

## **PETITION TO THE FEDERAL AVIATION ADMINISTRATION**

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**RE: Protest and Petition demanding that the FAA take immediate action to abate the currently unlawful and unacceptable levels of aircraft noise that are being inflicted upon the residents of Historic Georgetown and neighboring District of Columbia communities on the East side of the Potomac River.**

The DC Fair Skies Coalition and the Mayor of the District of Columbia, DC Council Members for Wards 2 and 3, all At Large Council Members and the undersigned civic organizations hereby submit this Protest and Petition to the Federal Aviation Administration (FAA) on behalf of the thousands of residents and students in or near the historic district of Georgetown, Burlieth, Foggy Bottom, Foxhall, Colony Hill, and Palisades in the District of Columbia who have been, and currently are, being seriously and adversely impacted and injured by unacceptable aircraft noise.

As the attached Declarations from residents of DC stretching from Foggy Bottom to Palisades make clear, aircraft noise from departing and arriving planes is causing serious adverse impacts to the health and well-being of residents under or near certain flight paths. Residents complain about inability to carry on conversations inside or outside their houses and inability to have phone conversations when planes are passing, sleep being interrupted by loud, early morning and late night aircraft departures and arrivals, sound levels so loud it causes ear aches, and considerable wide spread concern about the impact on property values of the areas most impacted. In particular residents complain about a large increase in noise from planes departing to

the north since 2015. See Declarations from DC residents in Appendix B. See also letters from Karl A. Racine, Attorney General of the District of Columbia and Chris Van Hollen, Member of Congress from the 8<sup>th</sup> District of Maryland (Appendix A).

A major part of this aircraft noise impact is caused by a new terminal procedure, known as LAZIR, that the FAA placed into use on a limited, occasional basis in 2011, fully tested in the Spring of 2015, and finally implemented and published as the initial segment of nine new Area Navigation (RNAV) routes in the Spring and Summer of 2015. As one resident wrote: "The switch to the LAZIR approximately two years ago has resulted in a sudden step-change to unbearable of what had been a problem slowly worsening for years." Declarations of Erich Fischer, Appendix B.

By adopting LAZIR as the mandatory default northern departure procedure from Ronald Reagan National Airport (National) in 2015, the FAA has effectively pushed the long-established northern flight path from National (known as National 328) more than a half-mile to the East so that departing aircraft now fly over Georgetown University, numerous residential neighborhoods, and more than 13 schools in the District of Columbia, inflicting noise between 70 and 80 decibels over the University and nearby residential neighborhoods. At peak times up to 60 planes an hour pass overhead.

### Health Impacts of Aircraft Noise

This constant noise from aircraft flying over DC far exceeds the maximum levels of noise permitted by D.C. Regulations in residential neighborhoods of 60 dB daytime and 55 dB nighttime. The World Health Organization (WHO) has recommended nighttime noise restrictions to ensure less than 40 dB(A) of annual average (L<sub>night</sub>) outside of bedrooms to prevent adverse health effects from night noise and less than 35 dB(A) in classrooms to allow good teaching and learning conditions. Night noise guidelines for Europe, World Health Organization /Europe, 2009.

The WHO Report notes that some groups are more vulnerable to noise. As children spend more time in bed than adults, they are more exposed to night noise. Chronically ill and elderly people are more sensitive to disturbance. Shift workers are at increased risk because their sleep structure is under stress. Excessive noise at night can lead to an increase in medical

visits and spending on sleeping pills, which affects families' budgets and health expenditure.

Impairment of early childhood development and education caused by noise may have lifelong effects on academic achievement and health of children. Studies and statistics on the effects of chronic exposure to aircraft noise on children have found:

- consistent evidence that noise exposure harms cognitive performance;
- consistent association with impaired well-being and motivation to a slightly more limited extent;
- moderate evidence of effects on blood pressure and catecholamine hormone secretion.

Night noise guidelines for Europe, WHO/Europe, 2009

LAZIR has created excessive aircraft noise over large sections of the District of Columbia

In March 2011, The FAA surreptitiously and unlawfully authorized a new LAZIR terminal departure procedure by publishing it on its website as a technical document for airlines and pilots. That new procedure, however had not been evaluated in an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), as required by the National Environmental Protection Act (NEPA) and the FAA's own regulations. Nor was LAZIR the subject of mandatory consultation, review, and decision-making processes of the National Historic Preservation Act of 1950 (NHPA).

