

SAVE OUR COMMUNITIES
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October 15, 2012

Ms. Cayla Morgan
Environmental Protection Specialist
Seattle Airports District Office, Federal Aviation Administration
1601 Lind Avenue S.W.
Renton, WA 98057-3356
(SENT VIA EMAIL TO CAYLA.MORGAN@FAA.GOV)

RE: Final Environmental Assessment, Snohomish County Airport (Paine Field / PAE)

Dear Ms. Morgan:

We are writing to comment on the final Environmental Assessment (EA) presented by the FAA for Snohomish County (Paine Field) airport. This letter responds within the thirty day time limit for comments set forth by the FAA. (The deadline falls on a Sunday and was extended by one day so it is actually a thirty one day limit.)

Our group, Save Our Communities (SOC), takes issue with the EA for reasons set forth herein. We reiterate our request that the FAA leadership reject this EA as inadequate and immediately issue an order to conduct an Environmental Impact Statement to study the proposed impacts of, and mitigation for, introducing scheduled airline service at Paine Field.

Although we acknowledge the attempt to respond to our comments on the draft EA, we do not consider the response to be adequate. We therefore reaffirm our draft EA comments and consider them applicable to this final EA and hereby incorporate them by reference. In addition, we are fully familiar with and completely endorse the comments being submitted by the City of Mukilteo and request they also be considered incorporated herein by reference. The following comments are submitted to address the final EA changes, your responses to prior comments and to reiterate key flaws with the final EA and the process.

Flawed Public Process: We object to the strict deadline for a thirty day comment period. The FAA had over 2.5 years (from December 2009 to September 2012) to work with the draft EA and respond to comments. The FAA then gave the public only thirty days to respond, and specifically denied our request for an extension to sixty days. Further, this "final" EA document and response to comments was written in a confusing, cumbersome fashion, using appendices and tabs to cross reference one another. As a

public document that should be accessible (easy for a wide cross section of the community to understand), this fails completely. The document should have been developed to a higher standard, with clear and complete explanations for positions put forward and the FAA should have given the public more time to respond. We object to the FAA decision to limit responses to changes only, particularly since there were so few changes to the draft EA. The requirement is to legitimately engage the public, not to shut them out by curtailing their involvement and disregarding their input, as has been demonstrated by the lack of changes and the lack of detailed responses to draft EA comments. As a governmental agency that should be concerned with good governance, the FAA has failed the public it is required to serve.

Why did the FAA Push to Publish a Final EA? We are aware that the airlines are not knocking on the door trying to get started at Paine Field now. In fact, Horizon has indicated they are not interested at this time unless they have to engage in turf protection (discussed further herein.) Even the sponsor (Paine Field Airport) apparently indicated no urgency in pushing the EA out at this time and probably did not want to publicize the waning interest in Paine Field – that would undermine their past efforts to demonstrate some level of pent up public demand for service out of Paine Field through a flawed market study ironically done by a consultant that has now merged with the consultant chosen to do this EA. Despite waning interest of the airlines and the sponsor (the airport), and internal communications apparently calling out the poor performance of the EA consultant, FAA leadership was apparently determined to push a “final” EA out. Why? Perhaps because the EA effort would have run on so long that it would exceed acceptable shelf life and expire. Then a new process would have to be initiated at some point in the future and would involve significant public pressure for a “public scoping” process, something the FAA apparently does not desire.

FAA Failed to Serve as Honest Broker: The FAA should serve as the “honest broker” committed to implementing the law and responsive to all legitimate concerns and perspectives. The FAA consistently demonstrates an inability or unwillingness to perform this role. Instead, FAA actions establish a clear and continuing bias towards starting up and subsidizing scheduled airline service while minimizing impact and mitigation assessments. A truly honest, comprehensive and legally compliant assessment of changing the airport role to essentially create a fourth commercial scheduled service runway in the region would produce dramatically different conclusions from this scaled back and minimized effort. Common sense alone would lead a reasonable person to conclude that over time significant impacts would be involved.

Based on a Freedom of Information Act request from SOC, we obtained a June 2, 2008 e-mail from Cayla Morgan, Environmental Protection Specialist, Seattle Airports District Office that said:

"I am nervous about putting too much information out in any venue until we have been able to discuss further and substantiate internally what our NEPA position is."

