

Chapter 12. Review of Aeronautical Lease Agreements

12.1. Introduction. This chapter discusses procedures for reviewing lease agreements between the sponsor and aeronautical users. As part of the compliance program, the FAA airports district office (ADO) or regional airports division may review such agreements, advising sponsors of their federal obligations, and ensuring that the terms of the lease do not violate a sponsor's federal obligations.

12.2. Background. The operation of a federally obligated airport involves complex relationships between the sponsor and its aeronautical tenants. In most instances, the sponsor will turn to private enterprise to provide the aeronautical services that make the airport attractive and self-sustaining.

a. Rights Granted by Contract. Airport lease agreements usually reflect a grant of three basic rights or privileges:

(1). The right for the licensee or tenant to use the airfield and public airport facilities in common with others so authorized.

(2). The right to occupy as a tenant and to use certain designated premises exclusively.

(3). The commercial privilege to offer goods and services to airport users.

b. Consideration for Rights Granted. The basic federal obligation of the sponsor is to make public landing and aircraft parking areas available to the public. However, the sponsor may impose a fee to recover the costs of providing these facilities. (Refer to chapter 18 of this Order, *Airport Rates and Charges*, for a further discussion on rates and charges.) Frequently, the sponsor recovers its airfield costs indirectly from rents or fuel flowage fees that it charges its commercial tenants. The sponsor's substantial capital investment and operating expense necessitates assessing airport fees to recover these costs.

c. Operator/Manager Agreements. Sometimes a sponsor may, for various reasons, rely on commercial tenants to carry out certain sponsor federal obligations. For instance, a sponsor may (i) contract with a commercial tenant to perform all or part of its airfield maintenance, or (ii) delegate to the tenant responsibility for collecting landing fees, publishing notices to airmen, or (iii) contract for airport management. When this occurs, the FAA highly recommends that the sponsor and tenant enter into separate agreements: one agreement for the right to operate an aeronautical business on the airport, and a separate management agreement if the tenant provides management services on behalf of the sponsor.

12.3. Review of Agreements.

a. Scope of FAA Interest in Leases.

The FAA does not review all leases, and there is no requirement for a sponsor to obtain FAA approval before entering into a lease. However, when the ADO or regional airports division does review a lease agreement, the review should include the following issues:

(1). Determine if a lease has the effect of granting or denying rights that are contrary to federal statute, sponsor federal obligations, or FAA policy. For example, does the lease grant options or rights of first refusal that preclude the use of airport property by other aeronautical tenants?

(2). Ensure the sponsor has not entered into a contract that would surrender its capability to control the airport.

(3). Identify terms and conditions that could prevent the airport from realizing the full benefits for which it was developed.

(4). Identify potential restrictions that could prevent the sponsor from meeting its grant and other obligations to the federal government. For example, does the lease grant the use of aeronautical land for a nonaeronautical use?

b. Form of Lease or Agreement. The type of document or written instrument used to grant airport privileges is the sole responsibility of the sponsor. In reviewing such documents, the FAA office should concentrate on determining the nature of the rights granted and whether granting those rights may be in violation of the sponsor's federal obligations. The most important articles of a lease to review include:

(1). **Premises.** What is being leased – land or facilities or both? Does the lease include only the land and/or facilities that the aeronautical tenant can reasonably use or has the tenant been granted options or rights of first refusal for other airport property and/or facilities that it will not immediately require? Do options or rights of first refusal grant the tenant an exclusive right by



In reviewing airport leases and agreements, the airports district office (ADO) or regional airports division should give special consideration to those arrangements that convey the right to offer services and commodities to the public. In particular, ensure that the sponsor maintains a fee and rental structure that will make the airport as self-sustaining as possible and that the facilities of the airport are made available to the public on reasonable terms without unjust discrimination. (Photo: FAA)

allowing the tenant to control a majority or all of the aeronautical property on the airport that can be developed?

(2). Rights and Obligations. Does the lease grant the tenant an explicit or implied exclusive right to conduct a business or activity at the airport? Does the lease state the purpose of the lease, such as “the noncommercial storage of the owner’s aircraft?” Does the lease require any use to be approved by the airport sponsor? This will prevent future improper nonaeronautical uses of airport property.

