

ORAL ARGUMENT NOT YET SCHEDULED

Nos. 16-1366, 16-1377, 16-1378,
17-1010, 17-1029 (Consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BENEDICT HILLS ESTATES ASSOCIATION, *et al.*,
Petitioners

v.

FEDERAL AVIATION ADMINISTRATION, *et al.*,
Respondents

On petition for review of an action by
the Federal Aviation Administration
49 U.S.C. § 46110

BRIEF OF THE CITY OF LOS ANGELES AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 28(a)(1) and 26.1, *amicus curiae* City of Los Angeles certifies the following:

(A) Parties and Amici

All parties and intervenors appearing in the proceedings below are listed in the Brief of Petitioners. It is the undersigned counsel's understanding from Petitioners that an additional homeowners' or neighborhood organization intends to file a brief in support of Petitioners.

(B) Ruling Under Review

Reference to the ruling at issue appears in the Brief for Petitioners.

(C) Related Cases

The cases on review have not previously been before this Court or any other Court, and the City of Los Angeles is not aware of any related cases in this Court or any other Court.

DISCLOSURE STATEMENT

The City of Los Angeles is a municipal corporation, organized under the provisions of the Los Angeles City Charter. There is no parent corporation for the City of Los Angeles. The City of Los Angeles has not issued stock, and therefore, no publicly held corporations own 10% of its stock.

TABLE OF CONTENTS

STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND INTEREST	1
ARGUMENT	6
SUMMARY OF ARGUMENT	6
I. THE FAA’S METROPLEX ACTION REARRANGED FLIGHT ROUTES OVER LOS ANGELES, CAUSING SIGNIFICANT COMMUNITY IMPACT.....	9
II. FAA DID NOT ADDRESS FUNDAMENTAL CONCERNS REGARDING THE ADEQUACY OF THE ENVIRONMENTAL ASSESSMENT PROCESS	16
A. FAA Has a Legal Duty to Ensure Clear Communication of Its Proposed Action and Impacts	17
B. FAA’s Draft Environmental Assessment Did Not Convey Exactly Where Route Changes Were Proposed or Their Impacts	18
C. FAA’s Attempts To Add Detail After the Draft Environmental Assessment Did Not Address the NEPA Deficiencies.....	22
D. The Environmental Assessment Also Failed To Communicate How the Routes Would Affect Historic Properties and Parks	26
III. FAA ULTIMATELY IMPLEMENTED ROUTES THAT DIFFERED FROM THOSE IT IDENTIFIED IN THE DRAFT ENVIRONMENTAL ASSESSMENT AND ITS NOISE ANALYSIS.....	29
CONCLUSION.....	33

TABLE OF AUTHORITIES

Cases

City of Phoenix v. Huerta, 869 F.3d 963 (D.C. Cir. 2017) 27

Statutes

49 U.S.C. § 303 4, 5, 26, 27

49 U.S.C. §§ 47503-05 2

54 U.S.C. § 306101, et seq., 4, 26

Regulations

36 C.F.R. § 800.2 27

36 C.F.R. § 800.4 27

40 C.F.R. § 1500.1 17

40 C.F.R. § 1500.2 17

40 C.F.R. § 1502.8 17

40 C.F.R. § 1502.9 33

Other

FAA Order 1050.1E *Environmental Impacts: Policies and Procedures*,
March 20, 2006 18, 25, 33

FAA Order 5190.6B *Airport Compliance Manual* 2

FAA Order 7400.2K *Procedures for Handling Airspace Matters* 11

Los Angeles Municipal Code 12.20.3 4

Los Angeles Municipal Code 91.106.4.5 5

GLOSSARY

City	City of Los Angeles
CLIFY	Waypoint in IRNMN, HUULL and RYDRR Arrival Routes
DAHJR	Waypoint in IRNMN, HUULL and RYDRR Arrival Routes
EA	FAA's Metroplex Environmental Assessment
FAA	Federal Aviation Administration
GADDO	Waypoint in IRNMN, HUULL and RYDRR Arrival Routes
IRNMN, HUULL, and RYDRR	New FAA Arrival Routes
LAX	Los Angeles International Airport
Metroplex	Southern California Metroplex Project
NEPA	National Environmental Policy Act
SHPO	State Historic Preservation Officer

NOTE: FAA flight routes and waypoints, like "DAHJR" are assigned names with five capital letters that do not represent acronyms and do not have any other formal title.

**STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP,
AND INTEREST**

All Petitioners and Respondents have consented to the filing of this brief. *See* Cir. Rule 29(a)(2). The City of Los Angeles states that no counsel for a party authored this brief in whole or in part, and no person, other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief. *See* Cir. Rule 29(a)(4)(E)(i)-(iii).

This brief is submitted by *amicus curiae* City of Los Angeles in support of Petitioners to provide this Court with additional context regarding the Federal Aviation Administration's ("FAA") August 31, 2016, Finding of No Significant Impact and Record of Decision for the Southern California Metroplex. FAA's new flight routes changed the noise environment in Los Angeles, with effects on both City residents and the City's fundamental interests. The City is the second most populous city in the country, with a U.S. Census-estimated 2016 population of 3,976,322 people and covers an area of about 469 square miles.

