

1 MICHAEL N. FEUER (SBN 111529)
City Attorney
2 DAVID J. MICHAELSON (SBN 138445)
Chief Assistant City Attorney
3 City Hall East, 200 N. Main St. Ste 800
4 Los Angeles, CA 90012
5 Telephone: (213) 978-7100
Facsimile: (213) 978-8312
6 mike.n.feuer@lacity.org
7 david.michaelson@lacity.org
Attorneys for Plaintiff City of Los Angeles
8

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 CITY OF LOS ANGELES,

No. CV

13 Plaintiff,

14 v.

15 FEDERAL AVIATION
ADMINISTRATION,

16 Defendant.
17
18
19
20
21
22
23
24
25
26
27
28

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF THE
FREEDOM OF INFORMATION ACT**

1 Plaintiff City of Los Angeles (“the City”) alleges as follows:

2 **INTRODUCTION**

3 1. By this lawsuit, the City seeks an order declaring that the Federal Aviation
4 Administration (“FAA”) is in violation of the Freedom of Information Act, 5 U.S.C. §
5 552 (“FOIA”), and to compel disclosure of records containing data important to the lives
6 and livelihoods of City residents throughout the San Fernando Valley. These records
7 relate to the environmental, noise, and safety studies FAA purportedly conducted when
8 the agency proposed new aircraft departure procedures at Hollywood-Burbank Airport
9 (“Burbank Airport”).

10 2. In October 2018, FAA published a “Draft Environmental Review Proposed
11 Categorical Exclusion” report regarding proposed new aircraft procedures (“Draft ER”).
12 In the Draft ER, FAA claimed that it had analyzed four alternative scenarios for aircraft
13 departures:

- 14 (1) a no-action scenario;
15 (2) an alternative scenario where flight paths would follow U.S.
16 Highway 101;
17 (3) an alternative scenario involving a southward shift of the existing
18 departure flight paths; and
19 (4) open SID (Standard Instrument Departures) procedures, namely the
20 OROSZ THREE and SLAPP TWO procedures (FAA’s “proposed
21 procedures”).
22

23 3. Relying upon undisclosed data, FAA told the public that the first three
24 scenarios were not feasible for operational and/or safety reasons. FAA claimed that the
25 agency’s proposed procedures (OROSZ THREE AND SLAPP TWO) as compared to the
26 baseline (the no-action scenario) would have no significant impact on noise levels and
27 air pollution and would not significantly affect the area’s ecological, recreational,
28 historic, or cultural properties. Thus, FAA concluded that its proposed action was only

1 subject to the most basic level of environmental review under the National
2 Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, a “CATEX” or Categorical
3 Exclusion.

4 4. There was immediate and justified public outcry, which continues to this
5 day. Any change in flight departure procedures at Burbank Airport would have the
6 potential to concentrate low-flying aircraft above homes, schools, places of worship,
7 parks, recreation centers, and historic sites primarily situated in the City’s portion of the
8 San Fernando Valley. That is because although the Burbank Airport is situated almost
9 entirely within the boundaries of the City of Burbank, aircraft departing from the airport
10 immediately—at their lowest altitudes—enter airspace above the City of Los Angeles
11 and its residents. The aircraft then ascend over huge swathes of City neighborhoods,
12 some of which are located in particularly noise-sensitive (and wildfire-prone) areas such
13 as canyons and parks.

14 5. On October 29, 2018, the City submitted a FOIA request, reasonably
15 targeted to seek only documents and modeling data explicitly referenced in FAA’s Draft
16 ER. The City assisted FAA by citing the relevant page numbers of the Draft ER where
17 FAA had referenced the records the City seeks. Though FAA had sufficient time and an
18 obligation under both FOIA and NEPA to disclose these records to the public affected by
19 the proposed procedures, FAA failed to produce any records in time to inform the
20 public’s (and the City’s) comments due Sunday, November 18, 2018.

21 6. Over a year later—and though FAA has effectively conceded that its
22 original CATEX review was deficient—the agency has produced only *one* record to the
23 City. FAA withholds *seven* records the agency *admits* should have been made public
24 and claims that the remaining 26 records are protected in their entirety by the
25 deliberative process privilege. Under governing Ninth Circuit law, the deliberative
26 process privilege does not apply to shield “factual” information and does not apply after
27 an agency has made its decisions, such as the ones contained in the Draft ER.

28 7. The current flight procedures at Burbank Airport are causing ongoing and

1 significant impacts to communities in Los Angeles south of the Airport and, any FAA
 2 flight procedure decision – and the facts and analyses underlying a decision – is
 3 information of clear and immediate public interest. As stated further herein, this suit
 4 demands that FAA comply with FOIA and produce all responsive records to the City so
 5 that it can make these records immediately available to the public and so that the City’s
 6 technical and legal experts can validate FAA’s methodology and factual conclusions.

7 **JURISDICTION AND VENUE**

8
 9 8. This Court has subject matter jurisdiction over this action and personal
 10 jurisdiction over the parties pursuant to 5 U.S.C. 552(a)(4)(B) and 28 U.S.C. 1331.

11 9. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), because
 12 the City of Los Angeles is within the Central District of California.

13 10. The Court has authority to enjoin federal agencies from withholding agency
 14 records and to order production of any agency records improperly withheld. 5 U.S.C. §
 15 552(a)(4)(B) and 28 U.S.C. § 2202.

16 11. The Court has authority to grant declaratory relief pursuant to 28 U.S.C. §
 17 2201.

18 **PARTIES**

19 12. The City of Los Angeles is a municipal corporation, organized under the
 20 provisions of the Los Angeles City Charter.

21 13. Defendant FAA is a federal agency of the United States and is subject to
 22 FOIA pursuant to 5 U.S.C. § 552(f)(1). FAA has possession of and control over agency
 23 records that the City seeks, which the City has properly requested pursuant to FOIA, the
 24 Department of Transportation’s implementing regulations, and FAA Orders.

25 **STATUTORY AND REGULATORY FRAMEWORK**

26 FOIA requires that a federal agency release records, unless a statutory exemption
 27 applies. 5 U.S.C. § 552(b)(1)-(9). Pursuant to Department of Transportation (DOT)
 28 regulations which govern FAA, a FOIA “record” “includes any writing, drawing,

1 map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary
2 material, regardless of medium, by which information is preserved. The term also
3 includes any such documentary material stored electronically by computer.” 49 C.F.R.
4 § 7.2.

5 14. Agencies may withhold only portions of records that fall under one of nine
6 statutory exemptions. FAA invokes Exemption 5, which protects “inter-agency or intra-
7 agency memorandums or letters which would not be available by law to a party other
8 than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5).

9 15. Thus, Exemption 5 protects only material that would be protected from
10 disclosure in civil discovery. Of those discovery privileges, FAA invoked the
11 deliberative process privilege. It is well-settled, however, that the deliberative process
12 privilege does not protect purely factual data or material.

13 16. Further, even if an exemption applies, “[a]ny reasonably segregable portion
14 of a record shall be provided to any person requesting such record after deletion of the
15 portions which are exempt.” 5 U.S.C. § 552(b). “It is DOT policy to make its records
16 available to the public to the greatest extent possible, in keeping with the spirit of FOIA.
17 This includes releasing reasonably segregable and meaningful nonexempt information in
18 a document from which exempt information is withheld.” 49 C.F.R. § 7.23.

19 17. DOT regulations provide that, whenever disclosure of a record containing
20 FOIA exempted information is required, “[FAA] redacts such information” with a “full
21 explanation of the justification for the deletion.” 49 C.F.R. § 7.14. FAA must provide
22 information regarding the type of record withheld as well as a reasonable estimate of the
23 volume of withheld material. *See* 49 C.F.R. § 7.31 (requiring an estimate of the volume
24 of records or information withheld, in number of pages or other reasonable form of
25 estimation.); FAA Order 1270.1 (requiring identification of the type of record withheld).

26 18. Within twenty business days of an agency’s receipt of a FOIA request, the
27 agency must issue a determination resolving the request, and must “immediately notify
28

1 ” the requester of “such determination and the reasons therefor.” 5 U.S.C. §
2 552(a)(6)(A)(i)(I).

3 19. An agency may only delay its response to a request if “unusual
4 circumstances” (as described by FOIA) exist. Even in this event, the agency’s time to
5 respond is extended by no more than ten days. 5 U.S.C. § 552(a)(6)(B)(i). Any such
6 extension must be “by written notice” to the requester, “setting forth the unusual
7 circumstances for such extension and the date on which a determination is expected.” *Id.*
8 Pursuant to FAA Order 1270.1A, a 10-day extension of time is permitted only when
9 “unusual circumstances” exist. Also, program officers are directed to obtain agreement
10 from the requester for such extensions. *Id.* 1270.1A, Part 14(d).

11 20. If a federal agency’s determination as to a request is appealed, the agency
12 must make a determination with respect to the appeal within twenty business days after
13 receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

14 21. If the agency fails to comply with the statutory time limits for issuing and
15 communicating determinations as to requests and appeals, the requester is deemed to
16 have exhausted its administrative remedies and may immediately file suit. 5 U.S.C. §§
17 552(a)(4)(B), (a)(6)(C)(i).

18 **ADDITIONAL FACTUAL ALLEGATIONS**

19 **The City’s FOIA Request**

20
21 22. On or about October 29, 2018, Los Angeles City Councilmember Paul
22 Krekorian, with the assistance of the City Attorney’s Office, submitted a FOIA request
23 to FAA (Exhibit A), seeking the following five categories of records:

24 (1) All records of AEDT (Aviation Environmental Design Tool),
25 TARGETS (the Terminal Area Route Generation and Traffic Simulation tool), National
26 Offload Program radar tracks, and other modeling inputs and outputs, that FAA used to
27 reflect the “no action” and proposed action alternatives.

28 (2) All records demonstrating which 90 days within calendar year 2017

1 FAA selected for its “track data” and what days were selected. Draft ER, 20.

2 (3) All records describing the terms of the “settlement in March 2016”
3 with Benedict Hills Estate Association and Benedict Hills Homeowners Association. See
4 Draft ER, 3, n 2.

5 (4) All records used for the evaluation of the Proposed Action by the
6 Safety Risk Management Panel. Draft ER, 7-8; and

7 (5) All records generated by the Safety Risk Management Panel
8 regarding the Proposed Action. Draft ER, 7-8.

9 (Ex. A, Att. 1, p. 2.)

10 23. Requests 1 and 2 sought only the “underlying data” used for modeling noise
11 and the airspace surrounding Burbank Airport. The City seeks these records so that the
12 public can understand, recreate and validate FAA’s noise screening and safety
13 methodologies.

14 24. Request 3 sought documents relating to a settlement agreement referenced
15 in the Draft ER to which FAA had been a party and the Department of Justice had been
16 counsel of record. FAA has repeatedly asserted that the terms of the settlement
17 agreement necessitated its proposed procedures. Upon information and belief, the
18 private parties to the settlement agreement have represented that they would like these
19 records to be released to the public.

20 25. Requests 4 and 5 requested factual data used by and generated for a
21 purported safety risk analysis, which FAA had also disclosed and touted in the Draft ER.

22 26. In connection with its FOIA request, the City justified its request for
23 expedited treatment and agreed to multi-track processing so that FAA could produce
24 records as they became available. Ex. A, 1-2. The City also requested a public interest
25 fee waiver. Ex. A, 1. The City certified its requests. Ex. A, 3.

26 **Intervening FAA Correspondence**

27 27. On November 5, 2018, FAA acknowledged receipt of the FOIA request
28

1 (received on October 29) and simultaneously granted itself 10 additional days to
2 respond, on the basis that it “need[ed] to search for and collect records from field
3 facilities.” (Exhibit B.)

4 28. The following day, FAA requested that the City justify its fee waiver
5 request, warning that “[the City’s] request will not be processed until the fee waiver
6 issue is resolved” (Exhibit C.) Concerned that FAA might use the fee waiver request to
7 stall disclosure, the City responded the very next day. The City provided ample
8 justification for a fee waiver but stated that the City would pay the duplication fees if
9 they were causing FAA’s delay in the disclosure of the records. (Exhibit D.)

10 29. Almost two weeks later, by letter of November 19, 2018, FAA claimed that
11 a “fee waiver” was not necessary after all. FAA also supplied a cryptic, factually
12 incorrect non-decision on the expedited processing request. FAA stated that it “[would]
13 attempt to prioritize this FOIA request over other FOIAs. However, due to litigation
14 between the City of LA, in addition to the status of any final agency decisions regarding
15 Burbank, the release of these records will require extra scrutiny.” (Exhibit E.)
16 (underlining added).

17 30. At that time, there was no pending litigation between FAA and the City. To
18 date, FAA has never explained why “extra scrutiny” was required for the release of
19 purely factual data FAA had referenced in its public documents. FAA has never
20 expressly granted or denied the City’s request for expedited treatment, which was based
21 on FAA’s imposed deadline for the public to comment on its proposed procedures.

22 **FAA’s Initial Determination**

23 31. By letter of December 12, 2018, FAA issued a deficient Initial
24 Determination on the FOIA request. (Exhibit F.) FAA disclosed that a search conducted
25 by the Western Service Area, Operations Group yielded 34 responsive records. FAA did
26 not identify the field facilities which it had searched, despite having granted itself 10
27 additional days based on the need to “search for and collect records from field facilities.”
28 *See* Ex. B.

1 32. FAA stated that 26 of 34 records “contain material” that have been withheld
2 based on FOIA Exemption 5 and the deliberative process privilege. FAA did not
3 describe the nature or volume of these records or attempt to provide any redacted
4 records, as required by FOIA and agency regulations.

5 33. FAA stated that eight records were public, but the enclosed CD contained
6 only one document: a 13-page Department of Justice-negotiated settlement agreement,
7 which should have already been made public pursuant to DOJ policy strongly favoring
8 public disclosure of settlement agreements. A citation to that DOJ policy regarding
9 “Settlement Transparency” had been relayed to FAA in the City’s FOIA request.

10 **The City’s Administrative Appeal**

11 34. On or about February 21, 2019, the City submitted an administrative appeal
12 to FAA, with a copy of the administrative record. (Exhibit K; Exs. A-J.) FAA
13 acknowledged receipt via email of February 28, 2019.

14 35. On May 13, 2019, the City sent a follow-up letter, requesting a report on the
15 status of the appeal. (Exhibit L).

16 36. After exchanging emails inquiring about the status of the appeal and the
17 production of the records, on November 12, 2019, the FOIA officer assigned to the
18 appeal informed a representative from the City Attorney’s Office that she had been
19 unable even to obtain the withheld records. Accordingly, upon information and belief,
20 the FAA FOIA appeals office had not even commenced the process of reviewing the
21 withheld records to evaluate the merits of the City’s administrative appeal.

22 37. The statutory deadline for response to the administrative appeal has long
23 passed, and FAA has demonstrated an unwillingness to comply with its statutory
24 obligations throughout the FOIA process. As a result, the City is deemed to have
25 exhausted administrative remedies and may bring this lawsuit to enforce FOIA. 5 U.S.C.
26 § 552(a)(6)(C)(ii).
27
28

FIRST CLAIM FOR RELIEF

38. The City repeats, realleges, and incorporates the allegations in paragraphs 1 to 38 as though set forth fully herein.

39. The City has a statutory right to have FAA process its requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). FAA violated FOIA, as follows:

(1) FAA violated FOIA by failing to conduct an adequate search of its agency records in a way reasonably calculated to locate responsive “records,” as defined by FOIA and applicable regulations.

(2) FAA violated FOIA by granting itself a 10-day extension despite the lack of unusual circumstances and by failing to adjudicate the City’s request for expedited treatment and/or denying expedited treatment. 5 U.S.C. § 552(a)(6)(E)(iii). FAA also justified its delay with arbitrary and inaccurate representations, including purported “litigation between the City” and the need to search multiple field facilities.

(3) FAA violated FOIA by failing to timely produce to the City at least seven records the agency admitted were public. 5 U.S.C. § 552(a)(3)(A) and (B).

(4) FAA violated FOIA by withholding at least 26 records under the deliberative process privilege. 5 U.S.C. § 552(b)(5).

(5) FAA violated FOIA by failing to provide a full explanation of the justification for any withholdings and information regarding the nature and volume of the records withheld. 49 C.F.R. § 7.14; *id.* § 7.31; FAA Order 1270.1.

(6) Even if FAA properly withheld any records (which it did not), FAA violated FOIA by not providing the City with the portions of the record which are public. 5 U.S.C. § 552(b); 49 C.F.R. § 7.23.

(7) FAA violated FOIA by abandoning its responsibilities to make a timely determination with respect to the City’s administrative appeal, further delaying the prompt production of the records at issue. 5 U.S.C. § 552(a)(6)(A)(ii).

40. The City reserves the right to allege additional violations based upon FAA’s production of a Vaughn index, custodial declarations, and discovery.

PRAYER FOR RELIEF

WHEREFORE, the City requests that this Court:

- (1) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- (2) Declare that FAA has violated FOIA as alleged in paragraph 40;
- (3) Declare that the records responsive to the City's FOIA request are public under 5 U.S.C. § 552 and must be disclosed, or in the alternative, conduct an *in camera* review to determine whether any parts of the records are properly public under FOIA, and thereafter order such records disclosed;
- (4) Order FAA to produce all records responsive to the City's FOIA request immediately and with no charge to the City;
- (5) Order FAA to prepare a "Vaughn Index" describing in detail any records or portions thereof withheld pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973);
- (6) Award the City its costs and reasonably attorneys' fees in this action, pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- (7) Grant other and further relief as this Court may deem just and proper.

Dated: December 12, 2019

Respectfully submitted,

MICHAEL N. FEUER, City Attorney

/s/

DAVID J. MICHAELSON
Chief Assistant City Attorney
Attorneys for Plaintiff City of Los Angeles

EXHIBIT A



Council Member Krekorian <councilmember.krekorian@lacity.org>

FOIA Request for Records, Expedited Treatment

1 message

Council Member Krekorian <councilmember.krekorian@lacity.org>

Mon, Oct 29, 2018 at 1:58 PM

To: 9-ATO-WSA-FOIA@faa.gov

Bcc: Doug Mensman <doug.mensman@lacity.org>, Ian Thompson <ian.thompson@lacity.org>

To Whom It May Concern:

Attached is a FOIA request for records and expedited treatment related to the FAA's Draft Environmental Review for proposed flight procedures from Hollywood Burbank Airport.

Very truly yours,

Paul Krekorian

Los Angeles City Councilmember, District 2

 **2018-10-29 Paul Krekorian_FOIA Request FAA.pdf**
10840K



PAUL KREKORIAN
LOS ANGELES CITY COUNCILMEMBER

October 29, 2018

FOIA Coordinator (Western Pacific Region)
FAA Northwest Mountain Region, AFN-400W
2200 South 216th Street
Des Moines, WA 98198

FOIA Requester Service Center
Federal Aviation Administration
800 Independence Avenue SW., Room 306
Washington, DC 20591

Re: FOIA Request for Records—Expedited Treatment Requested

Dear FOIA Coordinator:

Enclosed is a request of records made pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq., Department of Transportation regulations at 49 CFR Part 7, and FAA Order 1270.1A ("FOIA Requests").

These FOIA Requests relate to FAA's Draft Environmental Review ("Draft ER") for proposed flight procedures from Hollywood Burbank Airport, disclosed to the public on Friday, October 19, 2018.

FAA's proposed procedures would create and then concentrate aircraft above homes, schools, places of worship, parks, recreation centers, and businesses, introducing noise and pollution that previously was not present, or not present to the same degree.

FAA requires comments to the Draft ER by no later than **Sunday, November 18, 2018**.

Request for Expedited Treatment

I make this request for expedited treatment as an elected official for the City of Los Angeles representing Council District 2. Council District 2 is approximately 50 square miles large and includes the communities of North Hollywood, Studio City, Sun Valley, Valley Glen, Valley Village and Van Nuys. It is home to 260,065 Angelenos and 96,059 households.

My office employs 19 individuals, who are dedicated to serving Council District 2 and are primarily engaged in disseminating information directly to the public in-person, through press releases, and via its website, blog, and social media accounts, which are maintained regularly for the public's benefit (see <http://www.paulkrekorian.org/>). Accordingly, this request is entitled to expedited treatment.

There is both an urgent and compelling need for the records requested. The records sought must be *processed, disseminated and analyzed* in time for my constituents to submit comments by November 18, 2018, FAA's imposed deadline to submit comments. Although I, along with Representative Brad Sherman (D-CA 30th District), have requested that this deadline be extended, FAA has yet to respond.

Absent expedited processing of the request, my constituents and the City risk the deprivation of the substantial due process right to submit informed and detailed comments during FAA's designated comments period. The issues raised by FAA's flight patterns have been raised by scores of residents and have been the subject of dozens of media reports in major newspapers and television studios.

Fee Waiver Request

This request qualifies for a fee waiver or reduction. The records sought concern the operations of FAA, and the disclosure of information will contribute to an understanding of FAA operation and activities. This request is not made for my office's commercial interest.

Multiple-Track Processing

This request also attempts to accommodate any delays caused if the FAA components consulted utilize multiple-track processing. This request divides the requests by subject matter so that FAA components may gather information in a timely fashion. Please contact my office if you believe that any particular request is causing a delay of production in response to the other requests.

Scope of Records and their Requested Format

Pursuant to Department of Transportation regulations, a FOIA "record" "includes any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved. The term also includes any such documentary material stored electronically by computer." 49 CFR § 7.2

I request that all records such as emails and memoranda be provided in an electronic format for immediate circulation (such as scanned pdf). All records such as modeling data, graphical materials, spreadsheets, and the like, should be provided in native or similar format, such that it can be easily manipulated for analysis by consultants and aviation experts.

Certification

The above statements have been made and are certified to be true and correct to the best of my knowledge and belief.

Should you have any questions about this matter, please contact Doug Mensman, Transportation Policy Director, at doug.mensman@lacity.org or (213) 473-7002.

