

Aviation Forecasting/National Environmental Policy Act: Federal Appellate Court Addresses Challenge to Federal Aviation Administration Runway Approval



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The United States Court of Appeals for the Ninth Circuit (“Court”) addressed in a December 18th decision a challenge pursuant to the National Environmental Policy Act (“NEPA”) to the Federal Aviation Administration’s (“FAA”) decision to approve the construction of a 5,200-foot runway at the Ravalli County Airport in Hamilton, Montana. See *Informing Citizens Against Runway Airport Expansion v. Federal Aviation Administration*, 2018 WL 6649605.

Petitioner Informing Citizens Against Runway Airport Expansion (“Citizens”) argued that the FAA should have undertaken a NEPA Environmental Impact Statement (“EIS”) as part of the approval process.

NEPA requires federal agencies to include environmental values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to produce this document is only triggered in the event of a major federal action that will significantly affect the environment.

NEPA differs from action enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an EA or EIS in certain defined instances. As a result, NEPA does not require a certain alternative or meet a particular standard.

In its determination as to whether an EIS should be undertaken, the FAA prepared an Environmental Assessment (“EA”). Citizens argued that the EA did not use appropriate methodology for aviation forecasting nor adequately articulated the project’s purpose and need (i.e., appropriate range of alternatives). They also argued that the FAA did not adequately respond to studies regarding the effect of aircraft noise on property values.

As to aviation forecasting, the Court noted that the FAA was within its discretion and exercised its technical expertise in using fuel sales to estimate annual operations at the airport. As a matter of disclosure, it was deemed appropriate that the FAA relied in part on handwritten records of fuel sales to estimate operations. The Court noted that NEPA:

. . . requires an agency to “disclose the hard data supporting its expert opinions, but NEPA does not dictate how the agency must disclose that data. . .

The Court noted that the federal agency has “substantial discretion to choose among available forecasting methods, as long as it explains its choice.” The fact that every operation at the airport was not captured and the FAA relied on records of airport fuel sales to “get a more complete picture of annual operations” was deemed a reasonable approach.

In regards to the project’s “purpose and need,” the Court deferred to the FAA’s determination that an appropriate range of alternatives had been considered. The rationale for the need for a 5,200-foot runway to accommodate B-II aircraft safely was deemed reasonably considered.

The Court also discounted the fact that the FAA undertook its EA in response to Ravalli County’s project proposal. It stated that an agency may allow a private interest to give context to its Statement of Purpose and Need. The agency’s statutory mandate to promote “the safe operation of the airport and airway system” and efficient air transportation was deemed commensurate with adequate runway length. As a result, the FAA was deemed to have acted reasonably by only considering alternatives that involved a 5,200-foot runway.

The project’s effect on property values was deemed sufficiently considered for NEPA purposes. The agency is stated to have considered several studies addressing the effect of aircraft noise on property values. Further, the fact that the FAA did not address the studies provided by Citizens was not deemed a material issue. The group was deemed to have failed to show how the FAA’s failure to respond to these studies rendered its decision arbitrary.

Finally, the Court rejected an argument that Citizens should have had another opportunity to comment on the project’s effect on property values after the FAA released its EA. Otherwise, this was deemed by the Court as creating an “endless loop” in the administrative process. In addition, the FAA was determined to have provided a meaningful opportunity for Citizens and others to participate in the decision-making process, referencing the comment period.

In summary, the FAA’s decision to prepare an EA as opposed to an EIS was upheld.

A copy of the decision can be found [here](#).