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May 20, 2014

By Electronic Mail and Overnight Delivery

Atlanta Airports District Office
Attn: Lisa Favors
Environmental Program Manager
1701 Columbia Avenue, Suite 2-260
Atlanta GA, 30337-2747

Lisa.Favors@faa.gov

Re: **Notice of Intent to Prepare an Environmental Assessment for the Proposed Part 139 Operating Certificate and Related Actions at Paulding Northwest Atlanta Airport (Docket No. FAA-2013-0259-0415)**

Dear Ms. Favors and others:

These comments are in response to the Federal Aviation Administration (“FAA”) April 21, 2014, Notice of Intent (“NOI” or “Notice of Intent”) to prepare an Environmental Assessment (“EA”) for proposed actions at the Paulding Northwest Atlanta Airport (“PUJ”). It is submitted on behalf of six Paulding County residents and landowners: Jordan Louie, Janice Louie, Bob Board, Mary Board, Susan Wilkins and Anthony Avery (the “Paulding residents”). These individuals live near the Airport. They and many other Paulding residents will be directly affected by plans to convert this general aviation facility into a commercial airport. They will experience more aircraft noise, greater aircraft and vehicle emissions, more traffic congestion, deteriorated water quality, greater danger to threatened and endangered species, and other adverse environmental and socio-economic impacts.¹ Some of these residents

¹ The Paulding residents have already suffered harm from inadequate environmental reviews from prior actions associated with initial development of the general aviation airport and subsequent actions that were processed with minimal environmental review. Here, the Paulding residents address the FAA’s proposal to proceed with an EA to review the proposed actions. This does not reflect acquiescence by Paulding residents that an EA is sufficient under

also enjoy spending time monitoring and observing the Cherokee darter, an endangered species that serves as an indicator of water quality in streams near the airport.

Summary of Comments:

- As an initial matter, the EA process already has been irrevocably tainted by the selection of a biased EA contractor with a direct financial interest in the very proposal that is the subject of the EA. The Michael Baker Corporation and its subsidiary, the LPA Group, which formerly employed PUJ's Airport Director, continue to provide consulting services at PUJ today and have done so for over a decade. For this reason alone, the NEPA process should be delayed until the FAA steps in to select a contractor free of financial conflict.
- The NOI as well as the EA process fail to provide the public with an opportunity to understand and comment upon the cumulative effects of the many environmental, economic, social, and other impacts of connected and related actions, such as the Aerospace Technology Park, car rental facilities, and associated development.
- The FAA must provide assurances that it has sought the active participation and coordination of all affected federal agencies with subject matter expertise, including the United States Army Corps of Engineers ("ACOE"), the United States Fish and Wildlife Service ("FWS"), the Federal Highway Administration ("FHWA") and the United States Environmental Protection Agency ("EPA").²
- The FAA must also coordinate its environmental review with the Georgia Forestry Commission³, and the Georgia Department of Natural

NEPA and associated FAA environmental guidance. Indeed, we expect this EA will lead the FAA to conclude that these proposed actions require preparation of an Environmental Impact Statement ("EIS").

² For example, as provided in FAA Order 5050.4B, the scoping process outlined for Environmental Impact Statements ("EIS") scoping provides helpful information for scoping EAs. Para. 705.a. As part of the scoping process, the FAA should identify cooperating agencies and invite them to be part of the scoping process. Para. 910.

³ See, <http://www.gfc.state.ga.us/forest-management/state-forest-management/state-managed-forests/paulding/index.cfm>

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Resources⁴, state agencies that manage the Paulding Forest and the Paulding Forest Wildlife Management area adjacent to PUJ.

- The FAA must prepare a NEPA document that is complete, candid, and comprehensive to overcome the omissions of the past.
- In light of federal grant and statutory assurances of public use and non-discrimination, and because of inconsistent public statements by Paulding County as to its true intentions for PUJ growth, the EA must evaluate all reasonably foreseeable traffic forecast scenarios, including no growth, limited growth, and unconstrained growth. Only in this way will the FAA be able to fairly capture, disclose, and analyze all potential environmental impacts.
- With the world's busiest airport only 35 miles away, the FAA must use its expertise to evaluate thoroughly the project sponsor's "purpose and need," with a critical examination and comparison of the environmental consequences (or absence thereof) of adopting the no-action alternative: allowing the Hartsfield-Jackson Atlanta International Airport ("ATL") to continue to handle all of the region's domestic and international traffic.
- The FAA must obtain new studies to identify the impacts of the proposed actions on endangered species, water quality, storm water management, and protected parkland, especially since past efforts to address these subjects were flawed, incomplete, or not attempted.
- The FAA must scrutinize the unique financial arrangement between the Airport Authority and the untested, private financial backer of this proposal, to ensure that the Airport Authority retains the financial capacity to implement and maintain all mitigation measures, and to meet its debt obligations in the event that Silver Comet collapses financially, and anticipated air carrier service does not materialize, or in the more likely scenario involving Allegiant, comes and goes.

Comments on the Proposed Environmental Assessment:

This EA process needs to start anew because the contractor selected to prepare the EA is tainted by past and present economic ties to the airport sponsor, and cannot be expected to prepare an objective analysis. The Airport Authority recently announced the selection of the Michael Baker

⁴ See, <http://www.georgiawildlife.com/maps/hunting/region1>

Corporation as the contractor to prepare the EA. This selection violates NEPA because the Michael Baker Corporation and its subsidiary, the LPA Group, have a direct financial interest in the PUJ project. They have been and continue to be consultants to the airport sponsor(s), the project proponent.

In its regulations implementing NEPA, the Council on Environmental Quality (“CEQ”) provides at 40 C.F.R. § 1506.8(c) that “[c]ontractors shall execute a disclosure statement prepared by the lead agency or where appropriate, the cooperating agency, specifying that they have no financial or other interest in the outcome of the project.” CEQ has stated in a 1981 Memorandum, published in the Federal Register, that it defines “financial or other interest” in the project’s outcome “broadly to cover any known benefits other than general enhancement of professional reputation.”⁵

To preserve the integrity of the NEPA analysis, the contractor selection process must not only avoid the retention of contractors with actual financial conflicts, but also should avoid picking those whose engagement could create perceived impairments to objectivity. The Department of State’s NEPA guidance identifies four different scenarios that may create such perceived impairment. They include where: (1) the consultant/contractor has been involved with the applicant before the project is proposed or while it is pending with the Department; (2) the consultant/contractor has an ongoing relationship with the applicant; (3) the consultant/contractor would be called up to review its own prior work; or (4) the consultant/contractor has a financial or other interest in the outcome of the Department’s decision.⁶ The selection of the Michael Baker Corporation violates *each* of these prohibited scenarios.

It appears that the LPA Group has been involved as consultant to the PUJ Airport Authority dating back to the time PUJ existed only as a concept. The official minutes of Airport Authority meetings, beginning as early as Dec. 20, 2006, and continuing in 2007, 2008, 2009, 2010, 2011, 2012, 2013, and even this year show a repeated agenda item: “Construction Progress Update – the LPA GROUP.” Over time, these briefings were handled by several LPA Group employees, or by employees of the Michael Baker Corporation after the Baker Corporation acquired the LPA Group. As a result, the involvement by the LPA Group and thereafter by the Michael Baker Corporation in PUJ improvement

⁵ *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18027 (1981).

⁶ United States Department of State: Office of Inspector General, AUD-SI-14-20, February 2014, “Keystone XL Pipeline Project Compliance Follow Up Review” p. 4.

