

September 8, 2015

VIA E-MAIL (9-ANM-SOCALOAPM@FAA.GOV)

SoCal Metroplex EA
Federal Aviation Administration
Western Service Center - Operations Support Group
1601 Lind Avenue SW
Renton, WA 98057

Re: Comments re: SoCal Metroplex OAPM - Environmental Assessment

Dear Sir or Madam:

We represent the City of Culver City, California, located approximately two miles to the north and east of Los Angeles International Airport ("LAX"), and City of Inglewood, California, located immediately east of LAX (collectively "Cities"). Both will be materially affected by the changes in arrival and departure procedures proposed in the Federal Aviation Administration's ("FAA") SoCal Metroplex OAPM ("OAPM" or "Project"), and reviewed in the SoCal Metroplex OAPM Draft Environmental Assessment ("OAPM EA").

It should be noted at the outset that these comments are necessitated by the discomfort and confusion of Cities' citizens with respect to the Project's potential noise and other environmental impacts. The Cities' citizens are already suffering demonstrable increases in overflights at low altitudes, and resulting noise impacts. They are now being asked to become the recipients of the Project's additional noise, overflight, and other environmental impacts, the precise degree of which is as yet unascertainable, because the precise projected flight paths to be implemented by the Project cannot be deduced from the information provided to define them. This approach flies in the face of Congress' mandate that NextGen "take into consideration, to the greatest extent practicable, design of airport approach and departure flight paths to reduce exposure of noise and emissions pollution on affected residents." 49 U.S.C. § 40101, note, Vision 100-Century of Aviation Reauthorization Act of 2003, Pub. L. No. 108-176, § 709(c)(7). The Draft EA, however, ignores this mandate and instead limits its focus on improving the efficiency of the procedures and airspace utilization, OAPM EA, § 2.2. In fact, the absence of any discussion in the OAPM EA's "Purpose of the Proposed Action" section of such an effort to reduce noise, emissions or other environmental impacts, clearly demonstrates that the Project does not meet the goals Congress defined for it.

As a consequence of these and other pervasive omissions set forth below, both Cities have common concerns about the sufficiency of the analysis of potential impacts set forth in the EA. These concerns include: (1) use of an inapplicable Day-Night Sound Level (“DNL”) noise metric, instead of the Cumulative Noise Equivalent Level (“CNEL”) metric applicable in California, resulting in an understatement of the Project’s noise impacts over all areas to be overflowed by the Project’s anticipated revised flight paths; (2) use of the outdated and inapplicable Noise Integrated Routing System (“NIRS”) model, instead of the Aviation Environmental Design Tool (“AEDT”) model, thus exacerbating the inadequacies of the noise analysis resulting from the use of the DNL noise metric; (3) a misplaced reliance on a presumption” of conformity with the Federal Clean Air Act; (4) absence of discussion of the Project’s cumulative, capacity enhancing noise and overflight impacts, when taken together with the impacts of the already approved Specific Plan Amendment Study (“SPAS”) project at LAX, which involves, among other things, FAA acknowledged capacity enhancing improvements such as change in the configuration, and extension, of the runways on the North Airfield; and (5) manifestly deficient data and analysis concerning individual projects, evidenced by the belated and piecemeal distribution of the “TARGETS Distribution packages,” containing entirely new information concerning flight paths and altitudes implicated in individual project implementation.

These omissions are not insignificant. Not only do they go to the heart of public concerns regarding the unreported noise and other impacts of the Project on the public exposed to them, but also clearly reflect a “boilerplate” approach to NEPA analysis, in which EAs for other airspace redesigns, in other parts of the country, unrelated to the environmental issues prevalent in the Southern California Metroplex, were cut and pasted into the OAPM EA. For those reasons, as well as the analytic deficiencies set forth below, a full Environmental Impact Statement (“EIS”) should be prepared and circulated for public review, taking into account full information and the results of a complete analysis, as well as a complete catalogue of local environmental effects of the Project on each airport in the region.

I. THE ENVIRONMENTAL IMPACTS OF THE OAPM SHOULD BE EVALUATED IN AN EIS

It is Cities’ understanding that the OAPM encompasses a vast area ranging from Oxnard and Point Magu on the north, to the Mexican border on the south, and includes a myriad of urban and natural areas as well as a population approaching 20 million. FAA has decided to limit its environmental review to an EA on the ground that, among other things: (1) “the proposed action would not result in a significant noise exposure impact on populations exposed to DNL 65 dB or higher levels under the proposed action, or produce reportable noise increases in areas exposed to DNL 45 dB to 65 dB,” OAPM EA, § 5.1.3, p. 5-6; and (2) even though “the proposed action would result in a slight increase in emissions when compared to the no action alternative,” OAPM EA, § 5.8.1, p. 5-15, most of the changes would occur above 1,500 feet, and are, therefore, “presumed to conform” pursuant to Federal Presumed to Conform Actions Under General Conformity. 72 Fed.Reg. 41565 (July 30, 2007).

