Appendix A

Memorandum Regarding Implementation of the Court Order

Final Environmental Review Step 1B
Proposed Categorical Exclusion
May 2018

For

The Proposed West Flow Area Navigation Standard Instrument Departure Procedures at Phoenix Sky Harbor International Airport as per the Memorandum Regarding Implementation of Court Order per *City of Phoenix, Arizona v. Huerta*, 869 F.3d 963 (D.C. Circuit 2017)

Des Moines, WA

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

CITY OF PHOENIX, ARIZONA, et. al.	)	
Petitioners,	)	
vs.	)	
MICHAEL P. HUERTA, in his official capacity as Administrator, Federal Aviation Administration, et al.	)	Civ. Nos. 15-1158, 15-1247 (consolidated)
Federal Respondents.	)	

MEMORANDUM REGARDING IMPLEMENTATION OF COURT ORDER

The City of Phoenix and the Historic Neighborhood Petitioners (collectively, "Petitioners") and the Federal Aviation Administration and Michael Huerta, in his official capacity as Administrator (collectively the "FAA") (together with Petitioners, "the Parties"), have reached an agreement for implementation of this Court's August 29, 2017, judgment, with the Parties agreeing to undertake and perform the measures set forth in this stipulated Memorandum Regarding Implementation of Court Order ("Agreement").

Whereas, on September 18, 2014, the FAA published new flight routes and air traffic procedures at Sky Harbor International Airport ("PHX"), including west flow area navigation ("RNAV") Standard Instrument Departures from Runways 25L, 25R and 26 of PHX referred

to as BNYRD, KATMN, FTHLS, JUDTH, IZZZO, MAYSA, LALUZ, SNOBL, and YOTES (the "Western RNAV Routes");

Whereas, prior to September 18, 2014, and through today, FAA had and has published Standard Instrument Departures from Runways 25L, 25R and 26 of PHX known as CHILY, ST. JOHN'S, SILOW, MAXXO, STANFIELD, and BUCKEYE (the "Pre-RNAV Western Routes");

Whereas, Petitioners filed petitions for review challenging certain procedures from PHX published on that date;

Whereas, on August 29, 2017, the U.S. Court of Appeals for the District of Columbia issued a judgment vacating and remanding those departure procedures to FAA; and

Whereas, the FAA and Petitioners have reached an agreement specifically relating to certain initial departure instructions for the Western RNAV Routes.

THEREFORE, the Parties agree and stipulate as follows:

1. The Parties agree that the Western RNAV Routes should be remanded by the Court without *vacatur*, consistent with this Memorandum, to permit the FAA to address Petitioners' concerns in a manner that allows for PHX to be operated safely and efficiently as described herein. The parties further agree that no other routes shall be remanded or vacated by the Court.

2. The Parties agree to the following process for implementation of this Agreement and the Court's August 29, 2017, Order.

   a. Following execution of this Agreement, the Parties shall file a joint petition for panel rehearing that includes:

i. The agreement of the Parties that amendment of the relief identified in Section IV of the D.C. Circuit's August 29, 2017, opinion is appropriate to avoid uncertainty and assure safety and immediate noise relief.

ii. A request to amend and replace the D.C. Circuit's opinion and order of August 29, 2017, Section IV with the following text:

> "For the foregoing reasons, we grant the petitions and remand to the FAA, without vacating, the portion of the September 18, 2014 order implementing the MAYSA, LALUZ, SNOBL, YOTES, BNYRD, FTHLS, IZZZO, JUDTH, and KATMN procedures at Phoenix Sky Harbor International Airport departing Runways 25L, 25R or Runway 26 for further proceedings consistent with this opinion and the Memorandum filed with this Court on November 30, 2017. This Court will stay the issuance of its mandate until June 15, 2018, unless the parties notify this Court prior to that date that the mandate should issue. The parties may each file a status report of no more than 2,500 words on or before May 15, 2018, in the event the mandate has not yet issued."

b. In order to provide time for FAA to complete all necessary processes to implement "Step One" (which is described in Paragraph 5.a of this Agreement), the parties shall jointly request that the D.C. Circuit stay issuance of its mandate until June 15, 2018.

c. When FAA implements the Letter of Agreement identified in Paragraph 5.a of this Agreement and begins use of the Step One procedures, the Parties shall promptly notify the Court that the mandate should issue consistent with the relief requested in the petition for panel rehearing filed pursuant to Paragraph 2.a.

d. If the Letter of Agreement has not been implemented by April 1, 2018, the parties shall meet and work in good faith to determine if there are amendments to this Agreement that would meet the needs of the Parties and avoid a contested rehearing before the Court.

e. If the Letter of Agreement has not been implemented by May 15, 2018, the Parties shall file status reports of no more than 2,500 words on May 15, 2018, advising the Court regarding how they believe it should proceed.