This is just one of many e-mails we obtained that suggests the FAA internal process is to decide ahead of time about NEPA rather than properly scoping and assessing the proposal and dealing with "objective" results. The FAA apparently prefers to pre-define the outcome and then control the process to get there. Cayla Morgan stated in the past that she knew of no instance where the FAA ever upgraded an EA to an EIS. One has to wonder why that has never happened. Again, this approach paints a picture of FAA process flaws and harms the FAA's credibility as an honest broker required to serve the public.

The FAA Failed to Appropriately Expand The Scope of Study – EA Invalidated: The final EA fails to adequately address the key issues we highlighted in our original comments. The public clearly expressed the need and rationale for an expansion of the scope of study that reflects the potential impacts involved with FAA actions as required by NEPA. The EA's minimal scope of study coupled with overly restrictive forecasted activity assumptions essentially renders all impact analyses (noise, air emissions, surface traffic, socioeconomic, health risks, etc.) inadequate thus invalidating the entire final EA.

Purpose and Need for the Proposed Project Reveals FAA's Deferral to Airlines: The FAA cited a change under Page A.1 "Purpose and Need for the Proposed Project" stating "The need for the proposed action is to meet demand for commercial service within the area, as identified by Horizon Air and Allegiant Air." We take issue with both the proposed need and demand stated by the airline applicants and by the manner in which the FAA is working with the airlines' stated demand.

The FAA incentivizes airlines to forecast low activity levels when involved in starting scheduled service at an airport that does not have it. Why? Because the FAA and the airlines are well aware of the need to fully comply with the National Environmental Policy Act (NEPA) when making such changes. Both the FAA and airlines understand that greater activity levels in a NEPA assessment results in more impacts, more mitigation and more costs.

The FAA allows for lowballing "reasonable foreseeable" activity levels by accepting applicants' proposals as the maximum level to be studied under NEPA. The fact that the FAA defers to the applicants' assessment of "demand for commercial service within the area" for the purpose of a NEPA assessment is an abdication of responsibility. We are unconvinced that either airline has conducted a meaningful demand study under true market conditions (without subsidies). We are also equally convinced that the applicants will choose not to start flying out of Paine Field unless they receive subsidies particularly given the "alternatives" they are already using to serve demand. On this point, the FAA improperly dismisses alternative airports as an option for the applicants even though

the agency is required to consider alternatives and Horizon has indicated a preference for an alternative at this time unless they have to engage in turf protection.

Inadequate and Flawed Forecasting: We argue that the FAA's process creates poor forecasting. The EA's Table B2 "Aviation Activity Forecast Summary" depends largely on numbers submitted by the airline applicants, Horizon & Allegiant. As stated in Appendix S, p. 18., "The forecasts of aviation activity (Appendix G) were based on these projections supplied by the airlines." The document includes an estimated 112,000 enplanements in 2013 growing at an annual rate of 16.3% and more than doubling to 238,200 by 2018. Yet, these numbers do not reasonably reflect the foreseeable and potential activity levels required to be assessed by NEPA.

In the response to SOC, the FAA stated:

"Comparisons should be done for appropriate timeframes. Timeframes usually selected are the year of anticipated project implementation and 5 to 10 years after implementation. Additional timeframes may be desirable for particular projects."

Yet the FAA requires much longer range forecasts than that for airport planning. The FAA is applying two different standards. One standard, for Master Planning Purposes, uses a 20-30 year time frame. A second standard, for environmental policy actions, uses far shorter time frames, such as the 5 year period used in this EA. How can the FAA justify the use of double standards? Both Master Planning and Environmental Assessments depend on long range planning and adequate scoping. Yet the FAA justifies the use of this double standard apparently to rationalize the limited scoping in the EA, to drive towards limited forecasting, lower activity levels, less impacts and a FONSI conclusion. We take issue with the FAA's short time frame of only 5 years, because this essentially disregards the public demand to look at the broader picture and to fully comply with NEPA.