(3). Term. Does the term exceed a period of years that is reasonably necessary to amortize a tenant’s investment? Does the lease provide for multiple options to the term with no increased compensation to the sponsor? Most tenant ground leases of 30 to 35 years are sufficient to retire a tenant’s initial financing and provide a reasonable return for the tenant’s development of major facilities. Leases that exceed 50 years may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property. FAA offices should not consent to proposed lease terms that exceed 50 years.

(4). Payment of Fees to the Sponsor. Does the lease assess the tenant rent for leasing airport property and/or facilities and a concession fee if the tenant provides products and/or services to aeronautical users? Does the lease provide for the periodic adjustment of rent? Has the rental of airport land and/or facilities been assessed on a reasonable basis (e.g., by an appraisal)?

(5). Title. Does the title to tenant facilities vest in the sponsor at the expiration of the lease? Do any lease extension or option provisions provide for added facility rent once the title of facilities vests in the sponsor?

(6). Subordination. Is the lease subordinate to the sponsor’s federal obligations? Subordination may enable the sponsor to correct tenant activity through the terms of its lease that otherwise would put the sponsor in violation of its federal obligations.

(7). Assignment and Subletting. Has the sponsor maintained the right to approve in advance an assignment (sale of the lease) or sublease by the tenant? For example, could the sponsor intervene if (a) a dominant fixed-base operator (FBO)³³ decides to acquire all other competing FBOs on the airfield or (b) an aeronautical tenant decides to lease aeronautical space to a nonaeronautical tenant?

12.4. FAA Opinion on Review. Since the FAA’s interest in a lease is confined to the lease’s impact on the sponsor’s federal obligations, the sponsor should not construe the acceptance of the lease as an endorsement of the entire document. When the ADO or regional airports division reviews a lease and determines it does not appear to violate any federal compliance obligations, that office will advise the sponsor that FAA has no objection to the agreement. The FAA does not approve leases, nor does it endorse or become a party to tenant lease agreements.

³³ A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

12.5. Agreements Covering Aeronautical Services to the Public.

In reviewing airport leases and agreements, the ADO or regional airports division should give special consideration to those arrangements that convey to aeronautical tenants the right to offer services and commodities to the public. In particular, ensure that (a) the sponsor maintains a fee and rental structure in the lease agreements with its tenants that will make the airport as self-sustaining as possible and that (b) the facilities of the airport are made available to the public on reasonable terms without unjust discrimination. Any lease or agreement granting the right to serve the public on the airport should be subordinate to the sponsor's federal obligations.



It is important for the airport sponsor to maintain the right to approve in advance an assignment (sale of the lease) or sublease by a tenant. The sponsor must be able to intervene if an aeronautical tenant decides to lease aeronautical space to a nonaeronautical tenant to the detriment of aeronautical users, as shown below. A hangar must not be used as a car garage. (Photo: FAA)

That is, the lease should provide that it will be interpreted to preserve its compliance with the federal obligations. This will enable the sponsor to preserve its rights and powers and to maintain sufficient control over the airport to guarantee aeronautical users are treated fairly.

a. Required Nondiscrimination Provision. Grant Assurance 22.b, *Economic Nondiscrimination*, requires the airport sponsor to include specific provisions in any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted. The intent of this provision is to ensure aeronautical service providers engage in reasonable and nondiscriminatory practices and to provide the airport sponsor with authority to correct unreasonable and discriminatory practices by tenants should they occur. When reviewing lease agreements, ADOs and regional airports divisions should ensure that the agreement contains the required provision and, if it is missing, instruct the airport sponsor to insert the provision in the agreement.

b. Nonaeronautical Service to the Public. Although the grant assurances and property deed restrictions are not generally applicable to nonaeronautical leases and agreements (as compared to aeronautical agreements), the lease of premises or an agreement granting rights to offer nonaeronautical services to the public must incorporate specific language prohibiting unfair practices regarding civil rights assurances as outlined in AC 150/5100-15, *Civil Rights Requirements for the Airport Improvement Program*.

12.6. Agreements Involving an Entire Airport.

a. Contracts to Perform Airport Maintenance or Administrative Functions. The important point in such arrangements is that the sponsor may delegate or contract with an agent of its choice to perform any element of airport maintenance or operation. However, such arrangements in no way relieve the sponsor of its federal obligations. The sponsor has the ultimate responsibility for the management and operation of the airport in accordance with federal obligations and cannot abrogate these responsibilities. When the sponsor elects to rely upon one of its commercial operators or tenants to carry out airport maintenance or operating responsibilities, there is the potential for a conflict of interest and the potential for a violation of the sponsor's federal obligations.

