# RESIDENTIAL THROUGH-THE-FENCE AGREEMENTS AT PUBLIC AIRPORTS: ACTION TO DATE AND CHALLENGES AHEAD

**(111–136)**

## HEARING

BEFORE THE

## COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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September 20, 2010

## SUMMARY OF SUBJECT MATTER

**TO:** Members of the Committee on Transportation and Infrastructure

**FROM:** Committee on Transportation and Infrastructure Staff

**SUBJECT:** Hearing on "Residential Through-the-Fence Agreements at Public Airports: Action to Date and Challenges Ahead"

### PURPOSE OF THE HEARING

The Committee on Transportation and Infrastructure will meet on Wednesday, September 22, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding residential through-the-fence agreements between airport sponsors and the owners of residential property adjacent to airports.

### BACKGROUND

Approximately 3,300 publicly funded airports form an essential part of the nation's transportation network.[1] In fair weather and poor, the majority of these airports are used by general aviation pilots who depend on modern, serviceable infrastructure to take off and land safely.

In some cases,[2] Federal taxpayer money is being spent to operate and maintain public airports where private homeowners who live on adjacent property enjoy an exclusive right of access for their personal airplanes between their property and public airport operational surfaces. Airport owners and operators grant this right of access to homeowners by way of agreements known colloquially as "through-the-fence" agreements.[3] The agreements have created concern among

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[1] *See* Notice of Proposed Policy Regarding Access to Airports From Residential Property, 75 Fed. Reg. 54946 (Sept. 9, 2010) (hereinafter "Notice of Proposed Policy").

[2] About 75 cases, according to Federal Aviation Administration (FAA) officials.

[3] For purposes of this summary, each use of the term "through-the-fence agreement" refers to a residential through-the-fence agreement. Through-the-fence agreements between airport sponsors and commercial entities are not at issue in this hearing.

some Federal, State, and local officials because, the officials say, the agreements limit airport sponsors' rights and powers to use airport land for development and other public purposes, and the officials are further concerned that the agreements encourage incompatible land use that creates legal and safety problems for local airports. Other officials believe that airports should be able to enter into these agreements as long as the airports continue to comply with grant assurances.

Until now, FAA policy, as applied, has discouraged residential through-the-fence agreements. On September 9, 2010, the FAA published, in the *Federal Register*, a statement of proposed revisions to its policy on residential through-the-fence agreements; the proposal would preclude new residential through-the-fence access at airports where none exists presently. The FAA will be considering public comments on the proposed revisions through October 25, 2010.[4]

Proponents of through-the-fence access believe the access helps them create a lifestyle that they value. They enjoy the ability to come and go in their personal aircraft at their leisure. Homeowners with direct through-the-fence access say they share communal interests in monitoring airport activities and operations and in supporting general aviation in their communities. Proponents say through-the-fence access also benefits local airports, because homeowners with the access often pay access fees that enlarge local coffers.

Homeowners with through-the-fence access may realize direct and indirect financial benefits as the result of Federal investment in airports. The values of their homes and land may increase by virtue of access to airport surfaces. Real property on which a hangar home is constructed, after all, would have little to no utility if not connected to an airport with infrastructure funded by Federal money, and with the level of quality such Federal investment provides. However, this situation has raised questions regarding whether, in some instances, these Federal investments primarily benefit private interests at the expense of pursuing national policy objectives. Federal law requires the FAA to make grants to "maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics."[5] For FAA officials, the question, simply stated, is: If through-the-fence arrangements totally impede necessary expansion or safety improvements at certain airports, why should the FAA make investments in those airports?

## I. Through-the-Fence Agreements and Their Relationship to Federal Airport Investment

Concerns have emerged that residential through-the-fence agreements at some public-use airports create conditions that substantially diminish the return on Federal investment at those airports – as well as the airports' utility to the national aviation system. Although the agreements provide convenience to individuals who own airplanes and want to park those airplanes at their homes, FAA officials have reported that, in some cases, the agreements have created dilemmas that have impaired aviation safety, public access to local airports, and local airports' ability to conduct adequate planning for future development and equipage. At the same time, the agreements may encourage incompatible land use around airports.

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[4] *Id.*

[5] 49 U.S.C. § 47104(a) (2010).

### A. Through-the-Fence Access in General

Airports operate under a delicately balanced set of requirements. Airport operational areas – taxiways, runways, and aircraft parking areas – are generally not accessible to the public. At most general aviation airports, aircraft are parked in designated parking positions on airport tarmacs or in hangars on airport property. Airport operational areas are not generally accessible from outside airport property.

At approximately 75 of the 3,300 publicly funded airports nationwide, airport sponsors – the State or local authorities or private entities that own and operate the airports – have entered into through-the-fence agreements with homeowners who occupy land directly adjacent to airport perimeters. The homeowners park their personal aircraft in the curtilage of their homes and, with through-the-fence access, taxi the aircraft between their homes and active taxiways and runways. In many cases, entire residential subdivisions have blossomed around through-the-fence access points at public airports – in much the same manner as private homes fringe the runways of hundreds of private, residential airparks that receive no direct taxpayer support.

Airport sponsors may grant through-the-fence access for a variety of reasons. Homeowners often (but do not always) pay valuable consideration for unrestricted access between their homes and airport operational surfaces. Proponents of through-the-fence access point out that homeowners often pay for the access and that, in those cases, through-the-fence arrangements bring needed revenue to local airports. The amount of consideration paid by homeowners varies, however, and can be as low as $250 or less per year.[6] Aside from receiving access fees, airports receive indirect benefits from through-the-fence agreements, as well. The Experimental Aircraft Association (EAA), which believes the FAA should evaluate through-the-fence agreements on a case-by-case basis, has taken the position that through-the-fence access can relieve strain on general aviation airports that struggle to maintain adequate hangar space for locally based aircraft.[7]

The satellite image in figure 1, below, depicts Erie Municipal Airport (KEIK), near Erie, Colo., where numerous residents inhabit homes along the eastern edge of runway 15/33 and the northern and southern edges of a closed intersecting runway that now serves as a taxiway. Residents enjoy unrestricted through-the-fence access to taxi their private aircraft between their homes and airport taxiways and runways, using the driveway-like surfaces that span airport and residential property.

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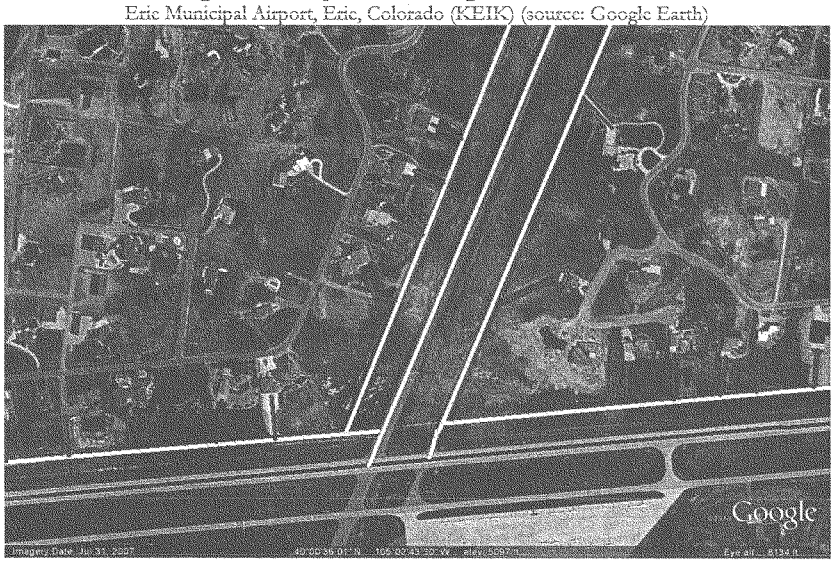
[6] *See, e.g.*, City of Clinton, N.C., Clinton-Sampson County Airport, *Airport Access Agreement and Permit*, *available at* http://www.cityofclintonnc.com/pdf/Through-the-Fence-CTZ-Draft_10-22-08.pdf (sample, draft, non-executed through-the-fence agreement).

[7] Letter from Randy Hansen to Charles Erhard (Dec. 21, 2009), *available at* http://www.eaa.org/news/2009/091222_ttf_memo.pdf (hereinafter "EAA Letter").

**Figure 1: An Airport with Through-the-Fence Access**
Erie Municipal Airport, Erie, Colorado (KEIK) (source: Google Earth)




The blue line in the photograph depicts runway 15/33, oriented northwest-to-southeast. Yellow lines indicate airport taxiways, and red lines indicate apparent through-the-fence access points between those taxiways and adjacent private homes. The photograph illustrates the homes' close proximity to airport operational areas, as well as the constraint placed on further airport expansion and development.

### B. Publicly Funded Airport Development and Improvement

Public money paid by taxpayers, travelers, and users of the aviation system funds airport planning and development, even at airports used primarily by through-the-fence access-holders. The FAA's Airport Improvement Program (AIP) distributes public grant funds to qualifying public-use airports (which include both publicly and privately owned airports) for purposes of improving airport facilities, expanding airport operational areas and surfaces, mitigating the noise impact of aviation operations over nearby areas, and conducting short- and long-term planning for future airport development.[8] AIP funds are drawn from the FAA's Airport and Airway Trust Fund,[9] which

[8] *See* 49 U.S.C. § 47101, *et seq.* (2010).
[9] *Id.* at § 47104(a).

itself is funded largely by revenues stemming from excise and other taxes paid by airline passengers, as well as fuel taxes paid by general aviation users.[10]

To administer the AIP, the FAA maintains and regularly updates the National Plan of Integrated Airport Systems (NPIAS), which provides for future development of the approximately 3,300 public-use airports that receive public AIP funds. The NPIAS charts a course for airport development "to provide a safe, efficient, integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics."[11] At Erie Municipal Airport, depicted in figure 1, for example, the FAA has invested approximately $5.3 million in Federal grants to maintain the airport in a manner consistent with Federal law, according to documents provided by FAA officials to staff.

### C. Conditions on Airports' Use of Federal Funds

In exchange for receipt of Federal assistance, the sponsors of public-use airports that receive public AIP funds must make a series of assurances to the FAA that the airports will comply with certain requirements, all of which emphasize the airports' public character and reflect the public interest in maintaining accessible, safe airport infrastructure.[12] Compliance with these requirements ensures, *inter alia*, that airports remain safe for flight operations; that airport sponsors exert sufficient control over the use of airport property to make improvements when necessary; and that public-use airports remain available and accessible to the public, without unjust discrimination among aeronautical users.

The chapter of the U.S. Code governing the AIP lists some of the grant assurances to which an airport sponsor must commit upon accepting public money in the form of an AIP grant. Section 47107(a) requires, for example, an airport sponsor to assure the FAA that:

> (1) the airport will be available for public use on reasonable conditions and without unjust discrimination; . . .
>
> (7) the airport and facilities on or connected with the airport will be operated and maintained suitably . . . ; [and]
>
> (10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations . . . .[13]

The FAA generally requires that airport sponsors make more specific written assurances as conditions of their receipt of public funds. The following assurances, generally required of airport sponsors through project grant agreements,[14] are of particular relevance to the issues that surround

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[10] FAA, *Airport and Airway Trust Fund Receipts* (Feb. 8, 2007), *available at* http://www.faa.gov/about/office_org/headquarters_offices/aep/aatf/media/AATF_Tax_Receipts_since_1998.xls; *see* 26 U.S.C. § 9502(b) (2010).

[11] 49 U.S.C. § 47103(a) (2010).

[12] *See id.* at § 47107.

[13] *Id.* at § 47107(a).

[14] *See id.* at § 47108(a) (authorizing FAA to enter into grant agreements with airport sponsors for use of AIP funds).

through-the-fence agreements and are part of a set of uniform grant assurances to which airport sponsors must agree:

- **Grant Assurance 5(a):** The airport sponsor "will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement."

- **Grant Assurance 5(b):** The sponsor "will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the [airport] property."

- **Grant Assurance 19(a):** The sponsor will operate "[t]he airport and all facilities which are necessary to serve the aeronautical users of the airport . . . at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. [The airport sponsor] will not cause or permit any activity or action thereon which would interfere with its use for airport purposes."

- **Grant Assurance 21:** The sponsor "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."

- **Grant Assurance 22(a):** The sponsor "will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport."

- **Grant Assurance 23:** The sponsor "will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

- **Grant Assurance 24:** The sponsor "will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport . . . ."[15]

Ultimately, airport sponsors are obliged to ensure that the land surrounding airports is zoned for uses that are compatible with aviation operations. Airport sponsors must exercise their legal rights and powers to conduct airport planning that accounts for numerous safety considerations, while ensuring at the same time that airports are able to meet present and future demand from aviation users.

The task of ensuring that airport sponsors are complying with the assurances listed above falls to the FAA. FAA officials employ FAA Order 5190.6B, the Airport Compliance Manual, to assess whether airport sponsors are in compliance with both grant assurances and the numerous other requirements that apply to the operation of airports. The order's guidance with respect to through-the-fence agreements specifically is discussed in section II, *infra.* The FAA is also

[15] FAA, *Assurances: Airport Sponsors, available at* http://www.faa.gov/airports/aip/grant_assurances-/media/airport_sponsor_assurances.pdf (hereinafter "FAA Grant Assurances").

responsible for ensuring the safe operation of aircraft on and around the Nation's airports through its safety oversight authority.

### D. Benefits for Homeowners.

Through-the-fence agreements bring benefits for both airports and those who use the access. FAA officials acknowledge that airports may benefit from revenue generated by the consideration that homeowners usually pay for the right of access between their homes and airport property. Moreover, proponents say through-the-fence access helps relieve airports of the burdens created by soft demand for general aviation-related services and the need to support existing users with hangar space and infrastructure. In a letter on the matter to the FAA last year, the EAA's government relations director wrote, "Around the country new pilot starts are down, airports aren't building hangers [sic] to support the pilot demand and airports are searching for viable means to remain solvent. Adjacent residential [through-the-fence] operations could be the ideal solution to help resolve all these issues."[16]

Furthermore, those who own residential property adjacent to airports clearly realize both lifestyle and financial benefits from their property and rights of access. The lifestyle benefits, as attested by the homeowners themselves,[17] include opportunities to fraternize with other pilots in residential settings and, perhaps most importantly, to crank up their personal airplanes and fly away in a matter of minutes. Homeowners enjoy the freedom and convenience provided by through-the-fence access.

Homeowners with through-the-fence access, like other property owners near airports in certain respects, may also realize direct and indirect financial benefits as the result of Federal investment in airports. The values of their homes and land may increase by virtue of access to airport surfaces. Real property on which a hangar home is constructed, after all, would have little to no utility if not connected to an airport with infrastructure funded by Federal money, and with the level of quality such Federal investment provides. However, this situation has raised questions regarding whether, in some instances, these Federal investments primarily benefit private interests at the expense of pursuing national policy objectives. Federal law requires the FAA to make grants to "maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics."[18] For FAA officials, the question, simply stated, is: If through-the-fence arrangements totally impede necessary expansion or safety improvements at certain airports, why should the FAA make investments in those airports?

The premium attached to homes with through-the-fence access is evidenced in part by comments posted on Throughthefence.org, an Internet Web site whose content advocates continuing through-the-fence agreements. In one published selection from a homeowner's comments to FAA officials during a town-hall meeting, the homeowner attested, "We paid a premium price for our lot because of its proximity to the runway."[19]

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[16] EAA Letter, *supra* note 7.

[17] Written correspondence to Transportation and Infrastructure Committee Chairman James L. Oberstar on file with Subcommittee on Aviation staff.

[18] 49 U.S.C. § 47104(a) (2010).

[19] Throughthefence.org, "Statement by Patricia Miller, President of the Erie Air Park Homeowners Association Regarding Through the Fence Ordinance,"(March 1, 2010), *available at* http://www.throughthefence.org/images/stories/pdf/erie-meeting-patricia-miller-statement-3-1-10.pdf; *see also* City of

Public land records suggest that residential property developed specifically around through-the-fence access can enjoy a price premium when compared to property elsewhere, giving residents with the access a return on their investment. According to public records of the Weld County, Colorado, Property Assessor, homes and land in the southeastern quadrant of the residential development at Erie Municipal Airport, depicted in figure 1, are appraised at total values ranging from $370,000 to more than $830,000. Other homes in the airpark development are appraised at values as high as $1.1 million.[20] In contrast, according to U.S. Census data, the median value of single-family homes in Weld County is $250,600.[21] Although private properties located near a reservoir, for example, or a scenic parkway may realize appreciation due to Federal investment, similar concerns would emerge if the use of those properties began to interfere with public access to the infrastructure purchased with Federal investment.

By the same token, private developers stand to profit from residential subdivisions built around through-the-fence access points. A December 2009 newspaper article, for example, reported on the situation of the small Randall Airport in Middletown, N.Y., a privately owned airport that receives AIP funds because of its designation as a reliever airport.[22] The airport's owner, the article reported, received $5.4 million in Federal taxpayer money to upgrade the small airport and to ready it for a planned subdivision of 37 "estate homes," which he planned to sell for more than $500,000 each.[23]

At the publicly owned Sandpoint Airport (KSZT) in Sandpoint, Idaho, a developer has begun construction of a subdivision of single-family "hangar homes" clustered around a through-the-fence access point. The developer's Web site markets the development, called SilverWing at Sandpoint, as follows:

> SilverWing at Sandpoint is a unique fly-in airpark community in northern Idaho, with exclusive hangars in a magnificent residential air park setting between Schweitzer Ski Mountain and Lake Pend Oreille . . . . Designed for pilots and aviators with direct access to the Sandpoint airport in a beautiful landscaped airpark community, SilverWing at Sandpoint offers a rare aviation real estate opportunity.[24]

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Erie, Colorado, "FAA Listening Session," March 1, 2010, *available at* http://erie.granicus.com/MediaPlayer.php?view_id=7&clip_id=448 (video of Erie residents' statements to FAA officials Randall Fiertz and Deandra Brooks during town hall meeting).

[20] *See* Weld County Property Assessor, Weld County, Colo., Property Information, *available at* http://maps2.merrick.com/website/weld/viewer.htm?Title=Weld%20County%2C%20Colorado.

[21] U.S. Census Bureau, *Fact Sheet: Erie, Colorado*, *available at* http://factfinder.census.gov/servlet/SAFFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=Erie&_cityTown=Erie&_state=04000US08&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y.

[22] *See* 49 U.S.C. §§ 47102(21)(B)(i), 47104(a) (2010).

[23] Thomas Frank, "Small airports: Giving us help benefits everyone," *USA Today* (Dec. 31, 2009), *available at* http://www.usatoday.com/travel/flights/2009-12-31-small-airports_N.htm.

[24] SilverWing at Sandpoint, LLC, *Our Vision*, *available at* http://www.silverwingatsandpoint.com/about_vision.html.

Lots and homes in SilverWing at Sandpoint are listed at prices ranging from $249,000 to nearly $1.7 million.[25] In contrast, the median value of single-family homes in the Sandpoint area is $111,100, according to U.S. Census data.[26]

Beneficial impacts to private property as the result of Federal investment is not unheard of, however. In fact, private properties located on a reservoir or a scenic parkway, funded by the Federal Government, also see increased property values.

### E. Safety And Legal Issues For Airports

Despite all their benefits for airports and homeowners, some through-the-fence agreements have raised safety and legal dilemmas for airport sponsors and other stakeholders.

#### 1. Safety Issues

According to FAA officials, through-the-fence access has led to conditions that impair safety at certain airports and that have rendered those public airports potentially incompatible with the Federal objective of creating "a safe . . . system of public-use airports."[27] Although each airport presents a unique set of facts, FAA and local airport officials report that the following safety issues, among others, have arisen in the course of homeowners' performance under through-the-fence agreements:

- Incursions of pets, people, and private vehicles on airport property, including operational areas such as taxiways, by way of seamless links between private property and public airports;
- Construction of structures that interfere with navigational radio signals and traffic separation; and
- Airport sponsors' inability to make safety-critical improvements to runways or taxiways.

The latter issue is a source of particular challenge for airport sponsors. FAA officials told staff that, at the Sandpoint development described above, the exclusive right of access granted to homeowners has created a perpetual easement that bisects the western half of the airport. According to the FAA, the airport sponsor is unable to make certain future safety improvements to that half of the airport because the airport sponsor has relinquished certain property rights with respect to sections of airport land. A potential safety issue has emerged, as explained in the text underneath figure 2, which depicts Sandpoint Airport and the Silverwing development.

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[25] SilverWing at Sandpoint, LLC, *Pricing and Availability*, *available at* http://www.silverwingatsandpoint.com/units_pricing.html.

[26] U.S. Census Bureau, *Fact Sheet: Sandpoint, Idaho*, *available at* http://factfinder.census.gov/servlet/SAFFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=sandpoint&_cityTown=sandpoint&_state=04000US16&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y.

[27] 49 U.S.C. § 47103(a) (2010).

**Figure 2: A Through-the-Fence Access Point**
Sandpoint Airport, Sandpoint, Idaho (KSZT) (source: Google Earth)

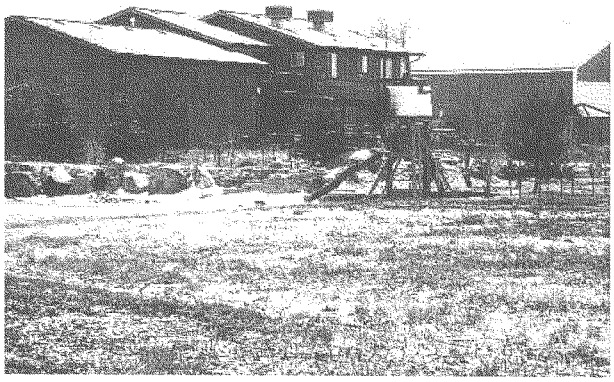

Specifically, the development, at left, is directly connected to the airport's north-south runway, depicted by the blue line, via a single perpendicular taxiway, depicted by the yellow line inside the red box. For a departure from the end of the runway, an aircraft that leaves the SilverWing development would have to cross the runway at the intersection in the red box in order to stay on the taxiway (in yellow) and follow it to the end of the runway. Alternatively, instead of crossing the runway, the aircraft would turn onto the runway and taxi down the runway, in a direction opposite to that used by arrivals and departures, in order to reach the end of the runway and take off in the proper direction. Such a procedure, known as a "back-taxi" procedure, is generally viewed by FAA officials and pilots as a higher-risk procedure, particularly at uncontrolled airports such as Sandpoint Airport (with no air traffic control), because pilots on final approach do not always see aircraft that are taxiing on the runway (and pilots may not make or hear radio transmissions broadcasting the positions of other aircraft). The limited ability to see another airplane on a runway is particularly an issue at night and in low-visibility conditions.[28] FAA officials said they are working to reduce the need for back-taxi procedures at U.S. airports.

[28] The world's worst air disaster, in fact, occurred because of pilots' confusion over the positions of their respective aircraft while one aircraft was back-taxiing down the active runway and the other was beginning its takeoff roll in fog. *See* Joint Report of the Spanish Ministry of Transport and Communications, *Collision of the Boeing 747 PH-BUF of KLM and the Boeing 747 N736PA of Pan Am at Los Rodeos (Tenerife), 27 March 1977* (Dec. 7, 1978). Although the scale of that accident is certainly not in line with that of a general aviation accident at a small airport of the type at issue in this hearing, the fundamental safety issue – and the potential for injury and loss of life – remains the same.

FAA officials told staff that construction of a parallel taxiway on the west side of the Sandpoint Airport would eliminate the need for back-taxi operations. Such a project, however, is not feasible, the officials said, because, in granting through-the-fence access to the SilverWing development, the airport sponsor cannot economically make improvements to the section of airport land in question, much less acquire the land necessary for the expansion.

The other issues listed above have created similarly challenging situations that are difficult, in many cases, to remedy effectively. These situations arise solely by virtue of easy access between homes and airport surfaces; homeowners and their children, pets, and guests can venture into operational areas that are literally in their back yards. Figure 3, below, is probative of the safety issues presented by incompatible land use around airports and easy through-the-fence access. The photograph, taken by an FAA official and provided to staff, depicts a child's playset in the back yard of a home that is directly adjacent to a primary taxiway. The photographer was standing at the taxiway itself when taking the photo.

**Figure 3: A Child's Playset Near an Airport Taxiway**
(Source: FAA)



**2. Legal Issues**

According to the FAA, through-the-fence access encourages and perpetuates incompatible land use around airports, contrary to both 49 U.S.C. § 47107(a)(10) and Grant Assurance 21, quoted above, which require airport sponsors to take actions necessary to ensure that adjacent property is zoned for uses that are compatible with aviation operations. Through-the-fence access, FAA officials say, creates an opportunity to develop land adjacent to airports for uses that are incompatible with aviation operations and preclude certain types of future development.

Through-the-fence agreements may also create legal roadblocks to airport improvement projects. When any property owner grants another person a right of access to the owner's property, the owner relinquishes certain rights with respect to the property. In most cases, through-the-fence

agreements create easements across airport land in favor of adjacent homeowners. As a result, airport sponsors in many cases have effectively ceded their rights and powers with respect to land bisected by easements or other grants of through-the-fence access.

Similarly, through-the-fence access has an important economic consequence for taxpayers. Airport sponsors, from time to time, must utilize public funds to purchase land adjacent to airports for purposes of expansion and airport development. However, through-the-fence access encourages the construction of valuable homes adjacent to airports and may also artificially inflate the value of residential property to amounts far in excess of what land zoned for uses compatible with airport operations – or even undeveloped residential land – would normally command. When residents build homes around a through-the-fence access point, the amount of taxpayer funds that an airport sponsor must ultimately pay if the sponsor must purchase the land for necessary airport development can increase by a multiple.

Proponents of through-the-fence agreements point out that the legal issues can be addressed in the through-the-fence agreement itself. Airport sponsors should be aware of the grant assurances and, when entering into such agreements, ensure that they remain in compliance with those assurances.

## II. FAA and Congressional Action To Date

The FAA's current policy, which disfavors through-the-fence agreements, is subject to significant proposed modifications, announced September 9, 2010, and discussed in section III. Meanwhile, a bill has been introduced in Congress to prevent the FAA from taking certain action with respect to airports that are subject to through-the-fence agreements.

### A. Current FAA Policy

Under current law, insistence on compliance with AIP grant assurances is the only direct method for FAA officials to prevent any possible ill effects of through-the-fence agreements. The FAA's current policy reflects the FAA's determination that through-the-fence agreements "can create situations that could lead to violations of [an] airport's federal obligations."[29] The policy, which is described in FAA Order 5190.6B, advises FAA staff that "[u]nder no circumstances is the FAA to support any 'through-the-fence' agreement associated with residential use since that action will be inconsistent with the Federal obligation to ensure compatible land use adjacent to the airport."[30] The current policy takes the position that "[t]he federal obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property."[31]

Order 5190.6B, in its present form, entered into effect on September 30, 2009. Since promulgating the order, FAA officials have embarked on a nationwide tour of airports with residential through-the-fence agreements in place and have received voluminous comments from interested stakeholders on the effects of the order's guidance to airport sponsors. These comments have included criticism of what some homeowners and access-holders characterize as a "one-size-

[29] FAA Order 5190.6B § 12.7 (Sept. 30, 2009).
[30] *Id.*
[31] *Id.* at § 12.7(a).

fits-all" approach that disadvantages local airports where through-the-fence agreements have not created the issues described above. Many homeowners argue through-the-fence access has been beneficial for all parties. The EAA has said some of the legal and safety issues described above have arisen not because of through-the-fence agreements, per se, but because of a "lack of standardized FAA guidance that has directly led to today's concerns facing the FAA, airport sponsors and property owners."[32]

At the same time, the FAA has found that certain airport sponsors that are parties to through-the-fence agreements have failed to comply with particular grant assurances. Figure 4 lists the NPIAS airports whose sponsors, according to FAA officials, are in noncompliance with various grant assurances.

**Figure 4: Airports in Noncompliance with Grant Assurances.**[33]
(Source: FAA)

| Airport | Sponsor | Area(s) of Noncompliance |
|---|---|---|
| Poplar Grove Airport, Illinois (C77) | Steve H. Thomas | Grant Assurance 29 (requiring publication of an airport layout plan) |
| St. Louis Metro-East/Shafer Field, Illinois (3K6) | Ed and Lois Shafer | Grant Assurance 29 |
| Clermont County Airport, Ohio (I69) | Clermont County Board of Commissioners | Grant Assurance 23 (requiring an airport sponsor not to grant exclusive rights to any person or entity for aeronautical activities at the airport) |
| Sandpoint Airport, Idaho (SZT) | Bonner County | Grant Assurance 5 (requiring an airport sponsor not to cede rights and powers with respect to airport development and operation)<br><br>Grant Assurance 19 (requiring an airport sponsor to operate facilities at all times in a safe and serviceable condition)<br><br>Grant Assurance 21 (requiring an airport sponsor to make good-faith effort to zone adjacent property for compatible land use)<br><br>Grand Assurance 24 (requiring an airport sponsor to maintain a fee and rental structure that makes the airport as self-sustaining as possible) |
| Cedar Key Airport, Florida (CDK) | Levy County Board of Commissioners | Grant Assurance 19<br><br>Grant Assurance 29 |

[32] EAA Letter, *supra* note 7.
[33] Staff expresses no opinion as to whether, in fact, the FAA's findings of noncompliance are supported by evidence.

| | | |
|---|---|---|
| Scott County Airport, Tennessee (SCX) | Scott County | Grant Assurance 5 |
| Cameron Airpark, California (O61) | El Dorado County | Grant Assurance 4 (requiring airport sponsor to hold or to obtain good title to airport land)<br><br>Grant Assurance 5 |
| Pine Mountain Lake Airport, California (E45) | Tuolumne County | Grant Assurance 5 |
| Santa Paula Airport, California (SZP) | City of Santa Paula | FAA officials informed staff that this airport, whose municipal sponsor received a grant to acquire development rights for the airport, is subject to an existing through-the-fence agreement with an adjacent landowner. The agreement provides for through-the-fence access for future residential uses of the adjacent land, although the land is currently undeveloped. FAA officials said the airport is not eligible for AIP funds. |

FAA officials emphasize that, although the violations of grant assurances in the cases listed above may be traceable to the existence of through-the-fence agreements, the officials have not found noncompliance in any case solely on account of the existence of such an agreement. Instead, each finding of noncompliance rests on a particular grant assurance that, FAA officials allege, was violated by an airport sponsor.

### B. Congressional Action

In March of this year, Congressman Sam Graves (Missouri) introduced bipartisan legislation to allow airports to continue to enter into through-the-fence agreements. H.R. 4815, the "Community Airport Access and Protection Act of 2010",[34] provides that a general aviation airport sponsor shall not be considered to be in violation of grant assurances or any other provision of law as a condition for the receipt of Federal financial assistance for airport development solely because the sponsor enters into a through-the-fence agreement. Further, H.R. 4815 requires through-the-fence agreements to require the property owner, at a minimum to: (i) pay airport access charges that are not less than those charged to tenants and operators on-airport making similar use of the airport; (ii) bear the cost of building and maintaining the infrastructure necessary to provide aircraft located on the property adjacent to the airport access to the airfield of the airport; and (iii) operate and maintain the property, and conduct any construction activities on the property, at no cost to the airport and in a manner that is consistent with grant assurances, airport operations, the airport's role in the NPIAS and does not adversely affect the safety, utility, or efficiency of the airport.

[34] Co-sponsored by Congressmen Leonard L. Boswell (Iowa ), Allen Boyd (Florida), K. Michael Conaway (Texas), Vernon J. Ehlers (Michigan), Thomas E. Petri (Wisconsin), and Kurt Schrader (Oregon).

## III. Prospects for Future Action

On September 9, 2010, the FAA published notice in the *Federal Register* of proposed revisions to its policy on through-the-fence access and opened a 45-day period for public comments on the revisions.[35] The proposed revisions would preserve existing through-the-fence access, subject to certain conditions, while foreclosing the establishment of new through-the-fence access at airports where none presently exists.

The FAA proposes to require each airport sponsor with existing through-the-fence access to do the following:

- Develop a residential through-the-fence access plan to address minimum requirements for access, safety, cost recovery, airspace protection, and land use compatibility;
- Submit the plan prior to submitting an AIP grant application for fiscal year 2013;
- Depict all residential through-the-fence access points on the airport layout plan required under Grant Assurance 29; and
- Implement the residential through-the-fence access plan as a special condition of any future AIP grants.

From time to time, an airport sponsor that is party to an existing through-the-fence agreement may wish to grant further access through additional access points, or to renew or extend an existing agreement. The FAA proposes to require an airport sponsor, in such a case, to do the following:

- Meet additional FAA requirements that address the airport's foreseeable planning and growth needs;
- Provide a current master plan;
- Update the applicable airport layout plan if necessary; and
- Limit any extension of through-the-fence access to 20 years.

The FAA further proposes to modify Grant Assurance 5, which is quoted in relevant part in section I.A, *supra*, and requires airport sponsors to maintain and exercise certain rights and powers with respect to airport land. The proposed revision to the grant assurance would prohibit an airport sponsor from entering into a new through-the-fence agreement in the future, if that airport sponsor is not a party to an existing agreement. The proposed policy would effectively foreclose the ability of airport sponsors to establish new through-the-fence access at airports where none exists currently.

The proposed policy also recites the FAA's options for remedying the undesirable effects of through-the-fence agreements that cannot be acceptably mitigated. Those options include:

- Review of an airport's role in the NPIAS;
- Consideration of a reduced level of Federal investment in the airport, commensurate with the portion of the airport that has not been injured by through-the-fence access; and
- Removal of the airport from the NPIAS.

