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10 STATE OF CALIFORNIA, ex rel. BILL LOCKYER,
ATTORNEY GENERAL

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

C 02 4021
Case No.

15 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
16 **rel. BILL LOCKYER, ATTORNEY GENERAL**
17 Plaintiff,
18 v.
19 **UNITED STATES DEPARTMENT OF**
20 **TRANSPORTATION; NORMAN Y. MINETA,**
21 **Secretary of Transportation; FEDERAL**
AVIATION ADMINISTRATION; and MARION C.
BLAKEY, Administrator, Federal Aviation
22 **Administration,**
23 Defendants.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

(National Environmental Policy
Act, 42 U.S.C. §§ 4321 *et seq.*)

24 **INTRODUCTION**

25 1. The Eastern Sierra is one of the most important natural resource areas in the State of
26 California. Within it lies some of the Nation's best-known and most treasured natural areas,
27 including Yosemite National Park, Kings Canyon National Park, Mono Lake, the Inyo National
28 Forest, and the John Muir and Ansel Adams Wilderness areas. It is home to many sensitive,

1 threatened, and endangered species that are found in few other areas. The region is also an
2 important watershed, serving productive valleys and basins and allowing cities to prosper in the
3 desert. The Eastern Sierra's unparalleled natural attributes attract many visitors to hike, ski, fish,
4 recreate in -- and simply view -- one of last wild places of California.

5 2. The Town of Mammoth Lakes ("Town") would like to substantially increase the
6 number of year-round visitors to the area. Toward this end, the Town submitted to the Federal
7 Aviation Administration ("FAA") a request to approve an Airport Layout Plan for the Mammoth
8 Yosemite Airport Expansion Project ("Expansion Project" or "Project"). By the Expansion
9 Project, the Town seeks to transform a small, non-commercial airport in the heart of the Eastern
10 Sierra to one that can accommodate jets up to the size of Boeing 757-200s, and hundreds of
11 thousands of new, year-round visitors.

12 3. In 2001, the FAA circulated for public comment a Draft and a Final Environmental
13 Assessment ("EA"), documents designed to assist it in deciding whether the Project may
14 significantly affect the quality of the environment, and thus whether the Project requires a
15 comprehensive, thorough analysis of such impacts in the form of an Environmental Impact
16 Statement ("EIS").

17 4. Numerous State and federal agencies and the California Attorney General's Office, in
18 addition to private citizens and organizations, submitted comments concerning possible
19 individual, cumulative, direct, indirect, and growth-inducing impacts of the Expansion Project.
20 The point of these comments was not that additional visitors to the area is not in the public
21 interest, but rather that the impacts of the Project must be acknowledged and analyzed.

22 5. Notwithstanding the numerous, specific concerns expressed in these comments, and
23 notwithstanding FAA's legal obligation to take a "hard look" at the environmental consequences
24 of the Project under the National Environmental Policy Act, ("NEPA"), 42 U.S.C. §§ 4321 *et*
25 *seq.*, the FAA found that the Project will have absolutely no significant impacts to the unique and
26 sensitive region surrounding the Mammoth Yosemite Airport. The FAA issued a Finding of No
27 Significant Impact ("FONSI"), and approved the Project by a Record of Decision ("ROD") on
28 July 29, 2002, without evaluating environmental impacts thought the preparation and circulation

1 of a comprehensive EIS.

2 6. The FAA's abdication of its duty to disclose and analyze the significant impacts that
3 may result from the Mammoth Yosemite Airport Expansion Project is the basis for this action.
4 The People of the State of California ("People") bring this action under NEPA, its implementing
5 regulations and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* The FAA's December
6 2000 EA, December 21, 2000 FONSI, and July 29, 2002 ROD, "re-visit[ing]" the FONSI, and
7 approving the Expansion Project and further processing of an application for federal assistance,
8 are deficient. The FAA, in the EA, FONSI, and the ROD failed to adequately consider, disclose,
9 and evaluate the significant impacts arising from the Expansion Project and failed to consider,
10 disclose, and evaluate reasonable alternatives.

11 7. By this Complaint, the People seek a declaratory judgment that Defendants have
12 violated NEPA and the APA by preparing an inadequate EA and by failing to perform an EIS.
13 The People also seek a mandatory injunction requiring Defendants to comply with NEPA by
14 setting aside the FONSI and preparing a legally adequate EIS.