Accordingly, the FAA's final 2015 decision, incorporating the unlawful LAZIR procedure as the first segment of nine new RNAV routes, was arbitrary, capricious, and in violation of Federal law. As soon as the members of the Fair Skies Coalition became aware of these unlawful acts, they filed an appeal with the U.S. Court of Appeals for the D. C. Circuit, pursuant to 49 U.S.C. § 46110. (Case No. 15-1285)

The new RNAV routes that currently utilize the LAZIR terminal procedure as the initial flight path segment, have inflicted debilitating noise impacts on Historic Georgetown, as well as the adjacent residential communities, National Parks, schools, and recreation facilities near the East side of the Potomac River. The impacted "noise sensitive" areas contain

thousands of historic buildings and homes for more than 83,000 residents and the thousands of students who attend Georgetown University, the George Washington University Foxhall campus, Holy Trinity School, Georgetown Day School, Georgetown Visitation, Hyde-Addison Elementary School, Washington International School, the Lab School, Duke Ellington High School, River School, Francis Scott Key Elementary, St. Patrick's, Our Lady of Victory, and Washington Montessori. The WHO has recently determined that noise must be less than 35 DB in classrooms to allow good teaching and learning conditions. Accordingly, the new flight path is impacting the learning at all of the above schools and universities.

In response to the FAA's unlawful establishment of the new northern departure flight path, residents have banded together to form the DC Fair Skies Coalition whose members include the Citizens Association of Georgetown, Burleith Citizens Association; Hillandale Citizens Association; Colony Hill Neighborhood Association; Palisades Citizens Association; Foggy Bottom Association; and Georgetown University. As noted earlier, this coalition has collectively filed its appeal of the unlawful new departure routes to the Court of Appeals for the D.C. Circuit.

The following District of Columbia governmental organizations have also adopted resolutions supporting the efforts of the DC Fair Skies Coalition to reduce the new and intolerable aircraft noise that is being inflicted on District of Columbia communities near the Potomac River: Karl Racine, DC Attorney General (see letter attached as Exhibit A); ANC2A - Foggy Bottom and West End; ANC2E - Burlieth, Georgetown and Hillandale; ANC3B - Glover Park and Cathedral Heights; ANC3C - Cathedral Heights, Cleveland Park, Massachusetts Avenue Heights, McLean Gardens, Woodley Park; ANC3D - Palisades, Kent, Spring Valley, Wesley Heights, New Mexico/Cathedral, American University, Foxhall Village, Berkeley.

In this administrative Protest, the undersigned Petitioners submit that because of the FAA's failure to comply with the NEPA and the NHP, LAZIR must be immediately withdrawn. In its place, the initial segment for all nine RNAV routes must revert to National 328 until the FAA has conducted the environmental evaluation required by law. Furthermore the FAA is requested to adopt well known techniques and regulatory controls for arrivals and departures at National that would reduce aircraft noise for all communities near the airport.

## **I. HISTORY OF AIRPORT NOISE IMPACTS ON HISTORIC GEORGETOWN AND OTHER RESIDENTIAL NEIGHBORHOODS NEAR THE NATIONAL AIRPORT FLIGHT PATHS.**

Georgetown, named after King George II, was formally established as a town in Maryland in 1751 and flourished as a port for the tobacco trade. During the Revolution, Georgetown served as a depot for military supplies. It was incorporated as a Maryland town in 1789 and was included within the boundaries of the new District of Columbia in 1871. Because Georgetown flourished as a separate community for 120 years prior to its inclusion within the boundaries of the District of Columbia, it retained its own character as a separate village. There are a large number of buildings that date to the 18<sup>th</sup> Century such as the Old Stone House (1765) and the City Tavern (1796). Many other very important buildings and houses were constructed during the early 19<sup>th</sup> Century such as Tudor Place and Dumbarton House, but the majority of the building stock was constructed after 1870 and is characterized by the row houses that were popular in the late Victorian era.

In 1938, President Roosevelt proposed the construction of a national airport to be built on the mudflats on a bend on the Potomac River at Gravelly Point, 4 ½ miles south of Washington, D.C. The airport opened for business on June 16, 1941, and handled 43,060 aircraft operations and 344,257 passengers that year.