Subsidies: The FAA's forecast numbers fail to address the dynamic of creating false demand by subsidizing an airline (Allegiant) which would then force another airline (Horizon) to engage in turf protection by demanding the same subsidy arrangement. Others may follow for similar reasons – imagine the cumulative impacts of such a spiraling effect. Speculative? Not really – Horizon's announcement about not being interested in Paine Field at this time makes this point clear. We understand that Allegiant's business model depends on low cost, low risk and low commitment entry at any airport at which it operates. Therefore, Allegiant depends on subsidies such as a FONSI that would relieve it of responsibility to pay mitigation costs, either directly or indirectly. Once established, other competitors such as Horizon may want to start operations not to meet market demand, but only to protect their current client base, i.e. "turf protection," and only because an initial entrant like Allegiant has started operations. A FONSI decision would create a subsidy for Allegiant that skews the market. The greater the subsidy, the more airlines are interested. Failure to adequately

assess impacts and to identify mitigation necessary by definition involves subsidies to the airlines since they would not have to “pay” their own way. If the FAA accepts this final EA and issues a Record of Decision with a FONSI determination, it will be endorsing subsidized service, a skewed market and uncompensated impacts to communities.

FAA’s Reasonable and Foreseeable Definition Seriously Flawed: SOC has argued that the FAA should NOT rely on numbers submitted by the applicants, since the applicants are inherently biased towards underestimating the potential, reasonable and foreseeable future growth. Applicants are induced to submit low enplanement and operations numbers to avoid or minimize environmental mitigation costs. Once they start up, they can increase volume easily beyond those initial numbers. Further, while the FAA has stated that changes in flight activity will require additional EA’s, it will endorse only incremental analysis from the most recent “baseline” analysis. This approach practically guarantees ongoing growth by the airline applicants with ongoing Findings of No Significant Impact for each incremental change.

Indeed, recent activity from Allegiant Airlines shows that it has aggressively expanded flight activity at Bellingham airport (BLI) after starting up at BLI. BLI’s most recent master plan, dated 2004, developed a “Recommended Enplanement Forecast” of 2.15% annualized growth (page 3-43). Yet the actual growth rate at BLI is far greater than that. As stated in the Bellingham Herald on 10/10/2012, “As recently as 2004, the airport had 80,000 outbound passengers. That number exceeded 500,000 in 2011 and is expected to be even higher in 2012 with 85 departing flights per week.” That growth rate, from 80,000 to 500,000 works out to about 30% per year. Thirty percent per year suggests a doubling of passenger volume about every 3 years. By contrast, BLI’s 2004 Master Plan’s predicted 2.15% growth rate suggests a doubling of passenger volume every 33 years. This huge discrepancy between actual and forecasted enplanements is unforgivable and leads to false conclusions, like a Finding of No Significant Impact, when there should be findings of significant impact.

We should note that “Allegiant Air has proposed 208 operations of MD83 aircraft at Paine Field in 2010 growing to 1,040 ops in 2016.” (FEA, App. G p. 6.) While the volume is low at the outset, the annualized growth rate is actually very high, at 30.8%, consistent with Allegiant’s growth at BLI. This growth rate, which represents a doubling of activity every 3 years, has been completely ignored in all of the “modeling” done by the FAA. Indeed, the FAA’s modeling actually serves mostly to dilute and obfuscate these numbers. For example, the FAA lumps the applicants’ operational numbers into a category called “AC” (Air Carrier) and then combines these with all other operational activity at the airport, including General Aviation, which has over 144,000 annual operations. (Existing versus Future Years Activity Table, App. G p. 7.) Total airport operations therefore effectively swamp the operations of the Air Carriers themselves. By doing this, the FAA’s analysis improperly derives low total growth rates and effectively ignores the very issue at stake here—analysis of the impact of new Air Carriers. The FAA’s analysis is therefore flawed for its failure to properly focus on the

new entrants that will have the greatest impact. The analysis should focus ONLY on the impact by the Air Carriers, since this represents the Federal Actions at stake here.

Further, it is reasonable to compare data from Bellingham when assessing or developing a forecast of reasonable and foreseeable commercial activity at Paine Field. The FAA is working with exactly the SAME two airlines at two airports in reasonably close proximity to each other. In fact, the FAA made this case when it rejected other arguments for an expanded scope. In the EA, the FAA stated:

“Some commenters speculated that additional carriers might choose to begin service at Paine Field in addition to Horizon Air and Allegiant Air. That might occur, but is dependent on a new carrier coming forward. Predictions of environmental effect would vary based on the aircraft mix that would be operated by the new carrier... Thus, without knowing a specific carrier, it would be speculative to estimate environmental effects of an additional unknown carrier.” (FEA, Appendix P, p. 4)

The FAA therefore cannot reject this argument as “speculative” since the same two carriers are involved. Therefore it’s reasonable to use the ACTUAL growth rates of those two carriers at BLI as part of the projections at Paine Field. The BLI numbers do not by themselves provide the answer to forecasting reasonable and foreseeable activity at Paine Field but it does provide a reality check that demonstrates the lowball numbers used in the final EA.