Any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. The agent's contract should be separate and apart from any other lease or contract with the sponsor that grants property or commercial rights on the airport.

b. Total Delegation of Airport Administration. In certain cases, the ADO or regional airports division may be asked to give consideration to entrusting the operation of a publicly owned airport to a management corporation. Whether the document establishing this kind of a relationship is identified as a lease, concession agreement, management contract, or otherwise, it has the effect of placing a third party in a position of substantial control over a public airport that may be subject to a grant agreement or other federal obligation. The ADO or regional airports division should review these agreements carefully to ensure that the rights of the sponsor and other tenants are protected. See paragraph 6.13, *Airport Management Agreements*, in chapter 6 of this Order, *Rights and Powers and Good Title*, for a discussion of the requirements applicable to such agreements.

c. Resident Agent. The FAA will, at all times, look to the sponsor to ensure the actions of its management corporation contractor conform to the sponsor's federal obligations. The FAA will consider a management corporation with a lease of the entire airport, or a tenant operator authorized to perform any of the sponsor's management responsibilities, as a resident agent of the airport sponsor and not as a responsible principal.



The sponsor retains the right to develop or improve the airfield and public areas of the airport as it sees fit, regardless of the desires or views of the management corporation and without interference or hindrance of the management corporation. (Photo: FAA)

12.7. Agreements Granting “Through-the-Fence” Access. There are times when the sponsor will enter into an agreement that permits access to the airfield by aircraft based on land adjacent to, but not a part of, the airport property. This type of an arrangement has frequently been referred to as a “through-the-fence” operation even though a perimeter fence may not be visible. “Through-the-fence” arrangements can place an encumbrance upon the airport property and reduce the airport’s ability to meet its federal obligations. As a general principle, the FAA does not support agreements that grant access to the public landing area by aircraft stored and serviced offsite on adjacent property. Thus this type of agreement is to be avoided since these agreements can create situations that could lead to violations of the airport’s federal obligations. (“Through-the-fence” access to the airfield from private property also may be inconsistent with Transportation Security Administration security requirements.)

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.

The 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.

a. Rights and Obligations of Airport Sponsor. The 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. The existence of such an arrangement could conflict with the sponsor’s federal obligations unless the sponsor retains the legal right to require the off-site property owner or occupant to conform in all respects to the requirements of any existing or proposed grant agreement. For example, in any “through-the-fence” agreement, the airport sponsor must retain the ability to take action should a safety or security concern require fencing around the airport. In some cases, airport sponsors have been unable to install actual fencing to mitigate wildlife hazards due to pre-existing “through-the-fence” agreements.

b. Economic Discrimination Considerations. The sponsor is entitled to seek recovery of capital and operating costs of providing a public use airfield. The development of aeronautical enterprises on land off airport and not controlled by the sponsor can result in an economic competitive advantage for the “through-the-fence” operator to the detriment of on-airport tenants. To equalize this imbalance, the sponsor should obtain from any off-base enterprise or entity a fair return for its use of the airfield by assessing access fees from those entities having “through-the-fence” access. For example, if the airport sponsor charges \$100 per month for a single-engine aircraft tie-down on the airport to pay for the costs of airport operation, then any other single-engine aircraft operator using the airport “through-the-fence” should be charged no less than a similar fee. The same is true for the ground lease on a privately owned hangar and the fees charged to “through-the-fence” operators with a hangar off the airport. The airport sponsor must not discriminate against those aeronautical users within the airport. NOTE: “Through-the-fence” operators are not protected by the grant assurances. The airport sponsor may assess any level of fee it deems appropriate for “through-the-fence” operators so long as that fee is not less than the comparable fee paid by on-airport tenants.

c. Safety Considerations. Arrangements that permit aircraft to gain access to the airfield from off-site properties complicate the control of vehicular and aircraft traffic. In some cases, they may create unsafe conditions. The sponsor may need to incorporate special safety operational requirements in its “through-the-fence” agreements. (For example, a safety requirement may be needed to prevent aircraft and vehicles from sharing a taxiway.) When required, FAA Flight Standards should be consulted on safety and operational matters. In all cases, in any “through-the-fence” agreement, the airport sponsor must retain the ability to intervene if a safety concern arises and take all the necessary actions.