Nine years later, in 1950, Congress passed two acts that were intended to preserve historic Old Georgetown as a quiet historical village, set apart and protected from the bustling commercial and monumental areas of the District of Columbia. First, the Old Georgetown Act of 1950 (64 Stat.903) established Georgetown as a historic district and prohibited any alteration, demolition, or building construction within the historic district without prior approval by the Old Georgetown Board of the United States Commission of Fine Arts. This precluded any alteration of existing buildings in Historic Georgetown without the Federal government's prior permission in order to preserve the historic character of this 200 year-old village.<sup>1</sup>

Second, the Washington Airport Act of 1950 (64 Stat. 770) provided for a second public airport "in or in the vicinity of the District of Columbia." The move was necessitated by severe congestion at National's ground facilities

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<sup>1</sup> The entire Historic District of Georgetown was subsequently listed as National Historic Landmark in 1967.

and the saturated airspace, as well as the unwelcome aircraft noise that was negatively affecting the lives of those who lived near the Potomac. It wasn't until 1958, however, that President Eisenhower ultimately selected a site in Loudoun County, Virginia for the new second airport. The Metropolitan Washington Airport Authority (MWAA) has described the rationale for the new airport as follows:

The immense size of the new site allowed for an airport, the first in the country designed for commercial jets, to be buffered from its neighbors. Only 3,000 of the 10,000 acres were graded for the new airport and boundaries were established at least 8,000 feet from the end of all runways. This planning in conjunction with the actions of local government to properly zone the land around the site helped the new airport to be a good neighbor in the Virginia countryside.

To the consternation of residents along the Potomac, however, the expansion of National Airport continued apace during the time that the new Dulles airport was being constructed. The main terminal was expanded in 1955-1956 and the little used East-West runway was closed and used as a taxiway.

Dulles Airport finally opened in 1962 and began accepting the new jet aircraft traffic that it had been specifically designed to accommodate. For the obvious reasons of noise and congestion, jet aircraft had been banned at National Airport. Indeed, even with the jet ban, aircraft noise in the vicinity of National had become such a problem that the FAA's first administrator, Elwood Quesada, received so many complaints at his home that he had to obtain an unlisted telephone number.<sup>2</sup>

Despite the fact that Dulles had, as intended, accommodated all jet aircraft operations with its wide noise buffers and its 10,000-foot runways, the Federal government decided to allow certain small jet aircraft to operate at National Airport in 1966. As the use of National increased, so did the aircraft noise. This ultimately led residents to demand that substantial traffic be diverted from National to the under-utilized Dulles. When the FAA refused to prepare an Environmental Impact Statement (EIS) to evaluate the balance

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<sup>2</sup> See The History of National Airport, by Nancy Norgaard Knickerbocker, p 4 (1990).

of air traffic between the two airports, a group of citizens sued and obtained an order requiring such an environmental review. *Virginians for Dulles, et al. v. Volpe*, 541 F.2d 442 (1976).

Ten years later, Congress vested control of both National and Dulles airports in a new entity called the Metropolitan Washington Airports Authority (MWAA). The law provided for a "review board" composed of nine congressmen any one of whom could veto any decision by the MWAA board of directors. This prompted a challenge to the "legislative veto power" that was ultimately sustained by the Supreme Court. *Airport Authority v. Citizens for Abatement of Aircraft Noise*, 501 U.S. 252 (1991). As the Supreme Court noted:

Dulles is larger than National and lies in a rural area miles from the Capitol. National is a much busier airport due to the convenience of its location at the center of the metropolitan area, but its flight paths over densely populated areas have generated concern among residents about safety, noise, and pollution.

Since that time, however, the expansion of air traffic operations at National has continued despite the fact that Dulles is still under-utilized and unprofitable. The "perimeter rule," which was imposed at the time jet traffic was first allowed at National, to limit use of National to short haul regional carriers has been continually expanded and now has 40 exceptions rendering it essentially meaningless.<sup>3</sup> The long haul carriers which now fly coast to coast out of National are larger, noisier planes than those used by regional carriers.

The ultimate result of all of the controversy and litigation between residents, the MWAA, the FAA, and the airlines since jet aircraft began flying from National Airport in 1966, were many hard fought compromises with respect to the least harmful arrival and departure routes. The only authorized northern departure route was NATIONAL 328, a straight-line departure over the Pentagon, Arlington National Cemetery, and commercial Rosslyn, Virginia.

From the time that NATIONAL 328 was instituted as the northern departure route from National Airport in 1941, landowners in Rosslyn, and

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<sup>3</sup> In 1997, John W. Hechinger Sr., former D.C. Council Chairman said: "We're the only airport in the country that has not had local control. Congress was trying to run the airport as if it were an extension of their parking lot assignment." Washington Post July 16, 1997.

the Virginia communities to the north have been aware that they were under the only northern aircraft departure flight path. Nevertheless, countless new commercial buildings, apartment buildings and even single-family homes have been built under that flight path during the past 75 years. Indeed, all of the high rise buildings in Rosslyn have required FAA approval before they could be built and such construction is continuing apace today, despite being under the NATIONAL 328 flight path. Accordingly, all current property owners in Virginia were aware of the aircraft noise that existed at the time they either built or bought property that was under this flight path and have assumed the consequences of building and living in that location.