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activities has been extensive, sustained, and virtually continuous from before the time of the airport's founding. Indeed, the current Airport Director, Blake Swafford, is a former LPA Group employee. This situation does not satisfy the objectivity expected by CEQ or by the FAA when a contractor is selected to prepare either an EA or an EIS.

What is more, the LPA Group and the Michael Baker Corporation appear to have currently outstanding contracts with the Airport Authority to facilitate the very proposals that are the subject of the forthcoming EA. In a Technical Memorandum dated July 12, 2013, the Michael Baker Corporation prepared a preliminary noise analysis (Area Equivalent Model, or "AEM") for the proposed Part 139 Airport Operating Certificate at PUJ. On August 28, 2013, the LPA Group contracted with the Airport Authority for airport obstruction mapping, an Airport Layout Plan update, and an AEM to support the Part 139 application.⁷

In addition, the selection of the Michael Baker Corporation violates FAA procedures regarding contractor selection for airport projects for which a sponsor seeks federal reimbursement. These procedures also prohibit the award of a contract if a conflict of interest, real or apparent, would be involved. See, FAA A/C 150-510014D, at 205.a. Proceeding with the Michael Baker Corporation as the contractor here would also violate FAA criteria that supplement those of CEQ to maintain NEPA objectivity. Paragraph 204 and Appendix B of FAA Order 1050.1E contain provisions to guide third-party contracting. The agency recognizes that the intent of the CEQ/FAA regulation identified above "is to avoid conflicts of interest by those preparing impact statements." Order 1050.1E, App. B, ¶ 1 b.

Although Appendix B addresses requirements for EISs, it would be a mistake to read this admonition narrowly. A scenario where the FAA vigilantly protects the integrity of its EISs, but looks away when compromised contractors conduct the EA analyses, is neither credible nor acceptable, particularly where, as here, there has been no transparency in the award process, including the likely absence of competitive bidding for the EA work.

⁷ The LPA group prepared the Supplemental EA for the terminal area expansion project. That project is one of the enumerated proposed actions identified in the April 21, 2014, NOI. As a result, the contractor selected for this EA will be called upon to review its own prior work.

The conflict of interest presented by this contractor selection is even more egregious because the FAA has a special duty in this case to exhaustively and objectively assess the “no-action” alternative. If the no-action alternative is fairly presented and objectively evaluated, the FAA is likely to adopt it as the preferred alternative. But, because the Michael Baker Corporation has a financial interest in having the FAA approve the proposed actions at PUJ as presented by the airport sponsor, that contractor cannot provide the requisite objectivity.

The FAA recognizes that it “must independently evaluate the EA and take responsibility for its scope and content (40 CFR 1506.5(b)).” Order 5050.4B, ¶ 707. Here, the FAA may conclude that the proposed PUJ actions cannot be sustained with a FONSI. Therefore, it makes no sense to abandon use of the screening criteria that would clearly exclude this contractor from preparing a subsequent EIS. Moreover, if the FAA adopts an EA for PUJ that was prepared by a contractor with so obvious a financial conflict, it would be vulnerable to a challenge involving the integrity of the document. *See Greene County Planning Board v. Federal Power Commission*, 455 F.2d 412 (2nd Cir. 1972). As the FAA is aware, courts have found fault with FAA use of contractors in the NEPA process that have been selected and controlled by the Airport Sponsor, instead of the FAA itself. *See, Citizens Against Burlington, Inc., v. Busey*, 938 F. 2d 190 (D.C. Cir. 1991). Given the conflict here, of which the FAA is now on notice, the outcome of this tainted contractor selection process is unlikely to survive judicial challenge.

The FAA should not continue with this EA process until it has invited other federal agencies with interest and expertise in the project to participate. The April 21, 2014, Notice of Intent states: “The FAA is now inviting the public, agencies, tribal governments and other interested parties to provide comments, suggestions and input on the content of the EA.” Because there was no formal “scoping process,” see 40 C.F.R. §1501.7(a)(1), federal agencies and stakeholders with special expertise or permitting obligations for connected actions were not expressly invited to participate.

As a result, there is no assurance that the ACOE, the FWS, FHWA, the EPA, and possibly other interested agencies are aware of this NEPA process. There is no basis to presume these agencies understand the proposed actions pending at the FAA, their environmental impacts, or the relationship that may exist between the FAA decision-making and their separate regulatory responsibilities.

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The connection between FAA review and actions being evaluated by other Federal agencies at PUJ is highlighted in a March 28, 2014 letter from the FWS to the Georgia Division of the Federal Highway Administration (“FHWA”), commenting on potential effects under the Endangered Species Act of a proposed 2.2 mile road for the Aerospace Technology Park that is adjacent to, and will interconnect with, PUJ. In that letter, FWS questioned whether the proposed roadway constitutes a separate project from improvements that are the subject of the proposed EA.⁸ These interagency communications and interactions should include not just FWS and FHWA, but the EPA and other agencies. The FWS letter further underscores the need for interagency involvement, consultation, and coordination as part of the environmental review process to provide a comprehensive analysis of the environmental effects of the proposed actions within each agency’s areas of expertise.

The ACOE issued a Clean Water Act Section 404 permit, signed by the Airport Authority in April 2013, for actions involving the terminal area expansion project. Although the actions leading to this permit related to the conversion of PUJ into a commercial airport, the ACOE was not made aware of the actions to be studied in this EA or those actions’ potential water quality and other environmental impacts. Instead, the ACOE relied upon the 2010 Supplemental EA, an outdated document that disclaimed any intention by the sponsor to convert PUJ into a commercial facility.

The EPA has a duty under Section 309 of the Clean Air Act to assess the quality of the NEPA review about to be commenced by the FAA. It is in the sponsor’s interest, and that of the FAA as well, to include EPA in this process as early as possible.

The need for the FAA to reach out and engage other Federal agencies is especially great here, because as we next show, the Airport Authority and its affiliated entities have presented inconsistent and incomplete pictures of the proposed actions to various audiences.

Because the Georgia Forestry Commission manages the Paulding Forest adjacent to PUJ and because the Georgia Department of Natural Resources manages the Paulding Forest Wildlife Management Area, the FAA must coordinate and consult with each of these agencies as part of its environmental review of the proposed actions. PUJ was constructed in the middle of the Paulding Forest Wildlife Management Area. This management area totals more than 25,000 acres of state managed forest and wildlife

⁸ This document appears as Attachment A to this letter.

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management areas. This ecological and recreational resource was preserved through efforts of the State, Paulding County, non-governmental organizations and private entities such as the Jones Company and the Woodruff Foundation. As part of the FAA's examination of direct, indirect, and cumulative effects stemming from the proposed and connected actions, the FAA must include coordination and involvement of the key stakeholders in this preservation effort, including at a minimum, the Forestry Commission and the state Department of Natural Resources.

The FAA must prepare a NEPA document that is complete, candid, and comprehensive to overcome the omissions of the past. This NEPA process offers the opportunity to obtain a thorough and comprehensive evaluation of the potential costs and potential benefits and adverse effects of introducing commercial airline service to the Paulding Airport. There is evidence in the record that local authorities have disguised their ambitious plans for PUJ by segmenting review of connected projects and fragmenting that review among different agencies. In addition, critical decisions were made at private meetings or in public sessions that had no rules for allowing citizens to comment. When such key PUJ decisions were finally disclosed to the public, these officials announced a sharp reversal of plans for PUJ without any public discourse.

