

No. 13-1984

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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FOR THE FIRST CIRCUIT

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Sheryl Fleitman, Barbara Baxter, Rosalee Carlson, Cindy L. Christiansen, Virginia  
Corcoran, Christopher Devine, Beth Fleitman, Vivian Fleitman, Philip Johenning,  
Jean MacIsaac, Craig Martin, Tim McCarthy, Martha McDonough and Paul  
Yovino

Plaintiffs-Appellants

v.

Federal Aviation Administration

Defendant-Appellee

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On Appeal From FAA's Runway 33L RNAV SID  
Finding of No Significant Impact/Record of Decision  
Regarding the Runway 33L RNAV SID  
Final Environmental Assessment (EA)

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BRIEF FOR THE PLAINTIFFS-APPELLANTS

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Respectfully submitted,

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**STATEMENT OF JURISDICTION**

The United States First Circuit Court of Appeals has jurisdiction under Title IV for review or enforcement of orders of an administrative board, reviewing the instant decisions by the Federal Aviation Administration (FAA), here approving a runway departure route directing aircraft from Boston Logan International Airport Runway 33L over Milton and Hyde Park based on its Finding of No Significant Impact & Record of Decision of May 2013 (FONSI/ROD). Article III standing is also appropriate as the Appellants have suffered an injury-in-fact to a cognizable interest, a causal link between that injury and respondent's action, and likelihood that the injury could be redressed by the requested relief. *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 128 S.Ct. 2531, 2542, 171 L.Ed.2d 424 (2008); *Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 55 (1st Cir.2001). "To establish injury-in-fact in a 'procedural injury' case," like the present one, "petitioners must show that 'the government act performed without the procedure in question [here, sufficient NEPA review] will cause a distinct risk to a particularized interest of the plaintiff.'" *Town of Winthrop v. FAA*, 535 F. 3d 1 (1st Cir.2007)(citation omitted).

**STATEMENT OF THE CASE**

This appeal is from the Boston Logan International Airport Runway 33L Area Navigation (RNAV) Standard Instrument Departure (SID) Environmental Assessment assessment of May 2013 and Runway 33L RNAV

SID FONSI/ROD issued on June 4, 2013. A Notice of Appeal was filed by Appellants on August 4, 2013. Extensions for filing of Appellants Brief were granted by the First Circuit Court of Appeals on April 9, 2014 and April 23, 2014. This brief is filed timely.

#### STATEMENT OF FACTS

The FAA, jointly with Massport, has implemented an Area Navigation Standard Instrument Departure procedure for Runway 33 Left at Boston-Logan International Airport ("Runway 33L procedure") based on an Runway 33L RNAV Environmental Assessment (EA). The Runway 33L procedure instructs aircraft departing from Boston Logan International Airport Runway 33L to climb on a heading of 331 degrees to at or above 520 feet, follow a 314-degree course to the TEKKK waypoint, and then diverge onto their various flight paths. See Runway 33L RNAV SID FONSI/ROD, 3. The Runway 33L procedure forces departing aircraft into a narrow flight corridor over the Hyde Park section of the City of Boston and the Town of Milton. The Town of Milton, comprising only 13.2 square miles, already experienced heavy air traffic noise and pollution from airplanes making Runway 4R arrivals, Runway 4L arrivals, and Runway 27 departures. The FAA's consolidation of flight paths from Runway 33L to the TEKKK waypoint further increases air traffic over the Hyde Park section of the City of Boston and the Town of Milton to a disputed extent. These areas include both the Blue Hills and Stony Brook Reservations, which contain a number of historically-significant landmarks as well as

wildlife and recreational resources. The Runway 33L procedure will also increase the noise and pollution levels over these areas to a disputed extent by the addition of Runway 33L departure flights.