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[35] Notice of Proposed Policy, *supra* note 1.

The period for public comments on the proposed revisions ends on October 25, 2010.

WITNESSES

MEMBER PANEL

**The Honorable Kurt Schrader**
Oregon's 5th District
Member of Congress

PANEL I

**Ms. Catherine M. Lang**
Acting Associate Administrator
Office of Airports
Federal Aviation Administration

**Ms. Carol L. Comer**
Aviation Programs Manager
Georgia Department of Transportation

**Mr. Mitch Swecker**
State Airports Manager
Oregon Department of Aviation

**Ms. Ann B. Crook, AAE**
Airport Manager
Elmira Corning Regional Airport

**Mr. James K. Coyne**
President
National Air Transportation Association

**Dr. Brent Blue, MD**
Founder of Throughthefence.org

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4325; e-mail *tom.yager@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4007(b) of the Motor Carrier Act of 1991 (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 2152; 49 U.S.C. 31307) requires the Secretary of Transportation to establish Federal minimum training requirements for drivers of LCVs. The responsibility for implementing the statutory requirement was subsequently delegated to FMCSA (49 CFR 1.73). The FMCSA, in a final rule entitled, "Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements" adopted implementing regulations for minimum training requirements for the operators of LCVs (March 30, 2004; 69 FR 16722).

The 2004 final rule created an information collection burden concerning the certification of new, current and non-grandfathered LCV drivers. An LCV is any combination of a truck-tractor and two or more semi-trailers or trailers, which operates on the National System of Interstate and Defense Highways (as defined in 23 CFR 470.107) and has a gross vehicle weight greater than 80,000 pounds. The purpose of this rule is to enhance the safety of LCV operations on our nation's highways.

By regulation, motor carriers cannot allow a driver to operate an LCV without ensuring that the driver has been properly trained in accordance with the requirements of 49 CFR 380.113. LCV drivers must present their LCV Driver-Training Certificate to prospective employers as proof of qualification to drive LCVs. Motor carriers must maintain a copy of the LCV Training Certificate in order to be able to show Federal, State or local officials that drivers operating LCVs are certified to do so.

*Title:* Training Certification for Drivers of Longer Combination Vehicles.

*OMB Control Number:* 2126–0026.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* Drivers who complete LCV training each year, current LCV drivers who submit the LCV Driver-Training Certificate to a prospective employer, and motor carriers receiving and filing the certificates.

*Estimated Number of Respondents:* 31,500 drivers and motor carriers (750 new LCV drivers plus 15,000 current LCV drivers plus 15,750 motor carriers).

*Estimated Number of Responses:* 31,500 (750 new LCV drivers plus 15,000 current LCV drivers plus 15,750 motor carriers).

*Estimated Time per Response:* 10 minutes for preparation of LCV Driver-Training Certificate and an additional 10 minutes for the use of the LCV Driver-Training Certificate during the hiring process each year.

*Expiration Date:* February 28, 2011.

*Frequency of Response:* At various times during the year.

*Estimated Total Annual Burden:* 2,750 hours. The total number of drivers per year for whom this activity will occur consists of newly-trained LCV drivers (750) and current LCV drivers changing employers (15,000), a total of 15,750 drivers. The total annual information collection burden is estimated to be 2,750 hours: Preparation of LCV Driver-Training Certificate [750 newly trained LCV drivers × 10 minutes ÷ 60 minutes], and use of the certificate during the hiring process [15,750 total LCV drivers × 10 minutes ÷ 60 minutes]

*Definitions:* The LCV training regulations under 49 CFR part 380 are applicable only to drivers of "longer combination vehicles," defined as "any combination of a truck-tractor and two or more trailers or semi-trailers, which operate[s] on the National System of Interstate and Defense Highways (defined in 23 CFR 470.107) with a gross vehicle weight greater than 80,000 pounds" (49 CFR 380.105).

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: September 2, 2010.

**Kelly Leone,**

*Director, Office of Information Technology.*

[FR Doc. 2010–22458 Filed 9–8–10; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2010–0831]**

### Airport Improvement Program (AIP): Policy Regarding Access to Airports From Residential Property

**AGENCY:** Federal Aviation Administration (FAA).

**ACTION:** Notice of proposed policy; notice of proposed amendment to sponsor grant assurance 5; and request for public comment.

**SUMMARY:** This action proposes to amend and clarify FAA policy concerning through-the-fence access to a Federally obligated airport from an adjacent or nearby property, when that property is used as a residence and permits continuation of existing access subject to certain standards. This action also proposes to modify sponsor grant assurance 5, Preserving Rights and Powers, to prohibit new residential through-the-fence access to a Federally obligated airport. Current FAA policy discourages through-the-fence access to a Federally obligated airport from an off-airport residence. Owners of properties used both as a residence and for the storage of personal aircraft, sometimes called "hangar homes," have urged the agency to permit an exception to through-the-fence policy for residents who own aircraft. The FAA proposes to modify Airport Improvement Program (AIP) grant assurance 5, Preserving Rights and Powers, to clarify that airport sponsors are prohibited from permitting new through-the-fence access from residential properties. Pursuant to applicable law, the Secretary of Transportation is required to provide notice in the **Federal Register** and an opportunity for the public to comment upon proposals to modify or add new AIP assurances. The agency recognizes that there are airports at which residential through-the-fence access already exists. The FAA will not consider sponsors of these airports to be in violation of current grant assurances if the airport sponsor meets certain standards for control of airport operations and development; self-sustaining and nondiscriminatory airport rates; and compatible land use.

At present, there are 75 airports in the continental U.S. where residential through-the-fence access is known to exist. This represents less than 3 percent of the 3,300 airports listed in the FAA's National Plan of Integrated Airport Systems (NPIAS) and eligible for Federal investment. While the vast majority of airport sponsors do not have

residential through-the-fence access, due to the increasing number of requests to establish such access, particularly at general aviation airports, the agency has revisited the policy in order to establish clear guidance for the future.

**DATES:** Send your comments on or before October 25, 2010. The FAA will consider comments received on the Proposed Policy and the proposed grant assurance modification. Any necessary or appropriate revision to the Policy or the grant assurance modification resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register**.

**ADDRESSES:** You may send comments [identified by Docket Number FAA–2010–0831] using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the notice and comment process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. For more information, *see* the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Randall S. Fiertz, Director, Office of Airport Compliance and Field Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–5257; e-mail: *randall.fiertz@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Availability of Documents**

You can get an electronic copy of this notice and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.regulations.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Field Operations, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

**Authority for the Policy and Grant Assurance Modification**

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, sections 47107 and 47122 of Title 49 United States Code.

*Background*

Sponsors of airports that accept planning and development grants from the FAA under the Airport Improvement Program (AIP), 49 U.S.C. 47101 *et seq.*, agree to a list of standard conditions, or grant assurances. Similar obligations also attach to the transfer of Federal surplus property to airport sponsors and are often contained in surplus property deeds. These include responsibilities to retain the rights and powers necessary to control and operate the airport; to maintain the airport in a safe condition; to take reasonable steps to restrict land adjacent to the airport to compatible land uses; to allow access to the airport on terms that are reasonable, not unjustly discriminatory to any category of user; and to maintain a rate structure for airport fees that makes the airport as self-sustaining as possible.

A complete list of the current grant assurances can be viewed at: *http://www.faa.gov/airports/aip/grant_assurances/.*

Administration of the AIP, including sponsor compliance with grant assurances, is the responsibility of the FAA Associate Administrator for Airports. The FAA developed internal agency Order 5190, commonly referred to as the Airport Compliance Manual, which is used by agency employees in the administration of the AIP. On September 30, 2009, the agency issued FAA Order 5190.6B, Airport Compliance Manual; it superseded Order 5190.6A, which was in effect from 1989 to 2009. The new order was updated to reflect new statutory grant assurances and other pertinent statutory changes as well as changes in and clarifications of agency policy since 1989.

Typically, through-the-fence access allows an aircraft owner to store an aircraft at an off-airport property, and to use the airport by way of a taxiway that crosses the airport boundary and connects the owner's property or neighborhood to the airport's runway-taxiway system. Residential access to airports from residences was only briefly mentioned in Order 5190.6A. It defined through-the-fence access as where "an individual or corporation residing or doing business on an adjacent tract of land proposes to gain access to the landing area.* * *" Order 5190.6A otherwise only dealt with commercial through-the-fence access, and stated that when this type of arrangement "circumvents the attainment of the public benefit for which the airport was developed, the owner of the airport will be notified that the airport may be in violation of his agreement with the Government." 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.

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 one case, the firm managing the airport established a residential development around the airport. In another case, a developer marketed hangar homes on the airport itself, next to a taxiway. 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. The FAA did not consider this to reflect any change in policy under Order 5190.6A, but rather an interpretation of that guidance and underlying grant assurance obligations as it applied to circumstances not anticipated in 1989.

The revisions to Order 5190.6B reflected the agency's strong policy concerns about new trends in residential through-the-fence access, which had been expressed in letters to sponsors and developers. Order 5190.6B stated that the FAA would not support any through-the-fence agreement associated with residential use, under any circumstances, since that action would be inconsistent with the Federal obligation to ensure compatible land use adjacent to the airport. In response to requests from numerous airport sponsors, users, and FAA airport district office staff, the FAA issued draft Compliance Guidance Letter 2009–1—*Through-the-Fence and On-Airport Residential Access to Federally Obligated Airports*, on October 13, 2009. The purpose of the Compliance Guidance Letter was to reiterate the FAA's policy regarding through-the-fence agreements and outline criteria for FAA personnel's review of these agreements. This guidance also discussed appropriate corrective actions that should be developed to prevent future residential through-the-fence access and limit its expansion. The FAA circulated the draft Compliance Guidance Letter among aviation user groups for comments from October 15, 2009 through December 21, 2009.

There has been no corresponding need for clarification of the agency's policy on commercial through-the-fence access. Commercial through-the-fence access has always been discouraged, but is a fact of life at some airports and a necessity at others where there is not sufficient land on airport for providers of aeronautical services. The potential adverse effects of commercial through-the-fence access can be mitigated by the measures discussed in Order 5190.6B, and the FAA is not proposing any changes to policy on commercial access.

*FAA Review of the New Policy Statement and Public Outreach*

In response to informal comments received on these actions, the FAA Associate Administrator for Airports directed the Office of Airport Compliance and Field Operations to review the policy for residential through-the-fence access as stated in Order 5190.6B. The Office of Airport Compliance and Field Operations took several steps to obtain public views on through-the-fence access as part of its policy review. Between July 2009 and March 2010, the Office of Airport Compliance and Field Operations:

- Received comments from stakeholders with regard to residential through-the-fence access at an aviation membership association's convention.
- Accepted comments from interested aviation associations and their members on a draft compliance guidance letter on through-the-fence access.
- Met with aviation membership associations which commented on the issue.
- Met with airport representatives from Wittman Regional Airport in Oshkosh, Wisconsin, and observed a meeting with representatives from Sandpoint Airport in Idaho and the FAA's Northwest Mountain Regional Office staff. Both airports have existing residential through-the-fence access arrangements.
- Spoke with State aviation officials of States with residential through-the-fence access.
- Conducted site visits and met with airport sponsors, local tenants, and residents at several other representative airports with existing residential through-the-fence access. Locations visited included airports in Erie, Colorado; Independence, Oregon; Driggs, Idaho; and Oneida, Tennessee.

Independent of the specific review of through-the-fence policy, the Office of Airport Compliance and Field Operations issued new Order 5190.6B for public review and comment. Any necessary corrections will be included in an update of the Order. A notice requesting public comment was published in the **Federal Register** on October 13, 2009 (74 FR 52524). Comments were due on March 31, 2010. Comments on the provisions of the Order related to residential through-the-fence will be addressed in finalizing this Policy. We expect to update the Order to reflect this Policy. Other comments will be dealt with separately in updating the Order.

*Comments Received on Residential Through-the-Fence Access, July 2009–March 2010*

During its policy review, the Office of Airport Compliance and Field Operations received comments by written submission, by e-mail, and verbally in meetings. Commenters included persons with residential through-the-fence access at a Federally obligated airport; State aviation officials; airport management; local government officials; developers; the Aircraft Owners and Pilots Association (AOPA); the American Association of Airport Executives (AAAE); the Experimental Aircraft Association (EAA); and the National Air Transportation Association (NATA). Many commenters took the position that residential through-the-fence access is actually beneficial for an airport. Some other commenters recognized potential and actual problems with such access, but stated that existing access should be allowed to continue even if new access is not allowed. EAA urged that residential through-the-fence be allowed, and that new requests for access be approved at general aviation airports. AOPA would accept a policy against establishing new residential through-the-fence access arrangements, but believed that existing locations should be permitted to continue. AAAE was concerned about requiring sponsors to depict through-the-fence access on the airport layout plan because the sponsor would not be able to prevent the property owner from splitting the parcel and establishing a second access point not depicted on the airport layout plan. NATA would support a ban on new residential through-the-fence access and the elimination of existing uses.

Issues raised by one or more commenters can be summarized as follows:

*Comment:* Residential through-the-fence access provides a supportive community that likes aviation, will not complain about airport noise, and protects the airport in local politics.

*Response:* Owners of residential lots with through-the-fence access frequently commented that the airport benefits from such owners, because they support the airport and would not oppose aircraft operations like other residents. We agree that this is true up to a point. We accept that aircraft owners do not object to the presence of the airport, or to operations by others with similar aircraft. However, when faced with a change in operations at the airport that may affect the desirability of a nearby residence, for example operations by helicopters or larger aircraft types, a through-the-fence owner is just as likely to oppose the change as support it. It is a guiding principle of the National Plan of Integrated Airport Systems (NPIAS) that "[a]irports should be flexible and expandable, and able to meet increased demand and to accommodate new aircraft types." The FAA is concerned that owners of residential property next to an airport could attempt to limit the airport sponsor's flexibility to expand an airport or accommodate new aircraft types.

Secondly, while through-the-fence communities sometimes attempt to limit ownership to aircraft owners, there is no effective way to prevent turnover of these properties to non-aircraft owners at some point. When that happens, the airport may encounter significant local opposition from its immediate neighbors.

*Comment:* Hangar homes should be considered an exception to the FAA general policy that residences are an incompatible land use, because owners of hangar homes accept airport noise. A hangar home should not be considered a residential use; the need to locate it near an airport taxiway makes it an aeronautical use.

*Response:* It is longstanding congressional and FAA policy that airports should be operated in a way that minimizes the impact of aircraft noise on communities. One of the key means of implementing that policy is to limit land uses around airports to uses compatible with airport noise and operations. Residential use is not a preferred, compatible use for properties adjacent to public-use airports. As such, the FAA has awarded several hundred million dollars in AIP grants in the past three decades for acquiring noise buffer land, relocating homes, and insulating homes to achieve compatible land use. Simultaneously adopting a policy that encourages more homes near airports is counter to these efforts. Distinguishing between homes without hangars and homes with hangars does not eliminate the domestic characteristics that present additional challenges, such as the proximity of children and pets, to normal airport operations. In addition, not all residents are aircraft owners, examples being family members and tenants. Furthermore, it is not possible to guarantee that a residence owned by an aircraft owner now will continue to be in the future. Even aircraft owners may be motivated more as homeowners than as aircraft owners, when faced with a proposed expansion of the airport or introduction of new aircraft types that might affect living conditions or residential property values. Finally, once in place, a residential use is difficult to move or eliminate because homeowners expect to retain the use and value of their home indefinitely.

*Comment:* Residential through-the-fence communities provide valuable revenue to the airport operator.

*Response:* It is true that some residential through-the-fence users pay the airport for access. In a few cases, the airport operator has come to depend on that revenue. In cases where residential through-the-fence access rights already exist, the FAA believes that the airport should charge for that access, not only to support the airport but also to fairly distribute the recovery of airport operating and capital expenses across both tenants and non-tenant users of the airport. So, if an owner of land next to an airport has through-the-fence access to an airport, the owner should pay for that access. However, the potential for additional revenue to the airport does not justify the establishment of homes next to an airport. Also, the effect on revenue is not always positive. Storage of aircraft at off-airport lots with airport access can undermine the market for hangars and tie-downs on airport property.

*Comment:* Residential through-the-fence owners provide additional security at an airport.

*Response:* Residence of persons near the airport does not automatically translate into full-time surveillance. It is true that residents may notice suspicious activity, because they are familiar with the airport and are around more than persons who are just using the airport when they are flying or working on an aircraft. On the other hand, the existence of routine traffic through-the-fence from off-airport locations makes such activity less suspicious because it is expected. Also, just the existence of additional access points through the airport boundary tends to make the airport less secure, not more. The FAA consulted with the Transportation Security Administration (TSA) of the Department of Homeland Security to obtain TSA's view of this particular comment. While TSA does not directly regulate access at general aviation airports, that agency took the position that access points to an airport should be limited to the number necessary. TSA plans to undertake a separate review of this matter and the FAA will incorporate any recommendations resulting from that review.

*Comment:* The FAA hasn't identified any actual problem associated with the residential use aspect of through-the-fence access. Most examples of problems cited have been generic through-the-fence issues, and are not specific to residential use. The FAA's concern about residential use is not justified by information, noise complaints, studies or experience.

*Response:* It is true that the FAA has cited problems with residential through-the-fence access that are common to any type of through-the-fence access, including commercial uses. Problems have included the sponsor's inability or failure to be reimbursed for the access; interference with airport operation because of the location of access points; and impeding optimal airport layout and growth. As with commercial uses, these problems can be mitigated, and the Policy proposed would require such mitigation for existing residential through-the-fence access where possible.

There are concerns that are particular to residential through-the-fence access, however. As mentioned previously, owners of hangar homes are highly tolerant of current aircraft types and operations at the airport, but can be resistant to change. Residential through-the-fence communities can have substantial influence on decisions of the airport sponsor, and over time limit the sponsor's ability to take actions to accommodate new aviation demand. Commenters pointed to a lack of noise complaints in FAA files as evidence that current hangar home owners have not objected to airport operations. Such comments would of course be made to the airport sponsor or local government, not the FAA. But we would not expect complaints about current operations anyway. The problem is complaints about growth and new aircraft types, and resistance to the sponsor's accommodation of those changes. At airports where the nearby residents have successfully prevented airport expansion or access by different aircraft types, *e.g.* jets or helicopters, then there will be no complaints, but there will have been a real and adverse effect on the airport's obligations and role in the NPIAS.

*Comment:* In developing policy toward residential through-the-fence, the FAA should not apply the same rules to all airports; airports are different, and the policy should reflect the fact that what is a problem at one airport will not be at another.

*Response:* The FAA agrees that each airport has its own circumstances, and conditions can vary widely among different airports. Differences might include, for example, the number of operations and variety of aircraft types, the number of owners with through-the-fence privileges, the number and location of access points across the airport boundary, the nature and duration of the owners' access rights, and the ability of State and local government to influence land use around the airport. Notwithstanding the different circumstances at each airport, however, there are common principles that apply to every sponsor of a Federally obligated airport. These include the obligations to maintain the rights and powers necessary to control operation and development of the airport, to treat similarly situated users in a similar manner, and to charge airport fees that are nondiscriminatory and that make the airport as self-sustaining as possible. The revised Policy proposed by the FAA will apply these general principles to the fact situation at each airport with existing through-the-fence access.

*Comment:* Even if there are potential problems with residential through-the-

fence access, they can be mitigated just like commercial through-the-fence uses.

*Response:* The FAA agrees that many actual and potential problems with residential through-the-fence access can be mitigated with the adoption of certain measures. Mitigation might help assure that the airport sponsor remains in control of airport access, collects reasonable fees to cover costs, and operates and maintains the airport in a safe manner. The revised Policy proposed in this notice will require sponsors of airports with existing through-the-fence access to take such measures if they have not already done so.

However, there are factors with residential use that are different from commercial uses and that cannot be entirely resolved by mitigation. Residential owners may resist change at the airport in order to protect the quality of life in residing next to the airport. Also, once in place, a residential use is difficult to move or eliminate because homeowners expect to retain the use and value of their home indefinitely. Accordingly, while the FAA agrees that there are mitigation measures that should apply to existing through-the-fence locations, that mitigation cannot resolve all problems.

Second, some of the mitigation measures mentioned by commenters are of limited effect, or may not be available at all airports. For example, a local government can zone a hangar home community as joint residential-aviation use, but that zoning would not prevent a non-aircraft owner from purchasing property there. Moreover, many States and jurisdictions do not have sufficient zoning power to adopt even this limited measure. Another example offered by commenters is a covenant not to complain about aircraft noise. Avigation easements and covenants can acknowledge the property is subject to airport noise and emissions, and effectively prevent the property owner from filing suit against the airport for aviation impact. No easement or covenant can prevent an owner from taking a position on local policy, however. Even the most restrictive covenant would not prevent a through-the-fence owner from working against the expansion of the airport or accommodation of new aircraft types. While the FAA supports these mitigation measures where available, they cannot completely eliminate the potential adverse effects of residential through-the-fence access.

*Comment:* If the FAA forces the termination of residential through-the-fence access by aircraft owners, the properties will be bought by non-aircraft owners, thereby bringing about the exact result that the FAA seeks to avoid: general residential use immediately adjacent to the airport.

*Response:* The FAA agrees with the comment. The FAA took this into consideration in its approach to both existing and new residential through-the-fence access. For existing access, the FAA will not require termination of existing arrangements, and will encourage mitigation measures that keep through-the-fence properties in the hands of aircraft owners to the extent possible. However, the same consideration argues against the establishment of any new residential through-the-fence access. This is because every property with such access can potentially be acquired in the future by an owner who has no interest in airport access, whether or not airport access is available.

*Comment:* The FAA changed its policy on residential through-the-fence access after years of not objecting to residential through-the-fence uses, and after hundreds of homeowners had already invested in hangar home properties. Even a policy that existing leases may not be renewed has a substantial adverse effect on the value of the property.

*Response:* The FAA would not characterize its approach to residential through-the-fence access in recent years as a policy change. Rather, the through-the-fence policy addressed an issue that was not fully considered in the agency's general compliance policy statement in 1989. However, we would acknowledge that the lack of clear guidance on this issue before the mid-2000's resulted in the inconsistent application of policy in FAA regional offices. Some older hangar home developments even had regional FAA approval. In visiting locations with residential through-the-fence access and talking to property owners, the FAA understands the effect of terminating airport access on the value and utility of properties that were acquired and developed to take advantage of airport access. For these reasons, the FAA is not proposing to require airport sponsors to terminate existing residential through-the-fence access at their airports. The FAA recognizes that Order 5190.6B and the draft Compliance Guidance Letter were not clear on how the FAA expected sponsors to manage existing residential through-the-fence arrangements. This Policy proposes clear guidance for these sponsors.

*Comment:* The FAA should allow not only through-the-fence access for hangar homes, but should allow hangar homes on the airport itself.

*Response:* The few cases where it may be appropriate to locate a residence on airport property are already listed in Order 5190.6B, including crew quarters and housing for key airport personnel in isolated areas. On-airport homes have the same problems as through-the-fence uses for airport rights and powers and oftentimes compatible land use. In addition, on-airport residences raise the additional concerns of personal safety, with pedestrians and vehicles in the vicinity of taxiways. In extremely unusual situations such as wilderness areas with no permanent road access to the airport and local community, the FAA has the authority to consider circumstances on a case-by-case basis. Accordingly, the FAA is not proposing any change to its effective prohibition on hangar homes on airport property.

*Comment:* The grant assurances, and the statute on which they are based, have not changed. The FAA previously interpreted this statute to allow residential through-the-fence access, and reversed this interpretation with no change in the underlying law.

*Response:* It is true that the grant assurances that affect through-the-fence access have not substantially changed since enactment of the Airport and Airway Improvement Act of 1982. It is clear from the FAA's 1989 compliance order, Order 5190.6A, that the agency recommended against any new through-the-fence access. The discussion in Order 5190.6A also indicates that the agency understood through-the-fence access to be almost entirely a commercial issue. At the time Order 5190.6A was issued, the agency was not confronted with a proliferation of residential through-the-fence uses or some of the actual problems caused by such uses. When those issues did arise, the FAA issued more specific policy guidance on through-the-fence access on a case-by-case basis. The agency continues to believe that residential through-the-fence access is not consistent with the characteristics of a Federally obligated public-use airport and has the strong potential to create grant assurance violations which are often difficult for a sponsor to correct. At the same time, however, the agency recognizes that a number of residential through-the-fence locations exist. Some of these uses could have resulted from the lack of specific guidance in FAA compliance documents, although in some cases the access was established over the objection of an FAA regional office. In any event the FAA proposes to accept the existence of these locations, and find the airport sponsor in compliance when the airport sponsor applies certain mitigation measures to

make the access consistent with the sponsor's grant assurances. However, with regard to the establishment of new through-the-fence arrangements, the FAA proposes amending the sponsor grant assurances to prohibit this practice in the future.

*Comment:* The FAA's policy is not being evenly applied in all regions. In at least one region, airports appear to be subject to a zero-tolerance policy on residential through-the-fence access that is not being applied in other regions.

*Response:* The Proposed Policy and amendment to the sponsor grant assurances will provide clear national guidance for all FAA regional and field offices and establish a standardized approach to through-the-fence issues in all regions.

*Comment:* The FAA should allow States and local communities to decide if residential through-the-fence access is appropriate for their airport.

*Response:* Airports become eligible for Federal assistance when the FAA determines they can provide important benefits to the national airport system. In turn, the FAA provides financial investments, through AIP grants, for the capital improvement programs of these airports. The FAA has a fiduciary responsibility to ensure that capital improvements made with AIP grants will serve their intended purpose for the useful life of the investment. The FAA believes that impacts associated with residential through-the-fence access can compromise the longevity of its investments. Allowing individual States and local communities to establish a different access policy for each airport could decrease the overall utility of the national airport system. Moreover, the FAA has a statutory obligation to enforce the terms of AIP grants, including the assurances made by airport sponsors.

*Discussion of Options Considered*

In reviewing the policy stated in Order 5190.6B, the FAA considered a range of possible policy approaches, as recommended in one or more public comments received. The agency considered the following four general policy approaches, with variations:

- Allow both new and existing residential through-the-fence access, on certain conditions.
- Prohibit new residential access, but allow existing access to continue under certain conditions on a case-by-case basis.
- Prohibit new residential through-the-fence access, and require sponsors to eliminate existing access.
- Allow States or airport sponsors to decide, as a matter of State and local law, whether to allow residential through-the-fence access at each airport.

The agency's review of the policy options listed above can be summarized as follows:

*Allow both new and existing residential through-the-fence access, on certain conditions.* The threshold issue for review of this policy is whether residential through-the-fence access is a problem for Federally obligated airports or not. The FAA has consistently discouraged through-the-fence access of any kind. In recent years, the FAA has objected to these arrangements as a result of actual and potential grant assurance violations. As part of its review, the FAA considered the potential problems for airports with residential through-the-fence access, but also the comments from property owners and others favoring such access for general aviation airports. After carefully balancing competing considerations of public policy, we have concluded that this access creates significant operational and land use problems for airport sponsors and should be banned in the future (at Federally obligated airports). Even at locations where off-airport property owners are charged a reasonable fee by the sponsor and the access is not causing current operational problems for the airport, residential through-the-fence access potentially diminishes the sponsor's ability to expand and improve the airport to meet current and future demand.

The FAA remains concerned that owners of residential property next to an obligated airport have strong incentives to limit the benefits of the Federal investments made at the airport, even if they are aircraft owners, if their residential quality of life or property values would be adversely affected by proposed airport improvements or increases in service. While through-the-fence communities sometimes attempt to limit ownership to aircraft owners, there is no very effective way to prevent sale or lease of these properties to non-aircraft owners in the future. If that happens, the airport may encounter significant local opposition from its immediate neighbors. Finally, once established, these access rights can be very difficult for a sponsor to change or eliminate.

*No new residential access, but allow existing access to continue on certain conditions.* Even if no new access from residential properties is created, the FAA believes there are approximately 75 airports in the continental U.S. with some degree of existing residential through-the-fence use. As part of this review, FAA staff visited some of these airports and spoke with affected property owners and airport sponsors. It is clear that through-the-fence access to residential property has existed at some locations for many years, and that some property owners have relied on permission for airfield access in purchasing their property and building hangar homes. Termination of the access at these existing locations could substantially reduce the value of the owners' properties and interfere with the owners' expected use of these properties in the future. In certain cases FAA regional offices were notified but took no action to discourage sponsors from permitting such access. In other instances, the sponsor granted through-the-fence access rights without addressing the FAA's concerns and objections. At some airports, access rights are perpetual, while at others the rights can be terminated only after expiration of a lease.

Given the potential for hardship and adverse effect on property values, the FAA does not believe a general policy against residential through-the-fence access should be applied retroactively to require sponsors to terminate existing uses. There are various actions that can be taken by airport sponsors and the property owners with access rights to help mitigate potential adverse effects. Where access rights could legally be terminated, but there is no immediate reason for the sponsor to do so, there would be little adverse impact from permitting those rights to continue until conditions at the airport change. For these reasons, the Policy proposed in this notice permits sponsors to continue existing access subject to standards for compliance.

The agency's acceptance of existing residential through-the-fence access does not constitute "grandfathering" of access rights at these airports. Rather, the Proposed Policy defines standards of compliance for an airport sponsor's control of access from residential property. Airport sponsors would be required to present the FAA with a plan for how the airport meets these standards, as a condition of continuing eligibility for future AIP grants and NPIAS status. The agency is aware that some sponsors and local governments have more rights and governmental authority to control activity around and adjacent to the airport than others. Agency staff would take these differences into account in reviewing the access plans provided by each sponsor. Where legal rights to through-the-fence access expire, the sponsor would be able to extend the rights for fixed periods with FAA concurrence

until there is a reason to terminate or modify the access.

Once a sponsor's residential through-the fence access plan is reviewed and accepted by the FAA, the FAA would consider the sponsor to be in compliance with its grant assurances although the airport has existing residential through-the-fence access. The FAA would allow sponsors a reasonable time to submit and obtain FAA acceptance of access plans, and would not initiate grant enforcement based on existing residential through-the-fence access per se during the review period. As proposed, the FAA would require an airport's access plan before the sponsor notifies the FAA of its intent to apply for an AIP grant, beginning in Fiscal Year 2013.

Where an airport sponsor is unable to meet the standards for existing access, the FAA would consider the future role of the airport in the NPIAS and the type of AIP investment justified. In the unlikely event a sponsor refuses to take available actions to meet the basic compliance standards, the FAA would consider grant enforcement at that time.

*No new residential through-the-fence access, and eliminate existing access.* For the reasons already discussed, the FAA does not believe that it is necessary or warranted to require sponsors to eliminate all existing residential through-the-fence access. Instead, the agency proposes a Policy that would allow existing access to continue on certain terms. In cases where an airport sponsor exercises its proprietary authority to limit or terminate its existing residential through-the-fence access, the FAA will not consider such action to violate Federal law. Residential through-the-fence access is not protected by the Federal grant assurances, and off-airport tenants would have no recourse under 14 CFR Part 16.

*Allow States or airport sponsors to decide whether to allow residential through-the-fence access at each airport.* Several commenters urged that the FAA take no position at all on residential through-the-fence access, at least at airports in the category of smaller general aviation airports. Instead, commenters urged that the FAA recognize the authority of each airport, or its State or local government, to decide as a matter of State and local, rather than Federal, law whether to allow residential through-the-fence access at the airport.

The FAA has a statutory obligation to enforce the terms of AIP grants, including the assurances made by airport sponsors. The FAA is ultimately responsible for interpreting and enforcing compliance with AIP grant assurances. Moreover, the Government Accountability Office's May 1999 report, *General Aviation Airports, Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement,* recommended the FAA exercise greater oversight with regard to monitoring grant assurance compliance. Interpreting through-the-fence policy to be a matter of State and local, rather than Federal, law would likely result in a less consistent application of the policy. Accordingly, the FAA will retain responsibility for the establishment and enforcement of policy on residential through-the-fence access.

**Actions Proposed in This Notice**

The FAA proposes to take a two-prong approach to through-the-fence access to obligated airports from residential property:

1. The sponsor of an airport where residential through-the-fence access or access rights already exist will be considered in compliance with its grant assurances if the airport meets certain minimum standards for safety, efficiency, ability to generate revenue to recover airport costs, and minimizes the potential for noncompatible land uses consistent with standard sponsor grant assurance 21, Compatible Land Use.

2. The agency proposes to add a new paragraph to standard sponsor grant assurance 5, Preserving Rights and Powers, to prohibit a sponsor from allowing new through-the-fence access from a residential property.

In considering policy on through-the-fence access to federally obligated airports, the FAA's primary goals are to preserve the safety and efficiency of airports, and to ensure continuing public access to these airports as part of the national airport system. The viability and utility of a federally obligated, public use airport are best preserved by measures that:

- Ensure that airport sponsors retain the powers necessary to meet their obligations under the grant assurances and are able to maintain and develop the airport in the future. Also, while an airport operator is not obligated to expand airport facilities or property, it is a guiding principle of the National Plan of Integrated Airport Systems (NPIAS) that "[a]irports should be flexible and expandable, and able to meet increased demand and to accommodate new aircraft types."
- Ensure that airports have sufficient revenue to be as self-sustaining as possible and meet capital and operating requirements.
- Minimize encroachment of noncompatible land uses around the airport. Noncompatible land uses around an airport can increase the possibility of access restrictions, prevent airport improvement and expansion in response to aviation demand, and even threaten the continuing existence of the airport.

