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Via Electronic Mail and Regular U.S. Mail

Gen. Wayne Monteith
Associate Administrator for Commercial Space Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
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RE: FAA Review of Proposed Spaceport Camden, Camden County, GA

Gen. Monteith:

On behalf of One Hundred Miles, the National Parks Conservation Association, the Satilla Riverkeeper, and Wild Cumberland, the Southern Environmental Law Center submits the following comments regarding the Federal Aviation Administration's ("FAA") review of the Revised Launch Site Operator License Application ("LSOL Application")¹ for the proposed Spaceport Camden submitted by Camden County, Georgia. This letter incorporates by reference all comments submitted in prior correspondence to the FAA, including comments on the Draft Environmental Impact Statement ("DEIS") and SELC's February 2, 2020 letter.

On September 11, 2020, the FAA released an open letter (the "September 11th Letter") stating its intention to curtail the environmental review of Spaceport Camden. This decision reversed the process set forth in an earlier statement by the FAA.² Specifically, the FAA stated its plan to finalize the DEIS for this project despite that fact that the Spaceport Camden proposal had been revised in the interim. Further, the FAA indicated that it will not conduct any additional public engagement or solicit public comment on the revised proposal.

¹ *Launch Site Operator License Application for Spaceport Camden*, Camden County Board of Commissioners (January 14, 2020).

² May 26, 2020 Email from S. Zee re Update on Spaceport Camden EIS – Schedule. All exhibits referenced in this letter that are not already in the FAA's possession are available for electronic document transfer through the following link:

<https://southernenvironment.sharefile.com/d-sfff950c529504754bc594233d18d54ab>

The FAA attempts to justify this reversal on two grounds. First, it asserts that this step is required under Executive Order 13927, which expedites the environmental review of infrastructure projects.³ Second, the FAA states that its “revised analyses have confirmed that all potential environmental impacts of the small-lift launch vehicles are subsumed within the potential impacts of the medium-large lift class vehicle as described in Draft EIS, issued in March 2018.”

As set forth below, the FAA is fully aware that the course of action described in the September 11th Letter is unlawful is acceding to political pressure by Camden County – the entity it is charged with regulating. The pretextual explanations in the September 11th Letter are both factually incorrect and legally flawed. The FAA should stop this unlawful course of action and resume its work to prepare a revised DEIS.

I. Executive Order 13927 Does Not Authorize The FAA’s Unlawful Process.

The FAA Letter relies on Executive Order 13927 (the “Executive Order”), which purports to respond to the Nation’s ongoing COVID-19 epidemic by expediting the environmental review of infrastructure projects. But the use of the Executive Order to justify the conclusions of the September 11th Letter ignores fundamental tenets of how government works in the United States.

In America, laws are not made nor amended by executive order. The Executive Order does not, and cannot, change the underlying legal obligations set forth in the NEPA statute, regulations, or caselaw. In simple terms, the President can sign an executive order instructing the FAA to work *faster*, but he cannot order the FAA *to do less than the law requires*. But doing less is precisely what the September 11th Letter describes. NEPA, its regulations, and caselaw all require the FAA to prepare a supplemental draft EIS for the revisions to the Spaceport Camden proposal. The Executive Order does not allow the FAA to skirt these requirements, and improper use of the Executive Order will ultimately delay, rather than expedite, this project.

II. The September 11th Letter Reflects A Political Decision The FAA Knows To Be Unlawful.

Recently released documents shed light on the true reason for the FAA’s changed position in the September 11th Letter. On May 26, 2020, the FAA released a statement indicating that it would prepare a revised DEIS and would conduct an additional round of public engagement on the Spaceport Camden proposal. *Supra* at n. 2. Shortly after this

³ Exec. Order No. 13,927, 85 Fed. Reg. 35,165 (Jun 4, 2020).
<https://www.whitehouse.gov/presidential-actions/eo-accelerating-nations-economic-recovery-covid-19-emergency-expediting-infrastructure-investments-activities/>

announcement, Camden County retained a Washington, D.C. lobbying firm to help reverse that decision. In response to a request by this lobbying firm, staff at the U.S. Department of Transportation provided this summary of the Spaceport Camden situation:

The amended application for a spaceport license has a completely different scope than the original application. Full environmental evaluation of small vehicles was not conducted, only the larger vehicles that were originally proposed. In order to comply with NEPA for this pending Federal action (issuance of the license), FAA must revise the existing Draft EIS to outline the potential environmental impacts from the change in the scope of the proposed project. Going forward without conducting the revised environmental would probably be subject to a legal challenge from Little Cumberland Island residents who oppose this; and there's a pretty good chance, as I understand, that they would win challenging the action on process grounds if we didn't perform the revised environmental.

May 29, 2020 Email from N. Rodgers to S. Howard (emphasis added) (attached). This summary, apparently provided by staff in the FAA's Office of Commercial Space Transportation, reflects the FAA's consistent - and legally correct - position that the revisions to the Spaceport Camden proposal require a revision to the DEIS. The FAA has repeatedly taken this position, both externally in the DEIS and internally in correspondence between staff.⁴

But Camden County's lobbying team discussed using political influence to change the FAA's decision to require a revised DEIS.

They are not hearing anything from the Hill...we need to step up pressure on DOT and FAA from our congressional allies and reach out to more Members of Congress to develop more pressure.

⁴ DEIS at 2-22 ("A supplemental environmental analysis could be required when one or more of the parameters of the proposed construction or launch activities fall outside what is analyzed in this EIS."); *Id.* at 2-21 n.18 ("Any proposed trajectories, launch vehicles, and/or fuel types or changes to the maximum number or timing of launches identified during the licensing process that are outside the scope of those addressed in this EIS would require additional environmental review."); and August 10, 2017 Email from D. Murray (FAA) to K. Branham (FAA) ("If they want to change their approach to only small launch vehicles to satisfy the location review, then I think they need to change the approach to the EIS. We can't put out an EIS that describes vehicles that look like Falcon 9s when [] they've only demonstrated that a Vector-R might be safe enough.").

Id. In fact, Camden County’s lobbying team specifically identified the Executive Order as “leverage” to force the FAA to reverse its decision. June 9, 2020 Email from N. Rodgers to S. Howard (attached).

These documents draw a straight line between Camden County’s lobbying efforts and the FAA’s reversal. They reveal that the September 11th Letter is not based on facts or the law, but on political influence. Further, these emails make clear that the FAA knows a revised DEIS is required by law and that their failure to prepare one is likely to be struck down in court. The FAA should not knowingly take an unlawful position, nor should, nor should it only follow the law when compelled to do so through litigation.

III. Failure to Prepare A Supplemental DEIS Will Violate NEPA and FAA Guidance.

The FAA’s concerns about the legality of finalizing the DEIS despite the revisions to the Spaceport Camden proposal are well founded. Council on Environmental Quality (“CEQ”) regulations require a supplemental EIS if changes to a proposed action are “relevant” to environmental concerns:

- (i) The agency makes substantial changes to the proposed action that are **relevant** to environmental concerns; or
- (ii) There are significant new circumstances or information **relevant** to environmental concerns and bearing on the proposed action or its impacts.

40 C.F.R. § 1502.9(d)(1)(i)-(ii) (emphasis added) and 23 C.F.R. §771.130(a); *see also*, *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 873 (9th Cir. 2004) (A supplemental EIS “is required if a new proposal will have a significant impact on the environment in a manner not previously evaluated or considered.”). FAA guidance suggests an even lower standard, only requiring that the proposed action “could affect” the environmental effects considered in the DEIS. FAA Order 5050.4B at ¶1402(b).⁵

The changes to Spaceport Camden are “relevant” to a number of environmental concerns including a significantly higher launch failure rate, an increased risk of wildfire, and the risk to human health. These changes clearly meet the standard for a supplemental EIS set forth in CEQ regulations and the FAA’s own guidance.