**SUMMARY OF THE ARGUMENT**

The FAA's Runway 33L procedure and Environmental Assessment documents suffer from a number of critical flaws in the data utilized to prepare these reports and in the conclusion derived from these reports indicating the Runway 33L procedure will have no significant impact upon the relevant community. Critical flaws in the information used to compile the reports include using an indicator other than Total Population Data and use of insufficient noise and air quality metrics. The analysis and conclusions the FAA drew from the RNAV SID FONSI/ROD and Environmental Assessment are flawed because they fail to protect "noise-sensitive areas" and do not sufficiently address a categorical exclusion routing Runway 27 departures through the relevant airspace. The FAA's report also fails to meet a number of other FAA requirements and objectives, such as the need to provide meaningful analysis of alternative routes, consider adverse effects on minority or low income populations, and to interact with the public. For these reasons, the Runway 33L RNAV SID FONSI/ROD and Environmental Assessment are invalid. The FAA must be ordered to perform full assessments utilizing correct information that fulfills the FAA's obligations under law and administrative procedure.

ARGUMENT

The RNAV SID FONSI/ROD and Environmental Assessment prepared by HNTB Federal Services Corporation on behalf of the FAA/Massport are fatally flawed because they rely on defective information and fail to meet many of the obligations imposed upon the FAA. The information in these documents are not sufficiently precise to conclude that there was no significant impact on the citizens who live below the Runway 33L navigation corridor.

I. THE FAA'S INFORMATION SUFFERS FROM CRITICAL FLAWS.

The FAA's RNAV SID FONSI/ROD and Environmental Assessment are inadequate because they fail to properly gauge the population of the affected areas, fail to adequately evaluate cumulative aviation noise effects on the relevant population, fail to adequately measure the air quality impact in the relevant area, and fail to adequately consider Runway 27 departures in their analysis.

A. The FAA underrepresented the population of the relevant areas affected by the Runway 33L procedure by failing to use Total Population data in its Environmental Assessment.

The FAA's Runway 33L procedure analysis failed to adequately consider adverse effects to minority or low income populations contrary to the Department of Transportation's Order on Environmental Justice (4/15/1997). D.O.T. Order 5610.2(a). The Order requires Title VI analyses and environmental justice analyses conducted as part of Federal Transportation Planning and NEPA Provisions to

prevent disproportionately high and adverse effects to minority or low income populations. The FAA's full assessment is as follows:

Because there are no significant impacts as a result of Proposed Action, there are no adverse human health or environmental effects associated with the Proposed Action, which would exceed applicable thresholds of significance. As such, no persons of low income or minority populations would be affected at a disproportionately higher level than would other population segments. Accordingly, there would be no significant environmental justice impacts.

EA, 6.

The FAA's study failed to review the racial and economic composition of areas beneath the Runway 33L departure route versus other areas where Runway 33L departures might be routed. This failure does not insure the FAA's proposal does not adversely impact disadvantaged populations.

The FAA's EA erroneously failed to use Total Population data from the U.S. Census, relying instead upon Total Household Population information that does not include the full community living in the affected areas of Hyde Park<sup>1</sup> and the Town of Milton. According to the EA, Total Household Population data includes family and non-family households but excluding group quarters residents. EA, 3-4. Group quarters residents excluded by the Total Household Population data may include those, as the FAA states, who live in transient or

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<sup>1</sup> The population in the city of Boston has expanded in recent years and that includes the Hyde Park section of the city (2010 census survey), The Final Draft EA is inconsistent in that it utilizes census data from 2000 in analysis of the Measures F-HH (v1, 2, 3, 4) for 33L but yet it utilizes census data from the year 2010 for the noise studies presented later in the Draft. It is odd that this Final Draft EA, presented into the year 2013, would illustrate comparative alternatives, which used numbers from the year 2000.

temporary residential arrangements such as displaced persons, students living in dormitories, religious orders, and other people living in group homes. *Id.* Frequently, those living in group homes represent the most vulnerable members of our population.