Very truly yours,



PAUL KREKORIAN
Los Angeles City Councilmember, Second District

cc: City Attorney Mike Feuer



PAUL KREKORIAN

LOS ANGELES CITY COUNCIL MEMBER

ATTACHMENT 1: FOIA REQUESTS

INSTRUCTIONS

Records Sought: Pursuant to Department of Transportation regulations, a FOIA “record” “includes any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved. The term also includes any such documentary material stored electronically by computer”. 49 CFR § 7.2

Requested Format of Records: All records such as written reports, emails and memoranda should be provided in an electronic format for immediate circulation (such as scanned pdf). All records such as modeling data, graphical materials, spreadsheets, and the like, should be provided in native format, such that it can be easily manipulated for analysis by consultants and aviation experts. This includes input and output files for the Aviation Environmental Design Tool (AEDT), The Terminal Area Route Generation and Traffic Simulation (TARGETS) tool and other models.

Abbreviations:

- “Draft ER” refers to the attached FAA Draft Environmental Review Proposed Categorical Exclusion for the Proposed OROSZ THREE DEPARTURE (RNAV) and SLAPP TWO DEPARTURE (RNAV) (hereinafter, “Draft ER”) The Draft ER and its appendices were disclosed to the public no earlier than Friday, October 19, 2018 and can be found at https://www.faa.gov/nextgen/nextgen_near_you/community_involvement/bur/
- The “Benedict Hills Settlement” refers to the March 2018 settlement of the petition for review in Benedict Hills Estates Association and the Benedict Hills Homeowners Association v. FAA, filed in the United States Court of Appeals for the District of Columbia Circuit, Case No. 16-1366.

REQUESTS 1-5

Underlying data supporting Draft ER

This section requests underlying data used for the Draft EA, for the purposes of recreating and validating FAA’s methodology.

1. All records of AEDT, TARGETS, National Offload Program radar tracks, and other modeling inputs and outputs, that FAA used to reflect the “no action” and proposed action alternatives.

2. All records demonstrating which 90 days within calendar year 2017 FAA selected for its “track data” and what days were selected Draft ER, 20.

Benedict Hills Settlement Agreement

This section requests documents relating to the Benedict Hills settlement, which FAA references in its ER, but the terms of which have not been made public.

Please be advised that the Department of Justice’s policy is to disclose the terms of civil settlements of cases, in which the DOJ represents the United States or a federal agency:

“It is the policy of the Department of Justice that, in any civil matter in which the Department is representing the interests of the United States or its agencies, ***it will not*** enter into final settlement agreements or consent decrees that are subject to confidentiality provisions, nor will it seek or concur in the sealing of such documents.” 28 C.F.R. § 50.23. While there may be “rare” exceptions to this policy that may be invoked only by certain Department officials, see id., ***as a general rule, civil settlements are subject to the principles of openness*** in judicial proceedings.

Department of Justice Manual, 1-18.200 – Settlement Transparency
(available at <https://www.justice.gov/jm/1-18000-general-civil-settlement-principles>)

3. All records describing the terms of the “settlement in March 2016” with Benedict Hills Estate Association and Benedict Hills Homeowners Association. See Draft ER, 3, n 2.

Records Regarding FAA’s Safety Risk Analysis

4. All records used for the evaluation of the Proposed Action by the Safety Risk Management Panel. Draft ER, 7-8.
5. All records generated by the Safety Risk Management Panel regarding the Proposed Action. Draft ER, 7-8.



PAUL KREKORIAN
LOS ANGELES CITY COUNCILMEMBER

**ATTACHMENT 2: DRAFT ENVIRONMENTAL REVIEW FOR THE PROPOSED OROSZ
THREE DEPARTURE (RNAV) AND SLAPP TWO DEPARTURE
(RNAV) OPEN STANDARD INSTRUMENT DEPARTURE PROCEDURES AT HOLLYWOOD
BURBANK AIRPORT**

**Draft Environmental Review
Proposed Categorical Exclusion**

For

**The Proposed OROSZ THREE DEPARTURE (RNAV) and SLAPP TWO DEPARTURE
(RNAV) Open Standard Instrument Departure Procedures at Hollywood Burbank Airport
October 2018**

**Prepared by:
United States Department of Transportation
Federal Aviation Administration**



Des Moines, Washington

Table of Contents

<i>Section 1: Background and Proposed Project Description</i>	<i>3</i>
<i>Section 2: Purpose and Need</i>	<i>6</i>
<i>Section 3: Alternatives</i>	<i>8</i>
<i>Section 4: Preliminary Environmental Impact Analysis</i>	<i>13</i>
<i>Section 5. Community Involvement</i>	<i>37</i>
<i>Section 6. Preparer(s)</i>	<i>38</i>
<i>Section 7. Facility/Service Area Conclusions</i>	<i>39</i>

Section 1: Background and Proposed Project Description

The Federal Aviation Administration (FAA) is proposing to implement two “Open” Standard Instrument Departure (SID) procedures at Hollywood Burbank Airport (Burbank), formerly known as Bob Hope Airport, in Burbank, California.

During the design phase of the SoCal Metroplex Project airspace procedures in 2012, the Metroplex design team had considered an Open SID at several airports, including Burbank. This type of departure would start as a satellite-based route but then have an “open” segment, where air traffic controllers would vector aircraft, before connecting with another satellite-based segment that would take aircraft up to higher altitudes. This “open departure” provides the precision and predictability benefits of satellite-based routes but also gives controllers the flexibility to direct aircraft as necessary in highly congested portions of the airspace around Burbank. However, when the procedures for the Southern California Metroplex project were being designed, the FAA had not yet established the safety criteria for open departures. As a result, we were unable to implement open departures for Burbank at that time. We tabled the open departures with the understanding that we would reexamine them when and if the FAA adopted new criteria allowing for these kind of routes.

In March 2016, the FAA Order 8260.58A, *United States Standard for Performance Based Navigation*, (PBN), changed to include flight procedure criteria for the Open SID concept based on recommendations from the FAA Performance Based Operations Aviation Rulemaking Committee.¹ The current OROSZ TWO Area Navigation (RNAV) SID (OROSZ TWO) and the SLAPP ONE RNAV SID (SLAPP ONE) procedures would be revised due to this change in criteria allowing embedded radar vector segments to be included in the departure procedure.

Because of the new criteria available, FAA proposed two Open SID procedures at Burbank to be named the *OROSZ THREE DEPARTURE (RNAV)* (OROSZ THREE) and the *SLAPP TWO DEPARTURE (RNAV)* (SLAPP TWO) as a way to address an air traffic operational need that had been requested by FAA Air Traffic Control (ATC) responsible for managing the complex terminal airspace in the local area. Additionally, implementation of the proposed procedures would fulfill the terms of a Settlement Agreement Between the Federal Aviation Administration, Benedict Hills Estates Association and Benedict Hills Homeowners Association (Settlement Agreement).² Thus,

¹ The Performance Based Operations Aviation Rulemaking Committee provides a forum for the United States (U.S.) aviation community to discuss, prioritize, and resolve issues, provide direction for U.S. flight operations criteria, support the NextGen implementation plan and produce U.S. consensus positions for global harmonization.

² On October 24, 2016, the Benedict Hills Estates Association and the Benedict Hills Homeowners Association (Petitioners) filed a petition for review challenging the FAA’s *Finding Of No Significant Impact and Record Of Decision* for the Southern California Metroplex Project under 49 U.S.C. § 46110 in the United States Court of Appeals for the District of Columbia Circuit, Case No. 16-1366. The parties engaged in mediation to informally resolve their dispute and reached a settlement in March 2016. The court dismissed Petitioners from the case on March 29, 2018.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 3 of 39

the proposed procedures address concerns regarding overflights while allowing the FAA to implement procedures that it had already contemplated were safe and improve efficiency of Burbank departures.

Under the proposed procedures, aircraft utilizing the proposed Open SID procedures would require radar vectors³ turning to the north as soon as practicable after departing Burbank. The proposed Open SID procedures are the Proposed Action for this draft environmental review, and the details of the Proposed Action are discussed below.

This draft environmental review will provide basic information about the Proposed Action to better assist in preparing for the environmental analysis phase and inform the FAA's compliance with the National Environmental Policy Act of 1969 (NEPA) (42 United States Code [U.S.C.] Section 4321 et seq.; implementing regulations issued by the Council on Environmental Quality (CEQ) (40 Code of Federal Regulations (CFR), parts 1500-1508); FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures* (FAA Order 1050.1F); and FAA Order 7400.2L, *Procedures for Handling Airspace Matters*. FAA Order 7400.2L, *Procedures for Handling Airspace Matters*, provides guidance and establishes policy and procedures to assist air traffic personnel in applying the requirements of FAA Order 1050.1F. In addition, this draft environmental review and the associated public involvement has been guided the principles in the FAA's February 2016 *Community Involvement Manual*.

Once the FAA determines that NEPA applies to a proposed action, the FAA needs to decide on the appropriate level of review. The three levels of NEPA review are Categorical Exclusion (CATEX), Environmental Assessment (EA), and Environmental Impact Statement (EIS).⁴ A CATEX refers to a category of actions that the FAA has determined, based on previous experience, do not individually or cumulatively have a significant effect on the human environment except in extraordinary circumstances. The presence of extraordinary circumstances preclude the use of a CATEX and would merit additional review in an EA or an EIS. A CATEX is not an exemption or a waiver from NEPA; it is a level of NEPA review and compliance. FAA Order 1050.1F, Section 5-6.5, *Categorical Exclusions for Procedural Actions* includes the list of CATEXs involving establishment, modification, or application of airspace and air traffic procedures.

³ Radar Vectors: Directional headings issued to aircraft to provide navigational guidance and to maintain separation between aircraft and/or obstacles.

⁴ An Environmental Assessment (EA) is prepared to determine whether or not the action has the potential to cause significant environmental effects. An Environmental Impact Statement (EIS) is prepared when one or more environmental impacts of a proposed action would be significant and mitigation measures would not reduce the impact(s) below significant levels. FAA Order 1050.1F

The FAA has determined that the Proposed Action would fall under one of the listed categorically excluded actions in FAA Order 1050.1F, specifically, Section 5-6.5.i: “. . . *modifications to currently approved procedures conducted below 3,000 feet above ground level (AGL) that do not significantly increase noise over noise sensitive areas.*”

Specifically, the Proposed Action would only alter the beginning of the departure procedures, requiring planes to return to the RNAV procedures after the first legs of their departure. Based on noise screening analysis (described in more detail below), the FAA has determined that the proposed action amending currently approved procedures conducted below 3,000 feet AGL would not significantly increase noise over noise sensitive areas, and thus would be covered by this CATEX. However, before finalizing a decision to categorically exclude the proposed action, the FAA must consider the potential for extraordinary circumstances, pursuant to FAA Order 1050.1F, Paragraph 5-2.

Extraordinary circumstances are factors or circumstances in which a normally categorically excluded action may have a significant environmental impact that then requires further analysis in an EA or an EIS. For FAA proposed actions, extraordinary circumstances exist when the proposed action involves any of the circumstances described in Order 1050.1F, Paragraph 5-2(b) and has the potential for a significant impact. For the Proposed Action, the FAA is considering the following factors, which, if they result in a significant impact, would preclude use of a CATEX to satisfy NEPA requirements:

- An adverse effect on cultural resources protected under the National Historic Preservation Act of 1966, as amended, 54 U.S.C. §300101 et seq.
- An impact on properties protected under Section 4(f) of the Department of Transportation Act.
- An impact on natural, ecological, or scenic resources of Federal, state, tribal, or local significance.
- An impact on noise levels of noise sensitive areas.⁵
- An impact on air quality.

⁵ An area is noise sensitive if aircraft noise may interfere with the normal activities associated with the use of the land. 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.

- Impacts on the quality of the human environment that are likely to be highly controversial on environmental grounds.⁶
- Likelihood to directly, indirectly, or cumulatively create a significant impact on the human environment.

This document describes how the CATEX applies to the Proposed Action, and analyzes extraordinary circumstances that could require more detailed NEPA review. The amount and type of documentation for a CATEX determination should be tailored to the type of action involved and the potential for extraordinary circumstances.⁷ There is not a prescribed format for an environmental review of a CATEX. However, the documentation should “cite the CATEX(s) used, describe how the proposed action fits within the category of actions described in the CATEX, and explain that there are no extraordinary circumstances that would preclude the proposed action from being categorically excluded.”⁸

Section 2: Purpose and Need

The complex air traffic flows and air traffic volume for the Los Angeles International Airport (Los Angeles), Santa Monica Municipal Airport, and Van Nuys Airport require ATC operational interaction in order to efficiently separate arrival and departure flight paths in the Burbank airspace between the terminal airspace structure and the en route airspace structure. The flight paths to and from Los Angeles, Santa Monica Municipal Airport, and Van Nuys Airport all interact with the Burbank airspace, creating the need to direct aircraft through certain congested areas on a more dynamic basis and then allowing the aircraft to proceed on a consistent course and re-join the RNAV SID as efficiently as possible.⁹

The FAA considered a procedure type that would allow departing aircraft to better travel along a departure path in order to turn sooner toward the en route airway structure, while ensuring that aircraft operations remain safe and efficient. An Open SID is a type of RNAV PBN departure starting and ending with a defined path but containing a variable ATC assigned vector leg within the procedure. The essence of these procedures is that they would require a pilot to resume the automated flight path once ATC vectoring is complete.

⁶ The term “highly controversial on environmental grounds” means there is a substantial dispute involving reasonable disagreement over the degree, extent, or nature of a proposed action’s environmental impacts or over the action’s risks of causing environmental harm. FAA Order 1050.1F, Section 5-2.b.(10).

⁷ FAA Order 1050.1F, Section 5-3.d.

⁸ FAA Order 1050.1F, Section 5-3.d.

⁹ FAA Order 8260.58A

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 6 of 39

As previously stated, at the time the OROSZ TWO and SLAPP ONE procedures were developed, criteria did not allow for the creation of an Open SID utilizing performance based navigation technology. This change in flight procedure criteria allows for the development of a more appropriate departure procedure for the Burbank airspace area that supports efficient management of air traffic.

The proposed Open SID procedure westbound turn directs aircraft away from the arrival operations into Los Angeles, and provides initial separation from the parallel arrival flight path into Burbank. Exit points from the terminal area airspace to the en route airway structure would be north of Burbank providing for aircraft to turn sooner toward the direction of their filed flight plan route, while gaining altitude in order to integrate with other area departure procedures and flows.

Section 2.1: Open SID Development Process

In developing the Open SID procedures near Burbank Airport, the FAA was responsible for following regulatory and technical guidance as well as meeting criteria and standards in three general categories:

1. RNAV Design Criteria and Air Traffic Control Regulatory Requirements - Flight procedure design is subject to requirements found in several FAA Orders and guidance documents, including FAA Order 8260.3C,¹⁰ *United States Standard for Terminal Instrument Procedures*, FAA Order 8260.58B, *United States Standard for Performance Based Navigation Instrument Procedure Design*, FAA Order 8260.43B, *Flight Procedures Management Program*, FAA Order JO 7110.65X, *Air Traffic Control*, FAA Order JO 7100.41A, *Performance Based Navigation Implementation Process* and *The Guidelines and Updates for Implementing Terminal RNAV Procedures*. In addition, FAA Order JO 7110.65X *Air Traffic Control* includes requirements governing air traffic control procedures, air traffic management, and appropriate technical terminology.

2. Operational Criteria - To the maximum extent possible, PBN procedures are developed operationally to ensure aircraft departure and arrival lateral and vertical paths are procedurally separated. Air traffic controllers are responsible for aircraft separation; however, they use PBN procedures to assist with their operational responsibilities at Burbank and surrounding airports. Operational criteria were consistent with the Purpose and Need for the project.

3. Safety Risk Management Criteria - FAA evaluated air traffic procedures using the Air Traffic Organization's (ATO) Safety Management System (SMS). The SMS is the system for assessing and managing the safety of air traffic control and navigation services in the

¹⁰ These procedures were developed before FAA Order 8260.D was issued on February 16, 2018.

National Airspace System. If a procedure introduced a new hazard or increased the severity and/or likelihood of an existing hazard, the design was adjusted or mitigated to reduce the hazard to acceptable levels. In compliance with SMS requirements, the procedures were evaluated by a Safety Risk Management Panel¹¹ following a five-step process: 1) describe the system; 2) identify the hazards in the system; 3) analyze the risks; 4) assess the risk; and, 5) treat the risk (if any).

Finally, FAA undertook validation exercises that further refined the procedures to ensure they were viable. Specifically, FAA took into account the limitations imposed by terrain, Controlled Airspace¹² and Special Use Airspace.¹³ These factors resulted in restrictions to the design options for the proposed Open SID procedures.

Section 3: Alternatives

Section 3.1: Alternatives Analysis

The FAA considered four alternatives for the Open SID procedure design for Runway 15 at Burbank. They are the Proposed Action, the No Action Alternative and two additional alternatives. This alternatives analysis is consistent with CEQ regulations and FAA guidance provided in FAA Order 1050.1F.

Section 3.2: No Action Alternative

The No Action alternative comprises the current OROSZ TWO and the SLAPP ONE SID procedures from Runway 15. The current published procedure charts are provided in Appendix A. The procedure charts depict the altitudes on each procedure.

Aircraft on the OROSZ TWO procedure departing Runway 15 climb with a right turn to a heading of 210-degrees or as assigned by ATC. Aircraft navigate a southwesterly to westerly-dispersed flight path influenced by wind, aircraft weight, and air speed. Generally, the flight path crosses over land use transitioning from industrial, commercial, to residential along the flight path to the southwest, and west. The flight path continues turning to the northwest over land use transitioning from residential to mountainous terrain of the Santa Susana Mountains and United States Forest Service managed lands. Air traffic control vector aircraft to cross the OROSZ fix to join the RNAV procedure to connect to the en route airway structure for flights to the north and northwest.

¹¹ Safety Risk Management Panel Members or subject matter experts are selected based on their technical expertise or operational responsibilities for the facility or system under consideration and their authority to make decisions for their respective organizations. (FAA Air Traffic Organization Safety Management System Manual, July 2017.)

¹² Classes of Airspace:

https://www.faasafety.gov/gslac/ALC/course_content.aspx?cID=42&sID=505&preview=true

¹³ Special use airspace is used to designate airspace in which certain activities must be confined, or where limitations may be imposed on aircraft operations that are not part of those activities. See

https://www.faa.gov/uas/where_to_fly/airspace_restrictions/.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 8 of 39

Aircraft on the SLAPP ONE SID procedure departing Runway 15 climb with a right turn to a heading of 210-degrees. Aircraft navigate a southwesterly to westerly-dispersed flight path influenced by wind, aircraft weight, and air speed. Generally, the flight path crosses over land use transitioning from industrial, commercial, to residential along the flight path to the southwest, and west. The flight path continues turning northeast over land use transitioning from residential to mountainous terrain of the San Gabriel Mountains and United States Forest Service managed lands. Air traffic control vector aircraft to the RAYVE fix to join the RNAV procedure to connect to the en route airway structure for flights to the east, northeast, and southeast.

Currently, aircraft depart Burbank on a heading of 210-degrees, which points aircraft towards the Los Angeles where approaching aircraft are on the downwind leg of the final approach. Additionally, the 210-degree heading puts departing aircraft in the opposite direction of the route filed per the aircraft's flight plan. The additional miles flown add time to completing the turn to the north, thereby adding to the time it takes the departing aircraft to cross the final approach path of arriving aircraft into Burbank, which adds to the complexity of managing Burbank operations.

The FAA Operations Network¹⁴ reports 84,692 itinerant operations for the calendar year 2017 for Burbank. Table 1 below details the type of operations; grouped by aircraft operation and method of navigation.

Table 1. Burbank Itinerant Operations Data: January 2017 through December 2017

Operation Type	Air Carrier	Air Taxi	General Aviation	Military
IFR Itinerant ¹⁵	51,478	18,809	14,430	243
VFR Itinerant	8	816	22,268	837

Note: IFR = Instrument Flight Rules, VFR = Visual Flight Rules

There are six categories -- (A) Heavy, (B) B757, (C) Large Jet, (D) Large Commuter, (E) Medium, (F) Small.¹⁶

- (A) Heavy: refers to any aircraft weighing more than 255,000 pounds such as the Boeing 747 or the Airbus A340;
- (B) B757: refers to the Boeing 757 all series;
- (C) Large Jet: refers to large jet aircraft weighing more than 41,000 and up to 255,000

¹⁴ The FAA Operations Network (OPSNET) is the official source of FAA air traffic operations. <https://aspm.faa.gov/opsnet/sys/Airport.asp>, accessed June 01, 2018

¹⁵ Airport Operations. The number of arrivals and departures from the airport at which the airport traffic control tower is located. There are two types of operations: local and itinerant. Local operations are those operations performed by aircraft that remain in the local traffic pattern, execute simulated instrument approaches or low passes at the airport, and the operations to or from the airport and a designated practice area within a 20-mile radius of the tower. Itinerant operations are operations performed by an aircraft, either IFR, Special VFR, or VFR, that lands at an airport, arriving from outside the airport area, or departs an airport and leaves the airport area.

¹⁶ http://aspmhelp.faa.gov/index.php/Weight_Class, accessed June 01, 2018

pounds such as the Boeing 737 or the Airbus A320;

- (D) Large Commuter: refers to large non-jet aircraft (turbo propeller engine) and small regional jets, weighing more than 41,000 and up to 255,000 pounds;
- (E) Medium: refers to small commuter aircraft including business jets weighing more than 12,500 up to 41,000 pounds such as the Learjet 35; and
- (F) Small: refers to small single or twin-engine (piston) aircraft weighing 12,500 pounds or less such as the Beech 90 or the Cessna Caravan.
- No Data/Other: refers to unspecified equipment.