Nevertheless, there are numerous facets to a decision as to whether to perform an elevated level of environmental analysis, or rely on a FONSI, that the OAPM EA does not take into account. Before a decision to perform an EA instead of an EIS is made, the agency must decide, based on substantial evidence, that the Project will not have significant environmental impacts. *See, e.g., Town of Cave Creek, Arizona v. FAA*, 325 F.3d 320, 327 (D.C. Cir. 2003). The definition of significance includes, but is not limited to: “. . . (4) the degree to which effects on the environment are likely to be highly controversial; . . . (7) whether the action is related to other actions with individually insignificant but cumulatively significant effects; . . . [and] (10) whether the action threatens a violation of federal, state or local environmental law.” 40 C.F.R. § 1508.7 (“CEQ Guidelines”). It is also notable that neither airport owners nor communities affected by changes in airport operations have been included, until the very latest time, in the development of the NextGen or the OAPM Project. Thus, the OAPM EA is not the product of significant community input, as set forth in more detail below, but rather appears to be a restatement of environmental analyses used in other parts of the country, and, thus, does not meet the public participation goals which are the fundament of NEPA. In short, the environmental effects reported in the OAPM EA, if fully and properly analyzed, fit all of these categories of significance and, as set forth below, should be evaluated in a full EIS.

II. THE OAPM EA NOISE ANALYSIS IS FOUNDED ON AN INAPPLICABLE METRIC

The OAPM EA’s noise analysis understates the Project’s manifest noise impacts insofar as it relies on the use of the LDN or DNL metric, Aircraft Noise Technical Report, May 2015, Section 2.1, p. 2.1-2.2 (“Noise Report”). While the Noise Report acknowledges that “[T]he FAA endorses the use of supplemental noise metrics on a case by case basis to describe aircraft noise impacts for specific noise sensitive locations,” *Id.* at 2.1-2.2, it also acknowledges that “no supplemental noise metrics are calculated for the SoCal Metroplex EA,” *Id.* As a graphic illustration of FAA’s apparent disdain for the CNEL metric, exclusively applicable in California, in EA, Appendix E, § E.8, p. E.5, the space set aside for discussion of the “Cumulative Noise Equivalent Level” is left entirely blank.

That omission, however, strikes at the heart of the OAPM EA noise analysis. The “Cumulative Noise Equivalent Level,” or CNEL, metric is required by FAA regulation to be used in California. *See, e.g., FAA Order 5050.4B*, Chapter 1, § 9.n, p. 8;¹ *see also FAA Order 1050.1F*, App. B, ¶ B-1, p. B-1. As the CNEL metric “adds a 5 dB penalty for each aircraft operation during evening hours (7:00 p.m. – 10:00 p.m.),” *ibid.* at Chapter 17, § 1.c(3), which does not exist in the LDN metric. To the extent that the noise impacts at LAX and other airports at least partially arise from operations during those hours, the noise impacts set forth in the OAPM EA are indisputably understated.

¹ “. . . in California, use the Community Noise Equivalent Level (CNEL) instead of the DNL metric.”

III. THE OAPM EA ALSO ERRONEOUSLY EMPLOYS THE NIRS NOISE MODEL EVEN THOUGH THE AEDT MODEL HAS BEEN REQUIRED SINCE MARCH 2012

The noise analysis in the OAPM EA is also called into question by the use of the NIRS model. While the NIRS model was generally in use until March, 2012, *see* Aircraft Noise Technical Report, p. 3-2, fn. 7, at that time, the AEDT model was adopted for regional airspace environmental analyses, Noise Report, § 3.1, p. 3-1. *See also* FAA Order 1050.1E, Change 1, Guidance Memo No. 4, March 21, 2012.

The apparent rationale for the use of the NIRS model in the OAPM EA is that “there is an exemption [from the use of AEDT] for projects whose environmental analyses began before March 1, 2012 . . .” Noise Report, p. 3-2, fn. 7. The OAPM EA, however, fails to specify or substantiate any date before March 1, 2012 the environmental review began. What is absolutely clear is that the OAPM EA noise analysis did not begin until December 1, 2012, *see, e.g.*, OAPM EA, § 4.3.1.1, p. 4-7 [“Radar data obtained from the FAA’s Performance Data Analysis and Reporting System (‘PDARS’) identified 1,242,614 IFR-filed flights to and from the study airports from [sic] December 1, 2012 through November 30, 2013. The 365 days of usable data span all seasons and runway usage configurations for the study airports.”], long after the use of the AEDT model was mandated by FAA’s own regulation.

