

# SOUTHERN ENVIRONMENTAL LAW CENTER

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January 11, 2016

Lisa Favors  
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Federal Aviation Administration  
1701 Columbia Ave, Ste 220  
Atlanta GA 30337-2747

Re: Draft Environmental Assessment for Proposed Part 139 Operating Certificate and  
Related Actions at Paulding Northwest Atlanta Airport

Dear Ms. Favors:

I am writing on behalf of the Southern Environmental Law Center to comment on the Draft Environmental Assessment released by the Federal Aviation Administration for the Proposed Part 139 Operating Certificate at the Paulding Northwest Atlanta Airport (“PUJ”). The Paulding County Airport Authority and Paulding County seek this certificate in order to commence expansion of the airport and initiate commercial air service from this location. As explained below, the draft Environmental Assessment (“Draft EA”) fails to adequately consider the environmental impacts of this proposal in a number of respects. These shortcomings must be addressed before the FAA can issue a final Environmental Assessment or a Finding of No Significant Impact under the National Environmental Policy Act (“NEPA”).

## **1. The Draft Environmental Assessment Adopts An Improperly Narrow Statement of Purpose and Need.**

The statement of purpose and need for the project is flawed because it is not only vague and ill-defined, but also because it only reflects the preferences of the project’s sponsors instead of FAA’s organizational mission.

The Council on Environmental Quality regulations require NEPA documents to “briefly specify the underlying purpose and need to which an agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. Instead of a clear and succinct statement justifying the project, the Draft EA lays out a general discussion of current trends in aviation and growth in northwestern Atlanta.<sup>1</sup> To the extent a concise statement can be discerned from this narrative, the justification for this project appears to be “accommodate[ing]

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<sup>1</sup>In this case, the “Purpose and Need of the Proposed Action” is anything but brief and specific; it is nearly a thousand words long, spans four pages, and contains two data tables. (Draft EA at Section 1.2).

the air carrier and general aviation aircraft forecasted to use PUJ,” (Draft EA at 1-6). More specifically, purpose of the project appears to be accommodating the commercial air service proposal submitted by Allegiant Airlines.<sup>2</sup> The Statement of Purpose and Need explains that Allegiant Airlines “provides service (several times a week rather than multiple times a day) from smaller communities outside the major hubs with flights to popular vacation destinations,” and that “Allegiant Airlines has expressed a desire to serve the northwest Atlanta Metro Area with this type of service.” (Draft EA at 1-6 and 1-7). This Statement of Purpose and Need, which essentially defines the project as the type of service Allegiant Airlines would like to conduct at PUJ, is impermissibly narrow.

“[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality.” Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991). When a federal agency is asked to sanction the preferences of a private entity in defining the purpose and need for NEPA review, the agency may consider the private entity's goals but those preferences are not dispositive. Instead:

[A]n agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency's statutory authorization to act, as well as in other congressional directives. Once an agency has considered the relevant factors, it must define goals for its action that fall somewhere within the range of reasonable choices.

Citizens Against Burlington, 938 F.2d at 196 (D.C. Cir. 1991) (internal citations omitted). This obligation – to determine the purpose and need based not only on the preferences of the project sponsor but also FAA's statutory mission – is reaffirmed in FAA's own NEPA guidance. FAA National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions, Order 5050.4B at §706(b)(1) (“The purpose and need should be defined considering the statutory objectives of the proposed Federal actions as well as the sponsor's goals and objective.”)<sup>3</sup>

FAA's statutory directives are broader than enhancing the service or profitability of any one airport or airline. Rather, FAA's mission is to “maintain safety and efficiency in air commerce and to consider the requirements of national defense and commercial and general aviation.” Order 5050.4B at §4 citing 49 U.S.C. § 40101. Further, “FAA must consider ways to enhance environmental quality and avoid or minimize adverse environmental impacts resulting from proposed FAA actions and their reasonable alternatives.” Id.

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<sup>2</sup> The Draft EA does not identify any particularized need for additional air service in metro Atlanta generally, a need for increased air service in northwest Atlanta in particular, a need to accommodate additional low cost carriers in the metro Atlanta market, or a need for additional air service to vacation destinations.