The Appellants object to the FAA's implicit determination that people living in transient or temporary residential arrangements deserve less protection from aircraft noise and pollution than those that can afford permanent housing. Congressman Stephen Lynch and over 1,000 petitioners from the Town of Milton have likewise expressed their concerns over the sufficiency of this population data. EA, page 4-2. Furthermore, the 33L noise study analysis did not consider that the Readville section of Hyde Park is a hub of railway activity. Hyde Park is adversely impacted by the noise and pollution from the CSX freight train stop, three Commuter lines, and the Amtrak passenger train traffic 24/7 on their way to and from Boston. Throughout the night, the freight trains unload and Commuter trains arrive for repair at the Readville Yard. The noise generated from these operations can be heard throughout HP. HP also contends with the noise and pollution from hundreds of School Buses as Boston's largest school bus garage is located in Readville. As a newly impacted community from the 33L RNAV SID, HP would deserve a strict study regarding environmental impact.

Given the FAA's erroneous reliance on underrepresented population data and failure to acceptably explain the cause of its reliance on

this information, the FAA's assessment is fatally flawed.

B. The FAA's noise metrics used in the Environmental Assessment are not sufficient to evaluate cumulative aviation noise effects on the relevant population.

The FAA's noise metrics used in the Environmental Assessment are not sufficient to evaluate cumulative noise effects on the relevant population due to aviation activities. The Integrated Noise Model (INM), used for environmental review of aviation noise impacts, is an average-value model the FAA uses to estimate long-term average changes in operating conditions. EA, 3-3. The FAA's assertion that these antiquated noise models accurately indicate negligible environmental changes by consolidating air traffic patterns within a narrow corridor are highly questionable. Congressman Stephen Lynch expressed these concerns to the FAA, based on many letters he received and a petition of nearly 1,000 residents of the Town of Milton. EA, 4-2.

The FAA's own EA responses made in the draft report indicate that the level of imprecision in the noise estimates is so large that no conclusion can be made, with any reasonable level of scientific confidence, about whether the new Runway 33L procedure will cause significant increases or decreases in noise levels. The FAA responded to questions regarding the imprecision in the Day Night Level noise estimates (DNL) by referencing to a document that says the imprecision levels are as large as 5 decibels ("dB"). EA Appendix

B, 6-3. This means that the estimate of 56 DNL for 198 Milton residents who were included in the analysis could actually have a noise burden as high as 61 (note the 198 only includes the flawed and reduced numbers used in this EA). The future projected estimates have even greater imprecision due to the inherent inaccuracies in the hypothetical projected input values. Even with a strong correlation between the current estimated value and the projected estimated, the estimate of the difference could be off by as much as 3.9 dB with 95% confidence. This makes it impossible to detect differences required by Order 1050.1E. To establish the non-existence of an increase of 1.5 dB (as required by Order 1050.1E for those in the 65 and more DNL) or even a difference of 3.0 (as required for those with DNL between 60 and 65), the level of imprecision would need to be 2 dB or less. The FAA's level of precision in the DNL measurement prevents the FAA from deriving meaningful use of its model and violates the required parameters of Order 1050.1E.

The history of the DNL model has a history of failure to meet the requirements of acceptable modeling. The origin of DNL was a 1974 EPA report, reviewed and adopted in 1992 by a federal interagency committee on noise and continues to be the measurement used in FAA noise studies. Mestre, Vincent, et. al., Technical Support for Day/Night Average Sound Level Replacement Metric Research, Report DOT/FAA/AEE/2011-02 (2011). This 20+ year old FAA policy has been questioned on many scientific levels as not

