

Eastern Queens Alliance, Inc
Addendum to Public Comment addressing Environmental Assessment
Runway 4L/22R Improvements John F. Kennedy International Airport

Introduction

The Eastern Queens Alliance (EQA) is a federation of civic associations in Southeast Queens that grew out of the idea to unify, organize, mobilize and utilize the talents and potentials of all the residents, civics, neighborhood associations, businesses, clergy and service providers in the area in order to bring about self-determination by acting in concert on mutual concerns and issues; to use the instruments of power to maintain, preserve, and develop the economic, political, social, moral and cultural stability of the communities within the area; to maintain, stabilize, develop and improve the area's physical environment; and to monitor, urge and support the improved delivery of services by the Community Board, elected officials and all city, state and Federal agencies that make decisions which impact upon the lives of those residing in the area.

We submit these addendum to comments previously sent to the Port Authority of NY & NJ (PANYNJ) and the Federal Aviation Administration (FAA) with the request that an Environmental Impact Statement (EIS) and FAR Part 150 is prepared to further investigate the impacts of the Runway 4L/22R Improvements Project proposed for John F. Kennedy (JFK) Airport. We are concerned that the current conditions experienced in this neighborhood due to airport activities will be exacerbated by this runway project that proposes to move Runway 4L/22R 728 feet closer to the community in Southeast Queens and lowers the aircraft by approximately 100 feet over homes. This addendum to previous comments will address the concerns of the Eastern Queens Alliance and community members based on further review and expert analysis of the Draft Environmental Assessment (EA) for this proposed project.

Environmental Consequences

Cumulative Impacts of Noise

A highly controversial point relating to the impact of the proposed runway improvements on the communities of Southeastern Queens and Nassau County, are the cumulative impact of present and reasonable foreseeable future actions.

Regulations require the agency to consider the cumulative environmental impacts of any proposed action¹. We contend that the Port Authority did not adequately consider the cumulative effects of the New York/New Jersey/Philadelphia Area Metropolitan Area Airspace Redesign

¹ 40 C.F.R. § 1508.8

Plan because the agency failed to account properly for the effects of focusing air traffic down specific corridors, increasing the efficiency and reliability of the airspace structure, in addition to the improvements of efficiency in the taxiway service provided by the aforementioned runway improvement. It is reasonably foreseeable that the result of these two plans will be an increase in movements at John F. Kennedy Airport; however, the Environmental Assessment (EA) does not factor in increases in movements in any calculation be it noise, air pollution, or other environmental issues. Moreover, the EA does not take into consideration the advancement of the Federal Aviation Administration's NextGen navigational technology, which has the stated future benefit of "enhancing [...] capacity for industry and the flying public."²

The Port Authority and their contractors erred by only modeling the environmental effects of airplanes with existing numbers, which have been artificially limited by the Federal Aviation Administration's High Density Rule.³ It stands to reason that with an increase in efficiency and capacity that the FAA will allow an increase in movements at JFK International Airport. The Port Authority should have modeled future years with the reasonable increase in movements both expected and forecasted.⁴ Unlike the difficulties and uncertainties involved in modeling noise levels in *Town of Cave Creek v. FAA*⁵ the Port Authority and the FAA have funded numerous studies into the amount and type of air traffic that would increase immediately after construction. Moreover, the present noise levels are so far above the 65 DNL curve that if airplane-related noise were hypothetically to increase at all between construction and 2020 something that we can in good faith claim - the resulting noise levels would *still not* be consistent with all existing land uses.

EQA will also argue that an EIS is required because, if using this EA as a guide, the agency will not have adequately considered "the degree to which the effects on the quality of the human environment are likely to be highly controversial."⁶ "The term 'controversial' refers to cases where a substantial dispute exists as to the size, nature, or *effect* of the major federal action rather than to the existence of opposition to a use."⁷ The contention is that complaints regarding the EA's modeling and forecasting of movements constitutes a "controversy." This issue is similar in nature and scope to *Blue Mountains v. Blackwood*⁸, here the court found that "the EA contains virtually no references to any material in support of or in opposition to its conclusions,"

² Federal Aviation Administration. (2009). Fact Sheet—NextGen Goal: Performance-Based Navigation [Press Release]. Retrieved from http://www.faa.gov/news/fact_sheets/news_story.cfm?newsid=8768.

³ FAA Order "Operating Limitations at New York's John F. Kennedy International Airport" Docket FAA-2007-29320, 14 CFR Part 93.