<sup>3</sup> [http://www.faa.gov/airports/resources/publications/orders/environmental\\_5050\\_4/](http://www.faa.gov/airports/resources/publications/orders/environmental_5050_4/)

There is no evidence that the Draft EA's Statement of Purpose and Need is based on anything other than the preferences of the project sponsor and Allegiant Airlines. There is no evidence that the Statement of Purpose and Need reflects any consideration of whether granting PUJ a Part 139 Operating Certificate would "maintain safety and efficiency in air commerce and [] consider the requirements of national defense and commercial and general aviation." Nor is there any evidence that the Statement of Purpose and Need reflects consideration by FAA of "ways to enhance environmental quality and avoid or minimize adverse environmental impacts resulting from proposed FAA actions and their reasonable alternatives."

A NEPA document's statement of purpose and need must reflect the agency's justification of a project, not merely parrot the wishes of the project sponsor. Here, the Draft EA's project justification is nothing more than the wholesale adoption of Allegiant Airlines' preferred business model. The FAA must adopt a new statement of purpose and need which correctly reflects FAA's multiple goals.

## **2. The Draft Environmental Assessment Fails to Consider Other Potential Alternatives.**

The Draft EA also fails to consider the range of reasonable alternatives that could meet the purpose and need for this project.

The analysis of alternatives is the "heart" of the NEPA process. 40 C.F.R. § 1502.14. "An agency's assessment of alternatives to the proposed action sharply defines the issues and provides a clear basis for choice among options by the decisionmaker and the public." N. Carolina Wildlife Fed'n v. N. Carolina Dep't of Transp., 677 F.3d 596, 602 (4th Cir. 2012) citing 40 C.F.R. § 1502.14. An EA need not consider an infinite range of alternatives, but must carefully consider reasonable or feasible ones. Id. at (a)-(c). If an alternative is not studied in detail, the reason for its elimination must be explained. Id. at (a).

Here, the Draft EA identifies enhanced commercial service operating from other metro Atlanta commercial airports as a potential alternative, and specifically names commercial operations out of Hartsfield-Jackson Atlanta International Airport. (Draft EA at 2-1). However, the Draft EA does not carry this alternative forward for further consideration because Allegiant Airlines does not operate out of large airports like Hartsfield-Jackson Atlanta International Airport. Id. The Draft EA's failure to consider changes at any other metro Atlanta airport as a reasonable alternative falls short of what NEPA requires.

Given the Draft EA's vague and improperly defined Statement of Purpose and Need, it is difficult to specifically limit the range of reasonable alternatives that should have been considered further. But no matter how the project purpose is defined, there are numerous potential alternatives that should have been considered further.<sup>4</sup>

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<sup>4</sup> The "Environmental Consequences" section of the Draft EA uses a much broader Statement of Purpose and Need. "The purpose of proposing the commercial air carrier service into PUJ is to

For example, if there is need for additional airport capacity at secondary airports in northwestern Atlanta, then modifications at Cartersville Airport, Cobb County McCollum Field, Fulton County Airport, and Cherokee County Airport should all have been considered. If the need is defined as providing additional air service at secondary airports in metro Atlanta more broadly, then modifications at the Dekalb-Peachtree Airport, Covington Municipal Airport, Gwinnett County Airport / Briscoe Field, Newnan-Coweta County Airport, Atlanta South Regional Airport, and Atlanta Regional Airport / Falcon Field should also be considered. If the need is simply to accommodate growing demand for low cost commercial air travel in metro Atlanta, then changes at Hartsfield-Jackson Atlanta International Airport must also be considered.

FAA must look beyond Allegiant Airlines's preferred business model and its proposal at PUJ as the sole basis for eliminating all other reasonable alternatives. Courts have held that when a project's "purpose is not, by its own terms, tied to a specific parcel of land," then alternatives at other locations must be considered. Ilio'ulaokalani Coalition v. Rumsfeld, 464 F.3d 1083, 1098 (9th Cir. 2006)(emphasis in original). Here, a properly defined statement of purpose and need could be met by improvements at some combination of other metro Atlanta airports, and improvements at those other locations must therefore be evaluated as reasonable, feasible alternatives. Anything less falls short of what NEPA requires.

