UNITED STATES
DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION

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In the Matter of the

FOUR CORNER-POST PLAN January 24, 2006 71 FR 3915
Draft Supplemental Environmental Assessment (SEA) for the Proposed Modification to the Four Corner-Post Plan at Las Vegas McCarran International Airport

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(1) FOUR CORNER POST PLAN, DRAFT SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT (SEA) COMMENTS; (2) FEDERAL AVIATION AGENCY ("FAA") PETITION FOR ADMINISTRATIVE ACTION, ON BEHALF OF THE NEVADA ENVIRONMENTAL COALITION, INC. AND ROBERT W. HALL

I. Preliminary Statement

This Petition is timely submitted on behalf of the Nevada Environmental Coalition, Inc. ("NEC") and Robert W. Hall ("Hall") as an individual. This Petition is submitted in response to Federal Aviation Agency ("FAA") notices published in the Las Vegas Review Journal on December 6 and 8, 2005 forward to a deadline to comment date of March 14, 2006. All references to NEC herein also include petitioner Hall as an individual in addition to being president of the NEC.

The Nevada Environmental Coalition, Inc. ("NEC") is a research and advocacy public service and oversight organization that specializes in Clark County, Nevada environmental issues. NEC's coalition organizations and NEC coalition associates live, work, and pay taxes in Clark County Nevada where the NEC is located, and the airports involved in the Nevada portion of the Four Corner-Post Plan are located.

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This Petition is both a comment document and a request for FAA administrative action regarding the issues described herein pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347l, the Clean Air Act, 42 U.S.C. §§ 7401-7671q and the Administrative Procedures Act, 5 U.S.C. §§ 701-706. The concern herein lies with the more stringent requirements of the above named Acts where FAA regulations complement but do not replace or negate the environmental responsibilities all three acts place on all Federal agencies.

This comment petition is submitted based on the fact that the SEA is yet another attempt by the FAA to substitute a low-level environmental assessment ("EA") for the actual NEPA requirement, an environmental impact statement ("EIS"). FAA Las Vegas Valley EIS documents are an endangered regulatory species in Southern Nevada.

Four Corner-Post Plan ("FCPP")

The FAA is a Federal agency subject to CAA § 176(c). According to the FAA, the SEA examines environmental impacts of a proposed project to implement air traffic control procedural changes in the Las Angeles Air Route Tower Control Center (ARTCC) and the Las Vegas Terminal Radar Approach Control (TRACON) airspace. The area involved is also the Las Vegas Valley serious non-attainment area for air pollution.

The SEA cover states in part that it was prepared to "address the environmental impacts associated with the proposed modification to the Four Corner-Post Plan (October 2001) at Las Vegas McCarran International Airport (LAS), Las Vegas, Nevada. This draft document is submitted for FAA review pursuant to major environmental directives to comply with NEPA; Section 102(2) of the National Environmental Policy Act of 1969 (P.L. 91-190); and other applicable Federal and state environmental laws, regulations, Executive Orders, and statutes." ... "The Four Corner-Post Plan was developed and implemented to address growing airspace and air traffic control inefficiencies caused by increases in air traffic in the Las Vegas TRACON airspace." "The Federal Aviation Administration is the lead agency for the Federal government in the preparation of this statement. This document is used to provide basis for findings for subsequent determinations on funding." There is no mention of a supporting EIS. S8-2

SEA 1.2. "The Four Corner-Post Plan was developed and implemented at LAS in 2001 as a direct result of the past and projected growth of air traffic in LAS." The excerpt from the 2001 FEA states, "The need or the Las Vegas Four Corner-Post Plan (Proposed Action) is a direct result of the increasing demand at LAS, resulting in higher levels of operations.[1] The plan proposes to correct Las Vegas Valley Air Traffic Control ("ATC") inefficiencies.

Petitioners adopt their previously submitted Four Corner Post Plan and North Las Vegas ILS comments herein and make them a part hereof for all purposes.

Public involvement:

The Federal Aviation Agency (FAA) claims that it is committed to agency input and public involvement throughout the development process of a Supplemental Environmental Assessment (SEA). Petitioners commented on the Four Corner Post DEA (May 30, 2001) and the North Las Vegas ILS DEA (November 12, 2002). We now have a supplement to an earlier, NEPA insufficient EA.

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Petitioners' May 30, 2001 Four Corner comments included the following statement at 2. "CAA § 165(a)(2). Public involvement, information meetings and comment opportunities connected with this DEA are legally insufficient. Out of 45 names on the Appendix C distribution list, only two were non-governmental entities. One of the two was a homebuilder lobbyist and the other appears to be a community planning organization. There are no community or environmental groups on the list other than the one noted. While government

[1] *FONSI/ROD for the Las Vegas Four Corner-Post Plan, McCarren International Airport, Las Vegas, Nevada.* U.S. Department of Transportation, FAA, Western-Pacific Region. June 2001.

agencies were notified directly, there was no such attempt involving community and environmental organizations."

Despite having commented on the Four Corner Post and North Las Vegas Airport ILS environmental assessments neither of the Petitioners nor any other environmental organization or group is listed in Appendix E, Document and Distribution List. The list consists of governmental agencies, commissions and individuals, and government sponsored town advisory boards. The two exceptions are the libraries and the Summerlin Community Association. The affected 15,000 residents of Sun City Summerlin and other similar community groups were not listed on the distribution list. There were no public notices prior to December 2005.

Noticed government agencies knew about the SEA but the public did not. When the public notices were published, they were published without the name and telephone number of any responsible FAA official. Subsequently and after telephone calls by Hall, the FAA corrected the omissions for the SEA distribution. The NEPA requirement is that the public and environmental groups must be included from the outset, not just at the end of any EA or EIS process. FAA statements regarding *public* involvement cannot be factually reconciled since governmental agencies and the public and are two entirely different groups where it comes to noise and air pollution. As long as Petitioners and the public are left of the earliest notice lists and that omission gives the proponents months and years to prepare in secret, we have a potential judicial review issue with the FAA.

