TABER LAW GROUP PC

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VIA E-MAIL AND USPS

Mr. Aaron Davenport
Public Hearings Examiner
Butler Fairman & Seufert, Inc.
8450 Westfield Blvd., Suite 300
Indianapolis, Indiana 46240

Mr. Bobb Beauchamp
Environmental Specialist
Chicago Airports District Office, CHI-ADO-600
Federal Aviation Administration
2300 East Devon Avenue
Des Plaines, Illinois 60018

Re: Written Comments of The Concerned Citizens of Decatur County Regarding the Greensburg Municipal Airport Draft Environmental Assessment

Dear Mr. Davenport and Mr. Beauchamp:

The following comments on the July, 2012 draft Environmental Assessment for Greensburg Municipal Airport ("Draft EA") are submitted by the Taber Law Group, P.C., on behalf of The Concerned Citizens of Decatur County ("Concerned Citizens'), a community group that represent residents of Decatur County, Indiana, who are concerned about the expansion of Greensburg Municipal Airport ("I34"). In particular, Concerned Citizens believes that the preferred alternative of erecting a new 5,405 foot by 100 foot runway on property to be obtained through eminent domain (the "Project") is not the best alternative, nor is it supported by the Draft EA.

I. THE "SPONSOR" LISTED IN THE DRAFT EA DOES NOT COMPLY WITH THE TERMS OF THE GRANT ASSURANCES AND THEREFORE THE DRAFT EA IS INADEQUATE.

The first issue with the Draft EA arises on the first page of the Draft EA. It seems that the Federal Aviation Administration and the engineering firm hired to develop the Draft EA (Butler, Fairman & Seufert, Inc.) have been operating under the impression that the Greensburg Municipal Airport Board of Aviation Commissioners ("BOAC") is the owner and operator of the airport. This is not the case. There is no record of either ownership or operatorship by the BOAC. Instead, it is the City of Greensburg is the owner and the operator of the airport – anything that BOAC does, it does on behalf of the City of Greensburg and not in its own name.

A. The BOAC Does Not Have Good Title to I34 and Therefore Is In Violation of Its Grant Assurances.

Although the Corporate Warranty Deed (Exhibit 1) shows that the "Decatur Airport Corporation" transferred the airport to the "Greensburg Aviation Commission" [*sic*], the BOAC does not appear to have the power, pursuant to Indiana law receive such property in its own name. In Ordinance No. 2007-11-27, the City of Greensburg claims to have established a "local board of aviation commissioners (the 'Board'), which Board . . . . will own and operate the Aviation Facilities pursuant to pursuant to [*sic*] IC 8-22-1 and IC 8-22-2…" Exhibit 2. However, IC 8-22-2 specifically states that the Board's powers and operations will be "on behalf of the eligible entity" and not in its own name. *See e.g.* IC 8-22-2-5. Therefore, either the Corporate Warranty Deed is void, since BOAC cannot receive property in its own name, or the Corporate Warranty Deed must be read to give title to the City of Greensburg, not the BOAC.

Since a large portion of the project involves the forced acquisition of land, the FAA needs to be certain that the entity currently listed as the sponsor, *i.e.*, BOAC, can deliver good title. First, as mentioned above, it cannot claim that it currently has good title to I34, since it does not have the power under the Indiana law to hold title to an airport in its own name. FAA must require that BOAC and the City of Greensburg clear this title issue up before granting any more projects, since the fact that it does not have good title is a violation of Grant Assurance 4 ("It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired"). Moreover, pursuant to Indiana law BOAC does not have the power to commit funds to purchase anything without the approval of the City of Greensburg. *See* IC 8-22-2-5. Although the BOAC may have the authority to apply for the AIP grants, it does not have the "legal authority … to finance … the proposed project…" Therefore, the Draft EA is also in violation of Grant Assurance 2. Thus, the Draft EA is inadequate because it violates Grant Assurances 2 and 4 and has been performed in the name of an entity that cannot be the owner of the airport.

B. The BOAC Does Not Have the Necessary Legal Authority to Exercise Eminent Domain Over the Requisite Property Needed for the Project.

Even if the BOAC does have good title to the airport, it lacks the power of eminent domain to acquire the property proposed to be acquired by the Project. Neither the BOAC nor the City of Greensburg has the power to acquire the property needed for the Project through eminent domain. Thus, the Draft EA is in violation of Grant Assurance 4.

All of the property that the Project seeks to acquire for the Project lies outside the boundaries of the City of Greensburg, therefore the City cannot grant to the BOAC the right to exercise eminent domain in an area over which it does not have jurisdiction. While Indiana law does grant duly appointed aviation commissions a limited right to eminent domain outside the boundaries of the "eligible entity" (in this case, that would the City of Greensburg), that right only applies to the establishment of "restricted zones" not the acquisition of property for the

expansion of a runway. IC 8-22-2-10. Thus, the right of eminent domain by the BOAC is virtually coterminous with the City of Greensburg's right of eminent domain. If the City of Greensburg cannot condemn the property, then the BOAC cannot condemn the property. Since the BOAC has yet to show that it has the power to exercise eminent domain over the property needed for the Project, it cannot comply with Grant Assurance 4. Thus, the Environmental Assessment is inadequate and must be rejected by the FAA.

II. THE PROJECT'S STATED PURPOSE AND NEED IS UNSUPPORTED BY THE EVIDENCE AND THEREFORE THE DRAFT EA IS INADEQUATE.

In order to comply with the provisions of the National Environmental Policy Act and Federal Aviation Administration rules and regulations, an environmental assessment must include a discussion of the "purpose and need" for the proposed action which must "specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. In addressing the Purpose and Need section of an environmental assessment, FAA Order 1050.1E provides that: "This discussion identifies the problem facing the proponent (that is, the need for an action), the purpose of the action (that is, the proposed solution to the problem), and the proposed timeframe for implementing the action." FAA Order 1050.1E, ¶ 405c. The Draft EA accomplishes none of these goals.

A. There Is No Current Need for the Project.

While the Draft EA states that the *purpose* of the Project is "to provide an efficient airport accommodating the present and forecasted activity in and around Greensburg, pursuant to Federal Aviation Administration (FAA) standards" (Draft EA, p.2), it does not provide any *need* for the Project. That is, as currently drafted, the Draft EA does not specifically identify or discuss the need (i.e., the problem facing the proponent) for the Project. Without identifying the need for the Project, readers are left to surmise what the drafters of the Draft EA intended the need to be. The fact of the matter is that there is no need for the project.

Moreover, there are at least three airports within a 30 mile drive of I34 that have runways over 5,000 feet long.[1]

(1) North Vernon Airport (KOVO), in North Vernon, Indiana, has two runways, the longest of which is 5,002 x 75 ft,, is in "good condition," and is located 23.7 miles from I34. Exhibit 3.

[1] In addition to the three airports listed above there are two airports slightly over 40 miles from Greensburg: (1) Mettel Field Airport (KCEV), in Connersville, Indiana, has two runways, the longest of which is 6503 x 100 ft., is in "good condition," and is located 40.1 miles from Greensburg, Indiana; and, (2) Freeman Municipal Airport (KSER), in Seymour, Indiana, has two runways, both of which are 5500 x 100, are in "good condition," and is located 44.4 miles from I34. Exhibits 20 and 21.

(2) Columbus Municipal Airport (KBAK), in Columbus, Indiana, also has two runways, the longest of which is 6400 x 150 ft, is in "excellent condition" and is located 27.5 miles from I34. Exhibit 4.