Under federal law, the City plays critical roles in the management of the effects of aircraft noise. First, as the proprietor of Los Angeles International Airport (“LAX”) and Van Nuys Airport, the City undertakes mitigation, noise planning, and land use compatibility efforts to address aircraft noise. *See* 49 U.S.C. §§ 47503-05 (noise management program for airport proprietors); FAA Order 5190.6B, *Airport Compliance* ¶ 13.2.a.2 (Sept. 30, 2009) (summarizing airport proprietor and federal roles in noise management). In execution of its police powers, the City is also charged with land use planning and development, zoning, and housing regulations to achieve multiple goals, including noise compatibility. *See* FAA Order 5190.6B ¶ 13.2 (Sept. 30, 2009) (role of local governments in zoning to address aircraft noise compatibility).

The City exercises these powers in a number of ways, including:

- operating a noise office for LAX and Van Nuys airports;
- hosting and supporting a LAX Noise Roundtable made up of representatives of nearby communities, Members of Congress, FAA, and others;

- providing over \$500 million in sound insulation to thousands of homes;
- collecting and reporting noise complaints and airport operations data such as the radar tracks for aircraft using City airports; and
- promoting noise compatibility procedures such as having the vast majority of aircraft depart over the Pacific Ocean west of LAX.¹

Indeed, FAA's Metroplex Environmental Assessment ("EA") directed noise complaints to the City's noise office (and similar offices for other airports) and provided City contact information rather than such information for the FAA itself. Final EA at F-5 to F-5 [AR 1-B-12; JA ____]. The City has seen a spike in noise complaints since FAA's implementation of the Metroplex.

¹ See generally, <https://www.lawa.org/en/lawa-environment/noise-management/lawa-noise-management-lax> and <https://www.lawa.org/-/media/lawa-web/tenants411/file/lax-noise-brochure.ashx?la=en&hash=D00255E63EA7CFAF3D909D52805D331202FF6DD0> .

The City's interests in historic preservation are also affected by noise increases. Federal law provides special protection for historic resources in both the National Historic Preservation Act, 54 U.S.C. § 306101, *et seq.*, and Section 4(f) of the Department of Transportation Act. 49 U.S.C. § 303(c). The City created Historic Preservation Overlay Zones to identify and protect neighborhoods with distinct architectural and cultural resources. Los Angeles Municipal Code § 12.20.3. Many of these Zones are overflowed pursuant to FAA's new procedures, and are affected by noise increases, including at least three different historic Zones (West Adams Terrace, Jefferson Park, and Adams-Normandie) directly below the IRNMN, HUULL, and RYDRR flight tracks along the I-10/Santa Monica freeway corridor.² The City also maintains a list of Historic-Cultural Monuments,³ many of which are concentrated along the flight tracks at issue. FAA showed many, but not all, of these

²<https://preservation.lacity.org/files/West%20Adams%20Terrace%20Survey%20Map.pdf>;
<https://preservation.lacity.org/files/Jefferson%20Park%20Survey%20Map.pdf>; <https://preservation.lacity.org/files/Adams-Normandie%20Survey%20Map.pdf> .

³<https://preservation.lacity.org/sites/default/files/HCMDatabase%23110717.pdf>

historic resources in the Environmental Assessment, including those under the IRNMN, HUULL and RYDRR routes. Draft EA at 4-17, Exhibit 4-5 [AR 2-A-5; JA ____].⁴ Pursuant to City ordinances, the City's Planning Department must make specific factual findings before it issues any permits to demolish, alter, or remove such a building or structure if it has been included on the National Register of Historic Places, or has been included on the City of Los Angeles list of Historic Cultural Monuments. See Los Angeles Municipal Code § 91.106.4.5.

In addition, the City has proprietary interests in its parks, beaches, recreation areas and other programs that are affected by noise along the Metroplex flight routes. FAA's Environmental Assessment showed locally-owned parks throughout Los Angeles that are overflowed by FAA's Metroplex routes. See Draft EA at 4-17, Exhibit 4-5; [AR 2-A-5; JA ____]. Parks are also accorded special protections under Section 4(f) of the Department of Transportation Act. 49 U.S.C. § 303(c).

⁴ FAA's files are difficult to use due to the scale and size. Magnification in a file reader of over 1000 % is often necessary to see the individual resources.

ARGUMENT

SUMMARY OF ARGUMENT

The City of Los Angeles, California (“City”), supports Petitioners’ request for a remand of the Federal Aviation Administration’s (“FAA”) Southern California Metroplex Project (“Metroplex”) Environmental Assessment and Finding of No Significant Impact. Remand is required in order for the FAA to comply with National Environmental Policy Act (“NEPA”) requirements and to evaluate changes to reduce environmental impacts.

The City files this *amicus curiae* brief to provide the Court its perspective as the largest city and airport operator affected by the shortcomings of FAA’s environmental assessment process. Relying on the City’s unique expertise in local airport and noise issues, this brief expands upon the Petitioners’ identification of FAA’s failure to adequately disclose FAA’s proposed action and failure to conduct adequate analysis of environmental impacts. *See e.g.*, Petitioners’ Brief at 44-60.

The issues in this case, while technical, are not abstract: FAA's Metroplex is moving flight routes to concentrate aircraft overflights above people's homes, schools, churches, parks, and historic sites, introducing noise that previously was not present, or not present to the same degree. Thus, the public and the City had a deep interest in understanding how FAA's Metroplex would affect the environment in Los Angeles.

However, FAA's Metroplex NEPA process failed in its most fundamental job of clearly identifying for the public the proposed federal action, its alternatives, and environmental effects. An ordinary person could not readily determine what FAA was proposing, how it differed from what was in place before FAA's action, and what it meant for a person's enjoyment of her home, school, or favorite park.