Worse, the SEA noticed the public in mid-December 2005, a holiday surprise. The result was immediate with numerous irate letters to the editor and articles in the Las Vegas-Review Journal, the Las Vegas Sun, on the Valley's television and radio stations and in smaller, neighborhood media. Subsequently articles have appeared in the newspapers regarding outraged citizens who made it clear that they were bushwhacked and blindsided. **The SEA is a highly controversial proposal**. S8-3

The SEA came as a total surprise to the Petitioners herein despite their best efforts to be included from the outset. Government agencies were fully informed starting in August 2005. There was no public involvement "throughout the development process." The public participation lapse means that the SEA is legally insufficient for any lawful purpose regardless of an added public meeting. The FAA's public involvement effort in this instance was not reasonable or legally sufficient. The SEA was not made available pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. § 432 et seq.).

The citizens of Las Vegas were not reasonably notified of the potential adverse impacts of the SEA that include but are not limited the 5 dB noise increase and the air pollution involved. The FAA also failed to notify the public, environmental and community organizations with the published newspaper notices regarding why they should attend information workshops or comment on the SEA at all. There is no plain English section dealing with the truth of the anticipated noise pollution or the air pollution the public will suffer.

Since the SEA is a supplement to the Four Corner Post Plan (FCPP), the FAA made an error in including the original Four Corner-Post Plan in the public notice and in the posted EA as an Appendix. The public was not given legally sufficient notice regarding the Four Corner Post

Plan and the comments that were submitted in response to that Plan. Without proper notice, the public does not know the history and the controversy that surrounded it. The public has insufficient information on which to comment. By not including the original Four Corner Post Plan in the notices, the FAA is justifying the fact, by omission, that there is no EIS. Low-level EAs are not a substitute for a NEPA compliant EIS. The SEA cannot be legally separated from the FCPP. Substantive documents such as the Four Corner Post Plan and responsive comments do not legally exist. A supplement cannot stand on its own without the original. Without the Four Corner-Post Plan, there is no support for the environmental statements in the SEA. S8-3

II. Comments on Specific SEA Sections

Chapter One – Purpose and Need

Even with dated information, the original Four Corner-Post Plan notes an increase of passenger activity from 1989 to 1999 of 96 percent or 16.9 million enplanements. That is an annual growth rate of about 7 percent per year. Passenger enplanements are expected to increase to approximately 37.9 million by 2020 or almost three times the current number of enplanements. The capacity of LAS was estimated at 27.5 million annual enplaned passengers. Id. at 1-26. Aircraft operations at LAS were projected to increase from 542,922 in 1999 to 705,000 by 2011. "If air field capacity did not constrain operations at LAS it is anticipated that annual aircraft operations would reach 724,160 by 2011 and 868,080 by 2020." "...a strong correlation has existed and continues to exist between the number of available hotel/motel rooms in the Las Vegas area and the number of passengers enplaned at LAS." "This continued demand for hotel and convention services is the primary reason for the increase in demand at LAS." Id. at 1-26 to 27. S8-4

The annual aircraft operations and passenger enplanements data in the Four Corner-Post Plan are now more than five years old, they are stale and they are legally insufficient for any lawful purpose. Annual aircraft operations and passenger enplanements have increased well over the rate the original Four Corner-Post Plan estimated. The FAA should have determined that an EIS is necessary at that time. There is also the issue regarding whether the FAA has ever produced a site specific, NEPA compliant, direct and indirect air pollution EIS in the Las Vegas Valley serious non-attainment area. An EIS is mandatory pursuant to the facts of the FCPP and the omitted SEA facts.

Chapter Two – Alternatives [40 CFR 1502.14 (d)]

The SEA "alternatives" discussion is legally insufficient since it concentrates on air traffic issues while ignoring quality of life issues of the people who live in the Western Las Vegas Valley except for an Enterprise mention. With the reality of the mountains to the West of McCarran and in terms of those who live there, the SEA proposed departure change will be less safe and it will raise noise levels substantially since averages do not exist in the real world. The SEA departures will increase air pollution. The air pollution increases and required supporting data were not included in the SEA. S8-5

The SEA describes a proposal to re-route departing air traffic from McCarran Airport over now quiet, largely residential, densely populated areas. The SEA describes a 5 dB increase

of average, departing aircraft engine noise over the Sun City Summerlin, an over-55 retirement community of some 14,500 souls. Other surrounding areas are even more densely populated. The average noise means that some departing aircraft will have a higher noise level and some will have a lower noise level.

2.3.1 Alternative 1: No Action Alternative. There is no "no action" discussion of the safety, noise and air pollution impact of the proposal over the Western Valley except for Enterprise. The no action alternative is a legally insufficient omission.

The alternative of determining how much air traffic from McCarran is too much and limiting aircraft traffic from McCarran was not considered.

"Federal Aviation Administration (FAA) Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, cites the Council on Environmental Quality (CEQ) regulations (40 CFR 1502.1D) regarding the development and evaluation of alternatives in an Environmental Assessment (EA). In short, the EA should present the positive and negative aspects of the proposal, reasonable alternatives to the proposal, and the No Action alternative in comparative form to provide decision makers and the general public information on each alternative." Four Corner-Post Plan at 2-1. S8-5

Regarding the proposed action alternative (Alternative 2), the Plan (the original Four Corner-Post Plan) states in part, "Many of the communities currently affected by noise would receive less noise, while a few areas would receive an increase." Id. at 2-4. "Alternative 6 proposes to find a more conducive site for commercial airport operations." Amen. Alternative 7 proposes limiting some or all of the existing operational restrictions at LAS." That refers to noise abatement procedures and other runway operating limitations. There are seven alternatives including a "No Action" alternative. Id. at 2-5 to 2-6. Alternative 2 was chosen. The instant SEA only includes three alternatives.

Chapter Three – Affected Environment

The Chapter Three, Affected Environment information consists of information relating to the entire Las Vegas Valley. The information is broad, general and does not describe the demographics and ambiance of the Summerlin South or the Sun City Summerlin areas, in the Western part of the Las Vegas Valley, two of the Western Valley areas that will be affected by noise and air pollution that will substantially increase because of the proposed SEA departure plan. The Sun City Summerlin area consists of 7,781 over-55, mostly retirement homes, and some 14,500 people. The average Sun City Summerlin age is 68. Most of those who bought homes in Sun City Summerlin did so in order to enjoy the quiet ambience of the area. S8-6

The development of the area started in 1989 and the project was complete in 1999. During that time, Sun City Summerlin residents were not given their statutory right to participate in a Federal Aviation Agency ("FAA") NEPA Environmental Impact Statement ("EIS") process. The instant SEA is one of three, low level Environmental Assessment ("EAs") the FAA has prepared and noticed that involve Summerlin Sun City.

