UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 22-1521

Town of Milton,

Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION; STEVE DICKSON, Administrator of the Federal Aviation Administration,

Respondents.

On Petition for Review of a Final Rule of the

Federal Aviation Administration

PETITIONER'S OPENING BRIEF

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RULE 26.1 DISCLOSURE STATEMENT

The Town of Milton, Massachusetts is a municipal "governmental corporation," incorporated under the laws of the Commonwealth of Massachusetts, and therefore is not required to file a corporate disclosure statement pursuant to Federal Rule of Appellate Procedures 26.1(a).

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STATEMENT OF REASONS WHY ORAL ARGUMENT SHOULD BE HEARD

Pursuant to Local Rule 34.0, Milton respectfully requests that oral argument should be heard in this matter because Milton believes oral argument, and the opportunity for the parties to address the Court and answer the Court's questions, will be helpful to the Court in making its determination concerning the complex facts and legal arguments presented in this matter.

JURISDICTIONAL STATEMENT

The Court has jurisdiction to hear this petition for review of a final order of the Federal Aviation Administration ("FAA")[1], pursuant to 49 U.S.C. § 46110. The final order under review concerns the implementation of a new Instrument Approach Procedure, referred to as an RNAV, to Runway 4L ("RNAV [GPS] RWY 4L") at Boston Logan International Airport ("Logan"), hereinafter "Final Order".

Petitioner, the Town of Milton ("Milton"), filed a timely petition for review with the Court on June 30, 2022, within 60 days of the May 4, 2022 effective date of the Final Order. Milton submits this brief pursuant to the deadline established in the Court's October 20, 2022 Order, and subsequent January 18, 2023 Order.

Each of the legal issues presented in this case were raised in oral and written comments and objections to the draft EA, filed with the FAA during the comment period for review of the proposed action. AR at 001983-002039.[2] In addition, Milton has been

[1] The FAA is an agency of the United States Department of Transportation.
[2] References in this brief to "AR" are references to the Administrative Record filed by the FAA in this

engaged in correspondence and discussions with the FAA since the proposed RNAV for 4L was first announced in March 2016.

matter, and to the individually Bates-stamped pages contained therein. On January 25, 2023, the Court granted the Petitioner's Assented to Special Motion for Leave to Proceed on a Deferred Appendix, and set an updated briefing Order. Submission of the record and an updated opening brief will be filed in accordance with that Order.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the 4L Final Decision violated the law because it fails to address the impacts to Milton from the Closely Spaced Parallel Runway ("CSPR") approach, and the overlapping noise contour corridors it presents, and fails to take into account the cumulative impacts of multiple RNAVS flying over Milton.
2. Whether 4L Final Decision violated the law because it relies upon flawed modeling, which fails to incorporate the noise effects of aircraft landing gear deployed along the approach path which overflies Milton, and fails to consider the importance of residents' complaints of noise and annoyance.
3. Whether the 4L Final Decision violated the law because it significantly and materially underrepresents and underreports the amount of time in which the 4L RNAV will be utilized.
4. Should this Court order the FAA to revert back to the status quo ante, unless and until the FAA completes an appropriate EA or EIS addressing each of the deficiencies Milton has alleged.

STATEMENT OF THE CASE

The Final Order is subject to the requirements of the National Environmental Policy Act ("NEPA") and the FAA's own guidance and regulation concerning how the assessment of impacts of major federal actions is to be reviewed and analyzed. NEPA, 42 U.S.C. § 4332(2)(C), requires that the FAA prepare an analysis for "major federal actions significantly affecting the quality of the human environment." A somewhat less detailed but still complete analysis set forth in an EA may be appropriate in certain situations. 40 C.F.R. § 1501.5. NEPA is a procedural statute, and does not dictate any particular outcome. Safeguarding the Historic Hanscom Area's Irreplaceable Resources, Inc. v. F.A.A., 651 F. 3d 202, 217 (1st Cir. 2011). The courts have noted, however, that the agencies must take a "hard look" at the consequences of and alternatives to its preferred regulatory outcome. Town of Winthrop v. FAA, 535 F. 3d 1, 8 (1st Cir. 2008) (citing Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 374, 109 S. Ct. 1851, 1859 (1989)("NEPA does require that agencies take a "hard look" at the environmental effects of their planned action,. . ."). In considering the proposed action, and the degree of

impacts, agencies are required to consider: short-term and long-term effects, beneficial and adverse effects, effects on public health and safety, and effects that would violate laws protecting the environment. 40 C.F.R. § 1501.3(b)(2). When an EA is the chosen form of analysis, the agency is required to "involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments." 40 C.F.R. § 1501.5(e).

In addition to NEPA and the regulations implementing NEPA, the FAA has established its own regulations which set forth the process by which an Environmental Impact Statement ("EIS") or an EA must be conducted, and the results evaluated. FAA Order 1050.1F ("Order 1050.1") updates "agency-wide policies and procedures for compliance" with NEPA and its regulations. AR at 017028-017321. The Order applies to actions directly undertaken by the FAA and those where the FAA has sufficient control or responsibility to condition the license or project of a non-FAA entity.

Milton and multiple elected officials representing the Town – including the members of the

Select Board, U.S. Congressman Stephen F. Lynch, Massachusetts Senator Walter F. Timilty, and Massachusetts Representative William J. Driscoll, Jr. provided detailed comments on material deficiencies in the Draft EA, on November 19, 2020. AR at 001983-002038. They were joined in those comments by former Boston City Councilor Andrea J. Campbell (now Attorney General of the Commonwealth of Massachusetts) and Boston City Councilor Ricardo Arroyo, who represented the abutting Boston neighborhoods of Dorchester, Mattapan, Hyde Park, and Roslindale.

The Final Order materially and significantly understates and under analyzes the significant impacts the 4L RNAV will have on Milton, via the 4L RNAV Milton. It relies upon flawed modeling, inaccurate assessment of the volume of overflights, non-existent data concerning the location and altitude of the deployment of landing gear (a significant cause of airplane overflight noise), fails to adequately analyze cumulative impacts of multiple closely spaced air corridors overflying Milton, and also fails to take into account the complaints, reports, and statements of the cumulative impacts of the increased and concentrated overflights by the citizens of

Milton. The Final Order should be rejected, and the FAA sent back to the drawing board, to complete the EA process anew, and in so doing, the FAA ordered to rely upon accurate data concerning the measurement and approach to measuring the significant noise and other impacts to Milton.

1. STATEMENT OF FACTS

A. RNAVs.

The Runway 4L RNAV[3] is a type of Performance Based Navigation ("PBN") which concentrates airplane approaches and departures over narrow, satellite-based navigation corridors. AR at 002273-002274; 014161. Prior to PBN, air traffic was dispersed over a much wider area, and impacted multiple communities. The dispersal of air traffic was more equitable then; now a few communities take on the burden for the entire region. AR at 002268, Fig. 4.

These overflight corridors result in concentrated noise and related impacts to the overflown areas, particularly the skies over Milton. AR at 00643-00645. These skies are saturated with too many airplanes, often from very early morning until very late at

[3] According to the FAA, the term "RNAV" means Area Navigation. AR at 002136.

night.

Implementation of the 4L RNAV over Milton has already increased the existing inequity, and increased the impacts to Milton, including increased noise and annoyance, from the concentrated streams of airplanes flying overhead.

B. The Town of Milton.

Petitioner, the Town of Milton, Massachusetts ("Milton") is a municipal corporation which sits ten miles southwest of the City of Boston, and Boston Logan International Airport.[4] Milton is a predominantly residential community with a population of 28,630 based in the 2020 census. Comprised of only 13.3 square miles, Milton bears the brunt of heavy air traffic and three existing RNAVs (4R, 27 and 33L), in addition to the proposed 4L RNAV, which is more than other Logan overflight communities except for the much larger City of Boston, where the airport is located. These noise and pollution impacts felt by Milton

[4] The Milton Select Board is the general policy making body and chief executive authority of Milton. Under the General Laws, and the Town of Milton Bylaws, the Select Board have control over finances and legal matters on behalf of the Town. Milton General Bylaw Chapter 4, §9.

impact both its citizens, and the Town itself, and are discussed in more detail in part D., infra.

C. Milton's Engagement with the FAA.

During the period from 2016 through the issuance of the Final Order, Milton remained engaged with the FAA, seeking meetings, making comments on the Draft EA, and sending other correspondence asking for the opportunity to work with the FAA to resolve the increasing noise impacts from the increasing airplane overflights above the town. The FAA consistently refused to engage with Milton and with its state and federal elected officials, in any meaningful way.

Milton has engaged with the FAA for close to a decade, seeking relief from the 4R RNAV, and then the 4L RNAV. To date, despite a multi-year study by the Massachusetts Institute of Technology, which recommended three flyable alternatives for arrivals to Runway 4R, the FAA has failed to implement the alternatives or provide any relief to Milton.[5]

[5] The flyable alternatives would place some of the 4R traffic over the City of Quincy, and the Towns of Braintree and Hingham, thus providing a more equitable dispersal of the air traffic over the south shore of Massachusetts.

D. The Impacts of Airplane Overflights on Milton.

There are mountains of data from Milton and its residents which indicate that the noise from airplanes in Milton is clearly heard above background noise in municipal, commercial and residential areas, and the impact of that noise is increasing as new RNAVs are implemented. Residents of Milton filed only 102 noise complaints in 2012; 21,796 noise complaints were filed in 2016; and 41,575 noise complaints were filed in 2019, which demonstrates the serious impact of these RNAVs on the overflown communities, particularly the cumulative impact from increasing the number of flights over Milton. AR at 002038. And this impact is found not just in Milton, but in the entire Logan overflight area. The Logan Noise Abatement Office received 2,331 total noise complaints in 2012, rising to 38,046 total noise complaints in 2016, and 268,929 complaints, in 2019. Id. Arlington, Belmont, Cambridge, Cohasset, Dorchester, Hull, Hyde Park, Jamaica Plain, Medford, Nahant, Roslindale, Roxbury and Somerville have all filed an escalating number of noise complaints since 2012. Id. The courts have recognized that noise complaints, in and of themselves, are substantial evidence of a noise

problem, even absent corroborating data showing a DNL[6] above 65. Helicopter Association International, Inc. v. F.A.A, 722 F.3d 430, 435-37 (D.C. Cir. 2013).

Specifically in Milton, between January 1, 2012 and October 31, 2020, residents of the Town filed 155,554 noise complaints, with complaint volumes rising steadily at a compound annual growth rate of 135% until 2020 when the pandemic significantly curtailed global air traffic.

In addition to filing noise complaints with Massport, residents shared their personal stories with the Milton Select Board, the Massport Community Advisory Committee ("MCAC")[7] representative, and the

[6] DNL is Day-Night Sound Level, and is the noise metric utilized by the FAA in assessing and evaluating noise impacts. AR at 004711, 004713. It is a "single number measure of community noise exposure," developed as a "simple methos to predict the effects on a population of the average long term exposure to environmental noise." Id. at 004711. This metric has been in effect for decades, and is known to have flaws, because it measures sound and averages it over a 24-hour period, on an annual basis. Id. Thus it minimizes spikes in sound.

[7] The MCAC is a State agency comprised of 35 communities surrounding greater Boston, with a mission to be the voice of communities impacted by Massport (and Logan) operations. Each impacted community has one representative, appointed by the chief executive officer of the community. Chapter 10 of the Acts of 2015, § 15; Chapter 443 of the Acts of 2018. In Milton, that is the Select Board.

Milton Airplane Noise Advisory Committee ("ANAC") on multiple occasions. These complaints included loss of sleep due to constant air traffic throughout the night, loss of the enjoyment of their homes due to constant air traffic from morning until night, with flights often spaced approximately 1 minute apart, and selling the family home and moving out of Milton to find a quieter place to live. Milton and its residents experience both "noise" as measured by DNL, and resulting "annoyance."[8]

E. Closely Spaced Parallel Runways - Creation of the "Sandwich" between 4L and 4R.

The FAA began flying the 4L RNAV in 2016, when it initially announced the implementation of the RNAV under a Categorical Exclusion. As a result, Milton

[8] Annoyance is "the most common reaction to aircraft noise." AR at 004718. Annoyance is felt by communities on varying levels, based on location, time of day, frequency, sensitivity, season, duration, control over the noise, and other variables. AR at 004718-004721. Studies done in London and the Netherlands in the 1960s indicated that community response to aircraft noise shows disturbances in sleep, relaxation, conversation, and television viewing. Communities experienced startle, fear, and disruption of sleep or work. AR at 004721. Milton and its residents report all of these impacts and effects from the many airplane overflights over the Town. AR at 002038 (next page missing from Bates stamped version in the record). See Milton's Comment Letter, p. 56, reproduced in full in the Addendum.

suffers from not only four separate RNAVS flying overhead (4R, 4L, 33L, and 27R), but also the close proximity of two RNAVS, the already existing 4R RNAV and the 4L RNAV. Runway 4L at Logan Airport sits 1500 feet to the West of its Closely Spaced Parallel Runway ("CSPR") counterpart Runway 4R. AR at 002267, Fig. 2.

That 1500-foot separation of Runways 4L and 4R at touchdown is significant for the analysis of the 4L impacts, particularly the cumulative impacts of 4R and now 4L because at the point of arrival procedure initiation, 15 nautical miles southwest of touchdown, the proposed 4L RNAV path and the 4R RNAV path are 4500 feet apart. The paths' lateral separation decreases at a rate of approximately 200 feet per mile over the 15 nautical miles to touchdown. AR at 002000. The "sandwich" between 4L and 4R includes many homes, schools, and facilities for older adults, including Milton Academy, Collicot Elementary School, Cunningham Elementary School, Fontbonne Academy, and St. Joseph's Retreat House. AR at 2005; 2010.

F. Statement of Relevant Procedural History.

1. Announcement of 4L RNAV and the FAA's Proposed Action.

In March 2016, the FAA announced that it would establish a permanent RNAV for Runway 4L at Logan. AR at 002136-002137. FAA initially announced that the RNAV qualified for a categorical exclusion ("CATEX") under the National Environmental Policy Act ("NEPA"), and the FAA's Order 1050.1F (which outlines its requirements to comply with NEPA). AR at 002136-002137.

In response to the outcry from impacted communities, including Milton, in approximately July 2016, the FAA elected to conduct an Environmental Assessment ("EA") to study in more depth the environmental impacts of the RNAV. Id. However, this EA process was delayed for the next four years.

During the delay, airplane use into Logan, and the noise and annoyance felt by the Milton residents, continued to increase. It was only after the onset of the COVID-19 Pandemic, where virtually all travel

ceased, and airplane traffic at Logan plummeted,[9] that the FAA issued a Draft EA for public comment on or about September 21, 2020. AR at 002177-004040. The FAA allowed 60 days for comments. Milton by and through its executives, the Milton Select Board, and with the other Elected Officials, submitted detailed public comments. AR at 001983-002038.

During the Public Comment period, September, October, and November 2020, the FAA refused to hold any in-person public meetings (holding only virtual meetings, AR at 004101-004102; 004106-004107) which were required to complete its public process required by the Administrative Procedures Act, and FAA rules.[10]

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[9] Jet arrivals at Logan on Runway 4L decreased over 95%, to single digits, from April 2020 through October 2020, at least. AR at 001994.

[10] The FAA's Order 7400.2K, Air Traffic Organization Policy, "Procedures for Handling Airspace Matters" (July 24, 2014) includes as Appendix 10 the FAA's "Community Involvement Policy." That Policy states:

> The Federal Aviation Administration (FAA) is committed to complete, open, and effective participation in agency action. The agency regards community involvement as an essential element in the development of programs and decisions that affect the public.
>
> The public has a right to know about our projects and to participate in our decision making process. To ensure that FAA actions serve the collective public interests, all

Prior to the issuance of the Draft EA, in May 2020, and again in its comment letter, Milton, and the MCAC objected to the timing of the Draft EA, and the lack of in-person engagement.[11] As noted in Milton's comment letter on the Draft EA:

> Social gatherings are restricted and/or prohibited such that residents cannot meet to confer about the EA issues. Libraries are closed and residents without internet access have no practical alternative means of internet assess because any libraries open at all limit such access to a few people for limited time each. Virtual meetings have serious limitations. The MCAC asked FAA to defer the EA until the later of January 1,

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> stakeholders will have an opportunity to be heard. Our goals are:
>
> > To provide active, early, and continuous public involvement;
> > To provide reasonable public access to information;
> > To provide the public an opportunity to comment prior to key decisions;
> > and to solicit and consider public input on plans, proposals, alternatives, impacts, mitigation and final decision.

Addendum. FAA's decision to issue the draft EA during the height of the pandemic, and its failure to hold in-person meetings, effectively deprived the impacted communities, leaders, and citizens, of their right to meaningful participation.

[11] Notably, the Commonwealth of Massachusetts elected to allow many of its permitting processes to be tolled by the pandemic, for many of the same concerns that the MCAC and Milton expressed to the FAA, the ability to safely congregate, and the effectiveness of those early virtual meetings. COVID-19 Order No. 17; Chapter 53 of the Acts of 2020.

> 2021 or two months after flights to and from Logan Airport resume with volume and frequency similar to what can be expected in future years.

AR at 001994. Nevertheless, the FAA pressed onward, falsely asserting that air traffic was increasing, and ignoring the concerns about how Milton residents and the impacted public would be able to effectively congregate and participate.[12] Id.

The public comment period closed on or about November 20, 2020.

2. The FAA's Final Action.

On May 4, 2022, the FAA issued the Final Order for the 4L RNAV, along with the Record of Decision ("ROD") and Finding of No Significant Impact ("FONSI"). AR at 000001-002159.

The FAA's proposed action is the implementation of the 4L RNAV at Logan Airport, as originally proposed. AR at 002137. The FAA claims that this RNAV will provide "lateral and vertical guidance, enabling continuous descent to the runway and offering a more

[12] Logan Airport was operating at 40% of 2019 volume through October 31, 2020, after rising to more than 109% of 2019 volume in January and February, and falling to only 16% of the 2019 volume in May. AR at 002038.

predictable, consistent, and stabilized approach path, thus improving safety." Id.

FAA states in the ROD that implementation of the RNAV will result in a net increase of 255 arrivals at Logan, and a shift of 104 annual arrivals from Runway 4R to Runway 4L, for a total increase of 359 arrivals to Runway 4L. AR at 002138-002139. However, and critically for Milton, the FAA has no restrictions on the usage of the 4L RNAV, and has confirmed same. AR at 002037. At the FAA's October 28, 2020 workshop, a Milton official asked the following question: *"What is the expected number of jet aircraft that will pass over Mattapan in the first year of operation after the proposed 4L RNAV path is implemented?"* The FAA could not answer this question. An FAA representative merely repeated that 359 flights are expected to use the 4L RNAV in its first year of operation. AR at 002037.

In Milton's experience, and borne out by its experience with the 4R RNAV and the resulting increase in airplane noise complaint volume,[13] plus the increased volume of flights at Logan using 4R, the

[13] Noise complaints in Milton rose from 102 in 2012 to 21,796 in 2016 to 41,475 in 2019. AR at 002038; see also Milton's Comment Letter on the Draft EA, Addendum.

initial estimate of the number of flights over a new RNAV is only that – an initial estimate. It does not show actual use, or expected growth of use, of the new RNAV.

FAA's alternatives analysis is cursory, at best, and did not take into account the many requests for other approaches made by Milton. The alternatives analysis did not take into account prior runway use patterns, the Preferred Runway Advisory System ("PRAS") goals,[14] which has been used in the past at Logan, and which established a more fair and equitable approach to distributing runway use, and the resulting noise, annoyance, and other impacts.

In the Final Order, FAA laid out only two options: (1) maintain the current operations (no action); or (2) the proposed action. AR at 002140. The FAA laid out additional alternatives which says

[14] The PRAS goals were established by the Logan Community Advisory Committee ("LCAC"), the predecessor to the MCAC. They were established and then abandoned. Sometime thereafter, the LCAC was discontinued and the MCAC was established. See Boston Logan Airport Noise Study (BLANS) 2003 through 2017, at Boston_Logan_Airport_Noise_Study_Background-1.pdf (faa.gov). Currently, 4L and 4R combined carry as much as 25% of Jet and Non-Jet arrivals into Logan. See the 2020 Noise Exposure Map for Logan, prepared for Massport, at https://www.massport.com/media/qh4hqa2o/boston-logan-nem-2020.pdf

it considered, but which it rejected for various safety reasons. Id.; see also AR at 000012-000035. None of them were carried into the full analysis as part of the Final Order.

The Final Order fails to address mitigation of potential impacts, in part because of the very narrow way in which the FAA defined its alternatives and its impacts. There is no mitigation analysis in the Final Order, at all. In the Draft EA, the FAA provides the total of its mitigation analysis, as set forth below:

> VII. Mitigation Are there measures, which can be implemented that might mitigate any of the potential impacts, i.e., GPS/FMS plans, navaids, etc.?
>
> __Yes X_ No __ N/A
>
> There are no impacts that require mitigation per FAA environmental requirements.

AR at 002346. This is the sum total of the FAA's effort to address mitigation. Because of the scope of the Final Order, and how it defined the impacted areas,[15] diluting the impacts on certain residents, of

[15] In its Final Order, the FAA considered impacts over a general study area of 1,173 square miles, including parts of four counties and all of the City of Boston. AR at 002141. This very large study area purposely dilutes the impacts of the implementation of the 4L RNAV, and completely ignores area-specific impacts, such as the impacts of the sandwich of 4R and 4L on Milton.

course the FAA didn't identify any impacts which required mitigation.

As part of its final analysis, the FAA was required to analyze the various public comments submitted on the Draft EA. Admittedly, many comments were received on the Draft, including detailed comments from Milton. The FAA, however, responded to Milton's detailed 50 plus single-spaced pages of comments, in almost a summary fashion, and did not respond to all of the comments (Appendix I, with responses to comments, is missing two pages of Milton's letter). It essentially disagreed with Milton's perspective, relied on assertions of safety concerns for establishing the 4L RNAV, and referred back to the EA document itself.

In particular, the FAA disagreed with Milton on its comments concerning the cumulative impacts of the 4L and 4R closely spaced parallel runways, and the scope of the study area analyzed in the Draft EA and Final Order. The FAA claims it "studied" these impacts, with no data to demonstrate that it did, other than to state that 4L and 4R were part of the overall general study area. Such a claim deserves a "duh" response. The FAA's general study area for the

Draft EA and Final Order is the entire Logan Overflight area, so of course 4L and 4R were considered, as part of this over general and watered down approach. But the specific impacts to Milton from the cumulation of 4L on the already existing 4R, and the other RNAVs impacting Milton was not evaluated at all. FAA appears to claim such an analysis would have been "arbitrary."

SUMMARY OF ARGUMENT

The FAA's Final Order is not supported by substantial evidence on the record, and is arbitrary and capricious. Milton's challenge to the Final Order should be upheld, because Milton has demonstrated the necessary Article III and prudential standing, by its participation in the public comment process and its allegations of harm to the town and to its residents.

The Final Order fails to address the impacts from Milton's closely spaced parallel runways (4L and 4R), which create overlapping noise corridors over portions of the Town, thus further concentrating the noise impacts in the "sandwich" area, between both RNAVs. The Final Order also fails to address the cumulative impacts of 4L and 4R, and the other RNAVS over Milton.

The Final Order relies upon flawed methodology in its analysis of noise impacts to Milton and its residents. It uses the outdated DNL model, which dilutes actual noise impacts by averaging noise data over a daily and annual basis – so that data on days when the 4L RNAV is being flown, is averaged with days with the 4L RNAV is not being flown.

The DNL model also has no data or methodology to consider the significant noise which results from the

early deployment of airplane landing gear on the approach to Logan. This early deployment often occurs over Milton, and is a significant contributor to noise and annoyance to the Town and its residents.

The Final Order contains only an assessment of the impact of its implementation in its first year. It fails to address the continuing increase in air traffic into Logan, and the resulting increased noise impacts. There is simply nothing in the record which considers the impacts of the 4L RNAV beyond initial implementation, thus failing to provide any accurate assessment of its true impacts.

ARGUMENT

A. Standard of Judicial Review

The FAA's findings of fact concerning the 4L RNAV are reviewed under the substantial evidence standard. 49 U.S.C. § 46110 states: "Findings of fact by the . . . Administrator of the Federal Aviation Administration, if supported by substantial evidence, are conclusive." Id. at § 46110(c).

Because the FAA's action to implement the 4L RNAV is governed by NEPA, a review must be in accordance with the Administrative Procedures Act, 5 U.S.C. §§ 551-559. A review may be set aside where the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise is not in accordance with the law." Safeguarding the Historic Hanscom Area's Irreplaceable Resources, Inc. v. F.A.A., 651 F. 3d 202, 207 (1st Cir. 2011) (citing 5. U.S.C. s 706(2)). Agency action fails when the agency "relied upon improper factors, failed to consider pertinent aspects of the problem, offered a rationale contradicting the evidence before it, or reached a conclusion so implausible that it cannot be attributed to a difference of opinion or the application of agency expertise." Id. (citing Assoc'd Fisheries of Me., Inc.

v. Daley, 127 F. 3d 104, 109 (1st Cir. 1997).

B. Standing

Milton has the required Article III standing and prudential standing to bring this petition. Article III standing requires: (1) an injury-in-fact to a cognizable interest; (2) a causal link between the injury and the respondent's action; and (3) a likelihood that the injury could be redressed by the requested relief. Town Of Winthrop v. F.A.A., 535 F.3d 1, 6 (1st Cir. 2008).

The requirements for the prudential aspect of standing include: (1) the petitioner's complaint needing to come within the zone of interests protected by the law at issue; and (2) the petitioner having to assert his own legal rights/interests rather than those of third parties. Dubois v. U.S. Dep't of Agric., 102 F.3d 1273, 1281 (1st Cir. 1996).

Milton has, through its public comments and through its continued engagement with the FAA on airplane overflight matters, especially including the establishment of the 4L RNAV, demonstrated the harm suffered. The injury to Milton includes the impact of noise on its residents, including increased annoyance and complaints about noise made both to Town officials

and to Massport and the FAA. Town officials have spent considerable time and money addressing these issues, engaging with Massport and the FAA, and engaging its state and federal elected officials to attempt to work through a solution with the FAA, with no relief to date. Milton has also been an active participant in the MCAC, and Town officials established its own Airplane Noise Advisory Committee ("ANAC") made up of Milton residents.

These impacts are directly traceable to the establishment of the 4L RNAV, and the FAA's proposed action, and the FAA is the only entity who can resolve Milton's issues. Further, Milton's issues are precisely why NEPA requires review of major federal actions, and why public comment on those proposed actions are required. Milton's injuries can be redressed by a decision in its favor, requiring the FAA to comply with NEPA and issue a new EA. See City of Dania Beach v. F.A.A., 485 F. 3d 1181, 1185 (D.C. Cir. 2007)("Agency action that is taken without following the proper environmental procedures can be set aside by [a] Court and remanded to the agency for completion of the review process.").

Courts have previously agreed that a municipality

like Milton has standing where it alleges harm to itself, rather than just harm to its citizens. City of Olmsted Falls, OH v. F.A.A., 292 F.3d 261, 268 (D.C. Cir. 2002). In this Circuit, the towns of Bedford, Lexington, and Concord were parties in a similar challenge, and found to have standing where they alleged increased traffic congestion and other related harms to the towns and their residents. Save Our Heritage, Inc. v. F.A.A., 269 F.3d 49, 55 (1st Cir. 2001). The towns of Winthrop and Marshfield brought challenges to the FAA's routing of airplane arrivals and departures at Logan, and those claims were allowed to proceed, demonstrating standing in the same type of claim brought in this matter. Town of Marshfield v. F.A.A., 553 F. 3d 1 (1st Cir. 2008); Town of Winthrop v. F.A.A., 535 F. 3d 1 (1st Cir. 2008).

C. The FAA's Review Process was Flawed and Insufficient, and its Decision is Arbitrary and Capricious, and Not Based on Substantial Evidence.

1. The Final Order fails to address the impacts to Milton from the Closely Spaced Parallel Runway ("CSPR") approach, and the overlapping noise contour corridors it presents, and fails to take into account the cumulative impacts from multiple RNAVs flying over Milton.

Both NEPA and FAA Order 1050.1F require that when evaluating federal actions, the Agency must consider cumulative impacts. Order 10501.f, p 4-2(d)(3). "Cumulative impacts are those that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, whether Federal or non-Federal. If the proposed action would cause significant incremental additions to cumulative impacts, an EIS is required."

The FAA has ignored the actual cumulative impacts from the imposition of Runway 4L on overflown approach corridor residents. Such an action is arbitrary, capricious and inconsistent with its obligations and mandates under NEPA. As a result, the court should remand the decision back to the agency, and order the FAA to issue a complete EIS which takes into account the significant cumulative impacts to Milton from the CSPR and from the impacts of all four RNAVS overflying Milton.

The ROD states, concerning the cumulative impact analysis:

> A comprehensive review of the projects at the Airport was done in order to identify any projects that may have cumulative impacts with the Proposed Action. Some of the identified projects were limited to the

> landside area such as the Logan Airport Parking Project and the Terminal C Canopy, Connector, and Roadway Project, so there would be no direct overlap between those projects and aircraft operations. The FAA also reviewed the environmental documents for the Framingham Logan Express Expansion, Logan Airport Parking, Terminal C Canopy, Connector and Roadway, Terminal E Modernization, and Logan Airport Renovations and Improvements at Terminals B & C/E projects for discussion of any noise impacts.

AR at 002152. The FAA also "reviewed" the rehabilitation of Runway 9-27, reconstruction of the Mansfield Municipal Airport, and "non-aviation projects." Id. The point of analyzing these projects is patently absurd, as they are all on airport projects, and have little to do with the impacts to the surrounding communities (except, perhaps, those immediately adjacent to Logan).

The ROD states that the FAA considered:

> the cumulative impacts of all existing arrival and departure procedures at the Airport have been considered in relation to the Proposed Action Alternative. Radar traffic data covering the baseline timeframe (November 1, 2018 through October 31, 2019) that was used to build the No Action Alternative includes aircraft flying existing procedures at the Airport. Therefore, the comparison between the No Action and Proposed Action alternatives considers the potential impact from all other existing Airport procedures.

AR at 002153. The FAA concludes that there is no "significant or reportable" increases in noise from the addition of 4L. Id. Again, this analysis flies in the face of the tens of thousands of complaints about airplane overflight noise that have been filed with Massport and the FAA since the initiation of PBN and the establishment of RNAVs.

Over Milton, Runway 4L is paralleled by Runway 4R, and those two approaches over Milton run from approximately 4500 feet in width at the start, to approximately 1500 feet in width at the tarmac. AR at 002010. This creates a "sandwich" of noise and annoyance, for the residents in between those two approaches. The Final Order does not address the impacts to Milton from these closely spaced parallel runways and fails to take into account the cumulative impacts of those runways and their approaches over Milton.

The Final Order (as well as the Draft EA) fails to even mention potential impacts resulting from the close relationship between 4L and 4R. While the Final Order mentions the fact of their parallel nature, it does not even discuss impacts

resulting from their configuration. There is some basic discussion, in the Draft EA, of aircraft-to-aircraft wake turbulence issues created by the closely spaced 4L and 4R tracks, but the analysis is without any analyses of 4L/4R closely spaced parallel noise disturbance and annoyance effects on residents.

Part of the reasons for this failure to address the 4L/4R impacts appears to be the broad, 1,173 acres study area, established by the FAA. The establishment of this study area has a fundamental flaw, as it does not differentiate between overall Logan air traffic compatibility, versus focused evaluations of the proposed 4L RNAV path's noise and other environmental effects on residents under that path and impacts on residents already under the nearby 4R RNAV path.

Milton is severely impacted by the four RNAVs which overfly the Town. No community in the Greater Boston area (except for the City of Boston, in which the airport is located) is subjected to the number of RNAVs that fly over Milton. Given Milton's unique circumstances, and the amount of time Milton has spent asking the FAA to address this specific problem (the

4L/4R sandwich, and the impacts of both RNAVs), the FAA should have and must analyze the cumulative impact of all RNAVs that either already fly over or are proposed to fly over Milton, and not only the impact of the proposed 4L RNAV.

FAA Order 1050.1F, section4-2(d)(3) defines cumulative impacts as: “those that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, whether Federal or non-Federal. If the proposed action would cause significant incremental additions to cumulative impacts, an EIS is required.” Under the FAA’s own definition of cumulative, the impact of the 4L RNAV, has to be evaluated with the impact of the 4R RNAV, as well as and in addition to the impacts from 27R and 33L. The effect of these RNAVs cumulate on Milton, so that the total impact is unacceptable. An EA which does not specifically address these significant cumulative impacts is arbitrary and capricious, and inconsistent with the FAA’s obligations and mandates under NEPA.

2. The Final Order relies upon flawed modeling, which fails to incorporate the noise effects from aircraft landing gear deployment along the approach path which overflies Milton, and fails to consider the importance of residents' complaints of noise and of annoyance.

FAA's use of outdated data and methodology, specifically, the reliance on the DNL measurement in assessing community impacts particularly underrepresents the actual noise impacts to Milton. The DNL measurement does not address the acute highs in airport noise impacts actually experienced by residents, but lumps all noise together in 24-hour annual averages. Milton is not alone in the contention that this measure is inadequate to measure impacts from noise, particularly in metro areas surrounding airports. This issue is being raised by communities around the country in litigation in federal courts, including the cities of New York, Chicago, Washington D.C., Los Angeles, Baltimore, and Phoenix.

Because the DNL metric averages noise over a 24-hour period on an annual basis, it dilutes the noise that results from days when planes are utilizing 4L (and/or 4R), which cause resident annoyances and disrupted activities of daily life, like working,

socializing, and sleeping. Common sense tells us that when days of high annoyance are averaged with days of zero annoyance, the result is average annoyance. However, in the real world, humans such as Milton residents and officials generally do not experience "average" annoyance. They experience high annoyance, or no annoyance.

The DNL method also underrepresents the noise impacts to Milton attributable to early deployment of landing gear over Milton, on approach to Logan. Residents of Milton and other communities observe planes routinely overflying them on approach to Logan with landing gear deployed miles before each plane passes over the Final Approach Fix ("FAF"), which for both 4L and 4R is 5 nautical miles from the airport, labeled MTTPN for Runway 4L and MILTT for Runway 4R. The timing of landing gear deployment is determined at the discretion of the aircraft captain subject only to FAA's requirement that it must be deployed at the FAF.

Milton residents and officials routinely observe landing gear already deployed by overflying aircraft at significant distances before the FAF, and over Milton. AR at 2019 A teenager hiding in the landing gear of a Boeing 737 fell to his death when the gear

deployed several miles prior to the FAF. Id. When landing gear is deployed it accounts for 40% of total aircraft noise effect. AR at 002021. When landing gear is being lowered the jet aircraft emits a loud whistling sound—which is highly audible and disturbing, and the noise and annoyance from that overflight increases.

In response to a FOIA request seeking data showing the actual time, aircraft speed, and aircraft location when landing gear deployed by each aircraft that arrived on runway 4L, FAA responded that "records you requested in Item 1 do not exist." AR at 002019; Addendum. So, the FAA has no data on when landing gear is deployed which it utilizes in its model. In addition, there is no data or information in the noise modeling about landing gear deployment.

Noise from deployed landing gears at higher speeds (i.e., when the aircraft is between the IF and FAF) is not measured as part of an aircraft's noise certification process and not incorporated into the noise model. Each aircraft's speed between the IF and the FAF, and the differential noise effect of higher speed at IF and thereafter, with landing gear deployed

prior to FAF as the plane approaches is not reflected in the FAA's EA model. AR at 002020.

Milton acknowledges that the case law allows a court to defer to the FAA's expertise and choice of approach when considering technical issues like choice of model. Winthrop, 535 F.3d at 13. However, that deference is not absolute, and the Agency's choice must be reasonable. Id. Here, where the difference between technical approaches to a noise analysis is such that the chosen approach completely underrepresents and omits critical pieces of the analysis, the choice is not reasonable, and courts should not be deferential.

Consequently, because of its choice of model and the limitations of the model, the contribution to noise impacts of those numerous flights where landing gear is lowered before the FAF is not addressed at all in the Final Order, and the Court should remand the Final Order back to the FAA with an order to conduct an EA which includes evaluation of those impacts. At a minimum, Milton requests that the Court order the FAA, as part of further analysis of the 4L RNAV as requested herein, to establish a rule that requires

the pilots to deploy landing gear only when at the FAF.

The Final Order also ignores the tens of thousands of noise complaints filed by Milton residents with Massport and the FAA (and the hundreds of thousands of noise complaints filed within the entire Logan overflight area. Noise complaints and of themselves, are substantial evidence of a noise problem, even absent corroborating data showing a DNL above 65. Helicopter Association International, Inc. v. F.A.A, 722 F.3d 430, 435-37 (D.C. Cir. 2013). This case is important, because it established the validity of noise complaints as a measure of noise and annoyance to overflown residents. Yet, the FAA continues to ignore the importance of these complaints and never discussed or considered them in the Draft EA or the Final Order. This is another significant failure.

3. The Final Order significantly and materially underrepresents and underreports the amount of time in which the 4L RNAV will be utilized.

FAA states in the ROD that implementation of the RNAV will result in a net increase of 255 arrivals at

Logan, and a shift of 104 annual arrivals from Runway 4R to Runway 4L, for a total increase of 359 arrivals to Runway 4L. However, and critically for Milton, the FAA has no restrictions on the usage of the 4L RNAV, and has confirmed same. The unrestricted operations allowed on 4L (and on its neighbor, 4R) is not compatible with densely populated areas such as Milton.

At the FAA's October 28, 2020 workshop, a Milton official asked the following question: *"What is the expected number of jet aircraft that will pass over Mattapan in the first year of operation after the proposed 4L RNAV path is implemented?"* The FAA could not answer this question. An FAA representative merely repeated that 359 flights are expected to use the 4L RNAV in its first year of operation.[16] AR at 002037.

[16] Another omission is that the Final Order fails to take into account flights that previously used the visual approach to 4L. The FAA only drops in a fact – not discussed anywhere else in the Final Order – in its response to the Milton's comments, when it states: "The number of flights expected to use the new procedure is . . 359 flights per year . . plus the 594 flights that previously flew the ILS RWY 15R visual transition to Runway 4L approach." AR at 002042. Those 594 flights are not discussed in the Final Order nor were they discussed in the Draft EA.

The Final Order fails to address the number and percentage of arrivals on runway 4L after its first year of operation and what rate of growth is expected thereafter.[17] That is a fundamental methodological flaw and material non-disclosure in the Final Order. In addition, nowhere in the Final Order does FAA commit that use of the 4L RNAV will be limited to the 359 flights referenced above. In fact, the FAA confirms that any and all air traffic will be able to use the 4L RNAV, without limitation, when it states in its response to the Milton's comment letter: "the Proposed Action investigated in the 2020 Draft EA was not built with any particular airline in mind and will be available for all airlines to use within the normal air traffic at the Airport." AR at 002040.

Further, in a response to a Milton resident commenter on the Draft EA, the FAA states: "the Airport is not currently constrained in terms of

[17] As noted in footnote 14, infra, in 2020, 4L and 4R combined to carry as much as 25% of Jet and Non-Jet arrivals into Logan. See the 2020 Noise Exposure Map for Logan, prepared for Massport, at https://www.massport.com/media/qh4hqa2o/boston-logan-nem-2020.pdf. This is a significant volume of flights when the total throughput at Logan in 2019 was 427,176 "operations". AR at 002141.

airspace or runway capacity during normal operations." AR at 002129. In a subsequent response, the FAA acknowledges that the 4L approach is already in use, noting that "the area over which the RNAV (GPS) RWY 4L procedure is proposed to be implement is currently heavily overflown by traffic landing on Runway 4L, . . ." AR at 002130.

In fact, Milton's experience with the 4R RNAV over the last decade (plus the increase in the number of overflights, and corresponding increase in noise complaints) suggests otherwise. As a result, the noise analysis only reflects changes in noise exposure solely due to the implementation of the 4L RNAV, at inception, and does not take into account the continuing increase in air traffic at Logan.

As a result of this lack of information and knowledge, and without restrictions to protect Milton, the FAA's use projection are meaningless, and its resulting noise analysis is also meaningless.

CONCLUSION

For all of the foregoing reasons, Milton's petition for review should be granted, and the Final Order should be remanded back to the FAA, for issuance of a revised EA or even an EIS, which completely and accurately evaluates the environmental impacts of implementing the 4L RNAV.

Respectfully submitted,
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By its Attorney,

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

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CERTIFICATE OF SERVICE

I, Karis L. North hereby certify that the above documents, filed electronically through the Court's electronic case filing system on February 1, 2023, will be sent electronically to all parties registered on the Court's electronic filing system, and paper copies will be sent by first class mail, postage pre-paid, and electronic mail to non-registered parties.

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1328260

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Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 551

§ 551. Definitions

Effective: January 4, 2011

Currentness

For the purpose of this subchapter--

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include--

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title--

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;[1]

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency--

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency--

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 381; Pub.L. 94-409, § 4(b), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 103-272, § 5(a), July 5, 1994, 108 Stat. 1373; Pub.L. 111-350, § 5(a)(2), Jan. 4, 2011, 124 Stat. 3841.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13892

Ex. Ord. No. 13892, Oct. 9, 2019, 84 F.R. 55239, which related to civil administrative enforcement and adjudication, was revoked by Ex. Ord. No. 13392, § 2, Jan. 20, 2021, 86 F.R. 7049, set out below.

EXECUTIVE ORDER NO. 13979

Ex. Ord. No. 13979, Jan. 18, 2021, 86 F.R. 6813, which required senior appointee participation in agency rulemaking, was revoked by Ex. Ord. No. 14018, § 1, Feb. 24, 2021, 86 F.R. 11855.

EXECUTIVE ORDER NO. 13992

<January 20, 2021, 86 F.R. 7049>

Revocation of Certain Executive Orders Concerning Federal Regulation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:

Section 1. Policy. It is the policy of my Administration to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies (agencies) must be equipped with the flexibility to use robust regulatory action to address national priorities. This order revokes harmful policies and directives that threaten to frustrate the Federal Government's ability to confront these problems, and empowers agencies to use appropriate regulatory tools to achieve these goals.

Sec. 2. Revocation of Orders. Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 of February 24, 2017 (Enforcing the Regulatory Reform Agenda), Executive Order 13875 of June 14, 2019 (Evaluating and Improving the Utility of Federal Advisory Committees), Executive Order

13891 of October 9, 2019 (Promoting the Rule of Law Through Improved Agency Guidance Documents), Executive Order 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication), and Executive Order 13893 of October 10, 2019 (Increasing Government Accountability for Administrative Actions by Reinvigorating Administrative PAYGO), are hereby revoked.

Sec. 3. Implementation. The Director of the Office of Management and Budget and the heads of agencies shall promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive Orders identified in section 2 of this order, as appropriate and consistent with applicable law, including the Administrative Procedure Act, 5 U.S.C. 551 et seq. If in any case such rescission cannot be finalized immediately, the Director and the heads of agencies shall promptly take steps to provide all available exemptions authorized by any such orders, rules, regulations, guidelines, or policies, as appropriate and consistent with applicable law. In addition, any personnel positions, committees, task forces, or other entities established pursuant to the Executive Orders identified in section 2 of this order, including the regulatory reform officer positions and regulatory reform task forces established by sections 2 and 3 of Executive Order 13777, shall be abolished, as appropriate and consistent with applicable law.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN JR.

Notes of Decisions (394)

Footnotes

1

See References in Text note set out under this section.

5 U.S.C.A. § 551, 5 USCA § 551
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

1328084.v1

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 552

§ 552. Public information; agency rules, opinions, orders, records, and proceedings [Statutory Text & Notes of Decisions subdivisions I, II]

Effective: June 30, 2016

Currentness

<Notes of Decisions for 5 USCA § 552 are displayed in multiple documents.>

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection in an electronic format--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format--

(i) that have been released to any person under paragraph (3); and

(ii)(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(II) that have been requested 3 or more times; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless

including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection in an electronic format current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to--

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that--

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(viii)(I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6).

(II)(aa) If an agency has determined that unusual circumstances apply (as the term is defined in paragraph (6)(B)) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), a failure described in subclause (I) is excused for an additional 10 days. If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees).

(bb) If an agency has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) if the agency has provided a timely written notice to the requester in accordance with paragraph (6)(B) and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with paragraph (6)(B)(ii).

(cc) If a court has determined that exceptional circumstances exist (as that term is defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for the length of time provided by the court order.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[**(D)** Repealed. Pub.L. 98-620, Title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357]

(E)(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either--

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the

findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall--

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of--

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination--

(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except--

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests--

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means--

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall--

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including--

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

(8)(A) An agency shall--

(i) withhold information under this section only if--

(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or

(II) disclosure is prohibited by law; and

(ii)(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information; and

(B) Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under subsection (b)(3).

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute--

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States and to the Director of the Office of Government Information Services a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), the number of occasions on which each statute was relied upon, a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(F) the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(G) based on the number of business days that have elapsed since each request was originally received by the agency--

(i) the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

(N) the total amount of fees collected by the agency for processing requests;

(O) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests;

(P) the number of times the agency denied a request for records under subsection (c); and

(Q) the number of records that were made available for public inspection in an electronic format under subsection (a)(2).

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

(3) Each agency shall make each such report available for public inspection in an electronic format. In addition, each agency shall make the raw statistical data used in each report available in a timely manner for public inspection in an electronic format, which shall be made available--

(A) without charge, license, or registration requirement;

(B) in an aggregated, searchable format; and

(C) in a format that may be downloaded in bulk.

(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Oversight and Government Reform of the House of Representatives and the Chairman and ranking minority member of the Committees on Homeland Security and Governmental Affairs and the Judiciary of the Senate, no later than March 1 of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(6)(A) The Attorney General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President a report on or before March 1 of each calendar year, which shall include for the prior calendar year--

(i) a listing of the number of cases arising under this section;

(ii) a listing of--

(I) each subsection, and any exemption, if applicable, involved in each case arising under this section;

(II) the disposition of each case arising under this section; and

(III) the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4); and

(iii) a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(B) The Attorney General of the United States shall make--

(i) each report submitted under subparagraph (A) available for public inspection in an electronic format; and

(ii) the raw statistical data used in each report submitted under subparagraph (A) available for public inspection in an electronic format, which shall be made available--

(I) without charge, license, or registration requirement;

(II) in an aggregated, searchable format; and

(III) in a format that may be downloaded in bulk.

(f) For purposes of this section, the term--

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes--

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(g) The head of each agency shall prepare and make available for public inspection in an electronic format, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration. The head of the Office shall be the Director of the Office of Government Information Services.

(2) The Office of Government Information Services shall--

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) identify procedures and methods for improving compliance under this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a nonexclusive alternative to litigation and may issue advisory opinions at the discretion of the Office or upon request of any party to a dispute.

(4)(A) Not less frequently than annually, the Director of the Office of Government Information Services shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President--

(i) a report on the findings of the information reviewed and identified under paragraph (2);

(ii) a summary of the activities of the Office of Government Information Services under paragraph (3), including--

(I) any advisory opinions issued; and

(II) the number of times each agency engaged in dispute resolution with the assistance of the Office of Government Information Services or the FOIA Public Liaison; and

(iii) legislative and regulatory recommendations, if any, to improve the administration of this section.

(B) The Director of the Office of Government Information Services shall make each report submitted under subparagraph (A) available for public inspection in an electronic format.

(C) The Director of the Office of Government Information Services shall not be required to obtain the prior approval,

comment, or review of any officer or agency of the United States, including the Department of Justice, the Archivist of the United States, or the Office of Management and Budget before submitting to Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(5) The Director of the Office of Government Information Services may directly submit additional information to Congress and the President as the Director determines to be appropriate.

(6) Not less frequently than annually, the Office of Government Information Services shall conduct a meeting that is open to the public on the review and reports by the Office and shall allow interested persons to appear and present oral or written statements at the meeting.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j)(1) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(2) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency--

(A) have agency-wide responsibility for efficient and appropriate compliance with this section;

(B) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(C) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(D) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(E) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;

(F) offer training to agency staff regarding their responsibilities under this section;

(G) serve as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy; and

(H) designate 1 or more FOIA Public Liaisons.

