

[4910-13]

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 [Insert date 45 days after date of publication in the Federal Register]. 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-2000’s, 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 email, 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 [INSERT DATE OF PUBLICATION]; or

2. There was development of the property prior to the date of this notice [INSERT DATE OF PUBLICATION], 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 [INSERT DATE OF PUBLICATION].

“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 aviation 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:
 - o Tenant tie-down charges.

 - o Tenant rates for square footage of off-airport hangars.

 - o Ground leases for dedicated taxiway connections to off-airport properties.

 - o 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 aviation 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 aviation 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 [INSERT DATE OF PUBLICATION], 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