Many Sun City Summerlin residents are in poor health. Many Sun City Summerlin residents depend upon on their Social Security checks for income. All appreciate the quiet

ambience of the area. The charts accompanying the Environmental Assessment ("EA") show that at least half of the Sun City Summerlin area will be under the new proposed flight path. The EA also admits that Sun City residents can expect a substantial 5dB increase over the current ambient noise.

The EA description of the affected area is written too broadly to be relevant. The affected area is the Western and Northwestern part of the Las Vegas Valley. There are no airports in the area. The area is mostly residential with schools, hospitals, retirement homes, nursing homes and small businesses. S8-6

Sun City Summerlin has two informal chat lines. The chatter on the two chat lines since the EA was noticed in early December 2005, indicates that many if not most of those who are aware of the SEA proposal are very concerned. Most were not aware of the December public notice and had no idea what the FAA is planning regarding the quality of their lives.

Chapter Four - Environmental Consequences:

4.1.1.1 Air Quality "FAA Order 1050.1E, Appendix A, Section 2, Air Quality, states that potential impacts of a proposed Federal be evaluated pursuant to the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA), which are each unique legislative acts that require distinct analyses for air impacts and are separately applicable to Federal projects. Airport actions are subject to the general conformity regulations of the CAA when the project area designated by the U.S. Environmental Protection Agency (USEPA) as nonattainment for one or more of the pollutants regulated under the National Ambient Air Quality Standards (NAAQS). However, when the Proposed Action is also exempt, conformity regulations would not apply."

"Clark County, Nevada, which encompasses the entire Study Area for the Proposed Action, has been designated nonattainment for carbon monoxide (CO), particulate matter (PM10, particles less than 10 micrometers in diameter), and ozone (O3). However, the Proposed Action at Las Vegas-McCarran International Airport (LAS) is exempt from the requirements of general conformity as defined in the preamble to the *General Conformity Rule* at 58 FR 63229 (11/30/93). Consequently, no analysis is required for the Proposed Action under the CAA conformity regulations." S8-7

The FAA is therefore basing its SEA on a claimed exemption. The issue framed by the FAA is whether "Air traffic control activities and adopting approach departure and enroute procedures for air operations" are in fact de minimis "exempt." "The CAA also specifies that regardless of the applicability of general conformity, the emissions due to a Federal action cannot exceed the emissions budget allocated in the State Implementation Plan (SIP). Airport actions that are limited modifications to departure procedures would not cause additional emissions. Therefore, an analysis to demonstrate that project emissions from the Proposed Action comply with the SIP emissions budget would not be applicable."

The FAA's argument continues, "Proposed Actions at airports that service more than 2.6 million annual passengers require an evaluation of airport-related emissions and the comparison of project emissions to the NAAQS (which requires that a dispersion analysis be conducted). However, Proposed Actions that are excluded do not require a[n] NAAQS evaluation, regardless

of the number of annual passengers. Although LAS services more than 40 million passengers each year, the Proposed Action is defined as exempt under FAA Order 1050.1E, Section 303(b). Consequently, a NAAQS comparison analysis is not required. ...

"Proposed Action. The proposed Action is exempt from the general conformity regulations and would not be required to show compliance to the State Implementation Plan (SIP). In addition, the Proposed Action is excluded under FAA guidelines and would not be required to show compliance to show compliance to the National Ambient Air Quality Standards (NAAQS). Consequently, emissions from the Proposed Action would be considered insignificant with regard to potential air quality impacts; and other than documenting the relevant regulations, no analysis or further reporting regarding air quality impacts is required."

Comment Response. First, conformity is a Clean Air Act (CAA) issue, not a NEPA issue. The FAA must still comply with NEPA. The FAA erred in citing from a twelve year-old FR Final Rule instead of from the current Code of Federal Regulations rules. Environmental statutes and Federal regulations constitute the applicable law. FAA guidance documents and FAA Orders do not lawfully set aside laws promulgated by Congress. That is exactly what the FAA is attempting to do.

Chapter 4 continues, "Pursuant to Federal Aviation Administration (FAA) Order 1050.1D, Chapter 6, Paragraph 66, *Environmental Consequences*, this Chapter describes the environmental impacts of the Proposed Action and the No Action Alternatives, any adverse environmental effects which cannot be avoided should the proposal be implemented, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented." Id. at 4-1. Legally sufficient compliance with the admitted requirement is missing from the SEA. S8-7

The presumption of "exempt" must be a truthful assumption; it must not be misleading. In promulgating the FR Final rule in 1993, the EPA stated that it "believes" that the illustration the FAA cited is one of several "de minimis" actions regarding environmental impact. That language is not in the Code of Federal Regulations. In promulgating its regulations, the EPA also made it clear that Federal agencies claiming an exemption must prove their direct and indirect cumulative emissions are in fact de minimis. That is where NEPA plays an important role.

When it cited a twelve-year old FR Final Rule, the FAA sidestepped the requirements of 40 CFR 51.853 and 51.854. More specifically, the FAA has failed to comply with the de minimis limits of 40 CFR 51.853(a), (b)(1), (g)(1) and (2), (h), (i), (j) and (k). The FAA has not met any of the CFR threshold criteria necessary for supporting a categorical exemption claim. NEPA and the CAA are more stringent and carry precedence over agency regulations. In the event of a conflict between agency regulations and environmental regulations, Federal agencies must comply with all of the applicable environmental statutes.

The limited data provided in the SEA and the underlying Four Corner Post EA are sufficient to show that the claim that the new departure routings will not result in an increase in air traffic with related noise and air pollution over the Western Valley is patently absurd. The traffic from McCarran Airport is growing faster than any other major airport in the country. The S8-8

Airport is bursting at its seams in response to the Valley's runaway growth. S8-8

The FAA has failed to discuss the fact that McCarran Airport is already at its reached its maximum safe air traffic load. The SEA is simply a misleading, bureaucratic bandage on an air traffic hemorrhage. One of the alternatives not discussed is that of returning the runaway growth issue to the governmental agency most responsible for the condition, the Clark County Board of Commissioners. S8-9

The underlying data from the noise measurements along with a full disclosure regarding who took the measurements and the parameters used did not accompany the EA. Petitioners have a right to access to that data including full disclosure regarding the methods and persons who actually accumulated the data. By this comment document, Petitioners make that request. S8-10

The Proposed Action is not and never was exempt. The failure of the FAA to comply with NEPA is no accident. Lawful compliance with NEPA would quickly show that the FAA cannot or will not meet any applicable NEPA or CAA requirement. Lawful NEPA data will show that the direct and indirect air pollution from the Valley's civilian and military airports is a significant, major source of air pollution requiring a NEPA compliant, direct and indirect cumulative EIS. The FAA knows what the air pollution data is from similar airports around the country and has failed to produce that comparison data herein. By this comment document, Petitioners also request that database. S8-11

4.1.1.1 Air Quality. "It must be emphasized that the implementation of this project's Proposed Action would not increase the number of flights within the Las Vegas Metropolitan area." Id. at 4-2. The project does call for shifting various flight tracks and/or procedures ... but is not expected to increase air emissions associated with these changes. Most likely, the Proposed Action would reduce emissions because flight delays will be reduced." There is no credible data in the SEA to back up the FAA's "most likely" statements. The statements are legally insufficient.