If a resident could not easily determine where flight route changes would be located relative to her home, FAA has not done its job under NEPA. To its credit, FAA acknowledged some of these flaws and tried to provide supplemental information for the public after issuing the Draft Environmental Assessment, but it was too little, too confusing,

too difficult to use, and too late to enable meaningful public engagement.

Further, when FAA implemented the Metroplex in 2017, FAA routed aircraft much lower to the ground than disclosed in the Environmental Assessment, which relied on noise modeling conducted in 2015 and 2016. As a result of this shift in flight altitudes, noise levels are likely greater than what FAA analyzed and presented to the public for its review and comment.

When Metroplex was implemented, affected neighborhoods and residents were stunned, leading to a dramatic spike in complaints submitted to the City. As discussed below, FAA's flight track changes have caused an almost seven-fold increase in monthly complaints filed with the City. *Infra* at 14-15. These complaints are likely attributable to FAA's failure to communicate during the NEPA process and its unexamined flight procedure changes during implementation of the Metroplex project.

As a result, the City respectfully requests that this Court remand this matter back to the FAA to address the shortcomings in its

environmental review. FAA must meet NEPA requirements by: (1) clearly communicating the proposed federal action and how it differs from the status quo; (2) properly conducting noise and other environmental reviews; and (3) considering alternatives or mitigation to reduce environmental impacts.

I. THE FAA'S METROPLEX ACTION REARRANGED FLIGHT ROUTES OVER LOS ANGELES, CAUSING SIGNIFICANT COMMUNITY IMPACT

FAA's Metroplex project changed flight routes over dozens of neighborhoods in Los Angeles. As seen below in Figure 1, from the Environmental Assessment, the resulting corridors for these routes cover the entirety of the City.

The Metroplex was an FAA project to implement elements of its Next Generation Air Transportation System in Southern California. In particular, the Metroplex was intended to provide new routes for aircraft using airports in the region that would use satellite-based navigation and modern technology rather than older ground-based radars. Finding of No Significant Impact at 2 (Aug. 31, 2016) [AR 1-A-1; JA ____]. When implemented appropriately, such new routes can

HUULL, and RYDRR arrival routes to LAX in western Los Angeles and Culver City,⁶ which shifted the route aircraft had taken about a half-mile north of the previous routes. *See e.g.*, AR-F-3-1 (route maps shown in public workshops) [AR 2-A-7; JA ___]; Final EA at A-573, -575 (same).

Second, the FAA's new "Next Generation" routes use Global Positioning System technology to allow aircraft to fly much tighter corridors, concentrating or "focusing" noise. *See* FAA Order 7400.2K, *Procedures for Handling Airspace Matters* at ¶ 32-2-2.e [AR 9-A-22; JA ___].

The term used to characterize the concentration of noise is "noise focusing." The actual flight tracks of aircraft flown on conventional [instrument flight procedures] using ground-based Navigational Aids (NAVAIDs) show broad dispersion around the trajectory of the defined procedures. The dispersion is typically based on the performance characteristics of individual aircraft types and pilot technique. In contrast, FAA's experience with satellite-based navigation procedures shows that actual

⁶These are the routes using the "CLIFY" waypoint referenced in Petitioners' Brief at pages 58-60. Because Petitioners focused on these routes, the City will do the same as consistent examples in its arguments. However, the use of these consistent examples do not mean that effects are limited to these routes. The same effects occur across Los Angeles.

flight tracks and [Next Generation] procedures converge to a much greater degree. Therefore, aircraft flying [Next Generation] procedures and the associated noise are concentrated over a smaller area than would be the case for the same operations using conventional, [non-Next Generation instrument flight procedures.]

Id. “The FAA recognizes the Proposed Action introduces additional RNAV routes that include flight paths with more concentrated flight tracks along the route centerlines.” Final EA at F-22 to -23 [AR I-B-12; JA ____]. However, because only broad 5-10 mile wide corridors were shown in the Environmental Assessment or its attachments, the public could not discern what homes would be affected by this noise focusing or how often they would be affected. *Infra* at 18-25.

Figure 2 below shows this before- and after-effect for FAA’s IRNMN, HUULL, and RYDRR routes, reflecting the increase in the number of flights over homes below the routes. At the “DAHJR” and “GADDO” waypoints,⁷ for example, *the number of direct overflights*

⁷ FAA's route procedures make use of both fly-over and fly-by waypoints. A fly-over waypoint is a waypoint that must be crossed vertically by aircraft. A fly-by waypoint marks the locations of turns. Thus, the waypoints denote places where aircraft must make turns, meet certain altitudes, or maintain course.

increased from 10-30 per day to more than 300 per day, at least a ten-fold increase. See Figure 2.

Third, FAA route changes involved undisclosed changes to the altitude at which aircraft fly. Aircraft that are lower in altitude are noisier on the ground below. See *Aircraft Noise Technical Report* at 3-64 (August 2016) [AR 3-A-4] (distance from ground and altitude are factors for noise considered in FAA noise modeling for Metroplex). As discussed below, residents could not determine the proposed effects on altitude from the Environmental Assessment itself.

