



December 21, 2009

Mr. Charles Erhard  
Manager, Airport Compliance & Field Operations Branch, ACO-100  
FAA, Airports Division  
800 Independence Ave., SW  
Washington, DC 20591

*Reference: Comments to FAA Policy Memorandum Subject: Compliance Guidance letter 2009-1 – Through-the Fence and On-Airport Residential Access to Federally Obligated Airports and to the Airport Compliance Program, FAA Order 5190.6B dated 9/30/2009*

Dear Mr. Erhard:

EAA (Experimental Aircraft Association) is the world leader in recreational aviation. With an international membership of 160,000 people in more than 110 nations, EAA brings together aviation enthusiasts, pilots and aircraft owners who are dedicated to *Sharing the Spirit of Aviation* by promoting the continued growth of aviation, the preservation of its history and a commitment to aviation's future. EAA programs, activities and events are known throughout the world for *Preserving* the heritage of aviation, *Promoting* access to flight, *Protecting* the right to fly, *Preparing* for the future of aviation, and of our *Passion* for aviation safety and education.

FAA Order 5190.6B is the most critical airport management tool available to FAA employees, state aviation officials, airport managers, and the pilots and tenants who work and fly from airports within the U.S. With its major policy shifts, this FAA Order should have been vetted by the public and their comments addressed prior to the issuance of this document and the follow-on FAA Through-The-Fence (TTF) Policy Memorandum. Since the public was not permitted to voice their concerns the adjacent residential TTF operations issue has become a highly volatile public concern.

The prior FAA policy, which allowed adjacent residential property through-the-fence agreements on a case-by-case basis based on the economic and operational needs of the public airport, and when safety, security, and equitable compensation issues were addressed, must be continued.

EAA's primary points are addressed in detail in the attachment and are outlined below:

1. Prior FAA/public historical agreements;
2. U.S. Code: Title 49, Section VII, Part B, Chapter 471, Subchapter 1, Subsection 47107 does not prohibit this type of operation;
3. Airport Sponsor Grant Assurance No. 24, *Fee and Rental Structure*, mandates that each airport have a goal to be economically self-sufficient; and
4. Taking of existing residential property values without cause.

Aircraft owners seek to build residential home/hangers on adjacent properties because of the lack of on-airport hanger availability at general aviation airports. In the Airports Fiscal Year 2010 Business Plan<sup>1</sup>, page 5, the Office of Airports has a stated goal of increasing capacity at airports, but only at the 35 Operational Evolution Partnership (OEP) airports or major metropolitan areas. This stated FAA goal ignores the hundreds of general aviation airports that are in need of capacity improvements, especially in the construction of new hangers. Without expanding hanger capacity at rural general aviation airports, adjacent residential TTF operations will continue to be an issue for the FAA.

EAA has not been able to identify any specific residential TTF operation that would cause the FAA to create a one-size-fits-all ban policy on all airports across the U.S. In EAA's opinion it has not been the concept of residential TTF operations, rather it has been the lack of standardized FAA guidelines for such agreements that airport sponsors and potential/existing adjacent property could use as the oversight tool for developing effective agreements at their local airports. It's that lack of standardized FAA guidance that has directly led to today's concerns facing the FAA, airport sponsors and property owners.

EAA strongly recommends the FAA adopt a flexible residential TTF policy that promotes the growth of general aviation while managing airport safety, security, and self-sustainment mandates. Therefore, EAA recommends the FAA:

1. Suspend the new adjacent residential TTF policy in Chapter 12 of FAA Order 5190.6B and reinstate the old policy contained in FAA Order 5190.6A;
2. Suspend development and issuance of the draft Adjacent Residential TTF Policy Memorandum; and
3. Develop a new TTF policy that provides the flexibility to allow adjacent residential TTF operations and on-airport residential access to federally funded public airports based on specific airport and general aviation aircraft operator needs.

Around the country new pilot starts are down, airports aren't building hangers to support the pilot demand and airports are searching for viable means to remain solvent. Adjacent residential TTF operations could be the ideal solution to help resolve all these issues. By establishing an open and constructive dialog EAA is confident that a win-win resolution will result for everyone – the FAA, general aviation airports, general aviation pilots, and the local communities.