Georgetown, on the other hand, had been in existence for more than 200 years before National Airport began operating in 1941. Most of Georgetown's housing stock was constructed in the 19<sup>th</sup> Century. As a Federal Historic District and National Historic Landmark, the United States Commission on Fine Arts must approve any and all changes or improvements to historic buildings. That Commission, from the beginning in 1950, has, among other things, prohibited property owners from replacing their antique single pane windows with new or more soundproof windows. That, of course, was not a significant problem prior to the unlawful institution of LAZIR because Georgetown had never been near or under the principal northern departure flight path from National. Accordingly, no one in Georgetown ever anticipated being bombarded by constant aircraft noise generated by a newly implemented northern flight path from National.

The new LAZIR procedure constituted a drastic change from the historic National 328 terminal procedure. The FAA ultimately explained the reasons for this drastic change to residents of Arlington, Virginia in a meeting on June 18, 2015, shortly before six of the nine new RNAV routes incorporating LAZIR were published on June 25, 2015. The minutes of that meeting, reflect a presentation by Terry Biggio, Vice President of Air Traffic Services for the FAA:

The FAA began developing the Lazir procedure in 2011 and it is now in its 5<sup>th</sup> iteration. *The stated goal of the procedure is to maximize time over water versus land and provide greater certainty that flights will not impinge upon the P-56 restricted airspace. . . . The National 5 [National 328 5<sup>th</sup> iteration] departure, which does not join the river until approximately the Georgetown Reservoir, is available to non-participating carriers or upon pilot request. (Emphasis added).*



Left unsaid was that maximizing “time over water versus land” was accomplished by moving the aircraft noise from the long-established departure route over commercial “land” in Virginia, more than half a mile East to Historic Georgetown and the other residential communities on the East side of the River in the District of Columbia.

Mr. Biggio’s statement that LAZIR would “provide greater certainty that flights will not impinge upon the P-56 restricted airspace” is disingenuous on its face. The chances of a pilot straying more than a mile from National 328 over to P-56, are extremely remote. LAZIR, on the other hand, moved the flight path to within a few hundred feet of P-56, greatly increasing the chances for unintentional incursions. That is why most pilots refused to fly LAZIR until the Secret Service agreed to a three-month test in the spring of 2015. Moreover, the new route is longer than the existing straight-line route and therefore burns more fuel and emits more pollutants. Because of the continual turns, it creates more noise. Thus, all of LAZIR’s negative attributes are contrary to the express goals of the NextGen legislation, which are: (1) to conserve fuel, (2) to reduce emissions, and (3) to reduce noise.

## **II. ATTEMPTS BY DISTRICT OF COLUMBIA COMMUNITY ORGANIZATIONS TO RESOLVE AIRCRAFT NOISE IMPACTS IN MEETINGS WITH THE MWAA AND THE FAA.**

Community leaders only recently learned that the FAA had created the new northern departure route the FAA named LAZIR to take the place of National 328 for planes equipped with Area Navigation (RNAV) equipment. The creation of RNAV routes is part of the development of the FAA’s Next Generation (NextGen) system to use advanced GPS technology instead of radar and FAA controllers. That new route was designed to move northern departures more than a half mile East, away from Virginia, so that aircraft now fly over Georgetown, Canal Road, and MacArthur Boulevard in the District of Columbia. As noted earlier, any such a drastic change in the long-standing northern departure procedure required an Environmental Assessment (EA), if not a more comprehensive Environmental Impact Statement (EIS), before it could be lawfully implemented. A proper EA or EIS would also have necessarily required advance notice to the residents of Georgetown and their neighbors, who were to be the unlucky recipients of the aircraft noise being transferred to them from Virginia. The FAA, however, simply published the new LAZIR RNAV terminal procedure in 2011 without undertaking an EA and

without the required consultation with the Advisory Council on Historic Preservation. Over the next two years, some RNAV equipped planes began using it on a limited basis.

In the fall of 2013, many residents of Georgetown and other communities near the East side of the Potomac River complained about the ever-increasing aircraft noise they were experiencing. This prompted D.C. Council Member, Jack Evans, to write a letter to the chairman of the MWAA on October 9, 2013, in which he stated:

It has come to my attention that the air traffic pattern at Reagan National Airport has changed, sending flights directly over the homes in Hillandale and nearby neighborhoods from 6 am until 11 pm. The noise has been loud, disturbing and constant since this happened.

It is my understanding that the flights have been diverted east, so that they no longer fly over the river or neighboring Rosslyn, where they had flown for many years. I would be interested to know why an old, established neighborhood suddenly found itself on a flight plan. I would also ask that this revert back to the established path.