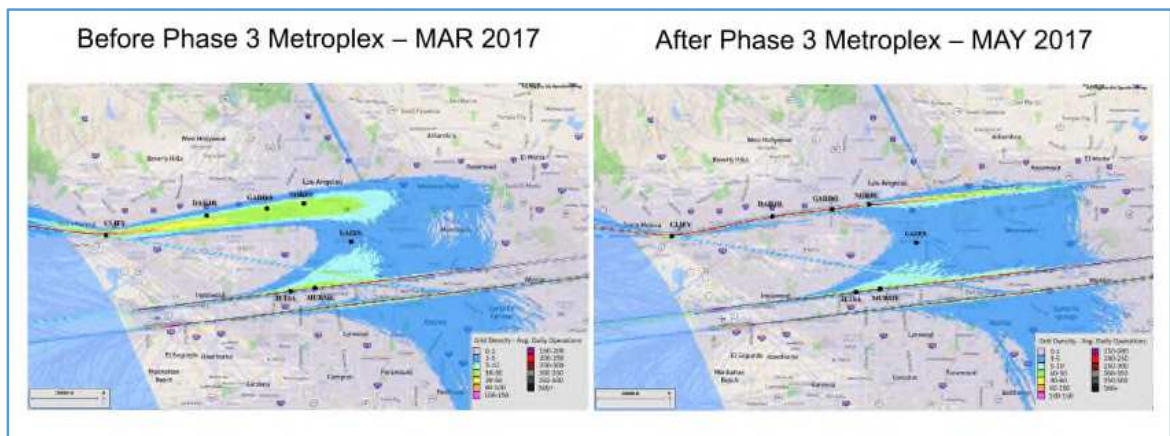


Figure 2: Concentration of Overflights Before and After IRNMN, HUULL, and RYDRR Metroplex Arrival Route Implementation⁸

⁸ *LAX North Downwind Arrivals at DAHJR Waypoint Before and After Metroplex Implementation* at 5-7, https://www.lawa.org/-/media/lawa-web/environment/lax-community-noise-roundtable/noise_management_presentations/noise_management_prese

Whether caused by the FAA's relocation of flight routes, the concentrated "noise focusing" tracks, flights at lower altitudes, or a combination of all these factors, noise complaints to LAX have dramatically increased.⁹ Because FAA's routes have not been in place for a full year, the best way to appreciate the effect is to compare months in late 2017 after implementation to late 2016 before implementation. Between November 2016 and November 2017, for example, noise complaints associated with LAX increased 693 % (from

[ntation/noisert_170913-dahjr-altitude-analysis.ashx?la=en&hash=F6C623B1F8038F97AA174354E42C6B5370638995](#). This data and map were produced by City staff using FAA radar data in the regular course of their noise management duties and kept as a public record with public access on the City's airport website. While the radar data obviously post-dates the FAA's implementation decision, the City presents it to help the Court better understand actual flight patterns that are not discernible from the Environmental Assessment.

⁹ As noted above, the Environmental Assessment directed residents to send future complaints about noise to the City, not to FAA, which was responsible for the changes in the airspace. Final EA Appendix F at F-5 to F-5 [AR I-B-12; JA ____]. Noise complaints submitted to the City are compiled and published monthly as public records on the City's airport website: <https://www.lawa.org/en/lawa-environment/noise-management/lawa-noise-management-lax/noise-management-monthly-report>.

2,936 to 23,290).¹⁰ Of these complaints, 46 % were from residents of the City of Los Angeles.¹¹ And, as seen in Figure 3 below, a substantial cluster of these complaints came from locations along the Interstate 10 corridor through Los Angeles, Culver City, and Santa Monica, the location of FAA's IRNMN, HUULL, and RYDRR routes.

