

**Eastern Queens Alliance**  
**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. And 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; 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 comments to the Port Authority of NY & NJ (PANYNJ) and the Federal Aviation Administration (FAA) with the request that an Environmental Impact Statement (EIS) 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 38 feet over homes. Our concerns are particularly focused on Noise Pollution; Environmental Justice; Children's Health; Air Quality; and Land Use. This comment will address the concerns of the Eastern Queens Alliance and community members based on the review of the Draft Environmental Assessment (EA) for this proposed project.

**Noise**

A highly controversial point relating to land use is if the FAA certifies the EA as a finding of no significant impact (FONSI), it will have considered only the incremental impact of the runway expansion on noise and not the cumulative effect of the existing airport structures, the runway expansion and foreseeable/planned increases in operations. The National Environmental Policy Act (NEPA) requires federal agencies to prepare an EIS for "every ... major Federal action significantly affecting the quality of the human environment<sup>1</sup>." An EA is made for the purpose of determining whether an EIS is required<sup>2</sup>. "If *any* 'significant' environmental impacts might result from the proposed agency action then an EIS must be prepared *before* agency action is taken."<sup>3</sup>

Aircraft noise is a common occurrence for most communities within the U.S. However, for communities neighboring airports the noise is far more detrimental to health and quality of life. A recent GAO study revealed that the FAA expects that by 2024 air traffic for the U.S. will

---

<sup>1</sup> 42 U.S.C. § 4332(2)(C) (2006)

<sup>2</sup> 40 C.F.R. § 1508.9 (2011)

<sup>3</sup> Sierra Club v. Peterson, 230 U.S. App. D.C. 352, 717 F.2d 1409, 1415 (D.C. Cir. 1983)

increase 20%<sup>4</sup>. Without any mitigation, the noise impacts at JFK may cause serious harm to the populations in the surrounding communities.

Research into the health impacts of airport noise has grown as airports continue to accommodate an increased amount of planes, larger planes, and more passengers. Studies have highlighted the potential physical and mental health links associated with aircraft noise. Stress-related ailments such as hypertension, cardiovascular impacts, and neuroendocrine elevation have been related to chronic noise exposure<sup>5 6</sup>. Mental health impacts include, lack of sleep, awakening from sleep, lessening of communication in social situations and aggression due to annoyance from chronic aircraft noise<sup>7 8</sup>.

According to the EA prepared for this proposed action, the noise analysis used the FAA's Integrated Noise Model (INM) to produce a 65,70,75 DNL Contour Map to evaluate noise impacts and found no significant impact by the proposed action. This map however is inconsistent with the 2008-2012 Monthly Remote Noise Monitor Readings provided by the PANYNJ. Specifically, the Springfield Gardens (4L/4R) monitor, the noise monitor in the community directly north of the proposed action is located in the 65 DNL zone according to the INM contour map. However, the actual data from the noise monitor reveals that all of the monthly DNL readings for 2012 and 2008, and all but one month in 2011, 2010, 2009 were higher than 65 with many months exceeding 70 DNL. If the noise analysis used in this EA cannot accurately produce a contour map that is representative of actual noise exposure, the projected no significant impact findings cannot be trusted to be accurate. Further, the Noise Analysis disregards cumulative impacts by only comparing the proposal with current and not the baseline of natural quiet and to consider the total impact of aircraft noise on homes and parks nearby. In addition, we contend that the calculations used to determine the 1.5dB increase zone are erroneous and require real data and mathematical proofs, as even simple calculations can show the increase in proximity of the runway to the community will have, on average, a 1.5dB increase over a far larger scale than shown by the EA.

If the FAA, were to conclude that the runway expansion would have no significant impact on the environment of the homes and parks nearby, it would essentially conclude that there is little discernible increased noise intrusion to the homes and parks in the area from the proposed expansion to the No Build/No Action alternative and that the increase in noise levels that would result from the expansion of the runway is negligible because airplanes still take-off and land in the area, even if the runway expansion is not constructed. The EA did acknowledge the existence of noise levels in and above 65 dBA in the area; however, it suggests that since this is an urbanized area the increase in noise is either suitable for the current land use or will not be

---

<sup>4</sup> United States Government Accountability Office. (2012). AIRPORT NOISE GRANTS: FAA Needs to Better Ensure Project Eligibility and Improve Strategic Goal and Performance Measures. Washington, DC.

<sup>5</sup> Stasfield, S., & Matheson, M. (2003). Noise Pollution: non-auditory effects on health. *British Medical Bulletin*, 243-257.

<sup>6</sup> Jarup, L., Dudley, M., Babisch, W. H., Swart, W., Pershagen, G., Bluhm, G., et al. (2005). Hypertension and Exposure to Noise near Airports (HYENA): Study Design and Noise Exposure Assessment. *Environmental Health Perspectives*, 1473-1478.

<sup>7</sup> United States Environmental Protection Agency. (1978). *Noise: A Health Problem*. Washington, D.C.: Office of Noise Abatement and Control.

<sup>8</sup> Stasfield, S., & Matheson, M. (2003). Noise Pollution: non-auditory effects on health. *British Medical Bulletin*, 243-257.

noticed. While recognizing that the take-offs and landings constitute noise events that are higher than background natural quiet during periods when ambient noise levels are low, the EA focuses on the incremental impact and ignores the cumulative impact while making unfounded assumptions about urban populations.

The Eastern Queens Alliance contends that by granting a FONSI the FAA cannot be said to have taken a "hard look"<sup>9</sup> at the problem as it considers only the incremental impacts of the runway expansion and not the total noise impact that will result from the expansion. The EA does not address the cumulative impact in light of other take-offs, landings, and air flights over the homes and parks and the reasonably foreseeable future aircraft activity that will contribute to the cumulative noise impact on homes and parks. Indeed, the EA's statement on cumulative impact is an unsupported allegation and reads, in part:

"The cumulative impact of the Proposed Action, when added to the other past, present, and reasonable foreseeable future actions described above, is collectively insignificant given the history of intense urbanization that has occurred in the New York City metropolitan area."<sup>10</sup>

The cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time<sup>11</sup>. The courts, in reviewing whether a federal agency has acted arbitrarily and capriciously in issuing a finding of no significant environmental impact, have given effect to the plain language of the regulations. While the factual settings differ in some respects from the instant issue, the consistent position in the case law is that, depending on the environmental concern at issue, the agency's EA must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum<sup>12</sup>. Noting that the regulatory definition of cumulative impact specifies that the "'incremental impact of the action' [at issue]" must be considered " 'when added to other past, present, and reasonably foreseeable future actions'<sup>13</sup>," we believe that, consistent with the regulation and purpose of NEPA, "it makes sense to consider the 'incremental impact' of a project for possible cumulative effects by incorporating the effects of other projects into the background 'data base' of the project at issue"<sup>14</sup>. The point, the court stated, was to provide in the EA "sufficient [information] to alert interested members of the public to any arguable cumulative impacts involving other projects"<sup>15</sup>. Further, the court concluded that insofar as *Kleppe v. Sierra Club*<sup>16</sup>, "may bear on an agency's duty to consider impacts in a context that realistically includes other pending projects, the [agency] fully complied by planning on the basis of ... ultimate completion of the related projects"<sup>17</sup>. Similarly, the court in *Peterson*, without regard to any particular NEPA regulation, reversed a finding of no significant impact and a decision to issue certain oil and gas leases in

---

<sup>9</sup> *Nat'l Parks & Conserv. Ass'n v. U.S. DOT*, 222 F.3d 677 (9th Cir. 2000) (9th Cir. Haw. 2000)

<sup>10</sup> Landrum & Brown. (2012). *Draft Environmental Assessment: Runway 4L/22R Improvements, John F. Kennedy International Airport*. Unpublished manuscript.

<sup>11</sup> 40 C.F.R. § 1508.7

<sup>12</sup> *Coal. on Sensible Transp., Inc. v. Dole*, 263 U.S. App. D.C. 426, 826 F.2d 60 (D.C. Cir. 1987)

<sup>13</sup> *id.* quoting 40 C.F.R. § 1508.7

<sup>14</sup> *id.* at 70-71

<sup>15</sup> *id.* at 71

<sup>16</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 49 L. Ed. 2d 576, 96 S. Ct. 2718 (1976)

<sup>17</sup> *Id.* at 415 n.26, 49 L. Ed. 2d 576, 96 S. Ct. 2718.

national forests without preparing an EIS, remanding the case because the agency had failed, as NEPA requires, to "[fully assess] the [possible] environmental consequences" of activities "which have the potential for disturbing the environment"<sup>18</sup>. *Natural Resources Defense Council, Inc. v. Hodel*<sup>19</sup>, is to the same effect. There, the agency had failed to consider the cumulative impact, as defined in the Council on Environmental Quality (CEQ) regulations, of simultaneous development in the region on "species, particularly whales and salmon, that migrate through the different planning areas" when it considered only the effect on those species "within the Planning Area" rather than "the interregional effects"<sup>20</sup>.

Various airports throughout the world have established programs to address the environmental consequences they have on their community. There are currently 256 airports in the US with Airport Improvement Program grants to conduct Part 150 studies. These airports are using this funding to understand the impacts of noise and provide mitigation measures to communities living in the 65+ DNL contours. Some facilities have even taken this step further to provide mitigation to communities living in the 60+ DNL zones. The only mitigation measures for noise the PANYNJ has performed were to insulate a handful of schools in Queens in 2001. None of the schools in the 65+ DNL zone north of runway 4L/22R and no homes have been insulated by the PANYNJ. (See Appendix A)

While, it is understood that the EA is not intended to be a lengthy document, it must at minimum address the considerations relevant to determining whether an EIS is required. NEPA regulations require that an agency consider cumulative impacts, and the EA fails to address the total noise impact that will result from the runway expansion. Indeed, the FAA's own NEPA policy calls for meaningful consideration of cumulative impact, parroting the language of the NEPA regulations to include proposed projects and past, present, and reasonably foreseeable future actions. Comments submitted by individual community members on the draft EA will call the FAA's attention to the need to consider mitigation measures in view of perceived noise-annoyance levels to persons near the runway. These submitted comments will also express concern about the total impacts of noise on the area, yet the EA contains no analysis of the foreseeable increase of take-offs, landings, and over flights from a more efficient runway system. EQA maintains that each flight may be responsible for a noise level of 55 to 75 dBA and that an increase of 10 dBA correlates to a doubling of loudness such that a commercial jet taking-off or landing may be 4 to 23 times as loud as the natural soundscape. Even in the absence of the regulatory definitions it would be difficult to understand how an agency could determine that an EIS is not required if it had not evaluated actual existing noise impacts as well as those planned impacts that will exist in the foreseeable future. From the case law it is clear that:

a meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions--past, present, and proposed, and reasonably foreseeable--that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate. (*Fritiofson v. Alexander*, 772 F.2d 1225, 1245 (5th Cir. 1985) (citing *Cabinet Mtns. Wilderness/Scotchman's Peak*

---

<sup>18</sup> 717 F.2d at 1415

<sup>19</sup> *Natural Resources Defense Council v. Hodel*, 275 U.S. App. D.C. 69, 296, 865 F.2d 288 (D.C. Cir. 1988)

<sup>20</sup> *Id.* at 297-99, 865 F.2d 288

Grizzly Bears v. Peterson, 222 U.S. App. D.C. 228, 685 F.2d 678, 683-84 (D.C. Cir. 1982)); *see also Hodel, Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 297-99 (1988); City of Carmel-by-the-Sea v. U.S. DOT, 123 F.3d 1142, 1160 (9th Cir. 1997)).

The EA, quoting CEQ guidance on preparation of an EIS, may assume that the no-action alternative is properly viewed as a "benchmark against which decision makers may compare the magnitude of environmental effects" of actions. However, neither the guidance nor the case law relieves the FAA of the duty to meaningfully consider cumulative impact in the EA. The EA has impermissibly taken a foreshortened view of the impacts which could result from the act of constructing and operating the runway expansion<sup>21</sup>.

The City of New York has already drawn up recommendations in a report to reduce sound levels related to airports under NYC Administrative Code 40 C.F.R. pts. 24-205. The recommendations are steps that would be beneficial to this community and would show that the PANYNJ has good will to its surrounding neighbors. The report, including the recommendations can be found at the following address: [www.nyc.gov/html/dep/pdf/noise/airport-noise-study.pdf](http://www.nyc.gov/html/dep/pdf/noise/airport-noise-study.pdf)

We would also request the PANYNJ ensure greater compliance and quieter aircraft during nighttime hours (10pm-7am). This should be enforced by increasing the current noise violation fee from \$250 to an amount that will make an airline reevaluate their practices. Some airports charge upwards of \$5,000 for these violations.

Our request to the PANYNJ is similar to many airport communities around the county – address the noise effects the community is already facing before extending a runway closer to the community. This runway extension could add unknown changes that will affect the health and peace of mind of the neighborhood's community members. The analysis in the EA, in other words, cannot treat the identified environmental concern in a vacuum, as an incremental approach attempts. Without analyzing the total noise impact on the area as a result of the construction and operation of the runway expansion, as of this EA, the FAA is not in a position to determine whether the additional noise that is projected to come from the expansion of the runway would cause a significant environmental impact on the area and, thus, requires preparation of an EIS.

