

Case No. 16-1366
(and consolidated cases)

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

BENEDICT HILLS ESTATES ASSOCIATION, a California Nonprofit
Corporation, et al.,

Petitioners,

v.

UNITED STATES FEDERAL AVIATION ADMINISTRATION, et al.,

Respondents.

ON PETITION FOR REVIEW OF AN ACTION OF THE
FEDERAL AVIATION ADMINISTRATION

**BRIEF *AMICI CURIAE* OF WEST ADAMS FOR CLEAR SKIES IN
SUPPORT OF PETITIONERS (REVERSAL)**

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 28(a)(1) and 26.1, amicus curiae West Adams for Clear Skies certifies the following:

(A) Parties and Amici

All parties and intervenors appearing in the proceedings below are listed in the Brief of Petitioners. Amicus in this matter include West Adams for Clear Skies and the City of Los Angeles.

(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 West Adams for Clear Skies is not aware of any related cases in this Court or any other Court.

CORPORATE DISCLOSURE STATEMENT

West Adams For Clear Skies is an unincorporated association composed of residents of the West Adams Neighborhood of Los Angeles, California being impacted by aviation operations being carried out as a part of the SoCal Metroplex Project. West Adams for Clear Skies advocates for mitigation of the noise and air pollution impacts on the West Adams Neighborhood.

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**INTEREST OF *AMICUS CURIAE* AND
SOURCE OF AUTHORITY TO FILE**

On March 20, 2018, West Adams obtained affirmative consent from counsel for all parties for the filing of the proposed *amicus curiae* brief. *Amicus Curiae*, West Adams for Clear Skies (“West Adams”), moves concurrently for leave of court to file the instant brief.

West Adams for Clear Skies is an unincorporated association composed of residents of the West Adams Neighborhood of Los Angeles, California being impacted by aviation operations being carried out as a part of the SoCal Metroplex Project. West Adams for Clear Skies advocates for mitigation of the noise and air pollution impacts on the West Adams Neighborhood.

The West Adams Neighborhood is located adjacent to Culver City as well as to the Mid-City, Jefferson Park, Baldwin Hills/Crenshaw and Palms neighborhoods of Los Angeles. The West Adams neighborhood is bound by the Santa Monica Freeway (Highway 10) on the north, Crenshaw Boulevard on the east, Exposition Boulevard on the South, and Ballona Creek and Fairfax Avenue on the West, along the border of the City of Los Angeles’ border line with Culver City. Comprised of 95.5 percent minority ethnicity (non-white) residents, as well as a significant number of low-income residents, the West Adams neighborhood was classified as an environmental justice community in the Environmental Assessment for the SoCal Metroplex Project. Pursuant to Executive Order 12898, FAA Order 1050.1E

and DOT Order 5610.2, the FAA is obligated to address adverse direct or indirect effects that would occur to any environmental justice populations within the flight path area.

The West Adams Neighborhood is also a historical neighborhood known for its large number of historic homes including Queen Anne Victorian and American Craftsman style houses. The Neighborhood includes the site of a number of federal and locally designated historical resources, including the West Adams Terrace area. Pursuant to Section 106 of the National Historic Preservation Act, the FAA must consider the direct and indirect effects, including changes in the environment such as noise exposure and visual impacts, on properties listed or eligible for listing in the National Register of Historic Places. 16 U.S.C. § 470f

The Southern California Metroplex Project refers to the FAA's modernization plan for air traffic control using the Next Generation Air Transportation System ("NextGen"). The plan specifically is designed to address airspace congestion, airports in close geographical proximity, and general efficiency in Southern California's busy "Metroplex" airspace.

A side effect of NextGen's more "efficient" system is the increased concentration of air traffic, and an increased recurrence of low-altitude flights over certain neighborhoods and properties. West Adams' members are property owners and occupants of the West Adams neighborhood of Los Angeles, which is situated

directly beneath the North Downwind Arrival flightpath into LAX, which include the IRNMN Star, CRHSR, CRSR, HULL, MDNYT as well as the MDNYT STAR Over Ocean and the BIGBR STAR East-flow procedures. As a result of the NextGen system, West Adams has faced an increase in the frequency of low-flying aircrafts (i.e. multiple times per hour) over their properties, resulting in an increase in heavy noise, vibrations, and a concentration of air pollution.