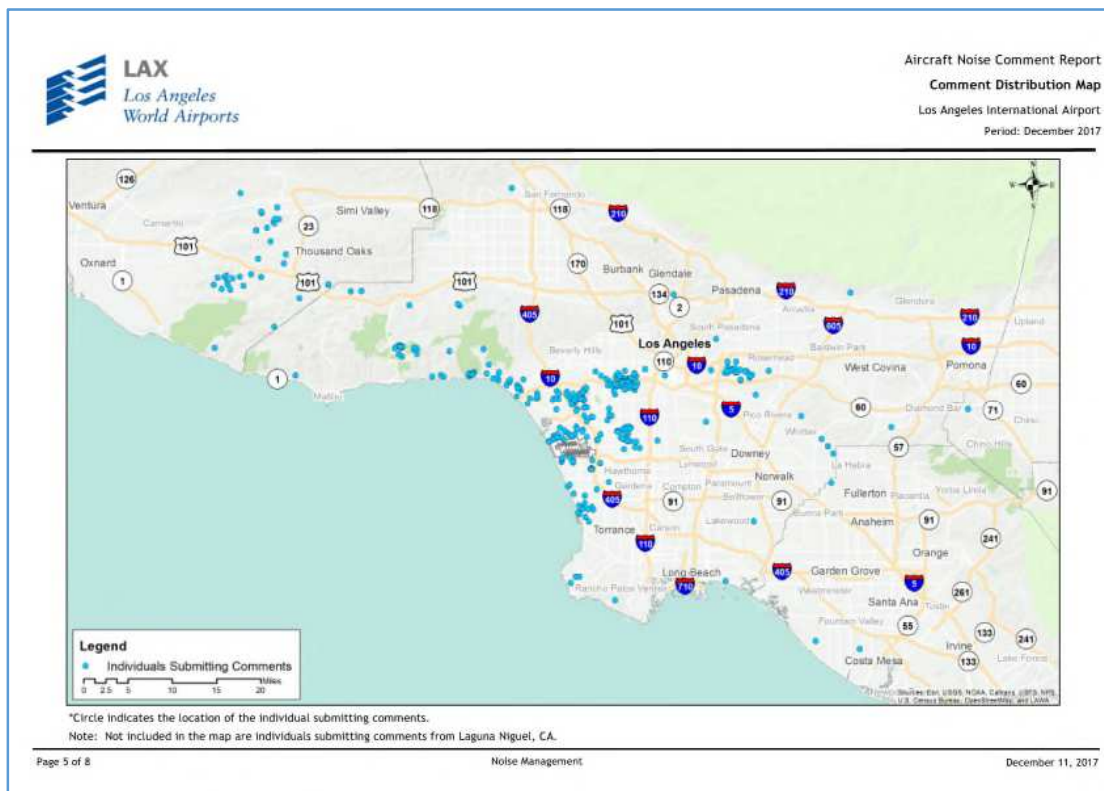


Figure 3: Map of Noise Complaints in November 2017¹²

¹⁰ See page 2 at <https://www.lawa.org/-/media/1c821f9a02f746f195ea902e2f5aff37.pdf>.

¹¹ *Id.* at page 4.

¹² <https://www.lawa.org/-/media/1c821f9a02f746f195ea902e2f5aff37.pdf>.

As FAA continues to implement its Metroplex action throughout Southern California, more communities will feel its deleterious impacts. Changes to any flight routes may bring beneficial or harmful changes to different neighborhoods; for this reason, clarity in the NEPA process regarding route location is especially important.

II. FAA DID NOT ADDRESS FUNDAMENTAL CONCERNS REGARDING THE ADEQUACY OF THE ENVIRONMENTAL ASSESSMENT PROCESS

FAA's Environmental Assessment did not comply with its basic duties under NEPA, because it failed to describe the proposed federal action, alternatives to the proposed action, and its impacts in a manner reasonably accessible to the public. *See* Petitioners' Brief at 58 ("FAA fails to provide, in the EA, an accurate representation of the paths anticipated for aircraft overflights..."). Instead, FAA provided technically-dense prose, maps, and charts not readily understandable to the public. FAA's Environmental Assessment failed to provide residents the most critical information: how the proposed changes to routes would affect their homes and neighborhoods. These flaws explain some of the issues raised by the Petitioners regarding the

accuracy of flight paths and flight altitudes. *See e.g.*, Petitioners' Brief at 58-60, 63-66.

A. FAA Has a Legal Duty To Ensure Clear Communication of Its Proposed Action and Impacts

The Council on Environmental Quality regulations governing NEPA implementation make clear that agencies must ensure that “environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality.” 40 C.F.R. § 1500.1(a). Agencies must also “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” *Id.* § 1500.2(d). As a result, “[e]nvironmental impact statements shall be concise, clear, and to the point...” 40 C.F.R. § 1500.2(b). And, “[e]nvironmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them.” *Id.* § 1502.8.

FAA's own order implementing NEPA and the Council on Environmental Quality regulations also requires it to identify clearly

and plainly in environmental assessments what it the agency is proposing to do. FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures* at ¶¶ 404a-404c, 405b. All environmental assessments must “describe[] the proposed action with sufficient detail in terms that are understandable to individuals who are not familiar with aviation or commercial aerospace activities.” *Id.* ¶¶ 209d (requirement to involve the public fully and effectively, including low-income and minority communities), 210 (plain language), 405d (plain description of proposed action).

B. FAA’s Draft Environmental Assessment Did Not Convey Exactly Where Route Changes Were Proposed or Their Impacts

FAA’s Draft Environmental Assessment for the Metroplex failed in this basic NEPA task, because the public could not discern from the document exactly where flight routes were before FAA’s proposed action, where they would be afterwards, or how high aircraft would fly using the new routes. Instead, the Draft Environmental Assessment provided a very high-level jargon- and acronym-filled overview of airspace covering Southern California and a general description of 179

different route changes at 21 airports. Draft EA at Chapter 3 [AR 2-A-4; JA ____]. Textually, FAA just listed the 179 routes with acronyms meaningless to the average person and highlighted only a handful of example routes. *Id.* at 3-17 to 3-25. Figure 4 shows a sample of the information available to readers of the Environmental Assessment regarding particular routes that may or may not be directly over their homes.

Proposed Action Procedure	No Action Procedure	Procedure Type	Basis of Design	Airports Served	Transitions (enroute/runway) ¹	Objectives
VAN NUYS ONE	VAN NUYS ONE	SID	Conventional	BUR	6/0	N/A
VENTURA SIX	VENTURA SIX	SID	Conventional	LAX	2/0	N/A
VISTA TWO	VISTA TWO	STAR	Conventional	LAX	1/0	N/A
VITKO ONE	VITKOONE	SID	Conventional	NKX	3/0	N/A
VVERA ONE	HAYEZ FOUR	SID	RNAV	VNY	2/0	Flexibility, Predictability
	VAN NUYS ONE	SID	RNAV	BUR		Flexibility, Predictability
WAYVE ONE	KIMMO FOUR	STAR	RNAV	LAX, SMO	4/0	Flexibility, Predictability
WEESL ONE	LYNXX EIGHT	STAR	RNAV	BUR, VNY	2/0	Flexibility, Segregation
WLKCR ONE	CANOGA ONE	SID	RNAV	VNY	3/1	Flexibility, Predictability, Segregation
WNNDY ONE	GORMAN FIVE	SID	RNAV	LAX	3/2	Flexibility, Predictability, Segregation
ZIGGY FIVE	ZIGGY FOUR	STAR	Conventional	ONT	4/2	Segregation
ZILLI THREE	ZILLI TWO	SID	RNAV	LAX	2/4	Predictability
ZOOMM ONE	SENIC ONE	SID	RNAV	LGB	5/0	Flexibility, Predictability, Segregation
ZUUMA ONE	MOORPARK THREE	STAR	RNAV	LAX	2/1	Flexibility, Predictability, Segregation

Figure 4: Example of Environmental Assessment Description of Proposed Action¹³

¹³ Draft EA at 3-24 [AR 2-A-4; JA ____].