This comparison of projected versus actual enplanements at BLI also serves to point out a more serious flaw in the FAA’s reasoning and process. In our draft EA written comments, SOC argued that the FAA’s conflicted approach fails to consider the potentially high growth rates of flight activity once passenger service begins (particularly if subsidized). The FAA’s process also fails to consider additional airlines that might come in, such as Allegiant’s entry at BLI in 2008. The FAA is therefore circumventing NEPA by dividing potential activity into “increments” that uses lower activity levels while suggesting additional incremental EAs will solve future contingencies. To this end, the FAA repeatedly refers back to its own order, FAA Order 5050.4B, throughout the EA for support of its narrow findings and to justify its process of using an incremental EA approach. FAA Order 5050.4B Paragraph 9q defines reasonably foreseeable as: “An action on or off-airport that a proponent would likely complete and that has been developed with enough specificity to provide meaningful information to a decision maker and the interested public. Use the following table to help determine if an action is reasonably foreseeable.” (Table omitted by the FAA.) (EA appendix 5, p. 6)

Certainly the *actual* enplanement activity at BLI is more specific, and much more accurate, than the low volume activity submitted by the applicants. It is also more specific and accurate than the forecasts provided by the FAA in the Master Plan. Further, the FAA must look at “connected actions” and “similar actions” when evaluating whether an action is “reasonably foreseeable.” Therefore we challenge the FAA both for failure to follow even the narrow construction of FAA Order 5050.4B, and

for the FAA's Order 5050.4B's overly narrow direction. The Order's failure to follow the National Environmental Policy Act and corresponding Council on Environmental Quality (CEQ) regulations because this Order unilaterally fails to comply with, or address, cumulative environmental impacts. The Order is therefore fatally flawed and must be thrown out, or at least expanded to allow "reasonably foreseeable" to include "connected actions" and "similar actions." If this Order as written fails to stand, the rest of the FAA's argument for a Finding of No Significant Impact must also fall.

Failure to Consider Cumulative Impacts as Required: Section 1508.7 of the Council on Environmental Quality Regulations for Implementing NEPA defines cumulative impacts as follows:

*"Cumulative impact" is 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** (emphasis added).*

And, Section 1508.8 defines "Effects" to include:

(b) Indirect effects, which are 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 relate to induced changes...

The definition goes on to say that "effects and impacts as used in these regulations are synonymous". We find the final EA completely disregards cumulative impacts as defined by CEQ regulations. Instead, it is apparent that the FAA's approach allows incremental growth with only the possibility of future assessments on segments of incremental growth. Unfortunately, this flawed FAA approach is "reasonably foreseeable" by the public given past performance and FAA's continuing position as reflected in the final EA and the response to comments. We strongly recommend the FAA commit to full implementation of the letter, spirit and intent of NEPA by expanding the scope, conduct and EIS and fully accounting for cumulative impacts and reasonably foreseeable activity levels.

Overall, the FAA should negate the EA in favor of an EIS with an expanded scope. We urge the FAA to reject the flawed minimal assessment that currently concludes there are no significant impacts in changing the role of Paine Field. For the reasons set forth below, **we restate our position that the draft EA is fatally flawed based on its unrealistically limited scope and faulty conclusions**, even with the recent changes made. **To comply with the spirit and intent of applicable law, we strongly recommend that the FAA conduct an EIS with an expanded scope. Specifically, we recommend that:**