Table 2 details the approximate number of total departure operations at Burbank by typical aircraft fleet mix by weight class.¹⁷

Table 2. Burbank Total Departures by Aircraft Weight Class
January 2017 through December 2017

Aircraft Weight Class	Total Departure Operations At Burbank
Heavy Jet	933
B757 Jet	57
Large Jet	22,651
Large Commuter	5,798
Medium Commuter	8,198
Small	4,809
No Data/Other	40

Table 3 details the approximate number by runway of daily departures on the OROSZ TWO and SLAPP ONE SID.¹⁸

Table 3. Approximate Number of Daily Departure Operations by Runway

Runway Number	OROSZ TWO (RNAV) Procedure	SLAPP ONE (RNAV) Procedure
8	2	1
15	39	30
26	1	1
33	1	1

¹⁷ FAA Traffic Flow Management System Count (TFMSC) Report contains data derived from the Air Traffic Airspace Lab's Traffic Flow Management System. Note: TFMSC does not represent the official traffic counts for the National Airspace System. <https://aspm.faa.gov/tfms/sys/tfms-server-x.asp>, accessed June 01, 2018

¹⁸ TARGETS Environmental Plug-In aircraft track data, *Average Annual Day Addendum to the Guidance for Noise Screening of Air Traffic Actions*
FAA Draft Environmental Review
Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018
Page 10 of 39

There is a preferential runway use program in effect at Burbank. Approximately ninety-six percent of departure operations at Burbank utilize the Runway 8/Runway 15 configuration.¹⁹ Runway 15 is the primary runway for departures that would utilize the current OROSZ TWO and the SLAPP ONE procedures. Burbank uses a “voluntary curfew” applicable to scheduled airlines that asks them to refrain from scheduling or operating between 10:00 p.m. and 7:00 a.m. daily. General aviation operators may participate in the “voluntary curfew,” but they are otherwise restricted under pre-Airport Noise and Capacity Act of 1990 approved noise rules based on FAA Advisory Circulars pertaining to aircraft noise.²⁰

Section 3.3: Alternatives Eliminated from Consideration

The FAA eliminated three alternatives to the proposed OROSZ THREE and SLAPP TWO Open SIDs from consideration:

- The No Action Alternative comprises the current OROSZ TWO and SLAPP ONE procedures, by which aircraft follow the published procedure current flight path. The No Action alternative does not meet the purpose and need of the Proposed Action. The No-Action alternative was eliminated, as amendments to the current OROSZ TWO and the SLAPP ONE are necessary to meet the change in procedure criteria that allow embedded radar vector segments to be included in the departure procedure.
- An alternative was suggested to laterally move the proposed procedure segment from the JAYTE waypoint to the TEAGN waypoint north to approximately follow Highway 101. This shift in procedure flight path would place aircraft on a flight path that would be in conflict with the final approach course to the primary arrival runway at Burbank, Runway 08. Therefore, this alternative was eliminated from consideration.
- An alternative was suggested to laterally move the proposed procedure segment from the JAYTE waypoint to the TEAGN waypoint south. To maintain safe and efficient control of air traffic in the area, the proposed procedure must remain north of the Los Angeles Class B controlled airspace. A shift of the proposed procedure flight path to the south would encroach on the Los Angeles Class B controlled airspace. Additionally, a more southerly flight path would enter a portion of airspace where VFR air traffic routinely transit a narrow airspace corridor between the Los Angeles Class B and Burbank Class C controlled airspaces. Therefore, this alternative was eliminated from consideration.

¹⁹ PBN Dashboard Airport Metrics, <https://pbn.mitre.org/pbnservices/pbn/FaaObserver.html>, accessed June 01, 2018

²⁰ FAA Advisory Circular 36-1H or 36-2C

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 11 of 39

Section 3.4: Proposed Action

The proposed OROSZ THREE and SLAPP TWO SID procedures would replace the current OROSZ TWO and the SLAPP ONE SID. Due to a change in procedure design criteria, embedded radar vector segments would be included in the departure procedures. At the time the OROSZ TWO and SLAPP ONE SID were developed, procedure design criteria did not allow for the creation of an Open SID utilizing PBN technology.

Aircraft on the proposed OROSZ THREE and SLAPP TWO procedures would follow the runway heading for approximately 1.21 nautical miles prior to turning toward the JAYTE fix. The proposed procedures would follow a 215-degree heading to cross the JAYTE fix at approximately 1,622 feet AGL (or 2,400 feet mean sea level). From the JAYTE fix, aircraft would fly direct to the TEAGN fix on a heading of 260-degrees to cross the TEAGN fix at 3,822 feet AGL (or 4,000 feet mean sea level).

The proposed ATC assigned westbound turn flight path directs aircraft away from Los Angeles International Airport arrival operations and provides initial separation from parallel arrival flight paths to Burbank. Exit points from the terminal airspace structure to the en route airspace structure are north of the airport; and the ATC assigned flight path turns aircraft around sooner and pointing towards their filed route while gaining altitude in order to get above Van Nuys Airport and integrate with other area departure procedures and flows. Once departing aircraft are above approaching aircraft, ATC would utilize the proposed Open SID procedure and vector departing aircraft through the congested airspace to re-join the published RNAV departure route north of Burbank.

Airspace modelling was conducted using the Terminal Area Route Generation, Evaluation, and Traffic Simulation (TARGETS). The proposed procedures TARGETS Distribution packages are available in Appendix B. The summary of the output from the modelling is discussed below.

The number of aircraft operations at Burbank and the aircraft fleet mix are not expected to change as a result of the implementation of the proposed Open SID procedures. Aircraft operational use of the proposed procedures are subject to safety and operational restrictions and potential conflicts, including, but not limited to events, other air traffic, weather, and emergencies.

Given the complexity of air traffic in the Burbank airspace area as described above, the FAA determined the preferred alternative is the Proposed Action of implementing the OROSZ THREE and SLAPP TWO Open SID procedures. The preferred alternative would meet procedure design criteria to provide the safest and most efficient routing of aircraft departing Runway 15 at Burbank. Additionally, the dynamic nature of the proposed Open SIDs with the embedded vectored turn in conjunction with the initial RNAV segment will aid ATC in efficiently managing aircraft in the Burbank Airspace.

Section 4: Preliminary Environmental Impact Analysis

As explained above, the use of a CATEX to satisfy NEPA is precluded if the proposed action involves any of the circumstances described in Order 1050.1F, Paragraph 5-2(b) and has the potential for significant impact. The determination of whether a proposed action may have a significant environmental impact under NEPA is made by considering the relevant environmental impact categories and comparing impacts to the FAA's thresholds of significance, where applicable, as well as any other relevant federal laws and statutes, Executive Orders, and regulations as outlined in with FAA Order 1050.1F.²¹

There are 14 environmental impact categories identified in FAA Order 1050.1F. Only those areas where there may be significant environmental impacts caused by the Proposed Action, or where there are uncertainties which require evaluation are analyzed in this document. The Proposed Action does not involve land acquisition, physical disturbance, or construction activities. Given the limited scope of the Proposed Action, the following environmental impact categories were assessed and were considered to have negligible or non-existent effects from the Proposed Action, and in accordance with CEQ regulations, did not warrant further analysis:

- Biological resources (including fish, wildlife, and plants)
- Climate
- Coastal Resources
- Farmlands
- Hazardous Materials, Solid Waste, and Pollution Prevention
- Land Use
- Natural Resources and Energy Supply
- Socioeconomic Impacts and Children's Environmental Health and Safety Risks.
- Water Resources (Including Wetlands, Floodplains, Surface Waters, Groundwater, and Wild and Scenic Rivers)

The following remaining impact categories below will be analyzed to determine their impacts on the relevant study area for the affected environment;

²¹ The determination of whether a proposed action may have a significant environmental effect is made by considering any requirements applicable to the specific resource [see FAA Order 1050.1, paragraph 4-3. and Exhibit 4-1].

- Noise and compatible land use
- Air Quality
- Department of Transportation Act, Section 4(f)
- Historical, architectural, archeological, and cultural resources
- Environmental Justice (*This is a subcategory under the general heading of Socioeconomic Impacts*), and
- Visual impacts

Section 4.1: General Study Area

The preliminary environmental analysis considered potential impacts within the Proposed Action General Study Area (GSA), which encompasses roughly a 30 nautical mile radius around Hollywood Burbank Airport, where departing aircraft cross the GSA boundary at 10,000 feet AGL. The GSA, approximately 3,750 square miles in area, is shown in Figures 1 and Figure 2 below.

Figure 1. Depiction of the General Study Area²²



²² Figure 1 - Not to scale.

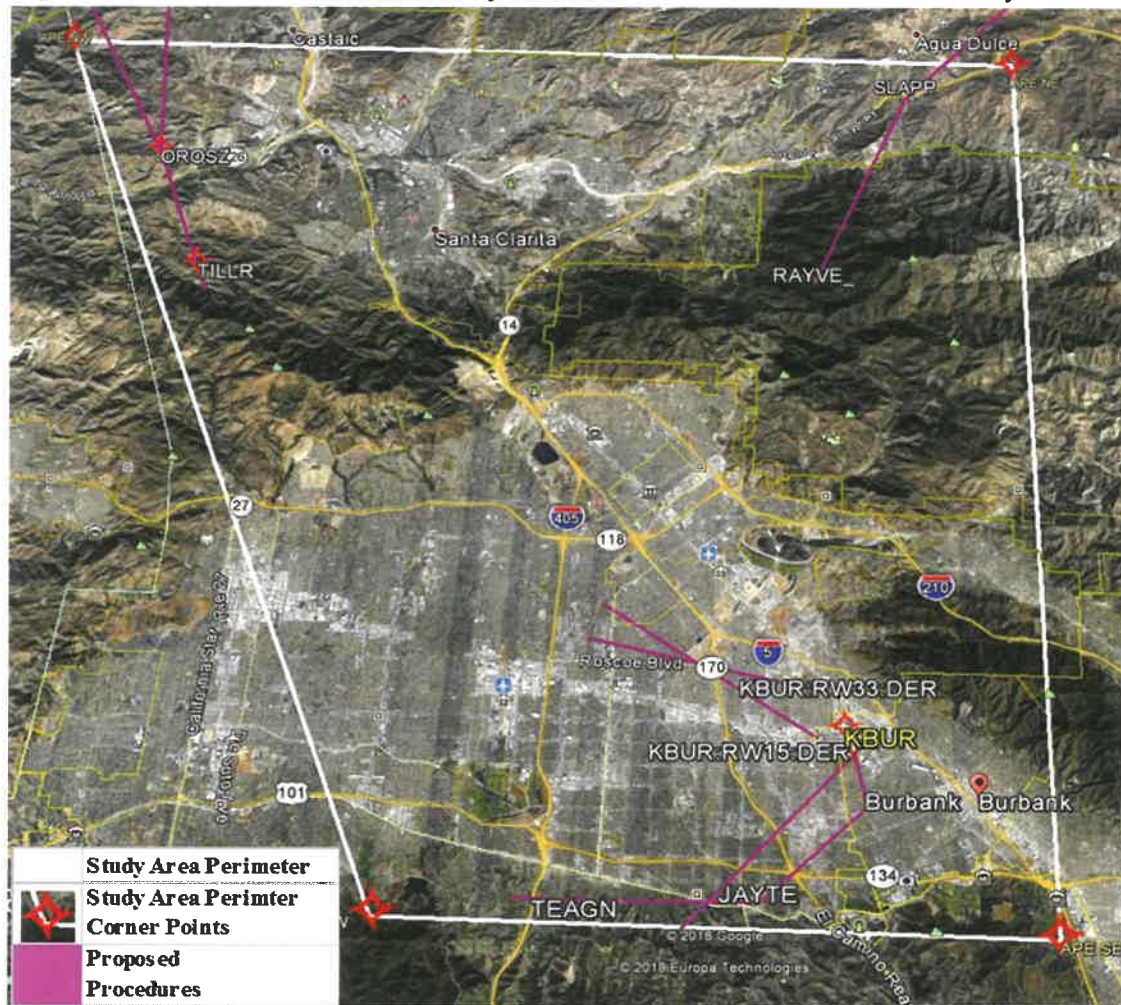
Figure 2. Depiction of Location of Burbank Airport within the General Study Area²³



Section 4.1.2: Affected Environment Study Area

The study area for the Affected Environment was determined by evaluating the Proposed Action and identifying the area that contains the proposed OROSZ THREE and the SLAPP TWO procedures. The area is approximately 477 square miles. Figure 3 below depicts the proposed procedures within the Affected Environment Study Area.

²³ Figure 2 - Not to scale.

Figure 3. Affected Environment Study Area within the Burbank General Study Area²⁴

Hollywood Burbank Airport is a public airport located approximately three miles northwest from the downtown area of the City of Burbank, in Los Angeles County, California. The City of Burbank extends to the east and to the south of the airport property. The City of Los Angeles extends to the north, and to the west of the airport property. The airport serves the northern, greater Los Angeles area. Land use in the immediate vicinity surrounding the airport is industrial. Surrounding the industrial areas are commercial and residential areas. The Verdugo Mountain Park and La Tuna Canyon Park are located approximately one nautical mile to the east of the airport at its closest point. The FAA reviewed the City of Burbank Planning and Development Department, City of Burbank Zoning Map, which identifies existing land use within the greater Burbank area.²⁵ Refer to Figure 4 below for City of Burbank zone map.

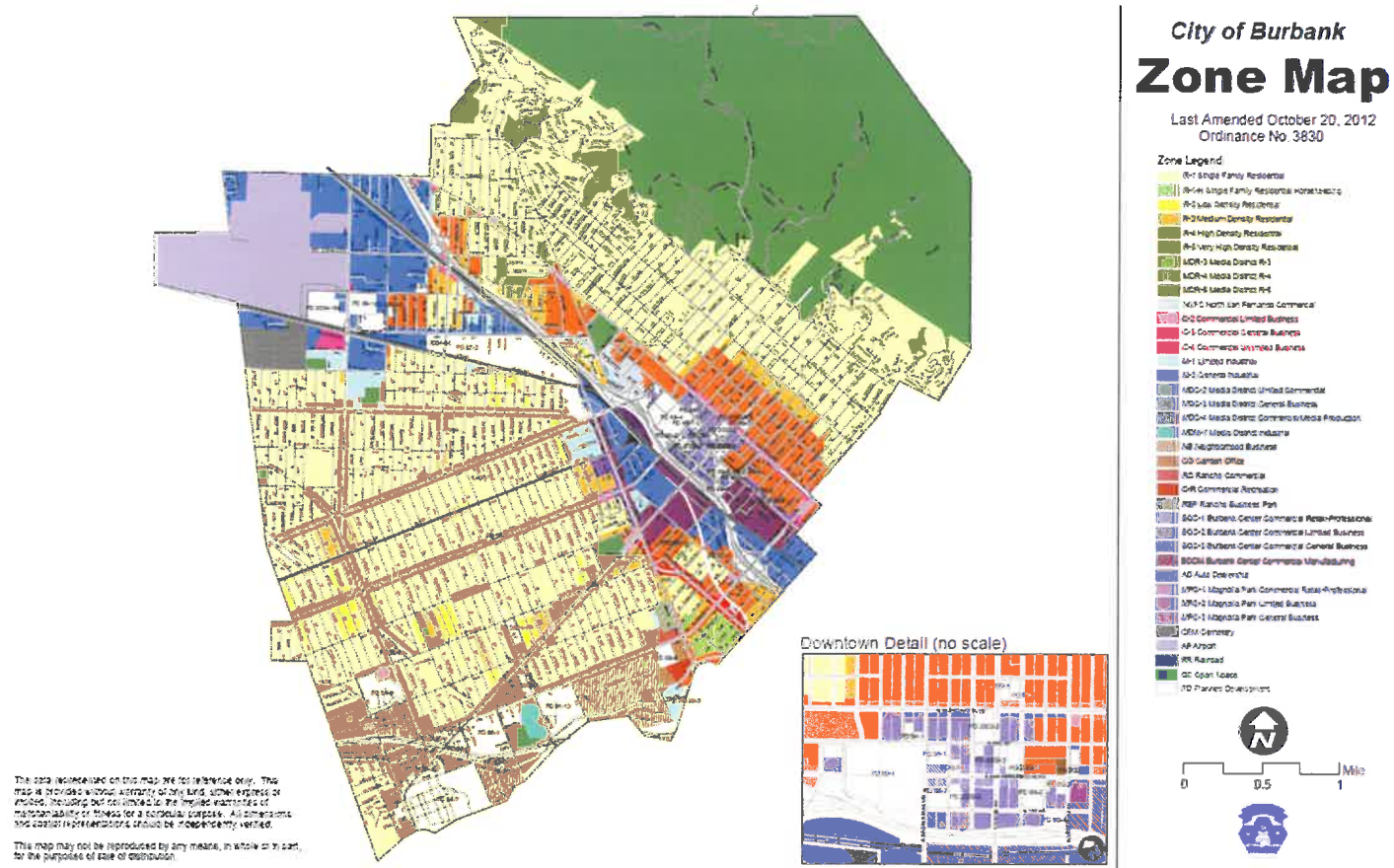
²⁴ Figure 3 – Not to scale.

²⁵ <http://www.burbankca.gov/departments/community-development/planning/zoning-information>. Accessed June 05, 2018.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 16 of 39

Figure 4. Depiction of the City of Burbank Land Use Diagram²⁶

The FAA further reviewed individual resources within this area, including parks and historic properties, to determine whether the Part 150 land use guidelines are relevant to their value, significance, and enjoyment.

Section 4.2: Noise and Noise-Compatible Land Use

The compatibility of existing and planned land uses with aviation actions is usually determined in relation to the level of aircraft noise by comparing the Day-Night Average Sound Level (DNL)²⁷ values to the land use compatibility guidelines in FAA's regulations at 14 CFR Part 150. Part 150 identifies a DNL level of 65 decibels (dB) and below as compatible with residential and most other uses (See Exhibit 11-3 of the FAA Order 1050.1F, Desk Reference).

²⁶ Figure 4 – Not to scale.

²⁷ DNL takes into account the noise level of each individual aircraft event, the number of times those events occur, and the time of day in which they occur. DNL includes a 10 dB noise penalty added to noise events occurring from 10:00 p.m. to 7:00 a.m., to reflect the increased sensitivity to noise and lower ambient sound levels at night. FAA Order 1050.1F requires use of the DNL metric in NEPA analyses, although DNL analysis may optionally be supplemented on a case-by-case basis to characterize specific noise impacts.

Ordinarily, actions that are categorically excluded from NEPA do not require detailed environmental analysis. To identify the potential for extraordinary circumstances involving impacts on noise levels of noise sensitive areas, the FAA conducts an initial noise analysis using a “screening tool.” Screening tools use simplified but conservative modeling assumptions to quickly provide estimates of where noise increases may occur.²⁸ While a comprehensive modeling tool also needs detailed inputs, a noise screening tool is optimized to take advantage of simplified inputs to produce results for a more narrowly defined purpose, such as a preliminary assessment of potential noise impacts. This analysis enables the FAA to identify areas that may require additional consideration prior to determining that use of a CATEX is appropriate.

Section 4.2.1: Methodology for Assessing Noise Impacts

To determine whether aircraft noise impacts are significant under NEPA, the FAA considers whether predicted increase in noise associated with the proposed action exceed defined thresholds of significance. For aircraft noise, that threshold is an increase of DNL 1.5 dB or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dB noise exposure level, or that will be exposed at or above the DNL 65 dB level due to a DNL 1.5 dB or greater increase, when compared to the no action alternative for the same timeframe.

Order 1050.1F notes that special consideration needs to be given to the evaluation of the significance of noise impacts on certain noise sensitive areas (including, but not limited to, noise sensitive areas within national parks; national wildlife and waterfowl refuges; and historic sites, including traditional cultural properties) where the land use compatibility guidelines in 14 CFR Part 150 are not relevant to the value, significance, and enjoyment of the area in question.

FAA’s noise screening tool for projects involving air traffic changes over large areas and altitudes over 3,000 feet AGL uses features available within the Terminal Area Route Generation Evaluation and Traffic Simulation (TARGETS), a flight procedure design tool, combined with the Aviation Environmental Design Tool (AEDT) Environmental Plug-In. This noise screening tool identifies areas that may be exposed to significant noise impacts (i.e., an increase of DNL 1.5 dB or more in an area that is exposed to noise at or above the DNL 65 dB noise exposure level.)

The noise screening tool also identifies certain areas with potential increases in areas exposed to lower levels of noise, specifically:

²⁸ In general, modeling accuracy is dependent on a range of factors, including 1) how well the fundamental quantity to be modeled is understood and calculated, and 2) how accurately the inputs needed by the model are provided. All aircraft noise modeling tools must accurately account for the fundamentals of noise. However, while a comprehensive modeling tool also needs detailed inputs, a noise screening tool is optimized to take advantage of simplified inputs to produce results for a more narrowly defined purpose, such as a preliminary assessment of potential noise impacts. As a result, noise screening outputs are not suitable for reporting more detailed or precise noise results at specific locations.

1. For DNL 60 dB to less than 65 dB: ± 3 dB
2. For DNL 45 dB to less than 60 dB: ± 5 dB

The FAA refers to changes in noise exposure levels meeting these criteria as “reportable.” Although they do not exceed the threshold of significance for most land uses where the Part 150 land use guidelines are not relevant to the value, significance, and enjoyment of the area in question, they are factors to consider in whether there are extraordinary circumstances rendering a CATEX inapplicable.

To determine the potential impact(s) from noise, the screening analysis compares the baseline scenario to an alternative scenario or scenarios. The baseline scenario typically represents the existing procedures as they are flown at the time of the modelling, or the No Action Scenario. The alternative scenario(s) represents the radar tracks assigned to the Proposed Action and any other alternatives being considered

Section 4.2.2: Noise Screening Analysis

Potential noise impacts were screened using the AEDT Environmental Plug-In for TARGETS. Two scenarios were evaluated for this noise screen.

1. No Action Scenario: The scenario represents radar tracks as they are currently flown and is considered the baseline. Noise screening of the No Action Scenario modeled the noise impact(s) of Burbank arrivals and departures as they are currently flown. Assigned aircraft routes were unchanged.
2. Proposed Action Scenario: The scenario screened using the simplifying assumption that Burbank departure aircraft would be assigned to the proposed RNAV SID that most closely matched their flight track regardless of aircraft equipment or type. This also incorporates the simplifying assumption that all aircraft are equipped and capable of flying RNAV procedures.