15 JURISDICTION AND VENUE

16 8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws
17 of the United States) and 5 U.S.C. §§ 701-706 (Administrative Procedure Act). Jurisdiction does
18 not lie in the Court of Appeals under 49 U.S.C. § 46110 because the FAA decision that the
19 People challenge was not made pursuant to 49 U.S.C. § 40101.^{1/}

20 9. An actual controversy exists between the parties within the meaning of 28 U.S.C. §
21 2201(a). This Court may grant declaratory relief, injunctive relief, and any additional relief
22 pursuant to 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

23 10. The FAA has made a final administrative determination that is subject to review under
24 the APA. 5 U.S.C. § 702.

25
26 1. The FAA asserted in the ROD that jurisdiction lies in the Court of Appeals pursuant to
27 49 U.S.C. § 46110, notwithstanding the holding of City of Alameda v. Federal Aviation
28 Administration, 285 F.3d 1143 (9th Cir. 2002). Out of an abundance of caution, the People have
filed simultaneously a petition in the Ninth Circuit Court of Appeals, but have requested that the
Ninth Circuit stay the petition pending this Court's determination of jurisdiction.

1 11. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e) and Civil Local
2 Rule 3-2(d), because all parties have offices within this district and because a substantial part of
3 the events or omissions giving rise to the claims occurred in this district.

4 **PARTIES**

5 12. Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA, by and through Attorney
6 General Bill Lockyer, seeks relief from the FAA's unlawful approval of the Project without
7 adequate environmental review under NEPA. Attorney General Bill Lockyer, acting in the name
8 of the People of the State of California, is the chief law enforcement officer of the State and is
9 authorized to file civil actions to protect public rights and interests and to file actions for
10 equitable relief against any person to protect the natural resources of the State from pollution,
11 impairment, or destruction. Cal. Gov. Code §§ 12600-12612. The FAA's action in approving
12 the Project without adequate environmental review deprives the People of California of the right
13 to an adequate public review process essential to NEPA. The areas in controversy are located
14 within California and their development or non-development will directly affect California lands
15 and interests. The Project thus threatens the State's natural resources and impairs the Peoples'
16 recreational, scientific, and aesthetic interests. Therefore, the interests of the State of California
17 will be adversely and irreparably impacted by the FAA's failure to comply with NEPA, unless
18 the relief requested is granted. This challenge is brought pursuant to the Attorney General's
19 independent constitutional, common law, and statutory authority to represent the public interest
20 (see Cal. Const., art V, § 13; Cal. Gov. Code, §§ 12511, 12600-12), the parens patriae theory and
21 because the State has alleged an injury in fact.

22 13. Defendant UNITED STATES DEPARTMENT OF TRANSPORTATION is the federal
23 agency responsible for the activities of Defendant Federal Aviation Administration.

24 14. Defendant FEDERAL AVIATION ADMINISTRATION is the federal agency
25 responsible for the Environmental Assessment, Finding of No Significant Impact, and Record of
26 Decision that are challenged by the People.

27 15. Defendant NORMAN MINETA, the Secretary of the Department of Transportation, is
28 responsible for the Department of Transportation's activities and is sued in his official capacity.

1 16. Defendant MARION C. BLAKEY, the Administrator of the Federal Aviation
2 Administration, is responsible for the Federal Aviation Administration's activities and is sued in
3 her official capacity.

4 **SUMMARY OF NEPA'S STATUTORY AND REGULATORY FRAMEWORK**

5 17. NEPA is the "basic national charter for protection of the environment." 40 C.F.R.
6 §1500.1. NEPA's purpose is to ensure "public officials make decisions that are based on
7 understanding of environmental consequences, and to take actions that protect, restore, and
8 enhance the environment" and to "ensure that environmental information is available to public
9 officials and citizens before decisions are made and before actions are taken." 40 C.F.R. §
10 1500.1(b)-(c). NEPA is designed to "encourage and facilitate public involvement in decisions
11 which affect the quality of the human environment." 40 C.F.R. § 1500.2(d). "Human
12 environment" is defined "comprehensively to include the natural and physical environment and
13 the relationship of people with that environment." 40 C.F.R. § 1508.14.

14 18. To achieve these purposes, NEPA requires all federal agencies prepare a "detailed
15 statement," known as an Environmental Impact Statement, regarding all "major federal actions
16 significantly affecting the quality of the human environment." 42 U.S.C. § 4332(c).

