

11th Circ. Asked To Nix FAA's OK Of Amazon Cargo Expansion

By **Kelcey Calder**

Law360 (August 2, 2022, 6:48 PM EDT) -- An Amazon air cargo facility expansion in Florida shouldn't have been approved by the Federal Aviation Administration because it needs additional environmental analysis, several Florida residents have told the Eleventh Circuit.

Asking the court to vacate the FAA's approval of the expansion of an Amazon facility at Lakeland Linder International Airport, residents who live or own property nearby said on Monday that the environmental assessment for the expansion failed to adequately consider and analyze the noise impact, air quality impact and environmental harms presented by the project, as is required under the National Environmental Policy Act. As a result, they asserted that the environmental assessment and the FAA's finding that it would cause "no significant impact" should be overturned.

The residents argued that the FAA has minimized the potential environmental harms and health risks by failing to consider the expansion project as separate from previous expansions that have been proposed and carried out at the airport since July 2015. This failure violates the National Environmental Policy Act, which requires agencies to analyze a proposed project's impacts in relation to the effects of "past, current and reasonably foreseeable future actions," the residents said.

"Essentially, the new air cargo facility at the airport is one project that FAA has divided into at least four segments that, collectively, may have significant adverse environmental impacts that should have been evaluated in a single NEPA environmental document," the residents said. "The justification for the rule against segmentation is obvious: it 'prevent[s] agencies from dividing one project into multiple individual actions each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.'"

The development of an international air cargo facility at the airport first began with an intermodal feasibility study in July 2015 that called for the construction of a 55,000-square-foot facility for \$13.4 million, with airfield modifications estimated to cost \$2.3 million, according to court documents. An environmental assessment was done for that proposed project the following year, and in August 2016, the FAA issued a finding that it wouldn't cause significant impacts on the surrounding area.

The residents said the environmental assessment for the initial project was for the construction and operation of one large aircraft maintenance hangar, leaving open the possibility of an additional two aircraft maintenance hangars and an air cargo building being constructed at the site within five years of the initial hangar, with the footprint of the four buildings totaling approximately 223,000 square feet. Once the air cargo facility was constructed, along with the other two hangars, the assessment predicted an increase of 100 commercial, 96 general aviation and 820 air cargo aircraft operations at the airport.

But despite the assessment, the project assessed in 2016 was never built. Then, in July 2018, court documents indicate that the airport sought the revalidation of the 2016 environmental assessment, saying it was "unchanged."

The FAA wrongly concluded in September 2018 that a written reevaluation of the 2016 environmental assessment wasn't needed, according to the residents, in spite of rules that require a written reevaluation when no major steps toward implementation of a proposed action have been commenced within three years from a finding of no significant impact.

Then, in May 2019, the residents said the city approved an initial Amazon air cargo facility of 225,000 square feet. The city's contract with Amazon required upgraded instrument landing systems at the airport that would facilitate aircraft operations in inclement weather, runway rehabilitation and five additional 15,000-gallon fuel tanks, according to court documents.

When the air cargo facility opened in summer 2020, the residents said it looked "nothing like" the facility proposed in the 2016 environmental assessment or the facility that was revalidated in 2018. They alleged it is "four times the size of the air cargo facility originally proposed in 2016" and that the environmental impacts of a facility that large were never studied.

Then, in January 2020, the new expansion project at issue in this case was proposed. It contemplates an air cargo facility that would be about 11 times the size of the facility studied in 2016, the residents said, and would induce over 19 times the number of new flights at the airport.

Representatives for all parties did not return requests for comment on Tuesday.

The residents are represented by Steven M. Taber and Daniel P. Yeomans of Leech Tishman Fuscaldo & Lampl LLC.

The Federal Aviation Administration is represented by Anna Katselas of the U.S. Department of Justice.

The city of Lakeland, Florida, is represented by Steven Lloyd Osit and Sarah Judkins of Kaplan Kirsch & Rockwell LLP.

The case is John Lowman, IV, et al. v. Federal Aviation Administration, et al., case number 21-14476, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Steven Edelstone.