### **Environmental Justice**

The CEQ has promulgated regulations implementing NEPA<sup>22</sup>. Under these regulations, an agency is required to prepare an EA in order to determine whether to prepare an EIS or a FONSI<sup>23</sup>.

Eastern Queens Alliance contends that the preparation of a FONSI by the FAA will violate NEPA, a Department of Transportation ("DOT") Environmental Justice Order, and Executive Order No. 12898 by failing to evaluate or develop alternative plans which do not have adverse impacts which weigh disproportionately high on minority or low-income populations. The EA position on impacts to the minority population does not take into consideration the cumulative

---

<sup>21</sup> *Peterson, Sierra Club v. Peterson*, 717 F.2d 1409, 1413 (1983)

<sup>22</sup> *Id.* § 1500.1

<sup>23</sup> *Id.* § 1501.4; 1508.9

effects of the runway expansion on a “79.5% to 80.0%<sup>24</sup>” minority population and only look at the incremental increase of adverse effects. As will be stated infra, in more depth, this is faulty logic and violates the good faith embodied in the aforementioned acts, regulations and orders. Even though both the Environmental Justice Order and Executive Order specifically state that they do not create any right to judicial review for alleged noncompliance; this lack of an evaluation and development of alternatives as well as the incremental approach to environmental justice will negate any FAA claim of giving the EA a ‘hard look’ under NEPA and allow potential challenges under the APA for a violation of the NEPA, having exhausted available administrative remedies prior to bringing an action<sup>25</sup>.

NEPA's regulations require agencies to "rigorously explore and objectively evaluate all reasonable alternatives.<sup>26</sup>" "The 'existence of a viable but unexamined alternative renders an environmental assessment inadequate."<sup>27</sup> The touchstone for an EA's selection and discussion of alternatives fosters informed decision-making and informed public participation.<sup>28</sup> The EA has failed to give specifics of any alternative, except for a No Build/No Action, that may help to inform the public and allow them to participate in a meaningful fashion. The only mention of an alternative is Proposal 16, which is summarily discounted without detailed discussion and only mentions the invasion of wetlands, which the current plan proposes as well. A certification of FONSI by the FAA would conclude to the community that the FAA arbitrarily and capriciously reviewed the EA in order to reach a predetermined result<sup>29</sup>.

It is also the duty of the FAA to "study, develop, and describe appropriate alternatives.<sup>30</sup>" If the certification of FONSI is granted by the FAA, it has not then fulfilled that requirement and need to develop and discuss a number of alternatives. In *City of Angoon*, the courts stated that the parties claiming a NEPA violation "had not offered a specific, detailed counterproposal that had a chance of success [and that] those who challenge an EIS bear a responsibility 'to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions."<sup>31</sup> It is our desire to effectuate a structure so that the community, Eastern Queens Alliance, the PANYNJ, FAA, and all other parties can develop a meaningful plan that satisfies all stakeholders without the costly delay of protracted litigation.

Therefore, even though an agency is required to examine only those alternatives necessary to permit a reasoned choice,<sup>32</sup> by granting a FONSI in light of this EA, the FAA will not be able to fulfill its obligation under NEPA to "rigorously explore and objectively evaluate all reasonable alternatives."<sup>33</sup> Eastern Queens Alliance asserts that the preparers of the EA arbitrarily chose the

---

<sup>24</sup> Landrum & Brown. (2012). Draft Environmental Assessment: Runway 4L/22R Improvements, John F. Kennedy International Airport. Unpublished manuscript.

<sup>25</sup> *Winnemem Wintu Tribe v. U.S. DOI*, 725 F. Supp. 2d 1119, 1139 (E.D. Cal. 2010)

<sup>26</sup> 40 C.F.R. § 1502.14

<sup>27</sup> *Res. Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1994) (quoting *Idaho Conserv. League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992)

<sup>28</sup> *Angoon v. Hodel*, 803 F.2d 1016, 1020 (9th Cir. 1986)

<sup>29</sup> 40 C.F.R. § 1502.14

<sup>30</sup> 42 U.S.C. § 4332(2)(E)

<sup>31</sup> *Angoon*, 803 F.2d at 1022 (quoting *Vt. Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 553, 55 L. Ed. 2d 460, 98 S. Ct. 1197 (1978))

<sup>32</sup> *Ass'n of Pub. Agency Customers v. Bonneville Power Admin.*, 126 F.3d 1158, 1185 (9th Cir. 1997)

<sup>33</sup> 40 C.F.R. § 1502.14

plan submitted in the EA and ignored potential alternative(s) which do not infringe upon the population of Eastern Queens and Nassau County. The Eastern Queens Alliance proposes the FAA require an EIS and mandate the contracting company to work directly with Eastern Queens Alliance and other community groups to create specific and feasible alternatives that would reduce the burden of adverse effects on the minority community while still allowing runway improvements.

### **Children's Environmental Health and Safety**

An area of great concern is the health and well-being of children living in the community north of runway 4L/22R. With little mitigation in place for noise, a specific worry is what impact this chronic exposure has on children currently and in the long-term.

Most studies on airport impacts to children have reviewed school-related achievement. These are highly useful in linking detrimental effects aircraft noise has on children's reading skills, attention spans, cognitive functions, and overall school failure rates<sup>34 35 36</sup>. Studies that produce such findings are the motivation behind airports' mitigation plans to insulate schools. However, our concern is that children don't spend all their time at school. Young children of pre-school age or children home after school are still susceptible to aircraft impacts even if their school has been insulated.

Studies conducted to understand the impacts of noise at home find that young children whom live or play in noisy environments may never develop listening skills necessary at the point they reach school age. Chronic noise exposure has also been linked to high levels of annoyance in children which is generally defined as "a mixture of anger, fear, and mild irritation." With the long-term health effects of such mental states unknown, we urge the PANYNJ and the FAA to initiate further studies with an EIS of this proposed project and make more of an effort to mitigate the impacts aircraft have on this community before exposing the community youth to increased disruptions at school and home.

