

FAA RECOMMENDATIONS FOR Airport Sponsors Considering Residential Through-the-Fence Access Agreements

The FAA Modernization and Reform Act of 2012, Section 136 (Section 136) permits sponsors of publicly-owned **general aviation** airports to establish residential through-the-fence access (RTTF) agreements that comply with specific terms and conditions. Airport sponsors considering such agreements are strongly encouraged to work with the FAA to ensure their proposals:

1. Are consistent with the current and future plans for the airport;
2. Comply with the terms and conditions of Section 136; and
3. Do not impede the sponsor's ability to comply with its federal grant assurances.

An airport sponsor's prime obligation is to serve the interest of the aeronautical public. This goal should be reflected in any potential RTTF agreement.

STEP 1 - Understanding the Current and Future Development Needs of Your Airport

General aviation airports come in different shapes and sizes. They serve various roles and cater to specific segments of general aviation. Establishing a properly structured RTTF access agreement may help improve the viability of some general aviation airports, but it may not be appropriate for every general aviation airport. Before exploring the possibility of establishing an RTTF access agreement, it's important to consider the following questions:

- Who are the airport's current aeronautical users?
- What kinds of users is the airport trying to attract?
- How may RTTF help or hinder the airport in attracting these users?
- What types of services are available at the airport?
- What kinds of services is the airport trying to attract?
- How may RTTF affect current services at the airport?



- Is there enough space on the airport to achieve immediate- and long-term development goals?
- How may RTTF supplement this or detract from the airport's ability to lease on-airport space?
- Would establishing a residential element adjacent to the airport preclude the airport from achieving any development goals?
- How could establishing an RTTF access agreement help or hinder the airport's ability to become and remain self-sustaining?
- What systems must be set up to ensure self-sustainability of the airport over the long-term?

STEP 2 - Determine the Size and Scope

RTTF access arrangements vary in size and scope. Some may consist of only one or two homes, but others may include several hundred residences. Some airport sponsors permit each RTTF user to develop their own access point, but others limit the number of access points available to RTTF users. Determining the appropriate size and scope for the airport will depend on the future development needs of the airport.

Sponsors should keep in mind that as the number of RTTF users increase, it may be more difficult for the airport sponsor to balance the interests and



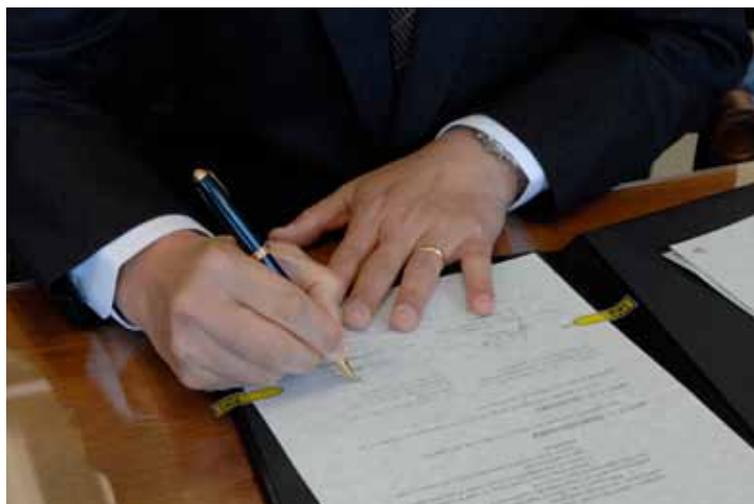
needs of all aeronautical users. Generally speaking, larger RTTF communities require more formal measures to govern the complex relationship between the airport sponsor and multiple RTTF users.

Once the potential size and scope of the RTTF arrangement is established, airport sponsors should work with the local zoning authority to limit noncompatible land uses around the airport. This ensures ongoing compliance with Grant Assurance 21, Compatible Land Use. Some recommended practices include:

- Developing a program to monitor potential zoning changes around the airport;
- Educating zoning officials on how changes in land use could impact the utility of the airport; and
- Requiring RTTF users to waive their rights to complain about aircraft noise and emissions.

STEP 3 - Develop the Draft RTTF Access Agreement

Section 136 specifically **requires** airport sponsors to have a written access agreement with the RTTF property owner(s) or an association representing property owners. Therefore, airport sponsors should not consider verbal, handshake, or other types of informal agreements.



Written agreements are important because they specify the duration, terms, rights, and responsibilities assigned to the RTTF user or association as well as the airport sponsor. Once executed by all parties, it may be difficult to renegotiate or alter provisions which may prove to be undesirable. The FAA strongly recommends airport sponsors include a general subordination clause acknowledging the RTTF access agreement is subordinate to the airport sponsor's current and future federal obligations and the airport rules and regulations.

The FAA strongly encourages airport sponsors to submit their draft RTTF access agreements to the FAA for review and comment prior to executing the agreement. Executing an RTTF access agreement which does not comply with Section 136 or results in a violation of the sponsor's federal obligations may result in the loss of Airport Improvement Program (AIP) grant funding.