(3) Shelbyville Municipal Airport (KGEZ), in Shelbyville, Indiana, also has two runways, the longest of which is 5000 x 100 ft, is in "good condition" and is located 26.2 miles from I34. Exhibit 5.

In addition, Concerned Citizens has heard that the Hillenbrand Industries Airport (KHLB), located 15 miles from Greensburg might be for sale.[2] HLB already has one runway that is 5951 feet long and 100 feet wide. Thus, purchasing HLB could meet the purpose and need of providing an "efficient airport accommodating the present and forecasted activity in and around Greensburg."

B. The Draft EA Does Not Follow FAA Regulations, Advisory Circulars and Guidance Documents In Establishing the Correct "Critical Design Aircraft."

1. The Draft EA incorrectly uses a future "critical design aircraft," not the current "critical design aircraft" as required by FAA standards.

The entire Project has a "build it and they will come" aspect to it. The selection of appropriate FAA design standards for the development and location of airport facilities is based primarily upon the characteristics of the aircraft which are *currently* using the airport. The FAA defines "critical design aircraft" in the National Plan of Integrated Airport Systems ("NPIAS") as the category of aircraft, which conduct 500 itinerant or more operations per year at the airport (the FAA usually requires 500 itinerant operations in order to be included in the NPIAS). *See In The Matter of Compliance with Federal Obligations by the City of Santa Monica, California,* FAA Docket No. 16-02-08 (Initial Decision of the Hearing Officer, May 14, 2009) at *16; *see also Great Lakes Regional Guidance Letter – Airports Division* No. 5300.3, July 27, 2010. The Draft EA identifies the "design aircraft" as a LearJet 45 and Citation III[3] for the "design group." Yet neither one of these planes or its design group is actually flown out of or into I34. Indeed, the Draft EA shows 300 of the 512 "annual operations" mentioned in the Draft EA are for aircraft that have not even been purchased by the company promoting the extension of the runway. Both Next Generation, Inc. and Cloud Nine Corp. do not own aircraft that the Draft EA purports to be a "critical aircraft." Even now, two years later, the FAA Aircraft Registry shows that neither company has purchased or leased a jet that would fit into this design group. Thus,

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[2] Because of the short time period that BOAC has allowed for commenting on the Draft EA, Concerned Citizens has not been able to confirm that the airport is indeed for sale.

[3] It should be pointed out that the Cessna Citation CJ3 identified in the Draft EA as a design critical aircraft does not need a 5,000 foot runway to takeoff at maximum takeoff weight (MTOW). *See* Draft EA, p.A-16. While a LearJet 45 would require a 5,000 foot runway, the only company to fly one, Pioneer/DuPont, claims it would only use 16 times a year. Moreover, as explained *infra* Pioneer/DuPont's facility is in Rushville, Indiana is closer to Shelbyville Municipal Airport and already has a 5,000 foot runway.

the Draft EA's claim that I34 should be classified as an ARC II-C is unjustified. The critical design aircraft must be chosen from aircraft that actually use the airport, not from some aircraft that might possibly, if-stars-line-up-properly, use the runway. To take the Draft EA's inference to the extreme, it is possible that a company is thinking about possibly bringing a 747 into I34, but that does not mean that Greensburg should design the airport to accommodate what may very well be a pipe dream. Because of the Draft EA's failure to follow FAA guidance with respect to establishing the "critical design aircraft," the Draft EA is inadequate because it does not establish a purpose and need for the aircraft that currently use the airport.

2. The Draft EA fails to separate itinerant operations from local operations, thereby making the Draft EA and all of the "letters of support" inadequate according to FAA Guidance.

One critical component of defining the proper critical design aircraft for an airport is establishing that the "critical aircraft" makes "substantial use" of the airport. However, the Draft EA claims that the critical design aircraft are projected in the future to have "512 annual operations." Draft EA, p.3; *see also* Appendix A. However, the Draft EA's use of "annual operations" differs markedly from the FAA criteria for selecting runway lengths and widths set forth in FAA Order 5090.3C:

> 3-4. AIRPORT DIMENSIONAL STANDARDS
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> Airport dimensional standards (such as runway length and width, separation standards, surface gradients, etc.) should be selected which are appropriate for the critical aircraft that will make substantial use of the airport in the planning period. Substantial use means either 500 or more annual **itinerant** operations, or scheduled commercial service.

FAA Order 5090.3C, p. 21 (emphasis added). The FAA divides General Aviation operations into two categories, "local" and "itinerant." Itinerant operations are defined as "an operation performed by an aircraft, either IFR, SVFR, or VFR, that lands at an airport, arriving from outside the airport area, or departs an airport and leaves the airport area." U.S. DOT JO 7210.695, p. 5. Local operations are defined as "those operations performed by aircraft that remain in the local traffic pattern, execute simulated instrument approaches or low passes at the airport, and the operations to or from the airport and a designated practice area within a 20-mile radius of the tower." *Id.*

The Draft EA, without reference to this distinction, relies on "annual operations" and "total annual operations" not "itinerant operations." *See* Draft EA, p.3, Appendix A, p.A-3. Separating itinerant and local operations at I34 would result in a dramatic reduction in the number of annual critical design aircraft operations at the airport. For example, data from the website City-Data.com shows that during the period 12/31/2007 to 12/31/2008 (that is within the time period that the "letters of support" covered) there were 1,760 itinerant operations and 7,918 local operations at I34. *See*, http://www.city-data.com/airports/Greensburg-Municipal-Airport-Greensburg-Indiana.html, attached as Exhibit 6. Since itinerant operations account for

approximately 17% of the total operations at I34 in 2008, and the Draft EA's states that there would be 512 "total annual operations" at I34, that would mean that there would be in the neighborhood of 87 itinerant operations per year (*i.e.*, 17% of 512 annual operations), which is substantially below the FAA's threshold of 500 annual operations to constitute "substantial use." *See* FAA Order 5090.3C, p. 21.

Thus, the Draft EA has failed to establish that the critical design aircraft make substantial use of I34. The Draft EA fails to separate the annual operations into "itinerant" and "local" operations, therefore, it cannot establish that ARC II-C is the correct category for I34's dimensional standards.

C. "Letters of Support" Are Fraught with Inaccurate and Out-of-Date Information and Do Not Support the Project's Purpose and Need.

Whether the inaccuracies displayed in the "letters of support" are intentional, overzealous projections, or simply the result of companies filling in the blanks to form letters provided by the drafters of the Draft EA, the simple matter is that they do not support the fanciful notion that over 500 operations of a critical design aircraft took place at Greensburg Municipal Airport at any time in the past 14 years. First, there are some inaccuracies in the collection of the data. Most "letters of support" double the number of "flights" to arrive at the number of "operations," since a "flight" consists of a takeoff and a landing, each one of those events counts as an "operation." However, the Draft EA does not distinguish between itinerant and local operations, therefore, this automatic doubling of the number of flights can be inaccurate. While it is clear from FAA rules that one operation is either a takeoff or landing, it is less clear what the Draft EA means by "flight." For example, a local operation would takeoff and land at I34, thus there would be 2 operations at I34 for one flight. However, because FAA rules regarding critical design aircraft only count itinerant operations, there would be only one operation at I34 per itinerant flight. That is, there would be *either* a takeoff or a landing, not both. Thus, the "letters of support" are unclear as to whether they refer only to operations at I34, or to all operations conducted by the aircraft. Because the Draft EA automatically doubles the number of "flights," it is only logical that the Draft EA is either (1) counting local operations; or (2) counting operations that occur at airports other than I34 for its totals.[4]

1. Next Generation, Inc.

Next Generation, Inc.'s May 19, 2010, which is more than two years ago, "letter of support" states that it "owns and operates a Pilatus PC12 aircraft (N#-706AG)." Draft EA, p. A-4. However, according to the FAA Aircraft Registry, Next Generation, Inc. is not the registered owner. *See* Exhibit 7. Moreover, Next Generation alleges that its "records show approximately 100 operations (takeoffs and landings combined) either into or out of Greensburg Municipal Airport for the past year [*i.e.*, 2009-2010]." Draft EA, p.A-4. However, data from FlightAware

[4] If this is not the case, the letters of support must be resubmitted so that they distinguish between operations at I34, local operations, itinerant operations, current operations and future operations.

show that 2009 was the last time the Pilatus has flown approximately one hundred operations overall (that is, not just at Greensburg Airport). Since 2009, the aircraft has flown approximately 50 operations (2010), 75 operations (2011) and less than 50 (2012).[5] *See* Exhibit 8. Thus, Next Generation's estimate is questionable and offers no basis to assume that it has the capacity to undertake 100 operations at I34 using any type of aircraft.