### **3. The Draft Environmental Assessment Fails to Consider Potential Impacts Based on Higher Levels of Future Air Traffic Than Allegiant Airlines' Proposal.**

The Draft EA is also deficient because its consideration of several key impacts are all tied to unreasonably low estimates regarding the potential number of commercial flights that would occur as a result of the Part 139 Operating Certificate.<sup>5</sup>

The Draft EA relies on an "Aviation Activity Forecast" to estimate the number of flights expected to occur as a result of the project. These forecasts are based on Allegiant Airlines' projected use of PUJ, and lay out a range of three possible scenarios. The high scenario anticipates 2 to 3 additional flights per day and the low scenario projects no additional flights per day. Aviation Activity Forecast, Appendix C to Draft EA at 8. The Aviation Activity Forecast also anticipates the types of planes that would be making these flights and makes assumptions about the number of potential passengers based on the size of the planes and their expected load factors. These assumptions are premised entirely on data specific to Allegiant Airlines.

The Part 139 Operating Certificate, however, does not limit commercial air service at PUJ to Allegiant Airlines. Nor does it bind Allegiant Airlines to the projections in the Aviation

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provide an airport facility to meet current and future aviation demands." (Draft EA at 4-2). This Statement of Purpose and Need is much broader than the definition stated earlier in the document, and does not preclude improvements at any other metro Atlanta airports.

<sup>5</sup> The Draft EA discusses its use of aviation forecasts in quantifying air emissions at 4-3; mobile source air pollution at 4-4; and traffic impacts at page 7 of its "Traffic Study," Appendix L to the Draft EA.

Activity Forecast. It is reasonable to expect that at some point in the future Allegiant Airlines may wish to use different types of planes, operate flights more frequently, or that another commercial carrier may wish to operate flights out of PUJ as well. If any of these actions occur, then the Draft EA has not adequately anticipated the flight activity resulting from the project, and therefore has not adequately considered the impacts that result directly from that flight activity including air pollution, automobile traffic, and noise.

It is not possible for FAA to anticipate the exact number of flights that would operate out of PUJ if a Part 139 Operating Certificate is granted, nor can it know the exact size of the planes or the number of passengers. However, NEPA provide several different mechanisms to deal with such uncertainty. First, FAA could treat additional commercial air service beyond Allegiant's Air's high forecast as a reasonable foreseeable cumulative action and follow the procedures set forth in 40 C.F.R. §§ 1508.7; 1508.25; and 1508.27 . Or FAA could address the amount of future commercial air service under the regulation for incomplete or unavailable information. 40 C.F.R. § 1502.22. FAA could also address this uncertainty by analyzing the potential impacts under a "worst case" scenario, in which PUJ is assumed to operate at capacity and the volume of air traffic is assumed to be the maximum number and size of planes the facility can accommodate.

But the Draft EA does not use any of these approaches. Instead, the Draft EA adopts Allegiant Airlines' forecasts as the upper bound for potential commercial air service from PUJ and limits its consideration of potential impacts to those resulting from Allegiant Airlines' forecast. This approach is virtually certain to underestimate the environmental impacts of the proposed project, and does not address the reasonable likelihood that future commercial air service will differ from Allegiant Airlines' current forecast.

This heavy reliance on Allegiant Airlines' forecast is even more problematic because the timeframe of the forecast is improperly short. The forecast uses two horizon years: 2015 and 2020. Although the forecast is itself undated, it was submitted to FAA in September 2014 and approved by the agency in October of that year.<sup>6</sup> By the time the Draft EA was released, the 2015 horizon had largely passed and, even under the most optimistic scenario, the 2020 horizon would likely be not more than three years beyond the commencement of commercial service at PUJ. Thus, these decisions are being made on what is effectively a three year planning horizon.

FAA guidance, however, instructs that capital improvements like those contemplated here should rely on "medium-term forecasts (a 6- to 10-year time frame)."<sup>7</sup> Short-term forecasts should only be used "for near-term development and support operational planning and environmental improvement programs," and even those short term forecasts would normally be longer than three years.<sup>8</sup> The Draft EA's reliance on a forecast with a planning horizon of less

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<sup>6</sup> October 22, 2014 Letter from P. Preston to B. Swafford, Appendix to the Draft EA.