Section 4.2.3: Noise Screening Track Data

To determine projected noise levels on the ground, it is necessary to determine the frequency of aircraft operations and the position of the aircraft in space laterally (i.e., ground tracks), and vertically (i.e., altitude). Arrival and departure direction to and from an airport generally depend upon the geometry of the airport’s runways and approved air traffic management procedures, but are primarily dictated by wind and weather conditions. Historical radar track data provides information regarding lateral path definitions, aircraft types, time of day operations, runway usage percentages for departure/arrival streams and day/night traffic ratios.

Historical radar track data was obtained from the FAA's National Offload Program²⁹. Track data was collected for 90 randomly selected days (using a random day generator) during calendar year 2017 ("2017 Track Data").³⁰ The selection of 90 random days is considered to best represent average traffic counts and traffic flows accounting for seasonal variations and peak travel times for Burbank.

Using the AEDT Environmental Plug-In, backbones for each departure procedure were created, accounting for the typical dispersion of an Open SID procedures. To ensure a consistent number of operations and a consistent fleet mix across alternatives, the same flights that were used for the No Action scenario were applied to the Proposed Action scenario backbones. This ensured that differences across scenarios were attributable to flight path changes only.

A separate noise screening analysis was run for each scenario to establish the noise exposure levels for that scenario. Once the two scenarios were screened individually, the TARGETS AEDT Environmental Plug-In Tool was used to compare the Proposed Action Scenario to the No Action Scenario to evaluate whether implementing the Proposed Action is expected to result in significant noise impacts when compared to the No Action Scenario. Figure 5 and Figure 6 depict the proposed Open SID procedures with the 2017 flight tracks associated with each departure route.

²⁹ All traffic data was obtained using the FAA Southern California Terminal Radar Approach Control and the FAA Los Angeles Air Route Traffic Control Center as the radar source facilities.

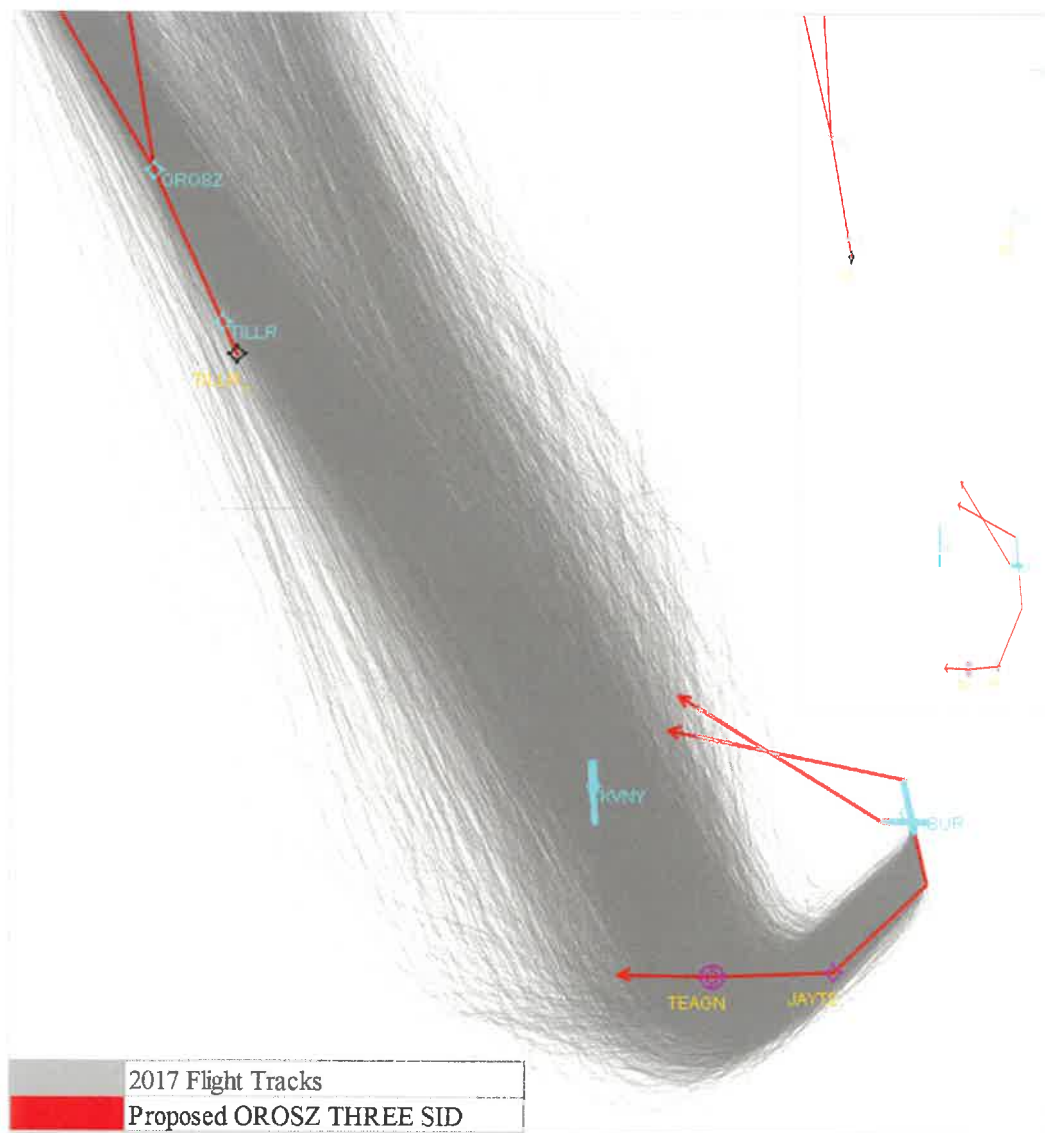
³⁰ An integral part of noise screening is the collection of average annual day (AAD) radar track data for noise modeling. The MITRE CAASD *Average Annual Day Addendum to the Guidance for Noise Screening of Air Traffic Actions* document prepared for the FAA proposes an objective method for determining the minimum subsample size of radar track data required and the sampling technique.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

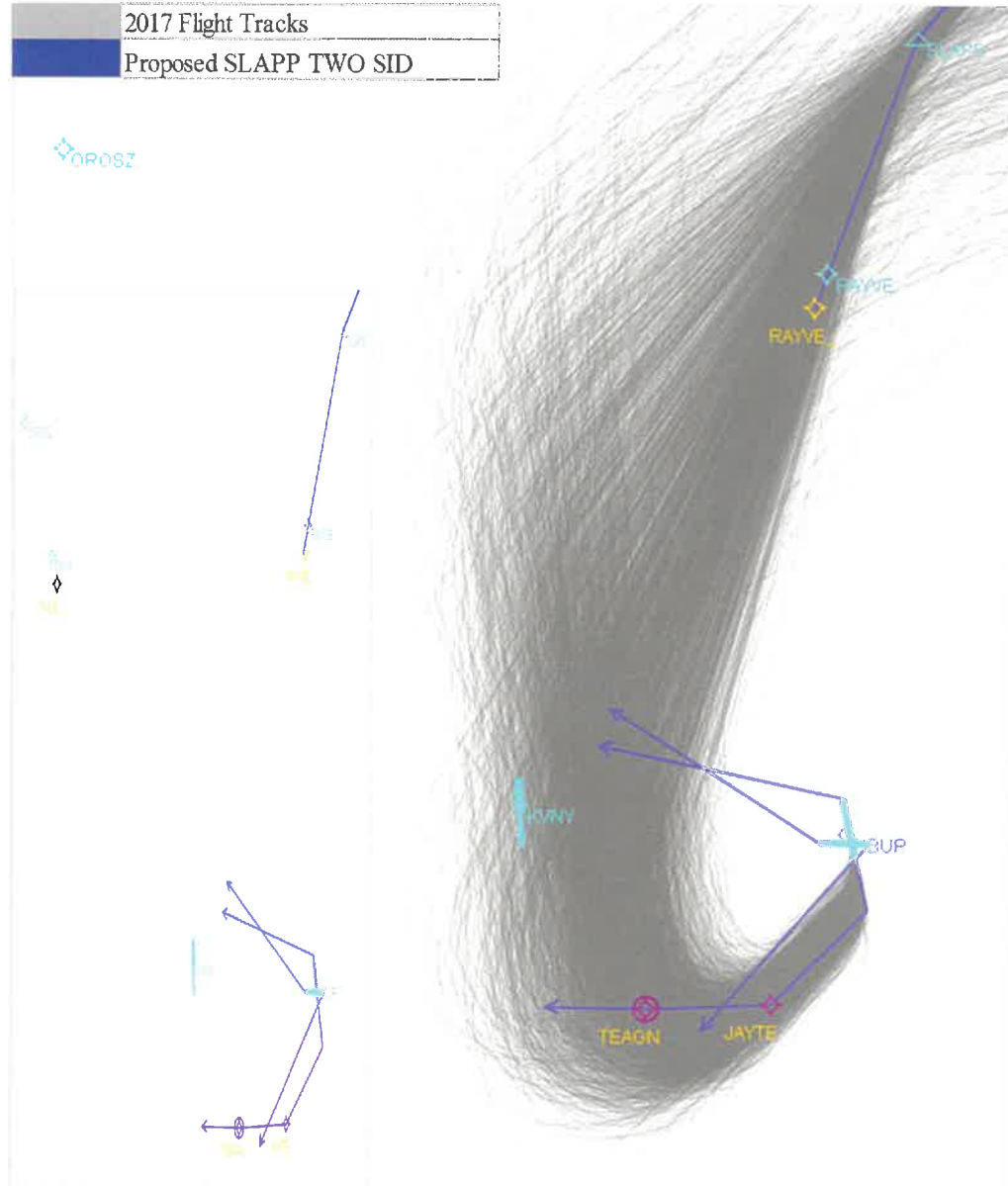
Page 20 of 39

Figure 5. Proposed OROSZ THREE SID with
Overlay of 90 Random Days 2017 Flight Tracks³¹



³¹ Figure 5 - Not to scale.
FAA Draft Environmental Review
Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed
Procedure, October 2018
Page 21 of 39

Figure 6. Proposed SLAPP TWO SID with
Overlay of 90 Random Days 2017 Flight Tracks³²



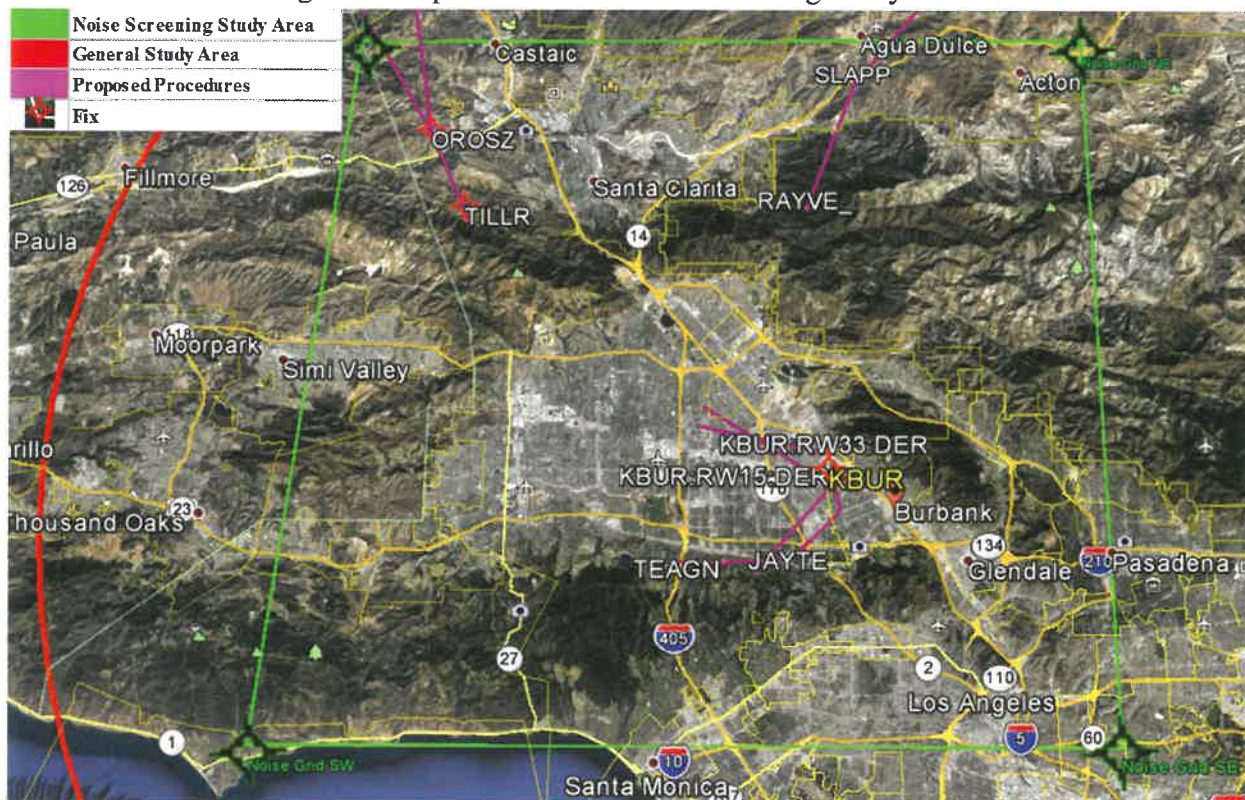
Section 4.2.4: Noise Screening Scenarios

The study area for the noise screening analysis is the geographic area that has the potential to be impacted by noise from the Proposed Action. The noise screening analysis focused on a change-in-exposure analysis, which examined the change in noise levels at a set of grid points. The noise study area, the area covered by the grid, was established to include all areas in which the No Action screening produced a DNL result of greater than DNL 45 dB. Refer to Figure 7 below. Noise exposure calculations were based on a rectangular grid (receptor set) at airport field elevation with

³² Figure 6 - Not to scale.

evenly spaced grid points (receptors). Grid points were spaced evenly at 0.25 nautical mile (NM) intervals.

Figure 7. Depiction of the Noise Screening Study Area³³



Two scenarios were evaluated for this noise screen. To determine the potential impact(s) from noise, the screening analysis compares the baseline scenario, or No Action scenario to the alternative scenario, or Proposed Action scenario.

1. No Action scenario: The scenario represents radar tracks as they are currently flown and is considered the baseline. Noise screening of the No Action scenario modeled the noise impact(s) of Burbank arrivals and departures as they are currently flown. Assigned aircraft routes were unchanged.
2. Proposed Action scenario: The FAA screened this scenario using the simplifying assumption that Burbank departure aircraft would be assigned to the proposed route that most closely matched their flight track regardless of aircraft equipment or type. This incorporates the simplified assumption that all aircraft are equipped and capable of flying RNAV procedures.

³³ Figure 7 - Not to scale.

FAA Draft Environmental Review

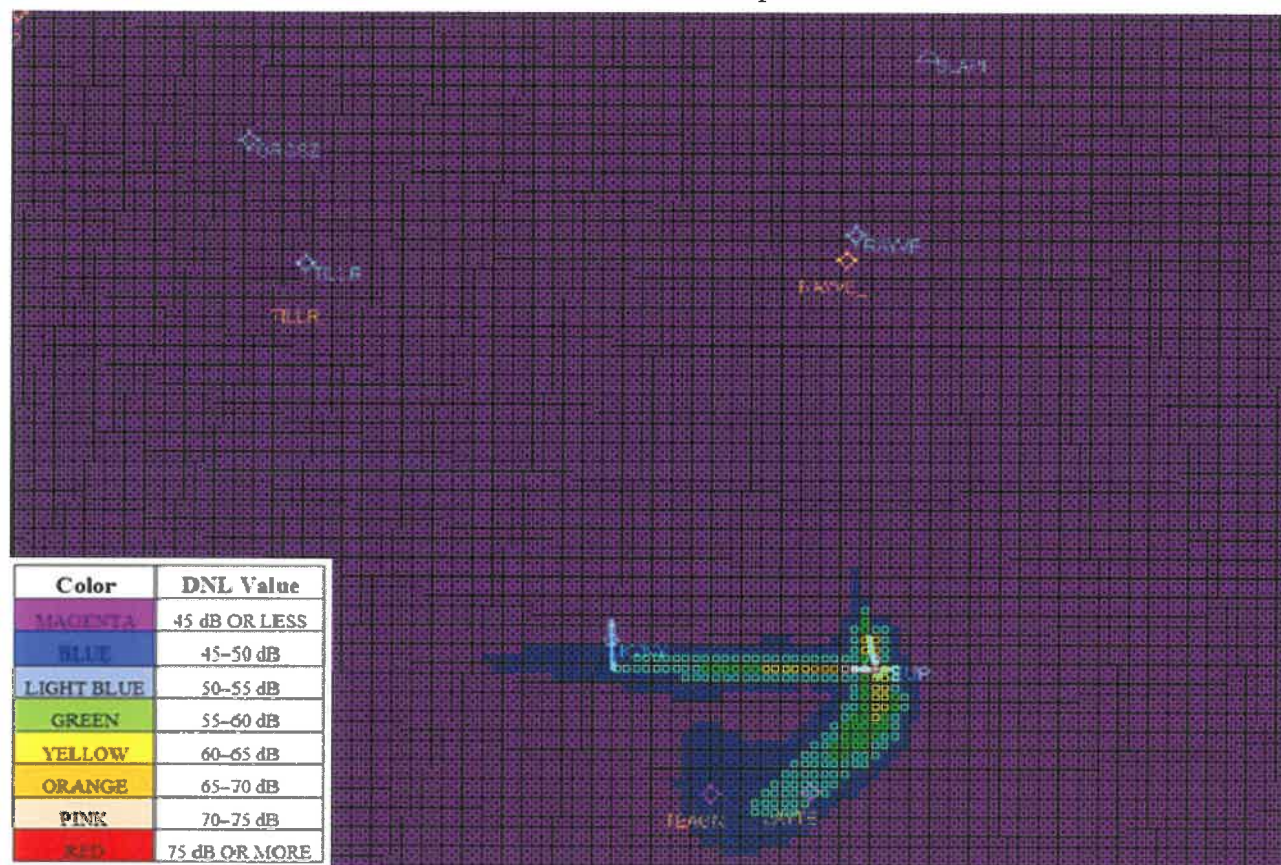
Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 23 of 39

Section 4.2.5: Noise Screening Analysis Results

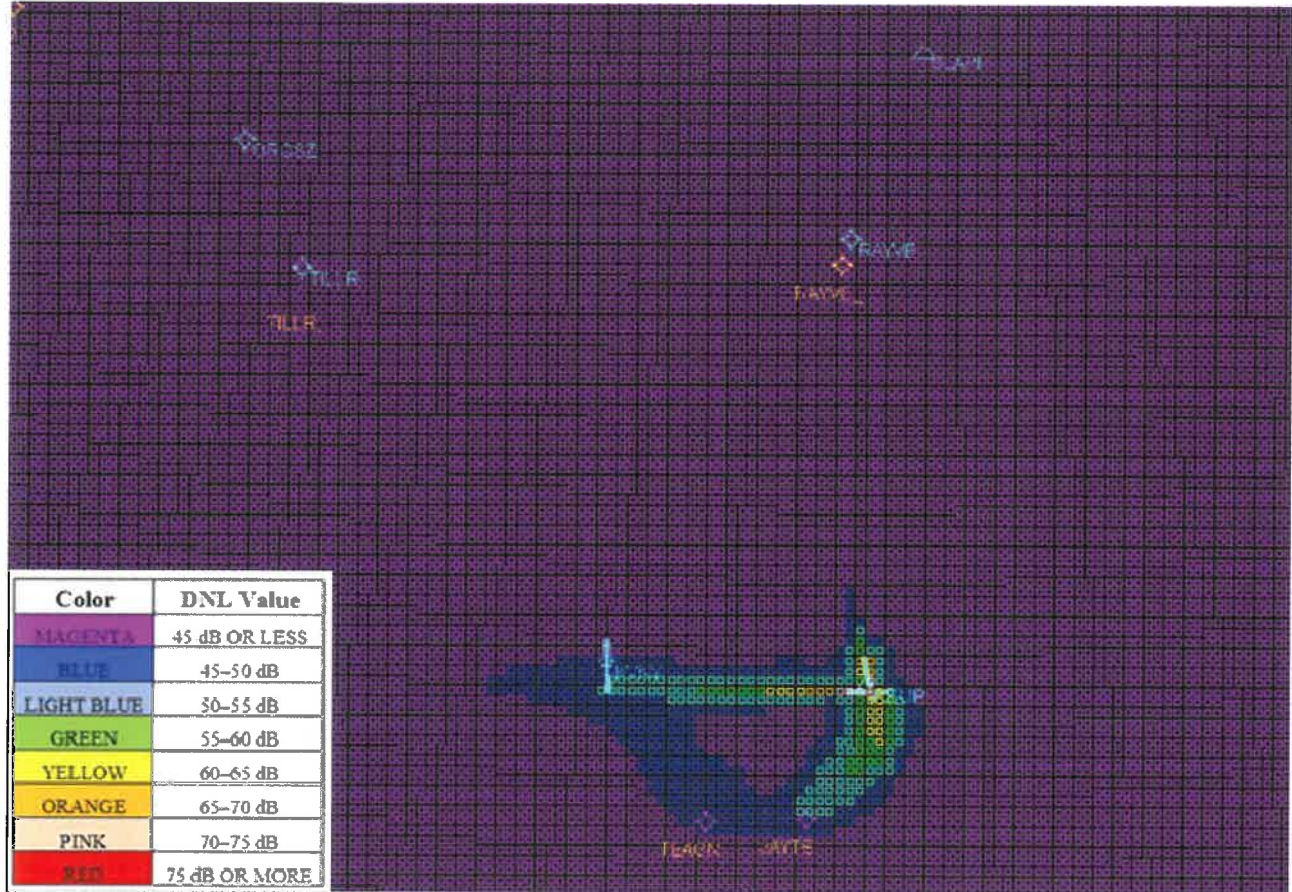
FAA conducted a separate noise screening analysis for each scenario. The TARGETS AEDT Environmental Plug-In graphically displays the noise exposure levels for each scenario in a grid point map. Figure 8 depicts the noise exposure grid point values for the No Action Scenario (the baseline). Figure 9 depicts the noise exposure grid point values for the Proposed Action Scenario.