3. The Parties agree to carry out the obligations set forth hereunder.

<u>FAA's Obligations</u>

4. **Short- and Long-Term Relief.** FAA will address Petitioners' concerns in two steps, hereafter referred to as "Step One" and "Step Two." The purpose of Step One is to provide Petitioners some short-term relief from aircraft noise as soon as practicable. The purpose of Step Two will be to develop longer-term procedure changes that will involve the implementation of new or modified Performance Based Navigation ("PBN") procedures at PHX, including RNAV procedures. An estimated schedule and list of

tasks for implementing Step One and Step Two is attached as Appendix A.

5. **Step One.**

a. ***Letter of Agreement.*** FAA will develop a Letter of Agreement between the Phoenix Terminal Radar Approach Control and the Phoenix Airport Traffic Control Tower that replaces the initial departure instructions for the Western RNAV Routes with alternate departure instructions that approximate, to the extent practicable, actual departure paths flown prior to September 18, 2014, using the Pre-RNAV Western Routes. Alternate departure instructions implemented in accordance with this Agreement are applicable to departing turbojet aircraft only and do not apply to aircraft conducting go-around or missed-approach operations. Specifically: Northwest departures MAYSA, LALUZ, SNOBL, and YOTES will be issued departure instructions to navigate along the extended runway centerline and then cleared to join the RNAV routes at the waypoint TWSND or some later waypoint. The southwest departures FTHLS, KATMN, BNYRD, and JUDTH will be issued departure instructions to a 240-degree course and then cleared to join the RNAV routes at the waypoint VANZZ or some later waypoint. West departure IZZZO will be issued departure instructions to a 240-degree course and then cleared to join the RNAV route at waypoint KEENS or some later waypoint. The instructions provided for in the Letter of Agreement will relate to instructions for PHX and

not for aircraft flying to or from satellite airports. Clearances or control instructions affecting initial departure instructions will not be issued any earlier than 43rd Avenue unless required for safety of flight purposes. Appendix B contains a graphical representation of intended corridors for these procedures.

b. ***Compliance.*** Development and implementation of the Letter of Agreement must comply with federal law and FAA Orders and policy, more specifically as detailed in Appendix A. As part of this Agreement, FAA agrees to conduct a noise analysis to compare differences in noise between both (1) the Pre-RNAV Western Routes and the Step One Letter of Agreement instructions; and (2) the Western RNAV Routes and the Step One Letter of Agreement instructions. FAA also agrees to consult with necessary historic-property representatives to determine the appropriate level of environmental analysis required under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.* Any action taken by the FAA during Step One will be subject to and contingent upon complying with the authorities described in Paragraph 7 below.

c. ***Timing.*** FAA agrees to use best efforts to develop and, subject to agreement by the City as to timing, implement the Letter of Agreement by April 1, 2018. This timing is contingent upon there being no findings related to safety issues in the Safety Risk Management process identified in Appendix A. Further, this timing is contingent upon the

FAA's completion of any environmental review required by NEPA and the consultation process required by the National Historic Preservation Act of 1966 as set forth in Paragraph 7 below.

d. ***Community Outreach.*** FAA agrees to conduct at least three community outreach meetings with the general public in the Phoenix metropolitan area, including at least one general public meeting in Northeast Phoenix. The purpose of the meetings will be to inform the public regarding the measures being performed under Step One and to solicit any public comments regarding noise concerns with the existing airspace and procedures, as well as any proposals for airspace and procedures FAA should consider for Step Two.

e. ***Post-Implementation Coordination of Step One.*** FAA shall meet with representatives of the Petitioners at least once per quarter until the completion of Step Two to discuss implementation questions and radar tracks for the procedures in Paragraph 5.a, including aircraft conducting go-around or missed-approach operations, as well as aircraft turning prior to 43rd Avenue (if any).