17 19. Where an agency does not know whether the effects of its proposed action will be
18 "significant," it may prepare an Environmental Assessment. 40 C.F.R. § 1501.4(b). An EA
19 consists of an analysis of the need for the proposed action, of alternatives to the proposed action,
20 and of the environmental impacts of both the proposed action and the alternatives. 40 C.F.R. §
21 1508.9. If the EA indicates that the federal action may significantly affect the quality of the
22 human environment, the agency must prepare an EIS. 40 C.F.R. § 1501.4(c) (emphasis added).

23 20. Under Ninth Circuit precedent, an agency must prepare an EIS if substantial questions
24 are raised as to whether a project may have significant effects.

25 21. If an agency decides not to prepare an EIS, it must prepare a Finding of No Significant
26 Impact explaining the reasons for the agency's decision. 40 C.F.R. § 1508.13.

27 ///

28 ///

1 **FACTUAL BACKGROUND**

2 **Procedural History**

3 22. The Mammoth Yosemite Airport ("Airport") is located at an altitude of 7,100 feet,
4 approximately eight miles outside the Town of Mammoth Lakes, in California's rugged eastern
5 Sierra Nevada mountain range. A second airport with two runways and existing terminal
6 facilities is located in the nearby town of Bishop, situated at a lower altitude in the northern
7 Owens Valley.

8 23. The Airport is surrounded primarily by undeveloped open space, although there is
9 development in progress or planned for the area. In the vicinity of the Airport are significant
10 biological resources, including several sensitive, threatened, and endangered species, such as the
11 Owens tui chub, the Sierra Nevada bighorn sheep, the sage grouse, and the bald eagle, as well as
12 valuable public resources, including Yosemite National park, Mono Lake, June Lake, Devil's
13 Postpile National Monument, and the Ansel Adams and John Muir wilderness areas. The
14 Airport is also within easy driving distance to numerous skiing, hiking, fishing, and wildlife
15 viewing sites.

16 24. Currently, the Airport is small and non-commercial, servicing private aircraft and
17 occasional commuter flights by private aircraft. Facilities include a single runway, a parallel
18 taxiway system, a general aviation hangar, tie-downs, support facilities, and passenger facilities.

19 25. The Project, as approved, would transform a currently rural, non-commercial airport to
20 accommodate jet aircraft up to the size of the Boeing B-757-200 and commercial passenger
21 traffic. The proposed expansion entails: expanding the runway width by 50 feet to 150 feet (the
22 current FAA design standard for Boeing 757s and 737s); widening the parallel taxiway system;
23 adding an air carrier apron; extending the runway 1,200 feet to the west to provide necessary
24 runway length for commercial aircraft; constructing road improvements and a passenger terminal
25 complex; and expanding parking facilities. The Project also appears to change the zoning of the
26 undeveloped surrounding lands to "permit the development of ... commercial, industrial, and
27 other related land uses." Final EA, IV-28. Although the Airport Expansion Project has a long
28 history, this is the first time the Town has proposed widening the runway to support jet aircraft,

1 and the first time that the Project has been analyzed by the FAA. See ROD, p. 3.

2 26. According to the FAA, the primary purpose of the Expansion Project is to bring
3 visitors to the area: "[t]he status of Mammoth Lakes as one of the most frequented ski resorts in
4 North America during the 1980s has been overshadowed by the emergence of other western ski
5 resorts (in the states of[]Colorado, Utah, and Washington.) The need for convenient access and
6 reduced travel time were identified as critical for economic success in this-competitive market."

7 ROD, p. 4.

8 27. As the FAA itself has acknowledged, the Airport, once expanded, will serve as a
9 gateway to the Eastern Sierra, facilitating increased use and development of the area. The FAA
10 forecasts 900 Boeing 757 take-offs and landings per year and 800 Boeing 737 take-offs and
11 landings per year by 2022. Final EA, IV-22. By 2022, the Airport will service a total of 5,000
12 commercial carriers annually. Final EA, IV-21. Total annual passenger traffic is projected to
13 reach 667,600 (333,800 enplanements) by 2022. Final EA, IV -12. Draft EA, V-77, V-78. As a
14 result of the Project, the Town estimates an annual increase of approximately one million
15 visitors. See, Biological Opinion (July 23, 2001), at p. 1.