(3) The Chief FOIA Officer of each agency shall review, not less frequently than annually, all aspects of the administration of this section by the agency to ensure compliance with the requirements of this section, including--

(A) agency regulations;

(B) disclosure of records required under paragraphs (2) and (8) of subsection (a);

(C) assessment of fees and determination of eligibility for fee waivers;

(D) the timely processing of requests for information under this section;

(E) the use of exemptions under subsection (b); and

(F) dispute resolution services with the assistance of the Office of Government Information Services or the FOIA Public Liaison.

(k)(1) There is established in the executive branch the Chief FOIA Officers Council (referred to in this subsection as the "Council").

(2) The Council shall be comprised of the following members:

(A) The Deputy Director for Management of the Office of Management and Budget.

(B) The Director of the Office of Information Policy at the Department of Justice.

(C) The Director of the Office of Government Information Services.

(D) The Chief FOIA Officer of each agency.

(E) Any other officer or employee of the United States as designated by the Co-Chairs.

(3) The Director of the Office of Information Policy at the Department of Justice and the Director of the Office of Government Information Services shall be the Co-Chairs of the Council.

(4) The Administrator of General Services shall provide administrative and other support for the Council.

(5)(A) The duties of the Council shall include the following:

(i) Develop recommendations for increasing compliance and efficiency under this section.

(ii) Disseminate information about agency experiences, ideas, best practices, and innovative approaches related to this section.

(iii) Identify, develop, and coordinate initiatives to increase transparency and compliance with this section.

(iv) Promote the development and use of common performance measures for agency compliance with this section.

(B) In performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section.

(6)(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close

the meeting for reasons of national security or to discuss information exempt under subsection (b).

(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register.

(D) Except as provided in subsection (b), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the Council shall be made publicly available.

(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council. The minutes shall be redacted as necessary and made publicly available.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(m)(1) The Director of the Office of Management and Budget, in consultation with the Attorney General, shall ensure the operation of a consolidated online request portal that allows a member of the public to submit a request for records under subsection (a) to any agency from a single website. The portal may include any additional tools the Director of the Office of Management and Budget finds will improve the implementation of this section.

(2) This subsection shall not be construed to alter the power of any other agency to create or maintain an independent online portal for the submission of a request for records under this section. The Director of the Office of Management and Budget shall establish standards for interoperability between the portal required under paragraph (1) and other request processing software used by agencies subject to this section.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub.L. 90-23, § 1, June 5, 1967, 81 Stat. 54; Pub.L. 93-502, §§ 1 to 3, Nov. 21, 1974, 88 Stat. 1561 to 1564; Pub.L. 94-409, § 5(b), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 95-454, Title IX, § 906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub.L. 98-620, Title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357; Pub.L. 99-570, Title I, §§ 1802, 1803, Oct. 27, 1986, 100 Stat. 3207-48, 3207-49; Pub.L. 104-231, §§ 3 to 11, Oct. 2, 1996, 110 Stat. 3049 to 3054; Pub.L.

107-306, Title III, § 312, Nov. 27, 2002, 116 Stat. 2390; Pub.L. 110-175, §§ 3, 4(a), 5, 6(a)(1), (b)(1), 7(a), 8 to 10(a), 12, Dec. 31, 2007, 121 Stat. 2525 to 2530; Pub.L. 111-83, Title V, § 564(b), Oct. 28, 2009, 123 Stat. 2184; Pub.L. 114-185, § 2, June 30, 2016, 130 Stat. 538.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12174

Ex. Ord. No. 12174, Nov. 30, 1979, 44 F.R. 69609, which related to minimizing Federal paperwork, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

EXECUTIVE ORDER NO. 12600

<June 23, 1987, 52 F.R. 23781>

Predisclosure Notification Procedures for Confidential Commercial Information

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act [this section] concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

Section 1. The head of each Executive department and agency subject to the Freedom of Information Act [5 U.S.C.A. § 552] shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act [FOIA], 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

Sec. 2. For purposes of this Order, the following definitions apply:

(a) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) [subsec. (b)(4) of this section], because disclosure could reasonably be expected to cause substantial competitive harm.

(b) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

Sec. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive

department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

(i) designated pursuant to this subsection; or

(ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

Sec. 4. When notification is made pursuant to section 1, each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

Sec. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

Sec. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

Sec. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

Sec. 8. The notice requirements of this Order need not be followed if:

(a) The agency determines that the information should not be disclosed;

(b) The information has been published or has been officially made available to the public;

(c) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act [5 U.S.C.A. § 552], and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

Sec. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

Sec. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN

EXECUTIVE ORDER NO. 13110

<Jan. 11, 1999, 64 F.R. 2419>

Nazi War Criminal Records Interagency Working Group

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Nazi War Crimes Disclosure Act (Public Law 105-246) (the "Act") [set out as a note under this section], it is hereby ordered as follows:

Section 1. Establishment of Working Group. There is hereby established the Nazi War Criminal Records Interagency Working Group (Working Group). The function of the Group shall be to locate, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration all classified Nazi war criminal records of the United States, subject to certain designated exceptions as provided in the Act. The Working Group shall coordinate with agencies and take such actions as necessary to expedite the release of such records to the public.

Sec. 2. Schedule. The Working Group should complete its work to the greatest extent possible and report to the Congress within 1 year.

Sec. 3. Membership. (a) The Working Group shall be composed of the following members:

(1) Archivist of the United States (who shall serve as Chair of the Working Group);

(2) Secretary of Defense;

(3) Attorney General;

(4) Director of Central Intelligence;

(5) Director of the Federal Bureau of Investigation;

(6) Director of the United States Holocaust Memorial Museum;

(7) Historian of the Department of State; and

(8) Three other persons appointed by the President.

(b) The Senior Director for Records and Access Management of the National Security Council will serve as the liaison to and attend the meetings of the Working Group. Members of the Working Group who are full-time Federal officials may serve on the Working Group through designees.

Sec. 4. Administration.(a) To the extent permitted by law and subject to the availability of appropriations, the National Archives and Records Administration shall provide the Working Group with funding, administrative services, facilities, staff, and other support services necessary for the performance of the functions of the Working Group.

(b) The Working Group shall terminate 3 years from the date of this Executive order.

WILLIAM J. CLINTON

EXECUTIVE ORDER NO. 13392

<Dec. 14, 2005, 70 F.R. 75373>

Improving Agency Disclosure of Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Policy.

(a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) [The Freedom of Information Act, is 5 U.S.C.A. § 552] has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.

(b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the agency's response.

(c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency's FOIA program does not produce such results, it should be reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

(d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

Sec. 2. Agency Chief FOIA Officers.

(a) Designation. The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) General Duties. The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(i) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency's Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA, including the extent to which the agency meets the milestones in the agency's plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

(iv) review and report, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the FOIA; and

(v) facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) FOIA Requester Service Center and FOIA Public Liaisons. In order to ensure appropriate communication with FOIA requesters:

(i) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency's website, including contact information for its FOIA Public Liaisons. In the case of an agency without a website, the agency shall publish the information on the Firstgov.gov

website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the Federal Register; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency's implementation of other means (such as tracking numbers for requests, or an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

Sec. 3. Review, Plan, and Report.

(a) Review. Each agency's Chief FOIA Officer shall conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(i) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency's administration of the FOIA, including the agency's expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency's:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(B) practices with respect to requests for expedited processing; and

(C) implementation of multi-track processing if used by such agency;

(iv) review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in section 552(a)(2) of title 5, United States Code; and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) Plan.

(i) Each agency's Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan,

which shall be submitted to the head of the agency for approval, shall address the agency's implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency's Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency's success in the implementation of the plan.

(c) Agency Reports to the Attorney General and OMB Director.

(i) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency's plan under section 3(b) of this order. The agency shall publish a copy of the agency's report on the agency's website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the Federal Register.

(ii) The head of each agency shall include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its plan under section 3(b) of this order and on the agency's performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under section 552(e) of title 5, United States Code.

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency's failure to meet the milestone;

(C) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President's Management Council.

Sec. 4. Attorney General.

(a) Report. The Attorney General, using the reports submitted by the agencies under subsection 3(c)(i) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later

than 10 months from the date of this order [Dec. 14, 2005], a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies' implementation of the FOIA and of their plans under section 3(b) of this order.

(b) Guidance. The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

Sec. 5. OMB Director. The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

Sec. 6. Definitions. As used in this order:

(a) the term "agency" has the same meaning as the term "agency" under section 552(f)(1) of title 5, United States Code; and

(b) the term "record" has the same meaning as the term "record" under section 552(f)(2) of title 5, United States Code.

Sec. 7. General Provisions.

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

(b) This order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

EXECUTIVE ORDER NO. 13642

<May 9, 2013, 78 F.R. 28111>

Making Open and Machine Readable the New Default for Government Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. General Principles. Openness in government strengthens our democracy, promotes the delivery of efficient and effective services to the public, and contributes to economic growth. As one vital benefit of open government, making information resources easy to find, accessible, and usable can fuel entrepreneurship, innovation, and scientific discovery that improves Americans' lives and contributes significantly to job creation.

Decades ago, the U.S. Government made both weather data and the Global Positioning System freely available. Since that time, American entrepreneurs and innovators have utilized these resources to create navigation systems, weather newscasts and warning systems, location-based applications, precision farming tools, and much more, improving Americans' lives in countless ways and leading to economic growth and job creation. In recent years, thousands of Government data resources across fields such as health and medicine, education, energy, public safety, global development, and finance have been posted in machine-readable form for free public use on Data.gov. Entrepreneurs and innovators have continued to develop a vast range of useful new products and businesses using these public information resources, creating good jobs in the process.

To promote continued job growth, Government efficiency, and the social good that can be gained from opening Government data to the public, the default state of new and modernized Government information resources shall be open and machine readable. Government information shall be managed as an asset throughout its life cycle to promote interoperability and openness, and, wherever possible and legally permissible, to ensure that data are released to the public in ways that make the data easy to find, accessible, and usable. In making this the new default state, executive departments and agencies (agencies) shall ensure that they safeguard individual privacy, confidentiality, and national security.

Sec. 2. Open Data Policy. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Chief Information Officer (CIO), Chief Technology Officer (CTO), and Administrator of the Office of Information and Regulatory Affairs (OIRA), shall issue an Open Data Policy to advance the management of Government information as an asset, consistent with my memorandum of January 21, 2009 (Transparency and Open Government), OMB Memorandum M-10-06 (Open Government Directive), OMB and National Archives and Records Administration Memorandum M-12-18 (Managing Government Records Directive), the Office of Science and Technology Policy Memorandum of February 22, 2013 (Increasing Access to the Results of Federally Funded Scientific Research), and the CIO's strategy entitled "Digital Government: Building a 21st Century Platform to Better Serve the American People." The Open Data Policy shall be updated as needed.

(b) Agencies shall implement the requirements of the Open Data Policy and shall adhere to the deadlines for specific actions specified therein. When implementing the Open Data Policy, agencies shall incorporate a full analysis of privacy, confidentiality, and security risks into each stage of the information lifecycle to identify information that should not be released. These review processes should be overseen by the senior agency official for privacy. It is vital that agencies not release information if doing so would violate any law or policy, or jeopardize privacy, confidentiality, or national security.

Sec. 3. Implementation of the Open Data Policy. To facilitate effective Government-wide implementation of the Open Data Policy, I direct the following:

(a) Within 30 days of the issuance of the Open Data Policy, the CIO and CTO shall publish an open online repository of tools and best practices to assist agencies in integrating the Open Data Policy into their operations in furtherance of their missions. The CIO and CTO shall regularly update this online repository as needed to ensure it remains a resource to facilitate the adoption of open data practices.

(b) Within 90 days of the issuance of the Open Data Policy, the Administrator for Federal Procurement Policy, Controller of the Office of Federal Financial Management, CIO, and Administrator of OIRA shall work with the Chief Acquisition Officers Council, Chief Financial Officers Council, Chief Information Officers Council, and Federal Records Council to identify and initiate implementation of measures to support the integration of the Open Data Policy requirements into Federal acquisition and grant-making processes. Such efforts may include developing sample requirements language, grant and contract language, and workforce tools for agency acquisition, grant, and information management and technology professionals.

(c) Within 90 days of the date of this order, the Chief Performance Officer (CPO) shall work with the President's Management Council to establish a Cross-Agency Priority (CAP) Goal to track implementation of the Open Data Policy. The CPO shall work with agencies to set incremental performance goals, ensuring they have metrics and milestones in place to monitor advancement toward the CAP Goal. Progress on these goals shall be analyzed and reviewed by agency leadership, pursuant to the GPRA Modernization Act of 2010 (Public Law 111-352).

(d) Within 180 days of the date of this order, agencies shall report progress on the implementation of the CAP Goal to the CPO. Thereafter, agencies shall report progress quarterly, and as appropriate.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Nothing in this order shall compel or authorize the disclosure of privileged information, law enforcement information, national security information, personal information, or information the disclosure of which is prohibited by law.

(e) Independent agencies are requested to adhere to this order.

BARACK OBAMA

MEMORANDA OF PRESIDENT

PRESIDENTIAL MEMORANDUM

<Jan. 21, 2009, 74 F.R. 4683>

Freedom of Information Act

Memorandum for the Heads of Executive Departments and Agencies

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the Federal Register. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the Federal Register.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA

PRESIDENTIAL MEMORANDUM

<Jan. 21, 2009, 74 F.R. 4685>

Transparency and Open Government

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.

Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

Government should be collaborative. Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.

I direct the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services, to coordinate the development by appropriate executive departments and agencies, within 120 days, of recommendations for an Open Government Directive, to be issued by the Director of OMB, that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum. The independent agencies should comply with the Open Government Directive.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the Federal Register.

§ 552. Public information; agency rules, opinions, orders, records...., 5 USCA § 552

BARACK OBAMA

Notes of Decisions (4406)

5 U.S.C.A. § 552, 5 USCA § 552
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 553

§ 553. Rule making

Currentness

(a) This section applies, according to the provisions thereof, except to the extent that there is involved--

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include--

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply--

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except--

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12044

Ex. Ord. No. 12044, Mar. 23, 1978, 43 F.R. 12661, as amended by Ex. Ord. No. 12221, June 27, 1980, 45 F.R. 44249, which related to the improvement of Federal regulations, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

Notes of Decisions (1557)

§ 553. Rule making. 5 USCA § 553

5 U.S.C.A. § 553, 5 USCA § 553
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 554

§ 554. Adjudications

Currentness

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved--

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a[1] administrative law judge appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of--

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for--

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not--

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply--

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 384; Pub.L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183.)

Notes of Decisions (177)

Footnotes

1

So in original.

5 U.S.C.A. § 554, 5 USCA § 554
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 555

§ 555. Ancillary matters

Currentness

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 385.)

Notes of Decisions (227)

5 U.S.C.A. § 555, 5 USCA § 555
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 556

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

Currentness

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence--

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may--

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with section 557 of this title; and

(11) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt

procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 386; Pub.L. 94-409, § 4(c), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub.L. 101-552, § 4(a), Nov. 15, 1990, 104 Stat. 2737.)

Notes of Decisions (161)

5 U.S.C.A. § 556, 5 USCA § 556
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 557

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

Currentness

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses--

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions--

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of--

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law--

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 387; Pub.L. 94-409, § 4(a), Sept. 13, 1976, 90 Stat. 1246.)

Notes of Decisions (153)

5 U.S.C.A. § 557, 5 USCA § 557
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 558

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

Currentness

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given--

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

§ 558. Imposition of sanctions; determination of applications for..., 5 USCA § 558

Notes of Decisions (76)

5 U.S.C.A. § 558, 5 USCA § 558
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 5. Administrative Procedure (Refs & Annos)
Subchapter II. Administrative Procedure (Refs & Annos)

5 U.S.C.A. § 559

§ 559. Effect on other laws; effect of subsequent statute

Currentness

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 388; Pub.L. 90-623, § 1(1), Oct. 22, 1968, 82 Stat. 1312; Pub.L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub.L. 95-454, Title VIII, § 801(a)(3)(B)(iii), Oct. 13, 1978, 92 Stat. 1221.)

Notes of Decisions (16)

5 U.S.C.A. § 559, 5 USCA § 559
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

5 U.S.C.A. § 706

§ 706. Scope of review

Currentness

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Notes of Decisions (5359)

5 U.S.C.A. § 706, 5 USCA § 706
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimitation Recognized by Miccosukee Tribe of Indians of Florida v. U S. Army Corps of Engineers, 11th Cir.(Fla.), Sep. 15, 2010

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4332

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

Currentness

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign

policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

CREDIT(S)

(Pub.L. 91-190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub.L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13352

<Aug. 26, 2004, 69 F.R. 52989>

Facilitation of Cooperative Conservation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

Sec. 2. Definition. As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

Sec. 3. Federal Activities. To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to

the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decisionmaking; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

Sec. 4. White House Conference on Cooperative Conservation. The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

Sec. 5. General Provision. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH

Notes of Decisions (5263)

Footnotes

[1]

So in original. The period probably should be a semicolon.

42 U.S.C.A. § 4332, 42 USCA § 4332
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 49. Transportation (Refs & Annos)
Subtitle VII. Aviation Programs
Part A. Air Commerce and Safety (Refs & Annos)
Subpart IV. Enforcement and Penalties (Refs & Annos)
Chapter 461. Investigations and Proceedings

49 U.S.C.A. § 46110

§ 46110. Judicial review

Effective: October 5, 2018

Currentness

(a) Filing and venue.--Except for an order related to a foreign air carrier subject to disapproval by the President under section 41307 or 41509(f) of this title, a person disclosing a substantial interest in an order issued by the Secretary of Transportation (or the Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration or the Administrator of the Federal Aviation Administration with respect to aviation duties and powers designated to be carried out by the Administrator of the Federal Aviation Administration) in whole or in part under this part, part B, or subsection (l) or (s) of section 114 may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) Judicial procedures.--When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration, as appropriate. The Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.

(c) Authority of court.--When the petition is sent to the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration to conduct further proceedings. After reasonable notice to the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration, if supported by substantial evidence, are conclusive.

(d) Requirement for prior objection.--In reviewing an order under this section, the court may consider an objection to an order of the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration only if the objection was made in the proceeding conducted by the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration or if there was a reasonable ground for not making the objection in the proceeding.

(e) Supreme Court review.--A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

CREDIT(S)

(Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1230; Pub.L. 107-71, Title I, § 140(b)(1), (2), Nov. 19, 2001, 115 Stat. 641; Pub.L. 108-176, Title II, § 228, Dec. 12, 2003, 117 Stat. 2532; Pub.L. 115-254, Div. K, Title I, § 1991(f)(1) to (4), Oct. 5, 2018, 132 Stat. 3642.)

Notes of Decisions (210)

49 U.S.C.A. § 46110, 49 USCA § 46110
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter V. Council on Environmental Quality
Subchapter A. National Environmental Policy Act Implementing Regulations (Refs & Annos)
Part 1501. NEPA and Agency Planning (Refs & Annos)

40 C.F.R. § 1501.3

§ 1501.3 Determine the appropriate level of NEPA review.

Effective: September 14, 2020

Currentness

(a) In assessing the appropriate level of NEPA review, Federal agencies should determine whether the proposed action:

(1) Normally does not have significant effects and is categorically excluded (§ 1501.4);

(2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ 1501.5); or

(3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this chapter).

(b) In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with § 1501.9(e)(1).

(1) In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area.

(2) In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:

(i) Both short- and long-term effects.

(ii) Both beneficial and adverse effects.

(iii) Effects on public health and safety.

(iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment.

SOURCE: 85 FR 43357, July 16, 2020; 85 FR 43359, July 16, 2020, unless otherwise noted.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

Notes of Decisions (2)

Current through Jan. 30, 2023, 88 FR 5799. Some sections may be more current. See credits for details.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter V. Council on Environmental Quality
Subchapter A. National Environmental Policy Act Implementing Regulations (Refs & Annos)
Part 1501. NEPA and Agency Planning (Refs & Annos)

40 C.F.R. § 1501.5

§ 1501.5 Environmental assessments.

Effective: September 14, 2020

Currentness

(a) An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

(b) An agency may prepare an environmental assessment on any action in order to assist agency planning and decision making.

(c) An environmental assessment shall:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; and

(2) Briefly discuss the purpose and need for the proposed action, alternatives as required by section 102(2)(E) of NEPA, and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.

(d) For applications to the agency requiring an environmental assessment, the agency shall commence the environmental assessment as soon as practicable after receiving the application.

(e) Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments.

(f) The text of an environmental assessment shall be no more than 75 pages, not including appendices, unless a senior agency official approves in writing an assessment to exceed 75 pages and establishes a new page limit.

(g) Agencies may apply the following provisions to environmental assessments:

(1) Section 1502.21 of this chapter—Incomplete or unavailable information;

(2) Section 1502.23 of this chapter—Methodology and scientific accuracy; and

(3) Section 1502.24 of this chapter—Environmental review and consultation requirements.

SOURCE: 85 FR 43357, July 16, 2020; 85 FR 43359, July 16, 2020, unless otherwise noted.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

Notes of Decisions (21)

Current through Jan. 30, 2023, 88 FR 5799. Some sections may be more current. See credits for details.

End of Document

GENERAL BYLAWS
OF THE
TOWN OF MILTON

As Amended Through The

2007

ANNUAL TOWN MEETING

warrants for all the Town Meetings held during the period for which they were appointed including the various articles in the warrant for the annual Town Meeting next after their appointment; they shall also consider all questions submitted to the voters of the Town at any meeting, excluding State elections; and they shall report in print before all such meetings their estimates and recommendations for the action of the Town. Copies of such reports shall be left at the dwelling houses in the Town at least four days before the day set for consideration of the various articles in the warrant considered by them and at least four days before the day upon which the voters are to consider questions submitted to them at any meeting.

a. On or before December first of each year each board, committee or officer of the Town shall file with the Selectmen, who shall transmit the same to the Warrant Committee, a preliminary budget, with a statement in detail of the appropriation or appropriations recommended by such board, committee or officer for the work under its or his charge for the ensuing year, with a final copy of said budget due to the Warrant Committee by January thirty-first.

b. The Warrant Committee shall include in its report of recommendations for the annual Town Meeting a statement setting forth the total appropriations so requested, the appropriations recommended, and the totals of such appropriations requested and recommended, and an estimate of the tax rate for the ensuing year if such recommendations are adopted. The copies of such reports may be combined with the warrants of the Selectmen for publication and delivery as provided in Section 1 of Chapter 2.

CHAPTER 4

FINANCES AND PROPERTY

Section 1. The Selectmen shall annually, not less than seven days before the annual town meeting, cause to be printed such number of copies of the annual town report as they shall determine to be sufficient for the use of the inhabitants. Such report shall contain a detailed report of all moneys received into and paid out of the Town treasury during the financial year next preceding, with such information and recommendations as the Selectmen may deem proper; the report of the school committee; the records of the meetings of the Town held since the last annual report; the report of the collector of taxes, of receipts, payments and abatements; statements concerning the conditions and funds of the public library and the cemetery to be furnished by the trustees thereof respectively, and statements of all other funds belonging to the Town or held for the benefit of its inhabitants; a statement of the liability of the Town on bonds, notes, certificates of indebtedness, or otherwise, and the total money paid the Town for perpetual

care of cemetery lots; and such other matters as the said report is required by law to contain, or as may be inserted by the Selectmen under the discretion granted them by law.

Section 2. No officer of the Town shall in his official capacity make or pass upon or participate in making or passing upon, any sale, contract or agreement or the terms or amount of any payment in which the Town is interested and in which such officer has any personal interest.

Section 3. The Warrant Committee shall send to the Selectmen and to the town accountant certified copies of all votes whereby transfers are made out of the Reserve Fund for extraordinary or unforeseen expenditures.

Section 4. The Selectmen shall have full authority as agents of the Town to institute and prosecute suits in the name of the Town or its officers in their official capacity and to appear and defend suits brought against it or its officers in their official capacity unless otherwise ordered by a vote of the Town.

Section 5. Whenever it shall be necessary to execute any deed conveying land or other instrument required to carry into effect any vote of the Town, the same shall be executed by the Selectmen, or a majority thereof, in behalf of the Town, unless otherwise ordered by a vote of the Town.

Section 6. The Selectmen shall appoint a Town Accountant who shall perform the duties prescribed by law. There shall annually be an audit of the accounts of the Town under the supervision of the State Director of Accounts, as provided in General Laws, Chapter 44, Section 35.

Section 7. Whenever damages may be recovered against the Town under General Laws Chapter 79, entitled "Eminent Domain," the Selectmen, unless otherwise provided by vote of the Town, may exercise in the name and behalf of the Town all the powers granted in Section 39 of said chapter relative to settlement of damages, assumption of betterments, offers of settlement, and any other matters in said section contained.

Section 8. The collector of taxes shall collect, under the title of Town Collector, all accounts due the Town, excepting interest on investments of sinking or trust funds. If it shall seem advisable to the town collector that suit or suits should be instituted and prosecuted in the name of the Town in connection with the collection of any accounts due to the Town, he shall so advise the Selectmen who shall have authority as agents of the Town to institute and prosecute the same.

Section 9. In addition to the authority to them granted by Section 8, the Selectmen shall have authority as agents of the Town to settle claims against the Town, after receiving the advice of the town counsel, payment for such settlement to be taken from the appropriation for the law department.

Section 10. Any Board or Officer in charge of a department may, with the approval of

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
EASTERN SERVICE CENTER

FINDING OF NO SIGNIFICANT IMPACT
and
RECORD OF DECISION

BOSTON LOGAN RNAV (GPS) RWY 4L ENVIRONMENTAL ASSESSMENT

Boston Logan International Airport, Boston, Massachusetts

May 4, 2022

Introduction

The Federal Aviation Administration (FAA) has determined that it is in the best interests of public aviation safety and efficiency to implement an Area Navigation (RNAV) Global Positioning System (GPS) instrument approach procedure for aircraft landing on Runway 4L (left) at Boston Logan International Airport (the Airport). The proposed instrument approach procedure will enhance public aviation safety by providing pilots with lateral and vertical electronic guidance to ensure a stabilized approach to landing, particularly during marginal and poor weather conditions. The proposed instrument approach procedure will also reduce delays at the Airport by reducing the number of flights that must be canceled or delayed during times of poor weather, resulting in an increase in efficiency at the airport as well as the National Airspace System (NAS) as a whole.

This document serves as the FAA Finding of No Significant Impact and Record of Decision (FONSI/ROD) based on the information and analysis contained in the Final Environmental Assessment (EA) (2022) for the Boston Logan RNAV (GPS) RNAV 4L and all corresponding Appendices, which are hereby incorporated by reference. It provides final agency determinations and environmental approvals for the federal actions necessary to implement the airspace procedure known as the RNAV Instrument Approach Procedure (IAP) to Runway 4L at Boston Logan International Airport (herein referred to as the Proposed Action). The FONSI/ROD has been prepared in compliance with the National Environmental Policy Act of 1969 (NEPA), FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, as well as the Council on Environmental Quality (CEQ) regulations for implementing NEPA at Title 40 of the Code of Federal Regulations Part 1500-1508 (40 CFR 1500-1508).[1] This FONSI/ROD demonstrates and documents FAA's compliance with all applicable environmental laws and requirements, including interagency and intergovernmental coordination and consultation, public involvement and documentation requirements.

Background

Boston Logan International Airport (the Airport) is a large commercial service airport in Massachusetts, with more than 20 million enplanements and approximately 427,000 aircraft movements in 2019. It is the primary passenger airport for southern New England as well as the region's busiest passenger service airport. Of the six runways available at the Airport, Runway 4L is the only runway that typically handles commercial aircraft arrivals but does not have an Instrument Approach Procedure (IAP) available to assist landings. An IAP is a series of predetermined maneuvers that facilitate the orderly transfer of an aircraft from the beginning of the initial approach to a landing or to a point from which a landing may be made visually.

In March 2016, the FAA completed a comprehensive Initial Environmental Review (IER) for the permanent implementation of a RNAV GPS IAP to Runway 4L at the Airport.[2] The IER concluded that the proposed procedure qualified for the categorical exclusion (CATEX) found in

[1] As permitted by 40 CFR 1506.13, the NEPA review documented in the Final EA was conducted under the regulations at 40 CFR parts 1500-1508 in effect when the NEPA process was begun, which preceded the updated regulations promulgated on July 16, 2020 and effective to any NEPA process begun after September 14, 2020.
[2] The March 2016 IER can be found in Appendix A of the Final Environmental Assessment.

FAA Order 1050.1F, paragraph 5-6.5.g, entitled, "Establishment of Global Positioning System (GPS), Flight Management System (FMS), Area Navigation/Required Navigation Performance (RNAV/RNP) or essentially similar systems that use overlay of existing flight tracks." [3] Additionally, the IER found that extraordinary circumstances as defined in FAA Order 1050.1F did not exist.

Nevertheless, in response to public input received from local, state, and federal officials, as well as members of the community, the FAA, in July 2016, elected to conduct an EA to further study the environmental impacts of the procedure. Due to budgetary constraints and other exigent circumstances, however, this effort was delayed. In late 2018/early 2019, the FAA ultimately acquired funding for a contractor to assist in analyzing potential environmental impacts and documenting the analyses, culminating in the preparation of this document.

Proposed Action

The Proposed Action is the implementation of a publicly available (published) RNAV IAP to Runway 4L at the Airport. The proposed RNAV procedure will provide lateral and vertical guidance, enabling continuous descent to the runway and offering a more predictable, consistent, and stabilized approach path, thus improving safety. Use cases associated with the FAA Proposed Action are described in more detail below:

Case (1): Instrument Meteorological Conditions (IMC): During IMC, an aircraft would be cleared by ATC for use of the RNAV (GPS) RWY 4L procedure beginning at the Initial Approach Fix (IAF) AAALL or the Intermediate Fix (IF) LVRON. Due to the limitations of landing onto Runways 4L and 4R simultaneously, utilization of this case is expected to be limited to times when arrival traffic is heaviest.

Case (2): Visual Meteorological Conditions (VMC) when receiving a clearance for a visual approach to Runway 4L: During VMC, an aircraft that is cleared for a visual approach to Runway 4L can utilize any available guidance on an advisory basis (i.e., without controller involvement) to improve safety and reduce fuel consumption. As the RNAV (GPS) RWY 4L approach will be the only IAP available for Runway 4L, it will be available for pilot use during VMC. Pilots are expected to fly similar ground tracks as they presently do while flying in these conditions and will continue to receive vectors to the final approach path as they do today. Flight crews will follow ATC vectors until they are cleared for the visual approach to Runway 4L, and usually will receive this clearance by approximately 5 nautical miles (nm) from the runway, depending on visibility and ATC operational factors. This portion of the landing, including the final segment to the runway, represents the extent for which the RNAV (GPS) RWY 4L approach could be used for advisory guidance during VMC.

Case (3): VMC (when receiving a clearance for the RNAV (GPS) RWY 4L approach): During VMC, an aircraft may be cleared by ATC for use of the RNAV (GPS) RWY 4L procedure at the IAF AAALL or the IF LVRON. Generally, this will be used by aircraft

[3] The proposed RWY 4L RNAV procedure also qualified for the FAA Order 1050.1F, paragraph 5-6.5, q CATEX.

approaching from the south that presently utilize the Runway 4R ILS and execute a change of runway maneuver to land on Runway 4L when the Airport is in sight. Essentially, aircraft will use the approach the same way it is used in Case (1), the only differences being in ambient weather conditions.

The proposed procedure includes two charted transitions, as well as two uncharted transitions requiring ATC radar vectors, as described below:

- NUNZO transition – aircraft arriving from the south transition into the approach procedure at the charted fix NUNZO and follow the charted procedure to the runway from that fix.

- WOONS transition – aircraft arriving from the southwest transition into the approach procedure at the charted fix WOONS and follow the charted procedure to the runway from that fix.

- Cape-area transition – aircraft arriving from Cape-area airports such as Nantucket (ACK), Martha's Vineyard (MVY) and Barnstable (HYA), as well as other points east and southeast, will approach the Airport from the southeast and transition into the procedure north of the IAF AAALL and south of the IF LVRON. It will then follow the charted procedure to the runway. This transition is not charted and requires radar vectors.

- Left-downwind transition – aircraft arriving from the west and north will fly a conventional left downwind leg to Runway 4L before making a base-to-final turn north of LVRON and transitioning into the procedure just south of MTAPN. This transition is not charted and requires radar vectors.

The Proposed Action is designated as an RNAV (GPS) Instrument Arrival Procedure (IAP)[4], which requires that an aircraft flying the procedure remain within one nautical mile of the procedure centerline 95% of the total flight time. The expected change to airport operations attributable to the Proposed Action would be comprised of the following:

- A net annual increase of 255 arrivals at the Airport. This increase is attributable to previously scheduled arrivals that will no longer need to be canceled due to increased Airport efficiency during IMC or "poor weather." With the availability of the RNAV (GPS) RWY 4L procedure, these arrivals will now be able to land on Runway 4L instead of being canceled or delayed.

- A shift of 104 annual arrivals from Runway 4R to Runway 4L. These 104 arrivals represent flights that would otherwise have landed on Runway 4R with a flight delay, but the availability of the RNAV (GPS) RWY 4L procedure would allow these flights to instead land on Runway 4L earlier in the day.

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[4] The term RNAV means "area navigation" in this context. Within RNAV procedures, there are two categories of navigation specifications, area navigation (RNAV) and required navigation performance (RNP). RNP is a GPS-based system that allows for more precise navigation via performance monitoring capability. In the United States, RNP approach or arrivals procedure are called RNAV (GPS) procedures. For more information about RNAV and RNAV (GPS) procedures, refer to https://www.faa.gov/air_traffic/publications/atpubs/aip_html/part2_enr_section_1.17.html.

- Combined, there will be an expected increase of 359 arrivals to Runway 4L, representing 255 flights that no longer need to be cancelled and 104 flights no longer delayed due to poor weather conditions.[5] All other airport operations in the No Action Alternative and Proposed Action are expected to operate identically as they would today.

Purpose and Need for the Proposed Action

The FAA's continuing mission is to provide the safest, most efficient aerospace system in the world. The purpose of the Proposed Action is to improve the safety and enhance the efficiency of the National Airspace System (NAS) by establishing and implementing an RNAV (GPS) IAP to Runway 4L at the Airport.

The implementation of the Proposed Action would serve a safety need by largely supplanting the need for small, maneuverable aircraft to fly a circling visual approach to Runway 4L after conducting an initial approach to ILS RWY 15R. This procedure, primarily used in marginal VMC, is relatively challenging and requires significant maneuvering at low altitude, followed by a short final to Runway 4L. Aircraft flying this procedure must keep the runway in sight at all times, as well as maintain visual separation with any aircraft landing on Runway 4R. The high workload required of this procedure has resulted in multiple runway incursions and other incidents in recent years.

Additionally, the Proposed Action is needed to enhance safety because currently there is no IAP of any kind available for approaches to Runway 4L. As such, aircraft arriving to Runway 4L lack vertical and lateral guidance during the approach phase of flight. Among large airports in the United States, like Boston Logan International Airport, it is very rare to have an arrival runway for commercial traffic that does not have an IAP with vertical and lateral electronic guidance. As pilots do not have instrument references allowing electronic guidance of the flight, they must "hand-fly" their aircraft when approaching Runway 4L and can only do so in VMC. This creates additional cockpit workload during a critical phase of flight (approach to landing). Further, the lack of an IAP limits the operational flexibility of the Airport particularly during poor weather when Runway 4L is not available for arrivals.

Consequently, during IMC, the aircraft arrival rate (AAR) at the Airport is reduced which, in turn, causes delays further upstream in the NAS. Moreover, during extended periods of IMC, the arrival delays to the Airport multiply as the reduced AAR cannot support the scheduled arrivals. This delayed arrival situation can also cause flight arrival times to be pushed back later into the nighttime hours or possibly result in cancelling flights.

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[5] This estimate of additional flights only includes aircraft flying in IMC or "poor weather"; aircraft flying in VMC or "good weather" are not expected to use the RNAV (GPS) RWY 4L procedure. Aircraft flying in VMC would continue to receive vectors from ATC and would generally fly the same current paths until receiving clearance for the visual approach to the runway. At this point, they would have the option to utilize the RNAV (GPS) RWY 4L procedure for reference purposes because all aircraft converge on the runway approach path at this point; aircraft flight paths are not expected to meaningfully differ from those associated with a visual approach.

The purpose of the Proposed Action is to address these needs by implementing an RNAV (GPS) IAP to Runway 4L at the Airport. The Proposed Action will allow for a stabilized approach with vertical and lateral guidance. This will reduce pilot workload and provide an approach for aircraft to land on Runway 4L in IMC, which will in turn reduce delays at the Airport and upstream throughout the NAS. The additional IAP for aircraft approaching the Airport in IMC during the Northeast configuration is anticipated to increase operational efficiency to a degree that would correspond to an additional 255 net annual operations. While the Proposed Action will usually only be assigned to landing aircraft during IMC, it will also be available for flight crews to use on an advisory basis at their discretion when cleared for a visual approach which is like other published arrival procedures at the Airport

Overall, the Proposed Action will create an IAP that meets the criteria of enhancing both safety and efficiency within the NAS. The implementation of the RNAV (GPS) RWY 4L procedure where no instrument procedure currently exists will improve safety by providing pilots with a stabilized approach and enables air traffic control (ATC) to monitor each aircraft more precisely both vertically and laterally along the arrival track. The implementation of this procedure will also create efficiency benefits for the Airport in IMC by decreasing arrival delays.

Alternatives

The clear identification and thorough discussion of project alternatives is imperative so that the potential impacts of each alternative can be distinctly defined and easily distinguished. A potential alternative is one that would accomplish the Purpose and Need for the Proposed Action while being a reasonable and feasible action. Two alternatives were carried forward after a number of alternatives were considered but did not meet the criteria for a potential alternative listed above. For more information, please see Section 2.2.2, Alternatives Considered but Eliminated from Further Study, of the Final EA.

Maintain Current Operations (No Action Alternative)

The No Action Alternative would maintain the current suite of available procedures and would not result in the implementation of a new IAP for Runway 4L. As a result, the current general lack of availability of Runway 4L during IMC would remain, and all arrivals to Runway 4L would continue to operate without vertical or lateral guidance. Although it does not meet the Purpose and Need, the No Action Alternative is carried forward for further environmental analysis in accordance with Council on Environmental Quality (CEQ) regulations implementing NEPA.

Proposed Action

The FAA developed an RNAV (GPS) arrival procedure to provide an IAP to Runway 4L and increase safety and efficiency at the Airport. This alternative, which was refined and technically evaluated to meet RNAV performance criteria and evaluated for noise impacts, has been carried forward for further environmental analysis.

Affected Environment

The Airport is the primary air service facility serving the Boston Metropolitan Area and as shown on Figure 3-1 is located just one mile due east of downtown Boston. The Airport serves as a domestic carrier hub while also serving multiple international destinations in North America, South America, Europe, Asia, and Africa. The Massachusetts Port Authority (Massport) owns and operates the Airport, as well as two additional airports in eastern and central Massachusetts. In 2019, there were 343,778 domestic flights, 54,476 total international flights, and 28,922 general aviation flights totaling 427,176 operations.[6,7] The Airport operates six runways with two pairs of parallel runways. Runways 4L/22R and 4R/22L are oriented in a northeast/southwest direction and are 7,864 feet and 10,006 feet long respectively. The other parallel runway pair, Runways 15L/33R and 15R/33L, are oriented to the northwest/southeast and are 2,557 and 10,083 feet long respectively. Runway 14/32 is oriented to the northwest/southeast on the southern edge of the airfield and is 5,000 feet long. Runway 9/27, oriented in an east/west direction, is located on the east side of the airfield crossing Runway 15R/33L and is 7,001 feet long.

General Study Area

The GSA was delineated following a combination of physical and municipal geographic boundaries adhering to the general area in which aviation activities related to the proposed project could reasonably be anticipated to affect the surrounding environs. This area was determined using procedure flyability lines, flight corridors, and other indicators of potential overflights.

The GSA encompasses an area of 1,173 square miles in Massachusetts. The GSA includes all or parts of Middlesex, Norfolk, Plymouth, and Suffolk counties and also includes the entirety of the City of Boston. The GSA has a population of 2,419,614 and includes 27,080 Census blocks (based on 2010 U.S. Census demographic data).

An analysis studying the Proposed Action and the historical flight paths of aircraft that were expected to be using the Proposed Action was performed. Using the results of the study, the GSA was constructed to encompass the geographic area where an aircraft flight path could be affected as a result of the Proposed Action up to 10,000 feet above ground level (AGL) in line with FAA Order 1050.1F.[8] The Airport is located in the northeastern corner of the GSA on the eastern edge of downtown Boston and bordered to the east by the Atlantic Ocean. The GSA

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[6] Please note that operations have generally been down across the National Airspace System because of the COVID-19 pandemic and as such these operational values represent a conservative estimate because they are likely higher than current operations as of spring 2022.
7 Boston-Logan International Airport Monthly Airport Traffic Summary – December 2019, http://www.massport.com/media/3927/1219-avstats-airport-traffic-summary.pdf
[8] FAA Order 1050.1F, B-1.3, Affected Environment, https://www.faa.gov/documentLibrary/media/Order/FAA_Order_1050_1F.pdf,

extends to the south and west of the Airport since the Proposed Action will occur in the airspace above these areas.

Environmental Consequences

Neither the Proposed Action nor the No Action Alternative are anticipated to affect certain environmental resource categories identified in the Desk Reference for FAA Order 1050.1F. Accordingly, no further discussion of these environmental resource categories is warranted. These environmental resource categories include:

- Biological Resources – Fish, Plants, and Terrestrial Species Only
    - The Proposed Action does not result in ground-based disturbance and is therefore not expected to have impacts on any terrestrial organisms considered as part of the Biological Resources impact category.
- Coastal Resources
    - The Proposed Action is an airspace action with no physical ground-based improvements and is thus not expected to have an impact on any coastal area or coastal ecosystem.
- Farmlands
    - The Proposed Action is an airspace action with no physical ground-based improvements and thus would not cause any conversion of farmlands into non-agricultural uses.
- Hazardous Materials, Solid Waste, and Pollution Prevention
    - The Proposed Action does not include construction or physical improvements and thus is not expected to have any impact on solid waste, hazardous waste, contaminated sites as defined by FAA Order 1050.1F, and solid waste management.
- Historical, Architectural, Archeological, and Cultural Resources – Archeological Resources Only
    - The Proposed Action is an airspace action with no physical ground-based improvements and thus is not expected to have any impact on any archeological sites. Impacts to non-archeological resources are described below on page 14.
- Natural Resources and Energy Supply
    - The Proposed Action would not cause demand to exceed the availability of available or future supplies of natural resources.
- Socioeconomics, Environmental Justice, and Children's Environmental Health – Socioeconomics and Children's Environmental Health Only
    - The Proposed Action is not expected to cause any changes to a community tax base, or any disruption or relocation of any

community business or houses. The Proposed Action is not expected to disproportionately cause a health or safety risk to children. Thus, these parts of this impact category were not considered.

- Light Emissions and Visual Effects
    - The Proposed Action is an airspace action only. Airspace actions are associated with low levels of light intensity. The Proposed Action is thus not expected to cause any changes to light emissions or visual effects in the GSA.
- Water Resources (including Wetlands, Floodplains, Surface Waters, Groundwater, and Wild and Scenic Rivers)
    - The Proposed Action is an airspace action with no physical ground-based improvements and thus is not expected to cause any changes to water resources in the GSA.

The potential environmental impacts from the Proposed Action were evaluated in the attached Final EA for each of the resource categories listed below. A summary of that analysis is included. No significant impacts to the quality of the human or natural environment were identified for any of the categories. Therefore, no Environmental Impact Statement is required to be, or has been, prepared.

Noise and Noise-Compatible Land Use

The Aviation Environmental Design Tool (AEDT) is the FAA's approved model for assessing noise and emissions at civilian airports. AEDT has been used for environmental review of air traffic noise and emissions impacts since 2012 and is also used for 14 CFR Part 150 studies as well as NEPA EAs and EISs. For these types of analysis, AEDT is used to estimate the long-term average changes in environmental impacts.

Detailed information on aircraft operations at the Airport was input into AEDT, including specific fleet mix information such as aircraft type, arrival and departure times, trip distance, runway use, flight track location/usage, and weather conditions (e.g., temperature and humidity). Noise exposure from aircraft operations was calculated at the 27,080 Census blocks throughout the GSA. The locations consist of population centroids, representing the centers of 2010 Census blocks. Census blocks are the smallest geographic unit for which the U.S. Census Bureau tabulates 100% sample data. Census blocks are generally bounded by streets, legal boundaries, and other features. For this analysis, the Census block counts represent the maximum potential population within the Census block that could be exposed to the modeled DNL values, including family and non-family households, but excluding those residing in group quarters (often representing transient or temporary residential arrangements). The actual number of people impacted can be smaller than the total population represented by a single Census block because noise levels will vary throughout the Census block. A detailed discussion of the noise modeling methodology can be found in Sections 3.4.6 and 4.6 of the Final EA and in Appendix B, the Noise Modeling Technical Report.

Changes in noise exposure for each population centroid in the GSA were evaluated based on FAA requirements to determine the degree of change in noise exposure. Aircraft noise is required, per FAA Order 1050.1F, to be evaluated in terms of the day-night average sound level (DNL) metric. FAA Order 1050.1F further defines that a significant impact would occur if a proposed action would result in an increase of 1.5 dB or more in any noise sensitive area at or above the DNL 65 dB exposure level when compared to the No Action Alternative for the same timeframe.

Per FAA Order 1050.1F, increases of 1.5 dB in the DNL 65 dB and above area are considered significant. Increases of 3 dB between DNL 60 dB and less than DNL 65 dB are to receive consideration when evaluating the environmental impacts of a proposed project, and will be identified regardless of whether a significant impact is identified. Increases of 5 dB or greater at levels between DNL 45 dB and less than DNL 60 dB are also to be disclosed. The FAA noise level criteria are used to compare DNL changes at the population locations in the GSA. Population locations are evaluated under the following categories: (1) those showing an increase in noise exposure relative to the No Action Alternative; (2) those showing a decrease relative to the No Action Alternative; and (3) those having no change relative to the No Action Alternative. Additionally, in accordance with FAA Order 1050.1F, special consideration was given to the evaluation of the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges and historic sites. For example, the DNL 65 dB noise exposure level does not adequately address the effects of noise on visitors to areas within a national park where other noise is low and a quiet setting is the recognized intention of the area.

A comparison of noise exposure between the No Action Alternative and the Proposed Action indicates no significant impacts (increases of DNL 1.5 dB in areas that would be exposed to DNL values of 65 dB or higher) to population centroids within the GSA. Though no significant impacts were identified, the Proposed Action was also evaluated for any reportable increases of 3.0 dB or greater in population centroids with a baseline exposure between DNL 60 dB and DNL 65 dB, or an increase of 5.0 dB or greater for population centroids with a baseline exposure between DNL 45 dB and DNL 60 dB. There were no reportable impacts as a result of the Proposed Action.

The current EA represents the fourth time that this specific Proposed Action has been evaluated for noise impacts by the FAA. These evaluations include:

1) The March 2016 IER, which used data from the FAA's older Integrated Noise Model (INM) tool, represented the initial evaluation of the RNAV (GPS) RWY 4L procedure.

2) As part of a NEPA evaluation supporting the reconstruction of Runway 4R at the Airport, a December 2017 noise screening was run using the FAA's Terminal Area Route Generation, Evaluation, and Traffic Simulator (TARGETS) Noise Plugin, which allows an analyst to feed TARGETS procedure designs directly into AEDT for rapid noise evaluations that do not require the detailed population and supporting data found in an EA. In this evaluation, the RNAV (GPS) RWY 4L procedure was used temporarily while Runway 4R was reconstructed.

3) A NEPA evaluation supporting the reconstruction of Runway 9-27 at the Airport was completed in summer 2020, with the RNAV (GPS) RWY 4L again being evaluated as a temporary procedure to be used during the reconstruction. None of these three evaluations have found any significant or reportable noise increases brought about by the implementation of the RNAV (GPS) RWY 4L procedure.