⁴ PB Americas, et al. (2007). FAA Regional Air Service Demand Study. Retrieved from http://www.faa.gov/airports/eastern/planning_capacity/media/PANYNJ%20Task%20B%20&%20D%20FINAL%20May%202007.pdf.

⁵ *Town of Cave Creek v. FAA*, 325 F.3d 320 (D.C. Cir. 2003)

⁶ 40 C.F.R. § 1508.27(b)(4)

⁷ *Found. for N. Am. Wild Sheep v. U.S. Dep't of Agric.*, 681 F.2d 1172, 1182 (9th Cir. 1982) (emphasis in original; internal quotations omitted).

⁸ *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998)

and *National Parks v. Babbitt*⁹, where the court found a substantial controversy because 85% of the 450 comments "urged that the EA's analysis was incomplete and the mitigation uncertain."

Finally, the EQA asserts that the INM projections used are faulty, as year-long DNL readings from the Port Authority state that between September 1, 2009 and August 31, 2010 the day-night noise level at the Springfield Gardens noise monitor was 70.8—well in excess of the 65 stated in the EA. Before a decision is made on this project we recommend the use of the FAA FAR Part 150 to determine, as closely as possible the true effect on the community.

Air Pollution

When a NEPA analysis is needed, the proposed action's impact on air quality is assessed by evaluating the impact of the proposed action on the National Ambient Air Quality Standards (NAAQS).¹⁰ We believe that, this plan, if granted a FONSI by the FAA, that the FAA will have violated The National Environmental Policy Act (NEPA) and other laws in approving and funding the 4L/22R Runway Improvement.¹¹

EPA directs that all federal agencies must, for major federal actions significantly affecting the quality of the human environment, prepare a detailed statement concerning 1) the environmental impact of the proposed action; 2) any adverse environmental effects which cannot be avoided should the proposal be implemented; 3) alternatives to the proposed action; 4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and 5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

According to CEQ regulations, an EA is a public document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI (finding of no significant impact), or to aid an agency's compliance with NEPA when no EIS is necessary, or to facilitate the preparation of an EIS when one is necessary¹². An EA must include brief discussions of the need for the proposed action, of alternatives to the proposed action, of the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted¹³.

⁹ *National Parks & Conservation Association v. Babbitt*, 241 F.3d 722, 736-37 (9th Cir. 2001)

¹⁰ FAA Order 1050.1E Change 1, *Environmental Impacts: Policies and Procedure*, Appendix A, Section 2, *Air Quality*, March 20, 2006.

¹¹ 42 U.S.C.A. § 4332 (West 2003).

¹² 40 C.F.R. § 1508.9(a)

¹³ 40 C.F.R. § 1508.9(b)

An EA must consider indirect impacts¹⁴. These may include induced growth and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems. 40 C.F.R. § 1508.8(b). In its sketchy three-paragraph discussion of secondary impacts, the 2008 EA acknowledges only economic impact and the “multiplier effect,” it does not delve into the foreseeable increases in movements at the airport, the increased distance for GSE equipment, nor the pollution and noise that these issues bring. The EA does not support its assumptions with any analysis, nor were mitigation measures discussed. As these significant issues are missing and, indeed at controversy there must be an FAA directive to create a proper EIS, along with a “hard look” at the secondary effects of this program in conjunction with the cumulative effects this will have on the community at large.

Pursuant to the Clean Air Act, EPA has identified air pollutants that endanger public health and welfare, and promulgated National Ambient Air Quality Standards ("NAAQS") that set forth maximum allowable concentrations in ambient air for six air pollutants: carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), particulates of two and one half micrometers and smaller in diameter, sulfur dioxide (SO₂), and lead (Pb)¹⁵. EPA has not established NAAQS for mobile source air toxics ("MSATs") or hazardous air pollutants ("HAPs"), but relies on rules regulating vehicle emissions and fuel formulations to reduce and regulate these materials.

State implementation plans ("SIPs") are the primary means of attaining or maintaining NAAQS. SIPs must establish "schedules and timetables for compliance with NAAQS"¹⁶. New York State has an EPA-approved SIP. If New York achieves the NAAQS for a particular pollutant, it is considered to be "in attainment." At present, the New York Metropolitan area, and Queens County more specifically is in non-attainment.

