KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

AGENDA STAFF REPORT

AGENDA DATE:	May 17, 2011
ACTION REQUESTED:	Consider a Certification for Residential Through-The-Fence Access as required by the Federal Aviation Administration.

BACKGROUND:	On March 18, 2011, the Federal Aviation Administration (FAA) established an interim policy on residential through-the-fence access to federally obligated airports. Bowers Field is one of these NPIAS airports that are federally funded and has received federal funding for eligible projects. This interim policy is to regulate any proposed RTTF and establish regulations for existing RTTF access'. This policy does not affect Bowers Field since we do not currently have any RTTF nor is it in the plan for the future. This Sponsor Certification is to certify that we do not have any existing RTTF at Bowers Field.
INTERACTION:	Public Works; FAA
RECOMMENDATION:	Move to Approve Sponsor Certification for Residential Through-The-Fence Access with the Federal Aviation Administration.
HANDLING:	Return two (2) originals to Public Works
ATTACHMENTS:	Sponsor Certification; FAA Letter; Interim Policy
LEAD STAFF:	Kelly Carlson Airport Manager

Initial Letter to Sponsors
Send out NLT 45 days from date of CGL
U.S. Department of Transportation
Federal Aviation Administration
Airport Improvement Program
SPONSOR CERTIFICATION
RESIDENTIAL THROUGH-THE-FENCE ACCESS

Kittitas County (Sponsor)

Bowers Field Airport – Ellensburg WA (Airport)

Title 49, United States Code, Section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on Residential Through-the-Fence (RTTF) access are in the FAA's Interim Policy (76 Fed. Reg. 15028; March 18, 2011) and further explained in the FAA's Compliance Guidance Letter 2011-1, FAA Implementation of Interim Policy Regarding Access to Airports From Residential Property and Review of Access Arrangements (March 21, 2011). The AIP project grant agreement contains a specific assurance on RTTF and may contain a special condition regarding the status of RTTF at this airport.
Except for the certified items below marked not applicable (N/A), the list describes the current status of RTTF at this airport. This certification does not relieve the sponsor from fully complying with all applicable statutory and administrative standards.

	Yes	No
1. This airport has Existing Access from Residential Property as defined in the FAA's Interim Policy (76 Fed. Reg. 15028; March 18, 2011).		X
2. This airport will submit an RTTF access plan in accordance with the Interim Policy prior to requesting its first AIP grant after Fiscal Year 2012.		X

I certify the responses to the forgoing items are accurate as marked and further certify to the best of my information and belief that all required RTTF submissions will be correct and complete.

Kittitas County
(Name of Sponsor)

May 17, 2011
(Date)

(Signature of Sponsor's Designated Official Representative)

Paul Jewell, Chairman
(Typed Name of Sponsor's Designated Official Representative)

Board of County Commissioners, Chairman
(Typed Title of Sponsor's Designated Official Representative)

U.S. Department
of Transportation
Federal Aviation Administration Northwest Mountain Region

Seattle Airports District Office
1601 Lind Ave. SW, Suite 250
Renton, WA 98057-3356
(425) 227-2650

April 28, 2011

Ms. Kelly Carlson
Kittitas County Public Works
411 N. Ruby St. Suite 1
Ellensburg, WA 98926

Bowers Field

Ms. Carlson,

On March 18, 2011, the Federal Aviation Administration (FAA) published its interim policy on residential through-the-fence (RTTF) access to federally-obligated airports in the Federal Register (76 Fed. Reg. 15028; March 18, 2011). The purpose of this letter is to:

1. notify you of the interim policy and revised grant assurances;
2. direct you to resources regarding this policy
3. ask you to certify the status of RTTF at your airport within 90 days; and
4. ask you to identify the status of residential use on airport property

The interim policy clarifies the FAA's concerns about arrangements allowing aircraft owners to taxi from their residential property onto a federally-obligated airport. Although the FAA is amending Grant Assurance 5, Preserving Rights and Powers, by adding paragraph "g" to prohibit these arrangements in the future, the interim policy does not require sponsors with existing arrangements to terminate this practice. Rather, the interim policy requires sponsors with existing RTTF arrangements to adopt measures to substantially mitigate existing and potential problems with RTTF access. As a result, airport sponsors with existing access will need to identify all RTTF access points on their Airport Layout Plan (ALP) and develop an access plan.

The interim policy requires all airport sponsors to certify their status with regard to the interim policy. Compliance Guidance Letter (CGL) 2011-1, FAA Implementation of Interim Policy Regarding Access to Airports From Residential Property and Review of Access Arrangements, explains how the FAA will implement the interim policy. The interim policy, the CGL, and additional resources have been posted on the FAA's Web site at: **http://www.faa.gov/airports/airport_compliance/residential_through_the_fence/.**

Please review these documents to determine if RTTF access exists at your airport and certify your status to this office within 90 days. Your certification may be submitted with the form enclosed, by adopting a local resolution, or submitting a signed affidavit.

Your certification will determine how the FAA applies paragraph "g" of Grant Assurance 5 at your airport. As of March 18, 2011, Grant Assurance 5(g) is effective. All grants accepted after March 18, 2011 will contain this grant assurance which reads as follows:

> "It [airport sponsor] will not permit or enter into any arrangements that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport."

Sponsors certifying the presence of existing RTTF arrangements will need to comply with the interim policy as follows:

1. If your FAA-approved ALP does not currently depict the RTTF access points, the ALP should be updated with a pen and ink change and sent to the FAA with the certification.

2. You must submit two copies of your access plan before October 1 of the fiscal year in which the you will request an AIP grant beginning in Fiscal Year 2013 (i.e., October 1, 2012 if seeking a grant in Fiscal Year 2013).

In addition, if residential use exists on your airport property, please provide a pen and ink change to your ALP identifying the location of these residences. This information will be reviewed separately from the RTTF access plan. Residential use is defined as

> A piece of real property used for single- or multi-family dwellings; duplexes; apartments; primary or secondary residences even when co-located with a hangar, aeronautical facility, or business; hangars that incorporate living quarters for permanent or long-term use; and time-share hangars with living quarters for variable occupancy of any term.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Carol A. Suomi, Manager
Seattle Airports District Office

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 125.

Respondents: 1,604,168.

Annual responses: 1,604,168 responses.

Frequency of Response: Once per request.

Average minutes per response: 5.46545 minutes.

Burden hours: 146,125 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: March 15, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–6452 Filed 3–17–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7371]

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported by Employing Agencies in Calendar Year 2009; Correction

AGENCY: Department of State.

ACTION: Notice; Correction.

SUMMARY: The Department of State published a document in the **Federal Register** of January 18, 2011 concerning Gifts to Federal Employees from Foreign Government Sources Reported to Employing Agencies in Calendar Year 2009. The document contained the incorrect title of a foreign dignitary.

