No. 15-1285

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NOT YET SCHEDULED FOR ORAL ARGUMENT

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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CITIZENS ASSOCIATION OF GEORGETOWN; BURLEITH CITIZENS ASSOCIATION; FOXHALL CITIZENS ASSOCIATION; HILLANDALE CITIZENS ASSOCIATION; COLONY HILL NEIGHBORHOOD ASSOCIATION; PALISADES CITIZENS ASSOCIATION; FOGGY BOTTOM ASSOCIATION; GEORGETOWN UNIVERSITY,

PETITIONERS,

V.

FEDERAL AVIATION ADMINISTRATION; MICHAEL HUERTA, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

RESPONDENTS.

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# PETITIONERS' OPPOSITION TO MOTION TO DISMISS

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DENTONS US LLP
MATTHEW G. ADAMS (CA BAR # 229021)
matthew.adams@dentons.com
525 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

PETER L. GRAY (D.C. BAR # 397544)
peter.gray@dentons.com
1900 K STREET, NW
WASHINGTON, D.C. 20006
(202) 496-7707

RICHARD DEC. HINDS (DC BAR # 174425)
GENERAL COUNSEL
CITIZENS ASSOCIATION OF GEORGETOWN
2000 PENNSYLVANIA AVE, NW
WASHINGTON, DC 20006
TEL. (202) 316-6999
FAX (202) 776-1942

Attorneys for Petitioners CITIZENS ASSOCIATION OF GEORGETOWN, ET AL.

Petitioners Citizens Association of Georgetown, Burleith Citizens Association, Foxhall Citizens Association, Hillandale Citizens Association, Colony Hill Neighborhood Association, Palisades Citizens Association, and Foggy Bottom Association (the "Neighborhoods") and Georgetown University have petitioned this Court for review of final decisions by the Federal Aviation Administration ("FAA") to permanently implement certain flight departure routes and procedures (the "New Routes") at Ronald Reagan Washington National Airport ("National" ) in violation of federal environmental laws.[1]

For decades, aircraft departing northward from National were routed in a straight line on the west side of the Potomac River. But the New Routes include a departure segment known as "LAZIR," which requires aircraft equipped with "Area Navigation" (or "RNAV") to fly a zigzagging course that routes planes to the east side of the Potomac River adjacent to and over historic Georgetown and nearby residential communities. *See* DCA Runway 1 Departures (Ex. 1).

The Neighborhoods, the University, and their residents and students have suffered — and will continue to suffer — significant noise impacts as a result of the New Routes. The FAA has never identified, evaluated, mitigated, considered alternatives to, or otherwise addressed these impacts as required by the National

[1] The New Routes are identified as BUTRZ, HAFNR, HORTO, REBLL, SCRAM, and WYNGS in the FAA's online "Instrument Flight Procedures" database. *See* FAA Instrument Flight Procedures Excerpt (Ex. 12) at 5.

Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), and Section 4(f) of the Department of Transportation Act ("Section 4(f)").

Respondents seek to avoid the merits of Petitioners' environmental claims by moving to dismiss the case as untimely. In their view, the Federal Aviation Act, 49 U.S.C. § 46110(a), required Petitioners to bring this action within 60 days of the FAA's 2013 publication of a set of documents (including an Environmental Assessment and a Finding of No Significant Impact/Record of Decision) addressing the "Washington D.C. Optimization of Airspace and Procedures in the Metroplex" (the "2013 Environmental Documents").

There are two fundamental flaws in Respondents' position.

*First*, Petitioners initiated this action within 60 days of the FAA's June 25, 2015 order publishing the New Routes in the agency's online "Instrument Flight Procedures" database (the "June 25 Order"). That publication marked the consummation of the agency's decisionmaking process and the moment at which the New Routes were fully implemented; therefore, it is a final and reviewable order within the meaning of the Federal Aviation Act (*see* part II.A, *infra*).