By participating as *amicus* in this case, West Adams seeks to assist the Court in evaluating the legal adequacy of the Federal Aviation Administration's environmental analysis as well as its legal obligation to conduct supplemental environmental analysis in light of subsequently attained information.

STATEMENT OF AUTHORSHIP

1. This brief was authored by the Law Offices of Mitchell M. Tsai, Attorney at Law. Mr. Tsai is also counsel of record for Petitioner Stephen Murray. Petitioner Stephan Murray's interest in this case is separate and apart from the interest of Amicus Curiae, West Adams for Clear Skies.
2. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief.
3. No person, other than Amicus Curiae and their members, contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

SUMMARY OF ARGUMENT

I. INTRODUCTION AND FACTUAL BACKGROUND

Since the implementation of the Southern California Metroplex Project (“Project”), the Los Angeles World Airport Authority (“LAWA”) has been flooded with complaints concerning the frequency and increased volume of aircraft noise. (See Declarations of Gavin Abercrombie [Addendum B, pp. 276 – 282], Jim Mangia [Addendum B, pp. 283 – 286], and Ray Miller [Addendum B, pp. 287 – 290])

The Project, which allows planes to follow flight paths guided by precise satellite GPS coordinates, has resulted in an increased frequency and concentration of aircraft over neighborhoods underneath the new flight paths. While conventional flight paths, based upon ground-based navigation aids, disbursed planes over a six-mile wide track due to the lack of precise positional guidance, the new flight paths concentrate the planes over a mere half a mile-wide path, resulting in an increase of aviation noise, vibration, and air pollution over the unfortunate communities below.

The Federal Aviation Administration’s (“FAA”) environmental analysis was flawed because it failed to consider the effect of concentrating aircraft flight paths. Whereas previously, aircraft were disbursed over a large 6-mile-wide area, planes

now follow precise flight paths in their approach into an airport, flying over fewer communities but causing increased noise impacts on the communities that do fall underneath the flight path. As a result, the EA for the Project failed to disclose the now obviously significant noise impacts that the Project has had on Los Angeles and many other communities where the FAA has implemented the its notorious Next Generation Air Transportation System (“Next Gen”).

The Project is an effort by the FAA to optimize airspace utilization in the “Southern California Metroplex”--the airspace in and around the Los Angeles and San Diego metropolitan area--by optimizing air traffic control procedures through the use of satellite-based navigation technology known as RNAV. FEA at p. 1-11 [AR 1-B-2 at 11; JA ____]. RNAV allows aircraft to follow more accurate and better-defined routes while approaching an airport. FEA at 1-11 – 1-12, 4-6 [AR 1-B-2 at 11 – 12, 1-B-5 at 6].

The FAA approved the Southern California Metroplex Project (“Project”), issuing a Finding of No Significant Impact and Record of Decision for the Project on August 31, 2016. FONSI/ROD [AR 1-A-1; JA____].

Since the Project’s approval, the FAA has slowly been implementing various phases of the Project. Phase 3 of the project, which was the implementation of RNAV arrival procedures, came into effect on April 27, 2017. Los Angeles World

Airports, North Downwind Arrivals at DAHJR Waypoint Before and After Metroplex Implementation at 2.

The North Downwind Arrival Procedures are utilized for planes arriving into LAX from the North when wind and weather conditions are appropriate, and planes are landing and taking off at LAX in a westerly direction. Planes take off and land in the westerly direction at LAX over 95 percent of the time. FEA at 3-34 [AR 1-B-4 at 34; JA ____].

The Project has added three RNAV flight paths to the North Downwind Arrival procedure to LAX, known as CRSHR, IRNMN and HUULL. to the existing conventional ground-based navigation route called SADDE SIX. FEA at 3-45 – 3-46 [AR 1-B-4 at 45 – 46, JA ____]. The new RNAV flight procedures for the North Downwind Arrival all meet at Santa Monica Airport and proceed along the Santa Monica Freeway (10 Freeway).

