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FOUNDED 1866

**By Electronic Mail and Federal Express**

November 3, 2015

The Honorable Reggie Govan  
Chief Counsel  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591

Ms. Lisa Favors  
Environmental Program Manager  
Atlanta Airports District Office  
Federal Aviation Administration  
1701 Columbia Avenue  
Suite 200  
Atlanta, GA 30337-2747

**Re: Request to Reissue Public Notice, Extend the Public Comment Period,  
Reschedule and Relocate the Public Hearing, and Provide a Separate Docket  
for Paulding Northwest Atlanta Airport (“PUJ”)**

Dear Mr. Govan and Ms. Favors:

On behalf of my clients, who are landowners near the Paulding County Northwest Atlanta Airport (“Airport”), I am writing to request that the FAA: (1) revise and republish the Notice of Availability for the Draft Environmental Assessment (“EA”) that appeared in the Federal Register on October 22 (“FR Notice”) <sup>1</sup> and the corresponding notice that appeared in the Dallas New Era <sup>2</sup> (“PCAA Notice”); (2) extend the comment period for the Draft EA; (3) reschedule for a later date the public hearing and relocate the hearing location to a more practical and neutral forum, and (4) ensure the transparency and accessibility of this matter by placing all materials and comments on the Draft EA in a separate, accessible public docket on [www.regulations.gov](http://www.regulations.gov). We are making these requests to ensure the process provides the information, time and opportunity for full and knowledgeable public participation as required by the National Environmental Policy Act (“NEPA”) and by federal regulations and guidance.

<sup>1</sup> Notice of Availability for Draft Environmental Assessment for the Proposed Part 139 Operating Certificate and Related Actions and Notice for Public Hearing at Paulding Northwest Atlanta Airport, 80 Fed. Reg. 64053 (Oct. 22, 2015).

<sup>2</sup> (See Draft EA § 5.3 and Appx. P).

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**1. The public notices should be reissued because of inaccuracies and non-compliance with FAA guidance and NEPA regulations.**

First, both notices inaccurately describe the physical locations where comments are accepted. They state that “[a]ny person desiring to review the Draft EA and to comment on the document may do so *at* the . . . Paulding Northwest Atlanta Airport . . . or Paulding County Library.” However, on Friday October 30, 2015, one of my clients asked about filing a comment on the Draft EA at the Paulding County Library and was informed by library staff that she could not do so. Accordingly, we have no confidence that comments submitted to the library will find their way to the FAA and into the administrative record. But even if the library, as a supposedly designated recipient of comments knew what its role in the process was, the physical addresses provided in the notices to inspect the Draft EA make no reference to whether comments can be mailed to these addresses, and if so, how they should be directed.

In addition, the notices inaccurately stated: “The Draft EA will also be made available online for review and comment via the following websites: Paulding Northwest Atlanta Airport: [www.pauldingairport.com](http://www.pauldingairport.com) [and] Paulding County, Georgia: [www.paulding.gov](http://www.paulding.gov)” and the PCAA Notice provides similar information. However, until November 2, 2015 – nearly 2 weeks after the FR Notice was published – no such mechanism actually existed to submit comments at those sites.<sup>3</sup> The public notice should be reissued to inform those who attempted to comment over the previous weeks that they now have an opportunity to do so.

In addition to the inaccuracies regarding avenues for submitting comments, the notices do not meet FAA and NEPA requirements. FAA Orders require that notices include “a statement that interested parties should *send written* comments to the sponsor or FAA.”<sup>4</sup> NEPA regulations require that notices of availability provide “information about where to review copies *and send comments*.”<sup>5</sup> In failing to reference the public’s opportunity to send in written comments and provide adequate contact information for transmitting those comments, the notices fail to comply with the cited FAA and NEPA obligations and do not comport with the requirement that agencies “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.”<sup>6</sup>

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<sup>3</sup> From October 22, 2015 through November 2, 2015, there was no opportunity to submit comments on the Airport’s website. Only on November 2 did a link appear offering a visitor to the site the opportunity to submit a comment. As of the date of this letter, the Paulding.gov site offers no comparable opportunity to submit comments.

