against GoJet. Therefore, the Court did not find that the FAA had abused its discretion when it terminated the VDRP self-disclosure proceeding and commenced a civil penalty action against GoJet.

Accordingly, the Court denied GoJet's petition for review.

Brittany Choun

Town of Barnstable, Mass. v. F.A.A., 740 F.3d 681 (D.C. Cir. 2014) (holding that the FAA's 2012 determination that the Nantucket Sound offshore wind farm posed no hazard to air navigation was reasonable, and an environmental impact statement was not required for the wind farm under NEPA because it would serve no purpose).

The U.S. Department of Interior approved a lease to Cape Wind Associates ("Cape Wind") for the development of an offshore wind farm in Nantucket Sound. Before beginning construction, the lease required Cape Wind to obtain a Determination of No Hazard to Air Navigation ("no hazard") from the Federal Aviation Administration ("FAA"). In 2009, the FAA determined the proposed wind turbines would have an electromagnetic effect on local radar facilities and conducted an aeronautical study. After the study, the FAA issued a no hazard determination because the proposed structures would not have an adverse effect on aircraft operating under visual flight rules ("VFR") under § 6-3-8(c)(1) of the FAA Handbook ("Handbook") because the structures were less than 500 feet high and did not affect takeoffs or landings.

The town of Barnstable ("Town") successfully challenged the FAA's no hazard designation in *Town of Barnstable, Mass. v.* FAA, 659 F.3d 28 (D.C. Cir. 2011) ("Barnstable I"). In Barnstable I, the court held that the no hazard determinations were inadequately justified because the FAA did not address whether the turbines would require a change in the regular course or altitude of VFR flights, which would constitute an adverse effect under § 6-3-3.

By 2012, the radar at a nearby airport had been upgraded and the FAA concluded the structures would neither exceed an obstruction standard nor have a physical or electromagnetic effect on an air navigation facility. Therefore, the FAA determined that the Handbook required no further adverse effects analysis. Although the FAA did not believe further analysis was required, the FAA hired a company to study the project's effect on VFR flights. The company determined there would not be a significant effect on VFR flights.

The Town filed a petition for review of the FAA's no hazard determinations, claiming the FAA failed (1) to analyze the safety risks to VFR

flights posed by the project and (2) to perform an environmental review under the National Environmental Policy Act (NEPA).

The court first addressed the issue of whether the FAA failed to analyze the safety risks posed to VFR flights by the project. According to § 6-3-3, "[a] structure is considered to have an adverse effect if it first exceeds the obstruction standards of part 77, and/or is found to have physical or electromagnetic radiation effect on the operation of air navigation facilities." The court agreed with the FAA's interpretation that § 6-3-3 is a threshold requirement, and if a structure does not meet either condition, then no further study is needed. Because the proposed structures did not violate an obstruction standard in part 77 and would not have a physical or electromagnetic effect on an air navigation facility, the FAA had no obligation to evaluate the effect of the project on VFR flights.

The court then addressed the issue of whether the FAA was required to perform an environmental impact analysis of the project under NEPA. Although Cape Wind was required to obtain a no hazard determination from the FAA, the determination is not legally binding. NEPA's "rule of reason" does not require the FAA to prepare an environmental impact statement (EIS) if it would not serve a purpose. Here, there is no purpose for an EIS because the determination is not binding and the Department of Interior had already prepared an EIS that was being challenged in another proceeding.

Accordingly, the court upheld the FAA's no hazard determination and denied the petition for review.

Matt Hoelscher

Almendarez v. BNSF Ry. Co., No. C13-0086-MAT, 2014 WL 931530, at *1 (W.D. Wash. Mar. 10, 2014) (holding that the motion for partial summary judgment on the issue of whether BNSF Railway Company violated the Federal Railway Safety Act is denied on the basis of genuine dispute as to the material facts, and declining to reach a determination on the request for an order determining undisputed facts.)

Plaintiffs, members of a BNSF construction group, alleged that BNSF Railway Company violated the Federal Rail Safety Act (FRSA) by threatening to terminate their employment if the group suffered anymore occupational injuries. Plaintiffs claimed that their supervisor, the group's construction roadmaster, indicated during a January meeting that the group's injury record was excessive in comparison to other construction groups, and advised the group of its termination if additional injuries oc-