Journal of Air Law and Commerce

Volume 67

2002

Airport Expansion - Costs vs. Environmental Damage When Expanding Airport Facilities - The Eighth Circuit Holds That All Reasonable Alternative Solutions Need Not Be Explained in Great Detail in the FAA's Final Environmental Impact Statement - *City of Bridgeton v. FAA*

Shelby Angel

AIRPORT EXPANSION—COSTS VS. ENVIRONMENTAL DAMAGE WHEN EXPANDING AIRPORT FACILITIES—THE EIGHTH CIRCUIT HOLDS THAT ALL REASONABLE ALTERNATIVE SOLUTIONS NEED NOT BE EXPLAINED IN GREAT DETAIL IN THE FAA'S FINAL ENVIRONMENTAL IMPACT STATEMENT—*CITY OF BRIDGETON V. FAA*

SHELBY ANGEL*

THE NATIONAL ENVIRONMENTAL Policy Act (NEPA)[1] mandates that the Federal Aviation Administration (FAA) prepare a Final Environmental Impact Statement (FEIS) if proposing any action that will have a major affect on the human environment. In the recent case of *City of Bridgeton v. FAA*,[2] the United States Court of Appeals for the Eighth Circuit decided that a three-tiered analysis[3] of alternatives in an airport expansion proposal was sufficient and that no further detail was needed in the FEIS in comparing alternatives not "adopted."[4] In declining to require certain detail regarding considered alternatives, the court created a situation in which it is difficult to ascertain whether the governmental entity fairly dismissed reasonable alternatives which would have minimal affects on the environment while still reaching the main goals of the proposed project.

---

* B.A., 2000, San Diego State University; J.D. Candidate, May 2003, Southern Methodist University, Dedman School of Law. The author wishes to thank her parents, Dr. Dan and Pat Angel, and her husband, Santiago Giraldo, for their support, encouragement, and patience.

[1] 42 U.S.C.S. § 4231 *et seq.* (2002).

[2] City of Bridgeton v. FAA, 212 F.3d 448 (8th Cir. 2000).

[3] The three-tiered analysis followed this approach: In Tier 1, the alternative had to fulfill basic operational goals of the proposed federal action. Those that passed went on to Tier 2, where they underwent a cost/benefit analysis. Tier 3 consisted of comparing economic, environmental, and operational factors. *See id.* at 456.

[4] *Id.*

Lambert Airport ("Lambert") lies just outside of St. Louis, Missouri. As one of the busiest airports in the nation, Lambert has experienced significant delays in the past years due to the structural layout of its runways.[5] The airport depends solely on two parallel runways that are less than 1,300 feet apart.[6] Due to the small separation, it is too dangerous to allow two planes to land simultaneously in bad weather.[7]

The FAA and local planners have consistently been concerned about reducing delays at Lambert Airport. In 1983 and 1993, St. Louis supported a study to explore ways in which the airport could be expanded.[8] After rejecting a first plan because the costs were too extensive and because it would interfere with the current operation of the airport hub, St. Louis selected a plan called Alternative W-1W,[9] which would have negative effects on the city of Bridgeton, and to a lesser degree on the city of St. Charles and St. Charles County.[10]

The FAA studied the proposal for more than two years, during which it scrutinized many options and alternatives.[11] In December 1997 the FAA issued a FEIS, and in September 1998, it issued a Record of Decision, which approved the W-1W project.[12]

Bridgeton petitioned for review of the FAA decision approving the W-1W proposal.[13] Petitioners claimed that the decision

---

[5] *Id.* at 453.

[6] In order to land planes simultaneously in incremental weather, the FAA requires that parallel runways be at least 4,300 feet apart, or 3,400 feet if the airport has a precision runway monitory. *Id.* at 453 n.1.

[7] *Id.* at 448.

[8] *Id.*

[9] W-1W calls for constructing a new runway, west of and parallel to the existing runways, of 9,200 feet.

[10] The negative effects include the following: 1) the relocation of 5,685 people, mostly in the city of Bridgeton; 2) the relocation of 75 businesses 3) direct affects on 26 acres of parkland. *Id.* at 454. It is worth noting here, that alternative S-1 was also considered, but ultimately decided against. Although alternative S-1 would have better reached operational goals, the environmental impact was too great (9,275 people would be displaced, 210 businesses would be relocated, and 57 acres of parkland would be affected). *Id.* However, it is also important to note that Ne-1a, not explained in detail in the FEIS, would not have displace *any* people or affected almost *any* people due to the project. *Id.* at 465.

[11] Specifically, the FAA examined eight project alternatives (N-1, NE-1, NE-1a, W-1W, W-1E, W-2, S-1, and C-1), a no-action alternative, and off-site expansion alternatives. Only the S-1, W-1W and the no-action alternative were considered in detail in the FEIS. *See id.* at 456.

