

Litigation filed in 2008 objecting to the increase in departures off of runway 33L after opening of runway 14/32. Ran into jurisdictional issues - motion was made to transfer case to US Court of Appeals First Circuit at which time it was abandoned by the Plaintiffs.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ROY A. AVELLANEDA, JOHN KENNARD,)	
YESSENIA ALFARO, LUIS N. PERRONE,)	
DEBRA CAVE, JACOPO MADARO,)	
WILLIAM J. GALVIN, JR., YELENA SHULKINA,)	
and LEV ZALTSMAN,)	
)	
Plaintiffs,)	CIVIL ACTION
)	No.
v.)	
)	
FEDERAL AVIATION ADMINISTRATION,)	
)	
Defendant.)	
)	

**COMPLAINT FOR DECLARATORY, INJUNCTIVE AND
OTHER EQUITABLE RELIEF**

1. In this action the plaintiffs seek declaratory, injunctive and other equitable relief with respect to the defendant Federal Aviation Administration ("FAA")'s arbitrary, capricious, and unlawful implementation of changes in runway use procedures at Logan International Airport (hereafter "Logan Airport" or the "Airport") without first undertaking the required federal environmental review.

PARTIES

2. Each of the plaintiffs listed below are residents of Massachusetts and reside at the following addresses:

- a. Roy A. Avellaneda resides at 122 Bellingham Street, Apartment 2, Chelsea.
- b. John Kennard resides at 122 Winnisimmet Street #2, Chelsea.
- c. Yessenia Alfaro resides at 12 High Street, Chelsea.
- d. Luis N. Perrone resides at 28-40 Washington Avenue, Apt. 308, Chelsea.

- e. Debra Cave and Jacopo Madaro reside at 106 White Street in the Eagle Hill Section of East Boston.
- f. William J. Galvin, Jr. resides at 49 Monument Square, Charlestown.
- g. Yelena Shulkina and Lev Zaltsman reside at 8 Ninth Street, Unit 64, Medford.

3. Defendant Federal Aviation Administration is an agency of the United States having its headquarters office at 800 Independence Avenue, S.W., Washington, D.C.; and a New England Regional Office located at 12 New England Executive Park, Burlington, Massachusetts.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-701 (Administrative Procedure Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346(a)(2) (United States as defendant); and 28 U.S.C. § 2201 (declaratory judgment). Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

Plaintiffs' Standing

5. The plaintiffs are seeking injunctive and equitable relief with respect to the FAA's authorization and implementation of new runway departure and arrival procedures at Logan Airport which have substantially increased the use of Runway 33L for jet aircraft departures and, as a result, significantly increased Airport noise impacts in communities to the northwest and west of the Airport including East Boston, Chelsea, Charlestown, Everett, Somerville, Medford, and Cambridge.

6. The plaintiffs have standing to bring this action for the reasons set forth in this complaint including, but not limited to, paragraphs 5 to 12, 60-70, 88, and 98.

7. The runway use changes authorized and implemented by the FAA have significantly

impacted and adversely affected the plaintiffs.

8. Plaintiffs live under flight tracks used by jet aircraft departing from Logan Airport to the northwest using Runway 33L, and jet aircraft arriving at Logan Airport from the northwest using Runway 15R.

9. The environmental review procedures which the plaintiffs seek to enforce are intended to protect the plaintiffs against FAA actions which may cause damage to the environment until after the FAA has completed an evaluation of the potential environmental impacts of these actions.

10. The plaintiffs have been, are being, and will be aggrieved by the FAA's failure to carry out its duties to evaluate the potential environmental impacts of proposed changes to Logan Airport runway use before the FAA authorizes and/or implements these changes; and by the failure of the FAA to comply with its own mitigation commitments made in August of 2002.

11. The health, recreational opportunities, aesthetics, environmental interests, and quality of life of the plaintiffs have been, are being, and will be adversely affected by the FAA's failure to make a proper environmental evaluation of the impacts of the runway use changes prior to these changes being implemented.

12. The relief sought by the plaintiffs in this action will restore or protect the plaintiffs' rights by ensuring that the environmental impacts of the runway use changes are properly evaluated by the FAA before these changes are implemented.

FACTUAL STATEMENT

Logan Airport

13. Logan Airport, a major international airport located primarily within the East Boston

section of the City of Boston, is owned and operated by the Massachusetts Port Authority ("Massport"), a body politic and corporate and an instrumentality of the Commonwealth of Massachusetts created pursuant to Mass. St. 1956, c. 465.

14. The Airport has six runways (one of which is used very infrequently) and a system of taxiways which connect to its four major passenger terminals, cargo buildings and other airfield facilities. During 2007 Logan Airport served approximately 400,000 domestic and international flight operations and 28.1 million inbound and outbound passengers.

15. The five principal runways at Logan Airport are Runway 15R/33L (oriented to the northwest/southeast); Runway 9/27 (oriented to the northeast/southwest); parallel Runways 4R/22L and 4L/22R (oriented to the north/south); and recently-completed Runway 14/32 (oriented to the northwest/southeast) which was opened for use on November 23, 2006. Runway 14/32 is only 5,000 feet long, which limits its use to certain regional jets, and turboprop and piston non-jet aircraft.

16. The complaint in this action primarily arises out of actions taken by the FAA to implement new runway departure and arrival procedures to use when Runway 14/32, along with Runways 27 and 33L, are available for use during northwest wind conditions.

FAA Review and Approval of Runway 14/32

17. Runway 14/32 is the major element of a program of runway and taxiway improvements and operational changes which were initiated by Massport in 1995 in order to increase airfield efficiency, enhance safety, and reduce current and future levels of aircraft and passenger delay at the Airport. These proposed improvements, called the Logan Airside Improvements Planning Project (the "Airside project"), have progressed through successive stages of planning, permitting and environmental review, design, construction and implementation.

18. Runway 14/32 was proposed primarily to address the issue of lowered airfield capacity during northwest wind conditions, when the Airport has to shift from use of three-runway configurations to lower airfield capacity configurations using only two runways (Runway 33L and Runway 27) or one runway (Runway 33L). The construction of Runway 14/32 was intended to make a third runway available for use during northwest wind conditions.

19. An environmental review process for the Airside project (including Runway 14/32) was completed jointly by the FAA and Massport, respectively, pursuant to the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4332(2)(C); and the Massachusetts Environmental Policy Act ("MEPA"), Mass. G. L. c. 30, §§ 61-62H. The FAA and Massport analyzed the comparative environmental impacts and delay reduction benefits of each of the several proposed Airside project improvement concepts, which were combined into a number of alternative "packages" and evaluated using a range of projected future "scenarios" of Airport passenger levels, aircraft fleet mix, and number of Airport operations.

20. One of the particular issues which the FAA examined during this process was the potential that when Runway 14/32 was available for use as part of a new three-runway configuration, the use of Runway 33L and Runway 27 for jet aircraft departures would increase, resulting in a redistribution of flight traffic and increasing Airport noise impacts in East Boston, Chelsea, Everett, and South Boston.

21. The FAA's Draft EIS, published in February of 1999, stated that Runway 14/32 would give air traffic controllers greater flexibility in the selection of runways and result in increased use of Runways 27 and 33L for departures, increasing the predicted levels of noise impacts in the Eagle Hill section of East Boston, Chelsea, and South Boston.