*Second*, 49 U.S.C. § 46110(a) explicitly permits a petition for review to be filed outside the 60-day period so long as there are "reasonable grounds" for such filing. Here, Petitioners had reasonable grounds for not filing their Petition within

60 days of the 2013 Environmental Documents: (i) Petitioners were not provided appropriate notice or a reasonable opportunity to comment on the 2013 Environmental Documents; (ii) the Environmental Documents themselves failed to address the noise impacts suffered by Petitioners; (iii) although Petitioners specifically inquired about departure routes from National in 2013, neither the FAA and the Metropolitan Washington Airport Authority ("MWAA") informed Petitioners of the New Routes or the 2013 Environmental Documents; and (iv) although Petitioners discussed National departure routes with the FAA and MWAA on at least 10 occasions in 2014 and 2015, at no time did the FAA disclose the existence of the 2013 Environmental Documents or identify those Documents as the last word on northern departures from National. Even if the 60-day period began to run upon the publication of the 2013 Environmental Documents, these facts constitute "reasonable grounds" supporting review of Petitioners' claims (*see* part II.B, *infra*).

## I. FACTUAL AND PROCEDURAL BACKGROUND

Since its inception in 1941, National has been the source of controversy arising from intrusive aircraft noise that is inflicted upon the areas directly under and near the airport's arrival and departure flight paths. In 1950, Congress attempted to alleviate this problem by constructing a new and much larger airport in the Virginia Suburbs that would have sufficient land buffers to preclude aircraft

noise over residential neighborhoods. *See* MWAA "History of Washington Dulles International Airport" *available at* www.flydulles.com (Ex. 2); Nancy Knickerbocker "The History of National Airport" *available at* www.caandc.org/nathist.html (Ex. 3) at 2. Dulles Airport was completed in 1962 and began accepting the new airline jet traffic that had been banned at National Airport because of noise impacts on the residents who lived near or under the flight paths. *See* "History of National Airport" (Ex. 3) at 2-3. In 1966, however, Congress decided to allow small jets that did not create as much noise as the larger planes and coupled that with a "perimeter rule" to preclude flights by heavier and noisier jets from airports further than 1,000 miles away. *Id*. at 3-4. In other words, the intent was to keep National, as a small regional airport while Dulles would accept all the heavier aircraft from airports West of the Mississippi and from international destinations. *Id*. at 5.

Over the years, however, the original intention to keep National as a small regional airport has disappeared and National has steadily grown to become one of the 25 busiest airports in the United States. The continual expansion of National has engendered much litigation over airport noise, as well as airport management. *See, e.g. Virginians for Dulles. et al. v. Volpe*, 541 F.2d 442 (4th Cir. 1976); *Airport Authority v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991).

Despite the litigation between residents, MWAA, the FAA, and the airlines, National kept expanding and the traffic on its standard arrival and departure routes continued to increase. The long-standing departure route to the North was "NATIONAL 328," a straight-line departure over the Pentagon, Arlington, and commercial Rosslyn. *See* DCA Runway 1 Departures (Ex. 1). The NATIONAL 328 route was intended to provide an efficient departure that would minimize noise impacts to historic Georgetown and nearby residential neighborhoods in the District of Columbia.

In the summer and fall of 2013, however, many District of Columbia residents noticed very significant impacts in aircraft noise from departures at National. Their concerns prompted District of Columbia Council Member Jack Evans to inquire about why the FAA had been "sending flights directly over the homes in Hillandale and nearby neighborhoods from 6 am until 11 pm." Evans Letter (October 9, 2013) (Ex. 4). Councilman Evans noted that "[t]he noise has been loud, disturbing and constant." *Id*.

After conferring with the FAA, MWAA responded to Councilman Evans as follows:

> 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.

Potter Letter (November 14, 2013) (Ex. 5). Neither MWAA nor the FAA informed Councilman Evans that the 2013 Environmental Documents were being prepared at that very time.

Cynthia Howar, President of the Hillandale Homeowner's Association also inquired about the possibility that FAA and MWAA might be in the process of changing departure routes from National. In a December 10, 2013 letter she noted

> There has been a significant increase in noise by the aircraft[]that are flying in and out of [National] Airport. … 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.

Howar Letter (December 10, 2013) (Ex. 6). Neither MWAA nor the FAA ever informed Ms. Howar (or any of the other Petitioners) of the preparation or completion of 2013 Environmental Documents.[2]

[2] It bears noting that Ms. Howar's inquiry was sent less than a week prior to the FAA's publication of the 2013 Environmental Documents. Petitioners are aware of no reason why the FAA and MWAA would have been unable to inform Ms. Howar of the Documents or their impending publication.