In response to public comments, the FAA prepared a sensitivity analysis using a very aggressive usage scenario, which is included in Appendix B to the Final EA. Even in that aggressive scenario, which assumed all arriving aircraft to Runway 4L would use the RNAV (GPS) RWY 4L procedure, there were no reportable or significant noise increases. The largest increase observed at any population centroid was an increase of DNL 2.2 dB. The FAA believes its original assumptions were reasonable and the scenario modeled in the sensitivity analysis is not plausible; however, this modeling effort in response to public comments demonstrates that even if more aircraft use the procedure it would not cause a reportable or significant noise change.

Air Quality

The United States Environmental Protection Agency (EPA) has established National Ambient Air Quality Standards (NAAQS) for ambient (i.e., outdoor) concentrations of the following criteria pollutants: carbon monoxide (CO), nitrogen dioxide (NO_2), ground-level ozone (O_3), sulfur dioxide (SO_2), lead (Pb), particulate matter with a diameter of 10 microns or less (PM_{10}), and particulate matter with a diameter of 2.5 microns or less ($PM_{2.5}$). States must identify geographic areas that do not meet the NAAQS for each criteria pollutant. These areas are then identified as non-attainment areas for the applicable criteria pollutant(s). States must develop, and obtain EPA approval of, a State Implementation Plan (SIP) for non-attainment areas that includes a variety of emission control measures that the state deems necessary to produce attainment of the applicable standard(s) in the future.[9] As described in FAA Order 1050.1F, Exhibit 4-1, an emissions impact is significant if "the action would cause pollutant concentrations to exceed one or more of the NAAQS, as established by the EPA under the Clean Air Act, for any of the time periods analyzed, or to increase the frequency or severity of any such existing violation."

Section 176(c) (commonly referred to as the General Conformity Rule) of the Clean Air Act (CAA) requires that federal actions conform to any applicable SIPs in order to attain the air quality goals identified in the CAA.[10] The EPA regulation 40 CFR 93.153 (b)(1)(2), specifies *de minimis* emission levels for each NAAQS pollutant in a non-attainment area. If a project's net emissions are less than the *de minimis* levels, then the federal action is considered to be too small to adversely affect the air quality status of the area and is automatically considered to conform with the applicable SIP, thus completing the conformity process. If the project's

[9] The Clean Air Act requirements governing State Implementation Plans (SIPs) are found in multiple sections of the Clean Air Act starting in Section 107(a). The EPA's implementing regulations can be found at https://www.epa.gov/air-quality-implementation-plans/sip-requirements-clean-air-act

[10] The initial and modified regulations governing General Conformity can be found at https://www.epa.gov/general-conformity/transportation-conformity-regulations-and-general-conformity-regulations

emissions exceed the *de minimis* level for a NAAQS pollutant in a non-attainment area, then a formal conformity determination must be prepared.[11]

The EPA's regulations also allow FAA to identify certain actions that are presumed to conform with an applicable SIP because, for example, the actions were found by FAA not to exceed *de minimis* thresholds. The FAA has published a list of presumed to conform actions, which includes air traffic control activities and adoption of approach, departure, and enroute procedures for air operations above the inversion base for pollutant containment (commonly referred to as the "mixing height") specified in the applicable SIP (or 3,000 feet Above Ground Level in places without an established mixing height).[12] The full list of FAA actions "presumed to conform" under General Conformity can be found in 72 Fed. Reg. 41565, July 30, 2007.[13] Another one of the actions published by the FAA is "air traffic control activities for air operations that occur at altitudes below the atmospheric mixing height, provided that modifications to routes and procedures are designed to enhance operational efficiency (i.e. to reduce delay), increase fuel efficiency, or reduce community noise impacts by means of engine thrust reductions."[14]

Implementation of the Proposed Action would result in a small increase in the amount of fuel burned and emissions emitted below the mixing height when compared to the No Action Alternative, due to the small number of additional operations. AEDT analysis indicated that implementation of the Proposed Action would result in a less than 0.1% increase in fuel burn when compared with the No Action Alternative, which can be found in Table 4.1-3 of the Final EA. This small increase in emissions of criteria pollutants, however, would not reach the *de minimis* thresholds that EPA defines as delaying timely attainment of the NAAQS, in any of the counties that comprise the GSA. As a result, further analysis is not required to demonstrate conformity, and implementation of the Proposed Action would not have a significant impact on air quality.

Climate

Greenhouse gases (GHGs) are naturally occurring and man-made gases that trap heat in the earth's atmosphere. These gases include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). For airspace actions, the primary source of greenhouse gases is CO_2 emissions from aircraft fuel combustion. CO_2 emissions for current flight operations (i.e. No Action Alternative) were calculated using AEDT for the lengths of the modeled tracks.

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[11] *De minimis* levels are defined in 40 CFR 93.153(b) (1)-(2), and can be found at https://www.epa.gov/general-conformity/de-minimis-tables

[12] 72 Fed. Reg 41565, p. 41569, July 30, 2007. https://www.faa.gov/airports/resources/publications/federal_register_notices/media/environmental_72fr41576.pdf

[13] 72 Fed. Reg 41565, p. 41565, July 30, 2007. https://www.faa.gov/airports/resources/publications/federal_register_notices/media/environmental_72fr41576.pdf

[14] 72 Fed. Reg 41565, p. 41568, July 30, 2007. https://www.faa.gov/airports/resources/publications/federal_register_notices/media/environmental_72fr41576.pdf

While fuel burn would slightly increase under the Proposed Action when compared with the No Action Alternative due to the additional operations, there is no significance threshold for aviation GHG emissions set by FAA Order 1050.1F. Regardless, this Proposed Action is not anticipated to cause significant effects on the climate.

The runway utilization changes in the Proposed Action cause only a marginal increase in the total miles flown by aircraft and therefore the total amount of additional fuel required for arrival operations under the Proposed Action is minimal. Based on AEDT results, total annual fuel burn in the Proposed Action is less than 0.1% higher than in the No Action Alternative. This represents an increase of approximately 17 short tons of fuel burn on an annualized basis, with total fuel burn within the GSA rising from 82,819 tons in the No Action Alternative to 82,836 tons in the Proposed Action. In terms of CO_2 emissions, this increase in fuel burn corresponds with an annual increase of approximately 54 tons of CO_2. This represents a marginal increase in estimated CO_2 emissions at the Airport relative to area sources with the Commonwealth of Massachusetts generating an estimated 73.5 million metric tons of carbon dioxide emissions in 2018.[15]

Biological Resources – Wildlife Only

The significance threshold pertaining to Biological Resources is if "the action would be likely to jeopardize the continued existence of a federally listed threatened or endangered species or would result in the destruction or adverse modification of federally designated critical habitat." Since this is an airspace action, there is not expected to be any destruction of critical habitat but an impact on a federally listed species is possible through wildlife strikes. Wildlife strikes are a common occurrence at airports around the country with over 194,000 wildlife strikes on civil aircraft occurring between 1990 and 2017. Almost all bird strikes (92%) occur at or below 3,500 feet above ground level, making the area near an airport the most critical area.[16]

The FAA National Wildlife Strike Database keeps a record of all reported wildlife strikes in the United States since 1990. The database contains records of over 227,000 different wildlife strikes across civilian and military airports. Since 1990, there have been 2,062 wildlife strikes at the Airport with 141 of these wildlife strikes occurring in 2018.

Of the 2,062 historical strikes at the Airport since 1990, a single strike was reported to include any of the federally listed species (red knot) but it occurred on Runway 27, which will be unaffected by the Proposed Action. From this dataset of 2,062 historical strikes, there were only two strikes of all state-listed species on approaches into Runway 4L with one strike of a *threatened* species and one strike of an *endangered* species. The Proposed Action is intended to enhance safety at BOS by making an IAP available at RWY 4L. This change is not expected to result in a change in the number of operations at BOS, except that fewer previously-scheduled flights will need to be canceled in inclement conditions (estimated to be 255 annual

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[15] Massachusetts Annual Greenhouse Gas Emissions Inventory: 1990-2018

[16] FAA 2021. *Wildlife Strikes to Civil Aircraft in the United States. 1990-2020.* https://www.faa.gov/airports/airport_safety/wildlife/media/Wildlife-Strike-Report-1990-2020.pdf

operations). Given the lack of ground disturbance, the limited impact of the Proposed Action to arrival operations at BOS, and the absence of historical strikes of federally listed species on an affected runway, the FAA has concluded there will be no effect to a listed species or a designated critical habitat, and therefore no significant impact.

Section 4(f) 49 U.S.C. Section 303(c)

Section 4(f) of the Department of Transportation (DOT) Act of 1966 (codified at 49 U.S.C. Section 303(c)), commonly referred to as Section 4(f) states, in pertinent part, that:

> *"… [the] Secretary of Transportation may approve a transportation program or project . . . requiring the use of publicly owned land of a public park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance . . . only if (1) there is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm . . . resulting from the use."* [17]

The word "use" includes both direct and indirect or "constructive" impacts to Section 4(f) properties. An indirect impact or "constructive" use does not require a physical taking of a Section 4(f) property. A constructive use would occur when non-physical impacts of a project are so severe that the activities, features, or attributes of the property would be substantially impaired.

Section 4(f) properties within the GSA were inventoried using geospatial data from federal, state, and local sources. The sources inventoried include multiple datasets from the MassGIS (Bureau of Geographic Information for the state of Massachusetts), Open Space data from the City of Boston, and parks data from the City of Quincy. A total of 11,854 Section 4(f) properties were identified within the GSA. The Section 4(f) properties identified as being part of the GSA were evaluated to identify potential noise increases that may represent an adverse impact or constructive use of the property. These properties were also evaluated with the same noise increase data for any noise sensitive areas within the Section 4(f) properties that have a quiet setting as an attribute. For each of the 11,854 Section 4(f) properties, a centroid at the center of each property was generated and the noise impact was calculated at each point for the No Action Alternative and for the Proposed Action. This noise impact was compared to the noise exposure levels specified in FAA Order 1050.1F, where a change of 1.5 dB in the DNL 65 dB or higher noise exposure level is considered significant, and a change of 3.0 dB in the DNL 60 to less than 65 dB noise exposure level or a change of 5.0 dB in the DNL 45 to less than 60 dB noise exposure level is considered as reportable.

For these Section 4(f) centroids, there were no significant noise impacts (increases of 1.5 dB in the DNL 65 or higher noise exposure level) or reportable noise impacts (increases of 3.0 dB in the DNL 60 to less than 65 dB noise level or increases of 5.0 dB in the DNL 45 to less than 60 dB noise exposure level) found within the GSA. This includes national, state, and local parks as

[17] FAA Order 1050.1F, B-2 Section 4(f), 49 U.S.C. 303, p. B-9, https://www.faa.gov/documentLibrary/media/Order/FAA_Order_1050_1F.pdf

well as state forests, state historic sites, and state and local refuges that were assessed as part of the analysis. There were also no increases above the 45 DNL noise exposure level in Section 4(f) properties within the GSA located in a quiet setting, where the setting is an attribute of the site's significance, such as a national park or national wildlife refuge within the GSA. When considering all Section 4(f) properties with a No Action noise exposure level of DNL 45 dB or greater, the maximum change in noise exposure level was 0.2 dB. Furthermore, sound level changes of 1 dB or less are not readily perceptible to the human ear, except in a laboratory setting.[18] The detailed visual analysis described in Section 4.5 of the Final EA also indicates that there would be a limited visual impact throughout the GSA.

Based on the results of the FAA's noise and visual analysis, as well as consideration of all comments received during the public comment period, it can be concluded that the Proposed Action would not cause a constructive use for any Section 4(f) property and would not cause a significant impact.

Historic, Architectural, Archaeological, and Cultural Resources

The National Historic Preservation Act (NHPA) is the principal statute concerning historical, architectural, archeological and cultural resources. For this reason, the evaluation of impacts on these resources was completed in line with the guidance specified in Section 106 of the NHPA, which requires federal agencies to consider the effects of their projects on properties listed, or eligible for listing, in the National Register of Historic Places (NRHP). As this is an FAA Action, the FAA document *Section 106 Handbook: How to Assess the Effects of FAA Actions on Historic Properties under Section 106 of the National Historic Preservation Act* was consulted and referenced to assist in making this determination.

The Section 106 regulations define the Area of Potential Effects (APE) as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking."[19] The APE was formulated based on the areas of potential noise impact criteria according to FAA Orders. FAA Order 1050.1F provides the following criteria for determining impact of changes in aircraft noise:

- For DNL 65 dB and higher: +1.5 dB (significant)
- For DNL 60 dB to <65 dB: +3 dB (reportable)
- For DNL 45 dB to <60 dB: +5 dB (reportable)

The Proposed Action would not cause any physical effects. However, pursuant to 36 CFR 800.5(a)(2)(v), the FAA considered the potential for the undertaking to introduce visual, atmospheric, or audible elements that could diminish the integrity of a historic property's significant historic features. The FAA also considered the potential for the Proposed Action to

[18] https://www.faa.gov/air_traffic/environmental_issues/ared_documentation/media/DC_OAPM_EA/Appendices/Appendix_E_Basics_of_Noise.pdf, E-3

[19] 36 CFR § 800.16(d), https://www.achp.gov/sites/default/files/regulations/2017-02/regs-rev04.pdf

have noise effects that could alter the character or use of historic properties. The FAA made this assessment by comparing the expected flight paths of aircraft flying the Proposed Action to flight paths of current arrivals at BOS. Based on this comparison, the FAA determined whether there would be new areas overflown by the Proposed Action, and specifically whether the undertaking has the potential to introduce new visual, atmospheric, or audible elements to historic properties in these areas. Any areas meeting this criteria were considered to be a part of the APE.

Databases from the NRHP, Massachusetts Historic Commission (MHC), and the Boston Landmarks Commission were used to compile a comprehensive list of historic properties within the APE. Additionally, the FAA requested input from local historical commissions, planning boards, tribes, and interested parties to identify additional properties not previously identified as eligible for the NRHP. This effort identified 4,242 properties listed in or potentially eligible for listing in national, state, or local historic registers. Of these, 58 properties within the APE are currently listed in or have been formally determined eligible for listing in the NRHP. For the purposes of the analysis, FAA assumed all 4,242 properties within the APE were eligible for listing in the NRHP.

The undertaking does not require land acquisition, construction, or ground disturbance, and as such the FAA anticipates no physical effects to historic properties. However, the FAA recognizes that for certain types of historic properties, particularly those where the property's setting contributes to its historical significance, the introduction of visual, atmospheric, or audible elements could diminish the integrity of a property's significant historical features (including setting and feeling which are characteristics contributing to the property's NRHP eligibility), and therefore aircraft operations could result in non-physical effects.

The Proposed Action would result in noise impacts an order of magnitude below the significance threshold identified in FAA Order 1050.1F. Using the DNL metric, the largest noise change at a historic resource is 0.2 decibel (dB) across the APE, which is a change in noise that is imperceptible to the human ear. When considering the potential for introduction of visual elements to historic properties, the Proposed Action would increase overflights within the APE from 268.1 daily overflights to 268.8 daily overflights, an average of less than one per day. A visual analysis of the current flight tracks shows that the entire APE is already densely overflown and would be very small compared to the existing level of overflights (a 0.26% increase).

All consulting parties were provided an opportunity to review the FAA's finding of no adverse effect and, in a January 5, 2022 response to the Massachusetts (MA) State Historic Preservation Office (SHPO), the FAA reaffirmed its finding of no adverse effect as part of continued consultation pursuant to 36 CFR 800.5(c)(2)(i). The MA SHPO did not respond to the FAA's January 5, 2022 consultation letter. On March 4, 2022, a representative from the FAA spoke with a representative from the Advisory Council on Historic Preservation and exchanged a number of follow-up emails. During those communications, ACHP confirmed the SHPO was entitled to a 30-day review period of the FAA's reaffirmed finding pursuant to 36 CFR 800.5. The FAA has provided that review period to the SHPO without receiving notice of a disagreement

with the FAA's reaffirmed finding. In addition, no other consulting party provided notice of a disagreement with FAA's finding of no adverse effect. Therefore, the FAA has fulfilled its consultation requirements and can proceed with the undertaking pursuant to 36 CFR 800.5. The FAA also provided notice to the Secretary of the Interior pursuant to 36 CFR 800.10(c). This correspondence can be found in Appendix E.

Based on the analysis, the FAA has determined that there would be no adverse impacts to historical, architectural, archeological and cultural resources. The incremental increase in overflights (an average of less than one per day) in an area already densely overflown would not diminish the integrity of any historic properties' significant historical features.

Socioeconomics, Environmental Justice, and Children's Environmental Health – Environmental Justice Only

An Environmental Justice analysis considers the potential of the Proposed Action to cause disproportionately high and adverse effects on low-income or minority populations. As set forth in DOT Order 5610.2B, activities that will have a disproportionately high and adverse effect on minority or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the effect are not practicable, reasonable, or consistent with statutory requirements.

The Affected Environment Chapter of the EA identified numerous Census block groups with environmental justice populations based on a comparison of demographic data. However, the Proposed Action would not involve construction of physical facilities nor would it result in a change in noise exposure levels in excess of (nor close to) the applicable thresholds of significance. There will also be no acquisition of real estate, no relocation of residents or community businesses, no disruption to local traffic patterns, no loss in community tax base, and no changes to the fabric of the community. Based on the limited impacts of the Proposed Action which are discussed in greater detail throughout the EA, there would be no disproportionately high and adverse effects to environmental justice populations.

Under the Proposed Action Alternative, there are no Census block groups of low-income concern that would exceed any applicable thresholds of significance for noise impact or air quality. While the FAA does not define a threshold of significance associated with visual impacts, visual impacts associated with the 255 net new flights, as well as the flights that previously flew the ILS RWY 15R and transitioned visually to a landing on Runway 4L that now use the RNAV (GPS) RWY 4L approach in the Proposed Action, occur over an area with a high concentration of EJ Census block groups. Additionally, it should be noted that the small increase in CO associated with the 255 new net flights, while marginal in the context of total Airport CO emissions, does similarly occur over an area with a high concentration of EJ Census block groups. However, these new arrival operations comprise less than 0.5% of all arrivals at the Airport and given the high volume of flights currently using the Airport, any potential impacts are likely to be small and undetectable to most of the overflown population. As such, no persons of low income or minority populations are expected to experience disproportionately high and

adverse effects. Accordingly, under the Proposed Action Alternative there would be no significant EJ impacts.

Cumulative Impacts

While the Proposed Action may result in environmental impacts when considered by itself, the cumulative impacts analysis for the Proposed Action, located in Section 4.8 of the Final EA, looked at the potential environmental consequences resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. This analysis focused on projects in the GSA that could cumulatively affect noise and/or the impact on noise sensitive resources (i.e. compatible land use, Section 4(f), and Section 106).

A comprehensive review of the projects at the Airport was done in order to identify any projects that may have cumulative impacts with the Proposed Action. Some of the identified projects were limited to the landside area such as the Logan Airport Parking Project and the Terminal C Canopy, Connector, and Roadway Project, so there would be no direct overlap between those projects and aircraft operations. The FAA also reviewed the environmental documents for the Framingham Logan Express Expansion, Logan Airport Parking, Terminal C Canopy, Connector and Roadway, Terminal E Modernization, and Logan Airport Renovations and Improvements at Terminals B & C/E projects for discussion of any noise impacts. The only noise impacts discussed in these documents were temporary construction related noise impacts. All but one of the documents stated that aircraft noise levels would not change due to the project with the one exception being the Terminal E Modernization Project, which was expected to "improve noise conditions from ground operations as compared to the future No-Action Alternative, as the terminal extension would act as a noise barrier to the community."[20] Lastly, the FAA reviewed the recently completed rehabilitation of Runway 9-27 and an enhancement of the Runway Safety Areas off of Runway 9-27 at the Airport. These projects will have no impact on the Proposed Action as traffic on Runway 9-27 is unaffected by the Proposed Action. With the recent slowdown in flight activity, the project was moved up and the runway was reopened on August 7, 2020.

The proposed reconstruction work at Mansfield Municipal Airport is in the vicinity of the Proposed Action as this airport is just due south of the NUNZO waypoint. The Mansfield Municipal Airport is a general utility, general aviation airport and the reconstruction of Runway 14-32 (the airport's primary runway) could result in changes to the local soundscape. However, the noise impact of the Proposed Action around Mansfield Municipal Airport is orders of magnitude below the 1050.1F thresholds with a No Action DNL value below 32 DNL, well below the 45 DNL threshold.

Non-aviation projects can also have a cumulative impact when considered alongside the Proposed Action. A full list of non-aviation projects in the GSA was compiled and can be found in Appendix C. This list of projects includes projects originated from the Boston Region Metropolitan Planning Organization, the City of Boston, the Massachusetts Bay Transportation

[20] http://www.massport.com/media/2245/tem_final-ea_eir_compiled.pdf

Authority (MBTA), the Massachusetts Department of Transportation, and multiple local municipalities. Several projects were eliminated after a cursory review as the extent of the project was unaffected by the Proposed Action such as MBTA's Wellington Yard and Maintenance Facility Rebuild, which is located four miles northwest of the Airport and well away from any impacts from the Proposed Action. The remaining projects were assessed for potential permanent noise impacts that would be supplemented by the impact of the Proposed Action. No non-aviation projects were identified that could conceivably contribute to noise levels in the GSA.

Additionally, the cumulative impacts of all existing arrival and departure procedures at the Airport have been considered in relation to the Proposed Action Alternative. Radar traffic data covering the baseline timeframe (November 1, 2018 through October 31, 2019) that was used to build the No Action Alternative includes aircraft flying existing procedures at the Airport. Therefore, the comparison between the No Action and Proposed Action alternatives considers the potential impact from all other existing Airport procedures. As there were no significant or reportable noise increases, the addition of the Proposed Action to currently available procedures will not contribute to the exceedance of the FAA noise significance threshold.

As a result, it can be concluded that the Proposed Action will not create a cumulative environmental impact when environmental consequences are considered cumulatively with the consequences of past, present, and reasonably foreseeable projects.

Public Involvement

As outlined in FAA Order 1050.1F, information about the EA must be coordinated with stakeholders including various government agencies, tribal communities, and the public. The Proposed Action was introduced to the public in two well attended meetings in 2015, environmental impacts were initially evaluated in March 2016, and this Environmental Assessment was prepared in response to input received from the public, local, state, and federal officials as part of outreach summarizing that initial 2016 environmental review. The FAA has been providing updates to both Massport and the Massport Community Advisory Committee on the status of the Proposed Action and the FAA's environmental review.

The FAA initiated consultation regarding the Proposed Action under Section 106 and the ACHP's implementing regulations in June 2020 to satisfy Section 106's public involvement requirements in conjunction with the NEPA process. The correspondence included the FAA's proposed finding, which was sent to all consulting parties (e.g., local historical commissions, tribal parties, interested parties, and planning commissions) to allow for the 30-day review period prescribed in 36 CFR § 800.5. The correspondence developed by FAA during the consultation process for the assessment of adverse effects to historic resources from the Proposed Action as prescribed in 36 CFR § 800.5 is included below.

- June 2020 – FAA Letter to MHC
- July 2020 – MHC Responding to FAA's Consultation Initiation Letter
- October 2020 – FAA Letter to MHC Proposing APE
- December 2020 – MHC Responding to FAA and Concurring with Proposed APE

- June 2021 – FAA Letters to Historical Commissions, Tribal Parties, Planning Commissions, and Other Interested Parties
- July 2021 – MHC Letter to FAA Requesting Additional Information
- August 2021 – FAA Letter to MHC with Additional Requested Information
- September 2021 – MHC Letter to FAA Asking Additional Project Questions
- October 2021 – FAA Letter to MHC with Additional Answered Questions
- November 2021 – MHC Letter to FAA Identifying Potentially Impacted Historical Properties
- January 2022 – FAA Letter to MHC with Additional Information in Support of FAA's Proposed Finding of No Adverse Effect
- January 2022 - FAA Letter to Interior Secretary with Notification about National Historic Landmark

On September 21, 2020, the Draft EA was published, and its Notice of Availability was published in the Boston Globe, the Boston Herald, and the Patriot Ledger. The notice of the Draft EA availability was provided to key local stakeholders and these notices and publications can be found in Appendix E of this document. The full list of these notified stakeholders can be found in Appendix F. The Draft EA was made available on the project website starting on September 21, 2020 and was also available at the following libraries:

- Boston Public Library, Central Library, 700 Boylston St, Boston, MA
- Boston Public Library, Codman Square, 690 Washington St, Boston, MA
- Boston Public Library, Fields Corner, 1520 Dorchester Avenue, Dorchester, MA
- Boston Public Library, Grove Hall, 41 Geneva Avenue, Boston, MA
- Boston Public Library, Lower Mills, 27 Richmond St, Boston, MA
- Boston Public Library, Mattapan, 1350 Blue Hill Avenue, Boston, MA
- Boston Public Library, Roxbury, 149 Dudley St, Roxbury, MA
- Boston Public Library, South Boston, 646 E Broadway, South Boston, MA
- Boston Public Library, South End, 685 Tremont St, Boston, MA
- Milton Public Library, 476 Canton Avenue, Milton, MA
- Thomas Crane Public Library, 40 Washington St, Quincy, MA
- Hyde Park Branch of the Boston Public Library, 35 Harvard Ave, Hyde Park, MA

A briefing of these findings were also given to members of Congress and local elected officials on September 21 and 22, 2020. The Notice of Availability included the project website address (FAABostonWorkshops.com), instructions as to how to comment on the Proposed Action via the project website, information about the Virtual Public Workshops and the complete details about the comment period. The project website allowed interested members of the public the opportunity to review the Draft EA, information about the public comment period, and information about the upcoming public workshops.

Two public workshops were held in a "virtual" format on October 23, 2020 from 11:00 am to 12:30 pm and October 28, 2020 from 6:00 pm to 7:30 pm. The FAA chose to hold the workshops in a virtual format to adhere to public health and safety guidelines issued by the U.S. Center for Disease Control and Prevention during the COVID-19 pandemic. During each public workshop an informational presentation was followed by a question-and-answer period during which members of the public shared concerns with members of the FAA and its consultant staff.

These questions asked during this question-and-answer period were not considered official comments on the Draft EA and this fact was announced multiple times throughout the Public Workshop; participants in the Public Workshops were repeatedly encouraged to submit their questions as comments to the Draft EA through email, mail, or the project website. The FAA received 41 comments on the Draft EA. All comments were considered by the FAA in the development of the Final EA and responses are provided in section Appendix I.

On May 4, 2022, the Final EA was published, and its Notice of Availability was published in the Boston Globe, the Boston Herald, Patriot Ledger, and the Federal Register. The notice of the Final EA availability was provided to the same stakeholders as the Draft EA and these notices and publications can be found in Appendix E of this document. The full list of these notified stakeholders can be found in Appendix F. The Final EA was made available on the project website starting on May 4, 2022 and was also available at the libraries listed above for public review.

Agency Findings

The FAA makes the following determinations for this project based upon a careful review of the Final Environmental Assessment, comments on the Draft EA, the supporting administrative record, and appropriate supporting information.

A. **The Proposed Action will ensure the safety of aircraft and the efficient use of airspace. (49 U.S.C. § 40103(b)).** The Federal Aviation Act of 1958 gives the Administrator the authority and responsibility to assign by order or regulation the use of the navigable airspace in order to ensure the safety of aircraft and the efficient use of the airspace. In its continuous effort to ensure safety of aircraft and improve the efficiency of transit through the navigable airspace, the FAA will implement the above-described RNAV GPS IAP to Runway 4L at BOS. The Project will enhance the safety of the airspace around BOS by reducing workload for both flight crew and for Air Traffic personnel, as well as increasing operational flexibility.

   In deciding to implement the Proposed Action, the FAA carefully evaluated both the Proposed Action and the No Action Alternative. The No Action Alternative would not improve the safety and efficiency of the airspace and would not further the Agency's mission of providing the safest aerospace system in the world.

B. **The FAA has given the Proposed Action the independent and objective evaluation required by the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (40 CFR Section 1506.5).** FAA provided guidance to its consultant and participated in the preparation of all chapters of both the draft and final Environmental Assessment. FAA independently evaluated the final Environmental Assessment and takes responsibility for its scope and content.

C. **The Proposed Action does not result in a significant noise impact over noise sensitive areas or population census blocks.** There are no noise sensitive areas or census blocks within the General Study Area that are exposed to DNL 65 or higher

that experience a 1.5 DNL increase nor where their population census blocks that are exposed to DNL 45 or higher that experience a 5.0 DNL increase, which is a reportable noise impact. There are no Section 4(f) and historical properties that experienced significant or reportable noise increases.

D. **The Proposed Action will not have a significant impact on Air Quality. Section 176(c) of the Clean Air Act requires that federal actions conform to the appropriate SIP to attain the air quality goals identified in the Clean Air Act.** A conformity determination is not required if the emissions caused by a federal action would be less than the *de minimis* levels established by regulations issued by EPA. The EPA regulation, 40 CFR 93.153 (b), specifies an emission level or *de minimis* level for each NAAQS pollutant and non-attainment area at which the emissions associated with the action are unlikely to contribute to a violation of the NAAQS or delay timely attainment of the NAAQS. The adoption of approach procedures above the mixing height is on a list of actions "presumed to conform" as are the adoption of approach procedures below the mixing height but only provided that the modifications are designed to enhance operational efficiency, increase fuel efficiency, or reduce community noise by means of engine thrust reductions. The full list of actions "presumed to conform" under General Conformity can be found in 72 Fed. Reg. 41565 (July 30, 2007). These conditions below the mixing height were not met so the emissions below the mixing height were calculated to identify any *de minimis* exceedances. The Proposed Action will not cause exceedances of the *de minimis* thresholds applicable to the GSA for any pollutant and as such a conformity determination is not required.

E. **The Proposed Action is not anticipated to cause significant effects to climate.** The Proposed Action would result in a slight increase in fuel burn when compared with the No Action Alternative due to the additional operations, but there is not a significance threshold for aviation GHG emissions set by FAA Order 1050.1F. The corresponding increase in carbon dioxide emissions is minor in the context of current emissions, as well as regional and nationwide GHG emissions. As a result, increases in GHG tied to increased fuel burn resulting from the Proposed Action are not significant contributors to climate effects associated with the propagation of GHG in the atmosphere.

F. **The Proposed Action would have no effect on biological resources including threatened or endangered species (Endangered Species Act 16 U.S.C. §§ 1531-1544).** The Proposed Action does not result in ground-based disturbance and is therefore not expected to have impacts on any terrestrial organisms considered as part of the Biological Resources impact category. Of the 2,062 historical wildlife strikes at the Airport since 1990, only one strike of any federal species has occurred on a non-parallel Runway to the Proposed Action with just five strikes of all state species on both Runway 4L and 4R. Given this information and the Proposed Action increasing operations by just 0.084% overall, the FAA concluded this action would have no effect on threatened or endangered species.

G. **The Proposed Action does not include a direct or constructive use of any resources protected under Department of Transportation Act Section 303(c), also known as Section 4(f).** The Project does not involve any physical development or modification of facilities, and therefore no actual, physical use of resources protected under Section 4(f) of the Department of Transportation Act. This includes national, state, and local parks as well as state forests, state historic sites, and state & local refuges. The Section 4(f) properties within the General Study Area were shown not to experience any significant or reportable noise increases with the implementation of the Proposed Action, nor will they experience noise increases sufficient to substantially impair the value of those resources.

H. **The Proposed Action will have No Adverse Effect on historical, architectural, archeological, and cultural resources protected under Section 106 of the National Historic Preservation Act.** The Proposed Action would not result in any physical impact on any property. The net change in aircraft operations as a result of the Proposed Action is minimal (less than one daily overflight on average) and would not cause an adverse effect, including no physical impacts and no introduction of significant audible or visual impacts within the APE.

I. **The Proposed Action would not result in significant environmental justice impacts (Executive Order 12898).** The Proposed Action would not involve construction of physical facilities, nor would it result in a change in noise exposure levels in excess of the applicable thresholds of significance. There will also be no acquisition of real estate, no relocation of residents or community businesses, no disruption to local traffic patterns, no loss in community tax base, and no changes to the fabric of the community. Based on the limited impacts of the Proposed Action which are discussed in greater detail throughout the EA, there would be no disproportionately high and adverse effects to environmental justice populations.

J. **Proposed Action will not create a cumulative environmental impact.** The anticipated projects at the airports in the GSA were identified in the Affected Environment Cumulative Impacts section, which can be found in Section 3.4.8 of the Final EA. No projects were identified that could create a cumulative impact that would reach the significant or reportable threshold with respect to noise when environmental consequences are considered cumulatively with the consequences of past, present, and reasonably foreseeable projects.

After careful and thorough consideration of the Final EA and the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101 of NEPA and other applicable environmental requirements and will not significantly affect the quality of human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(C) of NEPA. Therefore, an environmental impact statement will not be prepared.

I, the undersigned, have reviewed the Final EA and appendices, including the evaluation of the purpose and need that this Project would serve, the alternative means of achieving the purpose and need, and the environmental impacts associated with these alternatives. I find that the Proposed Action described in the Final EA is reasonably supported, and issuance of this FONSI/ROD is appropriate.

I have carefully considered the FAA's statutory mandate under 49 U.S.C. § 40103 to ensure the safe and efficient use of the national airspace system.

Accordingly, under the authority delegated to me by the Administrator of the FAA, I approve and the operational changes as described in the Proposed Action and direct that actions be taken that will enable implementation of that alternative.

RYAN W ALMASY Digitally signed by RYAN W ALMASY
Date: 2022.05.03 15:10:51 -04'00'

Ryan Almasy
Director, Eastern Service Center
Mission Support Services
Federal Aviation Administration

Date

RIGHT OF APPEAL

This FONSI/ROD constitutes a final order of the FAA Administrator and is subject to exclusive judicial review under 49 U.S.C. § 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the order is issued in accordance with the provisions of 49 U.S.C. § 46110. Any party seeking to stay implementation of the ROD must file an application with the FAA prior to seeking judicial relief as provided in Rule 18(a) of the Federal Rules of Appellate Procedure.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
Air Traffic Organization Policy

ORDER JO 7400.2K

Effective Date:
April 3, 2014

SUBJ: Procedures for Handling Airspace Matters

This order specifies procedures for use by all personnel in the joint administration of the airspace program. The guidance and procedures herein incorporate into one publication as many orders, notices, and directives of the affected services as possible. Although every effort has been made to prescribe complete procedures for the management of the different airspace programs, it is impossible to cover every circumstance. Therefore, when a situation arises for which there is no specific procedure covered in this order, personnel must exercise their best judgment.

The order consists of six parts:

a. Part 1 addresses general procedures applicable to airspace management.

b. Part 2 addresses policy and procedures unique to Objects Affecting Navigable Airspace.

c. Part 3 addresses policy and procedures unique to Airport Airspace Analysis.

d. Part 4 addresses policy and procedures unique to Terminal and En Route Airspace.

e. Part 5 addresses policy and procedures unique to Special Use Airspace.

f. Part 6 addresses policy and procedures regarding the integration of Outdoor Laser Operations, High Intensity Light Operations, and integration of Rocket and Launch-Vehicle Operations into the National Airspace System.

Elizabeth L. Ray for
Vice President, Mission Support Services
Air Traffic Organization

Date: FEB 19 2014

Distribution: ZAT-740 (ALL)

Initiated By: AJV-0
Vice President, Mission Support Services

Appendix 10. Community Involvement Policy

Community Involvement Policy Statement

The first step in meeting the needs of the public is to understand the public's needs. Community involvement lets the agency know what the citizens think about our activities. Though community involvement, we will broaden our information base and improve our decisions.

The Federal Aviation Administration (FAA) is committed to complete, open, and effective participation in agency action. The agency regards community involvement as an essential element in the development of programs and decisions that affect the public.

The public has a right to know about our projects and to participate in our decision making process. To ensure that FAA actions serve the collective public interests, all stakeholders will have an opportunity to be heard. Our goals are:

- To provides active, early, and continuous public involvement;
- To provide reasonable public access to information;
- To provide the public an opportunity to comment prior to key decisions; and
- To solicit and consider public input on plans, proposals, alternatives, impacts, mitigation and final decision.

This task will require agency management and staff:

- To identify and involve the public and to consider specific concerns;
- To use public involvement techniques designed to meet the diverse needs of the broad public, including not only interested groups and the general public, but individuals as well;
- To ensure FAA planning and project managers commit appropriate financial and human resources to community involvement;
- To sponsor outreach, information, and educational assistance to help the public participate in FAA planning, programming, and project development activities;
- To ensure key personnel are trained properly in community involvement techniques and methods; and
- To development and evaluate public involvement processes and procedures to assess their success at meeting our goals.

The goals of community involvement are:

- To promote a shared obligation of the public and FAA decision makers in identifying aviation–related concern and developing and evaluating alternatives to address them; and
- To promote an active public role to minimize potential adverse community reaction to agency plans that are necessary for safe, effective, and environmentally responsible management of our airspace.

Signed by

David R. Hinson

Administrator

Dated: April 17, 1995

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

ORDER SUSPENDING STATE PERMITTING DEADLINES AND EXTENDING THE VALIDITY OF STATE PERMITS

COVID-19 Order No. 17

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth. As of March 25, 2020, the Department of Public Health had reported 1,838 cases of COVID-19, including 15 deaths, with counties across the Commonwealth affected;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, on March 23, 2020, I issued an Order requiring all businesses and organizations that are not designated COVID-19 Essential Services to close their physical workplaces and facilities to workers, customers, and the public, and further limited all gatherings to 10 people or fewer;

WHEREAS, non-essential Commonwealth employees have been urged to remain home and work remotely, and many Commonwealth administrative offices are closed;

WHEREAS, such closures, while essential for public health, are expected to affect the ability of the Commonwealth and its agencies to timely process requests for licenses, permits, approvals, and certificates of registration;

WHEREAS, the current public health crisis is preventing people and businesses from complying with the deadlines and conditions of permits, licenses, and other approvals issued or granted by the Commonwealth and its agencies;

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to the authority to modify of the terms and conditions of licenses, permits, or certificates of registration issued by the Commonwealth or any of its agencies or political subdivisions and authority over assemblages in order to protect the safety of persons;

NOW, THEREFORE, I hereby Order the following:

(a) **Constructive Approvals:** No approval shall be considered granted, approved, or denied, constructively or otherwise, due to a failure of a state permitting agency to act within the time required by statute, rule, or regulation; provided, however, that the running of the applicable time period shall resume 45 days after the termination of the state of emergency.

(b) **Hearing Deadlines:** Any requirement that a hearing commence within a specific period of time after the filing of or appeal of a decision on an application, order, notice of intent, petition, or request for an approval is hereby suspended during the state of emergency; provided, however, that the running of the applicable time period shall resume 45 days after the termination of the state of emergency.

(c) **Decision Deadlines:** Any requirement that a state permitting agency (i) issue a decision on an application, order, notice of intent, petition, or request for approval, (ii) issue a decision on an appeal of an application, order, notice of intent, petition, or request for approval, or (iii) request a superseding order or determination, within a specific period of time is hereby suspended during the state of emergency; provided, however, that the running of the applicable time period shall resume 45 days after the termination of the state of emergency.

(d) **Appeal Rights:** Any person aggrieved by a decision or final decision of a state permitting agency on an approval whose right to appeal such decision would expire during the state of emergency absent the filing of an appeal shall have until 45 days following the termination of the state emergency to file an appeal.

(e) **Permit Tolling:** An approval issued by a state permitting agency valid as of March 10, 2020 shall not lapse or otherwise expire during the state of emergency and the expiration date of

the approval shall toll during the state of emergency. To the extent that any such approval contains or is subject to other deadlines or conditions, the state permitting agency may extend such deadlines or waive such conditions if an approval holder is not able to abide by the deadlines or conditions due to the state of emergency. This section shall not apply to a holder of an approval who was in violation of the terms and conditions of the approval as of March 10, 2020.

(f) **DEP Intended Use Plan:** The requirement that the Department of Environmental Protection conduct a public hearing before adopting its priority list, or Intended Use Plan (IUP), for 2020 under its State Revolving Fund regulations at 310 CMR 44.00 and 310 CMR 45.00 is hereby suspended. The Department may adopt its priority list without a public hearing if it publishes a draft IUP and accepts and considers public comments on its draft list.

For the purposes of this Order, the following words shall have the following meanings:

"Enforcement Order", an order from an inspector or other authorized official of a state permitting agency compelling the property owner, holder, or intended user of an approval to take or not take an action deemed by the official to be necessary to protect health, safety, or the environment.

"Approval", any permit, including an environmental permit, certificate, license, certification, determination, exemption, variance, waiver, state building permit, or other determination of rights issued by a state permitting agency, including any order but excluding any enforcement order, concerning the use, development, or rehabilitation of real property or improvements located thereon, the allocation or use of water and other natural resources, or the discharge, emission, abatement, or management of waste or pollutants, including but not limited to approvals issued pursuant to chapter 21, section 18 of chapter 21A, chapter 21D, section 3B of chapter 21E, section 61 to 62I, inclusive, of chapter 30, section 20 to 23, inclusive, of chapter 40B, chapter 91, chapter 92A½ , chapter 112, chapter 131, chapter 131A, chapter 132, chapter 142, chapter 143, and chapter 253 of the General Laws, but excluding approvals issued pursuant to chapters 92 or 132A of the General Laws.

"State permitting agency" any agency, board, bureau, department, office, committee, division, or official of the Commonwealth, which issues approvals and is within or reports to the Executive Office of Energy and Environmental Affairs or the Executive Office of Housing and Economic Development.

This Order is effective notwithstanding any general or special law or rule or regulation to the contrary.

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is terminated, whichever happens first. Such rescission or termination shall not invalidate any deferral that was effectuated or agreed to pursuant to the terms of this Order during the period in which this Order was in effect.

Given in Boston at 7:05 PM this 26th day of March, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

Acts (2015)

Chapter 10

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2015 TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to forthwith make supplemental appropriations for fiscal year 2015 and to make certain changes in law, each of which is immediately necessary to carry out those appropriations or to accomplish other important public purposes, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2015, the sums set forth in section 2 are hereby appropriated from the General Fund unless specifically designated otherwise in this act or in those appropriation acts, for the several purposes and subject to the conditions specified in this act or in those

appropriation acts, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2015. These sums shall be in addition to any amounts previously appropriated and made available for the purposes of those items.

SECTION 2.

JUDICIARY

Committee for Public Counsel Services

0321-1510

$34,708,792

SECRETARY OF THE COMMONWEALTH

0521-0000

$585,590

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Office of the Secretary of Administration and Finance

1599-4444

$8,267,872

Group Insurance Commission

1108-5200

$190,000,000

Human Resources Division

1750-0300

$836,137

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

Office of the Secretary

4000-0005

$2,200,000

Department of Developmental Services

5930-1000

$3,365,693

Department of Elder Affairs

9110-1455

$2,100,000

Department of Public Health

4590-0915

$1,983,386

Department of Children and Families

4800-0038

$7,622,823

4800-0041

$27,384,824

EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

Department of Housing and Community Development

7004-0101

$51,500,000

7004-0108

$3,000,000

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

Department of Transportation

1595-6368

$50,000,000

EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

Department of Correction

8900-0001

$5,691,913

OFFICE OF THE STATE COMPTROLLER

Office of the State Comptroller

1599-3384

$6,000,000

SECTION 2A. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations and to meet certain requirements of law, the sums set forth in this section are hereby appropriated from the General Fund unless specifically designated otherwise in this section, for the several purposes and subject to the conditions specified in this section and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2015. These sums shall be in addition to any amounts previously appropriated and made available for the purposes of those items. These sums shall be made available until June 30, 2015.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Office of the Secretary of Administration and Finance

1599-2015 For a reserve to reimburse state agencies for extraordinary expenses incurred as a result of severe winter storms affecting the commonwealth in 2015; provided, that the secretary of administration and finance may transfer from this item to other items of appropriation and allocations thereof for fiscal year 2015 amounts necessary to meet these costs where the amounts otherwise available are insufficient for the purpose, in accordance with a transfer plan which shall be filed not less than 15

days in advance with the house and senate committees on ways and means

$7,000,000

1599-4299 For a reserve to meet the fiscal year 2015 costs of salary adjustments and other economic benefits authorized by collective bargaining agreements with the University of Massachusetts that have not yet been ratified by the general court; provided, that no funds shall be expended from this item before ratification of the collective bargaining agreements by the general court; and provided further, that funding in this item shall be equitably distributed to the campuses of Amherst, Boston, Dartmouth and Lowell

$2,200,000

SECTION 3. Subsection (a) of section 172 of chapter 6 of the General Laws, is hereby amended by striking out clause (31), added by section 2 of chapter 284 of the acts of 2014, and inserting in place thereof the following clause:-

(32) A person licensed pursuant to section 122 of chapter 140 may obtain from the department data permitted under section 172M.

SECTION 4. Said chapter 6 is hereby further amended by striking out section 172L, inserted by section 3 of said chapter 284, and inserting in place thereof the following section:-

Section 172M. Notwithstanding section 172 or any other general or special law to the contrary, a person licensed pursuant to section 122 of chapter 140 shall obtain from the department all available criminal offender record information prior to accepting a person as an employee to determine the suitability of such employee who may have direct and unmonitored contact with firearms, shotguns or rifles. A person obtaining information pursuant to this section shall not disseminate such information for any purpose other than the further protection of public safety.

SECTION 5. The second sentence of subsection (a) of section 13 of chapter 17 of the General Laws, as appearing in section 2 of chapter 258 of the acts of 2014, is hereby amended by striking out the figure “10” and inserting in place thereof the following figure:- 13.

SECTION 6. Section 8A of chapter 19 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The governor shall appoint a board of trustees for the Taunton state hospital and for the Worcester recovery center and hospital.

SECTION 7. Section 14 of said chapter 19, as so appearing, is hereby amended by striking out, in line 4, the word “fifteen” and inserting in place thereof the following words:- not fewer than 15.

SECTION 8. Section 29D of chapter 29 of the General Laws, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "COMPASS system, so-called" and inserting in place thereof the following words:- COMMBUYS system.

SECTION 9. Section 57 of chapter 59 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding the first paragraph, if the last day for making a tax payment without incurring interest on a bill for real estate or personal property taxes occurs on a Saturday, Sunday or legal holiday, or on a day on which a municipal office is closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the payment may be made on the next day on which a municipal office is open, without penalty or interest.

SECTION 10. Section 57C of said chapter 59, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding the preceding paragraphs, if the last day for making a tax payment without incurring interest on

a bill for real estate or personal property taxes occurs on a Saturday, Sunday or legal holiday, or on a day on which a municipal office is closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the payment may be made on the next day on which a municipal office is open, without penalty or interest.

SECTION 11. Section 59 of said chapter 59, as amended by section 16 of chapter 62 of the acts of 2014, is hereby further amended by adding the following paragraph:-

Notwithstanding the foregoing provisions, if the last day for making an application for abatement of tax falls on a Saturday, Sunday, legal holiday or day on which municipal offices are closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the application may be made on the next day that a municipal office is open.

SECTION 12. Paragraph (a) of part B of section 3 of chapter 62 of the General Laws, as amended by section 21 of chapter 226 of the acts of 2014, is hereby further amended by adding the following subparagraph:-

(18) Losses from wagering transactions, that were incurred at a gaming establishment licensed in accordance with chapter 23K or at any racing meeting licensee or simulcasting licensee, only to the extent of the gains from such transactions.

SECTION 13. Section 2 of chapter 62B of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 64, the words “or wagering”.

SECTION 13A. Said section 2 of said chapter 62B, as so appearing, is hereby further amended by striking out, in lines 66 and 67, the words “slot machines, keno and bingo played at licensed casinos” and inserting in place thereof the following words:- keno and bingo.