EAA has a strong history working in partnership with the FAA in developing new regulations and policies for the benefit of all general aviation participants, to include working with AFS-1 to develop the new Sport Pilot and Light-Sport Aircraft policies and the ASTM/EAA/FAA leadership effort to create the new and very effective ASTM design standard F 2507-05 – *Standard Specification for Recreational Airpark Design*. We are confident that working together, we can find a way to allow for residential through-the-fence operations while addressing the need to protect the future vitality of general aviation airports. We are grateful that Airports Division will be participating in the annual EAA/FAA winter summit meeting along with Flight

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<sup>1</sup> [http://www.faa.gov/about/plans\\_reports/media/ARP%20Business%20Plan%20with%20Cover.pdf](http://www.faa.gov/about/plans_reports/media/ARP%20Business%20Plan%20with%20Cover.pdf)

Standards and Aircraft Certification, EAA looks forward to developing a working partnership with the Airports Division to address the concerns of the aviation community.

In conclusion, EAA does not believe the U.S. Code supports the FAA position to ban all adjacent residential TTF or on-airport residential access at U.S. public airports. EAA supports continuing the prior FAA policy which allowed adjacent residential property through-the-fence agreements on a case-by-case basis that was based on the economic and operational needs of the public airport, and when safety, security, and equitable compensation issues were addressed.

Thank you for this opportunity to comment on this new policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Hansen". The signature is fluid and cursive, with a large initial "R" and "H".

Randy Hansen  
Government Relations Director

Attachment 1, as stated

## Attachment 1

EAA's primary points as to why the new FAA adjacent residential through-the-fence operations ban should be suspended and the prior case-by-case approval policy be re-established are:

1. Prior FAA/public historical agreements;
2. U.S. Code: Title 49, Section VII, Part B, Chapter 471, Subchapter 1, Subsection 47107 does not prohibit this type of operation;
3. Airport Sponsor Grant Assurance No. 24, *Fee and Rental Structure*, mandates that each airport have a goal to be economically self-sufficient; and
4. Taking of existing residential property values without cause.

### Primary Issue Number 1 - Prior FAA/public historical agreements

Residential Through-The-Fence (TTF) operations have been a mainstay at general aviation airports ever since the Wright Brothers created the first "airport" at Kitty Hawk and gained access for their historic flight from their residential base property. The FAA has supported and approved adjacent TTF residential operations for well over 50 years.

Prior to September 30, 2009 the long standing FAA policy on residential TTF operations stated: "As a general principle, FAA will recommend that airport owners refrain from entering into any agreement which grants access to the public landing area by an aircraft normally stored and serviced on adjacent property. Exceptions can be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport." The policy was reinforced in several FAA policy documents:

1. *FAA Order 5910.6A*, effective October 2, 1989, page 44, paragraph 6-6d;
2. *FAA Policy and Procedures Memorandum – Airports Division* (AGL-600), dated July 14, 1994, paragraph 3 (Policy /Procedures) b(1); and
3. *Policy and Procedures Concerning the Use of Airport Revenue; Notice*. FAA Federal Register Policy Notice dated February 16, 1999, Section II-Definitions, paragraph B (Airport Revenue) 1a.

The effect of this lengthy partnership between airport sponsors and TTF residential property owners, combined with the FAA's long history of supporting and approving adjacent residential TTF agreements, can be observed at several airports with very successful TTF agreements.

Examples include, but are not limited to:

- Eastern WV Regional/Shepherd Field, WV (MRB) – FAA has supported and approved this residential TTF operation since the mid-1950's.
- Vashon Municipal Airport, WA (2S1) and Christmas Valley Airport, OR (62S) – FAA has supported and approved these residential TTF operations since the mid-1960's.
- Sacramento Executive, CA (SAC) and Wittman Regional Airport, WI (OSH) – FAA has supported and approved these residential TTF operations since the mid-1970's.

- Erie Municipal Airport, CO (EIK) and Roundup, MT (RPX) – FAA has supported and approved these residential TTF operations since the mid-1980’s.
- Gould Peterson Municipal, MO (K57) - FAA has supported and approved this residential TTF operation since the mid-1990’s.