From 2013 to July, 2015, Petitioners had no reason to believe that MWAA and the FAA had been anything other than forthcoming about potential changes to departure routes from National. They embarked upon a long series of discussions with MWAA, the FAA, and airline pilots in a good-faith effort resolve their concerns about aircraft noise. Between March 25, 2014 and July 2015, Petitioners and their representatives had more than ten meetings with the MWAA, FAA, and pilots. *See* Declaration of Roberto Vittori ("Vittori Decl.") (Ex. 7) at ¶¶ 4-5; Declaration of Robert vom Eigen ("Vom Eigen Decl.") (Ex. 8) at ¶¶ 2-3. At no time did the FAA inform the Neighborhoods of the 2013 Environmental Documents or the fact that the FAA believed those Documents were the last word on northbound departures from National. *Id.*

Petitioners have subsequently learned that their concerns were entirely justified. Contrary to the 2013 representations of MWAA and FAA, beginning in 2011 planes had been allowed to fly a new departure segment from National called LAZIR. Unlike the established NATIONAL 328 route, LAZIR passed over Key Bridge, Georgetown University, Canal Road, and MacArthur Boulevard, inflicting severe noise impacts on the residential communities below. *See, e.g.,* Vittori Decl. (Ex. 7) at ¶¶ 2-3, 8, Ex. C; Declaration of Dominic Patella ("Patella Decl.") (Ex. 9) at ¶ 2. LAZIR has never been subject to an Environmental Assessment or an Environmental Impact Statement, as required by NEPA.

Until July, 2015 LAZIR remained elective: Aircraft could use either LAZIR or NATIONAL 328. Those aircraft which chose to use LAZIR flew directly over or near Petitioners' homes and were the cause of the significant noise impacts which had occasioned the formal inquiries from Councilman Evans and Ms. Howar described above. Vittori Decl. (Ex. 7) at ¶¶ 7-8, Ex. A-D. But most aircraft departing National continued to use NATIONAL 328. Petitioners understand that until 2015 most pilots elected not to fly LAZIR so as to avoid incurring penalties for inadvertently infringing on Prohibited Government Area 56 ("P56A"), a restricted zone overlying the National Mall, the White House and other sensitive areas. Vom Eigen Decl. (Ex. 8) at ¶ 5; "NextGen Independent Assessment and Recommendations" (Ex. 10) at 36.

In response to pilots' reluctance to fly LAZIR, the FAA negotiated with the Secret Service a three-month "test period" (lasting from March to May 2015) during which pilots inadvertently straying into P65A would not incur penalties. *See* Vom Eigen Decl. (Ex. 8) at ¶¶ 5-6. During the three-month "test period," aircraft noise experienced by Petitioners increased substantially. *See* Vittori Decl. (Ex. 7) at ¶ 6. Although the FAA and MWAA conducted meetings with outraged Georgetown residents concerning aircraft noise, at no time did either entity inform the residents of the "test period" or the fact that LAZIR was the source of the aircraft noise affecting Georgetown.

Once the "test period" was complete, the FAA finalized and published the New Routes, thereby rendering LAZIR the default route for all RNAV-equipped aircraft departing north from National. *See* "Next Phase of Washington D.C. Metroplex Air Space Changes Being Implemented" (June 26, 2015) (Ex. 11); FAA Instrument Flight Procedures Excerpt (Ex. 12). The resulting noise was so pervasive and widespread that the FAA received more than 5,233 complaints from Georgetown's zip code 20007 in 2015, a total that accounted for 87% of all complaints received about National. *See* Patella Decl. (Ex. 9) at ¶¶ 2-7.

Petitioners first learned of the New Routes (each of which permanently renders LAZIR the default route for RNAV aircraft) at a meeting in July, 2015. Vom Eigen Decl. (Ex. 8) at ¶ 7. Soon thereafter, Petitioners also learned that the FAA had published, successive orders for the various flight paths mandating the use of the initial LAZIR segment by RNAV-equipped aircraft. *Id.*; *see also* FAA Instrument Flight Procedures Excerpt (Ex. 12). In light of that information, Petitioners filed the instant appeal on August 25, 2015.

## II. ARGUMENT

### A. Petitioners Timely Filed This Action Within 60 Days Of The FAA's Final Order Authorizing And Implementing The New Routes

The Federal Aviation Act provides for review of orders issued by the FAA. *See* 49 U.S.C. § 46110(a). To be reviewable, an order "must possess the

quintessential feature of agency decisionmaking suitable for judicial review: finality." *City of Dania Beach v. FAA*, 485 F.3d 1181, 1187 (D.C. Cir. 2007) (citing *Village of Bensenville v. FAA*, 457 F.3d 52, 68 (D.C. Cir. 2006)).