SECTION 14. Said section 2 of said chapter 62B, as so appearing, is hereby further amended by inserting after the seventh paragraph the following paragraph:-

A person at a gaming establishment licensed in accordance with chapter 23K making a payment of winnings of $1,200 or more from slot machine play shall file a form W-2G with respect to such payment. A person making a payment of winnings of $600 or more from pari-mutuel wagering shall file a form W-2G with respect to such payment if the proceeds are at least 300 times as large as the amount wagered. For purposes of this section, in determining whether winnings equal or exceed the $1,200 or $600 amounts, the amount of winnings shall not be reduced by the amount wagered. A person making a payment of winnings from wagering at a gaming establishment or from pari-mutuel wagering which are subject to tax under chapter 62 and subject to withholding under section 3402 of the Internal Revenue Code shall deduct and withhold an amount equal to 5 per cent of such payment. A person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of that payment. Notwithstanding any general or special law to the contrary, any review or transmission of information required to be done by a gaming licensee relative to the disbursement of cash or prize winnings shall be administered consistent with this paragraph and based upon real-time information.

SECTION 15. The first sentence of section 3A of chapter 70B of the General Laws, as appearing in section 8 of chapter 284 of the acts of 2014, is hereby amended by inserting after the word “agency” the following words:- or a designee.

SECTION 16. Section 1 of chapter 75 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 13 and 14 the words “thirty-eight A½ to forty three I, inclusive, of chapter seven” and inserting in place thereof the following words:- 44 to 58, inclusive, of chapter 7C.

SECTION 17. Section 25M of chapter 111 of the General Laws, as so appearing, is hereby amended by striking out, in lines 22 to 24, inclusive, the words “; 1 of whom shall be a representative of the Massachusetts Center for Nursing, Inc.”.

SECTION 18. Said section 25M of said chapter 111, as so appearing, is hereby further amended by striking out, in line 31, the word “and”, the first time it appears.

SECTION 19. Said section 25M of said chapter 111, as so appearing, is hereby further amended by inserting

after the word “professional”, in line 32, the following words:- ; and 1 of whom shall be appointed by the governor at the governor’s discretion.

SECTION 20. Section 229 of said chapter 111, added by section 1 of chapter 371 of the acts of 2012, is hereby repealed.

SECTION 21. Said chapter 111 is hereby further amended by adding the following section:-

Section 235. (a) For the purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

“Health care practitioner”, a person licensed or registered under section 2, 16, 74 or 74A of chapter 112 who conducts or assists with the performance of surgery; provided, however, that “health care practitioner” shall also include an intern, resident, fellow or medical officer.

“Operating room circulator”, a licensed registered nurse who is educated, trained and experienced in perioperative nursing and who is immediately available to physically intervene in providing care to a surgical patient.

“Surgical facility”, an entity that provides surgical health care services, whether inpatient or outpatient and whether overnight or ambulatory, including, but not limited to, a hospital, clinic or private office of a health care practitioner, whether conducted for charity or for profit and whether or not subject to section 25C, and any organization, partnership, association, corporation, trust or the commonwealth, or any subdivision thereof.

“Surgical technologist”, a person who provides surgical technology services but is not a health care practitioner.

“Surgical technology”, surgical patient care including, but not limited to, any of the following: (i) collaboration with an operating room circulator prior to a surgical procedure to carry out the plan of care by preparing the operating room, gathering and preparing sterile supplies, instruments and equipment, preparing and maintaining the sterile field using sterile and aseptic techniques and ensuring that surgical equipment is functioning properly and safely; (ii) intraoperative anticipation and response to the needs of a surgeon and other team members by monitoring the sterile field and providing the required instruments or supplies; and (iii) performance of tasks at the sterile field as directed in an operating room setting, including: (1) passing supplies, equipment or instruments; (2) sponging or suctioning an operative site; (3) preparing and cutting suture material; (4) transferring and irrigating with fluids; (5) transferring, but not administering, drugs within the sterile field; (6) handling specimens; (7) holding retractors; and (8) assisting in counting sponges, needles, supplies and instruments with an operating room circulator.

(b) A surgical facility shall not employ or otherwise retain the services of a person to perform surgical technology tasks or functions unless such person: (i) has successfully completed an accredited educational program for surgical technologists and holds and maintains a certified surgical technologist credential administered by a nationally-recognized surgical technologist certifying body accredited by the National Commission for Certifying Agencies and recognized by the American College of Surgeons and the Association of Surgical Technologists; (ii) has successfully completed an accredited school of surgical technology but has not, as of the date of hire, obtained the certified surgical technologist credential required by clause (i); provided, however, that such credential shall be obtained within 12 months of the graduation date; (iii) was employed as a surgical technologist in a surgical facility on or before July 1, 2013; (iv) has successfully completed a training program for surgical technology in the United States Army, Navy, Air Force, Marine Corps or Coast Guard or in the United States Public Health Service which has been deemed appropriate by the commissioner; or (v) is performing surgical technology tasks or functions in the service of the federal government but only to the extent that such person is performing duties related to that service.

(c) A person employed or otherwise retained to practice surgical technology in a healthcare facility may assist in the performance of operating room circulator duties under the direct clinical supervision, limited to clinical guidance, of the operating room circulator if: (i) the operating room circulator is present in the operating room for the duration of the procedure; (ii) such assistance has been assigned to the person by the operating room circulator; and (iii) such assistance is consistent with the education, training and experience of the person providing the assistance.

(d) Nothing in this section shall prohibit a registered nurse, licensed or registered health care provider or other health care practitioner from performing surgical technology tasks or functions if such person is acting within the scope of such person's license.

(e) Notwithstanding subsection (b), a surgical facility may employ a surgical technologist who does not meet the requirements of this section if the surgical facility receives a waiver from the department signifying that the surgical facility: (i) has made a diligent and thorough effort to employ qualified surgical technologists who meet the requirements of this section; and (ii) is unable to employ enough qualified surgical technologists for its needs. The department, in consultation with an advisory committee of clinicians, shall establish criteria for such waiver.

SECTION 22. The first paragraph of section 9 of chapter 112 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding the following clause:-

4. The applicant has applied to participate in the medical assistance program administered by the secretary of health and human services in accordance with chapter 118E and Title XIX of the Social Security Act and any federal demonstration or waiver relating to the medical assistance program for the limited purpose of ordering and referring services covered under the program if regulations governing such limited participation are promulgated under chapter 118E.

SECTION 23. Section 9F of said chapter 112, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

The board shall require as a condition of granting or renewing a physician assistant's certificate of registration that the physician assistant apply to participate in the medical assistance program administered by the secretary of health and human services in accordance with chapter 118E and Title XIX of the Social Security Act and any federal demonstration or waiver relating to such medical assistance program for the limited purpose of ordering and referring services covered under the program if regulations governing such limited participation are promulgated under chapter 118E.

SECTION 24. Section 24B 1/2 of said chapter 112, as so appearing, is hereby amended by striking out, in lines 42 to 46, inclusive, the words "and (5) agree to complete, in each year of the agreement, at least 5 additional contact hours or 0.5 continuing education units of board-approved continuing education that addresses areas of practice generally related to collaborative practice agreements" and inserting in place thereof the following words:- (5) agree to complete, in each year of the agreement, at least 5 additional contact hours or 0.5 continuing education units of board-approved continuing education that addresses areas of practice generally related to collaborative practice agreements; and (6) apply to participate in the medical assistance program administered by the secretary of health and human services in accordance with chapter 118E and Title XIX of the Social Security Act and any federal demonstration or waiver relating to such medical assistance program for the limited purpose of ordering and referring services covered under the program if regulations governing such limited participation are promulgated under chapter 118E.

SECTION 25. Section 119 of said chapter 112, as so appearing, is hereby amended by striking out, in line 12, the word "and".

SECTION 26. Said section 119 of said chapter 112, as so appearing, is hereby further amended by inserting after the word "Association", in line 15, the following words:- ; and

(e) has applied to participate in the medical assistance program administered by the secretary of health and human services in accordance with chapter 118E and Title XIX of the Social Security Act and any federal demonstration or waiver relating to such medical assistance program for the limited purpose of ordering and referring services covered under the program if regulations governing such limited participation are promulgated under chapter 118E; provided, however, that a psychologist who chooses to participate in a medical assistance program as a provider of services shall be deemed to have fulfilled this requirement.

SECTION 27. Section 131 of said chapter 112, as so appearing, is hereby amended by adding the following sentence:- Such individual shall also apply to participate in the medical assistance program administered by the secretary of health and human services in accordance with chapter 118E and Title XIX of the Social Security Act and any federal demonstration or waiver relating to such medical assistance program for the limited purpose of

ordering and referring services covered under the program if regulations governing such limited participation are promulgated under chapter 118E.

SECTION 28. Section 252 of said chapter 112, as so appearing, is hereby amended by striking out, in line 52, the figure “239” and inserting in place thereof the following figure:- 255.

SECTION 29. Section 257 of said chapter 112, as so appearing, is hereby amended by striking out, in lines 2 and 14, the figure “239” and inserting in place thereof, in each instance, the following figure:- 255.

SECTION 30. Section 39A of chapter 127 of the General Laws, inserted by section 4 of chapter 446 of the acts of 2014, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) Except in exigent circumstances that would create an unacceptable risk to the safety of any person or where no secure treatment unit bed is available, a segregated inmate diagnosed with a serious mental illness in accordance with clinical standards adopted by the department of correction shall not be housed in a segregated unit for more than 30 days and shall be placed in a secure treatment unit. Any such segregated inmate awaiting transfer to a secure treatment unit shall be offered additional mental health services in accordance with clinical standards adopted by the department.

SECTION 31. Section 5 of chapter 128A of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the word “meetings”, in line 55, the following words:- and, with the approval of the appropriate horsemen’s association representing the horse owners racing at that meeting, for payment of administrative and horseracing operations.

SECTION 32. Section 2 of chapter 128C of the General Laws, as so appearing, is hereby amended by inserting after the word “purses”, in line 130, the following words:- or, with the approval of the appropriate horsemen’s association representing the horse owners racing at that meeting, used for payment of administrative and horseracing operations.

SECTION 33. Section 4 of said chapter 128C, as so appearing, is hereby amended by inserting after the word “meetings”, in line 45, the following words:- or, with the approval of the appropriate horsemen’s association representing the horse owners racing at that meeting, for payment of administrative and horseracing operations.

SECTION 34. Said section 4 of said chapter 128C, as so appearing, is hereby further amended by inserting after the word “purses”, in line 55, the following words:- or, with the approval of the appropriate horsemen’s association representing the horse owners racing at that meeting, for payment of administrative and horseracing operations.

SECTION 35. Said section 4 of said chapter 128C, as so appearing, is hereby further amended by striking out, in lines 106 to 110, the words “not less than three and one-half percent shall be paid to the horse owners of the most recent live racing performance at the guest track, for purses, and the remaining portion shall be applied to the expenses as the racing meeting licensee is required to pay pursuant to contracts negotiated with the host track” and inserting in place thereof the following words:- in any year in which a running horse racing meeting of at least 1 day and not more than 50 days is conducted at a track owned by such licensee, such licensee and the appropriate horsemen’s association representing the horse owners racing at that meeting shall contract between themselves for not less than 0.5 per cent nor more than 2.5 per cent to be paid to said horse owners as purses.

SECTION 36. Section 44A of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 67, the word "COMPASS" and inserting in place thereof the following word:- COMMBUYS.

SECTION 37. Section 44D½ of said chapter 149, as so appearing, is hereby amended by striking out, in line 124, the words "COMPASS system, so-called" and inserting in place thereof the following words:- COMMBUYS system.

SECTION 38. Section 44D¾ of said chapter 149, as so appearing, is hereby amended by striking out, in line 112, the words "COMPASS system, so-called" and inserting in place thereof the following words:- COMMBUYS system.

SECTION 39. Subsection (l) of section 190 of said chapter 149, as appearing in section 3 of chapter 148 of the acts of 2014, is hereby amended by striking out clause (iii) and inserting in place there of the following clause:- (iii) if applicable, the provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance and yearly raises and whether or not earned vacation days, personal days, holidays, severance,

transportation and health insurance are paid or reimbursed;.

SECTION 40. Section 5 of chapter 149A of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 92, the words "COMPASS system, so-called" and inserting in place thereof the following words:- COMMBUYS system.

SECTION 41. Section 8 of said chapter 149A, as so appearing, is hereby amended by striking out, in line 66, the words "COMPASS system, so-called" and inserting in place thereof the following words:- COMMBUYS system.

SECTION 42. Section 22 of chapter 176O of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the words "and nurse practicing in an advance practice nursing role" and inserting in place thereof the following words:- , nurse practicing in an advance practice nursing role, intern, resident, physician assistant, pharmacist with a collaborative practice agreement, psychologist and licensed independent clinical social worker.

SECTION 43. Section 2 of chapter 176Q of the General Laws, as so appearing, is hereby amended by striking out, in lines 15 and 16, the words "for administration and finance, or a designee, who shall serve as chairperson; the director of Medicaid" and inserting in place thereof the following words:- of health and human services, or a designee, who shall serve as chairperson; the secretary of administration and finance.

SECTION 44. Said section 2 of said chapter 176Q, as so appearing, is hereby further amended by striking out, in line 40, the word “annually” and inserting in place thereof the following word:- quarterly.

SECTION 45. The General Laws are hereby amended by inserting after chapter 277 the following chapter:-

CHAPTER 277B

Statewide Grand Jury

Section 1. Upon written application of the attorney general to the chief justice of the superior court department, with good cause stated therein, the chief justice may authorize the convening of a statewide grand jury with jurisdiction extending throughout the commonwealth.

Section 2. The chief justice of the superior court department shall, upon granting an application, receive recommendations from the attorney general as to the county in which the statewide grand jury shall sit. Upon receiving the attorney general’s recommendations, the chief justice shall choose 1 of those recommended locations as the site where the grand jury shall sit. Once a county has been selected, the chief justice shall direct the regional justice from the county selected to appoint, and reappoint as necessary, a superior court justice to preside over the statewide grand jury.

Section 3. The superior court justice appointed to preside over the grand jury shall consult with the attorney general and district attorney for the relevant district about the nature and scope of the investigation and shall thereafter designate and authorize an existing county grand jury to serve as a statewide grand jury for the purposes of the investigation specified in the written application or, alternatively, the superior court justice may convene and preside over a specially-empaneled statewide grand jury.

Section 4. A specially-empaneled statewide grand jury shall be drawn and selected in the same manner as the county grand jury in the county in which the specially-empaneled statewide grand jury is to sit. A specially-empaneled statewide grand jury may, at the discretion of the presiding superior court justice, draw jurors from counties adjoining the county in which the statewide grand jury is to sit.

Section 5. A specially-empaneled statewide grand jury convened pursuant to this chapter shall sit for a period not to exceed 18 months. The superior court justice presiding over the statewide grand jury may extend that period if, in accordance with section 41 of chapter 234A and section 1A of chapter 277, public necessity requires further time by the statewide grand jury to complete an ongoing investigation.

Section 6. The attorney general or an assistant attorney general shall attend each session of a statewide grand jury and may prosecute any indictment returned by it. The attorney general or assistant attorney general shall have the same powers and duties in relation to a statewide grand jury that the attorney general or assistant attorney general has in relation to a county grand jury,

except as otherwise provided by law.

Section 7. Indictments shall be returned in the county wherein the statewide grand jury sits and shall thereafter be transferred to the county specified by the statewide grand jury on the indictment. For the purposes of trial for offenses indicted by a statewide grand jury, venue shall be in any county in which venue would otherwise be proper.

Section 8. Nothing in this chapter shall limit the jurisdiction of county grand juries or district attorneys. Except as otherwise provided by law, an investigation by a statewide grand jury shall not preempt an investigation by any other grand jury or agency having jurisdiction over the same subject matter.

SECTION 46. Chapter 277B of the General Laws is hereby repealed.

SECTION 47. The second sentence of subsection (a) of section 36 of chapter 465 of the acts of 1956, as appearing in section 55 of chapter 46 of the acts of 2013, is hereby amended by striking out the word “Bedford” and inserting in place thereof the following words:- Arlington, Bedford, Belmont.

SECTION 48. Said second sentence of said subsection (a) of said section 36 of said chapter 465, as so appearing, is hereby further amended by inserting after the word “Cambridge” the following word:- , Canton.

SECTION 49. Said second sentence of said subsection (a) of said section 36 of said chapter 465, as so appearing, is hereby further amended by striking out the word “Malden” and inserting in place thereof the following words:- Lynn, Malden, Marblehead.

SECTION 50. Said second sentence of said subsection (a) of

said section 36 of said chapter 465, as so appearing, is hereby further amended by striking out the words “Revere, Scituate, Somerville” and inserting in place thereof the following words:- Randolph, Revere, Salem, Scituate, Somerville, Swampscott, Watertown.

SECTION 51. The first sentence of the second paragraph of subsection (c) of section 21D of chapter 703 of the acts of 1963, as appearing in section 30 of chapter 193 of the acts of 2004, is hereby amended by striking out the words “COMPASS system, so-called” and inserting in place thereof the following words:- COMMBUYS system.

SECTION 52. The first sentence of subsection (f) of section 21G of said chapter 703, as so appearing, is hereby amended by striking out the words “COMPASS system, so-called” and inserting in place thereof the following words:- COMMBUYS system.

SECTION 53. Section 5 of chapter 624 of the acts of 1986, as amended by section 184 of chapter 165 of the acts of 2014, is hereby further amended by striking out the words “and use of Turtle Lane, a private way, and the use of a private driveway shall be restricted to emergency access, except that a temporary easement through Turtle lane shall be authorized for rehabilitation of Elm Bank”.

SECTION 54. Section 30 of chapter 79 of the acts of 2014 is hereby amended by striking out, in line 31, the words “October 31, 2014” and inserting in place thereof the following words:- November 30, 2015.

SECTION 55. Item 3000-1000 of section 2 of chapter 165 of the acts of 2014, is hereby amended by striking out the words “;

provided further, that the total transfers from any 1 item shall not exceed 3 per cent of the item's total funding".

SECTION 56. Section 236 of chapter 165 of the acts of 2014 is hereby amended by striking out, in line 42, the figure "2014" and inserting in place thereof the following figure:- 2015.

SECTION 57. Section 272 of said chapter 165 is hereby amended by striking out, in line 32, the words "December 31, 2014" and inserting in place thereof the following words:- June 30, 2015.

SECTION 58. Notwithstanding section 23 of chapter 59 of the General Laws, section 31D of chapter 44 of the General Laws or any other general or special law to the contrary, a city or town may amortize over fiscal years 2016 to 2018, inclusive, in equal installments or more rapidly, the amount of its fiscal year 2015 snow and ice removal deficit. The local appropriating authority as defined in section 21C of said chapter 59 shall adopt a deficit amortization schedule in accordance with the preceding sentence before setting the municipality's fiscal year 2016 tax rate. The commissioner of revenue may issue guidelines or instructions for reporting the amortization of deficits authorized by this section.

SECTION 59. Notwithstanding section 2 of chapter 128A of the General Laws and sections 1, 2, 2A and 4 of chapter 128C of the General Laws or any other general or special law to the contrary, the running race horse meeting licensee located in Suffolk county licensed to conduct live racing pursuant to said chapter 128A and simulcast wagering pursuant to said chapter 128C in calendar year 2014 shall remain licensed as a running horse racing meeting licensee until July 31, 2016 and shall remain authorized to

conduct simulcast wagering pursuant to said chapter 128C for the entirety of any year in which at least 1 day and not more than 50 days of live running horse racing is conducted at the licensee's facility; provided, however, that the days between January 1 and December 31 of each year shall be dark days pursuant to said chapter 128C and the licensee shall be precluded from conducting live racing during that period, unless it applies for and is granted a supplemental live racing license pursuant to said chapter 128A; provided further, that all simulcasts shall comply with the Interstate Horse Racing Act of 1978, 15 U.S.C. Sec. 3001 et seq. or other applicable federal law; provided further, that all simulcasts from states which have racing associations that do not require approval in compliance with the Interstate Horse Racing Act of 1978, 15 U.S.C. Sec. 3004(a)(1)(A), except simulcasts during the month of August, shall require the approval of the New England Horsemen's Benevolent & Protective Association prior to being simulcast to a racing meeting licensee within the commonwealth; and provided further, that if the association agrees to approve the simulcast for 1 racing meeting licensee, it shall approve the simulcast for all otherwise eligible racing meeting licensees.

SECTION 60. (a) Notwithstanding any general or special law to the contrary, the University of Massachusetts at Lowell, through its chancellor or the chancellor's designee, may, for the purpose of establishing a satellite campus in the city of Haverhill, enter into a lease agreement for real property and any structures thereon, or to be constructed thereon, with the owner of the real property at the following locations: 2-18 Merrimack street, 20-22 and 24-26 Merrimack street, 32 Merrimack street, 42-54 Merrimack street,

56-66 Merrimack street, 68-70 Merrimack street and 72-74 Merrimack street in the city of Haverhill. The lease shall be exempt from sections 44 to 58, inclusive, of chapter 7C of the General Laws, section 39M of chapter 30 of the General Laws, sections 44A to 44M, inclusive, of chapter 149 of the General Laws and chapter 149A of the General Laws or any other general or special law. The term of the lease shall not exceed 10 years; provided, however, that the University of Massachusetts at Lowell may opt to renew or extend the lease for 2 additional 5-year terms.

(b) The lease agreement shall provide that the lessee be responsible for the build out of the leased property to suit the needs of the lessee and that the costs of construction, reconstruction, alteration, remodeling, repair and maintenance or improvements to the property and the design services relative to the build out shall be the obligation of the lessee and shall be subject to all general and special laws relative to public building projects including, without limitation, sections 44 to 58, inclusive, of chapter 7C of the General Laws, section 39M of chapter 30 of the General Laws, sections 26 to 27F, inclusive, and sections 44A to 44M, inclusive, of chapter 149 of the General Laws and chapter 149A of the General Laws.

SECTION 61. Notwithstanding section 11 of chapter 211D of the General Laws, for fiscal year 2015, the chief counsel of the committee for public counsel services may waive the annual cap on billable hours for private counsel appointed or assigned to cases undertaken by the children and family law program established by the committee provided that the chief counsel finds that: (i) there is limited availability of qualified counsel in that practice area; (ii)

requirements for expertise rendering assignment to certain service providers would be more cost effective or (iii) demonstrated efficiency of the service provider shows that shifting the service to other providers shall reduce the quality and increase the cost of the service; provided, however, that counsel appointed or assigned to such cases within the private counsel division shall not be paid for any time billed in excess of 1800 billable hours. It shall be the responsibility of private counsel to manage their billable hours.

SECTION 62. Notwithstanding section 57, section 57C or section 59 of chapter 59 of the General Laws, an owner of property subject to tax under said chapter 59 who was required to make a payment or file an abatement application on February 2, 2015, and who made such payment not later than February 6, 2015, shall have any interest or penalty waived.

SECTION 63. Notwithstanding any general or special law to the contrary, not later than 60 days after the effective date of this act, the sex offender registry board, as established in section 178K of chapter 6 of the General Laws, shall initiate revisions to the board's regulations to reflect recent supreme judicial court or appeals court decisions that have resulted in remands or reversals of the sex offender registry board's final classification decisions.

SECTION 64. The secretary of elder affairs and the undersecretary of consumer affairs and business regulation in consultation with relevant stakeholders, shall review the necessity and desirability of in-person and telephonic methods with respect to reverse mortgage counseling to ensure proper protections for eligible seniors. The review shall include, but not be limited to, the advisability and overall protections for seniors, availability, costs

and convenience of counseling opportunities and full compliance with all federal lending laws.

The secretary of elder affairs and the undersecretary of consumer affairs and business regulation shall file the report with the clerks of the house and senate and the house and senate committees on ways and means not later than 60 days after the effective date of this act.

SECTION 65. The salary adjustments and other economic benefits authorized by the following collective bargaining agreements shall be effective for the purposes of section 7 of chapter 150E of the General Laws:

(1) between the University of Massachusetts and the Massachusetts Society of Professors MTA/NEA, Amherst & Boston Campuses, Units A50 & B40;

(2) between the commonwealth and the Massachusetts Nurses Association, Unit 7;

(3) between the University of Massachusetts and the International Brotherhood of Police Officers, Local 432, Amherst Campus, Unit A06;

(4) between the University of Massachusetts and the New England Police Benevolent Protection Organization, Amherst Campus, Unit A07;

(5) between the University of Massachusetts and the University Staff Association/MTA/NEA, Amherst Campus, Unit A08;

(6) between the University of Massachusetts and the Classified Staff Union/MTA/NEA, Boston Campus, Units B31 and B32;

(7) between the University of Massachusetts and the AFT Massachusetts Maintainers AFL-CIO, Local 6350, Dartmouth

Campus, Unit D83;

(8) between the University of Massachusetts and the International Brotherhood of Teamsters, Local 25, Lowell Campus, Unit L94;

(9) between the University of Massachusetts and the Classified and Technical Union, Lowell Campus, Unit L92;

(10) between the University of Massachusetts and the Maintenance and Trades Unit/MTA/NEA, Lowell Campus, Unit L93;

(11) between the University of Massachusetts and the American Federation of Teachers, Faculty, Librarians and Technical Staff, Dartmouth Campus, Units D80 and D81;

(12) between the University of Massachusetts and the International Brotherhood of Teamsters, Local 25, Boston Campus, Unit B33; and

(13) between the sheriff of the county of Dukes County and the Massachusetts Correction Officers Federated Union, Units A and B.

SECTION 66. Notwithstanding any general or special law to the contrary, the dog racing meeting licensee in Suffolk county and the dog racing meeting licensee in Bristol county shall not be required to pay the running horse racing meeting licensee in Suffolk county the 3 per cent premium with respect to interstate running horse racing simulcasts received otherwise required by section 2 of chapter 128C of the General Laws.

SECTION 67. Section 66 shall take effect upon commencement of gaming operations by the category 2 licensee whose license was issued pursuant to chapter 23K of the General Laws as certified by

the Massachusetts gaming commission.

SECTION 68. Sections 66 and 67 are hereby repealed.

SECTION 69. Sections 9, 10 and 11 shall take effect as of January 26, 2015.

SECTION 70. Section 39 shall take effect on April 1, 2015.

SECTION 71. Section 46 shall take effect on December 31, 2020.

SECTION 72. Section 54 shall take effect as of October 31, 2014.

SECTION 73. Sections 56 and 57 shall take effect as of December 31, 2014.

SECTION 74. Section 68 shall take effect on July 31, 2016.

Approved, March 31, 2015

Acts (2020)

Chapter 53

AN ACT TO ADDRESS CHALLENGES FACED BY MUNICIPALITIES AND STATE AUTHORITIES RESULTING FROM COVID-19.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to make certain changes in law in response to a public health emergency, each of which is immediately necessary to carry out to accomplish important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 9 of chapter 39 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out, in lines 13 to 14, the word “thirtieth” and inserting in place thereof the following words:- 30 except in the event of an emergency that poses an immediate threat to the health or safety of persons or property that prevents the completion of the business of the delayed town meeting on or before June 30 if the governor has declared a state of emergency with respect to such emergency.

SECTION 2. Subsection (a) of section 10A of said chapter 39, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- Notwithstanding any general or special law, charter provision or by-law to the contrary, during and for a period of 5 days after the termination of any weather-related, public safety or public health emergency, the town moderator or person designated to perform the duties of town moderator may, in consultation with local public safety or public health officials and the board of selectmen, recess and continue a town meeting previously called pursuant to a warrant issued pursuant to section 10 to a time, date and place certain; provided, however, that any such recess and continuance period shall not exceed 30 days. The moderator or person designated to perform the duties of town moderator may renew the declaration of recess and continuance period for up to 30 days at a time but not more than 30 days following the date of rescission of a state of emergency declared by the governor. If a town does not have a moderator, the board of selectmen may recess and continue town meeting in accordance with this paragraph.

SECTION 3. Said section 10A of said chapter 39, as so appearing, is hereby further amended by striking out subsection (c).

SECTION 4. Said section 10A of said chapter 39, as so appearing, is hereby further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) Within 10 days after the initial declaration of recess and continuance of a town meeting pursuant to this section, a local public safety or public health official designated by the board of selectmen shall submit a report to the attorney general providing the justification for the declaration.

SECTION 5. The first paragraph of section 31 of chapter 44 of the General Laws, as so appearing, is hereby amended by inserting after the second sentence the following 2 sentences:- If the declared emergency prevents the adoption of an annual budget by a town or district by the June 30 preceding the start of the fiscal year, the board of selectmen, town council or district commissioners shall notify the director and the director may approve expenditures, from any appropriate fund or account, of an amount sufficient for the operations of the town or district during the month of July not less than 1/12 of the total budget approved by the town or district in the most recent fiscal year pursuant to a plan approved by the board of selectmen, town council or district commissioners and such authority shall continue for each successive month while the emergency continues to prevent the adoption of a budget. The director may promulgate and revise rules or regulations regarding the approval of emergency expenditures described in this section and accounting with regard to such expenditures.

SECTION 6. Notwithstanding any general or special law to the contrary, if the adoption of an annual budget in a city, town or district is delayed beyond June 30, 2020, as a result of the governor’s March 10, 2020 declaration of a state of emergency or the outbreak of the 2019 novel coronavirus, also known as COVID-19, the director of accounts of the department of revenue may authorize the appropriation from the available balance of the city's, town’s or district’s undesignated fund balance or “free cash” certified by the director under section 23 of chapter 59 of the General Laws as of July 1, 2019, as a funding source for the city's, town’s or district’s fiscal year 2021 expenditures, including, but not limited to, any such undesignated fund balance in an enterprise fund or special revenueaccount. The director of accounts may promulgate and revise rules or regulations regarding the implementation of this section.

SECTION 7. Notwithstanding section 31 of chapter 44 of the General Laws, section 23 of chapter 59 of the General Laws or any other general or special law to the contrary, a city, town or district may amortize over fiscal years 2021 to 2023, inclusive, in equal installments or more rapidly, the amount of its fiscal year 2020 deficit resulting from the outbreak of the 2019 novel coronavirus, also known as COVID-19, as described in the governor’s March 10, 2020 declaration of a state of emergency, including, but not limited to, any such deficit in an enterprise fund or special revenue account. The local appropriating authority as defined in section 21C of said chapter 59 and, in the case of a district, the prudential committee or commissioners, or as otherwise defined in the General Laws, shall adopt a deficit amortization schedule in accordance with the preceding sentence before setting the city’s, town’s or district’s fiscal year 2021 tax rate. The commissioner of revenue may issue guidelines or instructions for reporting the amortization of deficits authorized by this section.

SECTION 8. Notwithstanding any general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, and the governor's March 10, 2020 declaration of a state of emergency, for fiscal year 2021, a city or town may expend from each revolving fund, established under section 53E1/2 of chapter 44 of the General Laws an amount not to exceed the amount authorized to be expended in fiscal year 2020 until the city or town adopts an annual budget for fiscal year 2021 at which time, the legislative body of the city or town shall also vote on the total amount that may be expended from each revolving fund in fiscal year 2021.

SECTION 9. Notwithstanding section 8 of chapter 61 of the General Laws, section 14 of chapter 61A of the General Laws, section 9 of chapter 61B of the General Laws or any other general or special law, charter provision, ordinance or by-law to the contrary, during and for a period of 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency, all time periods within which any municipality is required to act, respond, effectuate or exercise an option to purchase shall be suspended.

SECTION 10. (a) Notwithstanding any general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, and the governor's March 10, 2020 declaration of a state of emergency, for fiscal year 2020, the chief executive officer of a city or town, as defined in clause Fifth B of section 7 of chapter 4 of the General Laws, or a district may extend:

(i) for the purposes of the first paragraph of section 57 of chapter 59 of the General Laws, the date May 1 to a date not later than June 1, 2020;

(ii) for the purposes of the seventh and eighth paragraphs and the tenth and eleventh paragraphs of section 57C of said chapter 59, the date May 1 to a date not later than June 1, 2020;

(iii) for the purposes of the seventh paragraph of said section 57C of said chapter 59, the date April 1 to a date not later than June 1, 2020; and

(iv) for the purposes of the third paragraph of said section 59 of said chapter 59, the date April 1 to a date not later than June 1, 2020.

(b) Notwithstanding said sections 57, 57C and 59 of said chapter 59 or any other general or special law to the contrary, if municipal offices are closed as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, or the governor's March 10, 2020 declaration of a state of emergency on the date that a tax payment, abatement or exemption application is due, the due dates shall not be extended except pursuant to this section.

SECTION 11. Notwithstanding section 57, 57A and 57C of chapter 59 of the General Laws, section 2 of chapter 60A of the General Laws or any other general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, or the governor's March 10, 2020 declaration of a state of emergency, the chief executive officer of a city or town, as defined in clause Fifth B of section 7 of chapter 4 of the General Laws, or the prudential committee or commissioners of a district may waive the payment of interest and other penalty in the event of late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual

sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 and made after its respective due date but before June 30, 2020. Notwithstanding the forgoing, a city or town shall not terminate an essential service of a resident, including, but not limited to, water, trash collection or electricity, for nonpayment of taxes or fees with a due date on or after March 10, 2020, made after its respective due date but before June 30, 2020, if the nonpayment resulted from a demonstrated inability to pay due to circumstances related to the outbreak of COVID-19 or the governor's March 10, 2020 declaration of a state of emergency; provided that the inability to pay shall include a demonstrated financial hardship of a resident, which may include, but not be limited to, loss of employment, serious illness of someone within the home or death of someone within the home.

SECTION 12. Notwithstanding chapter 62C of the General Laws, all returns and payments for the 2019 calendar year otherwise due on April 15, 2020, under section 6 of said chapter 62C, shall be due on July 15, 2020.

SECTION 13. Notwithstanding any general or special law to the contrary, during the governor's March 10, 2020 declaration of a state of emergency, an establishment licensed to sell alcoholic beverages or only wines and malt beverages on-premises may sell wine or malt beverages only for off-premises consumption subject to the following conditions: (i) the wine or malt beverage shall not be sold to a person under 21 years of age; provided, however, that any delivery of wine or malt beverages for off-premises consumption shall not be made without verification that the person receiving the order has attained 21 years of age; (ii) the wine shall be sold in its original, sealed container and the malt beverage shall be sold in a sealed container; (iii) the wine or malt beverage shall be sold as part of the same transaction as the purchase of food; provided, however, that any order that includes wine or malt beverages shall be placed not later than the hour of which the establishment is licensed to sell alcohol or 12:00 midnight, whichever time is earlier; and (iv) a customer shall be limited to 192 ounces of malt beverage and 1.5 liters of wine per transaction.

SECTION 14. (a) Notwithstanding any general or special law to the contrary, subsections (b) and (c) of section 91 of chapter 32 of the General Laws shall not apply in calendar year 2020 to the following 2 categories of persons for hours worked and earnings received during the governor's March 10, 2020 state of emergency:

(i) any person who has been retired and who is receiving a pension or retirement allowance, pursuant to said chapter 32 or any other general or special law, from the commonwealth or a county, city, town, district or authority; or

(ii) any person whose employment in the service of the commonwealth or a county, city, town, district or authority has been terminated, pursuant to said chapter 32 or any other general or special law, by reason of having attained an age specified in said general or special law or by the rules and regulations of any department or agency of the commonwealth or a county, city, town, district or authority without being entitled to any pension or retirement allowance.

These 2 categories of persons may, during the state of emergency and subject to all other laws, rules and regulations governing the employment of persons in the commonwealth or a county, city, town,

district or authority, be employed in the service of the commonwealth or a county, city, town, district or authority, including as a consultant or independent contractor or as a person whose regular duties require that such person's time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

(b) This section shall not apply to individuals retired under a general or special law on disability.

SECTION 15. Notwithstanding section 7.08 of chapter 156D of the General Laws or any other general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19 and the declaration of a state of emergency issued on March 10, 2020, for the duration of said state of emergency and 60 days thereafter, a public corporation, as referenced in said section 7.08 of said chapter 156D and otherwise consistent with the other provisions of said section, may conduct an annual or special meeting of the shareholders solely by means of remote communication.

SECTION 16. Notwithstanding any general or special law or any bylaw of the corporation to the contrary, for the duration of the governor's March 10, 2020 state of emergency and 60 days thereafter and unless the articles of organization provide otherwise, the board of directors of a corporation defined in section 2 of chapter 180 of the General Laws may: (i) provide notice of a meeting of the board of directors: (A) only to those directors it is practicable to reach; and (B) in any practicable manner; (ii) cancel a meeting of the members, as defined in section 2 of said chapter 180, with notice of cancellation given in any practicable manner; (iii) allow a director or officer to continue to serve during the governor's March 10, 2020 state of emergency and until the director's or officer's successor is elected, appointed or designated; provided that directors and officers whose term is extended pursuant to this section shall continue to serve until the director's or officer's successor takes office, despite the expiration of a director's or officer's term; (iv) allow a director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating are able to simultaneously communicate with each other during the meeting; (v) allow members at a meeting of the members to vote in person or by proxy; provided that any member voting by proxy shall be considered present at the meeting for purposes of any quorum requirement; (vi) appoint successors to any of the officers, directors, employees or agents; (vii) relocate the principal office or designate alternative offices; and (viii) allow members to participate in any meeting of members by remote participation, even if not physically present at the meeting. Participation by remote communication at any meeting of the members shall constitute presence at such meeting only if: (i) reasonable measures are implemented to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member or proxyholder; (ii) reasonable measures are implemented to provide such members and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear to the proceedings of the meeting substantially concurrently with such proceedings, pose questions and make comments, regardless of whether the members can simultaneously communicate with each other during the meeting; and (iii) if any member or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the

corporation.

Directors who participate in a meeting of the board of directors pursuant to this section shall constitute a quorum. In a corporation with members, the corporation shall notify the members, as soon as reasonably practicable, of any action taken by the board of directors pursuant to this section.

SECTION 17. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Permit”, a permit, variance, special permit, license, amendment, extension, or other approval issued by a permit granting authority pursuant to a statute, ordinance, bylaw, rule or regulation, whether ministerial or discretionary.

“Permit granting authority”, a local, district, county or regional official or a local, district, county or regional multi-member body that is authorized to issue a permit.

(b) Notwithstanding any general or special law, rule, regulation, charter, ordinance or by-law to the contrary, during the governor’s March 10, 2020 declaration of a state of emergency:

(i) an application for a permit shall be deemed duly filed and accepted as of the date of the filing by the applicant if filed with and certified as received by the city or town clerk if a municipality, or with the secretary or other official established by law to receive such applications if a county or regional entity. Notwithstanding the foregoing, a permit granting authority may contest the completeness of an application at the time of filing if the application is ultimately denied by the permitting board on other grounds or if the permit is ultimately appealed by the applicant. An application for a permit may be filed electronically, through an electronic submission website established by the permit granting authority or through attachment of the requisite forms and supplemental materials to electronic mail sent to the clerk, secretary or official. Certification of receipt for purposes of this paragraph may be provided electronically to the applicant and shall be provided electronically if the permit application is submitted electronically and electronic certification of receipt is requested by the applicant;

(ii) a requirement of a statute, ordinance, bylaw, rule or regulation that a hearing commence within a specific period of time after the filing of an application or request for approval of a permit shall be suspended as of March 10, 2020; provided, however, that the applicable period shall resume 45 days after the termination of the state of emergency, or by a date otherwise prescribed by law, whichever is later;

(iii) a permit in effect or existence as of March 10, 2020, including any deadlines or conditions of the permit, shall not lapse or otherwise expire and the expiration date of the permit, or time period for meeting a deadline or for performance of a condition of the permit, shall toll during the state of emergency;

(iv) no permit shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within the time required by a statute, ordinance, bylaw, rule or regulation; provided, however, that the permit granting authority acts within 45 days of the termination of the state of emergency or by a date otherwise prescribed by law, whichever is later;

provided further, that the applicant and permit granting authority may agree to alternative timing in writing;

(v) notwithstanding the time periods by which a permit is to be heard or acted upon, a permit granting authority may, by a declaration of its chair, schedule or reschedule on 1 or more occasions the hearing or decision deadlines on a permit application; provided, however, that the chair may make such declaration whether or not a quorum is present to vote on such matter; provided further, that no such date or deadline is rescheduled for more than 45 days after the termination of the state of emergency or after a date otherwise prescribed by law, whichever is later. The chair shall provide written notice of any applicable rescheduled dates or deadlines to the applicant at the applicant's address and to the general public by posting electronically on the website of the city or town clerk or the website of the county or regional entity;

(vi) if a permit is required to be recorded with the registry of deeds or filed with registry district of the land court, as applicable, for the county or district in which the property subject to the permit is located, within a certain period of time after its issuance in order to remain in force and effect or as a condition to exercising the permit: (A) the period of time for recording the permit shall be suspended during such time that the relevant registry of deeds or registry district of the land court is closed or subject to rules and procedures restricting public in-person access; and (B) the failure to record the permit shall not preclude the permit holder from applying for, obtaining and commencing construction activities pursuant to other required permits and approvals, including, but not limited to, a building permit; provided, however, that such a building permit may be issued and, if issued, shall be considered duly issued pursuant to section 6 of chapter 40A of the General Laws; and

(vii) a hearing on a pending application for a permit opened by a permit granting authority before March 10, 2020, which has not been concluded as of March 10, 2020 or has been continued by the permit granting authority as of March 10, 2020, shall be automatically tolled and continued to the first hearing date of the permit granting authority following the termination of the state of emergency or to a date otherwise prescribed by law, whichever is later; provided, however, that the date is not later than 45 days from of the termination of the state of emergency or the date otherwise prescribed by law, whichever is later.

(c) Nothing in this section shall affect the ability of a permit granting authority, subject to applicable notice and hearing requirements, to revoke or modify a permit if that permit or the law or regulation under which the permit was issued authorizes the modification or revocation thereof; provided, however, that the permit granting authority shall not revoke or modify the permit where the permit holder fails as a result of the state of emergency to exercise or otherwise commence work pursuant to the permit or where such work commenced on or before March 10, 2020 but has stopped as a result of the state of emergency or actions taken by an agency or political subdivision of the commonwealth in reliance thereon. The limitations set forth in this subsection shall apply as long as the state of emergency is in effect and for a period of 60 days following the termination of the state of emergency; provided, however, that a permit holder shall be entitled to a further extension of reasonable length to exercise or otherwise commence work pursuant to the permit at the discretion of the permit granting authority for good cause shown; provided further, that the chair of any permit

granting authority may grant such further extension whether or not a quorum is present to vote on the matter.

(d) Notwithstanding section 20 of chapter 30A of the General Laws, a permit granting authority, during the state of emergency, may conduct meetings and public hearings remotely, consistent with the governor's March 12, 2020 order entitled, "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20", as the order may be amended, supplemented or replaced.

(e) Nothing in this section shall preclude or prohibit a permit granting authority from issuing decisions on permit applications for which duly held public hearings or meetings have been held or preclude or prohibit any building commissioner, inspector of buildings or other permit granting official, as applicable, from issuing permits, including, but not limited to, demolition or building permits.

(f) Notwithstanding any general or special law to the contrary and without limiting the foregoing, this section shall apply to the conduct of public meetings, public hearings or other actions taken in a quasi-judicial capacity by all local boards and commissions.

SECTION 18. Nothing in this act shall be construed or implemented in such a way as to modify a requirement of law necessary to retain federal delegation to, or assumption by, the commonwealth of the authority to implement a federal law or program.

SECTION 19. Sections 2 to 4, inclusive, shall take effect as of March 10, 2020.

Approved, April 3, 2020.

COMMONWEALTH OF MASSACHUSETTS
TOWN OF MILTON
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MEMBER

November 19, 2020

VIA EMAIL AND VIA OVERNIGHT MAIL

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE

and

Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
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Tampa, FL 33607

Comment Statement of Congressman Stephen F. Lynch, Massachusetts Senator Walter F. Timilty, Massachusetts Representative William J. Driscoll, Jr., Boston City Councilor Ricardo Arroyo, Boston City Councilor Andrea J. Campbell, and the Milton Select Board

To Whom It May Concern:

Enclosed please find the comment statement of the following federal, state, and municipal elected officials, including its appendix:

Congressman Stephen F. Lynch

Massachusetts Senator Walter F. Timilty

Massachusetts Representative William J. Driscoll, Jr.

Boston City Councilor Andrea J. Campbell

Boston City Councilor Ricardo Arroyo

The Town of Milton Select Board:

Melinda A. Collins, Chair

Kathleen M. Conlon, Vice Chair

Arthur J. Doyle, Secretary

Richard G. Wells, Jr.

Michael F. Zullas

Kindly confirm receipt of this document via e-mail.

Most sincerely,

Michael Dennehy

Town Administrator

Enclosure: Comment Statement (108 pages)

MDD:hw

COMMENT STATEMENT OF CONGRESSMAN STEPHEN F. LYNCH,
MASSACHUSETTS SENATOR WALTER F. TIMILTY,
MASSACHUSETTS REPRESENTATIVE WILLIAM J. DRISCOLL, JR.,
BOSTON CITY COUNCILOR ANDREA J. CAMPBELL,
BOSTON CITY COUNCILOR RICARDO ARROYO,
AND
THE MILTON SELECT BOARD

November 19, 2020

VIA EMAIL AND VIA OVERNIGHT MAIL

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE

and

Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
Suite 450
Tampa, FL 33607

To Whom It May Concern:

These comments and supporting appendix are submitted by the undersigned federal, state, and municipal elected officials regarding the FAA's proposed Logan Airport Runway 4L Environmental Assessment announced on September 15, 2020, with Comment Period running from September 21, 2020 to November 20, 2020.

The FAA's proposed 4L RNAV procedure, applied to the closely spaced parallel Logan Runway 4L and 4R realities, is based on arbitrary and capricious assertions and assumptions, and is compounded by FAA's material misstatements and omissions in its Draft EA and workshops.

It is important to note at the outset that there is no separate, independent federal oversight agency charged with watch-dog responsibilities to question FAA actions and disclosures before the proposed FAA procedure takes place.

For that reason, a public Comment Period can and should serve as an alert for affected residents to act as their own watch-dog, on alert for both arbitrary FAA rationales and materially misleading FAA justifications.

Accordingly, we submit these Comments, reserving all rights, and stating here explicitly that the EA process should be cancelled, rescinded, and the Draft EA withdrawn. In these Comments, we support that statement.

A. EXECUTIVE SUMMARY OF COMMENTS

But we also Comment on the material deficiencies in the Draft EA and workshops and state additions and revisions that would be needed to make clear the arbitrariness of FAA scope, method and disclosure. However, do not confuse that with this: the Draft EA website and the virtual workshops are not worth the paper they are not printed on.

In Section 1, we review the background to the March 20, 2017 IER, the public meetings that preceded it in 2015, and commentary by the undersigned federal, state and municipal elected officials, and by community members, as background to the IER and CATEX that led to FAA's commitment to conduct an EA of the proposed Runway 4L RNAV path.

In Section 2, we address FAA's delay between 2015 and 2020 in conducting the EA and its arbitrary, capricious and self-contradictory "safety" reason for proceeding now amidst a Covid-19 pandemic and collapse in runway operations at Logan and across the US. That Section is in two parts: Section 2A, addressing the time frame 2015 to the onset of the pandemic; and Section 2B, addressing the time frame from pandemic onset to September 15, 2020.

In Section 3, we address FAA's repeated denials of the undersigned elected officials' requests for written answers to their technical questions regarding the Draft EA, and also FAA's "virtual workshops" process. (See also the related Section 6 on FAA's lack of transparency, material misstatements and omissions.)

In Section 4, we address the undifferentiated scope of FAA's approach to the 4L RNAV analysis which we contend is an abuse of its discretion. We also address the FAA's failure to complete a cumulative impacts analysis, and how that failure is also an abuse of discretion.

By undifferentiated scope we mean this: FAA's confounding use, on the one hand, of a 1,173 square mile GSA for purposes of assessing overall air traffic compatibility across all 427,000 Logan Airport flight movements with, on the other hand, inapposite use of that same GSA 1,173 square mile GSA for assessing specific noise and health impacts of a proposed new RNAV procedure that originates southwest of the airport and proceeds for 15 miles from that point in concentrated fashion exclusively on a narrow sky-rail to the airport over noise sensitive areas.

The Draft EA fails to bifurcate the scope of the Assessment between (A) overall Logan air traffic compatibility, versus (B) focused evaluations of the proposed 4L RNAV path's noise and other environmental effects on residents under that path and impacts on residents already under the nearby 4R RNAV path.

This unfocused scope is also methodologically unsound and is presented in a misstated manner which we address in Sections 5 and 6.