In short, as the AEDT model applies to the noise (and air quality) analyses; and as the noise analysis was initiated long after the date upon which the AEDT model became applicable; any reliance on the purported “grandfathering” provision is entirely baseless, and the OAPM EA noise analysis should be revised using not only the CNEL metric, but also the AEDT model.

IV. THE OAPM EA’S RELIANCE ON A “PRESUMPTION” OF CONFORMITY IS SERIOUSLY MISPLACED

As the OAPM EA acknowledges, “typically, ‘significant air quality impacts would be identified if an action would result in the exceedance of one or more of the NAAQS [National Ambient Air Quality Standards] for any time period analyzed.” FAA Order 1050.1E, Change 1, App. A, § 2.3. The OAPM EA fails, however, to analyze and determine whether these standards are exceeded by the Project, and, instead, relies on the “Presumed to Conform” provisions in the Clean Air Act’s implementing regulations, 40 C.F.R. § 93.153(f), FAA’s Federal Presumed to Conform Actions Under General Conformity, 72 Fed.Reg. 41565-580 (July 30, 2007) (“Presumed to Conform Rule”). That section specifies, among other things, that even air traffic actions taking place below the mixing height (usually 3,000 feet above ground level) would be presumed to conform where there are “modifications to routes and procedures . . . designed to enhance operational efficiency (*i.e.*, to reduce delay).”

In this case, the evidence in the record appears to contradict the assumption relied upon throughout the OAPM EA that the Project will increase efficiency, and, thus, the record obviates the presumption of conformity. Specifically, the OAPM EA admits that the procedures specified in the OAPM will increase fuel burn, and, consequently, increase emissions, OAPM EA, § 5.8.3,

p. 5-16, even if by a small amount. The OAPM EA is, however, devoid of explanation or documentation as to the way in which procedures aimed at increasing operational “efficiency” (*i.e.*, reducing the time an aircraft spends in arrival and departure) will result in an increase in emissions, an effect normally associated with increased time spent in arrival and departure.

Moreover, the OAPM EA fails to give even a passing nod to “regional significance.” “Where an action otherwise presumed to conform . . . is a regionally significant action, . . . that action shall not be presumed to conform . . .” 40 C.F.R. § 93.153(j).

“[W]hen the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the [*de minimis*] rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area’s total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of § 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

40 C.F.R. § 93.153(i). Both FAA and EPA have interpreted this to mean that FAA must make an affirmative determination, based on the above standards, as to whether the action is, or is not, regionally significant. *See* FAA Order 1050.1E, App. A., § 2.1(m).

In this case, such a determination has never been made. While it could have been accomplished in the process of approving the Presumed to Conform Rule, at the outset, FAA declined to do so, stating “FAA has decided to defer action on this aspect [regional significance] in its draft notice, based on consultation with the EPA.” 72 Fed.Reg. 41580. Despite the broad scope of the instant Project, covering hundreds of miles and millions of people, FAA has again declined to make the required finding in the OAPM EA. In other words, a finding of regional significance constituting a predicate to a presumption of conformity, has never been made, and, in the absence of such a finding, and the data and analysis to support it, the OAPM EA air quality analysis is fatally flawed.

V. THE OAPM EA FAILS TO ADEQUATELY ANALYZE THE PROJECT’S CUMULATIVE IMPACTS

As FAA is well aware, in determining the scope of environmental review, “the agency ‘shall consider . . . 3 types of impacts’: direct, indirect and cumulative.” *National Resources Defense Council, Inc. v. Federal Aviation Administration*, 564 F.3d 549, 558 (2nd Cir. 2009), quoting 40 C.F.R. § 1508.25(c). A cumulative impact, in turn, “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. . .” *Id.* quoting 40 C.F.R. § 1508.7.

Here, FAA utterly ignores that mandate. The OAPM EA’s entire cumulative impact analysis is contained in four pages in Section 5.10, in which FAA claims to list the “past, present

and reasonably foreseeable future actions” that would potentially “contribute to cumulative impacts.” Section 5.10.2, p. 5-18-19, Table 5-7 (“Potential Impacts – 2015 and 2020”). Surprisingly, while listing several minor runway safety area projects at LAX, OAPM EA, Table 5-7, p. 5-19, FAA entirely omits the SPAS project, which is not only “reasonably foreseeable,” but was approved more than two years ago. That project not only contemplates moving Runway 6L/24R 260 feet north, purportedly to improve “safety and efficiency,” but also to extend Runway 6R/24L 1,250 feet to the east. SPAS DEIR, p. 2-9.

