

No. _____

In the
UNITED STATES COURT OF APPEALS
For the Ninth Circuit

VASHON ISLAND FAIR SKIES, a Washington nonprofit corporation,
Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION, BRYAN BEDFORD, in his official
capacity as Administrator, Federal Aviation Administration, U.S. DEPARTMENT
OF TRANSPORTATION and SEAN DUFFY, in his official capacity as Secretary
Respondents

PETITION FOR REVIEW OF AGENCY ORDER

[Federal Rules of Appellate Procedure, Rule 15]
[49 U.S.C. § 46110(a)]

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Pursuant to 49 U.S.C. § 46110, Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15-1, Petitioner, Vashon Island Fair Skies (“VIFS”) hereby petition the United States Court of Appeals for the Ninth Circuit for review of the Federal Aviation Administration’s decision signed on September 24, 2025, to issue an “Finding of Significant Impact/Record of Decision for the Sustainable Airport Master Plan Near-Term Projects at the Seattle-Tacoma International Airport” (“FONSI/ROD”). A copy of the FONSI/ROD is attached as Exhibit A to this Petition.

As stated in 49 U.S.C. § 46110(a), a person “may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.” Because VIFS has its principal place of business within the Ninth Circuit, this Court has jurisdiction over this Petition for Review.

This Petition is timely filed under 49 U.S.C. § 46110(a), in that Federal Rule of Appellate Procedure 26(a)(1) provides that “[i]f the last day [of a filing period] is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.” Since the 60th day after September 24, 2025, fell on a Sunday, the filing period under § 46110(a) continues to run until Monday, November 24, 2025.

Having confirmed that the Court has jurisdiction and this Petition is timely under § 46110(a), VIFS now addresses the underlying subject of this action—the significant environmental effects the FAA’s approval of the federal actions necessary to implement the Port of Seattle’s Sustainable Airport Master Plan will have on the residents of Vashon Island.

1. VIFS is a Washington not-for-profit corporation and federally recognized 501(c)(3) public charity based on Vashon Island, Washington. VIFS was formed in 2018 “in the wake of PBN implementation at KSEA as part of the Greener Skies project,” to respond to the concentration and lowering of arrival flight paths over Vashon Island caused by the FAA’s NextGen/Performance-Based Navigation (“PBN”) procedures at Seattle-Tacoma International Airport (“SEA”).

2. VIFS’s stated mission is to “restore the peace and natural environment to Vashon and Maury Islands that the FAA’s NextGen program has stolen” by restoring the pre-NextGen dispersed arrival paths and more optimized profile descents that historically spread noise more widely and kept aircraft higher over the islands. Since 2018, VIFS and its officers have engaged in technical analysis of flight tracks, filed comments with the Port of Seattle, FAA, and other bodies, and participated in national NextGen forums, including the FAA’s NextGen Advisory Committee.

3. Vashon Island lies under SEA’s downwind arrival legs, with the “Southflow” one being significantly more impactful. VIFS has documented that, after implementation of NextGen RNAV STARs, hundreds of daily SEA arrivals were routed in a narrow “razor-thin line” over the island at substantially lower altitudes than before, transforming what had been a quiet rural soundscape into a high-intensity aviation noise corridor. VIFS’s work has focused on the mismatch between this new, concentrated noise burden and FAA/Port of Seattle environmental documents that continue to treat Vashon as a “less noise sensitive area” and omit it from detailed noise analysis and monitoring.

