BEFORE THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C.

IN RE: PROPOSED MAJOR RUNWAY EXTENSION PROJECT AT ANN ARBOR MUNICIPAL AIRPORT.	)
PITTSFIELD CHARTER TOWNSHIP MICHIGAN, and COMMITTEE FOR PRESERVING COMMUNITY QUALITY, INC.	)
Petitioners.	)

PETITION TO DENY APPROVAL AND FUNDING FOR THE MAJOR RUNWAY EXTENSION PROJECT AT ANN ARBOR MUNICPAL AIRPORT (ARB) LOCATED IN PITTSFIELD CHARTER TOWNSHIP, MICHIGAN

Communications with respect to this document should be sent to Petitioners' Representative:

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Notice of Petition to:

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Honorable Michael Huerta, Administrator
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I. STATEMENT OF FACTS

A. The Airport.

Ann Arbor Municipal Airport (ARB) is a general aviation airport located entirely within the boundaries of Pittsfield Charter Township, Michigan ("Pittsfield"). According to AirNav.com, ARB has two runways, a concrete runway 3,505 feet long and 75 feet wide, and a turf runway 2,750 feet long and 110 feet wide. Exhibit 1. AirNav also notes that ARB is the base for 166 aircraft, consisting of 137 single engine airplanes, 16 multi-engine airplanes, 1 jet airplane, 11 helicopters and 1 ultralight. *Id.* ARB averages 161 operations per day, 64% of those operations are local general aviation, and 36% are transient general aviation operations.[1] *Id.* Although located outside the city limits of Ann Arbor, the City of Ann Arbor (the "City") owns and operates the airport.[2] Despite the fact that ARB is located entirely within the boundaries of Pittsfield, the township has no voting representation on any committee, council or board tasked with the management or the operation of ARB.[3]

B. The Petitioners.

1. Pittsfield Charter Township.

Pittsfield is a "charter township." Under Michigan law, a "charter township" is a municipal corporation that has been granted a charter, allowing it certain rights and responsibilities of home rule that are generally intermediary in scope between those of a city and a village. A charter township has greater protections against annexation of a township's land by

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[1] These figures are for the 12-month period ending December, 2011.

[2] Official FAA records actually list "Roger W. Fraser" as the owner of ARB without noting that Roger W. Fraser was the City Administrator for the City until 2011. Exhibit 2. The fact that the Airport is actually owned by the City, however, is noted on ARB's website: http://www.a2gov.org/government/publicservices/fleetandfacility/Airport/Pages/default.aspx.

[3] Both Pittsfield and Lodi Township have a non-voting *ex officio* member on the "Ann Arbor Municipal Airport Advisory Committee." *See* Exhibit 3. However, "the purpose of the [Ann Arbor Municipal Airport Advisory Committee] is to make recommendations to the Ann Arbor City Council regarding the construction and operation of the Airport." *Id.*

cities and villages. As a charter township, Pittsfield has established a variety of municipal services, such as a police force, fire department, assessors and is governed by a comprehensive zoning ordinance. Since ARB is within Pittsfield's corporate jurisdiction, the township provides services to ARB, as well as being subject to the township's ordinances limited only by the agreements between Pittsfield and the City.

The City, in the past, expressed an interest in annexing the property on which ARB sits. This resulted in the 1978 agreement between the City and Pittsfield Township regarding the airport. Exhibit 4. This agreement was modified in 2010. Exhibit 5.

2. Committee for Preserving Community Quality, Inc.

The Committee for Preserving Community Quality, Inc. (CPCQ) is a not-for-profit corporation consisting of approximately 400 residents of the Pittsfield and Lodi Townships and the cities of Ann Arbor and Saline. CPCQ was incorporated in April, 2010, as a community action group for residents of the communities surrounding ARB who feel the airport expansion is "both dangerous and unjustified."

C. The Proposed Project.

According to the draft Environmental Assessment[4] ARB has several issues that impact aviation safety. First, there is a "line of sight" issue whereby aircraft waiting to take off in the holding area for Runway 24 may pass out of sight of the control tower. In addition, because the northeast end of Runway 24 is a few hundred feet from State Road, a busy Township road, aircraft have to approach at slope of 20:1 instead of a more optimal 34:1. Moreover, according to the draft EA, State Road will only get bigger and wider, thereby exacerbating the problem.[5] Thus, according to ARB and MDOT, one goal of the proposed project is to move Runway 24

[4] The City of Ann Arbor issued a draft Environmental Assessment in March, 2010. Exhibit 26.

[5] The FAA, in its comments to MDOT, noted that the draft EA does not seem to substantiate the need for "a clear 34:1 approach surface to the east end of the runway." Exhibit 18, pp.4-5.

150 feet to southwest, resolving both the line-of-sight issue and the slope issue. The current 150 feet of runway at the northeast end of Runway 24 would remain as a displaced threshold.

If the project had ended there, Pittsfield and CPCQ (collectively, "Petitioners") may not have objected to it since it has a vested interest in the safe operation of the airport. However, the City also wanted to tack on an additional 800 feet at the southwest end of Runway 24 to make the runway 4,300 feet long. This runway extension, ARB and MDOT have argued, is necessary to "[e]nhance interstate commerce by providing sufficient runway length to allow the majority of critical aircraft to operate without weight restrictions." Thus, all told 950 feet of runway would be added to the southwest end of Runway 24 and 150 feet of the current runway would remain as a displaced threshold. However, there is no aviation safety issue connected to the extension of the runway.[6]

This extension of the Runway 24 qualifies as a "major runway extension" as that term has been defined by the FAA and the courts. The runway extension will permit the accommodation of aircraft that would result in an increase in noise of three decibels. *See Suburban O'Hare Commission,* 787 F.2d at 199-200; and *Town of Stratford v. FAA*, 285 F.3d 84, (D.C. Cir. 2002).

D. Petitioners' Opposition to the Proposed Project.

Petitioners' opposition to the proposed project dates back to the first time Ann Arbor proposed to extend the runway to allow bigger and noisier aircraft into ARB. On January 22, 2007, the Ann Arbor City Council unanimously approved Resolution R-31-1-07, formally adopting the airport's previous Airport Layout Plan (ALP) and called for "staff to bring back a

[6] The draft EA attempts to attach a safety concern to the extension, mentioning that aircraft had a tendency to overrun the runway at ARB. Ultimately, though, each of the runway overruns was found to be unrelated to the length of the runway and due to pilot error, a fact that ARB and MDOT admit in their response to FAA's comments. Exhibit 19, pp.14-15.

separate proposal regarding extending the runway within the next 60 days and that notification of the proposal be sent out to citizens in the surrounding area." Exhibit 6; *see also* Exhibit 31. Unfortunately, not only did the City's staff not return to a public council meeting within 60 days with an expanded runway plan, the City's staff also failed to inform "citizens in the surrounding community" of its actions for twenty months. Instead, on February 28, 2007, just 37 days after its initial City Council Resolution order, the City Staff, citing that Resolution as a basis, submitted a proposal for an 800-foot extension of primary Runway 6/24 at ARB to the Michigan Department of Transportation – Aeronautics Division (MDOT). Exhibit 7. No corresponding notice was given to Pittsfield or to the "citizens in the surrounding area."

On September 12, 2007, the proposed ALP was amended at the request of MDOT to allow for the 150-foot southwesterly movement of the entire primary runway,[7] to provide for the widening of State Street-State Road, which MDOT conceded could not be funded for decades.[8] Neither Pittsfield nor the "citizens in the surrounding community" had yet been informed by the applicant or MDOT about the proposed ALP, which calls for an extension of Runway 6/24 on land within Pittsfield's jurisdiction. The ALP finally was approved by MDOT on April 23, 2008, and presented to the Federal Aviation Administration for approval on June 4, 2008.

In a June 23, 2008, letter from David L. Baker, Manager, AIP Programs of MDOT's Airports Division of the Bureau of Aeronautics and Freight Services, MDOT indicated to the City that the FAA concurred with the approval of the ALP. Yet neither MDOT nor FAA informed Pittsfield or the citizens of the surrounding communities of either MDOT's or the FAA's approval of the ALP. In fact, it was not until August 22, 2008, that the City first

[7] In the end, then, the Project consisted of adding 950 feet of runway to the southwestern end of existing Runway 6/24: 150 feet to move the runway away from State Road and 800 for extending the runway to 4,300 feet. The existing 150 feet of runway at the northeastern end of the runway would remain as a displaced threshold.

[8] At this point in time, it is unclear whether the road will be widened at all or, if so, to the west or to the east.

officially provided Pittsfield with the plans and notification of the proposed ARB expansion and detailed proposed changes in the ALP. These documents were required to be provided to Pittsfield more than 18 months earlier under both the January, 2007, Ann Arbor City Council Resolution and under a separate 1979 Policy Statement.[9] *See* Exhibit 6 and 4, respectively. This is also contrary to the grant assurances that the City agreed to, which indicate that prior to receiving any federal funds for the Airport Layout Plan, it must give "fair consideration to the interest of communities in or near where the project may be located" (Grant Assurance 7). *See also* Grant Assurance 6. It is noteworthy, that this first notification from Ann Arbor to Pittsfield is dated 59 days after the FAA approved the revised Ann Arbor Airport ALP. Under 49 U.S.C. § 46110, routine appeals of final agency "orders" are barred after 60 days. Thus, Pittsfield was effectively barred from legally objecting to the Ann Arbor ALP before even being notified by Ann Arbor about its revised ALP.

Unable to file a legal action to stop the City from moving forward with its illegal ALP, Pittsfield responded to Ann Arbor's August notice, objecting to the proposed expansion, citing the (1) increased noise that would be generated, (2) larger aircraft that would be attracted, and (3) and greater use by heavier aircraft that could result.[10] Despite Pittsfield's opposition to the proposed expansion of ARB, the Ann Arbor City Council approved the revised Ann Arbor ALP on September 22, 2008, without considering Pittsfield's objections, or those of Lodi Township, another township close to ARB.