Moreover, as stated above, since Next Generation does not own a Cessna Citation CJ3 yet, any flights that it may fly cannot be counted in the total for the determination of what is a critical aircraft at I34. Indeed, in the two years since Next Generation submitted its letter, it has yet to purchase a jet similar to the Cessna Citation. Concerned Citizens are certain that if there were a business need for Next Generation to purchase a jet, it could hangar the aircraft at Shelbyville Municipal Airport, 25 miles from Greensburg. Since Next Generation overstates the number of flights it makes into and out of I34, its credibility is limited when assessing whether in the future it would utilize I34 in the manner it states in the Draft EA. Therefore, those operations numbers cannot be used to determine the length of the runway needed at Greensburg. Finally, even if one were to accept that a Cessna Citation CJ3 is a critical aircraft at I34, the Draft EA admits that CJ3 does not need a 5,000 foot runway for takeoff at MTOW. *See* A-16.

2. Cloud Nine, Corp.

Located at 336 Mitchell Avenue, Batesville, Indiana,[6] Cloud Nine Corp.'s July 30, 2010, "letter of support," which is more than two years old, claims to operate its Beechcraft A36TC (Tail No. 1807B) aircraft 150 times per year from I34. Draft EA, p.A-5. Yet FlightAware lists only two operations for that aircraft over the past five months and indicates that over the past 14 years, the aircraft has never flown more than 50 operations total per year. Exhibit 9. This cuts against the credibility of the estimates that Cloud Nine gives both for future operations as well as past operations.

In addition, in its "letter of support," Cloud Nine claims that it would operate a Beechcraft C90B King Air aircraft (Tail No. N724KH), currently based at Cincinnati Municipal Airport – Lunken Field (KLUK), out of Greenburg if the runway were extended. Draft EA, p.A-5. Yet the specifications for the King Air indicate that the takeoff field length at MTOW is only 2,552 feet, therefore an extension of the runway would not be needed for Cloud Nine to operate its King Air out of Greensburg. Exhibit 10. Moreover, there is no evidence to indicate that Cloud Nine would fly its King Air anywhere near the 200 operations[7] out of I34 that it projects

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[5] While Concerned Citizens recognize that 2012 is not yet complete, even if one were to annualize the past four months of data from FlightAware, Next Generation could only show that the Pilatus would have 66 operations for 2012.

[6] It is interesting to note that Google Maps show 336 Mitchell Avenue, Batesville, Indiana 47006 as being a residential area, rather than a commercial area.

[7] This is an instance where it is not clear from the letter what the company means by "flight." One hundred itinerant flights from or to Greensburg would result in 100 operations at I34, with the other 100 operations accruing to the destination or origination airport. Thus, these numbers should, at the very least, be cut in half.

in its letter of support. FlightAware shows that the King Air has either made less than or around 50 total operations from all airports every year over the past 14 years, with the exceptions of 2010 (75), 2002 (150), and 2001 (75). Exhibit 11. In no year in the past 10 years was this aircraft operated anywhere near the 200 operations at I34 that it claims that it would be operated in the future. *Id.* Thus, there is no factual basis for Cloud Nine's claims in its "letter of support."

Finally, Cloud Nine claims in its "letter of support" to be considering purchasing a Cessna Citation CJ1. Yet, over two years after submitting this letter, it has failed to do so. This is confirmed by a review of the information contained in the FAA Aircraft Registry. In addition, Cloud Nine offers no rationale for its estimate of 200 operations per year, when it is not currently operating any of its existing aircraft anywhere near that number of operations. Indeed, even if one were to combine the number of operations of both A36TC and the King Air, Cloud Nine could not account for 200 operations per year. The credibility of Cloud Nine's "letter of support" also takes another major hit when one considers that the specifications for Cessna Citation CJ1 do not need a 5,000 foot runway at MTOW for takeoff. Exhibit 12.

3. Decatur Hills, Inc.

Decatur Hills, Inc.'s May 19, 2010, "letter of support" (also more than two years old), alleges that it owns and operates a (1) rotary wing and (2) a fixed wing aircraft in support of its business. Specifically, it claims to own and operate a Raytheon Premier 1 Jet (Tail No. 855JB). However, according to the FAA Registry, Decatur Hills, Inc. is not the registered owner of that aircraft. Exhibit 13. Nor does the FAA Registry show Decatur Hills, Inc. to be the registered owner or lessee of any rotary wing aircraft. Thus, the credibility of the "letter of support" must be called into question.[8]

Moreover, even if one were to assume that Decatur Hills did own N855JB, data in the FlightAware database shows that N855JB had approximately 50 operations in 2012, 75 for 2005-2006 and 2008-2011, and reached 100 total operations only twice in the past eight years, in 2007 and 2004, which were both before the current economic downturn. Exhibit 14. This represents all operations of the aircraft, not solely operations to and from I34. Thus, it is highly unlikely that the aircraft would come anywhere near the 104 operations to I34 alone that it alleges in the letter of support any time soon.

Finally, as is the case with most of the large aircraft mentioned in these "letters of support," the Raytheon Premier 1 jet does not need a 5,000 foot runway to takeoff at MTOW. Exhibit 15.

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[8] Nor is there any record in the FAA Registry showing that Decatur Hills is the registered owner of a rotary wing aircraft that it claims to be based at Greensburg. Indeed, the FAA Registry indicates that Decatur Hills, Inc. is not the registered owner of any aircraft.

4. Pioneer Hi-Bred International, Inc.

In an undated "letter of support," Pioneer Hi-Bred International, Inc. claims it would use two corporate jets, a Bombardier Challenger 300 (Tail No. N584D) and a Gates Lear Jet 45 (Tail No. N196PH)[9] for 15 flights, combined, to visit its production facility near Rushville, Indiana. This is another instance where it is not clear how many operations would accrue to I34. Fifteen flights to and from Greensburg, would be only 15 itinerant operations that accrue to I34, not 30 operations. Thus, the number of operations must be cut in half. In addition, registration documents filed with the FAA show that DuPont Co. no longer owns N584D, so its numbers must be eliminated altogether.

Moreover, Pioneer's production facility in Rushville, Indiana, (3258 U.S. 52, Rushville, Indiana 46173) is closer to Shelbyville Municipal Airport than it is to Greensburg Municipal Airport. Shelbyville Municipal Airport already has a 5,000 foot runway.[10] Thus, there is no current need to extend I34's runway to accommodate Pioneer's needs, since those needs can be met by Shelbyville Municipal Airport already. Why expend precious federal dollars for extending Greensburg's runway, when there is a runway closer to the company's facility that already can handle the aircraft mentioned?