4.1.1.3 Compatible Land Use. There is no legally sufficient SEA land use data regarding noise and air pollution analyses. Living under a departure route is environmentally similar to living next to a highly traveled interstate highway. There is no SEA evidence that the FAA has made any effort to "alter aviation-related noise impacts and affect land uses subject to those impacts." There is no SEA evidence that the FAA has acknowledged that the "proposal would result in other impacts exceeding thresholds of significance which have land-use ramifications, the effects on land use shall be analyzed in this context and described accordingly under the appropriate impact category..." By failing to acknowledge the requirements of its own regulations and the land use impacts, the agency has failed "to guide noise sensitive land uses away from the noise source and encourage non-sensitive land uses where there is noise." To the contrary, the SEA simply transfers noise to a more densely populated bedroom area from a less densely populated largely manufacturing and production land use area. See, Federal Aviation Regulations (FAR) Part 150, *Airport Noise Compatibility Planning.* The noise analysis described in Section 4.2, Noise, has not been subject to public scrutiny because of a lack of opportunity to do so. By this comment petition the Petitioners request access to that data and those who actually recorded and reported the database. S8-12

4.1.1.8 Hazardous Materials, Pollution Prevention, and Solid Waste. "No adverse impacts would result and no mitigation measures are required." Contrary to the FAA's disclaimers, jet exhaust, emergency fuel dumping and mid-air collisions all result in hazardous material air pollution. S8-13

4.1.1.10 Energy Supply and Natural Resources. Energy supply and natural resource conservation must be balanced against quality of life, community environment, noise and air pollution and aesthetic impact. The FAA statement that "no adverse impacts would result and no mitigation measures are required" is another absurd, legally insufficient statement. There is no support for the statement in the SEA. There is no discussion of the human and economic cost of lost quality of life. There is a large retired population in the impacted area that is larger than the population of Boulder City. Direct costs to them and all others affected include medical care. The loss of a home resulting from SEA environmental effects are a direct cost. Moving from a private home to an assisted living home or a nursing home is an economic consideration that is not in the SEA. S8-14

4.1.1.12 Socioeconomic Impacts, Environmental Justice, and Children's Environmental Health and Safety Risks. Once again, the "no adverse impacts would result and no mitigation measures are required" statement is absurd for the all the reasons given herein. There are large populations of minorities, low income, children and retired persons in the area. The SEA adversely affects all. The impacts discussed herein fall "disproportionately high" with adverse effects than those who have the money to take expensive measures to control noise and air pollution, assuming they will not sell at a discounted price and leave the area. Once again, the FAA's "No Action" "No adverse impacts" statements are misleading and absurd. S8-15

4.2 Noise. The SEA noise discussion is not supported by actual data. The assumptions used were not justified. Summary charts are not a substitute for the actual detailed data report that is missing from the SEA. There is no way for the public to provide an appropriate level of comment without having access to all of the data available to the FAA. Petitioner Hall has experienced and has complained to the FAA regarding existing over flight noise that clearly exceeds the data reported in the SEA.

The public has not had sufficient time to respond to the data and assumptions presented. Sun City Summerlin would be a very quiet area except for the military and civilian helicopter and fixed-wing jet and reciprocating engine traffic the area already has. Helicopters in particular appear to exceed the SEA noise estimates. Over flights are occurring with increasing frequency and increasing noise levels. The current situation in the area where Petitioner Hall lives was not taken into consideration in the SEA. S8-16

The charts presented in the EA do not take a real life combination of IFR and VFR military and civilian fixed-wing and helicopter traffic into consideration. Petitioner Hall reported an early morning over flight of a government contracted Boeing 737 recently that was very loud. The over flight was so loud that it woke Petitioner Hall and several of his neighbors up and that was only one aircraft.

In summary, the FAA's assumptions and calculations do not match the actual noise experience of those affected in Sun City Summerlin. There is no reason to believe that the proposed SEA traffic will not be an environmental disaster for Sun City Summerlin. Much more full disclosure and an EIS are warranted.

III. Additional Comments

1. Compliance with the National Environmental Policy Act is the first duty of any Federal agency. NEPA requires that Federal statutes, regulations and policies be interpreted and administered in accordance with NEPA's policies. Section 102(1). Section 105 reinforces this requirement by providing that NEPA's policies and goals supplement "existing authorizations of Federal agencies." The SEA is an example where the FAA has interpreted and administered NEPA policies in accordance with FAA statutes and regulations. A Federal agency's compliance with its own statute does not excuse it from compliance with NEPA and the duty to prepare an environmental impact statement ("EIS") on its action. For that reason among the others herein, the SEA is legally insufficient for any lawful purpose.

2. There is no evidence in the SEA that the FAA complied with any NEPA EIS requirement since the Act was signed into law in 1970.

3. NEPA requires that Federal agencies such as the FAA incorporate NEPA's environmental policies in their decision-making. There is no evidence that NEPA policies were incorporated into the agency's decision-making. The SEA's purpose appears to be an example of the opposite. The SEA does not include all of the expected environmental impacts nor does it include the direct and indirect, cumulative effects of all of the area's Clean Air Act serious non-attainment area and maintenance area pollutants. There is no "hard look" or any look at all of direct and indirect, cumulative environmental impacts. There is no NEPA compliant EIS supporting the EA. For that reason among the others included herein, the SEA is legally insufficient for any lawful purpose. S8-17

4. The issue of preparing an EIS is not whether to prepare an impact statement, the issue is whether an impact statement must be prepared because the nature of the action is such that significant environmental impacts could occur. By impacts, NEPA applies to more than just noise.