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[9] The 1979 policy states, *inter alia*, that "[p]lans for municipal construction on Airport lands must be submitted to the Township for review and comment." Exhibit 4, p.3. The 1979 Policy was amended after the modification of the ALP. Exhibit 5. The amendment makes clear what Pittsfield already thought was plainly obvious under the 1979 policy - that the City must notify Pittsfield prior to modifying the ALP. *See* Exhibit 5, p.2, ¶ 4.

[10] It should also be noted that the new ALP raises the weight limit of aircraft at ARB to 45,000 (single axle) and 70,000 (double axle). Exhibit 31. This change was never discussed by the Ann Arbor City Council, who still believes that the weight limit at ARB is 20,000 pounds.

On March 24, 2009, Pittsfield unanimously approved a Resolution Opposing Proposed Expansion of the Ann Arbor Municipal Airport Runway. Exhibit 8. That Resolution cites several reasons why the runway at ARB should not be expanded. Primary among those reasons is the fact that ARB is "immediately adjacent to a residential area" and that the existing "width and length" of the runway "has not posed any substantial safety concerns in the past." *Id.* In addition, the Resolution states that:

- The proposed changes would shift the runway dangerously close to a busy township road (Lohr Road) and closer to dense residential subdivisions;
- The runway expansion will significantly increase air traffic volumes and noise pollution experienced by residential subdivisions in the vicinity of ARB, thereby resulting in a decline of residential home property values and impacting Pittsfield's tax base;
- The City has not fully demonstrated the economic and safety justifications for undertaking the proposed runway expansion;
- The City has not taken into consideration the negative safety implications such a runway expansion may impose on surrounding residential subdivisions by expanding a runway closer to residential subdivisions.

Id. Lodi Township, which is adjacent to Pittsfield on the west side and also impacted by ARB, passed a similar resolution on May 12, 2009. Exhibit 9. Ann Arbor, MDOT and the FAA did not respond to either Pittsfield or Lodi Township's resolution, despite repeated requests to consider the communities' input into the proposed revision of the ALP and the proposed expansion of ARB.

On June 17, 2009, the FAA issued a Notice of Intent to Prepare an Environmental Assessment and Conduct Citizen Advisory Meetings. Exhibit 10. Although the Notice of Intent stated that "[d]uring development of the draft EA, *a series of meetings* to provide for public input will be held to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EA" (*id.* (emphasis added)) the only real opportunity for any

public discussion -- with elected public officials present -- about the proposed expansion plan was before the Ann Arbor City Council, where speakers must call-in to register in advance. Only the first ten callers on the day of Council meetings are permitted to speak. Speakers are limited to three minutes. Such a process typically has a stifling effect on open and candid discussions for subjects as complex as an airport ALP and runway expansion proposal.

Prior to the FAA's issuance of the Notice of Intent, in the Spring of 2009, a "Citizens Advisory Committee" (CAC) was appointed to advise the preparers of the Environmental Assessment. The CAC was initially comprised of:

- The Ann Arbor Airport manager;
- The chairman of Ann Arbor's Airport Advisory Committee;
- An Ann Arbor 4th Ward resident, who is also a member of the Airport Advisory Committee;
- An Ann Arbor 3rd Ward resident, who is also a flight instructor at the airport;
- Another pilot based at the airport, who is also chief pilot of Avfuel, which stands to be the single greatest beneficiary from the runway extension;
- Another airport flight instructor, who is also a member of the airport-based FAA Safety Team;
- A citizen member from Ann Arbor's 5th Ward;
- A representative from Ann Arbor's 2nd Ward, who is also a member of the Ann Arbor City Council;
- A representative of the Washtenaw Audubon Society, which conducted a previous study that found no Canada geese among 38 other species on the airport;
- Lodi Township Supervisor Jan Godek; and,
- Pittsfield Township Deputy Supervisor Barbara Fuller.

Only after extensive political pressure was applied were two additional outside members added to the CAC:

- Shlomo Castell, a commercial passenger airline pilot from the Stonebridge Community Association in Pittsfield Township, and
- Kristin Judge, Washtenaw County Commissioner from District 7, which includes Pittsfield.

For an airport located in Pittsfield Township that most dramatically impacts Pittsfield and Lodi Townships and Ward 4 of Ann Arbor, the CAC was dominated by the City and airport members who stood to benefit from the expansion. It was apparent that ARB intended the CAC to under-represent those immediately outside the airport perimeter whose safety could be placed at greater risk by any expansion. Ultimately, however, the CAC was a powerless committee intended only to provide the façade of public participation in an essentially authoritarian decision-making process. The CAC only met three times, with no opportunity for public participation. According to records available to Petitioners, CAC first met on May 4, 2009, to receive information about the proposed project. Exhibit 11. The second meeting was held on July 20, 2009, at which some of the initial findings were presented by ARB's consultants. Exhibit 12. No members of the public were allowed to attend or ask questions. *Id.* Instead, members of the CAC were expected to interact with their "constituencies" and express to the committee their comments and concerns outside of the CAC. *Id.* The final meeting was held on February 22, 2010, when the executive summary of the draft EA was presented to the CAC. Exhibit 13.

This was not the "series of meetings to provide for public input … held to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EA" that MDOT and the FAA promised. The public was not invited to participate at the CAC meetings. Instead, the members of the CAC received information from ARB's consultants and

were expected to relay it back to their "constituencies." When the CAC had suggestions or recommendations, they were often ignored by ARB staff and consultants. For example, Shlomo Castell, a Delta 747-400 pilot and the only commercial pilot who was a member of the CAC, asked that the consultants request bird strike information from the FAA and study it prior to submitting the draft Environmental Assessment, since he himself had experienced a bird strike and since there is a substantial Canada goose population at and around ARB. However, ARB's consultants ignored that request. In the end, the CAC did not come up with any recommendations or findings to be presented to ARB's consultants. Instead, it operated solely as a method for ARB's consultants to disseminate propaganda about the importance of the expansion, while giving the FAA, MDOT, and the City the cover they needed to state that they were providing "public participation."[11]

The other avenue for the public to influence ARB's and MDOT's decision was through the AAC. But the AAC is also heavily weighted in favor of ARB's interests. Although both Pittsfield and Lodi Township have "*ex officio*" members on the AAC, they have no voting power, and the Mayor of Ann Arbor appoints the remaining members. Even if Pittsfield and/or Lodi Township did have voting powers, the AAC has no decision-making authority, and can only recommend actions be taken. During the period in between the FAA's Initial Notice and the publication of the draft EA, the AAC met five times. However, the AAC also limits the time that the public can speak to only three minutes. Thus, it was impossible for the AAC to receive all of the information it needed to make well-reasoned decisions and recommendations with respect to the extension of Runway 6/24 at ARB.

[11] In fact, public access to the CAC was so limited and tightly controlled that Mr. Castell was falsely accused of using his laptop to record the CAC meeting and broadcast it over Skype, which the rules of the CAC prohibited.

On March 19, 2010, the FAA issued its Notice of Availability of Draft Environmental Assessment concerning the expansion at ARB. Exhibit 14. The FAA's Notice of Availability indicated that written comments would be received by MDOT until 5:00 p.m. EST April 12, 2010. In addition, the FAA's Notice of Availability indicated that there would be a "public hearing to provide information on the draft EA and accept comments from the public" on March 31, 2010. However, the "public hearing" actually was a three-hour "open house" held during the dinner hour period between 4-7 pm, during which individuals could assemble and provide public comments in response to the Environmental Assessment. Local media announcements of the event (AnnArbor.com) encouraged citizens to send comment letters directly to the Airport Manager, rather than MDOT, until Petitioners intervened and requested that MDOT correct the process to restore a semblance of fairness. At the session itself, there was no dais of public officials impaneled to answer the public's numerous questions. There were no open, public statements with the media present. All testimony was given in private rooms to court reporters, to be forwarded to MDOT for later evaluation and, presumably, incorporation into the final EA.

That citizens, not public officials, needed to police the process was the ultimate insult to ensure any semblance of fairness and equity. Because this public hearing process was so restrictive, members of the public were effectively deprived of their due process rights under the 14th Amendment of the U.S. Constitution. Pittsfield and its citizens have not had an opportunity to speak in an open and fair forum for a reasonable amount of time in opposition to the extension of Runway 6/24 at ARB before a public body on an issue that directly impacted their physical and economic well-being. That is because, if the extension proposal goes forward, the Ann Arbor City Council generally restricts all outside speakers to three minutes, which is hardly an adequate time to offer an organized and coherent argument against such a complex proposition as an

airport expansion. At the same time, city officials and their surrogates are afforded unlimited time to speak to the City Council to advocate in favor of the runway extension, in clear violation of due process protections. Thus, by closing off the fairness and balance intended by holding this only federally-mandated forum, ARB and MDOT were able to stifle the only open public commentary and dissent regarding the airport in violation of the law.

Both Pittsfield and CPCQ submitted comments to the draft EA on April 19, 2010,[12] outlining in great detail the inadequacy of the draft EA and the need for a proper Environmental Impact Statement instead of an Environmental Assessment. *See* Exhibits 15 and 16. The Washtenaw County Water Commissioner also submitted comments to the draft EA, expressing serious concerns regarding inaccurate statements and the failure of the draft EA to address critical water resources issues with respect to the proposed project. Exhibit 17.

The Washtenaw County Water Commissioner was not alone is having reservations about the Project. On May 13, 2010, the Federal Aviation Administration also submitted comprehensive comments on the draft EA, raising a whole host of serious issues that the draft EA left unaddressed. *See* Exhibit 18. In particular, the FAA expresses its doubts of the Project's qualifying as a "safety" project, when the draft EA does not present any evidence for the need for the safety improvements detailed in the draft EA. These relate to the shifting of the runway 150 feet to the southwest so that sight lines between the Air Traffic Control Tower and the aircraft on the taxiway could be improved as well as allowing for the implementation of 34:1 approach instead of the current 20:1 approach. In its November 15, 2010, response, MDOT seems to abandon all of the safety improvements to the airport as being part of the "purpose and need,"

[12] MDOT and FAA extended the comment period from April 12, 2010, until April 19, 2010.

while still maintaining that 950 feet of impervious surface needs to be added to the southwest end of the Runway 6/24. *See* Exhibit 19.