[12] *Id.*

[13] *Id.*

that alternatives must only be "briefly" discussed violated federal statutes, specifically NEPA,[14] §4(f) of the Transportation Act (TA),[15] and the consistency and notice provisions of the Airport Airway and Improvement Act (AAIA).[16] The court denied the petitions for review and also denied Bridgeton's motion to file a supplemental brief.[17]

Writing for the court of appeals, Judge Loken measured the sufficiency of explanations laid out by the FAA in the FEIS.[18] Applying language from both the NEPA and TA statutes, he addressed the requirement to only "briefly discuss"[19] unreasonable alternatives not considered in the project.[20] Therefore, the court had to determine whether the FAA had properly excluded detailed explanations of unreasonable alternatives, such as NE-1a in the FEIS.[21]

According to the court of appeals, the FAA included all reasonable alternatives in its detailed analysis under NEPA, while properly excluding Alternative NE-1a, among other options.[22] The court concluded that the FAA correctly left out detailed analysis of the alternatives because they did not meet the "purpose and need" of the proposal.[23] In addition, the court deemed the need for arrival of planes simultaneously in bad weather as a "significant purpose" of the project.[24] In doing so, the court em-

---

[14] 42 U.S.C. § 4231 *et seq.* (2002).

[15] 49 U.S.C. § 303(c) (2002).

[16] 49 U.S.C. § 47106(a)(1) (2002); 49 U.S.C. § 47106(c)(1) (2002).

[17] *City of Bridgeton*, 212 F.3d at 463.

[18] *Id.*

[19] *See* 40 C.F.R. § 1502.14 (2002).

[20] *City of Bridgeton*, 212 F.3d at 455.

[21] *See id.*

[22] *Id.*

[23] The purposes and needs of the project were to:

> "effectively and safely accommodate project levels of aviation activity at an acceptable level of delay" by increased airfield capacity, improving visual flight rules capacity, allowing dual independent simultaneous arrivals in bad weather conditions, and decreasing delays; 2) to enhance the National Airspace System [(NAS)] by *increasing capacity* and *reducing delays*; [and] 3) to maintain Lambert's importance to the economic vitality of the St. Louis region.

City of Bridgeton, 212 F.3d at 454 (emphasis added). As the FAA itself notes, simultaneous arrivals are only "one of many indicia of a capacity-building alternative." *See id.* at 465 (quoting FAA Brief at 62). The dissent highlights that "[t]he FAA itself states that NE-1a does meet the project's goals with respect to the [NAS] and. . . the hubbing and economic goals of the region." *Id.* at 465 (Arnold, J., dissenting).

[24] *Id.* at 457.

phasized the FAA's extensive comments and analysis about the economic and environmental effects of the options chosen for detailed analysis.[25]

Judge Arnold dissented. He argued that while he fully agreed with the "expert" judgment of the FAA, the agency had nevertheless "violated NEPA by excluding from detailed consideration certain alternatives to its preferred solution."[26] He concluded that the district court erred in approving the FEIS because the FAA had not sufficiently flushed out alternatives in the report. Instead, Judge Arnold argued, the FAA merely discarded such alternatives and focused on only the two options most beneficial to them on a cost basis, rather than considering and comparing reasonable alternatives which were feasible and had a friendlier environmental impact.[27]

The court is correct in its conclusion that the W-1W was feasible and that the FAA's decision to implement it was not "arbitrary or capricious." However, the court is incorrect in finding the FAA followed NEPA procedurally by discussing other plausible alternatives in sufficient detail in the FEIS.[28] The court declares that the FAA was correct in omitting Alternative Ne-1a[29] from its second tier analysis because the alternative was not seriously considered.[30] This finding goes against the language of NEPA policies and goals. The NEPA statute dictates that "to the fullest extent possible," "detailed statements" must be included in every report including such statements about the "alternatives to the proposed action."[31] Requiring detail on plausible alterna-

---

[25] *City of Bridgeton*, 212 F.3d at 462.

[26] The dissent is referring specifically to Alternative Ne-1a, which was considered by the FAA but not included in detail in the FEIS. *See id.* at 464-65.

[27] *See id.* at 464-66 (Arnold, J., dissenting).

[28] The majority argues that NEPA does not mandate a particular *outcome*. *See id.* The author fully agrees with this statement, but argues that NEPA does mandate certain *procedures*, such as the discussion of all reasonable alternatives in sufficient detail in the FEIS. *See* 42 U.S.C. § 4332(2)(C) (2002).