When PUJ was initially proposed as a new general aviation airport, the 2005 EA stated it would address "construction of the airport as a Level II facility."⁹ This level of service does not accommodate commercial operations. But even as early as 2005, the ultimate intentions of the county were uncertain and provoked the FAA to challenge the true project purpose because the proposed runway length was not clearly stated in the draft EA. At 6,500 feet, the proposed runway could clearly accommodate commercial aircraft, a feat somewhat more difficult if the proposed runway was only 5,500 feet in length. In its response, the sponsor relied upon an Airport Feasibility and Site Selection Study, which declared that the "County does not propose to construct a commercial service airport; rather, the airport would provide citizens of Paulding County with access to general aviation and vice versa."

County residents were encouraged to study a fact sheet prepared in 2005 by the-then County Director of Transportation, Blake Swafford, that contained twenty-four Frequently Asked Questions.¹⁰ In Question and Answer 5, the county addressed commercial operations:

⁹ Final Environmental Assessment, Paulding Northwest Atlanta Airport, 2005, p. 2-4.

¹⁰ This document appears as Attachment B to this letter.

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Q. Will there be cargo or commercial aircraft landing in Paulding County?

A. No. A 5,500-foot runway is being planned with a possible future expansion to 6,500-foot. Commercial and cargo operations generally require much longer runways. *The sites that are currently being considered for the GAA [General Aviation Airport] are not capable of being extended to a length that would be suitable for cargo or commercial operations.* Also, the runways, taxiways and apron areas are only being designed to meet general aviation standards and therefore could not be used by commercial or cargo planes. (Emphasis added.)

After the site was selected and as the airport was under construction, the Airport Authority was pursuing a proposed terminal expansion project at PUJ.¹¹ According to the Supplemental EA for this project that was completed in 2010, the airport already had morphed into a Level III facility, and reasonably foreseeable actions included “a 1,500 foot runway extension and construction of a perimeter access road to service future development adjacent to the Airport.”¹² However, when citizens expressed concern with the concept of a 7,000 foot runway suitable for commercial operations, they were assured that this “potential project is not planned to occur within the next twenty years.”¹³

On November 28, 2012, the Airport Authority signed an agreement with Silver Comet Partners, LLC, (“Silver Comet”) for a purported ground lease at PUJ conveying the exclusive right for the development of aviation and non-aeronautical services and operations.¹⁴ Nine months later, on August 28, 2013, the Airport Authority contracted with the LPA Group for a number of aviation services at PUJ, including Airport Obstruction Survey Mapping, an Airport Layout Plan Update, and an Area Equivalent Model Analysis for a Part 139 Certification, the authorization required to become a commercial airport.

¹¹ Supplemental Environmental Assessment – Terminal Area Expansion, 2010, Appx. C-3, Letter from Airport Authority to Georgia EPD, Jan. 23, 2009. Note that although this EA was completed in 2010, it was not “approved” by the Georgia Dept. of Transportation until 2011. We will refer to the document as the 2010 Supplemental EA.

¹² Supplemental Environmental Assessment – Terminal Area Expansion, 2010, p. 4-22.

¹³ *Id.*

¹⁴ The PCIBA, Airport Authority and Silver Comet entered into a Commercial Lease Agreement dated November 24, 2012, granting Silver Comet exclusive rights to develop the terminal as a commercial service terminal, including concession development.

The absence of candor continued. Remarkably, even as the Airport Authority was in contract negotiations with a consultant for the preliminary work needed to apply for a Part 139 certificate, it filed an application on December 27, 2012, to obtain a Categorical Exclusion from NEPA for approval and funding for a taxiway and lighting improvement project. Presumably, this proposal was intended as an upgrade of the ground facilities deemed inadequate for commercial or cargo operations just a few years earlier. Regrettably, the application was devoid of any reference to commercial service or a possible Part 139 certificate. The proposed Runway Safety Area project, for which approval was also sought on December 27, 2012, was equally silent on the potential for commercial service at PUJ. In all likelihood, the only reason these projects received Categorical Exclusions under NEPA was because of the decision of the Airport Authority to make no mention of its plans for commercial flights in these project applications.

These and other incremental actions have masked a long-term plan to convert this modest, bucolic general aviation field¹⁵ into a bustling hub intended to capture commercial traffic serving the Atlanta region. Through a series of incremental actions, the Airport Authority intends to make PUJ, located in the middle of a unique ecological resource, the anchor for an ambitious development initiative. There has been no public discussion as to the long-term, manifestly irreversible consequences of such action.

Whenever a new airport is proposed, the public should have the opportunity to participate in debating the economic, social, and environmental issues that such a proposal inexorably produces. Here, PUJ was proposed as a general aviation field. But, now that the plans for commercial operations are public, the FAA must use its forthcoming NEPA process to host the discussion about commercial service at PUJ that has not yet been provided.

NEPA is democratic at its core. In many cases, NEPA gives citizens their only opportunity to voice concerns about a project's impact on their community. When the government undertakes a major project such as constructing a dam, highway or power plant, it must ensure that the project's impacts – environmental and otherwise – are considered and disclosed to the public. And, because informed public engagement often produces ideas, information, and even solutions that the government might otherwise overlook, NEPA leads to better decisions – and better outcomes – for everyone. The NEPA process has saved money, time,

¹⁵ As described below, PUJ is literally surrounded by the 25,000 acre Paulding Forest Wildlife Management Area.

lives, historical sites, endangered species and public lands while encouraging compromise and cultivating better projects with more public support.¹⁶

The Paulding residents expect that the FAA will fulfill its NEPA duties and provide the appropriate review and documentation to facilitate the purposes of this law.

The FAA must reject assurances of modest impacts from limited commercial service at PUJ. Because past representations by airport officials have proven unreliable, the FAA should treat as highly suspect all forthcoming representations by the Airport Authority about projected commercial service operations. Just recently, the Airport Director told a local television station that he expected PUJ to receive only two commercial flights a week, once commercial operations are authorized.¹⁷ However, it would be arbitrary and capricious for the FAA to base its EA on such modest projections, for at least three reasons.

First, the sponsor's anticipated projections of modest impacts from a mere handful of flights cannot be squared with its stated intentions to develop PUJ as a regional hub for commercial flights. Surely, the true intentions were revealed when, in state court litigation involving the validity of issuing bonds to cover some of the PUJ improvements, the Paulding County/Airport Authority¹⁸ brief stated:

the Project the bond is intended to finance is one small piece of Appellees' [Paulding County/Airport Authority's] master plan to turn its small, relatively local Airport into a regional hub for commercial flights.¹⁹

This admission is fully consistent with other documents in which the County, Airport Authority and others have lauded the anticipated economic benefits of commercial service at PUJ, including projections of thousands of additional

¹⁶ <http://www.nrdc.org/legislation/nepa-success-stories.asp>.

¹⁷ <http://www.youtube.com/watch?v=3sIYEUNdsrQ&feature=youtube>.

¹⁸ The relationship between the County, the Airport Authority and the FAA is unclear. For example, the County has applied for federal funding as the airport sponsor, but the Airport Authority operates the airport and has entered into several contracts related to the development and operation of the airport, and is listed as the applicant on its Part 139 application.

¹⁹ Paulding County/PCAA Response Brief in bond validation appeal before the Ga. Sup. Ct., pp. 18-19.

jobs.²⁰ In essence, the Airport Authority wants to have it both ways: it portrays PUJ as the engine for robust economic growth, but for this EA, it seeks to assure the FAA that there will be only a few weekly flights whose impacts will be negligible.