The issue of lighting at ARB also raised FAA's concern. Since the FAA owns and controls the lighting at ARB, the relocation or replacement of the current approach lighting system as well as the development for future approach procedures for the new runway end locations is solely a federal action not within the scope of MDOT's block grant authority. Yet, the FAA points out, the draft EA fails to cover the environmental impact of the relocation and/or replacement of the approach lighting would have. Exhibit 18, p.1. Because of this fact, an additional environmental assessment has been ordered, but has yet to be completed.

Finally, the FAA requested that additional information be submitted regarding the number of critical aircraft using ARB and how ARB arrived at its conclusion that there were over 500 itinerant operations of the critical aircraft at ARB to justify the extension of the runway. The FAA concluded its comments by stating:

> Since there are several updates/clarifications requested by the FAA contained in this letter and the sponsor's responses may be substantial, it would be prudent to afford the public an additional opportunity to review and comment on the changes that are anticipated to be made for the final draft publication. Most specifically, the document will need to clearly outline the requested local, state and federal actions. Since this was not clearly presented in the initial draft EA, the FAA may consider these changes and clarifications as a material change to the document that should result in solicitation of additional public comment.

Exhibit 18, p.9.

But the story does not end there. There is a growing lack of support by the Ann Arbor City Council for the extension of the runway. The Ann Arbor City Council has removed ARB's expansion project from its Capital Improvement Project list for both 2011 and 2012. In addition, despite the fact that the City's portion of additional consulting work to be performed amounts to the relatively small sum of $1,125, the resolutions approving these expenditures were met with

considerable skepticism and opposition by the City Council on the utility of the expansion. One City councilman remarked that he would "vote no on everything. It's taxpayer dollars, whether it's local or federal." Exhibit 20. He continued, stating that his constituents do not want the runway extension and he would vote no on that, too. *Id*. Another Council member allowed that the city's portion of the bill was very small but "what the council would be doing is spending money on something that won't move forward" reiterating the fact that the City Council had removed the project from the CIP, which, the Council member said, "translated into a decision that the council wouldn't move forward [with the extension of the runway]." *Id.*

II. LEGAL BASIS FOR PETITION

A. Statutory Basis for Pittsfield Petitioning the Secretary of Transportation.

Federal law gives communities[13] the right to petition the Secretary of Transportation about proposed airport development projects in their communities. 49 U.S.C. § 47106(c)(1)(A)(ii), states in pertinent part, that:

> (1) The Secretary [of Transportation] may approve an application under this subchapter [49 U.S.C. §§ 47101 *et seq.*] for an airport development project involving the location of an airport or runway or a major runway extension –
>
> (A) only if the sponsor certifies to the Secretary that –
>
> . . . .
>
> (ii) the airport management board has voting representation from the communities in which the project is located *or* has advised the communities that they have the right to petition the Secretary *about* a proposed project[14] . . . .

[13] Federal law does not define the term "communities." Thus, for purposes of this petition, Petitioners consider both Pittsfield and CPCQ to have standing to petition the Secretary of Transportation under federal law since they are both community organizations.

[14] This does not mean that the right to petition the Secretary does not exist for "communities" that have voting representation on the airport management board, only that the sponsor is not required to certify that it advised such communities that they have a right to petition the Secretary.

49 U.S.C. § 47106(c) (emphasis added). Congress, as part of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Pub. L. 102-581), added subsection (A)(ii) stating "the sponsor of the project certifies to the Secretary that the airport management board either has voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project."

The provision, however, is somewhat of an anomaly, since the provision itself does not give the communities the right to "petition the secretary," it states instead that prior to receiving approval of a grant for an "airport or runway or a major runway expansion," the sponsor must advise the communities of their right to petition the secretary "about a proposed project." This provision implies that the statutory "right to petition the secretary" exists beyond the scope of the paragraph, although it is the legal duty of the airport sponsor to inform "the communities" of their statutory right to petition the Secretary regarding the project *prior* to the sponsor receiving funding for the project. That is, this paragraph does not give the communities the right to petition the Secretary, but instead only requires that the sponsor certify that it has informed the communities of that pre-existing right. Thus, the communities' right to petition the Secretary of Transportation is separate from the sponsor's duty to inform the communities of that right.

Moreover, the paragraph also implies that the content of the petition need not solely concern environmental matters. Although the paragraph is entitled "Environmental Requirements," as explained above, the *right* to petition the Secretary exists separate and apart from the sponsor's duty to inform "the communities" of that right as part of the "Environmental Requirements." Indeed, one of the few cases to pass judgment on this statutory provision came to a similar conclusion. In *Communities Against Runway Expansion, Inc. et al. v. Federal Aviation*

Administration, 355 F.3d 678, 689 (D.C. Cir. 2004), the U.S. Circuit Court of Appeals for the District of Columbia held that 49 U.S.C. § 47106(c)(1)(A)(ii) was part of the grant application procedure, not the environmental procedure. On that basis the court rejected petitioners' claim that the Environmental Impact Statement was inadequate because the EIS failed to inform the communities of their right to petition the Secretary of Transportation. Thus, the scope of the petition to the Secretary goes beyond mere environmental analysis and extends to all reasons and issues why a proposed project should or should not be undertaken.

In addition, implicit in the language of the paragraph is the scope of the projects about which "communities" have a right to petition the Secretary. Although the statute states that the sponsor need only certify to the Secretary that "the communities" have been informed of their right to petition the Secretary for airport development projects that involve "the location of an airport or runway or a major extension," the paragraph states that the communities' right to petition extends to "a proposed project." The preceding clause in the paragraph states the certification is not necessary if the "airport management board has voting representation from the communities in which *the* project is located …" 49 U.S.C. § 47106(c)(1)(A)(ii)(emphasis added) *compare* "… has advised the communities that they have the right to petition the Secretary about *a* proposed project" (emphasis added). Had Congress intended that the right to petition the Secretary only extend to projects "involving the location of an airport or runway or a major runway extension," it would have used the definite pronoun "the" to indicate the project that is the "location of an airport or runway or a major extension." Instead, Congress uses the indefinite pronoun "a" coupled with the further distinction "proposed" to indicate a wider category of airport development projects. Thus, Congress must have meant to make a distinction between

"in which the project is located" and "about a proposed project." And that distinction can only be that the right to petition the Secretary goes beyond limiting factors expressed in (c)(1).

B. Constitutional and Administrative Procedure Act Bases for Petition.

In addition to the provisions of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, the United States Constitution and the Administrative Procedures Act also give Petitioners a basis for petitioning the Secretary. The First Amendment of the U.S. Constitution states that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition Government for a redress of grievances." U.S. Const., amend. 1. This right has been upheld numerous times by the courts. The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. *United Mine Workers of America, Dist. 12 v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967). It shares the "preferred place" accorded in our system of government to the First Amendment freedoms, and has "a sanctity and a sanction not permitting dubious intrusions." *Thomas v. Collins*, 323 U.S. 516, 530 (1945). "Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger." *Id.* The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *United States v. Cruikshank*, 92 U.S. (2 Otto) 542, 552 (1875).

The purposes of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*) have been generally described as (1) to require agencies to keep the public informed of their organization, procedures and rules; (2) to provide for public participation in the rulemaking process; (3) to establish uniform standards for the conduct of formal rulemaking and adjudication; and (4) to define the scope of judicial review. Since this petition falls within the definition of "rule

making" (5 U.S.C. § 551), the Administrative Procedure Act applies to the extent that Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 lacks clear direction.

III. NEITHER MDOT NOR THE FAA HAS GIVEN THE COMMUNITIES' INTEREST "FAIR CONSIDERATION" AS REQUIRED UNDER FEDERAL LAW.

The aviation statutes of the United States make it incumbent on the Federal Aviation Administration to ensure that communities are given the opportunity to express their frustration with a process that has explicitly disenfranchised them. *See* 49 U.S.C. § 47106(b)(2). That statute requires that before any federal funding of an airport development project takes place, the "Secretary must be satisfied that …the interests of the community in or near which the project may be located have been given fair consideration." 49 U.S.C. § 47106(b)(2). Thus, Petitioners ask federal intervention to preserve their due process rights, since local government has been afforded no voice in the ultimate decision as to whether the Project proceeds within Pittsfield's jurisdiction.

A. The Expansion at Ann Arbor Municipal Airport Does Not Comply With Planning in the Surrounding Communities.

The FAA has a duty under the law to ensure that federal funds are used properly for airport development projects that are required to fulfill the FAA's mission. Because of the substantial authority given to the Secretary of Transportation by Congress with respect to the development of airports, it is absolutely imperative that the concerns and issues of the surrounding communities are taken into account *prior* to approval of a project. This policy is reflected not only in the statutes that the FAA is bound to uphold, but in its regulations and guidance documents that it has issued. One place this policy is shown is in the assurances that

airport sponsors, owners and operators are bound to follow upon accepting federal funds for airport development. In particular, grant assurances 6 and 7 state:

> 6. Consistency with Local Plans. The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
>
> 7. Consideration of Local Interest. It has given fair consideration to the interest of communities in or near where the project may be located.

FAA Airport Sponsor Grant Assurances, Exhibit 21. Thus, approval of this project without the approval by Petitioners would be a violation of ARB's grant assurances.

B. The City's Goals Are Not the Same as Petitioners' Goals.

While Petitioners recognize the safety concerns presented in the draft EA, they are less sympathetic with growth inducing aspects of the project which would subject both the government of Pittsfield and the people of Pittsfield to untold potential future damage. This damage would come in the form of both safety risks and in economic loss because of repeated flights of low flying, heavy jet aircraft. Pittsfield and its residents would have no choice but to seek recovery in the event of a tragic accident or inverse condemnation class action proceedings, from the City potentially leaving Pittsfield victims without an effective remedy at law.

1. The Project would increase safety concerns of low-flying aircraft near surrounding densely populated communities.

Petitioners would be subjected to a perfect storm of potential risks from low-flying aircraft in heavily populated neighborhoods that are also occupied by wildlife, including many Canada geese, during much of the year. *See* Exhibit 22 for map of ponds surrounding the airport that support Canada Geese. This is confirmed by a study conducted by MDOT and Ann Arbor's own airport architects (URS Corporation), which was excluded from the draft EA, and visualized

on a projection of what the approach to an expanded Runway 6 would look like relative to the close proximity to area homes, which was corrected for accuracy. Exhibit 23.