Figure 8. Depiction of No Action Scenario (Baseline)
Grid Point Noise Exposure Results³⁴



³⁴ Figure 8 – Not to scale.

Figure 9. Depiction of Proposed Action Scenario
Grid Point Noise Exposure Results³⁵



Once the scenarios were screened individually for potential noise impacts, the TARGETS AEDT Environmental Plug-In Tool was used to compare the Proposed Action scenario to the No Action scenario to evaluate whether implementing the Proposed Action is expected to result in significant noise impacts when compared to the No Action scenario. The change in noise exposure levels when comparing the Proposed Action scenario to the No Action scenario is illustrated in Figure 10 below.

The results of the noise screening analysis indicate that the Proposed Action would not result in significant noise impacts relative to the No Action scenario. (Refer to Section 4.2 above for the noise exposure level thresholds.) The magenta color grid points in Figure 10 below indicate a change in noise exposure of a DNL 5 dB decrease within the DNL 45-50 No Action noise exposure level. This change in noise exposure level is related to the modelled change in the proposed flight paths associated with the Open SID departures.

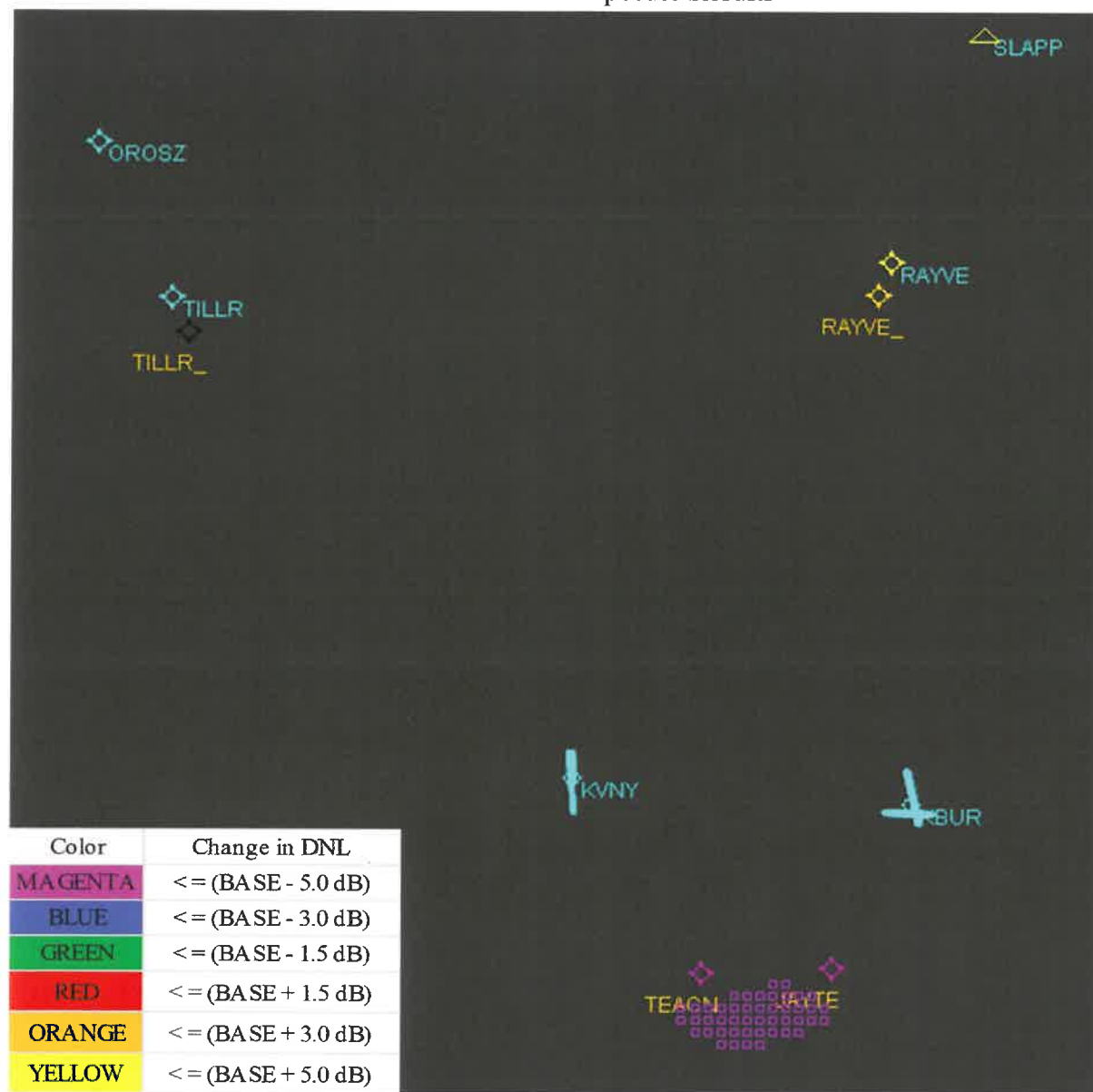
³⁵ Figure 9 - Not to scale.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 25 of 39

Figure 10. Depiction of the Comparison of Proposed Action Scenario to No Action Scenario
Grid Point Noise Exposure Results³⁶



Section 4.3: Air Quality

This section considers the potential for the Proposed Action to have impacts on air quality that could preclude use of a CATEX. Any air quality impacts would be the result of increased emissions from aircraft using the amended procedures as compared to the No Action alternative. There are no other emissions sources associated with the Proposed Action.

³⁶ Figure 10 – Not to scale.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 26 of 39

In the United States (U.S.), air quality is generally monitored and managed at the county or regional level. The U.S. Environmental Protection Agency (EPA), pursuant to mandates of the federal Clean Air Act, (42 U.S.C. § 7401 et seq. (1970)), has established the National Ambient Air Quality Standards (NAAQS) to protect public health, the environment, and quality of life from the detrimental effects of air pollution. Standards have been established for the following criteria air pollutants: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM), and sulfur dioxide (SO₂). Particulate Matter standards have been established for inhalable coarse particles ranging in diameter from 2.5 to 10 micrometers (µm) (PM₁₀) and fine particles less than 2.5 µm (PM_{2.5}) in diameter.

According to FAA Order 10501F, Exhibit 4-1, an emissions impact is significant if “[t]he 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 violations.”

Under section 176(c)(4)) of the Clean Air Act (42 U.S.C. 7506(c)) and EPA regulations at 40 CFR Parts 51 and 93 (commonly referred to as the General Conformity Rule), the FAA must ensure that its activities do not cause or contribute to new violations of the NAAQS; worsen existing violations of the NAAQS or delay attainment of the NAAQS. When developing the General Conformity Rule, the EPA recognized that many actions conducted by Federal agencies do not result in substantial increases in air pollutant emissions in nonattainment and maintenance areas. Therefore, the EPA established threshold levels (also referred to as *de minimis* levels) for emissions of each of the criteria pollutants. When the sum of the increases in direct and indirect emissions from a project would be less than the *de minimis* levels, a project would not require a general conformity determination.

The General Conformity Rule also allows Federal agencies to develop a list of actions that are presumed to conform to a State Implementation Plan (SIP).³⁷ This can be done by clearly demonstrating that the total of direct and indirect emissions from these types of activities would not cause or contribute to any new violation of any standard in any area; interfere with provisions in the applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including emission levels specified in the applicable SIP. Alternatively, Federal agencies can establish actions that are presumed to conform by providing documentation that emissions from these types of actions are below the applicable *de minimis* levels. The FAA published a list of Presumed to Conform activities in the Federal Register on July 30, 2007.³⁸

³⁷ A SIP is a collection of regulations and documents used by a state, territory, or local air district to reduce air pollution in areas that do not meet NAAQS.

³⁸ 72 Fed. Reg. 41565

Section 4.3.1: Air Quality Analysis

The FAA's Presumed to Conform list includes "Air Traffic Control Activities and Adopting Approach, Departure and Enroute Procedures for Air Operations." Air traffic control activities are defined for this purpose as "actions that promote the safe, orderly, and expeditious flow of aircraft traffic, including airport, approach, departure, and en route air traffic control. Airspace and air traffic actions (e.g., changes in routes, flight patterns, and arrival and departure procedures) are implemented to enhance safety and increase the efficient use of airspace by reducing congestion, balancing controller workload, and improving coordination between controllers handling existing air traffic, among other things."

FAA determined that project-related aircraft emissions released into the atmosphere below the inversion base for pollutant containment, commonly referred to as the "mixing height," (generally 3,000 feet above ground level) can be presumed to conform when 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.³⁹ The Proposed Action falls within the FAA's Presumed to Conform list of covered air traffic related activities.

Section 4.4: Department of Transportation Act, Section 4(f)

Section 4(f) of the U.S. Department of Transportation Act of 1966 (now codified at 49 U.S.C. § 303) protects significant publicly owned parks, recreational areas, wildlife and waterfowl refuges, and public and private historic sites. Figure 11 depicts the location of Section 4(f) property boundaries within the Affected Environment Study Area. An impact on properties protected under Section 4(f) of the Department of Transportation Act is one of the factors FAA considers in determining whether there are extraordinary circumstances that would preclude use of a CATEX to satisfy NEPA requirements for a proposed action. Section 4(f), as amended and re-codified at 49 U.S.C. § 303(c), states that, subject to exceptions for *de minimis* impacts:

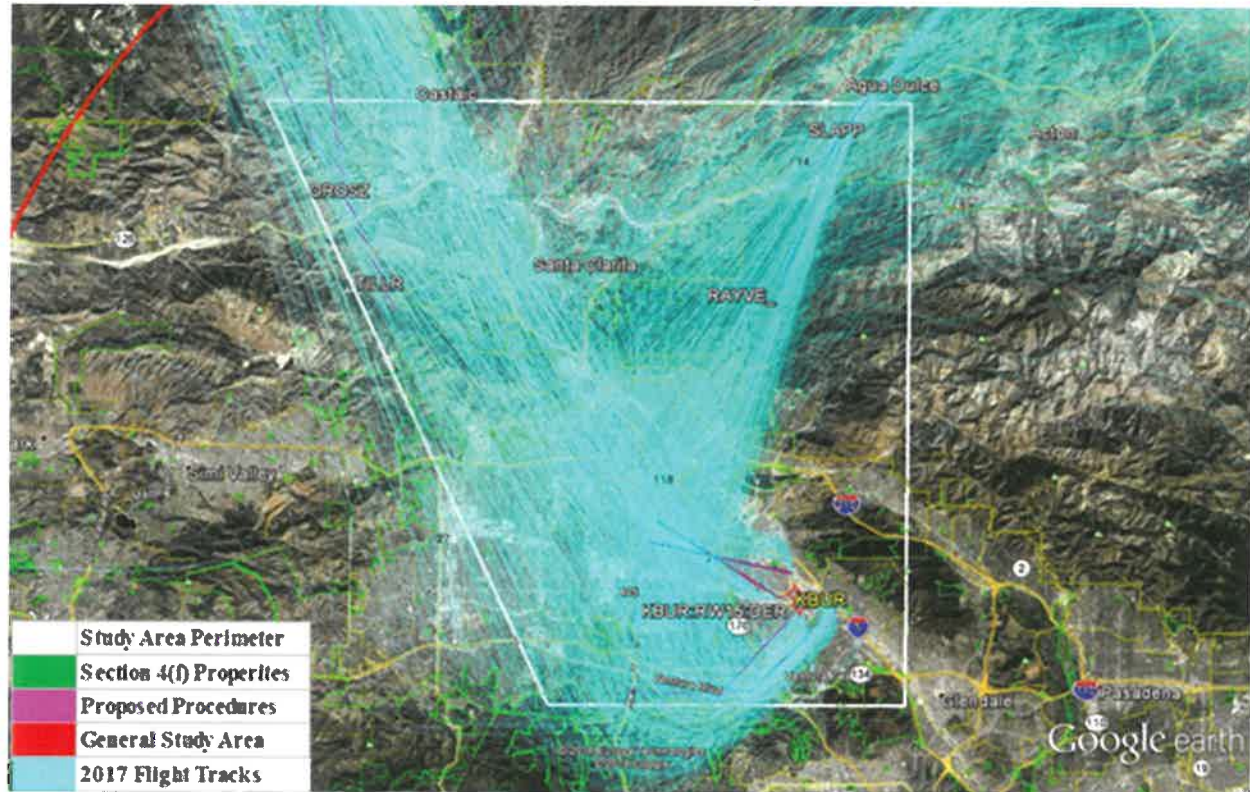
... the Secretary [of Transportation] may approve a transportation program or project . . . requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance,⁴⁰ (as determined by the officials having jurisdiction over the park, area, refuge, or site) only if . . . there is no feasible and prudent alternative to the use of such land and the program or

³⁹ 72 Fed. Reg. 41578.

⁴⁰ There is no prescribed format; however, the documentation should cite the CATEX(s) used, describe how the proposed action fits within the category of actions described in the CATEX, and explain that there are no extraordinary circumstances that would preclude the proposed action from being categorically excluded." FAA Order 1050.1F. Section 5-3.d.

project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Figure 11. Depiction of the Location of Section 4(f) Properties
With Overlay of 2017 Flight Tracks⁴¹



Civilian jet aircraft are currently overflying these areas, and would continue to overfly these areas. The number of aircraft operations and the aircraft fleet mix are not expected to change as a result of the implementation of the Proposed Action. As noted above, the Proposed Action would not result in noise levels at properties protected by Section 4(f) that would be incompatible with the land uses specified in the Part 150 guidelines. In addition, the results of the noise screening analysis indicated no significant changes in noise exposure levels as a result of the Proposed Action. Furthermore, the Proposed Action does not involve land acquisition, physical disturbance, or construction activities. Therefore, the FAA has concluded that the Proposed Action would not result in a constructive use of properties protected by Section 4(f).

⁴¹ Figure 10 – Not to scale.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 29 of 39

Section 4.5: Historical, Architectural, Archaeological and Cultural Resources

An adverse effect on cultural resources protected under Section 106 of the National Historic Preservation Act (NHPA) of 1966 (54 U.S.C. § 300101 et seq., as amended) that results in a significant impact is another extraordinary circumstance that would preclude use of a CATEX. Section 106 requires federal agencies to consider the effects of their undertakings on properties listed or eligible for listing in the National Register of Historic Places (“National Register”). For the purposes of Section 106 of the NHPA, the undertaking is the Proposed Action described above. Compliance with Section 106 requires consultation to identify historic properties that might be affected by the undertaking and the development of approaches to avoid, minimize or mitigate any adverse effects on those properties. The specific requirements for consultation are set forth in regulations of the Advisory Council on Historic Preservation at 36 CFR part 800.

Section 4.5.1: Definition of the Area of Potential Effect

Federal regulations define the Area of Potential Effect (APE) as the geographic area or areas within which an undertaking may directly or indirectly cause alternation in the character or use of historic properties, if any such properties are present. “Effects” are further defined by the regulations as alterations to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register. The APE is influenced by the scale and nature of the undertaking and may vary for different kinds of effects caused by the undertaking.

For this undertaking, to delineate the proposed APE, the FAA applied the Study Area identified for the Affected Environment analysis in this environmental review. (See Section 4.1.2 above). Table 4 below details the location of the four corner points for the proposed APE perimeter as plotted on Google Earth.

Table 4. Burbank Proposed Area of Potential Effect Perimeter Corner Point Location

Perimeter Corner Point	Latitude	Longitude
APE NE Corner	34°28'51.33"N	118°16'50.25"W
APE SE Corner	34° 8'7.93"N	118°16'52.10"W
APE SW Corner	34° 8'7.93"N	118°31'41.93"W
APE NW Corner	34°28'51.33"N	118°43'46.43"W

The FAA initiated consultation in September 2018 with the California Office of Historic Preservation. A separate search of the United States Department of the Interior Bureau of Indian Affairs database was completed to determine the presence of traditional cultural properties within the APE. The search accessed through Google Earth indicated no federally recognized tribal lands identified within the proposed APE. Appendix C, *Consultation Correspondence*, summarizes and includes copies of correspondence with potential consulting parties to date. The consultation process is ongoing to address potential effects associated with the Proposed Action.

Section 4.5.2: Identification of Historic Properties

Section 106 regulations direct federal agencies to make reasonable and good faith efforts to identify historic properties within the APE (36 CFR § 800.4(b)(1)). A search of the National Register accessed through Google Earth identified properties listed on the National Register within the APE. Figure 12 below depicts the approximate location of the properties listed on the National Register.

Figure 12. Depiction of the Location of Properties Listed on the National Register
With Overlay of Proposed Procedures⁴²

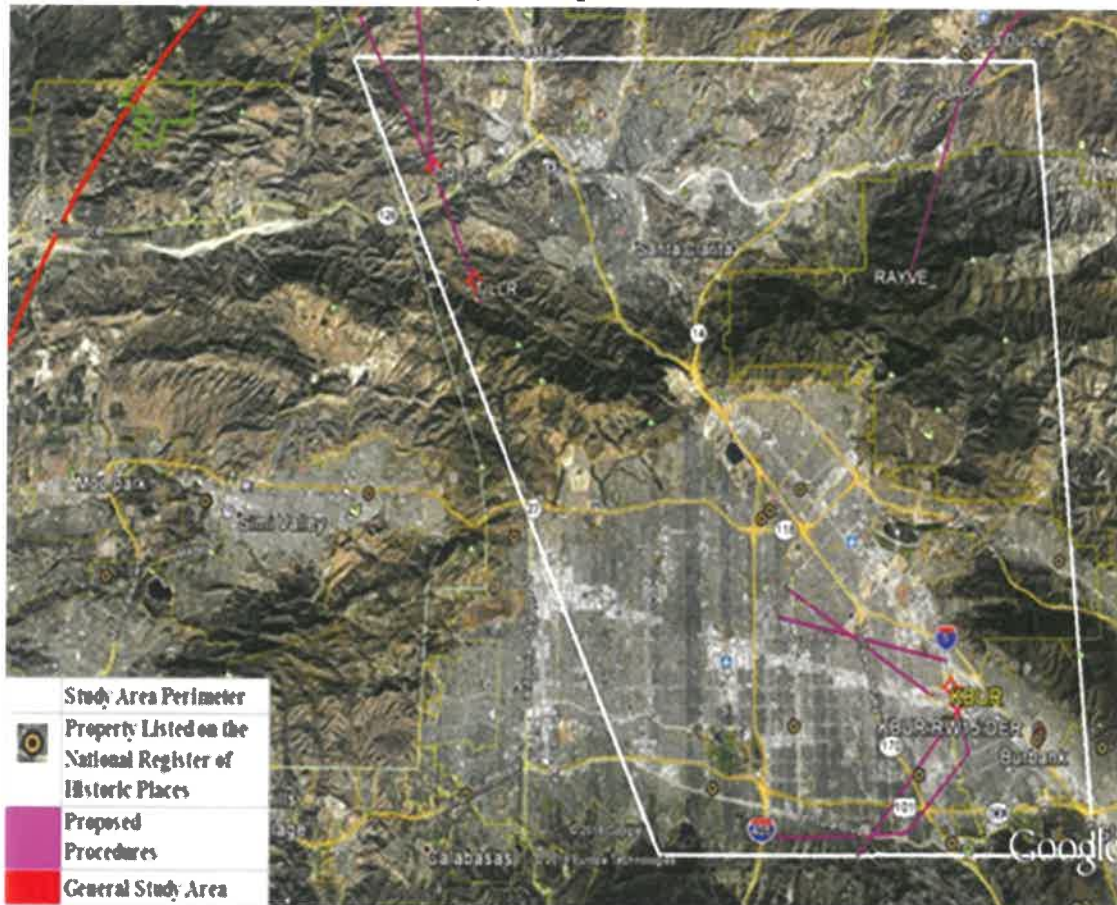


Table 5 below details the listed properties and identifies the applicable criteria for their eligibility to be listed in the National Register.

⁴² Figure 12 – Not to scale.
FAA Draft Environmental Review
Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed
Procedure, October 2018
Page 31 of 39

Table 5. Listed Properties on the National Register

Listed Property Name	NRHP Applicable Criteria	National Park Service (NPS) Reference Number
Campo de Cahuenga	Architecture/Engineering	72001602
U.S. Post Office – Burbank Downtown Station	Architecture/Engineering	85000127
City Hall – City of Burbank	Architecture/Engineering	96000426
North Hollywood Branch Library	Architecture/Engineering	87001018
Van Nuys Branch Library	Architecture/Engineering	71000142
Bolton Hall	Architecture/Engineering	71000159
Pico, Romulo, Abode	Architecture/Engineering	66000211
Mission San Fernando Rey de Convento Building	Architecture/Engineering	88002147
Lopez Adobe	Architecture/Engineering	71000157

Section 4.5.3: Determination of Adverse Effects

Under National Environmental Policy Act (NEPA), impacts to historic properties and other cultural resources are evaluated. Federal agencies are to take into account the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within areas that may be affected. The Proposed Action would have an effect on a historic property if it altered the characteristics qualifying that property for the National Register. Such effects are considered “adverse” if they would diminish the integrity of a property’s significant historic features (including its setting, provided the setting is a contributing factor to the property’s historic significance). For this undertaking, no land acquisition, construction, or other ground disturbance would occur. Accordingly, there would be no direct effects on historic resources.⁴³ Therefore, potential effects are limited to effects from aircraft overflights, primarily noise.

The FAA proposes to assess the indirect effects to historic resources within the proposed APE that receive noise increases that could alter historic properties where a quiet setting is a characteristic that qualify it for the National Register. Additionally, the FAA considered that certain historic sites may be potentially sensitive to effects of overflights that introduce a visual, atmospheric, or auditory element. Therefore, consistent with this understanding, the FAA is proposing an assessment of overflight within the proposed APE to capture these potential effects.

