



U.S. Department
of Transportation
**Federal Aviation
Administration**

Airport Compliance and Field Operations

800 Independence Ave., SW.
Washington, DC 20591

MAR 16 2010

Mr. Doug Hedlund
Director
Oregon Department of Aviation
3040 25th Street, SE
Salem, OR 97302-1125

Dear Mr. Hedlund:

Thank you for hosting the Federal Aviation Administration staff from the Northwest Mountain Region and Washington Headquarters in meetings with stakeholders on March 2. The opportunity to listen to airpark residents and other through-the-fence users, as well as tour Aurora and Independence State Airports, was helpful in advancing our understanding. This letter is to reiterate where we are in finalizing our policy statement and provide you with our current position on the Airpark at Independence State Airport.

As we noted in our meetings, the Airport Compliance Manual, FAA Order 5190.6B, was updated to reflect existing law and policies as of 2009. Some of the laws had changed since the previous Order was published in 1989. This Order, used by FAA employees to assist them in making decisions related to airport compliance matters, became effective upon its release last September. Chapter 12 includes an explanation of our existing policy on through-the-fence (TTF) residential access to federally obligated airports. After the updated Order was published and became effective, the FAA released a Draft Compliance Guidance Letter (CGL) on TTF. The CGL is to provide a more detailed explanation of the policy. Although not required, the FAA is accepting public comments on both documents. The comment period for the CGL closed in December, but the Order remains open for comment through March 31.

In addition to taking written comments on the CGL, the FAA is visiting various TTF locations and engaging aviation user groups in an ongoing dialogue to determine whether the policy should be changed.

During our meeting at Independence State Airport, airpark residents asked that their particular situation be addressed before the FAA completes its review of this national policy, because of the uncertainty over the future of their access to the airport and the

value of their properties. The Independence Airpark Homeowners Association, Inc., and the Independence North Park Annex Addition Homeowner's Association asked us to review past statements made by the Seattle Airports District Office (ADO) and communicate to you in writing whether the FAA's views have changed.

After receiving the Oregon Department of Aviation's (ODA) letter of compliance, the ADO, on July 24, 2009, stated in an e-mail:

"This is in response to your Letter of Stated Compliance with Federal Grant Assurances; Independence Airport Residential Airpark Access dated June 26, 2009. We find your plan to be acceptable and encourage you to coordinate the wording of the proposed resolution with us prior to the Oregon Aviation Board's August meeting. Once the resolution is passed by the Board and we receive a copy, our concerns with regard to the existing residential through-the-fence access will be satisfactorily resolved. Thank you for working with us on this concern."

Last August, the Oregon Aviation Board (OAB) passed Resolution 2009-1, which contained three general provisions. The OAB resolved to (1) prevent new or additional residential TTF access at OAB-sponsored airports, (2) utilize the state's process to establish parity in fees paid by on and off-airport users, and (3) "obtain review and comment from the Seattle Airports District Office for any and all proposed amendments to existing access agreements prior to enacting those changes."

On November 4, 2009, the Seattle ADO responded by e-mail to questions raised by the Acting ODA Director:

"Does the FAA approve the Board's Resolution? No, we don't approve it. We asked for a copy of it, which Dan Clem provided. We wanted some assurance that the State would not allow further residential Through-the-Fence agreements, which the resolution ensures.

When an existing residence is sold, does TTF access go along to the new owner? We are not requiring the TTF to close down...and therefore they can sell the residence to another owner with a plane (it is my understanding that this is required).

Does an existing lot platted for residential TTF access provide same to someone who buys lot to build on it? We have agreed to the development - as is - which has a very few limited open lots. We consider these lots to be grandfathered in, with specific rules attached.