1. The FAA should conduct an EIS with an expanded scope that considers the full potential capacity of Paine Field and the related to “*reasonably foreseeable*” activity levels and “*potential impacts*” and “*cumulative impacts*”. The words “*reasonably foreseeable*,” “*potential impacts*,” and “*cumulative impacts*” are key concepts and requirements in the NEPA process and the FAA should comply by fully including them in the NEPA process.
 - a. The FAA must throw out or properly expand FAA Order 5050.4B and rewrite a new definition that conforms to NEPA and CEQ standards.
 - b. The FAA should conduct an EIS with an expanded scope that analyzes *reasonably foreseeable*, *potential* and *cumulative impacts* of scheduled air service operations at Paine Field for at least 20 years, and preferably, 30 years. Both the draft and final EA’s only look out five years further minimizing the downstream impact analysis. This limited scope skews the entire assessment including, but not limited to, impacts from air emissions, noise, traffic, parking, water runoff, impacts to children and so on.
 - c. If the FAA proceeds to change Paine Field’s Operating Certificate from a Class IV to a Class I airport, then the FAA should conduct an EIS with an expanded scope that includes and analyzes the *potential* and *cumulative impacts* of the **full capacity of the airport** in operation 24 hours a day, seven days a week that **assesses mitigation costs properly**. Why include full capacity in addition to assessing various levels of activity increasing from startup through full capacity? The concern over adequately looking at various activity levels is due in part to the FAA’s inability to properly forecast demand (as shown by the BLI example) and its reliance on conflicted input data from the airline applicants themselves (as in the case with PAE.) The FAA would have to take several “federal actions” to change Paine Field’s Operating Certificate, and NEPA requires the responsible agency to fully identify and consider *potential and cumulative impacts* of those actions. Failure to do so is failure to comply with NEPA. **The potential activity levels associated with changing the role of Paine Field are akin to looking at the maximum activity of a new commercial airport or new runway at SeaTac.** The limited scope of the draft EA hardly gets at this larger picture. Sea-Tac’s third runway analysis was not based on a few daily flights so is it reasonable to expect opening another “new” scheduled service runway/airport in the region would get no less of an analysis. If the responsible agency conducted an EIS with an expanded scope, direct and indirect costs to mitigate the impacts would likely prove to be significantly higher than those projected under the draft EA. **The airlines, not the taxpayers, should bear such mitigation costs since the FAA’s rules allow direct and indirect costs to be passed onto the airlines.**

2. The FAA should conduct the EIS scoping process properly and publicly, inviting all governmental and non-governmental interested parties. The public and our region deserve a fair, transparent and honest decision-making process, particularly when the decision involves an irreversible regional change to the past thirty years of zoning, planning, building, purchasing, maintaining and improving.
3. Since the draft EA failed to properly scope out the impacts of changing Paine Field's role and operating certificate to allow scheduled service, we strongly recommend that the "No Action Alternative" be the default alternative until an EIS with an expanded scope is completed and compared to alternatives.
4. We urge the FAA to take additional steps to show that it is not collusive, conflicted, or coercive in its role as the lead NEPA agency for the four federal actions outlined in the draft Environmental Assessment. We recommend an independent agency, such as the federal Department of Transportation or the General Accounting Office, pursue an investigation immediately into the overall process and conduct of all involved officials at the FAA or Paine Field airport to determine compliance with applicable rules, policies and existing laws.
5. The FAA's overzealous drive to promote commercial airport activity includes the failure to hire a truly independent third-party contractor and the failure to direct that contractor to pursue a fair, unbiased and comprehensive analysis that genuinely meets the intent and purpose of NEPA. We ask that a new, qualified contractor be identified based on a proper bidding process.

We are copying the Snohomish County Council and County Executive on this letter. As stated in our letter of January 15, 2010 to the County, we urge the County to rescind its request for FAA terminal construction funds that effectively subsidize Horizon and Allegiant. The County's position of discouraging commercial service includes the County's stated policy to "insist that an airline pay its own way and mitigate its impacts." (MRD Report May 16, 2007.)

Finally, our February 5, 2010 comments outlined a number of substantial environmental concerns that the draft EA failed to address adequately due to the modest scope and/or flawed assessment methodology. We would expect that an EIS with an expanded scope would address these substantial environmental concerns by outlining a plan to analyze, mitigate, and assess payment for them to the airlines at Paine Field. **A failure to do this represents a free subsidy to the airlines and an unacceptable social, economic, and environmental liability to the taxpayers and municipalities of Snohomish County.**

Sincerely,

Save Our Communities (SOC)
President, Officers, Board
On behalf of SOC members

Cc:

Snohomish County Council
Snohomish County Executive
Senator Patty Murray
Senator Maria Cantwell
Former Congressman Jay Inslee
Congressman Rick Larsen
Governor Christine Gregoire
Senator Paul Shinn

Representative Marko Liias
Representative Mary Helen Roberts
Mayor Joe Marine (Mukilteo)
Mayor Dave Earling (Edmonds)
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Mayor Bob Colinas (Brier)
Secretary Paula Hammond (WA DOT)