22. The predicted increase in the use of Runway 27 and Runway 33L resulted in significant public controversy, and numerous public comments which expressed concerns about this issue were submitted to the FAA in response to the Draft EIS.

23. In order to address this issue, and other significant issues, which had been raised in public comments on the Draft EIS, in January of 2000 FAA Administrator Jane F. Garvey appointed a panel -- consisting of three members appointed by the Governor of the Commonwealth of Massachusetts, and three members appointed by the Mayor of the City of Boston -- to review concerns raised by the public and assist the FAA in the development of a Supplemental Draft EIS. At the conclusion of its review the panel issued a report, in February of 2001, which stated, among other recommendations, that one way to reduce the potential for redistribution of aircraft operations when Runway 14/32 was put into operation would be to adopt wind and weather restrictions on use of this runway.

24. The Supplemental Draft EIS, which was published the following month, evaluated issues which had been raised by the panel's report, as well as comments on the Draft EIS. The Supplemental Draft EIS concluded that a northwest wind restriction on use of Runway 14/32 could be an effective method to limit increased use of Runway 27 and Runway 33L for jet aircraft departures.

25. The FAA received almost 400 comment letters on the Supplemental Draft EIS. Numerous comment letters expressed concern that Runway 14/32 would lead to a large increase in the FAA's use of Runways 27 and 33L, including letters from Congressmen Michael E. Capuano and Barney Frank, the U.S. Environmental Protection Agency, Boston Mayor Thomas Menino, the Logan Airport Community Advisory Committee ("CAC"), Cambridge City Manager Robert W.

Healy, the City of Chelsea, and the City of Somerville, among many others.

26. After consideration of public comments on the Supplemental EIS, in June of 2002 the FAA published its Final EIS. The FAA selected as its Preferred Alternative a package of airfield and operational improvements that included a 10-knot northwest/southeast wind restriction on the use of Runway 14/32.

27. The Final EIS recognized that even though the primary purpose of Runway 14/32 was to create a third three-runway configuration (Runways 32/27/33L) at Logan Airport that could be used during northwest wind conditions to reduce operational delays, this new runway configuration had the potential for redistribution of runway usage by providing air traffic controllers with the opportunity to "more evenly distribute annual flight activity across different runways." Final EIS, p. 3-87. The Final EIS stated that "it is important to recognize that Runway 14/32 can be used in combination with a number of different runways and operating modes," including the slightly lower capacity configuration of using Runways 32 and 27 for arrivals and Runway 33L for departures; and that "the operational and environmental impacts associated with its use have been considered in all of the Airside analyses." Final EIS, p. 3-159.

28. The FAA modeled a number of wind speed direction and wind speed conditions under which Runway 14/32 would be available for use; and evaluated how a wind restriction would affect runway usage, overflights and Airport noise impacts. The 10-knot northwest/southeast wind restriction was included as a mitigation measure to prevent shifts in runway utilization that would restrict the opportunity for air traffic controllers to shift runway utilization patterns at Logan. Final EIS, pp. 1-32 to 1-33, 4-3 to 4-4.

29. Without a northwest wind restriction, the FAA's analysis determined that Runway 32 had the potential to impact runway utilization patterns during northwest wind conditions by (1) increasing departures from Runway 27 from 15 percent of Logan's total jet departures (calendar year 2000) to "up to 29 percent;" and (2) increasing departures from Runway 33L from 6 percent of Logan's total jet departures (calendar year 2000) to 11 percent. But with a 10-knot northwest wind restriction, the use of Runway 27 would be only fifteen percent, and the use of Runway 33L would be only 6 percent. Final EIS, pp. 3-82 to 3-83.

30. The FAA examined how wind speed restrictions (between 5 knots and 25 knots) on Runway 32 would effect the projections of cumulative noise exposure in communities around the Airport, concluding that as compared to an unrestricted Runway 32, a northwest wind restriction on this runway "will limit the increase in departures from Runways 27 and 33L..." limit the noise impacts of jet aircraft departures using Runway 27 and Runway 33L, and reduce noise levels in sections of Chelsea, East Boston, Everett, Revere, Roxbury, and South Boston; increase the use of three other runways for arrivals and two other runways for departures. Final EIS, p. 3-88.

31. The FAA found that a 10-knot northwest wind restriction "most closely maintains historical runway use shares," ensures that "shares of jet departures from Runways 27 and 33L are comparable to the shares in CY 2000," and eliminates "the increased overflights to the west and northwest that are predicted under the unrestricted scenario." Final EIS, p. 3-104.

32. But the FAA also concluded that a 10-knot northwest wind restriction on use of Runway 32, without implementation of a corresponding 10-knot southeast wind restriction on use of Runway 14 for departures, would result in a greater use of Runway 15R for nighttime arrivals which overfly Chelsea and Everett and cause increased noise impacts in these communities. Final

EIS, p. 3-107. Implementation of a 10-knot northwest/southeast wind restriction on use of Runway 14/32 in both directions, however, "should result in jet departures from Runway 27 and 33L that are very similar to CY 2000 shares..." limit an increase in use of Runway 15R for arrivals to prevent "increased noise impacts in Chelsea, Everett, and East Boston (Eagle Hill)..." and prevent "the shifts in runway use that were predicted with the unrestricted Runway 14/32." Final EIS, p. 3-107.

33. Accordingly, the FAA concluded that the Preferred Alternative, and the proposed 10-knot northwest/south east wind restriction as a mitigation measure, would achieve "substantial delay reduction benefits while preventing the changes in runway utilization that are predicted to occur with an unrestricted runway;" and that the proposed 10-knot wind restriction would allow the FAA "to achieve the purpose and need of the project to reduce delays during northwest wind conditions...without significantly redistributing aircraft operations and noise impacts over the communities to the west and northwest of the airport." Final EIS, pp. 3-133 to 3-134. See also Final EIS, p. 3-133 (the 10-knot wind restriction will "prevent major shifts in runway utilization"); Final EIS, p. 4-4 (the wind restriction "prevents changes in overall runway utilization patterns at Logan and thus addresses some of the public's concerns regarding Runway 14/32").

34. The Final EIS also concluded that while use of Runway 14/32 would help to reduce Airport noise in the residential areas which would be most severely affected, the runway (with the wind restriction) "is also expected to increase the affected population within the 65 dB DNL contour in certain areas," to be mitigated by provision of sound insulation for qualifying residences. Final EIS, pp. 4-5 to 4-6, which estimated a total of 1,200 to 1,470 dwelling units would be eligible for sound proofing in those areas of Chelsea, East Boston, South Boston, and Winthrop to be so affected.

35. In the Final EIS the FAA responded to the comments submitted on the Supplemental Draft EIS, which included repeated statements by the FAA that the Preferred Alternative of Runway 14/32 with the 10-knot wind restriction will not result in additional noise; that Runway 14/32 runway utilization would remain consistent with recent patterns; and that a complete airspace and final engineering design are not necessary to determine the environmental impacts of Runway 14/32.