The Draft Environmental Assessment's maps were not much more helpful. FAA attempted to show all of the 179 changed or added routes on one 11 x 17 inch sheet of paper and a 17-megabyte Adobe Portable Document Format file. *See* Draft EA at Figure 3-8 [AR 2-A-4]. This map was overlaid on an area about 140 miles tall from the Mexican border to Santa Barbara, and almost 230 miles wide from the Pacific Ocean to the Mojave Desert. *Id.* On the electronic version, for those members of the public with sufficient computer capacity and bandwidth to open and manipulate the 17-megabyte file, they could try to turn on or off "layers" on the map showing blobs that contained where each of the more than 100 routes would be. *Id.* and Figure 1, *infra*.

There was no guidance regarding how members of the public should determine which of the 179 all-capital-letter code-named routes were of interest to their home or area. *See* Draft EA Chapter 3 [AR 2-A-4; JA ____]. And, the map only showed wide corridors in which a proposed route was contained, not the actual route itself. *Id.* at 3-27, Figure 3-8. These corridors were 5 to 10 miles wide, within which the precise Next Generation "RNAV" or "RNP" route would be somewhere

located. *Id.* at Figure 3-8. Yet, elsewhere in its Environmental Assessment, FAA acknowledged that 90% of aircraft flying its routes would be within a half-mile of the route centerline. *Id.* at F-23. This meant that FAA's depicted corridors were many times wider than where most aircraft would actually fly, hiding the true location from concerned members of the public. And, to determine changes from the *status quo*, this challenging "Proposed Action" map had to be compared to another similar, but separate, map showing the "No Action" existing routes. Draft EA at Exhibits 3-7, 3-8 [AR 2-A-4; JA ____]. Finding where routes were proposed to change at a neighborhood scale relative to one's home, school, church, or park was impossible.

FAA's materials confounded, rather than clarified, whether a property would be affected, either positively or negatively. For example, using the IRNMN, HUULL, and RYDRR routes that include the "CLIFY" waypoint identified in Petitioners' brief, it was a challenge to the general public to ascertain whether any home is overflowed by either the Proposed Action or No Action routes. The City encourages the Court to try to discern how routes would change with the "Proposed

Action” scenario for IRNMN in Los Angeles south of Interstate 10 in Los Angeles. Draft EA at Figures 3-7, 3-8 [AR 2-A-4; JA ____].

C. FAA’s Attempts To Add Detail After the Draft Environmental Assessment Did Not Address the NEPA Deficiencies

The maps FAA used during a public workshop in Los Angeles on June 18, 2015, provided better information for the public regarding how routes would change at the neighborhood scale within which people actually live. FAA provided maps at this workshop of certain individual route procedures (IRNMN and HUULL, but not RYDRR) overlaid on Google Maps aerial photographs of the area, and posted these maps on its website in five files of up to 37 megabytes each. *See* AR 7-F-3-1; Final EA at A-573-75 [AR 1-B-7; JA ____].

However, interested residents either had to attend the public workshop or know to scroll down the FAA’s website to open the right files, which were located well below the Environmental Assessment files. *Id.* at A-668-669. And, residents would have had to have sufficient computer and internet resources to download and use 37-, 29- and 24-megabyte files. Once downloaded, the residents would have to

locate their home's location underneath a mess of blue, yellow, white, and black lines, which themselves obscured entire neighborhoods in the underlying map.

The City and other parties provided comments in September 2015 regarding the need to better describe the FAA's action and the noise effects on communities. Comment Letter from Los Angeles World Airports Executive Director Deborah Flint at 2 (Sept. 4, 2015), Final EA at F-632-33 [AR I-B-12; JA ___]; LAX Community Noise Roundtable Comment Letter at 5 (Sept. 2, 2015), *id.* at F-595, -599. The City stressed that FAA needed to include this information in the Draft Environmental Assessment to facilitate public use and engagement.¹⁴ *Id.* at F-633. The LAX Community Noise Roundtable concluded that the "Draft EA provides insufficient information for community members to assess potential adverse noise impacts on their specific community proposed by the proposed changes." *Id.* at F-595, -599. Despite this

¹⁴ Consistent with Petitioners' brief (see pages 55-58), the City also called for FAA to use the California Noise Equivalent Metric that the public is used to seeing in airport-related environmental documents in Los Angeles and elsewhere. Final EA at F-632 [AR I-B-12; JA ___].

assessment, FAA never amended or supplemented the Environmental Assessment to include this most basic information.

As noted in Petitioner's brief, FAA did extend the deadline for comments on July 9, 2015. Final EA at A-653 to -54 [AR I-B-7; JA ____]. It then extended the deadline again on September 8, 2015. *Id.* at A-697. During this period, FAA included some additional material on its website, as discussed below, but did not reference the additional information in the extension notices. Instead, FAA again "encourage[d] interested parties to review *the EA*, and provide written comments..." *Id.* at A-653-54, A-697 (emphasis added).