FOR FURTHER INFORMATION CONTACT: David Solomon, Office of the Chief of Protocol (202) 647–1333/ *Solomonda@State.gov.*

Correction

In the **Federal Register** of January 18, 2011 in FR Vol. 76, No. 11, page 2983, in the third entry in the third column under "Identity of foreign donor and government", the title of the President of the Constitutional Court of Korea is incorrect and should be changed from "President Kang-Kook Lee, Constitutional Court of Korea, Democratic People's Republic of Korea" to read: "President Kang-Kook Lee, Constitutional Court of Korea, Republic of Korea".

Dated: March 14, 2011.

Patrick F. Kennedy,

Under Secretary for Management, Department of State.

[FR Doc. 2011–6457 Filed 3–17–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 7324]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

DATES: April 7, 2011 from 2 p.m. to about 5 p.m. (open to the public).

Location: The American Institute of Architects (Boardroom), 1735 New York Ave., NW., Washington, DC 20006.

Meeting agenda: The agenda of the meeting will include a review of the results of the October 2010 UPU Council of Administration, the major issues to arise at the April 2011 UPU Postal Operations Council and other subjects related to international postal and delivery services of interest to Advisory Committee members and the public.

Public input: Any member of the public interested in providing public input to the meeting should contact Mr. Mohammed Nauage, whose contact information is listed below. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, e-mail or fax) prior to the close of business on March 31, 2011; written comments from members of the public for distribution at this meeting must reach Mr. Nauage by letter, e-mail or fax by this same date. A member of the public requesting reasonable accommodation should make the request to Mr. Nauage by that same date.

For further information, please contact Mohammed Nauage, Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *NauageM@state.gov.*

Dated: February 18, 2011.

Dennis M. Delehanty,

Foreign Affairs Officer, Department of State.

[FR Doc. 2011–6454 Filed 3–17–11; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0831]

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

AGENCY: Federal Aviation Administration (FAA).

ACTION: Interim policy; amendment to sponsor grant assurance 5.

SUMMARY: This action adopts an interim policy amending and clarifying 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 modifies sponsor grant assurance 5, Preserving Rights and Powers, to prohibit new residential through-the-fence access to a federally-obligated airport. Prior FAA policy discouraged 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," had urged the agency to permit an exception to the through-the-fence policy for residents who own aircraft.

At this time, the FAA is adopting an interim policy. The policy review conducted in 2010 highlighted a number of differences among the airports identified as having residential through-the-fence arrangements. As a result, the FAA believes it will take more time and more detailed information to better understand these arrangements and how they impact each airport sponsor's ability to comply with its grant assurances. However, the agency also acknowledges that interested stakeholders have a more immediate need for resolution. The goal of the interim policy is to strike a careful balance by accommodating residential through-the-fence access where it already exists.

To date, the FAA has not been able to clearly define the specific criteria or

Average minutes per response: 30.
Burden hours: 2,500,000.

requirements that would allow airport sponsors to enter into new residential through-the-fence arrangements while ensuring ongoing compliance with their grant obligations. Therefore, the interim policy requires airports with existing residential through-the-fence arrangements to develop access plans outlining how the airport sponsor meets certain standards for control of airport operations and development and for self-sustaining and nondiscriminatory airport rates.

In adopting this interim policy, the FAA is announcing its intent to initiate another policy review of residential through-the-fence access to federally-obligated airports in 2014. This timeframe will give the FAA the experience it needs in reviewing residential through-the-fence arrangements via the access plans and understanding how to mitigate the real and potential adverse effects of these arrangements. Additionally, it will allow the agency to complete a separate, ongoing general aviation airport study that is analyzing the federally assisted general aviation airport system.

The interim policy adopts the changes proposed to sponsor grant assurance 5, Preserving Rights and Powers, to prohibit new residential through-the-fence access to a federally-obligated airport. However, it is the agency's intent to reconsider this change as part of the policy review that will be conducted in 2014. In the interest of obtaining all available information relevant to the review, the FAA invites any person who would be interested in a specific approval of new residential through-the-fence access at a federally-obligated airport to contact the FAA Airport Compliance Division to discuss the particular circumstances so this can be considered in our 2014 review.

DATES: The effective date of this interim policy and the amendment to the grant assurance is March 18, 2011.

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.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this policy 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 Interim 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 and 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 Airport Compliance Manual, FAA Order 5190.6B, issued on September 30, 2009, contains policy guidance for agency employees monitoring sponsor compliance with the grant assurances.

Agency guidance that preceded Order 5190.6B discouraged through-the-fence access at airports with grant obligations, and Order 5190.6B contained specific objections to residential through-the-fence access based on more recent agency experiences. 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.

The Notice of Proposed Policy

Following review of written comments, meetings with state aviation officials, visits to airports with residential through-the-fence access, listening sessions with homeowners and homeowners' associations, and discussions with aviation membership associations, the FAA published a proposed revision in agency policy on residential through-the-fence access for public comment in September 2010: *Airport Improvement Program (AIP): Policy Regarding Access to Airports From Residential Property* (75 FR 54946; September 9, 2010). That notice contained a background history of the residential through-the-fence access issue, and addressed the comments the agency had received prior to issuing the proposed policy.

Comments Received on the Notice

The agency received more than 75 comments on the proposed policy, including comments from members of Congress, state aviation agencies, industry associations, and private homeowners with current through-the-fence access to an airport. Most commenters supported not only the continuation of existing residential through-the-fence uses, but also the accommodation of new access arrangements in the future. While commenters supporting residential through-the-fence access were often critical of the FAA's continuing concern about such access, many of these commenters also expressed appreciation that the proposed policy would allow virtually all existing residential through-the-fence access to continue. The National Air Transportation Association commented in support of the proposed policy, and described it as striking the right balance between future needs of airports and existing residential through-the-fence access.

As a preliminary matter, some commenters apparently assumed that the FAA objected to all residential through-the-fence access, at any airport. On the contrary, the interim policy relates only to residential through-the-fence access at airports that receive taxpayer funds through FAA grants. The FAA has no objection whatsoever to the development of private airparks, where property owners can manage and operate the airport in any manner they like, without federal assistance.

In recent years, the FAA has identified cases in which residential

through-the-fence access arrangements at federally-obligated airports resulted in an airport sponsor's inability to meet specific grant assurance obligations. In working with airport sponsors to correct their grant assurance violations, the FAA has found these arrangements impose long-term limitations on the airport and compromise the airport's ability to retain the inherent features expected of public use airports.

The question for the FAA, therefore, is not whether to allow hangar homes next to airports, but whether to use public funds to support airports with hangar homes. Over time, some of these airports may function more as private airparks than as public-use airports available to all users as part of a national system of airports. The standards for compliance adopted in this interim policy are not regulations; rather, they are mitigations needed to address the sponsor's ongoing ability to meet its obligations. The FAA considers these mitigations necessary to fulfill its obligation to assure that grant funds are used for the legal purposes for which these funds are authorized and appropriated, and that taxpayer dollars are used in the manner that will have the most benefit for the national airport system and its users.