reflecting the true effect of aircraft noise burden. The Mestre report, while couching its discussion in rationalizing the reasons for public mistrust, admits a number of reasons why a measurement like DNL is not useful for predicting public disturbance by air traffic noise. Section 2 of the report admits these metrics for predicting noise impacts are largely expedient in nature, unsupported by theory-based understanding of the causes of community reaction to noise, but rather on historical studies of perception of loudness, convenience of measurement, and on custom that has been codified in regulation. *Id.* The report goes on to admit that the EPA originally intended the DNL as an expedient means for quantifying and comparing transportation noise resulting from disparate sets of operations. *Id.* Most probatively, the report admits DNL "doesn't work particularly well as a predictor of aircraft noise impacts. FICON's 1992 relationship accounts for less than a fifth of the variance in the association between aircraft noise exposure and the prevalence of high annoyance in communities (Fidell, 2003; Fidell and Silvati, 2004)." *Id.* at 14. The report goes on to discuss the DNL model's failure to account for non-acoustic determinants of annoyance, practical limitations of the exposure-response curve, and random errors of measurement of both exposure and community response to aircraft noise exposure. *Id.*

The National Environmental Policy Act ("NEPA") [42 U.S.C. § 4321, et seq.] contains a Declaration of National Environmental

Policy which requires the Federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. The NEPA's purpose is to focus attention on the possible environmental effects of proposed actions so agencies do not make decisions with incomplete information and provide information about environmental effects to the public. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989). The NEPA requires Federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. To comply, all Federal agencies must prepare detailed statements assessing the environmental impact of and alternatives to major Federal actions significantly affecting the environment. Courts do not owe any deference to the FAA's interpretation of NEPA since it is addressed to all federal agencies and Congress did not entrust administration of NEPA to the FAA alone. *Citizens Against Rails-to-Trails v. Surface Transportation Board*, 267 F.3d 1144, 1150 (D.C.Cir.2001).

Measurements that are merely expedient are not sufficient to meet these requirements. Instead, compliance with the NEPA requires measurements that actually measure the impact of the decisions of Federal agencies on the communities that must live with them. For this reason, the DNL does not truly measure the discomfort that a community feels when subjected to intensive aircraft noise caused by intensively used narrow flight corridors. When using such a measure

as DNL, we believe that the FAA is not complying with the goals of NEPA.

An examination of the documents indicates that there was no Logan airport noise monitor located in Hyde Park. The FAA did not conduct actual noise measurements in Hyde Park for the preparation of the 33L EA. Results presented were obtained through algorithm modeling. Rather, the projected noise and environmental impacts were based on previous data when Hyde Park was not overflowed. Since February /March 2013, this data would no longer be accurate as low-flying planes (many below minimums) from all four major runways now overfly portions of Hyde Park.

There is also no evidence that the FAA is doing anything to account for deviations in air traffic's navigable airspace floors. Aircraft frequently fly below navigable airspace floors, increasing the noise and concentration of exhaust gases on the ground.<sup>2</sup> The FAA's noise and emission studies assume certain aircraft altitudes, but do not take this factor into account or require that aircraft respect the navigable airspace floors published on aviation charts. The FAA's failure to take this concern into account or to fine airlines whose aircraft fly below navigable airspace floors (or their controllers who clear aircraft to fly below those floors), fails to "protect and enhance the quality of the human environment" as required by NEPA.

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<sup>2</sup> See Massport complaint responses indicating flight below the 1,800 foot navigable airspace dated 03 May 2013, 19 June 2013, and 26 June 2013.

Further, the FAA's analysis of the additional noise caused by the consolidation of air traffic in the relevant corridor (see also Argument C below) is based on convenience rather than practicality and is not useful enough to predict noise level changes in locations which require special attention according to FAA's Order 1050.1E or NEPA requirements. At best, the study's conclusions are indeterminate with respect to these increases in noise level. The FAA cannot claim, with any level of confidence that would be acceptable in the scientific community, that "environmental impacts would not likely be significant.