Does FAA concur these grandfathered rights extend in perpetuity or only through the term of the existing access lease? Once the lease expires, the

FAA must have an opportunity to review the terms (like the payment of Fair Market Value for the access right and any changes to the contract). The State should not just renew the lease without coordinating with us, to make sure the conditions of the lease are adequate and that the airport can meet their grant obligations. If there are problems with the residential TTF access, then there must be an ability to terminate the lease (or not renew it). For instance, if homeowners or visitors are drag racing on the runway or creating an unsafe environment, the State could elect not to renew the lease.”

Based on careful review we have determined that past guidance is fully consistent with FAA Order 5190.6B and the Draft Compliance Guidance Letter for the following reasons:

1. The City of Independence has adopted zoning ordinances which designate these residences as an airpark zone.
2. The Seattle ADO has determined that the current arrangements between the ODA and the homeowners’ associations are consistent with Federal law and policy.
3. The access agreements are currently limited to nonexclusive rights of ingress and egress at specific, designated points.
4. Access fees paid by the homeowners’ associations are currently comparable to fees paid at other state-sponsored airports.
5. The ODA has resolved to obtain the Seattle ADO’s review and comment for any and all proposed amendments to these access agreements prior to enacting those changes.
6. The Seattle ADO has worked closely with the ODA to develop an appropriate corrective action plan to prevent further residential TTF access.

The Draft Compliance Guidance Letter states TTF access agreements should contain a reasonable expiration date. At this time, we are unclear as to the duration of ODA’s agreement with the Independence Airpark Homeowners Association, Inc. Senator Merkley’s office forwarded a document entitled, “Amendment to Independence State Airport Ingress/Egress Agreements” to us. These amendments, executed by the ODA and the Independence Airpark Homeowners Association, Inc., became effective January 1, 2009. The document amends a 2004 agreement and incorporates the Stearman Street Ingress/Egress Agreement. However, we have not received these agreements from you for review. The document provided to us does not specify the duration.

Senator Merkley’s office forwarded a second document entitled, “Independence State Airport Amended, Restated Ingress/Egress Agreement.” This document was executed by the ODA and the Independence North Park Annex Addition Homeowner’s Association, effective January 1, 2009. This agreement provides for a ten-year term from January 1, 2009 to January 1, 2019 and allows for two additional ten-year terms.

During the teleconference held on February 12, you noted that the duration of the agreements for both homeowners' associations were similar. However, we would like the opportunity to fully review and understand the agreements.

Additionally, in reviewing the Conditions, Covenants, and Restrictions (CC&Rs), we noted some discrepancies between those documents and the salient facts stated in the ODA's June 26, 2009 letter of compliance. Specifically, the CC&Rs do not require homeowners to have a hangar. The CC&Rs state, "Hangars are strongly encouraged for all homes. If a hangar is not constructed when the home is built, a 10 foot side lot line setback is required on one side to provide access for hangar construction." Moreover, nothing in the CC&Rs requires the homeowners to be aircraft owners. We also noted that while the CC&Rs prohibit farm animals, livestock, and poultry, other family pets are permitted. We have noted these distinctions because they could impact ODA's ongoing obligations with regard to its Grant Assurances.

Based on the information we have received to date, the FAA has no plans to require the ODA to take any additional corrective action with regard to the residential airpark and TTF access at Independence State Airport. However, as the terms of these agreements near their conclusion, the ODA and FAA should work together to review the current and future role of Independence State Airport in order to fully maximize the utility of the Federal investment.

The guidance outlined above is based on the FAA's existing policy. We are in the process of reviewing this policy to determine if it should be changed. The time we spent in Oregon yielded constructive information which we may reference in the next draft CGL. We will keep in touch on our progress; however, I do not foresee the FAA requiring the ODA to take actions more restrictive than those passed in Resolution 2009-1.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall Fiertz", with a stylized flourish at the end.

Randall Fiertz
Director
Office of Airport Compliance and Field Operations

cc: Mark Gardiner, ODA
Honorable John McArdle, Mayor, City of Independence
Gary Van Horn, President, Independence Airpark Homeowners Association
Norm Rainey, President, North Airpark Association