The safety of having an airport so close to a densely populated area is not an unfounded fear. In June, 2009, a small single-engine plane attempting to land at ARB instead made an emergency landing 1,200 yards short of Runway 6/24 on a Stonebridge Golf Club fairway in Pittsfield after its engine died at low altitude on final approach. Exhibit 24. The pilot said if there had been people on the fairway at the time, he would have "crashed into the trees," which would have probably been fatal for him and his grandson, whom he was instructing at the time. *Id*. Moreover, it is not insignificant that between 1973 and 2001 nine people died from accidents flying in the Ann Arbor Airport traffic pattern within three miles of the airport. Exhibit 25. With Runway 6/24 extended 950 feet farther to the southwest and even closer to hundreds of homes, as proposed, and planes still lower on approach – and planes heavier, larger, carrying greater payloads, and more people – this poses a risk too grave to bring to a heavily populated community as well as to the users of ARB.

2. As a result of the Project ARB will attract more and heavier aircraft, which will increase the safety risk to the surrounding community as well lower their property values.

Extending Runway 6/24 by 950 feet will attract more and heavier jets (as well as larger multi-engine aircraft) while bringing them closer to heavily populated residential areas. ARB estimates that jets would be within 600 yards at altitudes of 93 feet above rooftops of homes, or lower, on a regular basis. Aircraft landing on Runway 6 would pass Lohr Road below 90 feet, which is the site of a new, planned non-motorized bike path, designated the Lohr-Textile Greenway Project, for which the Washtenaw County Parks and Recreation Commission has

awarded Pittsfield a $300,000 Connecting Communities grant. Thus, low-flying, heavy jets would be landing just feet over people traversing a new non-motorized trail.

This is especially dangerous with heavier aircraft because, in the event of any common multi-engine aircraft mishaps – such as an engine failure on takeoff, a bird strike on takeoff, climb out, or approach, or similar incident – with aircraft in very close proximity to homes, the risk could be grave – a perfect storm of environmental or human risk. For example, a twin-engine jet losing one of its engines would lose 80 percent of its climb performance. At low altitudes that could be tragic. Likewise, the loss of an engine in a light twin-engine aircraft would be catastrophic, since the aircraft would not be able to continue to climb on one engine in takeoff configuration. Neither could it turn back toward the airport at low altitude in takeoff configuration.

Such impacts and safety implications on political jurisdictions where airports are located and where the airport decision-making bodies are devoid of local citizens and local governments must be investigated carefully and thoroughly by the governmental entities empowered to protect the safety of all concerned. The Department of Transportation and the FAA must protect the health and well-being of the people on the ground as well as those in the air from the inherent risks of aviation.

IV. THERE IS NO AVIATION SAFETY NEED TO EXTEND RUNWAY 6/24 AT ANN ARBOR MUNICIPAL AIRPORT BY 950 FEET.

The draft EA and the initial statements by ARB and MDOT tend to indicate that the primary purpose of the Project is to increase the safety at ARB. While parts of the Project may, in fact, contribute to an increase in aviation safety at ARB, the extension of Runway 6/24 will not provide any more safety either to those using the airport or to those on the ground.

A. Not All Alternatives That Would Meet the Stated Objectives for the Airport, Yet Still Meet the Stated Objectives and Goals, Were Considered.

As part of the National Environmental Policy Act ("NEPA") (42 U.S.C. §§ 4321 et seq.) process, federal agencies are required to examine all reasonable alternatives in preparing environmental documents. 42 U.S.C. § 4332(c)(iii). An agency preparing an EA 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 Project, as presented by ARB, has failed to explore all reasonable alternatives to the Preferred Alternative selected.

1. The draft EA utterly fails to give proper consideration to all reasonable alternatives.

The draft EA on p. 2-5 lists five objectives of the proposed project:

- Enhance interstate commerce by providing sufficient runway length to allow the majority of critical aircraft to operate without weight restrictions.
- Enhance operational safety by improving the FAA ATCT line-of-sight issues.
- Enhance operational safety in low-visibility conditions by providing a clear 34:1 approach surface to Runway 24, over State Road.
- Reduce the occurrence of runway overrun incidents by small category A-I aircraft (local objective).
- Relocate and potentially upgrade the Runway 24 Approach Light System.

Exhibit 26, p. 2-5. To that end, ARB and MDOT dismissed out of hand the alternatives of "use other airports," "construct new airport," and "extend runway to the east." While Petitioners may agree that constructing a new airport and extending the runway to the east may not be feasible either economically or practically, the alternative "use other airports" should have been given more consideration. In particular, Willow Run Airport (YIP), as the draft EA notes "is capable of accommodating any of the aircraft that currently fly into ARB" and that it is located a mere 12 miles from ARB, or 20 minutes by surface transportation. But because some corporate magnates want to be able to fly in on their corporate jets to be 12 miles closer to their offices, federal taxpayers will have to expend millions of dollars on extending the runway at ARB. Moreover, ARB and MDOT imply that interstate commerce will be "enhanced" by the extension of the runway, when, in fact, it will take business away from Willow Run Airport – which already has the infrastructure and excess capacity in place to accept the larger aircraft that ARB so desperately desires.

The FAA reached the conclusion that some of the alternatives mentioned in the draft EA were not given a complete treatment. For example, the FAA stated that: "[b]ased on the information presented in the draft EA, the FAA has not reached the same conclusion that alternatives 1 and 2 do not meet the stated needs for the project."[15] Exhibit 18, p.7. If that is the case, then the draft EA must examine the environmental impacts of alternatives 1 and 2. Moreover, the FAA pointed out "[a]dditional alternatives that may be considered for evaluation to address the need statements could include a combination of items such as: alternative modes of transportation to address enhancing interstate commerce, removal or relocation of obstructions

[15] *See also* "… table [3-1] appears to incorrectly dismiss alternative 1 because it does not meet purpose and need. The discussion in 3.3.2 does not support that conclusion." Exhibit 18, p.7.

that limit ATCT line of sight issues, and raising or constructing a new ATCT to address the line of sight issues." *Id.*

2. Even after ARB and MDOT changed the need for the Project after the draft EA was published, they have failed to consider all reasonable alternatives.

However, in response to the FAA's comments, ARB and MDOT jettison their concern for the line-of-sight issue and the need for a 34:1 approach on the east end. MDOT and ARB, in their response to the FAA, specifically state that "[t]here is currently not a 'need' for the 34:1 approach." Exhibit 19, p.10. Indeed, ARB and MDOT restate the need in the November 15, 2010, letter as being "based on the objective of providing a primary runway of suitable length to safely accommodate critical category aircraft without operational weight restrictions." *Id.,* p.8. If that is the case – then Build Alternative 2, extending the existing runway 800 feet to the west (instead of 950 feet), should have been more fully examined in the environmental assessment. According to the draft EA Build Alternative 2 was rejected for further consideration because "[k]eeping the east runway end in its current location would not address the tower line of sight issue or the need for a 34:1 approach on the east end." Exhibit 26, p.3-9. The draft EA is not sufficient if the need purposed is simply providing "a primary runway of suitable length," since it failed to assess properly the environmental impacts of Build Alternative 2. In addition, if the need is simply to provide "a primary runway of suitable length," ARB and MDOT have not yet shown that the need cannot be met by using Willow Run Airport instead of ARB.

On the other hand, if the tower line of sight issue or the need for a 34:1 approach on the east end are, indeed, issues that should be addressed, then ARB and MDOT have failed to take into account yet another alternative. The "need" to address the tower line of sight issue and the "need" for a 34:1 approach on the east end could be met by simply shifting Runway 6/24 150

feet to the southwest, *i.e.*, removing 150 feet from the approach end of Runway 24 and adding 150 feet to the departure end of Runway 24. Runway length would remain 3,505 feet.

Section 2.2.1 of the draft EA states that a 150-foot shift of the Runway 24 threshold to the west would (1) enhance the safety of ground operations by taxiing aircraft; (2) enhance operational safety, and possibly prevent runway incursions, by expanding the view of the hold area and parallel taxiway to ATCT personnel; (3) allow for a clear 34:1 approach surface to the east end of the runway, providing an added margin of safety between approaching aircraft and ground-based obstacles, which is particularly beneficial when aircraft are operating in low-visibility conditions; and (4) include relocation and replacement of the existing runway approach light system with newer Medium Intensity Approach Lighting System with Sequenced Flashers (MALSF). Exhibit 26. Shifting Runway 6/24 150 feet to the Southwest without lengthening the runway would also accommodate future widening of State Road. Nevertheless, this "reasonable alternative" was not considered in the draft EA. An Environmental Assessment "shall include brief discussions of . . . alternatives . . ." 40 C.F.R. § 1508.9(b).1. Absent an analysis of an alternative based on a 150-foot southwesterly shift of the runway, without lengthening the runway, the EA is inadequate and the Project should not be approved.

B. Resolving ARB and MDOT's "Need" Through the Extension of Runway 6/24 Is Unsupported by the Evidence.

An Environmental Assessment must include a discussion of the purpose and need for the proposed action that 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 EA, FAA Order 1050.1E provides that: "[t]his 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 and ARB and MDOT have not discussed or examined what exactly the need for the Project is. Although the draft EA never specifies the need for the Project, it does identify the purpose along with various "objectives." *See supra* pp.25 – 26.

1. The Project is not supported by any reasonable and independent evidence and does not solve the problem it purports to solve.