36. For example, in response to the concern expressed by Congressman Barney Frank, that Runway 14/32 would cause "more than tripling" in use of Runways 27 and 33L for departures over East Boston, South Boston, Jamaica Plain and Brookline, the FAA stated that the wind restriction will "prevent a major change in Logan's runway utilization" pending the reassessment of Massport's Preferential Runway Advisory System ("PRAS"). Response 2.5. In response to comments of the Logan Airport CAC, the FAA stated that while an increase in northwest operations "would certainly be expected," that increase would be consistent with the PRAS departure goal for Runway 27 (eighteen percent) and Runway 33L (twelve percent); and that the modeled use of these runways "most likely represents a reasonable estimate." Response 18.33. See also the following Topical Responses: 3.12 ("Runway 14/32/Runway Use"); 3.14 ("Runway 14/32/Flight Tracks"); 3.15 ("Runway 14/32/Insufficient Design"); 11.0 ("PRAS"); and 14.2 ("Environmental Justice/Runway Use").

37. In the Record of Decision ("ROD") dated August 2, 2002 which approved Runway 14/32, the FAA included as a mandatory mitigation measure the condition that Runway 14/32 will be used only during periods when winds are equal to or greater than 10 knots from the northwest (or southeast). Mitigation Measure 2 was adopted for the express purpose of preventing Runway 14/32 from causing a shift in runway use patterns from what was occurring at the time of approval of the

Airside Project. ROD Section VIII., Mitigation Measure 2; Appendix B, Responses to Issues ##1-5.

38. The ROD stated that no runway use changes would result from construction and operation of the proposed Runway 14/32; and that only after consideration of Airport-wide runway use changes as part of a Boston Logan Airport noise study – to be undertaken by the FAA in cooperation with Massport and the surrounding communities (through the participation of the Logan Airport CAC) – would runway use changes related to the availability of Runway 14/32 be considered. ROD Section VIII, Mitigation Measure 6; Appendix B, Response to Issue #12.

39. The ROD also stated in response to specific issues raised that the 10-knot wind restriction, as designed, prevents Runway 14/32 from changing overall Logan airport runway utilization patterns (Response to Issue #2); that the FAA will work jointly with Massport and the Logan CAC to undertake a new noise study that will evaluate new noise abatement measures to reduce the impacts of overflights and examine the then-existing PRAS (Response to Issue #12); that the modeling used by the FAA to evaluate the impacts of the wind restriction, even without incorporation of specific operational implementation procedures described in the Final EIS, “should still closely represent the actual operation of the wind restriction...;” (Response to Issue #24); that “it is reasonable to prevent Runway 14/32 from changing historic runway use patterns, particularly when such changes are not necessary to achieve the principal delay reduction benefits of the runway” (Response to Issue #28); that all persons exposed to projected noise increases of 1.5 DB or greater “off the Runway 33L departure end in Chelsea and East Boston” will receive sound insulation mitigation (Response to Issue #30); and that in response to comments generated throughout the EIS process that the predicted increased in departures using Runways 27 and 33L that would result from construction of Runway 14/32, “the FAA is implementing a 10-knot northwest/southeast wind

restriction that is designed to prevent Runway 14-32 from changing historic runway utilization patterns at Logan....” (Response to Issue #35).

40. The FAA’s ROD commitment that Runway 14/32 would not result in a change in Logan Airport runway use patterns was subsequently acknowledged by the United States Court of Appeals for the District of Columbia Circuit in litigation which had been brought to challenge the approval of Runway 14/32. Communities Against Runway Expansion, Inc. v. FAA, 355 F.3d 678, 690 (D.C. Cir. 2004) (responding to concerns that Runway 14/32 would result in increased noise in East Boston and South Boston, the FAA explained “that the project would not significantly alter overall patterns of runway use at Logan....”).

41. In a separate state court proceeding the Massachusetts Superior Court, as grounds for modifying a previously-issued injunction against the construction of Runway 14/32, relied on the FAA’s commitment in its ROD that the imposition of the 10-knot wind restriction “prevents Runway 14-32 from changing overall Runway utilization patterns ...;” the fact that with a 10-knot wind restriction imposed by the FAA the adverse noise impacts of Runway 14/32’s use are reduced and relatively contained; the representations made by Massport that the new runway “is intended to deal only with delay created by adverse wind conditions, and not to enhance the capacity of Logan Airport;” and that “Massport’s representations about the purpose of the runway and the restrictions that have been imposed through the environmental review process ... form an essential part of the basis” for that court’s decision to allow construction of Runway 14/32. Massachusetts Port Authority v. City of Boston et al., 2003 WL 23163113, *6, 9, 17-18 (Mass. Sup. Ct. 2003).

42. Subsequent to completion of the Final EIS and issuance of the ROD, the FAA has processed and approved Massport applications for federal grant-in-aid funds for the Airside project

under 49 U.S.C. §§ 47101 et seq., and for Passenger Facility Charge (“PFC”) funds under 49 U.S.C. § 40117; (b) approved changes to the Logan Airport Layout Plan that include Runway 14/32 and other approved elements of the project; ; and (c) established air traffic control procedures for use of Runway 14/32.

Boston Logan Airport Noise Study

43. The noise study identified in paragraphs 38-39, which is a collaborative process between the FAA, Massport, and the Logan Airport CAC, began in late 2003. The goal and purpose of the noise study is to identify, evaluate, and implement aircraft overflight and ground measures to reduce noise impacts from Logan Airport. The study has been divided into three phases.

44. Phase 1 identified certain noise abatement arrival and departure procedures to reduce Logan Airport noise impacts which could be implemented by the FAA without further environmental review. On October 16, 2007 the FAA approved a record of decision approving the Phase 1 changes which, when fully implemented by August 2009, will reduce noise for residents of some of the communities to the northeast and southeast of the Airport. The Phase 1 record of decision acknowledged in that, in recent months, concerns had been expressed by communities and elected officials related to an increase in use of Runway 33L for jet aircraft departures; and that these concerns could be better addressed as part of Phase 2 of the noise study, which will include an evaluation of all runways as part of the PRAS review.

45. Phase 2, which is now underway, is evaluating a number of airspace and operational measures carried forward from Phase 1 because of these measures required environmental review, and other proposed arrival and departure procedures and measures to reduce Airport ground noise impacts. Phase 2 is expected to be completed in 2010.

46. Phase 3 of the noise study, which is not expected to begin until late in 2010 or early 2011, will provide an opportunity to reassess Massport's PRAS system in order to identify and determine potential runway use goals and objectives that could minimize aircraft noise on nearby communities. The FAA has repeatedly stated that any recommendation resulting from the reassessment of PRAS "would be subject to appropriate environmental review." See, for example, Final EIS, p. 4-5.

FAA's responsibilities for air space management

47. The FAA has responsibility for ensuring the safe and efficient use of the nation's airspace, promoting aviation safety, and operating a nationwide system of air navigation.

48. The FAA operates air traffic control facilities throughout the United States, including air traffic control towers, air route traffic control centers, and terminal radar approach control ("TRACON") facilities.

49. Air traffic controllers at the Boston Tower, which is located at Logan Airport, manage ground movements of Logan aircraft and the airspace within five miles of the Airport up to an altitude of 3,000 feet. The Boston Tower is responsible for the issuance of departure and arrival clearances and taxi instructions, the selection of Airport runway or runways to be used, and the coordination of its air traffic control operations with other FAA facilities, including the Boston TRACON.