6. **Step Two.** The FAA will develop PBN procedures to supersede the westerly departure routes in Step One and Western RNAV Routes. As the FAA develops the PBN procedures, it will use best efforts to design and consider routes that closely approximate the actual flight tracks for the Pre-RNAV Western Routes between the airport and a 15-mile radius, that occurred before the FAA's September 18, 2014 Order. Recommendations

received by the FAA from stakeholders during public outreach sessions and written comment periods, including recommendations outside the scope of the westerly departure procedures described above, will be fully and reasonably considered. However, the proposal and adoption of any procedure changes other than the replacement of the western departures described above as "Step One" will be made solely by the FAA within its discretionary authority, in accordance with all applicable laws. Any action taken by the FAA during Step Two will be subject to and contingent upon complying with the requirements described in Paragraph 7 below. As part of Step Two, FAA will conduct community outreach meetings with the public. The purpose of the meetings will be to inform the public regarding the alternatives being considered under Step Two and to solicit public comments regarding these alternatives.

7. **Compliance with Applicable Laws, Orders, and Policy.** FAA will perform its obligations under Step One and Step Two in accordance with the following authorities:[1] NEPA, 42 U.S.C. § 4321 *et seq.*; FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*; FAA Order 7100.41, *Performance Based Navigation Implementation Process*; FAA Order 7400.2L, *Procedures for Handling Airspace Matters*; Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c); and other applicable federal laws. In addition, the

[1] All references to FAA Orders shall be to the most recent applicable version of such Order at the time of use.

FAA will be guided by the principles in its February 2016 Community Involvement Manual.

a. ***NEPA***. The FAA will comply with the guidance and instructions provided for under FAA Order 1050.1F and FAA Order 7400.2L, in addition to all applicable federal regulations. FAA also agrees to conduct a noise analysis to compare any potential noise impacts for both (1) the Pre-RNAV Western Routes and the Step One Letter of Agreement instructions; and (2) the Western RNAV Routes and the Step One Letter of Agreement instructions.

b. ***Section 106.*** The FAA will comply with Section 106 of the National Historic Preservation Act, the Advisory Council on Historic Preservation's implementing regulations at 36 C.F.R. Part 800, and FAA's internal policy when completing Steps One and Two. Compliance will include invitations to the local government, State Historic Preservation Officer, and Indian tribes to participate as consulting parties. During this process, Petitioners will identify who will serve as their authorized representatives. Petitioners may assist in identifying properties listed or eligible for listing on the National Register of Historic Places within the area of potential effects. In addition, FAA will provide them an opportunity to review and either concur or disagree with the FAA's proposed determination of effects to any historic properties within the area of potential effects.

c. ***Performance Based Navigation Implementation.*** The FAA will follow the systematic process for developing and

implementing PBN procedures and routes set forth under FAA Order 7100.41. This process includes the following stages: (1) preliminary activities, (2) development work, (3) operational preparations, (4) implementation, and (5) post-implementation monitoring and evaluation.

d. ***Community Involvement Manual.*** The FAA will be guided by the principles set forth in the FAA Community Involvement Manual during Steps One and Two above. These principles include involving the community early, facilitating inclusive participation through public meetings, and building trust through transparency.

e. ***Other Applicable Federal Laws.*** Other applicable federal laws may be identified during the environmental review process for Step One and Step Two and will need to be addressed by FAA consistent with FAA Order 1050.1F.

Petitioners' Obligations

8. **Procedures at Issue.** Petitioners agree the RNAV procedures covered in this Agreement are the Western RNAV Routes. Petitioners further agree that this Agreement does not require changes to any other existing procedures. Except as provided in paragraphs 5 and 6, this Agreement is limited to the Western RNAV Routes.

9. **Assist in Community Outreach.** Petitioners agree to cooperate with and the City of Phoenix agrees to cooperate with and assist the FAA in all community outreach efforts related to this Agreement. Such cooperation includes assisting the FAA with providing facilities, technical information, and advice regarding

public outreach and communications. City staff shall, in written and oral statements, support the implementation of Step One western departure procedures as providing the relief requested by the City of Phoenix during the course of the litigation.