On November 14, 2013, the Chief Executive Officer of the MWAA, John E. Potter, responded to Council Member Evans as follows:

Thank you for your October 9, 2013 letter regarding flight (Reagan National), their effects on the Hillandale neighborhood and whether any diversion to established patterns has occurred.

In response to your letter, the Metropolitan Washington Airports Authority (Airports Authority) Noise Abatement Officer examined Federal Aviation Administration (FAA) historical and recent flight path location data from August 2008 to October 2013. *Our review determined that FAA established arrival and departure flight paths in close proximity to the Potomac River near the Hillandale neighborhood have remained consistent during that period. (emphasis added).*

This prompted a response from Cynthia Howar, President of the Hillandale Homeowner's Association to Mr. Potter on December 10, 2013:

There has been a significant increase in noise by the aircrafts (sic) that are flying in and out of Washington Regan (sic) Airport. In the last year and one half, they seem to have taken a path directly over

our neighborhood. . . . It degrades the quality of our lives and risks a decrease in the value of our real estate investments.

The aircraft noise is extremely invasive and loud and is heard both inside and outside of our homes. In addition we feel the vibration from the noise inside our homes and those homes at the highest peak of Hillandale experience the worst of it. We hear the takeoffs at 6:00 am every morning until well after midnight. Having lived myself in Hillandale for 11 years, I can personally attest it has become significantly worse.

Mr. Potter replied on January 15, 2014, with the identical statement he made to Council Member Evans, i.e., that the flight patterns "have remained consistent" since August 2008. We now know that Mr. Potter's statement was incorrect because some aircraft had been flying LAZIR since 2011. Accordingly, there was nothing consistent about those new flight paths between 2008 and 2013. His statements were highly misleading because they implied that there had been no changes in the flight paths and did not even mention the new LAZIR segment which, at that time, was the most obvious and likely cause of the increased aircraft noise that residents were experiencing.

Over the next 16 months, from March 25, 2014 to July 2015, the resident organizations had more than ten meetings with the MWAA, FAA, and pilots to discuss the increase in aircraft noise impacts being experienced in the District of Columbia with no affirmative results. Then, at a meeting on July 8, 2015, the FAA ultimately revealed the fact that a new northern departure route called LAZIR had been incorporated as the initial segment in nine new RNAV northern departure routes and that most aircraft were now using that route.

At about the same time, an attorney in the office of the D.C. Attorney General, who was researching the aircraft noise problem, informed residents that the FAA had conducted an Environmental Assessment (EA) of the entire Washington Metroplex in 2013 and had issued a Finding of No Substantial Impact (FONSI) on December 12, 2013. In light of these developments, Petitioners immediately consulted a law firm and discovered that the FAA had recently published nine new northern RNAV routes that incorporated LAZIR as the initial departure segment. Accordingly, Petitioners appealed the final

implementation of those new RNAV routes to the D.C. Circuit Court of Appeals on August 24, 2015. (Case No. 15-1285)

At a meeting in the fall of 2015, the FAA belatedly informed community representatives that in the early part of the year, it had struck an agreement with the Secret Service to run a three-month test of the LAZIR segment that allegedly took place from March through May, 2015. During that period, pilots would not be penalized for inadvertent incursions into the prohibited area around the White House. That was the same time period in which complaints from residents under the new flight path substantially increased. The FAA also informed the community that after the test had been completed, LAZIR had been fully incorporated into all of the nine northern RNAV routes as the initial departure segment and was now the default route for all northern departures. Declaration of Robert vom Eigen, Appendix B.

In October 2015, the MWAA organized what it called a "Community Working Group" and invited organizations from both sides of the river to participate in finding possible solutions to the aircraft noise problem. Petitioners are, of course, pleased that the FAA is participating in the MWAA community meetings that include discussions of the adverse noise impacts being inflicted by LAZIR upon Georgetown and the other residential communities on the East side of the river. Petitioners are concerned, however, that the minor adjustments of the offending LAZIR route being proposed by the FAA would not have any meaningful impact on the currently unacceptable noise levels in the District of Columbia. Indeed, the FAA's own noise analysis of the minor adjustments it has suggested indicates that they would slightly *increase* noise in some DC neighborhoods and only slightly reduce it in others.

On December 18, 2015, Elizabeth Ray, FAA's Vice President for Mission Support Services, informed members of the "Working Group" by email that:

Noise cannot be eliminated and, absent a safety and efficiency purpose and need [sic] done with all associated NEPA review requirements, we simply cannot shift it from one community to another just because one community believes it is fairer to do so.