In fact, the September 11th Letter relies on an incorrect legal standard. The correct inquiry is whether the changes are “relevant” to the environmental effects, not

⁵ *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions*, Federal Aviation Administration Order No. 5050.4B (April 2006).
https://www.faa.gov/airports/resources/publications/orders/environmental_5050_4/

whether they are “subsumed” within the DEIS. This relevance standard is necessary because a supplemental EIS also serves NEPA’s core purpose of forcing government agencies to communicate the effects of their actions to the public.

The question of a supplemental EIS is premised on the dual purposes of the EIS: to assure that the public who might be affected by the proposed project be fully informed of the proposal, its impacts and all major points of view; and to give the agency the benefit of informed comments and suggestions as it takes a ‘hard look’ at the consequences of proposed actions.

Dubois v. U.S. Dep’t of Agric., 102 F.3d 1273, 1291 (1st Cir. 1996). Proceeding directly to a Final EIS without apprising the public of how the changes to Spaceport Camden could alter its environmental effects falls short of this standard, and deprives the public of the opportunity to comment on those changes.

IV. The September 11th Letter Ignores The Relevant and Significant Changes To The Revised Application

There are numerous ways in which the environmental effects of the revised Spaceport Camden proposal are not “subsumed” within the DEIS, but the three most glaring are the increased failure rate for small rockets, the increased risk of wildfire, and the omission of any discussion of risk to human health resulting from rocket failures.

- a. The FAA must prepare a Supplemental DEIS to evaluate the increased risk of launch failures.

The DEIS states that “launch failure probabilities for launch vehicles of the type being considered” are 2.5 to 6 percent. DEIS at 2-34. But small rockets are known to fail at a higher rate than the medium-large rockets considered in the DEIS, and the FAA has not disclosed the expected failure rate for the small rockets at Spaceport Camden. In fact, Spaceport Camden’s Revised LSOL Application suggests a failure rate of 20%.⁶

Parameter	Value	Notes
Total Probability of Failure (Pf)	20%	
First Stage Probability of Failure	10%	
Second Stage Probability of Failure	10%	

This increase in failure rate is a perfect example of the information that NEPA requires to be disclosed, yet the FAA has not made this information public. If accurate,

⁶ *Revised Launch Site Operator License Application for Spaceport Camden: Launch Site Location Review*, at 16.

this 20% failure rate would be three to eight times higher than the rates previously disclosed in the DEIS. This dramatic increase cannot be “subsumed” within the prior analysis, and it is certainly “relevant” to Spaceport Camden’s environmental impacts.

Further, NEPA requires the FAA to independently verify information submitted by the project applicant including, in this case, the anticipated failure rate for Spaceport Camden. 40 C.F.R. § 1502.24 (requiring agencies to insure the professional and scientific integrity of analysis in EIS) and FAA Order 1050.1F at § 2-2.1(a)(3) (FAA must “independently and objectively evaluat[e] applicant-submitted information and EAs and tak[e] responsibility for content and adequacy of any such information or documents used by the FAA for compliance with NEPA or other environmental requirements.”)

The Revised LSOL Application concedes that its 20% failure rate is a fiction: a default 10% failure rate was drawn from FAA regulations⁷ and then applied to both first and second launch stages to yield the 20% total failure rate. *Revised LSOL Application: Launch Site Location Review* at 20 and n. 6. FAA regulations may allow the use of default failure rates for purposes of the Part 420 calculations, but NEPA imposes separate requirements regarding the integrity of the information they contain. These NEPA requirements prohibit the FAA from relying on arbitrary information in an EIS when actual data is available.

Although launch information is not readily available to the public,⁸ it appears that the small rockets planned for Spaceport Camden fail at a higher rate than the 20% selected by Camden County.

ALL US COMMERCIAL SMALL CLASS ORBITAL ROCKETS HISTORY 2006-October 31, 2020						
	Thrust	Payload lbs	Launches	1st Stage Failures	1st Stage Failure %	Notes:
Rocket Lab Electron	37,980	660	15	1	7%	Licensed, operational
Astra Rocket 1.0-3.1	28,550	220	3	3	100%	Licensed, experimental
SpaceX Falcon 1	102,000	400	5	1	20%	Licensed, retired
Total small class launches since 2006>>			23	5	22%	

⁷ The 10% failure rate in Spaceport Camden’s Revised LSOL Application comes from Appendix C to Part 420, paragraph (b)(3) and Table C-1. These are default parameters assumed for purposes of calculating the failure rate of a hypothetical launch vehicle for purposes of the FAA’s Part 420 analysis. NEPA does not allow the FAA to rely on generic assumptions in lieu of action data in this fashion. 40 C.F.R. § 1502.21.

⁸ The data detailed in this table obtained from *Space Launch Report* www.spacelaunchreport.com (last visited Dec. 14, 2020) and verified at *Launch Sites*, Gunter’s Space Page, <https://space.skyrocket.de/directories/launchsites.htm> (last visited Dec. 14, 2020).

The FAA is required to use the best information available, so it cannot accept Camden County’s arbitrary failure rate when actual performance data for comparable rockets is available. 40 C.F.R. § 1502.24 and FAA Order 1050.1F at § 2-2.1(a)(3). This approach is particularly inappropriate here, because the actual data suggests a higher failure rate.

In fact, Spaceport Camden’s Revised LSOL Application is premised on a hypothetical rocket that does not currently exist. Although the Revised LSOL Application states that the RocketLab Electron, Vector R, and ABL RS0 are comparable vehicles, *Revised LSOL Application 9* and *Launch Site Location Review* at 15, this is not actually the case. In an attempt to meet the FAA’s safety requirements, Spaceport Camden has used a hypothetical launch vehicle that is smaller, with less thrust, and less payload than the rockets it identifies as peers.

<u>Rocket</u>	<u>Status</u>	<u>Payload (lbs)</u>	<u>Thrust</u>	<u>Liftoff Weight</u>
RocketLab Electron	Operational	660	37,980	27,200
Vector-R	Proposed	Suborbital	18,300	13,300
Firefly Alpha	Development	2,200	150,104	118,790
ABL RS1	Development	2,640	117,000	104,788
SpaceX Falcon 1	Cancelled	1,480	102,000	61,000
Spaceport Camden	Notional	100 to 300	20,000	TBD

Although FAA regulations allow launch facilities to be licensed for “unproven” launch vehicles, 14 C.F.R. § 420.29, NEPA requires the agency to address this fact and its potential environmental consequences. Given that Spaceport Camden seeks to launch an unproven vehicle that is smaller than any of its putative peers, it is unknown how such a vehicle will perform (if at all). The FAA must use the failure rate of its purported peers as a starting point, but must also disclose that Spaceport Camden’s notional rocket is unproven and could fail at an even higher rate.

The FAA must also address the possibility that this hypothetical rocket could fail in different ways than its peers. For example, given the low weight and lack of thrust, Spaceport Camden’s hypothetical rocket could fail closer to the launch site, could deviate from the planned trajectory more frequently, its use could be limited to ideal weather conditions resulting in more scrubbed launches, or it may result in larger debris pieces.