d. Off-Airport Aeronautical Businesses. As a general principle, the ADO or regional airports division should not support sponsor requests to enter into any agreement that grants “through-the-fence” access to the airfield for aeronautical businesses that would compete with an on-airport aeronautical service provider such as an FBO. Exceptions may be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport and subordinate the agreement to the grant assurances and grant agreement. Examples of “through-the-fence” uses that would not compete with an on-airport business include:

(1). At the sponsor’s option, if a bona fide airport tenant has already leased a site from the sponsor and has negotiated airfield use privileges but also desires to move aircraft to and from a hangar or manufacturing plant on adjacent off-airport property, the tenant may gain access through an area provided by the sponsor.

(2). Although not encouraged by the FAA, if an individual or corporation actually residing or doing business on an adjacent tract of land proposes to gain access to the airfield solely for aircraft use without offering any aeronautical services to the public, the sponsor may agree to grant this access. Airports commonly face this situation when an industrial airpark or manufacturing facility is developed in conjunction with the airport.

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.

e. FAA Determinations. The FAA regional airports division will determine whether arrangements granting access to the airfield from off-site locations are consistent with applicable federal law and policy. If the FAA regional airports division determines that such an agreement lessens the public benefit for which the airport was developed, the FAA regional airports division will notify the sponsor that the airport may be in violation of its federal obligations if it grants such “through-the-fence” access. If necessary, the FAA headquarters Airport Compliance Division (ACO-100) will be able to provide assistance in such cases.

f. Reasonable Access is Not Required. It is important to remember that users having access to the airport under a “through-the-fence” agreement are *not* protected by the sponsor’s federal obligations to the FAA. This is because the federal obligation to make the airport available for

public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities without granting an exclusive right does not impose any requirement to permit access by aircraft from adjacent property. In fact, the airport sponsor may simply deny “through-the-fence” access if it so chooses. The airport may also charge any fee it sees fit to those outside the airport.

Since federal obligations do not require that access be granted under these circumstances, the FAA will not normally entertain complaints from entities operating from adjacent property with a “through-the-fence” access agreement. The FAA should not support or agree to requests to enter into any agreement that grants access to the airfield for the establishment of a residential airpark since this would raise a compliance issue under Grant Assurance 21, *Compatible Land Use*.

The FAA will not support any agreement that grants access to a public airfield by aircraft stored and serviced on adjacent nonairport property, and strongly recommends that airport owners and aeronautical users refrain from entering into such an agreement. A “through-the-fence” access agreement may result in the violation of a number of the sponsor’s federal obligations. Among other things, “through-the-fence” agreements can have the effect of:

(1). Placing contractual and legal encumbrances or conditions upon the airport property, in violation of Grant Assurance 5, *Preserving Rights and Powers*;

(2). Limiting the airport’s ability to ensure safe operations in both movement and non-movement areas, in violation of Grant Assurance 19, *Operation and Maintenance*;

(3). Creating unjustly discriminatory conditions for on-airport commercial tenants and other users by granting access to off-airport competitors or users in violation of Grant Assurance 22, *Economic Nondiscrimination*;

(4). Effectively granting an exclusive right to the “through-the-fence” operator in violation of Grant Assurance 23, *Exclusive Rights*, if the operator conducts a commercial business and no on-airport operator is able to compete because the terms given to the



If an airport sponsor chooses to grant “through-the-fence” access, it must ensure that its decision will not result in a violation of its federal obligations, either now or in the future. It has been the FAA’s experience that airport sponsors are often unable to correct violations of the grant assurances that result from “through-the-fence” operations. The existence of a gate, as shown here, does not, per se, mitigate the FAA’s concerns regarding “through-the-fence” agreements. (Photo: FAA)



The “through-the-fence” operator shall not have a right to assign or sell the right of access without the express prior written approval of the sponsor. The sponsor shall have the right to amend the terms of the access agreement to reflect a change in value to the off-airport property at the time of the approved sale if the “through-the-fence” access is to continue. (Photo: AOPA)

“through-the-fence” operator are so much more favorable;

(5). Affecting the airport’s ability to be self-sustaining, in violation of Grant Assurance 24, *Fee and Rental Structure*, because the airport may not be in a position to charge “through-the-fence” operators adequately for the use of the airfield;

(6). Weakening the airport’s ability to remove and mitigate hazards and incompatible land uses, in violation of Grant Assurance 20, *Hazard Removal and Mitigation*, and Grant Assurance 21, *Compatible Land Use*.