We emphatically agree with Ms. Ray's assessment of the law: the FAA cannot "simply shift [noise] from one community to another" without compliance with "NEPA review requirements." Unfortunately, that is precisely what the FAA has done here by initiating LAZIR without environmental review in 2011 and then making it the default route for all

northern departures from National in 2015. All of this was done **without first** complying with NEPA and the NHPA and **without first** notifying the affected neighborhoods and communities. In short, the FAA did exactly what Ms. Ray has conceded to be illegal.

### **III. FAA'S CONTINUING VIOLATIONS OF FEDERAL LAW.**

#### **A. The FAA's continuing use of the LAZIR flight path is in violation of NEPA and its own regulations.**

The FAA regulations relating to the NEPA review at that time were set forth in FAA Order 1050.1E. The provisions relevant to the instant case are set forth in section 401 which provides, in pertinent part, as follows:

##### **Actions Normally Requiring an Environmental Assessment (EA).**

The following actions are examples of actions that normally require an EA. Some FAA projects involve actions by multiple FAA program offices. The overall significance of these actions, when viewed together, governs whether an EA or an EIS is required.

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401m. New instrument approach procedures, departure procedures, en route procedures, and modifications to currently approved procedures that routinely route aircraft over noise sensitive areas at less than 3,000 feet above ground level (AGL).

The new LAZIR departure procedure fits precisely within the above requirement because the departing aircraft now depart directly over the noise sensitive areas of Georgetown and residential areas to the north at less than 3000 feet above ground level. Accordingly, the FAA was required by this regulation to conduct an EA for its new LAZIR proposal **before** it made it the default route for most northern departures in 2015.

It is black letter law that an agency must comply with its own regulations. The D.C. Circuit recently applied this rule to the FAA. *See, e.g., Town of Barnstable, Mass. v. FAA*, 659 F.2d 28 (D.C. Cir. 2011). Indeed, the D.C. Circuit opinion in *City of Dania Beach v. FAA*, 485 F.3d 1181, 1189 (D.C. Cir. 2007), is directly on point for the instant case. In *Dania Beach*, the FAA issued a directive that turned a secondary runway into a main runway for the use of jet aircraft traffic. The City appealed to the D.C. Circuit, alleging that the

directive was unlawful because the FAA had failed to conduct an EA as required by Section 401n of FAA Order 1050.1E. The Court agreed with the City and held the FAA's directive to be invalid because it had violated both NEPA and Order 1050.1E:

Thus, under NEPA and the agency's own environmental review policies, the FAA was required to perform an environmental assessment to determine whether the new runway use procedures were likely to cause a "significant" effect on the quality of the human environment.

485 F.3d at 1190.

Similarly in the instant case, because the FAA violated both the provisions of NEPA, the NHPA, and its own regulations in establishing the LAZIR procedure without first conducting an EA, the FAA should immediately revert the terminal procedure for all northern departures back to NATIONAL 328. Any replacement route or future deviation from that long-established initial terminal procedure must be based on actual noise data collected in the course of an EA or EIS and -- only after proper notice to the public, the affected communities, and their elected D.C. government leaders.

**B. By initiating its new LAZIR departure route without first conducting an Environment Assessment, the FAA also violated the NHPA**

Section 306107 of the National Historic Preservation Act provides:

*Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. (emphasis added)*

In this case, the FAA created the new LAZIR departure route in 2011 without first conducting any investigation with respect to the potential environmental impacts on Historic Georgetown – a National Historic Landmark (NHL), that also hosts many other NHL's such as the 19<sup>th</sup> Century

Healy Hall at Georgetown University and on numerous Historic Landmarks within and near Georgetown.

The FAA cannot claim that there was “no feasible and prudent alternative” to that new route because the historic northern departure route, NATIONAL 328, has served the FAA, the airlines, and the public since the airport opened in 1941. There was, and still is, no valid reason why NATIONAL 328 cannot be continued in the future, as it has in past 75 years, as the initial terminal procedure for all northbound departures.

#### **IV. THE METROPLEX OPTIMIZATION OF AIRSPACE EA IN 2013 DID NOT BELATEDLY SUBJECT THE PREVIOUSLY UNREVIEWED LAZIR ROUTE TO THE REQUIRED ENVIRONMENTAL REVIEW.**

In 2012, as required by the FAA Modernization Act of 2012, the FAA prepared to conduct an EA for the review and adjustment of all flight patterns to and from all three airports -- Dulles, BWI, and Reagan National -- over the entire Metroplex area, including parts of Virginia, Maryland, the District of Columbia, West Virginia, and Pennsylvania. The FAA concluded its environmental review by issuing a Finding of No Significant Impact (IFONSI) and Record of Decision (ROD) on December 12, 2013.