First, the draft EA defines the purpose of the Project as "to provide facilities that more effectively and efficiently accommodate the critical aircraft that presently use the airport, as well as to enhance the operational safety of the airport." Exhibit 26. After being taken to task by the FAA for its lack of a clear definition of a "need" in the draft EA, ARB and MDOT responded that the need (although nowhere to be found in the draft EA) "for the project is based on the objective of providing a primary runway of suitable length to safely accommodate critical category aircraft without operational weight restrictions."[16] Exhibit 19, p.8. The draft EA defines "critical aircraft" as "the most demanding aircraft-type that performs a minimum of 500 annual operations at a particular airport," and claims that a 2009 MDOT Airport User Survey "has confirmed that the critical aircraft classification for ARB is 'B-II Small Aircraft.'" Exhibit 26, p.2-4. To effectuate the stated purpose, the draft EA purports to support the construction of a runway extension from 3,505 feet to 4,300 feet. However, the evidence is clear that no "B-II Small Aircraft" require a 4,300 foot long runway. All B-II Small Aircraft are capable of operating on the existing 3,505 feet long runway without weight restriction. In fact, the representative B-II Small Aircraft cited by ARB as justification for the Project, the Beechcraft King Air 200, requires only 2,579 feet of runway to take-off fully loaded, and 2,845 feet to land.

[16] As defined by the FAA in FAA Order 1050.1E, ¶ 405c, this is not a "need" but simply a restatement of the purpose. ARB and MDOT have yet to identify and discuss in any reasonable manner "the problem facing the proponent."

See, http://www.hawkerbeechcraft.com/beechcraft/king_airb200gt/specifications.aspx. Thus, the statement that "[d]evelopment of the primary runway at ARB to the recommended length of 4,300-feet would allow the majority of B-II Small Aircraft to operate at their optimum capabilities (without weight restrictions)," although true, is misleading. Exhibit 26.

There is no need to extend Runway 6/24 to allow B-II aircraft to operate at ARB. They can operate on a 3,505 foot runway without weight restrictions. Therefore, the statement that interstate commerce would be negatively impacted by B-II weight restrictions does not state a valid need, and the purported purpose of "provid[ing] facilities that more effectively and efficiently accommodate the critical aircraft that presently use the airport" is an unnecessary solution to a nonexistent problem.

2. ARB's justification for the Project incorrectly relies on total annual operations to support extending Runway 6/24.

The draft EA states, "[t]he critical aircraft, or grouping of aircraft are generally the largest, most demanding types that conduct at least 500 operations per year at the airport," and concludes that the proper Airport Reference Code ("ARC") for ARB is B-II, based on a total of "750 actual annual operations by B-II category critical aircraft from survey data year 2007." Exhibit 26. 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
>
> 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). It should be pointed out that FAA Order 5090.3C does not state that critical aircraft must be the "largest." 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* Exhibit 26, Table 2-1, p. 2-10. Separating itinerant and local operations at ARB would result in a dramatic reduction in the number of annual critical aircraft operations at the airport. For example, data from the website City-Data.com shows that there were 25,064 itinerant operations and 44,174 local operations at ARB in 2008. *See*, http://www.city-data.com/airports/Ann-Arbor-Michigan.html. In that itinerant operations account for approximately 36% of the total operations at ARB, itinerant B-II operations for 2007 would be in the neighborhood of 300 operations per year (40% of 750 total operations), substantially below the FAA's threshold of 500 annual operations to constitute "substantial use." Moreover, the Airport User Survey shows only 293 annual B-II operations at ARB in 2007. Thus, the FAA Order 5090.3C airport dimensional standards for B-II small aircraft do not apply.

Even if, for argument's sake, we were to accept the critical aircraft data reported in the Airport User Survey, a detailed analysis shows that a weighted average of 78 percent of those B-II aircraft operations took place within a 450-mile radius of ARB, according to MDOT's own data analysis. Exhibit 27. These represent areas that are within the flight range of ARB's current

based fleet, according to the User Survey data, from the current-length runway. Thus, by another means of calculus, itinerant operations beyond the range of need are fewer than 200 and the Purpose and Need fails.

Further, MDOT's choice of 2007 as a year of certification for critical aircraft was based on an arbitrary and capricious decision. The year 2007 represents the greatest number of ARB operations in the 5-year period 2004-2009 and was selected, according to the MDOT analyst involved, because "our thoughts were that the current recession could possibly have affected the 2008 operational levels in such a way that 2008 year records would not be a true indicator of a post-recession return to normal operations at the airport. . .." Exhibit 26. Even the FAA suggests ARB will not return to such high operating levels as 2007 for the next 20 years. Thus, MDOT was showing bias and affording Ann Arbor a huge advantage in not even evaluating operational data from any other year, particularly one that is more recent than 2007. Objectively, since its standard is the independent FlightAware data base, MDOT should analyze critical aircraft operational data for the five years 2007-2012 and base its decision on an average of those years' operational data. However, such aircraft operational data should be (1) independent, (2) verifiable, and (3) operationally detailed.

At the FAA's request, ARB examined the aircraft operational data for 2009. However, despite ARB and MDOT's claim that "there were still over 500 annual itinerant operations conducted by category B-II at ARB in 2009" (Exhibit 19, p.13), the data provided by ARB and MDOT could only support 346 critical aircraft (not necessarily itinerant) flights. These were the only flights that were (1) independent, (2) verifiable, and (3) operationally detailed, since they were derived from the FlightAware database. Since this is a critical issue, only operational data meeting these criteria should be used. MDOT's analyst, however, allowed purported additional

critical aircraft flights (again, not necessarily itinerant flights) based on a corporate pilot's one-line letter certification. These flights were unsupported by the FlightAware data or other independent criteria. Because these flights are not verifiable, independent or operational detailed they must be excluded from the determination of the critical aircraft category at ARB.

3. Shifting Runway 6/24 150 Feet to the Southwest Will Not Achieve an Additional Margin of Safety.

The draft EA states that part of the Project's purpose is to "[e]nhance operational safety in low-visibility conditions by providing a clear 34:1 approach surface to Runway 24, over State Road." Exhibit 26. Operational safety in low visibility conditions will not be enhanced by providing a clear 34:1 approach surface to Runway 24. The draft EA is correct in stating that shifting the Runway 24 threshold 150 feet west would enhance safety by effectively removing the current obstruction to line-of-site vision (hangar) of the parallel taxiway for ATCT personnel. Exhibit 26. However, in the next paragraph the draft EA states, "The proposed shift of the Runway 24 threshold would also allow for a clear 34:1 approach surface to the east end of the runway (the current approach surface is the steeper 20:1). By keeping obstructions below the flatter 34:1 approach surface, an additional margin of safety is provided between approaching aircraft and any ground-based obstacles." Exhibit 26. This statement lacks support in either the Instrument Approach Procedure (IAP) design or Terminal Instrument Procedures ("TERPS") Obstruction Standards. Both the 20:1 and the 34:1 surfaces exist simultaneously for every published IAP, and are defined as "Obstacle Identification Surfaces," which do not establish obstacle clearance safety margins, but rather only define instrument approach visibility minimums. The FAA does not require either of these two surfaces to be free of penetration by obstacles, and thus "providing an additional margin of safety" as stated in the draft EA does not apply in the case of these two surfaces. Other TERPS surfaces (Obstacle Clearance Surfaces) are

established which do ensure clearance from obstructions, and the FAA requires that these Obstacle Clearance Surfaces be clear of structures and terrain. The current IAPs to Runway 24 were designed by the FAA to accommodate all existing obstructions. Thus, shifting the runway 150 feet to the west would not enhance safety. Even if one were to assume that the draft EA is correct in the assertion that shifting the Runway 24 threshold would eliminate obstruction penetrations to the existing 34:1 Obstacle Identification Surface, the effect would not be a safety improvement, but would result only in a reduction in the required approach visibility minimums. In its response to the FAA's comments, ARB and MDOT drop the shifting of Runway 6/24 as a "need."

4. ARB and MDOT falsely conveyed the impression that ARB is located in a rural setting instead of in a densely populated area.

The draft EA intends to deceive readers as to the cosmopolitan location of the airport, utilizing Figure 2.1, for instance, which depicts unpaved Lohr and Textile Roads and vacant land and rock pits and gravel pits where developed communities of Pittsfield (Brian Hill, Lake Forest, Lake Forest Highlands, Lohr Lakes Village, St. James Woods, Silo Ridge, Stonebridge, and Waterways) and Lodi (Travis Pointe) Townships exist today, with more than 2,000 homes – making the area appear far more rural and not susceptible to the safety risks from added airport development that are actually posed.

V. THE EXTENSION OF THE RUNWAY WILL CAUSE SIGNIFICANT ENVIRONMENTAL IMPACTS ON THE SURROUNDING COMMUNITIES.

United States federal law states at 49 U.S.C. § 47101(a)(6) that it is "the policy of the United States - - that airport development under this subchapter provide for the protection and enhancement of natural resources and the quality of the environment of the United States." The Project will have a significant impact on the environment not only on the airport, but throughout

the surrounding community. Since it is Pittsfield's duty and responsibility to protect the environment within its boundaries and protect its citizens from significant environmental impacts, it has serious concerns about the environmental impact the Project will have on the community.

A. The Data Used to Justify the Project Is Not Current.

Even when the draft EA first came out almost three years ago, Petitioners had issues about the timeliness of the data presented. The data that the Airport relied upon was almost three years old when it was used in the draft EA.

Moreover, it is the FAA's policy to use timely data instead of data that is stale, like the data used to justify the Project. In particular, ¶ 402a of FAA Order 1050.1E states that

> A draft EA may be assumed valid for a period of three years. If the approving official has not issued an EA/FONSI within three years of receipt of the final draft EA, a written reevaluation of the draft (see paragraph 410) must be prepared by the responsible FAA official to determine whether the consideration of alternatives, impacts, existing environment, and mitigation measures set forth in the EA remain applicable, accurate, and valid. If there have been changes in these factors that would be significant in the consideration of the proposal, a supplement to the EA or a new EA must be prepared in accordance with the procedures of this chapter.

FAA Order 1050.1E. Although it has not yet been three years since MDOT issued the draft EA, at the very least a written re-evaluation must be issued, particularly since the data used in the draft EA was stale when the draft EA was first issued.