<sup>7</sup> FAA Advisory Circular 150/5070-6B (May 1, 2007) at 37  
[http://www.faa.gov/documentlibrary/media/advisory\\_circular/150-5070-6b/150\\_5070\\_6b\\_chg1.pdf](http://www.faa.gov/documentlibrary/media/advisory_circular/150-5070-6b/150_5070_6b_chg1.pdf)

<sup>8</sup> *Id.*

than five years not only runs afoul of FAA guidance but also undermines the validity of the Draft EA's assessment of potential future impacts.

#### **4. The Draft Environmental Assessment Fails to Properly Consider The Impact of Indirect and Cumulative Development Resulting From the Initiation of Commercial Air Service.**

Although the Draft EA concedes that the Part 139 Operating Certificate is likely to spur additional development of the land adjacent to PUJ, the document fails to consider the impacts of this induced development as an indirect or cumulative impact of the project.

“An EIS must analyze not only the direct impacts of a proposed action, but also the indirect impacts of past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Utahns for Better Transp. v. U.S. Dep't of Transp., 305 F.3d 1152, 1174 (10th Cir. 2002). “Indirect impacts are defined by the NEPA regulations as being “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.... [They] may include growth inducing effects....” Id. citing 40 C.F.R. § 1508.8(b). Likewise, an agency must consider the cumulative impact of multiple actions, which are defined as “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. 40 C.F.R. § 1508.7. Cumulative impacts “result from individually minor but collectively significant actions taking place over a period of time.” Id.

The Draft EA concedes that the project will spur additional development of land adjacent to the airport that is currently undeveloped.

Much of the land surrounding the Airport is currently undeveloped. Land uses within or adjacent to the Airport boundaries are currently zoned as “Airport Overlay District” within the “Paulding Airport Master Overlay District”. Other lands within the “Paulding Airport Master Overlay District” are zoned as “Corridor Overlay” or “Low Density Quality Residential Overlay District” and would also be subject to the zoning restrictions. Therefore, the potential exists for future commercial/industrial development in the area. Implementation of the Preferred Alternative would be expected to increase the potential for future development, which would be consistent with the development strategies outlined in the Paulding County Comprehensive Plan.

(Draft EA at4-12)(emphasis added).

This induced secondary growth is a foreseeable consequence of the project, and is likely to magnify the project's impacts on natural resources, including increased stormwater runoff, wetland fills, loss of wildlife habitat, and automobile traffic. However, in its discussion of “Secondary (Induced) Impacts,” the Draft EA makes no mention of this additional development or negative environmental impacts that might result from it. (Draft EA at Section 4.11.2.2). In the “Compatible Lane Use Section,” the Draft EA acknowledges that this development is likely to occur but dismisses any potential impacts because the induced development is “consistent

with the development strategies outlined in the Paulding County Comprehensive Plan.” *Id.* at 4-12.

This consideration of induced growth, and the indirect and cumulative impacts that are likely to occur, is woefully deficient. NEPA is clear that the indirect and cumulative impacts of a project must be considered, even if that growth is anticipated in local plans. To the extent local plans could be relevant in such analysis it would be to demonstrate that induced growth would not occur. *City of Carmel-by-the-Sea v. United States Dep't of Transp.*, 123 F.3d 1142, 1162 (9th Cir.1997)(Sanctioning use of local plans to demonstrate that induced development is unlikely to occur because “the surrounding land at issue is already developed or is otherwise committed to uses that were not contingent on the project under consideration.”). This project presents the exact opposite scenario: the adjacent property is currently undeveloped but zoned for development contingent on project under consideration. As such, the induced development is reasonably foreseeable and the impacts of such development must be considered as an indirect or cumulative impact under NEPA.

#### **5. The Draft Environmental Assessment Fails to Consider the Potential Impact of Increased Discharge of Deicing Fluid and Other Pollutants.**

The Draft EA is also deficient because it fails to adequately consider the potential impact of increased discharge of deicing fluid into the adjacent waterbodies.

