



Oregon

Theodore R. Kulongoski, Governor



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Mr. Charles Erhard
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Dear Mr. Erhard,

Thank you for the opportunity to comment on the FAA draft memorandum titled Compliance Guidance Letter 2009-1 – Through-the-Fence and On-Airport Residential Access to Federally Obligated Airports. The State of Oregon must respectfully disagree with the draft Memorandum as currently written and recommends FAA instead adopt a more performance based policy towards Through-the-Fence (TTF) access agreements which simultaneously serves to recognize legitimate FAA aspirational goals while at the same time respects individual state rights to pursue economic models that have been demonstrated to lead to self sustaining profitable airport operations.

While the FAA is using this document to clarify Through the Fence policy promulgated in a newly revised (09/30/2009) FAA Compliance Manual Order 5190.6B, the previous document (Airport Compliance Manual 5190.6A) did not forbid TTF operations and did not mention **residential** Through the Fence operations at all. In fact, neither Grant Assurances (dated 03/2005), Advisory Circular 150/5190-7 (Minimum Standards for commercial Aeronautical Activities/August 28, 2006) nor Advisory Circular 150/5190-6 (Exclusive Rights at Federally Obligated Airports/January 4th, 2007) address residential TTF at all.

The recent update to the FAA 5190.6 series regarding Through the Fence puts Oregon at a significant disadvantage to existing airport developments. Oregon is in the unique position of having codified into law (Oregon Revised Statute 836.640) a pilot program supporting Through the Fence airports designed to; *"promote economic development by creating family wage jobs, by increasing local tax bases and by increasing financial support for rural airports"*.

Oregon also has had a safe and financially self sufficient airport at Independence State Airport that is adjacent to over 200 residential airpark homes, many of which have been there since 1974.

Although the discussion between FAA and Oregon Aviation began in 2008, only in 2009 has there been a documented written FAA policy forbidding residential TTF, putting existing and long standing Oregon developments at odds with federal policy. This arbitrary and capricious change to FAA 5190.6B disregards over 34 years of FAA accepted precedent for residential TTF and challenges Oregon's innovative Administrative Rule for commercial TTF that has been a success story in making the state's rural airports self sustaining and economically viable. TTF success has been sufficient to produce over 1,000 jobs in at least one airport during a time when Oregon needs to preserve every job it can get and promote additional job growth.

Despite disagreement with the blanket policy that "there are no acceptable forms of residential TTF agreements" Per section III C of the Memorandum, the Oregon Aviation Board has previously made specific accommodations to comply including submitting a resolution (2009-01) to the FAA dated August 11th, 2009 committing to:

- No new residential TTF be allowed on state-owned public use airports.
- Allow Seattle Airport District Office to review amendments to existing residential access agreements.
- To conduct rule-making to re-set access fees for residential airpark aircraft to ensure parity between on-airport and off-airport charges.

The state of Oregon has also demonstrated that Commercial Through-the-Fence can be competitively beneficial to both on and off airport businesses at Aurora State Airport where off-airport aviation industries have provided sustainable employment and economic vitality to the counties and cities around the airport. At least 1,000 jobs have been created in aviation related occupations that can be directly correlated to TTF commercial opportunities.

Two of the rationales for prohibiting Residential TTF are safety and noise abatement. Independence State Airport has over 200 residential homes proximate to the airport. A records review of the FAA website showed 12 aircraft mishaps at Independence State Airport since 1989. None are related to runway or taxiway incursions related to TTF. There is no midfield access to the runway and airpark homes are separated from the runway by hangers, businesses and a parallel taxiway. Homeowners pay an access fee that is the same as an on airport tie-down or land lease for a hanger. Here is where performance based requirements might come into play and the FAA might contemplate withholding federal grant dollars from an airport at which TTF residential access is provided if at that airport documented safety concerns exist above the level of some average threshold for same at airports without residential TTF.

Historically, there is no record of noise complaints from the residential air park community. Residential Airpark residents are among the least likely to complain about noise. In fact, there is a clause in the Homeowner's joint declaration of restrictions, covenants and conditions of the Independence Airpark, Article 4, Section 3 that reads:

"Members forever waive all rights to protest against industrial and / or aviation noise resulting from operations and activities conducted in relation to the operations of Independence State Airport."

A third rationale offered for FAA opposition to through the fence agreements is that it has been the FAA's experience that sponsors find it difficult to correct FAA grant assurance violations that result from TTF access. It would be an interesting exercise if FAA could cite specific examples where it has had this experience in regard to Oregon operations. We are not aware of any such experience. That being the case, perhaps the generalized observation that may be supported by FAA experience with other states should more appropriately be stated as a performance based requirement for any state that contemplates allowing through the fence access agreement.

One final point; Oregon is a largely rural state with limited ability to achieve the FAA ideal of self sustaining federally funded airports. (See section 17.5 of Compliance Directive 5160.6B). Of 28 State owned airports, 12 are federally funded. Only four are self sustaining. Two of the four, Independence and Aurora, are self sufficient because TTF has generated enough aviation related revenue to make them profitable. It does not seem prudent to refuse to take official notice of this track record of a successful economic model incorporating TTF airport access.

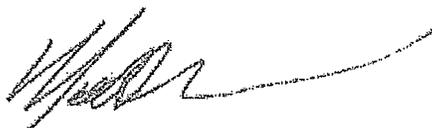
It is the position of this agency that Oregon is a model of success on both types, residential and commercial TIF. We respectfully suggest an open minded revision of the current draft of an FAA Through-the-Fence policy that could have significant negative impact on Oregon Airport communities. We see this as an issue of state rights. The matter of a choice of economic model deemed most appropriate for general aviation airports located within a state would seem to be more appropriately reserved to the individual states within the broad confines of a performance based federal guideline that establishes the basis for eligibility for federal funding. It would be unfortunate to see FAA attempt to rigidly and indiscriminately substitute its will for the reasonable exercise of state discretion by suggesting federal funds might be withheld from those states that do not comply with the federal one size fits all approach. We do not dispute you have that option available to you but would hope you would prefer to seek a more consensual relationship with each state partner.

Thanks again for allowing Oregon Aviation Board to comment. The state of Oregon stands ready to work to assist you in developing a workable policy solution for Through-the-Fence operations.

Sincerely,



Gregg Dal Ponte
Interim Director
Department of Aviation



Mark Gardiner
Board Chair
On Behalf of the Oregon Aviation Board

cc: J. Randolph Babbitt, FAA Administrator
Jeff Merkley US Senate
Ron Wyden US Senate
Earl Blumenauer US House Of Representatives
Peter DeFazio US House Of Representatives
Kurt Schrader US House Of Representatives
Greg Walden US House Of Representatives
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