### **Air Quality**

JFK and its surrounding neighborhoods are in an air quality region of non-attainment for Ozone (8hr), PM<sub>2.5</sub>, and until recently CO which is now in maintenance status. All of these pollutants have an impact on human and environmental health. Ozone has direct effects on respiratory tracts and can lead to diseases such as asthma or bronchitis. On average New York City residents have consistently higher asthma rates than the rest of the state. These health effects can be compounded with the region's non-attainment for PM<sub>2.5</sub> which is produced by vehicle combustion and reactions with Volatile Organic Compounds and SO<sub>x</sub> and NO<sub>x</sub>. Currently there is no air quality monitoring stations in Queens County near JFK to verify the emission levels produced by the airport.

---

<sup>34</sup> Evans, G., & Maxwell, L. (1997). Chronic Noise Exposure and Reading Deficits: The Mediation Effects of Language Acquisition. *Environment and Behavior*, 638.

<sup>35</sup> Haines, M., Stansfield, S., Job, R., Berglund, B., & Head, J. (2001). Chronic Aircraft Noise Exposure, Stress Responses, Mental Health and Cognitive Performance in School Children. *Psychological Medicine*, 265-277.

<sup>36</sup> Federal Interagency Committee on Aviation Noise. (2007). Findings of the FICAN Pilot Study on the Relationship Between Aircraft Noise Reduction and Changes in Standardized Test Scores. Washington, DC: FICAN.

Carbon dioxides, volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>)-- the air pollutants emitted by aircraft and airport-related industry—release a variety of toxic chemicals such a benzene and formaldehyde. A 1993 EPA health risk assessment concluded that aircraft engines were responsible for approximately 10.5 percent of the cancer cases within a 16-square-mile area surrounding Chicago's Midway airport. The National Resources Defense Council warns "the same conclusion might apply to people living immediately adjacent to airports all over the country."<sup>37</sup>

The proposed action presented in the EA states there will be an improvement in air quality because of the potential for reduced taxi time. However, the proposal also shows a foreseeable increase of over 250 aircraft per day using the airport. The effect of the runway extension on the number of aircraft that can use JFK is significant, at a foreseeable increase of approximately 25%. The proposed action should take into account these increases as a result of increased runway usage and any shifts in emissions that would potentially be directed over the neighborhood north of 4L/22R.

In addition to the omission of foreseeable increases in airport traffic, the GHG measurements and modeling used by L&B are in conflict with a 2009 PANYNJ study on Greenhouse gasses.<sup>38</sup> The PANYNJ study places total GHG emissions from JFK airport and operations at 1,570,818 metric tons CO<sub>2</sub> equivalent; whereas the figures provided by L&B show only 460,669 annual metric tons of CO<sub>2</sub>. This purported decrease of 79% is either (1) erroneous, or (2) represents a drastic decrease in emissions that should be carried over into the 2015 No-Build/No-Action plan.

Because of the non-attainment status of the air quality region JFK is located in, the airport is eligible for funding through the Voluntary Airport Low Emissions (VALE) program. The FAA program helps airports reduce all sources of ground emissions and meet state air quality requirements of the Clean Air Act. Through the program Airport Improvement Program funding would cover 75% of costs to JFK for such a program. The remaining 25% could be covered by Passenger Facility Charge funding. The Eastern Queens Alliance requests the PANYNJ further evaluates the impact this proposed project will have on the air quality in the areas of South East Queens through an EIS. We also request the PANYNJ take advantage of available funds from the FAA for establishing a VALE program at JFK airport.

## **Land Use**

### **Impact to Wetlands and Idlewild Park Preserve**

An EA should analyze both the direct and indirect impacts of a proposed action<sup>39</sup>. Indirect impacts are defined as being caused by the action and are later in time or farther removed in distance but still reasonably foreseeable<sup>40</sup>. Eastern Queens Alliance believes that in granting a FONSI the FAA will have violated NEPA by their inadequate analysis of impacts on wetlands at the north of the runway expansion, both direct and indirect. After reviewing the EA, especially chapters 4 and 5, we believe that the indirect impact on wetlands analysis is not adequate to the

---

<sup>37</sup> Skolnick, Sharon. (2001). *Exposing Airports' Poison Circles*. Earth Island Journal. 15, 4.

<sup>38</sup> Southern Research Institute. (2009). Greenhouse Gas Emissions Inventory for the Port Authority of New York and New Jersey. (Prepared for the Port Authority of New York & New Jersey).

<sup>39</sup> Custer Cnty. Action Ass'n v. Garvey, 256 F.3d 1024, 1035 (10th Cir. 2001)

<sup>40</sup> 40 C.F.R. § 1508.8(b)

point of being arbitrary and capricious. In addition, we contend that NEPA will be violated because the EA: (1) failed to identify and classify into subcategories the wetlands located between Rockaway Blvd., and the current airport property boundary, (2) failed to take actual field data relating to environmental impacts of the proposed runway project, and (3) failed to disclose the necessity of removing and/or ‘topping’ trees in Idlewild Park Preserve in the EA.

We argue that the EA erred by failing to consider the environmental impacts of cumulative or induced growth, thereby precluding a true comparison of alternatives. The EA shows conflicting data in regards to the destruction or filling of wetlands towards the north end of the runway and summarily and without discussion dismisses or disregards the foreseeable increase in air traffic, and thus noise, pollution, and vibrations related to the increased efficiency of the runway and the airport as a whole. In addition, the EA does not validate reasoning why one wetland is more important than another. The proposed plan impacts wetlands at the head of Jamaica Bay and by association could potentially do significant harm to the Bay itself.

We further allege that the EA improperly omitted from its analysis the impact to Idlewild Park Preserve. In a public hearing on October 4, 2012 to discuss the impacts of the proposed runway expansion the issue of tree-tops in Idlewild Park Preserve were mentioned. The PANYNJ representative noted that the trees would have to be removed, cut down, or topped to meet FAA safety standards. There is no mention of this significant impact in the EA nor is there a discussion of the impact this will have to the Peregrine Falcon (*Falco peregrinus*), a New York State Endangered Species, that may nest in the tops of trees of the height in Idlewild Park Preserve. The Preserve, as designated by New York City, is a wildlife refuge officially part of New York City’s Forever Wild Program (See Appendix B) and therefore, is entitled to § 4(f) protections<sup>41</sup>. § 4(f) requires, in part, that the Secretary of Transportation not approve any project which requires the use of *publicly* owned land from a park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance or *any land* from an historic site of national, state, or local significance *unless* the Secretary *finds there is no feasible and prudent alternative* to the use of such land (see comments supra for discussion of alternatives), and that all possible planning has been done to minimize harm to that protected area. According to the EA representative, the trees are obstructions to air navigation under the United States Federal Aviation Administration regulations, making them potential hazards to aeronautical safety that they will be obligated to remediate. However, we assert that because the trees are located in wetlands, protected by the Tidal Wetlands Enforcement Policy<sup>42</sup>, the FAA will need to obtain permission from multiple state and local organizations before trimming or removing trees and thus making the runway safe under FAA Regulations. The federal regulation of airport safety does not preempt state and local environmental laws which were created because any impact to tidal wetlands can be significant. Yet, there is no discussion of how this hurdle will be handled nor that the hurdle even exists, once again showing that the EA is incomplete, based on poor data, and does not allow the community an adequate opportunity to evaluate and improve the proposal.