It is that runway reconfiguration that leads directly to the increase in capacity of the airfield that the OAPM EA specifically abjures. The OAPM EA claims that “the number and type of aircraft operations are the same under both the Proposed Action and No Action Alternative in 2015 and 2020 [because] [t]he Proposed Action does not include developing or constructing facilities, such as runways or terminal expansions, that would be necessary to accommodate an increase in aviation activity,” OAPM EA, § 5.1.2, p. 5-3. It fails, however, to acknowledge that the FAA and its Administrator Michael Huerta have consistently maintained, as is the case at LAX, “[n]ew or reconfigured runways can effectively improve capacity at airports with significant constraints,” *see, e.g.*, Federal Aviation Administration Press Release – FAA Identifies Airport Capacity Constraints and Improvements, January 23, 2015.

This is because the increased “efficiency” which is the alleged goal of the Project, is an identity with an increase in “capacity.” “Capacity” is defined by FAA as “throughput rate, i.e. the maximum number of operations that can take place in an hour.” FAA Advisory Circular 150/5060-5, Airport Capacity and Delay, p. 1. The Project is allegedly designed expressly to enhance operational efficiency which is defined, in turn, as increase in flexibility and predictability in transfer of aircraft between the various levels of Air Traffic Control, and reduction in the complexity of routes all leading to a greater number of aircraft arriving and departing (safely) during a given period of time. Therefore, increased “efficiency” inevitably leads to increased “throughput” which necessarily increases “capacity.” It only requires a simple algebraic identity to establish that the Project possesses capacity enhancing potential when viewed together with LAX’s “reasonably foreseeable” SPAS project, although that identity has been entirely ignored in the OAPM EA.

VI. THE FAA HAS ONLY NOW PRODUCED “TARGET DISTRIBUTION PACKAGES” WHICH APPEAR TO MATERIALLY SUPPLEMENT THE OAPM EA ANALYSES OF FLIGHT PATHS AND ALTITUDES

Only now, at the eleventh hour, has FAA produced what it calls “TARGET Distribution Packages” purporting to contain “supplemental materials,” including “waypoint latitude/longitudes, distances between waypoints in a route, altitude restrictions at key waypoints, and map(s) depicting route[s].” The “supplemental materials” were originally, however, provided for only four airports, not including LAX, with the caveat that “the distribution packages for individual study airports will be posted as they are made available.” On or about August 28, 2015, barely a week before the due date for comments on the OAPM

EA, the FAA has released data purporting to support its conclusions regarding the change in procedures at LAX.

That approach to public review and participation is not sufficient to meet even the most liberal public information test applicable to an EA. *Klamath-Siskiyou Wildlands Ctr, v. Bureau of Land Management*, 387 F.3d 989, 993 (9th Cir. 2004) [“a ‘concise public document’ designed to ‘briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement’” quoting 40 C.F.R. § 1508.9. [Emphasis added.]] FAA’s piecemeal approach to public disclosure leaves barely more than one week, including a major holiday weekend, for the public and their consultants to review and analyze the data to determine whether it indeed supports FAA’s conclusions. In fact, the absence of such data and analysis from the original publication of the OAPM EA is a graphic admission that the information and analyses in the OAPM EA, in and of itself, is not sufficient to “provide full and fair discussion of significant environmental impacts and [to] inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

In the final analysis, the OAPM Project implicates substantial controversy over the “size, nature, or effect of the major federal action,” *Town of Cave Creek, supra*, 325 F.3d at 331; clear cumulative impacts with, at minimum, the LAX SPAS Project which remain unreported and unanalyzed; and potential violation of the Clean Air Act. The Project’s impacts, therefore, fall directly within the scope of impacts that must be further evaluated and circulated for public review in a full and complete EIS.

Despite these demonstrable deficiencies, Cities seek a reasonable resolution of the apparent inconsistency of FAA’s aim to increase efficiency in the national airspace system, with Cities’ goal of achieving sufficient mitigation to protect their citizens. This may be achieved by, among other ways: (1) circulation of an EIS or Supplemental EA containing the data and analysis, including new and properly documented noise and flight path analyses; (2) more rapid implementation of profile descent approaches which show great promise in the reduction of noise on arrival; and (3) direct consultation between Cities and FAA to discuss adjustment to flight tracks including a path over the Santa Monica Freeway, to maintain and enhance the delicate balance of approach and departure procedures between and among airports, while, at the same time, protecting citizens from bearing the whole burden for the benefits conferred by the OAPM exclusively on the aviation community.

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Culver City and Inglewood appreciate this opportunity to comment, and look forward to working with FAA toward a legally supportable environmental review and successful implementation of an environmentally compliant and properly mitigated SoCal Metroplex OAPM Project.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By 

Barbara Lichman