Duration of the Agreement

Airport sponsors secure their rights and powers by negotiating agreements which preserve their flexibility to plan for the airport's future. Therefore, the FAA recommends airport sponsors negotiate short term agreements which can be renewed or extended at the sponsor's option. Perpetual RTTF access agreements should be discouraged because such terms eclipse all reasonable airport planning periods and erode the rights and powers of the airport sponsor.

Rights, Responsibilities, Terms, & Conditions

Care should be taken to ensure that rights conveyed to RTTF users do not result in special benefits or more favorable treatment than received by on-airport tenants. On-airport tenants are protected by Grant Assurance 22, Economic Nondiscrimination, and have standing to challenge the actions of an airport sponsor's compliance with its federal commitments. RTTF users' off-airport activities are not protected by the grant assurances.

It is helpful to review the proposed RTTF access agreement to determine if it does the following:

- ✓ Clearly outline the rights conveyed to the RTTF user.
- ✓ Clearly outline the responsibilities of the RTTF user.
- ✓ Clearly outline the rights retained by the airport sponsor.
- ✓ Clearly outline the responsibilities of the airport sponsor.
- ✓ Include a legal indemnification clause requiring the RTTF user to acknowledge that their property will be affected by aircraft noise and emissions and waiving any right to bring an action against the airport sponsor for operations at the airport.
- ✓ Include a hazard removal clause to ensure the airport sponsor maintains a mechanism for mitigating (removal, tree trimming, marking, lighting, etc.) potential airport hazards and for stopping the construction or establishment of these hazards. RTTF users may be required to complete and file FAA Form 7460-1, Notice of Proposed Construction or Alteration, and obtain a “no hazard” determination prior to erecting and/or altering any structures on their property.
- ✓ Require the RTTF user to follow the current and future airport rules and regulations.
- ✓ Impose any special rules or restrictions on fly-in guests who taxi from the airport’s property to visit an RTTF user.
- ✓ Prohibit the provision of aeronautical services from the RTTF property.
- ✓ Prohibit the RTTF user from granting any unauthorized user the right to pass through their property to access the airport.
- ✓ Prohibit the sale of aircraft fuel.
- ✓ Allow the airport sponsor to terminate the agreement or extinguish an individual RTTF user’s access for cause such as breach of the agreement, violation of the airport’s rules and regulations, etc.

Rates and Charges

Section 136 **requires** RTTF users to bear the cost of building and maintaining the infrastructure the airport sponsor determines is necessary to provide RTTF users access to the airfield. Therefore, the RTTF access agreement should contemplate and detail the type of taxiway, fencing, and access controls needed to establish the access point. The day-to-day and long-term maintenance needs should also be clarified.

Section 136 **requires** RTTF users to pay access charges that are comparable to those charged to tenants and operators on-airport making similar use of the airport. The RTTF access agreement should establish an RTTF access fee and specify the method the airport sponsor will use to collect the fee. Fees charged to RTTF users should increase on the same schedule as fees charged to similarly situated on-airport users.

Special Safety Concerns

The creation of adjacent residential and aeronautical land uses has the potential to mix domestic activities such as children, pets, and cars with taxiing aircraft. Airport sponsors should ensure that residential activities remain confined to the residential property and are not permitted to drift onto airport property.

Some residential activities such as gardens, compost lots, water detention ponds, etc. may inadvertently become wildlife attractants. Airport sponsors should preserve their authority to address these potential situations.

Transfer or Assignment of RTTF Access Agreements

The RTTF access agreement should address whether or not the RTTF user is permitted to transfer or assign the rights conferred through the agreement to another holder. The FAA encourages airport sponsors to prohibit the transfer or assignment of rights from one RTTF user to another. This does not prevent the RTTF property owner from selling their home; it simply requires new property owners to enter into a new agreement directly with the airport sponsor. Limiting the transfer or assignment of rights ensures the airport sponsor has an opportunity to educate the new homeowner about the responsibilities, terms, and conditions contained in the access agreement.

The Airport Noise and Capacity Act of 1990 (ANCA) limits an airport sponsor's proprietary authority to use access restrictions as a means of reducing aircraft noise impacts.

STEP 4 – Propose the Potential RTTF Access Point(s) to the FAA

Required Documentation:

1. Revised ALP depicting access point(s)
2. (Draft) Access Agreement(s)
3. Access Agreement Review Sheet

Grant Assurances that Discuss RTTF

Grant Assurance 5, Preserving Rights and Powers

- g. Sponsors of commercial service airports 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. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

Grant Assurance 29, Airport Layout Plan

- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and (4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature

of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport. (emphasis added)

For more information, check out the RTTF Access Toolkit at http://www.faa.gov/airports/airport_compliance/residential_through_the_fence/