5. CTB, Inc.

CTB, Inc., located in Milford, Indiana, offered an undated "letter of support" stating that it would operate its Beech King Air and its Raytheon 400A Jet out of I34 if the runway was long enough. However, it is not clear from the letter what CTB means by the term "flight." In common parlance, a "flight" is a takeoff and a landing. When talking about itinerant operations for basing the determination of what a critical air craft is, only the operation that occurs at the relevant airport can be counted. Thus, CTB is counting not only operation that occurs at I34, but also the operation that occurs at the second airport. Thus, CTB, Inc.'s projected number of operations at I34 is 12, rather than 24.

In addition, neither one of the aircraft mentioned in the "letter of support" (a Raytheon 400A (N1116R) and a Beech King Air 90 (N603CB)) require a 5,000 foot runway for takeoff at MTOW.

6. Monsanto

Monsanto Company of Chesterfield, Missouri, sent an undated "letter of support" indicating that if I34 extended its runway, it "could potentially utilize" I34's runway "4 or 5 times a year." Draft EA, p.A-9. Even if one were to count future operations to determine the

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[9] Pioneer's Lear Jet 45 is only aircraft listed in all of the letters of support that would require a 5,000 foot runway to takeoff at MTOW.

[10] Airnav.com reports that Runway 1/19 at Shelbyville Municipal Airport is 5000 x 100 ft. and in good condition. http://www.airnav.com/airport/KGEZ (retrieved 08/28/2012).

critical design aircraft, the words used by the "letter of support" is less than positive that those operations would come to I34: "could potentially utilize" does not inspire much confidence that Monsanto will, in fact, utilize I34 if the Project were undertaken.

Second, again, it is not clear from the letter what Monsanto means by "flight." In common parlance, a "flight" is a takeoff and a landing. It appears once again that Monsanto is counting not only the operation that occurs at I34, but also the operation that occurs at the second airport. Thus, Monsanto's projected number of operations at I34 is 5, rather than 10.

Moreover, the FAA Aircraft Registry indicates that Monsanto is not the registered owner of the Dassault Falcon 900 with Tail No. N229DK. Exhibit 16. All of its operations, then, must be eliminated in any calculation. Thus, the number of operations that I34 could expect after extending the runway to accommodate Monsanto's needs is 2 operations per year.

7. Distribution by Air, Inc.

The May 19, 2010, "letter of support" submitted by Distribution by Air, Inc. (DBA) should not even be considered in the calculation of what is the critical aircraft at I34. DBA does not own any aircraft. It states that it "commonly operates" certain types of aircraft. If the runway were not lengthened, then DBA would operate aircraft that would be able to land and takeoff from I34, rather than avoiding I34. It does not mention that the current length of the runway is inhibiting its business in any manner. It does not mention the aircraft that it currently operates into I34, nor does it state that has, in the past, utilized either I34 or any of the surrounding airports to support its "logistics management" market. Because DBA does not present any details as to what it has in the past operated at I34, what its business has provided in the area, all of the operations it mentions must be deleted from the total.

Moreover, even if one did consider that the aircraft put forward by DBA, once again, it is not clear from the "letter of support" what it means by a "flight." Once again, it appears that DBA is counting not only the operation that occurs at I34, but also the operation that occurs at the second airport. Thus, DBA projected annual operations of 48, should be cut in half to 24.

8. Custom Conveyor, Inc.

Custom Conveyor, Inc. of Greensburg, Indiana, submitted their May 25, 2010, "letter of support" because they may at some point in the future get around to considering purchasing a larger aircraft, but only if the "the economic times recover and business operations return to the levels that existed 2 years ago." Draft EA, p.A-11. With that amount of uncertainty, the Draft EA cannot rely on there being *any* operations from Custom Conveyor. Moreover, the current runway length is suitable for the needs of the Cessna 182 that Custom Conveyor alleges it owns, although the FAA Registry does not show that Custom Conveyor, Inc. owns any aircraft.

Custom Conveyor also states that lengthening the runway would be beneficial to its customers who have to drive to Greensburg because they cannot fly into I34. This ignores the

fact that Shelbyville Municipal Airport is located a few miles down the road with a runway that is currently almost as long and as wide as the proposed runway for I34.[11] Custom Conveyor should tell its customers to fly into Shelbyville instead of driving. Thus, this "letter of support" cannot be used in determining the critical aircraft for I34.

9. IHC, Inc.

IHC, Inc., a Detroit, Michigan, based company offered a May 27, 2010, "letter of support" stating that it would continue to fly its Piper Seneca to I34. However, IHC is not the registered owner of the Piper Seneca PA-34 with tail number N59DS. Exhibit 17. It appears from the FAA Registry that IHC sold the aircraft in October, 2011. *Id.* Nor does the FAA Registry show that any aircraft are currently owned by IHC, Inc. Thus, all of the operations must be deleted from the total.

Moreover, this "letter of support" again, fails to define "flight" properly. It appears from the letter that it counts operations that took place at the originating or destination airport in its annual total, not the number of operations at I34. Therefore, the number of operations should be cut in half, even if IHC owned the aircraft it says in its letter it owned. Finally, since the aircraft that IHC alleges to own and operate already safely operates to and from I34, it does not need a longer, 5,000 ft. runway in order to operate at MTOW. In addition, IHC does not state any business justification for a longer runway.

10. Skydive Greensburg

Finally, the Draft EA offers an August 25, 2010, "letter of support" of Skydive Greensburg. It is apparent from the "letter of support" that Skydive Greensburg had been the heaviest user of the airport. However, the Draft EA is disingenuous, bordering on fraudulent, since Skydive Greensburg no longer operates out of I34. It currently operates out of Frankfort, Indiana, and has publicly stated that it has no intention of returning to Greensburg. The BOAC was well aware of the fact that Skydive Greensburg no longer operates out of I34 and should be admonished for including this letter in its Draft EA. It represents an attempt to make the airport appear to be busier than it actually is. Thus, this letter of support should be removed from the Draft EA and the BOAC should be admonished by the FAA for its inclusion.

Moreover, because of the nature of the operations conducted by Skydive Greensburg, the mentioned operations are most likely mainly local operations, not itinerant operations. Since it is not possible to separate the local operations from the itinerant operations, the entire number of operations is suspect. It also the understanding of Concerned Citizens that Skydive Greensburg at the request of two members of BOAC was asked to include "touch-and-go" operations to its total to make it appear that Skydive Greensburg had more operations at I34 than it actually did.

[11] As pointed above, there are at least two other airports in addition to Shelbyville with runways longer than 5,000 feet within 30 miles of Greensburg: North Vernon Airport (KOVO) is 23.7 miles from Greensburg and has a runway 5002 x 75 ft.; and Columbus Municipal Airport (KBAK) is 27.5 miles from Greensburg and has a runway 6400 x 150 ft.

If this is in fact true, then it reduces the credibility not only of Skydive Greensburg's "letter of support," but all of the letters of supports submitted by all of the other companies.

In summary, Companies who sent in "letters of support" based them on anticipated future operations, not current operations in order to establish a fictitious design category aircraft. FAA Advisory Circulars and FAA Orders require that current operations at the airport be taken into account in assessing the design aircraft and the design group. The Draft EA provides no legitimate data to conclude that ARC II-C is the proper design category for I34 and therefore the Draft EA must be rejected as inadequate since it does not establish a legitimate purpose and need for the project.