B. The Project Does Not Take into Account the Noise Impact of the Project on the Surrounding Community.

It has long been "the policy of the United States - - that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities." 49 U.S.C. § 47101(a)(2). Part of the FAA's mission is to ensure that the communities surrounding airports are not adversely impacted by noise from aircraft at airports. This mission is expressed

in 49 U.S.C. § 47101(c), which states that "[i]t is in the public interest to recognize the effects of airport capacity expansion projects on aircraft noise. Efforts to increase capacity through any means can have an impact on surrounding communities. Noncompatible land uses around airports must be reduced and efforts to mitigate noise must be given a high priority." Thus, to the extent that noncompatible land uses around airports cannot be reduced, then the capacity of nearby airports should not be increased or else the FAA and the airport sponsor would be in violation of federal law. ARB and MDOT seem to be aware of the fact that increases in capacity at the airport will affect the noise levels in Pittsfield, because they studiously avoid the topic.

1. ARB and MDOT incorrectly assume that extending the runway will not increase the number of air operations, the fleet mix or other growth-inducing effects of the Project.

When considering an airport project for federal funding, the FAA 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)) as well as 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. Even though the Project is virtually defined by its growth-inducing impacts, ARB and MDOT have ignored this requirement completely – not only in the draft EA, but in the public participation aspects of the Project as well. Although ARB and MDOT claim that the "percent of night and jet operations would remain constant between the existing condition and

the future years," there is substantial evidence to indicate that the Project will cause a large increase in both types of operations. Exhibit 26, p.4-2.

As indicated above, there are no weight restrictions that must be lifted to allow ARB's "critical aircraft" to operate at the airport without weight restrictions. For example, the "load restrictions" referenced on page 2-12 of the draft EA refer not to category B-II aircraft, but to the fact that higher category aircraft (jets in the C-I and C-II categories) must currently operate at reduced weights in order to use the current 3,505 foot runway. Operationally, weight is reduced by carrying fewer passengers, less baggage and/or less fuel, all of which discourage these aircraft from conducting operations at ARB. A Cessna Citation II (Category B-II), for example, requires 2,990 feet for takeoff at maximum certificated gross weight on a standard day, and can operate at unrestricted weight from the existing 3,505 foot runway. A Lear 35 (Category C-I), on the other hand, requires 5,000 feet for takeoff at maximum certificated gross weight on a standard day. While extending the runway to 4,300 feet would not facilitate unrestricted operations by the Lear 35, the required weight reduction would be less than is currently required. Therefore, the runway extension to 4,300 feet would operationally benefit the Category C-I Lear 35, but would provide no operational benefit to the Category B-II Citation jet, which the EA states is a "critical aircraft."

The primary reason why ARB and MDOT are so keen on extending the runway is to facilitate the loading of additional passengers and baggage on high performance jet aircraft outside of what ARB considers to be its "critical aircraft." Also, the ability to carry additional fuel may mean that, in certain cases, costly and time consuming intermediate fuel stops will become unnecessary. If the runway is lengthened to 4,300 feet, it is reasonably foreseeable that ARB will become much more attractive to operators of higher performance jet aircraft, such as

the Lear 25 (Category C-I), Cessna Citation III (Category C-II) and Cessna Citation Sovereign (Category C-II), who could then operate at ARB instead of driving to and from Willow Run Airport, a mere 12.3 mile car trip, where there are ample facilities for large aircraft.

2. The fact that night and jet operations will increase as a result of the Project has not been analyzed by either ARB or MDOT.

Contrary to ARB and MDOT's unsupported assertions in the draft EA (*see e.g.* Exhibit 26, p. 4-2; Appendix B-1, p. B-4), it is reasonably foreseeable that the fleet mix at ARB will change in favor of a higher percentage of jet operations as compared to the current level of light single and multi-engine propeller driven aircraft operations. The smaller Category A-I/II and B-I aircraft account for a high percentage of ARB operations. B-II aircraft account for a low percentage of ARB operations. Because of the availability of a longer runway, it is therefore 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. Since one of the stated purposes of the Project is to increase interstate commerce, this is not merely an indirect, but also a direct effect, that the Project will have on the surrounding community. 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, ARB and MDOT have failed to acknowledge, let alone analyze, these reasonably foreseeable impacts caused by expansion of airport physical facilities and operational profile and, thus, the Project should not be approved for federal funding.

3. Increased jet aircraft and nighttime operations were not included in the noise modeling used by ARB and MDOT.

The sole presentation of the noise modeling performed by ARB and MDOT is presented in the draft EA. On its face it is insufficient to meet FAA standards. The FAA's Integrated Noise Model (INM) was used to model annual operations for the 2009 existing condition in the draft EA, *i.e.*, April 2008 through March 2009 and develop 65, 70 and 75 DNL noise contours for the Project. Exhibit 26, Appendix B-1, p.4, p. 4-3. The EA states that "[t]he existing 65 DNL contour does not extend beyond airport property." Exhibit 26, p. 4-3. However, during the time modeled, jet operations accounted for approximately 2 percent of total operations at ARB, and nighttime operations accounted for 4.2 percent of total operations. Exhibit 26, p. 4-2. The draft EA states: (1) "[t]he percent of night and jet operations would remain constant between the existing condition and the future years;" (2) "fleet mix between the 2009 Existing Condition and the 2014 Future Alternatives would remain static"; and (3) "[t]he ARB 2014 proposed project alternative DNL 65 dBA noise contour does not extend beyond airport property." Exhibit 26, p. 4-2; Appendix B-1, p. B-4; p. B-6.

None of these assertions are based on facts or the reality of the situation that exists at ARB. As shown above, because of the increase in the length of the runway the Project will likely facilitate an increased number of night operations, and a change in fleet mix that 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). Exhibit 26, Appendix B-2, p. B-16. However, ARB and MDOT have failed to model or assess future increased night operations and fleet mix changes resulting from the Project.

The FAA requires the use of 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 dB ; 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 ARB, 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.

4. Noise from aircraft, particularly high performance jets, remains a very real concern for communities that surround ARB.

The FAA last reviewed the technical bases for its noise policies in 1992. For example, 65 DNL as the "threshold of significant impact" under NEPA and the level below which land uses are deemed compatible has been used by the FAA without substantial change since *1978* (it was "re-affirmed" by FICAN in 1992). It is safe to say that the FAA's policy no longer reflects the best scientific evidence of the effects of aircraft noise exposure. This failure on the part of the FAA to update its policy undermines the trust that the public places in the FAA in their pursuit to understand noise exposure and its effects.

This is particularly true since substantial research done on the measurement and effect of aircraft noise on the communities surrounding airports has come from sources outside the United States. For example, the Hypertension & Exposure to Noise Near Airports (HYENA) study evaluated the effects of aircraft noise on 4,861 persons residing near 7 European airports between 2002 and 2006. The 2002 RANCH study from London studied the effect of aircraft and road traffic noise on 2,844 children's cognition and health. Both of these studies came out with rather startling results concerning the effect aircraft noise has on the quality of human life.

Finally, WHO Europe issued "Night Noise Guidelines," which were based on research done by the European Union. This type of study has largely been absent in the United States.

The emerging research suggests that current standards used by the FAA are outdated and underestimate the significant health risks posed by aircraft noise. The current understanding of the health effects of aircraft noise goes beyond mere annoyance and sleep disturbance, which the current DNL protocols were meant to address. The new research shows a strong correlation between aircraft noise and significant, serious health outcomes, such as hypertension and heart disease. Four studies from Europe have shown this connection:

1. Haralabidis AS, Dimakopoulou K, Velonaki V, Barbaglia G, Mussin M, Giampaolo M, Selander J, Pershagen G, Dudley ML, Babisch W, Swart W, Katsouyanni K, Järup L; for the HYENA Consortium. Can exposure to noise affect the 24 h blood pressure profile? Results from the HYENA study. *J Epidemiol Community Health*. 2010 Jun 27.

2. Haralabidis AS, Dimakopoulou K, Vigna-Taglianti F, Giampaolo M, Borgini A, Dudley ML, Pershagen G, Bluhm G, Houthuijs D, Babisch W, Velonakis M, Katsouyanni K, Jarup L; for the HYENA Consortium. Acute effects of night-time noise exposure on blood pressure in populations living near airports. *Eur Heart J*. 2008 Feb 12

3. Jarup L, Babisch W, Houthuijs D, Pershagen G, Katsouyanni K, Cadum E, Dudley M-L, Savigny P, Seiffert I, Swart W, Breugelmans O, Bluhm G, Selander J, Haralabidis A, Dimakopoulou K, Sourtzi P, Velonakis M, VignaTaglianti F, on behalf of the HYENA study team. Hypertension and Exposure to Noise near Airports - the HYENA study. *Environ Health Perspect* 2008; 116:329-33

4. Jarup L, Dudley ML, Babisch W, Houthuijs D, Swart W, Pershagen G, Bluhm G, Katsouyanni K, Velonakis M, Cadum E, Vigna-Taglianti F for the HYENA Consortium. Hypertension and exposure to noise near airports (HYENA) - Study design and noise exposure assessment. *Environ Health Perspect* 2005; 113:1473-8.

This is not to say that there has not been any research done in the United States on this issue. In March 2007, for example, Lisa Goines and Louis Hagler published their article entitled "Noise

Pollution: A Modern Plague" in the *Southern Medical Journal*. While it did not concentrate solely on aircraft noise, the article concluded that

> [n]oise produces direct and cumulative adverse effects that impair health and that degrade residential, social, working, and learning environments with corresponding real (economic) and intangible (well-being) losses. It interferes with sleep, concentration, communication, and recreation. The aim of enlightened governmental controls should be to protect citizens from the adverse effects of airborne pollution, including those produced by noise. People have the right to choose the nature of their acoustical environment; it should not be imposed by others.

ARB and MDOT are imposing the nature of their "acoustical environment" on Pittsfield and its citizens, rather than having the citizens choosing for themselves.

