



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

Memorandum

Subject: **ACTION:** Program Guidance Letter 05-5 About §160 in Vision 100-Century of Aviation Reauthorization Act: Guidelines for Compatible Land Use Planning By State and Local Governments In Areas Around Large and Medium Hub Airports **Date:** June 1, 2005

From: Acting Manager, Airports Financial Assistance Division, APP-500 **Reply to**
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To: PGL Distribution List
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05-5.1 Section 160 – Compatible Land Use Planning and Projects by State and Local Governments – Vicki Catlett (202) 267-8770.

Section 160 of Vision 100-Century of Aviation Reauthorization Act (hereafter referred to as “Vision 100”) added section 47141 to 49 U.S.C.¹ that authorizes the Secretary to make grants from noise set-aside Airport Improvement Program (“AIP”) funds to states and units of local government (hereafter referred to as “nonfederal governments”) for compatible land use planning and projects around large and medium hub airports that have either never submitted a noise compatibility program or have not updated such program within the preceding ten years. These grants are limited to fiscal years 2004 through 2007.

Section 160 requires the FAA to establish guidelines to administer this new program. This program guidance constitutes the guidelines required by law. We will publish this PGL on the FAA’s web site so that State and local governments around large and medium hub airports are aware of our criteria to qualify.

¹ “49 U.S.C.” (United States Code) is the legal reference to the recodified Aviation Safety and Noise Abatement Act.

How to Qualify:

In order for Nonfederal governments to receive Airport Improvement Program (AIP) funding to develop land use compatibility plans and implement resulting projects, the Regional FAA Airports Division must first determine that the nonfederal government is an eligible sponsor able to carry out the requirements of Section 47141 as listed in Attachment A, Special Conditions and Other Grant Assurances. In addition, the following specific requirements must be met:

- The compatible land use planning and projects are in areas around a large or medium hub airport. (A listing of the large and medium hub airports can be found at the web address http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/.)
- The nonfederal government has authority to plan and adopt land use compatibility plans and control measures, including zoning, in the planning area in and around the airport.
- The airport operator has not submitted an airport noise compatibility program to the FAA under Title 14, Code of Federal Regulations, Part 150, or has not updated its approved noise compatibility program within the preceding 10 years. (The FAA website has a record of all airports that have completed studies, and the date they were approved. The address is http://www.faa.gov/airports/environmental/airport_noise/.)
- The nonfederal government and airport owner or operator must have entered into a written agreement to prepare the compatible land use plan cooperatively.
- The nonfederal government must incorporate two sets of grant assurances as part of their application. The first set is the standard assurances required for all planning projects (Planning Agency Assurances). The second set is unique for nonfederal sponsors of compatible land use grants (Noise Compatibility Assurances for Non-Airport Sponsors) This ensures that nonfederal governments will conduct the studies in accordance with standards approved by the Secretary. Assurances are at http://www.faa.gov/airports/aip/grant_assurances/.

Attachment A contains new special conditions that should be included in all grants issued under Section 160 of Vision 100, and they include the following statutory requirements solely for purposes of this PGL:

- The nonfederal government will achieve, to the maximum extent possible, compatible land uses consistent with Federal land use compatibility criteria in 14 C.F.R. 150 and those compatible land uses will be maintained.
- The land use plan will be reasonably consistent with the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.
- The land use plan will address ways to achieve and maintain compatible land uses, including zoning, building codes, and measures identified under 49

U.S.C. 47504(a)(2) that are within the authority of the nonfederal government to implement.

- The land use plan will use noise contours provided by the airport operator that are consistent with airport operation and planning, including any noise abatement measures adopted by the airport operator.
- The land use plan will not duplicate, and not be inconsistent with, the airport operator's noise compatibility measures for the same area.
- The airport owner or operator and the nonfederal government will jointly approve the land use plan.
- The nonfederal government will make provision to implement those elements of the plan ineligible for Federal financial assistance.

The Planning Application:

Along with the information required as part of the planning grant application under paragraph 412 of AIP Handbook 5100.38B, the nonfederal government must submit the following documents to develop a land use compatibility plan pursuant to 49 U.S.C. §47141:

- (1) A written agreement with the airport owner or operator that the land use compatibility plan will be prepared cooperatively. The agreement may be jointly signed or consist of separate letters from each party agreeing to prepare the land use compatibility plan cooperatively.
- (2) Noise contours provided by the airport operator. These noise contours must be certified by the airport operator to be representative of the conditions at the airport when they are submitted to the nonfederal government for use in its land use compatibility plan.
- (3) Two sets of grant assurance - Planning Agency Assurances and Noise Compatibility Assurances for Non-Airport Sponsors, with the Section 160 special conditions (Attachment A to this memorandum).