D. Conclusion.

The Draft EA has failed to establish a valid Purpose and Need since it does not show a need for the Project and fails to establish ARC II-C as the correct category for I34's dimensional standards under FAA Order 5090.3C. The letters of support are riven with inaccurate and false information and cannot be given credibility to support a project of this magnitude. Thus, they must be eliminated and the Draft EA deemed inadequate since it did not follow proper FAA protocol in establishing the proper critical design aircraft.

Moreover, there are several airports in the vicinity that can accommodate any increase in air traffic that are within 30 miles of Greensburg that would meet the purpose and need described in the Draft EA thus obviating the need to further expand I34. Finally, there may be a privately owned airport for sale that would also meet the purpose and need described in the Draft EA, but that alternative has not been considered by the Draft EA. Therefore, the only conclusion that can be drawn is that the Draft EA is inadequate.

II. THE EA DOES NOT CONSIDER ALL REASONABLE ALTERNATIVES.

The National Environmental Policy Act ("NEPA") (42 U.S.C. §§ 4321 et seq.) requires that federal agencies examine all reasonable alternatives in preparing environmental documents, such as Environmental Assessments. 42 U.S.C. § 4332(c)(iii). An agency preparing an Environmental Assessment should develop a range of alternatives that could reasonably achieve the need that the proposed action is intended to address. The Council on Environmental Quality ("CEQ") Regulations ("NEPA Regulations"), which implement NEPA, require that Federal agencies "[u]se the NEPA process to identify and assess the reasonable alternatives to the proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment" 40 C.F.R. § 1500.2(e), and that "agencies shall . . . (a) Rigorously explore and objectively evaluate all reasonable alternatives. . ." 40 C.F.R. § 1502.14(a). The EA fails to explore all reasonable alternatives to the Preferred Alternative selected.

The Draft EA states that the purpose of the proposed project is to "provide an efficient airport accommodating the present and forecasted activity in and around Greensburg pursuant to Federal Aviation Administration (FAA standards)." Draft EA, p.2. So long as an alternative

will meet the purpose and need, it is deemed to be reasonable and it must have its environmental impacts studied. FAA Order 5050.4B, § 706d. The Draft EA dismisses Alternatives 1 and 3 from further review, despite the fact that they both meet the purpose and need. The reasoning given for their exclusion is that the environmental impacts were too immense. Draft EA, pp.3-4. However, evaluating the environmental impacts of reasonable (*i.e.*, alternatives that meet the purpose and need) is the goal of the Environmental Assessment. Both of these alternatives warrant further consideration so that the sponsor can elucidate the environmental impacts they will have. To merely dismiss them out of hand with discussing the environmental impacts defeats the purpose of an Environmental Assessment.

Moreover, there is at least one alternative that is missing from consideration. This alternative would resolve the issues with respect to the width of the runway and taxiway and the length of the runway using the critical design aircraft as it is currently used, rather than what the BOAC hopes and prays it might at some time in future be used. Concerned Citizens would be willing to consider supporting a Project that would widen the taxiway and runway to meet FAA safety standards at its current location. The Draft EA states that "FAA standards are not satisfied because the runway width is less than 60 feet, runway object free area is less than 400 feet, and there is lack of control over development in the runway protection zones." There is no extant alternative that addresses these issues without also lengthening the runway. Also missing from the alternative section is any discussion of whether the purpose and need could be sufficiently met by use of the airports that surround the Greensburg area. Since the purpose and need is generally described ""to provide an efficient airport accommodating the present and forecasted activity in and around Greensburg, pursuant to Federal Aviation Administration (FAA) standards" (Draft EA, p.2), there is no reason why that purpose and need cannot be met by any of the three airports cited above. There is certainly no discussion in the Draft EA as to why those alternatives were not pursued or at the very least considered in the Draft EA. Likewise, there is no discussion of the alternative of BOAC purchasing HLB from Hillenbrand Industries and closing I34 at its current location. Again, this alternative meets the purpose and need and should have been considered and analyzed in the Draft EA. Thus, the Draft EA is inadequate without these alternatives being considered and analyzed. The failure of the Draft EA to develop these alternatives makes the Draft EA inadequate since an Environmental Assessment "shall include brief discussions of . . . alternatives . . ." 40 C.F.R. § 1508.9(b).[12] Absent an extended analysis of alternatives 1 and 3 and the development of an alternative based meeting the FAA safety standards, without lengthening the runway, the Draft EA is inadequate.

III. THE EA FAILS TO ANALYZE THE PRESENCE OF HAZARDOUS WILDLIFE NEAR THE AIRPORT AND FAILS TO PRESENT ANY MANDATORY MITIGATION MEASURES.

FAA Advisory Circular 150/5200-33B, entitled *Hazardous Wildlife Attractants on or Near Airports* contains standards for land uses that have the potential to attract hazardous

[12] Courts have consistently held that the "existence of reasonable but unexamined alternatives renders an EIS inadequate." *See, e.g., Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998).

wildlife on or near public-use airports. The standards are applicable to airport development projects, including airport construction, expansion and renovation. Airports that have received Federal grant-in-aid assistance must use these standards. *See* AC 150/5200-33B, p. ii. The FAA mandates separation distances of 5,000 feet at airports that do not sell Jet-A fuel, and 10,000 feet at airports that sell Jet-A fuel from hazardous wildlife attractants. AC 150/5200-33B, p.1. I34 sells both. The FAA also "recommends a distance of 5 statute miles between the farthest edge of the airport's AOA (Air Operations Area) and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure airspace." AC 150/5200-33B, p. 1. Finally, AC 150/5200-33B provides that "[a]irport operators should identify hazardous wildlife attractants and any associated wildlife hazards during any planning process for new airport development projects" (p. 17) and "[t]he FAA will not approve the placement of airport development projects pertaining to aircraft movement in the vicinity of hazardous wildlife attractants without appropriate mitigating measures." (pp. 16-17).

The FAA ranks geese as number three on a list of the relative hazard to aircraft for 25 species groups. AC 150/5200-33B, Table 1, p. iii. However, the Draft EA does not disclose that the area surrounding the airport is a prime habitat for large numbers of Canada Geese, which data clearly show it to be. Many Canada geese water habitats fall within the designated risk area, which are populated by numerous Canada geese much of the year. We raise the Canada geese issue because of growing safety concerns with respects to bird strikes in aviation. We know, for instance, that a 12-pound Canada goose struck by an aircraft traveling at 150 miles per hour has the kinetic energy impact of a 1,000 pound weight dropped from 10 feet. With more than 9,000 bird strike incidents in the U.S. in 2010 it is a serious issue.

This type of risk contributed to the deaths of three passengers and two crew members in the crash of a Cessna Citation in Oklahoma City in 2008 because, according to the National Transportation Safety Board, a large bird hit the plane wing because the FAA had done an inadequate job of enforcement of wildlife hazard requirements (National Transportation Safety Board, 2009). With many large birds in the I34 area, in close proximity to many homes, at low altitudes of under 100 feet, Concerned Citizens do not want that type of disaster to be repeated here because of an ill-informed Draft EA that ignores Canada geese. It is apparent on reading both the Draft EA and the short letter from the U.S. Department of Agriculture, Wildlife Services, that it did not follow the proper protocol for the conduct and review of Wildlife Hazard Assessments and Wildlife Hazard Management Programs. *See* AC 150/5200-32A, *Reporting Wildlife Aircraft Strikes,* AC 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports,* AC 150/5200-36A *Qualifications for Wildlife Biologist Conducting Wildlife Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazard on Airports* as well as 14 C.F.R. § 139.337.