50. The Boston TRACON, located in Merrimack, New Hampshire, has responsibility for the safe and orderly flow of air traffic, within certain defined airspace, in the vicinity of Logan Airport. It handles arrival and departure air traffic to and from Logan Airport (and certain other airports in the region), as well as enroute traffic operating in the vicinity of the Airport.

51. The PRAS program, which is part of Massport's noise abatement policy for Logan Airport, has been used by FAA air traffic controllers for approximately twenty years under a joint FAA/Massport Memorandum of Understanding. PRAS is a computer-based system, originally developed in 1982, which recommends runway configuration options to FAA air traffic controllers that will meet weather, wind and demand requirements, as well as provide an equitable distribution of the Airport's noise impacts on surrounding communities. The FAA is not bound to follow the PRAS recommendations. PRAS has not been in operation from February 4, 2004 to the present, due to relocation of the Boston TRACON facilities and improvements being made to Massport's noise monitoring system.

52. The FAA purported to consider Runway 14/32 layout and engineering issues, and potential conflicts in airspace requirements, during the environmental review process summarized in paragraphs 19 to 39. See, for example, Final EIS Topical Responses 3.14 ("Runway 14/32/Flight Tracks"); 3.15 ("Runway 14/32/Insufficient Design"). The FAA stated that inherent in the improvements it had selected as part of the Preferred Alternative "is the establishment or modification of air traffic control procedures and attendant airport navigational aids." Final EIS, p. 1-32, n.32.

53. Subsequent to publication of the Final EIS and issuance of the ROD, the FAA reviewed and approved in more detail the air traffic and airspace safety and efficiency aspects of Runway 14/32; adopted and published revised arrival and departure procedures for Logan Airport; modified the air traffic procedures previously used by the Boston TRACON for handling Logan Airport arrival and departure operations; and published Boston Tower Notice N7110.28 (November 23, 2006) to implement one of the requirements of the wind restriction condition adopted as a

mitigation measure in the August 2002 ROD.

54. During 2006 before Runway 14/32 was opened for use, FAA supervisory personnel from the Boston Tower and the Boston TRACON spent three days at the FAA's William J. Hughes Technical Center (the "Center"), located at Atlantic City International Airport in New Jersey, to test, verify and validate the suitability of the traffic spacing and sequencing concepts which the FAA had initially planned on using when Runway 14/32 was opened for use. Working with the Center's Airport Facilities Terminal Integration Laboratory (the "Laboratory") and assisted by the Center's tower and TRACON modeling simulation group, Boston Tower and Boston TRACON supervisory personnel used the Laboratory's control tower simulator, computer airport model, and related systems to analyze twelve different operational scenarios in order to determine the most efficient and safe operational configuration to use when Runway 14/32 opened.

55. As a result, the Boston Tower and Boston TRACON personnel who participated in the simulation modeling at the Center discovered that the air traffic control procedures which would allow the new runway to operate to its peak potential were different from what they initially had thought would work best; and that a new and simpler traffic flow configuration for use of Runway 14/32 would be more efficient. Use of the Center's simulator enabled the Boston Tower and Boston TRACON personnel to come to a conclusion about what runway configuration to use when Runway 14/32 was opened much more quickly and before use of the runway had begun.

56. The technical evaluation described in paragraphs 54-55 caused Boston Tower and Boston TRACON supervisory personnel to make significant changes in the air traffic control procedures for use of Runway 14/32, in combination with Runways 27 and 32, during "northwest flow" conditions.

57. The technical evaluation and changes identified in paragraphs 54-56 were incorporated into Boston Tower Notice N711.28, which in paragraph 9 established three runway configurations for use of Runway 14/32. Runway 33L was designated as the "primary departure runway" for two of the three new configurations, and the recommended departure runway for jet aircraft with north and northeast bound exit fixes; and Runway 27 was designated as the "primary departure runway."

58. The runway configuration changes identified in paragraphs 52-55 have caused a significant reduction in the use of Runway 33L for arrivals of jet aircraft, which operations have been shifted to Runway 27; and a significant increase in the use of Runway 33L for jet aircraft departures, which now include a significant number of departures previously assigned to Runway 27.

59. The changes identified in paragraphs 53-56 have been used by air traffic controllers in the selection and assignment of runways at Logan Airport from the date Runway 14/32 went into operation to and including the present.

Runway Usage at Logan Airport

60. FAA air traffic controllers at the Boston Tower determine which runway, or runway combination, to use at any given time based upon FAA and Boston Tower standard operating procedures, orders, and directives, and instructions of supervisory personnel. The prime factors used in runway assignment are wind direction and speed, weather, the volume of air traffic which may favor use of high capacity configurations, and other operational considerations.

61. During the year 2000, which the FAA used in the Final EIS as a basis to compare potential runway use changes resulting from Runway 14/32, Runway 33L was used for 6 percent of the jet aircraft departures, according to runway use statistics published by Massport.

62. During the year 2006, when Runway 14/32 had not become available for use until late in November of that year, Runway 33L was used for 6 percent of the jet aircraft departures, according to runway use statistics published by Massport.

63. During the year 2007, when Runway 14/32 had been available for use for the first time throughout a full year, the percentage use of Runway 33L for jet aircraft departures increased to 18.8 percent, and for jet aircraft arrivals showed a significant drop over prior years. At the same time, the use of Runway 27 for jet aircraft departures dropped significantly, and its use for jet aircraft arrivals showed a corresponding increase.

64. The significant increased usage of Runway 33L has continued unabated to the present: during January and February 2008, the latest months for which data is available from Massport, Runway 33L was used for 22.5 percent of the time for jet aircraft departures.

65. The following table shows the percentages that each of the Logan Airport Runways was used for jet aircraft arrivals and departures in each individual year between 1990 and 2007, and the average percentage of use, which figures have been compiled based upon runway end use data published by Massport in its 2006 Environmental Data Report, Tables 6-4 and 6-5, and separately-published Massport data for 2007:

Logan Airport Jet Aircraft Runway Usage
Percentages of Use 1990 - 2007
(All figures rounded)

	<u>4L</u>		<u>4R</u>		<u>9</u>		<u>15R</u>		<u>22L</u>		<u>22R</u>		<u>27</u>		<u>33L</u>	
	<u>Arr</u>	<u>Dep</u>	<u>Arr</u>	<u>Dep</u>	<u>Arr</u>	<u>Dep</u>	<u>Arr</u>	<u>Dep</u>	<u>Arr</u>	<u>Dep</u>	<u>Arr</u>	<u>Dep</u>	<u>Arr</u>	<u>Dep</u>	<u>Arr</u>	<u>Dep</u>
1990	1	0	25	3	0	21	2	10	14	2	0	36	28	20	29	7
1992	1	0	37	6	0	31	3	7	12	2	0	38	30	10	17	6
1993	2	0	44	9	0	33	1	7	11	3	0	40	28	4	15	4
1994	3	0	42	9	0	33	1	4	8	3	0	32	27	12	19	5
1995	3	0	41	8	0	36	2	5	8	5	0	29	27	11	17	5
1996	2	0	38	8	0	32	2	5	11	6	0	33	29	12	18	5
1997	2	0	36	8	0	30	2	5	9	6	0	31	30	15	20	5
1998	2	0	41	8	0	35	2	6	7	5	0	28	28	14	19	5
1999	3	0	37	8	0	31	2	5	10	4	0	30	28	15	21	6
2000	4	0	50	8	0	35	1	4	7	3	0	30	28	15	20	6
2001	5	0	36	7	0	34	1	4	8	3	0	35	32	12	18	5
2002	6	0	31	4	0	31	1	6	12	3	0	35	30	16	21	6
2003	7	0	33	4	0	33	1	7	14	2	0	34	28	14	18	6
2004	6	0	34	5	0	34	1	10	12	4	0	24	24	18	23	6
2005	8	0	33	5	0	36	1	7	11	1	0	31	29	13	17	7
2006	7	0	29	4	0	33	1	3	14	1	0	40	33	13	16	6
2007	5	0	30	5	0	31	1	6	15	1	0	32	36	7	11	19
AVE.	4	0	36	6	0	32	2	6	11	3	0	33	29	13	19	6

Noise Impacts Caused by Increased Usage of Runway 33L

66. The significant increase in use of Runway 33L for jet aircraft departures, which started in early 2007 and has continued to the present, is primarily the result of the FAA's adoption and use of changes to the "northwest flow" configuration when Runways 27, 32, and 33L are used in combination.