The FAA considers residential use of airport property or of properties within the airport's 65 DNL dB noise contour to be incompatible with the operation of a public use airport, whether or not the residents are aircraft owners. Ultimately, location of any residences near an airport boundary will increase the potential for opposition to expansion or increased use of the airport. Also, regardless of compatibility, the through-the-fence access itself can cause operational and land use problems for the sponsor and other airport users.

At the same time, the FAA recognizes that there are federally obligated airports where residential through-the-fence access already exists. In many of these cases the owners have legal rights for through-the-fence access to the airport.

*1. The Proposed Policy on Existing Through-the-Fence Access From a Residential Property*

In consideration of the foregoing, the Federal Aviation Administration proposes to adopt the following Policy on existing through-the-fence access to a federally obligated airport from residential property:

Policy on Existing Through-the-Fence Access to Airports From a Residential Property

Applicability

This Policy applies to any federally obligated airport with existing residential through-the-fence access.

For the purposes of this Policy statement:

In this sense "access" means:

1. An access point for taxiing aircraft across the airport boundary; or

2. The right of the 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" through the fence is defined as any through-the-fence access that meets one or more of the following conditions:

1. There was a legal right of access from the property to the airport (*e.g.,* by easement or contract) in existence as of the date of this notice September 9, 2010; *or*

2. There was development of the property prior to the date of this notice

September 9, 2010, in reliance on the airport sponsor's permission for through-the-fence aircraft access to the airport; or

3. The through-the-fence access 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 September 9, 2010.

"Development" is defined as excavation or grading of land or construction of fixed structures.

"Additional through-the-fence access" is defined as:

1. 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 accommodated by an existing access point; or

2. Extension or renewal of an existing right to access the airport from residential property or property zoned for residential use.

"Transfer of access" through the fence is defined as one of the following transactions:

1. Sale or transfer of a residential property or property zoned for residential use with existing through-the-fence access; *or*

2. Subdivision, development, or sale as individual lots of a residential property or property zoned for residential use with existing through-the-fence access.

I. Existing Through-the-Fence Access From Residential Property at Federally Obligated Airports

Status of Existing Residential Through-the-Fence Access

The FAA believes there are approximately 75 airports in the continental U.S. in the NPIAS where some form of through-the-fence access for taxiing aircraft was permitted prior to the date of this notice. The details of this access vary widely from location to location. Differences among particular locations include the number of persons with access rights; the number of access points across the airport boundary; the point at which the through-the-fence taxiway connects with the airport runway-taxiway system; the nature of access rights, *e.g.*, by easement, contract, or informal permission of the sponsor; the amount and type of traffic at the airport; and the sponsor's ability to impose operating rules and charge fees related to the access. In some locations, the access right is currently held by a developer that may intend to transfer the right to airport access to a homeowners association or to individual homeowners.

Many of these through-the-fence uses have been in effect for years, sometimes decades. At some locations, property owners have perpetual rights of access to the airport under an easement that cannot be extinguished by the airport sponsor except possibly through condemnation. In other locations, owners have rights of access for a term of years under contracts that will expire in the future. In both cases, many individual owners have made a substantial investment in properties for use jointly as a residence and aircraft hangar. In every case that the FAA reviewed, owners had the expectation of continued through-the-fence access to the airport both for their personal aircraft use and for the maintenance of property values and protection of their investment.

Some sponsors and users have taken measures to mitigate potential problems with residential through-the-fence at their airports. These measures include:

- Making through-the-fence users subject to airport operating rules and standards, by regulation or by agreement;
- Collection of fees by the sponsor for airport access from off-airport properties;
- Through-the-fence owners waiver of rights to bring any action against the sponsor for aircraft noise and emissions;
- Through-the-fence owners execution of avigation easements in favor of the airport;
- Conditions, covenants or restrictions that limit ownership of property with through-the-fence access rights to owners or operators of aircraft; and
- Zoning that limits the use of properties with through-the-fence use to a joint aviation-residential use.

As a result, the actual and potential problems with residential through-the-fence access to an airport have been mitigated to a greater degree at some airports than at others.

Policy Toward Sponsors With Existing Residential Through-the-Fence Access

The agency understands that it is not practical or even possible to terminate through-the-fence access at many of those airports where that access already exists. Where access could be terminated, property owners have claimed that termination could have substantial adverse effects on their property value and investment, and airport sponsors seeking to terminate this access could be exposed to costly lawsuits. Accordingly, the FAA will not consider the existence of residential through-the-fence access by itself to be in noncompliance with the airport sponsor's grant assurances.

However, where through-the-fence access rights are unrestricted, or where the airport sponsor has lost powers necessary for the future operation and growth of the airport, the existing residential through-the-fence access can interfere with the sponsor's ability to meet its obligations as sponsor of a federally assisted public use airport. As discussed above, at some airports the sponsor and through-the-fence users have made an effort to implement a series of measures to address potential problems with through-the-fence access, by ensuring continuing sponsor control of airport access and limiting the effects of incompatible land use on the airport boundary. The FAA believes such measures can substantially mitigate the potential problems with residential through-the-fence access where it exists, and avoid future grant compliance issues. It is reasonable, therefore, to require sponsors of airports with existing residential through-the-fence access, to have certain measures in effect to protect its proprietary power and limit adverse effects of the through-the-fence access to facilitate compliance with its grant assurance obligations.

Accordingly, the sponsor of an airport where residential through-the-fence access or access rights already exist will be considered in compliance with its grant assurances if the airport depicts the access on its airport layout plan and meets certain standards for safety, efficiency, ability to generate revenue to recover airport costs, and mitigation of potential noncompatible land uses. Those standards are listed in section II, *Standards for compliance at airports with existing through-the-fence access.* An airport sponsor covered by this Policy must seek FAA approval before entering into any arrangement which would establish additional access through-the-fence. Sponsors are reminded that there is no right to aircraft surface access to the airport from off-airport locations, and no off-airport property owner will have standing to file a formal complaint with the FAA to challenge the sponsor's decision not to permit such access.

The FAA will review future requests for AIP funds to ensure that Federal investments are in proportion to the public use of the airport. Projects designed to exclusively serve residential through-the-fence users will not be eligible for AIP funding.

II. Standards for Compliance at Airports With Existing Through-the-Fence Access

The FAA understands that municipally-owned airports have varying degrees of zoning authority. For example, one airport may have strong zoning powers, while another may have none. Also, the nature of existing through-the-fence rights can greatly affect the sponsor's ability to implement measures to control access. Accordingly, the FAA does not expect every airport with existing residential through-the-fence access to adopt a uniform set of rules and measures to mitigate that access. However, the FAA does expect each such sponsor to adopt reasonable rules and implement measures that accomplish the following standards for compliance, to the fullest extent feasible for that sponsor. In general, the greater the number of residential through-the-fence access points and users of the airport and the higher the number of aircraft operations, the more important it is to have formal measures in effect to ensure the sponsor retains its proprietary powers and mitigates adverse effects on the airport.

The FAA's standards for compliance for any sponsor of an airport with existing through-the-fence access are as follows:

1. *General authority for control of airport land and access.* The airport sponsor has sufficient control of access points and operations across airport boundaries to maintain safe operations, and to make changes in airport land use to meet future needs.

2. *Safety of airport operations.* By rule, or by agreement with the sponsor, through-the-fence users are obligated to comply with the airport's rules and standards.

3. *Recovery of costs of operating the airport.* The airport sponsor can and does collect fees from through-the-fence users comparable to those charged to airport tenants, so that through-the-fence users bear a fair proportion of airport costs.

4. *Protection of airport airspace.* Operations at the airport will not be affected by hangars and residences on the airport boundary, at present or in the future.

5. *Compatible land uses around the airport.* The potential for noncompatible land use adjacent to the airport boundary is minimized consistent with grant assurance 21, Compatible Land Use.

These standards will be applied, on a case-by-case basis, in the FAA's evaluation of whether each airport with existing residential through-the-fence access meets the above requirements to the fullest extent feasible for that airport. In situations when access can be legally transferred from one owner to another without the airport sponsor's review, the FAA will treat the access as existing. Because the ability of some sponsors to control access has been compromised as a result of legal rights previously granted to through-the-fence users, existing access locations may be evaluated under the alternative criteria for some standards as indicated below, if applicable to that airport.

III. Standards for Compliance at Airports Proposing Additional Through-the-Fence Access at Airports Covered by This Policy

Once allowed, residential through-the-fence access is very difficult to change or eliminate in the future. This is because residential owners, more so than commercial interests, typically expect that their residential property will remain suitable for residential use and protected from adverse effects for a long time. Residential buyers and their mortgage lenders may ensure that the property is purchased with rights that guarantee no change in the access to the airport for decades, or indefinitely. Because each additional residential through-the-fence access location introduces the potential for problems for the airport in the future, and because this access is effectively permanent and resistant to change once permitted, the FAA believes that additional residential through-the-fence access at public use airports should be carefully scrutinized.

The following supplemental standards will be applied to the FAA's case-by-case review of sponsors proposing additional residential through-the-fence access at airports with existing access. In situations when the transfer of access from one owner to another requires the airport sponsor's concurrence, the FAA will treat the access as additional. The FAA will not approve requests for additional access that are inconsistent with the sponsor's grant assurances (excluding grant assurance 5, Preserving Rights and Powers, paragraph "g" as proposed in this notice). Furthermore, the sponsor will be required to demonstrate the following standards for compliance:

- The term of the access does not exceed twenty years.
- The sponsor provides a current (developed or revised within the last five years) airport master plan identifying adequate areas for growth that are not affected by the existence of through-the-fence access rights, OR the sponsor has a process for amending or terminating existing through-the-fence access in order to acquire land that may be necessary for expansion of the airport in the future.
- The location of the new access point does not prevent development or changes in use of airport property in the future.
- The location and use of the new access point does not cause or hold the potential for operational problems or a reduction in efficiency of ground operations at the airport.
- The sponsor will impose and enforce safety and operating rules on through-the-fence residents utilizing this access while on the airport identical to those imposed on airport tenants and transient users.
- The sponsor will charge through-the-fence residents utilizing this access fees that recover airport costs and fairly distribute the burden of airport fees across all airport users, both tenants and through-the-fence. Rates should increase on the same schedule as tenant fees. Fees that may be sufficient for this purpose include, without limitation:
- Tenant tie-down charges.
- Tenant 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.
- Through-the-fence residents will bear all the costs of infrastructure related to their access.
- Through-the-fence residents utilizing this access will grant the sponsor an avigation easement for overflight, including unobstructed flight through the airspace necessary for takeoff and landing at the airport.
- Through-the-fence residents utilizing this access, by avigation easement; deed covenants, conditions or restrictions; or other agreement, have acknowledged that the property will be affected by aircraft noise and emissions.
- Through-the-fence residents utilizing this access have waived any right to bring an action against the airport sponsor for operations at the airport associated with aircraft noise and emissions.
- The sponsor has a mechanism for ensuring through-the-fence residents utilizing this access will file FAA Form 7460–1, Notice of Proposed Construction or Alteration, if necessary.
- Where available, the airport sponsor or other local government has in effect measures to limit future use and ownership of the through-the-fence properties to aviation-related uses (in this case, hangar homes), such as through zoning or mandatory deed restrictions. The FAA recognizes this

measure may not be available to the airport sponsor in all States and jurisdictions.

• If the residential community has adopted restrictions on owners for the benefit of the airport (such as a commitment not to complain about aircraft noise), those restrictions are enforceable by the airport sponsor as a third-party beneficiary, and may not be cancelled without cause by the community association.

• The additional access is consistent with and depicted on the approved or proposed Airport Layout Plan (ALP).

IV. Process and Documentation

A. Existing Residential Through-the-Fence Access

1. *General.* The sponsor of an airport with existing residential through-the-fence access will be considered in compliance with its grant assurances, and eligible for future grants, if the FAA determines that the airport meets the applicable standards listed above under *Standards for compliance at airports with existing residential through-the-fence access.* The sponsor may demonstrate that it meets these standards by providing the FAA Airports District Office (ADO) or Regional Airports Division with a written description of the sponsor's authority and the controls in effect at the airport ("residential through-the-fence access plan" or "access plan"). The regional division or ADO will review each access plan, on a case-by-case basis, to confirm that it addresses how the sponsor meets each of these standards at its airport. The regional division or ADO will forward its recommendations regarding each access plan to the Manager of Airport Compliance. Only the Manager may accept an airport sponsor's residential through-the-fence access plan. In reviewing the access plan, the Manager may consult with the Transportation Security Administration (TSA). The FAA will take into account the powers of local government in each State, and other particular circumstances at each airport. In every case, however, the access plan must address each of the basic requirements listed under II of this Policy.

2. *Residential through-the-fence access plan.* The FAA will require evidence of compliance before issuing an AIP grant, beginning in Fiscal Year 2013. FY 2013 and later grants will include a special grant condition requiring the ongoing implementation of these access plans. Generally the FAA will not award discretionary grants to the airport until the FAA accepts the sponsor's access plan as meeting the standards to the extent feasible for that airport. Therefore, a residential through-the-fence access plan should be provided no later than the October 1st of the fiscal year in which the sponsor will request an AIP grant (*i.e.*, sponsors that will request an AIP grant in Fiscal Year 2013 must submit an access plan no later than October 1, 2012; sponsors requesting an AIP grant in Fiscal Year 2014 must submit no later than October 1, 2013).

3. *Airport Layout Plan.* The FAA will require all residential through-the-fence access points to be identified on the airport's layout plan. A temporary designation may be added through a pen and ink change to immediately identify the locations on the airport property which serve as points of access for off-airport residents. Airport sponsors which are required to submit access plans will have three years from the date their access plan is accepted to initiate a formal ALP revision to fully depict the scope of their existing residential through-the-fence arrangements. The FAA may decline to provide AIP funds for costs associated with these formal ALP revisions.

A sponsor's failure to depict all residential through-the-fence access points may be considered an apparent violation of the sponsor's grant assurances, and the agency may consider grant enforcement under 14 CFR Part 16.

4. *FAA review.* The FAA's acceptance of the access plan represents an agency finding that the airport has met the compliance standards for existing residential through-the-fence access. The FAA will review the airport sponsor's access plan prior to approving any formal revisions to the airport's layout plan. An airport sponsor's failure to implement its access plan could result in a violation of the special grant condition and potentially lead to a finding of noncompliance.

5. *Airports currently in noncompliance.* Airports currently in noncompliance due to grant assurance violations related to through-the-fence access, such as grant assurance 19, Operation and Maintenance, will need to continue to work with ADO and regional division staff to establish an appropriate corrective action plan. An FAA-approved corrective action plan, once accepted by the FAA, will serve as the sponsor's access plan. The decision to restore the sponsor's compliance status will be made by the Manager of Airport Compliance. In cases where the airport's safety and utility have been compromised, the Manager may require the sponsor to take definitive steps to address those concerns before restoring the sponsor to a compliant status.

6. *Airports with existing residential through-the-fence access that do not meet the compliance standards.* The FAA recognizes that some airport sponsors will not be able to fully comply with the standards listed above, due to limits on the powers of the sponsor and/or other local governments, or on other legal limits on the sponsor's discretion to adopt certain measures. Other airports have the capability to adopt measures to satisfy the compliance standards but have not done so. The FAA will take the following action with respect to any obligated airport with existing residential through-the-fence access that does not meet the minimum compliance standards:

a. *Airports that serve a function in the NPIAS but cannot fully meet the through-the-fence compliance standards.* Where the airport still substantially serves its intended function in the NPIAS, but residential through-the-fence access at the airport will have an adverse effect on the airport's operations, its ability to grow, or its ability to accept new kinds of aviation use, the FAA will consider a reduced level of future AIP investment in the airport. FAA evaluation of investment needs will reflect any impairment in the airport's utility due to residential through-the-fence use. The sponsor will not lose eligibility for non-primary entitlement grants on the basis of the through-the-fence access, but will not be able to depend on receiving future discretionary grants for all eligible projects.

b. *Airports that no longer have significant value in the national system.* Where the residential through-the-fence access cannot be controlled by the sponsor, and use of that access adversely affects the airport's availability as a public use airport, the FAA will consider removal of the airport from the NPIAS consistent with the requirements of FAA Order 5090.3C *Field Formulation of the National Plan of Integrated Airport Systems (NPIAS).* The FAA may either take steps to recover unamortized grant funds, or may leave grant assurances in effect for the life of existing grants but award no new grants.

B. Requests for Additional Residential Through-the-Fence Access at Airports Covered by This Policy

As of the date of this notice September 9, 2010, a sponsor proposing additional access must submit a current airport master plan and a revised residential through-the-fence access

plan as detailed below. A sponsor proposing to establish additional access points must also submit a revised Airport Layout Plan. The regional division or ADO will forward its recommendations regarding each request for additional access to the Manager of Airport Compliance. Only the Manager may approve an airport sponsor's request for additional access. In reviewing the proposal, the Manager may consult with TSA.

1. *Master Plan.* A sponsor wishing to permit additional (including proposals to extend or renew existing access agreements) residential through-the-fence access must submit a recent airport master plan to the ADO or Regional Airports Division. The FAA considers a master plan to be recent if it was developed or updated within the past five years. The master plan should explain how the sponsor plans to address future growth, development, and use of the airport property over the next twenty years.

2. *Residential through-the-fence access plan.* The sponsor is responsible for revising its access plan, as discussed under section IV.A.2 of this Policy, to reflect how it will meet the standards for compliance for the additional access. Once accepting the revised access plan, the FAA will condition future AIP grants upon its ongoing implementation.

3. *Application to approve revised Airport Layout Plan.* A sponsor wishing to permit additional residential through-the-fence access by establishing a new access point must submit a proposed ALP revision to the ADO or Regional Airports Division, depicting the point of access and associated airport infrastructure required for linking the access point to the airport runway/taxiway system. The sponsor should also submit information on the aircraft types and number of aircraft expected to use the additional access proposed. The FAA will not approve any change to the airport's ALP that appears inconsistent with the sponsor's grant assurances or that adversely affects the safety, efficiency, or utility of the airport. The FAA may decline to provide AIP funds for costs associated with these formal ALP revisions.

A sponsor's failure to depict all residential through-the-fence access points may be considered an apparent violation of the sponsor's grant assurances, and the agency may consider grant enforcement under 14 CFR Part 16.

4. *Continuing obligations.* Once the revised access plan and if required the revised ALP depicting the new access point are accepted by the FAA, the additional residential through-the-fence access is considered existing residential through-the-fence access, and the sponsor must comply with the continuing obligations for sponsors of airports with existing residential through-the-fence access, as described in section IV.A of this Policy.

V. Eligibility for AIP Grants

A. *General.* Beginning in Fiscal Year 2013, a sponsor will be required to submit their residential through-the-fence access plans prior to notifying the FAA of its intent to apply for an AIP grant. However, the FAA will review subsequent grant applications from each such sponsor to ensure that the requested grant of AIP funds would primarily serve the airport's public function in the national airport system. The FAA will limit the Federal investment in airport infrastructure and facilities to an amount related to general public demand at the airport.

B. *Public infrastructure and facilities with substantial benefit to private through-the-fence users.* Where private residential developments with through-the-fence access receive value from access to Federally assisted airport infrastructure and facilities, the FAA will expect the private users to share in those capital costs.

C. *Exclusive or primary private benefit.* On-airport infrastructure and facilities used exclusively or primarily for accommodation of through-the-fence users are considered private-use and are ineligible for AIP grants.

*2. The Proposed Amendment to the Standard AIP Sponsor Assurances*

The FAA considers a sponsor's consent to any new permission for through-the-fence access to the airport from a residential property to be inconsistent with the sponsor's grant assurances, specifically, the obligation to maintain rights and powers to control airport development and operation. Permitting such access to the airport may also result in violations of the obligation to impose a reasonable, not unjustly rate structure that makes the airport as self-sustaining as possible, and the obligation to restrict areas adjacent to the airport to compatible land uses. While some commenters argued that many existing residential through-the-fence uses have not caused apparent problems for the airport, the problems for airports and access to the national airport system are not always evident or important to the through-the-fence users themselves. For example, the interests of commercial and transient users may create a demand for expanded use of the airport or expansion of airport property, both of which could be adversely affected by the existence of residential properties on the airport boundary. This is inconsistent with the expectation that Federally obligated airports will be able to accommodate new demand.

Once allowed, residential through-the-fence access is very difficult to change or eliminate in the future. This is because residential owners, more so than commercial interests, typically expect that their residential property will remain suitable for residential use and protected from adverse effects for a long time. Residential buyers and their mortgage lenders may ensure that the property is purchased with rights that guarantee no change in the access to the airport for decades, or indefinitely. Because each new residential through-the-fence access location introduces the potential for the airport sponsor to have problems meeting its obligations under the sponsor grant assurances in the future, and because this access is effectively permanent and resistant to change once granted, the FAA believes that new residential through-the-fence uses at public use airports should not be established.

Accordingly, the FAA will consider a new through-the-fence access arrangement from a property used as a residence or zoned for residential use to be an apparent violation of the sponsor's grant assurances, and the agency may investigate any report of such action for possible enforcement under 14 CFR Part 16. Any action taken to strengthen, memorialize, or codify existing access in perpetuity beyond that described in an FAA approved residential through-the-fence access plan at an airport with existing access will also be considered a new grant of through-the-fence access. The sponsor will of course have the opportunity to present information and arguments to the FAA during the Part 16 process.

In consideration of the above, the FAA proposes to add new paragraph g. to standard AIP sponsor assurance 5, to read as follows:

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

* * * * *

5. Preserving Rights and Powers.

* * * * *

g. It 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 zoned for residential use, to taxi an aircraft between that property and any location on airport.

Issued in Washington, DC, on August 27, 2010.

**Randall Fiertz,**

*Director, Airport Compliance and Field Operations.*

[FR Doc. 2010–22095 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its denial of 97 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director Medical Programs, (202) 366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption." The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 97 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this Notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 7 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application:

Larry Cornelius, William M. Dunn, Thomas C. Furcht, Michael E. Herrera, Jr., William Moore, Steve Scriven, Carey A. Willoughby

The following 15 applicants had no experience operating a CMV:

Leon Andrews, Clay Burns, Tracy E. Duke, James R. Gladden, Yi D. Guo, Eric G. Harmann, Meridith J. Karppinen, Jackson D. Mason, Thomas G. Moffett, Kenneth Olsen, Gabriel A. Oubre, Chris Patton, Carlos Quezada, Angelina Rayes, David G. Stringer

The following 27 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency:

James R. Bodine, Robert L. Borsh, Larry E. Carter, Albert M. DiVella, Steven Gahart, Martin E. Holden, Lee J. Hollister, Steven M. Keller, Jr., Ray V. Kuhaneck, Christopher Love, Frank S. Martinez, William M. Mercer, Ronald S. Milkowski, Noel V. Munoz, Curtis A. Norris, John P. O'Day, William Offord, Paul C. Pallini, Jerry L. Parks, Douglas L. Peterson, Charles D. Settles, Raeford W. Sink, William J. Statts, Robert D. Swaite, Edwin Treloar, Jr., Ronald Turner, Brent Wheeler, Jr

The following 12 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Ale Algarra, Lee S. Angelo, Eli J. Borkholder, Steven Keyes, Scott Murphy, Dennis R. Overman, Michael J. Peschong, Harry W. Richards, David Smith, Jeffrey M. Thorpe, Charles Watts, Donald Wright

The following 10 applicants did not have sufficient driving experience during the past 3 years under normal highway operating conditions:

Rick A. Ervin, Stephen P. Goodall, John R. Kelly, Osvaldo R. Maldonado, Frank G. Merrill, Alberto Mireles, Jr., Montie Price, Daniel R. Rosas, David M. Sims, Stephen W. Verrette

One applicant, Albert D. Agardi, had more than 2 commercial motor vehicle violations during the 3-year review period and/or application process. Each applicant is only allowed 2 moving citations.

One applicant, William R. Hammond, had commercial driver's license suspensions during the 3-year review period for moving violations. Applicants do not qualify for an exemption with a suspension during the 3-year period.

One applicant, John L. Broadway, had 2 serious commercial motor vehicle violations within a 3-year period. Each applicant is only allowed a total of 2 moving citations, 1, which can be serious.

One applicant, Kerrie L. Smith, did not have verifiable proof of commercial driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

The following 3 applicants did not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the 3-year period:

Adam O. Carson, Joe H. Saine, Joseph W. Schmit.

One applicant, James McKnight, did not have an Optometrist/Ophthalmologist willing to state that he is able to operate a commercial vehicle safely with his vision deficiency.

The following 10 applicants were denied for miscellaneous/multiple reasons:

Carl H. Block, Robert D. Fink, Felix M. Gonzalez, William A. Green, Tina L. Hernandez, Ramon L. Suarez, Clarence Taylor, Reginald D. Taylor, Ricky A. Teel, Jr., Cardell F. Thomas

One applicant, William A. Rochester, was disqualified for holding 2 commercial driver's licenses simultaneously.

One applicant, Soledad R. Martinez, did not meet the vision standard in his better eye.

The following 6 applicants met the current federal vision standards. Exemptions are not required for these applicants that meet the current regulations for vision:

A. B. Brown, Ryan M. Cook, Brian R. Hastins, Terry A. Jordan, Daniel Provencio, Keith Snyder.

Issued on: August 28, 2010.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 2010–22538 Filed 9–8–10; 8:45 am]

BILLING CODE 4910–EX–P

# HEARING ON RESIDENTIAL THROUGH–THE-FENCE AGREEMENTS AT PUBLIC AIRPORTS: ACTION TO DATE AND CHALLENGES AHEAD

**Wednesday, September 22, 2010**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
WASHINGTON, DC.

The Committee met, pursuant to call, at 10:13 a.m., in room 2167, Rayburn House Office Building, the Honorable James Oberstar [Chairman of the Full Committee] presiding.

Mr. OBERSTAR. The Committee on Transportation and Infrastructure will come to order. Apologies from the Chair for being delayed; the traffic jams had traffic jams this morning. I like August much better, I told Mr. Petri; there aren't as many people around Washington; traffic isn't so horrible.

This morning we gather to review a very intriguing subject that has existed for some time but hasn't come to the fore as a subject of public policy concern in all of my 25 years of working on aviation issues, residential through-the-fence agreements at public airports. Today, we are exploring the effects of residential through-the-fence agreements at the Nation's public airports. We are seeking a balance between the interests of homeowners who own and operate aircraft, and the government and the public at large, who have invested substantial amounts of money to develop airports.

When this issue came up, I thought immediately of the former president of AOPA, Phil Boyer, who was sent off to the sunset in a lovely event right here in this room, in fact, among other events that were done for him, with a picture of Phil rolling his airport out of his hangar, to which his home was attached, and moving right over to the adjacent airport.

That is really what this is about, agreements between the State and local governments who own and operate the airports, and, on the other hand, people who have land adjacent to the airports. These colloquially called through-the-fence agreements exist for a very unique purpose: they allow homeowners to park their personal aircraft at home, and taxi the aircraft to and from airport runways and taxiways at their leisure. I thought of that this morning. It might have been a lot easier to get to downtown Washington than to struggle through the traffic.

These are people who are very keen on aviation, who do service to the Nation promoting general aviation; they watch over the airport. They have invested in a lifestyle that allows them to support their airports and to support general aviation. And a majority of those who have the privilege or negotiated the agreement to have

through-the-fence access exercise their privilege with restraint and a sense of civic responsibility.

Yet, there are challenges. If you read, as I did last night, through all the testimony, there are some very intriguing comments. Challenges for the FAA, for local airports, and homeowners, challenges that have developed because of these agreements. In certain situations, the agreement may hold back airport development; it may prevent an airport from expanding; it may prevent critical safety improvements; it may even result in the access holders' improper use of airport property for non-aviation purposes.

Since a year ago, the FAA has approved more than $2.8 billion in Federal grants for airport infrastructure. They are made to support our national system of integrated airports. Each of them has a role in each I say as an indispensable part of our national airport system. When these through-the-fence agreements become a constraint on airport development, or when they create safety issues that limit the ability of pilots to use an airport, then that return on investment is diminished. So there are some situations, there are cases where that in fact is happening, according to the documentation we have received that airports and the FAA has supplied for us.

Last year, FAA began to deal with the issue by publishing a policy that would discourage through-the-fence agreements. The FAA typically received a large number of comments on the policy. Many took a rather opposite view of the decision to discourage agreements and some are uncertain about the future of such through-the-fence agreements in the aftermath of FAA'S publication of that policy.

In September of this year, just a few days ago, the FAA published revisions to its policy that take into account some of the criticisms that they received. Under the FAA proposals, homeowners will be able to continue to enjoy access when their airports comply with reasonable requirements to ensure that all points of access are accounted for and mapped. Homeowners and airport owners must work to ensure that, in the future, these through-the-fence access agreements do not establish or lead to safety issues or legal issues that FAA has documented in the past.

We will hear from Kate Lang, of FAA, the Office of Airports, who has been doing a splendid job in that position for many, many years; is now the acting. Maybe some day they will do the right thing and make her the Director. I also look forward to hearing other witnesses who have personal experience and expertise on these issues.

I especially want to thank our Committee colleague, Congressman Graves, Missouri Graves, for bringing this issue to my attention and to the Committee's attention. The gentleman has been a very strong supporter of general aviation; is a knowledgeable and vigorous advocate for general aviation. When he says there is an issue, we pay attention and we have to address those issues that are raised.

And also Mr. Schrader, whom I saw just a few weeks ago in Portland at a bridge event, reconstruction and repainting and realignment. It was a great infrastructure day.

Now I will yield to my very good friend, the Ranking Member, Mr. Petri.

Mr. PETRI. Again, thank you very much, Mr. Chairman, for holding this hearing today.

Residential through-the-fence agreements are not new. In fact, some agreements date back to the 1970's and others were drafted with the assistance and approval of local FAA officials. Simply put, a residential through-the-fence agreement is an agreement between an airport operator and a private landowner who owns residential property adjacent to the airport, commonly referred to as a hangar home. The agreement sets forth the terms and conditions for the private landowner to have direct access to the airport from his or her own property.

While the Federal Aviation Administration has never been a huge fan of residential through-the-fence agreements, in 2009, the agency proposed to eliminate all residential through-the-fence agreements. Earlier this month, after receiving hundreds of comments on the 2009 proposal, the FAA published new guidance and again asked for public comment. In its recently published document, the FAA proposes to prohibit any new residential through-the-fence agreements while requiring a two-year review of existing agreements and a review upon renewal of any existing agreements.

This is an issue that impacts a very small universe of public general aviation airports in the United States. Of the 3,300 airports in the National Plan of Integrated Airport Systems, the FAA has provided a list of only 75 public general aviation airports with residential through-the-fence agreements, which represents less than 3 percent of all public airports in these United States. But for those airports and landowners impacted by this change in FAA policy, this is a very important property right and aviation issue.

Opponents of residential through-the-fence agreements, including the FAA, claim that these agreements are more trouble than they are worth and allow incompatible land use near airports that will constrain future airport development. Residential through-the-fence agreements may not make sense at every airport, I am sure they don't, but they do make sense at many locations and in some communities provide much needed aviation and local property tax revenue.

While there may be isolated issues at some locations, in general, hangar homes are owned by aviation enthusiasts who love the industry and lifestyle. What better neighbors could a general aviation airport ask for?

Proponents of residential through-the-fence agreements also point out that airports should have the flexibility to enter into these agreements if they want to, and can remain in compliance with their grant assurances. After all, airport authorities are locally accountable government entities.

Today we have before us the FAA and representatives of interested groups to testify about residential through-the-fence agreements. I am pleased that parties on both sides of the issue have joined us here today to give us their insights. It is important that the Committee hear from all sides of this issue to gain a better understanding of what residential through-the-fence agreements are, who is impacted, what issues are related to the use of such agree-

ments, and what effect the FAA'S proposed guidance will have on private property rights and on small airports and communities.

I want to thank the witnesses for joining us today and look forward to hearing from them.

And before I yield back, I would ask that statements by the Experimental Aircraft Association and the Aircraft Owners and Pilots Association be made part of the hearing record.

Mr. OBERSTAR. Without objection, so ordered.

[The referenced information follows:]

AIRCRAFT OWNERS AND PILOTS ASSOCIATION
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www.aopa.org

# Statement of Craig L. Fuller, President Aircraft Owners and Pilots Association

*before the*

## Committee on Transportation and Infrastructure's Subcommittee on Aviation U.S. House of Representatives

*concerning*

## Residential Through-the-Fence Agreements at Public Airports: Action to Date and Challenges

**September 22, 2010**

My name is Craig Fuller, and I am President and Chief Executive Officer of the Aircraft Owners and Pilots Association (AOPA), a not-for-profit individual membership organization representing more than 410,000 members, nearly three-quarters of the nation's pilots. AOPA's mission is to effectively represent the interests of its members as aircraft owners and pilots concerning the economy, safety, utility, and popularity of flight in general aviation (GA) aircraft.

Although GA is typically characterized by recreational flying, it encompasses much more. In addition to providing personal, business, and freight transportation, general aviation supports such diverse activities as law enforcement, fire fighting, air ambulance, logging, fish and wildlife management, news gathering, and other vital services.

Each year, 170 million passengers fly using personal aviation, the equivalent of one of the nation's major airlines, contributing more than $150 billion to U.S. economic output, directly or indirectly, and employing nearly 1.3 million people whose collective annual earnings exceed $53 billion. General aviation serves 5,200 public use airports as well as more than 13,000 privately owned landing facilities.

We are pleased to see the Committee hold this hearing to better understand the complexities of residential through-the-fence issues that come into play at public use airports that are either eligible for or have received development funds from the Federal Aviation Administration (FAA).