Since implementation of the new flight paths, LAWA and the FAA have experienced a flood of noise complaints concerning aircraft operations from neighborhoods underneath the commonly utilized North Downwind Arrival Procedures to Los Angeles International Airport (“LAX”), including from residents of the West Adams Neighborhood in Los Angeles who formed *amicus* West Adams for Clear Skies (“West Adams”). LAWA Aircraft Noise Community Response Report Monthly and Yearly Comparisons [Addendum B, pp. 293 - 432].

The increase in complaints are largely attributable to the narrower and more concentrated flight paths taken by aircraft since the Project's implementation. LAX Los Angeles World Airports, North Downwind Arrivals at DAHJR Waypoint Before and After Metroplex Implementation at 5 – 7, 10, 12 [Addendum B, pp. 461 – 463, 466, 468] In addition, the aircraft entering LAX along the North Downwind Arrivals have also exhibited an overall decrease in altitude distribution, flying closer to surface level populations since implementation of the Project. Los Angeles World Airport LAX Los Angeles World Airports, North Downwind Arrivals at DAHJR Waypoint Before and After Metroplex Implementation at 11, 13 [Addendum B, pp. 467, 469].

II. ARGUMENT

A. Supplemental Environmental Review Must Be Conducted When Substantial Changes or Significant New Circumstances Arise

A federal agency must prepare a supplemental NEPA document if (i) the agency makes substantial changes in the proposed action that are relevant to the environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c).

An agency cannot rest on the conclusions made in an Environmental Assessment, but instead maintains a continuing obligation to take a “hard look at

the environmental effects of its planned action, even after a proposal has received initial approval.” *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 371 (1989). “A federal agency has a continuing duty to gather and evaluate new information relevant to the environmental impact of its actions” and then “make a reasoned determination whether it is of such significance as to require implementation of formal NEPA filing procedures.” *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023-24 (9th Cir. 1980).

Agencies must apply a “rule of reason” in determining whether to conduct additional environmental review. *Marsh*, 490 U.S. at 373. Whether an agency is obligated to prepare a supplemental EIS after making its initial determination, turns on the value of the new information to the still-pending decision-making process. *Id.* at 374. A supplemental EIS must be prepared if “there remains ‘major federal action[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affec[t] the quality of the human environment’ in a significant manner or to a significant extent not already considered.” *Id.* (citing 42 U.S.C. § 4332(2)(C)).

The reasonableness of an agency’s decision not to file a supplemental EIS depends upon (i) the environmental significance of the new information, (ii) the probable accuracy of the information, (iii) the degree of care with which the agency considered the information and evaluated its impact, and (iv) the degree to

which the agency supported its decision not to supplement with an explanatory statement or additional data. *Cuomo v. United States*, 772 F.2d 972, 975 (D.C. Cir. 1985) citing *Gribble*, 621 F.2d at 1024); *Com. Of Mass. V. Watt*, 716 F.2d 946 (1st Cir. 1983). If, in light of the project change or new circumstances, the environmental consequences are “remote and highly improbable,” an agency is excused from its obligation to conduct supplemental environmental review. *Cuomo*, 772 F.2d at 975. That is not the case here.

B. Supplemental Environmental Review is Required Due to the Obvious and Disproportionate Impact on Environmental Justice Communities and Historic Neighborhoods

The well documented noise impacts on the West Adams Neighborhood since the implementation of the NextGen System are so obvious and of such significance that supplemental review by the FAA is essential. The noise impacts of the Project are apparent from the massive increase in noise complaints from the public, particularly along the new North Downwind Arrival RNAV procedures down the Santa Monica Freeway (10 Freeway). *Compare* LAWA Aircraft Noise Community Response Report Monthly and Yearly Comparisons January 2017 at pp. 4-5 to LAWA Aircraft Noise Community Response Report Monthly and Yearly Comparisons September 2017 at p. 5 [Addendum B, pp. 307 – 308, 392].

Moreover, the surge in noise complaints is occurring within environmental justice communities. The EA even acknowledges that the North Downwind Arrivals RNAV routes into LAX, following the Santa Monica Freeway (10 Freeway) pass over environmental justice communities. FEA at Exh. 4-6 [AR 1-B-5, Exh. 4-6 ; JA_____]. These are the exact communities that have been filing complaints in record numbers since the Project's implementation. LAWA Aircraft Noise Community Response Report Monthly and Yearly Comparisons September 2017 at 5 [Addendum B, p. 392].