67. The highest capacity Logan Airport runway configurations use three available runways. In these configurations air traffic controllers are able to maximize the Airport's operating efficiency by separating aircraft of different size classes and operating characteristics through use of two runways for arriving aircraft. When prevailing winds reduce Logan Airport to use of only two runways, or in extreme cases to only one runway, the Airport's capacity can become significantly reduced.

68. Runway 14/32 is being used to provide an additional runway for use in moderate northwest wind conditions, when the Airport previously had been forced to use a lower-capacity Runway 27 and 33L configuration; and in strong northwest wind conditions, when Runway 27 cannot be used due to excessive cross-winds (which had previously limited the Airport to use of only Runway 33L for both landings and departures).

69. The substantial increase in use of Runway 33L for jet aircraft departures has caused a significant increase in the number of airplane overflights and the level of Airport noise in communities to the west and northwest of the Airport, including many residential neighborhoods of East Boston and Charlestown, Chelsea, Somerville, Everett, Medford, and Cambridge. The precise locations and levels of increased noise will be documented when Massport publishes the 2007 annual noise contours for Logan Airport, which it expects to do by June 2008.

70. The increased use of Runway 33L during 2007 to date has caused significant increases in telephone and written noise complaints received by Massport from residents of the communities of East Boston, Chelsea, Charlestown, Everett, Somerville, and Cambridge.

The FAA's Explanation of Reasons for Increased Use of Runway 33L

71. Elected officials (including Congressman Michael E. Capuano, Somerville Mayor Joseph A. Curtatone, and Cambridge City Manager Robert W. Healy) and representatives from the Logan Airport CAC have met with and/or written to the FAA and Massport seeking specific information about the reasons for the runway use changes and why these changes were not subject to an environmental review process.

72. In response to concerns expressed by the City of Cambridge and the Logan CAC representatives from Cambridge and Somerville, Amy L. Corbett, FAA Regional Administrator for the New England Region, states in her letter dated January 29, 2008 that the increased use of Runway 33L "over and above the EIS's modeling" does not require the FAA to reevaluate Runway 14/32's effect on the Airport. This letter, a true copy of which is attached as Exhibit 1, explains that even though Massport reported an increase during 2007 in the percentage of jet departures using Runway 33L over the historic norm, "[o]ther than implementing the required 10-knot wind restriction on the use of R/W 32, the air traffic control tower at Logan made no changes in policy or procedure from 2006 to 2007 regarding runway configuration selection;" and that the FAA has not made "some change in air traffic procedures that caused the increase" in use of Runway 33L.

73. Instead, Regional Administrator Corbett's letter speculates that the increased use of Runway 33L for departures may be attributable to the fact that "the prevailing wind flowed from the northwest for a greater number of days than the historic norm, especially in the spring;" and to the

fact that "Massport undertook several taxiway construction projects in 2007...." The letter does not provide any data to substantiate these statements.

74. Regional Administrator Corbett's letter further states that the FAA, after evaluating the reasons why "the EIS's modeling for runway utilization has not been realized....," found that the runway configuration using Runway 33L for arrivals and Runway 27 for departures "requires greater aircraft separation and presents more safety concerns than anticipated" in comparison to the alternative configuration using Runway 27 for arrivals and Runway 33L for departures. This letter also states that after air traffic controllers had experience using both runway configurations, the FAA determined that the configuration using Runway 33L for departures and Runway 27 for arrivals "is safer in that it is not as dependent on aircraft performance or piloting and is more efficient...."

75. Although Regional Administrator Corbett's letter states that the FAA "studied extensively the changes to Logan Airport that resulted from adding a wind-restricted R/W32 to the available runway configurations," the Final EIS contains no analysis of the noise and other impacts in communities to the northwest and north of Logan Airport which would be expected to result from use of Runway 33L at levels and intensities of use similar to what has been experienced from 2007 to date when the FAA began the significant increased use of Runway 33L. For this reason, the plaintiffs dispute the statement made in the Final EIS, p. 3-159, that "the operational and environmental impacts associated with its use have been considered in all of the Airside analyses."

CLAIMS FOR RELIEF

76. The allegations of paragraphs 1 to 75 of this complaint are repeated.

77. During the EIS and ROD process for Runway 14/32, the FAA did not determine, using the FAA's Integrated Noise Model, or otherwise, (a) the predicted noise exposure levels in

communities surrounding Logan Airport and noise contours if the runway use percentages for Runway 33L jet aircraft departures and Runway 27 jet aircraft arrivals were (i) significantly higher than the historical averages, (ii) significantly higher than the PRAS goals, and/or (iii) actually used in the approximate percentages of use during the period January 2007 through the present; and/or (b) how these noise exposure levels and contours compared to the noise analysis in the Final EIS and ROD.

78. To the present the FAA still has not made the comparative noise impact analysis described in paragraph 77; and has not evaluated the environmental impacts, including noise exposure changes, which would result from shifting jet aircraft departures from Runway 27 to Runway 33L when Runway 14/32 is used during northwest wind conditions.

79. The statement in the Final EIS that the FAA considered the "operational and environmental impacts" of use of Runway 33L for jet aircraft departures, in combination with use of Runways 27 and 32 for jet aircraft arrivals, is not supported by an analysis of the precise runway use configurations, and runway assignments, which the FAA actually analyzed and reported in its Final EIS, Supplemental Draft EIS, and Final EIS.

80. The FAA's approval and implementation of changes to runway use at Logan Airport are major federal actions significantly affecting the quality of the human environment within the meaning of § 102(2)(C) of NEPA, 42 U.S.C. §4332(2)(C); the implementing Regulations of the Council on Environmental Quality ("CEQ"), 40 CFR Parts 1500-1508; and FAA Order 1050.1E.

81. The CEQ Regulations provide in 40 CFR § 1502.9(c)(1) that all Federal agencies, which includes the FAA, shall prepare a supplemental draft and final environmental impact statement ("SEIS") if (i) the agency "makes substantial changes in the proposed action that are relevant to

environmental concerns;" or (ii) "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

82. The CEQ Regulations provide in 40 CFR § 1508.27(b)(4) that "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial" are one of the factors that all Federal agencies, including the FAA, must take into account in deciding whether to prepare an environmental impacts statement.