In continuing with the inadequacy of the EA in relation to land use, the preparers analysis on Idlewild Park Preserve, all 346 acres is required, yet omitted. The uninterrupted and purposeful use by the public of the property for almost thirty years and a New York City designation of

---

<sup>41</sup> Nat'l Wildlife Fed'n v. Coleman, 529 F.2d 359, 370 (5th Cir. 1976)

<sup>42</sup> NYS N.Y. Env'tl. Conserv. Law, 42 U.S.C. §§ 1-0101, 3-0301, 25-0302

Forever Wild makes these lands a public park and recreation area of state and local significance within the meaning of § 4(f). There is no mention of the increases in noise and pollution from Rockaway Blvd., and the airport which will occur once trees from this historical wetland have been removed, cut down, or topped. Accordingly, an EIS is required, and will have to determine whether (1) there are no prudent and feasible alternatives to using the Idlewild Park Preserve and the NYSEDC land for the project, and (2) whether the project includes all possible planning to minimize whatever harms will result to the Idlewild Park Preserve and the NYSEDC property. If a FONSI is granted, the omission of the use of publicly owned land from Idlewild Park Preserve for this runway expansion would violate the CEQ guidelines that suggest an EIS be prepared when the impacts are controversial [substantial dispute] as to the size, nature, and effect of the major federal action<sup>43</sup>.

## **Land Use**

### **Construction of New Interchange**

An issue related to land use that is only briefly mentioned is the construction of a new interchange from Rockaway Blvd., to the airport access roads. In section 5.3.3, the discussion of a new public access road to JFK airport is summarily dismissed as there is currently little traffic on North Boundary Road. However, the EA does not take into account the foreseeable effects of having a new public access point to the airport from a major thoroughfare.

NEPA requires federal agencies contemplating major action to follow a procedure -- preparing and considering an EIS -- whenever the proposed action may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). Failing to follow this procedure creates a risk that serious and avoidable environmental consequences of the action, which an EIS would reveal, will not be brought to the attention of agency decision makers. Thus, if a particular project does in fact entail serious but nonobvious environmental impacts, agency failure to prepare an EIS may mean that the last opportunity to eliminate or minimize these impacts, in accordance with NEPA's broad objectives, has been lost. The interchange alone is grounds for requiring an EIS, as can be seen in *Davis v. Coleman*, "an interchange on a major highway in an area where no connecting road currently exists will have a substantial impact on a number of environmental factors."<sup>44</sup> That this is so is recognized in the Department of Transportation's own PPM 90-1, August 24, 1971, 2 Env. L. Rep. 46106, which governs preparation of impact statements for federal-aid highway projects:

The improved access and transportation afforded by a highway may generate other related actions that could reach major proportion and which would be difficult to rescind. An example would be a highway improvement which provides access to a nonaccessible area, acting as a catalyst for industrial, commercial, or residential development of the area. *Id.*, Appendix E, para. 2f, 2 Env. L. Rep. at 46110.

The impact this new interchange will have on the communities in the area once completed and the foreseeable impacts must be evaluated under an EIS in order to measure these unknowns properly.

---

<sup>43</sup> *Hanly v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972)

<sup>44</sup> *Davis v. Coleman*, 521 F.2d 661 (9th Cir. 1975)

## Land Use

### Value of Homes

In 1994 the consulting firm of Booz-Allen & Hamilton, Inc. prepared a report titled *The Effect of Airport Noise on Housing Values: A Summary Report* for the Federal Aviation Administration<sup>45</sup>. The report describes a methodology for evaluating the impact of noise on housing values. The methodology essentially compares market prices in similar neighborhoods that differ only in the level of airport-related noise. In pilot studies using this method, Booz-Allen found that the effect of noise on prices was highest in moderately priced and expensive neighborhoods. In two paired moderately priced neighborhoods north of Los Angeles International Airport, the study found "an average **18.6 percent** higher property value in the quiet neighborhood, or **1.33 percent per dB of additional quiet**."

A 1996 study funded by the Legislature of the State of Washington<sup>46</sup> used a somewhat similar methodology and found that the proposed expansion of Seattle-Tacoma Airport would cost five nearby cities \$500 million in property values and \$22 million in real-estate tax revenue. The study of single-family homes -- all in "very good" condition, with three or more bedrooms and two or more baths, and excluding the most expensive and inexpensive units to provide more representative comparisons -- found that "a housing unit in the immediate vicinity of the airport would sell for **10.1 percent** more -- if it were located elsewhere." The Washington study also concluded: "all other things remaining equal, the value of a house and lot increases by about 3.4% for every quarter of a mile the house is farther away from being directly underneath the flight track of departing/approaching jet aircraft."

In 1997 Randall Bell, MAI, Certified General Real Estate Appraiser, licensed real estate broker, and instructor for the Appraisal Institute, provided the results of his own professional analysis to the Orange County Board of Supervisors<sup>47</sup>. Comparing sales of 190 comparable properties over six months in communities near Los Angeles International Airport, John Wayne Airport, and Ontario Airport, Bell found a diminution in value due to airport proximity averaging **27.4 percent**. Bell has also developed a list of over 200 conditions that impact real estate values -- airport proximity is categorized as a "detrimental condition". In addition, the EA does not take into consideration all of the impacted communities in south eastern Queens. It specifically ignored the communities of Springfield Gardens, Rosedale, Brookville, and Laurelton. The omission of a discussion of communities directly around the affected area is a significant omission that further establishes the inadequacy of the EA and the need for an EIS<sup>48</sup>. "The Secretary shall designate critical habitat, and make revisions thereto, . . . on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." (Emphasis added) It is rudimentary administrative law that discretion as to the substance of the ultimate decision does

---

<sup>45</sup> Booz-Allen & Hamilton, Inc. (1994). *Effect of Airport Noise on Housing Values: A Summary Report*. (Prepared for the Federal Aviation Administration, Office of Environment and Energy.)

<sup>46</sup> Helmuth, Obata, & Kassabaum, Inc. (1997) *SEA-TAC International Airport Impact Mitigation Study*. (Prepared for the Washington State Department of Community, Trade and Economic Development.)