C. The FAA's EA fails to adequately measure the Runway 33L procedure's impact on air quality in the relevant area.

The FAA's analysis of the Runway 33L procedure's impact on Air Quality does not conform to the requirements of Order 1050.1E, Appendix A. When a NEPA analysis is needed, the proposed action's impact on air quality is assessed by evaluating the impact of the proposed action on the National Ambient Air Quality Standards (NAAQS). *Id.* This measure requires analysis of both direct and indirect emissions that are reasonably foreseeable, dispersion modeling to determine whether pollutants exceed general conformity thresholds, and comparison of pollutant concentrations combined with background pollutant concentrations with the NAAQS standards. *Id.* Actions must be taken to mitigate or offset pollutant concentrations

or reduce emissions if they exceed the NAAQS standards. *Id.* at A-3, 4. The FAA has asserted that traffic control activities and adoption of approach, departure and enroute procedures for air operations in their list of activities that are "presumed to conform" to NAAQS standards, thereby indicating that these types of activities will not exceed de minimis emissions levels. 40 C.F.R. 93.153(b). The FAA's 'presumption' however is not supported by any facts.

In addition, the intense usage of the Town of Milton's airspace for arrivals to and departures from Boston Logan Airport requires the FAA to evaluate the cumulative impact of these routings on exhaust gases pursuant to Order 1050.1E. Milton, MA is a town of 13.2 square miles. Currently, airplanes utilizing the busiest approach runways (4R/L) for Boston Logan Airport fly over the Town of Milton at 1,200 to 1,700 feet. The usage of these runways in typical years far exceeds the existing Preferential Runway Advisory System's (PRAS) long term runway use goals. Given the many other routes that pass over Hyde Park and the Town of Milton, the FAA's presumption of de minimis emissions is not sufficient. The frequent and increasing air traffic over this corridor requires meaningful efforts be taken by the FAA to determine whether consolidated air traffic in this corridor meets State and National implementation plans in conformance with the Clean Air Act, condified as 42 U.S.C. 7401, et sec., as well as the NEPA. The substantial air traffic over this corridor requires the FAA to evaluate the emissions inventory for Hyde Park and the

Town of Milton rather than relying upon administrative convenience of claiming these emissions are de minimis.

D. The FAA's EA fails to adequately consider the inclusion of Runway 27 departures.

The Appellants' concerns about the Runway 33L procedure are increased due to a surprising and unexplained categorical exclusion for Runway 27 departures which also use the airspace under dispute. A Categorical Exclusion occurs when an agency decides not to conduct an EA believing that their proposed action will not have any significant impact on the environment. See 40 CFR 1508.3-4. The FAA can only create Categorical Exclusions in "extraordinary circumstances" that are "likely to directly, indirectly, or cumulatively create a significant impact on human environment." Order 1050.1E, §304(k). Citizens of the Town of Milton, including some of the Appellants, became disturbed on a routine basis by aircraft noise that they had never experienced before beginning around March 2013. The FAA's response to inquiries alleged that this additional noise was due to changes in preparation for the 33L RNAV. However, administrative records for the Runway 33L procedure show the creation of a categorical exclusion for Runway 27 RNAV departures around this time. The Runway 27 categorical exclusion indicates that the additional aircraft noise heard in Hyde Park and Milton came from a change in routing for runway 27 RNAV departures.

The circumstances in this case are similar to *Runway 27*

*Coalition, Inc. v. Engen*, 679 F. Supp. 95, 109 (D. Mass. 1987), discussing the same runways. In Runway 27 Coalition, the court entered a judgment ordering the FAA and its administrator to prepare an environmental assessment on the impact on the human environment of the introduction of a multiple runway configuration procedure for arrivals and departures from certain runways at the major airport. The *Runway 27 Coalition* court also required a decision to issue a Finding of No Significant Impact or prepare an environmental impact statement by a certain date. Just as in the 1987 *Runway 27 Coalition* case, the FAA is concurrently introducing air traffic procedures Runways 27 and 33L. The FAA must prepare a separate environmental impact statement for the Runway 27 RNAV procedure that evaluates the cumulative effect of Runway 27 aircraft departures, Runway 33L departures, and Runway 4L/R arrivals in terms of noise and exhaust gas concentrations.