5. NEPA makes environmental protection a part of the mandate of every Federal agency and department. Federal agencies including the FAA must consider environmental issues just as they consider other matters within their mandates. There is no evidence in the SEA that the FAA ever considered environmental protection according to NEPA standards.

6. Regarding significant impacts, the Council on Environmental Quality ("CEQ") regulations provides that the agency is to consider the degree to which the effects on the quality of the human environment are likely to be highly controversial. 40 C.F.R. § 1508.27(b)(10). The CEQ regulation introduces into the definition of significance the degree of public opposition to a Federal action. The SEA is extremely controversial as the FAA found out when it held and in one case attempted to hold a public hearing. The S8-18

reason for the controversy is the FAA's attempt to blindside the public with short notices, two public meetings that avoided the highest environmental impact on the human environment area and an SEA that avoids all of the issues the FAA would be forced to discuss in an EIS. The term "controversial" refers to Federal agency acts where a substantial dispute exists as to the size, nature or effect of the major Federal action. The fact that the SEA is highly controversial for its impact on the human environment is beyond dispute. The fact that any EA is inadequate regarding that substantial impact of the new departure proposal is beyond dispute. S8-18

7. The Supplementary Environmental Assessment ("SEA") is legally deficient by the Federal Aviation Agency's ("FAA's") failure to cite the applicable National Environmental Policy Act ("NEPA") and Clean Air Act ("CAA") statutes and regulations that are more stringent than FAA regulations. All three Acts and must be complied with in addition to FAA regulations particularly where they are more stringent.

8. The SEA is legally deficient where the FAA admits there is no direct or indirect, NEPA compliant, cumulative environmental impact statement ("EIS") supporting any FAA action in the Las Vegas Valley.

9. The SEA is legally deficient where the FAA has substituted a succession of lower level environmental assessments ("EAs") for the NEPA required direct and indirect cumulative EIS requirement.

10. The SEA is legally deficient where it parses EIS requirements into a series of "little piece EAs" in order to evade NEPA EIS requirements.

11. The SEA is legally deficient where it failed to invite the public to participate from the outset of the EA process. In the instant proposal, the public was blindsided late in the EA process. S8-19

12. The SEA is legally deficient by the FAA's failure to present all of the obvious negative aspects of the proposal including all the possible alternatives.

13. The SEA is legally deficient where the FAA interposed the modifying word "reasonable" before the word alternatives without citation to applicable law. The alternatives presented are not "reasonable," they are misleading.

14. The SEA is legally deficient where the FAA included "safety, airspace efficiency, increasing traffic demands, operational restrictions, operational benefits for National Airspace System (NAS) users, changing fleet mix, application of new technologies, air traffic controller and flight crew workload, airport expansion, new airport, and consolidation of air traffic control facilities" as factors for modifying air traffic control procedures. Any one of these factors is sufficient to trigger a NEPA EIS requirement.

15. The SEA is legally deficient where the FAA omitted the corresponding negative impacts that the projected modification of air traffic control procedures will have on the quality of the lives of those who live in the proximity of the modified air traffic control procedure routes.

16. The SEA is legally deficient by the FAA's failure "to determine if forecasted demand for an airport could be reasonably accommodated with the current procedures." The EIS process would have shown that the modified air traffic control procedure routes are not "reasonable."

17. The SEA is legally deficient by admitting that airspace reviews will only "serve to open dialogue between the air traffic control service provider, airport proprietors, community groups and NAS users, including commercial airlines, general aviation, and military users" in a full EIS process. That is an admission that the public was left out of the EA process from the outset despite that NEPA requirement.

18. The SEA is legally deficient where the FAA's admits that the traffic to and from and McCarran airport is already over capacity where traffic increased nine percent between 2001-2004 and departure delays rose fro 2,677 in 2001 to 8,538 in 2004, a 31 percent increase. A 31 percent departure delay increase in four years shows that the congested traffic situation is out of control. A full EIS is required.

19. The SEA is legally deficient where the proposed alternative transfers and increases the safety problem to a more densely populated area than the current departure over flight area.

20. The SEA is legally deficient where the proposal increases the potentially dangerous mix of civilian and military aircraft along with a wider range of aircraft types and speeds.

21. The SEA is legally deficient by the omission of cumulative direct and indirect noise and air pollution data. S8-19

22. The SEA is legally deficient by its use of sea level altitudes instead of above ground altitudes. The crest of Sun City Summerlin is 3200-3300 feet above sea level or more than 1,000 feet above the valley floor.

23. The SEA is legally deficient where there is an absence of data showing how many fixed wing aircraft and helicopters (type, size, noise level, etc.) per hour, day, week or month will fly over various Summerlin areas or what the altitude of the over flights will be above the ground.

24. The SEA is legally deficient where it fails to take into account the current noise and air pollution from reciprocating and jet engine aircraft and helicopters that already over fly the Summerlin area to and from Indian Springs, Nellis AFB and North Las Vegas Airport.

25. The SEA is legally deficient where it fails to take into account the fact the safety issues with the proposal to turn 33% of McCarran's air traffic into North Las Vegas and Nellis AFB air traffic for a 2.3% departure efficiency gain.

26. The SEA is legally deficient where it fails to take into consideration the loss of departure lift and corresponding altitude that results from the type of turn the FAA is proposing to require.

27. The SEA is legally deficient where it fails to take into consideration the danger that the proposed turn will pose to heavy aircraft passengers, and Las Vegas residents, at the most dangerous moments of flight. A departing, climbing, turning, heavy aircraft is at its vulnerable moments of flight.

28. The SEA is legally deficient where it fails to include performance data regarding each type and model of aircraft it proposes to route over half a million souls in the City of Las Vegas.

29. The SEA is legally deficient as a low level EA that concentrates on air traffic density and routing while disregarding the FAA's primary responsibility, the serious safety considerations cited herein.

30. The SEA is legally deficient by failing to discuss the fact that the proposed turn is similar to the one eliminated in 2001 because of safety concerns. Those concerns are even worse now.

31. The SEA is legally deficient where it relies on new navigational technology without regard and consideration of aircraft performance safety concerns.

32. The SEA is legally deficient by failing to consider and discuss migratory bird patterns and the risk of bird strikes in the right turn climb out area.