The second reason the FAA should disregard all assertions of modest impacts is because, as a matter of law, the FAA would lack the authority to cap the level of commercial service at PUJ if it issues the airport its Part 139 certificate. Indeed, the FAA has long maintained that once a Part 139 certification is issued, any recipient of federal airport funds (such as PUJ) must accept all commercial service that seeks to use the airport on a reasonable, non-discriminatory basis.

This obligation finds its basis in the Federal aviation law, see 49 U.S.C. § 47107, which requires the recipient of FAA grants to make the airport “available for public use on reasonable conditions and without unjust discrimination” to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering service to the public at the airport. As the FAA stated in another EA involving a proposed Part 139 certificate and amendments to Operation Specifications (“Op Specs”):

A consequence of that Act [the Airline Deregulation Act of 1978] allowed airlines unrestricted choice as to which airports they serve. Other than to ensure safety, neither the Airport Sponsor nor the Federal Government controls where, when and how airlines provide their service. Public use airports, like Paine Field, cannot deny access to an airline if the aircraft they propose to use can safely operate at that facility.²¹

Similarly, the issuance or amendment of OpSpecs does not empower the FAA to limit the number of commercial operations an air carrier can conduct, once its OpSpecs are amended to include commercial operations at a particular

²⁰ <http://pauldingairport.com/sites/all/themes/haiku/documents/SilverCometFieldPressRelease.pdf>: “**It is anticipated that economic development activity at the airport could result in more than \$350 million in annual economic activity and thousands of jobs for Paulding County over the next decade.** . . . ‘Our partnership with Propeller and **our plans to bring commercial service to Silver Comet are a cornerstone of our economic development agenda** and our plan to stem the tide of 70% of our residents leaving the county each day for work,’ said County Commission Chairman David Austin. ‘Together with Propeller our investment will yield revenues for the County which will help keep taxes low. Private investment dollars spent on development around the airport will potentially create thousands of jobs in Paulding County by 2020. We are excited about this opportunity.’” (Emphasis added.) *See also* Paulding Chamber of Commerce, Open Letter to Residents of Paulding County (including projections of some 3,000 additional jobs).

²¹ Final Environmental Assessment, Snohomish Co., Paine Field, September, 2012, p. B-4.

airport. See, 49 U.S.C. § 44705, which does not empower the FAA to constrain the number of activities found to meet air commerce safety standards in the OpSpecs process.

The third reason why FAA should ignore projections of modest impact from granting the pending proposal: when other “modest” airports obtained similar Part 139 approvals, some experienced a swift deluge of commercial traffic. For example, at the small Mercer County Airport in southern New Jersey, Frontier Airlines operations went from zero to 73 weekly flights, serving approximately 17 destinations.²² In Mesa, Arizona, at the general aviation “reliever” field for Phoenix Sky Harbor, Allegiant now operates some 63 weekly flights to over 30 destinations.²³ In some cases, the presence of a nearby large commercial airport seems not to stem the flood of discount flights pouring into a reliever airport, as shown by the experience at Sanford, Florida, where Allegiant provides about 75 weekly commercial departures at an airport roughly 33 miles from the massive Orlando International Airport.²⁴

To summarize, the sponsor has declared its intention to build a regional hub at PUJ. The Airport Authority will be aided by funding from Silver Comet for substantial development adjacent to PUJ. Once a Part 139 certificate is issued, the FAA has no legal authority to impose limits on PUJ or on the air carriers serving PUJ, and the history of similar undertakings at other airports shows that a bustling schedule of many commercial flights is reasonably foreseeable. Therefore, any assurances by the airport sponsor that only modest impacts should be expected from the proposed FAA approvals are unreliable and have no place in this document. As the FAA observes: “Forecasts that are too high or too low will jeopardize the NEPA and decision making processes by affecting environmental and funding decisions.” Order 5050.4B. ¶ 504 b.

The FAA should use the EA to conduct an analysis of likely commercial flight operations as recommended by GRA, a nationally-recognized aviation consulting entity, as the basis for determining environmental impacts. Because the heart of the proposed actions involve converting a general aviation airport into a commercial airport, the FAA’s traditional reliance

²²http://www.nj.com/mercerc/index.ssf/2014/04/bucks_county_pa_group_sues_mercer_freeholders_frontier_airlines_and_faa_over_trenton-mercerc_airport.html. See also, <http://www.law360.com/articles/532739/faa-approved-nj-airport-expansion-sans-enviro-review-suit>.

²³ After just six years, the airline handles around 1.5 million passengers per annum at the airport. <http://www.anna.aero/2013/10/02/allegiant-air-the-worlds-second-most-profitable-airline/>.

²⁴ *Id.*

upon Terminal Area Forecasts is of very limited value in this EA for any purpose, other than addressing the “no-action” alternative. Therefore, the FAA should use other techniques to establish reasonably foreseeable numbers of commercial flights at PUJ. To assist in this process, GRA, a nationally recognized aviation and economic consulting entity, recommends use of sensitivity analyses to construct a range of scenarios. Also, the FAA should factor into its calculus the level of commercial flight activity commenced at other converted airports – Trenton/Mercer County, Mesa, and Sanford.

The FAA has many tools to accomplish these tasks. These include developing choice and regional distribution models to project both traffic diversion from existing airports and traffic stimulation due to new services. The FAA Aerospace Forecast for 2014, the forecasts for ATL, the ATL budget book, and ATL’s Master Plan Forecast, all provide helpful information that can be used for PUJ.

In developing range or scenario forecasts, the FAA should assess a variety of outcomes that capture the full range of reasonably foreseeable possibilities. The FAA should review at least three “demand scenarios:” a projection of what can be reasonably expected once commercial service begins; a demand that is significantly higher (including operations at full planned designed capacity and additional likely future improvements); and a demand that evaporates after the carrier withdraws from the airport. For each of these scenarios, the FAA should conduct a detailed noise analysis, using the latest version of the Integrated Noise Model (“INM”). The EA should include contours for all three forecast demand scenarios, showing contours at the Day-Night Sound Levels of 65, 70 and 75dB.

Also, the FAA should study the largest Origin & Destination markets in the Atlanta region, identify those that may experience higher than expected fares and markets that are arguably underserved. Allegiant, Frontier, and Spirit Airlines should get detailed scrutiny, especially since those carriers often focus on secondary airports. In addition, the forecasts must anticipate competitive responses by incumbent air carriers at ATL, which might include adding direct nonstop services at PUJ to meet the competition.

Because the expanded runway identified in the NOI can accommodate large passenger and cargo aircraft, the EA should employ similar analyses for potential freight service (and the extent of such service) at PUJ, along with use of traditional INM noise forecasting for freight operations at the several levels of possible service. The FAA also should anticipate the likelihood that the airport

sponsor will pursue additional actions and seek another supplemental EA to enable PUJ to handle even larger wide-body freight and passenger aircraft.

Most importantly, because the FAA at this juncture intends to prepare an EA, and not an EIS, it is imperative for the FAA to act prudently in establishing a projected level of commercial flights to predict the likely environmental impacts of the proposed actions. If the FAA is too modest in its projections, it is almost certain that the EA will understate the permanent, adverse environmental impacts; and any subsequent FONSI based on this EA would be fatally flawed.