The FAA has recently published a revised policy in the Federal Register and is seeking comments from the public for a period of 45-days. AOPA believes the FAA is moving in the correct direction with both the revised policy and publication notice with 45-day comment period.

Of the nation's 5,200 public use airports, there are about 3,400 existing and proposed airports that are identified in the FAA's National Plan of Integrated Airport Systems (NPIAS) as significant to national air transportation and thus eligible to receive Federal grants through the Airport Improvement Program. As we understand it, the FAA has identified approximately 70 of these that have some residential through-the-fence access.

Clearly, when the FAA initially issued their revised policy on residential through-the-fence access at the end of 2009, the agency did not actually have a good understanding of the scope or variety of residential through the fence access agreements and other access agreements that had been issued to adjacent property owners, or the legal ramifications of the agency's actions to force the airport sponsor to terminate those agreements or face a finding of non-compliance by the FAA.

Prior to and over the ensuing year after the issuance of the initial draft policy in 2009, AOPA has worked to help the FAA Airports staff better understand the nature of the residential through-the-fence access issue, and that a "one size fits all" policy would not provide a workable solution in dealing with this issue. We are pleased to note that since our discussions began, the FAA has undertaken an aggressive effort to gain a deeper understanding of these issues and the challenges that are attached to residential through-the-fence access agreements.

It is our understanding that the FAA has now identified approximately 70 publicly funded airports that have residential through-the-fence access to the airport infrastructure from land adjacent to the airport – out of over nearly 3,400 in the NPIAS. These airports represent a small percentage of the total number of federally supported airports, and the individual nature of each of their circumstances requires the FAA to deal with them on a case-by-case basis. Again, we are pleased that the newly revised policy recognizes this concern that was raised by AOPA in our discussions.

Additionally, we are pleased to see that the newly issued FAA policy recognizes the need to maintain these airports and a willingness to accept existing access agreements. We also believe that the agency must work with each airport sponsor to implement a plan to ensure the safety and security of the airport and the public.

While the latest policy indicates that the FAA will not accept any new proposals for residential through-the-fence access, AOPA believes that the agency should not close the door completely to such proposals. There may be circumstances in the future where an agreement to allow such access would bring significant economic development opportunities to the airport without the need for significant federal investment in the airport infrastructure. Such opportunities could be valuable in ensuring the financial health of the airport, and allow it to make its highest contribution to the community. In doing so, AOPA believes that the FAA has the ability and responsibility to set the standards for such requests at a very high level in order to protect the airport, any existing federal investment, and the future safety and growth potential of the airport.

As we look forward, AOPA hopes that the newly revised policy will do much to satisfy the legitimate concerns that had been raised over the more restrictive initial draft. Individuals who seek through-the-fence access to an airport do so because they value access to an airport, and have a strong interest in keeping the airport open and in use. AOPA is far more concerned about the many residential developments that have been and continue to be built near airports that are occupied not by pilots, but by families
As we settle the issue of aviation-related residential through-the-fence development adjacent to these NPIAS airports, we hope to focus more attention on a far greater menace to the federal investment in public-use airports.

AOPA has been concerned that the time and energy focused on residential through-the-fence access, an issue that affects less than 3% of NPIAS airports, could have been better spent on the many other airport sponsors who allow non-aviation related residential development to take place around their airports. Such development is an incompatible land use that presents a grave threat to the ongoing unrestricted use of these airports. We look forward to continuing our work with the FAA and this Committee in fighting this growing problem for America's community airports.

Committee on Transportation and Infrastructure Hearing

*"Residential Through-the-Fence Agreements at Public Airports: Action to Date and Challenges Ahead"*

Statement of the Experimental Aircraft Association (EAA)

September 22, 2010

EAA is a 510(c)(3) non-profit membership organization headquartered in Oshkosh, Wisconsin. Founded in 1953 with the purpose of preserving Americas' rich heritage of personal flight, EAA has grown to a membership of more than 160,000 pilots, aircraft owners and aviation enthusiasts. EAA and its 900 chapters throughout the U.S. make participation in aviation safer, easier, and more rewarding while introducing the passion and spirit of flight to future generations of pilots and enthusiasts. EAA headquarters in Oshkosh, Wisconsin is also the home to our annual convention, *EAA AirVenture Oshkosh,* the world's largest aviation event.

Written Statement

Mr. Chairman and committee members, we appreciate the opportunity to comment on the matter of residential through-the-fence agreements and their use at federally funded general aviation airports. On the surface, the debate before the Committee today appears to be one of whether residential access to federally funded general aviation airports using so-called "through-fence-agreements" is appropriate. We believe that the discussion is far more nuanced. It is not a question of whether residential through-the-fence agreements should be permitted but rather under what conditions they should be deemed appropriate and under what criteria they should be approved and administered. Fundamentally, EAA views this issue through the lens of accessibility to publicly funded airports. We maintain that ultimately the local airport sponsor has the authority to determine the best use of their facility, provided they do so consistent with the national safety and security guidelines set forth by the Federal Aviation Administration and Transportation Security Administration. It is the firm belief of EAA and its membership that, when properly managed in accordance with FAA standards, adjacent residential through-the-fence operations at public-use general aviation airports can increase the value, security, and economic well-being of these facilities. Such operations also serve to preserve them from residential development encroachment by others less likely to support the airport.

Forty years ago, Congress created a program for sustaining and growing our national network of state and locally-owned public-use airports through the establishment of the Airport and Airways Trust Fund

and the Airport Improvement Program (AIP) as part of the *Airport and Airway Revenue Act of 1970* (P.L. 91-258). A core principle of the national airport system is that the federal government provides AIP funds to maintain and sustain these airports, while management and ownership remains in the hands of local municipalities and state government agencies. Under this construct, it is the role of the federal government to provide guidance by which these federal funds may be used and to set safety and security standards necessary to ensure the continued success of the national air transportation system. In our view, the Federal Aviation Administration's proposed residential through-the-fence policy goes beyond setting appropriate standards by precluding any future residential through-the-fence agreements. It denies states and local communities the right to decide how best to use adjacent airport properties.

Unfortunately, nothing in the FAA statutes and guidelines prohibits the construction of non-aviation oriented residential developments adjacent to publicly funded airports. These developments often result in expression of ongoing noise complaints and safety concerns by residents who pressure municipalities to curtail operations at these federally funded airports or close them entirely. Wholesale construction of housing developments adjacent to airports would continue unabated threatening the viability of the national airports system. Ironically, only residential construction and airport access by individuals who support the airport, aircraft operations, and the long-term viability of the facility would be precluded. We do not believe that this is in the best interest of the aviation community or the nation as a whole.

Some argue that individual land owners should not benefit from private access to federally-funded airports. As a matter of public policy, we do not agree that general aviation should be treated differently than other modes of transportation in this regard. In fact, there is ample precedent for private access to federally funded assets provided it is consistent with national safety standards. One example can be found in the federally-funded national highway system, where access is managed based upon demand or traffic density of a particular section of roadway. High density traffic areas are managed by means of restricted access ramps while areas with less traffic permit direct access by adjacent residential property owners. Both types of access to a federally funded public asset are deemed to be acceptable and appropriate. EAA argues that a similar public policy should apply to general aviation airports. There are some airports, with high-density operations around urban areas, where it is likely that residential through-the-fence operations would be considered inappropriate. Meanwhile, many airports in rural areas could consider such operations to be entirely consistent with the use and purpose of the airport. What remains is a discussion as to which airports could potentially be eligible for through-the-fence operations and what constitutes the minimum standards for such operations from the standpoint of preserving the safety and utility of the facility.

Over the past decade the Federal Aviation Administration has conducted several airport studies, including the *Future Airport Capacity Task team* (FACT) and the Operations Evolution Plan (OEP). Both programs identified public-use airports that are deemed in need of expansion to meet national airport system capacity shortfalls. Beyond these critical facilities are an additional 2,564 general aviation airports listed in the FAA's National Plan of Integrated Airport System (NPIAS) that are eligible for federal funds. None of these airports has been identified as one of the critical FACT or OEP airports. We believe

that general aviation airports listed in the NPIAS that have not been identified as a shortfall airport within the FACT or OEP reports should be permitted to consider future residential through-the-fence agreements provided they are deemed appropriate by the airport sponsor and executed in a manner consistent with national safety policy set forth by the Federal Aviation Administration.

On September 9, 2010 the Federal Aviation Administration published a proposed policy entitled "Airport Improvement Program (AIP): Policy Regarding Access to Airports From Residential Property" in which it proposes to prohibit any future residential through-the-fence agreements at federally-funded airports. In the same document, the Agency proposes to permit holders of existing residential through-the-fence agreements to continue to operate provided they meet a series of safety and security provisions outlined in the document. EAA believes that these criteria (provided they are enacted in a reasonable manner) should not only be applied to existing through-the-fence agreements but should also form the basis of a policy that would evaluate the efficacy and oversight of future residential agreements.

There is no doubt that this is a complicated issue. The path of least resistance is to continue to permit existing agreement holders to operate and ban all future agreements. However, EAA does not believe that the easy way out is the best path for our airport system. We should undertake the hard work to ensure that future residential through-the-fence agreements may be considered and that they are executed and overseen in a manner that is consistent with safety and the continued utility of the airport.

In summary, EAA:

1. agrees with the FAA that residential through-the-fence agreements are not appropriate at every federally-funded airport,
2. strongly disagrees with the FAA that through-the-fence agreements are never appropriate and should be banned in the future,
3. maintains that private access to publicly funded airports is appropriate from a public policy standpoint consistent with other federally-funded transportation modes provided it is done in a manner consistent with the safety, security and continued utility of the airport,
4. believes that FAA, in its recently proposed policy has identified the basis by which future through-the-fence agreements could be evaluated and approved,
5. maintains that decisions on future residential through-the-fence agreements are best made by the airport sponsor provided they adhere to federal guidelines,
6. agrees with the intent of Congress and the FAA under the NPIAS program that federal funds should not be used to cover the cost of residential through-the-fence operations or infrastructure and that the construction and care of such assets must be borne by the residential agreement holder.

General aviation airports are a community's gateway to the world. EAA firmly believes that the residential through-the-fence segment of the general aviation community is a critical and legitimate component of the nation's intermodal transportation system and that both new and existing adjacent residential through-the-fence operations should be permitted by the Federal Aviation Administration under appropriate guidance and policy.

We thank the Committee for your time and the opportunity to submit our views for the record. EAA stands ready to assist in any further consideration of this important issue to our members.

Mr. PETRI. Again, thank you for indulging my use of time.

Mr. OBERSTAR. Oh, my goodness, no. It was a very thoughtful statement.

The Chair will now yield to Ms. Johnson in her new neckpiece.

Ms. JOHNSON OF TEXAS. Thank you very much.

Mr. OBERSTAR. I am sure you would rather have a more stylish one, but glad to see you are recovering very well from your most recent operation.

Ms. JOHNSON OF TEXAS. Thank you.

Mr. OBERSTAR. Thank you for being here this morning.

Ms. JOHNSON OF TEXAS. Thank you very much and thank you for holding this hearing today on residential through-the-fence agreements.

None of the public airports in my district employ through-the-fence agreements; however, there are between 7 and 11 airports in Texas with such agreements. It seems that this is a very personal and emotional issue for many general aviation pilots whose planes are parked at their homes and who take advantage of direct access to airport taxiways.

I can understand their concerns if they have grown accustomed to the use and benefits of the through-the-fence agreements; however, I can also understand the safety and land use concerns raised by the FAA. This Committee takes transportation safety issues very seriously, and I believe the FAA raises some valid concerns.

In reviewing through-the-fence agreements, the FAA found incidents, such as incursions of pets, people, and private vehicles, on airport property, the construction of structures that interfere with navigational radio signals and the ability of airports to make safety-critical improvements to runways and taxiways.

I am glad that we are taking time to hear from both sides of this issue and hope that we can find a solution agreeable to all interested parties.

I thank you, Mr. Chairman and Mr. Petri, for holding the hearing this morning. I yield back.

Mr. OBERSTAR. The Chair will now yield to Mr. Graves, sponsor of the legislation and initiator of this hearing.

Mr. GRAVES. Thank you, Mr. Chairman. I want to thank you and Representative Ranking Member Mica for holding this hearing. This is obviously a great way to bring this issue to light.

For those of you who don't know, or folks out there that don't know, residential through-the-fence agreements are agreements between an airport sponsor, and that might be the city, the county, or a municipality, between them and an individual with privately owned land adjacent to an airport that provides that landowner and their aircraft access to the airport.

You know, nothing that the FAA does prohibits anybody from developing that land, and I hear a lot of talk about not being able to develop land or being able to expand an airport. Yet, all an residential through-the-fence agreement does is allow access. You can still develop that land. You can do anything you want to, for that matter, with that land, within reason.

Of the few thousand public use general aviation airports, there are roughly 75 known airports with residential through-the-fence agreements. In some cases, such as the 75 mentioned above, the

airport sponsor and the airport manager might feel these agreements benefit the airport and surrounding areas; whereas, in other instances, they simply might not like these agreements. But the decisions made about existing potential agreements are deliberated by the local community, and they should be; they own the airport, they have the investment in the airport. It should be up to the local community and municipality to make that decision.

I am not saying that every airport should have a residential through-the-fence agreement. I am just saying it should be their right to choose.

With that said, I am sure there are a few extreme examples out there of residential through-the-fence agreements that can be improved, which I am sure I know some of our panelists are going to point that out. But, likewise, I think there are many more great examples of existing through-the-fence agreements which could be a model for future agreements.

Earlier this year I introduced legislation, which is H.R. 4815, in the hopes of providing more uniformity and developing a framework for all of these agreements. I made a few changes post-introduction, but we shouldn't take the easy way out, I believe, and ban all future residential through-the-fence agreements. I think with proper planning and coordination amongst all the stakeholders we can find some reasonable solutions.

The Federal Aviation Administration recently published, as has been pointed out today, in the Federal Register a proposal which would allow existing agreements to remain in effect. However, it clearly prohibits any new residential through-the-fence agreements. I believe the FAA policy on existing agreements is a great step in the right direction, but I also believe that you have really missed the mark on future arrangements, and without significant changes to the proposal, I just will not support it.

I firmly believe that residential through-the-fence agreements can safely and efficiently coexist with GAA airports now and in the future, and I also believe the Federal Government should protect its investments. But I don't think the agreements we are discussing today adversely, or without exception, affect an airport's authority, their ability to operate or the FAA'S ability to protect their investment.

Again, this comes down to a city's choice or a county's choice, whatever the case may be; and if they don't like them, then they don't have to have them. But if they do like them, I believe that they should be allowed to have them. And it also comes down to just access. That is all it is. And we are going to see examples up here and we are going to see pictures up here, and you are going to see a lot of development around an airport, but the bottom line is that development can take place regardless. If somebody owns a piece of property, and it doesn't matter if it is a Driggs or independent, if somebody owns a piece of property adjacent to an airport, they can develop it. And if the airport needs to expand, what they will probably do is condemn that property or do whatever it takes to expand it. They have that option. But, regardless, all this is allowing is access for that individual.

And as far as pets on an airport and vehicles on an airport, those are still unauthorized. If it is an unauthorized vehicle, and I know

we are getting into specifics here, and I didn't necessarily want to do that, but if it is an unauthorized vehicle on an airport, then it is unauthorized. That is just all there is to it. And I think we can put these agreements together in such a way that it benefits everybody.

But, Mr. Chairman, I really appreciate the fact that you decided to have this hearing, and I know we talked about it on the floor, but thank you very much, and thank you to Ranking Member Mica for also agreeing to it.

Mr. OBERSTAR. Thank you, Mr. Graves. Certainly those issues you raised will be explored during the course of this hearing.

Now, Mr. Schrader, also an advocate for through-the-fence agreements, we look forward to your testimony.

**STATEMENT OF THE HONORABLE KURT SCHRADER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. SCHRADER. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, I appreciate the opportunity you are giving me today to speak with you about the residential through-the-fence agreements at our federally supported airports.

As a licensed general aviation pilot, I have been familiar with this issue for some time. While I was in the State legislature in Oregon, I had the privilege of working on this issue with Oregon State Senator Betsy Johnson, who continues to be a leading advocate for aviation in our great State. It is a privilege to come before you today as a Member of Congress to represent the interests of my constituents living at Independence Airpark.

In a few moments, you are going to hear from Mitch Swecker, the Oregon State Airports Manager, and he can tell you about the success Oregon has actually had with residential-commercial through-the-fence agreements at our State airports that receive FAA grants. I know he will be a valuable resource to you today, and I thank him for coming.

For my constituents who make their homes at Independence Airpark, I am proud to be before you to attest to their commitment to keep Independence Airport a highly functional and important part of National Plan of Integrated Airport Systems.

Since 1976 the Independence Airport has been the heart of this community. Each resident has chosen to live there and is invested in their community's future. The 213 houses in Independence Airpark I think serve as a model for how residential through-the-fence agreements can and should work. In Oregon we have done through-the-fence the right way, and I am glad the FAA has proposed a new rule that will allow Oregon and Independence Airpark to continue operating under their existing residential through-the-fence agreements while we here in Congress figure out the long-term success.

Mr. Chairman, as the Congressman for the Independence Airpark and a strong supporter of Mr. Graves, Mr. Boswell's, Mr. Ehlers' and Mr. Petri's Community Airport Access and Protection Act of 2010, I am grateful to you for holding this hearing to explore the issues of through-the-fence agreements, hopefully granting further FAA assurances in the future. I look forward to continuing to

work with you and my colleagues who sit on this Committee to develop a fair and very sound policy on residential and commercial through-the-fence agreements.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Well, thank you for your testimony. You have had an opportunity, I gather, to review the current September revisions by the FAA of their original policy. I would like to get your thoughts about it. I think the cornerstone is making changes for the future, leaving existing agreements in place, but strengthening compliance with grant agreements, FAA–AIP grant agreements.

Mr. SCHRADER. Mr. Chairman and Members of the Committee, I appreciate the direction the FAA is going. Certainly the existing agreements I think need to be honored, and there is a lot of good lessons to be learned from the airparks like Independence that do it right. And I think everyone in any airparks all over the issues of safety, I think that goes without saying. But I would hope there would still be an opportunity for new through-the-fence agreements. I have actually two airports out of the 75, apparently, nationwide that are in my district. They both are major airports for the communities. One, actually a little further north than Independence, actually serves as a potential hub or outlier airport for our greater Portland community.

So having this sort of agreement and understanding promotes the jobs in these areas. A lot of our communities are severely hard hit right now. This would be just one more blow to our economy and to the ability for honest Americans that made a decision to live near an airpark to exercise their free will.

Mr. OBERSTAR. Thank you.

Other Members have questions?

[No response.]

Mr. OBERSTAR. If not, thank you for your testimony.

Mr. SCHRADER. Thank you.

Mr. OBERSTAR. We will now hear from Kate Lang, who is the Director of Airports for the FAA; from Ms. Carol Comer, Aviation Programs Manager for the Georgia Department of Transportation; Mr. Mitch Swecker, Airports Manager for the State of Oregon Department of Aviation; Ms. Ann Crook, Airport Manager, Elmira Regional Airport.

Been passed Elmira many times over the years. My late wife was from Rochester, New York. We used to drive up that way from here to Rochester.

Jim Coyne, a former colleague who spends more time answering quorum calls and votes up here, and not actually voting, than probably when he was a Member; and Dr. Brent Blue, Founder of Throughthefence.org.

Ms. Lang, we will begin with you. Thank you very much for being with us this morning. But again let me repeat my compliments for the service you have rendered as Director of Airports, the splendid job you have done particularly through the period of the stimulus, moving those airport grants out very quickly. We have 98 percent of FAA stimulus funding under contract, actually onsite work carried on.

My recollection is that the airport grants under stimulus affects some 2.5 million operations a year at airports that have used those

grant funds, and they have been put into effect very quickly, projects completed. In fact, there is one airport that invited me to a groundbreaking ceremony, and by the time I got there a few weeks later, there was a ribbon cutting; they had already completed the project. That is good news. People working jobs and permanent benefits left for the Country.

I know that didn't happen by accident; it happened because you had a portfolio of projects that had been vetted, that had been cleared, that had gone through all the preliminary reviews, environmental review, design engineering, and ready to go to bids. And in many cases bids had already been taken even before we passed this stimulus, because airports can hold those bids for quite a period of time, unlike the highway program.

So, with that, please begin.

**TESTIMONY OF CATHERINE M. LANG, ACTING ASSOCIATE ADMINISTRATOR, OFFICE OF AIRPORTS, FEDERAL AVIATION ADMINISTRATION; CAROL L. COMER, AVIATION PROGRAMS MANAGER, GEORGIA DEPARTMENT OF TRANSPORTATION; MITCH SWECKER, STATE AIRPORTS MANAGER, OREGON DEPARTMENT OF AVIATION; ANN B. CROOK, AIRPORT MANAGER, ELMIRA CORNING REGIONAL AIRPORT; JAMES K. COYNE, PRESIDENT, NATIONAL AIR TRANSPORTATION ASSOCIATION; AND BRENT BLUE, MD, FOUNDER OF THROUGHTHEFENCE.ORG**

Ms. LANG. Thank you. And I will pass your kind words on to the airports team.

Chairman Oberstar and other Members of the Committee, good morning and thank you for inviting me here today to discuss the FAA'S proposed policy regarding access to airports from residential property.

In order to frame this discussion properly, let me explain what a public use airport is and how it differs from an airpark. There are approximately 21,000 airports and landing strips in the United States. Out of these, only 3,332 have been selected for inclusion in the National Plan of Integrated Airport Systems, or the NPIAS. These are public use airports that must be open to all aeronautic users, must be sufficiently expandable and adaptable so as to accommodate new aircraft and future demand, and must develop in a way that meets FAA safety standards. It is these airports that are eligible for Airport Improvement Program, or AIP, grants.

Conversely, private airparks are financed and maintained by the aviation community that uses them, and they are free to set their own standards for use, access, and safety.

It is also necessary to consider the longstanding principle that with the expenditure of any Federal grant funds certain conditions attach. In keeping with this principle, every time we make a Federal investment at a NPIAS airport, the sponsor agrees to 39 Federal assurances, the vast majority of which are explicitly congressionally mandated. These are assurances designed to protect the public aeronautical characteristics of the airport, to encourage good airport management, and to impose conditions to protect the public purpose for which the investment of taxpayer dollars was made.

These principles and assurances have, for 60 years, protected and expanded the most robust system of airports in the world.

Over the past decade, the FAA has responded to several on-airport residents and residential through-the-fence proposals from NPIAS airport sponsors and developers. Our view, both then and now, was that residential development does not meet the statutory requirement for compatible land use. Over time, inconsistent approaches to residential through-the-fence agreements have developed, and we recognized that a more comprehensive approach was warranted.

After our initial attempt last year to clarify our residential through-the-fence policy, we ultimately assembled a policy team to review the gaps in our approach. The team met with a wide variety of interested parties, visited five airports with residential through-the-fence access, and reviewed countless documents and comments received on our previous guidance materials.

At several of the sites we visited and studied, the fundamental distinctions between public use, public purpose airports and private airports have begun to blur. While private airparks serve an important and cherished purpose for members of the aviation community, AIP funds must be used strategically and responsibly at NPIAS airports that serve public purposes and retain the characteristics expected from public use, public purpose airports.

The agency's statutory charge to invest in a national system of airports for the long-term, coupled with the fact that residential through-the-fence arrangements can compromise the ability of the airports to serve the public purpose expected of tax-funded airports, led us to the policy we are proposing. The policy is twofold. We propose both minimum requirements that airports with existing residential through-the-fence access must meet and proposed prohibit sponsors from entering into new arrangements. Among other things, airports with existing access would be required to develop access plans to address general authority for control of airport land, the safety of airport operation, cost recovery, air space protection, and compatible land use. While these arrangements continue to be undesirable, we believe that this will address our most serious concerns, while offering a common sense and fair solution for the communities involved.

This proposed policy is currently out for public comment, and the comment period will remain open until October 25th of this year. We have worked extremely hard to arrive at a policy that addresses the concerns and needs of State and local governments and of the general aviation community, while fulfilling our obligation to protect the role that NPIAS airports play in the national system.

I believe our staff has given full and fair consideration to all the ideas and feedback we have received up to this point in the process, and I assure you that we will continue to be open-minded as we review the public comments on our draft policy.

As stewards of the Federal tax dollars, the FAA takes seriously our responsibility to make wise investments with AIP grant funds. I believe our proposed policy regarding access to airports from residential property reflects the long view this Committee explicitly expects us to take when we invest $3.5 billion of taxpayer money in our airport systems annually.

Mr. Chairman, Members of the Committee, this concludes my prepared remarks. I would be happy to answer any questions you might have.

Mr. OBERSTAR. Thank you, Ms. Lang. I am going to have to leave; I have another Committee responsibility in a different mode of transportation, I have to go talk to a transit group, and Mr. Boswell will take the Chair during that time. But I just wanted to ask you about the revisions in the FAA policy. I made note in 2007 FAA issued a determination that residential development adjacent to airport property is an incompatible land use. Is that still the guiding policy and principle?

Ms. LANG. It is, sir.

Mr. OBERSTAR. And the safety concerns, you have cited some issues and there is evidence in other statements about safety concerns. What are the principle safety concerns that you would cite that should be a part of the agreement, the AIP grant agreement between FAA and the owner of the airport?

Ms. LANG. Well, for all NPIAS airports, we really work to drive Federal investments to meet FAA standards so a pilot flying into an airport has a uniform experience. What is happening at some of the through-the-fence airports, some of the ones where we have done the deeper review is, let's take an example of an airport that has a runway with a parallel taxiway. We have instances where through-the-fence operators on the other side of the airport just do a perpendicular taxiway right into the middle of the runway. Now, all over the country we spend Federal tax dollars to provide situations so we do not have pilots at federally obligated airports back-taxiing. Yet, to accommodate through-the-fence operations, we see incident after incident in which——

Mr. OBERSTAR. Can't those be avoided by guidance and training? I mean, physically it is not necessary to do that; it may be a little more difficult to approach properly, but isn't that a manageable matter or not?

Ms. LANG. What, back-taxying?

Mr. OBERSTAR. Yes.

Ms. LANG. Well, you know, at an untowered airport, I mean, you would hope——

Mr. OBERSTAR. They just do it, you are saying.

Ms. LANG. Right. I mean, the fact of the matter is that we have major initiatives, particularly in western parts of the United States, to eradicate the instances where we have runways without parallel taxiways to eliminate what we find to be an unsafe condition. We intentionally invested in this particular airport to provide that parallel taxiway to achieve that safety outcome, only to have it compromised by the airport giving up the rights and power by allowing through-the-fence access that undermined the Federal investment to achieve the higher safety standard. We actively use Federal money at public airports to specifically avoid those situations.

Mr. OBERSTAR. There is another issue of expansion. If there is a need for expansion and the airport owner is allowed residential development so close, to expand, you have to acquire that property. Shouldn't there be agreements, shouldn't there be covenants in the

grant award that the airport owner will take care not to allow encroachment?

Ms. LANG. Mr. Chairman, this Committee has, over the years, given very good guidance to the FAA on how to think about the development of airports receiving Federal funds. On the one hand, we give airports the infrastructure and the land they need to operate the airport. But Congress has also urged us, and we have done it vigorously, to provide money to develop compatible land use planning around an airport to make sort of a buffer zone there. Throughout the last several decades, homes have been found to be a non-compatible use. Building a home is one of the most difficult arrangements to make. If someone does an on-airport hangar, they generally will understand that the hangar will extinguish at the end of that and the airport should retain the right to do that. But with homes, people buy homes and take mortgages thinking that those will continue in perpetuity. Homes, versus other arrangements, are considered not to be extinguished.

Mr. OBERSTAR. One of the biggest issues we have is airport noise, and I insisted, I think it back in 1990, that we have language, that the FAA include language directing counties or cities or those who have public ownership of land around airports to have a provision in the mortgage agreement that the buyer of the home or builder of the home acknowledge that they are living within the DNL and that they understand there is going to be airport noise, so that they can't come later and complain that there is airport noise. That is not acceptable to me; I just have no patience with people who buy a home in the vicinity of an airport and then complain there is airport noise. If you can't see that it is an airport and there are airports coming in, then goodness knows you don't belong there, you belong someplace else. I mean, I really truly have little patience for that.

But then in subsequent testimony from Ms. Crook I though it was very interesting, even airport residential through-the-fence agreement complain about a jet aircraft coming in. It is OK for their own airplane, but they don't want a small jet coming in the airport. You can't have it both ways.

Well, we will have to pursue that. I would love to be able to pursue this further, but I will have to ask Mr. Boswell to take the Chair, and I will return as soon as I can.

We will continue with Ms. Comer.

Ms. COMER. Chairman Oberstar, Members of the Committee, we are pleased to report that not one of Georgia's 91 publicly owned and federally obligated airports has residential through-the-fence access. The majority of these issues have been successfully resolved by educating our airport sponsors. We advise them that these agreements are inconsistent with their obligation to ensure compatible land use adjacent to the airport. We review their grant assurances and discuss the inherent safety, security, and liability issues that are associated with these proposals. Lastly, we inform the airport sponsor of the undesirable consequences of noncompliance with their Federal grant assurances: they risk not receiving future Federal funds.

The remaining proposals we review, simply put, take on a life of their own. They tend to be as unique as the airport and their pro-

ponent, and contain elements that may adversely impact the safe operation of the airport. Rarely do they contain provisions that are truly in the best interest of the airport, and they consume the valuable personnel and financial resources of all involved.

One such proposal presented to us in 2006 still remains unresolved today. The original proposal contained a substantial residential component along with a long water feature which would provide a habitat for birds and wildlife, potentially posing a safety hazard to aircraft operations. This particular proposal is further complicated by the sponsor's lack of jurisdiction for zoning around the airport and ongoing litigation between the sponsor and the proponent. More than 30 meetings have taken place in the last five years over this issue, but we are very close to resolving it.

As this example illustrates, these issues have a high degree of complexity, are contentious, are usually protracted over a number of years, and can result in significant expense to the airport sponsor and the proponent.

In working with our airport sponsors to resolve the more difficult proposals, we have long criticized FAA for its lack of a clear and enforceable policy on this issue. The word "discourage" does very little to dissuade local government officials with very little experience in airport operations or a true understanding of their Federal grant obligations.

In 2008, the FAA selected the State of Georgia to become the 10th Block Grant Program State. When we executed the Memorandum of Agreement with FAA, they did not give us an option to enforce only those policies and rules and regulations that we liked or agreed with. Resolving through-the-fence issues are one of the most difficult parts of administering the Block Grant Program.

During the past 12 years, Georgia has invested more than $50 million in our own State funds to extend runways at 37 airports statewide in support of regional economic development opportunities. This will keep Georgia's citizens and its business and industry connected to the global economy. It is imperative that we provision for and protect the future development of our airports so they will continue to serve for the public benefit in our State and national airport system.

After reviewing comments from residential through-the-fence proponents, I am compelled to offer a personal perspective to answer their question "Who are these people who are telling us and our local airports we can't do this?"

For more than 25 years I have held an FAA pilot's license with a multi-engine and instrument rating, and a flight instructor's certificate. I have owned four airplanes, am an avid general aviation pilot, logging more than 3,000 flying hours, and I have lived for eight years in a privately owned, private use residential flying community. I assure the Committee I understand the desires of a pilot who wishes to live in this environment. However, my personal enjoyment of this lifestyle should not be associated with a publicly funded airport. In Georgia, more than 35 privately owned, private use residential airparks exist specifically for this purpose.

We respectfully urge the Congress to support FAA'S update to its residential through-the-fence policy and amendment to its grant assurances in order to minimize safety risk, protect the future devel-

opment of our publicly owned airports, and maintain the integrity of the Federal, State, and local dollars invested in these facilities. This would support the past and future efforts of our staff and FAA as we work to ensure the safest possible operating environment on our airports and compliance with all Federal policies and regulations.

Thank you for the opportunity to share Georgia's experiences and challenges with residential through-the-fence agreements. This will conclude my formal remarks and I would be happy to answer any questions you may have.

Mr. BOSWELL. [Presiding] Thank you very much.

We will move on now to Mr. Swecker. Thank you very much. You are now recognized.

Mr. SWECKER. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before the Committee today. I am currently the State Airports Manager for the Oregon Department of Aviation, and the Department is overseen by a seven member board of directors appointed by the governor, and I am here at their behest.

The Department's mission is to support Oregon communities by preserving and enhancing aviation safety, infrastructure, and development, and part of my charter is to be the manager for 28 of those public use airports that are State owned. Oregon is a mostly rural State, and those general aviation airports provide essential services, such as transportation, medevac, airborne firefighting, as well as aviation related recreation.

I am here today in support of residential and commercial through-the-fence and H.R. 4815, the Community Airport Access and Protection Act of 2010. On behalf of the Oregon flying community, I thank Representatives Graves, Boswell, Ehlers, and Petri as sponsors of that bill. Additionally, I would like to thank the cosponsors, including Representative Schrader of Oregon.

On a larger scale, residential through-the-fence is almost entirely a general aviation issue, and general aviation contributes $1.8 billion annually to the Oregon economy, according to data provided by the Alliance for Aviation Across America. It also directly and indirectly is responsible for close to 197,000 jobs in Oregon. The largest kit built aircraft company in the world, Van's aircraft, is located at one of our airports, and there are numerous aviation manufacturers located at airports around the State.