4. In December 2024, as part of the National Environmental Policy Act (NEPA) process for the Sustainable Airport Master Plan (“SAMP”) Near-Term Projects Environmental Assessment (“EA”), VIFS submitted detailed technical and legal comments on the Draft Environmental Assessment (“Draft EA”) dated December 13, 2024 (“Vashon Island SAMP Comments”). Those comments identified seven primary themes: (1) the Draft EA’s reliance on the Council on Environmental Quality (“CEQ”) NEPA regulations, which VIFS argued had been held ultra vires by the D.C. Circuit in *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024); (2) an incomplete cumulative impacts analysis that fails to account for the Third Runway and the Greener Skies/NextGen RNAV changes; (3) an arbitrarily small General Study Area (“GSA”) and “affected environment” that

excludes communities like Vashon Island that bear substantial noise and emissions impacts; (4) the absence of a project-specific Health Risk Assessment; (5) continued reliance on the “fatally flawed” DNL noise metric and 65 dB threshold; (6) unresolved altitude and profile errors in the Aviation Environmental Design Tool (“AEDT”) inputs for arrivals; and (7) serious deficiencies in the availability and quality of technical documentation, including key noise and missed-approach exhibits.

5. On cumulative impacts, VIFS emphasized that many scoping commenters had expressly demanded that the EA evaluate the cumulative effects of the Third Runway and the 2012 Greener Skies NextGen RNAV STARs together with the SAMP Near-Term Projects, and argued that treating those prior changes as merely part of “existing conditions” “is completely antithetical to the very premise of a Cumulative Impact Analysis.”

6. It bears emphasis that the operational changes purportedly “inspired” by the FAA’s 2012 Greener Skies Over Puget Sound FONSI/ROD were not implemented in any meaningful way until approximately 2015 and, even today, remain only partially implemented. Most notably, the central justification for the Greener Skies initiative—the continuous-descent, curved Required Navigation Performance (RNP) approach through Elliott Bay, designed to concentrate arrivals over water and reduce noise and emissions over densely populated areas—was never deployed

as an operational procedure. Instead, it has been used only a negligible number of times per year, far short of the level of implementation assumed and analyzed in the 2012 NEPA document.

7. The Vashon Island SAMP Comments explained that the Draft EA's baseline was fundamentally distorted because it excluded major past actions, most notably the so-called *Greener Skies* procedures that were modeled in the FAA's 2012 FONSI/ROD but were never implemented in the form or frequency the agency represented. By treating these unimplemented or materially altered procedures as if they were fully in effect, the Draft EA constructed a false baseline and unlawfully minimized the cumulative noise and emissions burdens already borne by communities such as Vashon Island.

8. On the scope of the affected environment, VIFS objected that the Draft EA's "General Study Area" (GSA). The GSA's 3,692 acres (5.8 square miles) loosely bounded by S. 140th Street, 33rd Avenue S., S. 200th Street, and Des Moines Way was an artificially small, unexplained study area that ignored reasonably foreseeable noise and emissions impacts on more distant communities, including Vashon Island. The Final Environmental Assessment ("Final EA") retains this same 5.8-square-mile GSA definition and boundaries, with no additional explanation responding to VIFS's contention that the affected environment must

encompass the full three-dimensional area of potential noise impacts from SEA arrivals and departures.

9. VIFS further argued that NEPA required preparation of a Health Risk Assessment for the SAMP Near-Term Projects in light of the expanding scientific literature linking aviation noise and emissions to cardiovascular disease, sleep disturbance, and other health harms, particularly in quiet rural soundscapes such as Vashon Island. The Final EA does not add a stand-alone Health Risk Assessment, does not systematically quantify health risks from aviation noise and emissions, and nowhere explains why such an assessment is unnecessary in light of VIFS's comments and the cited literature.

10. On noise metrics and thresholds, Vashon Island's SAMP Comments attacked continued use of the DNL metric and the 65 dB "significance" threshold as inconsistent with the Aviation Safety and Noise Abatement Act's directive to use a metric with a "highly reliable relationship" to surveyed community responses, and as incompatible with newer evidence (including FAA's own Neighborhood Environmental Survey) showing substantial annoyance and health impacts at far lower levels. VIFS urged FAA and the Port to abandon exclusive reliance on DNL 65 in favor of alternative metrics such as Time-Above Ambient (TAA) to account for low ambient noise on Vashon Island. The Final EA and accompanying FONSI/ROD instead continue to define significant noise effects by

reference to the 65+ DNL contour, and the FONSI specifically summarizes noise impacts in terms of the 65+ DNL contour area, population, and housing units, concluding that the Future (2032) Action Alternatives would not cause significant noise impacts so defined. The 65+ DNL contour extends only a few miles from the airport and does not reach Vashon Island, and neither the Final EA nor the FONSI/ROD responds to VIFS's argument that this metric and threshold are themselves unlawful and inadequate.