83. FAA Order 1050.1E (June 8, 2004), as modified by Change 1 (March 20, 2006), sets out the FAA's policies and procedures for compliance with NEPA and the CEQ Regulations.

84. Because Runway 14/32 has been implemented in stages and has required successive FAA approvals that have occurred more than three years after approval of the Final EIS in 2002, the FAA was required to prepare "a written reevaluation of the continued adequacy, accuracy, and validity of the FEIS." Paragraph 514b.(2) of FAA Order 1050.1E

85. If the FAA had completed the required written reevaluation as alleged in paragraph 84, the FAA would have been required to prepare a supplemental EIS because (1) the changes made to Logan Airport runway use do not conform to the project which had been analyzed and approved in the Final EIS and changes have been made to the proposed action that are relevant to environmental concerns; (2) data and analyses in the Final EIS are not still substantially valid, and there are significant new circumstances relevant to environmental concerns bearing on the impacts of Runway 14/32, including (a) the information resulting from the simulation modeling described in paragraphs 54-57, and (b) the information and experience described by Regional Administrator Corbett in her letter identified in paragraphs 70-73; and (3) pertinent conditions of requirements of the FAA's prior approval of Runway 14/32 have not been met. FAA Order 1050.1E, paragraph 515a(1)-(3).

86. Even in the absence of a written reevaluation, the FAA was required to prepare a supplemental EIS since substantial changes in the approval of Runway 14/32 that are relevant to environmental concerns, and significant new circumstances or information relevant to environmental concerns which bear on the FAA's approval of Runway 14/32 and its impacts, have taken place. FAA Order 1050.1E, paragraph 516a.

87. Furthermore, even if the requirements of FAA Order 1050.1E for preparation of an environmental reevaluation and supplemental EIS are not applicable, FAA Order 1050.1E required the FAA, at a minimum, to undertake an environmental review process to evaluate the significance of the projected impacts of the runway use changes before the changes were implemented. The new and modified departure procedures and air traffic procedures for use of Runways 333L/27/32 have routinely routed aircraft over noise sensitive areas at less than 3,000 feet above ground level. FAA Order 1050.1E, paragraphs 401m-401n. A "significant noise impact" is defined in FAA Order 1050.1E, Appendix A, paragraph 14.3, to be "an increase in noise of DNL 1.5 dB or more at or above the DNL 65 dB noise exposure..." and an increase of DNL 3 dB or more in noise sensitive areas between the DNL 60 dB and DNL 65 dB noise contour. See also the definition of "noise sensitive area" in FAA Order 5050.4B (April 28, 2006), paragraph 9.n. and Table 7.1-5.

88. The changes in runway usage, including the increased use of Runway 33L, have resulted in significant environmental impacts including increased noise and emissions of pollutants into the air; the impairment of open space; and interference with the quality of life in communities to the north and northwest of the Airport, including the use and enjoyment of residences.

89. New airspace and runway operational information obtained by the FAA after the Final EIS was published, as well as new information about the use and impacts of Runway 33L, constitute

substantial changes to the proposed action and significant new circumstances within the meaning of 40 CFR § 1502.9 and FAA Order 1050.1E.

90. The effects of the runway use changes on the quality of the human environment are highly controversial within the meaning of 40 CFR § 1508.27(b)(4).

91. The actions taken by the FAA to change runway usage at Logan Airport were done without it making an informed decision, without the FAA evaluating the relevant issues, and without the FAA understanding the environmental impacts of its actions.

92. The reasons stated by the FAA why an environmental review process has not been undertaken to evaluate the changes in use of Runway are arbitrary, capricious, and unlawful.

93. The FAA's decision to increase the use of Runway 33L for jet aircraft departures, but to defer any evaluation of the noise and other impacts of this change until it can be considered during the noise study, violates NEPA, the CEQ Regulations, and FAA Order 1050.1E. Furthermore, the FAA's decision is arbitrary and capricious because it is in direct conflict with the FAA's procedures which govern the evaluation of all other runway use and operational changes during Phase 2 and Phase 3 of the noise study.

94. The FAA has failed to carry out the mitigation measure adopted in the 2002 ROD that approval of use of Runway 14/32 with a 10-knot wind restriction would prevent changes in runway utilization, including increased use of Runway 33L.

95. The FAA's authorization and implementation of changes in runway use at Logan Airport are "major Federal actions significantly affecting the quality of the human environment" within the meaning of NEPA § 102(2)(C), and have been undertaken in violation of NEPA, the CEQ Regulations, and FAA Order 1050.1E.

96. The FAA is an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

97. The plaintiffs are suffering, and have suffered, legal wrong and/or are adversely affected or aggrieved within the meaning of 5 U.S.C. § 702 because of unlawful final agency actions of the FAA.

98. The plaintiffs are being exposed to excessive noise, air pollution, and other adverse impacts as a direct consequence of the actions of the FAA which are the subject of this complaint, as well as denied their right to the fulfillment of past environmental mitigation commitments.

99. The plaintiffs are entitled to judicial review of the final agency actions which are the subject of this complaint.

100. The actions of the FAA as alleged in this complaint are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; have been taken beyond the applicable statutory authority and requirements; were made without observance of the procedures required by law; and, to the extent that the facts in this action may be subject to a trial de novo, are unwarranted by the relevant facts, all as provided in 5 U.S.C. § 706(2)(A), (C), (D), (E), and (F). An actual controversy exists within the jurisdiction of this Court regarding the rights and other legal relations of the plaintiffs with respect to the failures of the FAA to carry out its duties to comply with the above-referenced provisions of law, as to which declaratory judgment is appropriate pursuant to 28 U.S.C. §§ 2201-2202.

PRAYERS FOR RELIEF

WHEREFORE, the plaintiffs pray that this Court enter the following relief:

1. That the Court enter a declaratory judgment in favor of the plaintiffs with regard to the actions of the FAA as alleged in the complaint.
2. That this Court find and enter judgment that the actions of the FAA are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the applicable laws and regulations relied on by the plaintiffs.
3. That this Court enter such preliminary and permanent injunctive relief as is appropriate to restrain and enjoin the FAA from its unlawful conduct and actions which are being taken in violation of law, and to require the FAA to restore the runway use procedures which were in effect prior to the changes which are the subject of this complaint and which were committed to in the Final EIS and ROD.
4. That this Court award the plaintiffs attorney's fees and costs to the extent allowed by law.
5. That this Court grant and award the plaintiffs such other and additional relief as they are entitled to under this complaint.

By their attorney,

/s/ Peter L. Koff
Peter L. Koff/BBO #276520
Engel & Schultz, LLP
265 Franklin Street, Suite 1801
Boston, MA 02110
Te. 617-951-9980

Dated: April 30, 2008



U.S. Department
of Transportation
Federal Aviation
Administration

New England Region
Office of the Regional Administrator

Exhibit 1

12 New England Executive Park
Burlington, MA 02803-5299

IAN 29 2007

Mr. Robert W. Healy
City Manager
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Mr. Healy:

Thank you for your October 30, 2007, letter expressing concern about the increased use of Runway 33L for departures at Logan. You cited runway use statistics provided to you by Massport in support of your concerns. In summary, you raised questions about the reasons for the increase in Runway 33L departures and why the FAA did not provide advanced notice to the affected communities through a public comment process. You suggested that the approval of the 2002 Record of Decision (ROD) for the Airside Improvements Final Environmental Impact Statement (EIS) gave assurances to the general public that the use of the new Runway 14/32 would not result in any changes in historical runway use frequency. You asked for assurances that the FAA would honor that commitment, and in particular, that Runway 14/32 would not change usage frequency of Runway 33L without consultation with affected communities.