Keeping general aviation and the industries that support it alive has to be part of any economic recovery, and it seems contradictory to discourage one of the strongest supporters and customers of the aviation industry. Residential airpark tenants are that aviation community that loves flying so much that they are willing to live close to an airport, despite the noise, that they literally live what the previous Oregon Department of Aviation Director used to call the Wright Brothers spirit. They are the most ardent of aviation supporters and have enhanced the value of the community through the tax base and through their civic contributions. They are consumers of aviation products that essential to keeping general aviation industries viable across the United States.

In Oregon we have seen firsthand that residential through-the-fence is not, contrary to FAA draft policies, inherently wrong. The

State of Oregon believes that when done wisely it can be a tremendous asset to an airport. Independence Residential Airpark has over 200 homes laid out in a model development that clearly demonstrates residential airparks can be done safely, help to make the airport economically self-sustainable, and probably are more secure than most airports that don't have homes with access to the airport.

The State of Oregon is not looking to combat the FAA. It is a great organization that does a remarkable job and we have a good working relationship with it. Yet, occasionally we have a professional difference of philosophy on how best to enhance and promote aviation in Oregon. We have worked well with the FAA and even invited Randall Fiertz, the FAA'S Director of Compliance and Field Operations, to our State to see firsthand how a successful residential TTF airport could look.

As background, in September 2009, the FAA changed the 5190.6A from 1989 that, by the FAA'S own admission, did not address residential through-the-fence in a meaningful way. The clarifications in the new manual are a significant departure from the past practices on the part of the FAA. The verbiage in the new manual radically changes the approach to residential through-the-fence, making it absolutely unacceptable under any circumstances, and we appreciate that they have agreed to modify that just a little bit.

The homeowners at Independence have invested significantly in their community. They have lived in safety and harmony since 1976, when the first airpark homes were developed and sold. And up until the late 2000's they were also in harmony with the FAA, having been through multiple FAA grant assurance inspections over the years without issue related to through-the-fence.

Both the State of Oregon and the homeowners appreciate concessions offered by the FAA; however, the newest proposed revision verifies that the FAA'S mind-set has remained the same, that residential through-the-fence is not good for airports, and it also calls into question the commitment and promises made to the Oregon Department of Aviation.

Mr. Chairman, I would like to conclude my remarks by respectfully requesting the following: approve and pass H.R. 4815; encourage the FAA to work with the States on a policy that fits each State's situation vice using a one size fits all approach; and recognize the economic, safety, security, and community value of TTF, through-the-fence, both commercial and residential, and that they are not inherently wrong in and of themselves.

Mr. Chairman, I thank you again for the opportunity to appear before your Committee.

Mr. BOSWELL. Thank you for your testimony.

We move on now to Ms. Crook, Airport Manager, Elmira Corning Regional Airport. Welcome.

Ms. CROOK. Good morning. Thank you, Mr. Chairman, Members of the Committee. I am the Manager, as you mentioned, of the Elmira Corning Regional Airport, but am also the past Director of the Oregon Department of Aviation. I am an accredited airport executive, so my comments today are based on over 20 years of man-

aging public use airports, many of them with through-the-fence agreements.

In my opinion, what we are here talking about today is not residential airparks. What we are talking about is the appropriate way to allocate the scarce airport improvement program funding and how to prioritize that to the essential components of the public use airport system.

First I want to talk, again from my experience, about a comment we have heard several times already this morning about residential airpark homeowners being good neighbors and proponents of aviation. I absolutely believe in that. We have heard some very good comments already about how these people are drivers of general aviation, supporters of general aviation, and proponents of that element of the industry.

However, I have received noise complaints from residents of a residential home park with through-the-fence agreement who are absolutely trying to protect their investment and their homes and their way of life, but when there have been different kinds of aircraft operations that are appropriate at a public use airport weren't consistent with their way of life, and this was, for example, helicopter noise; other aircraft, transient aircraft, aircraft not based at the airport operating after their normal hours, at night, maybe; and also when we have, at a particular airport, had discussions with businesses in the community about the possibility of developing the airport so that it could accommodate light jets to accommodate corporate flight activity, the residents of the airpark were extremely opposed to any development of the airport that would make it accessible to jet type of traffic.

So while I do believe that they are supportive of their residential use of the airport, I haven't found them to be supportive of the airport and its public use in general.

Another factor that I have seen is, again, as Ms. Lang mentioned, the fact that homeowners tie to their home, their major investment, their asset in their life is different than the business relationship that pilots will have on their hangar or a commercial hangar that is on an airport. Again, the expected value of a home continues forever, it is not just for the life of an agreement or for your expected use of your hangar. It is expected that your home is an asset that becomes part of your estate, that you can convert to your heirs or sell with a value that is not only consistent, but is expected to grow. I mean, everyone is expecting to gain equity in their home over time, and a major portion of the value of that home is the access to the airport.

That becomes an issue when, again, sometime in the future, the airport may need to do some development to accommodate public use. If that development eliminates that opportunity for the access, then we are not just talking about moving a taxiway; what we are talking about is reducing the value of this home that, if that home no longer has access, then it becomes a residential development next to the airport that can be a real incompatible land use, that can cause noise problems and other problems for the airport in the future. And that is where I think putting our public funding, our scarce AIP funding into that is a mistake.

I do want to say that the FAA'S proposal that came out a couple of weeks ago is a very, very good compromise. It allows for places that already exist, like the Independence State Airport in Oregon, to demonstrate that they can meet the requirements to make sure that the airport operates safely and securely, maximizes future investments, but doesn't allow future type of developments that might create problems for the FAA and for the community in the future.

I also wanted to stress that this proposal does not attempt to prohibit residential airparks. It doesn't at all. What it does is say that it is inappropriate to invest Federal funds in airports that have those, and that is a very important distinction.

That is the end of my comments, but I am available for any questions. Thank you very much.

Mr. BOSWELL. Well, thank you. Appreciate your comments.

We would now like to recognize Mr. James Coyne, President of the National Air Transportation Association. Welcome.

Mr. COYNE. Thank you very much, Congressman Boswell and other Members of the Committee. I am Jim Coyne, the President of the National Air Transportation Association. We are sometimes called the voice of aviation business; we represent about 2,000 aviation businesses across the Country, companies that provide fuel, services, repairs, and so forth, at both private aviation locations and at regular airports across the Country, public use airports.

The FAA, of course, has issued a proposed policy related to residential through-the-fence agreements at federally funded airports. This policy would subject existing through-the-fence agreements to closer oversight and scrutiny, and prohibit federally obligated airports from entering into any new through-the-fence agreements.

NATA supports the FAA'S proposed policy and believes it is in the long-run interest of the air transportation system to adopt such a policy. The Association believes the FAA proposal comports with existing Federal grant assurance requirements and applicable case law with regard to prohibiting new through-the-fence agreements, while providing a reasonable accommodation for existing agreements to continue. In short, we feel that this is a compromise, a compromise that meets the objectives of just about everybody involved.

Congress has recognized the value of maintaining and developing a network of airports across the Nation through the establishment of the AIP program. This program provides Federal funds for the maintenance and development of airports that are deemed important to the national air space system. This investment of taxpayer dollars in airport development is protected by, as we have heard, Federal grant assurances. These assurances require airport owners to operate the airport in a manner that best serves the interest of the entire transportation system, not just one or two local residents. Without these assurances, the Federal investment in airport infrastructure would be subject to the whim and preference of local politics and local consideration.

Of course, this body has, for the last 50 years, worked so hard to develop a national air transportation system, and that is why I think it is so important for us to emphasize that the issue before the Committee today is what step most protects a national system.

I think somebody, it may have been Phil Boyer, once said, it is the system, stupid. And keeping this system viable depends upon us creating rules at the FAA at the national level that support these public airports.

As a legal document, the through-the-fence agreements convert access and other rights, depending upon the specific language in the agreement, to individuals owning residential property near the airport. These access rights at their core do not necessarily conflict with the idea of maintaining airport utility public interest. Conflicts can, however, occur when the transportation needs of the surrounding communities and region dictate a change in airport environment and, as we have heard, nobody in this room can predict the changes that we are going to need to make to our aviation system in the future, and it is wrong to handicap our ability to adapt to those future changes at this time through unwise legal agreements with homeowners around airports.

NATA member companies have invested billions of dollars in creating on-airport service facilities that cater to the needs of the flying public. This investment, much like the Federal investment, is protected by the Federal grant assurances from unreasonable or unjust loss. Businesses, the majority of which are small businesses, across the Nation have created service facilities, jobs and economic activity based upon the idea that public use airports are maintained and operated for the benefit of the transportation needs of the whole region and the Nation. These on-airport businesses are subject to tight oversight from the airport sponsor to ensure that their activities are aligned with the needs of the airport and the public. These businesses accept the fact that the needs of the airport as a public use facility supersede the plans of the individual business owners. This is acceptable because the needs of the commercial operation usually align with the growth and development of the community and the region. Activities such as the creation of residential through-the-fence agreements, which reduce the future utility of airports, can devastate the investment in on-airport facilities made by these businesses.

In closing, let me say that NATA understands the position of residential through-the-fence proponents. General aviation is an industry that was born in the United States and has grown from the ground up. It is successful because of the passion and devotion of countless aviation enthusiasts and entrepreneurs. It is these same individuals who, because of their passion, desire to reside near the local airport and operate the aircraft directly from their homes.

Nothing in the Federal grant assurances or other Federal law prevents residential through-the-fence operations from occurring at the many private airports around the Country. However, allowing private rights of access via residential through-the-fence agreements from residential properties adjacent to federally funded airports threatens the investment of public funds made in those airports. The vision of public airports must extend beyond the current use of the airport and account for the various possible future needs of the Nation and the traveling public.

NATA believes that the FAA has proposed a policy that well serves the long-term interest of airports, airport businesses, and the public. Any attempt to override that policy by statute would re-

sult in unintended consequences that damage the future utility of public use airports and could call into question the future of all grant assurances and the FAA'S ability to ensure that those obligations are followed by all airports receiving Federal funding.

Thank you very much and I look forward to your questions.

Mr. BOSWELL. Thank you.

I would like to recognize now Dr. Brent Blue, Founder of the through-the-fence organization. Dr. Blue.

Dr. BLUE. Thank you very much, Members of the Committee. It is a pleasure to be here. My name is Brent Blue. I am a family physician from Jackson, Wyoming. I am the Founder of throughthefence.org, which is a site for dissemination of information about residential through-the-fence activities and the FAA'S attempt to change them.

I am, for what it is worth, the Democratic candidate for coroner in Teatime County, Wyoming. Like the coroner's position, this issue should not be partisan, and I don't know how it has gotten to be partisan. It is not a Republican or Democratic issue, but an issue of whether a local airport should have the right to determine who its best neighbors are and which ones will benefit that airport the most.

General aviation has been hit hard by the recession, and was having hard times even before due to increasing fuel prices and other factors. We need to do everything we can to support general aviation.

Residential through-the-fence access is an income source for airports and helps the viability of noncommercial general aviation airports, and the viability of these airports is important to the economy of the Country. Demonstrated by the adverse effects of commerce during the shutdown after 9/11, the lack of business aviation had significant adverse impacts on many industries during the three weeks of restricted general aviation activity.

Examples of viable airports and the positive economic effects of residential through-the-fence access can be seen at many places like Batavia, Ohio, where Phil Boyer, by the way, lives; Independence, Oregon; Driggs, Idaho; and Erie, Colorado. In Driggs, half the airports' board airports budget is paid for by through-the-fence activity, and that number is expected to be 60 percent for Erie, Colorado.

Residential through-the-fence activity also provides the eyes on the field, especially at night, when most small airports are vacant, helping increasing security. This is an extension of the AOPA's Airport Watch Program, which has been endorsed by the TSA and the FAA. A classic example of this was in a March drug bust in Colorado, where a residential through-the-fence homeowner noticed suspicious activity during the night and called the police.

The FAA cites issue after issue to discourage through-the-fence access, but most of these issues are unsupported by any hard data and are significantly influenced by the personal bias of FAA personnel. One bias is the sense that residential through-the-fence owners receive an unfair economic benefit from Federal improvements at adjacent airports. This is like saying that somebody who lives near a bus shelter that has an improvement done with Fed-

eral monies is benefitting. The same could go for highway interchanges, open water projects, or home near bike paths.

The FAA wants to guard against titled easements to restrict residential through-the-fence properties because their mission is to guard the Federal investment. Aside from the fact titled easements are not a requirement for residential through-the-fence access, these easements do guaranty income for the airport and is a positive for the government investment by making the long-term viability more secure.

The FAA has said it will be more difficult to move residential through-the-fence owners over other land uses around the airport, if indeed that needs to be done in the future. But the FAA has not considered a much more difficult move: moving cemeteries, which are common "compatible" airport neighbors. Moving a cemetery is more controversial than moving anybody's home, and cemeteries are forever.

The bottom line is I am concerned about the future of general aviation. I am not sure the FAA'S Airport Compliance Office has the same concerns. Ms. Lang, in her written testimony, characterizes residential through-the-fence homeowners' input at a public airport board meeting as "influence" and is an inappropriate process. Public comment at an airport board meeting inappropriate process. I believe the FAA is an American institution.

This attempt to codify the ban on residential through-the-fence access is Federal bureaucracy gone bad and should be stopped.

Thank you very much for your time and I would appreciate any questions.

Mr. BOSWELL. Thank you.

I wasn't here for the opening remarks; I was actually reviving and I did see some of the things that were said as I was coming passed the monitor.

First off, this is a hearing. We are not going to take any votes today, so you know that, and we are here to gather information. But I guess I could confess to some bias that I would have on the issue. I personally think, and I will say some more in a minute, after I recognize Mr. Graves and go through the order here of questions, that, you know, absolutely I concur with Mr. Oberstar and, before him, Mr. Young. Safety. Safety is an absolute must. There is no argument.

But, you know, I think that pilots do understand that they must follow and comply with instructions, whether it is entering a taxiway or a runway or whatever, and it would seem possible and reasonable to me that through education, signage, and firm regulation, that this could and, I might add, should be worked out in a safe and respectable manner, and we can continue to have the incentives and the economic impact and the safety for the through-the-fence operations.

You might have thought I felt that way before I took this chair, but I think there is room, Jim, for the FBOs to do their, you know. You know, I think folks like you and me could sit down and work this out. I really believe that.

So, having said that, I recognize Mr. Graves, and we will go through the order. Mr. Graves.

Mr. GRAVES. Mr. Young has to leave, so——

Mr. BOSWELL. Excuse me. I just got corrected.

Mr. Young, sir.

Mr. YOUNG. I thank you, Mr. Chairman. I, at this time, would like to yield my five minutes to Mr. Graves, if I may. And I do yield back the balance of my time. I yield to Mr. Graves.

Mr. BOSWELL. Mr. Graves.

Mr. GRAVES. Thank you. Again, thank you, Mr. Chairman. It is unfortunate that we have this hearing today on a day we don't have votes, because we don't have very many Members here, obviously, on this very important issue.

I have a lot of questions to go through and I will start with Ms. Comer. You stated in your testimony that the State of Georgia has no residential through-the-fence agreements at any of your public airports.

Ms. COMER. I made the distinction we do not have any residential through-the-fence agreements at our 91 publicly owned airports that are contained in the NPIAS that receive Federal funding.

Mr. GRAVES. And that is what we are talking about today. Is there any Federal regulation that requires you to have a through-the-fence agreement?

Ms. COMER. Would you restate your question?

Mr. GRAVES. Is there any Federal regulation out there that requires you to have a through-the-fence agreement?

Ms. COMER. That requires? No, sir, not that I am aware of.

Mr. GRAVES. OK. So basically it is your decision. It is the State of Georgia's decision and you have decided that you don't want any through-the-fence agreements with any of the airports. And I am short on time, so yes or no.

Ms. COMER. Ask the question one more time.

Mr. GRAVES. So basically the State of Georgia has made the determination that you don't want any through-the-fence agreements. That has been your decision, correct?

Ms. COMER. We are, as a State Block Grant program State, administering Federal funds for the FAA. We are required to ensure that our airports are in compliance with their Federal grant assurances in order to maintain their eligibility.

Mr. GRAVES. And you have made that decision as the State of Georgia, then, not to have any through-the-fence agreements, which is interesting in the fact that you are a Block Grant State, so you really make the decision. But, regardless, you have made that decision that the State of Georgia chooses not to do through-the-fence agreements.

Ms. COMER. Congressman Graves, I think something I will remind a comment that you made. The airport makes that decision of whether or not to enter in——

Mr. GRAVES. But you use the term educate. You educate them to do that. All I am trying to get at is it is your decision, is that correct? I mean, it is their decision after you have educated them.

Ms. COMER. It is not our decision, it is their decision. We offer the education to them of the potential.

Mr. GRAVES. OK. So you are here testifying today that you believe that every State shouldn't be able to have through-the-fence agreements, and you want the Federal Government just to say no, period.

Ms. COMER. I am only testifying on behalf of Georgia's experience.

Mr. GRAVES. Perfect. That is all I need to hear. You are here for Georgia.

Ms. Crook, I will say the same thing to you. You know, at your airport you have decided that it is not going to be in the best interest to have a through-the-fence agreement, so you don't have any through-the-fence agreements, correct?

Ms. CROOK. Actually, we do have commercial through-the-fence agreements.

Mr. GRAVES. You have commercial through-the-fence agreements. I said residential, or I meant to say residential. You have three commercial through-the-fence agreements, isn't that right?

Ms. CROOK. That is correct.

Mr. GRAVES. But you have decided not to have any residential through-the-fence agreements.

Ms. CROOK. That is correct.

Mr. GRAVES. So essentially you are here testifying to say that everybody else shouldn't have them either.

Ms. CROOK. Actually, no. I am here to testify that residential through-the-fence agreements on public use airports should not be eligible for AIP funding.

Mr. GRAVES. OK. That brings us to other issues.

Then I am going to go to Mr. Coyne. I am real quick now. The National ATA, you basically oppose all residential and all commercial through-the-fence agreements.

Mr. COYNE. What we propose and support is this compromise, which allows existing residential through-the-fence agreements to continue to operate, and we feel——

Mr. GRAVES. But all new.

Mr. COYNE. All new residential agreements I think should follow the rules of this proposal.

Mr. GRAVES. How about business through-the-fence agreements?

Mr. COYNE. Well, I think, as a general rule, business through-the-fence agreements don't have exactly the same issues, but they do have some concerns as well, and we don't have, at this point, a blanket rule about all business or commercial through-the-fence agreements, but we are very cautious about them because many of them, as you know, involve circumstances where they threaten the economic viability of the businesses at the airport and threaten the economic viability of the airport itself.

Mr. GRAVES. OK, I am running out of time, Mr. Chairman, and I can come back, too, because I know other Members probably have other obligations to go to.

Let's come back to this idea, and I keep hearing it from everybody, that it prevents the future development of the airport or the viability of the airport. Now, explain that to me. In fact, on these residential through-the-fence agreements it is private property, is it not? It is private property. And I am still talking to Mr. Coyne and then I will come back. It is private property. So you can't prevent that individual from building a house next to the airport.

Mr. COYNE. Well, we truly believe that residential homebuilding near airports, especially important airports that are part of the

NPIAS, is something that is not in the national interest. The more residential homes——

Mr. GRAVES. Can you prevent somebody from building a house on a piece of property adjacent to an airport?

Mr. COYNE. We would love to see ways in which the FAA could do that because there are many circumstances when it really is in the national interest and the interest of safety and others to do that. I think, in fact, the FAA does work very hard to prevent unnecessary residential construction around airports. To use the word prevent is a complicated term, but I think, frankly, we would like to see much less residential development around airports. And this is an important issue for what we are talking about here. If we leave aside the question of the taxiway to the individual's home adjoining the airport, I think most of the people involved in this debate would say, yes, we don't want more residential activity around airports, because residents around airports usually become the opponents of airports, and we have seen time and time and time again how vulnerable the important national air transportation system is to just a handful of two or three people who call all the time and say shut down the airport.

Mr. GRAVES. It is still private property, is it not?

Mr. COYNE. Of course it is private property. But private property——

Mr. GRAVES. No, no, no, no. Where do you draw the line on where the Federal Government's jurisdiction should stop, how far away? Two miles? One mile? Where should the Federal Government quit telling people on private property——

Mr. COYNE. I don't think the Federal Government is necessarily the organization that is going to lead the restrictions.

Mr. GRAVES. That is what everybody here is advocating.

Mr. COYNE. Well, no, we are certainly——

Mr. GRAVES. Not everybody. I apologize.

Mr. COYNE. I was saying the word lead. I think the local governments should become, first and foremost, the groups that oppose residential development around airports, and I strongly support local zoning, county zoning——

Mr. GRAVES. And is that their decision now?

Mr. COYNE. Most local communities are totally ignorant——

Mr. GRAVES. Is it their decision? Is it the local community's decision now?

Mr. COYNE. I think they are doing a very poor job of protecting the environments of airports from unnecessary——

Mr. GRAVES. But is it their decision?

Mr. COYNE. Well, I think some of them aren't even aware of it, whether it is their decision.

Mr. GRAVES. Is it their decision?

Mr. COYNE. I think in many cases they are an important part of the equation.

Mr. GRAVES. Is it their decision?

Mr. COYNE. It is not their unilateral decision, I don't think. I think the questions of zoning are shared by many people. The Federal Government has roles in zoning. To say that every local——

Mr. GRAVES. Let me rephrase one more time. Who owns the airport?

Mr. COYNE. The sponsor.

Mr. GRAVES. Who is the sponsor?

Mr. COYNE. Well, it varies from airport to airport. In some cases it is the New York Port Authority——

Mr. GRAVES. County, city?

Mr. COYNE. Sure.

Mr. GRAVES. Community?

Mr. COYNE. Yeah.

Mr. GRAVES. Who makes the decision?

Mr. COYNE. The decision about——

Mr. GRAVES. The ultimate decision on whether or not there should be a through-the-fence agreement? Who makes that decision? Who makes that decision now?

Mr. COYNE. That decision historically has been made by the individuals around the airport and the people who influence that airport. Sometimes it is made by very powerful political——

Mr. GRAVES. But who makes it? Yes.

Mr. COYNE. It is made by a political entity, sometimes which can be swayed by one or two powerful political forces.

Mr. GRAVES. I will come back, Mr. Chairman.

Mr. BOSWELL. OK. Thank you very much. That was interesting. We will probably have some more discussion in that area.

I would like now to recognize the gentlelady from Texas, Ms. Johnson.

Ms. JOHNSON OF TEXAS. Thank you very much, Mr. Chairman. I am really seeking information, not trying to admonish anyone for their thoughts here.

Ms. Lang, in your written testimony you described a situation where residents with through-the-fence access attempted to prevent an airport sponsor from preserving its rights and powers with respect to the airport property and development. Could you elaborate a little bit on that?

Ms. LANG. Sure. Thank you for the question. There are a number of ways in which we have seen this happen. Again, we are talking about, really, nationwide, a very small percentage of federally obligated airports with this problem. But the problems are various. Like I said, in some cases an airport gave away a right to access that penetrated a runway, and that is a situation that we actually do try to avoid. In another case, a private developer built a parallel taxiway adjacent to the runway, which violated FAA separation standards between runways and taxiways for the kind of operation of the aircraft going into the airport. It was extremely difficult to get the proper separation done so we would have safe operation of the aircraft. That is a dilemma. In other cases we have had homes that have gone up.

Bear in mind that in many of these cases the community and the airport operator did not consult with the FAA. We found out about these developments only after the fact, without consultation, in some cases. I will concede up front in other cases we were advised and said no; in other cases our field folks inappropriately gave the approval. But there are cases where they proceeded with development that did things, that put hangar homes in places on airports, literally on airport that eliminated the line of sight, that we then had to pay other investments to correct.

Throughout all of these there has been a very casual relationship with the processes, and that is kind of a fundamental violation of the standard set by the United States Congress, that you have to go to the FAA to make changes on the airport. A lot of the problems we are seeing were developed by local communities, without consulting with the FAA as to whether or not the arrangements made for these through-the-fence operations would in any way injure or harm the operation or movement of the airport or the safety of the airport. So it is kind of a mixed bag.

Ms. JOHNSON OF TEXAS. Thank you. Anybody can comment on this question. In the area where I live, which is Dallas, Texas, we have had much growth, and when the airports get ready for any kind of expansion, there are usually hearings and usually FAA has some rules or regulations on safety. That is my number one concern, is safety. Now, is this is a rural airport 50 miles from a major urban area, it might make a difference. But if you are in a city, where it is already congested, it seems to me that there should be some type of rules to follow, because we have two major airports, and I know we are generally talking about the general airport, and we have that too, but we don't have that off-the-fence or whatever you call it, through-the-fence agreement because it is very near a neighborhood, and the citizens object to having a lot of extra traffic because of safety.

So I would like the people here to comment on whether or not you think location and whether or not the density around that airport makes a difference. I can see relenting a bit for very rural or very large spaced airports, but in large urban areas it could really present a real safety problem. So whoever would like to comment on that, I would like to hear.

Ms. CROOK. I will give you my perspective on that. One reason that I really enjoy managing airports, particularly in small communities, is because airports are economic drivers. The presence of an airport, many cases brings jobs, creates momentum, and drives economic growth in the area. And an airport lasts; it is a piece of infrastructure that lasts very a very long time.

Ms. JOHNSON OF TEXAS. I know the value of an airport. But I am talking about this type of arrangement.

Ms. CROOK. Yes. That is wonderful. My concern is that even an airport that seems like it is in a sleepy little rural area with not a lot happening that you could build a home with access to the airport and it would have very little impact, in the future, which could be 50 years in the future, that might now be now a bustling area that, all of a sudden, now that home with access is limiting the future development potential of the airport.

Ms. JOHNSON OF TEXAS. Yes. My time has expired, but you keep talking.

Dr. BLUE. Could I make a comment about that? There is a major difference between a residential through-the-fence access hangar home and another type of residence that is not aviation connected. In actuality, aviation-connected homes provide a buffer to other residents around airports, it provides space between those non-aviation-connected residences and airports. So there is a major difference there. And the FAA doesn't receive, at least from our FOIA request, does not have documented complaints of noise complaints

from hangar home residents, nor have they ever, through another FOIA request, ever bought a hangar home because of noise considerations like they have non-aviation-connected residences. So by having aviation-connected residents around airports, that actually provides some buffering to the noise issue.

Mr. SWECKER. Mr. Blue actually made my point, but I would add that, as a manager of 28 airports, I don't get complaints from residential through-the-fence neighborhoods; I get complaints from non-residential across the State.

Ms. JOHNSON OF TEXAS. Thank you. I know my time has expired.

Mr. BOSWELL. Thank you.

The Chair recognizes the gentleman from Georgia, Mr. Westmoreland.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

Ms. Comer, it is good to see you here, and I want to tell everybody that is here that may not know you, you do a great job for the State of Georgia and we appreciate all the help that you have given us. You mentioned one particular situation I think you and I both are very familiar with in the State of Georgia, but some of these through-the-fence agreements have been given by deed to some of these property owners. In some particular cases some of this through-the-fence agreements have been given in deed by a Federal agency, and I am talking about the resolution trust, the RTC. When they sold some of this property, in the selling of it they actually gave the person they sold to through-the-fence rights, and they have not been able to use it. So I would just like to know how you feel about that, number one. And number two is that we do have some residential through-the-fence that is already there, do we not?

Mr. COMER. No, sir, not on any of our publicly owned and federally obligated airports.

Mr. WESTMORELAND. OK. But you have evidently done that quite well, because I have not had any complaints from anything about anybody even trying to get a residential through-the-gate. But we, of course, have had discussions about some of these through-the-gate agreements that people feel like they purchased with the land. Could you comment on that for just a moment?

Ms. COMER. Yes, I would be more than happy to. In regards to that particular airport and issue that we are familiar with, as I mentioned when I described it, these issues are very, very complex, and I did not specifically point out that in that particular case, when the airport was purchased, along with the airport deed came existing through-the-fence access points for adjacent property owners. Those are deeded and the airport sponsor has an obligation to honor those access points. So, the plain and simple, they must honor those agreements, or they must honor the access.

The difficulty becomes when the proponent or the owner of the adjacent property and the airport sit down to negotiate a formal access agreement, and that is where the difficulty comes in in many cases. But it is just a process that has to be gone through and developed, and at some point it will be successfully resolved. And I think we are very close in this particular issue to coming up with a resolution, but, as I said, that whole issue is so complicated be-

cause of zoning and jurisdiction. It is kind of one for the record books.

Mr. WESTMORELAND. No, it certainly is. Trust me, I have heard a lot about it too. You know, I agree with Mr. Graves, Congressman Graves in the fact that he has questioned the personal property rights issue, and I do think that is an issue that needs to be addressed. We have gotten away from the life, liberty, and the pursuit of happiness part of our Bill of Rights, Constitution, Declaration of Independence, and the other things that allowed us the pursuit of happiness with our personal property. So I do think that is something that I hope we will all consider when we do this, that some people that have bought that property, thinking that they had the right to use it in the manner or for the reasons that they bought it, you know, we kind of need to let them do that.

Now, anything that the Federal Government wants to do in the future, I think that those are some of the concerns that need to be addressed and need to be looked at, and before we do anything else, because I am sure this one in Georgia is not the only issue that the FAA has got with through-the-fence agreements across this Country. But I would hope that we could come up with some kind of policy just to try to resolve those things that are already backed up, keeping people and airports from being able to benefit to the financial rewards that some of these through-the-gate agreements allow.

Thank you very much, Mr. Chairman. I yield back the balance of my time.

Mr. BOSWELL. Thank you.

The Chair recognizes the gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman.

Ms. Comer, your sweet and gentle southern accent is comforting to me and reminds me of home, and you know what I am talking about, Lynn Westmoreland. But, at any rate, I do want to thank you for being here today, and it is my understanding that your office has worked hard to dissuade any through-the-fence agreements in Georgia. Is that correct?

Ms. COMER. Well, I think we have worked very hard to educate our airport sponsors as to the grant assurances that are there for them to continue receiving Federal funding and again ensuring compatible land use adjacent to the airport. So by doing that the airports make those decisions themselves, and in the majority of the cases they have chosen not to enter into residential through-the-fence agreements.

Mr. JOHNSON OF GEORGIA. So they pretty much decide whether or not they want to be in a position for Federal funding for their airports and then they make the decision.

Ms. COMER. Yes, the decisions are made at the local level.

Mr. JOHNSON OF GEORGIA. Now, in the case of any situation such as Mr. Westmoreland just indicated, where does the power of eminent domain come into play?

Ms. COMER. Interestingly, in the State of Georgia, we do not own or operate any airports, so the eminent domain issue is a local issue with the local government.

Mr. JOHNSON OF GEORGIA. Does that ever come in terms of local governments deciding whether to allow for the through-the-fence

agreements or to mitigate these agreements that may already be in existence by way of eminent domain so that they can be eligible for Federal funds?

Ms. COMER. Actually, the acquisition of private property adjacent to the airport has been a very successful mitigation measure. For the residential through-the-fence issues we really haven't had any property acquisition of those parcels because the proponent of those proposals has changed their plans and not decided to use it in that manner. But in other commercial through-the-fence operations airports have chosen to purchase that property, and certainly in every opportunity our airports strive not to have to use eminent domain as a means to acquire that property. Sometimes it takes a little bit longer, but continued negotiation on those issues typically is pretty successful. But we have had airports condemn adjacent property in our State.

Mr. JOHNSON OF GEORGIA. Tell me, can you give us a little insight into how many of these types of agreements have been proposed in Georgia?

Ms. COMER. Residential through-the-fence access agreements?

Mr. JOHNSON OF GEORGIA. Yes.

Ms. COMER. We probably see maybe six, seven proposals a year. And that has been pretty continuous over my 13 years here in the State of Georgia.

Mr. JOHNSON OF GEORGIA. OK.

Ms. Lang, what is the FAA'S role in reviewing through-the-fence agreements prior to their being signed?

Ms. LANG. Well, I think part of the issue is the FAA is not always consulted on these agreements. In fact, we are finding in many cases their existence after the fact and after changes have been made to the airport layout plan that would potentially create problems putting an airport in noncompliance. And by noncompliance, I really want to stress what that means. When a local government makes the decision to take a Federal grant by laws established by this Committee, they sign up to operate and manage that airport in very specific and particular ways, including providing to the FAA an updated airport layout plan, or ALP when they make any changes on the airport. And on a lot of the things that we are finding, we were not consulted. Had we been consulted in advance, we would have been able to work with the communities to deal with that.

The fact of the matter is the FAA has long discouraged through-the-fence, whether commercial or residential, in this Country. The objective is to try to keep as much of the activity related to those uses, whether they are commercial or private aviation operators, on airport to generate money for the airport.

Mr. JOHNSON OF GEORGIA. Mr. Coyne, would an expanded FAA role in the drafting of through-the-fence agreements help prevent an airport from being in noncompliance or are through-the-fence agreements simply unworkable?

Mr. COYNE. Well, I think the FAA'S role is going to continue along the way it is now, being part of this equation, an important part of this equation, setting the national policy, and that is what this Committee and the FAA work at doing, is setting the national policy so that we don't have one small airport in one part of the

Country defining what our national policy is and then having some lawyer in another part of the Country saying, hey, well, you did it over there, let me do it here, and all of a sudden the whole national air transportation policy starts to unravel.

We think the FAA has a very important role but, as she just said, the local airport sponsor has a responsibility as well to communicate to the FAA, to communicate with the State and so forth when they have requests like this. But I think as a general rule the public use airports should be well advised that both residential and commercial through-the-fence agreements are not a constructive part of a national air transportation policy.

Mr. JOHNSON OF GEORGIA. Thank you. My time has expired.

Mr. BOSWELL. Thank you.