33. The SEA is legally deficient by placing heavy aircraft in the position of a turn that blinds the pilots from aircraft approaching the exposed belly of the turning aircraft thereby creating a critical blind spot by departure regulation. S8-19

34. The SEA is legally deficient by failing to include the opinions of experienced pilots.

35. The SEA is legally deficient where it displaces aircraft flying over a 2.6 people per acre to an area with more than 13 people per acre a large number of whom are neither Caucasian nor wealthy.

36. The SEA is legally deficient where it fails to recognize that Clark County has a zoning and land use responsibility regarding aircraft departure routes that it has abdicated.

37. The SEA is legally deficient where it fails to balance the aircraft departure fuel cost against quality of life issues.

38. The SEA is legally deficient where it fails to recognize that departure fuel costs must be compared to the costs to the over flight public regarding as but one example, the decline in the value of homes in areas such as the Sun City Summerlin over-55 retirement community. Retirees purchased their homes there as far back as 1989 where the peace, quiet and tranquility of the area were an important factor. At a time when Medicare is paying less and less, the proceeds from a home sale at a time of declining health is a critical cost consideration in the ability to afford an assisted living or nursing home. A home is a health care asset for most retirees.

39. The SEA is legally deficient by failing to evaluate the human and economic cost of a potential of one mid-air collision or other accident against departure fuel costs.

40. The SEA is legally deficient in its safety analysis by failing to include the fact that the turmoil in the aviation industry has resulted in fatigued airline pilots working longer hours over more time zones than ever before.

S8-19

IV. Compliance with NEPA

40 C.F.R. § 1500.1 (7-1-02). (a) ... Their purpose is to tell Federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the Federal agencies, and the courts share responsibility for enforcing the Act to achieve the substantive requirements of section 101. ... (b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.... (Emphasis added.).

By its own terms, the intent of NEPA was enacted to reorganize the priorities of the Federal government, to integrate "environmental amenities and values" alongside more traditional more traditional "economic and technical considerations." 42 U.S.C. § 4332(2)(B). To achieve this goal of including environmental concerns in governmental decision-making, NEPA requires that an EIS be prepared for all "major Federal actions significantly affecting the ... human environment." 42 U.S.C. § 4332(2)(C). The Council on Environmental Quality ("CEQ") defines "major Federal action[s]" as "actions with effects that may be major and which are potentially subject to Federal control and responsibility," including "[a]doption of official policy, such as rules, regulations, and **interpretations**." (Emphasis added.) 40 C.F.R. § 1508.18. "Major" reinforces but does not have a meaning independent of "significantly," meaning that a Federal action is "major" whenever it has "significant" environmental effects. 40 C.F.R. § 1508.18. City of Davis v. Coleman, 521 F.2d 661, 673 n. 15 (9th Cir. 1975). 42 U.S.C. § 4332(2)(C), NEPA 102(2)(C), 40 C.F.R. 1501.4, 1508.9 (2001). NEPA reporting disclosures form the basis for CAA conformity certifications. Where there is no NEPA compliance, there is no Federal agency administrative sunshine.

S8-20

NEPA EIS requirements include strong public notice, public involvement and public hearing requirements. The Federal agency pattern in the West is that whenever a Federal agency wants to by-pass NEPA and the problem of reporting a "major Federal action," agencies simply find ways around NEPA compliance. This comment review highlights a classic example of Federal agency environmental law avoidance, and is a classic example of the importance of citizen oversight.

The scheme is then that of ignoring the EIS requirement. Appellant Hall's claims have concentrated on Federal agency compliance with the language, spirit and intent of NEPA, CAA or APA. Instead of complying, the FAA misleads the public and other agencies.

The only legally sufficient course the FAA has available was to prepare a NEPA compliant, direct and indirect, cumulative impact EIS. The FAA knows that their approvals and proposed approval of successive EAs constitute a "major Federal action." Instead of complying,

the FAA simply hid the information by omitting it from the EA.

NEPA requires impact statements to consider possible alternatives to the proposed action other than the proposed no action alternative. See 42 U.S.C. § 4332(2)(C)(iii). The required statement considering all the possible alternatives is not in the SEA.

The FAA is responsible for NEPA and CAA compliance with not one but several military and commercial airports in the Las Vegas Valley. The Valley is a relatively small area that involves a mix of civilian and military aircraft comprised of almost every type of lighter-than-air, helicopter and fixed wing traffic airborne in the United States.

The FAA has a habit of issuing EAs that are authored by consultants. The EAs are not signed and dated by a responsible FAA official, the Chapter Five List of Preparers notwithstanding. There is no SEA legally sufficient certification of compliance and conformity with the National Ambient Air Quality Standards ("NAAQS") environmental impacts signed by an FAA executive authorized to do so. There is no NEPA complete disclosure.

The FAA routinely issues parsed EAs and FONSIs that avoid compliance with NEPA. The FAA relies on low level EAs that do not include emissions estimates for all of the cumulative, direct and indirect emissions the agency is responsible for reporting. The SEA does not resolve any of these issues. The FAA's silence and omissions regarding the issues raised herein adds to the confusion.

No matter how thorough, an EA can never substitute for preparation of an EIS if the proposed action could significantly affect the environment. See Sierra Club v. Marsh, 769 F.2d 868, 874-76 (1st Cir. 1985). "We stress in this regard that an EIS serves different purposes from an EA. An EA simply assesses whether there will be a significant impact on the environment. An EIS weighs any significant negative impacts of the proposed action against the positive objectives of the project. Preparation of an EIS thus ensures that decision-makers know that there is a risk of significant environmental impact and consider that impact. As such, an EIS is more likely to attract the time and attention of both policymakers and the public. In addition, there is generally a longer time period for the public to comment on an EIS as opposed to an EA, and public hearings are often held...." None of this was dealt with in the SEA. See Anderson v. Evans, 350 F.3d 815, 836 (9th Cir. 2003). S8-20

The SEA essentially notices the FAA's intent not prepare a NEPA, site specific, cumulative impact EIS determination. Unlike surprise EAs, an EIS must involve the public from the beginning, not just at the end of the NEPA EA or EIS process. The FAA's SEA intent is not to go beyond the EA process no matter how many EA supplements or amendments are involved. The FAA's omissions and failure to include all of the relevant, supporting environmental data is a cavalier way to treat the citizens of the Las Vegas Valley.

The actual text of the NEPA regarding acts that are prohibited prior to the issuance of an ROD were omitted from the SEA. FAA's substitute language has led to confusion and bad policy decisions.