In addition several "findings" have been issued by governmental or quasi-governmental sources. The Federal Interagency Committee on Aviation Noise (FICAN) has issued two findings: *FICAN Recommendation for use of ANSI Standard to Predict Awakenings from Aircraft Noise* (2008) and *Findings of the FICAN Pilot Study on the Relationship between Aircraft Noise Reduction and Changes in Standardized Test Scores* (2007). Partnership for AiR Transportation Noise and Emissions Reduction (PARTNER), a collaboration among the FAA, NASA and TransportCanada, issued in July 2010, its *Review of the Literature Related to Potential Health Effects of Aircraft Noise*, (prepared by Hales Swift). That review concluded that "[p]otentially serious health outcomes have been identified in studies involving transportation noise exposure in a population. These include heart disease and hypertension and the observed effects seem to be related especially to nighttime noise exposure although similar daytime exposure effects have also been identified." PARTNER 2010, p.62. PARTNER has also issued several other reports:

• Sonic Boom and Subsonic Aircraft Noise Outdoor Simulation Design Study. Victor W. Sparrow, Steven L. Garrett. A PARTNER Project 24 report. May 2010. Report No. PARTNER-COE-2010-002.

• Passive Sound Insulation: PARTNER Project 1.5 Report. Daniel H. Robinson, Robert J. Bernhard, Luc G. Mongeau. January 2008. Report No. PARTNER-COE-2008-003.

• Vibration and Rattle Mitigation: PARTNER Project 1.6 Report. Daniel H. Robinson, Robert J. Bernhard, Luc G. Mongeau. January 2008. Report No. PARTNER-COE-2008-004.

• Low Frequency Noise Study. Kathleen Hodgdon, Anthony Atchley, Robert Bernhard. April 2007. (Report No. PARTNER-COE-2007-001) PARTNER Project 1, Low Frequency Noise Study, final report.

• Land Use Management and Airport Controls: A further study of trends and indicators of incompatible land use. Kai Ming Li, Gary Eiff. September 2008. Report No. PARTNER-COE-2008-006

• En Route Traffic Optimization to Reduce Environmental Impact: PARTNER Project 5 Report. John-Paul Clarke, Marcus Lowther, Liling Ren, William Singhose, Senay Solak, Adan Vela, Lawrence Wong. July 2008. Report no. PARTNER-COE-2008-005

• Land Use Management and Airport Controls: Trends and indicators of incompatible land use. Kai Ming Li, Gary Eiff, John Laffitte, Dwayne McDaniel. December 2007. (Report No. PARTNER-COE-2008-001) PARTNER Project 6 final report.

Thus, there is no shortage of relevant, topical information for ARB, MDOT and the FAA to use in assessing the health risks and impacts of noise on the communities surrounding ARB. It is readily apparent that the current system does not fully account for the increased health risks communities surrounding airports are subject to due to the increased noise levels. FAA needs to re-evaluate its noise modeling and insist that health risks to the surrounding communities be assessed prior to ARB receiving federal funds for any expansion that will result in an increase in aviation operations.

C. ARB and MDOT Have Failed to Take Into Account the Effects the Project Will Have on Air Pollution in the Surrounding Community.

Section 7506 of the Federal Clean Air Act (42 U.S.C. § 7401 et seq.) mandates that "[n]o department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to [a State Implementation Plan] after it has been approved or promulgated under [42 U.S.C. §7410]." The Environmental Protection Agency (EPA) has promulgated regulations implementing § 7506 (the "Conformity Provision") in 40 C.F.R. § 93.150 *et seq*. ("General Conformity Rule"). The General Conformity Rule requires, in part, that federal agencies first determine if a project is either exempt from conformity analysis or presumed to conform. If it is neither, the agency must conduct a conformity applicability analysis to determine if a full conformity determination is required. *See Air Quality Procedures for Civilian Airports and Air Force Bases*, p. 13.

The project area, *i.e.*, Washtenaw County, is in attainment for five of the seven criteria pollutants, and marginal nonattainment for Ozone. Exhibit 28. Washtenaw County is designated as in nonattainment for $PM_{2.5}$. *Id*. Therefore, one of the following applies:(1) the project is exempt from conformity; (2) the project is presumed to conform; or (3) the agency must conduct a conformity applicability analysis to determine if a conformity determination for $PM_{2.5}$ is required. Neither ARB nor MDOT has indicated that any of the required actions was performed.

The draft EA does not provide any guidance as to whether the Project is exempt or presumed to conform. At page C-4, the draft EA states unequivocally that "[f]or this analysis it will be assumed that the project is *neither* exempt nor presumed to conform." (Emphasis added). However, on the next page, the draft EA states that ". . . a conformity determination is not required and the proposed project *is presumed to conform* to the state implementation plan."

Exhibit 26, p.C-5, (emphasis added). Under either scenario, however, ARB and MDOT have failed to meet the "public disclosure" requirement under NEPA.

1. ARB and MDOT have failed to establish that the Project is exempt.

There are two options in determining that a project is exempt from conformity analysis: (1) if the project is included in the list of exempt actions listed in § 93.153(c)(2); or (2) if the project's total of direct and indirect emissions are below the emissions levels specified in § 95.153(b) of the Conformity Regulations ("*de minimis*"), § 93.153(c)(1).

The first option does not apply here because none of the actions to be undertaken as part of the Project are included as "exempt actions" § 93.153(c)(2). Exhibit 26, p. 2-1. Nor does the Project qualify as exempt because of *de minimis* emissions under 40 C.F.R. § 93.153(c)(1). The closest ARB and MDOT come to any type of air quality analysis can be found on pp. 4-17 and 4-18 of the draft EA. ARB and MDOT, instead of performing a site-relevant analysis, rely on an outdated study, 1996 MDOT Bureau of Aeronautics Air Quality Study of seven general aviation airports (which notably do not include ARB), to conclude that "typical GA airports generate a low level of pollutants." Exhibit 26, p. 4-17. From there, ARB and MDOT extrapolate that because ARB is comparable in size and activity to the seven airports studied, it can be assumed that emissions resulting from the Project will not exceed the conformity threshold levels, and, on that basis, concludes that a conformity analysis is not required.

This assumption, however, does not comply with federal law for at least two reasons. First, neither ARB nor MDOT has quantified $PM_{2.5}$ emissions from flight operations at ARB. Even the superannuated 1996 Study makes no mention of ARB. Second, because ARB and MDOT have failed to quantify the emissions, there can be no comparison with the *de minimis* thresholds established in 40 C.F.R. § 93.153(c)(1). While the original version of 40 C.F.R. §

93.153(c)(1) did not establish explicit thresholds for $PM_{2.5}$, as distinguished from PM_{10}, the newly implemented revised General Conformity Rule does establish that distinction, and now serves as the template for the air quality analysis required in the EA. Moreover, FAA Order 1050.1E, Appendix A, p. A3, § 2.16 includes both PM_{10} and $PM_{2.5}$ in "particulate matter."

2. ARB and MDOT have failed to establish that the project is "presumed to conform."

The second option, the presumption of conformity, does not apply here either. In order for a federal action to be "presumed to conform," the Project has to fall within a category of actions predetermined by the responsible federal agency to carry a presumption of conformity. *See* 40 C.F.R. § 93.154(f) – (h). In July, 2007, the FAA published its *Federal Presumed to Conform Actions Under General Conformity Final Notice*, 72 Fed.Reg. 41,565-580 (July 2007), in which the FAA listed fifteen Airport Project categories that the FAA presumes to conform to applicable SIPs. None of the actions to be undertaken by the Project fall within any of those presumed to conform categories. ARB and MDOT cannot unilaterally presume that the Project is in conformity and therefore the draft EA's statement is in error.

3. ARB and MDOT have failed to establish the Project's conformity status under the Clean Air Act.

Finally, the antiquated study of General Aviation airports in Michigan other than ARB is an inadequate substitute for the required analysis. 40 C.F.R. § 93.159 requires that analyses under the General Conformity Rule be based on, among other things: (1) "the latest planning assumptions" (§ 93.159(a)); and (2) "the latest and most accurate emissions estimation techniques available" (§ 93.159(b)). The 1996, 17-year old, study patently fails to fall within either, let alone both, of these parameters. In summary, the EA fails to establish the existence of any of the necessary components of the required finding of conformity for a project that can be

supported by federal funds, and, thus, is inadequate under federal aviation statutes, NEPA and the Clean Air Act.

D. ARB and MDOT Have Failed to Take Into Account the Effect the Project Will Have on Water Resources in the Surrounding Communities.

Throughout this process ARB and MDOT have consistently understated the significance of water resources. The principal use of the grounds where the airport is located is for the collection and pumping of water for the City. However, water quality is something that must be taken much more seriously than ARB or MDOT has taken it. As FAA Order 1050.1E points out "[i]f there is the potential for contamination of an aquifer designated by the [EPA] as a sole or principal drinking water resource for the area, the responsible FAA official needs to consult with the EPA regional office, as required by section 1424(e) of the Safe Drinking Water Act, as amended." FAA Order 1050.1E, pp. A-74, 75, ¶ 17.1c. Likewise, "[w]hen the thresholds indicate that the potential exists for significant water quality impacts, additional analysis in consultation with State or Federal agencies responsible for protecting water quality will be necessary. *Id*., pp. A-75, A-76, ¶ 17.4a. Finally, in situations such as this, "[i]f the EA and early consultation [with the EPA] show that there is a potential for exceeding water quality standards [or] identify water quality problems that cannot be avoided or mitigated . . . an EIS may be required. *Id*., pp. A-75, ¶ 17.3.

The Airport is the location of a porous sand/gravel formation that yields a large amount of water for pumping. Historically, the land where the airport is located was originally acquired by the City of Ann Arbor for water rights in 1929. Until recently, 15% of Ann Arbor's water supply came from the three wells located on Airport property. Exhibit 29, Water Quality Report, 2008, City of Ann Arbor, p. 2. The paving that the Project will require increases not only the

impervious area on top of the aquifer, but also increases the risk of contamination. This in turn reduces the infiltration of water that feeds the aquifer/City water supply. Adding 950 feet to the end of the runway adds another 71,250 square feet of impervious area over an aquifer that is vital to the City. However, ARB and MDOT have given this issue only passing mention: "[b]ased on coordination with the City of Ann Arbor, the proposed runway extension would not impact the water supply wells or the new water supply line (Bahl, 2009)." Exhibit 26, p. 4-20. Notably absent from their coordination efforts is the EPA or its Regional Office with respect to water resource issues.

