221-1374

STATE AV. BOARD
HAND-OUT 9/23/2010

Residential Through the Fence FAA policy review

Oregon Department of Aviation

Overview

- FAA has revised Internal Agency Order 5190.6B (Airport compliance manual) section on residential Through The Fence (TTF) policy with a revision posted to the Federal Register.
- Link is: http://edocket.access.gpo.gov/2010/pdf/2010-22095.pdf
- Action in document is to *"Amend sponsor grant assurance 5 (Preserving Rights and Powers) and request for public comment".*
- Deadline for comment is 10/25/2010
- POC: Randall Fiertz, Director, Office of Airport Compliance and Field Operations

Background

- On Sep 30, 2009, FAA replaced 5190.6A (1989 document) with 5190.6B

- *"Order 5190.6A did not address airparks with multiple residences or the sponsor's authority to permit establishment of new residences with through-the-fence access. Order 5190.6A stated a general policy recommending airport owners refrain from entering into residential through-the-fence agreements but did not articulate a policy that such access constituted a per se violation of Federal grant assurance obligations."*

- *"FAA did not consider this to reflect any change in policy under Order 5190.6A"*

Words in italics directly quoted from Federal Register

Background

- *"In the mid-2000s, several issues specifically relating to residential use of property on or near several Federally obligated general aviation airports came to the FAA's attention."*
- *"In these cases and others, the FAA advised that the sponsor was precluded by its grant assurance obligations from permitting new residential development with through-the-fence access."*
- *"In so advising, the agency cited violations of the AIP grant assurances relating to the rights and powers of the airport sponsor; economic discrimination; safe operation; and compatible land use."*
- *"FAA did not consider this to reflect any change in policy under Order 5190.6A but rather an interpretation …(of) grant assurance obligations not anticipated in 1989."*
- Clarified change to 5190 in draft compliance letter 2009-1 dated Oct 13, 2009 which outlined criteria for FAA personnel's review of TTF agreements.

Italics directly quoted from Federal Register

Highlights

- Multiple public comments with FAA responses (several pages)
- FAA considered four options
  - 1) Allow new and existing TTF w/conditions
  - 2) Prohibit new but allow existing TTF w/conditions
  - 3) Prohibit new and eliminate existing TTF
  - 4) Allow states or airport sponsors to decide
- FAA chose second option
- "Agency's acceptance of existing residential TTF access does not constitute 'grandfathering' of access rights"

Details

- FAA to take "*two prong*" approach
  - Existing TTF allowed with restrictions
  - Prohibit all new residential TTF
- Rationale:
  - Preserve safety and efficiency of airports
  - Continue public access as part of NPIAS
  - Airports should be flexible and expandable
  - Self sufficient and sustainable
  - Minimize encroachment of non-compatible land uses

Definitions

- **Access defined:**
  - *Access point for taxiing aircraft across airport boundary*
  - *The right of owner of a particular off-airport residential property to use an airport access point to taxi an aircraft between the airport and that property*
- **Existing access defined:** (must meet one of these conditions)
  - *Legal right of access from the property to the airport (by easement or contract) in existence as of the date of this notice.*
  - *Development of property prior to the date of this notice in reliance on airport sponsor's permission for TTF aircraft access to the airport*
  - *TTF is shown on an FAA-approved airport layout plan or has otherwise been approved by the FAA in writing, and the owner of the property has used that access prior to the date of this notice.*
- **Development defined:**
  - *Excavation or grading of land or construction of fixed structures.*

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Definitions

- **Additional TTF access defined**
  - *Establishment of a new access point to the airport for the benefit of the holder of a legally enforceable right to access that cannot be accomodated by an existing access point or…*
  - *Extension or renewal of an existing right to access the airport from residential property or property zoned for residential use.*
- **Transfer of Access defined:**
  - *Sale or transfer of a residential property or property zoned for residential use with existing TTF access or…*
  - *Subdivision, development, or sale as individual lots of a residential property or property zoned for residential use ??? with existing TTF access.*

FAA TTF Policy

- FAA will not consider Residential TTF by itself a violation

EXISTING TTF

- Must meet standards in section 2:
  - Residential TTF access must be depicted on ALP
  - Sponsor has sufficient control of access points for safety and …(ability) to make changes in land use to meet future needs
  - Safety- TTF users must comply with Rules and Standards
  - Sponsor collects fees comparible to on-airport tenants and TTF residents bear a fair proportion of airport costs
  - Protection of airspace – operations will not be affected by hangars and residences, now and in the future
  - Potential for non-compatible land use adjacent to airport boundary is minimized per GA 21, (Compatible Land Use)

Issues

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- In situations when access can be legally transferred WITHOUT sponsor's review, FAA views access as existing
- In situations when access REQUIRES airport sponsor concurrence, FAA views access as additional
- For additional access, FAA requires following standards:
  - Term of access does not exceed 20 years
  - Sponsor provides current (last 5 years) Master Plan with growth plan not affected by TTF OR sponsor has process for terminating or amending existing TTF agreements.
  - Location of new access point does not prevent development or changes in use of airport property in future
  - New access point does not cause potential for operational problems or reduction of efficiency of ground operations at airport.
  - Sponsor will impose and enforce safety and operating rules on TTF residents identical to on-airport tenants.
  - Sponsor will charge fees that recover airport costs and fairly distribute fees across all users
  - Additional access is depicted on ALP

SUPPLEMENTAL STANDARDS

Fee comparibles and conditions

BASIS FOR TTF ACCESS

- Tenant tie-down charges
- Rates for square footage of off-airport hangars
- Ground leases for dedicated taxiway connections to off-airport properties
- Assessment of capital costs for general infrastructure.
- TTF residents will bear cost of infrastructure related to access.

- TTF residents will grant sponsor avigation easement for overflight
- Residents agree to noise clause in covenants, deed or other agreement
- Residents waive right to bring action for noise and emissions
- Residents must file FAA form 7460 if required
- Sponsor has ability to limit future use and ownership of TTF to aviation related homes via zoning or deed restrictions
- Residential agreements are enforceable by sponsor as third party beneficiary

(must be noncancellable by home owners association)

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Issues cont:

ADDITIONAL CONDITIONS

- Sponsor required to have written description of authority and control of TTF (Access Plan) prior to Oct 1, 2012 for FY 2013 before receipt of AIP.
- Residential TTF access must be depicted on ALP within 3 years of plan acceptance by FAA.
- FAA <u>may</u> decline to provide AIP funds for costs associated with TTF ALP revisions.
- Failure to depict access may be considered violation of grant assurances subject to enforcement.
- Failure to meet standards may result in reduced level of AIP. IN FUTURE
- Sponsors that cannot control TTF and airport is adversely affected may "no longer have significant value in the national system".

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For ACCESS PLANS

P44 Regional ADO remains to forward REC TO manage of airport complia

Issues con't

- For TTF residents that receive value from access, FAA will expect them to share capital costs
- On-airport infrstructure and facilities used exclusively by TTF residents are ineligible for AIP
- Sponsor's consent to ANY NEW residential TTF "is inconsistent with grant assurance #5 (rights and powers) and an "apparent violation of grant assurances"

- Proposed changes to Grant Assurance #5
  - ***It (sponsor) will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zone for residential use, to taxi an aircraft between that property and any location on airport***

Discussion

Way ahead?

- Agreement on contested issues
- Letter to Federal Register
- Legislation – Hearing

- Additional guidance?

what is the problem we are trying to fix

Brent Blue →

get reps to Columbia Helicopters?

hearing
22 SEP 2015
10:00AM

Questions