## II. THE FAA'S REPORTS SUFFER FROM CRITICAL PROCEDURAL FLAWS.

The FAA failed to sufficiently consider all reasonable alternatives to minimize the noise and pollution impacts on the communities below the proposed flight path or interact with the affected public. The FAA's EA substantially failed to evaluate the significant health detriments (air and noise) impact on the historic and natural resources in the airspace. The FAA's EA also failed to adequately consider other acceptable flight paths. The FAA further failed to meet its Order 1050.1E obligations to meet with the public

prior to enacting the Runway 33L procedure. The FAA's EA "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. FAA*, 290 F. 3d 339 (D.C.Cir.2002). Due to these many flaws, the FAA must at minimum be required to perform a thorough evaluation of the Runway 33L procedure.

A. The FAA's proposed action fails to protect noise and environmentally-sensitive areas.

The FAA's proposed action fails to meet the FAA's obligation to protect the population from aircraft noise in "noise-sensitive" areas. See FAA Advisory Circular AC No: 91-36D (September 17, 2004). An area is considered "noise sensitive" if noise interferes with normal activities associated with the area's use. Examples of noise-sensitive areas include residential, educational, health and religious structures and sites and parks, recreational areas (including areas with wilderness characteristics), wildlife refuges and cultural and historical sites where a quiet setting is a generally recognized feature or attribute. *Id.* The Blue Hills Reservation and Hyde Park contain many of these attributes, including park and recreational areas that require additional protection from the Runway 33L procedure.

1. The Blue Hills Reservation

The Blue Hills Reservation area is a large recreational space with

wilderness characteristics and is home to a number of cultural and historical sites. The Executive Office of Energy and Environmental Affairs' website states the Blue Hills Reservation contains a National Historic Landmark, sixteen historic structures, and is home to several rare and endangered species in Massachusetts. Energy and Environmental Affairs, Blue Hills Reservation, <http://www.mass.gov/eea/agencies/dcr/massparks/region-south/blue-hills-reservation.html>.

The Blue Hills Reservation is also a source of parks and recreational opportunities, offering hiking trails, fishing, camping, nonmotorized boating, biking, skiing, swimming, skating, rock climbing, softball, and golfing opportunities to the public. *Id.* Former Milton Community Advisory Committee (CAC) representative Judy Kennedy stated that the southbound departures from Runway 33L should be moved farther west to avoid subjecting the Blue Hills Reservation to the greater noise and environmental pollution in her letter to the FAA (EA, 4-14 Table B-1) Therefore Runway 27 and 33L departures must be diverted from the airspace of Milton and Randolph to protect the Blue Hills Reservation area.

## 2. Hyde Park

Hyde Park, while primarily a residential neighborhood, is home to the Stony Brook Reservation and Camp Megis Memorial Park. The Stony Brook Reservation is a large recreational area offering a

variety of outdoor hiking and recreational opportunities. Energy and Environmental Affairs, Blue Hills Reservation, <http://www.mass.gov/eea/agencies/dcr/massparks/region-boston/stony-brook-reservation.html>. Hyde Park also contains Camp Megis Memorial Park, a historic Civil War training field for many regiments including the 5<sup>th</sup> Cavalry, the first African-American troops to serve in the U.S. Army. Exploring Boston's Neighborhoods: Hyde Park, 3-4, [http://www.cityofboston.gov/images\\_documents/Hyde\\_Park\\_brochure\\_tcm3-19119.pdf](http://www.cityofboston.gov/images_documents/Hyde_Park_brochure_tcm3-19119.pdf). While not hosting as many culturally, historic, and environmentally-significant elements as the Blue Hills Reservation area, Hyde Park's cultural and recreational sites nevertheless significantly contribute to the need for the FAA to reevaluate its Runway 33L procedures to protect these areas.