10. **Consulting Parties in Section 106 Process.** Petitioners also agree to be consulting parties with the FAA in fulfilling the Section 106 requirements in implementing Step One and Step Two. This includes, but is not limited to, reviewing and commenting on any Determinations for Eligibility and consulting on the development of a Programmatic Agreement or Memorandum of Agreement (if necessary) pursuant to the regulations at 36 C.F.R. Part 800, *et seq.*

11. **Technical Consultation and Meetings.** The City of Phoenix agrees to identify an individual employed with the City of Phoenix Aviation Department who shall serve as a point of contact for the City during the process of PBN design and implementation identified in Paragraph 7.c for Step One and Step Two. The person identified as the City's point of contact or authorized representative shall attend all technical meetings called by FAA needed to implement Step One and Step Two, and the City agrees that any communication with the City's point of contact or authorized representative on Step One and Step Two shall be deemed to be actual and sufficient communication to the City regarding the PBN implementation process described in Paragraph 7.c and NEPA. The Historic Neighborhood Petitioners may also identify a point of contact to attend these meetings. If the Historic Neighborhood Petitioners identify no point of contact,

the City of Phoenix point of contact or authorized representative shall be deemed to be the point of contact for the Historic Neighborhood Petitioners and other neighborhoods in the City.

Miscellaneous Provisions

12. **Own Costs.** Each Party shall bear its own costs and fees, including attorney fees, in connection with this Agreement and the litigation giving rise to this Agreement.

13. **Authority.** The representative of each Party hereby certifies that he or she is duly authorized to enter into this Agreement. Petitioners represent that they have the full authority to perform all of the acts and obligations they have agreed to perform under the terms of this Agreement. The United States, acting though the Department of Justice and the FAA, represents that the FAA has the full authority to perform all of the acts and obligations it and the United States has agreed to perform under the terms of this Agreement.

14. **Copies and Counterparts.** It is contemplated that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same document. Facsimiles, hard copies, and scanned electronic copies of signatures including scanned electronic copies sent by email, shall constitute acceptable binding signatures for purposes of this Agreement.

15. **Defense of This Agreement.** The Parties agree to vigorously and actively defend this Agreement and all terms embodied therein as fair and reasonable, to vigorously and actively defend the same against any challenge by any individual or entity.

Petitioners may, but are not required to, intervene in support of this Agreement in any action brought by third parties against the FAA regarding this Agreement. The Parties further agree not to undermine directly or indirectly this Agreement or any terms set forth therein for as long as this Agreement remains in effect.

16. **Modification.** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties in writing. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all duly authorized representatives of each Party.

17. **Release.** Upon the date on which the mandate in the above-captioned matters is issued, the Petitioners and their heirs, administrators, representatives, attorneys, successors, and assigns, hereby release, waive, acquit, and forever discharge the FAA and all its respective officers, employees, and agents from, and are hereby forever barred and precluded from prosecuting, any and all claims, causes of action, and/or requests for relief asserted in these consolidated actions, except that this release does not apply to actions taken to enforce this Agreement or taken in response to a request or order by the D.C. Circuit in these consolidated actions.

18. **No Third Party Rights.** This Agreement is not intended to create, and does not create, any third-party beneficiary right, confer upon any non-party a right to enforce or sue for an alleged breach of the Agreement or generate any other kind of right or privilege for any person, group, or entity other than the Parties.

19. **Anti-Deficiency Act.** Nothing in this Agreement may be construed to commit a federal official to obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

20. **Effective Date.** This Agreement shall be effective upon the date signed by all Parties. This Agreement's continued effectiveness is contingent on the Court's Order of August 29, 2017, being amended in a manner substantially consistent with the proposed language for amending the Order in Paragraph 2.a.ii of this Agreement. In the event that the D.C. Circuit issues its mandate and any of the Western RNAV Routes are vacated as a result, then the Parties shall immediately be relieved of their obligations under this Agreement.

For the Federal Aviation Administration and Michael P. Huerta:

Date: 11/28/17

JEFFREY H. WOOD
Acting Assistant Attorney General

LANE N. MCFADDEN
Lane.McFadden@usdoj.gov
Attorney, ENRD Appellate Section
United States Dept. of Justice
PO Box 7415, Ben Franklin Station
Washington, DC 20044T: (202) 353-9022

For the Federal Aviation Administration:

Date: Nov. 17, 2017

Charles Trippe

CHARLES M. TRIPPE, JR.
Chief Counsel
Federal Aviation Administration

Date: November 17, 2017

James A. Lofton

JAMES A. LOFTON
Assistant Chief Counsel for Airports &
Environmental Law
Federal Aviation Administration

11/27/17

Jodi S. McCarthy

JODI MCCARTHY
Deputy Vice President for Mission
Support Services
Air Traffic Organization
Federal Aviation Administration

For the CITY OF PHOENIX, an Arizona municipal corporation

Ed Zuercher, City Manager

By: _____
James E. Bennett, A.A.E.
Director of Aviation Services

By: _____
Brad Holm
City Attorney

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Acting City Attorney

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For the Historic Neighborhood Petitioners:

By: _____
William Denney, President
Story Preservation Association, Inc.