Airports and airlines engage in deicing operations during icy conditions. Such operations include deicing both the aircraft and the airfield pavement, and frequently involve the application of deicing fluid through pressured spraying systems. Much of the deicing fluid that is sprayed is designed for minimal adhesion to aircraft surfaces, and as a result is discharged into an airport’s storm drainage system or directly into waters of the U.S. without any treatment

Deicing fluid has been found to have significant environmental effects, including impacts on water quality. The primary ingredients of aircraft deicers are propylene glycol and ethylene glycol, which “exert extremely high levels of oxygen demand when they decay in the environment. *Effluent Limitations Guidelines and New Source Performance Standards for the Airport Deicing Category*, 77 Fed. Reg. 29168-01, 29195 (May 16, 2012).<sup>9</sup> Airfield pavement deicers are applied to runways, taxiways, and ramps, and these pavement deicers contain salts, such as potassium acetate, sodium acetate, and sodium formate, which ionize in water to create pollutants such as biochemical oxygen demand and chemical oxygen demand loads. *Id.* at 29173. Deicers that contain urea degrade to ammonia and also generate biochemical oxygen demand and chemical oxygen demand loads, as well as nitrates, which lead to algae blooms. *Id.* The non-point source discharge of these pollutants can enter storm drains, surface waters, and potentially, groundwater aquifers. *Id.*

The environmental hazards of such discharges have been observed in water bodies adjacent to or downstream from airports. According to the EPA:

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<sup>9</sup> <https://www.gpo.gov/fdsys/pkg/FR-2012-05-16/pdf/2012-10633.pdf>

Some locations experienced acute impact events, whereas other locations have experienced chronically degraded conditions. Observed impacts to surface waters include both physical and biological impacts. Some surface waters have been listed as impaired under section 303(d) of the CWA because they do not meet applicable state water quality standards. Physical impacts include elevated levels of glycol, salinity, ammonia, and other pollutants; depressed oxygen levels; foaming; noxious odors; and discoloration. Biological impacts include reduced organism abundance, fish kills, modified community composition, and reduced species diversity.

Id. at 29195. In addition to these aquatic impacts to nearby communities, the discharges negatively impact human uses, by contaminating surface and groundwater drinking sources. Id.

The environmental impacts of deicers have led EPA to promulgate a rule limiting discharges from deicing operations at commercial airports. That rule, which was finalized in 2012, created effluent limitation guidelines and imposed new source performance standards on new airports of a certain size. Under that rule, existing and new primary airports with at least 1,000 annual non-propeller aircraft departures are prohibited from using airfield pavement deicing products that contain urea, or alternatively, the airport must meet a numeric effluent limitation for ammonia. 40 C.F.R. § 449.10. New airports with at least 10,000 annual departures must collect at least 60% of aircraft deicing fluid after deicing and must meet NSPS for chemical oxygen demand. 40 C.F.R. § 449.11.

Although the proposed expansion of service at PUJ would fall below the threshold set forth in the regulation, the issue must nonetheless be considered in the NEPA process. Despite the well-documented environmental impacts of deicing operations, the Draft EA fails to consider the potential impacts from expanded deicing operations under the Preferred Alternative. An EA must include a discussion of the environmental impacts of a proposed action, and “must provide sufficient information and detail to demonstrate that the agency took the required ‘hard look’ at the environmental consequences of the project before concluding that those impacts were insignificant.” *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) and 40 C.F.R. § 1508.9(b).

The increased number of flights originating from PUJ will likely mean an increase in the frequency of deicing operations, and the expanded runway and other facilities will put these operations in closer proximity to the adjacent waterways. Here, despite the fact that the adjacent waterbodies are known habitat for endangered species, the Draft EA fails to address the potential environmental impacts of increased deicing operations at the PUJ under the Preferred Alternative. The potential for these operations to negatively impact water quality and aquatic life must be considered as part of the EA.



## Conclusion

Thank you for your consideration of these comments. If you have any questions or concerns please contact me at (404) 521-9900 or [bgist@selcga.org](mailto:bgist@selcga.org).

Sincerely,

A handwritten signature in cursive script that reads "Brian Gist".

Brian Gist

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