B. The FAA's Finding of No Significant Impact & Record of Decision and Environmental Assessment have significant procedural deficiencies.

The FAA did not meet its obligations to consider alternative routes or engaging with the public prior to making the Runway 33L procedure. The FAA's finding of no significant impact attempts to avoid its responsibilities to consider other alternatives for addressing air traffic routing, which may be performed without consolidating so many routes within a particularly narrow flight path. The FAA's public outreach has also failed to meet its obligations. The FAA's failures to meet its regulatory obligations support a determination that it must vacate its current Runway 33L

RNAV SID FONSI/ROD and Environmental Assessments.

1. Alternative Routes

The FAA did not sufficiently consider alternatives to the Runway 33L departure as required by Order 1050.1E §405(d) and §102 (2)(E). To fulfill its obligations under Order 1050.1E, the FAA must analyze the consequences of taking no action, and may not limit the range of alternatives to action or no action when there are no unresolved conflicts concerning alternative uses of available resources. Order 1050.1E §405(d).

The FAA's Environmental Assessment must also include a discussion of alternatives that provide sufficient information for the decision maker to choose an option that meets the need for the proposal and demonstrates reasoned decision making. Order 1050.1E §102 (2)(E). While the FAA's Environmental Assessment mentions alternatives routes between Runway 33L and the TEKKK, this token assessment is too limited in scope for reasonable decision making.

The FAA's Environmental Assessment did not properly consider alternative flight paths because it failed to accurately identify certain relevant waypoints. A waypoint is a coordinate or marker used by pilots and are best defined as a "predetermined geographical positions that map out the desired departure paths of flights, including when the flight should *begin it's turn.*" *City of Las Vegas, Nevada v. FAA*, 570 F.3d 1109, 1113 (9<sup>th</sup> Cir. 2009). The FAA's

Environmental Assessment consistently confused the waypoints COLYN and COUSY in the study. On the actual aeronautical map, COLYN is in Randolph and COUSY is in Newtonville. Newtonville is 10 miles directly west of Boston, while Randolph is approximately 17 miles south of Boston. The FAA's failure to identify and correct such critical errors in its report conclusively shows the FAA's assessment of alternate routes must be fatally flawed. While the FAA allowed consultants to prepare the Environmental Assessment for it with oversight, critical errors such as this shows the entire study was performed in an extremely perfunctory manner and without sufficient oversight.

The FAA also failed to consider other reasonable alternatives for the SSOXS, BRUWN and CELTK routes, all of which affect the quality of life in Hyde Park, the Town of Milton, and other towns. The FAA has admitted that the flight path over Hyde Park and the Town of Milton is already heavily utilized, stating "(t)he configurations that use Runways 4L/R for arrivals and departures tend to be the most heavily utilized". EA, 3-4. Thus, without any relief, the FAA's decision on 33L will make traffic over Milton and Hyde Park excessive.

There are better airline routes available that the FAA failed to adequately consider in their Environmental Assessment that have been brought to the FAA's attention. A southbound turn over Natick, Sherborn, or Holliston would not cause as great a noise or exhaust

impact as the current route since aircraft will reach a higher altitude by the time they fly over towns and people. Further, the racial demographics and income levels in Newton, Dedham, Milton, Randolph, Holbrook, Abington, Whitman, Hanson, and Rockland are generally more mixed than those of suburbs farther west. The FAA erred in not considering a farther westbound turn for southbound 33L departures.

Requests to disperse rather than consolidate airline routes have been proposed to the FAA from multiple sources. Members of the Town of Milton and Hyde Park areas recommended shifting some airline routes west to more fairly share the pollution and noise impacts of the aircraft at a February 2013 meeting with Massport regarding the Runway 33L procedure. Likewise, Representative Michael Capuano voiced support for sharing the burden of overflight noise by creating multiple flight path channels, stating that "all of Greater Boston benefits from the existence of an international airport and the burden of such a facility should be spread amongst as many as possible to achieve equity. EA, B-1.