As you are probably aware, we also received a letter from Mr. Peter Koff, the Logan Airport Community Advisory Committee (CAC) representative for the City of Cambridge and Mr. Wig Zamore, Somerville's CAC representative. They both expressed many of the same concerns regarding the increased use of Runway 33L. We have attached our response letter to them as a means to address the following issues:

- (1) The reasons for the increased use of 33L
- (2) How this will be considered in the Boston Logan Airport Noise Study (BLANS)

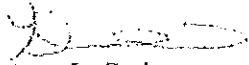
In addition to the information relayed in the attached letter, please note there has never been a requirement that the FAA use Runway 33L only when winds are from the northwest. Furthermore, the 10-knot wind restriction for Runway 14/32, identified in the 2002 Airside EIS ROD, was intended to prevent major shifts in runway use while still retaining most of its delay reduction benefits. Although historical runway usage has not been realized thus far, the FAA has not violated the wind restriction to date. Based upon these clarifications and the information contained in the attached letter, we maintain that we are in compliance with the 2002 Airside EIS ROD.

Mr. Robert Healy

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We appreciate the ongoing commitment from Mr. Koff and the other CAC representatives who participate in the BLANS, and look forward to discussing runway-end utilization during that study.

Sincerely,


Amy L. Corbett
Regional Administrator

Enclosure



U.S. Department
of Transportation
Federal Aviation
Administration

New England Region
Office of the Regional Administrator

12 New England Executive Park
Burlington, MA 01803-5299

JAN 29 2008

Mr. Peter L. Koff
37 Huron Avenue
Cambridge, MA 02138

Mr. Wig Zamore
13 Highland Avenue #3
Somerville, MA 02143

Dear Messrs. Koff and Zamore:

Your letter of November 12, 2007, sent in your capacities as members of the Logan Airport Citizens Advisory Committee (CAC), expressed concern regarding the use of Runway (R/W) 33L for jet departures at Logan. This letter represents the collective expertise of many FAA offices. It is not an explanation of any change in procedure by any FAA office, including the air traffic control tower at Logan; it is not a final decision of the FAA regarding R/W 33L at Logan; and it is not an attempt to justify or support the observed result of using R/W 33L for jet departures at Logan over the past 12 months.

As you know, the FAA does not track runway end utilization at Logan. The Massachusetts Port Authority (Massport), as the operator of the airport, reported that during the past year the percentage of jet departures using Runway 33L increased over the historic norm. One obvious difference between 2006 and 2007 at Logan is the availability of R/W 32 as an arrival runway when winds are from the northwest at 10 knots or greater. Two northwest-wind, three-runway configurations now exist when none existed prior to the commissioning of R/W 32. The Final EIS approving R/W 32 studied those new runway configurations and analyzed their effect on runway utilization. The EIS concluded that the "Arrive 33L and 32, depart 27" (A-33L/D-27) configuration would achieve a more efficient aircraft flow than the "Arrive 27 and 32, depart 33L" (A-27/D-33L) configuration. The EIS forecasted that introducing a wind-restricted R/W 32 to the northwest-wind runway configurations available at Logan would result in a reduction in delays without appreciably altering the runway-end utilization observed in the year 2000. The addition of R/W 32 to the northwest-wind runway configurations at Logan has allowed the airport to achieve a substantial reduction in delays in 2007 compared to 2006.

Other than implementing the required 10-knot wind restriction on the use of R/W 32, the air traffic control tower at Logan made no changes in policy or procedure from 2006 to 2007 regarding runway configuration selection. The tower supervisor considers many operational factors such as wind, weather, demand, capacity, fleet mix, surface construction, closures, maintenance, etc. The supervisor weighs those factors in the context of safety and efficiency and selects the runway configuration most appropriate for the circumstances.

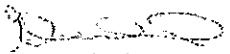
During 2007, the prevailing wind flowed from the northwest for a greater number of days than the historic norm, especially in the spring. Also, Massport undertook several taxiway construction projects in 2007 in the vicinity of the departure end of R/W 27. When considering runway availability in light of those construction projects, R/W 27 might not have been available for use for jet departures in 2007 as much as it was in 2006. In addition, R/W 33L is 3,000 feet longer than R/W 27, so using R/W 33L for departures is preferred to using R/W 27, or another three-runway configuration that exposes departing aircraft to substantial crosswinds.

In an effort to understand why the EIS's modeling for runway utilization has not been realized, we found that the A-33L/D-27 configuration requires greater aircraft separation and presents more safety concerns than anticipated. In order to clear an aircraft to depart R/W 27, for example, aircraft landing R/W 32 and 33L must clear the R/W 27 intersection at, ideally, the same time. Actual application of the modeled procedure produced unanticipated results. The extended centerlines of R/W 32 and R/W 33L cross approximately 6 miles southeast of the airport. The R/W 32 arrivals, on a visual approach, tended to reduce to a slower approach speed than expected due to the runway length, and sometimes would reposition to be in front of the R/W 33L aircraft to "line up" for R/W 32. This results in countering the efforts of air traffic to create the separation necessary to depart an aircraft from R/W 27. The A-27/D-33L configuration, on the other hand, requires separation for only one arrival track, that to R/W 27, in order to depart an aircraft from R/W 33L. And the intersection of R/W 27 and 33L occurs at the first part of an aircraft's landing or takeoff roll, enhancing the ability of air traffic to create the separation necessary to clear an aircraft to depart R/W 33L. Accordingly, our experience in dealing with both configurations after R/W 32 became available has shown that the A-27/D-33L configuration is safer in that it is not as dependent on aircraft performance or piloting and is more efficient than the A-33L/D-27 configuration.

You premise your concern about the FAA conducting an environmental assessment of the increased use of R/W 33L on the assumption that the FAA has made some change in air traffic procedures that caused the increase. As I said before, the FAA has made no such change in air traffic procedure. In addition, the FAA studied extensively the changes to Logan Airport that resulted from adding a wind-restricted R/W 32 to the available runway configurations.

We do not accept your conclusion that because R/W 33L has seen increased use over and above the EIS's modeling that the FAA must re-evaluate R/W 32's effect on the airport. We will continue to study this situation as part of the on-going Boston Logan Airport Noise Study (BLANS). As part of that study, the CAC will participate in re-evaluating runway-end utilization and the viability of a Preferential Runway Advisory System (PRAS). We welcome your input on this issue in that context.

Sincerely,


Amy L. Corbett
Regional Administrator

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROY A. AVELLANEDA, JOHN KENNARD,)
 YESSENIA ALFARO, LUIS N. PERRONE,)
 DEBRA CAVE, JACOPO MADARO,)
 WILLIAM J. GALVIN, JR., YELENA SHULKINA,)
 and LEV ZALTSMAN,)
)
 Plaintiffs,)
)
 v.)
)
 FEDERAL AVIATION ADMINISTRATION,)
)
 Defendant.)