In Section 5, we address FAA's 4L RNAV Draft EA methodology, including: materially understated noise impacts resulting from FAA's exclusive use of the DNL metric without supplementation through use of the metric recommended for RNAV noise effect measurement;

lack field work; failure to include noise contours even though the proposed 4L RNAV track is closely spaced adjacent to the extant 4L RNAV path; landing gear deployment modeling flaws; and disregard of 15R approach/circling to 4L alternatives.

In Section 6, we address FAA's Non-Transparency, including its self-contradictory statements, selective and misleading disclosures, material misstatements and omissions and refusals to answer questions, which collectively render this Draft EA in need of being withdrawn and restated with requisite transparency.

In Section 7, we address FAA's failure to identify, examine and pursue any available Alternatives (other than the "No Action" alternative) and specify several that require full development, full presentation and full discussion.

In Section 8, we address FAA's failure to assess and present Environmental Justice impacts and alternatives.

In Section 9, we address FAA's failure to identify, examine and pursue available mitigation measures.

In Section 10, we discuss the impacts on Milton residents, and our concluding remarks.

CONTENTS

B. COMMENTS

1. 2015-2016: COMMUNITY INVOLVEMENT, IER, FAA INACTION

The first page of the Draft EA contains the following statement:

"In **March 2016**, the FAA completed a comprehensive Initial Environmental Review (IER) for the permanent implementation of a RNAV GPS IAP to Runway 4L at the Airport. The **IER concluded** that the proposed procedure qualified for the **categorical exclusion** (CATEX) found in Order 1050.1F, paragraph 5-6.5.g, entitled "Establishment of Global Positioning System (GPS) , Flight Management System (FMS), Area Navigation/Required Navigation Performance (RNAV/RNP) or essentially similar systems that use overlay of existing flight tracks."

That IER is Appendix 1 to the Draft EA. It contains this statement at page 68. We have bold highlighted it for emphasis.

> The FAA must:
> **Make a determination if the proposed project has the potential to become highly controversial.**
> **The effects of an action are considered highly controversial when reasonable disagreement exists over the project's risks of causing environmental harm. Opposition on environmental grounds by a Federal, State or local government agency or by a Tribe, or by a substantial number of the person[s] affected by the action should be considered in determining whether reasonable disagreement regarding the effects of a proposed action exists (see FAA Order 1050.1F, Paragraph 11-5.b.(10)).**

In fact, there was extensive opposition by Federal, State and local government and by a substantial number of the persons affected which had been raised repeatedly in meetings, in writing, and in virtual gatherings for years prior to the FAA's March 2016 IER page 68 statement—and that opposition continues to this day.

Nevertheless, and despite longstanding elected official and public opposition, at page 78, the FAA asserted that effects on the quality of the human environment are **not likely to be highly controversial:**

> 9. Effects on the quality of the human environment that are likely to be **highly controversial on environmental grounds** (see Order 1050.1F, paragraph 5-2.b.(10)).
> [ ]Yes [**x**] **No** [ ] Possibly

The FAA went on to comment on that same page:

> Comment:
> As evidenced by comments received by the FAA following an outreach meeting on May 18, 2015 **there is opposition** from some residents of Milton, MA,

> (approximately 108 comments received) and their elected officials regarding implementation of the Proposed Action (Runway 4L RNAV GPS IAP). Two members of the Logan Airport CAC from other communities and the Board of Health for the Town of Randolph also expressed opposition.
>
> As stated in FAA Order 1050.1F, paragraph 5-2, **opposition alone is not sufficient for a Proposed Action or its impacts to be considered highly controversial on environmental grounds. There must be a reasonable disagreement regarding the impacts of the Proposed Action. Comments received indicate that the majority of the opposition is based on noise and air quality associated with current flights over Milton.**

The FAA's assertion that there is no reasonable disagreement is factually false and misleading, and administratively an abuse of discretion. The elected officials and residents living under the proposed 4L RNAV path are the relevant representatives and affected persons here.

Other Sections of these Comments will address FAA's basis for its contra-factual assertion that this matter is not highly controversial on environmental grounds. But we quote next FAA's purported support for this assertion so that it can be referred to below. FAA's assertion continues as follows. We have added some bold to highlight it:

> To provide detailed information on noise impacts, FAA has done a full INM analysis for the FAA's Proposed Action, which includes analysis of the proposed JetBlue Runway 4L RVFP for cumulative impact purposes. Typically, a noise screen is conducted for these types of situation — adding instrument guidance an existing visual operation, without changing the type of aircraft, nor increasing the number of flights involved, or changing the area on the ground that is overflown. The INM cumulative analysis findings (for both proposed procedures) are summarized in Table 14 (page 39). **People exposed to less noise outnumber those exposed to more noise by a 13:1 ratio**. Within the Baseline 45 dB DNL contour, the maximum DNL increase is 0.3 dB. All DNL increases are negligible in comparison to the applicable thresholds shown in Table 4. For the FAA's Proposed Action individually, the maximum DNL increase is 0.1 dB and the population exposed to a decrease in DNL exceeds those exposed to an increase by a ratio of 5-to-1 (Table 11, page 36).
>
> In addition, the implementation the FAA's Proposed Action would result in **reduced fuel consumption and CO2 emissions**. Based on the findings of these detailed analyses, **there is no "reasonable" disagreement regarding the impacts of the proposed procedure.**

Disagreeing with FFA's proposal to concentrate flight tracks onto residents who will then live under a narrow sky-rail such that **13 times** as many people are **relieved** of the existing dispersed noise burden compared to the victims who will then have that **noise shifted onto them** is more than a reasonable disagreement. It is response to an authoritarian act that merits legitimate, reasoned officials' and public disagreement.

Similarly, disagreement on behalf of people to be exposed to proposed 4L RNAV path jet exhaust emissions presently dispersed across 13 times that many people is reasoned, and reasonable, disagreement. See also Sections 4 and 5 below.

The Draft EA goes on to state that "in July 2016 [FAA] elected to conduct an EA to further study the procedure." (Draft EA page 1-1). But, the Draft EA immediately then states, [d]ue to budgetary constraints and other [unspecified] exigent circumstances, however, this effort was delayed." Yes, FAA delayed for many years and nowhere is that delay further explained. In further disregard to residents' lives, FAA now proceeds during a pandemic and air traffic near-shutdown. (See Section 2 below)

Lastly for this Section, we raise the following statutory comment:

The Draft EA does not explain how a CATEX that it determined in March 2016 complies with the requirements of the National Defense Authorization Act of 2017, Section 341(b)(4) enacted in December 2016. We highlight in bold for emphasis:

> (b) **Performance-based Navigation.**--Section 213(c) of the FAA Modernization and Reform Act of 2012 (Public Law 112-95; 49 U.S.C. 40101 note) **is amended by adding at the end the following:**
>
> ``(4) Review of certain categorical exclusions.--
> ``(A) In general.--**The Administrator shall review any decision of the Administrator made on or after February 14, 2012, and before the date of the enactment of this paragraph to grant a categorical exclusion under this subsection with respect to a procedure to be implemented at an OEP airport that was a material change from procedures previously in effect at the airport to determine if the implementation of the procedure had a significant effect on the human environment in the community in which the airport is located.**
> ``(B) Content of review.--If, in conducting a review under subparagraph (A) with respect to a procedure implemented at an OEP airport, the Administrator, in consultation with the operator of the airport, determines that implementing the procedure had a significant effect on the human environment in the community in which the airport is located, the Administrator shall--
> ``**(i) consult with the operator of the airport to identify measures to mitigate the effect of the procedure on the human environment; and**
> ``**(ii) in conducting such consultations, consider the use of alternative flight paths that**

> **do not substantially degrade the efficiencies achieved by the implementation of the procedure being reviewed.**

We are not aware of any review conducted by the FAA or that the operator of Logan Airport, Massport, was consulted by FAA. FAA apparently disregarded this mandatory duty required by Congress nearly four years ago.

2. 2017-2020: DELAY, AND THEN A MISLEADING SAFETY PREDICATE

a. January to Pandemic Onset

FAA took no action on its EA for years following the March 2016 IER. The economy was growing, planes were flying at increasing numbers per year on Logan runways including 4L and 4R. Community concerns about the high concentration of planes on the runway 4R approach continued, and at the urging of communities and elected officials, an FAA-Massport MIT assisted Study proceeded to examine ways to restore dispersion of flight paths toward pre-RNAV levels.

Then, in late 2019, FAA announced that it was going to proceed with the 4L EA after 5 years' delay. In response to that announcement, Milton's representative on the Massport Community Advisory Committee (MCAC) commenced what became a multi-month effort to gather information from FAA, including by requesting that it publish its unpublished Appendices to the IER and respond to questions about the proposed 4L RNAV path in relation to other 4L approach paths and the existing closely spaced parallel runway 4R RNAV path. The documentation of that effort is appended hereto as the Appendix to this letter, and is incorporated herein as part of these Comments as if fully set forth at this point.

Among other things, the FAA Regional Administrator was asked to provide in writing the specific approach procedures to 4L, both visual and instrument. On March 4, the Regional Administrator responded in writing as follows, after checking with the relevant FAA Points of Contact:

> ***FAA Response: Currently, Runway 4L does not have an instrument approach procedure associated with it. We use a Visual Approach (no course or vertical guidance). When weather goes below a 3000ft. ceiling we can make an instrument approach to Runway 4R and circle to Runway 4L. We also can conduct an ILS approach to Runway 15R and when the pilot reports BOS in sight, the Tower clears the aircraft for a Visual Approach over the harbor to Runway 4L. The 15R situation is only good down to weather conditions of 1500ft. ceiling and 5 miles visibility. When circling from Runway 4R we can use about an 800ft. ceiling and 2 miles visibility.***
>
> ***When pilots are aware that they will be getting a Visual Approach to Runway 4L, they have the ability in their FMS to build a course and artificial glide slope if they choose. It would all depend on workload and Company requirements.***

Other than the proposed RNAV RWY 4L, there are no other procedures planned. The old JetBlue visual procedure is no longer authorized.

The penultimate paragraph of that statement will be addressed in Section 3 of our Comments below.

b. Pandemic Onset, Community Requests to Defer This EA, and FAA's Capricious "Safety" Rationale for Proceeding

In March-April 2020, the Covid-19 pandemic hit and the American society, health system, economy and air traffic were massively disrupted. Jet arrivals on runway 4L **plummeted 98%** in April to only 7 arrivals that entire month, and then only 5 arrivals during the month of May.

At the behest of Milton's MCAC representative, the MCAC wrote to FAA on May 18, 2020 asking FAA to defer the 4L EA process because Covid-19 impacts and FAA's already 5 year delay in proceeding with the EA respectively restricted residents from participating in any EA at this time and suspended any legitimate urgency for FAA to proceed with the EA now. Residents were (and still are) dealing with high incidence of Covid (and as this is written, with a second wave of high incidence), and severe economic impacts. Milton, Mattapan and Dorchester include many health care workers, essential workers on bus, rail and other basic services efforts whose lives are disrupted by those duties now. Home child care, unemployment, small business losses, food stamp needs all require extraordinary attention and time-consuming alternative measures, as the MCAC letter pointed out specifically.

Social gatherings are restricted and/or prohibited such that residents cannot meet to confer about the EA issues. Libraries are closed and residents without internet access have no practical alternative means of internet assess because any libraries open at all limit such access to a few people for limited time each. Virtual meetings have serious limitations. The MCAC asked FAA to defer the EA until the later of January 1, 2021 or two months after flights to and from Logan Airport resume with volume and frequency similar to what can be expected in future years.

By letter dated June 11, 2020, FAA's Regional Administrator refused MCAC's request to defer the EA asserting:

1. that air operations had increased in May and early June;
2. that safety and efficiency were its priorities; and
3. those residents' concerns were immaterial because FAA's virtual workshop routine would suffice.

In actuality, the FAA's assertion that air operations were increasing was false. Logan Airport reported that jet arrivals on 4L were, as stated above, 7 in April, 5 in May and only **3** in June. That was no basis to proceed with the EA. And single digit monthly jet arrivals on runway 4L continue today.

As to the assertion (3) that FAA's virtual workshop would substitute for in-person gatherings of residents, it is obvious that in-person meetings of residents to prepare, discuss, review **among**

themselves are not part of FAA virtual workshops. And the material failings of those "workshops" are discussed separately in Section 3 below.

Turning now to assertion (2), there are two rationales for the proposed 4L RNAV that are repeatedly asserted in the Draft EA, and its predecessor IEA appended thereto: safety and efficiency. We address efficiency in Sections 4 and 5.

But here, in this Section 2B, we want to address at some length the FAA's purported safety reason for FAA's 4L RNAV initiative. We do so, not merely to negate **any** assertion that now is a time that FAA needs to proceed with the EA for safety reasons, but also to comment explicitly that FAA's assertion of safety concern is a misleading predicate for the 4L RNAV proposal **itself.**

Regarding safety, the Draft EA states the following at page 1-3:

> The implementation of the RNAV (GPS) RWY 4L procedure where no instrument procedure currently exists will improve safety by providing pilots with a stabilized approach and enables air traffic control to more precisely monitor each aircraft both vertically and laterally along the arrival track.

As support for its safety rationale for proceeding with an EA, the FAA had referred in its March 2016 IER to generalized US and worldwide safety statistics but offered **no** specific instance of any runway 4L safety concerns. (Draft EA Appendix A, page 32).

When the FAA by its June 11, 2020 letter denied MCAC's request to defer this EA process, Milton's MCAC representative on July 14, 2020, and the MCAC itself by separate letter that same day, each responded to FAA reiterating that the EA process must be deferred. In addition to reiterating the reasons for deferral stated above and addressing FAA's disregard of those ongoing concerns in its June 11 letter, the MCAC representative pointed out that the FAA had not identified any specific safety incidents prompting the need for the EA to proceed now. The FAA again denied the requests to defer the EA by letter dated August 7, 2020 without further explanation of why.

Perhaps in light of the MCAC representative's July 14 statement that (from the time of the FAA's 2013-2016 analyses for its IEA through July 2020) FAA had not identified any specific safety rationale for proceeding with the EA now, the Draft EA, published on September 21, 2020, contains the following statement:

> **Circling Visual Approach to Runway 4L after conducting ILS RWY 15R approach to visual conditions**
>
> A circling approach can be used by the pilot to align the aircraft with the runway for landing when a straight-in approach is not possible or desirable.
> **The circling maneuver that is currently used for aircraft landing on Runway 4L is only available during VMC and marginal VMC.**

When traffic and weather conditions dictate, **small, maneuverable Category A or Category B aircraft (limited to approach speeds of 120 knots or below) are able to follow the ILS straight-in approach to Runway 15R until descent below the cloud ceiling. Once the aircraft is below the cloud ceiling and has the Airport in sight, the pilot can execute a circling approach to land on Runway 4L.**

A circling approach, in this context, consists of an aircraft executing a turn to the south upon transitioning below the cloud ceiling. While remaining clear of clouds and **with the Airport in sight at all times,** the aircraft then maneuvers to a visual landing on Runway 4L. Pilots are responsible for maintaining visual separation from other traffic, including traffic landing Runway 4R, at all times when executing this maneuver. As this approach requires significant manual low-altitude maneuvering while maintaining visual separation from other traffic in busy airspace at an airport with multiple intersecting runways, it can be a challenging and potentially hazardous maneuver. **Numerous safety-related incidents have occurred with aircraft flying this procedure, including some particularly notable recent incidents as described below:**

* In October **2016**, **a DeHavilland Dash 8** passed directly over an Airbus A320 at low altitude while executing a go-around following an errant approach to Runway 4L's parallel Taxiway Bravo instead of the runway itself.

* In October **2019**, **a Cessna 414**, after receiving clearance to execute a final approach to land Runway 4L, mistakenly lined up with Runway 9 instead, where another aircraft was preparing for takeoff. Once the pilot of the Cessna realized there was another aircraft on the runway, he executed a go-around at low altitude, overflying a third aircraft by an estimated 300 feet.

* In October **2019**, **a DeHavilland Dash 8,** when flying the left downwind leg to Runway 4L after departing the ILS 15R approach course, extended the left downwind more than expected due to **excessive airspeed on that leg**. This resulted in ATC cancelling the approach clearance and instructing the aircraft to complete a go-around due to the imminent risk of an airspace incursion.
Of the three described methods that pilots can currently follow to land on Runway 4L, **the change of runway and circling maneuvers are used far less frequently than visual approaches to the runway.** (Draft EA page 2-6)

We submit that there are these extraordinary elements to that FAA statement:

1) In all the many years that the 4L EA has been deferred, these are the **only** specifics mentioned;

2) **Each** of these three proffered scenarios occurred during **Visual Meteorological Conditions, not** during **IMC** for which FAA proposes the 4LRNAV to reduce late night arrival delays.

3) **Each** of these involved **old** propeller (Cessna 414) and turboprop DeHavilland Dash 8 (turbo-propeller) **small** (8 passengers, 36 passengers, respectively) planes. **Neither** Cessna 414 (built in the 1970s and early 80s) nor DeHavilland Dash 8 (built in the 1980s) are identified by FAA as having any gps capability on board —necessary for RNAV if the 4LRNAV had been in place. In other words, the 4LRNAV does not address that safety issue at all.

4) **Each** of the planes was in visual contact with the Logan runways, and the third scenario mentioned concerned excessive speed.

None of these anomalies in all these years is a basis to proceed with an EA now, when few planes are flying. But also consider this: In its last sentence the FAA states that this "Circling Visual Approach to Runway 4L" is used far less frequently than other visual approaches to runway 4L." Then why not discontinue its use if it is unsafe, and in any event why use this as a reason to subject thousands of residents to the noise and pollution impacts of a concentrated RNAV path rather than mitigating that safety anomaly itself ? (See Section 7 of these Comments)

Well, a complete reading of the Draft EA and its appendices, reveals that FAA may do just that: At Draft EA Appendix D page 8, FAA states: "[i]n the Proposed Action Alternative, **the ILS 15R circling transition to Runway 4L** will still be available, but based on consultation with Boston Consolidated TRACON (A90) personnel, **it is not expected that it will continue to be used."**

Our comment is to agree that it need not be used and is not a safety reason to proceed with this EA now. To be clear, FAA still wants to associate the aircraft that used the 15R circling transition to Runway 4L with runway 4L **by another means: "**[i]nstead, Air Traffic Control (ATC) plans to assign the aircraft previously flying the ILS 15R circling transition to Runway 4L to **fly the RNAV (GPS) RWY 4L** in the Proposed Action Alternative." (Draft EA Appendix D-8)
However, we submit that 4L or 4R without RNAV guidance in VMC can be used—and no RNAV is needed for that. No EA for 4L RNAV need proceed at **any** time for that purpose.

3. SEPTEMBER 15 - NOVEMBER 20, 2020: FAA FAILS TO ANSWER QUESTIONS OF ELECTED OFFICIALS AND OTHER RESIDENTS AND CONDUCTS OPAQUE, FORMULAIC "WORKSHOPS"

We begin this section with a quote from the FAA Regional Administrator's March 4, 2020, statement about Runway 4L paths that we referred to in Section 2A above:

> ***"When pilots are aware that they will be getting a Visual Approach to Runway 4L, they have the ability in their FMS to build a course and artificial glide slope if they choose. It would all depend on workload and Company requirements.***

> ***Other than the proposed RNAV RWY 4L, there are no other procedures planned. The old JetBlue visual procedure is no longer authorized."***

The statement in that first part of the quotation that "pilots and their airline companies can use their flight management systems **"to build a course and artificial glide slope if they choose" is a red flag**, raising the concern that FAA can allow **additional concentrated visual FMS-guided 4L flight paths to be built and flown over additional parts of Mattapan, Milton and Dorchester,** thereby adding yet more overflight burden than the proposed concentrated 4L RNAV path over residents' homes, along with schools, hospitals and churches.

It is no solace that FAA adds that no other procedures "are planned." There is **no statement** by FAA that any community engagement process would be required if FAA decides to accept an airline's decision to "use their FMS to build a course and a glide slope if they choose" for repeated concentrated use.

Indeed, during the October 28 FAA virtual "workshop," FAA's presenters gave conflicting answers to the question of whether additional 4L flight paths could be added: The airline pilot presenter indicated that use of an aircraft's onboard FMS to build a flight path is available, and the FAA representative stated only that the JetBlue procedure is no longer authorized**, without** addressing the fact that the FAA's stated policy is that airlines can build their own FMS guided course if they choose.

Because of that FAA red flag, earlier in this EA process, the Town of Milton Select Board, along with Congressman Stephen Lynch, State Senator Walter Timilty, State Representative William Driscoll, and other residents, each asked the FAA in writing to provide in writing the FAA's answer to the following question, so that residents would know what to expect, what is actually at stake here:

> (D) provide a table, in format similar to Table 8 of Appendix A to the Draft EA, stating the **Estimated Annual Use** of 4L RNAV Approaches, on the basis of **Cleared** IMC, **Cleared** VMC, **Advisory** IMC (if any), **Advisory VMC** and Total Cleared+Advisory use while **including, listed separately**, as in Table 8, **any RVFP use**, in **each** of those categories.

(See the Appendix to these Comments which contains letters submitted by each of those elected officials asking that they receive FAA's written response prior to the FAA "workshops.")

The FAA never answered the elected officials' question before, during, or after the FAA's two "workshops."

That question was one of several from elected officials to which the FAA failed respond.

On September 21, 2020, Zoom session with elected officials regarding the Draft EA, the FAA invited those elected officials to submit technical questions about the Draft EA. Soon thereafter, those elected officials submitted technical questions in writing, including the question quoted above, and sought written responses.

In response, the FAA sent emails stating that "questions will be addressed during the Boston public workshops." (See Appendix to these Comments at document 1). The elected officials followed-up again, and sought written responses to the questions "as soon as practicable, and not halfway through the comment period and as part of workshops intended for the public." (See Appendix to these Comments at document 2).

The FAA never responded to these questions about the Draft EA from elected officials – not in writing, and not as part of the workshops.

The FAA's pattern of failing to respond to questions about the Draft EA continued during the virtual "workshops."

During the October 23 FAA virtual workshop, the FAA did not answer a question submitted by a resident that was similar to the question from elected officials quoted above: "for the first year of 4L RNAV operation, what is the expected number of flights on the proposed 4L RNAV path, and on **each other** alternative 4L path expected to be in use if any."

We will address this matter again the Sections 4 (Scope of the Draft EA), 5 (its Methodology) and 6 (its Lack of Transparency, Material Misstatements and Omissions).

As one prelude to those Comment Sections, we add this Comment on the virtual workshops process. The FAA's technical workshop team members, including its consultants, from Washington D.C. Virginia, Dallas and Raleigh-Durham never visited Mattapan, Milton and Dorchester in connection with this EA, and, because of COVID-19 restrictions, never conducted an in-person session with residents, which is the standard process for a Draft EA.

The two workshops were recorded. So, any reader of the Comments can review those videos and form his or her own view of our Comment that the presentations by FAA were formulaic recitations of FAA positions, were arbitrarily selective in content, omitted material facts, and were wholly incomplete as information statements for the public.

As such, the Draft EA itself and its accompanying workshops and non-responses to officials' questions are reminiscent of the misleading process and content of unregulated prospective investment "roadshows" that our federal securities laws long-ago outlawed. See Section 6 of these Comments.

The FAA emailed a letter dated November 10, but sent on November 12, only after the draft of these Comments had been published on November 10, stating that FAA had never answered the technical questions by elected officials that FAA itself had solicited. That FAA letter was emailed to undersigned elected officials stating that the unanswered technical questions "will be responded to in the Final Environmental Assessment." The FAA's November 10/12 letter doubly deprived residents of the Comment Period information that their elected officials asked for, namely: (1) written responses before the September virtual workshops so that residents could absorb that information and ask questions based upon those responses at those workshops; and (2) information contained in written responses to those questions that residents could also

comment upon as they developed their Comments during the Comment Period for submission before November 20. (See the Appendix to these Comments.)

4. SCOPE: THE DRAFT EA FAILS TO DIFFERENTIATE ITS GENERAL STUDY AREA FROM AN APPROACH STUDY AREA, IGNORES CSPR REALITIES, NOISE CONTOUR IMPACTS, AND SOOT, WITH SEVERAL RESULTANT SINGLE POINTS OF ANALYTICAL FAILURE AND CUMULATIVE ABUSES OF DISCRETION

a. The Draft EA Ignores 4L/4R CSPR Realities

The proposed arrival procedure to Runway 4L originates Southwest of Logan Airport beginning at an altitude of approximately 5,000 feet, at 15 nautical miles from the Runway 4L threshold. (Draft EA, Appendix A page 25). Residents familiar with the area will recognize that as in the Blue Hills area to the south of the Blue Hills Observatory. Runway 4L at Logan Airport sits 1500 feet to the West of its Closely Spaced Parallel Runway (CSPR) counterpart Runway 4R and should be analyzed together with it for reasons explained here.

That 1500 foot separation of Runways 4L and 4R at touchdown has fundamental significance for RNAV analysis because at the point of arrival procedure onset, 15 nautical miles Southwest of touchdown, the proposed 4L RNAV path and the extant 4R RNAV path are 4500 feet apart. The paths' lateral separation decreases at a rate of approximately 200 feet per mile over the 15 nautical miles to touchdown.

For that reason, it is important to consider alone and together the combined impacts of aircraft traversing the proposed 4L and extant 4R sky-rails on residents, schools, hospitals, churches and other noise sensitive areas under and adjacent to those CSPR paths. Noise perception depends critically on time and place, coincidence of event (overflight) and proximity. Locations such as Wellesley, Hopkinton, Watertown, Medford, Newton, Kingston or Sherborn may have their own issues, but they are **not** near the 4L/4R conical CSPS paths corridor, nor near planes passing along as it sits in the sky from its point of origin 15 nautical miles Southwest of Logan, where the 4L/4R paths are only 4500 feet apart, to touch down where the 4L/4R runways are 1500 feet apart.

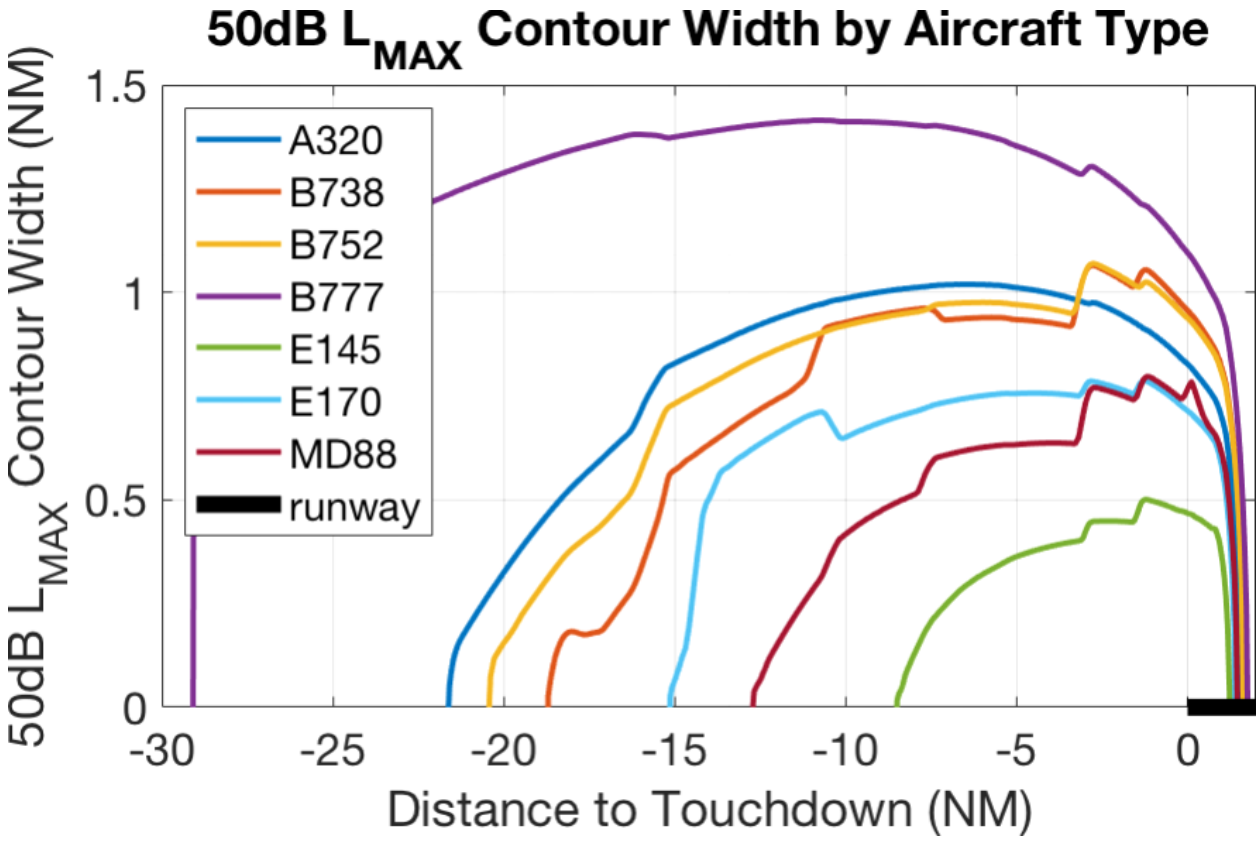
In addition, one needs to take into account two dynamics:

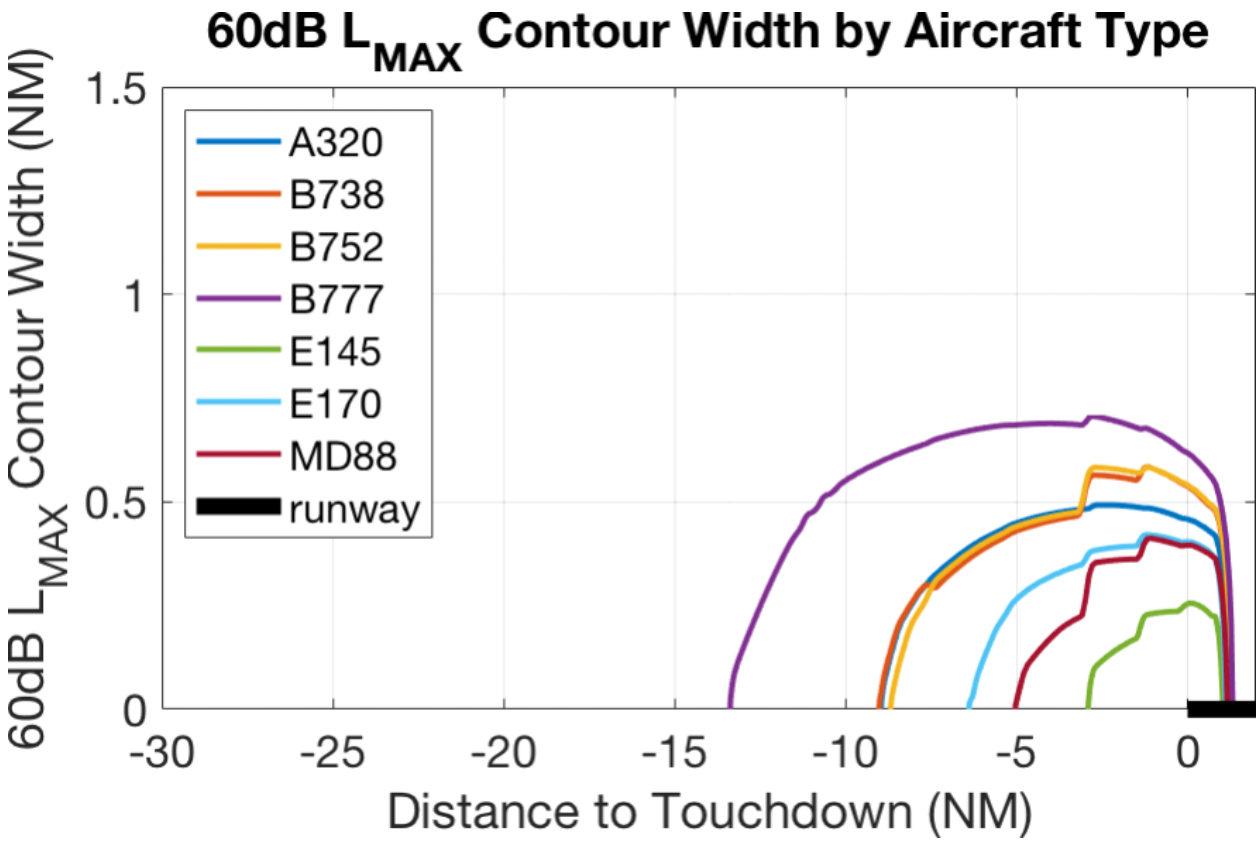
1. that planes proceeding along the 4L path create so-called **noise contours** that reach to the west and east side of each plane; and
2. by doing so, they extend 4L noise to the west of the path and 4R noise to its east; but also by extending 4L noise to the east toward the 4R path, and 4R noise to the west toward the 4L path create a **noise overlap** between the 4L and 4R paths increasing noise occurrence, intensity and duration in that between-CSPRs overflight area.

MIT identified aircraft noise contours as part of its work on the Massport-FAA study referred to earlier in these Comments. The following MIT diagram shows that from distances 15 nautical miles and less to touchdown many aircraft (each identified by type) generate noise contours of

50 and 60 decibels a mile wide (50 decibels) and half a mile wide (60 decibels). That contour width is wide enough to spread across the area between the proposed 4L RNAV and extant 4R RNAV flight paths as planes overfly residential Milton.

Figure 41. Approach L_{MAX} Contour Widths for 7 Fleet Types Following Radar Median Approach Profiles





The foregoing paragraphs are prelude to this statement: the Draft EA's scope of analysis addresses none of the foregoing 4L/4R CSPR noise realities. Indeed, runway 4R is mentioned in the Draft EA at its Section 2.1.2 which only states its procedure elements, and in its Section 2.2.2.3 which exclusively addresses aircraft-to-aircraft wake turbulence issues created by 4L/4R closely spaced parallel flight tracks **without** any analyses of 4L/4R closely spaced parallel noise turbulence effects on residents.

In fact, once the Draft EA was published, the undersigned state and municipal elected officials had to request that the 4R RNAV flight path (not even shown by FAA on its "Noise Visualization" tool) be shown there. And each of those undersigned elected officials repeatedly insisted to no avail, that FAA address in writing the CSPR noise contour impacts, and noise metrics appropriate to be considered for noise sensitive areas. This has dispositive effects on the FAA's Draft EA methodology and non-transparency as will be discussed in Sections 5 and 6 of these Comments.

Instead, FAA's Draft EA deliberately, and we submit, in abuse of its discretion, uses a single geographical scope for all purposes of its Draft EA called a General Study area (GSA). The FAA's chosen GSA covers **1,173 square miles,** including 27,000 census centroids across locations far away from the proposed 4L RNAV approach path and the combined 4L/4R CSPR paths.

That huge geographical scope is appropriate for one purpose, namely, assessing **overall air traffic compatibility** across all 427,000 Logan Airport flight movements. In other words, assuring that aircraft using a proposed 4L RNAV path will be able to fit in amongst the totality of aircraft movements associated with all Logan arrivals and departures.

But, it is inarguable that locations that are **not near** the CSPR RNAV paths' **narrow conical corridor** (4500 feet wide at the start of the procedure and 1500 feet wide at touchdown) are not appropriate candidates for the specific tasks of noise measurement because residents of those locations are neither proximate to the 4L/4R overflights in location or in time. Residents of towns and cities such as Wellesley, Hopkinton, Watertown, Medford, Newton, Kingston or Sherborn and the other almost innumerable inapposite locations listed on FAA's Draft EA hundreds of pages long Appendix B are **not exposed to 4L/4R approach noise impacts.**

For that reason: **the Draft EA is fundamental flawed**. It fails to bifurcate the scope of the Assessment between: (A) overall Logan air traffic compatibility (for which a GSA of its scope is appropriate), versus (B) focused evaluations of the proposed 4L RNAV path's noise and other environmental effects on residents under that path and impacts on residents already under the nearby 4R RNAV path (for which the Draft EA contains no focused scope).

In these Comments, we will use the term Approach Study Area to refer to the Draft EA's missing focused scope defined by the conical corridor defined by the CSPR approach paths and their respective outreaching and inward/overlapping noise contours—none of which the Draft EA addresses. Using FAA's own practice of assigning acronyms, we refer to that as the missing **ASA**.

One might well ask why FAA chose not to prepare, include and present an ASA with associated, focused noise metrics and other environmental effects metrics. On the one hand, such reasoning is irrelevant to the fact that the Draft EA is materially incomplete, and reasons for such abuse of discretion are irrelevant. On the other, it may in part have to do with the following two admissions embedded in the FAA's many Draft EA pages and words.

First, at page 32 of Appendix A of the Draft EA contains the following statement. Note that INM refers to FAA's Integrated Noise Model:

> The INM standard assumption is that, when aircraft are flying an approach below 3,000 feet, they utilize ILS guidance. While true for the vast majority of air carrier approaches at major U.S. airports, it is not true for approaches to Logan Runway 4L. While a non-standard profile could have been developed and used, that was not done because **reliable data for the associated noise emissions for each aircraft involved were not available.**

We submit that lack of reliable noise data for aircraft flying the conical corridor defined by the 4L/4R CSPR approach paths over Mattapan, Milton and Dorchester would certainly impede application of focused, appropriate noise metrics. Hence, no ASA analysis, though lack of data does not excuse the FAA's fatal omission of it.

Second, as discussed in Section 5, when asked at the October 28 FAA virtual workshop why noise monitors were not used as supplement to FAA's sole reliance on a computer noise model across the entire GSA, FAA's respondent replied that noise monitors would only allow **targeted** measurements and are therefore for **not practical**.

We agree that noise monitors would allow targeted measurements. That is their very purpose, and if used in the ASA as supplement to the FAA's noise model that is applied only to the GSA, they could have provided actual data otherwise unavailable and without which the Draft EA is materially incomplete. We disagree that such use of monitors is not practical. Many are in place and were not used. In addition, as a supplement, there is a practical alternative. We will address that in Section 5.

As discussed in the next Section, FAA did no field work at all for this EA at any time. Use of the existing field noise monitors could have been accompanied by some FAA soot monitoring. When residents living under the 4L/4R CSPS paths use hoses pointed skyward to wash down the clapboards of their houses in the Spring or Summer, they can place a tarp along the base of the wall to protect any shrubs or plants on the ground from the wash. Residents daily see the speckles of jet fuel soot on their white, or yellow, or other paint-colored outer walls. But when they do the wall wash, as their hose does its work, the soot turns to slurry cascading down clapboard after clapboard. And if the tarp began as a white or pale cloth, it becomes a blackened soggy reminder of what their own and their family members' lungs regularly absorb in their CSPR yards and neighborhoods.

The Town of Milton Board of Health registered its opposition to the proposed Runway 4L RNAV (and any use of a visual RVNP) by letter to the Town's Select Board dated October 6, 2020, which we quote here in its entirety and have included in the Appendix to the Comments:

> *TO: Milton Select Board members*
>
> *FROM: Milton Board of Health*
>
> *DATE: October 6, 2020*
>
> *RE: Detrimental Health Effects of RNAV Plane Flights over the Town of Milton*
>
> *The Milton Board of Health strongly opposes the proposed 4L RNAV and 4L visual approach RNAV. We strongly urge the FAA to halt any further implementation of these RNAV's.*
>
> *The Town of Milton is 13.3 square miles in area, and is already experiencing an unfair distribution of flights compared to other surrounding communities. Milton residents have the highest number of complaints compared to all other communities.*
>
> *The Town has experienced an exponential increase in RNAV's. As you know these RNAV's are highways in the sky: they are narrow concentrated paths for*

the airplanes to fly along. We are very concerned about the potential health risks associated with repeat exposure. Already residents have told us about their worries, including soot falling on their cars, homes, lawns and gardens from the airplanes fine particulate matter. These airplanes are lower also, many are flying less than 3000 feet.

According to a LAX study, fine particulate matter can cause blocked coronary arteries as well as worsen respiratory diseases like asthma. Those with underlying conditions like asthma who also contract COVID-19 may develop more severe respiratory symptoms.

It should be noted that the LAX study authors stated that their findings could apply to any other large airport. In addition, other studies have demonstrated increases in blood pressure for those bothered by noise from aircraft while they were sleeping.

The residents in Milton will be put at a higher risk for illnesses if these proposed changes occur. Additionally, the location of these RNAV's would affect some of the most vulnerable populations including: elderly residents of Fuller Village, Milton Health Care nursing home facility, college students-Curry College, young children- Thatcher Montessori school, Delphi academy, Tucker Elementary School, just to name a few.

In the past, routes have gone out over the water, and not over populated communities and residential areas. These proposed changes will be going over residential areas and effecting homeowners and residents that never previously had routes over their homes.

We ask the Select Board to urge the FAA to consider the above factors and stop the implementation of these proposed RNAV's.

Respectfully,

Caroline A Kinsella B.S.N. R.N.

Caroline Kinsella, BSN, RN, RS
Milton Health Director

b. NEPA Requirements and Failure to Consider Cumulative Impacts

Under the NEPA, the FAA is required to evaluate the potential environmental effects of projects before "undertaking a major federal action which could significantly affect the quality of the human environment." 42 US § 4332(2)(C). In addition to NEPA and the regulations implementing NEPA, the FAA has established its own regulations which set forth the process by

which an EIS or an EA must be conducted and the results evaluated. FAA Order1050.1F, dated July 16, 2015, updates FAA Order 1050.1E to: "1) provide a clear, concise, and up-to-date discussion of the FAA's requirements for implementing NEPA; and 2) clarify requirements in order to facilitate timely, effective, and efficient environmental reviews of FAA actions, including NextGen improvements." Order 1050.1F applies to actions directly undertaken by the FAA and those where the FAA has sufficient control or responsibility to condition the license or project of a non-FAA entity.

While no formal scoping process is required for an EA, Order 1050.1F states that items considered within an EA should be similar to those considered within an EIS. We submit that, as set forth below, by not complying with its own internal procedures, and not preparing a thorough and comprehensive EA, or EIS, the FAA has been arbitrary and capricious.

1050.1F, paragraph 2-3.2(b) "Initial Environmental Review" requires that in evaluating the scope of an EA, the FAA must consider:

> (1) Connected actions. Connected actions are closely related actions that: (a) automatically trigger other actions; (b) cannot or will not proceed unless other actions are taken previously or simultaneously; or (c) are interdependent parts of a larger action and depend on the larger action for their justification (see 40 CFR § 1508.25(a)(1), CEQ Regulations). Connected actions and other proposed actions or parts of proposed actions that are related to each other closely enough to be, in effect, a single course of action must be evaluated in the same EA or EIS (see 40 CFR §§ 1502.4(a) and 1508.25(a)(1), CEQ Regulations). A proposed action cannot be segmented by breaking it down into small component parts to attempt to reduce impacts (see 40 CFR § 1508.27(b)(7), CEQ Regulations).
>
> (2) Cumulative actions. Cumulative actions, when viewed with other proposed actions, have cumulatively significant impacts. Cumulative actions should be discussed in the same EIS (see 40 CFR § 1508.25(a)(2), CEQ Regulations). (See Paragraph 4-2.d(3) for a discussion of cumulative impacts).
>
> (3) Similar actions. Similar actions, such as those with common timing or geography, should be considered in the same environmental document when the best way to assess their combined impacts or reasonable alternatives to such actions is in a single document (see 40 CFR §§ 1502.4(b) through (c) and 1508.25(a)(3), CEQ Regulations).

In addition, FAA Order 1050.1F, paragraph 4-2(d) identifies the types of impacts that must be considered in each EA or EIA. It states:

Within each applicable environmental impact category, the EA or EIS must address the following types of impacts (for further details, see the 1050.1F Desk Reference):

> (1) Direct impacts (see 40 CFR § 1508.8(a), CEQ Regulations);

> (2) Indirect (including induced) impacts (see 40 CFR § 1508.8(b), CEQ Regulations); and
>
> (3) Cumulative impacts (see 40 CFR §§ 1508.7, 1508.8, 1508.25, and 1508.27(b)(7), CEQ Regulations, and CEQ Guidance on Considering Cumulative Effects Under the National Environmental Policy Act (January 1997)). Cumulative impacts are those that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, whether Federal or non-Federal. If the proposed action would cause significant incremental additions to cumulative impacts, an EIS is required.

Taken together, these two sections of FAA Order 1050.1F mandate that the Draft EA for the Runway 4L RNAV consider the cumulative impact together of the proposed Runway 4L RNAV and its existing CSPR approach Runway 4R RNAV on the residents actually subjected to the combined ASA corridor noise effects noise effects. Instead of performing the required analysis, the Draft EA utterly fails to address cumulative impacts in any meaningful way. The cumulative impacts of imposing yet another concentrated flight path over Milton requires the completion of an EIS, and a full evaluation of the resulting environmental impacts, with a formal scoping process. The Draft EA is insufficient to meet the FAA's requirements to comply with NEPA, the CEQ regulations and guidance, and its own guidance, i.e. Order 1050.1

The EA attempts to address cumulative impacts at section 3.4.8 (p.3-34) and in section 4-4 (p. 4-25 to 4-27). In Section 3.4.8, the FAA dutifully recites:

> Cumulative impacts refer to the impacts resulting from the effects of implementation of the Proposed Action with other actions in the GSA that when combined have the potential to affect the environment. The White House Council on Environmental Quality (CEQ) regulations define a cumulative impact as "an impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."17 The CEQ regulations also state that cumulative impacts can result from individually minor, but collectively significant actions that take place over a period of time. The Proposed Action is only expected to change the arrival path for a subset of air traffic at the Airport and has no effect on any activities once the aircraft has touched down. This Proposed Action Alternative and the changes related to this Proposed Action Alternative will be considered against past, present, and reasonably foreseeable future actions with direct or indirect effects on the human environment.

Incredibly, the EA then goes on to consider undifferentiated impacts in and around the 1,173 square mile GSA as discussed above.

The FAA's 1,173 square mile GSA dilutes noise impact analysis to the point of elimination of the required focus on cumulative noise impacts upon CSPR dual RNAV path victims (proposed 4L/Extant 4R).

That fatal defect in FAA's Draft EA occurred precisely because FAA includes no targeted analysis of such cumulative noise impacts.

Using a GSA for an overall air traffic compatibility purpose, while failing to differentiate an appropriate CSPR approach paths' study area to provide the requisite cumulative noise analysis of the CSPR approach paths' impacts on overflown residents, is the definition of arbitrary and capricious.

The FAA then states, at page 3-34 to 3-35 of the Draft EA (emphasis added) further distracting focus from the actual CSPR noise corridor cumulative overflight impacts:

> Because the Proposed Action concerns an arrival path, aviation-related projects associated with airports within the GSA were emphasized when assessing cumulative impacts; as these projects would be more likely to generate impacts similar to the Proposed Action. **Aside from Boston Logan International Airport, additional projects have been identified within the GSA and these projects at the Airport and the remainder of the airports within the GSA are identified in Table 3.4-7**. Non-aviation projects and plans within the GSA were also identified for consideration in the assessment of cumulative impacts. Regional and local plans for jurisdictions and agencies in the GSA were reviewed to identify projects which could contribute to cumulative impacts.
>
> While these plans have been identified from across the GSA, the environmental consequences from the considered impact categories in this EA will be tabulated and reviewed relative to these projects to ascertain if any of plans meet the definition of cumulative impacts with respect to the Proposed Action. **Given that the project is entirely within the airspace around the Airport,** the potential for cumulative impact for non-aviation projects and plans will be judged relative to any significant or reportable impacts from the considered impact categories. **There are over 100 non-aviation projects that have recently occurred or are expected to occur in the reasonably foreseeable future within the GSA and given the large list**, these projects are listed in Appendix E.

Table 3.4-7 and Appendix E list construction projects such as gate expansions, runway reconstruction, and terminal modifications. This failure to differentiate distant noise occurrences throughout the GSA from noise effects within the CSPR approach path noise corridor (inclusive of construction project noise, if any, heard there) is fatal to the Draft EA because inclusion of the 100+ projects regardless of proximity to that corridor disables any focused overflight noise impacts analysis.