Many of the comments supportive of residential through-the-fence access were similar to comments received in the FAA's outreach efforts in the past year, and repeated arguments that were summarized and addressed in the preamble to the proposed policy published on September 9, 2010. For example, these comments typically asserted benefits from residential through-the-fence access, including the presence of a supportive airport community; a source of income and aviation activity the airport would not otherwise have; and improved security resulting from constant observation of the airport by close neighbors. Some commenters argued that residents who own aircraft on adjacent property should not be covered by the same policies that apply to residential land use generally. Some commenters also reiterated that a decision on residential through-the-fence access should be left to the local community. The agency believes these particular comments were addressed in the notice of proposed policy, and the agency's position remains the same on these points.

Approval of New Residential Through-the-Fence Access

A substantial number of comments criticized the proposed prohibition on approval of new residential through-the-fence arrangements. The FAA understands that future residential through-the-fence access could be controlled, to a great extent, by making any approval conditional upon the airport operator taking any steps the FAA considers necessary to mitigate potential problems with that access. Accordingly, we would agree that many of the issues experienced with existing locations could be avoided. However, as the FAA stated in the notice, the agency has continuing concerns about the existence of residential properties on the airport boundary. First, it is virtually impossible to assure that these properties will not be used as residences by non-aircraft owners at some point. Second, even residents who now own aircraft and use the airport may still not be supportive of changes in the airport that result in more noise or night operations, or changes in airport boundaries. Also, federal law and policy make no distinction between residents that own aircraft and those that do not. As a result, approval of hangar homes next to an airport makes it more difficult for the FAA and airport operators to oppose other residential communities near an airport, which are the primary source of incompatible land use encroachment at airports nationally. Finally, homeowners have an expectation of perpetual title to their homes to retain the value of their investment, to obtain financing on a long-term schedule, and to simply avoid being uprooted from their residence. As a result, residential through-the-fence uses are typically very difficult for the airport operator to relocate or terminate if the need arises. There is no option of allowing new residential through-the-fence access on a trial basis; if it is allowed, it will probably be there as long as the airport. As noted in the summary, the interim policy is designed to help the FAA better understand possible ways to reconcile these issues.

The Experimental Aircraft Association (EAA) submitted detailed comments supporting approval of new residential through-the-fence locations, including several points not raised in earlier comments. EAA commented that the FAA does not have the authority to amend the grant assurances; however, that authority does exist, at 49 U.S.C. 47107(h), and the agency has fully complied with the requirements of that statute. EAA also stated that it had done a survey of ten airports in Georgia, and found no available hangars. That fact could argue for through-the-fence access to off-airport hangars, if there were some reason the hangars could not be built on-airport, but it does not support the need for hangar homes. Residential use, not the storage of aircraft, is the issue. Through-the-fence access to private hangars at general aviation airports is not generally a compliance issue, and is not the subject of this interim policy.

EAA offered specific criteria for FAA approval of individual new projects, in lieu of the general prohibition proposed in the interim policy, similar to the standards proposed in the notice for assuring compliance at existing residential through-the-fence locations. The criteria suggested by the FAA are intended to mitigate the adverse impacts that arise from residential through-the-fence arrangements. They may not necessarily allow an airport sponsor to eliminate these impacts, and EAA did not identify any new methods to ensure that these arrangements do not compromise the public-use features of the airport.

Accordingly, as an interim measure, the FAA is adopting the proposed general policy against approval of new residential through-the-fence access at this time, and is revising AIP grant assurance 5, *Preserving Rights and Powers*, as proposed. However, the agency also accepts that both the agency and airport operators will learn more about the effects of residential through-the-fence access at airports as airports with existing access develop access plans and FAA staff has the opportunity to review and approve a substantial number of those plans. The FAA recently initiated a study of general aviation airports to better understand how these airports are utilized and the roles they serve in the national airport system. EAA, in its comments, recommended that the FAA study general aviation airport capacity through a new Future Airport Capacity Task (FACT) study. The FAA's current review of the public-use general aviation airport system is not technically a successor to the most recent FACT study (FACT 2). This study recognizes the diversity that exists within the general aviation airport community, and it will develop detailed data about the roles, operations, and profiles of these facilities to provide more useful information about our current airport system. While we believe that the majority of airports with existing residential through-the-fence arrangements fall within a category of less than 50,000 operations and less than 50 based aircraft, other characteristics that may better define their role locally and nationally are less transparent. As a result of these efforts, the agency expects to have reliable information on the utilization of federally assisted general aviation airports, and also on the ability of the

access plans to resolve potential compliance issues at airports with residential through-the-fence access. On that basis, it is the agency's intent to initiate a review of this interim policy in fiscal year 2014.

Existing Residential Through-the-Fence Locations

As with comments received before the proposed policy was issued, most commenters supported FAA's proposal to allow existing residential through-the-fence access to continue, with less restrictions and oversight than proposed by the FAA in the notice. Some commenters supported the FAA's proposal to allow through-the-fence access where it exists, if the airport can meet certain standards, and not allow new access. Several commenters opposed allowing even the existing uses to continue, and urged the eventual elimination of the residential through-the-fence access at federally-obligated airports. For reasons discussed in the notice, the FAA believes it is neither feasible nor necessary to eliminate existing residential through-the-fence arrangements. The FAA's proposed alternative (having these airports take certain actions to mitigate the adverse effects of through-the-fence access) should be adequate to protect the government's investment in these airports in most cases and avoids unnecessary hardship on current property owners.

In addition to existing and new residential through-the-fence access, many commenters had specific comments on what if anything should be required of airport operators and residents at existing residential through-the-fence locations, and if new standards do apply, what the FAA's approval process should involve. The FAA found these comments very useful in developing the interim policy statement.

Comments not previously addressed in the notice of proposed policy can be summarized as follows:

Comment: The FAA should do a case-by-case review of new requests for residential through-the-fence access, rather than prohibit new access, because of the different conditions at each airport.

Response: The interim policy adopted toward existing uses does allow agency staff to take full account of the individual conditions at each airport. The interim policy provides certain general minimum standards of compliance for safety, cost recovery and efficient operation of these airports, for evaluation of each airport's circumstances. As the FAA explained in the introduction to comments on new access in this notice, the agency does not believe that the mitigation of existing conditions is a reason to create new through-the-fence uses, given the inherent problems with residential use next to an airport, and the fact that residential use tends to be permanent once established. However, the FAA intends to review the issue of approval of new residential through-the-fence access in fiscal year 2014, after experience with individual airport access plans and completion of an FAA study on general aviation airports now in progress. In the interest of obtaining all available information relevant to that review, the FAA invites any person who would be interested in a specific approval of new residential through-the-fence access at a federally-obligated airport in the future to contact the FAA Airport Compliance Division to discuss the particular circumstances so it can be considered as part of the FAA's 2014 review.