(7). Making it more difficult for an airport sponsor to implement future security requirements that may be imposed on airports.

g. While FAA does not support “through-the-fence” access, should a sponsor choose to proceed, it should do so only under the following conditions:

(1). **FAA Review.** Seek FAA review to ensure that its decision will not result in a violation of its federal obligations, either now or in the future. It has been the FAA’s experience that airport sponsors find it difficult to correct grant assurance violations that result from “through-the-

fence” access. The inability to correct such violations could result in an airport losing its eligibility to receive Airport Improvement Program (AIP) grant funds.

(2). Access Agreement Provisions. Sponsors should consider the following provisions in preparing an access agreement to grant a right of “through-the-fence” access:

(a). The access agreement should be a written legal document with an expiration date and signed by the sponsor and the “through-the-fence” operator. It may be recorded. Airports should never grant deeded access to the airport.

(b). The right of access should be explicit and apply only to the “through-the-fence” operation (i.e., right to taxi its aircraft to and from the airfield).

(c). The “through-the-fence” operator shall not have a right to grant or sell access through its property so other parties may gain access to the airfield from adjacent parcels of land. Only the airport sponsor may grant access to the airfield, which should be consistent with Transportation Security Administration (TSA) requirements.

(d). The access agreement should have a clause making it subordinate to the sponsor’s grant assurances and federal obligations. Should any provision of the access agreement violate the sponsor’s grant assurances or federal obligations, the sponsor shall have the unilateral right to amend or terminate the access agreement to remain in compliance with its grant assurances and federal obligations.

(e). The “through-the-fence” operator shall not have a right to assign its access agreement without the express prior written approval of the sponsor. The sponsor should have the right to amend the terms of the access agreement to reflect a change in value to the off-airport property at the time of the approved sale if the “through-the-fence” access is to continue.

(f). The fee to gain access to the airfield should reflect the airport fees charged to similarly situated on-airport tenants and aeronautical users. For example, landing fees, ground rent, or tie-down fees paid to the sponsor by comparable on-airport aeronautical users or tenants to recover



If an airport sponsor chooses to grant “through-the-fence” access, it should seek FAA review to ensure that its decision will not result in a violation of its federal obligations, either now or in the future. It has been the FAA’s experience that airport sponsors find it difficult to correct grant assurance violations that result from “through-the-fence” access. The inability to correct such violations could result in an airport losing its eligibility to receive Airport Improvement Program (AIP) grant funds. (Photo: FAA)

the capital and operating costs of the airport should be reflected in the access fee assessed the “through-the-fence” operator, including periodic adjustments. In addition, if the “through-the-fence” operator is granted the right to conduct a commercial business catering to aeronautical users either on or off the airport, the sponsor shall assess, at a minimum, the same concession terms and fees to the “through-the-fence” operator as assessed to all similarly situated on-airport commercial operators. As previously stated, the FAA does not support granting “through-the-fence” access to aeronautical commercial operators that compete with on-airport operators.

(g). The access agreement should contain termination and insurance articles to benefit the sponsor.

(h). The expiration date of the access agreement should not extend beyond a reasonable period from the sponsor’s perspective. It should not depend upon the full depreciation of the “through-the-fence” operator’s off-airport investment (i.e., 30 years), as would be the case had the investment been made inside the airport. In any case, it should not exceed the appraised useful life of the off-airport facilities. Should the access agreement be renegotiated at its expiration, the new access fee should reflect an economic rent for the depreciated off-airport aeronautical facilities (i.e., hangar, ramp, etc.) comparable to what would be charged by the sponsor for similar on-airport facilities. That is, when on-airport facilities are fully amortized and title now vests with the airport instead of the tenant, the airport may charge higher economic rent for the lease of its facility. The access fee for a depreciated off-airport facility should be adjusted in a similar fashion notwithstanding that title still vests with the off-airport operator. However, there is no limitation on what the airport sponsor may charge for “through-the-fence” access.

h. Access Not Permitted. No exception will be made to permit “through-the-fence” access for certain purposes.