The FAA repeats this approach in section 4-8 if the EA. There the FAA summarily concludes that there are no environmental consequences from the proposed alternative, and then again tries to shift the focus to landside projects. It states, on page 4-26, in part:

> In the research of potential projects at airports within the GSA, some of these projects at the Airport consisted of **projects on the landside area** such as the Logan Airport Parking Project and the Terminal C Canopy, Connector, and Roadway Project. These landside projects impacts would likely be limited to the landside areas but the environmental documents for the Framingham Logan Express Expansion, Logan Airport Parking, BOS Terminal C Canopy, Connector and Roadway, BOS Terminal E Modernization, and Logan Airport Renovations and Improvements at Terminals B & C/E projects were all reviewed for documentation of any noise impacts.

The EA makes only a passing reference to possible aviation noise from the imposition of this new RNAV, when it states, on page 4-27:

> On top of the aviation and non-aviation projects already considered, the Proposed Action Alternative has already been considered for cumulative impacts relative to all of the existing arrival and departure procedures that exist at the Airport. The radar traffic data covering the period November 1, 2018 to October 31, 2019 that was used to build the No Action Alternative includes aircraft flying those existing procedures at the Airport and so the comparison between the No Action and Proposed Action alternatives considers the potential impact from all other existing Airport procedures. As there were no significant or reportable noise increases discussed in Section 4.6, the addition of the Proposed Action to the existing Airport airspace will not contribute to the exceedance of any noise threshold.
>
> As a result, it can be concluded that the Proposed Action Alternative will not create a cumulative impact that will reach the significant or reportable threshold with respect to noise when environmental consequences are considered cumulatively with the consequences of past, present, and reasonably foreseeable projects.

By these Comments we reiterate our objection to those asserted conclusions. It is a matter of record that the elected officials submitting these Comments have long protested the imposition of hyper-concentrated RNAV path noise, which this EA will compound. And, for example, the Town of Milton stated its concerns in Section 10 of the following 2017 letter. Not only are there impactful noise increases from the new RNAV, the citizens of Milton have been complaining about such, as set forth in more detail in Section 10 of this letter.

Milton has long been concerned with how the FAA would view cumulative impacts in the EA, since the time which the EA was announced, and shared its concerns with the FAA Regional Counsel Mary McCarthy in a June 23, 2017 letter. That letter stated:

> *Milton is currently impacted by the ongoing overuse of Runway 4R (which already has an RNAV). . . Two new RNAVs for Runway 4L would bring the total number of RNAVs for Milton to five (5). Given Milton's unique circumstances, the FAA should and must analyze the cumulative impact of all five (5) RNAVs that*

either already fly over or are proposed to fly over Milton, and not only the impact of the proposed 4L RNAVs in isolation.

The vast majority of the land use in Milton under the 4L RNAVs is residential. In addition to many single family and multi-family homes, this area also includes a large housing development for senior citizens, a nursing home, Curry College, Milton Academy, Beth Israel Deaconess Hospital – Milton, and three elementary schools. Combining increased throughput and residential neighborhoods increases the impact of aviation on those neighborhoods. The FAA must evaluate these impacts with a critical eye – particularly where schools and nursing homes, which are highly sensitive communities, are under the concentrated RNAV flight paths and impacted by the ongoing RNAV implementations. Moreover, the Fowl Meadow and Ponkapoag Bog, which is an "area of critical environmental concern," as well as portions of the Blue Hills would also lie under the 4L RNAV.

The importance of evaluating cumulative impacts cannot be stressed enough. Runways 4L and 4R are parallel to each other and separated by only 1,500 feet. The homes of many Milton residents are "sandwiched" between the proposed 4L RNAV paths and the 4R RNAV path. Multiple schools and playgrounds also lie under or between these flight paths. As you know, in recent weeks Runway 4R has been closed for renovation. The temporary closure has resulted in either Runway 4L being used more frequently than it has in the past, or pilots using other flight paths that are between or near the proposed 4L RNAV paths and/or the 4R RNAV path. During the temporary closure of Runway 4R, many Milton residents who are typically adversely impacted by the FAA's overuse of the 4R RNAV continued to be adversely impacted by arrivals to Runway 4L. Additionally, the Milton Board of Selectmen heard from residents of Milton who live near the proposed 4L RNAV paths and are newly impacted by continuous airplane noise. Thus, the recent temporary closure of Runway 4R confirms what common sense already tells us -- it is impossible for any environmental assessment of the impact of the two proposed Runway 4L flight paths to have any analytic value unless all of the impacts of Runway 4R (including noise, public health, and all other environmental impacts) are also evaluated at the same time and in conjunction with it, consistent with the cumulative impact requirements as set forth in Order 1050.1F.

The FAA has ignored the actual cumulative impacts from the imposition of Runway 4L on overflown approach corridor residents. Such an action is arbitrary, capricious and inconsistent with its obligations and mandates under NEPA.

5. METHODOLOGY

a. Undefined Permitted Use, Opaque as to IMC/VMC, Arbitrary and Misleading "Efficiency" Assumption

Our first set of Comments on methodology draw upon our Comments on Scope and begin with this predicate question:

What number and percentage of arrivals on runway 4L will follow the proposed 4L RNAV path in its first year of operation and what rate of growth of those two numbers is expected thereafter? The Draft EA nowhere addresses that question. That is a fundamental methodological flaw and material non-disclosure, as discussed further in Section 6.

Instead, the Draft EA, page 4-16, merely and only states that its analysis assumes that 255 new arrivals will be placed on the 4L RNAV procedure along with an unidentified number of former 15R circling procedure small aircraft flights:

> Only two sets of flights were placed on the backbones representing the new procedure – **the 255 new net arrivals** that will be able to take place in IMC and cannot do so today, **and** the flights that were previously using the ILS **15R procedure** and circling to a visual landing on Runway 4L. All other flights in the No Action Alternative and the Proposed Action Alternative are identical. The noise analysis therefore reflects changes in noise exposure **solely** due to the implementation of the RNAV (GPS) RWY 4L procedure when compared to the No Action Alternative

Is that the entirety of proposed permitted 4L RNAV path use?

At the October 28, 2020 FAA virtual workshop, FAA consultant Donovan Johnson, who joined the Zoom event from Dallas, stated that other than those two 4L RNAV path arrival candidates (255 net new and whatever small aircraft15R conversions occur) flights arriving on 4L "**will follow closely existing flight tracks**."

But **nowhere** in the Draft EA does FAA commit that use of the 4L RNAV will be limited to 255 net new arrivals plus former small aircraft 15R circling procedure converts.

Nowhere in the Draft EA does FAA disclose what 4L fight path(s) will be flown by the JetBlue aircraft that formerly flew the now discontinued JetBlue Special RVNP. Nor has FAA responded to the undersigned elected officials' request for written answers to those matters.

i. Opaque as to IMC/VMC Use

Nowhere does the Draft EA state that the 4L RNAV will **not** be used in **VMC** conditions. Such use is inconsistent with the FAA's stated suggestion that the 4L RNAV path's purpose is to **reduce arrival delays during extended IMC** as defined in the Draft EA (page 1-2).

Nowhere, does the Draft EA contain a Table such as that contained in its 2016 IER in which there, **Table 8** states "Estimated Annual Aircraft Use of RNAV Approaches" to Runway 4L, including "Cleared IMC", Cleared VMC, "Advisory VMC" and Total annual aircraft use of 4L RNAV approaches. That table listed **10,860** Cleared and Advisory annual aircraft use of the 4L RNAV path assuming JetBlue aircraft to be included in its analysis.

Are we to assume that JetBlue aircraft will not use the proposed 4L RNAV path in VMC conditions, nor any other aircraft, on a cleared or advisory basis?

We reiterate therefore: What "existing" 4L approach flight paths will be used?

As we addressed in Section 4, "**reliable data for the associated noise emissions for each aircraft involved were not available"** for 4L VMC approach path aircraft for FAA to use for FAA's INM model in 2016. The Draft EA does **not** state that it was able to obtain reliable actual VMC flight path data to input to its model for this Draft EA? If so **where is it**? If not, this Draft EA has materially insufficient empirical data.

Figure 8 of FAA's 2016 IER (Appendix A to the Draft EA page 15) depicts a triangular image in **blue brush-stroke form** of some selected tracks for JetBlue Airlines flights (Airbus A320 and Embraer E190 jets) during April-May of 2013 using the VMC arrival procedure. **Does FAA** represent that such tracks are representative of where JetBlue jets will fly upon the implementation of the proposed 4L RNAV? Or, will JetBlue aircraft be able to use their "FMS to build a course and artificial glide slope if they choose…. depend[ing] on workload and Company requirements" as the FAA represented on March 4 of this year? **If so, that concentration has not been modeled or addressed in this Draft EA.**

What would preclude aircraft that fly the 4L RNAV path in extended IMC conditions from building its GPS another coordinates into their FMS and flying that 4L RNAV path in IMC conditions that are shorter than the hours stated in the Draft EA. or in VMC conditions? Nothing in the Draft EA addresses that.

ii. Arbitrary and Misleading "Efficiency" Assumption

The Draft EA's stated efficiency purpose for the 4L RNAV procedure is in order to reduce late night arrival delays on runway 4R in "extended IMC conditions" by adding a net of 255 flights a year onto 4L arrivals. For the Draft EA, FAA chose to build a model based on assumed "eligible" weather conditions (6 consecutive hours or 8 out of 10 hours" of below 5 nautical miles visibility with the airport in Northeast configuration at least 80% of that time). Its model found only 7 such days for the baseline year. (Draft EA Appendix D page 10) We submit that residents under the 4L and 4R arrival paths will find the assertion that there are only 7 days a year of extended inclement weather conditions absurd. Will the FAA agree to limit use of the 4L RNAV to an additional 255 flights a year, given its stated purpose?
Or is this model **a stalking horse** for **much more use of the 4L RNAV path in the actual weather conditions we experience?**

This is not Arizona, and there is no need for such **model-itis**. Various public records show that in 2019 there were 130 days reported as days with reportable rain, and there is little variation in that count depending on each recorder's method. Why didn't FAA state the number of **actual days** during which more than x number of Logan 4R arrivals were delayed for more than y hours in the baseline year? And state the number of actual days that more than x number of Logan 4R arrivals were delayed y hours beyond a scheduled arrival time of 10 pm?

Perhaps because the **US Department of Transportation Bureau of Transportation Statistics** public records show that during that baseline period **5% of all Logan arrivals were delayed due to weather. That does not suggest** a potential of net **255** new arrivals out of 4L's approximately 12,000 jet and small aircraft arrivals, and Runway 4R's more than 60,000 arrivals in the baseline year, but rather a total of 72000 x.05= **3,600** delayed additional arrivals from which delayed but arrived before 10 pm would need to be calculated—-and there again, the FAA's analyses are baseless and misleadingly materially **understate** the burden shift that any 4L RNAV would impose on the proposed 4L RNAV residents, schools, hospitals, churches and libraries— here **by a factor of 14 x multiplier.**

Without realistic data, the Draft EA model is arbitrary and fundamentally flawed. The FAA's stated "efficiency" purpose for its proposed 4L RNAV procedure is presented in a materially misleading way. It is cause for worry, not a don't worry marginal matter.

b. This Draft EA's Use of DNL: Dead o**N** Arriva**L**

The FAA's methodology as conceived and as applied to the introduction of an RNAV approach procedure for the Runway 4L component of the CSPRs 4L and 4R is materially incomplete, arbitrary and harmful as conceived and as applied in the Draft EA.

Like a doctor with discretion who applies the wrong medicine, it will make a bad situation worse. As is addressed in these Comments, the FAA's DNL metric as applied here, and as used as the sole metric for these CSPR approaches, is materially incomplete. Like a partial diagnosis, if used, it can and here does lead to a faulty calibration of the infection…here, of the noise impacts and other health effects.

i. GSA But No ASA and No Field Work

The Draft EA uses a GSA comprised of **1,173 square miles and 1,054,982 people** to develop a Yearly Day-Night Average Sound Level (**DNL**) range of 41.46 to 58.16 dB in the baseline year in Milton, 46.46 to 51.49 dB in Mattapan, and 47.26 to 60.58 dB in Dorchester. (FAA 1050.1f Desk Reference, February 2020 page 11-2).

As stated previously, the FAA did **no field work**, relying solely on its AEDT noise model and DNL metric. At its October 28, 2020 Draft EA virtual workshop, FAA's presenter, in response to questions, stated that use of field monitors "would only allow targeted measurements" and therefore are "not practical". We dispute that. **Sample testing** would have confirmed that actual overflight noise impacts are out of line with FAA's analyses.

For example, taking just two of the days between the first and second FAA virtual workshops and looking at field readings of noise impacts of overflights of Milton Hill showed dB readings exemplary of **any** day Runway 4R is in use:

October 25, 2020

4:40 pm AAL 1569 from Phoenix A321 72.3 dB

4:51 pm UAL 385 from Denver B738 73.4 dB

5:00 pm AAL 1728 from Charlotte B738 74.2 db

5:02 pm AAL 1148 from Dallas B738 73.7 dB

October 26, 2020

4:30 pm AAL 2148 from Reagan National A319 71.7 dB

4:50 pm UAL 2068 from SFO B738 74.2 dB

5:05 pm AAL 1569 from Phoenix A321 74.0 dB

5:13 pm UAL 664 from Orlando A320 75.0 dB

5:17 pm SWA 950 from BWI B738 75.4 dB

ii. No Noise Contours

Furthermore, despite the fact that Runway 4L overflies "noise sensitive areas" (NSA) as does its CSPR counterpart 4R, FAA developed no **noise contours** to assess cumulative impacts of their combined overlapping noise and health effects. Section 4 of these Comments contains MIT's noise contour graphics and our related discussion. No contours analysis was included in the Draft FAA, and once it was published, the undersigned elected officials informed FAA in writing that they wanted noise contours included in the analysis and a written reply. The FAA ignored that request.

The FAA defines NSA as:

> [a]n area where noise interferes with normal activities associated with its use. Normally, noise sensitive areas include **residential, educational, health, and religious structures and sites, and parks, recreational areas,** areas with wilderness characteristics, wildlife refuges, and **cultural and historical sites**.

(Paragraph 11-5.b.(8) of FAA Order 1050.1F)

And the FAA's Order 1050.1f Desk Reference Section 11-4 states:

> **In some cases, public understanding may be improved with a more complete narrative description of the noise events contributing to the DNL contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL.**

FAA did **none** of that.

Lastly, FAA's regulation states that it is only **required** to employ noise contour analyses, even as to noise sensitive areas, for its **"larger scale air traffic airspace and procedure actions."** But that: "If the study encompasses **a large geographical area,** it is not recommended that contours be created for the representation of results below DNL 55 dB due to fidelity of receptor sets needed to create an accurate representation of the contour." Here the GSA is 1,173 square miles. However, the narrow ASA corridor that these Comments addresses is much less than 5% of that 1,173 square miles—not "large scale traffic airspace" at all.

iii. Dilutive DNL and No In-Use Metrics

Yet, although FAA stated that the Draft EA "will **focus** on a **change-in-exposure analysis,** which examines the change in noise levels as compared to population and demographic information at population points throughout the study area," its over-broad GSA, and failure to include a focused ASA, using the DNL metric without field confirmation of metric supplementation is methodologically fatal to representative change-in-focus analysis. Why?—Because it is materially incomplete as to CSPR impacts precisely because the DNL metric as applied massively **dilutes** the **actual** Runway 4L **in-use** noise impacts by including days of the year when Runway 4L is not in use.

Runways 4L and 4R are used 34% of the days of the year according to Logan Airport published records—not 365 days of the year which the DNL 365 day metric includes. That is, Runway 4R and 4L were in use 121 days of the baseline year (November 1, 2018 to October 31, 2019).

So, consider this: In response to a resident's Freedom of Information Act (FOIA) to FAA in connection with this Runway 4L Environmental Assessment, FAA was required to provide access to its AEDT model. The AEDT model shows that for this Draft EA's **baseline year, the number of flights per day that meet an above 60 dB a day sound level threshold when divided by <u>365 days</u> were: more than <u>150</u> flights a day under the 4R path.**

Consequently, the **above 60 dB sound level** number of flights during **121** days corresponds to residents' **actual experience** of more than **450** flights a day in the CSPR corridor where impacts of both Runway 4R and 4L overflights are experienced.

And corresponding figures under the 4L Triangle, comprised of Beth Israel Hospital, St Elizabeth's Church and Milton Academy, are 66 flights per 365 days and therefore actually more than 190 flights a day that create above 60dB sound level when 4L is in use.

The FAA's methodology does not even begin to address this. And—that is only the beginning of its flawed use of DNL.

The AEDT model also shows average time each day of the years' 365 days that residents' experience of noise above the 60dB sound level, which under Runway 4R is more than 50 minutes a day, and therefore more than **150 minutes every day 4R is in use. More than two and a half hours of the sound of planes approaching residents' yards, flying over and receding toward the airport—-building in level from 45dB to over 70 dB and receding as the plane proceeds toward Logan . . . to the extent that on the days as a whole sound level is doubled across the day !**

In fact, 70 dB sound is perceived as **four times as loud** as 50 dB sound, and 60dB sound is perceived as **twice as loud as 50dB sound. For these reasons alone,** the assertion that no further analyses by FAA is needed due to yearly average DNL as low as 45 dB is fundamentally flawed and incomplete analysis as applied by FAA here. Noise rising to a 70dB crescendo then falling repeatedly 450 times, interrupting for two and a half cumulative hours across each overflight day with such annoyance is nowhere addressed by FAA's methodology.

But there is much more to be addressed.

iv. Missing Supplemental Metrics

The FAA's own regulation 1050.1f Desk Reference for noise analysis in its Section 11.4 states:

> DNL analysis **may optionally be supplemented on a case-by-case** basis to characterize specific noise impacts. Because of the diversity of situations, the variety of supplemental metrics available, and the limitations of individual supplemental metrics, the FICON report concluded that the use of supplemental metrics to analyze noise should remain **at the discretion of individual agencies."**

And one FAA's listed supplemental metrics is:

> **Maximum sound level (Lmax) defined as: A single event metric that is the highest A-weighted sound level measured during an event.**

Notably, the US Federal Highway Department (which, like FAA is also part of the US Department of Transportation) also states:

> U S Department of Transportation
> Federal Highway Administration FHWA-HEP-17-053:
> **The LMAX, or Maximum Sound Level, descriptor is the highest sound level measured during a single noise event (such as a vehicle pass by), in which the sound level changes value as time goes on.**

These statements concern noise measurement for **any** noise event analysis such as a single RNAV path noise analysis. And here we have a proposed new CSPR Runway 4L RNAV counterpart to the extant Runway 4R RNAV.

MIT's experts who studied the Logan Runway 4R RNAV path including reference to its present 4L CSPR counterpart wrote a methodological thesis in 2018 that specifically states that the Lmax noise metric is the appropriate measurement tool for supplemental RNAV analyses, superior to the yearly average DNL metric for that analysis, stating that overflight frequency is an important factor driving annoyance. N_{ABOVE} captures overflight frequency effects directly, essentially counting the number of qualifying events experienced by a surface observer over the period of interest. Lmax captures the overflight flight-by highest sound level. Together they measure repetitive high annoyance. Together they are used to target days that the approach path is in use, and in a focused way are also used to assess peak-day use repetitive noise annoyance, as MIT's expert'' study shows.

For those reasons, N_{ABOVE} Lmax 60dB/50dB is a sine-qua-non of this EA analysis for the 4L CSPR RNAV procedure. Consequently, when the Draft EA was published **without** inclusion of Lmax analysis as a supplemental measure to DNL, at residents' request, our elected officials acted.

Each of the undersigned state and municipal elected officials **asked FAA in writing** to provide Nabove Lmax dB 60Day/50Night noise metric readings in writing prior to any FAA virtual workshops. They pointed out that the N_{ABOVE} Lmax metric is described by MIT avionics experts as a more appropriate measurement tool for noise effect analyses of proposed RNAV paths overflight noise impact than yearly average DNL for the reason that it focuses on the heightened noise effects of concentrated overflight paths by measuring the number of flights a day that have sound readings of at least 60 dB by day and 50dB—-undiluted by days without overflights. FAA **never did so.**

v. No Wake Turbulence Analyses

The FAA's Draft EA Section 2.2.2.2 contains a recitation of aircraft in-flight wake turbulence. Wake turbulence forms behind an aircraft as it passes through the air. The Draft EA uses many paragraphs to address **wake turbulence modeling** for the CSPR 4R and 4L paths. That analysis is directed to the safety need for lateral and vertical separation of approaching 4R RNAV path (and visual or ILS path) aircraft from the proposed 4L RNAV path.

Approach paths 4L/4R are so closely parallel paths that the wake of a plane on the 4R approach path can affect the wake of a plane on the 4L approach path and vice versa.

But the Draft EA contains **no** analysis of the import of wake turbulence for the proposed 4L RNAV and its likely noise effects due to reduced aircraft separation and therefore increased overflight frequency —that is to say reduced time between aircraft overflying residents on a hyper-concentrated RNAV path by day and with its string of landing lights visible like bright beads stretching from Southwest sky for 15 miles by night.

FAA's ongoing efforts to reduce wake turbulence by "optimizing" the lateral and vertical spacing of aircraft will have the effect of enabling more planes to land each day on Runway 4L once it has an RNAV procedure, and enable "optimized" 4R arrivals spacing in relation to 4L aircraft as well. Yet FAA **denied** this in response to a direct question raised at the November 4, 2020 Massport Community Advisory Committee meeting at which FAA made a presentation about the 4L EA and Wake Turbulence stating: There will be no effect on 4L/4R capacity utilization.

However, FAA's own website contains this statement to the contrary:

From FAA website: Wake RECAT. Memphis Airport example 2012

"Last updated by FAA July 27, 2020"

> January 30–**Capacity at Memphis International Airport has increased significantly since the FAA revised wake turbulence separation standards.** Memphis Tower and TRACON were the first facilities to apply the new standards on Nov. 1, 2012.
>
> The re-categorization of separation standards (RECAT) resulted from **a decade of collaboration** between the FAA, DOT/Volpe National Transportation System Center, EUROCONTROL and the aviation industry. Experts in wake turbulence, and safety and risk analysis determined that **decreasing separation** between similar type aircraft i**s as safe, or safer than current** standards.…
>
> The FAA estimates a **more than 15 percent increase in capacity at Memphis as a result of RECAT.** Overall, the FAA can accommodate nine additional flights per hour using the new separation standards. Lower fuel consumption and fewer emissions are added benefits of this newly gained efficiency.
>
> The FAA plans to expand the new standards to other airports in 2013 and 2014, and estimates **an average capacity increase of 7 percent.** Capacity increases at each airport will depend on the mix of aircraft categories operating at that airport. For more information read the Safety Alert for Operators (SAFO) (PDF).

Will capacity utilization increase on Runway 4L arrivals by 7 percent (the average) or as much as in Memphis, 15 percent? What about 4R?

That 2012 statement by FAA was last updated only a few months ago and **remains current today**. For that reason, the Draft EA and FAA's presentation at the MCAC meeting on November 4, 2020 are materially incomplete, and contrary to FAA's wake turbulence re-categorization promotional statements and contrary to reality: an RNAV procedure on Runway 4L will bring more arrivals per hour on 4L and 4R.

vi. No Analysis of Deployed Landing Gear Noise Effects

Residents of Mattapan, Milton and Dorchester observe planes routinely overflying them on approach to Logan Airport with landing gear deployed miles **before** each plane passes over the Final Approach Fix (FAF), which for both 4L and 4R is 5 nautical miles from the airport, labeled MTTPN for Runway 4L and MILTT for Runway 4R. For readers, that is located at Cedar Grove (ironically not in Mattapan—perhaps CDRGR would be a better FAA acronym) and MILTT located at the Granite Ave entrance to the Expressway. (There are no markers at either location. It is all GPS coordinates now. The little white painted hut at MILTT was removed years ago.)

To be clear, **we recognize** that the timing of landing gear deployment is **determined at the discretion of the aircraft captain** subject to FAA's **only** requirement that it must be deployed at the FAF. In this section we are **not suggesting** that landing gear must be deployed no earlier than at the FAF. We speak only about noise effects here.

Residents routinely observe landing gear already deployed by overflying aircraft at significant distances from the FAF. Reports of routine observations on Randolph Ave (the numbering of which increases with distance from MTAPN and MILT of aircraft approaching from the Southwest) at locations numbered in the 1151 Randolph Ave range or further are numerous. That is a far distance from the FAFs. Every one of the aircraft listed in Subsection B-i above had its landing gear deployed when it was observed. Notably also, in 2010, a teenager who hid in the landing gear enclosure of the left wing of a Boeing 737 on approach from Charlotte, NC fell to his death in the Brierbrook Road Blue Hills neighborhood when the landing gear was deployed, several miles from the FAF. Aircraft overflying locations such as the Runway 4L Triangle formed by Beth Israel Hospital, St. Elizabeth's Church and Milton Academy, or the Milton Library are repeatedly observed with landing gear lowered.

When landing gear is deployed it accounts for 40% of total aircraft noise effect. This has been a concern to residents living under Runway 4L and 4R. For purposes of this Comment, we will leave aside landing gear deployment by propeller aircraft, and address that of jet aircraft. Nothing that follows is reflected in the Draft EA. We state that for these reasons.

In August 2020, after the FAA stated that it will proceed with this EA despite repeated reasoned requests to defer it, Milton's MCAC representative submitted the following FOIA request to the FAA and received this FAA response:

> The Federal Aviation Administration received your FOIA request dated July 14, 2020, to obtain the following information:
>
> **Request "Item 1.)** Data showing the **actual time, aircraft speed, and aircraft location when landing gear deployed by each aircraft that arrived on runway 4L, and the flight number, aircraft type and engine model."**
> **FAA Response: "**We conducted a search within the Air Traffic Organization, Mission Support Services, Eastern Service Center, Operations Support Group. **As a result, records you requested in Item 1 do not exist.**

The FAA has no data on when landing gear is deployed.

After determining that FAA has no landing gear deployment data at all, the representative submitted a FOIA request to review modeling inputs for the Runway 4L EA to determine what landing gear deployment assumptions it makes. There is no data or modeling information in the AEDT modeling about landing gear deployment.

Why is that alone a dispositive material methodological failure of this Draft EA?

Current professional studies report that landing gear accounts for about 40% of the total noise emitted by a long-range aircraft in approach conditions. And that it takes approximately 6 seconds to deploy landing gear. (See the references below.)

The FAA requires that an aircraft's landing gear is deployed as the plane passes by the FAF, located approximately 5 nautical miles from the threshold of the applicable runway, as stated above. That landing gear deployment requirement likely derives from FAA aircraft certification criteria by which each model of aircraft and its engine design is certified by means of measurement of noise as the aircraft passes by a certification point that the model assumes is at 1500 feet altitude. **That** is FAF altitude. On a 3 degree glide slope, that altitude places the aircraft 5 nautical miles from the runway threshold in the test modeling, the FAF.

However, as stated above, observation in the field indicates that aircraft on approach very often have lowered their landing gear after passing by the Initial Fix (IF), located 15 nautical miles from the airport threshold and miles before the FAF, not as the plane passes the FAF.

Lowered landing gear of long range aircraft approaching between the IF and FAF, contributing approximately 40% of total noise emitted by those long-range aircraft, is not accounted for in the FAA's noise model used in connection with its EAs. The FAA’s modeling assumes only that landing gear are lowered as planes pass by the certification location.

The FAA does not require pilots to report lowering of landing gear at the time they do so, nor does it restrict them from doing so, absent exigent circumstances, prior to the FAF. There is no model data to reflect the realities of when landing gear is actually lowered along the arrival path prior to the FAF, and the Draft EA noise modeling results are fatally flawed for that reason.

Noise from deployed landing gears at higher speeds (i.e., when the aircraft is between the IF and FAF) is not measured as part of an aircraft’s noise certification process and not incorporated into the AEDT noise model. Each aircraft's speed between the IF and the FAF, and the differential noise effect of higher speed at IF and thereafter, with landing gear deployed prior to FAF as the plane approaches is **not reflected in the FAA’s EA model.**

As mentioned above, lowering a landing gear takes only seconds (six seconds for an Airbus A320) and could be done promptly at the FAF.

The EA modeling does not include any record of the location of lowered landing gear and accompanying **flight speed** with gear lowered for each flight approaching. As residents witness,

when landing gear is being lowered the jet aircraft emits a loud whistling sound—which is highly audible and disturbing. Total noise jumps. They are correct (see below).

Consequently, the contribution to noise impacts of those numerous flights in that important unrecorded regard is not addressed all on the Draft EA. For that reason alone, it does not present the material effects of this proposed Runway 4L procedure and should be withdrawn.

In sum, the FAA's model does not track the material contributing grounds (i.e. observed landing gear noise source and effects) or give any proper consideration to the circumstances of lowered landing gear noise impacts on residents under the fight path between the IF and FAF.
Nor is the noise effect of lowered landing gear at higher aircraft speed between the IF and FAF given any proper consideration.

References:
ARC: JOURNAL OF AIRCRAFT Vol. 55, No. 6, November–December 2018

> During aircraft approach to landing, when engines are operating at low thrust, the noise from the landing gear and the wheel bay cavity contributes substantially and can often be a major contributor to the overall noise signature of modern aircraft. Specifically, of the total aircraft noise that radiated from the landing gear, it varies for short-range to long-range aircraft from 31 to 40%, which compares significantly when compared to that from the engine, which ranges from 38 to 42% [**4**]. Because landing gear is typically deployed at the 1500 ft altitude position on the 3 degree glide slope, radiated noise disturbs communities for many kilometers outside the airport boundary.
>
> > [Citation: footnote[4]: Manoha, E., Sanders, L., and De La Puente, F., "Landing Gear Noise Prediction: What Is the Best Method?" Proceedings of 19th CEAS-ASC Workshop on Broadband Noise of Rotors and Airframe, The Aeroacoustics Specialists Committee of the Council of European Aerospace Societies, La Rochelle, France, 2015.

EU ACARE (Advisory Council for Aviation Research in Europe):
In terms of noise impact for the residential areas surrounding airports, takeoff and landing are the most critical phases of the flight. While noise emissions at takeoff are mainly dominated by engines, contributions of all other noise sources are evenly balanced during landing.

For a typical long-range airplane during the approach phase, around 54% of the noise stems from the airframe. Out of these 54%, 76% originate from the landing gear alone (see Figure 2 and Figure 3).

In total, the landing gear accounts for about 40% of the total noise emissions of a long-range airplane in approach conditions.

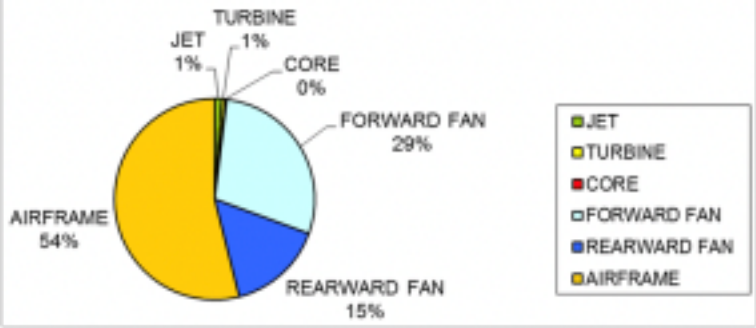


Figure 2 – Contribution to the overall noise emission of a typical long-range jet airplane during the landing phase

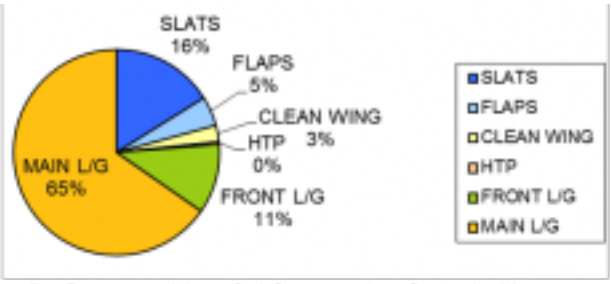


Figure 3 – Decomposition of airframe noise of a typical long-range jet airplane during the landing phase

6. NON-TRANSPARENCY, MATERIAL MISSTATEMENTS AND OMISSIONS, SELECTIVE DISCLOSURES, ARBITRARY REFUSALS TO DISCLOSE, SELF-CONTRADICTORY STATEMENTS

The proposed Logan Airport Runway 4L procedure would add a hyper-concentrated RNAV approach path to the narrow CSPR corridor already bordered by the adjacent extant Runway 4R RNAV path. To understand the fatally deficient recitations of the Draft EA and its associated virtual "workshops," one needs to understand the applicable disclosure standards to be applied, and FAA's disregard of them. That is needed for the following reason.

The Draft EA itself and FAA's associated virtual workshops process contain materially incomplete, selective, and misleading statements as well as material omissions and self-contradictory statements. But consider this: The FAA's practice of arbitrary and capricious scope and methodological analytics leads to, **but should not be confused with**, its **related, coincident** misstatements, and its refusals to disclose material information that would fill-in its material omissions, as well as its failures to address its selective statements' disclosure gaps, all of which creates fundamental objective non-transparency.

So much so that residents potentially impacted by the proposed 4L RNAV approach procedure are not provided with the full and accurately presented set of facts that are reasonably considered important to their understanding of the situation. That is a separate and fatal deficiency in the Draft EA and its process for a distinct set of legal reasons.

It is a fundamental tenet of public disclosure, whether under or federal administrative procedures or federal securities disclosure laws, that without full and complete disclosure of material information by the proponent (here the FAA) to the recipient (here affected residents and others) there can be no adequately informed process.

Material misstatements and omissions disable and invalidate a disclosure process such as an EA Draft publication process and its workshops, making it uninformed, prejudicial to recipients, and unlawful.

The standard of disclosure as applied to this EA process is **objective.** The FAA has no discretion to depart from it.

Information reasonably believed by an objective observer to be important to the recipient's understanding of the proposal must be disclosed in full and complete fashion to the recipients. That did not happen here.

What does that mean?

In some instances, there is an independent agency to whom the proponent provides its proposed draft statement of information so that the independent agency can review it and clear it for public distribution, or require it to be amended for completeness and accuracy.

Proposed offerings of investment securities to the public by companies (the proponents of the offering) must go through SEC (Securities and Exchange Commission) pre-clearance review of their information statements by SEC staff for objective completeness and accuracy before the draft information statements can be approved for use by potential investors (the public recipient people and investment firms such as brokerages and pension funds).

In addition, meetings with potential investors, referred to as "roadshows" are held to the **same** standards of accuracy and completeness as the associated information statements.

The FAA has no independent federal agency to which it submits it Draft EA prior to publication for review. But that does not change the objective standard: the FAA cannot provide an objectively incomplete or mis-informative information statement, or workshop assertions, and there is ultimately objective review available in a court of law.

But there is no prior review by an independent federal disclosure watch-dog like the SEC. Nevertheless, the FAA cannot self-police its own draft assessment information statement content.

And in the absence of a federal watch-dog, citizens need to raise their voice to point out disclosure defects in the information that are **objectively important**—that is, **where there is a substantial likelihood that a reasonable recipient would consider the misstated, incomplete or omitted information important in determining how the proposal affects him or her or their family or organization.**

As to information **missing, omitted** from the draft information statement, that requires a determination whether under all the circumstances, the omitted fact would have assumed actual significance in the determination of the recipient of how the proponent's proposal affects him or her or their family or organization.

Those are the well-considered principles for determining the material accuracy and completeness of a proponent's information statement and our Comments are made on that basis. We submit that the following Comments address objectively important information that is misstated, incomplete or omitted such that in all the circumstances the missing misstated information would have actual significance to readers' determination of how the proposed 4L RNAV procedure will affect them. It needs to be provided.

Our effort in that regard is presented here, drawing upon the previous Sections of these Comments. The following format draws upon extant federal watch-dog formats.

a. Purpose and Need for the Proposed Action

Section 1.2 of the Draft EA states that **safety and efficiency** are the purposes of the proposed Runway 4R RNAV procedure.

Safety: Section 2.1.1 states that safety under the No Action Alternative is jeopardized by the Circling Visual Approach to Runway 4L after conducting ILS Runway 15R approach to visual conditions.

Please address in Section 2.1.1 the additional facts not presented regarding the only three instances referenced in the past 5 years as safety concern examples:

***Each** of these three proffered scenarios occurred during **Visual Meteorological Conditions, not** during **IMC** for which FAA proposes the 4LRNAV to reduce late night arrival delays.*

***Each** of these involved **old** propeller (Cessna 414) and turboprop DeHavilland Dash 8 (turbo-propeller) **small** (8 passengers, 36 passengers, respectively) planes. **Neither** Cessna 414 (built in the 1970s and early 80s) nor DeHavilland Dash 8 (built in the 1980s) are identified by FAA as having any gps capability on board —necessary for RNAV if the 4LRNAV had been in place. In other words, the 4LRNAV does not address that safety issue at all.*

***Each** of the planes was in visual contact with the Logan runways, and the third scenario mentioned concerned excessive speed.*

Please explain why the Circling Visual Approach to Runway 4L was not discontinued if it is unsafe and in light of the last sentence Section 2.1.1. of the Draft EA which states that the "Circling Visual Approach to Runway 4L is used far less frequently than other visual approaches to runway 4L."

Please explain why FAA did not and cannot discontinue its use if it is unsafe, and in any event why should this be a reason to subject thousands of residents to the noise and pollution impacts

of a concentrated RNAV path rather than mitigating that safety anomaly itself?

*Please disclose why this safety concern was not addressed without the need for a Runway 4L RNAV procedure previously and explain why the Draft EA did not give equal prominence by including in Sections 1.2 and 2.1.1 the disclosure contained in its Appendix D page 8 that "based on consultation with Boston Consolidated Tracon (A90) personnel, **it is not expected** that [the ILS 15R circling transition to Runway 4L] will continue to be used."*

Please address whether Runway 4L and/or Runway 4R can be used in VMC for aircraft that have previously used the ILS 15R circling transition to Runway 4L.

Please amend Section 1.2 of the Draft EA to explain to readers concisely why, if the ILS 15R circling transition to Runway 4L will not continue to be used, and if Runway 4L and/or Runway 4R can be used in VMC for aircraft that have previously used the ILS 15R circling transition to Runway 4L, why there is a safety based need for the proposed 4L RNAV procedure. Please concisely explain it, and do so in Section 2.1.1 without placing any material aspect of the statement in an appendix. Specifically explain why only a proposed 4L RNAV procedure can address the safety need.

Efficiency: The Draft EA states in its Section 4.6.6 at page 4-16 that:

> the Proposed Action Alternative… **includes an additional 255 net arrivals** annually to the Airport that are enabled by **increased efficiency at the Airport during IMC.** An associated 255 net departures annually are also included in the noise analysis. Only two sets of flights were placed on the backbones representing the new procedure – **the 255 new net arrivals that will be able to take place in IMC** and cannot do so today, and the flights that were previously using the ILS 15R procedure and circling to a visual landing on Runway 4L. **All other flights in the No Action Alternative and the Proposed Action Alternative are identical.** The noise analysis therefore reflects changes in noise exposure **solely** due to the implementation of the RNAV (GPS) RWY 4L procedure when compared to the No Action Alternative. A more detailed explanation of all of these modeling assumptions and how they were arrived at is available in Appendix D.

Please note that readers of the foregoing statement need to page through literally scores of pages of centroids listings in Appendix C in order to find material information that completes the above statement. Please note that Appendix C can be placed last in the Draft EA materials so that the present Appendix D is more accessible.

Please revise Section 4.6.6 to state there the following (from Appendix D):

[A] net total of 255 annual operations will be added to traffic at the Airport to represent additional operations that would currently be canceled under the No Action Alternative. This will occur because the additional gain in efficiency attributable to the Proposed Action increases

the Airport's hourly Average Arrival Rate (AAR) and allows additional arrival operations. These operations comprise:
** An **additional 359 annual arrivals to runway 4L,** representing flights that are no longer canceled or delayed due to additional runway throughput available with the RNAV (GPS) RWY 4L IAP.*
****** *A **reduction of 104 annual arrivals to Runway 4R**, representing flights that can now use Runway 4L earlier in the day due to increased throughput and no longer need to wait to use Runway 4R.*

Please note that the above stated calculation of how a total of 255 net added annual operations will be added to traffic at the airport deserves greater prominence in the Draft EA and should be concisely stated in Section 1 of a revised Draft EA.

Please confirm** that **nowhere in the Draft EA does FAA commit that the proposed 4L RNAV path will only be used in IMF conditions to provide a net total of 255 added annual operations at the airport.

If FAA commits to that, state so explicitly and prominently in Section 1 of a revised EA Draft.

If FAA does not commit to that, state so explicitly and prominently in Section 1 of a revised EA Draft.

Please see our related Comments below regarding the need to inform readers of the Draft EA of the noise and other health impacts of each of the foregoing eventualities:

—use of the 4L RNAV procedure only in IMF conditions limited to a net total of 255 added annual operations with no other changes in 4L operations; or

—use beyond IMC conditions and/or other permitted changes in operations such as, but not limited to, elective FMS use of gps guidance or cleared or advisory use of the proposed Runway 4L RNAV procedure in VMC.

In either event, prominent disclosure in plain English with accompanying graphics and table are required in order to provide objectively complete and accurate information.

b. Scope

The Draft EA, at various places states that FAA is using a **single GSA.**
That GSA is stated to be comprise an area of **1,173 square miles** (Section 3.2.1) **for "purposes of assessing overall air traffic compatibility" across all 427,000 Logan Airport flight movements** (Section 3.4.6.2), and **27,080 census blocks** (Section 3.4.6.1) that include **1,054,982 people** (Table 3.4-5)

Please state prominently in one paragraph those combined GSA characteristics.

Please note prominently and explicitly that use of a single 1,173 GSA does not bifurcate

the scope of the Assessment between (A) overall Logan air traffic compatibility, versus (B) focused evaluations of the proposed 4L RNAV path's noise and other environmental effects on residents under that path and impacts on residents already under the nearby 4R RNAV path.

Please revise the Draft EA to explain to its readers that the FAA is permitted to supplement its analyses to better focus on noise and other environmental impacts by using a supplemental study area for those purposes. Here we refer to such a supplemental study area as the Approach Study (ASA).

Please provide supplement the Draft EA to include disclosure focused on the objectively material combined impacts of aircraft traversing the proposed 4L and extant 4R RNAV approach paths (and their Visual and ILS counterparts) on residents, schools, hospitals, churches and other noise sensitive areas under and adjacent to those CSPR paths.

Please address in a revised Draft EA that noise perception depends critically on time and place, coincidence of event (overflight) and proximity.

Please acknowledge and address in a revised Draft EA that locations such as Wellesley, Hopkinton, Watertown, Medford, Newton, Kingston or Sherborn may be relevant to overall Logan air traffic compatibility assessment, but that they are ***not*** *near the 4L/4R conical CSPS paths corridor, nor near planes passing along those approach paths from its point of origin 15 nautical miles Southwest of Logan, where the 4L/4R paths are only 4500 feet apart, to touch down where the 4L/4R runways are 1500 feet apart.*

Please describe in a revised Draft EA the material information concerning the noise and health impacts of planes passing along those CSPR approach paths from its point of origin 15 nautical miles Southwest of Logan, where the 4L/4R paths are only 4500 feet apart, to touch down where the 4L/4R runways are 1500 feet apart.

In doing so, please take describe two important aircraft noise dynamics that the Draft EA omits:

(1) *that planes proceeding along the 4L path create so-called* ***noise contours*** *that reach to the west and east side of each plane; and*
(2) *by doing so, they extend 4L noise to the west of the path and 4R noise to its east; but also by extending 4L noise to the east toward the 4R path, and 4R noise to the west toward the 4L path create a* ***noise overlap*** *between the 4L and 4R paths increasing noise occurrence, intensity and duration in that between-CSPRs overflight area.*

Please describe the approximate area of the ASA, from its origin 15 nautical miles Southwest of Logan, where the 4L/4R paths themselves are only 4500 feet apart, to touch down where the 4L/4R runways are 1500 feet apart and also including its respective noise contour areas to the west and east of the 4L/4R CSPR approach corridor.

c. Methodology

Permitted Use: The Draft EA does not define and state what the permitted use of the proposed 4L RNAV will be. **So that readers of it can understand what the expected use of the proposed Runway 4L RNAV:**

Please state in an early and prominent section of a revised Draft EA:

(1) *the total number of arrival aircraft that will use the proposed 4L RNAV procedure in its first, second and fifth years of operation;*

(2) *the percentage of Runway 4L arrivals that will use the proposed Runway 4L RNAV procedure in its first, second and fifth years of operation;*

(3) *the total number of arrival jet aircraft that will use the proposed 4L RNAV procedure in its first, second and fifth years of operation;*

(4) *the percentage of Runway 4L jet aircraft arrivals that will use the proposed Runway 4L RNAV procedure in its first, second and fifth years of operation.*

So that readers of the Draft EA can understand the assumptions, if any, underlying the statements to be made upon revision of the Draft EA regarding each of the foregoing 4 total and percentage numbers, ***state any important assumptions made for each, and in doing so:***

(a) state separately what assumptions are made about permitted use, including IMC use, VMC use, and use under any meteorological conditions of FMS-guided use of the Runway 4L RNAV path by aircraft other than the 359 arrival aircraft that the Draft EA presently references;

(b) state clearly what assumption is made, if any, about the impact of ***Covid-19 pandemic*** *induced uncertainties and flight curtailments in the statements to be made upon revision of the Draft EA regarding each of the foregoing 4 total and percentage numbers;*

(c) if uncertainty due to ***Covid-19 pandemic circumstances have any influence on the degree of the FAA's confidence in the statements to be made*** *upon revision of the Draft EA regarding each of the foregoing 4 total and percentage numbers, state in the revised Draft EA what that influence is; and*

(d) state why the FAA is proceeding with this EA at this time when Runway 4L and Runway 4L arrivals are curtailed to a small fraction of baseline year operations and explain fully in the revised Draft EA why the FAA refused to postpone this EA process as have been repeatedly requested by the Runway 4L and 4R communities' federal, state and municipal officials if Covid-19 circumstances materially affect FAA's ability to answer matters (1) through (4) with confidence.

The Draft EA nowhere states that the 4L RNAV procedure will not be used in VMC conditions.

The Draft EA does not contain a Table such as that contained in its 2016 IER in which there, **Table 8** states "Estimated Annual Aircraft Use of RNAV Approaches" to Runway 4L, including "Cleared IMC", Cleared VMC, "Advisory VMC" and Total annual aircraft use of 4L RNAV

approaches. That table listed **10,860** Cleared and Advisory annual aircraft use of the 4L RNAV path assuming JetBlue aircraft to be included in its analysis.

Please revise the Draft EA to state whether the Runway 4L RNAV Procedure will be used in any way by any aircraft in VMC Conditions.

Please revise the Draft EA to add a table stating "Estimated Annual Aircraft Use of RNAV Approaches" to Runway 4L, including "Cleared IMC", Cleared VMC, "Advisory VMC" and Total annual aircraft use of 4L RNAV approaches so that readers can understand those matters.

Please similarly revise the Draft EA to state whether JetBlue aircraft will or will not use the proposed 4L RNAV path in VMC conditions and state separately whether any other airline's aircraft included in that table will be permitted to use the proposed Runway 4L RNAV path on a cleared or advisory basis and in what condition or conditions.

Please revise the Draft EA to specifically state what VMC approach path or paths Jet Blue aircraft will be permitted to fly in VMC conditions and whether in light of the fact that JetBlue aircraft previously used the Special RVNP procedure, JetBlue air craft will be permitted to use their FMS to build a path and glide slope. If so, state whether or not the FAA will conduct an EA regarding such procedure in advance of its use.

Noise Emissions Data: In light of the statement at page 32 of Appendix A to the Draft EA that:

> **The INM standard assumption is that, when aircraft are flying an approach below 3,000 feet, they utilize ILS guidance.** While true for the vast majority of air carrier approaches at major U.S. airports, it is **not true for approaches to Logan Runway 4L.** While a non-standard profile could have been developed and used, **that was not done because reliable data for the associated noise emissions for each aircraft involved were not available.**

Please describe how, if at all, the FAA's AEDT model developed a non-standard profile for approaches to Runway 4L for the associated noise emissions for each aircraft; and if any reliable data were used, state what it is and how it was obtained.