⁴³ Note: Direct effects include the removal or alteration of historic resources. Indirect effects include changes in noise, vehicular traffic, light emissions, or other changes that could interfere substantially with the use or character of the resource.

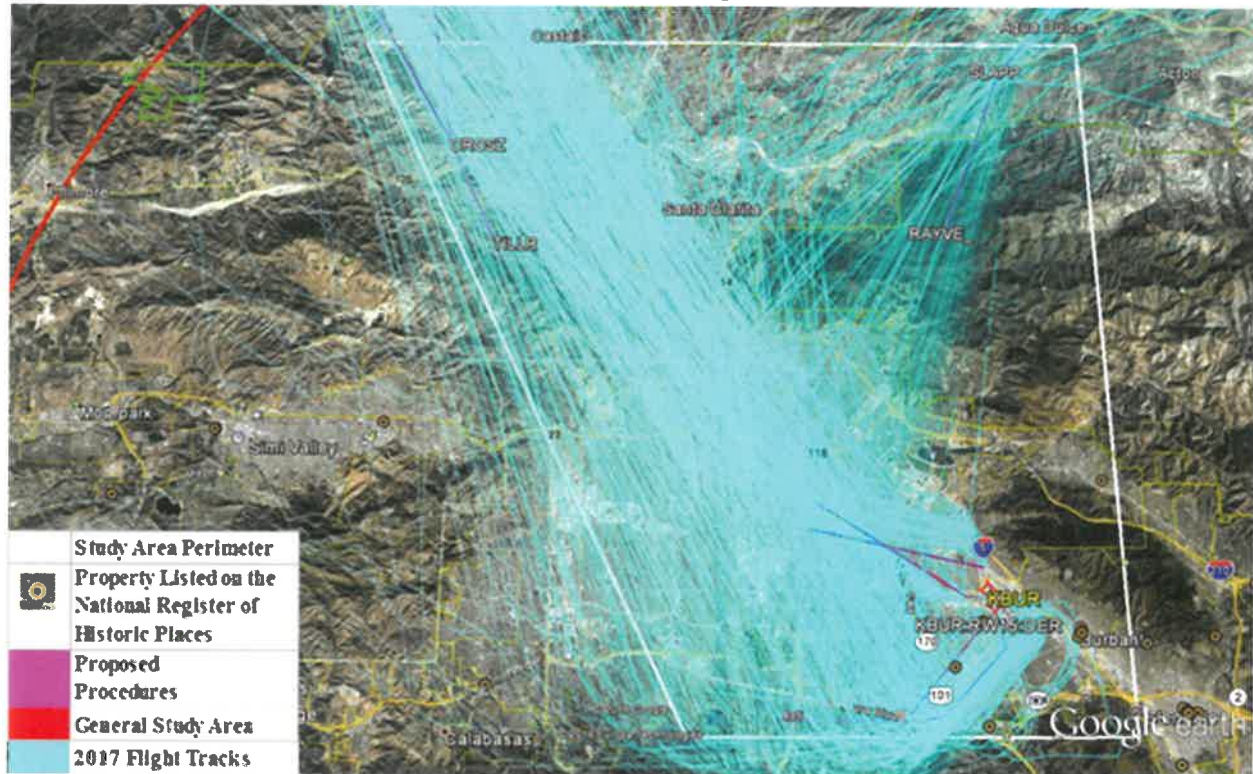
Section 4.5.3: Assessment of Effects

The FAA is proposing a finding of “no adverse effects” to historic properties for the proposed OROSZ THREE and the SLAPP TWO procedures. The FAA’s noise screening analysis indicated that the undertaking would not result in changes to noise exposure that exceed the FAA’s significant noise threshold.⁴⁴ The search of records for the National Register did not identify any historic properties within the APE for which a quiet setting is a characteristic that qualifies it for the National Register, and that therefore could be affected at a lower level of noise exposure. Implementation of the Proposed Action would involve changes to aircraft departure procedures, and would not include any project components that would touch or otherwise directly affect the ground surface. Consequently, the assessment of effects was limited to the introduction of atmospheric, audible or visual features resulting from aircraft overflights.

The FAA also considered the potential for overflights to introduce visual, atmospheric or auditory elements to historic properties. The FAA compared the proposed procedures with the 90 random days of 2017 flight tracks, as shown in Figure 13 below, and determined that there would be no new areas overflown and therefore no potential to introduce new visual, atmospheric or auditory elements that could diminish the integrity of a historic property.

⁴⁴ The FAA considers an increase of DNL 1.5 dB or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dB noise exposure level, or that will be exposed at or above the DNL 65 dB level due to a DNL 1.5 dB or greater increase to be significant.

Figure 13. Depiction of Proposed Procedures in the Area of Potential Effect
With Overlay of 2017 Flight Tracks⁴⁵



Section 4.6: Environmental Justice

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.

Section 4.6.1: Environmental Justice Analysis

An environmental justice analysis considers the potential of the Proposed Action to cause disproportionately high and adverse effects⁴⁶ on low-income or minority populations due to significant impacts in other environmental impact categories; or impacts on the physical environment that affect an environmental justice population in a way that FAA determines are unique to the environmental justice population and significant to that population. If these factors exist, there is not necessarily a significant impact; rather, the FAA must evaluate these factors in

⁴⁵ Figure 13 – Not to scale.

⁴⁶ “Adverse effects” means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects. DOT Order 5610.2(a) provides the definition for the types of adverse impacts that should be considered when assessing impacts to environmental justice populations. FAA Draft Environmental Review
Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018
Page 34 of 39

light of context and intensity to determine if there are significant impacts. The FAA has not established a significance threshold for Environmental Justice.

This section addresses the potential for impacts on minority⁴⁷ and low-income populations of the Proposed Action as compared with No Action alternative. In weighing whether the Proposed Action raises environmental justice concerns, the analysis draws on the findings of the other impact analyses, particularly noise, land use, and air quality.

Section 4.6.2: Environmental Justice Analysis Results

Aircraft have historically overflown the Affected Environment Study Area. Implementation of the Proposed Action would not adversely affect air quality or land use within the Affected Environment Study Area. Additionally, the results of the noise screening analysis when comparing the No Action alternative to the Proposed Action alternative indicate that changes in noise exposure level would be below the threshold of significance for implementation of the Proposed Action. The Proposed Action has no new social or economic effects on the Affected Environment Study Area. Therefore, there are no disproportionately or adverse impacts on minority, or low-income populations as a result of the Proposed Action as compared to the No Action Alternative.

Section 4.7: Visual Effects

There are no special purpose laws for light impacts and visual impacts. Impacts from light emissions are generally related to airport aviation lighting.

The FAA has not established a significance threshold for visual effects in FAA Order 1050.1F; however, the FAA has identified factors to consider when evaluating the context and intensity of potential environmental impacts for visual effects. As noted above, it was determined that there would be no new areas overflown and that the Proposed Action would not result in an introduction of new atmospheric, visual, or auditory elements that could diminish the integrity of historic and traditional cultural resources. The FAA has concluded that the Proposed Action would not have a significant visual effect on parks, wilderness areas, tribal lands and historic properties.

⁴⁷ DOT Order 5610.2(a) defines “minority” as a person who is Black: a person having origins in any of the black racial groups of Africa; Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent; American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America) and who maintains cultural identification through tribal affiliation or community recognition; or Native Hawaiian and Other Pacific Islander: people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. A minority population is any readily identifiable group of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

Section 4.8: Cumulative Impacts

The cumulative impacts analysis focuses on those resource areas that may be impacted by the Proposed Action in conjunction with the past, present, and reasonable foreseeable future actions. The likelihood that an action would cumulatively create a significant impact on the human environment is another extraordinary circumstance that the FAA must consider before categorically excluding an action from further NEPA review. In accordance with FAA Order 1050.1F, the significance of cumulative impacts should be determined in the same manner as the significance of direct and indirect impacts.⁴⁸

The FAA has discretion to determine whether, and to what extent, information about past actions are useful for the analysis of the impacts of the proposed action and alternative(s). Present impacts of past actions that are relevant and useful are those that may have a significant cause-and-effect relationship with the direct and indirect impacts of the proposed action and alternative(s). Present actions occurring in the same general time frame as the proposal may have noise or other environmental concerns that should be considered in conjunction with those that would be generated by the FAA proposed action and alternative(s) under consideration. Reasonably foreseeable future actions are actions that may affect projected impacts of a proposal and are not remote or speculative.

Section 4.8.1: Cumulative Impacts Analysis - Noise and Noise-Compatible Land Use

As discussed in Section 4.2, analysis of the predicted noise levels in conjunction with the Proposed Action indicate that changes in noise exposure levels would be below the threshold of significance relative to the No Action alternative. No projects or proposals have been identified that, when combined with the Proposed Action would result in changes in noise exposure that exceed the noise exposure threshold criteria in accordance with FAA Order 1050.1F. Therefore, the Proposed Action would not incrementally contribute to a cumulative noise impact.

Section 4.8.2: Cumulative Impacts Analysis - Air Quality

No projects or proposals have been identified that, when combined with the Proposed Action, would violate any aspect of the current SIP or threaten the attainment status of the region. In addition, no projects or proposals have been identified that, when combined with the Proposed Action, would have substantial GHG emissions, or would lead to a violation of any Federal, state, or local air quality regulation. The cumulative impact of this Proposed Action on the global climate when added to other past, present, and reasonable foreseeable future actions is currently not scientifically predictable. Aviation has been calculated to contribute approximately three percent of global carbon dioxide (CO₂) emissions; and this contribution may grow to five percent by 2050. Actions are underway within the U.S. and by other nations to reduce aviation's contribution to climate change. Such measures include new aviation related technologies to reduce emissions and

⁴⁸ FAA Order 1050.1F, Paragraph 15.3

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 36 of 39

improve fuel efficiency, renewable alternative fuels with lower a carbon footprint, more efficient air traffic management, market-based measures and environmental regulations including an aircraft CO₂ standard. At present, there are no calculations of the extent to which measures individually or cumulatively may affect aviation's CO₂ emissions. The FAA, with support from the U.S. Global Change Research Program and its participating federal agencies, (e.g., NASA, NOAA, EPA, and DOE), has developed the Aviation Climate Change Research Initiative (ACCRI) in an effort to advance scientific understanding of regional and global climate impacts of aircraft emissions, with quantified uncertainties for current and projected aviation scenarios under changing atmospheric conditions.

Section 5. Community Involvement

The National Environmental Policy Act of 1969 requires federal agencies to assess the environmental effects of their major federal actions prior to making decisions. There can be public involvement under NEPA, but this requirement is not fixed -- it can vary depending on the environmental impact of the action proposed. Additionally, NEPA requires agencies to develop their own NEPA implementing procedures. This includes establishing “categorical exclusions” for actions the agency has determined normally do not have significant environmental impact on the environment. Unless extraordinary circumstances exist, a categorically excluded action does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or the same public involvement as an EA or EIS. The FAA implements NEPA through FAA Order 1050.1F.

The FAA recognizes the importance and value of public input in the environmental and historic review process and uses community involvement methods that are appropriate for the types of actions it proposes.⁴⁹ In this case, the FAA action being proposed is to develop RNAV procedures that are shown to have little to no environmental impact. However, based upon comments and questions the FAA has received, there seems to be some misunderstanding about the development of the proposed procedures and their potential environmental impacts.

Therefore, even though the FAA has no statutory or legal obligation to do so, for this Proposed Action the FAA has selected a public involvement program that includes community outreach and public feedback through comments. Specifically, the FAA, with the assistance and cooperation of the City of Burbank, will hold public workshops in the greater Burbank metropolitan area to educate the public about the development and operation of the Open SID procedures. These workshops will also help the public better understand how the proposed procedures will operate near Burbank Airport. Representatives from the FAA will be available at the workshops to answer

⁴⁹ FAA Community Involvement Manual February, 2016.

questions. Materials presented at the workshops will be available online on the FAA's Community Involvement website for Burbank.⁵⁰

In addition to the public workshops, the FAA will provide the public an opportunity to comment on the information presented in the workshops, information placed on the FAA's website, and the draft version of this document. The FAA will consider the comments in developing the final procedure designs and in making a final NEPA determination.

Section 6. Preparer(s)

The FAA Air Traffic Organization, Western Service Center, Operations Support Group is responsible for all or part of the information and representations contained herein.

⁵⁰ See https://www.faa.gov/nextgen/nextgen_near_you/community_involvement/bur/.

FAA Draft Environmental Review

Hollywood Burbank Airport – OROSZ THREE DEPARTURE (RNAV), SLAPP TWO DEPARTURE (RNAV) Proposed Procedure, October 2018

Page 38 of 39

Section 7. Facility/Service Area Conclusions

Based on this initial review and analysis, there are no extraordinary circumstances or other reasons that would preclude the responsible federal official from selecting this documented Categorical Exclusion as the appropriate level of NEPA documentation for the Proposed Action. The undersigned have determined that the Proposed Action qualifies as a documented categorically excluded action in accordance with FAA Order 1050.1F and, on this basis, recommends that further environmental review need not be conducted before the Proposed Action is implemented.

Facility Manager Review/Concurrence

Signature: _____ **Date:** _____

Name: _____

Air Traffic Manager

Southern California Terminal Radar Approach Control

Service Area Environmental Specialist Review/Concurrence

Signature: _____ **Date:** _____

Name: _____

Environmental Protection Specialist, Operations Support Group,
Western Service Center, AJV-W25

Service Area Director Review/Concurrence, if necessary

Signature: _____ **Date:** _____

Name: _____

Acting Director, Air Traffic Operations
Western Service Area, AJT-W

EXHIBIT B



Doug Mensman <doug.mensman@lacity.org>

FOIA 2019-001114WS Krekorian (Nelson-Pittle)

Geneva.Laing@faa.gov <Geneva.Laing@faa.gov>
To: doug.mensman@lacity.org
Cc: suzanne.nelson-pittle@faa.gov

Mon, Nov 5, 2018 at 10:58 AM

Dear Mr. Krekorian:

This email acknowledges receipt of your Freedom of Information Act (FOIA) request for records related to the FAA's Draft Environmental Review for proposed flight procedures from Hollywood Burbank Airport. Your request was received in our office on October 29, 2018, and has been assigned to the offices below for action at:

FAA Northwest Mountain Region
Air Traffic Organization Western Service Area
email: 9-ATO-WSA-FOIA@faa.gov
2200 S. 216th
Des Moines, WA 98198

Under Title 49 Code of Federal Regulations 7.34, we are extending the response due date by a minimum of 10 working days because we need to search for and collect records from field facilities.

Should you wish to inquire as to the status of your request, please contact the assigned FOIA Officer, Suzanne Nelson-Pittle, and reference the subject tracking number.

Thank you,

Respectfully,

Geneva Laing
Management and Program Analyst, Management Support Team

Northwest Mountain Regional Office
ATO Western Service Center
Administrative Services Group

 2019-001114WS Krekorian (Nelson-Pittle) Request.pdf
8899K

EXHIBIT C



Doug Mensman <doug.mensman@lacity.org>

FOIA Request 2019-001114WS - Request for Fee Waiver

suzanne.nelson-pittle@faa.gov <suzanne.nelson-pittle@faa.gov>
To: Doug.mensman@lacity.org

Tue, Nov 6, 2018 at 10:32 AM

Dear Mr. Krekorian:

Thank you for your Freedom of Information Act (FOIA) request 2019-001114WS. We are considering your request for expedited processing and will be informing you if your request has been granted. Your request for records also included a request for a waiver of fees. In order to process your request for a fee waiver, please provide a written response to the following questions:

49 Code of Federal Regulations § 7.43

To determine whether your request for a fee waiver should be granted, please describe how disclosure of this information to you is likely to contribute significantly to the public understanding of the operations or activities of the government. The agency will make a fee waiver determination after consideration of your response. Your request will not be processed until the fee waiver issue is resolved.

Please address each of the following factors:

- 1) How the subject of the requested records concerns the operations or activities of the government;
- 2) How the disclosure is likely to contribute to an understanding of Federal government operations or activities;
- 3) How disclosure of the requested information will contribute to the understanding of the public at large, as opposed to your individual understanding or a narrow segment of interested persons;
- 4) In what ways the contribution to public understanding of Federal government operations or activities will be significant;
- 5) Whether you, as a requester, have a commercial interest that would be furthered by the requested disclosure; and
- 6) The magnitude of your identified commercial interest as a requester in comparison with the extent of the public interest in disclosure.

Many thanks,

Suzanne Nelson-Pittle
Management and Program Analyst,
Management Support Team (MST)
FAA, ATO Western Service (WSA)

Administrative Services Group (ASG), AJV-W52
Northwest Mountain Regional Office Building
2200 South 216th Street, 3rd Floor
Des Moines, Washington 98198
(206) 231-3339

 Pages from 2019-001114WS Krekorian.pdf
1001K

EXHIBIT D



Doug Mensman <doug.mensman@lacity.org>

FOIA Request 2019-001114WS - Request for Fee Waiver

Doug Mensman <doug.mensman@lacity.org>

Wed, Nov 7, 2018 at 10:29 AM

To: suzanne.nelson-pittle@faa.gov

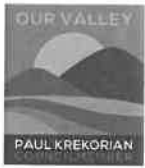
Cc: Ian Thompson <ian.thompson@lacity.org>, Mehrin Rahman <Mehrin.Rahman@lacity.org>, Ruth Kwon <ruth.kwon@lacity.org>, Paul Krekorian <councilmember.krekorian@lacity.org>

Ms. Nelson-Pittle,

Please see the attached letter responding to your request of yesterday. Thank you very much for your prompt attention and thorough communication during this process. The Council Member greatly appreciates it.

A hard copy will be following this electronic version via US Mail.

Regards,



Doug Mensman | Transportation Director
LA City Councilmember Paul Krekorian, District 2
Office: 213.473.7002 | Fax: 213.978.3092
www.paulkrekorian.org



[Quoted text hidden]



2018.11.06_Response to Request to Justify Fee Waiver_Krekorian.pdf
477K



PAUL KREKORIAN

LOS ANGELES CITY COUNCILMEMBER

November 6, 2018

FOIA Coordinator (Western Pacific Region)
FAA Northwest Mountain Region, AFN-400W
2200 South 216th Street
Des Moines, WA 98198

FOIA Requester Service Center
Federal Aviation Administration
800 Independence Avenue SW., Room 306
Washington, DC 20591

Re: Response to Request for Information to Justify Fee Waiver

Dear Ms. Nelson-Pittle:

I am writing in response to your November 6, 2018, email. In your email, you request information to justify my office's request for a fee waiver in connection with my request under the Freedom of Information Act ("FOIA") dated October 29, 2018 ("FOIA Requests"). I believe that the information you seek is contained within my October 29, 2018, cover letter, attachment 1 (listing five requests) and attachment 2 (a copy of FAA's Draft environmental review document). Nevertheless, I reiterate and respond further to your inquiry here so that there is no further delay in disclosure.

The FOIA Requests relate to FAA's Draft Environmental Review ("Draft ER") for proposed flight procedures from Hollywood Burbank Airport, disclosed to the public on Friday, October 19, 2018. FAA requires comments to the Draft ER by no later than Sunday, November 18, 2018. The disclosure of these records is critical for my constituents to be able to submit timely comments to the FAA.

The five FOIA Requests seek three discrete categories of records: (1) Underlying data supporting FAA's October 19 Draft ER; (2) records concerning the Benedict Hills Settlement Agreement referenced in the Draft ER; and (3) records concerning FAA's Safety Risk Analysis, referenced in the Draft ER.

The records concern the operations and activities of FAA, as disclosed by FAA. Each of the FOIA Requests originates from statements made within the Draft ER and thus, contain page citations to the Draft ER. The FOIA Requests were drafted because the Draft ER does not provide basic information for the public to appreciate the geographic locations, much less

Response to Request for Information to Justify Fee Waiver
Councilmember Paul Krekorian
Page 2

the noise and safety impacts of the proposed procedures on their homes, schools, businesses, and parks.

Disclosure of the information will contribute to the understanding of the public at large. My office has fielded dozens, if not hundreds, of inquiries regarding FAA's proposed procedures. Upon disclosure of these records, my office intends to make the records and the information contained therein publicly available. The records will be reviewed and summarized by my staff and other city employees. Summaries may be disseminated to the public on our website, social media accounts and in press releases. My office may use the information contained to inform legislative action.

The contribution to public understanding will be significant. My office has access to experts to process the underlying radar track data and safety records sought by Requests Nos. 1, 2, 4 and 5. My office also has access to legal experts to review the Settlement Agreement, sought by Request No. 3. That is necessary because, according to FAA, the proposed procedures were contemplated in order to fulfill the terms of a Settlement Agreement, the terms of which are not public. See October 19 and November 2, 2018, Notices (available at https://www.faa.gov/nextgen/nextgen_near_you/community_involvement/bur/.)

Upon review and analysis of the FAA records, the public will have a better understanding of FAA's rationale for the proposed procedures, the extent to which alternative procedures were evaluated, whether environmental impacts to the public were considered, and whether safety risks were properly evaluated.

Neither my office nor I have a commercial interest in the records. Under governing Ninth Circuit law, the possibility that these documents will be used to submit comments, file claims, or otherwise inform a citizen's exercise of their substantive due rights, does not render a FOIA requester's interest to be commercial. To the extent any commercial interest exists, it is far outweighed by the public interest in disclosure of information. As explained in my initial FOIA Request, FAA's actions affect my constituents' basic rights to enjoy their neighborhoods.

I respectfully request that FAA grant the request for fee waiver, grant expedited treatment and disclose these records without further delay. To the extent the duplication fees are causing delay, my office is authorized to pay at least \$250.00, if not more, for immediate disclosure of the records.

Response to Request for Information to Justify Fee Waiver
Councilmember Paul Krekorian
Page 3

Should you have any further questions, please contact Doug Mensman, Transportation Policy Director, at doug.mensman@lacity.org or (213) 473-7002.

Very truly yours,

A handwritten signature in black ink that reads "Paul Krekorian". The signature is written in a cursive, flowing style.