The 2008 EA analyzed air quality impacts of the 4L/22R Runway Improvements, and concluded that there would be no significant air quality impacts. The EA goes so far as to suggest that emissions would decrease as a result of any of the build alternatives, based solely on the assumption that GSE's will improve. Other assumptions are included in the comparisons of air pollution, which lead to a level below the de minimis threshold, such as:

- the No-Build/No-Action alternative assumes an increase in airport movements, instead of the current FAA capped 81 movements per hour;
- the annual emissions assume a precipitous (16.8% per year) drop in the emissions of GSE's every year between 2012 and 2015 and a 10% decrease per year every year between 2015 and 2020, and;

¹⁴ 40 C.F.R. § 1502.16

¹⁵ 42 U.S.C.A. §§ 7408-09

¹⁶ 42 U.S.C.A. § 7410(a)(2)

- the aircraft emissions will decrease by 1% between 2012 and 2015, yet the movements at the airport will increase by 13% to 25%.

The manipulation of air pollution data by way of figures based on assumptions is a danger to the community.

CO can cause harmful health effects by reducing oxygen delivery to the body's organs (like the heart and brain) and tissues. At extremely high levels, CO can cause death. Exposure to CO can reduce the oxygen-carrying capacity of the blood. People with several types of heart disease already have a reduced capacity for pumping oxygenated blood to the heart, which can cause them to experience myocardial ischemia (reduced oxygen to the heart), often accompanied by chest pain (angina), when exercising or under increased stress. For these people, short-term CO exposure further affects their body's already compromised ability to respond to the increased oxygen demands of exercise or exertion. Current scientific evidence links short-term NO₂ exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Also, studies show a connection between breathing elevated short-term NO₂ concentrations, and increased visits to emergency departments and hospital admissions for respiratory issues, especially asthma.

Current scientific evidence links short-term exposures to SO₂, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms. These effects are particularly important for asthmatics at elevated ventilation rates (e.g., while exercising or playing.) Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly, and asthmatics.

Alienation of Idlewild Park Preserve

EQA asserts that the removal or 'topping' of trees at the edge of and within the Idlewild Park Preserve will result in the alienation of parkland in violation of the public trust doctrine. The public trust doctrine provides that "parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes¹⁷".

As Idlewild Park Preserve is deemed parkland, legislative approval is required because the project will "substantially interfere with access to or use of the facilities," and the alienation will be permanent. Also, completion of the project will cause the elimination of the park-like

¹⁷ *Friends of Van Cortlandt Park v City of New York*, 95 NY2d 623, 630, 750 N.E.2d 1050, 727 N.Y.S.2d 2 [2001], citing *Williams v Gallatin*, 229 NY 248, 128 N.E. 121 [1920]]. As was found to be the case in *Powell v City of New York* (85 AD3d 429, 431, 924 N.Y.S.2d 370[1st Dept], *lv denied* 17 NY3d 715, 933 N.Y.S.2d 655, 957 N.E.2d 1159 [2011])

activities such as birding and hiking. Moreover, as the Idlewild Park Preserve is designated a 'Forever Wild' park using New York Department of State, Title 11 funding the Alienation of the park land must be approved by both New York State Assembly/Senate as well as the New York City Counsel.

Conclusion

The Airport and Airway Improvement Act of 1982 (AAIA) does not permit the FAA to approve an airport development project that has a significant adverse effect on natural resources unless there is no possible and prudent alternative to the project and every reasonable effort to mitigate the adverse effect has been taken. As noted extensively in these addendums to previous comments, there are several significant adverse effects on natural resources and the population around the proposed runway expansion; however, there is no plan put forth to mitigate these effects.

As stated earlier NEPA requires a federal agency to prepare an EIS before taking any major action "significantly affecting the quality of the human environment." The purpose of an EIS is to "provide full and fair discussion of significant environmental impacts and [to] inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." The agency's overall EIS-related obligation is to "take a 'hard look' at the environmental consequences before taking a major action."

At present, the EA does not satisfy the 'hard look' obligation and an EIS is required. The broad assumptions made and the lack of a clear methodology place portions of this EA in significant controversy. Therefore, an air quality impact evaluation, per statutory authority¹⁸ must be completed with local government and public participation in accordance with procedures established in Part 621 -- Uniform Procedures of NYS Requirements For Emission Sources, in conjunction with other recommendations and an EIS.

¹⁸ (Environmental Conservation Law, §§ 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305; Federal Clean Air Act, §§ 160-169, 171-193 [42 U.S.C. 7470-7479; 7501-7515])