A final (and thus reviewable) order "need not be a formal order, the product of a formal decision-making process, or be issued personally by the Administrator." *Aerosource, Inc. v. Slater*, 142 F.3d 572, 578 (3d Cir. 1998). Instead, "the core question is whether the agency has completed its decision making process, and whether the result of that process is one that will directly affect the parties." *Id.* (citing *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992)); *see also City of Dania Beach*, 485 F.3d at 1187 (a final order "must mark the consummation of the agency's decision making process, and must determine rights or obligations or give rise to legal consequences").

Thus, the concept of finality is pragmatic, flexible, and dependent on the circumstances of the case. *See, e.g.*, *Aerosource*, 142 F.3d at 577-78 (collecting cases); *Ciba-Geigy Corp. v. EPA*, 801 F.2d 430, 435 n.7 (D.C. Cir. 1986) (discussing "final agency action" and rejecting an "inflexible meaning that precludes pragmatic or functional considerations").

The circumstances presented in this case clearly demonstrate that the June 25 Order to implement the New Routes was final and reviewable.

The FAA has promulgated formal regulatory guidance known as "Order 7100.41," which specifies a multi-phase implementation process for new arrival and departure routes. *See* FAA Order 7100.41 (Ex. 13). The first phase defines the purpose of the routes. *Id*. at § 2-3. The second phase consists of "development work," which includes the preparation of environmental analyses and documentation required by NEPA, the NHPA, and Section 4(f). *Id*. at §§ 2-4-4(b), 2-4-4(d), 2-4-4(e). The third phase, referred to as "operational preparations," involves further review, testing, adjustment, and, if necessary, rulemaking in support of the routes. *Id*. at § 2-5. The fourth phase consists of finalizing and implementing the routes, a process which culminates when the routes are published. *Id*. at § 2-6. Order 7100.41 specifically provides that new arrival and departure routes are not available for use until the routes are published and phase 4 is complete. *Id*. at §2-6.

Thus, the June 25 Order by which the FAA published the New Routes was both the culmination of the agency's decision-making process and the event which gave rise to "real world" consequences directly affecting the Petitioners — *i.e.*, implementation and mandatory use of the New Routes. As such, it was a final, reviewable order within the meaning of 49 U.S.C. § 46110(a). *See, e.g., City of Dania Beach*, 485 F.3d at 1188 (document providing "marching orders about how air traffic will be managed" was a reviewable order).

Respondents' arguments to the contrary are premised on the notion that the 2013 Environmental Documents constitute the only final, reviewable order addressing the New Routes. That premise is factually inaccurate and legally unsound.

First of all, Respondents' position is inconsistent with Order 7100.41, which clearly specifies that environmental documents must be prepared well before new routes are finalized and implemented. Order 7100.41 (Ex. 13), §§ 2-4, 2-6. Environmental review and documentation occurs during Phase 2 of the Order 7100.41 decision-making process. *Id*. at § 2-4. Implementation and use of new routes is not allowed until all of the steps in Phases 2, 3 and 4 of that process are complete. *Id*. at § 2-4. Agency action is not final if it is contingent on the completion of additional administrative steps. *See, e.g.*, *Village of Bensenville*, 457 F.3d at 69.

Indeed, Respondents have admitted that the FAA did, in fact, undertake further analysis and review of the New Routes after the 2013 Environmental Documents were published. *See* Resp. Motion at 7 ("routes were subject to additional safety and technical reviews"). If the New Routes remained subject to review — and presumably revision — after publication of the 2013 Environmental Documents, those Documents cannot have been the consummation of the agency's decisionmaking process.

Furthermore, Respondents' position in this case is inconsistent with their position in *City of Phoenix v. Huerta* (D.C. Cir. Case Nos. 15-1158 and 15-1247). In the *City of Phoenix* litigation, the FAA has taken the position that publication of a new route is a final order from which an appeal can be taken within 60 days. *See* "Respondents Motion to Dismiss" (Case No. 15-1158, Doc. 1563118) (Ex. 14) at 1. The agency has taken precisely the opposite position here. Such inconsistencies further justify denial of Respondents' Motion to Dismiss. *See, e.g., Safe Extensions*, 509 F.3d at 600 (rejecting FAA jurisdictional arguments that were inconsistent with the agency's prior position).