<sup>47</sup> Bell, Randall. (1999). "The Impact of Airport Noise on Residential Property Values." PriceWaterhouseCoopers (unpublished paper).

<sup>48</sup> SEC v. Chenery Corp., 318 U.S. 80, 94-95, 87 L. Ed. 626, 63 S. Ct. 454 (1943)

not confer discretion to ignore the required procedures of decision making. And any omission of this nature is reviewable under 40 C.F.R. pt. 1540 (g).

In addition, a special set of takings problems has resulted from airplane flights, including problems of overflights, pollution, noise and nuisance<sup>49</sup>. The traditional theory that a landowner has rights in the space above the land has resulted in compensation when low flights interfered with those rights. This theory has been extended to the problems on nearby lands, not directly under the flight approaches, which have suffered from noise and fumes of the airplanes. Low-flying aircraft have been held to have taken an easement, or to have constituted a trespass, for which compensation must be given. Airflights even within navigable airspace have been held to be takings, and the prohibition of building structures above a certain height when within certain proximity to the airport has also been held to be a taking.

Therefore, by expanding the runway to the north, this, in essence, places planes, the flight paths and the noise/vibration closer to homes, decreasing their value and possibly creating a nuisance or “taking”. From the draft EA provided and the lack of calculations and real data used in noise levels it is impossible to determine the exact decrease in land value and an EIS which utilizes actual data should be implemented to avoid future issues with the runway expansion.

### **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<sup>50</sup>. As noted extensively in these 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. We request that further studies, such as a Part 150 study, a VALE Program Evaluation and a formal Environmental Impact Statement be undertaken with the advice and consent of community organizations so as to properly and meaningfully inform the FAA of the adverse effects and how to properly mitigate them, to the satisfaction of all parties.

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."<sup>51</sup> 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."<sup>52</sup> The agency's overall EIS-related obligation is to "take a 'hard look' at the environmental consequences before taking a major action."<sup>53</sup> At present the EA does not satisfy the 'hard look' obligation and an EIS is required.

---

<sup>49</sup> Gardner v. Cnty. of Allegheny, 114 A.2d 491 (Pa. 1955); Ackerman v. Port of Seattle, 348 P.2d 664 (Wash. 1960)

<sup>50</sup> 49 U.S.C. § 47106(c)(1)(B) (2006)

<sup>51</sup> 42 U.S.C. § 4332(2)(C); see Stewart Park & Reserve Coal. v. Slater, 352 F.3d 545, 557 (2d Cir. 2003); Citizens against Burlington, Inc. v. Busey, 290 U.S. App. D.C. 371, 938 F.2d 190, 193 (D.C. Cir. 1991)

<sup>52</sup> 40 C.F.R. § 1502.1

<sup>53</sup> Balt. Gas & Elec. Co. v. Natural Resources Defense Council, 462 U.S. 87, 97, 103 S. Ct. 2246, 76 L. Ed. 2d 437 (1983)

**Works Cited**

- Bell, Randall. (1999). *The Impact of Airport Noise on Residential Property Values*. PriceWaterhouseCoopers (Unpublished Paper).
- Booz-Allen & Hamilton, Inc. (1994). *Effect of Airport Noise on Housing Values: A Summary Report*. (Prepared for the Federal Aviation Administration, Office of Environment and Energy).
- Evans, G., & Maxwell, L. (1997). Chronic Noise Exposure and Reading Deficits: The Mediation Effects of Language Acquisition. *Environment and Behavior*, 638.
- Federal Interagency Committee on Aviation Noise. (2007). *Findings of the FICAN Pilot Study on the Relationship Between Aircraft Noise Reduction and Changes in Standardized Test Scores*. Washington, DC: FICAN.
- Haines, M., Stansfield, S., Job, R., Berglund, B., & Head, J. (2001). Chronic Aircraft Noise Exposure, Stress Responses, Mental Health and Cognitive Performance in School Children. *Psychological Medicine*, 265-277.
- Helmuth, Obata, & Kassabaum, Inc. (1997). *SEA-TAC International Airport Impact Mitigation Study*. (Prepared for the Washington State Department of Community, Trade, and Economic Development.)
- Landrum & Brown. (2012). *Draft Environmental Assessment: Runway 4L/22R Improvements, John F. Kennedy International Airport*. Unpublished manuscript.
- Jarup, L., Dudley, M., Babisch, W. H., Swart, W., Pershagen, G., Bluhm, G., et al. (2005). Hypertension and Exposure to Noise near Airports (HYENA): Study Design and Noise Exposure Assessment. *Environmental Health Perspectives*, 1473-1478.
- Skolnick, Sharon. (2001). *Exposing Airports' Poison Circles*. *Earth Island Journal*, 15, 4.
- Southern Research Institute. (2009). *Greenhouse Gas Emissions Inventory for the Port Authority of New York and New Jersey*. (Prepared for the Port Authority of New York & New Jersey).
- Stasfield, S., & Matheson, M. (2003). Noise Pollution: non-auditory effects on health. *British Medical Bulletin*, 243-257.
- United States Environmental Protection Agency. (1978). *Noise: A Health Problem*. Washington, D.C.: Office of Noise Abatement and Control.

United States Government Accountability Office. (2012). *AIRPORT NOISE GRANTS: FAA Needs to Better Ensure Project Eligibility and Improve Strategic Goal and Performance Measures*. Washington, DC.

**TABLE OF AUTHORITIES**

**Supreme Court Opinions**

Kleppe v. Sierra Club, 427 U.S. 390, 49 L. Ed. 2d 576, 96 S. Ct. 2718 (1976) ..... 3  
SEC v. Chenery Corp., 318 U.S. 80, 87 L. Ed. 626, 63 S. Ct. 454 (1943) ..... 11  
Balt. Gas & Elec. Co. v. Natural Resources Defense Council, 462 U.S. 87, 103 S. Ct. 2246, 76 L. Ed. 2d 437 (1983) ..... 12

**Federal Court Opinions**

Natural Resources Defense Council v. Hodel, 865 F.2d 288 (1988) ..... 4  
Sierra Club v. Peterson, 717 F.2d 1409 (1983) ..... 5

**Second Circuit Opinions**

Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972) ..... 9  
Stewart Park & Reserve Coal. v. Slater, 352 F.3d 545 (2d Cir. 2003) ..... 12

**Fifth Circuit Opinions**

Fritiofson v. Alexander, 772 F.2d 1225 (5th Cir. 1985) ..... 4  
Nat'l Wildlife Fed'n v. Coleman, 529 F.2d 359 (5th Cir. 1976) ..... 9