The FAA’s regulations allow it to license facilities to launch unproven vehicles, but NEPA requires the FAA to evaluate and disclose the risk of doing so.

b. The FAA must consider the risk of wildfires from failed launches.

As the FAA is aware, a launch failure at Spaceport Camden poses an extreme risk of dangerous and destructive wildfires to Cumberland and Little Cumberland Islands. In fact, the FAA raises this precise concern in its correspondence with Camden County.

Fire – A launch accident may cause an uncontrollable fire on LCI or Big Cumberland Island. Access to LCI for firefighting and egress from LCI for evacuation are limited.

Dec. 16, 2019 Letter from K. Wong (FAA) to J. Starline (Camden County). *See also*, Feb. 12, 2019 Letter from K. Wong (FAA) to J. Starline (Camden County) (“If a fire were to start due to a mishap or incident, it could quickly spread and would be difficult to contain.”) and Feb. 15, 2019 Memorandum from W. Monteith to D. Elwell (“[T]here are limited firefighting capabilities available to the residents of LCI in the event of a launch mishap, which could further impact public safety.”).

The DEIS never discusses the risk of uncontrollable wildfires or their potential effects on these barrier islands. The DEIS also fails to discuss any potential mitigation measures for wildfires. The FAA cannot square its repeated acknowledgement of these risks internally with the complete omission of these same topics from the DEIS. Given that small rockets fail at a significantly higher rate, the threat of wildfire would be even greater and cannot be “subsumed” within the DEIS’ nonexistent analysis.⁹

c. The FAA must disclose the effects of launch failures on human health.

The DEIS also fails to disclose the risk to human health from this project, particularly the risk of harm to people or property on Cumberland and Little Cumberland Islands in the event of a rocket failure. Evaluating the impact of government actions on human health is a central focus of NEPA. 42 U.S.C. § 4321 *et seq.*, and *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983) (“NEPA was designed to promote human welfare by alerting governmental actors to the effect of their proposed actions on the physical environment.”). Human health is also central to the FAA’s licensing process under Part 420. Thus, one would assume that the extensive public safety information available to the FAA through the Part 420 license application would be provided to the public through NEPA. But that did not occur here.

⁹ The Revised LSOL Application’s Fire Management Plan does not cure this deficiency. This document post-dates the DEIS, was never released to the public, and contains little actual analysis of conditions on the islands, the risk of wildfires, the likelihood of damage to people or property, or mitigation measures that could be used to address the risk of wildfires.

- i. *The DEIS’ reliance on “authorized personnel” renders all discussion of safety invalid.*

To the extent the DEIS discusses safety issues in any fashion, that analysis is irreparably tainted by the characterization of the public in downrange areas as “authorized persons.” DEIS at 10. Despite the fact that it was used nineteen times in the DEIS, the FAA later rejected this term as a fiction created by the project applicant and meaningless for purposes of its safety review.

Bottom line. Authorized personnel is NOT an FAA term or definition. It is something the proponent, Camden County, put in the dEIS to describe people who may be able to remain in certain areas of Cumberland and Little Cumberland Island.

April 2, 2018 Email from P. Underwood to H. Price.¹⁰ Camden County’s consultant, Andrew Nelson, described “authorized persons” as “a term of convenience” devoid of statutory or regulatory meaning.¹¹ The FAA cannot conclude treat safety issues as “subsumed” within the DEIS’ prior analysis when that document contains this fatal flaw.¹²

- d. The FAA must address the risk of rocket failure, wildfire, and human health as part of its cumulative effects analysis.

Given that Spaceport Camden seeks to conduct multiple launches per year for an indeterminate period of time, the FAA must consider the adverse effects of rocket failures on a cumulative basis. The Revised LSOL Application anticipates twelve launches per year with a failure rate of 20% - this would suggest 2.4 rocket failures every year for the life of this facility. Even a single rocket failure could catastrophically damage people, property, and the environment. But repeated rocket failures in downrange areas could trigger different, cumulative effects on people and the environment. Accordingly, the FAA must consider the cumulative effects of repeated launch failures on downrange areas.

¹⁰ A copy of this email is attached to SELC’s Feb. 4, 2020 letter.

¹¹ M. Landers, *Cumberland Island landowners object to Camden spaceport plans*, Savannah Morning News (Apr. 9, 2018) (attached).

¹² An October 2020 draft of the Final EIS released by the FAA in response to a Freedom of Information Act request continues to use the disavowed term “authorized personnel.”

V. The FAA Must Conduct A New Alternatives Analysis Based on Spaceport Camden's New Purpose.

The FAA's decision not to prepare a supplemental EIS is also improper because it fails to address the fact that the putative need for this facility has changed, and therefore the range of reasonable alternatives must also be reevaluated. Both of these elements of NEPA review are tied to the substance of a particular proposal, so Camden County's decision to change its proposal requires both steps to be reexamined.

a. The FAA must independently verify the purpose and need for this project.

The DEIS repeatedly states that the purpose of Spaceport Camden is to launch small to medium-large rockets. DEIS at 1.5.¹³ Camden County now changes the putative purpose of this project to focus exclusively on small rockets. The FAA's willingness to accept a different statement of purpose and need, despite the years of work and millions of dollars in public resources invested in the prior proposal, demonstrates the lack of independent oversight for this element of the NEPA process. Order 1050.1F §2-2.1(a)(3).

The FAA must independently verify that Spaceport Camden is actually needed because recent years have seen a speculative bubble of spaceport construction. As outlined in previous letters, the FAA has consistently overestimated the need for launch site capacity.¹⁴ New launch sites licensed by the FAA have gone underused, and in some cases the proposed facilities have been abandoned or were never built at all. Licensing unneeded launch capacity does not serve the national interest and wastes public resources, yet the FAA continues to entertain proposals for unneeded facilities like Spaceport Camden without scrutiny.

The risk of licensing unneeded facilities is particularly acute for the small rockets that Spaceport Camden now seeks to launch. Over the previous five years, a total of eighteen small rockets comparable to those planned for Spaceport Camden have been launched.¹⁵ Currently there are 164 annual launch slots available for such rockets, with the number of launch slots potentially increasing to 315 based on licensed and planned spaceport expansions. Therefore, the utilization rate of current launch capacity is

¹³ In prior letters, SELC explained why it is inappropriate for a DEIS to include separate statements of purpose and need on behalf of the FAA and the license applicant. Those comments are incorporated by reference here.

¹⁴ June 25, 2018 Letter to S. Zee (FAA) from W. Sapp (SELC) re Amended Comments on DEIS at 5.

¹⁵ Small, orbital, and liquid-fueled launch vehicles.

approximately 2.2%, and the utilization rate could drop to 1.1% with the proposed expansions.¹⁶

Under NEPA, the alternatives analysis is linked to a project's purpose and need. And in defining the need for a project, the agency must balance the desires of the project applicant with its agency objectives. In striking that balance here, the FAA must explain why the agency views Spaceport Camden as needed if 98% of the country's small rocket launch capacity is going unused and the utilization rate is poised to drop even further. In such circumstances, the FAA's objectives are better served by the "no build alternative."

Spaceport Camden's proposal should be viewed with even more skepticism because the notional launch vehicle described in the Revised LSOL Application does not exist. There is no operational launch vehicle that could use Spaceport Camden as currently proposed, and it is unclear whether such a vehicle is technologically possible.¹⁷ It is unclear why the FAA will agree that Spaceport Camden is needed, when the facility cannot be used by any launch vehicle currently in existence. The FAA's willingness to entertain a purely speculative proposal does substantial disservice to NEPA, and to the national interest in developing a robust, and functional, space industry.