Comment: Residential through-the-fence access could be approved at new locations if the airport agreed to additional safety regulations, such as prohibitions on commercial flights, charter flights, and flight training.

Response: This is exactly the kind of limitation on airport use that the interim policy is intended to avoid. An airport that receives taxpayer assistance for its role in the national system should not have limits on aviation use just so that residences can be located adjacent to the airport.

Comment: EAA proposed, as part of a request that FAA allow new residential through-the-fence access, that each airport with that access develop a safety management system (SMS).

Response: The FAA supports the adoption of SMS at airports, and the agency has recently issued a notice of proposed rulemaking proposing to require SMS at airports with 14 CFR part 139 certification, *Safety Management System for Certificated Airports* (75 FR 62008, October 7, 2010). However, the agency does not believe that it is necessary or appropriate to adopt a special requirement for SMS, as a condition of AIP grants, at airports with through-the-fence access. First, although safety issues are one of the potential problems with residential through-the-fence access, the FAA is not aware of broad evidence that such airports are necessarily more prone to specific safety problems. Second, the SMS process involves costs for airport sponsors and staff time for both sponsors and the FAA. A requirement for an SMS plan at all such airports would be an unjustified expense and administrative burden on sponsors of many small airports that have no unresolved safety issues at this time. The FAA would encourage any general aviation operator to consider an SMS program, but is not making SMS a condition of approval of residential through-the-fence access at this time.

Comment: All NAS users pay into funds through fuel taxes and should not have to pay additional fees. Paying property taxes and airport fees is "double taxation."

Response: Grant-assisted airports are required to be as self-sufficient as possible and develop rate structures that fully support the capital and operating expenses of the airport. While fuel taxes go to fund AIP grants that assist with capital projects, AIP grants are not available to pay for an airport's operating and maintenance expenses. Local and state property taxes, even taxes collected on hangars built on airports by tenants, go to support general local government expenses, and may not contribute anything to the airport. Most airports rely almost exclusively on rent and fees from tenants and users to cover their operating and maintenance expenses. A through-the-fence user who does not pay a fee for access may not be contributing any revenue to the airport itself, even though the user has special access to a valuable asset in the airfield.

Comment: The owner of a hangar home with through-the-fence access should not have to pay the same amount an on-airport hangar tenant pays for rent of the hangar, since that rent includes the capital costs of providing that hangar.

Response: While airport sponsors can establish their own rate-setting methodology for access through the fence, the methodology used must be consistent with the sponsor's grant assurance obligations. In other words, the methodology should provide for recovery of costs and ensure fairness to airport tenants and users. The FAA has included several examples of fees that would accomplish the general goals of recovering costs and fairly distributing costs among airport users. The example related to hangar rent has been revised to make clear the amount represents an access fee based on the ground rental rate, and not the full rental for lease of an on-airport hangar.

Comment: The notice used three different references to cost recovery, which made it unclear how much airport sponsors are expected to recover from through-the-fence users.

Response: The preamble to the policy summarizes standards for through-the-fence access that include recovery of

airport operating costs. That standard states the airport can collect, and does collect, fees from through-the-fence users that are comparable to those charged to airport tenants so that all users bear a fair proportion of airport costs. That is an accurate statement of the agency's general policy goal for through-the-fence charges. The specific list of standards the FAA expects to be included in a sponsor's access plan includes more specific guidance on various fees that could be used to accomplish this goal, but the two statements both state the same principles of recovery of airport costs and fairness to airport tenants and users. However, nothing in the interim policy precludes an airport sponsor from establishing a higher rate for its through-the-fence users.

Comment: The compliance standards stated in the proposed policy address situations that are not common at airports with through-the-fence access. These conditions addressed by the standards are also found at airports that do not have through-the-fence access, where they have no effect on compliance.

Response: Each of the standards listed for inclusion in an airport's access plan is based on experience with conditions at airports with residential through-the-fence access. If the condition addressed by a particular standard does not apply at an airport (for example, the airport already recovers airport costs from both tenants and off-airport users), then the sponsor would be required to do no more than document that fact in the access plan.

Comment: The effective date of the policy should be the date of publication of the final policy, and not September 9, 2010.

Response: The effective date of the interim policy adopted is March 18, 2011. However, the definition of "existing access" retains the status date of September 9, 2010, the first date that the public was on notice of the FAA's intended policy. Retaining the September 9, 2010 date in the definition simply prevents an attempt to establish new residential through-the-fence access in the brief period between publication of the notice and publication of this interim policy.

Comment: The proposed policy on "additional" access provided that a change or extension of new access would be effective for 20 years. First, that is a disincentive for through-the-fence users to agree to changes in access that improve airport operation and safety; if the owner's current access rights are longer than 20 years. The developer of a through-the-fence residential project at an obligated general aviation airport in Sandpoint, Idaho, is willing to agree to relocation of its access taxiway to improve airport safety, but only if its current perpetual access rights transfer to the new configuration. Other commenters noted that the 20-year extension is not enough to amortize a standard residential mortgage of 30 years.

Response: The FAA agrees that the proposed definition of "additional access" and the 20-year limitation would have had some unintended effects. The interim policy adopted combines extensions and renewals of access into the single definition of "extend an access." The interim policy makes clear that a change that serves to improve airport safety or implement the sponsor's long-term planning decisions will not be considered an "extend an access." In this case, the 20-year limit on access extensions will not apply, and whatever rights of access the owner has in the current access location may transfer to the new access location.

On the second point, the FAA does not believe the 20-year limit on extension of access would be a hardship. First, many extensions of access would not involve financing or refinancing at all. Second, homeowners with significantly shorter access terms, such as one year, have obtained financing for construction. This is also a reasonable timeframe for airport sponsors as airport planning is typically based on a 20-year forecast and planning horizon.

Comment: Revisions to the airport layout plan (ALP) and access plans required by the policy should be eligible for AIP planning grants.

Response: By law, AIP funds may only be used for airport development projects, planning associated with airport development, and noise, air, and water quality mitigation. As a result, FAA Order 5100.38C, Airport Improvement Program Handbook, states that AIP grants may fund updates to an ALP when the update is done as part of an airport's master plan study or update. Airport master plans routinely identify adjacent land uses to determine what, if any, constraints they might have on an airport's development. Therefore, the work items associated with an airport sponsor's implementation of the interim policy are directly related to airport master planning which is eligible for AIP grant funding. Airport sponsors should work with FAA Airports District Office (ADO) and regional division staff to develop an appropriate scope of work for their master plan. However, airport sponsors that choose to undertake these work items outside of a master planning process will need to fund them through local means.

