

*Use of Airport Revenue, Denver International Airport*

*Federal Aviation Administration*

*Report Number: AV-1999-052*

*Date Issued: January 27, 1999*



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

Office of Inspector General

---

# Memorandum

Subject: ACTION: Report on Audit of  
Use of Airport Revenue, Denver International  
Airport, Report No. AV-1999-052

Date: January 27, 1999

From: Lawrence H. Weintrob  
Assistant Inspector General for Audit

Reply to  
Attn of: JA-10:X60500

To: Federal Aviation Administrator

We are providing this report for your comments and action on the findings and recommendations. Since FAA did not respond to our December 15, 1998, draft report there are no management comments in this report. However, the audit results were discussed with members of the Federal Aviation Administration's (FAA) Airports Division. Their comments were considered in preparing this report. A synopsis of the report follows this memorandum.

Please provide your written comments to this report within 5 working days. For concurrence, we would like to know the actions taken or planned for each recommendation and estimated completion dates. For any nonconcurrence, we would appreciate an explanation of your position. Please feel free to propose alternative courses of action to resolve the findings in an effective manner.

We appreciate the cooperation and assistance provided by your staff during the audit. If I can answer any questions or be of further assistance, please call me at (202) 366-1992 or Alexis Stefani, Deputy Assistant Inspector General for Aviation, at (202) 366-0500.

#

# ***Airport Revenue, Denver International Airport Federal Aviation Administration***

---

## ***Objectives***

The objectives of the audit were to determine if (1) revenues generated at Denver International Airport (Airport) were used for airport operating and capital costs, and (2) the fee and rental structure was sufficient to make the Airport as self-sustaining as possible, in accordance with Federal regulations.

## ***Background***

The Federal Aviation Administration (FAA) promotes developing a system of airports to meet the Nation's aviation needs by providing Federal assistance through grants-in-aid. FAA grants include funds for airport development, planning, and noise compatibility programs. As a condition for approval of an FAA grant, Title 49, United States Code, Section 47107 requires the airport sponsor<sup>1</sup> to agree to comply with specific assurances. These assurances include using airport revenues only for the capital or operating costs of the airport, and setting a fee and rental structure to make the airport as self-sustaining as possible.

The City and County of Denver is the sponsor for the Airport. The Airport generated operating revenues of \$389 million and had operating expenses of \$276 million during Fiscal Year 1996. The Airport generated operating revenues of \$414 million and had operating expenses of \$287 million during Fiscal Year 1997. The revenues and expenses included those of Stapleton International Airport (Stapleton). The Airport opened and Stapleton closed in February 1995. In Fiscal Years 1996 and 1997, FAA awarded the sponsor a total of \$60.2 million in grants to the Airport.

## ***Results-in-Brief***

We found the sponsor: (1) used Airport revenues to redevelop Stapleton property beyond that necessary to dispose of the property, (2) used Airport revenues for prohibited purposes, and (3) did not maintain a fee and rental structure sufficient to make the Airport as self-sustaining as possible.

---

<sup>1</sup> An airport sponsor is generally a public agency (e.g., a city or local authority) that owns the airport.

## Revenue Used to Redevelop Stapleton

The sponsor is using Airport revenues to redevelop Stapleton property beyond that necessary to dispose of the property. The disposition of a major U.S. commercial airport like Stapleton is unprecedented. To accomplish the disposition and ultimately renew this urban area, the sponsor adopted a redevelopment plan and created the Stapleton Development Corporation (Corporation), financed with Airport revenues. In Fiscal Years 1996 and 1997, the Corporation was reimbursed \$9.7 million from Airport revenues. The Corporation's efforts primarily included planning and facilitating the redevelopment of Stapleton according to the redevelopment plan. Corporation staff salaries and benefits for Fiscal Years 1996 and 1997 totaled about \$2.4 million (25 percent of the total \$9.7 million). FAA policy permits the use of Airport revenues for the reasonable costs of disposition. However, Airport revenues were being used for Stapleton's redevelopment, not for the reasonable costs of disposition, and costs were not being monitored by FAA as required.