Moreover, even if the 2013 Environmental Documents were *a* final, reviewable order, it does not necessary follow that they were *the only* final, reviewable order relating to the New Routes. Indeed, this Court has previously held that "a firm interpretation of an existing regulation" is a final, reviewable order. *See Aviators for Safe & Fairer Regulation v. FAA*, 221 F.3d 222, 225 (D.C. Cir. 2000).

Respondents also allege that Petitioners seek to "subject the FAA to the continuous threat of future litigation over decisions reached years ago." Resp. Motion at 9. Not so. Petitioners have not brought — and do not seek to bring — multiple, repeated, or continuous petitions attacking a single FAA order. Nor have Petitioners sought to re-litigate claims previously rejected elsewhere. Instead, they

filed a single petition for review within 60 days of (i) the consummation of the implementation process described in Order 7100.41 and (ii) the moment when the challenged routes were authorized (and, in the case of the LAZIR segment, required) for use. Allowing such a suit to proceed poses no threat of the "continuous" litigation about which Respondents have expressed concern.[3]

### B. Petitioners Had Reasonable Grounds For Not Filing This Petition Within 60 Days Of The 2013 Environmental Documents

Respondents' Motion to Dismiss should be denied even if the Court finds that the 60-day period for filing a petition for review of the New Routes began to run upon publication of the 2013 Environmental Documents. As explained below, the Federal Aviation Act permits a petition for review to be filed outside the 60-day period so long as there are "reasonable grounds" for such filing (part II.B.1, *infra*) and Petitioners had reasonable grounds for filing their petition in August, 2015 (part II.B.2, *infra*).

[3] Respondents also point out that the 2013 Environmental Documents include "unequivocal" statements about the FAA's compliance with various environmental laws. See Resp. Motion at 8-9. But that fact does not render the June 25 Order unreviewable. Finality "is informed but not decided by an agency classification." *Aerosource*, 142 F.3d at 579 (emphasis added). The mere fact that the 2013 Environmental Documents make "unequivocal" statements about legal compliance does not render them final "orders." And, as explained above, even if the 2013 Environmental Documents were a final, reviewable order, it does not necessary follow that they were the only final, reviewable order relating to the New Routes for purposes of 49 U.S.C. § 46110(a).

### 1. A Petition For Review Of An FAA Order May Be Filed Outside The 60-Day Period So Long As There Are Reasonable Grounds For Doing Such Filing

Respondents contend that "[b]ecause the [60-day] statute of limitations expired before Petitioners filed their suit, this Court lacks subject-matter jurisdiction…" Resp. Motion at 1. That proposition is legally incorrect. The Federal Aviation Act explicitly authorizes the courts to hear petitions filed outside the 60-day period whenever there are "reasonable grounds" for doing so. *See* 49 U.S.C. § 46110(a). And this Court has confirmed that the 60-day deadline is not an automatic jurisdictional bar. *See Avia Dynamics, Inc. v. FAA*, 641 F.3d 515, 519 (D.C. Cir. 2011) ("the sixty-day deadline [ ] does not constitute a jurisdictional bar"). Respondents have completely failed to address the statutory language and Circuit case law relevant to this point.[4]

### 2. Petitioners Had Reasonable Grounds For Filing Their Petition In August, 2105

Petitioners had reasonable grounds for filing their petition for review more than 60 days after the 2013 Environmental Documents were published.

*First*, the FAA provided no notice of the 2013 Environmental Documents to Petitioners or their elected representatives in the District of Columbia government. The agency's original notice of intent to prepare the 2013 Environmental

[4] In fact, Respondents have quoted to the Court virtually every word of 49 U.S.C. § 46110(a) *except* the clause authorizing petitions for review filed outside the 60-day window. *Compare* Resp. Motion at 2 *with* 49 U.S.C. § 46110(a).

Documents was mailed to 330 government officials in the Washington Metropolitan Area. *See* Draft Environmental Assessment, Appendix A (Ex.15) at A-4 - A-11. None of the 330 was an official of the District of Columbia Government. *Id*. The only District of Columbia resident on the FAA's mailing list was Eleanor Holmes Norton, the District's Delegate to Congress. *Id*.