The FAA's own documents show that the DEIS's alternatives analysis is nothing more than an exercise in reverse engineering, with Camden County working backward to justify its desired conclusion.

Scoping was completed before the applicant described the proposed action and alternatives, alternatives were proposed before determining the purpose and need for the project, and field work was proposed before establishing the alternatives to be included in the original DEIS.

¹⁶ A table with this launch utilization information is attached at the electronic document transfer link provide above in footnote 2.

¹⁷ Spaceport Camden's use of a notional launch vehicle smaller than any operational rocket in the small vehicle class violates the spirit, if not the letter, of 14 C.F.R. §420.19(c). Camden County's safety analysis relies on a launch vehicle smaller than any vehicle in the "small" class. Camden County's notional launch vehicle would be better categorized as an "ultra small" vehicle, if such a category existed. But because this category does not exist, Camden County is attempting to game the FAA's safety regulations by proposing a notional vehicle than is smaller than any vehicle in the smallest class. This notion vehicle is not representative of any small launch vehicle in operation today.

June 8, 2016 Email from S. Zee (FAA) to S. Howard (Camden County).¹⁸ Having failed to perform the proper analysis leading up the DEIS and facing a proposal that is both highly speculative and apparently unneeded, the FAA must revisit these portions of the NEPA analysis.

- b. The FAA must consider launch capacity at existing small rocket launch facilities as NEPA alternatives.

The FAA's failure to prepare a proper statement of purpose and need also serves to improperly exclude other launch sites from consideration. Agencies may not "define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." *Citizens for Smart Growth v. Sec'y of Dep't of Transp.*, 669 F.3d 1203, 1212 (11th Cir. 2012); *see also City of New York v. Dep't of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983) (holding agency may not "narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered"). By accepting Camden County's project definition – creating a new launch site in Camden County – the DEIS unreasonably foreclosed other alternatives. To the extent it exists at all, the FAA should have examined whether the need for a small rocket launch facility could be met by other small rocket sites in relatively close proximity (e.g., Wallops and Cape Canaveral).

The DEIS for this project is an example of the tail wagging the dog. The FAA accepted Camden County's statement of need without scrutiny, and then allowed Camden County to change that statement of need with a similar lack of oversight. The FAA simply accepted Camden County's preferences, without any effort to balance its interests against those of the applicant and "define goals for its action that fall somewhere within the range of reasonable choices." *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026 at 2(a) (March 23, 1981).

The DEIS states that Spaceport Camden is necessary to fulfill the FAA's statutory mandate and serves the national interest in fostering commercial space launch activities. DEIS at 3. But the national interest is not served by licensing facilities that can only be used by nonexistent vehicles. The national interest is not served by licensing launch facilities that sit idle. The national interest is not served by launching rockets from unsafe locations. And the national interest is not served by wasting millions of taxpayer dollars

¹⁸ A copy of this email is attached to SELC's Feb. 4, 2020 SELC letter.

pursuing pie-in-the-sky economic development projects. The FAA must evaluate all reasonable alternatives, even if those alternatives are not the applicant's preference.

- c. The FAA must ensure that the site design and location reflect the requirements of the new proposal.

Similarly, the FAA also cannot adopt the DEIS' alternatives analysis because that document relied on specifications substantively different than the requirements of a small rocket launch facility. The DEIS eliminates multiple sites from further consideration on the following basis: "Because of the size and shape of the property, it does not have the clear potential to satisfy FAA regulations, 14 CFR Part 420." DEIS at 2-41. The DEIS does not provide any further explanation for this conclusion, but it is an apparent reference to the minimum distance requirements set forth in 14 C.F.R. § 420.21(c). However, the minimum distance requirements for a small rocket facility are significantly less than those of a medium-large rocket facility, so the FAA must evaluate whether any of the sites eliminated for this reason would be viable for a small rocket facility.

Further, as set forth in SELC's February 2020 letter, essentially all aspects of the spaceport's design, layout, and operations should be revisited to reflect the new proposal. But Camden County's hastily-revised application recycles much of the designs from its medium-large rocket proposal. For example, because the revised application no longer includes a first-stage return, Camden County relabeled the landing pad from the original proposal as a "Mission Preparation Area." This Mission Preparation Area uses the exact same location, layout, and even concept art as the landing pad.¹⁹ The Revised LSOL Application appears to include the same fuel storage, gantry, water catchments, and lightning protection components planned for the medium-large rockets even though these elements are not required to the same specifications for small rocket launches. The FAA cannot rely on the DEIS' conclusion that other sites are infeasible due to size restrictions, DEIS at Table 2.4-1, when Camden County failed to properly revise its application and reduce its footprint.

- d. The FAA cannot finalize the DEIS because a small rocket facility was not previously evaluated as an alternative.

A final EIS can only diverge from the alternatives considered in a draft EIS if the changes are "minor variations ... qualitatively within the spectrum of alternatives that were discussed in the draft EIS." *Russell Country Sportsmen v. U.S. Forest Serv.*, 668

¹⁹ Compare, Revised LSOL Application at 9 with DEIS Executive Summary at 7; and Revised LSOL Application at 15, with DEIS at 2-15. Similarly, the launch pad and surrounding facilities for small rockets are unchanged from the proposed medium-large launch area. Compare Revised LSOL Application at 11, with DEIS at 2-9 (Exhibit 2.1-5).

F.3d 1037, 1047 (9th Cir. 2011) (internal formatting omitted) (citing *CEQ Forty Most Asked Questions*, 46 Fed. Reg. at 18,035). Stated another way, a supplemental EIS is required if the preferred alternative “could not fairly be anticipated by reviewing the draft EIS alternatives.” *California v. Block*, 690 F.2d 753, 772 (9th Cir.1982).

Here, the DEIS focused exclusively on the launch of medium-large rockets. The DEIS evaluated a range of potential alternatives for a medium-large launch facility including: different locations (DEIS at § 2.1.4.2); different configurations on the site (*Id.* at § 2.4.2); different ways to operate the site (*Id.* at § 2.2); and different ways to conduct construction on the site (*Id.* at § 2.1.1.1). But at no point did the DEIS consider limiting the launch site to small launch vehicles. The revised proposal is not a logical outgrowth of the alternatives evaluated in the DEIS, so a supplemental DEIS must be prepared to consider this new, and previously unevaluated, alternative.

VI. Issuing a Combined FEIS and ROD is Prohibited By Statute.

The September 11th Letter references 23 U.S.C. § 139(n)(2) as the basis for its recommendation to proceed with a combined FEIS/ROD. However, this statute actually prohibits the use of a combined FEIS/ROD if either of two circumstances are met:

- (A) the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or
- (B) there is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action.

23 U.S.C. § 139(n)(2). As the revised Spaceport Camden proposal presents both of these circumstances, the statute actually prohibits the use of a combined FEIS/ROD here. *See, supra* at Sections III and IV.

Further, beyond the statutory prohibition, U.S. DOT guidance encourages agencies to consider a number of questions in deciding whether a combined FEIS/ROD is practicable.²⁰ Applying these questions to Spaceport Camden, it is clear that the combined approach is inappropriate. For example, this project is the subject of substantial controversy (Question 3) and the small rocket facility was not among the alternatives

²⁰ U.S. Dep’t of Transp. Office of Transp. Policy, *Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews* (April 25, 2019) <https://www.transportation.gov/sites/dot.gov/files/docs/mission/transportation-policy/permittingcenter/337371/feis-rod-guidance-final-04302019.pdf>.

considered in the DEIS (Question 4). Accordingly, under this practicability guidance, the FAA should not issue a combined FEIS and ROD for this proposal

VII. The FAA Must Conduct A Full Environmental Review To Dispel the Cloud of Impropriety and Political Influence That Hangs Over This Project.