By: _____
Robert Cannon, President
Willo Neighborhood Association

By: _____
Brent J. Kleinman, President
Encanto-Palmcroft Historic
Preservation Association, Inc.

By: _____
Andie Abkarian, President
Roosevelt Action Association, Inc.

For the Historic Neighborhood Petitioners:

By: _____
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By: _____
Andie Abkarian, President
Roosevelt Action Association, Inc.

_____
City Clerk

APPROVED AS TO FORM:

_____
Acting City Attorney

For the Historic Neighborhood Petitioners:

By: _____
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By: _____
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Roosevelt Action Association, Inc.

For the Historic Neighborhood Petitioners:

By: _____
William Denney, President
Story Preservation Association, Inc.

By: _____
Robert Cannon, President
Willo Neighborhood Association

By: _____
Brent J. Kleinman, President
Encanto-Palmcroft Historic
Preservation Association, Inc.

By: _____ VICE PRESIDENT BY DIRECTION OF
Andie Abkarian, President
Roosevelt Action Association, Inc.

APPENDIX A

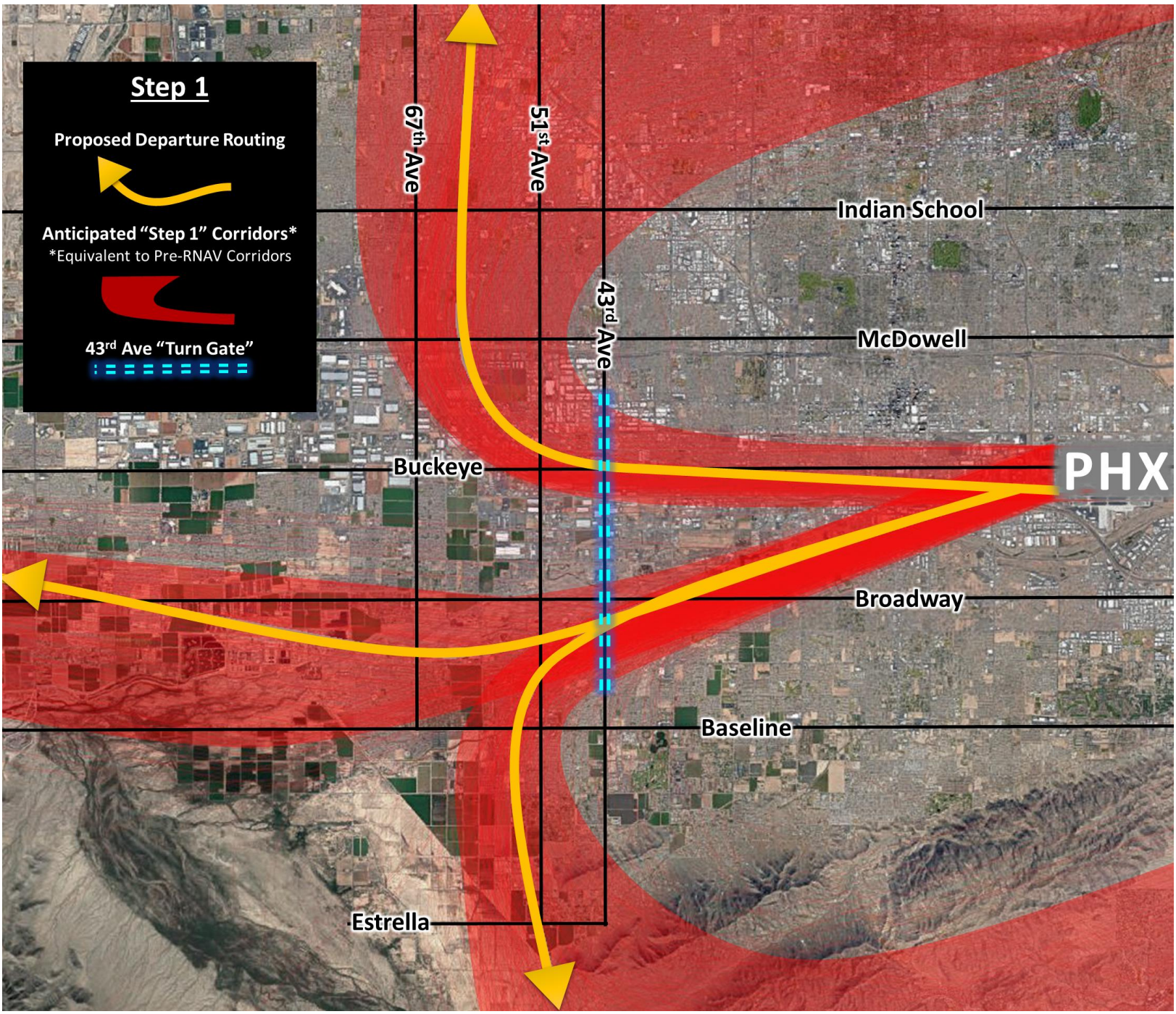
TABLE 1: STEP ONE FAA PROCESS FOR DEVELOPMENT AND IMPLEMENTATION OF LETTER OF AGREEMENT