The FAA must use its expertise to independently assess whether a legitimate “purpose and need” exists in designating PUJ as the second commercial hub airport in the Atlanta area. CEQ requires every EIS to describe the purpose and need for the proposed action. 40 C.F.R. § 1502.13 provides that “[t]he statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” This requirement also applies to EAs. 40 C.F.R. § 1508.9(b). For NEPA documents prepared for FAA actions, the responsible agency officials must ensure that the purpose and need for the action are rational, and are supported by current available data. FAA Order 5050.4B, ¶ 706(b).

Here, the “purpose” of the proposed action is to commercialize a general aviation field some 35 miles from the world’s busiest passenger airport. To attract commercial flights, the sponsor is developing the interconnected Aerospace Technology Park adjacent to PUJ. It expressly hopes to use PUJ as an economic spring-board for regional development. However clear the “purpose,” there is no apparent “need” for this project in any aeronautical sense. Therefore, the FAA must use its expertise to test the accuracy of any statement of need for commercial service at PUJ. GRA has recommended the tools the FAA should employ in this task. Independently, the FAA must also identify whether and how each of the twenty enumerated proposed actions in the NOI, as well as any additional proposed actions that the sponsor may present, are essential in satisfying the purpose and need.

This statement of purpose and need is critical to the NEPA process. If a sponsor contrives its project’s purpose and need in a narrow and artificial way, the resulting NEPA document forecloses consideration of reasonable and sensible alternatives. This approach has been condemned as an “obvious way for an agency to slip past the strictures of NEPA to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration.” *Simmons v. U.S. Army Corps of Eng’rs*, 120 F. 3d 664, 666 (7th Cir. 1997).

Accordingly, the FAA must use the EA to examine whether there is a true need for commercial operations at PUJ.

Importantly, the Paulding residents are not asking the FAA to assert federal authority over airport planning in the State of Georgia. Instead, we believe that NEPA's procedural requirements impose an obligation on the FAA to test the accuracy of any assertion by the project sponsor about the aeronautical need for the proposed action. The FAA should not abdicate its role to assess the accuracy and validity of purpose and need declarations.

The FAA must address the impacts upon the Atlanta regional air traffic system of commercial flights at PUJ. In past years, the FAA has devoted many resources to modernizing air traffic procedures at major metropolitan centers. These complex, multi-year efforts are intended to address increased levels of air traffic in an environmentally friendly manner, provide enhanced safety, reduce delays, and allow implementation of state-of-the-art air traffic management equipment. In the Atlanta region with its complex airspace, and numerous airports including the world's busiest passenger airport, ATL, the FAA has made a host of improvements in the airspace, and it continues to propose new ones. See *Environmental Assessment for Atlanta Optimization of Airspace and Procedures in the Metroplex*; March, 2014.

However, it is almost certain that if the FAA approves commercial operations at PUJ, the agency also will be required to develop new air traffic procedures for PUJ, and that these new procedures will conflict with existing and proposed airspace management measures for the overall Atlanta region.²⁵ The EA for PUJ needs to address this potential for two reasons. First, any new PUJ procedures that interfere with existing or proposed airspace procedures for ATL would result in flight delays to and from ATL, causing aircraft to consume more fuel and produce more emissions. The environmental implications of delaying flights serving the world's busiest passenger airport need to be weighed against purported benefits (if any) of new air traffic procedures that would be required if commercial operations began at PUJ.

Second, the EA must include a cost-benefit analysis in environmental terms, the outcome of which may depend upon an accurate statement of purpose and need. If the "need" for commercial operations at PUJ is because the sponsor has established a compelling demand for a new regional hub, then perhaps it may make sense to compromise flight path efficiency at ATL. But, if the true need for the proposed action is largely to provide economic benefit to Paulding

²⁵ See, *Atlanta Aviation Capacity Study Phase II, Executive Summary*, p. 8, (May, 2011).

County, the EA should assess whether that parochial interest warrants delaying the flights of millions of passengers at ATL, and thereby causing higher aircraft fuel consumption, more emissions and wasting federal funds on an unneeded commercial service airport.

The FAA must rigorously examine all reasonable alternatives to the proposed action, including the “no-action” alternative and other options that are not within the control of the project sponsor. This EA must contain a robust identification and examination of all reasonably foreseeable alternatives to the proposed action. As the FAA notes, the EA section on Alternatives “is based on the Purpose and Need Statement.” Order 5050.4B, ¶ 706 d. This order also observes that “[w]hen developing reasonable alternatives for NEPA purposes, the scope of alternatives must include ... those reasonable alternatives outside the airport sponsor’s and FAA’s jurisdiction (40 CFR 1502.14(c). *Id.* at ¶ 504 d.(2).

This proposed action involves transforming a recently constructed aviation facility into something much different from that contemplated by the FAA and the public when the airport was approved. Therefore, it is critical that the EA’s “no-action” alternative receive more than administrative genuflection. The FAA needs to assess whether, in the absence of a Part 139 certificate to PUJ, the commercial aeronautical needs of the Paulding County area are likely to be met by facilities at ATL. Further, in light of the anticipated decline of federal Airport Improvement Program funding for future airport infrastructure and environmental improvements, the EA should assess whether rejection of the no-action alternative means that less federal funding is likely for improvements at ATL and other existing commercial service airports in Georgia and other states throughout the FAA Southern Region. The EA should discuss all the potential effects of such an occurrence.

The range of alternatives an agency must examine under NEPA was resolved two years after the statute was enacted, and that duty has not changed. In *Natural Resources Defense Council v. Morton*, 458 F.2d 827 (D.C. Cir. 1972), the D. C. Circuit held that an agency must consider a broad array of alternatives, including those that are beyond the statutory authority of the agency preparing the NEPA document. Moreover, an agency cannot disregard an alternative simply because it is not a complete solution to the problem. *See, NEPA Law and Litigation*, D. Mandelker, § 9.19, p. 9-50.

For these reasons, the FAA needs to consider alternatives involving commercial operations at other general aviation airports in the Greater Atlanta region. This is not unplowed ground; preliminary regional feasibility studies go back to at

least 1974. *See*, City of Atlanta, Dept. of Aviation, Preliminary Feasibility Study of Paulding/Polk County Airport Site, Sept. 1974. As recently as May, 2011, there was another Atlanta Metropolitan Aviation Capacity Study addressing some 13 regional facilities. This legacy of analysis and the recommendations contained in these many studies should be addressed in the EA for PUJ, and these studies should be updated as appropriate. Any examination of alternatives that ignores this body of work would compromise the EA's assessment of alternatives, a process that courts have called the "lynchpin" of NEPA's environmental analysis. *Monroe Cnty. Conservation Council, Inc. v. Volpe*, 472 F. 2d 693, 697-98 (2nd Cir. 1972).

The FAA's study of the affected environment for this EA must include an examination of matters barely considered or ignored in earlier NEPA documents prepared for PUJ. As a result of the December, 2013, settlement with the FAA in the U.S. Court of Appeals for the District of Columbia Circuit, the Categorical Exclusions issued for PUJ's taxiway and lighting improvement project and the runway safety area project are subsumed into the environmental review for the proposed actions listed in the NOI, and will be addressed as cumulative impacts. Additionally, the Supplemental EA prepared in 2010 for the Terminal Area Expansion project has been effectively supplanted by this action.²⁶ FAA NEPA procedures require detailed analysis of impacts and affected environmental aspects that may have been given only cursory consideration or were ignored in earlier FAA environmental processing.