Additionally, the surge in noise complaints underneath the North Downwind Arrival originate in communities that contain many national, state and local historic resources. FEA at Exh 4-5 [AR 1-B-5, Exh. 4-5; JA_____]. With the now apparent noise impacts of the RNAV procedures implemented with the Project, those same noise impacts are having significant impacts on the viability of the historical resources underneath them.

Even LAWA has openly acknowledged the noise impacts that the Project has had on certain areas such as West Adams. It responded to a complaint lodged in the West Adams area on March 14, 2018:

Per our assessment of your location, the primary noise issue is related to implementation of new satellite-based flight procedures as part of the Federal Aviation Administration's (FAA) Southern California Metroplex Project. The Metroplex project is designed to improve the flow of air traffic into and out of Southern California by reducing airspace complexity, optimizing flight paths, and removing

operational conflicts between arrivals and departures. This reduces workload for controllers and pilots, separates aircraft more safely, and saves fuel. FAA selected new routes based on a variety of factors including selection of shortest point-to-point route, land terrain (high mountain avoidance) and spacing between adjacent airports.

Since the implementation of Metroplex procedures in 2017, aircraft have been arriving at/departing from LAX via narrower and more concentrated flight paths than before. As a result, areas under the concentrated flight paths may experience a higher frequency of flights and more aircraft noise. Please note that the FAA has exclusive authority to control aircraft in flight and on the ground.

Email from Maria Depax, LAWA Noise Management Team to Ray Miller (Mar. 14, 2018) [Addendum B, p. 290].

NEPA obligates agencies to consider “past, present, and reasonably foreseeable future actions” 40 C.F.R. § 1508.7, and requires a “meaningful analysis of the cumulative impacts.” *Carmel-by-the-Sea v. Dep’t of Transp.*, 123 F.3d 1142, 1161 (9th Cir. 1997). That LAWA is aware of the significant impacts of the NextGen System on the West Adams Neighborhood, underscores the deficiencies in the initial Environmental Assessment and the need for supplemental environmental review.

An agency may not sweep “stubborn problems or serious criticisms ... under the rug.” *See County of Suffolk v. Sec’y of the Interior*, 562 F.2d 1368, 1384-85 (2d Cir. 1977). *Amicus Curiae* have submitted substantial evidence which undermines the agency’s “No Significant Impact” determination regarding impacts on this environmental justice community and historic neighborhood. The FAA should be

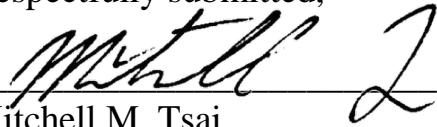
ordered to conduct supplemental environmental review, particularly in regard to the effects on environmental justice and historic communities in light of this new evidence.

C. Conclusion

For the aforementioned reasons, the Court should grant the Petition and order FAA to withdraw its approval of the Southern California Metroplex Project, return to the original flight paths and redo its environmental documentation if and when the FAA decides to revamp the Project.

Dated: March 23, 2018

Respectfully submitted,



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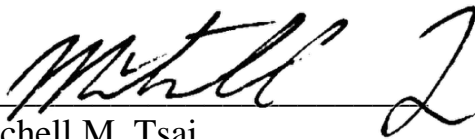
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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of D.C. Circuit Court Rules 32(a)(7)(B) and 29(a)(5) because it contains 3195 words, excluding parts of the brief exempted by Circuit Court Rule 32(f).

2. The brief further complies with the requirements of D.C. Circuit Court Rule 32(a)(5) and the type-style requirements of Circuit Court Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

By 
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CERTIFICATE OF SERVICE

I certify that on March 23, 2018, I electronically filed the foregoing BRIEF *AMICI CURIAE* OF WEST ADAMS FOR CLEAR SKIES IN SUPPORT OF PETITIONERS (REVERSAL) using this Court's CM/ECF system. All counsel of record are registered for electronic service.

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