Consequently, the Project would establish a new runway within the separation distances for wildlife hazards. The Draft EA does not adequately discuss the Wildlife hazard presented by the proximity of the Project to local ponds, rivers, streams, and lakes that attract geese and herons. Exhibit 22 is small sampling of the wildlife hazards that are within the separation distances set by FAA guidance. The Draft EA does not discuss what effect these wildlife

hazards will have on the increased operations that the Draft EA assumes will occur once the Project is completed. Moreover, recently the Department of Transportation Inspector General upbraided the FAA for its ineffective handling of its Wildlife Hazard Mitigation Program. Exhibit 18. The mitigation procedures suggested in the Draft EA (and ultimately not adopted by the Draft EA) are insufficient to meet the criteria set out in the Inspector General's Audit Report. In particular, the Draft EA does not address the following issues that were mentioned in the Inspector General's Audit Report:

(1) "FAA's oversight and enforcement activities are not sufficient to ensure airports fully adhere to Program requirements of effectively implement their wildlife hazard management plans." Exhibit 18, p.2.

(2) "FAA's policies and guidance for monitoring, reporting, and mitigating wildlife hazards are mostly voluntary, thereby limiting their effectiveness." *Id.*

(3) "FAA's oversight and enforcement activities are not sufficient to ensure that airports are fully adhering to wildlife hazard assessment and plan requirements or effectively implementing their plans to reduce strikes. As a result of these practices, FAA has missed instances of airports' noncompliance with Program requirements." Exhibit 18, p.4.

(4) "FAA did not sufficiently oversee whether airports complied with Program requirements." Exhibit 18, p.5.

(5) "FAA Inspectors did not always ensure that airports' wildlife assessments and plans were adequate and met all regulatory requirements." Exhibit 18, p.6.

In order for the Draft EA to comply with the findings of the Inspector General's Audit Report, these deficiencies must be addressed. Moreover, the sponsor has to commit to carrying out the mitigation program that will be required by the FAA's Wildlife Hazard Mitigation Program. So far, the sponsor has not done that, only committing to "updating the Wildlife Hazard Assessment and creat[ing] a Wildlife Hazard Management Plan once the runway project is complete." Draft EA, p.22. Since the current runway is within 10,000 feet of the runway, I34 should already have a Wildlife Hazard Management Plan drafted and implemented. Therefore, it is apparent that I34 is out of compliance with the FAA's Wildlife Hazard Mitigation Program already. Until I34 drafts and implements a Wildlife Hazard Management Plan and until the Draft EA corrects the above deficiencies, the Draft EA is inadequate under NEPA and must be rejected. Since the Project will create significant environmental impacts, an Environmental Impact Statement must be drafted instead of an Environmental Assessment.

IV. THE DRAFT EA INCORRECTLY STATES THE STANDARD FOR ASSESSING THE IMPACT OF CONVERTING PRIME FARMLAND AND FAILS TO PROPERLY ASSESS THE DAMAGE THE PROJECT WOULD DO ON PRIME AND UNIQUE FARMLAND.

The Draft EA states in two places that the Project will cause a conversion of prime and unique farmland. Draft EA, pp.8 and 14. It goes on to state that because the Natural Resources Conservation Service concluded that the Project received a total point value of "less than 260 points," the site "will receive no further consideration for farmland protection." *Id.* Not only does the Draft EA incorrectly state the NCRS standard, but the total point value computed by the NCRS does, in fact, meet the threshold for "further consideration" under FAA Orders. Moreover, since the NCRS can only assess the information that it receives from the project sponsor, the fact that the BOAC did not provide accurate information to the NCRS for their evaluation makes the Draft EA inadequate.

A. The Draft EA Fails to Properly Analyze the Project's Conversion of Prime Farmland.

The reason why the Project received a total point value of less than 260 points is because the maximum total points that can be obtained is 260. Draft EA, p.C-44. Suffice it to say that if the threshold were 260 points, there would not be many projects that would receive "further consideration." That being said, with respect to FAA projects, the threshold of significance is 160 points.

> **7.2c**. For FPPA-regulated farmland, scoring of the relative value of the site for preservation is performed by the NRCS and the proponent. If the total score on Form AD-1006 "Farmland Conversion Impact Rating" is below 160, no further analysis is necessary. *Scores between 160 and 200 may have potential impacts and require further consideration of alternatives that would avoid this loss.* Consider measures that reduce the amount of protected farmland that the project would convert or use farmland having relative lower value.

FAA Order 1050.1E, § 7.2c, p.A-223 (emphasis added); *see also* 7 C.F.R. § 658.4(c). This project scored 162, so it "may have potential impacts" and requires "further consideration of alternatives that would avoid this loss." Since the Draft EA specifically states that it did not undertake that proper analysis of "consider the impact further, it is inadequate pursuant to FAA Order 1050.1E., § 7.2c.

No other site was submitted to the NCRS for analysis.

B. The Information Given to NCRS for Analysis Was Flawed.

In assessing the Farmland Conversion Impact, the NCRS looks at the amount of acreage that will be "converted directly" and "converted indirectly." Draft EA, p.C-46. The Draft EA

indicates that 195 acres will be "converted directly" and that no acres will be "converted indirectly." *Id.* However, the Draft EA fails to take into account at least 30.2 acres owned by Mr. Marc Haston[13] that, after the Project has been completed, he would not have any access to. *See* Exhibit 19. Since the addition of additional acreage would increase the NCRS score of the Project, the true NCRS score of the Project still has not been determined, although it would be at least 162 points. Therefore the Draft EA does not meet FAA guidelines, orders and regulations and must be considered to be inadequate.

C. Conclusion.

Since the Project's direct and indirect conversion of prime and unique farmland protected under the Farmland Protection Policy Act will create a significant environmental impact, an Environmental Impact Statement must be drafted instead of an Environmental Assessment. As the Draft EA does not address the impact the Project will have on the prime and unique farmland, or offer any mitigation program as required by FAA Orders, the Draft EA is inadequate.

V. THE DRAFT EA'S CONSIDERATION OF 4(F) ISSUES IS INADEQUATE AND IMPROPER.

The Draft EA claims that the "proposed project will not use or acquire land from a publicly owned park, recreation area or wildlife and waterfowl refuge. . . . As a result, there are no Section 4(f) resources in the project area." Draft EA, p.8. The Draft EA comes to this conclusion based on the fact that there is no taking of 4(f) property. *See* Draft EA, pp.E-1 and E-2. However, FAA Guidance documents specifically state that an Environmental Assessment must analyze if the Project's intended use will substantially impair the features, activities or attributes of the surrounding 4(f) property. For example, FAA Order 5050.4B states that the Environmental Assessment must "[d]etermine if the proposed action or a reasonable alternative would eliminate or severely degrade the intended use of the Section 4(f) resource. That is would the proposed action or alternative physically or constructively use (i.e., substantially impair the use) that resource?" This goes beyond the mere taking of the property, since impairment refers to noise and other environmental impacts that the Project would have on the 4(f) resource.

FAA Order 1050.1E further clarifies the FAA's position with respect to 4(f) resources by stating that:

> The responsible FAA official will give particular attention to its responsibilities under section 4(f) of the DOT Act to insure that a special effort is made to preserve the natural

[13] It should also be pointed out that the Project slices Mr. Haston's farm in two, rendering the entire farm worthless because the remaining parcels are too small to farm and places his home at the end of the runway. Thus, because of the thoughtless acts of BOAC, Mr. Haston will not be able to pass on his farm as part of his legacy. Moreover, the way the new runway is designed a water way that crosses the runway will be diverted into Mr. Haston's backyard. The Draft EA fails to mention that or offer any mitigation to Mr. Haston as a result of that diversion.