As described above, Camden County’s use of political pressure to force the FAA into an unlawful course of action compounds the cloud of undue influence hanging over this project. According to the Savannah Morning News, U.S. Congressman Buddy Carter purchased property near the Spaceport Camden site in May 2018. “A month later he led the U.S. House of Representatives Georgia delegation in urging the Federal Aviation Administration to move the project forward.”²¹

The Savannah Morning News also reported that Rep. Carter introduced an amendment to limit the FAA’s NEPA review of spaceport projects.²² Among other changes, this amendment would require the FAA to “evaluate only those launch or reentry site locations proposed by the applicant and no-action alternative.” *Amendment to Rules Committee Print 116-54 Text of H.R. 2, The Moving Forward Act, Offered by Mr. Carter of Georgia* at 1, ln 13–15.

Although not adopted, this amendment is nonetheless important. First, by seeking to change the law to prohibit it, Rep. Carter’s amendment makes clear that NEPA currently requires the FAA to consider launch sites other than those offered by the applicant. *See, supra* at Section V(b). Second, Rep. Carter’s amendment would have limited the launch sites considered by the FAA for Spaceport Camden to the property that would financially benefit him. Lastly, this amendment demonstrates efforts by members of Congress to influence the FAA’s NEPA review prior to the September 11th Letter, illustrate the use of political pressure from Georgia’s congressional delegation to influence the NEPA review as described in the emails of Camden County’s lobbyists.

These actions cast a dark shadow over the FAA’s review of this project and the true reasons for the September 11th Letter. To reaffirm the public’s trust in the FAA and the integrity of its process, the FAA must hit “restart” on this process, prepare a revised DEIS, and conduct a new round of public engagement.

²¹ M. Landers, *Congressman Buddy Carter advocated for spaceport near \$2 million property he bought*, Savannah Morning News (May 2, 2020).

²² M. Landers, *U.S. Rep. Buddy Carter tried to speed review of spaceport with amendment*, Savannah Morning News (July 25, 2020) (A copy of the amendment is available at: <https://www.scribd.com/document/470192157/Carter-Spaceport-Amendment-1>).

VIII. The FAA Should Not Rely On The New CEQ Rules.

It is unclear the extent to which the FAA intends to rely on the new NEPA rules promulgated by CEQ in its review of Spaceport Camden. On July 15, 2020, CEQ finalized a revision to its regulations implementing NEPA.²³ The effective date for these regulations was September 14, 2020 – the business day after the FAA’s September 11th Letter. Thus, the decisions reflected in the FAA’s September 11th Letter were not undertaken based on those rules. The FAA should continue to apply the prior CEQ NEPA regulations, rather than the new rules, for several reasons.

First, the fundamental obligations governing NEPA reviews arise from the statute itself, as interpreted by courts for decades. The FAA has an obligation to meet these statutory requirements “to the fullest extent possible.” 42 U.S.C. § 4332. Rather than attempt to find daylight between its statutory obligations and CEQ’s new regulations, the FAA should continue applying the long-standing NEPA standards in place when this project was initiated and when the September 11th Letter was released.

Second, the new CEQ regulations expressly authorize agencies to continue using the old regulations for ongoing processes. 40 C.F.R. § 1506.13. Given that this project was initiated and the September 11th Letter was sent prior to implementation of the new CEQ regulations, the only consistent and orderly approach is to continue applying the prior CEQ regulations.

Third, reliance on the new CEQ regulations will place this project in additional legal jeopardy. The new CEQ regulations are the subject of multiple ongoing lawsuits and suffer from a number of legal vulnerabilities. *Wild Virginia v. Council on Environmental Quality*, No. 3:20-cv-00045-MFU (W.D. Va. filed Aug. 18, 2020); *California v. CEQ*, No. 3:20-cv-06057-RS (N.D. Cal. filed Aug. 28, 2020); *Env’t Just. Health All. v. CEQ*, No. 1:20-cv-06143-CM (S.D.N.Y. filed Aug. 6, 2020); and *Alaska Cmty. Action on Toxics v. CEQ*, No. 3:20-cv-05199-RS (N.D. Cal. filed July 29, 2020). If the FAA issues a FEIS for this project based on the new CEQ regulations and those regulations are later struck down, the FEIS will also be rendered deficient and will need to be redone.

For these reasons, the FAA should continue applying the prior CEQ regulations, the existing U.S. DOT regulations, guidance, and NEPA caselaw interpreting the prior CEQ regulations.

²³ *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 43304 (July 16, 2020).

IX. The FAA Is Poised to Violate Section 4(f) In A Variety of Ways.

As outlined in SELC's previous letters, the DEIS does not contain appropriate analysis under Section 4(f) of the Department of Transportation Act. Instead, the DEIS attempts to defer compliance with those legal obligations until some undefined later date. The FAA is now poised to finalize this erroneous position.

a. The Executive Order does not alter the FAA's Section 4(f) obligations.

Section 4(f) and NEPA are separate statutes and impose distinct obligations. Although both require an alternatives analysis, they differ in that Section 4(f) imposes substantive obligations compared to NEPA's procedural requirements. *Defs. of Wildlife v. N. Carolina Dep't of Transp.*, 762 F.3d 374, 398 (4th Cir. 2014). But given their similar scope and to avoid prejudicing the Section 4(f) analysis, NEPA and Section 4(f) analyses should be processed concurrently. 23 C.F.R. §§ 771.135(i), (j), and (l).

These regulations create a problem for the FAA's attempts to use the Executive Order to cut corners. Even if the Executive Order relieved some of the FAA's obligations under NEPA, the alternatives analysis and public engagement required by Section 4(f) operate as a backstop and are unchanged by the Executive Order. The FAA's September 11th Letter ignores this fact, and ignores the independent legal obligations under Section 4(f) that will be violated.

b. The DEIS fails to perform the proper Section 4(f) analysis.

The FAA cannot finalize the Section 4(f) review contained in the DEIS because that document is incomplete and fails to address key issues as required by regulations. Section 4(f) can be triggered by "constructive use" of a subject property, and access restrictions are specifically identified as an example of constructive use. 23 C.F.R. § 774.15(e)(3). The DEIS fails to address this issue, stating that it cannot consider whether "closures or restricted access to parks and recreation areas" constitute Section 4(f) constructive use because "the need for, and extent and duration of closures can be ascertained when a number of important launch variables are known." DEIS at 4-29.

Since the release of the DEIS, Camden County submitted additional information to the FAA regarding the access restrictions required for Spaceport Camden. These materials include a "Population Management Plan" describing where and how public areas would be closed during launches from Spaceport Camden. Revised LSOL Application at Attachment 10. The FAA has explicitly acknowledged the link between this Population Management Plan and the Section 4(f) analysis. May 29, 2019 Letter from K. Wong to J. Starline (Describing need to "further coordinate Section 4f consultation with the information provided in the Population Management Plan.")

(attached). Yet now, with the benefit of this additional information, the FAA is poised to do nothing with it.

A map of Camden County’s proposed access restrictions from the Revised LSOL Application is below.