The FAA has improperly ignored these concerns. In dismissing these comments, the FAA stated "[t]he purpose of the Proposed Action is to increase the efficiency of air traffic control procedures at Logan Airport and in Boston TRACON's adjoining/overlying airspace by using NextGen technology – defined procedures instead of less efficient, ground based and/or radar vector procedures." EA, 1-8.

In so stating, the FAA fails to meet its obligations under Order 1050.1E by failing to meet its environmental and other obligations while allegedly pursuing efficiency.

## 2. Public Interaction

The FAA is required in Order 1050.1E to interact with the public. Federal agencies must consider environmental information in their decision making process; obtain information from the public regarding environmental concerns surrounding an agency's proposed action; fully assess and disclose potential environmental impacts resulting from the proposed action and alternatives; and provide the public with this information and allow it to comment on these findings. Order 1050.1E, §208(a). The FAA's Community Involvement Policy affirms FAA's commitment to make complete, open and effective public participation an essential part of its actions, programs and decisions. Order JO 7499.2J. Here, the FAA limited its discussion to reviews with the Logan International Airport Community Advisory Committee and Massport, often by telephone. 33L RNAV SID FONSI/ROD, 10. This limited approach is inadequate because heavily affected communities like Belmont, Arlington, Watertown, Waltham, Hyde Park, Canton and Randolph were not represented on the Community Advisory Committee at that time. Additionally, the FAA refused the Town of Milton's request to attend their Selectmens' Meeting on February 7, 2013 to review the Preliminary EA with its citizens and to discuss their concerns. Terry English at the Nashua, NH office of the FAA

told the Town of Milton "the FAA does not interact with the public." The FAA's refusal to meet with any of the affected communities before or after the FONSI/ROD to share details of the plan for the Runway 33L procedure violates their responsibilities under Order 1050.1E.

**CONCLUSION AND REQUEST FOR RELIEF**

We, the Appellants, based on the inaccuracy of the study versus the requirements for accuracy in order to reach a finding of no significant impact and also based on the failure of the FAA to comply with the various requirements of Order 1050.1E, Environmental Impacts: Policies and Procedures, ask the court:

1. Invalidate the FAA's Runway 33L RNAV SID FONSI/ROD and Environmental Assessment.
2. Order the FAA to perform a full Environmental Assessment for the Runway 33L RNAV and the Runway 27 RNAV in a manner that fulfills its obligations. Fulfilling these obligations requires the FAA to include the total populations of the affected areas, use a scientifically-acceptable methodology to review noise parameters, and give adequate consideration of the adverse and cumulative impact of noise and pollution in the affected areas, including for the historic Blue Hills areas. Fulfillment of these duties may require the FAA to create a full environmental impact statement.
3. Require the FAA to fully consider valid options that will not

consolidate more airline departures from Runways 27 and 33L over Hyde Park/Milton airspace.

4. Award all applicable costs, attorney fees, and other such damages as the court may determine.

Respectfully submitted,

Appellants,

/s/ Sheryl Fleitman

By Sheryl Fleitman

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May 8, 2014

**CERTIFICATE OF SERVICE FORM  
FOR PAPER FILINGS ONLY**

Appeal No. 13-1984

I, Sheryl Fleitman, hereby certify that on May 8, 2014  
I served copies of Appellant's Brief on the following parties,  
Federal Aviation Administration

Address:

By hand,

By us mail or

Commercial carrier

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals  
for the First Circuit

Appellants, Petitioner }

v. }  
} Petition for Review  
}

Federal Aviation Agency, Respondent )

The Appellants, hereby petitions the court for review of the Order of the Federal Aviation Agency Runway 33L RNAV SID FONSI/ROD entered on June 4, 2013.

The Appellants are pro se,

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U.S. Court of Appeals for the First Circuit  
(Rev 5/8)