Please describe whether FAA used reliable data for the associated noise emissions for each aircraft based on any data specific to noise emissions over the ASA's arrivals corridor and its adjacent east/west noise contour areas.

Please explain in the Draft EA why no noise monitors were placed, on a supplemental basis in the ASA to measure the associated noise emissions for each aircraft involved in the proposed 4L RNAV procedure, and/or as a check on the reliability of AEDT modeling.

If the answer to the foregoing request is that field work use of a monitor for such purpose is not or would not be "practical" explain why, and if cost is a factor, state that cost per monitor, and state whether FAA has the ability to use a portable monitor that can test different locations at different times.

Soot and Particulates Emissions Data: The Draft EA nowhere states that the FAA did any sample testing of aircraft engine emission particulates in the CSPR proposed 4L-extant-4R RNAV corridor and that corridor's aprons to the west and east sides of it.
Closely Spaced Parallel Runway approach corridors pose a rare and exacerbated coincidence of hyper-concentrated noise and emissions.

That reality renders sole use of GSA of 1,173 square miles arbitrary and capricious as evidenced by the Draft EA's reliance on its assertion that 13 times as many people reside outside the CSPR corridor and its contour aprons as under it. That 13-to-1 assertion bears no reasonable relationship to the hyper-concentrated ASA CSPR realities that are not extant in the areas outside of the ASA. It attempts to dilute noise and pollutant impact analysis by ignoring hyper-concentration.

Please revise the Draft EA to include measurement and health expert evaluation for the proposed Runway 4L RNAV/extant Runway 4R RNAV CSPR ASA of: aircraft engine emission particulate residue; relevant resident interviews; house clapboard and other surfaces' aircraft engine emission soot accumulation sampling; and other measurements as directed by health expertise.

FMS: As quoted in Section 2A of these Comments on March 4, 2020, in response to a direct written question, the FAA Regional Administrator stated:

> When pilots are aware that they will be getting a Visual Approach to Runway 4L, they have the ability in their FMS to build a course and artificial glide slope if they choose. It would all depend on workload and Company requirements.

The Draft EA does not negate that statement and leaves a reader uninformed on this fundamentally important question: will pilots be able, depending on workload and their Company requirements, to build a course and artificial glide slope if they choose?

Please revise the Draft EA to state yes or no to that question. Please concisely and clearly explain the import of that answer for Runway 4L approach path location and concentration in the revised Draft EA. Include in that statement whether such an FMS-built path can become a concentrated repeatedly used flight path used by that Company's flight operations. If so, state what prior FAA review, if any, will occur and what prior advisory information will be provided to residents of the ASA, including how much advance public notice will be given, and by what means, by the FAA of any proposed FMS-built path.

DNL: *Please revise the Draft EA to state the following clearly, prominently and explicitly in* ***bold type****:*

DNL is based on the yearly average annual day whether or not the applicable runway is in use.

For that reason, DNL dilutes the noise impacts of days in use by including days without use, thereby reducing overflights' noise impact on days in use by including in the DNL the noise impact calculation days when there are no aircraft overflying, thereby adding zero overflight noise impact for each such day and reducing annual noise impact analysis accordingly.

Please add to that revised Draft EA statement that due to its logarithmic nature, A-weighted decibel readings of 50dB, 60dB and 70dB scale as follows:
*60dB is perceived as **twice** as loud as 50dB;*
*70dB is perceived a **four** times as loud as 50dB and **twice** as loud as 60dB.*

Please include in that statement that FAA's AEDT model for the baseline year indicates that more than 150 aircraft overflew Milton Hill residents on an average annual day during the baseline year exposing residents to 60 dB or higher.

*Please include in that statement that Logan Runways 4L and 4R approach procedures are **in use 34% of the year** according to the public Massport website. Therefore, and accordingly the significant extent that DNL dilutes days of noise effect can be determined by multiplying the DNL metric's yearly annual average days stated factor by the inverse of the yearly percentage of **days in use.***

*Please state that for that reason when Runways 4R and 4L were in use during the baseline year **in-use noise exposure** based on FAA's AEDT model indicates that Milton Hill residents were overflown by more than 450 flights with noise exposure above the 60dB level.*

*Please add that according to the FAA's AEDT model on the average annual day (including when Runways 4L and 4R were **not** in use Milton Hill residents were subject to more than 50 minutes of noise above the 60dB level, and therefore on days when Runways 4L and 4R were in use in the baseline year those residents were subjected on average each and every in-use day to more than two hours and half hours of noise above the 60dB level as planes overflew in consecutive order at times 50 or 60 seconds apart during peak hours of the day and night.*

Please add that corresponding figures under the 4L Triangle, comprised of Beth Israel Hospital, St Elizabeth's Church and Milton Academy, are 66 flights per 365 days and therefore actually more than 190 flights a day creating above 60dB sound level when 4L is in use.

Resident dB readings of jet engine overflights during this Comment Period regularly exceed **70dB** as referenced in Section 5B-1 of these Comments.

Please revise the Draft EA to include field work measurements of peak dB readings for jet aircraft on approach to Runway 4L and 4R, during a time period following these Comments and prior to the revised EA, listing the time of each siting, flight number, departure airport, and location of the aircraft at the time of siting.

For reasons stated below, include whether the aircraft's landing gear were observed to be deployed during the siting for each aircraft.

Supplemental Metrics and Noise Contours: The Draft EA contained no supplemental metrics and no noise contours despite repeated written requests of the undersigned federal, state and local elected officials and despite the need for them. Without such metrics, the use of the stated GSA without supplement of an ASA combined with use only of the yearly average day DNL metric without supplemental noise metrics and noise contours renders this Draft EA's noise methodology as applied arbitrary and capricious as well as materially incomplete and misleading.

Please revise the Draft EA to include this statement (highlighted in bold and prominently placed within its noise analysis section):

"FAA's Order 1050.1f regarding Environmental Impacts, Section 11.4 states:
DNL analysis may optionally be supplemented on a case-by-case basis to characterize specific noise impacts**. Because of the diversity of situations, the variety of supplemental metrics available, and the limitations of individual supplemental metrics, the FICON report concluded that the use of supplemental metrics to analyze noise should remain **at the discretion of individual agencies.

Supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise sensitive locations or situations and to assist in the public's understanding of the noise impact.** The selection of supplemental analyses will depend upon the circumstances of each particular project. In some cases, public understanding may be improved with a more complete narrative description of the noise events contributing to the DNL **contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL. There is no single supplemental methodology that is preferable in all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study."

In light of the hyper-concentrated noise impacts in the ASA of the CSPR proposed Runway 4L RNAV approach procedure and its extant 4R RNAV counterpart:

Please revise the Draft EA to disclose the Nabove 50 flights peak period Lmax 60dB Day and 50dB Night sound level readings for baseline year and the first, second and fifth years of operation of the Runway 4L procedure and the Nabove 50 flights peak period Lmax 60dB Day and 50dB Night sound level readings for baseline year and separately for those same first, second and fifth years of corresponding operation of the extant Runway 4R RNAV procedure.

Please revise the Draft EA to point out the Nabove Lmax metric is described by MIT avionics experts as a more appropriate measurement tool for noise effect analyses of proposed RNAV paths overflight noise impact than yearly average DNL for the reason that it focuses on the heightened noise effects of concentrated overflight paths by measuring the number of flights a day that have sound readings of at least 60 by day and 50dB—-undiluted by days without overflights.

Wake Turbulence Capacity Impact: The Draft EA uses many paragraphs to address wake turbulence modeling for the CSPR 4R and 4L paths. That analysis is directed to the safety need

for lateral and vertical separation of approaching 4R RNAV path (and visual or ILS path) aircraft from the proposed 4L RNAV path.

Approach paths 4L/4R are so closely parallel paths that the wake of a plane on the 4R approach path can affect the wake of a plane on the 4L approach path and vice versa. But the Draft EA contains **no** analysis of the import of wake turbulence for the proposed 4L RNAV and its likely noise effects due to reduced aircraft separation and therefore increased overflight frequency — that is to say reduced time between aircraft overflying residents on a hyper-concentrated RNAV path by day and with its string of landing lights visible like bright beads stretching from Southwest sky for 15 miles by night.

Please revise Section 2.2.2.2 of the Draft EA to disclose that FAA's ongoing efforts to reduce wake turbulence by "optimizing" the lateral and vertical spacing of aircraft ***will have the effect of enabling more planes to land each day on Runway 4L once it has an RNAV procedure, and enable "optimized" 4R arrivals spacing in relation to 4L aircraft as well.*** *State the estimated increase in arrivals on Runways 4L and 4R resulting from the proposed Runway 4L RNAV procedure and wake turbulence optimization of Runway 4L and 4R approach path flights.*

*Please disclose that due to its Wake Turbulence Re-Categorization initiatives, FAA currently estimates "****an average capacity increase of 7 percent****" at applicable US airports, and achieved a* ***15 percent increase in capacity at Memphis airport****, and:*

Please state the estimated percentage increase in arrivals on Runways 4L and 4R respectively and combined resulting from the proposed Runway 4L RNAV procedure and wake turbulence optimization of Runway 4L and 4R approach path flights.

Landing Gear Deployment: The Draft EA contains no mention of noise impacts of deployed landing gear on approach path noise.

Please revise the Draft EA to disclose that professional studies show that landing gear, when deployed, comprises 40% of total aircraft noise.

Please revise the Draft EA to disclose that FAA's AEDT noise model has no "data showing the actual time, aircraft speed, and aircraft location when landing gear deployed by each aircraft that arrived on runway 4L, and the flight number, aircraft type and engine model."

Please revise the Draft EA to disclose that for those reasons the AEDT model inputs to any noise metric are not reflective of landing gear deployment noise impacts, and for that reason are likely to materially understate aircraft approach noise impacts within the ASA as applied in this matter.

Please revise the Draft EA to state that residents' of the ASA routinely report that sighting Runway 4L and 4R approach path aircraft with lowered landing gear miles to the Southwest of the MTAPN and MILTT final fix location and mark on the loudness of such noise.

Please revise the Draft EA to include any FAA field work it does to confirm this.

d. Process

The Draft EA needs to be candid and accurate regarding the Draft EA process.

Please revise the Draft EA to disclose that the proposed 4L RNAV procedure has been highly controversial since inception and remains so. That is a fact and not for FAA to claim otherwise.

Please revise the Draft EA to state that the MCAC repeatedly requested that this EA process be deferred and candidly state in the text of the revised Draft EA each of the Covid-19 related reasons stated in those requests. State also the actual low number of Runway 4L jet arrivals per month beginning with April 2020 (e.g. only 7 jet arrivals that month).

Please disclose that at September meetings with elected officials the FAA's Regional Administrator stated that those officials could submit technical questions for FAA to answer regarding the proposed 4L RNAV and that the officials did so, in writing asking for written response from the FAA before the FAA's two virtual workshops.

Please disclose that the FAA never answered those questions in writing at any time, nor during either workshop other than drawing a single line onto its visualization representing the Runway 4R RNAV path which it otherwise ignored. Please include by quotation each of the elected officials' written questions by adding a new prominent Section 1.1 to the initial pages of the Draft EA.

We reiterate that the Virtual Workshops are held to the same disclosure standard as the Draft EA and that elected officials' questions were not responded to there or otherwise addressed.

Please disclose the written questions that were submitted by email or text or other means for each virtual workshop.

Please revise the Draft EA to provide a new appendix with a transcription of any question on which an FAA representative, consultant or pilot remarked and all remarks stated upon that respective question.

Please revise the Draft EA to state that the FAA's technical workshop team members, including its consultants, from Washington D.C. Virginia, Dallas and Raleigh-Durham never visited Mattapan, Milton and Dorchester in connection with this EA, and, because of COVID-19 restrictions, never conducted an in-person session with residents, which is the standard process for a Draft EA in non-Covid-19 times. Residents were unable to have their own in person meetings on this matter due to Covid-19 restrictions.

7. ALTERNATIVES

First, as burdensome as the present CSPR Runway 4L/4R approach paths are upon the ASA residents, the No Action Alternatives bad as it is, is superior to the proposed Runway 4L RNAV procedure.

Looking at other alternatives than the present situation, residents have been clear for years that FAA needs to develop ways to restore the dispersion of aircraft that preceded its hyper-concentration of 70,000+ arrivals per year onto a thin sky-railed trapezoid 4500 feet wide at its Southwest start and 1500 feet wide at touchdown 15 nautical miles from that starting point.

The FAA held a virtual meeting among elected officials upon the publication of the Draft EA. The FAA did not record the meeting. At that meeting, Congressman Lynch, State Senator Timilty and State Representative Driscoll each stated that FAA itself needs to use its expertise to develop a set of dispersed procedures that will restore equitable sharing of the noise and pollution burdens. That can be done incrementally, but must start now, rather than this analytically arbitrary and unsupportable Runway 4L RNAV proposal, opaque in its timing, its presentation, its prospective intensity of use, and its actual impacts.

How? The FAA can and should:

1) Start to build a family of RNAV paths that begin to replicate
prior Runway 4L/4R arrival path dispersion.

2) Use RNP technology (available on more than 60% of major airline aircraft) to create curved approaches, including over water, to begin to replicate prior Runway 4L/4R arrival path dispersion.

3) Use the very technology that FAA has been vague about inflicting on residents living under the Runway 4L path noise contours that is: FMS built paths and glide slopes with intelligent FAA field-work-generated, resident-involved governance procedures, to begin to replicate prior Runway 4L/4R dispersion.

4) Stop trying to force a highly controversial and highly burdensome procedure onto a highly problematic situation; and start engaging in real community involvement, not remote roadshow indifference.

Otherwise, this watch-dog will never rest from its vigilant opposition to authoritarian actions taken with consent of the people.
John Kennedy famously said in June 1963,

> There are some who say that communism is the wave of the future. **Let them come to Berlin.**

> And there are some who say, in Europe and elsewhere, we can work with the Communists. **Let them come to Berlin.**
>
> And there are even a few who say that it is true that communism is an evil system, but it permits us to make economic progress. **Let them come to Berlin.**

We say:

There are some who say that RNAV is the wave of the future. **Let them come to Milton, Mattapan and Dorchester.**

And there are some who say, in airline headquarters and airfreight offices, we can work with the FAA. **Let them come to Milton, Mattapan and Dorchester.**

And there are even a few who say that it is true that the FAA is a closed system, but permits us to make progress. **Let them come to Milton, Mattapan and Dorchester.**

The FAA-residents dynamic needs to change.

8. THE EA FAILS TO INCLUDE CONSIDERATION OF ENVIRONMENTAL JUSTICE IMPACTS

The Draft EA fails to assess and present environmental justice ("EJ") impacts and alternatives, as required by FAA Order 1050.1F, which sets forth the FAA's policies and procedures for compliance with the National Environmental Policy Act. The Draft EA also fails to comply with Executive Order 12898, "Federal Actions to Address EJ in Minority and Low-Income Populations," by providing (1) meaningful public involvement by minority and low-income populations and (2) analysis, including demographic analysis, which identifies and addresses potential impacts on those populations that may be disproportionately high and adverse.

Milton borders the Boston neighborhoods of Mattapan to the west and Dorchester to the north. Mattapan, Dorchester and the western part of Milton have large minority populations and low-income populations. The FAA is aware that the geographic area overflown by arrivals to the closely-spaced parallel runways 4L and 4R includes communities with populations exceeding the poverty threshold and/or the minority threshold. See Attachment 4 to the FAA's March 20, 2017 Air Traffic Initial Environmental Review (relating to the reconstruction of Runway 4R-22L, the temporary implementation of an RNAV approach to runway 4L, and a "side-step" maneuver to the RNAV approach for runway 4R). The communities shown in said Attachment 4 include Mattapan, Dorchester and parts of Milton.

Both FAA Order 1050.1F, Paragraph 2-5.2.b, and Executive Order 12898 require the FAA to provide an opportunity for meaningful public involvement by minority and low-income populations on proposed actions. For the reasons stated above in Section 2.B, residents of Milton, Mattapan and Dorchester have had no meaningful opportunity to provide input on the FAA's analysis of the impacts of the Draft EA. Since the onset of the COVID-19 pandemic in February, 2020, residents of Mattapan, Dorchester and parts of Milton have dealt with a high

incidence of COVID-related illness and economic disruption. Social gatherings have been restricted, preventing residents from meeting to confer about the Draft EA. Many residents do not have internet access, and public libraries have been either closed or limited to short visits.

In Section 3.4.7 of the Draft EA, the FAA noted that its environmental analysis of the proposed 4L RNAV must consider "the potential of the Proposed Action Alternative to cause disproportionate and adverse effects on low-income or minority populations. In the event that adverse impacts are determined, applicable mitigations will be explored in order to avoid or minimize disproportionate impacts."

In Section 4.7 of the Draft EA, the FAA concluded that:

> Under the Proposed Action Alternative, there are no Census block groups of low-income concern that would exceed any applicable thresholds of significance for noise impact or air quality.
>
> While the FAA does not define a threshold of significance associated with visual impacts, visual impacts associated with the 255 net new flights, as well as the flights that previously flew the ILS RWY 15R and transitioned visually to a landing on Runway 4L that now use the RNAV (GPS) RWY 4L approach in the Proposed Action, occur over an area with a high concentration of EJ Census block groups.
>
> Additionally, it should be noted that the small increase in CO, associated with the 255 new flights, while marginal in the context of total Airport CO, emissions, does similarly occur over an area with a high concentration of EJ Census block groups. However, these new arrival operations comprise less than 0.5% of all arrivals at the Airport and given the high volume of flights currently using the Airport, any potential impacts are likely to be small and not detectable to most of the overflown population. As such, no persons of low income or minority populations are expected to experience disproportionately high and adverse effects. Accordingly, under the Proposed Action Alternative there would be no significant EJ impacts.

The EJ analysis underlying the Draft EA considers only the "255 net new flights" that the FAA anticipates will use the Runway 4L RNAV in the first year of its operation (i.e., 359 minus 104 that otherwise would have arrived to Runway 4R). By taking into account only 255 flights, the FAA's EJ analysis is incomplete and inadequate. The FAA failed to consider the 4L JetBlue special path that flew over Milton, Mattapan and Dorchester and where those aircraft will fly in VMC and IMC if the 4L RNAV procedure is adopted, using Jet Blue, FMS or otherwise. Moreover, the Draft EA contains no data or images of flight path tracks over Mattapan in the baseline comparison year.

At the October 23, 2020 workshop, an FAA representative stated that the 4L JetBlue special path has not been used since 2014 and will be cancelled if the proposed 4L RNAV is implemented. However, on many other occasions, FAA representatives have stated that any airline that has an

arrival path programmed into its flight management system can request and obtain permission to use such path. Therefore, the former 4L JetBlue special path, even if it were to be officially "cancelled", can be expected to remain in use by JetBlue and potentially other airlines. Yet, the Draft EA provides no information or analysis concerning the number of flights that would continue to utilize the 4L JetBlue special path (or use the 4L RNAV in lieu of it). Therefore, residents of Mattapan, Dorchester and the western part of Milton and their respective elected officials have no way of knowing what impact this "back door" use of the 4L JetBlue special path will have upon them.

At the FAA's October 28, 2020 workshop, a Milton official asked the following question: "***What is the expected number of jet aircraft that will pass over Mattapan in the first year of operation after the proposed 4L RNAV path is implemented?***" The FAA could not answer this question. An FAA representative merely repeated that 359 flights are expected to use the 4L RNAV in its first year of operation. That fact is irrelevant to the question because the proposed 4L RNAV path does not fly over Mattapan. The Draft EA should have analyzed the impacts, including EJ impacts, of the 4L JetBlue special path as well as the anticipated use of the 4L RNAV. Not doing so is another fatal flaw in this Draft EA.

9. THE FAA FAILS TO IDENTIFY, EXAMINE AND PURSUE AVAILABLE MITIGATION MEASURES

The Draft EA fails to identify, examine, and pursue available mitigation measures. This requirement under a complete NEPA analysis requires an agency to evaluate measures to mitigate the impacts of the proposed/chosen alternative.

On page 85 of the Draft EA, Appendix X, the FAA provides the total of its mitigation analysis, as set forth below:

> VII. Mitigation Are there measures, which can be implemented that might mitigate any of the potential impacts, i.e., GPS/FMS plans, navaids, etc.?
> __Yes X_ No __ N/A
> **There are no impacts that require mitigation per FAA environmental requirements.**

This is the sum total of the FAA's effort to address mitigation. Of course, because of the scope of the EA, and how it defined the impacted areas, diluting the impacts on certain residents, then of course the FAA didn't identify any impacts which required mitigation.

We note the following additional points:

There is no need to mitigate the assorted 15R Circling procedure safety risk--that VMC procedure has been discontinued.

The 4L RNAV IMC procedure won't mitigate a withdrawn VMC procedure that had no substantial safety need documented by this Draft EA.

As noted in Section 6 of these Comments, the Draft EA at Section 2.1.1 states that safety under the No Action Alternative is jeopardized by the Circling Visual Approach to Runway 4L after conducting an ILS Runway 15R approach to visual conditions.

Yet, this safety concern was not addressed prior to the asserted the need for a Runway 4L RNAV procedure previously and the Draft EA at Appendix D page 8 states that "based on consultation with Boston Consolidated Tracon (A90) personnel, **it is not expected that [the ILS 15R circling transition to Runway 4L] will continue to be used."**

Given that the ILS 15R circling transition to Runway 4L will not continue to be used, and if Runway 4L and/or Runway 4R can be used in VMC for aircraft that have previously used the ILS 15R circling transition to Runway 4L, there is no safety based need for the proposed 4L RNAV procedure.

10. RESIDENT COMPLAINTS, COMMENTS AND OBSERVATIONS AND THE CONCLUSION TO THESE COMMENTS

a. Complaint Data from Residents

There is, by this date, mountains of data from Milton residents which indicate that the noise from airplanes in Milton is clearly heard above background noise in both commercial and residential areas, and the impact of that noise is increasing as new RNAVs are implemented. Residents of Milton filed only 102 noise complaints in 2012 21,796 noise complaints were filed in 2016, and 41,475 noise complaints were filed in 2019, which demonstrates the serious impact of these RNAVs on the overflown communities, particularly the cumulative impact from increasing the number of flights. The Logan Noise Abatement Office received 2,331 total noise complaints in 2012, rising to 38,046 total noise complaints in 2016, and X in 2019. Arlington, Belmont, Cambridge, Cohasset, Dorchester, Hull, Hyde Park, Jamaica Plain, Medford, Nahant, Roslindale, Roxbury and Somerville have all filed an escalating number of noise complaints since 2012. The courts have recognized that noise complaints, in and of themselves, are substantial evidence of a noise problem, even absent corroborating data showing a DNL above 65. Helicopter Association International, Inc. v. FAA, 722 F.3d 430, 435-37 (D.C. Cir. 2013).

Specifically in Milton, between January 1, 2012 and October 31, 2020, residents of the Town filed 155,554 noise complaints, with complaint volumes rising steadily at a compound annual growth rate of 135% until 2020 when the pandemic significantly curtailed air traffic globally. (Note: Logan Airport is operating at 40% of 2019 volume through October 31, 2020, after rising to more than 109% of 2019 volume in January and February, and falling to only 16% of the 2019 volume in May).

Total number of noise complaints filed per year:

2020 - 23,654
2019 - 41,475
2018 - 34,902
2017 - 23,940

2016 - 21,796
2015 - 4,991
2014 - 2,669
2013 - 1,925
2012 - 102

In addition to filing noise complaints with Massport, residents shared their personal stories with the Milton Select Board, MCAC representative, and Airplane Noise Advisory Committee (ANAC) on multiple occasions. These complaints encompassed the following topics:

- Loss of sleep due to constant air traffic throughout the night
- Loss of the enjoyment of their homes due to constant air traffic from morning until night, with flights often spaced approximately 1 minute apart
- Irritability and fatigue due to constant noise
- Inability to work from home due to constant noise
- Inability to enjoy their yards or have family over due to constant noise
- Needing to leave the house for hours or days at a time to find peace and quiet
- Needing to move the family out of the house and into a hotel the night before exams in order to get a full night's sleep
- Soot deposits on doors and windowsills from flights overhead
- Selling the family home and moving out of Milton to find a quieter place to live

b. Conclusion

It is patently clear that the proposed 4L RNAV procedure is not needed for asserted avoidance of 15R Circling procedure safety reasons that have been shelved in any event, that it is not stated or assured to be limited to net 255 operations a year on IMC only, that it is not based on realistic IMC days a year, that its stated efficiency reasons are not valid because they hide its wake re-categorization capacity increase intentions, and so it is clear that it would only compound CSPR underlying residents' suffering by further hyper-concentrating combined overflights.

FAA cannot and does not state projected cleared and advisory VMC and IMC uses in the first, second or fifth years of operation of the proposed Runway 4L RNAV procedure.
Present Covid-19 conditions would render any such assertion deeply suspect.

FAA's DNL metric has no reasoned application to these CSPR corridor's combined hyper-targeted in-use noise and particulate conditions, and FAA has offered no supplemental noise metrics, nor does FAA's AEDT model even record or reflect the impacts of routine aircraft landing gear deployment over the ASA far before the FAF, which upon deployment comprises 40% of total aircraft noise. Nor did FAA do any field work.

In sum, the proposed Runway 4L RNAV procedure justifications are arbitrary and capricious as applied here, and the FAA's assertions concerning the merits of the 4L RNAV procedure as applied here are characterized by materially misleading misstatements and omissions. We submit that the entire Draft EA should be stamped **D**ead oN Arriva**L.**

Therefore, the undersigned federal, state and municipal elected officials, respectfully request that this terribly flawed, arbitrary, and capricious EA process should be cancelled and rescinded, and the Draft EA withdrawn.

Respectfully submitted by:

Congressman Stephen F. Lynch
Massachusetts Senator Walter F. Timilty
Massachusetts Representative William J. Driscoll, Jr.
Boston City Councilor Andrea J. Campbell
Boston City Councilor Ricardo Arroyo
Milton Select Board

APPENDIX

Federal Aviation Administration

MCAC Jan 9th 2020 Milton Q&As

Question 1- Why was the 4L JetBlue RNAV procedure suspended from September 15, 2019 through March 14, 2020?
Answer - Currently the procedure is NOTAM'ed out of service.
Boston Terminal Radar Approach Control (TRACON) had not been using the procedure for years since the FAA agreed to conduct an EA.

FAA NOTAMS PAGE LINK

IFDC 9/4972 (KBOS A0045/19) BOS SPECIAL EDWARD LAWERENCE LOGAN INTL, BOSTON, MA. SPECIAL RNAV VISUAL RWY 04L ORIG . PROC NOT AUTH. 1909251500-2003142359

* The 4L JetBlue RNAV procedure will be analyzed only in the cumulative impacts section of the EA. Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Question 2- Will the baseline for noise comparison be conditions pre-4L JetBlue path?
Answer- The baseline covers the period between November 1, 2018 and October 31, 2019. This time-frame was chosen because it is representative of current operations and was largely free of factors that could affect normal air traffic operations, such as runway and airfield construction or runway closures.

*The EA scope only involves the proposed BOS RNAV (GPS) RWY 4L instrument approach procedure.

Question 3-Will noise metrics other than DNL be used, specifically: A-weighted Lmax; LEQ and SEL?
Answer- FAA does not intend to use any supplemental metrics at this time. Order 1050.1F specifies that supplemental noise metrics can be considered for determining impact in noise sensitive areas, as well as in areas where a quiet setting is considered a recognized purpose and attribute. If any of these areas are identified after the determination of the area of potential impact (APE), FAA will work with those whose jurisdiction these areas fall under to determine if supplemental noise analysis should be done, and what supplemental metrics should be used for this analysis.

Question 4- Will the EA noise model use gear-down at 10 miles from final approach fix (FAF) in addition to at FAF?
Answer- The Aviation Environmental Design Tool (AEDT) models aircraft using individual flight profiles for each specific aircraft type, and the exact point of the approach where landing gear is extended differs by profile. For the proposed RNAV (GPS) RWY 4L approach, the FAF is 5 miles from the Runway 4L threshold and the intermediate fix (IF) is 10.3 miles from the Runway 4L threshold. Profiles for most aircraft types frequenting BOS would be expected to extend landing gear at a point between the IF and the FAF – between approximately 5 and 10 miles away from the Runway 4L threshold.

Question 5- Will total CSPR noise impacts be taken into account inclusive of the other RNAV 4L and 4R path realities?
Answer- Assuming CSPR means closely-spaced parallel runways, all traffic at the airport will be captured for the purposes of determining noise impacts.

Question 6- Will the noise impacts of 27 and 33L departures on the same 4L JetBlue RNAV residents be included in the EA?
Answer- Noise impacts of all BOS departures will be included in the EA cumulatively.

Question 7- Will economic justice criteria be assessed, given Blue Hill Ave, Mattapan, and Dorchester overflights?
Answer- Yes. As specified by FAA Order 1050.1F, environmental justice should be considered in order to determine potential disproportionate impacts on minority- or low-income communities. These impacts can come from potentially any impact category, and all relevant impact categories will be evaluated for potential environmental justice issues.

DAlessandro, Colleen (FAA) Colleen.DAlessandro@faa.govHide

To **tdprojects@aol.com** tdprojects@aol.com

BOS 4L & 4R IER Appendices... (12.1 MB)

Tom – I've attached the attachments here in a single file, but the file is quite large, so I am not sure it will go through the email system. I am working to get them posted. Let me know if the file didn't come through on this message. If it didn't, I'll let you know when it is posted.

Regards, Colleen

From: tdprojects@aol.com <tdprojects@aol.com>
Sent: Thursday, February 6, 2020 6:38 AM
To: DAlessandro, Colleen (FAA) <Colleen.DAlessandro@faa.gov>
Subject: Re: Questions regarding the Logan 4L EA process

1. Colleen,
2. Thanks very much. Here is the link. This has the IER summary text that refers to to the 4 Attachments, but does not have the Attachments. Tom
3. Air Traffic Initial Environmental Review (I E R) for Boston Consolidated TRACON (A90) / Boston Logan Airport (BOS) R NAV (G P S) R W Y 4 L Procedure and BOS R NAV (G P S) R W Y 4 R Amendment, 20 March 2017 (PDF)www.faa.gov/airports/new_england/environmental/media/IER-BOS-RNAV-GPS-RWY-4L-4R-Amendment-20170327.pdf

Apr 12, 2017 - … (IER)
Boston Consolidated TRACON (A90) / Boston Logan Airport (BOS) RNAV (GPS) RWY 4L Procedure and BOS RNAV (GPS) RWY 4R Amendment

…

Facility/Office: **Boston Consolidated TRACON A90** Date: March 20, 2017 Prepared by: Clifford R. Baird, Support Manager … Facility/Office: **Boston Consolidated TRACON** Telephone: (603) 594-5516 Specific Area of Responsibility: Air Traffic …

-----Original Message-----
From: DAlessandro, Colleen (FAA) <Colleen.DAlessandro@faa.gov>
To: tdprojects@aol.com <tdprojects@aol.com>
Sent: Wed, Feb 5, 2020 8:43 pm
Subject: Re: Questions regarding the Logan 4L EA process
Hi Tom, sure, let me investigate. Can you send me the link where you found the IER? Ultimately I would like to post the attachments in the same place so everyone can access them.

Thanks, Colleen
Sent from my iPhone

On Feb 5, 2020, at 6:07 PM, "tdprojects@aol.com" <tdprojects@aol.com> wrote:

Ms D'Alessandro,
Thanks very much for the responses. Matt Romero forwarded them to me. I distributed them to the Town of Milton elected officials and interested residents and will be discussing them with those folks.
Here is a related question:
I have not been able to locate on the FAA website, or elsewhere, the attachments to the 2017 IER concerning runway 4L RNAV GPS and 4R. The IER that is on the FAA website is attached to this email. You'll see that the IER
itself refers to the following 4 Attachments (listed below). Could you please ask the applicable FAA person to send me each of these?
I and residents here wish to read them as background in connection with/preparation for our 4L EA review.
Thank you again for the responses to my questions.
Best Regards,
Tom Dougherty

Attachment 1: FAA, Flight Standards Service (AFS), *RNAV (GPS) RWY 4L and RNAV (GPS) RWY 4R Prototype Approach Plates*, February 2017.
Attachment 2: Proposed Action TARGETS AEDT Noise Modeling Report
Attachment 3: RNAV (GPS) RWY 4L and RNAV (GPS) RWY 4R Flight Tracks
Attachment 4: Proposed Action Environmental Justice

-----Original Message-----

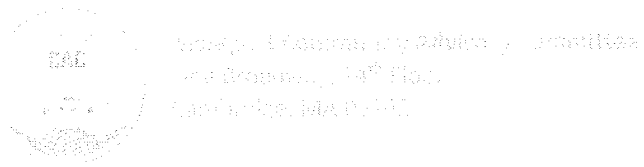
-----Original Message-----
From: DAlessandro, Colleen (FAA) <Colleen.DAlessandro@faa.gov>
To: tdprojects@aol.com <tdprojects@aol.com>
Sent: Wed, Mar 4, 2020 1:51 pm
Subject: RE: Logan 4L EA waypoints

Hi Tom – sorry for taking so long to get back to you. I wanted to ensure we had all the right FAA POCs weigh in on your questions. Below are the answers.

1) which (if any) of these are the IF and FAF for the path that the EA will address;
· ***FAA Response: LVRON (IF), MTAPN (FAF)***
2) what the five letter IF and FAF labels are for the path that the EA will address, if different;
· ***FAA Response: See response to question 1***
3) the respective latitude and longitude of the IF and FAF to be used; and
· ***FAA Response: LVRON (IF) 42°11'55.240" N/ 071°05'58.920" W; MTAPN (FAF) 42°16'51.53" N/ 071°03'20.40" W***
4) if a visual path is to be retained, its IF and FAF labels and the respective latitude and longitude of its IF and FAF.
· ***FAA Response: Currently, Runway 4L does not have an instrument approach procedure associated with it. We use a Visual Approach (no course or vertical guidance). When weather goes below a 3000ft. ceiling we can make an instrument approach to Runway 4R and circle to Runway 4L. We also can conduct an ILS approach to Runway 15R and when the pilot reports BOS in sight, the Tower clears the aircraft for a Visual Approach over the harbor to Runway 4L. The 15R situation is only good down to weather conditions of 1500ft. ceiling and 5 miles visibility. When circling from Runway 4R we can use about an 800ft. ceiling and 2 miles visibility. When pilots are aware that they will be getting a Visual Approach to Runway 4L, they have the ability in their FMS to build a course and artificial glide slope if they choose. It would all depend on workload and Company requirements. Other than the proposed RNAV RWY 4L, there are no other procedures planned. The old JetBlue visual procedure is no longer authorized.***

Regards,
Colleen

Colleen D'Alessandro, ANE-1
New England Regional Administrator



May 18, 2020

(VIA ELECTRONIC MAIL)
Colleen D'Alessandro, ANE-1, FAA New England Regional Administrator
Colleen.Dalessandro@faa.gov

RE: Proposed Runway 4L Environmental Assessment Timeline and Process

Dear Ms. D'Alessandro:

Thank you for your continued engagement with the Massport Community Advisory Committee (MCAC), as well as the participation of your fellow colleagues at the Federal Aviation Administration (FAA), especially during these extraordinary circumstances. Due to this unprecedented health crisis and the resulting changes in standard business practices across the nation, I have been asked to request that FAA delay an upcoming environmental review process.

As you presented at our MCAC General Meeting in January, the FAA had tentatively scheduled the Environmental Assessment (EA) process for the proposed Boston Logan International (Logan) Airport Runway 4 Left (4L) Approach Procedure for the third quarter of calendar year 2020. This proposed process included a draft EA 30-day public comment period during which the FAA would hold two public workshops. Furthermore, FAA staff proposed to hold a public workshop separate from and prior to the formal public workshops following an MCAC General Meeting. We discussed the issue with our membership and determined that while a workshop prior to the formal EA comment period was important, a more appropriate venue would be within the communities and neighborhoods affected by this proposed change. The MCAC membership also expressed reservations at the FAA's proposed use of a workshop format versus a formal public hearing and questioned the ability of commenters to effect any meaningful change on a proposed procedure. In response to a request for an update on the timeline for the 4L EA process, you indicated on May 6, 2020 that the FAA is tentatively planning to begin the 30-day public comment period on September 21, 2020.

On May 14, 2020, the MCAC's Milton representative, Tom Dougherty, brought forward the request to delay the 4L EA process citing three main reasons:

First, the neighborhoods impacted by the proposed 4L RNAV flight path include two densely populated areas – Mattapan (82% African American) and Dorchester (43% African American) – where residents are dealing with high incidence of COVID-19 health and economic impacts. There are many working in the area – healthcare workers at Carney Hospital, a COVID-19 dedicated facility, mass transit employees – that are essential employees working to provide basic services to the region. Other families are dealing with unemployment, small business loss, food stamp needs, and home childcare issues. These families need to focus on these urgent needs.

Second, due to the COVID-19 restrictions related to group gatherings and urging social distancing, residents have been unable to have their own preparatory meetings among affected community members to address and ready collective thought on the EA issues.

Massport Community Advisory Committee
One Broadway, 14th Floor
Cambridge, MA 02142

The 4L EA has previously been deferred by FAA for several years for other reasons. The need for safety review of a 4L RNAV track is less at present given the very few flights occurring. For those reasons, awaiting a time when such preparatory meetings can occur would be advisable.

Third, residents likely will not be in a position to do the field work and analyses for which they have engaged an independent consultant because so few planes are flying now. That field work and analyses will aim to compare actual flight activity with FAA model assumptions over the course of the 4L arrival path.

As you and I have discussed over email, there are serious equity concerns over the use of virtual meetings with residents in lieu of the originally planned in-person public meetings. Virtual meetings are especially problematic for low income communities whose residents may lack the resources to participate; moreover, there is ongoing debate about whether a virtual meeting would be an adequate substitute for a community gathering such as this.

At a virtual meeting on May 14, 2020, the MCAC Executive Committee directed me to request that the FAA defer the 4L EA process until the later of either January 1, 2021 or two months after flights to and from Logan Airport resume with volume and frequency similar to what can be expected in future years.

As previously mentioned, at the January 2020 MCAC meeting, we requested that the FAA meet with 4L EA affected residents prior to the comment period to provide information (such as the EA Documentation itself and Volpe Center or other analyses) and to allow residents to provide input before FAA finalizes and submits its EA for public comment. We reiterate that request, adding now that considering the COVID-19 guidelines, such pre-comment period meetings should occur at the start of the deferred schedule as proposed above.

We appreciate the FAA's commitment to conduct a full Environmental Assessment process after the initial 2015 public meeting on this proposal and its recognition that conducting this enhanced review process properly and thoroughly will provide a meaningful benefit to the affected communities, businesses, and residents.

I look forward to working with you on this matter moving forward.

Sincerely,

Matthew A. Romero
Massport CAC Executive Director

cc: David Carlon, MCAC Chairman
Thomas Dougherty, MCAC Milton Representative and Treasurer
Flavio Leo, Massport Director of Aviation Planning and Strategy
Anthony Gallagher, Massport Community Relations

U.S. Department
of Transportation
Federal Aviation Administration

Office of the Regional Administrator
New England Region

1200 District Avenue
Burlington, MA 01803-5299

June 11, 2020

Mr. Matthew A. Romero, Executive Director
Massport Community Advisory Committee
One Broadway, 14th Floor
Cambridge, MA 02142

Dear Mr. Romero:

Thank you for your May 18, 2020, correspondence on behalf of the Massport Community Advisory Committee (MCAC). This letter is in response to MCAC's request to delay the environmental review process for the proposed General Edward Lawrence Logan International (BOS) Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 4 Left (4L) [RNAV (GPS) RWY 4L] approach procedure. The proposed action will establish an instrument approach procedure to Runway 4L, where no instrument approach procedure is currently published, that will enhance both safety and efficiency at BOS and in the National Airspace System (NAS). As a result of the expected benefits and with recent proven success conducting virtual public workshops for other initiatives, the FAA intends to proceed with the project as currently scheduled.

The implementation of the RNAV (GPS) RWY 4L will enhance safety specifically by:

1) Allowing air traffic control to more precisely monitor each aircraft both vertically and laterally along the arrival track;
2) Enable air traffic control and operators to conduct instrument approaches to Runway 4L when Runway 4 Right (R) is not available and;
3) Significantly reduce the need to use the Instrument Landing System (ILS) approach to Runway 15R with a transition to a Visual Approach (VA) to Runway 4L (ILS 15R VA 4L) procedure.

The implementation of the RNAV (GPS) RWY 4L will enhance efficiency by improving aircraft arrival rates and will reduce pushing delays incurred during the daytime into the nighttime, particularly during inclement weather.

The FAA first notified the community of its intent to conduct an Environmental Assessment (EA) in 2015 as a result of input from community members and elected officials regarding the level of environmental review planned for the project. After securing funding and procuring contract support, the FAA notified MCAC that the EA process had begun in October 2019. Continuing the EA for the proposed RNAV (GPS) RWY 4L during this time is important to increasing flight safety, and the FAA has determined that realizing the procedure's benefits are an operational necessity for BOS and the NAS. The FAA will follow its normal process to

analyze the impacts of the proposed procedure by using historical radar track data to model the baseline conditions and compare them to the expected changes from the proposed action. Since historical data will be used, the reduced operations caused by COVID-19 will not inhibit the FAA's ability to assess the environmental impacts of the procedure. Furthermore, BOS operations have increased the first week of June to a total of 2,215 operations from a total of 1,709 during the first week of May, representing an increase of nearly 30 percent; a trend we expect to continue further justifying the need for the procedure.

The FAA's environmental analysis will first be shared with the public in the form of a Draft EA, at which time the public can submit any comments or concerns they might have about the FAA's analysis. Ensuring the appropriate level of public notification about a Draft EA through interactive virtual public workshops has proven successful in achieving the desired outreach with the communities potentially affected by proposed changes to instrument flight procedures. Recently, as part of the EA process for the South Florida Metroplex project, virtual public workshops, attended by tens of thousands, were held via Zoom, Facebook, Twitter and YouTube to notify the public of the Draft EA. During the live virtual public workshops, participants could submit their questions through any one of the platforms, using a mobile device or PC, or submit inquiries through the dedicated website created for the virtual events. Community members have access to the site as a source for more information related to the Draft EA, access to recorded live question and answer sessions, and may submit comments through the site during the open comment period. Establishing this new technology-enabled environment and offering multiple opportunities for community members to attend events increased the quality and rigor of our communications and allowed the FAA to reach a much broader audience. In addition, copies of the Draft EA will be available at local libraries, which are expected to be open prior to the release of the Draft EA. These libraries allow public access to the Internet, where the public can view the website for the project and submit comments. If libraries do not open by the time the Draft EA is released, then physical copies can be mailed to residents upon request.

We appreciate MCAC sharing potential accessibility concerns with the FAA. We look forward to working with MCAC members and local community leaders to identify other accommodations that may help address specific community challenges. While the FAA understands that the COVID-19 pandemic has caused massive disruptions within communities across the world, we must continue our mission to improve safety and enhance efficiency in the National Airspace System. As a result, we intend to proceed with the project as scheduled with virtual public workshops conducted in early fall 2020.

Sincerely,

COLLEEN M D'ALESSANDRO

Digitally signed by COLLEEN M D'ALESSANDRO
Date: 2020.06.11 11:09:02 -04'00'

Colleen D'Alessandro
Regional Administrator, New England Region

247 Adams Street Milton MA 02186

July 14, 2020

(VIA ELECTRONIC MAIL)
Colleen D'Alessandro, ANE-1, FAA New England Regional Administrator
Colleen.Dalessandro@faa.gov

RE: Proposed Runway 4L Environmental Assessment Follow Up Response

Dear Ms. D'Alessandro:

I am writing on behalf of residents of Milton, Mattapan and Dorchester, with the support of the Milton Select Board and Boston City Councilor Ms Andrea Campbell, to respond to your letter of June 11, 2020 to the MCAC. The MCAC is submitting a letter to you also.

The FAA's June 11, 2020 reply, rejecting the MCAC's request that the Logan runway 4L EA be deferred, should be reversed because it is prejudicial to the residents of Milton, Mattapan, Dorchester and other neighborhoods overflown by the referenced RNAV flight path for these reasons:

1. The FAA bases its decision in part on the statement that BOS operations increased in the first week of June by 30% over May's operations. The FAA reply does not acknowledge that due to the CDC's Covid-19 advisory that air travel should be limited, there actually were only **5** landings on runway 4L during the entire month of May 2020. (In 2019, there were 907 arrivals in May.) Then yesterday, July 13, Massport reported that there were only **3** landings on runway 4L during the entire month of June 2020. Meanwhile, airlines have announced reductions in planned August service given the continuing Covid-19 contagion. There is no runway-utilization-related reason to resume the EA now.

2. Given the paucity of 4L arrivals due to the CDC's Covid-19 advisory, there is also no safety reason to proceed with the runway 4L arrival path EA now as contrasted with the **7 prior years** since 2013 during which FAA

announced that it would proceed with the EA but did not do so. Nor does the FAA's June 11, 2020 reply reference any recent 15R or 4L incursion or other safety instances at all.

3. The FAA's letter ignores the important predicate need for residents to have their own meetings to discuss the proposed 4L arrivals RNAV path prior to and during the EA public comment period. A large group of residents cannot readily meet in person due to Covid-19 restrictions, and many residents have no access to internet/virtual meeting capability. FAA's reply ignores residents' need for their own gatherings. Furthermore, libraries are closed. Residents without internet access cannot attend virtual-meetings among their own neighbors, nor attend a FAA virtual workshop. The FAA had no response to this very question at its recent Tampa virtual-meeting, nor did its reply to the MCAC letter address how such residents could participate meaningfully now.

4. The recent FAA virtual meetings regarding an EA for the South Central Florida Metroplex Airports confirmed added concerns that virtual meetings are no substitute for in person meetings by residents with the FAA.

There are 2.877 million residents of the Tampa metro area. The FAA's attendance record for the two days of virtual meetings indicated that 31 registered residents attended, not including Matthew Romero and myself, whom you allowed to attend as observers.

The virtual-meetings for the Tampa Airport residents provided no means for residents to engage other than by submitting a written question--without the ability to follow-up or ask for further explanation or detail, and provided no ability for participants to drill-down on summary explanations of FAA policy. In a word, it is not a fully interactive dynamic, as in-person meetings can be.

Our further concerns about the virtual-meeting modality include the following issues: FAA's voluminous EA and Appendices were not explained by slide run-through or other means during the Tampa virtual-meeting. Instead, FAA participants' terminology often equated FAA "measurements" with modeling outputs, suggesting to residents that noise data from more than a hundred thousand locations had been gathered rather than modeled. The means of measurement versus modeling and the methods of noise calculation were not clarified for residents. The FAA puts a lot of resources and effort into its virtual meetings. However, the lack of interactive dialog renders the

FAA's virtual-meeting modality not a "workshop" but rather a friendly, recital equivalent to the FAA's required flight attendant advisory content, given to minimally-participatory passengers on aircraft, or here a small number of registered live-attendee residents.

5. The FAA's Draft EA's importance, length, embedded terminologies, and assumptions render it complex. Residents will need time to read, absorb and discuss it among themselves before the public comment period begins to run. For that reason, the Draft EA should be made publicly available at least 30 days before any EA public comment period. Furthermore, any online resources like those presented at the South Central Florida Metroplex virtual meetings (e.g. interactive maps, video representations flight paths, etc.) should be made available less than 30 days prior to the commencement of the public comment period. Additionally, given economic justice concerns, please include in the information provided 30 days prior to the public comment period current census block data for the neighborhoods within the proposed 4L RNAV path's IF-to-touchdown sound contours, including race and ethnicity data as well as mean, median and modal incomes. For inclusiveness and comparison, please include separately such data for the neighborhoods overflown by all 4L visual and FMS paths as well as neighborhoods overflown by the parallel 4R path.