Comment: Some commenters expressed concern that the definition of "existing access" may be too narrow. For example, how will the FAA address a situation in which a property owner develops a lot adjacent to an airport, but residential through-the-fence access is not currently being used and has not been formally granted by the airport sponsor. The policy should permit the airport sponsor to grant those property owners residential through-the-fence access.

Response: Based on the limited information provided, the future access through the fence described in the comment would not be permitted under the interim policy if the property is used as a residence. This scenario does not meet the definition of "existing access". However, the airport sponsor will have the opportunity to demonstrate how its specific situation meets the definition of "existing access" as stated in the interim policy. The FAA notes that the interim policy would not prevent the owner from requesting that the sponsor permit through-the-fence access for a hangar on the property if the property is not being used as a residence. Additionally, this is an interim policy and is subject to review. As stated in the introduction of the interim policy, FAA invites any person who would be interested in a specific approval of new residential through-the-fence access at a federally-obligated airport to contact the FAA Airport Compliance Division to discuss the particular circumstances so this can be considered in our 2014 review.

Comment: If the FAA considers removing an airport from the National Plan of Integrated Airport Systems (NPIAS), that consideration should be based on the general criteria for inclusion in the NPIAS, and not simply the fact that the airport has not met the special standards included in the policy for residential through-the-fence access.

Response: The FAA agrees with the comment. While failure to meet the compliance standards will trigger an FAA review of whether it is appropriate to retain an airport in the NPIAS, and possibly a compliance action, the final decision on whether to remove an airport from the NPIAS will take into account all of the criteria for inclusion in the NPIAS.

Comment: The policy does not address on-airport housing. Existing on-airport housing should be subject to the same policy as off-airport properties with through-the-fence access, and the FAA should not consider the airport in noncompliance if the airport meets the

listed standards for through-the-fence access.

Response: Airport property is not a safe or appropriate location for a residence. However, the FAA will review individual existing situations as necessary, to determine if special circumstances exist that make it appropriate to apply the criteria for through-the-fence residential use to on-airport housing.

Comment: The policy should make clear that FAA is not softening its position on commercial through-the-fence access.

Response: The interim policy on residential through-the-fence access does not affect the agency's policy on through-the-fence access from property used for commercial purposes. Through-the-fence access for any reason is generally discouraged, particularly from property used to provide aviation services. However, the FAA understands that there may be reasons for access to property used for aircraft storage or an owner's business, without the potential problems or permanent rights associated with residential use. Accordingly, a sponsor's permission for through-the-fence access for commercial purposes is not, in itself, considered a violation of the grant assurances. The FAA cautions that any attempts to convert commercial through-the-fence access into a residential arrangement is inconsistent with this interim policy and could result in a violation of sponsor assurance 5 as amended by this interim policy.

Comment: It is not necessary for the FAA to consult the Transportation Security Administration (TSA) when reviewing access plans.

Response: The FAA lacks the expertise to determine what impact, positive or negative, through-the-fence residential access may have on airports with regard to security. The TSA did not express any preference for residential use of land near the airport in our consultation with them in 2010. As noted in the proposed policy, the TSA plans to undertake its own review, and the FAA will review and consider any recommendations that may follow. In the interim, the FAA may consult the TSA as part of its review of the access plans.

Comment: The proposed policy is inconsistent with Homeland Security Presidential Directive 16 and its supporting Domestic Outreach Plan.

Response: The TSA did not raise any concerns related to this specific directive or any others when the FAA consulted with their staff in the spring of 2010. However, the FAA will forward these concerns to the TSA for further evaluation.

Discussion of FAA Clarifications

Interim Policy

In reviewing the comments, the FAA determined that it will take more time and more detailed information to better understand how residential through-the-fence arrangements impact a sponsor's ability to comply with its grant assurances and whether or not specific criteria can be developed to ensure a sponsor's ongoing compliance with its assurances. Therefore, the FAA is adopting an interim policy and will initiate a policy review in 2014.

Changes: All references to the policy now clarify that it is an interim measure.

Applicability

In reviewing the proposed policy, the FAA determined that the scope identified for applicability was too narrow. The scope has been broadened to include federally-obligated airports where new residential-through-the-fence access is proposed. The FAA's implementation of the policy will require all federally-obligated airports to certify their status with regard to the policy.

Changes: The interim policy clarifies this statement to read, "this interim Policy applies to all federally-obligated airports, including those with existing residential through-the-fence access or proposing to establish new residential through-the-fence access." Additionally, the interim policy states that all federally-obligated airports will be required to certify their status with regard to the policy.

Applicability—"Additional Through-the-Fence Access"

In reviewing the comments, the FAA recognized the unintentional confusion created by the use of this term. The proposed policy defined "additional through-the-fence access" to capture two specific circumstances: an airport sponsor's ability to permit a new access point and extension or renewal of access agreements at airports with existing residential through-the-fence arrangements. Upon further review, given the clear, specific conditions used to define "existing access," it is not necessary to contemplate new points of entry for the residential through-the-fence users covered by the interim policy at this time.

Changes: The interim policy replaces this term with a definition for "extend an access" and deletes references to the development of new access points.

Applicability—"Development"

In reviewing the comments, the FAA recognized this term was vague. The interim policy offers a refined definition to better specify residential development.

Changes: The interim policy amends this definition to specify the excavation or grading of land needed to construct a residential property or construction of a residence.

Applicability—"Residential Property"

Some comments noted that the proposed policy lacked a clear definition of "residential property". The interim policy defines this term.

Changes: The interim policy defines residential property as a piece of real property used for single- or multi-family dwellings; duplexes; apartments; primary or secondary residences even when co-located with a hangar, aeronautical facility, or business; hangars that incorporate living quarters for permanent or long-term use; and time-share hangars with living quarters for variable occupancy of any term.

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

In reviewing the proposed policy, the FAA found many of the statements in this section to be duplicative of statements made in the preamble. The interim policy incorporates these statements by reference to the proposed policy.

Changes: The two subsections have been combined and shortened to succinctly summarize the interim policy.

Relocation of Access Points

One comment noted that holders of through-the-fence access rights would be discouraged from relocating their access point if that relocation triggered a higher level of review or potentially diminished their legal rights. The interim policy adopts the change proposed in the comments.

Changes: Section II of the interim policy allows the relocation of through-the-fence access points to be considered as "existing access" when the access point is relocated to improve the airport's overall safety or better address issues associated with the sponsor's long-term planning needs. The interim policy clarifies that the first access point must be removed, and this provision is not intended to be used to create new access points.

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

The title and text of this section has been changed to reflect the FAA's decision to replace the term "additional through-the-fence access" with "extend an access". Additionally, some of the language has been re-worded to better reflect FAA's intent to review these proposals carefully.