Both the FAA and the MWAA have alleged, in different forums, that the LAZIR terminal procedure was ultimately subjected to an environmental review in the course of an EA for the “Washington D.C. Optimization of the Airspace and Procedures in the Metroplex,” (Metroplex EA). As the EA itself demonstrates, however, that contention is baseless.

The Metroplex EA was devoted solely to the optimization of certain flight paths in the DC Metropolitan area. The FAA defined the study area as follows at pages 4-2 and 4-2 of the EA:

[T]he General Study Area is a three-dimensional block of airspace designed to capture aircraft operations to and from the Study Airports as they operate at or below 10,000 feet AGL. The lateral dimensions of the General Study Area are defined using 2011 radar data to determine the point at which departing aircraft penetrate the 10,000 feet AGL altitude and arriving aircraft penetrate the 7,000 feet AGL altitude.

For the purpose of estimating the noise impacts of the proposed changes in the flight paths of the Study Area, the FAA selected the Noise Integrated Routing System (NRIS) stating "NRIS is typically used for flight track changes over large areas and at altitudes over 3,000 above ground level (AGL). Specifically, for the Proposed Action, FAA specifies use of NIRS, Version 7.0b." EA p. 4-9. Accordingly the Metroplex EA studied the impacts of aircraft between 3,000 and 10,000 AGL. This, of course, excluded any study of noise impacts for terminal procedures like LAZIR that are less than 3,000 feet AGL.

It is also clear that any noise impacts from the LAZIR departure procedure over Georgetown and its neighboring residential communities at less than 3,000 feet were not involved in the environmental analysis because the unlawfully implemented LAZIR THREE procedure was included in both the "proposed action" and the "no action alternative." See, Metroplex EA pp. 3-10, 3-32-34. In other words, the FAA treated LAZIR THREE as an established procedure that was part of the baseline against which any future increases in aircraft noise were to be determined using the NRIS tool. Accordingly, there was no environmental assessment of the LAZIR terminal departure procedure.<sup>4</sup>

**V. THE FAA HAS ALSO FAILED TO INITIATE MANY SENSIBLE ACTIONS AND POLICIES THAT WOULD MATERIALLY REDUCE AIRCRAFT NOISE IN THE DISTRICT OF COLUMBIA AND ALL NEIGHBORHOODS ALONG THE POTOMAC RIVER.**

National Airport is located at the very heart of Metropolitan Washington and is surrounded by residential neighborhoods. As mentioned earlier, the intent of the Washington Airports Act of 1950 was to retain National as an inner-city regional airport for smaller planes and establish Dulles as the primary Washington airport for all long haul and international air traffic. Over the years, however, the opposite has occurred and National now handles six million more domestic passengers per year than Dulles. MWWA statistics show that in 2014, National handled 20,810,387 passengers while Dulles handled only 14,472,995 domestic passengers. Accordingly it is critical for MWWA and the FAA to jointly do whatever they can do to reduce aircraft

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<sup>4</sup> Moreover, the Metroplex EA had no legal effect whatsoever with respect to the residents of the District of Columbia because the FAA failed to provide either residents or their elected representatives with notice and opportunity to comment as required by NEPA. See Appendices A and B to the Metroplex EA.



noise over both sides of the river. Some of the noise mitigation actions they should undertake include:

1. The FAA and MWAA should institute a curfew on all aircraft operations between 10:00 P.M. and 7:00 A.M. All flights during that time period should be scheduled from Dulles, an airport that was specifically designed to have the necessary noise buffers to protect residential neighborhoods from both daytime and nighttime noise.
2. The FAA has failed to use its enforcement authority to properly and effectively penalize pilots and aircraft that violate rules for ground speed and altitude while taking off and landing. The FAA has received many complaints about excess speed but has imposed no penalties. Moreover, the penalties are too low ; the fines for such violations should be raised to \$50,000 in order to deter such violations. The FAA should be protecting the residents from all unnecessary aircraft noise and not allowing the airlines to violate procedures and regulations without immediate and appropriate sanctions.
3. The FAA has failed to prescribe and enforce well-known noise abatement procedures for making quieter departures and arrivals. The FAA should explicitly require those procedures for all flights at National Airport and impose adequate penalties for all violations.
4. Until recently, northern and southern departures maintained an approximate 50/50 split. Currently, however, the FAA has been directing almost 70% of departures to the north, even when the wind is blowing from the south. The current bias for northern departures must be ended.
5. The FAA has failed to impose rules that would require heavier and longer-range aircraft to use Dulles as the legislation that created Dulles intended. Such a rule would also have the salutary effect of making Dulles profitable rather than losing millions per year.
6. The FAA should eliminate the "localizer" route for arrivals from the north and require all aircraft using Reagan National to be RNP capable for making RNP approaches over the Potomac River. Any airline that elects to fly aircraft that are not RNP equipped should be required to schedule those aircraft to operate only at Dulles or BWI and not National.
7. The FAA should prohibit all class II aircraft such as the MD80 from ever using National except in case of emergency. The FAA should also

gradually prohibit the noisiest class III aircraft at National with the eventual goal of permitting only class IV aircraft at National.