Conceptually, this duty is not in dispute. In the Notice of Intent, the FAA stated: "In addition, the EA will consider the cumulative impacts of airport improvement projects recently completed at PUJ including a runway safety area and a taxiway widening and lighting project." Therefore, the FAA should apply section 707 e. (1) of Order 5050.4B: "To complete the EA's cumulative analysis, the Affected Environment section should include critical background information of past, present, and reasonably foreseeable future actions."

The FAA must address a number of topics in detail to correctly assess the affected environment, and to create an accurate baseline by which to measure the reasonably foreseeable environmental impact of the proposed actions. Of course, Order 5050.4B contains detailed procedures for any EA to follow, including the standard list of subjects that every EA must address. But, in addition to those familiar subjects that must be included in any EA, the FAA

²⁶ The work addressed in the 2010 Supplement EA has not been completed. Moreover, as of 2014, the current proposals for terminal area expansion are substantially different from the proposal considered in the 2010 document.

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must pay particular attention to the subjects discussed in the subsequent sections of these comments.

The FAA must correct errors and omissions in the 2005/2010 EAs with respect to threatened and endangered species, and conduct a Biological Assessment of the likely effects of the proposed actions. The PUJ airport is located in the headwaters of Bluffy Creek, a tributary of Pumpkinvine Creek in the Etowah River watershed. These headwaters are known to harbor populations of a federally protected fish species, the Cherokee darter (*Etheostoma scotti*). As described in the attached report by the nation's foremost Cherokee darter expert, Dr. B.J. Freeman of the University of Georgia, the Airport Authority arranged for research in 2004 into nearby stream reaches that found Cherokee darters in 11 of 18 reaches.²⁷ Dr. Freeman reports that a subsequent sediment release from an erosion control structure at PUJ caused the FWS to request another survey in 2007. This second study found the darter again at 11 of 18 sites and concluded stated that monitoring to assess whether the darter was affected by construction at PUJ showed no adverse effects upon the fish. However, as outlined in his report, Dr. Freeman disputes that conclusion and states that it cannot be relied upon for this environmental review.

Dr. Freeman's report also finds significant deficiencies in the Airport Authority's twice-annual monitoring plan, which included fish surveys and habitat monitoring at three sites on streams draining airport property. Dr. Freeman notes that the monitoring plan focused on a tolerant minnow species, which has no bearing on the question of whether the darter is suffering from construction impacts. Conveniently, this monitoring of an irrelevant fish occurred at sites where no darter had previously been found (and in stream segments well upstream of likely darter habitat). As a result, an accurate assessment about the presence of darters over time or changes in their abundance due to construction could not be made. Other obvious defects are described in Dr. Freeman's report. Based on his personal observation of this endangered fish, and his long career studying them, he recommends that FAA evaluate the potential effect of the proposed actions on the darter in this watershed and prepare a Biological Assessment. This assessment should include areas not previously addressed because streams in those areas may be receiving sediment and chemical runoff from PUJ that could harm the Cherokee darter.

²⁷ This document appears as Attachment C to this letter.

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In addition, the Airport Authority plans call for the development of a 1,000 acre tract north of highway 278. That development would impact the Raccoon Creek watershed, which is known to support both Cherokee and Etowah darters. The FWS, the Southeast Aquatic Resources Partnership, the National Fish Habitat Partnership and several other partners have invested significant resources – including significant federal grant funds – into restoring and protecting this important habitat. Accordingly, as part of its environmental review for the proposed actions identified in the NOI, the FAA must also assess the potential impacts to the Raccoon Creek watershed and should coordinate its assessment closely with experts from FWS.

The FAA must re-examine the practices and procedures developed in the 2005/2011 EAs with regard to water quality because those plans were never fully implemented and are ineffective. An adequate EA also will require a new comprehensive examination of the impacts of PUJ on streams, water quality, stormwater management and other related concerns.

Dr. Freeman's concerns about protected fish and the need for assurances of good water quality in their streams are reinforced by a report from the highly-regarded water quality experts at Nutter and Associates.²⁸ Nutter and Associates notes the multiple efforts for expansive industrial, commercial, and residential development in connection with the proposed airport development plan. For example, Paulding County recently proposed sanitary sewer improvements to serve not only PUJ, but also future nearby residential, commercial and office park developments. Some of the initial infrastructure for the sewer system has already been constructed. Because these anticipated activities are reasonably foreseeable (see below), the FAA must determine whether the combination of the proposed actions and these related activities will have significant environmental impact. To do so, the FAA cannot rely upon past studies conducted by the Airport Authority for earlier NEPA documentation.

The Nutter and Associates report demonstrates the inadequacy of the current airport regime to monitor for sedimentation and other potential water quality impacts associated with past, present, and future airport construction and operations. The report's conclusions are based on several factors: the last assessment of stream bed sediment in airport receiving streams was conducted in 2006, long before much of the past and present construction had begun;

²⁸ This document appears as Attachment D to this letter.

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these nearby streams have steep slopes, and there is the potential for additional catastrophic sediment releases during construction. High turbidity measurements have been collected at long-term in-situ monitoring stations.

Nutter and Associates also finds woefully inadequate the water quality monitoring program that was proposed in 2006. Much of the 2006 water quality plan has never been implemented. Critical portions of the plan exist only on paper. Thus, there is no credible mechanism to assess the water quality impacts of current or future construction and operations at PUJ. Instead, the plan's promises are a hollow harbinger of future airport assurances. Other defects include the failure to provide the FWS with the promised, detailed analysis of continuous in-situ monitoring of airport receiving streams, and the failure to provide basic quality assurance and normal stream sampling procedures.

With respect to stormwater management, these deficiencies present especially critical concerns for a development of this size. In fact, the present stormwater regime is even more deficient than the plan for water quality monitoring. A 2007 stormwater plan was prepared for the original airport construction. Another report was prepared in 2010 for the proposed terminal area expansion. However, as described in the Nutter and Associates report, gross inconsistencies exist between the two plans involving the calculation of projected discharge rates. Moreover, these discrepancies may have allowed PUJ to avoid installing more robust stormwater infrastructure to meet the Etowah Habitat Conservation Plan standards.

Inadequate or under-designed stormwater infrastructure can lead to faulty assumptions involving a project's construction and operational impacts. Defective infrastructure can lead to detrimental impacts to aquatic habitats as a result of thermal instability, increased erosion and sedimentation, and degraded water quality. To prevent such outcomes, the FAA should conduct a detailed and comprehensive review of all aspects of the 2007 and 2010 stormwater management plans at PUJ.

In correspondence involving the 2005 EA, the FWS asked the FAA to implement an "intensive water quality monitoring program." The purpose of this request was to enable testing to compare pre- and post- construction impacts on water quality. However, data collection did not begin until October 2006, around the time that construction of the airport began. Data collection continued through January 2011, but because it began so late, there is a paucity of pre-construction data to assess the effectiveness of the then-proposed stormwater infrastructure.

Thermal stability is a critical aspect of healthy aquatic habitats. Bluffy Creek is protected by state standards that limit temperature change to 2 degrees C. However, Nutter and Associates detected a greater than permitted temperature swing in more than 53 percent of the monitoring events. While it is unclear what caused this variation, the repeated occurrences of these unacceptable variations in stream temperature compels the FAA to address this concern in the EA and require that the sponsor provide mitigation measures (if such measures exist) that will assure protection of the stream.