**Ninth Circuit Opinions**

Nat'l Parks & Conserv. Ass'n v. U.S. DOT, 222 F.3d 677 (9th Cir. 2000) ..... 3  
City of Carmel-by-the-Sea v. U.S. DOT, 123 F.3d 1142 (9th Cir. 1997) ..... 4  
Winnemem Wintu Tribe v. U.S. DOI, 725 F. Supp. 2d 1119 (E.D. Cal. 2010) ..... 6  
Res. Ltd. v. Robertson, 35 F.3d 1300 (9th Cir. 1994) ..... 6  
Idaho Conserv. League v. Mumma, 956 F.2d 1508 (9th Cir. 1992) ..... 6  
Angoon v. Hodel, 803 F.2d 1016 (9th Cir. 1986) ..... 6  
Ass'n of Pub. Agency Customers v. Bonneville Power Admin., 126 F.3d 1158 (9th Cir. 1997) ... 6  
Davis v. Coleman, 521 F.2d 661 (9th Cir. 1975) ..... 10

**Tenth Circuit Opinions**

Custer Cnty. Action Ass'n v. Garvey, 256 F.3d 1024 (10th Cir. 2001) ..... 8

**D.C. Circuit Opinions**

Sierra Club v. Peterson, 230 U.S. App. D.C. 352, 717 F.2d 1409 (D.C. Cir. 1983) ..... 1  
Coal. on Sensible Transp., Inc. v. Dole, 263 U.S. App. D.C. 426, 826 F.2d 60 (D.C. Cir. 1987) .. 3

Natural Resources Defense Council v. Hodel, 275 U.S. App. D.C. 69, 865 F.2d 288 (D.C. Cir. 1988) ..... 3, 4

Citizens against Burlington, Inc. v. Busey, 290 U.S. App. D.C. 371, 938 F.2d 190 (D.C. Cir. 1991) ..... 12