Changes: Section III of the interim policy is now titled, "Standards for compliance at airports proposing to extend through-the-fence access". Similar changes have been made throughout the text of the interim policy, and the requirements applicable to new access points have been deleted. This section clearly states the FAA's intent to review proposals to extend residential through-the-fence access carefully.

Access Fee Methodology

In reviewing the comments, the FAA found that the phrasing used to describe various fee methodologies was confusing. The interim policy revises this phrasing to clarify that residential through-the-fence access fees should, at a minimum, be equivalent to the ground rental rate for on-airport tie-downs and hangars. Additionally, the FAA identified two other potential methodologies that could be used to set rates for through-the-fence access.

Changes: Section III has been revised to better specify various methodologies that may be used to establish through-the-fence access fees, and adds two methodologies not included in the notice of proposed policy.

Section III. Standards for Compliance at Airports Proposing To Extend Through-the-Fence Access

In reviewing the proposed policy, the FAA broadened the scope of some considerations to better capture the potential for an airport's growth and/or the use of new aircraft at that airport over time. Other changes were incorporated to better protect the sponsor's rights and powers.

Changes: Section III is revised to better clarify:

- Sponsors should obtain perpetual avigation easements for overflight.
- Residential through-the-fence users acknowledge that their property will be affected by aircraft noise, emissions, and operations that may change over time.
- Residential through-the-fence users waive any right to bring an action against the airport sponsor for existing and future operations and activities at the airport.
- The airport sponsor has a mechanism for requiring a residential through-the-fence user to comply with the FAA's determination with regard to FAA Form 7460–1, Notice of Proposed Construction or Alteration.

In reviewing the proposed policy, the FAA identified three additional criteria it will consider when an airport sponsor proposes to extend existing through-the-fence access. Consistent with other changes made to the interim policy, one reference to new access points has been deleted.

Changes: Section III has been revised to delete the reference to additional access and include the additional considerations:

- The sponsor has a mechanism for ensuring residents with through-the-fence access do not create or permit conditions or engage in practices that could result in airport hazards, including wildlife attractants.
- The access agreement is subordinate to the sponsor's current and all future grant assurances.
- The airport sponsor has developed a process for educating residents with through-the-fence access about their rights and responsibilities.

Section IV. Process and Documentation

Some comments questioned the process and timeline for how the FAA will review residential through-the-fence access plans. To address this, the interim policy now states that the FAA will establish implementation guidance in the form of a Compliance Guidance Letter available on the FAA's Web site at *http://www.faa.gov/airports.*

Changes: Section IV references the forthcoming Compliance Guidance Letter on FAA Implementation of Interim Policy on Residential Through-the-Fence and Review of Access Plans. The interim policy encourages airport sponsors to review this Compliance Guidance Letter that will be available on the FAA's Web site at www.faa.gov/airports.

In reviewing the proposed policy, the FAA re-worded some of the language in Section IV to better clarify that airport sponsors should provide residential through-the-fence access plans.

Changes: A sentence in Section IV has been re-worded to more clearly convey airport sponsors' responsibility to provide residential through-the-fence access plans.

In reviewing the proposed policy, the FAA re-evaluated its proposal to require airport sponsors with existing residential through-the-fence arrangements to initiate a formal airport layout plan (ALP) revision after the FAA accepts their access plan. The FAA believes that the sponsor's pen and ink change should be sufficient to provide the information needed. Thus, the interim policy provides a more flexible approach and allows the airport sponsor to undertake this task on its own schedule as part of its planning process.

Changes: Section IV no longer requires airport sponsors to initiate a formal ALP revision within three years from the date their access plan is accepted. Instead, the airport sponsor will be expected to complete a formal ALP revision that fully depicts the scope of the existing residential through-the-fence arrangements the next time the sponsor initiates an airport master plan study or update.

In reviewing the proposed policy, the FAA found it was vague with regard to when an airport sponsor would need to re-evaluate its access plan. The interim policy clarifies that the FAA's acceptance of an access plan represents an agency determination, as opposed to a finding, that the airport sponsor has met the compliance standards for existing residential through-the-fence access for a period not to exceed 20 years.

Changes: The interim policy notes that the FAA will make a determination, which is more consistent with other actions made by the FAA Airport Compliance Division. It is also more specific with regard to the frequency at which sponsors will need to update their residential through-the-fence access plans. The interim policy identifies four events which would trigger an update of the access plans. Those events include: development of a new master plan, significant updates to an ALP, requests for federal participation in land acquisition, or any changes to the access agreement.

In reviewing the proposed policy, the FAA determined that language used to describe airports serving a function in the NPIAS, but unable to meet the standard of compliance, should be revised. The interim policy states that the FAA will consider the constraints placed on the utility of the airport to be a significant factor.

Changes: The interim policy has been revised to state, "The sponsor will not lose eligibility for entitlement grants on the basis of through-the-fence access, but the FAA will have to consider the constraints on the utility of the airport as a significant factor in AIP funding decisions."

In reviewing the proposed policy, the FAA revised the language used to describe airports that no longer have significant value in the national system. The interim policy states the FAA will address cases in which the residential

through-the-fence access cannot be reasonably mitigated through the development of an access plan and the use of that access adversely affects the airport's public use characteristics.

Changes: The interim policy has been revised to clarify the FAA will consider removing an airport from the NPIAS if residential through-the-fence access cannot be reasonably mitigated through development of an access plan and the use of that access affects the airport's public use characteristics.

In reviewing the proposed policy, the FAA found it was vague in its treatment of airport sponsors with existing residential through-the-fence access that fail to submit an access plan. The interim policy explains that failure to submit an access plan may jeopardize an airport sponsor's ability to compete for AIP grant funding beginning in Fiscal Year 2013.

Changes: The interim policy adds paragraph 6.c. to Section IV. This paragraph discusses the FAA's expectation that airports with existing residential through-the-fence access will develop appropriate access plans. Failure to do so may jeopardize an airport sponsor's AIP eligibility beginning in Fiscal Year 2013.

In reviewing this section, the FAA replaced all references to requests for "additional" residential through-the-fence access to "extend" residential through-the-fence access. The FAA also deleted any requirements that would be necessitated by a new access point.

Changes: Paragraph B of Section IV is titled "Requests to extend residential through-the-fence access at airports covered by this interim Policy". Similar changes have been made throughout this section, and references to new access points have been deleted. The interim policy also deletes the requirement that sponsors submit a revised ALP depicting any new access points.

In reviewing the requirements for sponsors proposing to extend residential through-the-fence access, the FAA refined its intent with regard to master plans. The interim policy specifies that airport sponsors should work with FAA staff to develop an appropriate scope of work for their master plan.

Changes: The paragraph describing the master plan requirements directs airport sponsors to work with the FAA ADO or regional division staff to develop an appropriate scope of work for their master plan.