11. VIFS also raised technical concerns with the Draft EA's "Aviation Environmental Design Tool" (AEDT) modeling, including inherent altitude errors in arrival profiles, and criticized the poor quality or unavailability of key technical supporting documents, such as the 44-page "Missed Approach Operations" memo (Exhibit B-1 to Appendix J). In the Final EA, FAA acknowledges "comment (037 Vashon Island Fair Skies)" and responds only by replacing the low-resolution, unsearchable version of Exhibit B-1 with a higher-resolution copy in Appendix J; there is no indication that FAA revisited the underlying arrival-profile assumptions or altitude modeling in AEDT in response to VIFS's technical critiques. Apart from this formatting correction, neither the Final EA's main text nor Appendix O (Agency & Public Engagement) contains a substantive change that addresses VIFS's specific modeling concerns.

12. VIFS also challenged the Draft EA's reliance on CEQ's NEPA regulations in light of the D.C. Circuit's *Marin Audubon* decision, where a divided panel declared those regulations ultra vires—beyond CEQ's statutory authority—even as it ultimately resolved the case on other grounds. The Draft EA expressly cites CEQ's regulations as the governing NEPA framework, and the Final EA does not alter that reliance, acknowledge the *Marin Audubon* holding or dicta, or otherwise grapple with VIFS's argument that the SAMP NEPA review must be grounded directly in the NEPA statute and binding FAA regulations rather than in CEQ rules of questionable validity.

13. The FONSI/ROD reiterates that the SAMP Near-Term Projects will not cause significant environmental impacts and relying on the EA's noise, cumulative impact, and health-effects assessments (or lack thereof). The FONSI/ROD does not expand the geographic scope of the noise analysis beyond the 65+ DNL contour, and does not address the ultra vires CEQ argument, the request for a Health Risk Assessment, the criticisms of the DNL metric, or the demand for a cumulative impacts analysis that includes the Third Runway and Greener Skies/NextGen RNAV procedures.

14. In sum, VIFS is a long-standing, technically sophisticated community organization formed in direct response to FAA's PBN/NextGen changes at SEA and represents a uniquely impacted rural island community. Its SAMP comment

letter raised fundamental legal and technical defects in the Draft EA's regulatory framework, cumulative-impacts baseline, geographic study area, absence of a Health Risk Assessment, reliance on the DNL 65 metric, and AEDT modeling inputs. With the narrow exception of supplying a readable copy of a single Appendix J exhibit, the Final EA and FONSI/ROD fail to meaningfully address or resolve those concerns, instead preserving the same limited study area, metric and threshold choices, and analytical omissions that VIFS had identified as unlawful and inadequate.

15. For these above-stated reasons and arguments to be raised in the briefs, VIFS contends that its Petition for Review of the SAMP FONSI/ROD should be granted and the FONSI/ROD be vacated and remanded.

Dated: November 21, 2025 LEECH TISHMAN NELSON HARDIMAN, INC.

By: Steven M. Taber
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Attorneys for Vashon Island Fair Skies

RULE 26.1 DISCLOSURE STATEMENT

Petitioner Vashon Island Fair Skies is Washington Nonprofit corporation. It does not have a parent entity, and no publicly held corporation owns 10% or more of the shares or interests in Vashon Island Fair Skies.

Dated: November 21, 2025 LEECH TISHMAN NELSON HARDIMAN, INC.

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