**United States Code**

42 U.S.C. § 4332(2)(C) (2006) ..... 12

42 U.S.C. § 4332(2)(E) (2006) ..... 6

N.Y. Env'tl. Conserv. Law, 42 U.S.C. §§ 1-0101, 3-0301, 25-0302 (2006) ..... 9

N.Y. Env'tl. Conserv. Law, 42 U.S.C. § 4(f) (2006) ..... 9

49 U.S.C. § 47106(c)(1)(B) (2006) ..... 12

**Pennsylvania State Opinions**

Gardner v. Cnty. of Allegheny, 114 A.2d 491 (Pa. 1955) ..... 11

**Washington State Opinions**

Ackerman v. Port of Seattle, 348 P.2d 664 (Wash. 1960) ..... 11

**Other**

40 C.F.R. § 1508.9 (2011) ..... 1

40 C.F.R. § 1508.7 (2011) ..... 3

id. quoting 40 C.F.R. § 1508.7 ..... 3

id. at 70-71 ..... 3

id. at 71 ..... 3

717 F.2d at 1415 ..... 3

40 C.F.R. pts. 24-205 (2011) ..... 5

40 C.F.R. § 1500.1 (2011) ..... 5

40 C.F.R. § 1501.4 (2011) ..... 5

40 C.F.R. § 1502.14 (2011) ..... 6

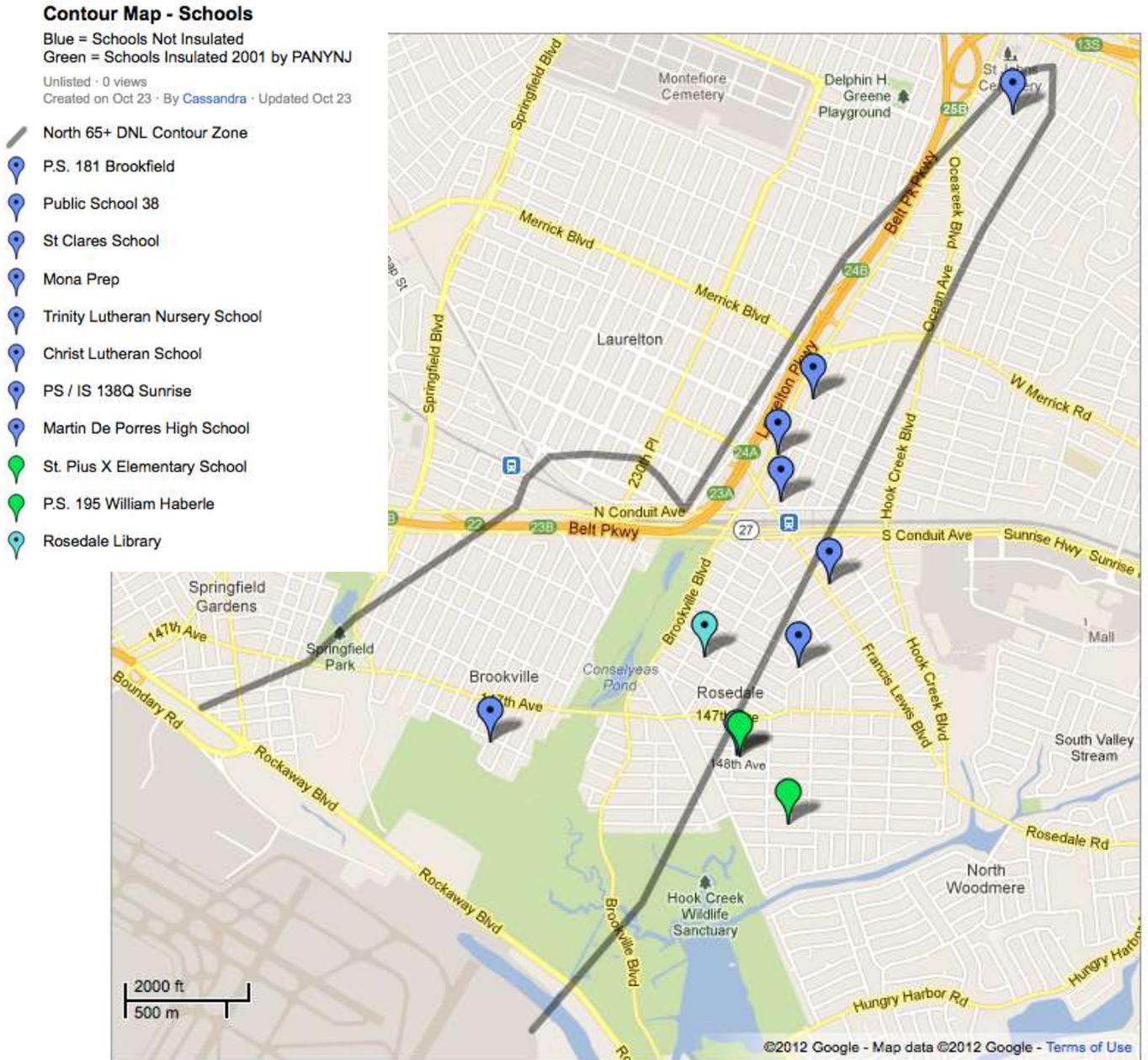
40 C.F.R. § 1508.8(b) (2011) ..... 8

40 C.F.R. pt. 4 (2011) ..... 9

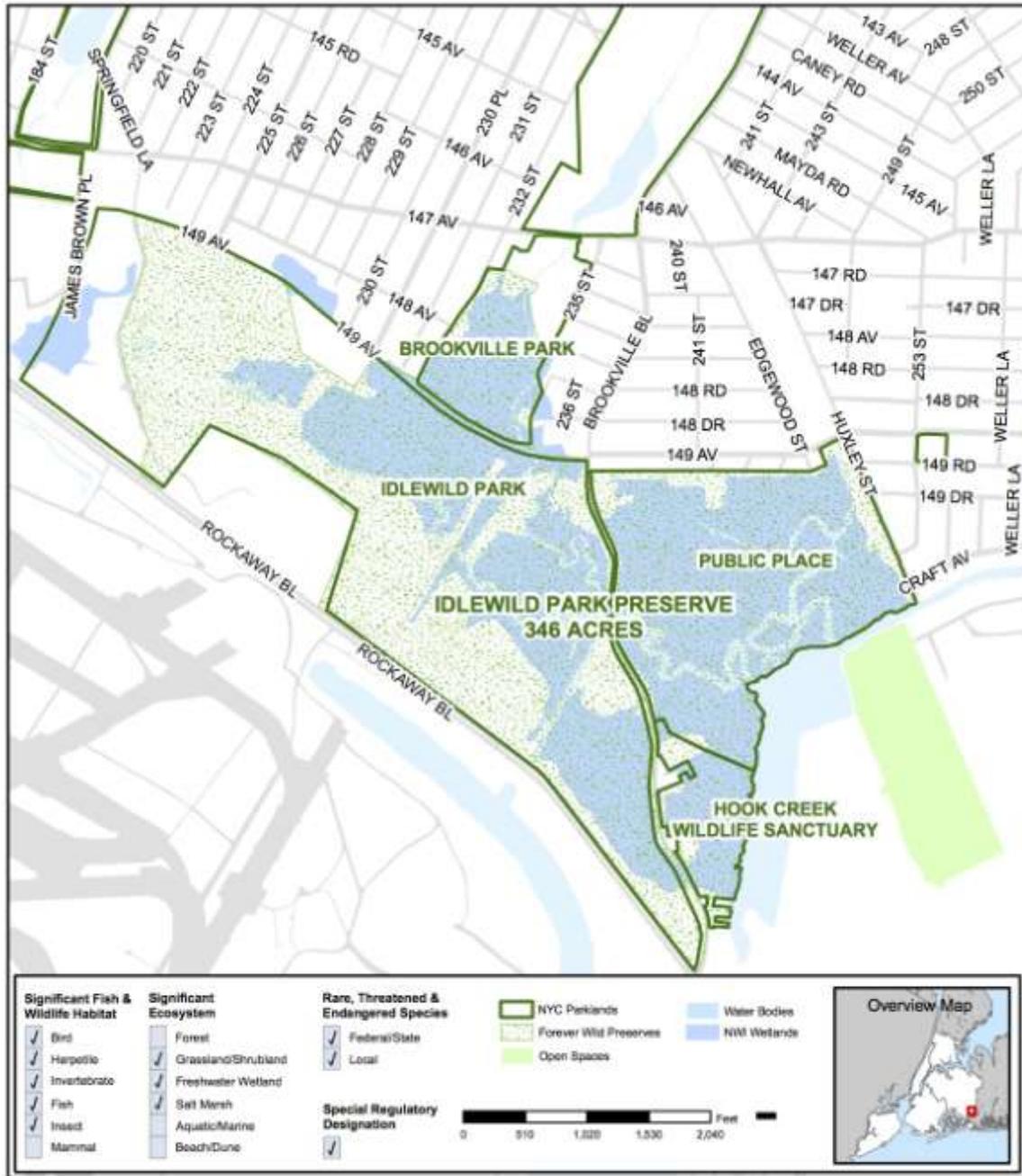
40 C.F.R. pt. 1540 (2011) ..... 11

40 C.F.R. § 1502.1 (2011) ..... 12

Appendix A – Contour Map with Schools North of Runway 4L/22R



Appendix B – Idlewild Park Preserve



**City of New York  
Parks & Recreation  
Natural Resources Group**  
Avenue North, 1234 79th Avenue, New York, NY 11355  
 Michael R. Bloomberg, Mayor  
 Adrian Benepe, Commissioner  
 Bill Tal, Director  
 Craig Mandel, GIS/Data Manager

February 2008

**FOREVER WILD**  
 IDLEWILD PARK PRESERVE  
 IDLEWILD PARK (Q392)  
 HOOK CREEK WILDLIFE SANCTUARY (Q466)  
 BROOKVILLE PARK (Q008)  
 PUBLIC PLACE (Q454)  
 QUEENS, NY

This map is limited by the accuracy of its source data and is intended for illustrative use only.

**Eastern Queens Alliance Board Members**

Board of Directors

Barbara E. Brown, EQA Chairperson & President, Springfield/Rosedale Community Action Association, Inc.

Patrick L. Evans, Vice Chairperson & President, Springfield Gardens Tax Payer's Association, Inc.

Lonnie W. Glover, EQA Treasures & President, SpringGar Community Civic Association, Inc.

Annette Jennings Bradley, Recording Secretary, Professional Member: Business and Early Childhood Education

Board Members

Bernella Wilcox, Financial Secretary & Board Member, SpringGar Community Civic Association, Inc.

Michael Gordon, Chairperson of Wayanda Civic Association, Inc.

Dwight Johnson, President, Federated Blocks of Laurelton, Inc.

Richard Belgrave, Professional Member, Environmental Specialist

William Perkins, President, Rosedale Civic Association

Gloria Boyce Charles, Professional Member, Business & Education

Cynthia Curtin, President, Wayanda Civic Association, Inc.

Greg Mays, President & CEO, A Better Jamaica, Inc.

Louis Kilkenny, Vice President Springfield/Rosedale Community Action Association, Inc.