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in

Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.... (Emphasis added.)

Another important omission in the SEA involves the statutory definition of Sec. 1508.18, Major Federal action and Sec. 1508.27, Significantly.

"Major Federal action" includes actions with effects that may be major, and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). ...

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and Federally assisted activities.

Sec. 1508.27 Significantly.

Significantly as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. S8-20

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

V. Federal Agency NEPA, CAA and APA compliance and conformity

Deference

Federal agencies tend to defer to their own statutes and regulations. By law, they must also comply with NEPA, CAA or APA regardless of whether the requirements therein are more or less stringent than the agency's statutes and regulations. The requirements of all of the three Acts of Congress must be met in addition to FAA regulations.

The FAA is responsible for all of the above and more. The FAA is not entitled to deference. The courts will not defer to an agency interpretation of a statute the agency is not charged with administering. United States v. Corey, 232 F.3d 1166, 1183 (9th Cir. 2000). Further, when a statute is administered by more than one agency, a particular agency's interpretation is not entitled to deference. Agency interpretations developed informally (i.e., not through formal adjudication for notice and comment rulemaking) do not warrant deference. Scales v. I.N.S., 232 F.3d 1159, 1185-1166 (9th Cir. 2000). The courts may refuse to defer to an agency's interpretation of a particular statute (even though within the agency's expertise) if the agency has not consistently interpreted the provisions issue. State of Oregon v. BLM, 876 F.2d 1419, 425 (9th Cir., 1989). The SEA along with FAA manuals and guidance documents must give way to the language, spirit and intent of NEPA. The FAA prefers the legally insufficient reverse approach. S8-21

VI. NEPA, CAA and APA

Congress enacted a trio of environmental laws, the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370f, the Clean Air Act ("CAA"), 42 U.S.C.A. §§ 7401 to 7671q, the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 551-553 and the corresponding Code of Federal Regulations sections. The intent of Congress was to achieve cleaner air and a friendlier environment. The three acts were meant to work together in harmony. The instant action does not comply or conform to any of the three Acts. S8-22

NEPA is a very important reporting requirement. NEPA in its simplest form and in this instance, is a requirement to disclose the amount of air pollution the agency is responsible for in Clark County and the Las Vegas Valley serious non-attainment areas for particle matter ten microns or less (PM-10), particle matter two and one-half microns or less (PM-2.5) and Ozone (O3). The Las Vegas Valley is also a non-attainment maintenance area for carbon monoxide (CO).

Petitioner Hall and everyone else affected has a right to see and challenge to the extent necessary, the FAA's direct and indirect, cumulative air pollution it is required to disclose by NEPA. Without publicly noticed and available air pollution data including totals on a regular basis, the agency is able withhold data from the public, state agencies, local agencies, other Federal agencies and the courts. NEPA, CAA and APA statutes are worthless if the data reported are not direct and indirect, cumulative impact data. As we have noted, it is worse if the data are not reported at all. 40 C.F.R. § 93.153.

The FAA has not produced a Federal agency, NEPA compliant, direct and indirect, cumulative impact statement (EIS) that discloses how much air pollution the Federal agency's actions and funding are causing in the Las Vegas Valley. The FAA has not produced NEPA compliant, direct and indirect, cumulative, environmental impact statements at any time. Instead the FAA created a series of local, site specific, parsed, "little piece" environmental assessments (EAs). In the SEA, the EA data are not totaled much less disclosed to the public. The result is the FAA shields projects and plans from NEPA EIS and APA review.

S8-22

An environmental impact statement is not a NEPA, direct and indirect, cumulative environmental impact statement until and unless it is exposed to public notice, hearing and if necessary, APA review. A lawful NEPA document a Federal agency may rely upon is an APA reviewable document that is a direct and indirect, cumulative, environmental impact statement. All one has to look for is a total of that agency's air pollution emissions for the area involved. If there is no total, if no responsible official certifies the document, if the entire process was not subject to public notice and good faith public involvement, the entire process is legally insufficient for any lawful purpose. The entire process is a sham, argument notwithstanding.

The NEPA direct and indirect, cumulative impact totals are the critical information necessary to complete a CAA state implementation plan. To the extent that Federal agency NEPA totals are not a part of an EPA finally approved state implementation plan (SIP), there is no way the public can hold any Federal agency responsible for their own Las Vegas Valley serious non-attainment area air pollution. Everything that follows is worthless because no one knows how much is too much. The issue is not lost on the FAA.

VII. State Implementation Plans

The State of Nevada has not successfully had an EPA finally approved PM10 SIP since the 1979 SIP approval, amended in 1981. That SIP has long since lapsed. It does not comply with the 1990 amendments to the CAA. A more recent preliminary, PM-10 SIP EPA approval is currently on appeal at the Ninth Circuit Court of Appeals. As a result, there is no way the Federal Defendants can lawfully comply with the CAA requirement for PM10 conformity. The FAA knows or should know that without an EPA finally approved PM10 SIP, conformity cannot be lawfully claimed or certified. The FAA can only conform to a finally approved PM10 SIP that has not lapsed. The SEA is also deficient in not reporting nitrogen oxide (NOx) and ozone O3 data.

S8-23

The SEA fails to discuss FAA conformance to a state implementation plan ("SIP"). Granted that is very difficult if not impossible to do since there is no EPA finally approved Clark County PM10 SIP that meets the 1990 amendments to the Clean Air Act ("CAA"). The FAA has

not acknowledged that fact. The latest PM10 SIP submittal is currently on judicial review at the Ninth Circuit Court of Appeals. The omission along with all the other omissions included herein are fatal to the SEA. See, 42 U.S.C. § 7506(c).

NEPA compliance involves a very simple question. Where are the FAA's NEPA direct and indirect, cumulative, Las Vegas Valley serious non-attainment area, maintenance area, environmental impact statement PM10, CO, NOx and Ozone air pollution totals? What direct and indirect, cumulative impact NEPA document does the FAA rely upon? What SIPs do the FAA rely upon?

How much air pollution does the FAA propose to permit and fund in the Las Vegas Valley serious non-attainment area? How much air pollution does the FAA currently permit and fund in the Las Vegas Valley serious non-attainment area? What is the FAA's legal authority for approving, permitting and funding pollution emitting acts without lawful compliance? Without NEPA, CAA and APA compliance, the FAA is for all practical purposes, seizing the powers of Congress by setting aside the NEPA, CAA and APA without lawful authority.