Spaceport Camden – Population Monitoring and Management Plan

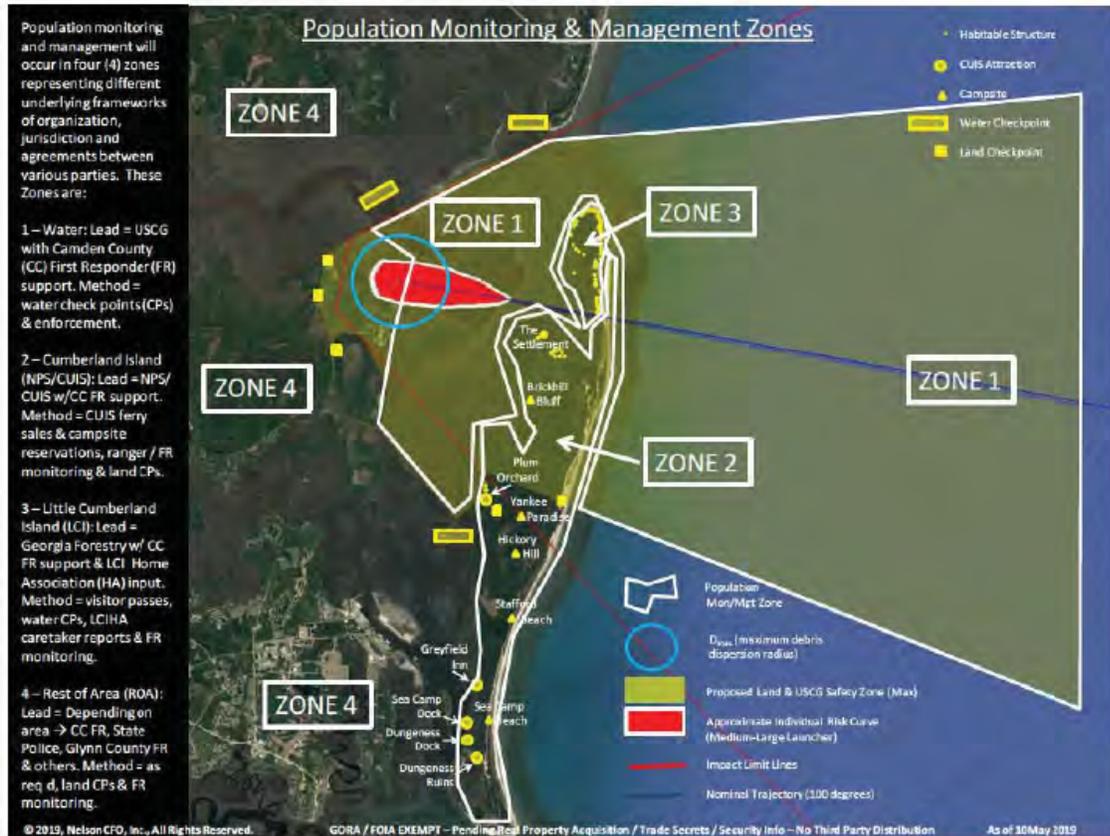


Exhibit 1. Spaceport Camden Population Monitoring and Management Approach

Beyond the Population Management Plan, Camden County’s application also contains information regarding launch trajectories, vehicle type, payload, and an “Access Control Plan” for the site. Revised LSOL Application at Attachments 1 and 5. Thus, the FAA now possesses the precise type of information it stated was necessary to perform the Section 4(f) analysis.

- c. The FAA must account for the frequency of closures, potential closures, and their effects on the operation of NPS activities on Cumberland Island.

The FAA’s Section 4(f) analysis must address the frequency of potential access restrictions, including those resulting from rescheduled launches. Spaceport Camden

intends to conduct twelve rocket launches per year. But launches are frequently rescheduled for a variety of reasons (weather, equipment malfunction, members of the public in restricted areas, etc.), and the decision to reschedule a launch is often made on very short notice. Thus, each of the twelve proposed launches will likely involve a launch window potentially spanning multiple days, and even the possibility of access restrictions on these days will significantly disrupt the NPS' operations of Cumberland Island.

A recent closure notice for Pacific Spaceport Complex Alaska illustrates this problem. Pacific Spaceport Complex Alaska is the launch site for the Astra rocket, one of the rockets cited as a peer by Spaceport Camden. The U.S. Coast Guard issued a Notice to Local Mariners related to a proposed launch from Pacific Spaceport Complex Alaska in September 2020.²⁴ The Notice includes the following schedule for access restrictions for this single planned launch.

Alaska – South Central – Kodiak / Gulf of Alaska

CORRECTED NOTICE (The dates and end times have changed): The Pacific Spaceport Complex Alaska (PSCA) is planning to conduct a rocket launch from launch pad LP-3B at Narrow Cape, Kodiak, Alaska from 110200-110500 UTC which is 1800-2100 Alaska Daylight Savings Time on September 10th, 2020. If the launch does not occur on September 10th then it will be rescheduled for the following day during the same time window. Rescheduling could continue each day through September 16th 2020 (September 17th for UTC). Additional information including the locations of the hazardous areas is available in an enclosure to this LNM.

U.S. Coast Guard: Local Notice to Mariners Week of 36/20 (emphasis added). Thus, the access restrictions for a single rocket launch scheduled for September 10th could potentially extend for a week, through September 16th if necessary. The exact duration of the access restrictions will only be known when the rocket is launched successfully.

Assuming a similar one-week launch closure window for each of the twelve planned launches from Spaceport Camden would subject Cumberland Island to the potential for access restrictions for 23% of the year. Given that the launch of experimental vehicles at Boca Chica and Pacific Spaceport Complex Alaska are frequently rescheduled, one must assume that the experimental vehicles proposed for Spaceport Camden would suffer this same fate. And each day with an actual or potential access restriction will trigger a cascade of effects on the operation of Cumberland Island

²⁴ United States Coast Guard, District 17 Local Notice to Mariners, Week 36/20 (09 September 2020) (attached).

<https://content.govdelivery.com/accounts/USDHSCG/bulletins/29f937e>

National Seashore including reduced ferry service, restricted access by private boaters, rescheduled campsite reservations, and conscription of NPS staff to perform launch-related activities. It will be logistically impossible for the NPS to operate Cumberland Islands if nearly a quarter of the year is subject to potential access restrictions that can be imposed or removed on short notice.

- d. The proposed access restrictions for Cumberland Island are constructive use under the standard applied in a recent FAA Section 4(f) analysis.

Contrary to the DEIS' assertions, the FAA routinely performs Section 4(f) analyses as part of its NEPA review of launch site license applications.²⁵ And based on the standard articulated in a recent, analogous Section 4(f) decision, the access restrictions proposed for Cumberland Island constitute constructive use.

The Firefly proposal at Vandenberg Air Force Base is analogous to Spaceport Camden because it would also require temporary closures of public beaches and parks. Firefly Environmental Assessment at 3-16.²⁶ The FAA's Firefly EA concluded that these access restrictions are not constructive use because they do not diminish the protected activities, features, or attributes of the Section 4(f) properties. The FAA cited three specific reasons for this conclusion. First, these areas had a history of closures associated with the operation of Vandenberg Airforce Base. Second, a formal evacuation agreement for these areas had been in place since 1979. And third, the closures would be temporary.