(1). The FAA will not approve any “through-the-fence” access for residential airpark purposes since that use is an incompatible land use. Refer to chapter 20 of this Order, *Compatible Land Use and Airspace Protection*, for additional details concerning the FAA’s position on residential airparks.

(2). The FAA will not approve a release of airport land for “through-the-fence” access to the airport by aircraft. Airport land may only be released if the land no longer has an airport purpose; if the land would be used for the parking and operation of aircraft, it would not qualify for a release. A release of airport land for an aeronautical use would simply serve to reduce the sponsor’s control over the use and its ability to recover airport costs from the user.

12.8. through 12.12. reserved.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 29 2005

Mr. Hal Shevers
Chairman
Clermont County-Sporty's Airport
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than \$300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because

FAA Response to Request for Residential "Through-the-Fence"

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they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Associations (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally* obligated airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

**Original signed by:
Woodie Woodward**

Woodie Woodward
Associate Administrator
for Airports

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U.S. Department
of Transportation
**Federal Aviation
Administration**

San Francisco Airports District Office
831 Mitten Road, Room 210
Burlingame, California 94010-1303

March 28, 2003

Mr. Sam Scheider
Airport Manager
Madera Municipal Airport
205 West 4th Street
Madera, California 93637

Dear Mr. Scheider:

Madera Municipal Airport
Release Determination

This is in regard to a request by the City of Madera (City) for the release of 1.332 acres of land at Madera Municipal Airport from its federal obligations. The proposed release would allow the land to be sold to a buyer who intends to develop the property with, among other things, aircraft storage hangars. As part of the proposed sale, the city has agreed to grant the buyer a through-the-fence permit that will authorize exclusive access to the airport from the private property. Upon review of all available information regarding this request, the Federal Aviation Administration (FAA) finds it cannot approve the City's request. This decision is a result of our review and analysis of the following factors:

We have determined that the release proposed by the City does not meet the criteria set by law or by FAA policy. First, the use of the land once it is released incorporates an aviation-related function. Therefore, the purpose of the release demonstrates that the land is still needed for airport purposes. By law, the FAA cannot approve such a release.

Second, the City also proposes to grant the buyer through-the-fence access to the airport from the private property. This proposal does not comply with the FAA policy that advocates against through-the-fence arrangements whereby airport owners enter into an agreement with a private property owner to grant access to the airport by aircraft normally stored and serviced on the adjacent non-airport property. Based on the terms of the City's release proposal, the City is asking the FAA to approve a through-the-fence agreement that the FAA, by policy, recommends be avoided. (See FAA Order 5190.6A, Section 6-6) Since the Madera proposal relies on through-the-fence access, approving the release would conflict with current FAA policy. Although there are some exceptions to this policy, those exceptions are not intended to

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apply to cases where through-the-fence access was the result of an FAA-approved release of federal surplus property.

In addition, the proposed use of the parcel would not qualify for an exemption to the policy. The City's through-the-fence request is not incidental to an existing land use arrangement adjacent to the airport. The city wishes to create through-the-fence access to permit the released land to be used for an aviation-related purpose. The FAA policy rests on the likelihood that through-the-fence access for the purpose of providing aviation services to the public will create conditions that result in the violation of the sponsor's federal obligations. Therefore, based on the policy, the release cannot be approved.

Suitable alternatives to a land release exist. The FAA supports a proposal that would consider offering a private developer a ground lease upon which tenant improvements would be made. We recognize that the City stated in its release request that the airport is not willing to make the investment necessary to finance the project. However, we must assume that the developer is prepared to make an investment if the land were released. Therefore, why not just make an investment in airport land under the terms of a favorable lease agreement? The leasing option would not only establish a long-term revenue stream for the airport, but would also allow the airport to retain ownership of the property and avoid through-the-fence access.

In conclusion, although our determination may not have been timely, the FAA cannot approve the City's release request or waive the regulatory requirements to permit a release or through-the-fence access. We trust that the City will conclude that there are suitable alternatives other than a release to satisfy the airport's development needs and to serve the City's public airport interests.

If you have any questions, please contact Racior R. Cavole, Airports Compliance Specialist, at (650) 876-2804.

Sincerely,

ORIGINAL SIGNED BY
ANDREW M. RICHARDS

Andrew M. Richards, Manager
San Francisco Airports District Office

**Sample Response to Request Release for "Through-the-Fence" Purposes -
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