ARB and MDOT's nonchalance with respect to a principal source of Ann Arbor's water supply raised serious issues with the Washtenaw County Water Resources Commissioner – another entity with whom ARB and MDOT should have been consulting from the very beginning. In response to the draft EA, the Washtenaw County Water Resources Commissioner pointed out:

> It is noted in the [draft EA] that: "The amount of impervious surface on site would increase slightly due to the extension of the runway and taxiway from the existing 7 percent of the 837 acres to 7.4 percent." This slight increase noted equates to an additional 3.348 acres or 145,839 square feet. This increase in impervious surface is considered by this office to be significant and not slight particularly knowing that the additional runoff from this area will discharge to the Wood Outlet Drain.

Exhibit 17, p.2. This, coupled with the fact that the City owns and operates four water wells on ARB's property, causes deep concern with the County.

This issue has become even more important since the draft EA was published back in 2010. In May, 2012, it was reported that the water table in the Ann Arbor area, has risen substantially. As pointed out in the Ann Arbor Chronicle, "[t]he only hard data that the city has collected on the water table is at the municipal airport, and there the water table measures

between 2-7 feet below the surface now, compared to 15 feet below the surface 50 years ago." Exhibit 30.[17] This is not an insubstantial problem. With the water table at the airport now being 2-7 feet below the ground surface instead of 15 feet, when the drinking water wells were first dug, the groundwater is even more vulnerable to contamination because there is much less soil for any surface pollution to filter through or attach to soil particles before it reaches the water table. This dramatic change in the water table may also alter ground water data from the past. That is, the rise in the water table may have altered the direction of groundwater flow, or there may now be some barrier blocking the traditional pathway for the water to flow, which would cause Ann Arbor's principal drinking water supply to be contaminated.

The Washtenaw County Water Resources Commissioner raised additional significant concerns that have yet to be addressed by either ARB or MDOT.

> 3. It is indicated that the preferred alternative does not impact the stream that is existing on the site. [Draft EA, p.4-18]. Using GIS measurements it appears that the stream is less than 1,000 linear feet from the existing runway. The runway extension would bring this infrastructure within 50 linear feet or less of the stream. In addition to this the grading limits shown in Appendix D-7 clearly extend into and beyond the location of the stream. Based on this information *it is not understood how it has been concluded that there are no impacts to the stream*.
>
> 4. It is indicated that the preferred alternative does not impact the floodplain for the stream that is existing on the site. It is indicated that proposed grading for the expansion would not occur within the designated floodplain boundary. [Draft EA, p.4-24]. Based on the floodplain boundary shown on FEMA Community-Panel Number: 260623 0010 C these statements are incorrect. Not only do the grading limits indicated for the preferred alternative extend into the floodplain boundary but the runway extension itself will extend into this floodplain boundary. Based on this information it is *not understood how it has been concluded that there are no impacts to the floodplain*.
>
> ….

[17] By contrast, the draft EA relies on data at least 15 years old. Since there is more current data, that should be used instead of outdated data. *See* Exhibit 26, p.4-20.

6. It is noted in the report that: "Implementation of appropriate best management practices (BMPs) would continue to control the rate of stormwater runoff and maintain water quality standards." [Draft EA, p.4-18]. It is unknown by this office as to what the control rate of stormwater is currently being implemented or whether this rate meets county standards. *The additional volume created by this increase in imperviousness is not spoken to at all by the report. The type or locations of the appropriate BMPs indicated are not identified*.

Exhibit 17, pp.1-2 (emphasis added). Petitioners have the same concerns about how water resources will be managed by ARB and MDOT should this Project move forward. These issues have not been sufficiently addressed by either ARB or MDOT in the draft EA or at any of the public hearings.

VI. REDRESS

By this Petition, and for the reasons stated above, Pittsfield Charter Township and the Committee for Preserving Community Quality, Inc. respectfully request that the Secretary of Transportation take the following actions with respect to Ann Arbor Municipal Airport, which is located solely in Pittsfield Charter Township:

1. Halt any further FAA action regarding MDOT and ARB's proposal to extend the primary runway at Ann Arbor Municipal Airport pending the resolution of this petition.

2. Vacate the current Airport Layout Plan as being improvidently approved by MDOT and reinstate the prior Airport Layout Plan.

3. Inform MDOT that federal funds may not be used for the extension of the primary runway at Ann Arbor Municipal Airport due to the fact that MDOT and ARB have failed to state a legitimate purpose and need for the extension.

4. Inform MDOT and ARB that should the primary runway be extended without the agreement or acquiescence of Pittsfield, it will be in violation of its federal grant assurances.

5. If the Secretary of Transportation fails to take the actions described in ¶¶ 3 and 4 above, Pittsfield Charter Township requests that he order that an Environmental Impact

Statement be conducted that assesses the impact the extension of the runway will have on the surrounding communities and that addresses the significant environmental impacts detailed in this Petition.

6. If the Secretary of Transportation declines to order that an Environmental Impact Statement be conducted, Petitioners request that the Secretary of Transportation direct MDOT to make federal block grant funds available to Pittsfield to conduct its own Environmental Assessment and/or Environmental Impact Statement. In addition, Petitioners request that the Secretary of Transportation inform MDOT and ARB that federal funds will not be available for the implementation of the extension of the runway until such time as Pittsfield completes its Environmental Impact Statement.

7. If the Secretary of Transportation declines to take any of the actions described in the above paragraphs, Petitioners request that the Secretary direct MDOT to conduct a written re-evaluation of the Project and publish a new draft Environmental Assessment, which would then be subject to public participation in the form of substantive public hearings and comments.

8. Inform MDOT and ARB that in order to use federal funds for any future airport actions that will affect the surrounding community in general and Pittsfield in particular, they must consult and receive approval from Pittsfield prior to commencing any such action.

VII. CONCLUSION

Federal law requires the Secretary of Transportation to give this petition prompt consideration. Additionally, under the Administrative Procedure Act "agency action" is defined to include "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent denial there of *or failure to act.*" Therefore, Petitioners are requesting a substantive response to

this petition within one hundred eighty (180) calendar days.[18] In the absence of an affirmative response, Petitioners will be compelled to consider litigation in order to achieve the agency actions requested.

Dated: January 28, 2013

Respectfully submitted,

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[18] Petitioners note that a response period of 180 days is reasonable under the APA. *See* 42 U.S.C. § 7604(a) requiring notice of 180 days prior to commencement of an action for unreasonable delay.

EXHIBIT LIST

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01	Airport Information for Ann Arbor Municipal Airport (KARB) as Reported on AirNav.com	5
02	Airport Master Record for Ann Arbor Municipal Airport (FAA Form 5010-1)	5
03	Bylaws of Ann Arbor Municipal Airport Advisory Committee	5
04	Resolution R-280-7-78 of the Ann Arbor City Council Approving Agreement between the City of Ann Arbor and Pittsfield Charter Township. July 6, 1978.	6, 9
05	Agreement Supplementing 1979 Policy Statement Relative to Airport Layout Plans, Aeronautical Facilities and Non-Aeronautical Facilities at the Ann Arbor Airport. October 1, 2009.	6,9
06	Resolution R-31-1-07 of the Ann Arbor City Council to Approve the URS Corporation Airport Layout Plan Update for the Ann Arbor Municipal Airport which Illustrates Existing and Proposed Facilities to meet the Future Demands of Airport Tenants and Users. January 22, 2007.	8,9
07	February 28, 2007, Request by the Ann Arbor City Council to MDOT to approve the Revised Airport Layout Plan.	8
08	March 24, 2009, Res #09-23 of Pittsfield Charter Township Opposing Proposed Expansion of the Ann Arbor Municipal Airport Runway.	10
09	May 12, 2009, Resolution # 2009-009 of Lodi Township Opposing Proposed Runway Expansion of the Ann Arbor Municipal Airport.	10
10	FAA Notice of Intent to Prepare an Environmental Assessment; Ann Arbor Municipal Airport, Ann Arbor, MI. 74 Fed.Reg. 28768 (June 17, 2009).	11
11	Meeting Minutes from the May 4, 2009, meeting of the Ann Arbor Municipal Airport Citizens Advisory Committee.	12
12	Meeting Minutes of the July 20, 2009, meeting of the Ann Arbor Municipal Airport Citizens Advisory Committee.	12
13	Meeting packet for the February 22, 2010, meeting of the Ann Arbor Municipal Airport Citizens Advisory Committee.	13
14	Notice of Availability of Draft Environmental Assessment; Ann Arbor Municipal Airport, Ann Arbor, MI. 75 Fed.Reg. 13334 (March 19, 2010).	14

No.	Title	Page
15	April 19, 2010, Comments on the Draft Environmental Assessment submitted by Pittsfield Charter Township.	15
16	April 19, 2010, Comments on the Draft Environmental Assessment submitted by Committee for Preserving Community Quality.	15
17	April 19, 2010, Comments on the Draft Environmental Assessment submitted by Janis A. Bobrin, Washtenaw County, Michigan Water Resources Commissioner.	15, 48 – 50
18	May 13, 2010, Comments on the Draft Environmental Assessment by the Federal Aviation Administration.	7, 15, 16, 26
19	November 15, 2010, Response of Michigan Department of Transportation to FAA's Comments on the Draft Environmental Assessment.	7, 16, 27, 29, 32
20	April 27, 2012, Ann Arbor Chronicle Article regarding Airport Request for Additional Funding.	17
21	FAA Grant Assurances Airport Sponsors (4/2012).	22
22	Map of Lakes and Ponds that Support Hazardous Wildlife in Vicinity of Ann Arbor Municipal Airport.	23
23	URS Study Excluded from Draft Environmental Assessment and Airport Layout Plan.	23
24	Images of Aircraft Emergency Landing: Stonebridge Golf Course – June, 2009.	23
25	National Safety Transportation Board Reports regarding fatal accidents in the vicinity of Ann Arbor Municipal Airport.	23
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27	Supplement Report Airport User Survey, December, 2009.	32
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29	2008 Drinking Water Quality Report, Ann Arbor Public Services.	48
30	The Ann Arbor Chronicle Article from April 27, 2012 indicating rise in water table at Ann Arbor Municipal Airport.	49
31	2007 and 2008 Airport Layout Plans for Ann Arbor Municipal Airport.	8, 9