CIVIL ACTION
No. 08-10718-DPW

FAA’S OPPOSITION TO MOTION TO TRANSFER

The FAA argued in its second Motion to Dismiss that if the Plaintiffs are able to obtain judicial review, it must be in the Court of Appeals, which has exclusive jurisdiction to review FAA Orders, pursuant to 49 U.S.C. § 46110(a). The statute provides,

[A] person disclosing a substantial interest in an order issued by the . . . Administrator of the Federal Aviation Administration . . . may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. . . .

The statute provides for review when there is an FAA order and when the petition for review has been filed within 60 days of the issuance of the order. A case filed in the

District Court may be transferred pursuant to 28 U.S.C. § 1631, which provides,

Whenever a civil action is filed in a court, . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to another such court in which the action . . . could have been brought at the time it was filed, . . . and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed

Accordingly to the statute, transfer is improper unless the action could have been brought in the Court of Appeals in the first instance. United States v. Heller, 957 F.2d 26, 27 (1st Cir. 1992) (statutory language of 28 U.S.C. § 1631 requires transferor court to decide whether the appeal could have been brought in the transferee court at the time it was filed).

This action could not have been brought in the Court of Appeals for two reasons. The first reason is that there is no FAA order in this case upon which to proceed for review in the Court of Appeals.¹ The second reason is that this action was untimely when it was filed in this Court because, if any reviewable action could be said to have occurred, it occurred well beyond the 60 day deadline for filing set forth in the statute. Plaintiffs appear to take the position that the mere fact that the percentage of departures from Runway 33L increased, commencing in early 2007 is a reviewable “final agency action.” Assuming arguendo, that that is the case, this action was required to be filed more than a year before it was filed on April 30, 2008.

Effectively conceding that any petition for review would have been untimely if filed in

¹ The FAA has briefed this issue in its Reply Brief to Plaintiffs’ Opposition to Motion to Dismiss, filed on this day, and in its first Motion to Dismiss, filed on October 31, 2008.

the Court of Appeals as an original matter on April 30, 2008, Plaintiffs take the position that they would have still been able to bring the petition under 49 U.S.C. § 46110(a) because they fall within the “reasonable grounds” exception to the 60-day deadline. They argue that the “reasonable grounds” is the uncertainty and plaintiffs’ lack of knowledge about what FAA “order” had been issued. Plaintiffs’ Opp. at 7-8. Because Section 46110(a) addresses jurisdiction of the Court of Appeals, that court would be in a better posture to consider whether plaintiffs have met the narrow exception that plaintiffs invoke. See, e.g., United States v. Pierro, 32 F.3d 611 (1st Cir. 1994) (“As a matter of first principles, an appellate court is duty bound to confirm the existence of its own jurisdiction.”). Cf. Credit Francais Intern., S.A. v. Bio-Vita, Ltd., 78 F.3d 698, 706 (1st Cir. 1996) (sua sponte invalidating district court’s determination that it could enter partial judgment so as to confer jurisdiction upon the court of appeals).

Regardless, plaintiffs do not meet the exception, because the excuses that they offer – lack of knowledge and uncertainty about the FAA’s alleged action – are similar to those that courts have previously rejected as “reasonable grounds” that allow untimely filing under Section 46110(a). See, e.g., Sierra Club v. Skinner, 885 F.2d 591, 593 (9th Cir.1989) (refusing to find reasonable grounds for filing late even when “the FAA ha[d] created a confusing situation” leading to the petitioner filing in the wrong court and missing the deadline to file in the court of appeals); see also Americopters, LLC v. F.A.A., 441 F.3d 726 (9th Cir. 2006) (“[A] delay stemming from the filing of a petition or complaint with the wrong court is not, in general, a reasonable ground for delay” that would excuse late filing under 49 USC 46110(a)).

CONCLUSION

For the foregoing reasons and those in the FAA’s opening memorandum, this case should be dismissed.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Anita Johnson
ANITA JOHNSON
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
One Courthouse Way
Boston, Massachusetts 02210
(617) 748-3266

Of Counsel:

John Donnelly
Office of Regional Counsel
Federal Aviation Administration
12 New England Executive Park
Burlington, Massachusetts 01803

Certificate of Service

I hereby that the foregoing will be filed by electronic filing system and served electronically upon counsel for Plaintiffs, Peter L. Koff, on this sixth day of December 2008.

/s/ Anita Johnson

/S/ Anita Johnson

ANITA JOHNSON

Assistant U.S. Attorney

John

Joseph Moakley U.S. Courthouse

One

Courthouse Way

Boston, Massachusetts 02210

(617)

748-3266

Of Counsel:

John Donnelly

Office of Regional Counsel

Federal Aviation Administration

12 New England Executive Park

Burlington, Massachusetts 01803

Certificate of Service

I hereby that the foregoing will be filed by electronic filing system and served electronically upon counsel for Plaintiffs, Peter L. Koff, on this fifth day of December 2008.

/s/

Anita Johnson

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
ROY A. AVELLANEDA, et al.)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	No. 08-10718-DPW
FEDERAL AVIATION ADMINISTRATION,)	
)	
Defendant.)	
_____)	

PLAINTIFFS’ MOTION TO TRANSFER

Plaintiffs Roy A. Avellaneda, John Kennard, Yessenia Alfaro, Luis N. Perrone, Debra Cave, Jacopo Madaro, William J. Galvin, Jr., Yelena Shulkina, and Lev Zaltsman move that this Court enter the following relief:

1. That if this Court should determine, after consideration of the defendant Federal Aviation Administration (“FAA”)’s motion to dismiss on jurisdictional grounds, that the plaintiffs seek judicial review of an order of the defendant Federal Aviation Administration (“FAA”) for which exclusive jurisdiction lies in the United States Court of Appeals pursuant to 49 U.S.C. § 46110(a), then this Court should enter an order finding (a) that there is want of jurisdiction in this Court to hear this matter; and (b) that it is in the interest of justice to transfer this matter to the United States Court of Appeals, where the complaint could have been brought at the time it was filed in this Court.

2. That upon the entry of the above findings, this Court shall transfer this matter to the United States Court of Appeals for the First Circuit.

3. That this Court consider and rule upon the instant motion in conjunction with the FAA’s motion to dismiss.

Plaintiffs submit a memorandum in support of this motion.

REQUEST FOR ORAL ARGUMENT

In accordance with Local Rule 7.1(D), the plaintiffs request a hearing on this motion. In addition, the plaintiffs request that this hearing be scheduled at the same time this Court hears the FAA's motion to dismiss.

By their attorney,

/s/ Peter L. Koff
Peter L. Koff/BBO #276520
Engel & Schultz, LLP
265 Franklin Street, Suite 1801
Boston, MA 02110
Tel. 617-951-9980

Dated: November 17, 2008

**CERTIFICATE OF SERVICE AND
CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)**

I hereby certify that a true copy of the above document was served by electronic mail upon the following:

Anita Johnson, Esq.
Assistant United States Attorney
John Joseph Moakley
United States Courthouse, Suite 9200
1 Courthouse Way
Boston, MA 02210.

I further certify that in accordance with Local Rule 7.1(A)(2), I have conferred with the above-named counsel for the defendant and have attempted in good faith to resolve or narrow the issue presented by this motion.

/s/ Peter L. Koff
Peter L. Koff

Dated: November 17, 2008