Near the end of the comment period, FAA added some additional information resources showing flight tracks and noise levels on a local level to its website.¹⁵ Final EA at A-713 to -727, -727 [AR I-B-7; JA ____]. If members of the public happened upon these additional resources, they could link to computer files within a Google Maps application to see routes and some noise information. For technically-

¹⁵ FAA did reference these new resource documents in a September "invitation" to local governments, but not to the general public. Final EA at A-748-49.

proficient individuals with good computers and internet capacity, these files provided higher resolution images of flight track locations, allowing users to see how they would be located relative to individual houses and streets.¹⁶ However, FAA's website warned that the files were large and required good internet connections.¹⁷ Further, the files required users to have underlying Google Earth software and digest an eight-minute video tutorial to use, on top of long download times.

While helpful for some of the public, these measures did not provide plain, clear, and easy-to-access information, particularly for less advantaged parts of the community such as low-income communities without access to the same technical skills, computer equipment, and high-speed internet. *See* FAA Order 1050.1E ¶ 209d [AR 9-A-11; JA ___] (FAA must provide members of minority populations and low-income populations access to public information concerning the human health or environmental impacts of the proposed action).

¹⁶ The Court can try these files itself, which are at AR 8-A-1, 8-A-2, and 8-A-3, or still on FAA's website at:

http://www.metroplexenvironmental.com/socal_metroplex/socal_docs.html#ge .

¹⁷ *Id.*

D. The Environmental Assessment Also Failed To Communicate How the Routes Would Affect Historic Properties and Parks

The inability to understand the impact of proposed routes was even greater for historic resources and parks, which are accorded special protections under the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act. 54 U.S.C. § 306101, *et seq.* (“Preservation Act”); 49 U.S.C. § 303(c) (Section 4(f)). In addition to the inability to readily determine the location of the routes, FAA’s maps in the Environmental Assessment did not identify particular historic resources and parks. *See* Draft EA at 4-16 to -18, Figures 4-4, 4-5 [AR 2-A-5; JA ____]. FAA’s few maps routinely sacrificed depth for breadth. The 11 x 17 inch map to cover all of Southern California did not permit users to see where the identified resources were located on a street grid, or at any other useful level of detail. *Id.*

FAA did send a list of National Register of Historic Places properties in the study area to the State Historic Preservation Officer (“SHPO”). Final EA at PDF pages 293-322 [AR I-B-7; JA ____].

However, this list did not correspond to the labels for modeled properties in FAA's noise modeling report, necessitating laborious and technical cross-referencing of 600 pages of points using GPS coordinates. *Compare id.* and *Aircraft Noise Technical Report* Table 2 [AR 3-A-3; JA ___] Further, this list was incomplete, because the standard FAA was required to apply under the Preservation Act was for whether properties were National Register-*eligible*, not just actually listed. *See e.g.*, 36 C.F.R. § 800.4(c); 49 U.S.C. § 303(c) (Section 4(f) protects historic sites and parks of local significance, as determined by local officials with jurisdiction over the resources). FAA never directed the State Historic Preservation Officer to identify properties that are National Register-eligible. *See* Final EA, Appendix A, Section A.3 [AR 1-B-7; JA ___].

Even more troublingly, FAA failed to comply with its duty under Part 106 of the Preservation Act to consult with local historic officials such as the Los Angeles Office of Historic Resources, as required by the Part 106 regulations. 36 C.F.R. § 800.2(a)(4), (c)(3); *City of Phoenix v. Huerta*, 869 F.3d 963, 971 (D.C. Cir. 2017) (“agencies must consult with

certain stakeholders in the potentially affected areas, including representatives of local governments”). FAA’s Section 106 consultation record makes clear that it only consulted with the SHPO and tribal historic officials; only the State and tribal officials received Section 106 consultation letters. Final EA at A-289, *et seq.* [AR I-B-7; JA ___].

Because FAA did not comply with its nondiscretionary duty to consult with local historic officials, there was no opportunity for these officials to identify National Register-eligible properties, uniquely noise sensitive properties, etc. *Id.* (“FAA’s failure to notify and provide documentation to the City of the agency’s finding of no adverse impact violated regulations under the Preservation Act, and denied the City its right to participate in the [Preservation Act] process and object to the FAA’s findings.”)

III. FAA ULTIMATELY IMPLEMENTED ROUTES THAT DIFFERED FROM THOSE IT IDENTIFIED IN THE DRAFT ENVIRONMENTAL ASSESSMENT AND ITS NOISE ANALYSIS

Even if members of the public could navigate the voluminous and confusing set of materials regarding the Proposed Action, they would have not gotten a full understanding of the noise impacts, because FAA implemented the Metroplex in a manner different from what it disclosed in the Environmental Assessment and modeled for noise purposes. Petitioners' Brief identifies flaws in the FAA's Environmental Assessment and noise analysis associated with a shift in the "CLIFY" waypoint used in the heavily-used IRNMN, HUULL, and RYDRR arrival routes into LAX. Petitioners' Brief at 58-60.¹⁸ These

¹⁸ Although the City agrees that the FAA's noise analysis was flawed, the City does not agree with Petitioners' proffered cumulative impact arguments. *See* Petitioners' Brief at 69-74. Petitioners' argument that the Metroplex should have included consideration of a City Specific Plan Amendment Study completed in 2013 is based on incorrect assertions. For example, the Study cited in the brief reflects no approval by FAA; it was a purely local action by the City. *See* Petitioners' Brief at 72 (claiming FAA approval); Petitioners' Request for Judicial Notice at Exhibits A-C. FAA will need to approve any runway changes from the Study and consider them under NEPA, which the City has not requested. Further, while the City did conduct California Environmental Quality Act ("CEQA") review for Study, it made clear that this was only on a high-level programmatic review and

flaws are exacerbated by the fact that FAA is not implementing minimum altitudes for these routes in the manner that it stated that it would in the Environmental Assessment process.