Before approving the land use compatibility planning or project application, the FAA planning or environmental specialist in the region or Airports District Office should discuss the assurances, special conditions, and the Federal funding process with the nonfederal government applicant

Developing the Land Use Compatibility Plan:

Section 47141 requires that the airport owner or operator and nonfederal government prepare the land use compatibility plan cooperatively.

Land use control measures should be selected for evaluation based upon achieving the goal established in Section 47141 to "achieve, to the maximum extent possible, compatible land uses

consistent with Federal land use compatibility criteria under section 47502(3) and that those compatible land uses will be maintained.”

The nonfederal government’s plan should disclose the existing noise mitigation and noise abatement measures in place at the airport, and demonstrate that the plan recommendations do not conflict with existing airport mitigation.

An opportunity for public involvement is important in any planning process in which the resultant recommendations will impact the public. The nonfederal government should provide an opportunity for the public to review and comment on plan recommendations prior to completing the plan. Evidence of public involvement should be included in the final plan prior to submittal to the FAA for review to determine eligibility of plan measures for Federal financial assistance.

The final plan should clearly identify each measure the nonfederal government proposes to enact, with or without Federal funding, anticipated cost of implementation, and its anticipated benefits. It should indicate the steps that must be taken to implement the measure, and the anticipated time frame to implement/complete.

Filing the Completed Plan for FAA Action:

The nonfederal government (the applicant) must provide three copies of the completed plan prepared under the AIP to the region. The plan must contain evidence of approval by the airport owner or operator. This can be in the form of a jointly signed transmittal, a transmittal from the nonfederal government with airport owner or operator approval on a separate letter attached to its transmittal, or other written form in the plan. One copy of the plan should be retained at the ADO, one sent to the region, and the third should be sent to the airport sponsor. FAA will accept the plan after determining that it meets the development criteria, and will notify the nonfederal government and the airport sponsor of the plan’s acceptance.

Funding to Implement Program Measures:

(a) No further FAA action is required if the nonfederal government has no elements in its FAA-accepted land use plan for which Federal funds will be requested.

(b) If AIP funding is contemplated for implementing the measure(s), then the nonfederal government should submit a capital improvement plan (CIP), identifying FAA-accepted land use plan measures and the year(s) that Federal funding is anticipated.

You should advise the nonfederal government to submit a copy of its CIP at the same time it submits the land use plan to the FAA for acceptance, or funding may not be available when the nonfederal government submits its grant application. If it submits a copy of its CIP at the time of its first grant application to carry out a recommendation(s) in the plan, funding will likely be delayed.

Upon receiving the CIP, the FAA will review it against the FAA-accepted land use plan to determine which measures are eligible for Federal funding. The FAA will use FAA

Order 5100.38B to determine whether each measure is eligible for AIP funding, and notify the nonfederal government in writing of the FAA's findings of eligibility for the plan. The FAA will provide the information to the nonfederal government necessary to understand these eligibility requirements.

If a plan measure is eligible for Federal aid, then the nonfederal government should carry out the approved measure(s) utilizing the current application approval process for noise compatibility projects approved under Part 150.

Airport Sponsors' Part 150 Programs:

Although airport owners or operators participate in plans conducted by nonfederal governments pursuant to 49 U.S.C. §47141, the airport owners or operators are *not* required to plan or implement any on-airport operational or restriction measures as part of such a plan. Section 160 of Vision 100 limits nonfederal government sponsored plans to land use compatibility plans and measures regarding the use of land areas around large hub airports and medium hub airports. Plan measures are limited to those within the scope of the responsibility of the nonfederal government, which has no authority to either study or carry out aircraft operational procedures, airport layout changes, or airport noise or access restrictions.

The airport owner or operator may subsequently decide to develop or update a noise compatibility program (NCP) pursuant to Part 150. The airport owner or operator must comply with all Part 150 consultation and analysis criteria and assure that all land use planning jurisdictions within the (Noise Exposure Map) NEM noise contours are invited to participate in the study process, including the nonfederal government that completed its own land use plan. The airport owner or operator's NCP should describe, but need not evaluate mitigation measures in the nonfederal government's plan.



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