> beauty of countryside, public parks, and recreation lands, wildlife and waterfowl refuges, wild and scenic rivers or study rivers, and historic sites.[14] *FAA will not approve actions requiring the use of properties under section 4(f) of the DOT Act unless there is no feasible and prudent alternative to the use and the program includes all possible planning to minimize harm from the use.*

FAA Order 1050.1E, § 206c (emphasis added). FAA Order 1050.1E continues, stating that "'[u]se' within the meaning of section 4(f) includes not only actual physical takings of such lands but also adverse indirect impacts (constructive use) as well. When there is no physical taking, but there is the possibility of constructive use, the FAA must determine if the impacts would substantially impair the 4(f) resource." FAA Order 1050.1E, ¶ 6.2e, p.A-20. The Draft EA does not discuss whether the Project will have adverse indirect impacts on 4(f) resources and whether those adverse indirect impacts would substantially impair the 4(f) resources (*see* FAA Order 1050.1E ¶ 6.2f), or how it plans to mitigate the environmental and safety impacts the Project will have on the adjoining 4(f) and 6(f) resources (FAA Order 1050.1E, ¶ 6.2e).

Concern about the impact the Project will have on the use and enjoyment of Decatur County Park, which adjoins I34, is not illusory. Already they have been several near misses at the airport because of the proximity to the Park and Fairgrounds. That concern will only grow if the airport meets the Draft EA's anticipated level of operations. Thus, the failure of the Draft EA to include even a rudimentary discussion of the adverse indirect impacts that the Project will have on the nearby 4(f) resources makes the Draft EA improper and inadequate.

VI. THE ACCURACY AND RELEVANCE OF THE DATA SUBMITTED IN SUPPORT OF THE DRAFT EA IS, AT BEST, QUESTIONABLE, LEADING TO THE INADEQUACY OF THE DRAFT EA.

Much of the data that the Draft EA includes in support of its conclusions is too old to use for an adequate EA. For example, the alternative site selection is from 2006. That data is too old by the standards of the FAA to be used in an EA. Likewise, many of the "letters of support" are at least two years old, which has resulted in the data being collected to be inaccurate. For example, one of the primary supporters, with the most operations at I34, Skydive Greensburg, no longer operates at I34. Since Greensburg is a small community, it is probable that the drafters (or at least BOAC) of the Draft EA knew this fact prior to the publication of the Draft EA. Yet the letter of support from Skydive Greenburg is contained in the Draft EA. Knowingly submitting false information, at the very least, renders the Draft EA inadequate. At worst, it constitutes fraud.

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[14] It should be pointed out the Goddard farm, recognized a Hoosier Heritage Farm, having been in his family for over 150 years. No mention was made of that fact in the Draft EA or that the Project will destroy this piece of Indiana history.

B. Information from the Alternative Site Selection Committee Is Too Old to Be Useful

The Alternative Site Selection Committee met over 6 years ago, and published its findings. Since that time much has happened. Additional properties have become available, other sites previously considered have changed such that they may be more desirable than once thought. The standard at the FAA is that the data must be no older than three years old. FAA Order 5050.4B, ¶ 1401(c)(3); *see also*, FAA Order 1050.1E, ¶ 514b(2). Although there are exceptions to this rule, it should apply to this case. Thus, because the Draft EA uses data that is over 6 years old, it is inadequate and should be rejected.

Moreover, one of the members of the Alternative Site Selection Committee has publically stated that the alternative site selection process in 2006 was a farce. The alternative sites studied were handpicked by proponents of keeping I34 at its present location, rather than being selected from alternative sites that would be competitive with the current site. In addition, it was the understanding of this member that at least one of the alternative sites, if not more, would also be examined by the FAA in the environmental assessment after the Committee had performed its duties. The Draft EA, however, prematurely eliminated *all* of the alternative sites from further analysis. Indeed, it has come to Concerned Citizens' attention, although we have been unable to confirm prior to the deadline for submitting written comments, that Hillenbrand Industries Airport (KHLB), which is a private airport located three miles Northwest of Batesville, Indiana and 15 miles West of Greensburg, might be for sale. According to Airnav.com that airport already has a runway that is 5951 long and 100 feet wide, so there would be no need to lengthen the runway. Since it is already an airport, it contains the necessary infrastructure to support aviation. This is an alternative should have been considered by the Draft EA.

This Project cries out for an alternative site. The current site is fraught with difficulties: wetlands, wildlife, endangered species, Hoosier Heritage farms, proximity to public parks. If there is a legitimate need for an airport with a longer runway, then there must be a better place to put it than where it is currently located. Because of the age of the alternative site data, a new study should be done to investigate the possibility of alternative sites for the airport that are devoid of the many obstacles to growth that the current site possesses. At the very least, the Draft EA needs to analyze one or two of the alternative sites identified six years ago.

VII. THE DRAFT EA DOES NOT ACKNOWLEDGE OR ANALYZE THE PROJECT'S MANIFEST GROWTH-INDUCING IMPACTS.

A Federal agency is required to evaluate not merely the direct impacts of a project, but also its indirect impacts, including those "caused by the action and later in time but still reasonably foreseeable." 40 C.F.R. § 1508.8(b). Indirect impacts include a project's growth-inducing effects, such as changes in patterns of land use and population distribution associated with the project [40 C.F.R., § 1508.8(b)] and increased population, increased traffic, and increased demand for services. *City of Davis v. Coleman*, 521 F.2d 661, 675 (9th Cir. 1975). The "growth-inducing effects of [an] airport project appear to be its 'raison d'etre.'" *California v.*

U.S. D.O.T., 260 F.Supp.2d at 978, *citing City of Davis, supra*, 521 F.2d at 675. The Draft EA ignores this requirement, even though the Project is virtually defined by its growth-inducing impacts. There is substantial evidence to indicate that the Project will cause a large increase in both night and jet operations, but the effect of the increase in this type of operations is not analyzed in the Draft EA on the surrounding community.

The longer runway will facilitate operations from heavier, noisier and more polluting aircraft than I34 has ever seen or experienced. Indeed, if the runway is lengthened to 5,400 feet, it is reasonably foreseeable that I34 will become much more attractive to operators of higher performance jet aircraft. And that is certainly the intent of the Project.

However, with the arrival of higher performance jets and turboprops, come additional environmental impacts that have not been analyzed by the Draft EA. It is, for example, reasonably foreseeable that the number of night operations will increase as the number of arrivals of longer haul business jets often occur in the evening hours due to the longer time duration of their trips. This will also affect the fleet mix of night operations to reflect a higher percentage of jet operations than exist under current conditions.

Thus, the evidence is clear that the Project will cause an increase in both jet *and* night operations. It is also reasonably foreseeable that these added high-performance jet aircraft operations and night operations will be accompanied by significant noise and air quality impacts.

Nevertheless, the Draft EA fails to acknowledge, let alone analyze, these reasonably foreseeable impacts caused by expansion of airport physical facilities and operational profile and, thus, is inadequate.

This is especially troublesome because these increased number of high-performance aircraft impact the use and enjoyment of Decatur County Park by the residents of Decatur County.

VIII. NOISE MODELING FOR THE PROJECT FAILED TO INCLUDE INCREASED JET AIRCRAFT AND NIGHTTIME OPERATIONS IN DEVELOPING NOISE CONTOURS.