The Chair recognizes the gentleman from Kentucky, Mr. Guthrie.

Mr. GUTHRIE. Thank you, Mr. Chairman. And I will yield my time to Mr. Graves from Missouri, and at the conclusion of his remarks yield back the balance of my time.

Mr. GRAVES. My question is for Ms. Lang. Just out of curiosity, you just said that you want it to be on airport and to generate revenue for the airport. How did you put that? You want any activity around the airport to generate revenue for the airport.

Ms. LANG. Correct. It is a Federal assurance in the law that airports are to be self-sustaining. Congress, makes money available to the FAA, to give airports money to build the infrastructure associated with airport operations, but we also give land in order to develop the businesses that support aeronautical activities and in turn produce revenues to make the airport a financial, healthy operation. I think it was a very wise law that Congress passed. You want to keep the money on airport to keep the airport healthy.

Mr. GRAVES. OK. Well, how does having a residential through-the-fence agreement, how does it prevent that from happening?

Ms. LANG. So let's take that apart in a couple of pieces. I mean, as a general rule, airports have sufficient land and, in fact, grant funds are eligible for airports to build T hangars on airport has a way of making money and, at the same time, accommodating private aircraft owners who would like to base their aircraft on public use airports. So the number one objective is for that aviation interest to be accommodated on airports so the money conveys to the airport.

The other problem, though, with residential through-the-fence is really fundamentally one of residential encroachment, and the fact that in providing a through-the-fence access we have had a couple of major problems come up. Number one, there isn't always economic parity, and the FAA has received complaints from on-airport tenants that they are subsidizing the operation and maintenance of the airport because off-airport tenants are not required to pay comparable fees. That is in fact a violation——

Mr. GRAVES. Well, let's stop right there.

Ms. LANG. That is a violation of a Federal assurance on economic non-discrimination.

Mr. GRAVES. Let me ask you that. In fact, I think it would be a great opportunity because you can still have T hangars. But you can expand your airport through through-the-fence, but I certainly wouldn't expect a community or a county to have a through-the-

fence agreement without being compensated for that access. That person who has a through-the-fence agreement should pay exactly what the same fee as that person that is going to rent a T hangar. In many cases, there are airports all over the Country that the hangars are privately owned, but they lease the property underneath them. But why not just have them pay the same access fee? And that is generating income for the airport and allowing expansion without even using airport property that is still available for future expansion.

Ms. LANG. Congressman, I think you have raised a very fair point, but it is much more complicated to actually get those practices into compliance. I am going to go to my colleague from the State of Oregon. It took us five years to get the Independence Airpark, and it really looks like an airpark, to have the homeowners and off-airport users pay equitably with the on-airport operators. Five years to correct what was an economic matter of discrimination.

Mr. GRAVES. But it was done.

Ms. LANG. You know, it was done, but it was complicated. Now, we still have what I think really is the fundamental question before this Committee, which is whether or not we believe a home—and a hangar home, in the end, it is still a home—is in any instance compatible with the long-term vision and look, operation of an airport. That is the fundamental question.

Mr. GRAVES. Real quick, and I won't take too much time because I know other Members have to get going and I will come back to myself later. Again, just like in Independence, that is still private property, and if there was no access to the airport, you could still build a house on that property, could you not?

Ms. LANG. Congressman, I would like to, if I could, explain what I think the layers are that we approach. We look at the development of the airport system in the United States at federally obligated airports. We give airports the infrastructure they need to own and operate that facility. But we also give millions and millions and millions of dollars to those same communities to develop compatible land uses around the airport to avoid uses that harm or injure the current or long-term operation of the airport. Homes, historically and legally, and I think Mr. Coyne correctly pointed out the case law, are the most difficult challenge to expanding airports in the United States and frankly around the world.

Mr. GRAVES. But does it prevent it? I am running out of time and I want to be respectful of the other Members, so I apologize for shutting you off, and we will come back. But does it prevent it? Does anything prevent somebody from building a house on that property?

Ms. LANG. Only to the extent that the local zoning authorities properly zone compatible land uses around the airports.

Mr. GRAVES. And we are back to the local issue.

Ms. LANG. So it is in the end a local responsibility to do appropriate land use planning.

Mr. GRAVES. Thanks for your question. Again, I want to be respectful of the other Members.

Mr. BOSWELL. Thank you.

The Chair recognizes Mr. DeFazio from Oregon.

Mr. DEFAZIO. Oregon. Come on now, Leonard, we have been together many years.

Mr. BOSWELL. Oregon. Excuse me, sir. I stand corrected.

Mr. DEFAZIO. Thank you. Thank you.

In answer to Ms. Lang's question which you posed just before that last exchange about compatibility, I would say residential development is not always compatible and it is not always incompatible. I mean, I know that is probably not a satisfactory clear line answer that satisfies bureaucratic concerns, but I think there is a way that this can be done and be done properly.

Let me ask. It took five years in Independence, Oregon to get what you said was equitable compensation from the homeowners. What if the regulation just stated before any further AIP funds are invested in any of these airports, those airports must negotiate equitable compensation agreements with beneficial property owners? Would that satisfy the Federal concern? I mean, I am asking Ms. Lang, but I would be happy to have Mr.——

Ms. LANG. I would say it satisfies that particular assurance. There are 39 assurances. When a community accepts a grant, they sign up to own and to operate the airport in a manner consistent with those.

Mr. DEFAZIO. I understand.

Ms. LANG. And to be part of the national system is to have signed up to keep the surrounding lands available in a way to keep the airport expandable and adaptable. Putting a residential community of 200 plus homes adjacent to an airport would make it very difficult in the event that sometime in the future that community needs to expand or do something to enhance the aeronautical operation of the airport. I mean, history——

Mr. DEFAZIO. If I could, then, given the fact Oregon has comprehensive land use planning, given the fact that most people know it has the largest number of residential through-the-fence access agreements, as I understand, in the Country, are there inhibitions for the future of that airport or the anticipated future of that airport from what we have there? Mr. Swecker?

Mr. SWECKER. Well, I would point out that up until 2009 it wasn't a violation of a grant assurance in the language of that 5190 document, so Independence, the one we are talking about, was in place since the 1970's and in harmony with the FAA. There are others in the State that maybe could use addressing, that maybe have a safety issue. And I am not going to mention them by name, but we would agree with the FAA on some circumstances that there is room for improvement.

So does that answer your question, I hope?

Mr. DEFAZIO. Yes. I mean, where I am coming from is just where I started, which is I think there are some places where this could be appropriate, beneficial, economically beneficial, could potentially provide benefits for the operation or continued operation of the airport, because Oregon is kind of struggling with its general fund money and I would see that in other States. On the other hand, we want to meaningfully address the issues of safety. We should never compromise safety and the FAA does a good job of pushing on those issues.

So I think there is some middle ground here that we are not contemplating as we move forward. I mean, this is what I call lowest common denominator regulation, which is there is some really abusive thing over here, there is something really good over here, we will draw up the regulations targeted at all the abuses going on over here, even if that causes extraordinary problems or difficulties over here with the people who are doing it right. That is my concern.

One particular question. This is one that is of particular concern with the letter from the FAA to the residents in Independence. And, as I understand, the present proposal would say no new agreements; existing ones could continue. But then there becomes the issue of is there a property right. Because those people paid more for that home because it has that attribute, and if they can't pass that on, and I understand there have been some problems, then it seems to me we are getting I don't know that we can say it is a takings issue, but it is an issue of real concern to me.

Mr. Swecker?

Mr. SWECKER. There is concern among realtors, and if people want to sell their homes, they are very concerned about the verbiage in even the revised wording that might be subject to interpretation, and not black and white, that there might be a potential that houses couldn't be resold or that the terms of the resale or the access agreement might terminate. In this new documentation it talks about, under additional new access, the term might be limited to 20 years. That would be of concern if additional access and anything in that airpark were determined to be additional, that it could impact future sales and the value of those homes.

Mr. DEFAZIO. I see my time has expired, but we have had a debate for as long as I have been in Congress over something that is a little bit of a different twist on this, but it is residential development on forest service lands where people have been granted what were renewable leases. But then the question is whether the Government is getting a fair return, which we are dealing with, but, secondly, at one point there was a bad era where the Federal Government just went in and refused to renew any of those leases and actually went in and put junk in wells to destroy wells and bulldozed homes and things like that.

I just think in all of these instances we have to protect the taxpayers and the public interest, and certainly safety. On the other hand, we have to be cognizant of some of the potential benefits that can come from these things. So that is where I am at.

Thank you, Mr. Chairman.

Mr. BOSWELL. I think the gentleman from Oregon. I have to set it right that way.

Mr. DEFAZIO. You got it right that time.

Mr. BOSWELL. I know. I wanted to prove that I could. But I also wanted to acknowledge that you made some comments that correlate with what I said earlier, too. We can work this out if we just make up our minds to do it.

Second round. Mr. Graves.

Mr. GRAVES. OK, good. Thank you, Mr. Chairman, I appreciate it.

My question is for Dr. Blue, and it goes back to what I was talking about with Kate. You have a residential through-the-fence agreement.

Dr. BLUE. That is correct.

Mr. GRAVES. Do you take a little bit of offense, not a fence, to somebody saying that a residential through-the-fence agreement doesn't contribute to the viability of the airport?

Dr. BLUE. Well, I moved from on the airport, where we had a lease of land with our own hangar, to off the airport, where I own the land underneath the hangar, and I pay more to the City of Driggs, which is the airport sponsor, than I did when I was on the airport.

Mr. GRAVES. So you are contributing to the viability.

Dr. BLUE. I am contributing more to the viability.

Mr. GRAVES. And, again, I think that is important, and it comes back to—and it is unfortunate and I think, FAA, you are really, really missing the boat on this when you say no more new agreements, because I think every airport is different, and I think we ought to take a look at these. And if it doesn't work in Georgia, that is fine; that is your decision or the local community's decision, after you have educated them, to use your terms, or in the case of Elmira Corning Regional Airport, that has been your decision and that should be the case.

I completely disagree with this idea that you can't expand an airport with through-the-fence because we still come back to this.

Kate, you used the term buffer zone. Well, where does that buffer begin and where does that buffer end? All of these instances, whether we are talking about Independence or we are talking about Driggs or whatever, there is property private right up against the fence of that airport, and that private property could be used for residential land development; it can be used for anything. And you can't prevent that. There is nothing that is going to prevent that. So to save it just because you have an access point at the airport that is preventing the use of that airport for the public purpose or preventing the development of that airport is completely false.

Go ahead.

Ms. LANG. So there are a couple of ways that the FAA likes to work with local communities in thinking about exactly this issue, because I think it is a totally correct question to ask. We do it two ways, two principal ways. Number one, we give airports money to do planning, master planning on their airports, and we say look at the demand you have today and anticipate where you think you are going to be 20 years from now. And in many cases the 20-year vision is something beyond the current airport boundary of the airport, and in those cases, where we agree that the future and what they see around the corner is the right future, we actually work with those communities to buy the land to create buffers for future development.

In other cases the boundary of the airport is going to be pretty much, at least for the foreseeable future, the boundary of the airport, and it has what it needs to be to meet its expected growth. Not everyone needs to expand their boundaries. But in those cases we really urge the community, through grants from the Federal

Government, to work at really thinking about what are the most compatible best uses around that airport that keep the development and the operation of the airport compatible with what is going on with the community.

Historically, the interpretation on that has been that homes are not compatible with either the current or long-term uses. And I think that is really the fundamental public policy question, and I want to really emphasize something here. We have put out a proposed policy. We have heard you loud and clear, and I agree with Congressman Westmoreland and Congressman DeFazio. In instances in which there are existing legal arrangements, we have to honor those. We recognize that communities went into those. There are legal liabilities and we have some culpability in the creation of some of those, and we have to responsibly manage them going forward.

The real question about the future is what do we do and do we, in certain instances, say that homes are not, per se, a violation of compatible use and could enhance an airport. That is an extremely difficult criteria. We have struggled very hard with threading the needle for the existing locations. Going forward, we have not been able to find the right recipe. As we have advised, we sat down with all of the community, AOPA, EAA and we have said if you think there is criteria that the Federal Government should consider, provide it to us during the comment period. We think it is a high bar, but I think it remains to be seen whether or not, going forward, it is an insurmountable one. And, as I said, we are very open-minded to see what the input of a very passionate community is on this issue.

Mr. GRAVES. I think it is important, again, that we just don't bar permanent from now on. I still think it comes down to a local decision, and the fact of the matter is very few communities, particularly small communities with small airports are going to spend the money, taxpayer dollars, when they are already short, to fix the road or whatever it is in town, to spend the money to buy adjacent property around an airport in the hopes that in 20 years something is going to come around.

Now, having said that, though, I also know a lot of communities that do buy adjacent property for a potential business park. They love locating business parks out by the airport because it is industrial use. They don't care about the noise. And what is more, I have a lot of communities, and I know this is different, but it is still talking about hanging on to that property and holding that property to be used; it is not residential, but they also like the idea of being able to offer up as a business incentive to attract Caterpillar, or whatever the case may be or whoever it is, access to that airport. That is a huge economic development tool when you can say, hey, you bring your company in here and we will give you access.

So I think, again, it comes down to—I just hate the idea of the FAA just saying from now on none. It still comes down to a local decision and, again, if the State of Georgia doesn't want it, then that is the State of Georgia's decision, along with the local community. A perfect example, local community has decided that they don't want residential through-the-fence, or at least your regional airport is, and that has been your decision, and it should be your

decision. Driggs has decided they want them, and it is working, and they are making more money from through-the-fence agreements than they were before. Oregon is a great example of the way it works, but it still comes down to the local decision, and I hate the idea of a total prohibition.

Again, I went over again, Mr. Chairman.

Mr. BOSWELL. OK, Mr. Westmoreland, please.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

Mr. Blue, at some other time, not now, but I would be interested in trying to figure out how a Democratic coroner candidate campaigns against a Republican coroner candidate. I can't imagine what your issues would be, but at some other time we will discuss that.

Dr. BLUE. Well, if I am elected, I hope you never need my services.

Mr. WESTMORELAND. I don't know, those would be some campaign issues. But you made a comment about, I think, a bus stop at the Federal Government, because part of what I have heard is that this is Federal money going into these airports that would enhance the property value of the people that had a residential through-the-gate. But isn't it true that with some of the stimulus money that we spent, or other Federal money we spent, we pave streets, we put in water lines, we do sewer systems. And if you live on a dirt road and through some type of Federal money somebody came in and paved the street that you live in, would that not enhance your property value through a Federal funding mechanism?

Dr. BLUE. It would obviously enhance us. The argument that we are going to benefit because we have a through-the-fence agreement is just a silly argument and I really think it is just a bee in the bonnet in some of the FAA staff members who don't like that idea.

Mr. WESTMORELAND. Let me ask you this, and this goes to the buffer. And I would like to just ask each one of you, if you could, just tell me what your ideal buffer would be.

Ms. Lang, what would your ideal buffer be, 1,000 feet, 500 feet, half a mile? What would your buffer be?

Ms. LANG. Well, you know, the one thing, Congressman, I think we all agree on is if you've seen one airport, you have seen one airport. I think we have unanimity of view at least on that point.

The answer is different in the facts and circumstances of every airport we look at. I mean, frankly, you look at the current operation, the impact on the surrounding community, but, again, this is a really important part of the American tradition. We expect airports to look around the corner and say what are you going to need in 20 years from now. So we design and do buffers based on the current operation and the projected operation, and then we layer on that.

You know, I started in local government. I began my aviation career in local government. Local government does its job right when it has responsible leadership on local zoning, and this is really the other thing we provide, the other tool we give airports is money to come up with ways to make the airport compatible with the demands of the community. So I think the answer is it depends on

the particular needs of the airport and the community going forward.

Mr. WESTMORELAND. So if that is your answer to that, would it also not depend on local community's need for revenue or services to be able to allow some of these through-the-fence agreements?

Ms. LANG. Well, again, I think there are a lot of ways in which the Congressman and I agree. I mean, I look at industrial parks. I think industrial parks are a wonderful example of a compatible collateral development around an airport. And you know the amazing thing about industrial sites is they don't complain about noise. I mean, that is a huge benefit to the system.

So we really like to encourage the kind of development that adds. And there are properly structured through-the-fence operations that do support industrial operations. It is a compatible land use and it is one, when necessary, is also easier to extinguish than those that convey with a private property or a home. It is just a fact that homes are just much more difficult to move.

Mr. WESTMORELAND. No, I understand.

Ms. LANG. And they are much more willing to move.

Mr. WESTMORELAND. I know, but you have to some kind of idea of what you think a good buffer might be. And I agree with Chairman Oberstar when he said, look, if you build a house next to an airport, if you don't know there is an airport there, you have bigger problems than building a house next to an airport.

Ms. Comer, how about you? What would you think a great buffer would be around an airport?

Ms. COMER. I'm sorry, I think I have to kind of echo Ms. Lang's remark. I think it really depends on exactly what you are trying to buffer against. If you were to ask me about landfills near airports, I would tell you five or six miles. Just different issues where you are looking at obstructions——

Mr. WESTMORELAND. It is only a half mile in Georgia, isn't it?

Ms. COMER. No, sir.

Mr. WESTMORELAND. It is not more than a mile.

Ms. COMER. Actually, there are no State laws that address the location of landfills adjacent to airports, except there are some Federal laws.

Mr. WESTMORELAND. OK.

Ms. COMER. So that is a good thing.

Mr. WESTMORELAND. Because we have a landfill that was built too close to an airport and I will have to call you on that.

Ms. COMER. There are many of those that exist that are there, and they are going to continue to exist there until they care closed.

Mr. WESTMORELAND. Mr. Swecker?

Mr. SWECKER. Five miles of farmland in all directions.

Mr. WESTMORELAND. OK.

Mr. SWECKER. Seriously, residential access, residents with access to an airport aren't going to be the ones that complain; it is the residential neighborhoods that are encroaching on an airport that aren't associated with aviation, those are the ones that complain. I know this from experience.

Mr. WESTMORELAND. Ms. Crook?

Ms. CROOK. Again, I can only echo what Ms. Comer and Ms. Lang have said, that there are many different types of buffers. But

if you are talking about a buffer for a residential use, then I would look at the future projected noise footprint.

Mr. WESTMORELAND. OK.

Mr. COYNE. I would stress the noise footprint too. Obviously, the approaches coming into the runways, you are going to have more distance there than on lateral sides. But generally speaking, 50 or 55 dB level is something where you want to keep the residents away.

But I do want to emphasize something here. Just because we believe a current neighbor is going to be friendly to the airport, you cannot count on that in the future, and I often use the example of Santa Monica Airport. Santa Monica Airport was built during the Second World War, and they built hundreds and hundreds of homes for the workers at that factory that was right there at the airport, and everyone said, oh, their job is at the airport; these houses are always going to be proponents of this airport.

Well, today, as I am sure Ms. Lang and others can tell you, the people who live in those houses have long since forgot that that house was part of our Nation's building the B-29s and so forth that were so critical at that airport, and now many of them have all turned into, somehow, anti-airport activists. And I am concerned that this same thing could happen at any residential location.

Mr. WESTMORELAND. I understand.

Mr. Blue?

Dr. BLUE. I am not sure what that number is, but there are things that the airports can do to mitigate their impact related to traffic patterns and noise abatement procedures. However, in the Driggs setting, where we received $7 million two years ago to upgrade our runway from a B-2 runway to a C-2 runway, they talked a lot about the residential through-the-fence access, but they didn't talk about the middle school that they moved the runway closer to that is adjacent to the airport on the other side. So, I mean, the FAA can complain about residential through-the-fence, but they are not looking at the whole picture.

Mr. WESTMORELAND. Well, plus, too, if you get into this buffer situation, you could have 1,000 feet, 2,000 feet around an airport that is not really guarded, because your fence is going to be around the airport. I mean, you are talking about wildlife and other things, people getting close to a plane taking off or landing. And then if you fence in the outside of it, now you have an entrapment between the two fences for things also.

So I just hope that we will study this very carefully and that the FAA will listen to the input. But, you know, we passed a law in Georgia that we had people that lived close to Fort Benning, and they didn't understand they were going to be shooting guns at Fort Benning. Well, if you live adjacent to a fort, they are going to shoot guns. So we had to pass some type of legislation in Georgia that said if you move close to a fort, this is the buffer you have to have between the fort and where your house is. And if you do that, then you don't have any legal ability to file suit against them with the noise.

Thank you very much, Mr. Chairman. I yield back.

Mr. BOSWELL. Well, thank you, Mr. Westmoreland, for that line of discussion.

We are going to move to closing here pretty quickly, but before I recognize Chairman Oberstar, since he wasn't here, I made this comment, Mr. Chairman. I want you to hear it from me. I had made this comment when I took the Chair, that we all recognize that you are very safety conscious. Nobody questions it, none. None of us whatsoever. And I recognize that and always will because I know you believe it and practice. I just made this comment.

I do have to say, though, that pilots do understand that they must follow and comply with instructions, whether it is entering a taxiway or runway or back-taxying or whatever goes on in what they do. It would seem possible and reasonable to me that, through education, signage, and firm regulation, that this question can and, I might add, should be worked out in a safe and respectful manner.

So I realize this is a hearing and exchange of ideas, and I think it has been extremely good. I would like to recognize you, Mr. Chairman, and then Mr. Graves, and then we will be finished.

Mr. OBERSTAR. I think Ms. Norton——

Mr. BOSWELL. No, she said she didn't have any questions.

Mr. OBERSTAR. No questions. All right.

The safety issue I explored sort of briefly with Ms. Lang. I think there needs to be a reemphasizing and reenforcing of the safety practices that pilots must adhere to under any circumstances, whether it is through-the-fence agreement or on a major hub airport. We learned long ago, if you are a general aviation pilot, you do have a right to access MSP or JFK or LaGuardia, but you then have to have all the proper equipment to get into that airspace; you have to have a Mode C transponder, you need a T-cast, you need all the electronics to be able to operate in that environment. Similarly, on a general aviation public use airport there are rules, regulations that have to be adhered to, and pilots, maybe you need a refresher course for them, but that is certainly the primary concern.

Mr. Westmoreland asked the intriguing question of how much of a buffer do you want, and I think Ms. Lang said if you have seen one airport, you have seen one airport. It depends on the layout of that airport and the location, and depends on whether you have jet aircraft operating in the proximity of a landfill. If you do, there is a very specific FAA requirement for distance between the landfill and the airport operations area. We saw how important that is with US Airways landing in the river in New York City. You have a bird strike in a jet aircraft and it is extraordinarily dangerous.

There was no objection raised at all by the people in Brainerd in my district when they were extending the runway, and there was a landfill that had to be removed, and there was some objection from some of the members of the county board, so the airport authority asked me to come out and talk with them, and I laid it out for them. You want to extend the runway? I want the runway extended? You have to move the landfill. And they did, to their great credit.

So safety concerns are the first.

But, Ms. Comer, last night, reading your testimony, I was intrigued by the second page of your testimony. You say one of our airports, in 2006, original proposal has a substantial residential component, the water feature, hangars, new fixed base operation.

The water feature would provide a habitat for birds and wildlife and pose a safety hazard. That is the kind of thing that you have to pay particular attention to. I can't imagine anybody wanting a through-the-fence agreement wouldn't acknowledge that that is an issue.

Is there anyone at the witness table that says we ought to let that happen?

[No response.]

Mr. OBERSTAR. Well, I didn't see any hands go up.

But the airport sponsor does not have jurisdiction for zoning. Now, that is a unique problem. If the zoning authority resides in another county, you have an airport authority here and another county over there, there is a conflict of law, a conflict of jurisdiction. You are still trying to work that out, apparently.

Ms. COMER. Yes, sir, we are.

Mr. OBERSTAR. And you have no resolution in sight at the moment, at least as of your testimony.

Ms. COMER. For the dedicated through-the-fence access agreement I think there is a resolution in sight that would contain primarily aeronautical activity and no residential or water features or anything that would be an attractant to wildlife. But as far as this airport resides in one county, but the airport owner is the adjacent county. So they don't have, obviously, the jurisdiction for right of eminent domain and zoning around the actual airport property, so it is just a very difficult issue.

Mr. OBERSTAR. Left to your own devices, you are going to be able to work this out, apparently.

Ms. COMER. We have been in there for five years and we are not giving up.

Mr. OBERSTAR. Five years? Oh my goodness. That is a long time.

Ninety-one general aviation airports in Georgia?

Ms. COMER. That are federally obligated and public use.

Mr. OBERSTAR. Yes. And a statewide plan to place every Georgian within a 30-minute drive of an airport capable of accommodating 85 percent of the corporate aircraft line today. That is an admirable aviation policy. I was really struck by that. I don't know of another State that has such a—there may be others who have such a policy, but I think that is very sensible. Very progressive.

Ms. COMER. We developed those guidelines through a systems planning grant that FAA provided probably about 20 years ago, that was the very first one, and we have a tiered system of airports.

Mr. OBERSTAR. I was very impressed with that. We in Minnesota are very proud of our, but we don't have that kind of policy in our State. I am going to take that up with our airports director; something we ought to be thinking about. I always learn something at our hearings.

Now, Ms. Lang, what are the next steps in the rulemaking process?

Ms. LANG. Chairman Oberstar, it is a policy, so it is not subject to the same kind of rigor that a rulemaking is, but it is out for public comment. The docket closes on October 25th and we are quite anxious. We are trying very hard. I emphasize the fact that we have tried very much over the last six or seven months to go out

and really have first-person conversations with the affected communities here. There has been a lot of energy on this, and when you involve people's homes, that is a very emotional issue.

We are very interested in getting it right and understanding the existing situations, and in having what I think is a very important conversation with the aviation community and this Committee on how to really advance the public policy going forward. Are these agreements that are replicable, duplicable that we can come up with transparent policies on for the future and still have the long view that this Committee expects us to have?

So, as I have said, I hope the last seven months show that we have really approached this with fresh eyes and open minds. We put it out for comment rather than going final. This is the second time out with this draft because we really are trying to hit center line on it. So we are very much looking forward to the feedback and would be happy to report back to this Committee on the comments we receive on this second round.

Mr. OBERSTAR. Is this process covered by ex parte requirements?

Ms. LANG. I am going to look for one of my lawyers. I don't think it applies at the same level that rulemaking does. I mean, it is a policy change.

Mr. OBERSTAR. Then in that context, let me ask that in the next couple of weeks, with consultation with Mr. Graves, Mr. Boswell, and others on the Committee, that we invite you back to have a briefing on the status before you finalize things.

Ms. LANG. We would absolutely welcome that conversation and really do appreciate the support of this Committee and your leadership in advancing these policy discussions.

Mr. OBERSTAR. Good. On that note I think we have a pass forward. Thank you.

Mr. BOSWELL. Thank you, Mr. Chairman.

Mr. OBERSTAR. Let me just ask Mr. Graves. I will yield to him, if you think that would be an acceptable approach.

Mr. BOSWELL. Yes.

Mr. Graves, he wants to know if you wanted to respond to his offer.

Mr. GRAVES. Oh, absolutely.

Mr. OBERSTAR. All right. Good.

Mr. GRAVES. Listen, Mr. Chairman, and I know you always want to do the right thing and get this right, and I think we can get it right. You know, I hate the idea of a blanket policy that just ends this from now on. I think every airport is different, and every airport ought to have the opportunity. So, you know, I very much appreciate being open with this.

And I would like to point out a few things before we finish up.

Mr. BOSWELL. Well, you are going to have some time. You are yielding to him right now.

Mr. OBERSTAR. No, the gentleman may have his own time.

Mr. BOSWELL. OK. At this time I would recognize Mr. Graves.

Mr. GRAVES. Well, I just want us to remember, and I know everybody in this room obviously is associated with aviation, but when we are talking about this, let's remember we are talking about medium and small airports. You get a lot of confusion out there that what we are talking about in some cases is airports with

commercial service, and that is not the case. You don't have agreements like this. You may have some business agreements through-the-fence, but you don't have residential.

I also think we have to remember, too, we are talking about access. You know, the two poster childs for residential through-the-fence agreements are Driggs Airport and Independence Airport, and nothing is preventing that development from taking place outside of the airport. We are talking about access. That is all it is, is access. And I think people who have that access ought to pay just as much and contribute to the viability of that airport as anybody that is leasing a hangar or leasing the property underneath the hangar, and I think we have to remember that.

But I have heard not one single thing today, not one single argument that prevents the expansion of an airport that has a through-the-fence agreement. I haven't heard one single argument that it prevents the viability of that airport in the future. In fact, I think it enhances the viability because you get more people around there, more people paying attention.

And I want to promote aviation, I don't want to scare people off from it. I want as many people from the community out there as I can possibly get, because I am scared to death about the future of aviation and the fact that we just don't have as many pilots as we used to have, or people that are interested in it. And there isn't one single argument that I have heard today that prevents the public use of that airport when it has a residential through-the-fence agreement, not one single argument.

I think the worst thing that we can do is have the Federal Government come in and say that local communities are not going to be able to do this anymore if you want to receive tax dollars. Remember, those are tax dollars; they are contributed by people who buy aviation fuel or people who buy tickets, and it goes to the aviation trust fund, and that is what is used to draw AIP funds to develop infrastructure.

The worst thing that we could do is this is another case where the Federal Government would come in and say you cannot do this. It still comes down to a community decision, and if the community decides that they don't want this, then the community ought to have that choice. If the county decides they don't want it, then the county ought to have that choice. If the airport board decides they don't want it, then they ought to have that choice. Whoever is responsible.

And there is nothing wrong with guidance from the FAA, because you are there to protect the airspace and to protect that public use, but let's be reasonable on this. You said it yourself, every airport is different. So let's not just say from now on there aren't going to be any more new ones. Let's look at them on a case-by-case basis.

And I appreciate, Mr. Chairman, again, your willingness to do this hearing. You are always very gracious in that respect.

And thank you, Leonard, for Chairing today and taking the time.

And all of our witnesses, thanks for coming out. I know you came a long way.

Mr. BOSWELL. Well, thank you, Mr. Graves.

Again, Mr. Chairman, you have suggested a way we can move forward on this. We appreciate it. I look forward to that and I

think Mr. Graves summed it up very well. You have a big responsibility. Nobody is doubting that. And I would concur with what he said in that regard completely, without repeating.

All of you at the panel, you have been pretty good to have you here today. We have a good discussion going on, and it would be my hope that we walk before we run and we do this right. I think we will. I think we can.

So, with that, we will have standard procedure on how we close out this meeting.

Mr. OBERSTAR. The meeting is adjourned.

Mr. BOSWELL. Well said. The meeting is adjourned.

[Whereupon, at 12:27 p.m., the Committee was adjourned.]

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

**"Residential Through-the-Fence Agreements at Public Airports: Action to Date and Challenges Ahead"**

**September 22, 2010**
**Room 2167, Rayburn House Office Building**

Thank you, Mr. Chairman, for holding today's hearing to enable us to examine "through-the-fence" agreements between residential property owners and public airports.

Today's hearing will focus on the current state of "through-the-fence" agreements and will also seek to inform our discussion on the proposed Federal Aviation Administration (FAA) rule regarding existing "through-the-fence" agreements.

I am concerned with current policy regarding "through-the-fence" agreements. The premise of these agreements appears to be in conflict with federal regulations, and I am particularly concerned to ensure that these agreements do not pose a risk to the autonomy of public airports or to the general safety of those who live in surrounding areas.

"Through-the-fence" agreements defy federal requirements for compatible land use surrounding public airports, considerably limiting opportunities for airport expansion. In addition, at airports where "through-the-fence" agreements exist, these agreements appear to drive up the cost of adjacent vacant property, which in turn, can increase the tax dollars needed for the government or the airport to purchase additional property in the immediate area.

Through-the-fence agreements may also create unintended safety risks by allowing private residents to enter a runway from several points – in some instances without the supervision of an air traffic controller or airport personnel.

I am further concerned by the legal implications of "through-the-fence" agreements. These agreements can create easements on airport property in favor of residential property owners, effectively stripping away public airport control of that property. This leaves private residents responsible for maintenance of that property, and public airports lose the ability to make necessary repairs or improvements.

Current policy does not appear to adequately address the potential problems resulting from "through the fence" agreements – particularly when public airports entering into "through-the-fence" agreements expose themselves to potential liabilities. We must find a solution that best serves taxpayer interests in these public facilities.

I look forward to the testimony of today's witnesses as we assess the future of "through-the-fence" agreements.

With that, I yield back.

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SENIOR DEMOCRATIC WHIP

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STATEMENT OF CONGRESSWOMAN
EDDIE BERNICE JOHNSON
Committee on Transportation & Infrastructure
Hearing on Residential Through-the-Fence Agreements at
Public Airports: Action to Date and Challenges Ahead
September 22, 2010

**Mr. Chairman, thank you for holding this hearing today on residential through the fence agreements.**

**None of the public airports in my district employ through-the-fence agreements; however, there are between seven and eleven airports in Texas with such agreements.**

It seems that this is a very personal and emotional issue for many general aviation pilots whose planes are parked ~~in~~ at their homes and who take advantage of direct access to airport taxi-ways. I can understand their concerns, as they have grown accustomed to the use and benefits of through-the-fence agreements.

However, I can also understand the safety and land use concerns raised by the FAA.

This Committee takes transportation safety issues very seriously and I believe the FAA raises some valid concerns.

In reviewing through the fence agreements, the FAA found incidents such as the incursions of pets, people and private vehicles on airport property; the construction of structures that interfere with navigational radio signals; and, the ability of airports to make safety-critical improvements to runways and taxiways.

I am glad that we are taking the time to hear from both sides on this issue and hope that we can find a solution agreeable to all interested parties.