16 28. In Spring of 2000, in response to the FAA's notice of intent to prepare an EA for the
17 Expansion Project, numerous local, State, and federal agencies and individuals submitted scoping
18 comments. For example, the California Air Resources Board noted that the Mammoth Lakes
19 area is in nonattainment for ozone and inhalable particulate matter, recommended that the
20 analysis of impacts to air quality quantify increases in the emissions of carbon monoxide, oxides
21 of nitrogen, reactive organic compounds, particulate matter, and air toxics, and stated that
22 "subsequent environmental impact documents should incorporate all feasible, cost-effective
23 mitigation measures to reduce any identified air quality impacts of the proposed projects." The
24 California Regional Water Quality Control Board ("RWQCB") raised questions about potential
25 impacts to wetlands, stormwater runoff, and hazardous materials storage, among other things.
26 The California Department of Fish and Game ("DF&G"), in a detailed letter, noted numerous
27 potential direct, indirect, and cumulative impacts to state and federally-listed species and species
28 of special concern. DF&G even listed future projects that it believed should be included in a

1 legally adequate cumulative impacts analysis, such as planned resorts, ski areas, hotels, and
2 residential developments. And the California Department of Transportation ("Caltrans") raised
3 eleven "questions of concern," relating to such things as changes in traffic patterns and impacts to
4 the deer migration corridor that could affect public safety on area highways.

5 29. In October 2000, the FAA published a Draft EA, which, notwithstanding the
6 substantial questions raised by the scoping comments, asserted that it had "to date uncovered no
7 significant environmental impacts caused by the expansion of the Airport that could not be
8 satisfactorily mitigated." Draft EA p. I-1.

9 30. Commenting on the Draft EA, a number of state and federal agencies again raised
10 substantial concerns about the Project and the adequacy of the information contained in the Draft
11 EA. Representative comments follow.

12 31. The RWQCB, for example, commented that soils at the Airport are very porous and
13 that drainage water readily infiltrates into the ground. Given that groundwater is very shallow,
14 the RWQCB opined, "there is a potential for ground water contamination by storm water runoff,
15 which may contain hydrocarbons or other contaminants from daily airport operations." The
16 RWQCB also noted that other questions remained unanswered, including whether there were
17 wetlands in the area of the Airport.

18 32. DF&G concluded after substantial analysis of the available data that "the proposed
19 project has the potential to significantly affect the quality of the human environment, and as such
20 NEPA requires that an Environmental Impact Statement (EIS) must be prepared." In support of
21 its position that an EIS was required, DF&G provided detailed comments, discussing potential
22 impacts to air quality, adjacent federal lands, water quality, the threat of bird strikes, including
23 the federally-listed threatened bald eagle, numerous impacts to other species, including
24 endangered and threatened species, and cumulative impacts. DF&G cited literature, studies, and
25 specific sections of the Draft EA in support of its argument that impacts were possible and an
26 EIS was required.

27 33. Commenting on the Draft EA, Caltrans noted that before the FAA could legitimately
28 conclude that there would be no adverse impacts to traffic on U.S. 395, a thorough traffic

1 intersection operation study was required.

2 34. The Bureau of Land Management ("BLM") also commented on the Draft EA, stating
3 that its "review of the document has raised concerns regarding the potential for off-site impacts to
4 adjacent public lands and resources[.]" including the area's biotic communities. BLM also noted
5 that the area "is known for its significant wildlife and recreation values[.]" such as a nearby
6 segment of Hot Creek that is eligible for inclusion in the National Wild and Scenic Rivers
7 System. The agency concluded that the Draft EA was "deficient" in "assessing potential impacts
8 to those values" and in "identify[ing] appropriate measures to mitigate impacts to those values."

9 35. Members of the public also expressed concern that the Draft EA's analysis of the
10 Expansion Project improperly minimized impacts to biotic resources, understated the growth-
11 inducing impacts of the Project, and failed to adequately examine viable alternatives to the
12 proposed Project, including the potentially environmentally superior alternative of expanding the
13 existing airport in the town of Bishop to accommodate commercial jet service.

14 36. In spite of the controversy engendered by the Project, and the substantial objections
15 and concerns of numerous State and federal agencies having relevant expertise and
16 responsibilities concerning the area's resources, in December 2000, the FAA issued a Final EA
17 which was substantially similar to the Draft EA. And on December 21, 2000, the FAA signed
18 the FONSI adopting the Final EA.

19 37. DF&G commented on the Final EA and FONSI, reiterating its concern "that the EA
20 does not contain the necessary supporting data and references to convincingly demonstrate that
21 there would be no significant effects on the environment." As DF&G noted, the EA fails to
22 meaningfully address the Expansion Project's significant growth-inducing impacts, as well as
23 impacts to sensitive and threatened and endangered species, including federally-listed endangered
24 Sierra Nevada bighorn sheep, bald eagle, and other wildlife in the vicinity.