In June, 2013 the FAA transmitted a Draft Environmental Assessment ("Draft EA") to approximately 600 public officials and 60 public libraries in Virginia, Maryland, West Virginia and Pennsylvania. *See* Draft Environmental Assessment, Appendix B (Ex. 16) at B-5 - B-20. The Draft EA was not sent to any library or elected official in the District of Columbia. *Id*.

The only individual in the District of Columbia government to be sent a copy of the Draft EA was the (unelected) State Historic Preservation Officer ("SHPO"), a problem compounded by the fact that the FAA inaccurately represented to the SHPO that the New Routes (i) would only affect the flow of air traffic ***around*** the DC Metro area and (ii) would not change the noise levels in the District of Columbia itself. *See* Federal Agency Section 106 Review Form (Ex. 17).[5] In light of these representations, the SHPO had no reason to be aware of the

[5] In the Section 106 Review Form memorializes the relevant facts as follows: "Based upon our review of the project Environmental Assessment and ***our discussions with Ms. Kyker of the FAA staff***, we understand that this Federal action is limited primarily to revisions to the flow of air traffic around the DC Metro Area, that no substantial noise increase will result from the proposed revisions, and that

full impact of the New Routes and did not circulate the Draft EA to other District of Columbia officials or to the public.

*Second*, during the fall of 2013 — precisely the time during which the FAA was preparing the 2013 Environmental Documents — Petitioners specifically inquired about northbound departure routes from National. *See* Evans Letter (Ex. 4) and Howar Letter (Ex. 6). Petitioners were never informed that changes to those routes were, in fact, under consideration.

*Third*, the 2013 Environmental Documents failed to address the full noise impacts associated with the New Route — including, most notably, the impacts associated with making the departure segment known as LAZIR the default for all RNAV aircraft. In fact, the 2013 Environmental Documents explicitly disclaim any intent to address the primary source of the noise affecting the Neighborhoods and the University: northbound departure routes below 3,000 feet. *See* Environmental Assessment (Ex. 18) at 4-9. Thus, even if the 2013 Environmental Documents had been properly circulated for review, they would not have been adequate to inform Petitioners of the impacts of the FAA's proposal.[6]

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no ground disturbing activities or other physical alterations within the District of Columbia will occur in conjunction with the project." *See* Ex. 17 (emphasis added).

[6] The fact that the 2013 Environmental Documents failed to identify, disclose, address mitigation for, and evaluate alternatives to all potential impacts of the New Routes — including, without limitation, significant noise impacts on historic resources and neighborhoods in the District of Columbia — also renders the

*Fourth*, from March 2014 through July 2015, the MWAA and the FAA held at least 10 meetings with DC residents and officials on the subject of arrivals and departures from National. *See* Vittori Decl. (Ex. 7) at ¶ 4 and Vom Eigen Decl. (Ex. 8) at ¶ 3. In none of those meetings did anyone from those agencies mention, let alone discuss, the 2013 Environmental Documents or the fact that the FAA believed those Documents were the last word on fundamental changes to northbound departures from National. *Id.*

For each of these reasons, Petitioners had "reasonable grounds" for filing their Petition for Review more than 60 days after the publication of the 2013 Environmental Documents. Respondents' Motion to Dismiss should be denied even if the Court finds that the 2013 Environmental Documents triggered the 60-day deadline.

## III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court to deny Respondents' Motion to Dismiss.

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Documents inadequate to satisfy the FAA's legal obligations under NEPA, the NHPA, and Section 4(f). *See, e.g.*, 40 C.F.R. §§ 1508.8, 1508.9, 1508.13, 1508.14 (NEPA requires evaluation of significance of and alternatives to all potential environmental consequences); 36 C.F.R. §§ 800.1, 800.3 - 800.6 (NHPA requires consultations regarding identification and resolution of adverse effects on historic resources); 49 U.S.C. § 303(c), 23 C.F.R. §§ 774.3, 774.5, 774.17 (Section 4(f) requires evaluation of potential impacts to historic resources, prohibits use of such resources unless there is no feasible and prudent alternative and all possible mitigation has been incorporated).

Dated: February 8, 2016

Respectfully submitted,

DENTONS US LLP

By /s/ *Peter L. Gray*
Peter L. Gray
Matthew G. Adams
Attorneys for Petitioners