Sufficient information is available to apply these same standards here, and two of the conditions relied upon in the FAA's Firefly EA are absent for Spaceport Camden. Cumberland Island has never been subject to closures due to rocket launches and there is

²⁵ See, e.g. *Final Environmental Assessment and Finding of No Significant Impact for SpaceX Falcon Launches at Kennedy Space Center and Cape Canaveral Air Force Station* July 2020 (FAA conducting Section 4(f) analysis on launch site license application); *Environmental Assessment for the Space Coast Air and Spaceport, City of Titusville, Brevard County, Florida* (April 2020) (same); *Draft Environmental Assessment for Issuing a Launch Operator License to Virgin Orbit, LLC for LauncherOne Operations from Andersen Air Force Base, Guam* (October 2020) (same); and *Final Environmental Assessment, Finding of No Significant Impact, and Record of Decision for the Houston Spaceport, City of Houston, Harris County, Texas* (June 2015) (same).

²⁶ FAA, *Environmental Assessment and Finding of No Significant Impact for Issuing Firefly Aerospace a Launch License for the Alpha Launch Vehicle at Spaceport Launch Complex 2 West, Vandenberg Air Force Base, Vandenberg California* (May 2020). https://www.faa.gov/space/environmental/nepa_docs/media/FireFly_EA_FONSI_508.pdf

no formal evacuation agreement in place between the County and the NPS.²⁷ The FAA concluded that the Firefly proposal did not diminish the use of Section 4(f) properties because it continued existing conditions. But the opposite is true for Spaceport Camden: the proposal will require new access restrictions on Cumberland Island that will diminish the public's use and enjoyment of the area. Accordingly, these restrictions constitute constructive use of Cumberland Island under Section 4(f).

- e. The DEIS' Section 4(f) analysis does not consider the risk posed by wildfires on Cumberland Island.

The FAA must also evaluate the risk of wildfires on Cumberland Island under Section 4(f). The FAA has repeatedly acknowledged that failed launches from Spaceport Camden pose a risk of uncontrollable wildfires on Cumberland and Little Cumberland Islands, yet the DEIS never considered whether damage to these properties as a result of wildfire triggers Section 4(f). Wildfire damage could constitute a constructive use of Cumberland Island as an "ecological intrusion," by impairing its "esthetic features," damaging historic sites, or other reasons. 23 C.F.R. § 774.15(e). None of these wildfire-related effects were considered in the DEIS' Section 4(f) review. It is also unclear whether the FAA even disclosed the risk of rocket failure and wildfire to the National Park Service as part of the Section 4(f) consultation process.

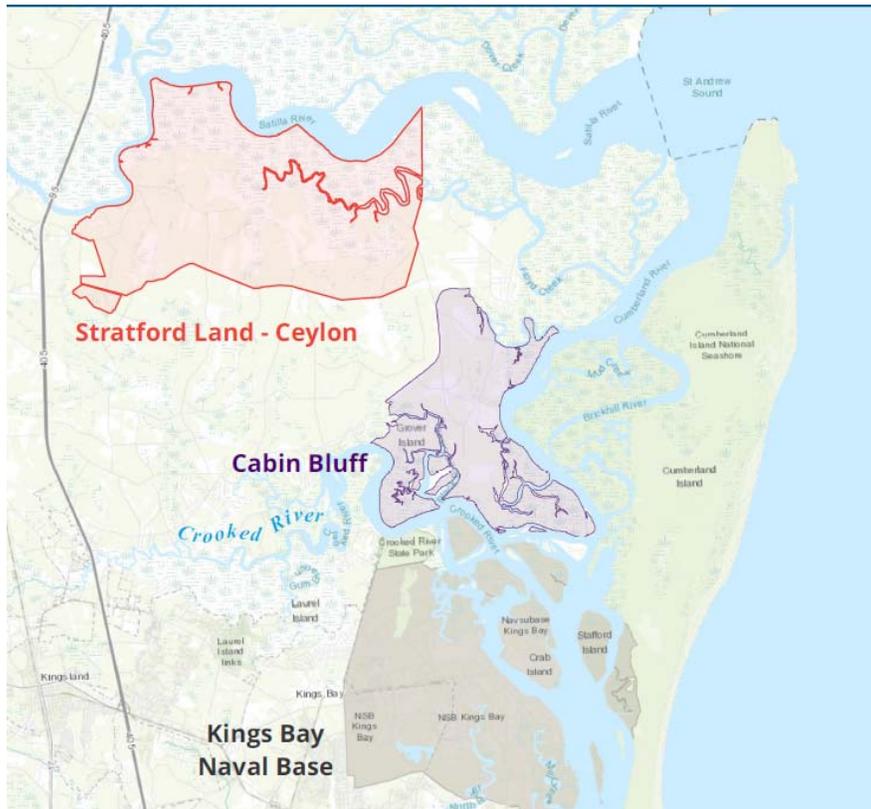
- f. The FAA has not considered effects on the new Wildlife Management Areas adjacent to the Spaceport Camden site under Section 4(f).

The DEIS' Section 4(f) review is also deficient because it fails to account for two new Section 4(f) properties created since that document was released. In December 2019, the Conservation Fund announced the purchase of the Ceylon Property, a 16,083 acre parcel located immediately to the west of the Spaceport Camden site.²⁸ The Ceylon site is thought to contain one of the largest populations of gopher tortoises in Georgia and is home to indigo snakes, a federally-listed species. Pursuant to an agreement with the Georgia Department of Natural Resources, this site is now open to the public as a State

²⁷ Also, unlike the properties discussed in the Firefly EA, portions of Cumberland Island National Seashore are protected as federal wilderness areas. The noise and light from rocket launches are uniquely incompatible with the attributes and management of wilderness areas.

²⁸ *One of the Largest Undeveloped Unprotected Sites on Southeast Atlantic Coast Acquired for Conservation*, The Conservation Fund, (Dec. 6, 2019), <https://www.conservationfund.org/impact/press-releases/2151-16-000-acres-of-atlantic-coastline-purchased-in-georgia> (last visited Dec. 14, 2020).

Wildlife Management Area.²⁹ On October 27, 2020, the Georgia Department of Natural Resources voted to acquire the Cabin Bluff site. This site is nearly 8,000 acres and borders the Spaceport Camden site to the south.³⁰ Like Ceylon, the Cabin Bluff site will be open to the public as a Wildlife Management Area.



These properties border the Spaceport Camden site on two sides and are within 12,000 feet of the launch pad.³¹ Yet the FAA did not include either property in its Section 4(f) review. DEIS at 3-35. As both properties are (or soon will be) open to the public as state recreation areas, they must be examined for Section 4(f) effects including noise, vibration, wildfire, and access restrictions.

²⁹ *Ceylon*, Georgia Department of Natural Resource Wildlife Resources Division, <https://georgiawildlife.com/ceylon-wma> (last visited Dec. 14, 2020) (The Conservation Fund is in the process of transferring legal ownership of this property to Georgia Department of Natural Resources).

³⁰ Board Meeting Summary -- Board of Natural Resources, Ga Dep't of Nat. Res., (Oct. 27, 2020), https://gadnr.org/sites/default/files/board20201027_Summary.pdf.

³¹ A map illustrating the proximity of the Ceylon WMA to the launch pad is attached via the electronic document transfer link in footnote 2.

- g. The FAA must conduct public notice and comment regarding any changes to its Section 4(f) review.

Like NEPA, Section 4(f) imposes public notice requirements to ensure that the public has an opportunity to review and comment on any Section 4(f) analysis. 23 C.F.R. §774.5(b)(2)(i). Should the FAA perform additional Section 4(f) analysis to rectify the errors outlined above, the public must be provided an opportunity to review and comment on this new analysis. This is true even if the FAA reaches a *de minimis* finding. 23 U.S.C. § 138(B)(3)(a) (A *de minimis* finding can only be reached “after public notice and opportunity for public review and comment.”). Given the comprehensive shortcomings in the DEIS’ Section 4(f) analysis, the public must be allowed to review and comment on any subsequent analysis.