The Cherokee darter and Etowah darter are not the only species that the FAA must address in its environmental review. Several native bat species also inhabit this area, but to date, there has been no adequate or comprehensive assessment of the effects of the current or future airport and related development on these species. An assessment of the area surrounding the airport site shows suitable roosting and foraging habitat for two already listed endangered species, the gray bat, (*Myotis grisescens*), and the Indiana bat (*Myotis sodalist*), and similar conditions for the soon-to-be listed endangered Northern long-eared bat (*Myotis septentrionalis*). The available bat habitat in the airport vicinity includes mature hardwood forests, rock overhangs along Bluffy Creek, and tributaries, caves and the abandoned Yorkville gold mine that bats currently occupy on a seasonal basis.

In addition, the northern long-eared bat is scheduled to be listed under the Endangered Species Act this fall. It has been documented using the forested habitats surrounding PUJ and has been found to be present on airport property. Other bats have also been documented in the vicinity of the airport. With documentation of these bats' existence in the area, the FAA must address the effects not only of stormwater runoff, but de-icing runoff at PUJ that could invade creeks and streams where the bats live and catch insects. The EA must include a study of bioaccumulation: bats eat half their weight in insects each night, and the presence of toxic runoff could have significant adverse effects. Noise and light pollution have long been known to have a negative effect on a variety of animals, including bats. Also, the cumulative effects of proposed economic development on many acres of land in the vicinity of PUJ further support detailed consideration of the direct, indirect and cumulative impacts of the proposed action, and connected actions on bats.

If PUJ receives its Part 139 certificate, it will be required to prepare a snow and ice control plan for FAA approval. Chemicals used in de-icing and anti-icing fluids include propylene and ethylene glycol, urea, salts, and chemicals that contain toxic agents. These chemicals have been shown to be harmful, if not toxic, to fish and other organisms in streams receiving run-off from airports.

Because of the documented presence of the Cherokee and Etowah darters in streams near PUJ and the presence of bats, the EA must evaluate the Airport Authority's plans for attenuating and treating these chemicals. The FAA should also impose long-term monitoring of outfalls, receiving streams, and reference streams. Because the impacts of these chemicals on the protected species cannot be mitigated, the EA must contain a rigorous plan for imposing protective conditions on these activities.

As described earlier, the FWS recently declined to concur in a determination by the FHWA that proposed construction of a new, 2.2 mile road immediately adjacent to PUJ and serving the Aerospace Technology Park will have no effect on the Cherokee darter and the Northern long-eared bat. In a letter dated March 28, 2014, the FWS raised concerns about the potential for stormwater runoff to adversely impact downstream habitat for the darter, and for economic development associated with the roadway, as well as roadway traffic, to adversely impact the northern long-eared bat.²⁹

The FWS also asked FHWA to explain if the 2005 EA and corresponding FAA Record of Decision "included the effects of economic development on the whole site." Confronted with these recent concerns from the agency charged with the administration of the Endangered Species Act, the FAA should conduct a Biological Assessment and use the EA to address the effects of construction and operation of the airport, the Aerospace Technology Park, and the related development upon all protected species.

The FAA must also address the cumulative and indirect effects of other actions that will flow from approval of the Part 139 certificate or that rely upon the proposed improvements at PUJ for their utility. It is the FAA's duty to go beyond a comprehensive analysis of the likely direct impacts stemming from the proposed actions, and provide similar detailed scrutiny to the cumulative and indirect effects that can be expected from these and from other connected actions. As defined by CEQ, cumulative impacts are:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7.

²⁹ This document appears as Attachment A to this letter.

In *Grand Canyon Trust v. Federal Aviation Administration*, 290 F. 3d 339 (D.C. Cir. 2002), the EA prepared for a replacement commercial airport was held inadequate because the FAA had not addressed the cumulative impacts of flights in the area that did not use the proposed new airport. Here, Paulding County has indicated that there would be taxiway access from the proposed Aerospace Technology Park. That facility, accordingly, is a connected action both factually and legally, and should be analyzed as such. In addition, its impacts should be captured in the cumulative analysis.

CEQ states that indirect effects are those

caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. 40 C.F.R. § 1508.8(b).

In Paulding County's economic development materials, the County asserts that "key features of the airport include a 190-acre Aerospace Technology Park with direct access to taxiway and runway access, 1,000 additional acres directly across from the airport entrance, and many opportunities for growth."³⁰ Clearly, the airport and the surrounding commercial development go hand-in-glove, and the direct and indirect impacts of both must be addressed in the EA. Because the Part 139 certificate, the terminal area expansion, the other on-site improvements and the Technology Park are all "connected actions" under NEPA, the FAA should have identified these connected actions in its Notice of Intent and announced its commitment to address the environmental impacts of all these related activities.

As a result of business development proposed at PUJ and its environs, a regional commercial hub airport complete with a business/technology park, if successful, can be expected to produce hotels, rental car facilities, air freight companies and all the indicia of commercial development associated with any

³⁰ Another Economic Development document asserted: "Paulding Aerospace Technology Park is a county-owned business park located at Silver Comet Field at Paulding Northwest Atlanta Airport [PUJ]. The Park has opportunity for zone designation and is ideal for aircraft and completion centers, maintenance repair overhaul (MRO) operations, aircraft suppliers and avionics companies. The site is being developed through a partnership between Propeller Investments, Paulding County Airport Authority (PCAA) and Paulding County Industrial Building Authority (IBA). Incentives available to new and expanding businesses at the airport are among the highest in Georgia. Propeller Investments has the ability to finance and lease buildings of any size. The Park can accommodate over 800,000 square feet of hanger, assembly and MRO space." This document appears as Attachment E to this letter.

busy airport. The EA must address this entire package. In doing so, an emissions inventory should be completed to assess the air quality impacts of all this proposed development. New controlled intersections could require more detailed analysis.

According to local press reports, a spokesperson for Silver Comet Partners told the Airport Authority that “prospects like the area’s workforce and the site’s undeveloped nature but want an airport offering passenger service because of the security and emergency response requirements the Federal Aviation Administration requires under Part 139 certification regulations.”³¹ The relationship between the Part 139 certificate application and the proposed business/industrial park at PUJ is the opposite of that discussed by the Tenth Circuit in *Airport Neighbors Alliance v. United States*, 90 F. 3d 426, 431 (10th Cir. 1996) (determining that no “inextricable nexus” existed between a runway upgrade and other components of an airport master plan – e.g., expansion of the passenger terminal, construction of a second parking structure, construction of a new cargo terminal, and expansion of surface access roads).

The indirect effects in Paulding County from such new economic development are similar to those claimed for a highway interchange in *City of Davis v. Coleman*, 521 F. 2d 661 (9th Cir. 1975). There, the Ninth Circuit held that the decision to address only impacts of highway construction violated NEPA. It ruled that because the project had been proposed, in part, to stimulate the economy, NEPA required an analysis of the environmental impacts of such proposed stimulus. The FAA should follow *City of Davis*, and prepare a robust evaluation of impacts involving not just operations at PUJ, but also the air, water, noise, traffic, and likely socio-economic consequences, and impacts to biological resources (including flora and fauna), attendant to the creation of an entire commercial complex, supporting a Part 139 airport in a formerly rural setting.³²

³¹ Neighbor Newspaper, statement by Mark Reichin reported by Tom Spigolon, April 23, 2014.

³² Indeed, the County opened PUJ in 2008 “as part of a continuing commitment to their economic development agenda.” <http://pauldingairport.com/sites/all/themes/haiku/documents/SilverCometFieldPressRelease.pdf>.