[29] Alternative Ne-1a failed under the FAA's analysis in Tier 1 because the FAA claimed that it did not meet the "basic operational goals" of the plan. *See City of Bridgeton*, 212 F.3d at 457. The author argues that the court's reasoning is misplaced here in allowing the specifics of Ne-1a to be left behind after the first tier, because in order to meet the "basic operational goals" it is not necessary that every single goal be met to the exact standards proposed. *See* North Buckhead Civic Assoc. v. Skinner, 903 F.2d 1533, 1542-43 (11th Cir. 1990); *see also* Surfrider Foundation v. Dalton, 989 F. Supp. 1309, 1326 (S.D. Cal. 1998), aff'd per curiam, 196 F.3d 1057 (9th Cir. 1999).

[30] *City of Bridgeton*, 212 F.3d at 448.

[31] *See* 42 U.S.C. § 4332(2) (2001).

tives does not ask for the FAA to "include every alternative device thought conceivable by the mind of man."[32] Such a gross exaggeration is not required. Instead, the language of the statute supports giving details for *plausible* alternatives *considered.* This is not as great a burden as majority suggests.[33]

The court is also flawed in its conclusion that Alternative NE-1a was correctly omitted from detailed discussion because it did not meet the "purpose and need" of the proposal and was thus unreasonable.[34] The court considers only the standards and goals given by the FAA in its analysis,[35] defining "purpose and need" so narrowly that if the court's criteria were used, the FAA could establish any goal when designing a project. If an alternative does not reach every aspect of the FAA's goals exactly, then the alternative is considered unreasonable, and can be excluded from detailed explanation. Notably, this allows the FAA to discard "unreasonable" alternatives, regardless of the environmental impact relative to the alternative chosen.[36]

In addition, the court incorrectly interprets a Seventh Circuit case that gave credence to a regional commission's approval of a proposal.[37] In that case, the court merely asserted that the commission's approval gave support to the project; nowhere in the opinion did it declare that the commission's approval would trump any opposing local authority's plans. In fact, in the case cited by the majority, there were no opposing zoning laws in direct conflict with the project.[38] Here, the project proposed, while approved by the East-West Gateway Coordinating Council (EWGCC), is in direct conflict with Bridgeton's development plan. Under Missouri law, the EWGCC is able to issue opinions in support of proposals, but those opinions are "solely advisory."[39] Thus, the fact that the EWGCC supports the proposal does not overcome the obstacle that the project conflicts with

---

[32] *See City of Bridgeton,* 212 F.3d at 455.

[33] *See* 40 C.F.R. 1502.14 (2002) ("[A]gencies shall: [r]igorously explore and objectively evaluate *all* reasonable alternatives" and "[d]evote substantial treatment to each alternative *considered* in detail including the proposed action. . . *so that reviewers may evaluate their comparative merits.*") (emphasis added).

[34] *City of Bridgeton* 212 F.3d at 457.

[35] *See id.*

[36] *See id.* at 458, 461.

[37] *See id.* at 466, dissenting opinion (applying concepts from Suburban O'Hare Comm'n v. Dole, 787 F.2d 186, 199 (7th Cir. 1986)).

[38] *See id.*

[39] *See* MO. ANN. STAT. §§ 251.300, 251.350 (2002).

the plans developed by the Bridgeton, an agency authorized by the State to develop plans for the airport.[40]

As it stands, *City of Bridgeton* allows for the FAA to sidestep any alternatives that are not necessarily beneficial to the Administration by focusing primarily on certain options without providing detailed explanations on others that were plausible, though not as appealing to the FAA on a cost or goal basis. By not requiring detailed explanations about such feasible alternatives, the court creates a situation in which it is impossible to analyze from the report whether other alternatives would have been equally plausible and more beneficial to the public while still reaching the overall goals of the plan.[41]

---

[40] *See* 49 U.S.C. § 47106(a)(1) (2002) ("The Secretary of Transportation may approve an application. . . *only* if the Secretary is satisfied that—the project is consistent with plans. . . authorized by the State in which the airport is located" (emphasis added)).

[41] *See* North Buckhead Civic Assoc. v. Skinner, 903 F.2d 1553, 1542 (11th Cir. 1990) ("Alternatives that would only partly meet the goals of the project may allow the decision maker to conclude that meeting part of the goal with less environmental impact may be worth the trade of with a preferred alternative that has greater environmental impact"); *see also* Surfrider Foundation v. Dalton, 989 F. Supp. 1309, 1326 (S.D. Cal. 1998), aff'd per curiam, 196 F.3d 1057 (9th Cir. 1999) (supporting the conclusion that the mere fact that one solution is preferred by an agency in substantive terms doe not exclude the possibility that another alternative is reasonable in other terms).