25 38. By issuing the FONSI, the FAA violated its duty to take a "hard look" at the potential
26 impacts of the Expansion Project and ignored the substantial concerns raised by State and federal
27 agencies and the public. In fact, at the time it signed the FONSI, the FAA was still discussing
28 potential impacts to biological resources with DF&G and the U.S. Fish and Wildlife Service

1 (“FWS”), and these agencies were attempting to assist the FAA to develop appropriate mitigation
2 measures for the Project. The FAA's premature issuance of the FONSI cut this process short.^{2/}

3 39. In response to these clear problems with the FAA's issuance of the FONSI, and because
4 the FAA's decision was not yet final, on February 22, 2001, the California Attorney General's
5 Office provided comments on the proposed Project. In light of the significance of the area
6 surrounding the Airport and the clear potential for substantial individual, cumulative and growth-
7 inducing impacts, the Attorney General recommended that the FAA “prepare an EIS to more
8 thoroughly document, disclose, and analyze the potentially significant impacts of this project and
9 measures that might serve to mitigate those impacts.”

10 40. Earthjustice, an environmental law firm, also submitted comments after the FAA
11 signed the FONSI and, thereafter, filed suit in federal district court. On the FAA's representation
12 that the FONSI was not its final decision, Earthjustice dismissed its suit without prejudice on
13 August 10, 2001.

14 41. On July 29, 2002, eleven months after the dismissal of Earthjustice's suit, the FAA “re-
15 visit[ed]” but elected to stand behind its December 2000 FONSI, issuing a ROD incorporating
16 and affirming as valid the findings of the FONSI and the EA.

17 **Impacts of the Expansion Project**

18 42. The Final EA, FONSI, and ROD do not disclose, analyze or evaluate the substantial
19 questions raised by various resource agencies and members of the public regarding the potential
20 impacts of the Expansion Project.

21 43. The potential impacts from the construction and operation of the Expansion Project are

22
23 2. In the FONSI, the FAA represented that it had consulted with FWS pursuant to the
24 Endangered Species Act (“ESA”), 16 U.S.C. § 1536 *et seq.* In fact, according to FWS, FAA had
25 not at that time completed consultation. Four months after finalizing the EA and issuing the
26 FONSI, in April 2001, the FAA initiated consultation with the FWS under Section 7 of the ESA
27 to evaluate the Project's likely impact to listed species. In July 2001, FWS issued a Biological
28 Opinion addressing the Project's impacts on the endangered Owens tui chub. FWS does not
address other listed species in the Biological Opinion, in spite of its own recommendation that
the FAA initiate consultation on additional listed species in the vicinity which may be affected
by the Project, including the Sierra Nevada bighorn sheep and the bald eagle. These significant
impacts remain unaddressed by any environmental document.

1 wide-ranging and environmentally significant. These impacts are described in detail in the
2 comment letters that were submitted at various stages of the FAA's environmental review. The
3 discussion that follows is illustrative, and is not intended to be an exhaustive discussion of the
4 Project's potential impacts.

5 44. At minimum, and as described more fully below, the Project poses potentially
6 significant impacts to wildlife, including federally and state-listed species, valued wilderness
7 areas and national parks, as well as impacts to air quality, water quality and quantity, and
8 cumulative impacts and growth-inducing impacts, all of which must be analyzed in an EIS.

9 45. The Expansion Project poses a significant threat to wildlife, including threatened and
10 endangered species, that is not adequately disclosed or analyzed in the EA, FONSI, or ROD. The
11 Final EA does not even mention the presence or potential impacts to the endangered Sierra
12 Nevada bighorn sheep, even though FWS stated in its July 2001 Biological Opinion that any
13 change in visitor use is likely to affect the species. Nor do the documents analyze the impacts to
14 the endangered Owens tui chub or its critical habitat, which exists along eight miles of the
15 Owens River and five acres at the nearby Hot Creek Fish Hatchery, located less than a mile from
16 the Airport. In spite of the admitted porosity of soils in the area, and the potential for even low
17 levels of contamination to extirpate the imperiled tui chub, the Final EA does not disclose the
18 close proximity of this endangered species to the Project, disclose or analyze any impacts to the
19 species from the Project, or propose mitigation measures to safeguard the species. Because the
20 Final EA and FONSI were issued and signed before coordination with appropriate federal and
21 State agencies was concluded, the Final EA and FONSI are virtually bereft of any
22 acknowledgment and evaluation of the Project's impact to imperiled species or their habitat.