Connected actions are those that “are closely related” to the Part 139 certification process and possible amendments of OpSpecs because these other actions cannot or will not proceed unless the proposed action now before the FAA is approved. They may also be interdependent parts of a larger action and depend on the larger action for their justification. 40 C.F.R. § 1508.25(a)(1). These actions include the number of commercial flights projected for PUJ following the amendment of carrier OpSpecs. The FAA must also address all foreseeable effects and associated impacts of widening and lengthening the runway as connected actions, including commercial aircraft that could be accommodated and night cargo operations. For example, widening the runway from 100 feet to 150 feet and an additional 500 feet in runway length would make it possible for FedEx, UPS and other freight carriers to operate wide-body cargo jets into PUJ during the night or early morning hours. Noise and other impacts of this service should be analyzed.

If the workforce projections advanced by the Airport Authority are achieved as a result of this project, the County will need new schools; it may need additional law enforcement and other public safety services. Indeed, the County may have recently paid to build a new fire station at the airport that is expected to serve the airport, the technology park, the other planned developments and the existing neighborhood. All this projected growth will surely also require new and improved highways. This bold transformation may produce some benefits (if destroying the rural quiet setting that attracted many citizens to Paulding can be viewed as a benefit), but it also is likely to produce profound environmental disruption. Because all of this change is tied to the Airport Authority’s ambitious proposal, the FAA must address these impacts in the forthcoming EA. Indeed, these impacts are probably the reason that Order 5050.4B provides in ¶ 903b(1) that the proposal for a new commercial service airport in a Metropolitan Statistical Area normally requires an EIS.

The FAA should expect opposition to such a robust analysis. Surely, there will be those who will not want the FAA to take the time or spend the resources to address all the facets of this transformative proposed action. However, if these issues are not addressed now, they will never be given detailed consideration in any subsequent decision-making. Once the first one carrier has its OpSpecs approved, the second and third applicants will certainly receive less scrutiny. If a carrier decides to increase its operations at PUJ, as Frontier has done at Trenton/Mercer County, there is no NEPA or regulatory mechanism to address the changed environmental circumstances that will surely follow. Future steps to lengthen the runway to 7,000 feet will seem modest and inconsequential. Truly, this is a “now-or-never” situation.

The current EA gives FAA the opportunity to correct an important error in the 2005 EA and achieve compliance with Section 4(f) of the Department of Transportation Act as part of its review of these proposals and to analyze impacts to the approximately 6,000 acres purchased by the state and added to the Paulding Forest in 2008. To build PUJ as originally proposed, the Airport Authority acquired about 162 acres of land from the 10,000 acre Paulding Forest Tract, a parcel owned by the City of Atlanta. In response to the expected inquiry as to whether federal funding for this acquisition and use might trigger the protections of section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c), the 2005 EA stated that “the primary function of the Paulding Forest is for timber harvesting and management” and that “since the Wildlife Management Areas do not primarily function as a park or refuge and are not considered significant as a park or refuge, then Section 4(f) does not apply.”

The 2005 EA statement was only partially accurate. In fact, a quick review of the current Georgia Forestry Commission website, shows that the Paulding Forest is managed for other purposes as well as timber management. Other additional purposes include wildlife habitat, and protection from natural and human-caused damage.³³ Recreational uses of the forest include hiking, bird-watching, primitive camping, canoeing, fishing and others. Also, a portion of forest land acquired for airport expansion includes a tributary to Bluffy Creek where Cherokee darters were seen. As stated earlier, Etowah darters have also been noted in the area, in particular in relation to the 1,000 acres of land across the highway from PUJ. In this more realistic view, the forest takes on the character of a protected Section 4(f) resource.

The imminent EA process and pending applications provide the opportunity for the FAA to correct this oversight and apply section 4(f) to the ongoing and proposed actions at PUJ. Section 4(f) regulations provide that even after a ROD is issued, a separate section 4(f) analysis is required if there are proposed modifications to the original action that would result in a substantial increase in the adverse impacts to a protected property. 23 C.F.R. § 774.(c)(3). Now, the FAA has the opportunity to assess the extent to which the proposed actions could cause a direct or constructive use of the forest property and its resources.

The FAA must transcend any reticence to use a NEPA document to examine financial arrangements; here, it must review the contracts

³³ <http://www.gfc.state.ga.us/forest-managment/state-forest-management/state-managed:forests/paulding/index.cfm>

between the Airport Authority and the investors to assure the integrity of environmental mitigation measures. It is also necessary for the FAA to look at the environmental consequences if the rosy predictions of economic success at PUJ do not occur. When an airport sponsor asserts that a Finding of No Significant Impact is the appropriate outcome for the proposed actions, it is imperative that the FAA make certain the sponsor has the capacity to accomplish all of the mitigation that made a Finding of No Significant Impact possible. If critical mitigation measures are not assured, it will be extremely difficult to demonstrate that the proposed project “may not cause significant degradation of some human environment factor.” *Ctr. For Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F. 3d 1172, 1219 (9th Cir. 2008).

The FAA duty, in this regard, is critical because the air carrier most likely to be the first to initiate service at PUJ is Allegiant Airlines, a notoriously fickle carrier that has stranded many an airport suitor after only briefly serving that airport.³⁴ If Allegiant were to only briefly serve PUJ, its departure may deprive the Airport Authority of the revenues needed to perpetuate the environmental mitigation the FAA may deem necessary if it issues a FONSI. The Airport Authority may also lack sufficient funds to pursue Allegiant or any other carrier, through litigation or otherwise, for failing to provide required mitigation measures.

This potential for financial inadequacy to fund mitigation is likely exacerbated by the unusual financial arrangement between the Airport Authority and Silver Comet/Propeller Group. While it is not the role of the FAA to assess an airport sponsor’s contracting sagacity, the FAA needs to assure the public at large that the mitigation measures discussed in the NEPA document and relied upon to justify a Finding of No Significant Impact are not hollow blandishments. As a result, the FAA must use the EA to provide a public review of the contractual arrangements between the airport sponsor and the commercial benefactor. Only then could the FAA, other governmental entities, and the public treat as credible any promises of environmental mitigation coming from the Airport Authority.

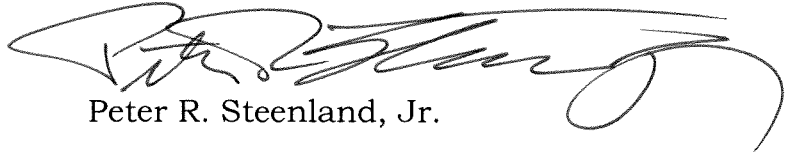
³⁴ In Abilene, TX, Allegiant service lasted only seven months. A local entity spent \$135,000 promoting that service. In Bakersfield, CA, Allegiant service lasted for eight months. In Baton Rouge, LA, a \$430,000 incentive plan approved by the City Council resulted in no service at all, and 700 ticket holders were left stranded. Other cities with similar ephemeral Allegiant experiences include Columbia, SC, Fayetteville AK, Forbes KS, Gulfport-Biloxi MS, Champaign-Urbana IL, Huntsville AL, Kinston NC, Lafayette LA, Lincoln NB, Saginaw MI, Madison WI, Worcester MA, Pueblo CO, and others.

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Conclusion:

The proposed transformation of PUJ is not a routine proposal normally addressed in an EA; the FAA must give this extraordinary initiative the detailed attention it deserves. For the reasons set forth herein, we strongly encourage the FAA to heed these comments and prepare an environmental analysis worthy of the agency's long tradition of NEPA excellence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter R. Steenland, Jr.", written over a horizontal line.

Peter R. Steenland, Jr.

Counsel for the Paulding Residents