S8-23

The FAA is also on notice regarding all of their direct and indirect cumulative air pollution in the Las Vegas Valley. The missing documents, if legally sufficient and if produced, would have been evidence of FAA's NEPA, direct and indirect, cumulative environmental impact statement compliance to an EPA finally approved, post CAA 1990 amendments SIP. Instead, we have a legally insufficient, lapsed. The missing documents do not exist.

Transportation plans and programs are not exempt from lawful conformity determinations pursuant to 40 C.F.R. § 93.100-.160. A conformity determination must be supported by a missing direct and indirect, cumulative NEPA compliant EIS and a missing 1990 amendments SIP. Without these missing documents, there is no lawful way the Federal Appellants can comply with 42 U.S.C. § 93.100-.160 requirements. The FAA has failed to discuss 40 C.F.R. § 93.102(a)(1)-(b) and the fact that "conformity determinations are required for" "all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan."

VIII. Conformity determinations under the CAA

Each State is required to adopt and submit for EPA approval a State Implementation Plan ("SIP") for each pollutant. 42 U.S.C. § 7410(a)(1). To ensure compliance with these plans, the CAA contains a "conformity" requirement, mandating 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 any activity which does not conform to [a SIP]." 42 U.S.C. § 7506(c)(1). Most Federal actions affecting levels of pollutants in non-attainment areas require that the responsible agency conduct a "conformity determination." 40 C.F.R. § 93.150-.160.

S8-24

The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under 40 C.F.R. § 51.855. 40 C.F.R. § 51.857, Subpart W. There is no evidence of a final conformity determination in the SEA. If after the conformity determination is made, the Federal action is changed so that there is an increase in the total of

direct and indirect emissions above the levels in 40 C.F.R. § 51.853 (b), a new conformity determination is required. 40 C.F.R. § 51.857 (c).[2]

S8-24

IX. Conformity findings

Since 1970, all Federal agencies that permit or fund actions that generate environmental impacts in a serious non-attainment area must prepare and maintain an environmental impact statement ("EIS"). There is no mention of an EIS in any of the three Las Vegas Valley EA documents. Petitioners filed comments regarding the first two EAs. This is the third comment document.

The responsible Federal official who signs a "conformity finding" and who uses information prepared by others, must **independently** satisfy himself or herself of the validity of that information. The reason is that the official is expected to use the information in making decisions. The official is expected, in turn, to require valid information when making decisions. Failure to validate information in a lawful NEPA EIS process that is properly noticed to the public is strong evidence that the decision maker has not given significant weight to such information in the decision process, contrary to the goals of NEPA.

In addition, a Finding of No Significant Impact ("FONSI") is required. There is no mention of a lawful NEPA EIS process in the lower level Environmental Assessment ("EA"). There is no evidence of a proper public notice or public participation. The two prior EA's that were the subject of Petitioners' first two comment submittals provide strong support for the fact that the decision maker must give significant weight to contrary information in the decision process, or the goals of NEPA cannot be met.

S8-25

Without a full EIS process, there is no practical citizen participation. Meetings were questions may only be asked by submittal card and misleading answers or errors cannot be challenged under heavy police presence are not legally sufficient for any lawful purpose. The duty to prepare an EIS lies squarely with the responsible Federal agency and its officials, not with any local, state or other Federal agency absent specific authority.

A Conformity Finding must identify the EPA, finally approved, pollution specific SIPs that meet the 1990 amendments to the CAA that the FAA relies upon. There is no EA mention of the only Nevada, Clark County complete SIP the EPA has ever finally approved, the 1979/81 SIP. There is no mention that the Clark County portions of the 1979 Nevada SIP are much more stringent than Federal standards. There is no full disclosure and discussion mention of serious non-attainment areas. There is no mention of a NEPA direct and indirect, cumulative impact determination. There is no basis for a Federal Conformity Finding.

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[2] Both 40 C.F.R. part 51, subpart T and 40 C.F.R. § 51.853 subpart W apply if Nevada and Clark County had pollution specific SIPs before the October 2001 FCPP date that met the 1990 amendments to the CAA. Clark County did not have a complete set of finally approved SIPs by that date. As a result, the more stringent rules of the EPA approved 1979/82 SIP apply. The point is somewhat moot since the 1979/81 SIP has lapsed and does not meet the requirements of the 1990 amendments to the CAA in any case. The result is that Nevada and Clark County were in a SIP lapse during and after October 2001. See, 40 C.F.R. § Part 51, Subpart T.

Hall v. EPA, 273 F.3d 1146 (9th Cir. 2001) has relevance since like all the other State of Nevada, Clark County SIP submittals after 1979, that submittal did not survive EPA approval or judicial review prior to October 1991. *Hall* was also relevant since it was the latest SIP submittal to have a final, adverse adjudication after the 1990 CAA amendments. The point is that Clark County did not have an EPA approved SIP by October 1991. Clark County has failed to come up with a finally approved SIP since the 1990 CAA amendments were signed into law. All claims to the contrary require and depend upon the reality of a finally approved 1990 amendments SIP for all non-attainment and maintenance area pollutants.

X. Summary

FAA assumptions and presumptions do not comply with higher level, more stringent NEPA and CAA non-discretionary requirements discussed herein. The SEA is legally insufficient and portions of the SEA misrepresent. A full Environmental Impact Statement (EIS) is required. Petitioners request timely, written notices of all interim and final decisions concerning the SEA as well as any other FAA plan or action having a Clark County environmental impact. Petitioners request that they be placed on all notice lists including press release lists (for publication on the NEC Web site), regarding FAA Clark County activities and issues.

Petitioners request an opportunity to examine the raw data presented in the FCPP and SEA and the methods used to collect, draft and report all data. Petitioners request full disclosure regarding data assumptions and presumptions.

In making our comments, we honor those who have lost their lives or whose quality of life has declined as a proximate result of Federal agency, Southern Nevada NEPA and CAA compliance and conformity lapses since 1970.

Respectfully submitted,

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Dated: March 14, 2006
Las Vegas, Nevada

CERTIFICATE OF SERVICE

I certify that a copy of the attached to Robert W. Hall's Four Corner-Post Plan, Draft Supplemental Environmental Assessment (SEA) comments, petition and administrative complaint was served by First Class U.S. Mail to the persons listed below on March 14, 2006. In addition, service was made on the FAA by telefax and electronic mail transmission.

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