Those highly successful partnerships effectively ended on September 30, 2009 when the FAA issued FAA Order 5190.6B.

Primary Issue Number 2 - U.S. Code: Title 49, Section VII, Part B, Chapter 471, Subchapter 1, Subsection 47107

In developing this new public policy, in which the FAA Airport Division did not solicit public opinions, the FAA cited Airport Sponsor Grant Assurance No. 21 *Compatible Land Use* as the primary reason for the need to issue and immediately implements this new policy. Grant Assurance No. 21 is based on U.S. Code: Title 49, Section VII, Part B, Chapter 471, Subchapter 1, Subsection 47107, *Project Grant Application Approval Conditioned on Assurances about Airport Operations*, subparagraph (a)(10) *General Written Assurances*<sup>2</sup>. Subparagraph (a)(10) of the U.S. Code states: “appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations”;

1. The above U.S. Code wording does not specifically restrict residential TTF operations. EAA believes the FAA Airports Division is incorrectly interpreting the U.S. Code as establishing a legal authority to prevent residential through-the-fence agreements.
2. EAA has been unable to find a single case where specific issues have created such a concern for national-wide airport safety, security or land compatibility that would trigger the FAA to develop and implement this new prohibition of all adjacent residential TTF situations.

Primary Issue Number 3 - Airport Sponsor Grant Assurance No. 24, *Fee and Rental Structure*

When preparing this new policy it appears that the FAA did not address airport sponsors management need to comply with Airport Sponsor Grant Assurance No. 24, *Fee and Rental Structure*, and it’s supporting U.S. Code: Title 49, Section VII, Part B, Chapter 471, Subchapter 1, Subsection 47107, subparagraphs (a)(13) and (k)(3) that states: “The airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the airport...” The self-sustaining requirement is further supported by paragraph 1a of the FAA Airport Division’s *Policy and Procedures Concerning the Use of Airport Revenue; Notice* as it states: “Revenue

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<sup>2</sup> [http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=\\$\\$xa\\$\\$busc49.wais&start=7592179&SIZE=76845&TYPE=TEXT](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=$$xa$$busc49.wais&start=7592179&SIZE=76845&TYPE=TEXT)

*from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties.”* This document is the sole FAA authority on types of airport revenue and that revenues permitted usages. The section EAA underlined clearly indicates that payment/income received from adjacent residential property owners is an authorized source of income that an airport may receive in its quest to satisfy Airport Sponsor Grant Assurance No. 24.

Several airports across the country rely on rents received from FAA approved adjacent residential TTF operations to meet the self-sustaining requirement of assurance No. 24. By eliminating a proven and authorized source of revenue, the FAA itself will be forcing airports to be in non-compliance with its Grant Assurance self-sustaining agreement, and could force many airports to close. EAA is in favor of the FAA continuing to allow existing and new residential TTF operations as proven sources of airport revenue.

#### Primary Issue Number 4 - Taking of existing residential property values without cause.

For many residential hanger owners the new FAA policy banning residential TTF operations comes as a swift overnight policy reversal by the FAA. Typically, signed residential TTF leases contain a clause that allows the lease not to be renewed at termination of the lease or upon sale of the off-site hanger to another party. Because FAA policy did not specifically prohibit renewals, adjacent TTF residential hanger properties have routinely been bought and sold, with airport access a key part of the appraised property value. Without advance notice and comment the FAA has issued a major change in policy that threatens the funding for airports with existing agreements.

Many of these adjacent residential property owners have poured their life savings into their dream home adjacent to an airport where they can readily access to enjoy their favorite passion – flying. After approving the renewal of their existing TTF agreements with the airport for 20, 30, 40, or 50 years the FAA clearly left the direct impression that the past approvals were not simply temporary approvals. With this newly revised TTF policy the FAA is in fact taking their property values. Coupled with the fact that the FAA failed to provide the public the opportunity to comment on the new FAA Order 5190.6B policy, the FAA has truly deprived these homeowners with their right to due process.