23 46. The Project's impacts are not limited to threatened and endangered species, but affect a
24 broad range of wildlife and habitat. For instance, DF&G noted that the sage grouse (which may
25 be a genetically distinct population unit) will be directly and indirectly impacted through loss of
26 foraging, nesting, and lekking (breeding) areas and increased mortality, resulting in a "range wide
27 decline of sage grouse." Similarly, mule deer herds, which migrate many miles between winter
28 and summer ranges, depend on the maintenance of a migration corridor; this corridor is directly

1 compromised by the Expansion Project. Finally, the Project has the potential to disrupt the
2 seasonal migration patterns for many raptors, including golden eagles, northern harriers,
3 American peregrine falcons, and Swainson's hawks.

4 47. The Project threatens significant growth-inducing impacts on an ecologically fragile
5 and unique region of California. Yet the Final EA and FONSI do not adequately discuss the
6 Expansion Project's potentially severe growth-inducing impacts on the region. The Draft EA
7 recognizes that the Airport's expansion would induce growth in this ecologically sensitive region:
8 "[t]he introduction of air carrier jet service to Mammoth Yosemite Airport is likely to result in
9 faster tourism growth in the region than would otherwise occur" and would encourage the
10 development of additional tourist facilities such as new hotels, motels, rental properties, service
11 stations, and retail facilities. Draft EA, V-77-78. The Draft EA also notes that the Project will
12 increase the number of inhabitants in the area and will exacerbate traffic problems. Inexplicably,
13 even this limited discussion of growth-inducing impacts was eliminated from the Final EA.

14 48. The FAA also failed to conduct an adequate analysis of the Project's cumulative
15 impacts (*e.g.*, impacts to water quality and quantity, wildlife, air quality, safety, and threatened
16 and endangered species). In cursory fashion, the Final EA dismisses the possibility of
17 cumulative impacts in each of these categories, stating without citation, "no cumulative impacts
18 are anticipated." Final EA, V-89.

19 49. Both the Draft and Final EA merely disclose the existence of several proposed projects
20 within the immediate vicinity that may impact the same resources as the Project, but do not
21 analyze the combined impacts of these projects. For example, the FAA fails to analyze two
22 actions intimately related to the Project: the Mammoth Lakes Airport Commercial Development
23 Plan (which encompasses 25.6 acres of lands within the Airport boundary) and the Sierra
24 Business Park. Final EA, V-81. The Expansion Project is slated to occur in four phases. Phase I
25 consists of construction of the Airport infrastructure, as well as 60 units of time-share, hotel,
26 condominium, or commercial facilities; phase II consists of a 300-seat restaurant complex and
27 additional lodging units; and phases III and IV consist of additional lodging units and individual
28 hangars. Final EA, V-81. The Final EA dismisses analysis of these reasonably foreseeable future

1 actions on the ground that the Town has the “right, but not the obligation” to develop the four
2 phases. Id.

3 50. In addition, the FAA has imposed only the most minimal of mitigation measures, *e.g.*,
4 that fuel spills be reported to the FWS within one month of their occurrence.

5 51. The FAA was required to consider other reasonable alternatives to approving the
6 Expansion Project in this location. The EA considers only alternatives that propose different
7 levels of development at the Mammoth-Yosemite Airport, and fails to consider any other
8 reasonable alternatives which would also meet the Project’s purpose and need: to facilitate visitor
9 use. For example, the FAA failed to adequately consider the reasonable alternative of expanding
10 facilities at the already existing Bishop Airport to allow for commercial jet service, which might
11 pose substantially less significant impacts to the environment and listed species. The FAA’s
12 outright dismissal of any alternative that proposed development of commercial airline service in
13 any other location^{3/} resulted in consideration of a limited range of alternatives that prevented
14 the public and decision-makers from evaluating, in comparative form, the impacts of the
15 proposed action.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT IN**
18 **VIOLATION OF NEPA**

19 52. Plaintiff hereby realleges and incorporates each and every paragraph above.