Step/Task	Target Completion Date
Develop FAA Facility Letter of Agreement (LOA) Phase	April 1, 2018
Draft Letter of Agreement for Phoenix Terminal Radar Control and Phoenix Air Traffic Control Tower	Late November 2017
Secure National Air Traffic Controllers Association (NATCA) agreement on change	Early December 2017
Secure FAA Western Service Area Operations Support Group approval of Letter of Agreement revision.	Early January 2018
Complete Safety Risk Management process on change.	End January 2018
Provide NATCA formal notification of change for Impact & Implementation bargaining. (NATCA gets 30 days to determine Impact & Implementation accommodations.)	End February
Controller training	March 2018
Letter of Agreement implementation target date	April 1, 2018
Environmental Review Process Phase	End February 2018
Complete Initial Environmental Review Form (Appendix 5, FAA Order JO7400.2L) and supporting research, noise analysis, graphics/figures/exhibits. --Include noise modeling --Include environmental justice assessment --Include historic, parks, air, and other protected resources	End January 2018
Historic and other consultation with State Historic Preservation Office (SHPO), City Historic Preservation Office and other consulting parties (30-day comment period for historic and Tribal officials).	Middle February 2018
Publish environmental, noise, Step One description and Step Two scoping materials on FAA website prior to public meetings	February 2018
Community involvement meetings (same as Community Involvement Phase, below)	End February 2018
Determine and document level of NEPA review	End February 2018
Community Involvement Phase	End February 2018
Notification of community involvement meetings in local newspapers, outreach to contact list, City of Phoenix website, and FAA website	January/February 2018
Publish environmental, noise, Step One description and Step Two scoping materials on FAA website	February 2018
Hold three public meetings, including one in Northeast Phoenix	February 2018
Comment period in conjunction with public meetings	February 2018
Respond to public comments	March 2018

TABLE 2: HIGH-LEVEL STEP TWO FAA PROCESS FOR LONG-TERM PERFORMANCE-BASED NAVIGATION ROUTES AND PROCEDURES

Estimated start: May 2018

Step/Task	Expected Time
Phase 1 - Preliminary Activities	1-2 months
Consider Step One input and determine Step Two scope	
Notify public of Step Two scope and responses to comments from Step One	
Phase 2 - Design Activities	12-18 months
FAA route and procedure design process --City and Historic Neighborhood participation --Safety Risk Management and environmental reviews	
FAA public meetings and engagement regarding scope of alternatives	
Phase 3 - Development and Operational Preparation	12-18 months
FAA environmental analysis process	
Notification of community involvement meetings in local newspapers, outreach to contact list, City of Phoenix website, and FAA website	
Release draft environmental assessment for public comment	
Public meetings and engagement regarding scope of alternatives	
Consultation and coordination with SHPO, CHPO, Tribal representatives and other governments	
Finalize environmental assessment and determine final action	
Phase 4: Implementation of New Routes/Procedures	1-2 months
Public engagement and information consistent with Community Involvement Manual	
Phase 5: Post-implementation Monitoring and Evaluation	1-2 months
Public engagement and information consistent with Community Involvement Manual	

Appendix B

Step 1
Routing & Corridors