PAUL KREKORIAN
Los Angeles City Councilmember, Second District

cc: City Attorney Mike Feuer

EXHIBIT E



Doug Mensman <doug.mensman@lacity.org>

FOIA Request 2019-001114WS - Request for Fee Waiver

suzanne.nelson-pittle@faa.gov <suzanne.nelson-pittle@faa.gov>
To: doug.mensman@lacity.org

Mon, Nov 19, 2018 at 8:35 AM

Mr. Mensman,

A fee waiver will be unnecessary in this case because as an "All other" request, there is no charge for review time or duplication, and search fees will be minimal. As for your request for expedited processing, we will attempt to prioritize this FOIA request over other FOIAs. However, due to litigation between the City of LA, in addition to the status of any final agency decisions regarding Burbank, the release of these records will require extra scrutiny.

Many thanks.

Suzanne Nelson-Pittle
Management and Program Analyst,
Management Support Team (MST)
FAA, ATO Western Service (WSA)

Administrative Services Group (ASG), AJV-W52
Northwest Mountain Regional Office Building
2200 South 216th Street, 3rd Floor
Des Moines, Washington 98198
(206) 231-3339

Warning: This Email may contain Privacy Act Data/Sensitive Data, which is intended only for the use of the individual to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable laws.

From: Doug Mensman <doug.mensman@lacity.org>
Sent: Wednesday, November 07, 2018 10:29 AM
To: Nelson-Pittle, Suzanne (FAA) <suzanne.nelson-pittle@faa.gov>
Cc: Ian Thompson <ian.thompson@lacity.org>; Mehrin Rahman <Mehrin.Rahman@lacity.org>; Ruth Kwon <ruth.kwon@lacity.org>; councilmember.krekorian@lacity.org <councilmember.krekorian@lacity.org>
Subject: Re: FOIA Request 2019-001114WS - Request for Fee Waiver

[Quoted text hidden]

EXHIBIT F



U.S. Department
of Transportation
Federal Aviation
Administration

Mission Support Services
800 Independence Avenue, SW.
Washington, DC 20591

December 12, 2018

The Honorable Paul Krekorian
Los Angeles City Hall
200 N. Spring Street, Rm 435
Los Angeles, CA 90012

Dear Councilmember Krekorian:

Subject: Freedom of Information Act (FOIA) Request 2019-001114WS

This is an Air Traffic Organization (ATO), Mission Support Services, Western Service Area (WSA), partial denial response to your FOIA request dated October 29, 2018. The request was made under the provisions of Title 5 United States Code (U.S.C.), Section 552. You requested copies of records related to the Federal Aviation Administration (FAA) Draft Environmental Review (ER) for flight procedures from Hollywood Burbank Airport (BUR).

A search for records was conducted by the WSA, Operations Support Group. The search revealed 34 electronic documents related to your request. Of those 34 documents, the responsive records not subject to FOIA exemptions are provided on the enclosed compact disk in addition to being contained on the following publicly available website:
https://www.faa.gov/nextgen/nextgen_near_you/community_involvement/bur/

- FAA and Benedict Hills Settlement, executed on March 16, 2018.

We have withheld 26 of the 34 electronic records under Exemption 5 of the FOIA, 5 U.S.C., Section 552(b)(5). Exemption 5 of the FOIA allows agencies to withhold recommendations, opinions, and analysis under the deliberative process privilege. The BUR Draft ER working documents and files contain material that are deliberative and pre-decisional. If these records were released, it would discourage open, frank discussions on policy matters, would result in the premature disclosure of proposed policies before they are adopted, and would cause public confusion that might result from disclosure of reasons and rationales that were not in fact the ultimate grounds for an agency action.

Your request qualifies for the "All Other" fee category whereby you are not being charged for the first 2 hours of search time, any review time, or the first 100 pages of duplication. An invoice has been enclosed for your records.

2

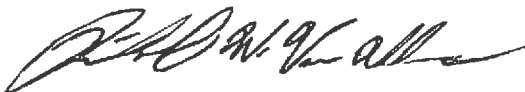
The undersigned and Kevin Stewart, Acting Director, ATO, WSA, are responsible for this partial denial response. You may request reconsideration of this determination through electronic mail at FOIA-Appeals@faa.gov or by writing to the address below:

Assistant Administrator for Finance and Management, AFN-400
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Your request for reconsideration must be made in writing within 90 days from the date that the initial determination was made, and must include all information and arguments relied upon. Your appeal must also state that it is an "appeal" from the above described denial of a request made under the FOIA and include your assigned FOIA control number. The envelope containing the appeal should be marked "FOIA."

You also have the right to seek dispute resolution services from the FAA FOIA Public Liaison via phone at (202) 267-7799 or email at: 7-AWA-ARC-FOIA@faa.gov. Additionally, you may contact the Office of Government Information Services at: <https://ogis.archives.gov>, via phone at (202) 741-5770, toll free at (877) 684-6448, via fax at (202) 741-5769, or via email at ogis@nara.gov. Please note "FOIA Public Liaison" in the subject line.

Sincerely,



For Jodi S. McCarthy
Vice President, Mission Support Services
Air Traffic Organization

Enclosures

Federal Aviation Administration
(WSJA001)
Air Traffic Org - Western Service Area
FAA ANM-RO Mailcode: AJV-W52
2200 S 216th street
Des Moines, WA 98198

FOIA Number: 2019-001114WS

Pay.Gov Web Payment ID: 496939

Invoice

Paul Krekorian
200 N. Spring Street
Room 435
Los Angeles, CA 90012
doug.mensman@lacity.org

Date	Item Category	Description	Other	Charges Incurred	Charges Deducted	Charges Applied	Payment
12/13/2018	Review	Review Time		\$123.00	\$123.00	\$0.00	\$0.00
						\$0.00	\$0.00

A balance equal to or less than \$20.00 is not collected.

Amount Due \$0.00

To pay by check: Please clip the payment coupon below and mail it, along with your check payable to DOT/FAA, to the address indicated.

To pay thru Pay.Gov: Please use the link from our FOIA web page (www.faa.gov/foia) to access the proper Pay.Gov Account. Pay.Gov is a secure website where you can pay by eCheck or Credit Card. When you access the Pay.Gov website, you will be asked for the following information:

Web Payment ID Number: 496939
FOIA Request Number: 2019-001114
Name of FOIA Requester: Paul Krekorian
Amount Due: \$0.00

Paul Krekorian
200 N. Spring Street
Room 435
Los Angeles, CA 90012
doug.mensman@lacity.org

Balance due upon receipt.

Balance Due: \$0.00

Payment Amount:

Please write the FOIA Number
in the memo field on your check.

FOIA Number: 2019-001114WS (WSJA001)

Remit to: Federal Aviation Administration
Air Traffic Org - Western Service Area, WS-JA1
FAA ANM-RO Mailcode: AJV-W52
2200 S 216th street
Des Moines, WA 98198

Federal Aviation Administration
Northwest Mountain Regional Office
ATO Western Service Center
2200 S. 216th Street, 3rd floor
Des Moines, WA 98198
ATTN: Suzanne Nelson-Pittle AJV-W52

The Honorable Paul Krekorian
Los Angeles City Hall
200 N. Spring Street, Rm 435
Los Angeles, CA 90012



ZIP 98198 \$ 001.42
02 1W
0001402945 DEC 14 2018



EXHIBIT G



PAUL KREKORIAN

LOS ANGELES CITY COUNCILMEMBER

October 23, 2018

Stephanie C. Harris
Manager, Flight Procedures Team
Operations Support Group
c/o Burbank Public Comments
2200 South 216th Street
Des Moines, WA 98198

Re: Draft Environmental Review for the Proposed OROSZ THREE and SLAPP TWO (RNAV) Open Standard Instrument Departures Procedures at Hollywood Burbank Airport

Dear Ms. Harris:

I write to you regarding the proposed RNAV departure procedures being reviewed for Hollywood Burbank Airport. This proposed change in departure procedure is an issue of significant importance to my constituents and neighboring communities in the East San Fernando Valley.

In order for East Valley residents to have adequate time to review and comment on this environmental analysis, I respectfully request that the comment period be extended from the current 30 days to 90 days. I want to ensure that this is a fully fair, transparent and inclusive process. In order for that to occur, the communities affected by this proposed change deserve an additional 60 days added to the current comment period. This will provide enough time for proper review of the documentation in order for residents to comment effectively on the proposal.

If you have any questions please contact Doug Mensman on my staff at (213) 473-7002 or doug.mensman@lacity.org. Thank you in advance for your consideration.

Very truly yours,

PAUL KREKORIAN
Los Angeles City Councilmember, Second District

EXHIBIT H



November 15, 2018

Stephanie C. Harris
Manager, Flight Procedures Team
Operations Support Group
c/o Burbank Public Comments
2200 South 216th Street
Des Moines, WA 98198

RE: Request to extend public comment period for the Draft Environmental Review
(Proposed Categorical Exclusion) for the Proposed OROSZ THREE and SLAAP TWO
(RNAV) Open Standard Instrument Departure Procedures at Hollywood Burbank Airport

Dear Ms. Harris:

We write to request that the public comment period regarding the proposed RNAV procedures under review be extended from 30 to 90 days and that the Federal Aviation Administration (FAA) provide the information and data requested below well before a new comment period closes. As you know, there continues to be significant public interest surrounding these procedures. Yet the Draft Environmental Review report provides neither basic information for public understanding nor the underlying analytical data supporting FAA's decision. Absent such information, the public cannot make informed decisions about whether they should submit comments, and if so, what issues should be addressed by their comments.

This high level of public interest and need for additional information strongly support an extension of the public comment period. Specifically, we are requesting the FAA provide the following information:

- Precise descriptions of the proposed procedures, including the location and nature of the new RNAV segment. The imprecise descriptions in the Draft Environmental Review Report impede a basic understanding of the proposed procedures.
- Higher quality maps and files showing existing radar tracks and the proposed procedures. In addition, we request TARGETS, AEDT and other input and output files with underlying geographic references. The current maps are low-resolution, small, and otherwise insufficient to convey the location of the proposed procedures. Without this information, the City and the general public are unable to determine exactly where the proposed route will fly vis-à-vis underlying homes, schools, historic properties, parks, etc.

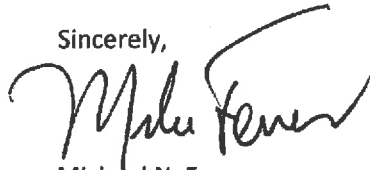
Stephanie C. Harris
November 15, 2018
Page 2

- Detailed information regarding FAA's noise analysis, including data regarding the flight tracks modeled, assumptions about early or late vectors from the RNAV paths, dispersion from the centerline assumed flight track, and assumed receptor elevations. This information is critical to understanding the reasonableness and adequacy of FAA's noise analysis.
- The Aviation Environmental Design Tool (AEDT) Environmental Plug-In, TARGETS, radar track and other information used by FAA, including all input and output files, in native electronic format. Please be advised that Los Angeles City Councilmember Paul Krekorian submitted a FOIA request for these records on October 29, 2018.
- A copy of the FAA's settlement agreement with Benedict Hills Homeowners Association, as the FAA has disclosed that the proposed procedures are tied to implementation of a settlement agreement.

The City and the public need this information and the time to properly analyze it. Such information would allow the City and the public to appreciate the locations and impacts of the proposed flight procedures and provide meaningful comments. A ninety-day comment period, extending the deadline from November 18, 2018 to February 16, 2019 is reasonable, provided that FAA discloses the requested information within the next 30 days.

We thank you for your attention to this request. If you have any questions, please contact Chief Assistant City Attorney David Michaelson at (213) 978-7100.

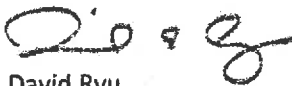
Sincerely,



Michael N. Feuer
City Attorney



Paul Krekorian
Councilmember, Second District



David Ryu
Councilmember, Fourth District

cc: The Honorable Dianne Feinstein, United States Senate
The Honorable Kamala Harris, United States Senate
The Honorable Adam Schiff, United States House of Representatives
The Honorable Brad Sherman, United States House of Representatives

EXHIBIT I



BRAD SHERMAN
UNITED STATES CONGRESS

PH: (202) 225-5911
FAX: (202) 225-5879

November 19, 2018

Dan Elwell
Acting Administrator
Federal Aviation Administration
800 Independence Ave SW
Washington, DC 20591

Re: Comment on Proposed Amendments to the OROSZ and SLAPP Departure Procedures at Hollywood Burbank Airport

Dear Acting Administrator Elwell,

I join many of my constituents in expressing concern about the proposed amendments to the OROSZ and SLAPP Departure Procedures.

Thank you for making available multiple FAA staff to meet with me in my office, for having additional experts available when I attended the FAA Workshop on November 6th, and for responding to the numerous queries from my office.

The FAA must engage in a full Environmental Review Process that evaluates several alternatives for possible departure routes from Burbank Airport. In addition to the departure route currently under consideration, the FAA must examine departure routes that follow a south, southeastern, and eastern heading after departure, rather than direct all takeoffs to the southwest. It does not appear that such alternatives have yet been considered. Furthermore, this review of alternative flight patterns out of the Burbank Airport should include an evaluation of potential changes to the flight paths departing and arriving at all local airports that share airspace with the San Fernando Valley, including departures from the Van Nuys Airport and Los Angeles International Airport (LAX). Possible changes to the departure routes from Burbank should not be dismissed merely because it would interfere with the current flight patterns of neighboring airports. Instead, the environmental review should consider changes to flight paths of both Burbank and nearby airports so as to reduce the intolerable burden now focused on the southern San Fernando Valley.

I remain firmly opposed to any changes that will increase aviation noise and frequency of exposure over schools and residential neighborhoods in the southern San Fernando Valley. The FAA must pursue additional measures to safeguard the quality of life for residents living in the San Fernando Valley, including a mandatory curfew and mandatory and enforceable noise abatement procedures, with fines for noncompliance.



The FAA should fully consider the comments from the impacted communities in the San Fernando Valley. The Flight Path Analysis published by the Hollywood Burbank Airport on October 2018 has found that, "the most frequently used path or concentrated path has shifted south over time..." Large numbers of residents from these communities have already reported experiencing a significant, negative impact on their quality of life.

The FAA must provide for a more extensive public comment period to allow the affected communities to express the severe impact of these changes before even considering implementing the proposed departure procedures for several reasons. First, residents and Los Angeles City officials have requested more information, including more precise descriptions of the proposed procedures, higher quality maps and files, detailed information regarding FAA's noise analysis, more technical information, and a copy of the FAA's settlement agreement with the Benedict Hills Homeowners Association. Second, I have been informed that residents of the San Fernando Valley have reported technical failures from the FAA's on-line submission portal, which hindered the public's ability to comment. Third, multiple residents have expressed a concern that even the extended formal comment period was too short, given the impact of these proposed amendments. Finally, the public was assured that two public workshops would be held, and the FAA chose to end one of those events early, directing community residents to leave the premises.

In summary, more time is needed to comment on the proposed changes, and more technical information should be available to those wishing to comment. The FAA needs to provide a full Environmental Review Process. Finally, the FAA must consider alternative routes and additional measures to safeguard the quality of life for residents of the southern San Fernando Valley.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Sherman', with a stylized, cursive script.

BRAD SHERMAN
Member of Congress

Cc: Clark Desing, Director, Western Service Center, Federal Aviation Administration
Beth White, Federal Aviation Administration

EXHIBIT J

2/13/2019

Community Involvement — Burbank



Federal Aviation Administration

Community Involvement — Burbank

Updates

November 2, 2018

Based on public feedback, the Federal Aviation Administration (FAA) will postpone public workshops on proposed amendments to two existing departure procedures at Hollywood Burbank Airport. This postponement will enable the agency to provide the public with greater advanced notice of the workshops. Additionally, the FAA will extend the public comment period on the proposed amendments to 30 days, compared to the original 15 days.

The FAA will hold public workshops from 5 p.m. to 8 p.m. on Wednesday, November 7 and Thursday, November 8, 2018, at the Pickwick Gardens Conference Center where community residents will be able to learn about proposed amendments to two existing departure procedures for Hollywood Burbank Airport.

The proposed amendments to the OROSZ and SLAPP departure procedures would fulfill the terms of a Settlement Agreement between the FAA, Benedict Hills Estates Association and Benedict Hills Homeowners Association, and will continue to provide safe and efficient operations at Hollywood Burbank Airport and the surrounding airspace.

The workshops will be held in an open-house format. People can arrive any time between 5 p.m. and 8 p.m. to view project display boards and talk to FAA subject matter experts.

People also may comment on the proposed amendments. The FAA will take public comments from October 19, 2018 through November 18, 2018, and will evaluate these comments as part of the environmental review of the proposed amendments. Comments can be submitted at the workshops (attendance is not required to submit a comment), via U.S. mail (address below), and through this website.

The workshops will take place at:

Pickwick Gardens – Rose Garden Room
1001 Riverside Drive
Burbank, CA 91506

Information about the proposed amendments will be posted on the above-referenced website.

2/13/2019

Community Involvement — Burbank

Mailing address for comments during the open comment period:

Federal Aviation Administration
Operations Support Group
C/O Burbank Public Comments
2200 S. 216th St
Des Moines, WA 98198

October 19, 2018

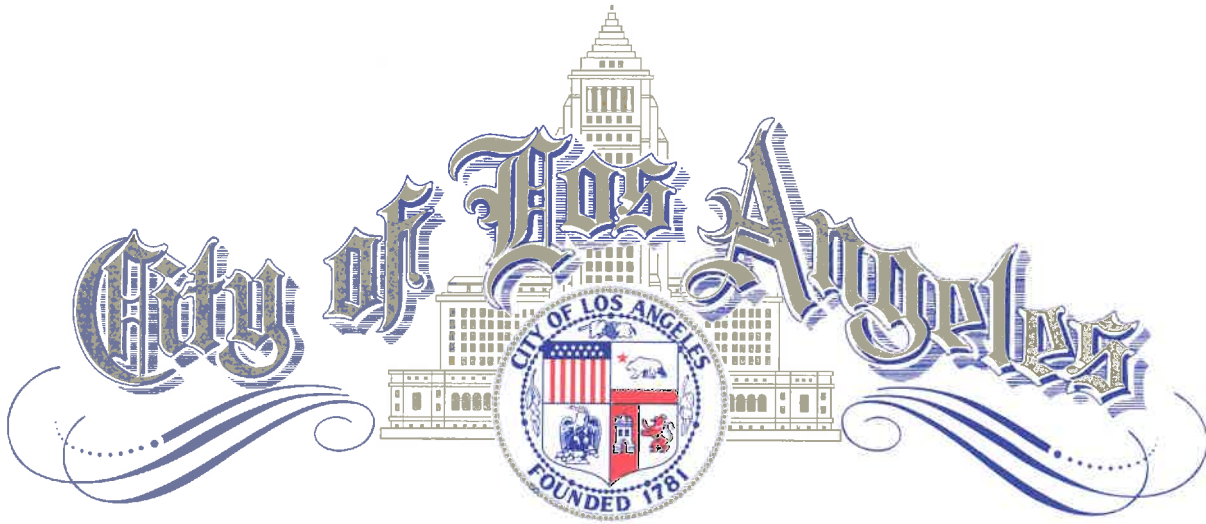
Supplemental Materials

- FAA and Benedict Hills Settlement – Fully Executed March 16, 2018
([media/FAA-and-Benedict-Hills-settlement-fully-executed-March-16-2018.pdf](#))(PDF)
- Air Traffic Control – Proposed Procedure
([media/Air_Traffic_Control_boards.pdf](#))(PDF)
- Burbank Meeting Handout (English) ([media/BUR_Handout_English.pdf](#))(PDF)
- Burbank Meeting Handout (Spanish) ([media/BUR_Handout_Spanish.pdf](#))(PDF)
- Environmental Study ([media/Environmental_Boards.pdf](#))(PDF)
- General Information ([media/General_Information_Boards.pdf](#))(PDF)
- Draft Environmental Review for the Proposed OROSZ THREE and SLAPP TWO Departures
([media/BUR_OROSZ_SLAPP_DRAFT_IER_FINAL_V17_20181018.pdf](#))(PDF)
- Appendix A — OROSZ TWO and SLAPP ONE Existing Procedures
([media/Appendix%20A_BUR_ExistingProcedures_Cover_and_Pages_20181015.pdf](#))(PDF, 699 KB)
- Appendix B — OROSZ THREE and SLAPP TWO Proposed Procedures
([media/Appendix%20B_BUR_Cover_and_ProposedProcedures_20181015.pdf](#))(PDF)
- Appendix C — Section 106 of NHPA Correspondence
([media/Appendix%20C_Sec106%20Cover_TOC_Letters_20181015%20-%20Copy.zip](#))(Zip)

Page last modified: November 16, 2018 1:56:09 PM EST

This page was originally published at: https://www.faa.gov/nextgen/nextgen_near_you/community_involvement/bur/

EXHIBIT K



February 20, 2019

Via U.S. Mail and E-mail

Assistant Administrator for Finance and Management, AFN-400
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
FOIA-Appeals@faa.gov

Re: FOIA Appeal of FAA's December 12, 2018 Initial Determination

The City of Los Angeles ("City") hereby appeals the Federal Aviation Administration's December 12, 2018 Initial Determination of City Councilmember Paul Krekorian's October 29, 2018 Freedom of Information Act request ("FOIA request"). This appeal is timely pursuant to 49 C.F.R. § 7.32(d).

The Initial Determination must be reversed for the following reasons:

- FAA improperly withheld *factual* data and information pursuant to the deliberative process privilege (FOIA Exemption 5);
- FAA failed to segregate the information the public is entitled to know from purportedly privileged material, *i.e.* by redaction;
- FAA has not provided the City with the records *FAA admits should be public*; and
- FAA failed to issue a written determination on the City's request for expedited processing of the FOIA request.

FOIA Appeal
February 20, 2019
Page 2

I. BACKGROUND

A. Introduction

This FOIA appeal arises from the City's need to obtain FAA records for the benefit of the public and to comment effectively on environmental reviews of airspace procedures. On Friday, October 19, 2018, FAA published a Draft Environmental Review ("Draft ER") providing incomplete information regarding two proposed flight procedures for departures from Hollywood Burbank Airport.