8. The FAA should revise and update its requirements for testing noise levels of all passenger aircraft. All aircraft should be retested periodically and always retested after engine changes. Moreover, the tests should be conducted by the FAA itself and not left to the aircraft manufactures that have inadequate incentive to provide accurate noise ratings.

9. The FAA has ignored its statutory obligation, under Section 103(a)(2) of the Aviation Safety and Noise Abatement Act of 1979 (ASNAA), to require the MWAA to submit a revised noise exposure map to replace the vastly outdated 2004 map that does not show any recent non-compatible uses. MWAA should be ordered to immediately undertake the necessary studies and to submit an up-to-date noise exposure map as soon as possible.

## **VI. CONCLUSION AND REQUEST FOR RELIEF**

Because of the FAA's dereliction of its regulatory duty to notify and involve the residents in Northwest D.C. in its implementation of the new LAZIR departure procedure, the Metroplex EA, and the incorporation of LAZIR into all nine new northern RNAV routes; its violations of the NEPA and NHPA, as well as its own Order 1050.1E; the undersigned government officials and community organizations, hereby request and demand that the FAA take the following actions:

1. Immediately cease the use of the LAZIR terminal departure procedure for all Northbound departures and revert all such departures to the long-established NATIONAL 328 terminal procedure that remains today as an authorized departure procedure for all aircraft.

2. Should the FAA desire to either replace or modify NATIONAL 328 for the initial northbound terminal departure procedure, it must first conduct an Environmental Assessment (EA) and most probably an Environmental Impact Statement (EIS) that will insure a proper assessment of aircraft noise impacts on the "noise sensitive" areas of Historic Georgetown and the adjacent residential communities in the District of Columbia.

a. In any such environmental study, the FAA must actively solicit the participation of all residents and resident organizations, as well as the Mayor, City Council Members, and heads of District of Columbia agencies and

hold open public hearings to accept both oral and written testimony and exhibits from any resident or governmental agency.

b. In any such environmental study, the computer results from FAA's Aviation Environmental Design Tool (AEDT) must be validated by actual noise measurements in the nearby communities.

c. In any such EA and EIS, the FAA should also not rely exclusively upon the defective and outdated Day/Night Noise Level (DNL) calculations. The FAA should take actual – not computer modeled – single event noise measurements with certified equipment at various locations in Historic Georgetown and the adjacent residential communities to capture the impact of multiple discrete noise impacts from any proposed route.

3. The FAA should immediately initiate a rulemaking proceeding to consider any and all actions, specifically including the measures set forth in Section V above, to reduce aircraft noise for all communities near the Potomac River.

DATED: MAY 27, 2016:



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MURIEL BOWSER  
Mayor, District of Columbia



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PHIL MENDELSON  
Chairman, D.C. City Council



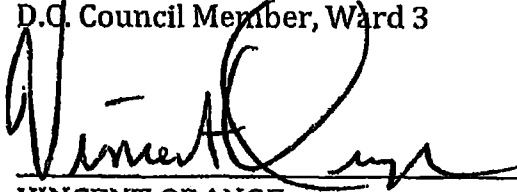
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JACK EVANS  
D.C. Council Member, Ward 2



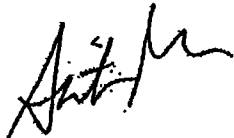
MARY CHEH

D.C. Council Member, Ward 3



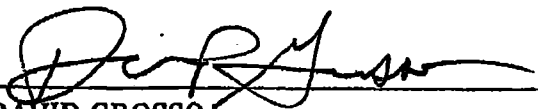
VINCENT ORANGE

D.C. Council Member, At Large



ANITA BONDS

D.C. Council Member, At Large



DAVID GROSSO

D.C. Council Member, At Large



ELISSA SILVERMAN

D.C. Council Member, At Large



**ED SOLOMON**

**Chairman, DC Fair Skies Coalition**

**On Behalf of**

**Burleith Citizens Association,  
Citizens Association of Georgetown,  
Foggy Bottom Citizens Association,  
Hillandale Homeowners Association,  
Foxhall Citizens Association,  
Colony Hill Neighborhood Association,  
Palisades Citizen Association, and  
Georgetown University**