



# Oregon

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Mr. Randall S. Fiertz  
c/o Ms. Carla Scott  
Room 712, Federal Aviation Administration  
IT Enterprises Business Services Division, AES-200, 800  
Independence Ave., SW., Washington,  
DC 20591.

Dear Mr. Fiertz,

Thank you once again for the opportunity to comment on the proposed changes to the 5190.6B regarding Residential Through the Fence (RTTF). Upon reviewing the proposed changes, the Oregon Board of Aviation appreciates the FAA's willingness to compromise on the previous position of absolutely no RTTF access to federally funded airports. However, it is apparent from reading the proposed draft revision of the Order 5190.6B addressing Residential TTF; the FAA still believes RTTF is inherently wrong.

Despite the fact that through the FAA's own analysis, RTTF constitutes only 3% of all NPIAS airports, the agency has determined that the issue of RTTF deserves 52 pages (albeit double spaced draft) of special conditions and caveats to address issues of safety, economic nondiscrimination, compatible land use and efficiency that are not the exclusive domain of RTTF. In fact, they are sponsor management issues not relevant to whether or not homes with hangars are associated with them. For the FAA to devote such significant time to 75 airports with through the fence access seems like an effort best delegated to state and local airport sponsors provided they meet all other grant assurance conditions.

While we understand that federal funding for airports comes with grant assurance compliance guidelines, the 5190.6A of 1989 *"did not articulate a policy that such access constituted a per se violation of federal grant assurance obligations"* (Page 7). We ask the FAA to consider grant assurances and Residential Through The Fence are not mutually exclusive and urge the FAA to return to a more reasoned policy that works in coordination with the airport sponsor for the best approach to airport development. What could be a more compatible land use than homeowners that want to live next to an airport, provide tax base to the local community, security and revenue to the airport?

Grant Assurance 21 addressing Compatible Land Use (copied below in its entirety) is vague, inadequately defined and subjectively interpreted at best to consider RTTF to be an incompatible use. Grant Assurance 21 directs sponsors to adapt (to the extent reasonable) zoning laws to restrict the use adjacent to airports. It is inconsistent with state to state land use laws for the FAA to dictate to state and local jurisdictions, what use is compatible with federally funded airports that may or may not be accountable or responsive to airport sponsors.

**21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.**

Moreover, for cost reasons alone, it is inconceivable that the FAA could buy up all the land adjacent to 3,300 NPIAS airports to prevent incompatible land use by communities unaccountable to airport sponsors. Residential TTF might well be the most compatible land use for individual airport circumstance and should not be arbitrarily discounted by FAA bureaucratic regulations.

In the proposed revision to Order 5190.6b, the agency now intends to offer three new categories of RTTF. Of the three categories; *Existing, Additional and New*, only the first two will be tolerated by the FAA. "New" is proposed to be expressly forbidden as a violation of Grant Assurances and clearly subject to withholding of AIP funds. Even for the two other categories; *existing* and *additional*, the wording of the document clearly is intended to discourage even *existing* or *additional* RTTF development. The FAA proposes no less than 5 standards in section II for *existing* TTF and 14 conditions in section III for additional TTF. All of these standards and conditions are subject to regional division or ADO review and recommendation on a case by case basis and then forwarded to national FAA officials for final adjudication. (Section IV A.2).

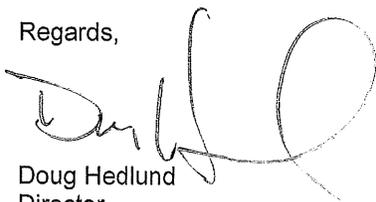
Included in these conditions are "terms of access" that do not exceed 20 years if the sponsor has "concurrence" on renewal of the access agreement. Intentionally or unintentionally, the net effect will prevent refinancing or sale by homeowners, making their residential airpark homes unmarketable by common real estate standards where 30 year mortgages are the norm. **The Oregon Board of Aviation strongly disagrees with this condition and requests the FAA revise this condition to allow a minimum of 30 years for accesses requiring sponsor concurrence.**

Finally, the proposed change to the 5190.6B proposes amending Grant Assurance number 5, Preserving Rights and Powers, to prohibit future residential Through the Fence. This is an unprecedented step backwards from the cooperation extended by the FAA in previous interactions on this issue. This creates an objective grant assurance violation where none was codified before. This is inconsistent with any allowance for *existing* or *additional* accesses and diminishes the argument that RTTF is inherently incompatible with grant assurances.

Oregon has proven residential TTF can be done in a manner that is compatible with grant assurances. Many other states have also successfully developed Through the Fence. Residential Through the Fence is not, in and of itself an incompatible land use and grant assurance violation.

The Oregon Board of Aviation again thanks the FAA for the opportunity to comment on the most current revision to Order 5190.6B and looks forward to working with the agency on developing a functional and reasonable policy on all aspects of Through the Fence access.

Regards,



Doug Hedlund  
Director  
Oregon Department Of Aviation