Section V. Eligibility for AIP grants

In reviewing the proposed policy, the FAA found it was not clear in its explanation of future AIP eligibility and how the Agency will evaluate requests to fund public infrastructure and facilities that provide substantial benefit to private through-the-fence users. The proposed policy states the FAA will reduce its investment in such projects; however, the FAA will consider the constraints on the utility of the airport and determine if the project is sufficiently justified before making an investment decision.

Changes: The interim policy states the FAA will have to consider the constraints on the utility of the airport as a significant factor in AIP funding decisions. It also more clearly explains that the FAA may not be able to justify the federal investment in projects that result in substantial benefit to residential through-the-fence users.

Amendment to Grant Assurance 5

In reviewing the proposed policy, the FAA found many of the statements in this section to be duplicative of statements made in the preamble. The interim policy deletes these statements.

Changes: The description of item 2 has been shortened to succinctly summarize the interim policy.

1. Interim Policy on Existing Through-the-Fence Access From a Residential Property

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

Interim Policy on Existing Through-the-Fence Access to Airports from A Residential Property

Applicability

This interim Policy applies to all federally-obligated airports, including those with existing residential through-the-fence access or proposing to establish new residential through-the-fence access. All federally-obligated airports will be required to certify their status with regard to this policy.

For the purposes of this interim 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 September 9, 2010; *or*

2. There was development of the property prior to September 9, 2010, in reliance on the airport sponsor's permission for through-the-fence aircraft access to the airport; or

3. The through-the-fence access is shown on an FAA-approved airport layout plan (ALP) or has otherwise been approved by the FAA in writing, and the owner of the property has used that access prior to September 9, 2010.

"Extend an access" is defined as an airport sponsor's consent to renew or extend an existing right to access the airport from residential property or property zoned for residential use, for a specific duration of time, not to exceed 20 years.

"Development" is defined as excavation or grading of land needed to construct a residential property; or construction of a residence.

"Residential property" is defined as a piece of real property used for single- or multi-family dwellings; duplexes; apartments; primary or secondary residences even when co-located with a hangar, aeronautical facility, or business; hangars that incorporate living quarters for permanent or long-term use; and time-share hangars with living quarters for variable occupancy of any term.

"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

The agency understands that it may not be 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 existing residential through-the-fence access by itself to be in noncompliance with the airport sponsor's grant assurances.

In some cases, the FAA has found that through-the-fence access rights can

interfere with the sponsor's ability to meet its obligations as sponsor of a federally assisted public use airport. This is discussed in detail at 75 FR 54946, 54948 (Sept. 9, 2010). As a result, the FAA believes that sponsors with existing through-the-fence access arrangements must adopt measures to substantially mitigate the potential problems with residential through-the-fence access where it exists to avoid future grant compliance issues. Therefore, the FAA, as a condition of continuing grants to airports with residential through-the-fence access, will require that sponsors adopt the measures to substantially mitigate the potential problems with residential through-the-fence access to avoid future grant compliance issues.

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 (ALP) 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.* The FAA's review of those standards will be detailed in a Compliance Guidance Letter which will be issued concurrently and published on the FAA's Web site at www.faa.gov/airports. An airport sponsor covered by this interim Policy must seek FAA approval before entering into any arrangement that would extend (including renewal of access) through-the-fence access. Sponsors are reminded that nearby homeowners possess no right to taxi aircraft across the airport's property boundary, and no off-airport property owner will have standing to file a formal complaint under 14 CFR Part 16 with the FAA to challenge the sponsor's decision not to permit such access.

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 sponsor 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 residential 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.

In some cases, an airport sponsor may seek to relocate an existing access point. If the sponsor can demonstrate that this action will improve the airport's overall safety or better address issues associated with the sponsor's long-term planning needs, the FAA will not consider the access rights associated with the replacement access point to extend an access. In order to transfer the terms of the existing access point to a new access point without a change in compliance status, the former existing access point must be removed. Such requests should be coordinated with the FAA Airports District Office (ADO) or Regional Airports Division and clearly depicted on the sponsor's ALP.

III. Standards for Compliance at Airports Proposing to Extend Through-the-Fence Access

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 will review extensions of existing residential through-the-fence access at public use airports carefully.

The following supplemental standards will be applied to the FAA's case-by-case review of sponsors' proposals to extend residential through-the-fence 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 an extension. The FAA will not approve requests to extend access that are inconsistent with the sponsor's grant assurances (excluding grant assurance 5, Preserving Rights and Powers, paragraph "g" as amended by this notice). Furthermore, the sponsor will be required to demonstrate the following standards for compliance:

- The term of the access does not exceed 20 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 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, to both tenants and through-the-fence users. Rates should increase on the same schedule as tenant fees. Fees that may be sufficient for this purpose include, without limitation:
  - Fees equal to tenant tie-down charges.
  - A fee that is based on the methodology used to establish tenant rates for land rental on the airport, e.g., 25 cents per square foot.
  - Ground leases for dedicated taxiway connections to off-airport properties.
  - Assessment of capital costs for general infrastructure.
  - A local tax assessment or levy on off-airport aircraft owners that is dedicated to airport's account.
  - Any methodology that reflects the high value of through-the-fence access.
- Through-the-fence residents will bear all the costs of infrastructure, including snow removal and maintenance, related to this access.
- Through-the-fence residents utilizing this access will grant the sponsor a perpetual avigation easement for overflight, including unobstructed flight through the airspace necessary for takeoff and landing at the airport.
- Through-the-fence residents utilizing this access, by avigation easement; deed covenants, conditions or restrictions; or other agreement, have acknowledged that the property will be affected by aircraft noise and emissions and that aircraft noise and emissions may change over time.
- Through-the-fence residents utilizing this access have waived any right to bring an action against the airport sponsor for existing and future operations and activities 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 and complying with the FAA's determination related to the review of Form 7460–1.
- The sponsor has a mechanism for ensuring through-the-fence residents do not create or permit conditions or engage in practices that could result in airport hazards, including wildlife attractants.
- 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 access agreement is subordinate to the sponsor's current and all future grant assurances.
- The airport sponsor has developed a process for educating through-the-fence residents about their rights and responsibilities.

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 ADO or regional division staff 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"). Airport sponsors are encouraged to review the FAA's Compliance Guidance Letter on FAA Implementation and Review of Residential-Through-Fence Access Arrangements, which will be issued concurrently, prior to submitting their access plan. This guidance letter will be published on the FAA's Web site at *http://www.faa.gov/airports.* The ADO or regional division 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 ADO or regional division 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 section II of this interim 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, airport sponsors should provide a residential through-the-fence access plan 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 sponsor's pen and ink change to immediately identify the locations on the airport property that serve as points of access for off-airport residents. A formal ALP revision that fully depicts the scope of the existing residential through-the-fence arrangements should be completed the next time the airport sponsor initiates an airport master plan study or update.