The FAA's Integrated Noise Model ("INM") was used to model annual operations for the 2002 existing condition. Draft EA Appendix G-1 and G-2 and purports to develop 65, 70 and 75 DNL noise contours for the Project. Draft EA, p. G-2. The Draft EA states that "[t]he elongated 60 DNL contour (and more importantly, the 5 DNL contour) do not extend across noise sensitive land uses, such as school or residences." Draft EA, p.G-1. However, as shown in above, the Project will likely facilitate an increased number of night operations, and a change in fleet mix, which will include higher performance jet aircraft. DNL calculations depend on, among other things, forecast numbers of operations, operational fleet mix and times of operation (day versus night). However, the EA fails to model or assess future increased night operations and fleet mix changes resulting from the Project.

The FAA is required to use INM to produce, among other things: (1) noise contours at the DNL 75 dB, DNL 70 dB and DNL 65 dB levels; (2) analysis within the proposed alternative DNL 65 dB contour to identify noise sensitive areas where noise will increase by DNL 1.5 dB3; and (3) analysis within the ***DNL 60-65 dB contours*** to identify noise sensitive areas where noise will increase by DNL 3dB, ***if*** DNL 1.5 dB increases as documented within the DNL 65 dB contour. FAA Order 1050.1E, Appendix A, p. A-62, ¶ 14.4d.

As the noise modeling failed to take into account the foreseeable increases in nighttime and jet aircraft operations at I34, the questions of whether the future DNL 65 dB contour will be increased, and to what extent, and whether increased noise levels within the DNL 65 dB contour would necessitate designation of a DNL 60 dB contour remain unanswered.

IX. THE DRAFT EA FAILS TO MENTION, LET ALONE ANALYZE, THE PROJECT'S REASONABLY FORESEEABLE CUMULATIVE IMPACTS.

One of the purposes of an Environmental Assessment is to consider the cumulative effects of the proposed action and other "reasonably foreseeable" actions. A cumulative impact is defined in NEPA's implementing regulations 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.... Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7; *Klamath v. BLM*, 387 F.3d 989, 993 (9th Cir. 2004).

As far back as 1985, the courts laid out the specific criteria for examining cumulative effects in EAs. For example, in *Fritiofson v. Alexander*, 772 F.2d 1225 (5th Cir. 1985) the court found five criteria that must be identified in the analysis of cumulative impacts:

- The area in which the effects of the proposed action will occur;
- The impacts that are expected in that area from the proposed action:
- Other past, present, and reasonably foreseeable actions that have or are expected to have impacts in the area;
- The impacts or expected impacts from these other actions;
- The overall impacts that can be expected if the individual impacts are allowed to accumulate.

Fritiofson, 772 F.2d at 1245; *see also*, *City of Carmel-By-The-Sea v. U.S. Dept. Of Transportation*, 95 F.3d 892, 902 (9th Cir. 1996) ("[w]e adopt the Fifth Circuit's analysis of what a cumulative impacts analysis requires"). The Draft EA fails this test.

The Draft EA fails to mention any past, present and future on-airport projects. Yet, one on-going project for which the BOAC is asking for federal assistance is for repaving the runways at I34. At the very least, this is a reasonably foreseeable project and must be mentioned in the Draft EA as part of the cumulative effects section. Thus, the Draft EA has failed to identify, let alone analyze all of the "other actions - past, proposed and reasonably foreseeable - that have had or are expected to have impacts in the same area." *Fritiofson,* 772 F.2d at 1245.

X. OTHER ISSUES FOR THE FAA TO CONSIDER.

A. The City of Greensburg May Not Be Financially Capable of Supporting an Expanded Airport.

It is Concerned Citizens' belief that the City of Greensburg is in the middle of a fiscal crisis. Because of that crisis, it may not be able produce the required funds to fund its portion of the Project. While the BOAC may act on behalf of the City of Greensburg, it relies on the City of Greensburg for funding. Moreover, even if it did come up with the funds to support the expansion, it may not have the financial wherewithal to properly operate and maintain an expanded airport.

B. In Light of the City of Greensburg's Lack of Financial Resources, and the Length of the Grant Assurances, the BOAC May Not Be Able to Comply with the Grant Assurances in the Future.

Since the proposed project involves the purchase of land with federal money, the FAA's Grant Assurances will require that the City of Greensburg use the property acquired with federal money as an airport in perpetuity. Since the Draft EA operational data is questionable and is based primarily on the hopes and dreams of several companies and projected operations by aircraft that have never used I34, the long term viability of an expanded airport and the BOAC and the City of Greensburg's ability to properly maintain and operate the expanded airport is an issue that the FAA should investigate prior to the commitment of federal funds. It is Concerned Citizens' contention that should the FAA invest federal funds to expand I34, particularly at that location, the FAA might well expect in the next 10 to 20 years to be asked to the close the airport or to use property for some use other than aeronautical. By expanding I34, the FAA is inviting another Lorain County, OH, or St. Clair, MO situation, where the airport operator could not afford to operate and maintain a larger airport.

C. The Draft EA Fails to Take into Account the Movement of the Airport Lighting.

Because the Project will involve moving the runway to a new location, the runway lighting will also have to be moved. There is no discussion in the Draft EA about the environmental impacts of moving the lighting, nor the financial impacts of such movement. It is Concerned Citizens' understanding that movement of airport lighting will not be covered by a grant from the FAA, unless the FAA concludes that the lighting has to be moved. This will

result is an expense to the City of Greensburg of anywhere from $200,000 to $400,000 that may not be reimbursable by the FAA. Since the runway will almost double in size, the lighting that is currently being used will not be adequate and new and different lighting will be required. Moreover, the environmental impact of moving and upgrading the lighting for the runways must be included in an environmental assessment, which, at this time, it is not.

XI. THE PROJECT REQUIRES AN ENVIRONMENTAL IMPACT STATEMENT.

". . . NEPA requires federal agencies to prepare 'a detailed statement . . . on the environmental impact' of any proposed major federal action 'significantly affecting the quality of the human environment.'" *San Luis Obispo Mothers for Peace*, 449 F.3d at 1029, *quoting* 42 U.S.C. § 4332(1)(C)(i). "As an alternative to the EIS, an agency may prepare a more limited environmental assessment ('EA') concluding in a 'finding of no significant impact' ('FONSI'), briefly presenting the reasons why the action will not have a significant impact on the human environment." *Id*. at 1020. "The question thus becomes whether a given action 'significantly affects' the environment." *Id*. at 1029, *quoting* 42 U.S.C. § 4332(1)(C)(i).

Here, in light of the significant environmental impacts that the expansion of I34 will have on wildlife hazard, prime and unique farmland, 4(f) resources, endangered species, wetlands, and the failure of the Draft EA to properly state a purpose and need, the potential impacts of the Project are neither "remote nor highly speculative." *No Gwen Alliance v. Aldridge*, 855 F.2d 1380, 1386 (9th Cir. 1988). Rather, "the closeness of the relationship between the change in the environment and the 'effect' at issue," *San Luis Obispo Mothers for Peace*, 449 F.3d at 1029, *quoting Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983), clearly reveals the status of the Project as a major federal action significantly affecting the quality of the environment. *Id*. A full EIS must therefore be performed, which includes a comprehensive project description; reveals the full panoply of environmental effects resulting from that project; and discloses the effects of the Project, when combined with other reasonably foreseeable past, present and future actions, including, but not limited to, those documented in the existing approved Master Plan.

Concerned Citizens appreciates this opportunity to comment, and looks forward to the FAA's substantial revision of the Draft EA, and an additional opportunity to review and comment on a fully compliant and complete Environmental Impact Statement. If you have any questions or comments, please feel free to call me at (949) 735-8217 or send me an e-mail at staber@taberlaw.com.

Yours very truly,

TABER LAW GROUP, P.C.

Steven M. Taber