The two flight procedures (the OROSZ THREE AND SLAPP TWO) would create new fixed routes and then concentrate aircraft overflights on these routes above homes, schools, places of worship, parks, recreation centers, and historic sites, introducing noise that previously was not present, or not present to the same degree. Because the new routes will be over the Santa Monica Mountains, aircraft will be closer to the homes, schools and parks, which are situated at a higher elevation than surrounding areas. The public has also expressed concerns about increased noise and environmental pollution.

Given the lack of basic information¹ in the Draft ER, Councilmember Krekorian, assisted by the City Attorney's Office, submitted a FOIA request via email² and mail on October 29, 2018. (**Exhibit A.**) The FOIA request sought expedited processing so that the records could be used to inform public comments, due Sunday, November 18.

Thirty calendar days (19 business days) was insufficient time to respond to a highly technical document, especially one that failed to disclose underlying factual data and factual assumptions. Therefore, several City and Federal officials also contacted FAA to request an extension of the public comments deadline. (**Exhibits G-I.**) (10/23/18 Councilmember Krekorian Letter, 11/15/18 City Attorney Feuer, Council President Wesson, Councilmembers Krekorian and Ryu Letter and 11/19/18 Rep. Sherman letter).

In response to public concern, FAA had two reasonable options under FOIA or the National Environmental Policy Act ("NEPA"): (1) FAA could have disclosed the records concerning the Draft ER in a timely fashion, and/or (2) it could have extended the comment period. FAA did neither. Instead, on December 12, 2018—after the public comment period had long expired—FAA made its Initial Determination. FAA disclosed just a single document, despite having referenced and relied upon many documents and sources of data in its Draft ER. In contravention of its duties under FOIA and NEPA, FAA has not responded to either the City's request for expedited processing or its request (joined by others) for an

¹ As explained in a November 15, 2018 letter to FAA, the Draft ER lacked basic information for the public to understand the location, nature, and noise impact of the proposed flight procedures. FAA also impeded public understanding by publishing low-resolution maps and withholding the data inputs and assumptions used to model its highly technical analyses. *See* Ex. H, 1-2.

² FAA personnel directed that FOIA requests concerning these flight procedures be emailed to 9-ATO-WSA-FOIA@faa.gov. The City therefore submitted its FOIA request by email and mail. *See* Ex. A.

FOIA Appeal
February 20, 2019
Page 3

extension of the public comments' deadlines. Thus, it is FAA's failure to comply reasonably (or at all) with its statutory responsibilities that necessitates this FOIA appeal.

B. The City's FOIA Request

1. Records Sought by the City

On October 29, 2018, the City submitted a FOIA request, which sought records within five specified categories:

1. All records of AEDT, TARGETS, National Offload Program radar tracks, and other modeling inputs and outputs, that FAA used to reflect the "no action" and proposed action alternatives.
2. All records demonstrating which 90 days within calendar year 2017 FAA selected for its "track data" and what days were selected. Draft ER, 20.
3. All records describing the terms of the "settlement in March 2016" with Benedict Hills Estate Association and Benedict Hills Homeowners Association. See Draft ER, 3, n 2.
4. All records used for the evaluation of the Proposed Action by the Safety Risk Management Panel. Draft ER, 7-8; and
5. All records generated by the Safety Risk Management Panel regarding the Proposed Action. Draft ER, 7-8.

Ex. A, Att. 1, p. 2.

Notably, the City only requested records referenced in the Draft ER, and the Draft ER was attached to the FOIA request. *See* Ex. A, Att. 2. As explained in the FOIA Request, Requests 1 and 2 sought only the "underlying data" used for the Draft EA, so that the public could understand, recreate and validate FAA's methodology that it described in generalized terms. Request 3 sought the terms of a settlement agreement referenced in the Draft ER to which FAA had been a party and the Department of Justice had been counsel of record. Requests 4 and 5 requested factual data used by and generated for a safety risk analysis, which FAA had also disclosed and touted in the Draft ER.

FOIA Appeal
February 20, 2019
Page 4

2. *The City's Request for Expedited Treatment and Fee Waiver*

The City requested expedited treatment to inform public comments. *See* Ex. A, 1-2. To facilitate an efficient search and prompt production, the City attached a copy of the Draft ER and cited *by page number* the relevant portions of the Draft ER for which factual data and documents were sought. *See, e.g.,* Ex. A, Att. 1, p. 2. (“All records demonstrating which 90 days within calendar year 2017 FAA selected for its “track data” and what days were selected. Draft ER, 20”). The City justified its request for expedited treatment and agreed to multi-track processing so that FAA could produce records as they became available. Ex. A, 1-2. The City also requested a public interest fee waiver. Ex. A, 1. The City certified its requests. Ex. A, 3.

C. Intervening FAA Correspondence

On November 5, 2018, FAA acknowledged receipt of the FOIA request (received on October 29) and simultaneously granted itself 10 additional days to respond, on the basis that it “need[ed] to search for and collect records from field facilities.”³ (**Exhibit B.**) The following day, FAA requested that the City justify its fee waiver request, warning that “[the City’s] request will not be processed until the fee waiver issue is resolved” (**Exhibit C.**) Concerned that FAA might use the fee waiver request to stall disclosure, the City responded the very next day. The City provided ample justification for a fee waiver, but stated that, “[t]o the extent the duplication fees are causing delay, [Councilmember Krekorian’s] office is authorized to pay at least \$250.00, if not more for immediate disclosure of the records.” (**Exhibit D.**)

Almost two weeks later, by letter of November 19, 2018, FAA claimed that a “fee waiver” was not necessary after all. FAA also supplied a cryptic, factually incorrect non-decision on the expedited processing request. FAA stated that it “[would] attempt to prioritize this FOIA request over other FOIAs. However, due to litigation between the City of LA, in addition to the status of any final agency decisions regarding Burbank, the release of these records will require extra scrutiny.” (**Exhibit E.**) (underlining added).

At the time, there was no litigation between the FAA and the City. FAA has never explained why “extra scrutiny” was required for the release of purely factual data.

D. FAA’s Initial Determination

By letter of December 12, 2018, FAA issued the Initial Determination. (**Exhibit F.**) FAA disclosed that a search conducted by the Western Service Area, Operations Group yielded 34 responsive records. FAA did not identify the field facilities in which it had

³ Pursuant to FAA Order 1270.1A, a 10-day extension of time is permitted only when “unusual circumstances” exist. Also, program officers are directed to negotiate extensions. No such negotiation to either the due date or modification to the scope of request occurred in this case. 1270.1A, Part 14(d); *see also* DOT FOIA Reference Guide, 8.

FOIA Appeal
February 20, 2019
Page 5

searched, despite having granted itself 10 additional days based on the need to “search for and collect records from field facilities.” *See* Ex. B. FAA made no mention or reference to the specific documents and types of data explicitly identified in the Draft ER.

1. Records Withheld by FAA under Exemption 5

According to FAA, 26 of 34 records have been withheld based on FOIA Exemption 5 and the deliberative process privilege. FAA’s full rationale was, as follows:

Exemption 5 of the FOIA allows agencies to withhold recommendations, opinions, and analysis under the deliberative process privilege. The BUR Draft ER working documents and files contain material that are deliberative and pre-decisional. If those records were released, it would discourage open, frank discussions on policy matters, would result in the premature disclosure of proposed policies before they are adopted, and would cause public confusion that might result from disclosure of reasons and rationales that were not in fact the ultimate grounds for an agency action.”⁴

2. Seven Responsive Records Withheld by FAA

FAA has not yet produced seven admittedly responsive non-exempt records. FAA stated that “responsive records not subject to FOIA exemptions are provided on the enclosed compact disk *in addition* to being contained on a website.”⁵ But the enclosed CD contained only one document: a 13-page Department of Justice-negotiated settlement agreement, which was already subject to disclosure pursuant to DOJ policy.⁶

II. ANALYSIS

A. FAA erred by withholding factual data and records under the Deliberative Process Privilege

FAA’s secretive treatment of factual data and information violates FOIA (and NEPA). “[D]isclosure, not secrecy, is the dominant objective of [FOIA].” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). “Consistent with this purpose, agencies may withhold only those documents or portions thereof that fall under one of nine delineated statutory exemptions.” *Elliott v. USDA*, 596 F.3d 842, 845 (D.C. Cir. 2010) (citing 5 U.S.C. § 552(b)).

⁴ FAA’s response to a City resident’s August 16, 2018, FOIA request for records concerning the flight procedures contains strikingly similar boilerplate language. That response also refers to 34 responsive records, 26 of which are claimed to be exempted under Exemption 5.

⁵ The FAA’s website contains a copy of the settlement agreement posted on or about November 16, 2018. (**Exhibit J.**) (FAA screenshot noting “last modified November 16, 2018”). No other records appear to have been posted by FAA in response to the City’s FOIA Request.

⁶ Prior to the City’s FOIA request—and the City’s accompanying citation to the DOJ policy manual—FAA withheld the agreement from the public.

FOIA Appeal
February 20, 2019
Page 6

"These exemptions are 'explicitly made exclusive' and must be 'narrowly construed.'" *Milner v. Dep't of Navy*, 562 U.S. 562, 565 (2011).

FAA has invoked Exemption 5, which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5) (underlining added). Exemption 5 protects only material that would be protected from disclosure in civil discovery. Here, FAA asserts that it has withheld material protected by the deliberative process privilege.

The deliberative process privilege is a litigation privilege which covers "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Carter v. U.S. Dep't of Commerce*, 307 F.3d 1084, 1089 (9th Cir. 2002) (quoting *DOI v. Kalamth Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001)). The deliberative process privilege applies only to material that is both "predecisional" and part of the agency's "deliberative process." A federal agency may invoke the privilege, "only if disclosure of [the] materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." *Kowack v. United States Forest Serv.*, 766 F.3d 1130, 1135 (9th Cir. 2014) (internal quotes and cites omitted). The Ninth Circuit Court of Appeals has held that "[i]n light of the strong policy of the FOIA that the public is entitled to know what its government is doing and why, [E]xemption 5 is to be applied as narrowly as consistent with efficient Government operation." *Maricopa Audubon Soc'y v. U.S. Forest Serv.*, 108 F.3d 1089, 1093 (9th Cir. 1997) (internal quotation marks omitted).

Thus, it is well-settled that the deliberative process privilege does not protect purely factual data or material. *See Sierra Club, Inc. v. United States Fish & Wildlife Serv.*, 911 F.3d 967, 981 (9th Cir. 2018) (scientific data, research, statistical information, description of topography, and projected environmental impacts are a "plain account of factual information" and not protected by the deliberative process privilege); *Carter*, 307 F.3d at 1091 (neither census data nor adjusted census data is protected by deliberative process privilege); *Assembly of Cal. v. United States Dep't of Commerce*, 968 F.2d 916 (9th Cir. 1992) ("bare numbers" not protected particularly when method used to generate numbers already a matter of public record); *Kowack*, 766 F.3d at 1135 (stand-alone factual material is not protected by deliberative privilege).

Moreover, an agency cannot artificially shield records by asserting that ongoing agency consultation constitutes one long pre-decisional deliberative process later consummated by a single final agency action. *See, e.g., Sierra Club*, 911 F.3d at 981 (fact that biological jeopardy opinions pre-dated the later no-jeopardy opinion does not automatically render them pre-decisional); *see also Mead Data*, 566 F.2d at 248, 250 (D.C. Cir. 1977); *Vaughn v. Rosen*, 523 F.2d 1136, 1145, 173 U.S. App. D.C. 187 (D.C. Cir. 1975).

FOIA Appeal
February 20, 2019
Page 7

No part of the City's FOIA request implicated the deliberative process privilege. The City's FOIA request sought raw data and factual records such as "modeling inputs and outputs," records reflecting "the days within calendar year 2017 FAA selected" for "track data," the finalized "terms" of a settlement agreement, and the records "used" by and "generated by" the FAA's Safety Risk Management Panel. That type of information is not protected from disclosure and is provided to the public on a regular basis.

Moreover, the fact that FAA published a self-labeled "Draft" ER for proposed flight procedures does not shield the requested records from disclosure. The Draft ER was released to the public in accord with FAA's obligations under NEPA. FAA's use and public reference to the modeling and other data reflects that they are no longer pre-decisional if FAA is using them to support its proposed conclusion and action. Nor is the Draft ER or any of the data it cites deliberative in nature. Rather, the Draft ER represents the agency's position on its proposed flight procedures as of October 2018. FAA should produce all responsive records without further delay.

B. FAA erred by failing to redact purportedly privileged "material" or segregate the information, which the public is entitled to know

FAA never identified what kind of "material" it withheld and deemed privileged. However, even if some "material" is purportedly privileged, FAA still violated FOIA by withholding records in their entirety. FAA was required to segregate disclosable material, redact privileged material, estimate the volume of purportedly exempted material, and indicate the rationale for any redaction. FAA did none of that.

FOIA prohibits an agency from withholding a record in its entirety, if a portion of that record can be reasonably disclosed:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . . 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 ... under which the deletion is made.

U.S.C. § 552(b)(underlining added)

The Department of Transportation's FOIA-implementing regulations also reflect a mandatory duty to produce any reasonably segregable, public information:

It is DOT policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of FOIA. This includes releasing reasonably segregable and meaningful nonexempt information in a document from which exempt information is withheld.

FOIA Appeal
February 20, 2019
Page 8

49 C.F.R. § 7.23. (underlining added).

Indeed, when an agency redacts a record, it must do so upon a sentence-by-sentence basis. *Columbia Riverkeeper v. United States Army Corps of Eng'rs*, 38 F. Supp. 3d 1207, 1218 (D. Or. 2014) (“Under applicable Ninth Circuit jurisprudence, such segregation must be effected at a sentence-by-sentence level of granularity, such that ‘mundane’ sentences contained within a document partially subject to the deliberative-process privilege must be produced, while sentences containing information that is both predecisional and deliberative may be redacted from production.”) (citing *Yonemoto v. Dep't of Veterans Affairs*, 686 F.3d 681, 697 (9th Cir. 2012)(underlining added)).

Further, DOT regulations provide that, whenever disclosure of a record containing FOIA exempted information is required, “DOT redacts such information” with a “full explanation of the justification for the deletion.” 49 C.F.R. § 7.14. FAA must provide information regarding the type of record withheld as well a reasonable estimate of the withheld material. *See* 49 C.F.R. § 7.31 (requiring an estimate of the volume of records or information withheld, in number of pages or other reasonable form of estimation.); FAA Order 1270.1 (requiring identification of the type of record withheld).

Here, FAA stated only that “BUR Draft ER working documents and file” “contain material” that are deliberative and pre-decisional. *See* Ex. F. FAA claimed that 26 “records” are exempted, without describing the type or volume of those records. This does not come even close to compliance with an agency’s FOIA obligations. *Id.*

The City therefore requests that FAA produce all the responsive records without further delay. If redactions are required, FAA should do so on a sentence-by-sentence review, providing a “full explanation of the justification for [any] deletion.” If FAA continues to withhold any pages or records in their entirety, it should provide the City with a precise description of those records and the number of pages and/or bytes of information withheld.

III. FAA failed to produce the seven records it has identified as non-exempt

FAA even failed to produce those records it *concedes* should be disclosed. Upon perfection of a FOIA request, a federal agency is required to make its “records promptly available.” 5 U.S.C. § 552(a)(3)(A) and (B). As explained above, FAA identified eight responsive records for which they claimed no exemption. FAA stated that those records were on an enclosed CD. However, the CD contained only one record: a 13-page settlement agreement, entered into by DOJ attorneys on behalf of FAA.⁷

⁷ It is the City’s understanding that the other parties to the settlement agreement (Benedict Canyon homeowners groups) have asked FAA to release all documents relating to the settlement agreement. Therefore, FAA should produce all records “describing the terms of the settlement agreement,” as requested by the City’s FOIA Request No. 3.

FOIA Appeal
February 20, 2019
Page 9

FAA should produce the seven remaining records, in the format requested by the City (scanned pdf and/or native or similar format). If FAA believes that the records are already available on a publicly-available website, it should identify the website and list which specific records are responsive to each of the City's requests so that the City can determine whether FAA has complied with its obligations. As noted above, the City has already reviewed FAA's website and has not been able to locate the requested records.

IV. FAA failed to grant or deny the City's request for expedited treatment

FAA further violated FOIA by dodging the City's request for expedited treatment. Pursuant to FOIA, all federal agencies are required to respond to a FOIA Request within 20 business days. A FOIA request, which seeks expedited treatment, requires a determination no more than 10 calendar days from the request. 5 U.S.C. § 552(a)(6)(E)(ii)(I) and (II); 49 C.F.R. § 7.31 (c)(ii)(4) ("Within ten calendar days of receipt of a request for expedited processing, the proper component decides whether to grant it and notifies the requester of the decision. If DOT grants a request for expedited treatment, the request is given priority and is processed as soon as practicable.") When denying a request, FAA is required to provide written notice of that determination, including the reasons for that determination, and information regarding the right to appeal. 49 C.F.R. § 7.32(c).

Rather than addressing the City's request for expedited treatment, FAA immediately availed itself of a 10-day extension of time for "unusual circumstances," claiming the need to search for documents in "field offices." Then, in a November 19, 2018 letter, FAA provided a cryptic, non-decision on the expedited processing request. *See* Ex. E. FAA also ignored multiple letters it received regarding the urgent need for FAA records.

FAA should comply with its obligation to provide a written notice of its determination, (acceptance or denial) to the City's request for expedited treatment, so that the City has a complete administrative record upon which it may seek judicial review on this issue.

C. The City may assert additional claims

The City reserves the right to assert additional claims should it be forced to seek judicial review. For example, FAA's search appears to have been inadequate. FAA provided no details regarding its search, except that it was conducted by one entity, "WSA, Operations Support Group" and that it intended to reach out to undisclosed "field offices," thus attempting to justify a 10-day extension. However, a nearly-identical response to City residents' FOIA requests (also identifying only 34 total records) suggests that FAA did not conduct a unique search to the City's more technical request for data inputs. Accordingly, the City reserves its right to challenge the adequacy of FAA's search.

The City also has sufficient grounds to assert a policy-or-practice claim. Here, FAA immediately granted itself a 10-day extension, failed to adjudicate the expedited

FOIA Appeal
February 20, 2019
Page 10

treatment request, required the City to justify a fee waiver request while later asserting that the request was unnecessary, failed to produce admittedly responsive documents, failed to redact or segregate purportedly exempted material from an entire file of documents, and did not produce a single byte of the factual data requested by the City.

Given the very short time period (19 business days) allotted for public comments to the Draft ER, FAA's practice precluded the public from obtaining information to provide meaningful comment on flight procedures that affect their quality of life. Accordingly, the City also reserves its right to bring a claim that FAA's policy or practice impairs the public's lawful access to information concerning FAA's operations, policies, and actions.

V. CONCLUSION

The City therefore respectfully requests that FAA reverse its Initial Determination, immediately produce all responsive documents its initial search yielded, and thereafter, conduct an adequate supplemental search, review, and production, which complies with both the letter and spirit of FOIA.

Sincerely,



MICHAEL N. FEUER
CITY ATTORNEY

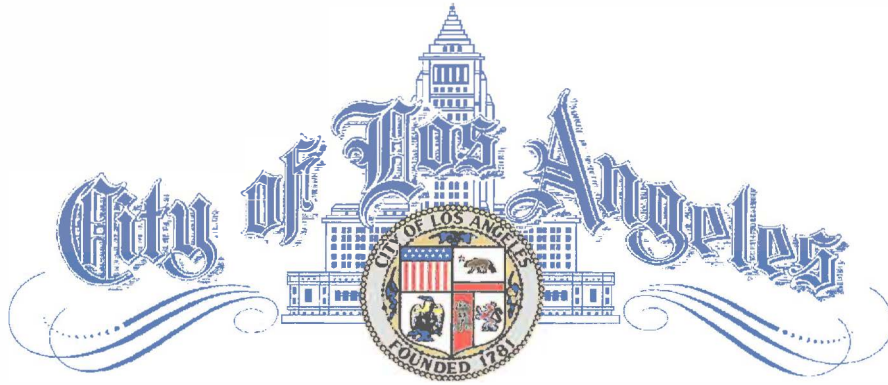


PAUL KREKORIAN
COUNCILMEMBER, SECOND DISTRICT

Enclosures (Exhibits A-J)

cc: FAA, Operations Support Group (Burbank Public Comments)
Patrick Wells, Esq., Office of the Chief Counsel

EXHIBIT L



MICHAEL N. FEUER
CITY ATTORNEY

May 13, 2019

Via U.S. Mail and E-mail

Assistant Administrator for Finance and Management, AFN-400
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
FOIA-Appeals@faa.gov

Laurie L. Karnay
Laurie.Karnay@faa.gov

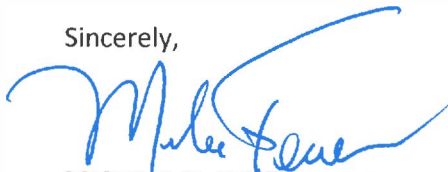
Patrick J. Wells, Office of Chief Counsel
Patrick.J.Wells@faa.gov

Re: FOIA Appeal of FAA's December 12, 2018 Initial Determination

The purpose of this letter is to request immediate production of the documents and data requested by the City's Freedom of Information request of October 29, 2018. On February 21, the City filed an administrative appeal to the FAA's adverse initial determination, to which no substantive response has been provided.

The records requested are vitally important to the City, its neighborhoods, and its businesses, all of which have been profoundly affected by existing and proposed overflights. Please provide a response, which at a minimum provides the estimated dates of production. If FAA continues to believe its withholdings are justified, it should provide a substantive response to the administrative appeal. Thank you for your prompt reply.

Sincerely,


MICHAEL N. FEUER
CITY ATTORNEY


PAUL KREKORIAN
COUNCILMEMBER, SECOND DISTRICT