20 53. NEPA, 42 U.S.C. § 4332(2)(c), and its implementing regulations require all federal
21 agencies to prepare an EIS for major projects significantly affecting the quality of the human
22 environment. The FAA’s failure to prepare an EIS for the Expansion Project violates NEPA
23 because the Project is a major federal action within the meaning of 4332(2)(c) significantly
24 impacting, among other things, wildlife, including listed species, public lands, public safety, air
25 quality, and water quality and quantity. The FAA was also required to prepare an EIS addressing
26

27 3. Whether another location, such as the Bishop Airport, would be more suitable is
28 unknown because the FAA did not analyze any location other than the Mammoth Yosemite
Airport.

1 the cumulative impacts of the Project itself and its four phases, and the impact of the Expansion
2 Project and other past, present, and reasonably foreseeable future development projects in the
3 vicinity. Finally, the FAA was required to prepare an EIS that discusses all relevant impacts of
4 the Project.

5 54. The FAA's failure to prepare an EIS for the Expansion Project violates NEPA's
6 implementing regulations, including but not limited, to the following: --

7 A. One of the stated purposes of NEPA is to address the "profound influences of
8 population growth, high-density urbanization, industrial expansion, [and] resource exploitation."
9 42 U.S.C. § 4331(a). NEPA therefore requires evaluation of "indirect effects" such as "growth
10 inducing effects and other effects related to induced changes in the pattern of land use,
11 population density or growth rate" 40 C.F.R. § 1508.8(b). The FAA violated NEPA by
12 failing to prepare an EIS despite the Project's acknowledged growth-inducing impacts and
13 related impacts to fragile resources in the surrounding region.

14 B. NEPA, 40 C.F.R. §1501.2, requires agencies to identify environmental effects and
15 values in adequate detail so that they can be subjected to economic and technical analysis. The
16 FAA violated NEPA by failing to discuss in adequate detail the Project's mitigation measures
17 and to demonstrate whether these measures will offset the negative impacts of the Expansion
18 Project.

19 C. NEPA, 40 C.F.R. § 1508.27(b)(3), requires that, in determining the "significance"
20 of the effects of an action, the agency must take into account the "unique" characteristics of the
21 geographic area. For example, the FAA failed to take into account the unique characteristics of
22 the Eastern Sierras, such as the numerous national parks, wilderness and wildlife areas, and other
23 valuable publicly-owned resources.

24 D. NEPA, 40 C.F.R. § 1508.27(b)(9), requires that, in determining the "significance"
25 of a proposed action for purposes of determining whether or not to prepare an EIS, the agency
26 must take into account "the degree to which the action may adversely affect an endangered or
27 threatened species " or its critical habitat. The FAA did not adequately address the Project's
28

1 impacts to listed species and designated critical habitat, and consulted with the appropriate
2 federal agencies only after the EA had been finalized and the FONSI approved.

3 E. NEPA, 40 C.F.R. § 1508.27(b)(7), requires that, in determining the “significance”
4 of a proposed action, an agency must consider “whether the action is related to other actions with
5 individually insignificant but cumulatively significant impacts.” Cumulative impacts result from
6 the “incremental impact of the action when added to other past, present, and reasonably
7 foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes
8 such other actions.” 40 C.F.R. § 1508.7. The FAA failed to adequately address the Project’s
9 cumulative impacts in relation to other proposed projects in the region.

10 F. NEPA, 40 C.F.R. §1508.27, requires that in determining the “significance” of a
11 proposed action, the agency must consider the degree to which the effects on the environment are
12 “highly controversial.” The Expansion Project has generated significant controversy from
13 resource agencies, both federal and state, and members of the public.

14 SECOND CAUSE OF ACTION

15 FAILURE TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT 16 EVALUATING COMMERCIAL DEVELOPMENT AS CONNECTED ACTIONS

17 55. Plaintiff hereby realleges and incorporates each and every paragraph above.

18 56. Actions are deemed connected actions and must be analyzed in an EIS if they trigger
19 other actions that may require an EIS, if they will not proceed unless other actions are taken
20 previously or simultaneously or if they are interdependent parts of a larger action. 40 C.F.R. §
21 1508.25.

22 57. The FAA was required to analyze the Expansion Project in a comprehensive EIS that
23 evaluated all connected actions, including actions intimately related to the Expansion Project,
24 such as commercial development associated with the Expansion Project.

25 58. The FAA's failure to consider, analyze and disclose the environmental impacts of these
26 connected actions in an EIS violated NEPA.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PREPARE AN ADEQUATE EA IN VIOLATION OF NEPA**

3 59. Plaintiff hereby realleges and incorporates each and every paragraph above.