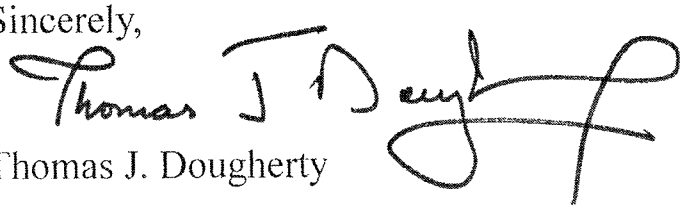
As the MCAC's May 18, 2020 letter requested, 30 days prior to commencement of the public comment period should be at least 30 days before the later of January 1, 2021, or two months after flights to and from Logan Airport resume with volume and frequency similar to what can be expected in future years. We hereby reiterate that request and timing.

We also request that when the public comment period occurs, it be extended to 90 days to permit added opportunity for resident questions, input and interaction among themselves and with the FAA.

6. Lastly, without the frequency of flights that occur absent the Covid-19 restrictions, it is impossible for residents to do the field work regarding 4L arrivals that they plan to do. The FAA's reply ignored this factor. It is a sine qua non for residents.

Thank you for your attention to this matter.

Sincerely,



Thomas J. Dougherty

cc Town of Milton Select Board
and Boston City Councilor Ms Andrea Campbell

Massport Community Advisory Committee
One Harborside Drive
Cambridge, MA 02128

July 14, 2020

(VIA ELECTRONIC MAIL)
Colleen D'Alessandro, ANE-1, FAA New England Regional Administrator
Colleen.Dalessandro@faa.gov

RE: Proposed Runway 4L Environmental Assessment Follow Up Procedural Request

Dear Ms. D'Alessandro:

Thank you for your response to my letter dated May 18, 2020 regarding the Environmental Assessment (EA) process and timeline for the proposed Boston Logan International (Logan) Airport Runway 4 Left (4L) Approach Procedure. I would also like to thank you and FAA staff for attending our virtual Massport Community Advisory Committee (MCAC) meeting on June 11, 2020 to discuss this matter further. We were disappointed that FAA denied our request to delay the timing of the 4L EA process considering the ongoing COVID-19 pandemic and the effect upon the communities, neighborhoods, and residents that would be impacted by this process. We urge FAA to reconsider our request for the delay as stated in my initial letter. Barring that, however, I would put forward some follow up requests for the Proposed 4L EA process.

As discussed at our virtual meeting, the current FAA process would release the draft EA upon the commencement of the public comment period, during which the public workshops would be conducted. We request that the Draft Proposed 4L EA be provided to members of the public no less than 30 days prior to the commencement of the public comment period. Furthermore, any online resources like those presented at the Southern Florida Metroplex virtual workshop (e.g. interactive maps, video representations of flight paths, etc.) should also be made available no less than 30 days prior to the commencement of the public comment period. This would ensure adequate time to review the Draft EA and supporting materials prior to both the workshops and the public comment period.

Your letter indicated that the FAA plans to conduct the 4L EA public workshops virtually using a format and platforms like the recent South Florida Metroplex project virtual workshops. Having attended these virtual workshops, we maintain our belief that the virtual workshop format is not an adequate substitute for in person meetings. In particular, we remain concerned for impacted communities and neighborhoods with higher proportions of residents lacking sufficient resources and availability to attend virtual meetings in a meaningful way. Adequate access to information and the ability for impacted residents to participate is critical for any environmental review process. To address these concerns, we request that the comment period be extended from the currently planned 30 days to 90 days to allow for greater participation and engagement by the impacted communities and their residents given the anticipated use of the virtual workshops format.

Massport Community Advisory Coalition
One Broadway, 14th Floor
Cambridge, MA 02142

We appreciate the FAA's participation with the MCAC on matters relating to Boston Logan International Airport, and especially for your further consideration of our requests as it relates to the 4L EA. Ensuring the impacted communities, neighborhoods, and residents are fully briefed and aware of the proposed procedure and can participate and comment in a meaningful way is our primary concern on this issue.

We are also aware that some of the communities and neighborhoods plan to commit both time and monetary resources to further evaluate and study this matter and its effect on their residents. We expect they will submit follow up questions directly to FAA as well as specific recommendations or requests regarding the 4L EA process. We respectfully request that these questions and requests be fully considered and responded to by FAA as needed.

I look forward to working with you on this matter moving forward.

Sincerely,

Matthew A. Romero
Massport CAC Executive Director

cc: David Carlon, MCAC Chairman
Thomas Dougherty, MCAC Milton Representative and Treasurer
Flavio Leo, Massport Director of Aviation Planning and Strategy
Anthony Gallagher, Massport Community Relations

U.S. Department
of Transportation
Federal Aviation Administration

Office of the Regional Administrator
New England Region

1200 District Avenue
Burlington, MA 01803-5299

August 7, 2020

Mr. Matthew A. Romero, Executive Director
Massport Community Advisory Committee
One Broadway, 14th Floor
Cambridge, MA 02142

Dear Mr. Romero:

Thank you for your July 14, 2020 correspondence regarding the proposed Runway (RWY) 4 Left (L) environmental assessment (EA) follow-up procedural request on behalf of the Massport Community Advisory Committee (MCAC).

In your letter, you requested the Federal Aviation Administration (FAA) delay the environmental review process for the proposed General Edward Lawrence Logan International Airport (BOS) Area Navigation (RNAV) Global Positioning System (GPS) RWY 4L [RNAV (GPS) RWY 4L] approach procedure. However, the FAA intends to proceed with the project as scheduled, with virtual public workshops to be conducted in the fall 2020 for the reasons cited in our June 11, 2020 letter.

You also requested to extend the comment period from 30 days to 90 days. After careful consideration, we have determined that we are able to extend the comment period for an additional 30 days for a total of 60 days. The draft proposed 4L EA will be provided to members of the public no less than 30 days prior to the commencement of the virtual public workshop. The draft EA and supporting information will be made available in the fall 2020. The public and stakeholders may begin to provide comments at that time for 60 days.

Finally, you requested that the FAA provide adequate access to information and the ability for impacted residents to participate in the environmental review process. The FAA plans to host two virtual workshops in the fall 2020, which will be recorded and available on YouTube and the FAA website. The proposed format for these workshops will be similar to the Southern Florida Metroplex. The FAA will consider all comments and respond to them in the final decision document. The final decision is expected to be made in the spring 2021.

We appreciate the continuing dialog with MCAC on this subject and look forward to working with MCAC members and local community leaders to identify other accommodations that may help address specific community challenges. While the FAA understands that the COVID-19 public health emergency has caused massive disruptions within communities across the world, we must continue our mission to improve safety and enhance efficiency in the National Airspace System.

Sincerely,

COLLEEN M D'ALESSANDRO

Digitally signed by COLLEEN M D'ALESSANDRO
Date: 2020.08.10 09:55:55 -04'00'

Colleen M. D'Alessandro
Regional Administrator, New England Region

CC: Thomas Dougherty

Office of State Representative William J. Driscoll, Jr.
7th Norfolk District
Commonwealth of Massachusetts

September 29, 2020

Colleen D'Alessandro, ANE-1
New England Regional Administrator
Federal Aviation Administration (FAA)
VIA EMAIL: Colleen.DAlessandro@faa.gov

RE: Logan Runway 4L Environmental Assessment Technical Questions

Dear Administrator D'Alessandro:

This letter follows up on the September 21, 2020 Zoom session regarding the Logan Runway 4L Environmental Assessment (EA). During the session, it was stated that elected officials may submit technical questions.

I respectfully request that the following technical questions be addressed. The FAA's inclusion of these matters in its presentations will help residents understand and evaluate the draft EA.

Thank you for your attention to this aspect of the EA effort.

The technical questions follow.

Best Regards,

William J. Driscoll, Jr.
State Representative, 7th Norfolk District

1) **JetBlue Special Procedure**: Will aircraft with the 4L JetBlue Special procedure recorded in their FMS be allowed to request to use that procedure and to use it, or will the FAA state that the 4L RNAV will be the only arrival path to Runway 4L? With regard to that question, please also state:
   A. The number of arrivals in the baseline year on the 4L JetBlue Special procedure path.
   B. The number of arrival aircraft expected to use the 4L RNAV path in its first year of use that otherwise would been expected to use the JetBlue Special procedure.
   C. The number of arrival aircraft, if any, expected to use the JetBlue Special procedure in the first year of implementation of the 4L RNAV path.

2) **4R RNAV Path on Noise Visualization**: Please promptly provide a version of the Noise Visualization on the same FAA website that adds the position of the Runway 4R RNAV path so that users can find answers to these questions: their location in relation to each of the closely spaced parallel runways; the combined noise impact on their location of the proposed RNAV 4L procedure and the existing 4R RNAV procedure; and compare that noise impact level to noise impact levels at other locations.

3) **Baseline Year:** Please provide a version of the Noise Visualization as in question 2) for the baseline year. With regard to the baseline year, please also explain:
   A. On what basis has the FAA used November 1, 2018 through October 31, 2019 as the baseline year rather than the baseline year used in its March 23, 2016 IER, contained in Appendix A to the draft EA?
   B. Is it correct that the Draft EA does not measure the noise impacts of consolidating the JetBlue Special procedure with the 4L Visual path into a single RNAV path?
   C. Is it correct that the Draft EA only measures the noise impact of incremental 4L arrivals due to implementation of RNAV capability to use 4L in IMC circumstances?
   D. Is it therefore correct that this EA will not address whether implementation of the 4L RNAV procedure will have significant or reportable noise impacts under Order 1050.1f?

4) **Noise Contours:** For the present Noise Visualization and the added 4R RNAV path noise visualizations in questions 2 and 3, please provide graphically the noise contours of aircraft traveling those paths so that residents can answer the questions: how far from each side of the parallel paths aircraft noise extends; and what overlaps exist of noise from the two parallel 4L and 4R paths.

5) **Nabove 25 Lmax peak day 60/50 [day/night] noise measurement:** On the present FAA Noise Visualization and on each of the two additional versions requested above, or in another format, show what the Nabove 25 Lmax peak day 60/50 [day/night] noise measurements at locations affected solely by the 4L and 4R RNAV paths are respectively, as well as at those locations affected by both paths' noise, using different a color for each of these three indications, or other differentiating means.

   For the Nabove 25 Lmax peak day 60/50 [day/night] noise measurement method, we refer you to Data-Driven Flight Procedure Simulation and Noise Analysis in a Large-Scale Air Transportation System June 2018 by Luke L. Jensen and R. John Hansman "The analysis in this thesis uses an annoyance threshold of 25 daily flights at the 60dB (day) and 50dB (night) level." (Section 2.8, page 59 referencing Logan runway 4L/4R arrivals) https://pdfs.semanticscholar.org/6322/03aecd9d9a55136e8bc9e105b1e4bbc8ca93.pdf

cc: Michael D. Dennehy, Milton Town Administrator
Milton Town Select Board
Thomas J. Dougherty, Massachusetts Port Authority Community Advisory Committee (MCAC)
Milton Airplane Noise Advisory Committee (ANAC)

Office of State Representative William J. Driscoll, Jr.

7th Norfolk District

Commonwealth of Massachusetts

October 7, 2020

Colleen D'Alessandro, ANE-1
New England Regional Administrator
Federal Aviation Administration (FAA)
VIA EMAIL: Colleen.DAlessandro@faa.gov

RE: Additional Technical Questions – Logan Runway 4L Environmental Assessment

Dear Administrator D'Alessandro:

This letter is intended to serve as a supplement to my previous letter dated 09/29/2020 regarding technical questions on the Draft Environmental Assessment (EA). Upon further reflection and consideration of the ongoing Draft EA, I would like to submit three new questions in addition to those previously submitted.

The new technical questions are highlighted in yellow below and are **1(D)**, **3(D)** and **6**.

I appreciate your time and attention to this aspect of the EA effort.

Best Regards,

William J. Driscoll, Jr.
State Representative, 7th Norfolk District

1) **Jet Blue Special Procedure**: Will aircraft with the 4L JetBlue Special procedure recorded in their FMS be allowed to request to use that procedure and to use it, or will the FAA state that the 4L RNAV will be the only arrival path to Runway 4L? With regard to that question, please also state:
   A. The number of arrivals in the baseline year on the 4L JetBlue Special procedure path;
   B. The number of arrival aircraft expected to use the 4L RNAV path in its first year of use that otherwise would have been expected to use the JetBlue Special procedure;
   C. The number of arrival aircraft, if any, expected to use the JetBlue Special procedure in the first year of implementation of the 4L RNAV path; and
   D. Provide a table, in format similar to Table 8 of Appendix A to the Draft EA, stating the Estimated Annual Use of 4L RNAV Approaches, on the basis of Cleared IMC, Cleared VMC, Advisory IMC (if any), Advisory VMC and Total Cleared + Advisory use while including, listed separately, as in Table 8, any RVFP use, in each of those categories.

2) **4R RNAV Path on Noise Visualization**: Please promptly provide a version of the Noise Visualization on the same FAA website that adds the position of the Runway 4R RNAV path so that users can find answers to these questions: their location in relation to each of the closely spaced parallel runways; the combined noise impact on their location of the proposed RNAV 4L procedure and the existing 4R RNAV procedure; and compare that noise impact level to noise impact levels at other locations.

3) **Baseline Year**: Please provide a version of the Noise Visualization as in question 2) for the baseline year. With regard to the baseline year, please also explain:
   A. On what basis has the FAA used November 1 2018 through October 31, 2019 as the baseline year rather than the baseline year used in its March 23, 2016 IER, contained in Appendix A to the draft EA?
   B. Is it correct that the Draft EA does not measure the noise impacts of consolidating the JetBlue Special procedure with the 4L Visual path into a single RNAV path?
   C. Is it correct that the Draft EA only measures the noise impact of incremental 4L arrivals due to implementation of RNAV capability to use 4L in IMC circumstances?
   D. Is it therefore correct that this EA will not address whether implementation of the 4L RNAV procedure will have significant or reportable noise impacts under Order 1050.1f compared with the baseline year, not the baseline year used in its March 23, 2016 IER, contained in Appendix A to the draft EA?

4) **Noise Contours**: For the present Noise Visualization and the added 4R RNAV path noise visualizations in questions 2 and 3, please provide graphically the noise contours of aircraft traveling those paths so that residents can answer the questions: how far from each side of the parallel paths aircraft noise extends; and what overlaps exist of noise from the two parallel 4L and 4R paths.

5) **Nabove 25 Lmax peak day 60/50 [day/night] noise measurement**: On the present FAA Noise Visualization and on each of the two additional versions requested above, or in another format, show what the Nabove 25 Lmax peak day 60/50 [day/night] noise measurements at locations affected solely by the 4L and 4R RNAV paths are respectively, as well as at those locations affected by both paths' noise, using different a color for each of these three indications, or other differentiating means.

   For the Nabove 25 Lmax peak day 60/50 [day/night] noise measurement method, we refer you to Data-Driven Flight Procedure Simulation and Noise Analysis in a Large- Scale Air Transportation System June 2018 by Luke L. Jensen and R. John Hansman "The analysis in this thesis uses an annoyance threshold of 25 daily flights at the 60dB (day) and 50dB (night) level." (Section 2.8, page 59 referencing Logan runway 4L/4R arrivals)

   https://pdfs.semanticscholar.org/6322/03aecd9d9a55136e8bc9e105b1e4bbc8ca93.pdf

6) Please see the attached diagram illustrating that based on the Draft 4L EA Visualization the proposed 4L RNAV path will overfly the triangular areas formed by three noise sensitive areas,

namely hospital center, church and rectory, and a 13-year school campus. In light of this, provide the Nabove 25 Lmax peak day 60/50 [day/night] noise measurement, and corresponding DNL measurement, for each of those three locations.

cc: Michael D. Dennehy, Milton Town Administrator
Thomas J. Dougherty, Massachusetts Port Authority Community Advisory Committee (MCAC)
Milton Airplane Noise Advisory Committee (ANAC)
Milton Town Select Board

Office of State Representative William J. Driscoll, Jr.

7th Norfolk District

Commonwealth of Massachusetts

October 13, 2020

Colleen D'Alessandro, ANE-1
New England Regional Administrator
Federal Aviation Administration (FAA)
VIA EMAIL: Colleen.DAlessandro@faa.gov

RE: Logan Runway 4L Environmental Assessment Technical Questions

Dear Administrator D'Alessandro:

In response to my letter dated September 29, 2020, Ms. Christian sent an email stating that my "questions will be addressed during the Boston public workshops."

That response is, at best, woefully inadequate, and, at worst, an affront to the office that I hold. My previous correspondence with your office in 2019 generated a written response.

I deserve written responses to the questions in my 9/29/20 letter as soon as is practicable, and not halfway through the comment period and as part of workshops intended for the public.

In addition, my requests included that

i. The FAA visualization website "promptly" to be revised to include the 4R RNAV path on the visualization so that residents now can use the FAA visualization to see their residence in the actual 4L/4R paths setting.
ii. Residents know prior to the public workshops the Nabove Lmax 60/50 (Day/Night) alternative noise readings so they can ask questions about it.
iii. The FAA add to the EA Draft an updated statement addressing the other technical questions (including the Noise Sensitive Area (Hospital/Church/School) impacts prior to the public workshops so residents can ask about it and the Nabove Lmax noise impacts.
iv. The FAA address prior to the public workshops the "Advisory" use of the proposed RNAV path by planes (for example) that had been on the JetBlue RNAV path previously, and any other Advisory use of the former JetBlue path, or any use of any Visual 4R path.

I look forward to receiving your responses to these and all the questions included in my prior letters **on or before October 16, 2020**.

Best Regards,

William J. Driscoll, Jr.
State Representative, 7th Norfolk District

cc: Michael D. Dennehy, Milton Town Administrator
Thomas J. Dougherty, Massachusetts Port Authority Community Advisory Committee (MCAC)
Milton Town Select Board

From: Timilty, Walter (SEN)
Sent: Wednesday, October 7, 2020 9:21 AM
To: Lorna.Christian@faa.gov <Lorna.Christian@faa.gov>; Colleen.DAlessandro@faa.gov <Colleen.DAlessandro@faa.gov>
Cc: Congressman Lynch Stephen (Stehphen.Lynch@mail.house.gov) <Stehphen.Lynch@mail.house.gov>; shaynah.barnes@mail.house.gov <shaynah.barnes@mail.house.gov>; Buntich, Hannah (SEN) <Hannah.Buntich@masenate.gov>
Subject: Questions regarding Logan Airport's Environmental Assessment

Dear Regional Administrator D'Alessandro and Supervisory Senior Advisor Christian,

Attached, please find a letter from myself and Congressman Stephen Lynch with questions pertaining to the Logan Runway 4L Environmental Assessment.

We appreciate the time that was taken on September 21st to review the EA with ourselves, and other stakeholders. We believe that the FAA's attention to the attached technical questions will help stakeholders further understand and evaluate the draft EA.

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

State Senator Walter F. Timilty
Norfolk, Bristol and Plymouth. District

Congressman Stephen F. Lynch
8th Congressional

The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR WALTER F. TIMILTY
NORFOLK, BRISTOL AND PLYMOUTH DISTRICT

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CHAIR
JOINT COMMITTEE ON VETERANS AND FEDERAL AFFAIRS

VICE CHAIR
JOINT COMMITTEE ON ENVIRONMENT, NATURAL RESOURCES AND AGRICULTURE

JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND EMERGING TECHNOLOGIES

JOINT COMMITTEE ON MENTAL HEALTH, SUBSTANCE USE AND RECOVERY

JOINT COMMITTEE ON PUBLIC SERVICE

SENATE COMMITTEE ON BODING, CAPITAL EXPENDITURES AND STATE ASSETS

October 2, 2020

Colleen D'Alessandro, ANE-1
New England Regional Administrator
Federal Aviation Administration
1200 District Avenue
Burlington, MA 01803-5299

Lorna Christian
Supervisory Senior Advisor, ANE
Office of the Regional Administrator
Federal Aviation Administration
1200 District Avenue
Burlington, MA 01803-5299

Dear Regional Administrator D'Alessandro and Supervisory Senior Advisor Christian,

This letter follows-up on the Regional Administrator's statement at the September 21, 2020 Zoom session with elected officials regarding the Logan Runway 4L Environmental Assessment that the elected officials may submit technical questions to you. These questions originated from Milton's representative to the Massport Community Advisory Committee, Mr. Tom Dougherty.

We are, respectfully, asking that the following technical questions be addressed. The FAA's inclusion of these matters in its presentations will help residents understand and evaluate the draft EA.

Thank you for your attention to this aspect of the EA effort. The technical questions follow.

Sincerely,

Senator Walter F. Timilty
Norfolk, Bristol and Plymouth

Congressman Stephen F. Lynch
8th District of Massachusetts

1. Jet Blue Special Procedure: Will aircraft with the 4L JetBlue Special procedure recorded in their FMS be allowed to request to use that procedure and to use it, or will the FAA state that the 4L RNAV will be the only arrival path to Runway 4L? With regard to that question, please also state:
   (A) the number of arrivals in the baseline year on the 4L JetBlue Special procedure path;
   (B) the number of arrival aircraft expected to use the 4L RNAV path in its first year of use that otherwise would have been expected to use the JetBlue Special procedure;
   (C) the number of arrival aircraft, if any, expected to use the JetBlue Special procedure in the first year of implementation of the 4L RNAV path.

2. 4R RNAV Path on Noise Visualization: Please promptly provide a version of the Noise Visualization on the same FAA website that adds the position of the Runway 4R RNAV path so that users can find answers to these questions: their location in relation to each of the closely spaced parallel runways; the combined noise impact on their location of the proposed RNAV 4L procedure and the existing 4R RNAV procedure; and compare that noise impact level to noise impact levels at other locations.

3. Baseline Year: Please provide a version of the Noise Visualization as in question 2) for the baseline year. With regard to the baseline year, please also explain:
   (A) On what basis has the FAA used November 1 2018 through October 31, 2019 as the baseline year rather than the baseline year used in its March 23, 2016 IER, contained in Appendix A to the draft EA?
   (B) Is it correct that the Draft EA does not measure the noise impacts of consolidating the JetBlue Special procedure with the 4L Visual path into a single RNAV path?
   (C) Is it correct that the Draft EA only measures the noise impact of incremental 4L arrivals due to implementation of RNAV capability to use 4L in IMC circumstances?
   (D) Is the FAA going to keep the additional 4L JetBlue RNAV path (which it "suspended" in 2019) as an "Advisory" path?

4. Noise Contours: For the present Noise Visualization and the added 4R RNAV path noise visualizations in questions 2 and 3, please provide graphically the noise contours of aircraft traveling those paths so that residents can answer the questions: how far from each side of the parallel paths aircraft noise extends; and what overlaps exist of noise from the two parallel 4L and 4R paths.

5. Nabove 25 Lmax peak day 60/50 [day/night] noise measurement: On the present FAA Noise Visualization and on each of the two additional versions requested above, or in another format, show what the Nabove 25 Lmax peak day 60/50 [day/night] noise measurements at locations affected solely by the 4L and 4R RNAV paths are respectively, as well as at those locations affected by both paths' noise, using different a color for each of these three indications, or other differentiating means. For the Nabove 25 Lmax peak day 60/50 [day/night noise measurement method, we refer you to Data-Driven Flight Procedure Simulation and Noise Analysis in a Large-Scale Air Transportation System June 2018 by Luke L. Jensen and R. John Hansman "The

analysis in this thesis uses an annoyance threshold of 25 daily flights at the 60dB (day) and 50dB (night) level." (Section 2.8, page 59 referencing Logan runway 4L/4R arrivals)
https://pdfs.semanticscholar.org/6322/03aecd9d9a55136e8bc9e105b1e4bbc8ca93.pdf

6. Does the FAA acknowledge that the triangle formed by Beth Israel, St Elizabeth's and Milton Academy is a Noise Sensitive Area for which FAA should use a peak-day Noise Above measurement?

Hillary Waite hwaite@townofmilton.orgHide

T **lorna.christian@faa.gov** lorna.christian@faa.gov, **colleen.dalessandro@faa.gov**
o colleen.dalessandro@faa.gov

C **Michael D. Dennehy** mdennehy@townofmilton.org, **SB** SB@townofmilton.org,
c **tdprojects@aol.com** tdprojects@aol.com, **stephen.lynch@mail.house.gov** stephen.lynch@mail.house.gov, **Barnes, Shaynah** Shaynah.Barnes@mail.house.gov, **Timilty, Walter (SEN)** Walter.Timilty@masenate.gov, **hannah.buntich@masenate.gov** hannah.buntich@masenate.gov

201007 FAA Technical Questions... (124 KB)

Dear Regional Administrator D'Alessandro and Supervisory Senior Advisor Christian,

Please see the attached letter from the Milton Select Board with technical questions pertaining to the Logan Runway 4L Environmental Assessment.

Thank you for your attention to this matter.

If I can provide any additional information, please contact me or Michael Dennehy, Town Administrator, at 617-898-4845 or mdennehy@townofmilton.org .

Best,

Hillary Waite
Executive Administrative Assistant
Town of Milton, MA
525 Canton Avenue
Milton, MA 02186
617-898-4843

COMMONWEALTH OF MASSACHUSETTS
TOWN OF MILTON
OFFICE OF SELECT BOARD
525 CANTON AVENUE, MILTON, MA 02186
Telephone: 617-898-4843
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MICHAEL D. DENNEHY
TOWN ADMINISTRATOR

SELECT BOARD
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CHAIR
KATHLEEN M. CONLON
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ARTHUR J. DOYLE
SECRETARY
RICHARD G. WELLS, JR.
MEMBER
MICHAEL F. ZULLAS
MEMBER

Colleen D'Alessandro, ANE-1
New England Regional Administrator
Federal Aviation Administration
1200 District Avenue
Burlington, MA 01803-5299

Lorna Christian
Supervisory Senior Advisor, ANE
Office of the Regional Administrator
Federal Aviation Administration
1200 District Avenue
Burlington, MA 01803-5299

via email

October 7, 2020

RE: Logan Runway 4L Environmental Assessment Technical Questions

Dear Administrator D'Alessandro:

This letter follows up on your statement during the September 21, 2020 Zoom session regarding the Logan Runway 4L Environmental Assessment (EA) that elected officials may submit technical questions.

We respectfully request that the following technical questions be addressed. The FAA's inclusion of these matters in its presentations will help residents understand and evaluate the draft EA.

We understand that these technical questions have also been submitted to you by United States Congressman Stephen Lynch and Massachusetts State Senator Walter J. Timilty, as well as by Massachusetts State Representative William J. Driscoll.

We appreciate your attention to this matter.

The technical questions are attached.

Sincerely,

Melinda A. Collins, Chair

Kathleen M. Conlon, Vice Chair

Arthur J. Doyle, Secretary

Richard G. Wells, Jr.

Michael F. Zullas

Milton Select Board

cc (via email):
Congressman Stephen Lynch
Massachusetts State Senator Walter J. Timilty
Massachusetts State Representative William J. Driscoll

1. **Jet Blue Special Procedure:** Will aircraft with the 4L JetBlue Special procedure recorded in their FMS be allowed to request to use that procedure and to use it, or will the FAA state that the 4L RNAV will be the only arrival path to Runway 4L? With regard to that question, please also state:
   A. The number of arrivals in the baseline year on the 4L JetBlue Special procedure path;
   B. The number of arrival aircraft expected to use the 4L RNAV path in its first year of use that otherwise would have been expected to use the JetBlue Special procedure;
   C. The number of arrival aircraft, if any, expected to use the JetBlue Special procedure in the first year of implementation of the 4L RNAV path; and
   D. Provide a table, in format similar to Table 8 of Appendix A to the Draft EA, stating the Estimated Annual Use of 4L RNAV Approaches, on the basis of Cleared IMC, Cleared VMC, Advisory IMC (if any), Advisory VMC and Total Cleared+Advisory use while including, listed separately, as in Table 8, any RVFP use, in each of those categories.

2. **4R RNAV Path on Noise Visualization:** Please promptly provide a version of the Noise Visualization on the same FAA website that adds the position of the Runway 4R RNAV path so that users can find answers to these questions: their location in relation to each of the closely spaced parallel runways; the combined noise impact on their location of the proposed RNAV 4L procedure and the existing 4R RNAV procedure; and compare that noise impact level to noise impact levels at other locations.

3. **Baseline Year:** Please provide a version of the Noise Visualization as in question 2 for the baseline year. With regard to the baseline year, please also explain:

   A. On what basis has the FAA used November 1 2018 through October 31, 2019 as the baseline year rather than the baseline year used in its March 23, 2016 IER, contained in Appendix A to the draft EA?
   B. Is it correct that the Draft EA does not measure the noise impacts of consolidating the JetBlue Special procedure with the 4L Visual path into a single RNAV path?
   C. Is it correct that the Draft EA only measures the noise impact of incremental 4L arrivals due to implementation of RNAV capability to use 4L in IMC circumstances?
   D. Is it therefore correct that this EA will not address whether implementation of the 4L RNAV procedure will have significant or reportable noise impacts under Order 1050.1f compared with the baseline year, not the baseline year used in its March 23, 2016 IER, contained in Appendix A to the draft EA?

4. **Noise Contours:** For the present Noise Visualization and the added 4R RNAV path noise visualizations in questions 2 and 3, please provide graphically the noise contours of aircraft traveling those paths so that residents can answer the questions: how far from each side of the parallel paths aircraft noise extends; and what overlaps exist of noise from the two parallel 4L and 4R paths.

5. **Nabove 25 Lmax peak day 60/50 [day/night] noise measurement:** On the present FAA Noise Visualization and on each of the two additional versions requested above, or in another format, show what the Nabove 25 Lmax peak day 60/50 [day/night] noise measurements at locations affected solely by the 4L and 4R RNAV paths are respectively, as well as at those locations affected by both paths' noise, using different a color for each of these three indications, or other differentiating means.

   For the Nabove 25 Lmax peak day 60/50 [day/night] noise measurement method, we refer you to Data-Driven Flight Procedure Simulation and Noise Analysis in a Large-Scale Air Transportation System June 2018 by Luke L. Jensen and R. John Hansman "The analysis in this thesis uses an annoyance threshold of 25 daily flights at the 60dB (day) and 50dB (night) level." (Section 2.8, page 59 referencing Logan runway 4L/4R arrivals)

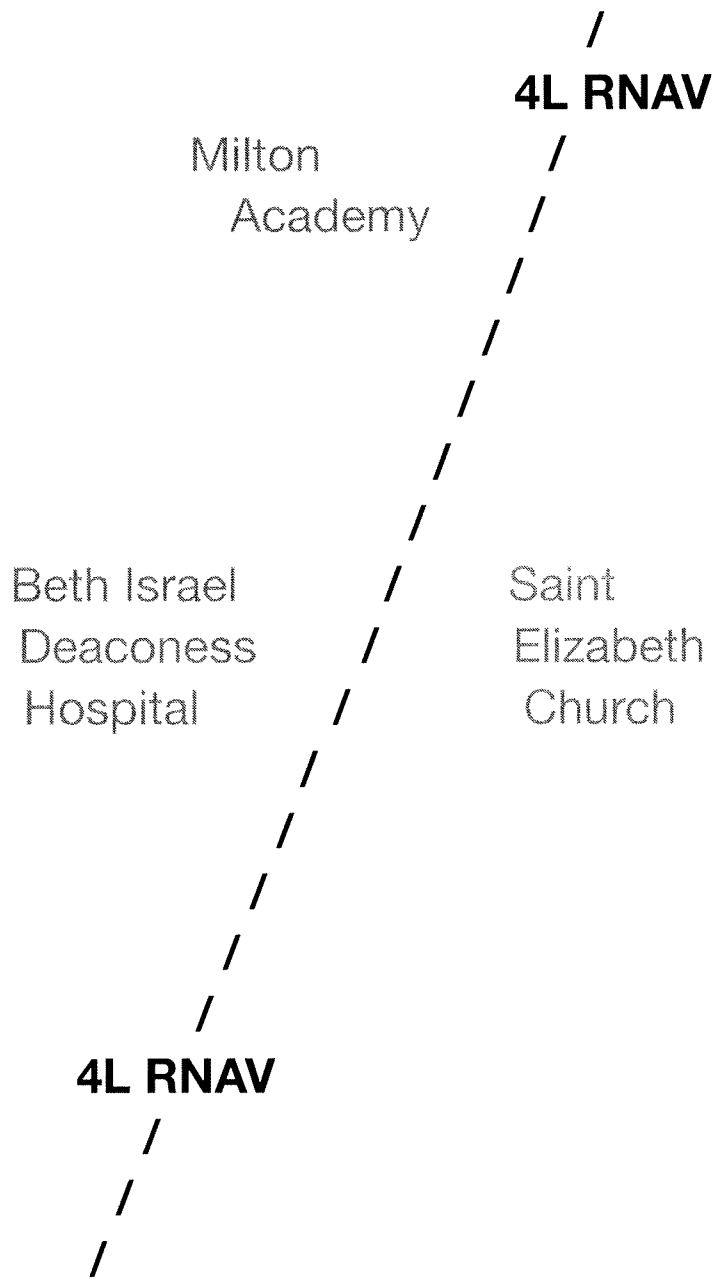
https://pdfs.semanticscholar.org/6322/03aecd9d9a55136e8bc9e105b1e4bbc8ca93.pdf

6. See the attached diagram illustrating that based on the Draft 4L EA Visualization the proposed 4L RNAV path will overfly the triangular areas formed by three noise sensitive areas, namely hospital center, church and rectory, and a 13-year school campus. In light of this, provide the Nabove 25 Lmax peak day 60/50 [day/night] noise measurement, and corresponding DNL measurement, for each of those three locations.

"NOISE SENSITIVE AREAS"

4L RUNS DIRECTLY THROUGH THE **N.S.A. TRIANGLE**:

HOSPITAL, CHURCH, SCHOOL – **EACH** IS A N.S.A.



The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR WALTER F. TIMILTY
NORFOLK, BRISTOL AND PLYMOUTH DISTRICT

STATE HOUSE, ROOM 213-B
BOSTON, MA 02133-1053

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FAX. (617) 722-1522

WALTER.TIMILTY@MASENATE.GOV
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VICE CHAIR
JOINT COMMITTEE ON ENVIRONMENT, NATURAL RESOURCES AND AGRICULTURE

JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND EMERGING TECHNOLOGIES

JOINT COMMITTEE ON MENTAL HEALTH, SUBSTANCE USE AND RECOVERY

JOINT COMMITTEE ON PUBLIC SERVICE

SENATE COMMITTEE ON BODING, CAPITAL EXPENDITURES AND STATE ASSETS

October 15, 2020

Colleen D'Alessandro, ANE-1
New England Regional Administrator
Federal Aviation Administration (FAA)
VIA EMAIL: Colleen.DAlessandro@faa.gov

RE: Logan Runway 4L Environmental Assessment Technical Questions

Dear Administrator D'Alessandro:

In response to our letter dated October 2, 2020, Ms. Christian sent an email stating that our "questions will be addressed during the Boston public workshops." That response is, at best, woefully inadequate, and, at worst, an affront to the offices that we hold. During the September 21st Zoom session with elected officials, regarding the Logan Runway 4L Environmental Assessment, we were told that elected officials may submit technical questions to you. It was our collective understanding that in submitting these questions directly to you, that we would be provided with answers to said questions. Instead, what we received was an invitation to register for a public workshop that is more than 10 days from now.

It is our firm believe that we, along with our constituents, deserve written responses to those questions as soon as is practicable, and not halfway through the comment period and as part of workshops intended for the public.

In addition, our requests included that:

(i) The FAA visualization website be “promptly" revised to include the 4R RNAV path on the visualization so that residents now can use the FAA visualization to see their residence in the actual 4L/4R paths setting;

(ii) Residents know prior to the public workshops the Nabove Lmax 60/50 (Day/Nght) alternative noise readings so they can ask questions about it;

(iii) The FAA add to the EA Draft an updated statement addressing the other technical questions (including the Noise Sensitive Area (Hospital/Church/School) impacts prior to the public workshops so residents can ask about it and the Nabove Lmax noise impacts; and

(iv) The FAA address prior to the public workshops the "Advisory" use of the proposed RNAV path by planes (for example) that had been on the JetBlue RNAV path previously, and any other Advisory use of the former JetBlue path, or any use of any Visual 4R path.

We look forward to receiving your responses to these and all the questions included in our prior letter **on or before October 20, 2020**.

Sincerely,

Senator Walter F. Timilty
Norfolk, Bristol and Plymouth

Congressman Stephen F. Lynch
8th District of Massachusetts

From: Christian, Lorna (FAA) <lorna.christian@faa.gov>
Date: Tuesday, October 20, 2020 at 12:26 PM
To: Timilty, Walter (SEN) <Walter.Timilty@masenate.gov>, DAlessandro, Colleen (FAA) <Colleen.DAlessandro@faa.gov>
Cc: Congressman Lynch Stephen (Stehphen.Lynch@mail.house.gov) <Stehphen.Lynch@mail.house.gov>, shaynah.barnes@mail.house.gov <shaynah.barnes@mail.house.gov>, Buntich, Hannah (SEN) <Hannah.Buntich@masenate.gov>, Donnelly, John (FAA) <john.donnelly@faa.gov>, Stephen Goetzinger <SGoetzinger@esassoc.com>, Davis, Reginald E (FAA) <Reginald.E.Davis@faa.gov>, Johnson, Veronda (FAA) <Veronda.Johnson@faa.gov>
Subject: [External]: RE: Questions regarding Logan Airport's Environmental Assessment

Dear Senator Timilty,

Thank you for your questions regarding the Boston Logan Environmental Assessment. We look forward to your participation in the upcoming workshops.
One of your questions addressed a visualization of the RNAV path for 4R so users can find their location in relation to each of the parallel runways.

The RNAV path for the 4R procedure has been added as a "layer" to the noise visualization page.

Please visit the faabostonworkshops.com site to view the changes.

Thank you,
Lorna Christian
Supervisory Senior Advisor, ANE
Office of the Regional Administrator
Federal Aviation Administration

Office: (781) 238-7224
Mobile: (781) 496-7512
Email: Lorna.Christian@faa.gov

TOWN OF MILTON
BOARD OF HEALTH
525 Canton Avenue
Milton, MA 02186

Public Health
Prevent. Promote. Protect.

Board of Health

Caroline A. Kinsella, BSN, RN, RS
Health Director

Tel: (617)898-4886
Fax: (617)696-5172
www.townofmilton.org

Laura T. Richards, Esq., Chair
Mary F. Stenson, RN, BSN, Secretary
Roxanne Musto, RN-C, MS, ANP, Member
Anthony Compagnone, M.D., Medical Advisor

TO: Milton Select Board members

FROM: Milton Board of Health

DATE: October 6, 2020

RE: Detrimental Health Effects of RNAV Plane Flights over the Town of Milton

The Milton Board of Health strongly opposes the proposed 4L RNAV and 4L visual approach RNAV. We strongly urge the FAA to halt any further implementation of these RNAV's.

The Town of Milton is 13.3 square miles in area, and is already experiencing an unfair distribution of flights compared to other surrounding communities. Milton residents have the highest number of complaints compared to all other communities.

The Town has experienced an exponential increase in RNAV's. As you know these RNAV's are highways in the sky: they are narrow concentrated paths for the airplanes to fly along. We are very concerned about the potential health risks associated with repeat exposure. Already residents have told us about their worries, including soot falling on their cars, homes, lawns and gardens from the airplanes fine particulate matter. These airplanes are lower also, many are flying less than 3000 feet.

According to a LAX study, fine particulate matter can cause blocked coronary arteries as well as worsen respiratory diseases like asthma. Those with underlying conditions like asthma who also contract COVID-19 may develop more severe respiratory symptoms.
It should be noted that the LAX study authors stated that their findings could apply to any other large airport. In addition, other studies have demonstrated increases in blood pressure for those bothered by noise from aircraft while they were sleeping.

TOWN OF MILTON
BOARD OF HEALTH
525 Canton Avenue
Milton, MA 02186

Public Health
Prevent. Promote. Protect.

Board of Health

Caroline A. Kinsella, BSN, RN, RS
Health Director

Tel: (617)898-4886
Fax: (617)696-5172
www.townofmilton.org

Laura T. Richards, Esq., Chair
Mary F. Stenson, RN, BSN, Secretary
Roxanne Musto, RN-C, MS, ANP, Member
Anthony Compagnone, M.D., Medical Advisor

The residents in Milton will be put at a higher risk for illnesses if these proposed changes occur. Additionally, the location of these RNAV's would affect some of the most vulnerable populations including: elderly residents of Fuller Village, Milton Health Care nursing home facility, college students-Curry College, young children- Thatcher Montessori school, Delphi academy, Tucker Elementary School, just to name a few.

In the past, routes have gone out over the water, and not over populated communities and residential areas. These proposed changes will be going over residential areas and effecting homeowners and residents that never previously had routes over their homes.

We ask the Select Board to urge the FAA to consider the above factors and stop the implementation of these proposed RNAV's.

Respectfully,

Caroline A Kinsella B.S.N. R.N.

Caroline Kinsella, BSN, RN, RS
Milton Health Director

U.S. Department
of Transportation
Federal Aviation Administration

Office of the Regional Administrator
New England Region

1200 District Avenue
Burlington, MA 01803

November 10, 2020

The Honorable William J. Driscoll, Jr.
Office of State Representative 7th Norfolk District
Commonwealth of Massachusetts
24 Beacon Street, RM 446
Boston, MA 02133

Dear Representative Driscoll,

Thank you for your interest in the Boston Logan Runway 4L RNAV Draft Environmental Assessment. The questions that were submitted by your office were addressed during the public workshops and I invite you to refer to the workshop recordings for the answers you need. Your questions will be considered as formal comments, and will be responded to in the Final Environmental Assessment. The Noise Visualization page has been modified to include the overlay of the 4R RNAV path as requested.

Please refer to the website at https://faabostonworkshops.com/.

Sincerely,

COLLEEN M D'ALESSANDRO
Digitally signed by COLLEEN M D'ALESSANDRO
Date: 2020.11.10 15:22:36 -05'00'

Colleen M. D'Alessandro
New England Regional Administrator

STEPHEN F. LYNCH
8TH DISTRICT, MASSACHUSETTS

COMMITTEE ON FINANCIAL SERVICES

COMMITTEE ON OVERSIGHT AND REFORM
CHAIRMAN, SUBCOMMITTEE ON NATIONAL SECURITY

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

ASSISTANT DEMOCRATIC WHIP

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508-580-4692 FAX

1245 HANCOCK STREET
SUITE 41
QUINCY, MA 02169
617-657-6305
617-773-0995 FAX

LYNCH.HOUSE.GOV

VIA EMAIL AND VIA OVERNIGHT MAIL **November 19th, 2020**

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE

and

Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
Suite 450
Tampa, FL 33607

RE: Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport

To Whom It May Concern:

The undersigned joins in providing these consolidated Comments on the Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport.

Best regards,

Congressman Stephen F. Lynch
8th District of Massachusetts

The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR WALTER F. TIMILTY
NORFOLK, BRISTOL AND PLYMOUTH DISTRICT

STATE HOUSE, ROOM 213-B
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CHAIR
JOINT COMMITTEE ON VETERANS AND FEDERAL AFFAIRS

VICE CHAIR
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JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND EMERGING TECHNOLOGIES

JOINT COMMITTEE ON MENTAL HEALTH, SUBSTANCE USE AND RECOVERY

JOINT COMMITTEE ON PUBLIC SERVICE

SENATE COMMITTEE ON BODING, CAPITAL EXPENDITURES AND STATE ASSETS

November 12, 2020

VIA EMAIL AND VIA OVERNIGHT MAIL

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE
and
Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
Suite 450
Tampa, FL 33607

RE: Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport

To Whom It May Concern:

The undersigned joins in providing these consolidated Comments on the Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport.

Sincerely,

Senator Walter F. Timilty
Norfolk, Bristol and Plymouth

The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

WILLIAM J. DRISCOLL, JR.
STATE REPRESENTATIVE
7TH NORFOLK DISTRICT

STATE HOUSE, ROOM 443
BOSTON, MA 02133-1053

TEL.(617) 722-2460
William.Driscoll@MAhouse.gov

Vice Chair of the Joint Committee
on Election Laws
Joint Committee on Healthcare Financing

Joint Committee on Consumer Protection
and Professional Licensure

House Committee on Post Audit
and Oversight

November 16, 2020

VIA EMAIL AND VIA OVERNIGHT MAIL

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE

and

Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
Suite 450
Tampa, FL 33607

RE: Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport

To Whom It May Concern:

The undersigned joins in providing these consolidated Comments on the Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport.

Best regards,

William J. Driscoll, Jr.
State Representative, 7th Norfolk District

ANDREA J. CAMPBELL
BOSTON CITY COUNCILOR
DISTRICT 4

VIA EMAIL AND VIA OVERNIGHT MAIL **November 12, 2020**

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE

and

Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
Suite 450
Tampa, FL 33607

RE: Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport

To Whom It May Concern:

The undersigned joins in providing these consolidated Comments on the Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport.

Best regards,

Andrea J. Campbell
Boston City Councilor, District 4

OFFICE OF

RICARDO ARROYO

BOSTON CITY COUNCILOR
DISTRICT 5

VIA EMAIL AND VIA OVERNIGHT MAIL **November 18, 2020**

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE

and

Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
Suite 450
Tampa, FL 33607

RE: Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport

To Whom It May Concern:

The undersigned joins in providing these consolidated Comments on the Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport.

Best regards,

Ricardo Arroyo
Boston City Councilor, District 5

COMMONWEALTH OF MASSACHUSETTS
TOWN OF MILTON
OFFICE OF THE SELECT BOARD
525 CANTON AVENUE, MILTON, MA 02186
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MICHAEL D. DENNEHY
TOWN ADMINISTRATOR

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SECRETARY
RICHARD G. WELLS, JR.
MEMBER
MICHAEL F. ZULLAS
MEMBER

VIA EMAIL AND VIA OVERNIGHT MAIL

FAABostonWorkshops@esassoc.com
ATTN: Lorna Christian, Supervisory Senior Advisor, ANE

and

Environmental Science Associates
c\o Boston Logan RNAV (GPS) Approach EA
4200 West Cypress St
Suite 450
Tampa, FL 33607

RE: Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport

To Whom It May Concern:

The undersigned joins in providing these consolidated Comments on the Draft Environmental Assessment for a Proposed New Approach Procedure to Runway 4-Left at Boston Logan International Airport.

Best regards,

Melinda A. Collins, Chair

Kathleen M. Conlon, Vice Chair

Arthur J. Doyle, Secretary

Richard G. Wells, Jr.

Michael F. Zullas

Milton Select Board

U.S. Department
of Transportation
Federal Aviation Administration

Mission Support Services
800 Independence Ave, SW
Washington, DC 20591

8/19/2020

Mr. Thomas J. Dougherty
247 Adams Street
Milton, Massachusetts 02186-4232

RE: Freedom of Information Act (FOIA) Request 2020-007445
Classification Type: No Records/Denial Disclosures
Classification Determination: Natasha A. Durkins, Director, Eastern Service Center

Dear Mr. Dougherty:

The Federal Aviation Administration received your FOIA request dated July 14, 2020, to obtain the following information:

Item 1.) Data showing the actual time, aircraft speed, and aircraft location when landing gear deployed by each aircraft that arrived on runway 4L, and the flight number, aircraft type and engine model.

Item 2.) Data for the AEDT modeled runway 4L baseline for each day of the baseline year (November 1, 2018 to October 31, 2019), and for the 4L modeled change including but not limited to all radar flight tracks, operations data, report, figures, graphics and related content as well as the AEDT model files (utilizing the AEDT "backup database" function).

Item 3.) Data for the AEDT modeled runway 4L and 4R baseline aircraft noise contours for each day of the baseline year (November 1, 2018 through October 31, 2019), and for the 4L modeled charge, including but not limited to all operations data, reports, figures, graphics and related content, as well as the AEDT model files (utilizing the AEDT "backup database" function).

We conducted a search within the Air Traffic Organization, Mission Support Services, Eastern Service Center, Operations Support Group. As a result, records you requested in Item 1 do not exist. Records for Items 2 and 3 contains information which has been identified as pre-decisional and deliberative, which renders the information exempt from release under FOIA Exemption 5.

You may request reconsideration of this determination by following the enclosed instructions. There were no fees incurred in processing your request. Please be sure to include your FOIA request number in any future communications.

Sincerely,

DocuSigned by:
Natasha R. Durkins
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for Angela R. McCullough
Vice President, Mission Support Services
Air Traffic Organization

Enclosure(s)