Thank you, Mr. Chairman.

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
9/22/10

Thank you, Mr. Chairman.

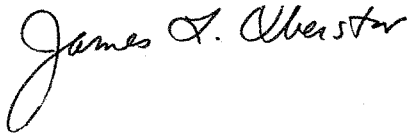
As we discuss through-the-fence issues today, I want to encourage my colleagues to be mindful of the needs of their local airports, and how vitally important these airports are to their local economies.

Airports frequently serve as major economic engines for the communities in which they are located.

For example, Scottsdale Airport in my district generates an estimated $180 million economic impact. That means jobs.

So, while I know there are a number of issues relating to through-the-fence access, I hope to hear from our witnesses today about the economic impact any proposed changes to current through-the-fence policy would have.

At this time, I yield back.



OPENING STATEMENT
THE HONORABLE JAMES L. OBERSTAR
FULL COMMITTEE HEARING ON
"RESIDENTIAL THROUGH-THE-FENCE AGREEMENTS AT PUBLIC AIRPORTS:
ACTION TO DATE AND CHALLENGES AHEAD"
SEPTEMBER 22, 2010

Today, we are exploring the effects of residential through-the-fence agreements at the nation's public airports. We are seeking a balance between the interests of homeowners who own and operate aircraft, and the interests of the government and the public at large, who have invested substantial sums to develop the airports involved.

Residential through-the-fence agreements are agreements between the State and local governments that own and operate local airports, on the one hand, and people who own land adjacent to airports, on the other. The agreements exist for a unique purpose: they allow homeowners to park their personal aircraft at their homes, and taxi those aircraft to and from airport runways and taxiways at their leisure. Where others might park a car, these homeowners park an airplane, and they enjoy the freedom to go flying at their convenience.

I commend these homeowners for their interest in promoting general aviation and their vigilance in watching over their local airports. I appreciate their investment in a lifestyle that, when pursued responsibly, allows them to support their local

airports and general aviation as a whole. The majority of homeowners with the privilege of through-the-fence access exercise that privilege with a remarkable sense of civic virtue.

At the same time, I recognize the challenges for the Federal Aviation Administration (FAA), local airports, and even homeowners themselves that have materialized as the result of through-the-fence agreements. I am concerned that, in certain situations, through-the-fence agreements may restrain airport development; prevent airports from expanding or making critical safety improvements; and even result in access-holders' improper use of airport property for non-aviation purposes.

Since October of 2009, the FAA has approved more than $2.8 billion in Federal grants for local airports to invest in needed infrastructure. By law, these grants are made to create a national, integrated system of public-use airports. Each of the Federally-funded airports functions as an indispensible part of that system. But when through-the-fence agreements restrain airport development, or create safety issues that limit the ability of pilots to use an airport, the return on Federal investment in that airport is diminished. I am concerned that through-the-fence access, in some cases, may be doing just that.

Last year, the FAA published a policy discouraging residential through-the-fence agreements. The FAA has received a large number of comments on that policy. Many of those who commented took a rather dim view of the FAA's decision to discourage these agreements. I understand that some homeowners were uncertain about the future of through-the-fence access after publication of the FAA's policy.

On September 9 of this year, the FAA published proposed revisions to its policy that take into account some of the criticisms of the prior policy. I am pleased to note that, under the new FAA's proposal, homeowners will be able to continue to enjoy through-the-access when their local airports comply with reasonable requirements to ensure all points of airport access are accounted for and mapped. Of course, homeowners and airport sponsors must work to ensure that, going forward, through-the-fence access does not create the safety and legal issues that the FAA has documented in the past. The FAA does not propose to prohibit, outright, through-the-fence access to all airports, public and private. Rather, in the end, airport sponsors are free to judge whether the benefits of creating new through-the-fence access would bring opportunities and benefits that outweigh the continued receipt of Federal investment. The FAA's proposal to preclude new through-the-fence access does not apply to airports that do not receive Airport Improvement Program grants.

I look forward to hearing more from Kate Lang, Acting Associate Administrator in the FAA's Office of Airports, on what the proposed policy means for homeowners and for airports. I also look forward to hearing from our other witnesses with unique expertise and knowledge of the issues presented by through-the-fence agreements.

We will vigorously explore whether the FAA's new policy serves the public interest and protects Federal investment in the nation's airport system. I am optimistic that all stakeholders will have the opportunity to work together in a spirit of respect and cooperation to find common ground and to ensure that the policy that emerges from the FAA's September 9 proposal reflects both the nation's interest in maintaining a healthy, functioning airport system and homeowners' interest in preserving investments that mean a great deal to them and to their local communities.

We must remain committed to ensuring that Federal investment in airports produces the returns and benefits we expect from such significant public investment. I look forward to hearing from our witnesses.

# Written Testimony of Brent Blue MD

## The Committee on Transportation and Infrastructure

## "Residential Through-the-Fence Agreements at Public Airports: Action to Date and Challenges Ahead."

## September 22, 2010

**Chairman Oberstar, Ranking Member Mica, and Committee Members:**

Thank you for the opportunity to present written testimony to the Committee on Residential Through-the-Fence (rTTF) agreements at federally funded airports.

The FAA, through its Airport Compliance Manual (5190.6B dated September 30, 2009), interprets any residential land use next to airports as "incompatible land use." The basis of prejudice is the FAA's interpretation of 49 United States Code (U.S.C.) 47107(a) (10) and the associated federal grant assurance 21, Compatible Land Use.

The FAA has refused to distinguish between residential homes which have no aviation connection and aviation connected hangar homes. Part of this deficiency is related to the FAA's Airport Compliance and Field Operations Division on site lack of familiarity with hangar homes. Residential hangar homes are completely different than non aviation related homes and are airport "Compatible Land Use." Not only are they compatible, but rTTF agreements are good for airports economically and improve security.

The FAA has stated multiple reasons for their proposed ban of rTTF agreements based on federal grant assurance 21 and other sections in this Code. The FAA's reasons and interpretations for the ban have change over the past year as each one of has been challenged, disproven or shown not to have any evidence or data to support them in the first place.

The FAA has listed the follow reasons at various times for their prejudice against hangar homes:

1. Noise Complaints;
2. Diminished Security;
3. Diminished Safety;
4. Efforts by Residential Neighbors to Restrain the Growth of the Airport or Impose Restrictions;
5. Wildlife Issues;
6. Unfair Economic Benefit from Airport Improvement Program Grant Monies to rTTF Agreement Holders; and
7. Owners of rTTF Hangar Homes Could Sell Their Property to a Non Aviation Related Purchaser.

### 1. Noise Complaints

Through a Freedom of Information Act request asking for all the noise complaints from hangar homes for the past ten years, the FAA was unable to produce one complaint or any other supporting evidence for this concern related to rTTF agreement holders. FAA personnel stated that "They (hanger home owners) complain just like everyone else when the noise is from an aircraft that isn't theirs."[1] This is a totally unsupported statement lacking documentation of written complaints, interviews, or any other data collection.[2] It is strictly the opinion of FAA personnel who do not have any direct experience with hangar residences.

FAA personnel have also pointed to federal monies used to purchase residences next to airports due to noise and/or other purposes. None of these monies were used to purchase hangar homes with rTTF agreements.[3]

### 2. Diminished Security

Through FOIA requests, no data or other information was in existence to show diminished security. In the contrary, the FAA and the TSA have both

[1] Katherine Baxter, FAA Airport Compliance and Field Operations Division, Email 19 May 2009
[2] FOIA request November 9, 2009
[3] FOIA request November 10, 2009

endorsed the Aircraft Owners and Pilot's Associations (AOPA) "Airport Watch" program.[4] The AOPA has partnered with the TSA to develop this nationwide program that uses the more than 600,000 pilots as eyes and ears for observing and reporting suspicious activity. Residents of hangar homes are adjacent to the airport on a more consistent basis, especially at night, when most non commercial general aviation airports are totally vacant and less secure.

Just as an example, at the Erie, CO, airport this year, a hangar home resident reported susupicious airport activity which led to the arrest of drug smugglers who were using aircraft for their transport.

We have polled the administrators of approximately 600 private residential airparks for security issues at their facilities. That poll revealed only two unauthorized encroachments over the past 10 years—neither of which were security related.[5]

### 3. Diminished Safety

The FAA has not shown any data which suggest that rTTF agreements diminish safety at the approximately 75 airports which currently have rTTF agreements.[6] Nor has our polling of the approximately 600 non federally funded airparks shown any safety issues related to runway and taxiway access.[7]

The FAA continues to use a structure at Gillespie Field as an example of improper rTTF building affecting safety due to the restriction of tower line of site to a federally funded taxiway.[8] However, there are several problems with the use of this example: 1) Because the structure is on airport property, the FAA approved the construction plans; 2) the fact that the building contains a residence has no bearing on the issue[9]; and 3) the owners paid for and maintain a closed circuit television system for the

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[4] http://www.aopa.org/airportwatch/
[5] David Sclair, President of www.livingwithyourairplane.org, results reported by Email communication
[6] Ibid FOIA November 10, 2009
[7] Ibid Sclair, President of www.livingwithyourairplane.org, results reported by Email communication
[8] Document ID: FAA-2010-0831-0007.3 Page 5
[9] Fact acknowledged by Randell Fiertz, FAA, Public Meeting, March 4, 2010

tower that actually improves visibility over direct line of site due to frequent fog in the area.[10]

Safety concerns expressed by the FAA personnel have been strictly conjectured without basis on fact or experience.

### 4. Efforts by Residential Neighbors to Restrain the Growth of the Airport or Impose Restrictions

The FAA does not have one instance where hangar home residents have tried to restrain or impose restrictions on airport growth or operations.[11] Although this may have occurred with non aviation related residences, there has never been a case that the FAA can document where this has been an issue with rTTF agreement holders.

### 5. Wildlife Issues

Although this has been cited by FAA personnel as an issue, we have yet to determine a wildlife connection to rTTF agreements. Fencing of airports is independent of whether rTTF agreements are in place.

When asked at a public meeting why a local airport grant of $7 million did not include money or a requirement for a fence, FAA personnel responded that "fencing is not required" at the airport which has rTTF access.[12]

The FAA personnel at this meeting were asked three times, after their personal inspection of the airport, if they found any problems to which they responded "no" every time.[13] Despite this public statement, the FAA used a photo of a gate at this same airport as an example of improper rTTF access.[14]

### 6. Unfair Economic Benefit from Airport Improvement Program Grant Monies to rTTF Agreement Holders

[10] Private communication, Willis Allen, San Diego, CA, March 4, 2010
[11] Ibid FOIA November 10, 2009
[12] Public Meeting, March 4, 2010, Driggs ID (KDIJ)
[13] Ibid
[14] Document ID: FAA-2010-0831-0007.3 Page 18

This issue would be similar to the economic benefit for a homeowner near a bus stop that was upgraded with a shelter with stimulus monies. Similarly, owners of properties near federal highways benefit from road improvements.

In actuality, any increased valuation of a hangar home due to airport improvements would be reflected in higher property taxes, thus, supporting the local community. An example of this is Claremont County airport where rTTF homeowners pay approximate average of $17,000 a year in property taxes.[15]

7. **Owners of rTTF Hangar Homes Could Sell Their Property to a Non Aviation Related Purchaser**.

This cannot be controlled; however, the likelihood of a non aviation related person buying a home which has an increased price due to the presence of an aircraft hangar would hardly be enticed to pay extra for its presence if they did not have an intention to use it for its intended perpose.

In addition, most rTTF owners are currently required sign avigation easements related to noise. These easements persist through a sale.

**Comments Specific to the FAA-2010-0831 Proposed Policy:**

The FAA proposes, with this action, to codify the prohibition of residential Through-the-Fence access at airports in the National Plan of Integrated Airport Systems (NPIAS), more commonly known as federally funded airports. Although this action is somewhat of a compromise position by the FAA from their new, total ban of all rTTF access in the 2009 FAA Order 5190.6B by allowing current rTTF to continue at federally funded airports, the FAA is still proposing prohibition for future rTTF access is based on theoretical concerns without any supporting data which was the fatal flaw in their original order. This action is an attempt by the FAA to insulate itself from the question of whether a hangar home with rTTF access is airport adjacent "compatible" land use.

[15] Personal Communication, Hal Sheavers, September 17, 2010

Specifically, in the section "Actions Proposed in This Notice", section 2; bullet point 1, the FAA states that "airport sponsors retain the powers necessary to meet their obligations under the grant assurances and **are able to maintain and develop the airport in the future**" (emphasis mine).[16]

The FAA has acknowledged that there approximately 75 airports which currently have rTTF access but has not demonstrated one situation where the airport sponsors have not been able to "maintain and develop the airports" due to rTTF presence.

In the same section, next bullet point, the FAA states "Ensure that airports have sufficient revenue to be as self-sustaining as possible and meet capital and operating requirement." The FAA has acknowledged that rTTF access.[17]

In the following bullet point, the FAA still classifies rTTF as "noncompatible (sic) land uses" by continuing to formally **not** recognize the difference between the airport noise sensitivity of hangar residences and non aviation related residences. In this notice, the FAA states in reference to "a change in operations at the airport" that a "through-the-fence owner is just as likely to oppose the change as support it[18]." This comment is completely unsupported by data and is the personal opinion of FAA personnel. It is obviously more logical that someone with an aviation connection would support aviation across the board versus someone who does not have any aviation connection whatsoever.

The Notice continues that the "location of any residences near an airport boundary will increase the potential for opposition to the expansion or increased use of the airport." However, the FAA does not justify with any supporting data that "expansion or increased use" would be opposed to any lesser or greater degree by other surrounding property holders such as cemeteries, golf courses, schools, churches, or industrial facilities. As above, common sense dictates someone with an aviation interest would be

[16] **Federal Register**/Vol. 75, No. 174, p 54952
[17] **Federal Register**/Vol. 75, No. 174, p 54949
[18] **Federal Register**/Vol. 75, No. 174, p 54948

more likely than someone who does not have aviation interest to support airport "expansion or increased use."

In section III, the FAA states that "residential owners, more so than commercial interests, typically expect that their residential property will remain suitable for residential use and protected from adverse effects for a long time"[19] (emphasis mine). The FAA has absolutely no data nor source for this statement. Does the FAA have any evidence that someone who owns a factory next to an airport will be less expectant that a home owner that their property will be "protected from adverse effects?" The answer is "No!" Plus, the loss of business income due to a forced move of a commercial enterprise would not be experienced by a hangar home owner, thus, the commericial owner might be more difficult to move.

Under Section V, C.2., the FAA states that it "considers a sponsor's consent to any new permission for through-the-fence access to the airport from a residential property to inconsistent with the sponsor's grant assurances, specifically, the obligation to maintain rights and powers to control airport development and operation."[20] The FAA has does not have one example of the inability "to maintain rights and powers to control an airport development and operation" happening at any of the approximately 75 airports with rTTF activity.

In the same section, the FAA states that permitting rTTF may "result in violations of the obligation to impose a reasonable, not unjustly rate structure that make the airport as self-sustaining as possible."[21] As previously noted the FAA has acknowledged that rTTF access has proven economic support of the airports and has no evidence to the contrary making this suggested possibility inaccurate and opposed to the evidence.

The FAA continues "interests of commercial and transient users may create a demand for expanded use of the airport or expansion of airport property, both of which could be adversely affected by the existence of residential

[19] **Federal Register**/Vol. 75, No. 174, p 54954
[20] **Federal Register**/Vol. 75, No. 174, p 54956
[21] Ibid

properties on the airport boundary."[22] As stated before, the presence of rTTF hangar homes versus other types of properties has not been shown to be consequential. In addition, the FAA has not shown this to be an issue at any of the approximately 75 airports which currently have rTTF access.

Thus, in summation, the statement that "the FAA will consider a new through-the-fence access arrangement from a property used as a residence or zoned for residential use to be an apparent violation of the sponsor's grant assurances..."[23] is unjustified.

The FAA's proposal to codify the prohibition of rTTF lacks any documented purpose and only reflects the unsubstantiated bias of FAA staff. In fact, the prohibition will potentially hurt the viability of general aviation airports in a time when the economic resources of airports are tenuous.

Local airport sponsors know who their best neighbors are and those sponsors will protect the interests of their facility. Airport sponsors should be allowed to control access to their taxiways and runways since they are the most informed about their facilities and their specific operations and situations.

The FAA's oversight and attempt to control to rTTF agreements, in order to protect the investment of the federal government, is understandable but lacks foundation. With a modicum of advisory remarks, the FAA can monitor and alleviate their concerns about rTTF agreements at federally funded airports without an unjustified ban.

Thank you Chairman Oberstar, Ranking Member Mica, and members of the Committee for the opportunity to submit these comments.

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[22] Ibid
[23] Ibid

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**Statement of**
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**Before the**
**House Committee on Transportation and Infrastructure**

**September 22, 2010**

Chairman Oberstar, Ranking Member Mica and Members of the Committee I want to thank you for the opportunity to appear before you today to discuss Residential Thru-the-Fence Access Agreements at Public Airports: Action to Date and Challenges Ahead. Currently in the State of Georgia we have 104 publicly-owned public-use airports. 95 of those airports are general aviation airports and 91 of the 95 are federally obligated and identified in FAAs National Plan of Integrated Airport Systems (NPIAS).

**Actions to Date**

We are pleased to report to the Committee not a single publicly-owned NPIAS airport in our state has residential Through-the-Fence access. This is certainly not due to the fact no one has ever asked. In each of the 13 years I have worked with the Georgia Department of Transportation we have received numerous questions from our airport sponsors who have been approached with residential Through-the-Fence proposals. Our initial response to the airport sponsor has always been "just say no." Then we work to outline for the airport sponsor why these agreements are

not in the best interest of a publicly-owned airport. First and foremost we point out residential Thru-the-Fence agreements are inconsistent with the airport's federal obligation to ensure compatible land use adjacent to the airport. Secondly we review their federal sponsor's grant assurances relative to preserving rights and powers for control of airport operations and development; development of self-sustaining and nondiscriminatory rates and charges; and discuss the inherent safety, security and liability issues associated with these proposals. Lastly, we inform the airport sponsor of the probable consequences of their actions should they choose to enter into a residential Thru-the-Fence access agreement - they risk not receiving any future federal funding assistance for potential non-compliance with the airport's federal grant assurances. In the majority of the proposals we review, this educational process with the airport sponsor gives them the information needed to make a decision to decline the proposal.

The remaining proposals that come across our desk are not nearly as easy to resolve. Simply put these proposals take on a life of their own. They tend to be as unique as the airport and their proponent; contain elements that may adversely affect the safe operation of the airport; rarely contain provisions that are truly in the best interest of the airport; and consume the valuable personnel and financial resources of all involved.

One such proposal presented to one of our airports in 2006 still remains unresolved today. The original proposal contained a substantial residential component along with a large water feature and also included hangars and a new fixed base operation. The FAA and the state voiced our concerns and objections to the residential component of the development proposal along with the water feature which would provide a habitat for birds and wildlife and potentially pose a safety

hazard to aircraft operating at the airport. This particular proposal is extremely complicated and complex due to a number of other issues which include but are not limited to: the airport sponsor does not have jurisdiction for zoning around the airport as the airport property lies in another county; and when the airport sponsor originally purchased the airport property the deed contained a number of established Thru-the-Fence access points.

At last count more than 30 meetings involving the proponent; airport sponsor and local government officials; GDOT and other state officials; and FAA and other federal officials have taken place since 2006 to address this proposal. Additionally the airport sponsor has been and still is involved in litigation with the Thru-the-Fence proponent relative to the proposed access agreement. During the past year, the proponent has brought forth a revised proposal that contains primarily aeronautical development and no residential component. Although this particular Thru-the-Fence proposal has not been completely resolved, the residential component has been eliminated. The FAA and our office remain committed, as we have for the past five years, to working with the airport sponsor, proponent and other interested parties to successfully resolve this issue. As this particular example illustrates, these issues have a high degree of complexity, are contentious, are usually protracted over a number of years and can result in significant expense to the airport sponsor and proponent.

**Challenges Ahead**

In working with our airport sponsors to resolve these more difficult proposals we have long criticized FAA for its lack of a clear and enforceable policy on this issue. The word "discourage" in FAAs current Thru-the-Fence policy does little to dissuade some local government officials with little to no experience in airport

operations or a true understanding of federal grant obligations. The weak language in FAAs current policy prolongs the process of successfully resolving residential Thru-the-Fence proposals to the benefit of the national and our statewide airport system.

In 2008 the FAA selected the State of Georgia to become the 10th Block Grant Program state. When we executed the Memorandum of Agreement for the Block Grant Program with FAA it outlined our responsibilities under the program and FAAs expectations. Nowhere in the Agreement did FAA give us an option to enforce only those policies, rules and regulations we liked or agreed with. We accepted the responsibility for administering the federal Airport Improvement Program for our 91 general aviation airports in its entirety. Resolving Thru-the-Fence issues, whether they are residential or commercial, are the most difficult part of administering the Block Grant Program. Until such time as the current FAA Residential Thru-the-Fence policy is clarified and strengthened we will continue to struggle to bring timely resolution to these issues.

During the past 12 years Georgia has invested more than $50 million of state funds to extend runways at 37 airports statewide in an effort to place every Georgian within a 30 minute drive of an airport capable of accommodating 85 percent of the corporate aircraft flying today. This has been done in an effort to support regional economic development opportunities which in turn will keep Georgia's citizens, and its business and industry connected to the global economy. It is imperative we provision for and protect the future development of our airports so they will continue to serve for the public benefit in our state and national airport system.

**A Personal Perspective**

After reviewing a number of comments from Residential Through-the-Fence proponents posted on the internet and contained in FAAs Federal Register notice, I am compelled to offer several comments to the Committee from a personal perspective and not as comments on behalf of GDOT. Proponents of Residential Through-the-Fence agreements have asked "who are these people who are telling us and our local airport we can't do this? They certainly aren't pilots or aviation-minded."

For more than 25 years I have held an FAA pilot's license, along with a multi-engine, instrument and flight instructor's ratings. I have owned four airplanes including a 1946 Piper J-3 Cub and a Cessna 210. I am an avid general aviation pilot who has logged more than 3000 flight hours and lived for eight years in a privately-owned private-use fly-in community. I assure the Committee I understand the desires of a pilot who wishes to live in a fly-in community environment. However, my personal enjoyment of that lifestyle should not be associated with a publicly funded airport. It is appropriate for that lifestyle to be enjoyed at a privately-owned and maintained airport. In Georgia more than 35 privately-owned private-use residential airparks exist for this purpose.

It is important to note as a private citizen flying out of a private airport I am solely responsible for my safety and that of my passengers. I personally assume that risk. As an employee of Georgia Department of Transportation I am charged with ensuring the safety of traveling public at our public-use airports. Neither I, our staff, FAA, nor an airport sponsor should take any action that would potentially jeopardize the safe operation of our airports.

**For The Future**

We respectfully urge the Congress to support FAAs update to its Residential Thru-the-Fence policy and amendment to its Grant Assurances in order to minimize safety risks; protect the future development of our publicly-owned airports and maintain the integrity of the federal, state and local dollars previously invested at these airports. This would support the past and future efforts of our staff and FAA as we work with our airport sponsors to ensure the safest possible operating environment on our airports and compliance with all federal airport policies and regulations.

It should be noted FAAs proposed policy prohibiting new access to airports from residential property does not preclude an airport sponsor from making a decision to allow this access. FAAs proposed policy only sets forth clear and enforceable consequences for a sponsor who chooses to allow this access.

Again, I thank you for the opportunity to share Georgia's experience and challenges with Residential Thru-the-Fence issues. This will conclude my formal remarks and I am happy to answer any questions the Committee may have.

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National Air Transportation Association

**Statement of the**

**National Air Transportation Association**

**before the**

**Subcommittee on Aviation**

**Committee on Transportation and Infrastructure**

**U.S. House of Representatives**

**Hearing on**

**Residential Through-the-Fence Agreements**

**at Public Airports**

**September 22, 2010**

**2167 Rayburn House Office Building**
**Washington, DC**

**Appearing for NATA:**
James K. Coyne, President
National Air Transportation Association
4226 King Street
Alexandria, Virginia 22302
(703) 845-9000

Chairman Costello, Ranking Member Petri, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss Residential Through-The-Fence agreements at federally obligated airports.

My name is James K. Coyne, and I am president of the National Air Transportation Association (NATA). NATA, the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 member companies own, operate and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

**Summary**

The Federal Aviation Administration (FAA) has issued a proposed policy related to Residential Through-The-Fence (RTTF) agreements at federally funded airports. This policy would subject existing RTTF agreements to closer oversight and scrutiny and prohibit federally obligated airports from entering into any new RTTF agreements.

NATA supports the FAA's proposed policy and believes it is in the long-term interest of the air transportation system to adopt such a policy. The association believes the FAA proposal comports with existing federal grant assurance requirements and applicable case law with regard to prohibiting new RTTF agreements, while providing a reasonable accommodation for existing agreements to continue.

**Background**

Over the past year, beginning with the FAA release of a draft guidance letter regarding through-the-fence operations at federally obligated airports in late 2009, RTTF agreements have become quite contentious[1]. Simply stated, an RTTF agreement is a legal document between a residential property owner and an airport owner that allows the property owner to access the airfield directly from the residential property by aircraft. In the draft guidance letter, the FAA stated that there "are no forms of acceptable" RTTF agreements. The FAA's determination that RTTF agreements were unacceptable revolved around the premise that the signing of these agreements violated the federal grant assurances signed by the airport sponsor (owner) in return for federal funds being expended for development at the airport[2].

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[1] It should be noted that RTTF agreements at non-federally obligated airports (private airports) are beyond the regulatory purview of the FAA. In the interest of brevity, all references to RTTF agreements in this statement refer to agreements at federally obligated airports (public airports) unless otherwise noted.

[2] There are also other activities, such as the granting of federal surplus property to an airport, that trigger the requirement for an airport sponsor to sign and abide by the federal grant assurances.

Following the release of this draft guidance letter, there was significant debate throughout the general aviation industry regarding the role and appropriateness of RTTF agreements. In objecting to the draft guidance letter, supporters of RTTF agreements pointed to the fact that many such agreements currently exist and in some cases they had been approved by the FAA at the local or regional level. RTTF proponents claim that these agreements provide revenue and security benefits to airports. Some supporters of RTTF operations have urged Members of Congress to intervene and override the FAA's authority to determine whether RTTF agreements are in compliance or conflict with federal grant assurances.

Last week, a proposed policy on RTTF agreements was published in the *Federal Register*[3] as a further response to the draft guidance letter the FAA released in 2009. The proposed policy explains that numerous RTTF agreements currently exist at public-use airports and in some cases may not be easily revoked by the airport. The basic framework of the proposed policy prohibits airport sponsors from entering into any new RTTF agreements while allowing existing RTTF agreements to continue under tighter federal oversight.

**Federally Obligated Airports**

Congress has recognized the value of maintaining and developing a network of airports across the nation through the establishment of the Airport Improvement Program. This program provides federal funds for the maintenance and development of airports that are deemed important to the National Airspace System. This investment of taxpayer dollars in airport development is protected by the federal grant assurances. These assurances require airport owners (called sponsors) to operate the airport in a manner that best serves the interest of the entire transportation system. Without these assurances, the federal investment in airport infrastructure would be subject to the whim and preference of local politics and local consideration.

The grant assurances, as administrative law, have been subject to repeated judicial and FAA clarification through the decisions resulting from cases brought under Title 14 of the Code of Federal Regulations, Part 16. The resultant case history has established a solid framework that airport sponsors, airport users and the federal government depend on to ensure that airports receiving federal funds are operated for the general benefit of the public.

The general theme of the grant assurances is that the federal investment in airport development is best realized when airports remain flexible enough to meet the changing transportation needs of the nation. Activities such a providing exclusive rights to airport users or encouraging incompatible land uses around the airports are prohibited because they lessen the long-term utility of the airport and thus degrade the federal investment.

**Effects of RTTF Agreements**

As a legal document, the RTTF agreements confer access and other rights, depending upon the specific language used in the agreement, to individuals owning residential property adjacent to an airport. These access rights, at their core, do not necessarily conflict with the idea of

[3] 75 FR 54946

maintaining airport utility in the public interest. Conflicts can, however, occur when the transportation needs of the surrounding communities and region dictate a change in the airport environment. Changes in the volume and type of aircraft operations at an airport or the need to expand airport facilities can pit the transportation requirements of the region or nation against the interests of a few homeowners with RTTF agreements.

Due to the unique legal rights of residential homeowners, in comparison to commercial property owners, significant challenges can occur if RTTF agreements need to be modified or terminated in the future due to airport expansion. Groups of homeowners with RTTF agreements can exert significant political pressure on airport sponsors to act in a fashion that limits the future utility and function of these airports in favor of acting to satisfy local constituents. The resultant loss of future utility of these public airports degrades the investment of taxpayer dollars by changing the management of airport development from a regional and national focus to a purely local, and likely status-quo, environment.

**NATA Member Prospective**

NATA's member companies have invested billions of dollars in creating on-airport service facilities that cater to the needs of the flying public. This investment, much like the federal investment, is protected by the federal grant assurances from unreasonable or unjust loss. Businesses, the majority of them small businesses, across the nation have created service facilities, jobs and economic activity based upon the idea that public-use airports are maintained and operated for the benefit of the transportation needs of the region and nation. These on-airport businesses are subject to tight oversight from the airport sponsor to ensure that their activities are aligned with the needs of the airport and the public. These businesses accept the fact that the needs of the airport, as a public-use facility, supersede the plans of the business owners. This is acceptable because the needs of the commercial operation usually align with the growth and development of the community and region. Activities such as the creation of RTTF agreements, which reduce the future utility of airports, can devastate the investment in on-airport facilities made by these businesses.

**Congressional Action**

Supporters of RTTF operations have suggested that congressional action is necessary to override the FAA and allow the creation of additional RTTF access agreements at airports. NATA believes such action is unwarranted and dangerous to the future of public-use airports. Remedies suggested by RTTF supporters include preventing the FAA, by statute, from enforcing the grant assurances in regards to RTTF agreements. This course of action represents an extreme threat to the federal investment in airport development as well as the private investment from aviation businesses in building general aviation infrastructure. The long case history regarding federal grant assurances establishes a well understood foundation of how public-use airports must be operated. Any statute exempting RTTF agreements from that framework, regardless of how well written, substitutes a new standard in place of the assurances. This new standard will be subject to countless interpretations by the FAA and the judiciary and will introduce a level of uncertainty in airport operations and utility that is unacceptable. The long-term dangers to both public and

private investments in airports threaten the future of the public airports system. NATA believes the proposed FAA policy on RTTF appropriately addresses future and existing RTTF agreements.

**Closing**

NATA understands the position of RTTF proponents. General aviation is an industry that was born in the United States and has grown from the ground up. It is successful because of the passion and devotion of countless aviation enthusiasts and entrepreneurs across this nation. It is these same individuals who, because of their passion for aviation, desire to reside near their local airport and operate their aircraft directly from their homes. Nothing in the federal grant assurances or other federal law prevents RTTF operations from occurring at the many private airports around the country. However, allowing private rights of access, via RTTF agreements, from residential properties adjacent to federally funded airports threatens the investment of public funds made in those airports. The vision of public airports must extend beyond the current use of the airport and account for the various possible future needs of the nation and traveling public.

While RTTF agreements may provide a short-term benefit to airports through additional revenue and community goodwill, NATA believes those benefits are far outweighed by the risk posed to the long-term usability of airports. NATA supports the FAA's proposed policy on RTTF agreements and believes that it provides a solution that protects the value of the taxpayer investment in airport development while allowing existing of RTTF agreements to continue.

NATA believes that the FAA has proposed a policy that well serves the long-term interests of airports, airport business and the public. Any attempt to override that policy by statute could result in unintended consequences that damage the future utility of public-use airports and could call into question the future of all grant assurances and the FAA's ability to ensure that those obligations are followed by all airports receiving federal funding.

House Committee on Transportation & Infrastructure Committee
**Residential Through-the-Fence Agreements at Public Airports: Action to Date and Challenges Ahead**
September 22, 2010

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Good morning. At the Elmira Corning Regional Airport in New York I have three commercial through-the-fence operations. However, my testimony today on residential through-the-fence operations is informed by my previous experience as the director of the Oregon Department of Aviation. The State of Oregon is the owner of the Independence State Airport as well as several other airports with through-the-fence agreements.

I would like to begin by stating clearly that I am not opposed to residential airparks. I agree that living in a hangar-home can be an optimal condition for the aviation enthusiast. Residential airparks can build a community of support for general aviation, and can provide a positive benefit to the overall community. If an airport sponsor believes that they can adequately manage the access of a public use airport from a private residence, then they should have the ability to do that. But I am also in favor of sound public policy that will ensure that limited Airport Improvement Program funds are invested in facilities that will benefit the aviation industry and the flying public. The FAA desperately needs a multi-year

reauthorization that will provide Airport Improvement Funds for needed capacity, safety, security, and noise mitigation projects. Scarce Federal funds should not be squandered on airports that do not take steps to preserve the ongoing viability of the facility.

A residential use or "hangar-home" is different than commercial or private hangar uses at airports in some fundamental ways. A typical hangar owner seeks to amortize the cost of the building over the term of the land lease. Also, a typical airport land lease includes provisions for removing or relocating the hangar if necessary for future airport development. In a nutshell hangars are treated as business investments.