4 60. NEPA requires agencies to “emphasize real environmental issues” so that the public
5 can understand, and decision-makers can use, the required environmental documents. 40 C.F.R.
6 § 1500.2(b). The EA violates NEPA because, among other things, it fails to adequately address
7 the individual, cumulative, and growth-inducing impacts arising from the Expansion Project, and
8 it fails to mitigate those impacts.

9 61. NEPA, 42 U.S.C. § 4332(2)(E); 40 C.F.R. §§ 1501.2(c), 1507.2, requires that federal
10 agencies consider all reasonable alternatives to a proposed action. Agencies must “study,
11 develop and describe appropriate alternatives to recommended courses of action in any proposal
12 which involves unresolved conflicts concerning alternative uses of available resources.” CEQ
13 regulations specifically require that an agency issuing an EA “shall include brief discussions of
14 the need for the proposal, of alternatives as required by section §102(2)(e), of the environmental
15 impacts of the proposed action and alternatives....” 40 C.F.R § 1508.9(b). An agency is also
16 required to explore all reasonable alternatives and provide an explanation for eliminating
17 reasonable alternatives from study. 40 C.F.R. §1502.14. Even reasonable alternatives not within
18 the jurisdiction of the lead agency must be considered. 40 C.F.R. § 1502.14(c).

19 62. The EA considers only alternatives that propose different levels of development at the
20 Mammoth Yosemite Airport, and fails to consider any reasonable alternatives that would also
21 meet the Project’s purpose and need: to facilitate visitor use. For example, the EA fails to
22 adequately consider the reasonable alternative of expanding facilities at the already existing
23 Bishop Airport to allow for commercial jet service, which might pose substantially less
24 significant impacts to the environment and listed species, but would still meet the Project’s
25 desired purpose and need.

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1 **FOURTH CAUSE OF ACTION**

2 **ARBITRARY AND CAPRICIOUS ISSUANCE OF A FONSI IN VIOLATION OF NEPA**

3 63. Plaintiff hereby realleges and incorporates each and every paragraph above.

4 64. The FAA's issuance of the FONSI for the Expansion Project was arbitrary, capricious,
5 and in violation of NEPA and the APA, because there is no substantial evidence to support the
6 FAA's finding that the Project will not significantly affect the environment. The FAA's decision
7 was arbitrary and capricious based on all of the issues raised in the comments submitted, the
8 express findings of the Draft EA related to growth-inducing impacts that were excised from the
9 Final EA, and the likely impacts to species exposed by biological evaluations and consultations
10 made after the public review process closed and the EA and FONSI were issued. The FAA's
11 decision is also arbitrary and capricious because it failed to consider reasonable and viable
12 alternatives, and failed to satisfy NEPA's public review requirements.

13 **FIFTH CAUSE OF ACTION**

14 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

15 65. Plaintiff hereby realleges and incorporates each and every paragraph above.

16 66. The Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, entitles a party to seek
17 judicial review of an agency action where a legal wrong is alleged and the party alleging the
18 violation is adversely affected or aggrieved by the agency action. Pursuant to 5 U.S.C. § 706, a
19 reviewing court shall hold unlawful and set aside agency action found to be arbitrary, capricious,
20 or otherwise not in accordance with the law, and compel agency action illegally withheld or
21 unreasonably delayed.

22 67. FAA's failure to comply with NEPA and its supporting regulations constitutes arbitrary
23 and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures
24 required by law. 5 U.S.C. § 706(2)(A), (D).

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RELIEF REQUESTED

WHEREFORE, the People request that this Court:

1. Issue a declaratory judgment that Defendants have violated NEPA by illegally issuing a FONSI and failing to prepare an EIS with respect to the proposed Expansion Project;
2. Issue a declaratory judgment that Defendants have violated NEPA by failing to prepare an adequate EA;
3. Issue a declaratory judgment that Defendants violated the APA by acting arbitrarily, capriciously, in an abuse of discretion, not in accordance with law and/or without observance of proper procedures required by law;
4. Issue a mandatory injunction compelling Defendants to comply with NEPA and its implementing regulations by setting aside the FONSI and ROD and preparing an EIS;
5. Award the People costs, expenses and reasonable attorney fees pursuant to the Equal Access of Justice Act, 28 U.S.C. § 2412 or other authority; and
6. For such other relief as this Court deems just and proper.

Dated: September 24, 2002

Respectfully submitted,

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