<sup>4</sup> 5050.4B ¶ 406b(4) (emphasis added)

<sup>5</sup> See also 1050.1E Figure 5-2 (emphasis added).

<sup>6</sup> 40 C.F.R. §1506.6.

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Because of the serious flaws in the comment procedures, we request that the FAA revise and republish the FR Notice and direct the PCAA to republish the PCAA Notice so that they comply with NEPA and FAA notice procedures and afford interested persons a meaningful opportunity to participate in the NEPA process.<sup>7</sup>

**2. The comment period should be extended: the public notices were inaccurate factually, and the public does not yet have access to the necessary documents.**

Second, as detailed in prior correspondence, we are concerned that the Draft EA relies on multiple documents and analysis that were not included in the EA and are not presently available to the public. Our FOIA request for those documents was submitted on October 29, 2015 for those documents. We are also concerned that the inaccurate and inadequate FAA notice and Paulding County Airport Authority (“PCAA”) notice discourage public participation. As such, additional time is necessary to ensure the public is able to adequately review and provide substantive comments on the Draft EA.

This request to extend the comment period is consistent with the FAA’s commitment to the public participation process in NEPA proceedings. Further, the FAA needs to address significant unresolved legal issues, including whether the FAA has before it a valid Part 139 application before taking final action. Thus, there is simply no injury to the FAA or the project sponsor resulting from this requested extension. Indeed, the County, which is identified in the Draft EA as a purported project co-sponsor, has not yet responded to the request for a legal opinion on whether there is even a valid Part 139 application pending, although we understand the County has retained special counsel to prepare the requested opinion.

**3. The public hearing should be rescheduled so the public has sufficient time to review the documents and relocated to a larger, neutral location.**

Third, while we agree that the public hearing must be conducted in a way that is acceptable to the FAA, my clients remain concerned that the hearing must allow for meaningful public participation as detailed in my letter last week, and that it be moved to a neutral (non-Airport) location suitable to accommodate the very large turnout, which is expected to be in excess of 200 people. Because the public hearing should be rescheduled, the task of finding a new and more acceptable location should not be burdensome.

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<sup>7</sup> See e.g. FAA Order 1050.1F at § 2-5.3 “Notice of a public meeting or hearing should be published (e.g., in local, general circulation newspapers) at least 30 days prior to the event.”

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**4. The FAA should ensure transparency by ensuring the receipt of all public comments and by placing all materials in a separate, accessible, electronic location.**

Fourth, the FAA should take all steps necessary to ensure the transparency and accessibility of this matter by ensuring it receives copies of all comments from the Airport, and by placing all materials in a separate, publicly accessible electronic location on [www.regulations.gov](http://www.regulations.gov).

Based on the Airport's history of secrecy regarding this project and the fact that the comment submission process has been poorly executed, the FAA should take immediate steps to ensure transparency of the public participation process for the Draft EA. Upon reissuing the public notice, the agency should provide a single, dedicated docket for all materials connected with the Part 139 certificate for the Airport. Additionally, the FAA should make certain there is a mechanism in place to ensure that all comments submitted to any of the locations referenced in the original notice—the Airport, the Paulding County Library, [Paulding.gov](http://Paulding.gov), and [pauldingairport.com](http://pauldingairport.com)—actually make it into the record.

In sum, based on the concerns raised above, we respectfully request that the FAA: (1) revise and reissue the notice in the Federal Register so that it contains accurate and complete information regarding the submission of comments, (2) postpone the public hearing until at least 30 days after the FAA has provided the documents relevant to our FOIA requests, (3) extend the public comment period at least 15 days after the hearing, and confirm that the hearing will be relocated to a neutral location, and (4) establish a transparent system to ensure the receipt and public availability of comments in [regulations.gov](http://regulations.gov). These requests are in conformance with FAA requirements to allow for meaningful public participation.

Thank you for your consideration of these requests.

Sincerely,



Peter R. Steenland

cc: D. Fuller