A homeowner views their residence much differently. Homeowners expect the values of their homes to appreciate over time, rather than simply amortizing the investment over the length of their anticipated use. Homeowners expect to be able to transfer their home, as a part of their estate, to their heirs or to sell it with equity. An inherent part of the value of a hangar-home is its access to the airport. So, in essence the Federally-funded airport becomes an asset of the homeowner, at least in the homeowner's view.

The fact that the airport access is viewed as an asset by a homeowner can cause problems for the airport sponsor and, potentially, for the FAA when future airport improvements result in blocking the through-the-fence access point. The

value of the hangar-home would be diminished if airport access is no longer available. The homeowner would likely seek recovery for perceived lost value from the airport sponsor or from the FAA. Simply, it is not good policy to allow this kind of use that would inhibit future airport development. In this case, even if the hangar-home which no longer has airport access is sold as a non-aeronautical residence, the airport is now stuck with a non-compatible residential use. And taking this scenario to the final step, the airport sponsor could seek Airport Improvement Program funding to acquire the property and relocate the residence. This is simply bad policy and poor use of our limited trust fund.

An argument is often made that pilots living with their planes make good airport neighbors. It has been said that aviation enthusiasts to not complain about aircraft noise and are in favor of airport development. I can state from experience that this is not the case. I have received complaints from the noise of helicopters using a public use airport from residents of an adjacent airpark. I have also been advised of opposition from residential airpark homeowners to airport improvements designed to accommodate light jet traffic. The opposition in this case was based on the perception that jet use of the airport would reduce the homeowner's enjoyment of the airport. These are perfectly valid complaints. People who have made a significant investment in a home with a hangar in order to enjoy their flying lifestyle have every reason to want to preserve that lifestyle. However, it is not appropriate to limit public use of a facility which is developed

with AIP funds to preserve their lifestyle. This is the reason that through-the-fence residences are problematic on Federally-funded airports.

The current situation is challenging. There are existing residences with through-the-fence access to NPIAS airports. Closing their access poses problems because of the homeowner issues described above and because of existing agreements between airports and the homeowners. FAA's current policy proposal is an excellent compromise that allows for the continued operation of existing through-the-fence agreements, with mitigations to deal with the risks. But it clearly does not allow any new through-the-fence residential agreements for those sponsors wishing to continue to use AIP funds.

The testimony I have given this morning demonstrates the ways that by permitting through-the-fence residential access an airport sponsor gives up the rights and powers to protect and control the access point and the airport facility. FAA's proposal to amend Sponsor Assurance #5 to clarify this position is clear and accurate.

This proposal is a well-reasoned policy to deal with existing and future residential through-the-fence uses for airport's that seek to use Airport Improvement Program funds. Finally, I want to thank Congressman Oberstar for inviting me to provide input based on my experience on this topic at airports across the country.

STATEMENT OF CATHERINE M. LANG, ACTING ASSOCIATE ADMINISTRATOR FOR AIRPORTS, FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, ON RESIDENTIAL THROUGH-THE-FENCE AGREEMENTS AT PUBLIC AIRPORTS: ACTION TO DATE AND CHALLENGES AHEAD." SEPTEMBER 22, 2010.

Chairman Oberstar, Ranking Member Mica, Members of the Committee:

Thank you for inviting me here today to discuss the Federal Aviation Administration's (FAA) proposed policy regarding access to airports from residential property. Since the 1930's, the United States has pursued the development of a national system of airports to meet the nation's air transportation demands. When Congress created the first airport development program, it tasked our precursor agency, the Civil Aviation Authority, with ensuring that airports that receive monies from the Airport and Airway Trust Fund be available for public use and to serve a variety of public purposes. As the aviation industry has evolved, there have been many changes, from the types of aircraft and aeronautical users to the way we plan, build, and develop airports to ensure the highest possible levels of safety. However, one thing has remained constant: when we invest in an airport, Congress has mandated certain guarantees to ensure both the longevity and the public nature of that investment.

We apply this principle in two ways. First, we indentify the airports critical to our national system because out of the 21,000-some airports and landing strips in the United States, only 3,332 are designated as a part of the "national system of airports," and therefore eligible for Airport Improvement Program (AIP) grants. From the inception of this program, a guiding principle in the selection of airports as part of the national system

has been the ability of an airport to be expanded and adapted to meet both current and future needs of the public air transportation system.

Second, it is a long-standing principle that with the expenditure of any federal grant funds certain conditions attach, such as non-discrimination requirements. In keeping with this principle, every time we make a financial investment at an airport, the sponsor agrees to 39 federal assurances, the vast majority of which are explicitly Congressionally-mandated. These assurances are designed to protect the public aeronautical characteristics of the airport, encourage good airport management, and impose conditions to protect the public purpose for which the investment of taxpayer dollars was made. These conditions include requirements pertaining to fair and reasonable rates and charges, airport layout plans, maintenance and operation consistent with safety standards, and prohibitions on discrimination and revenue diversion. We may not always be able to predict where demand will grow and drive future capacity needs, but we can make long-term investments and through the assurances require airport operators to ensure a solid foundation to serve the needs of future aeronautical users. These principles and assurances have for 60 years protected and expanded the most robust system of airports in the world.

Today, I'll be discussing the FAA's proposed policy regarding access to airports from residential property. Although the vast majority of residential through-the-fence agreements involve general aviation airports, this policy applies to all airports in the NPIAS. I'd like to explain why we decided to initiate a policy review earlier this year, how we conducted that policy review, and what we learned. My testimony will be

confined to airport compliance and capacity issues and will not address any potential security issues.

In order to frame this discussion properly, let me first explain what a public use airport is and how it differs from a private airpark. Our national plan of integrated airport systems (NPIAS) is comprised of public use airports that must be open to all aeronautical users, must be sufficiently expandable and adaptable so as to accommodate new aircraft types, and must develop in a way that meets FAA safety standards. These airports are eligible for federal Airport Improvement Program grants. Conversely, private airparks are financed and maintained by the aviation community that uses them and are free to set their own standards for use, access, and safety.

Through-the-fence access agreements create a right to taxi an aircraft from adjacent or nearby private property across the airport boundary through an established access point. Historically, FAA's national policy did not focus on residential through-the-fence access to federally obligated airports. Rather, the principal focus was commercial though-the-fence access. In general, we discouraged commercial through-the-fence arrangements in most instances. To promote self-sustainability of an airport (a statutory grant condition), it is a preferable business practice that airports promote on-airport commercial tenants, and airport layout plans include land for such purposes. However, airports sometimes lack sufficient space for all commercial interests, and in those limited cases we acknowledge the need for commercial through-the-fence arrangements. In light of these limited exceptions, we have not banned these types of agreements.

Operating on the *prima facie* assumption that residences are inconsistent with the values for expandability and adaptability, we did not consider it necessary to put out guidance explicitly banning residential through-the-fence. However, ambiguity in the language with regard to commercial through-the-fence agreements left insufficient guidance for field staff. Our lack of awareness and consideration of this issue was further exacerbated by our heavy reliance on our state aviation partners to conduct land use inspections at GA airports.

In 1999, the Government Accountability Office issued a report titled "General Aviation Airports Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement." This report cited serious deficiencies in the way the FAA monitored sponsor compliance with regard to land use and recommended on-site inspections. As a result, in 2001, we began conducting land use inspections in each of the FAA's nine regions, as agreed to with GAO.

Shortly thereafter, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century established a specific grant program for general aviation airports. These nonprimary entitlements (NPE) have had a profound effect on the FAA's relationships with, and expectations from, GA airports. In working more closely with GA sponsors, we realized that some had a better understanding of their federal obligations than did others. As a result, we have sought to educate GA sponsors and promote our principles for long-term investment by helping GA airports engage in master planning to identify both immediate and long-term needs. Since the NPE program started, the FAA has issued $132,483,327 in master planning grants at 1,005 GA airports.

The FAA's increased involvement with GA airports led to increased knowledge about their facilities and activities. It was shortly after initiating the NPE program that FAA staff in the field began alerting headquarters about proposals to develop residential housing near, and in some cases, on airport property.

In the mid-2000's, the Airport Compliance Division responded to several on-airport residence and residential through-the-fence proposals from airport sponsors and developers. In light of the national policy of constructing and operating aviation facilities so as to minimize current and projected noise impacts on nearby communities, as well as the agency's experience with noise abatement and residential encroachment, residential through-the-fence arrangements were viewed as being in conflict with policies on compatible land use planning. We responded to each request, citing actual and potential violations of the sponsor assurances that could occur as a result of these plans. In 2007, we issued a Director's Determination, which stated that residential development adjacent to airport property is an incompatible land use. We also started training our staff in the field about the need to better educate airport sponsors and to mitigate residential through-the-fence problems. Unfortunately, the ultimate result was mixed. Some airport sponsors heeded our advice while others did not, and some FAA regional offices sought to identify and mitigate all existing residential through-the-fence access agreements while others chose to wait until an actual grant assurance violation had already occurred.

As these inconsistencies became apparent, we recognized that a more comprehensive approach was warranted. At that time, we were in the process of updating our Airport Compliance Manual and used that opportunity to clarify our policy residential through-

the-fence arrangements. New Order 5190.6B states: "under no circumstances is the FAA to support any 'through-the-fence' agreement associated with residential use since that action will be inconsistent with the federal obligation to ensure compatible land use adjacent to the airport." While this Order is internal guidance and binding only on FAA employees, we realize that it is a widely used reference within the airport community. Although not required to do so, we made the Order available for public comment for a period of six months.

FAA then followed up the Order by issuing for comment Draft Compliance Guidance Letter 2009-1 - Through-the-Fence and On-Airport Residential Access to Federally Obligated Airports. The Draft Compliance Letter reiterated our views, in more detail, with regard to through-the-fence access and offered some additional suggestions to FAA staff working with airports with such arrangements. We received a number of comments from through-the-fence homeowners and other interested parties on both documents. Neither the updated Order nor the Draft Compliance Guidance Letter offered much discussion with regard to what steps the FAA expected airports with existing through-the-fence arrangements to take. We now realize that vacuum created a very uncertain environment for what we believe to be approximately 75 of the 2,829 GA airports in the continental United States included in the NPIAS.

In January, the Administrator asked the Office of Airports to review its policy on residential-through-the-fence access. We quickly assembled a policy review team, which began detailed analysis of a core sample of residential through-the-fence arrangements. In the course of eight months, the policy review team met with a wide variety of

interested parties, including aviation associations, state officials, airport sponsors, and impacted residents. The team also conducted site visits at five airports with residential through-the-fence access. Additionally, staff reviewed the approximately 250 comments filed in response to FAA Order 5190.B, Airport Compliance Manual and the Draft Compliance Guidance Letter, and began compiling an inventory of federally-obligated airports with known residential through-the-fence access arrangements.

During its site visits, the policy review team observed a number of concerning conditions first hand. First, we noted the diversity and complicated nature of the various residential through-the-fence arrangements. We also learned that while some of these arrangements were entered into over the FAA's objections; others were erroneously approved by FAA field staff. Finally, we observed that the residential through-the-fence arrangements we visited had compromised one or more of the inherent features of public use airports that taxpayer-funded projects are expected to support. To be clear, these conditions would make these airports ineligible for inclusion in the NPIAS, were they to be considered today.

Conversations with interested parties also provided a wealth of information. Perhaps the most important, and most disconcerting, observation the staff made was the intense protectiveness homeowners feel toward "their" airport and the preservation of their access from their private residence. At many of the sites we visited, the fundamental distinctions between public use, public purpose airports and private airparks have begun to blur. While private airparks serve an important and cherished purpose for members of the aviation community, AIP funds must be used strategically and responsibly at NPIAS

airports that serve public purposes and retain those characteristics expected from public use airports.

We are particularly concerned by incidents in which adjacent residents, both with residential through-the-fence access and their neighbors, have attempted to prevent an airport sponsor from preserving its rights and powers regarding airport property or future development, a key grant assurance any recipient of AIP funds must agree to meet. As an example, at one location that we visited the airport sponsor lacks full control of the access points. When the sponsor proposed a fencing project to rectify this situation, adjacent homeowners objected to the placement of the fence, even though the fence was being placed on airport property. Although we now understand that the project is finally moving forward, we believe the influence adjacent homeowners have had over the airport in the process is inappropriate and creates the potential for additional future problems. An airport sponsor must retain sufficient autonomy and authority to make crucial planning decisions that ensure the long-term usefulness of the airport and to protect the airport's role as part of the national system.

The agency's statutory charge to invest in a national aviation system for the long-term, coupled with the fact that residential through-the-fence arrangements continue to compromise the ability of some airports to serve the broader public purpose expected of federally-obligated airports, led us to the policy we are proposing. This policy is two-fold. While we establish minimum requirements that airports with existing residential through-the-fence access must meet, we are also proposing to amend Grant Assurance 5, Preserving Rights and Powers, to prohibit sponsors from entering into new arrangements.

Airports with existing access, as defined in the proposed policy, would be required to develop access plans to address general authority for control of airport land access, the safety of airport operations, cost recovery, airspace protection, and compatible land use. To ensure the appropriateness and adequacy of the mitigation components in these access plans, we would consider the nature and parameters of the sponsor's agreement with the property owner or homeowners on a case by case basis. These plans will be approved by the Manager of Airport Compliance in headquarters, and sponsors will have approximately two years to develop their access plans. While these arrangements continue to be undesirable, we believe this will address our more serious concerns, while offering a common-sense and fair solution for the communities involved.

Additionally, the policy would require sponsors with through-the-fence access arrangements to immediately depict the access points on their airport layout plans using a "pen and ink" change. They will have additional time to formally update this document – three years from the date the FAA accepts their access plan.

Based on what we've learned over the last nine months, most of the airports with existing access agreements should be able to satisfy the bulk of our concerns associated with the legal terms and conditions associated with receiving AIP grants. If the sponsor cannot address these minimum requirements, it will be necessary to reexamine that airport's role in the NPIAS and evaluate if it should remain in our national airport system. We would also determine what types of AIP investments continue to be appropriate. If an airport

sponsor refuses to develop an access plan, the FAA may consider initiating an investigation.

There are currently several airports that have through-the-fence arrangements that are in noncompliance for specific grant assurance violations. To date, we have not put any sponsors into a noncompliant status solely because they have a through-the-fence arrangement. This proposed policy will not have a significant impact on the eight noncompliant sponsors. They will be required to continue working with local FAA staff to develop a corrective action plan to address their grant assurance violations. Once the FAA accepts that corrective action plan, it will become their residential through-the-fence access plan.

The proposed policy also establishes a process for renewing or extending existing residential through-the-fence access arrangements as well as addressing the rare circumstance in which an airport with existing access might need to develop a new access point or allow a new homeowner to use an existing access point. We refer to this limited development of new access points as "additional" access. For an airport to propose "additional" access, it must have had existing access as of September 9, 2010. In light of the fundamental concerns that are guiding the new policy, any additional access would be subject to stringent requirements to ensure the new access will not limit the airport's ability to fulfill its role in the NPIAS. This is also why we propose to limit additional access agreements to twenty years. We use twenty years as a natural planning horizon, and it's also used to define the useful life of most capital grants.

The proposed policy is currently out for public comment, and the comment period will remain open until October 25, 2010. My office has worked extremely hard to arrive at a policy that addresses the concerns and needs of state and local governments and of the general aviation community while fulfilling our obligation to protect the role that NPIAS airports play in the national system. I encourage those users to comment and look forward to receiving their input. I believe our staff has given full and fair consideration to all the ideas and feedback we have received up to this point in the process, and I assure you that we will continue to be open minded as we review the public comments on our draft policy.

The FAA's Office of Airports appreciates the important role general aviation plays in our national aviation system. GA airports play a vital role in the NPIAS, as well as in their local communities. For communities all over the country, GA airports have for decades been where we train our pilots, have provided medical and law enforcement response, enabled aviation to be at the front lines of response to natural disasters, been the backbone of agricultural communities, and enabled deliveries to remote locations. It is for these purposes that Congress enacted the Airport Improvement Program, and it is these purposes that are protected by grant assurances.

As a result, part of the FAA's responsibility is to safeguard the general aviation infrastructure in this country. Based on our experience and observations, we believe that residential through-the-fence arrangements have the potential to do far greater harm than

good. If the control exercised by an airport sponsor is compromised, harm is done. If an airport that was selected for inclusion in the NPIAS based on a strategic long-term vision no longer has the ability to grow and fulfill its role, harm is done. If public monies can be spent to correct deficiencies or problems caused by residential through-the-fence arrangements, harm is done.

The FAA takes seriously its responsibility to make wise, value-maximizing investments with its AIP grant funds. I believe our proposed policy regarding access to airports from residential property reflects the long view this Committee expects us to take when we invest $3.5 billion in our airport system annually. This responsibility must also include the continued advancement of the principles that have built the strongest national aviation system in the world. We may not be able to predict where the demand will grow or how our capacity needs might change, but we must use every available tool we have to ensure the airports selected to serve in our national system remain flexible enough to expand and adapt.

Mr. Chairman, Congressman Mica, Members of the Committee, this concludes my prepared remarks. I would be happy to answer any questions that you might have.

**Statement of Congressman Kurt Schrader**
**Transportation and Infrastructure TTF Hearing**
**09.22.2010**

Mr. Chairman and members of the committee, I appreciate the opportunity you are giving me today to speak with you about the residential through-the-fence agreements at federally supported airports.

As a licensed general aviation pilot, I have been familiar with issue you are considering here today for some time. While I was in the state legislature, I had the privilege of working with Oregon State Senator Betsy Johnson who continues to be a leading advocate for general aviation in our great state. It is privilege to come before you today as a Member of Congress to represent the interests of my constituents living at the Independence Airpark.

In a few moments you will hear from Mitch Swecker, the Oregon State Airports Manager. He can tell you about the success Oregon has had with residential and commercial through-the-fence agreements at state airports receiving funding from FAA grants. I know he will be a valuable resource to you and I thank him for his presence here today.

For my constituents who make their homes at the Independence Airpark, I am proud to be before you to attest to their commitment to keep the Independence Airport a highly functional and important part of the National Plan of Integrated Airport Systems.

Since 1976 the Independence Airport has been the heart of their community. Each resident has chosen to live there and is invested in their community's future. The 213 households in the Independence Airpark serve as a model for how residential through-the-fence agreements can and should work. In Oregon we have done through-the-fence the right way and I am glad the FAA has proposed a new rule which will allow Oregon and the Independence Airpark to continue operating under their existing residential through-the-fence agreements while we here in Congress continue to work on this issue.

Mr. Chairman, as the Federal Representative for the Independence Airpark and a strong supporter Mr. Graves', Mr. Boswell's, Mr. Ehlers', and Mr. Petri's Community Airport Access and Protection Act of 2010, I am grateful to you for holding this hearing to explore the future of through-the-fence agreements and FAA grant assurances. I look forward to continuing to work with my colleagues who sit on this committee to develop a fair and sound policy on residential and commercial through-the-fence agreements.

**Committee On Transportation and Infrastructure Hearing**
**September 22, 2010**

**"Residential Through-the-Fence Agreements at Public Airports: Action to Date and Challenges Ahead".**

**Written Testimony of Mitch Swecker,**
**Oregon Department of Aviation**
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Chairman Oberstar, and members of the committee. thank you for the opportunity to appear before the committee today. My Name is Mitch Swecker. I am a retired Navy helicopter pilot and am currently the State Airports Manager for the Oregon Department of Aviation. The Department is overseen by a seven member board of directors appointed by the governor. I am here at their behest. The Department's mission is to support Oregon communities by preserving and enhancing aviation safety, infrastructure, and development. Part of my charter is to be the manager for 28 public use general aviation airports owned and operated by the state. Oregon is a mostly rural state and these general aviation airports provide essential services such as transportation, medevac, airborne firefighting as well as aviation related recreation.

I am here today in support of residential (and commercial) Through the Fence (TTF) and HR 4815, The Community Airport Access and Protection Act of 2010. On behalf of the Oregon flying community, I thank Representatives Graves, Boswell, Ehlers and Petri as sponsors of the bill. Additionally, I thank the co-sponsors of the bill including Rep Schrader of Oregon. I would also point out that there is a letter signed by a significant number of state legislators in Oregon supporting TTF as a valuable contributor to the aviation community in Oregon, a copy of which I would like to have placed into the record as part of my statement There has even been a bill passed in Oregon (Senate Bill 680) which developed a pilot program (no play on words) that encourages the economic benefits of commercial Through the Fence.

On a larger scale, residential Through the Fence is almost entirely a general aviation issue and general aviation contributes $1.8 billion annually to the Oregon economy according to data provided by the Alliance for Aviation Across America. It is also directly and indirectly responsible for close to 197,000 jobs in Oregon. The largest kit built aircraft company in the world (Van's aircraft, manufacturer of the RV line of kit built aircraft) is located at one of our airports and there are numerous aviation manufacturers located at airports around the state. Like most states, the poor economy has had its impact in Oregon and Cessna Aviation recently closed its Bend Oregon plant. That closure is a direct reflection of an economy that needs all of the jobs it can get.

Keeping general aviation and the industries that support it alive has to be part of any economic recovery and it seems contradictory to discourage one of the strongest supporters and customers of the aviation industry. Residential airpark tenants are that aviation community that loves flying so much that they are willing to live close enough to an airport that they literally live what a previous Oregon Aviation Director used to call the "Wright Brothers spirit". They are the most ardent of aviation supporters and have enhanced the value of the community through both the tax base and their civic contributions. They are consumers of the aviation products that are essential to keeping general aviation industries viable across the United States.

In Oregon, we have seen first hand that residential Through the Fence is not, contrary to FAA draft policies, inherently wrong. The state of Oregon believes that when done wisely, it can be a tremendous asset to an airport. We are fortunate to have a number of examples of Through the Fence airports including Independence State Airport and Creswell Airport (Hobby Field) which could be used as models of how it can be done right. Independence residential Air Park has over 200 homes laid out in a model development that clearly demonstrates residential air parks can be done safely; help to make the airport economically self sustainable; and probably more secure than most airports that don't have homes with access to the airport. As airport manager, I have been promptly challenged within minutes by vigilant air park residents when I am working around the taxiway or runway away from my truck and not recognizable from a distance.

The State of Oregon is not looking to combat the FAA. It is a great organization that does a remarkable job and we a have good working

relationship with it and yet occasionally have a professional difference of philosophy on how best to enhance and promote aviation in Oregon. We have worked well with it and even invited Randall Fiertz, the FAA's Director of Compliance and Field Operations to our state to see first hand how a successful residential TTF airport could look.

As background, in September of 2009, The FAA changed the 5190.6A compliance manual dated 1989 that, by the FAA's own admission, did not address residential through the fence in a meaningful way. The changes in the new manual, (5190.6B) and all clarifications are a significant departure from past practice on the part of the FAA. The verbiage in the new manual radically changed the approach to residential Through the Fence making it absolutely unacceptable under any circumstances. This change has had substantial impact on the 213 homeowners at Independence which have invested significantly in their community. They have lived in safety and harmony with the Independence Airport since 1976 when the first airpark homes were developed and sold. Up until the late 2000s, they were also in harmony with the FAA having been through multiple FAA grant assurance inspections over the years without issue related to TTF.

Airpark residents contribute significantly to the economic sustainability of the airport. With over 200 home sites, Independence Airpark residents pay in excess of $36,000 per year in access fees to the airport. This amount is well in excess of the capacity of the airport's potential revenue from hangars and aircraft tie downs. With the exception of three hangar lots, the airport is entirely built out without expanding into farm land west of the airport.

The effect of this change in FAA policy has resulted in turmoil in the real value of the homes and reluctance on the part of lenders to either fund or refinance residential air park homes at Independence. After Mr. Fiertz visited Independence and understood the issues related to this policy, he authorized a letter to the Oregon Department of Aviation and copied the Homeowners association that said *"based on the information we have received to date, the FAA has no plans to require ODA to take any additional corrective action with regard to the residential airpark and TTF access at Independence state Airport"*. The letter signed by Deandra Brooks went on to state *"We are in the process of reviewing this policy to see if it should be changed."*

Both the state of Oregon and the homeowners appreciate the concession offered in this letter. However the newest proposed revision to the residential TTF policy verifies that the FAA's mindset has remained the same: that residential TTF is inherently evil. It also calls into question the commitment of the promises of the Brooks letter to ODA. The remainder of the 52 pages discount arguments in favor of TTF and establish rationales, caveats, restrictions and threats of withholding AIP dollars clearly designed to restrict TTF and give discretion to regional ADOs to recommend approval or disapproval based on interpretation and biases in opposition to TTF agreements. There is no security guarantee for Oregon's TTF communities, that lenders and investors can depend on for consistency, that makes them willing to finance the economic develop of these valuable airport communities.

Mr Chairman, as part of my testimony, I would like to address some of the primary issues the FAA has suggested as reasons for prohibiting or discouraging TTF.

**Safety** - Dogs, people, hunters on runway surfaces are the exception rather than the rule – and have nothing to do with through the fence. As previously mentioned, at Independence, pedestrians, be they four legged or two legged are likely to be challenged. A review of FAA and NTSB databases was unsuccessful in identifying any accidents related to through the fence incursions of people or animals. There were numerous occurrences of collisions with deer or birds. Is there FAA empirical data that suggests this is anything but anecdotal stories of conflicts?

**Noise Complaints** - The FAA has no documentation (per Dr Brent Blue's FOIA request) that residential airpark residents are part of any noise complaint problem. Independence actually builds into their home owners association bylaws and deed restrictions prohibiting residents from complaining about noise. I can tell you as the manager of 28 airports, I get my fair share of noise complaints related to the 97 public and 350 private use airports in Oregon. Never do they come from TTF tenants. Almost always, they are from non-aviation residents in proximity to airways or encroachment to active airports.

**Economic fair share equity** - We would stipulate that this is a grant assurance issue that applies to all airports – and is not unique to, nor particularly more relevant to, through the fence. The FAA is concerned that

off airport businesses or residents gain an economic advantage by their proximity to a federally funded airport. Again using Independence as a model, airpark residents contribute significantly to the economic sustainability of the airport. Airpark residents pay the equivalent of an on airport tie down for each aircraft with access. With over 200 home sites each paying access fees, Independence Airpark residents collectively pay in excess of $36,000 per year to the airport, making it one of only four of 28 airports that is self sustaining. Federal funds can only be used for airside improvements to the airport runway and taxiway airside infrastructure itself. This amount is well in excess of the capacity of the airport's potential revenue from hangars and aircraft tie downs. With the exception of three hangar lots, the airport is entirely built out without expanding into farm land west of the airport. TTF residents are supporters of on airport Fixed Base Operators, buying both fuel, mechanic and other services and patronizing the local airport restaurant.

**Loss of sponsor control of airport** - Again, this is a grant assurance issue that can apply to any airport with multiple private interests – whether they be residential or commercial. The FAA has in place regulatory tools that require airport sponsors to maintain control. For the Oregon Department of Aviation, the policy set by the Oregon Aviation Board explicitly reflects the State's commitment to its FAA-mandated obligations regarding TTF, including the following provisions:

> The Oregon Department of Aviation will, in compliance with Oregon statutes governing re-setting land-lease rents, conduct rule-making to re-set the access fee for residential airpark aircraft to ensure parity between on-airport and off-airport charges for aircraft based at that airport.

Sponsor control of the airport is a function of all aspects of airport management and does not warrant singling out TTF access for special attention.

**Perception of "rich" pilots benefit from taxpayer support of airport** - FAA officials have used the argument that they must defend against the perception of the non-flying public that general aviation airports are the playgrounds of rich privileged pilots. This is not true any more than boats or automobiles are the exclusive purview of the wealthy. Certainly, the FAA's site inspection of Independence State Airport demonstrated that

residential airparks can be solidly middle class. GA pilots run the gamut from the retired private pilot who uses his last dollars for a hobby that he loves to corporate pilots and businesses that contribute to economic vitality and act as the gateways to rural communities and the businesses that depend on them. According to the FAA's own data: GA *contributes $14 billion in direct impacts and $4 billion in indirect impacts (to the economy) although the total economic impact of GA is less than that of their Commercial counterparts, GA contribute $81 billion, which is a significant contribution for non-scheduled service that includes all aircraft activity excluding major airlines and the military. In the United States, GA accounts for more than 5 percent of aviation-related services. GA has access to more than 5,300 public-use airports and a significant number of private airports making it one of the largest users of airports.*
***Source: FAA study, The Economic Impact of Civil Aviation on the U.S. Economy/Oct 2008.***

To summarize my testimony, Oregon appreciates the cooperation already extended to the state and would like to work with the FAA to refine their policy. HR 4815, in prohibiting the FAA from characterizing TTF as a violation of grant assurances, simply guarantees airport sponsors and TTF tenants a level of stability that reassures investors for commercial TTF and guarantees lenders that residential air parks such as Independence are not a risky endeavor to fund 30 year mortgages and capital construction projects beneficial to economic development.

The Oregon aviation community strongly believes Through the Fence, both residential and commercial is not inherently wrong. Like most issues, a one size fits all policy is generally less effective than a tailored policy that addresses the specific issues.

**Mr. Chairman, I would like to conclude my remarks by respectfully recommending the following:**

**1. Approve and pass HR 4815**

**2. Encourage the FAA to work with the states on a policy that fits each state's situation vice using the "one size fits all" approach.**

**3. Recognize the economic, safety, security and community value of TTF, both commercial and residential and they are not inherently wrong in and of themselves.**

Mr. Chairman, I thank you again for the opportunity to appear before your committee.

OREGON LEGISLATIVE ASSEMBLY

900 Court Street NE
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March 31, 2010

Mr. Charles Erhard
Manager, Airport Compliance & Field Operations Branch, ACO-100
FAA, Airports Division
800 Independence Avenue, SW
Washington, DC 20591

RE: FAA Order 5190.6B (9/30/2009)

Dear Mr. Erhard:

We are writing to add our complete support to and endorsement of the comments submitted to you by the Oregon Board of Aviation in December 2009 regarding the new policies contained in FAA Order 5190.6B.

We appreciate the continued efforts by FAA staff to ensure the safety and security as well as the continued viability of the Nation's airports. We also appreciate the cooperation and coordination between the FAA and local jurisdictions exhibited by the FAA over the years. In our opinion, however, FAA Order 5190.6B represents a serious lapse in that cooperation and coordination.

As you may know, Oregon has a long history of interest in aviation safety and security evidenced by the fact that in 1921 Oregon became the first state in the Nation to adopt aircraft registration and pilot licensing requirements. Oregon also has a long history of addressing compatible land use.

In the late 1960's Oregon began experiencing tremendous population growth and recognized that the resulting urbanization of many areas of the state was encroaching on valuable agricultural and forest lands. Our legislative predecessors could have prohibited such development by law but chose rather to enact legislation requiring local jurisdictions to adopt comprehensive land use plans to protect our resource lands and to provide for the efficient use of public funds for transportation, water and other infrastructure systems. Although the Oregon land use legislation provided several specific goals that had to be considered in each locally adopted comprehensive plan, the legislation did not tell local jurisdictions *how* to achieve those goals. (It should be noted that Oregon's land use law was recently amended to ensure that local jurisdictions consider the safety and security needs of public use airports in their comprehensive land use plans.) We suggest that a similar approach by the FAA to satisfy aviation needs and

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concerns would be much more appropriate than the unilateral proclamations found in FAA Order 5190.6B.

We agree with the comments of other individuals and organizations who have submitted comments concerning FAA Order 5190.6B that the Order is unrealistic given its one-size-fits-all approach. We also agree with those who have argued that the Order appears to be a solution looking for a problem.

We agree that through-the fence industrial, commercial and residential uses may present issues requiring attention. However, these uses also present many beneficial opportunities for some airports.

FAA staff recently conducted meetings at two airports owned and operated by the Oregon Department of Aviation; Aurora (UAO) and Independence (7S5). Both airports make extensive use of TTF and both airports are financially self-sustaining. Neither airport has been the subject of noise complaints nor safety or security matters – the very issues addressed in Order 5190.6B.

The only complaints we as legislators are receiving from these airports, as well as other Oregon public use airports, pertain to FAA Order 5190.6B. We would like to bring to your attention the fact that the Order even exists has caused and continues to cause serious financial harm to many of our constituents. A few examples:

> The uncertainty of future TTF access at Independence Airport has resulted in one home going into foreclosure.
>
> Two other properties at Independence have been taken off the market due to prospective purchaser concerns over continued TTF access.
>
> At Scappoose Airport (SPB) three aviation-related businesses who each have purchased property with TTF access have postponed construction of new facilities valued at several millions of dollars pending resolution of FAA Order 5109.6B. The employment of up to 100 additional employees has also been delayed as has the increase in local property tax revenue which had been forecast for local governments and school districts.

One factor that is of great interest to legislators throughout the country is the opportunity for public-private partnerships. Our rural airports especially do not have the capital to provide water, sanitary sewer, storm water, streets, lighting and the other infrastructure improvements necessary to expand the usefulness of their airport or to

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provide employment opportunities to their communities. TTF access from privately developed property developed with private funds affords these rural airports a future they can only dream of.

Well planned aviation related residential development provides these same airports with additional 'based' aircraft to support existing on-field businesses as well as the critical mass of aircraft to warrant additional on-field enterprises. In addition, the residents of these developments have proven to be the most zealous protectors of the safety and security of the airport if for no other reason than protecting the airport ensures the protection of their substantial investment in their airport accessible homes.

In conclusion we ask that the FAA reconsider the need and purpose of FAA Order 5109.6B; that the FAA clearly define perceived problems associated with TTF by relying on factual data; that the FAA consider the adoption of land use goals rather than land use edicts; and that the FAA work to re-establish the collegial relationship with state and local jurisdictions that have worked to everyone's benefit for so long.

Respectfully,

| | | |
|---|---|---|
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