X. The FAA Must Consider the Risk of Wildfires to Historic Properties As Required by the National Historic Preservation Act.

Like Section 4(f), Section 106 of the National Historic Preservation Act imposes legal obligation separate and independent of NEPA. And also like Section 4(f), the FAA’s planned use of NEPA shortcuts will result in a flawed Section 106 analysis.

The FAA recently requested that the Georgia Historic Preservation Division reaffirm its prior Section 106 concurrence. October 15, 2020 Letter from D. Murray to J. Dixon. The FAA recommended a finding that Spaceport Camden’s adverse effects are limited to impacts on archeological resources during construction of the facility. *Id.* This recommendation tracks the analysis of Spaceport Camden’s effects on historic properties found in the DEIS. DEIS at §4.8.1. However, the FAA’s October 2020 letter does not provide the Georgia Historic Preservation Division with relevant information related to the risk of rocket failure and resulting wildfires to historic resources on Cumberland and Little Cumberland Islands. Without this necessary information, neither the Georgia Historic Preservation Division nor the public has had the opportunity to properly evaluate the potential effects of Spaceport Camden on historic resources.

- a. The FAA must consider the adverse effects of wildfires as part of its Section 106 analysis.

Section 106 of the NHPA requires agencies to consider the adverse effects of government undertakings on historic structures. These effects include both direct and indirect effects, and effects resulting from the operation of the facility. 36 C.F.R. § 800.5(a)(1). Agencies must consider “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” *Id.* The FAA must provide relevant information to Georgia Historic

Preservation Division “to the extent permitted by law and within available funds.” 36 C.F.R. § 800.11(a).

The FAA’s October 2020 letter only identifies three potential effects from Spaceport Camden’s operation: noise, vibration, and light. Based on these issues, the FAA’s October 2020 letter recommends a finding of “No Effect” for Spaceport Camden’s operational effects on above-ground historic properties. The FAA completely omits any discussion of whether “above-ground historic properties” could be damaged by debris from rocket failure or as a result of a wildfire caused by rocket failure. The FAA did not apprise the Georgia Historic Preservation Division of its conclusion that a rocket failure could trigger an “uncontrollable” wildfire on Cumberland or Little Cumberland Islands. Further, it does not appear that the FAA disclosed the significant increase in rocket failure rate for the small rocket proposal to the Georgia Historic Preservation Division. By omitting this necessary and relevant information, the FAA failed to perform its duties under Section 106 and is preventing the Georgia Historic Preservation Division from properly consulting on this project.

b. The FAA must expand its Section 106 Area of Potential Effects.

The FAA must also expand the Area of Potential Effects (“APE”) to reflect the risks posed by debris from rocket failure and wildfires. “Area of potential effects” is the geographic area within which an undertaking may “directly or indirectly cause alterations in the character or use of historic properties.” 36 C.F.R. § 800.16(d). The APE “is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” *Id.*

The FAA proposed a five-mile APE for the potential indirect effects of operating Spaceport Camden. May 24, 2016 Letter from D. Murray (FAA) to J. Dixon (GA HPD), DEIS at Appendix A-158. However, this letter does not reference the risk of wildfire or rocket failure. Without the benefit of this information the Georgia Historic Preservation Division concurred with the FAA’s proposed APE. DEIS at Appendix A-169.

The five-mile APE is inappropriate because it fails to account for the risk of structural damage to historic properties due to falling debris from a failed launch or wildfire. Even a small piece of debris can cause substantial damage when falling at a high velocity. Similarly, even a small amount of debris and/or fuel can trigger a wildfire. There is no reason to believe that these effects would be limited to the five-mile APE. As a starting point, the FAA should treat the “Land and Coast Guard” closure areas identified in Camden County’s Population Management Plan as the APE for falling debris. *See supra* at 19. And in light of the FAA’s stated opinion that wildfires on

Cumberland and Little Cumberland Islands could be uncontrollable, the entirety of these islands should be treated as the APE for wildfire.

- c. The FAA must conduct new public notice and comment regarding the threat to Section 106 properties from rocket failure and wildfire.

Section 106 regulations make clear that “the views of the public are essential to informed Federal decision making in the section 106 process.” 36 C.F.R. § 800.2(d)(1). This public engagement should allow the public to understand “the nature and complexity of the undertaking and its effects on historic properties.” *Id.* The FAA is required to prepare a Section 106 public engagement plan and engage with the public at “appropriate points for seeking public input and for notifying the public of proposed actions.” 36 C.F.R. § 800.3(e). The FAA may use the public engagement requirements of NEPA to satisfy this obligation, but only if they “provide adequate opportunities for public involvement consistent with [the Section 106 requirements].” 36 C.F.R. § 800.2(d)(3).

As the DEIS’ Section 106 analysis is inadequate, the FAA’s public notice and comment performed on that document is likewise deficient. The FAA must apprise the public of information related to the new proposal, including both the increased small rocket failure rate and resulting risk of adverse effects from debris or wildfire. The FAA must also address potential mitigation measures to reduce those risks.

CONCLUSION

As set forth above, the course of action described in the September 11th Letter is poised to send the FAA down an unlawful path and will create a myriad of legal flaws in its final decision. Combined with the troubling circumstances from which that letter arose, the FAA must revisit its review of Spaceport Camden and reinstitute the process described in the May 2020 letter.

Thank you for your consideration of these comments. If you have any questions or concerns, please contact me at (404) 521-9900 or bgist@selcga.org.

Sincerely,



Brian L. Gist

Enclosures

CC (via email only):

Ms. Stacy Zee (FAA)
Mr. Kenneth Wong (FAA)
Mr. Michael Fineman (FAA)
Ms. Joyce Stanley (DOI)
Mr. Stan Austin (NPS)
Cdr. Norm Witt (Coast Guard)
Mr. Ted Boling (CEQ)
Ms. Jennifer Dixon (GA SHPO)
Mr. James Starline (Camden County)
Rear Adm. Gary Mayes (Navy)

Index of Enclosures

The following documents are submitted as part of this letter and are available for electronic transfer at the following link:

<https://southernenvironment.sharefile.com/d-sfff950c529504754bc594233d18d54ab>

- May 29, 2020 Email from N. Rodgers to S. Howard (Camden County).
- June 9, 2020 Email from N. Rodgers to S. Howard (Camden County).
- Dec. 16, 2019 Letter from K. Wong (FAA) to J. Starline (Camden County).
- Feb. 12, 2019 Letter from K. Wong (FAA) to J. Starline (Camden County).
- Feb 15, 2019 Memorandum from W. Monteith (FAA) to D. Elwell (FAA).
- Table of Small Rocket Launch Capacity.
- May 29, 2019 Letter from K. Wong (FAA) to J. Starline (Camden County).
- United States Coast Guard, District 17 Local Notice to Mariners, Week 36/20 (Sept. 9, 2020).
- M. Landers, “Congressman Buddy Carter advocated for spaceport near \$2 million property he bought,” Savannah Morning News (May 2, 2020).
- M. Landers, “U.S. Rep. Buddy Carter tried to speed review of spaceport with amendment,” Savannah Morning News (July 25, 2020).
- M. Landers, “Cumberland Island landowners object to Camden spaceport plans,” Savannah Morning News (Apr. 9, 2018).
- Map of Ceylon Wildlife Management Area.
- D. Williams, “New state wildlife management area to open on Georgia coast,” Capitol Beat News Service (Oct. 27, 2020).