During the course of the public comment period, FAA showed that aircraft arriving to LAX on these routes would fly at an altitude of 6,000 feet or higher at a critical point in Los Angeles called the “DAHJR” waypoint. *See* Final EA at A-575 (public presentation of routes at June 18, 2015, public workshops); *Id.* at A-714-18 [AR I-B-7; JA ___] (FAA website link to FAA “TARGETS” model files for IRNMAN, HUULL and RYDRR); AR at 5-A-28-3, 5-A-60-3; JA ___] (TARGETS files for IRNMAN and HUULL showing minimum altitudes of 6,000 feet at DAHJR). And, FAA indicated that its noise analysis was based on these altitude assumptions, with higher altitude meaning less noise, all

any implementation would require more specific project-level review. *See* Final EA at F-772. No such project-level review has been initiated by the City for any runway projects. The City’s airport CEQA website lists all environmental reviews underway and does not include the runway or other projects identified by Petitioners:

<https://www.lawa.org/en/lawa-our-lax/environmental-documents/current-projects>.

things being equal. *See Aircraft Noise Technical Report* at 3-64 (August 2016) [AR 3-A-4; JA ____].

But FAA has not implemented the routes as it disclosed it would. The IRNMAN, HUULL and RYDRR routes were designed to feed into other “Required Navigation Performance” (referred to in FAA’s documents as “RNP”) for their final approach into LAX. *See Final EA* at A-573, 575 [AR 1-A-7; JA ____]. Despite its originally-disclosed design, FAA has not enabled this connection, because it has not deployed a critical air traffic control software tool called the Terminal Sequencing and Spacing tool. *See LAX Community Noise Roundtable Recap* for May 10, 2017 at 2-3.¹⁹ FAA’s Regional Administrator informed the City and the City-facilitated LAX Community Noise Roundtable about this delay in May 2017, but has not undertaken any additional noise analysis or supplemental NEPA work to address the

¹⁹ See https://www.lawa.org/-/media/lawa-web/environment/lax-community-noise-roundtable/noise_management_recaps/noise_management_recaps/noise_rt_170510_recap.ashx?la=en&hash=EBDF17EA5C7D03EB07903FD0FD3328A6383F8269. Minutes of all LAX Community Roundtable meetings are prepared and kept as public records on the City’s airport website. FAA participates in the Roundtable meetings.

effects of flying routes differently than portrayed in the Environmental Assessment. *Id.*

Thus, more than two thirds of the aircraft flying the IRNMN, HUULL, and RYDRR routes are below the “minimum” 6,000 foot altitude at the DAHJR waypoint in Los Angeles.²⁰ This altitude mismatch, along with the location concerns identified by Petitioners (Brief at 58-60) and concentration of flight tracks, means noise is being focused in new areas north of the pre-Metroplex flight tracks and at levels greater than assumed in the Environmental Assessment noise analysis. These locations of focused noise correspond with the locations of increased noise complaints to the City from aircraft operations. *See* Figure 3. FAA must supplement and reconsider its Metroplex Environmental Assessment based on its own changes to the Metroplex

²⁰ *LAX North Downwind Arrivals at DAHJR Waypoint Before and After Metroplex Implementation* at 13, https://www.lawa.org/-/media/lawa-web/environment/lax-community-noise-roundtable/noise_management_presentations/noise_management_presentation/noisert_170913-dahjr-altitude-analysis.ashx?la=en&hash=F6C623B1F8038F97AA174354E42C6B5370638995. As noted in footnote 12, this data and map were produced by City staff using FAA radar data as public records.

implementation, as compared to what was disclosed to the public. *See* 40 C.F.R. § 1502.9(c) (agencies must develop supplemental statements if “the agency makes substantial changes in the proposed action that are relevant to environmental concerns”); FAA Order 1050.1E, ¶¶ 410-411 (FAA must prepare written reevaluation and/or supplement to environmental assessment if there are changes to the action or changed information affecting environmental analysis).

CONCLUSION

The City agrees with Petitioners that Court should remand the Metroplex Environmental Assessment to FAA to address the deficiencies in the NEPA process. At a minimum, on remand FAA must provide clearer information to the public regarding FAA’s action and its impacts. FAA can readily do so by providing more accessible maps and descriptions of its actions, by neighborhood, in a user-friendly manner. Second, FAA must address the actual flight routes that aircraft will use – including accurate altitudes – in its noise analysis. Third, FAA should take a hard look at measures to minimize and mitigate the noise effects of the Metroplex. This should include effective minimum

altitude requirements, routing to minimize direct overflights of residential areas, and measures to eliminate or address the effects of concentrating operations on very narrow flight corridors.

Dated: March 23, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the word limit imposed by this Court's Rules, and contains 5,561 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

Dated: March 23, 2018

/s/ David J. Michaelson

David J. Michaelson

CERTIFICATE OF SERVICE

I hereby certify, that on March 23, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: March 23, 2018

/s/ David J. Michaelson
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