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 determination that the airport has met the compliance standards for existing residential through-the-fence access for a period not to exceed 20 years. The following actions will require an airport sponsor to update its access plan prior to its 20-year expiration: development of a new master plan, significant updates

to an ALP, requests for federal financial participation in land acquisition, or any changes to the access agreement. 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 National Plan of Integrated Airport Systems (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 entitlement grants on the basis of the through-the-fence access, but the FAA will have to consider the constraints on the utility of the airport to be a significant factor in AIP funding decisions.

b. *Airports that no longer have significant value in the national system.* Where the residential through-the-fence access cannot be reasonably mitigated through the development of an access plan, and use of that access adversely affects the airport's public use characteristics, 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.

c. *Airports that fail to submit an access plan.* The FAA expects airport sponsors with existing residential through-the-fence access to develop an access plan which preserves their proprietary rights and powers and mitigates the inherent challenges posed by this practice. Beginning in Fiscal Year 2013, a sponsor's failure to comply with the interim policy may jeopardize its ability to compete for AIP grant funding.

B. *Requests to extend residential through-the-fence access at airports covered by this interim Policy*

As of the date of this notice March 16, 2011, a sponsor proposing to extend an access arrangement must submit a current airport master plan and a revised residential through-the-fence access plan as detailed below. The ADO or regional division will forward its recommendations regarding each request to extend access to the Manager of Airport Compliance (Manager). Only the Manager may approve an airport sponsor's request to extend access. In reviewing the proposal, the Manager may consult with the TSA.

1. *Master Plan.* A sponsor wishing to extend an existing residential through-the-fence access arrangement must submit a recent airport master plan to the ADO or regional 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 20 years; airport sponsors should work with ADO or regional division staff to develop an appropriate scope of work for these master plans.

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 interim Policy, to reflect how it will meet the standards for compliance for the extended access. Once accepting the revised access plan, the FAA will condition future AIP grants upon its ongoing implementation.

3. *Continuing obligations.* Once the revised access plan is accepted by the FAA, and if required, the revised ALP, is approved by the FAA, the sponsor must continue to comply with obligations described in section IV.A of this interim 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. The sponsor will not lose eligibility for entitlement grants on the basis of the through-the-fence access, but the FAA will have to consider the constraints on the utility of the airport to be a significant factor in AIP funding decisions.

B. *Public infrastructure and facilities with substantial benefit to private through-the-fence users.* The FAA may be unable to justify the federal investment in a proposed project when private residential developments with through-the-fence access will receive substantial value from that federally assisted airport infrastructure and/or facility.

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

At this time, the FAA considers a sponsor's consent to any permission for through-the-fence access to the airport from a residential property that does not meet the definition of "existing access" in this interim policy 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 discriminatory 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.

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 adds 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 March 14, 2011.

Randall S. Fiertz,

Director, Airport Compliance and Field Operations.

[FR Doc. 2011–6346 Filed 3–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry NextGen Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Charter Renewal.

SUMMARY: The FAA is issuing this notice to advise the public of the renewal of the RTCA Charter (FAA Order 1110.77T) for two years, effective April 2, 2011. The administrator is the sponsor of the committee. The objective of the advisory committee is to seek solutions to issues and challenges involving air transportation concepts, requirements, operational capabilities, and the associated use of technology and related considerations to aeronautical operations that impact the future Air Traffic Management System. RTCA provides the following two categories of recommendations to the FAA: Broad gauged policy and investment priority recommendations used by FAA when considering policy and program decisions; and minimum performance standards, reports, and guidance documents used by the FAA in regulatory decisions and rulemaking. Government regulatory and procurement practices reference or use RTCA standards (with or without change). The Secretary of Transportation has determined that that information and use of committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* or the FAA Business Operations Group, NextGen and Operations Planning, 800 Independence Avenue, SW., Washington, DC; telephone (202) 493–4409; fax (202) 267–5071.

SUPPLEMENTARY INFORMATION: Steering Committee and Special Committee meetings are open to the public and announced in the Federal Register, except as authorized by Section 10(d) of the Federal Advisory Committee Act.

Issued in Washington, DC, on March 15, 2011.

Kathy Hitt,

RTCA Advisory Committee.

[FR Doc. 2011–6525 Filed 3–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Grants Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for grant proposals for the Commercial Space Transportation Grant Program.

SUMMARY: This notice solicits Fiscal Year (FY) 2011 grant proposals to continue the development of a Commercial Space Transportation infrastructure system, which supports the National Space Policy and Congressional intent. Begun in 2010, the program supports the Commercial Space Transportation industry by identification, prioritization, and funding for Commercial Space Transportation infrastructure projects.

It must be noted that with the FY 2011 Congressional appropriation not yet enacted, the FAA's Office of Commercial Space Transportation (AST) does not currently have funding for the Commercial Space Transportation Grants Program. Should there be an appropriation for the Commercial Space Transportation Grants Program; the FAA/AST intends to swiftly execute grant awards within FY 2011. To facilitate this, the FAA/AST is requesting grant applications at this time. The FAA/AST intends to receive, process, and evaluate the applications in a timely manner, and in accordance with the notional schedule listed below, so should there be an appropriation, the recipients will already be selected and the awards can be made within FY 2011. There remains the possibility that no funds will be appropriated in FY 2011 for the Commercial Space Transportation Grants Program. If no funds are appropriated, no grant applications submitted in response to this Notice will be approved and funded.

Due to time constraints, this Notice will be the only solicitation made for FY 2011 projects and proposals. The FAA/AST will review and evaluate all applications for a grant received by the deadline, pursuant to 49 United States Code (U.S.C.) Chapter 703 (to be recodified at 51 U.S.C. Chapter 511). The FAA/AST may make one or more grant awards based upon its evaluations of the submissions. All grants awarded under the Commercial Space Transportation Grants Program are discretionary awards. Projects to be funded under the Commercial Space Transportation Grants Program must carry out commercial space transportation infrastructure development, as defined in 49 U.S.C. 70301 (to be recodified as 51 U.S.C. 51101).

DATES: In order for the FAA/AST to award funds (if appropriated) prior to the end of FY 2011, the following notional schedule is provided.

Submission Open Period Opens: March 18, 2011

Submission Open Period Closes: May 13, 2011

Review and Approval Period: May 16, 2011 thru June 30, 2011

Announcement: July 15, 2011

ADDRESSES: Applicants can get more information about the Commercial Space Transportation Grants Program, to include a checklist for the submission package, by:

1. Accessing the Office of Commercial Space Transportation website at: *http://www.faa.gov/go/ast;* or

2. Contacting Glenn Rizner or Julie Price, AST–100, for program questions; or

3. Contacting Greg Carter, AGC–510, for legal questions.