The sponsor estimates that as much as \$100 million in additional Airport revenue will be expended over the next 15 years to dispose of Stapleton property valued at \$58 million<sup>2</sup>. The sponsor could not estimate the total revenue that would be generated by the Stapleton disposal to off-set the \$100 million cost and retire Airport debt. FAA needs to establish controls over the amount of Airport revenues being expended for Stapleton's disposal and ensure that Airport revenues are not diverted to the sponsor's urban renewal program.

## Revenue Used for Prohibited Purposes

The sponsor inappropriately used Airport revenues for:

- ineligible and unsupported indirect administrative costs of the sponsor totaling \$215,842 (ineligible costs totaling \$170,049 and unsupported costs totaling \$45,793);
- excessive investment service fees charged by the sponsor totaling \$522,960;
- maintaining a facility used by a transit authority totaling \$352,465; and
- a study of a proposed public transit project off of Airport property totaling \$147,617.

As a result, \$1.2 million in Airport generated revenues were used for non-Airport purposes during Fiscal Years 1995 through 1997 and the Airport will continue to

---

<sup>2</sup> The \$58 million represents fair market value for a bulk sale as of July 1, 1998.

lose \$600,000 annually until FAA requires the sponsor to comply with revenue use requirements.

### Airport Not Self-Sustaining

The Airport was not as self-sustaining as possible. The Airport did not receive approximately \$1.2 million in Airport revenue during a 2- to 3-year period.

Uncollected revenues included:

- \$559,000 for two Airport properties leased at less than fair market value;
- \$281,200 for services not provided by two tenants in lieu of rents; and
- \$347,052 for utility costs not billed to Airport tenants.

These conditions continued to exist because FAA did not adequately monitor the sponsor's property management. The Airport will continue to lose about \$500,000 annually until FAA requires the sponsor to change its fee and rental structure.

We also found the sponsor signed and accepted a grant on September 30, 1997 for \$363,750, but did not comply with Grant Assurance Number 25 requiring the sponsor to direct its Independent Auditor to review and report on the use of Airport revenue and taxes.

### ***Recommendations***

FAA must take immediate action to control the use of Airport revenues for Stapleton's disposal and set a fiscally responsible precedent for future airport closures. With regards to Stapleton, we recommend FAA prohibit the use of Airport revenues to finance those aspects of Stapleton's redevelopment that are beyond that which is reasonably necessary for marketing Stapleton. If it turns out that the estimated costs of Stapleton's disposal exceed expected net sale proceeds, FAA should consider transferring all Federal interest in Stapleton at no cost to the sponsor, and thereby requiring the sponsor to assume full financial responsibility for its disposition without use of Airport revenue.

We are also recommending recovery of prohibited expenditures made from Airport revenues, improved management controls over the use of Airport revenues, collection of payments due the Airport, and improved property management controls to ensure the Airport is as self-sustaining as possible.

## ***Management Position***

FAA did not respond to the December 15, 1998 draft report. Therefore, management's official position on the issues discussed in this report is not presented. A management response to the final report is requested within 5 working days.

## TABLE OF CONTENTS

### TRANSMITTAL MEMORANDUM

### SYNOPSIS

#### I. INTRODUCTION

Background .....	1
Objectives, Scope, and Methodology .....	2
Prior Audit Coverage .....	3

#### II. FINDINGS AND RECOMMENDATIONS

Finding A: Airport Generated Revenue Was Used to Redevelop Stapleton .....	4
Finding B: Airport Generated Revenue Was Used for Prohibited Purposes .....	13
Finding C: Airport Was Not as Self-Sustaining as Possible.....	17

#### III. OTHER MATTERS .....

#### IV. EXHIBITS

Exhibit A: Denver Airport Revenue Diversions.....	22
Exhibit B: Uncollected Airport Revenues at Denver .....	23
Exhibit C: Major Contributors to This Report .....	24

## INTRODUCTION

### Background

The Airport and Airway Improvement Act (AAIA) of 1982, as amended and codified in Title 49, United States Code (U.S.C.), Section 47107, directs all airport sponsors<sup>1</sup> receiving airport improvement program grants to provide specific written assurances (known as grant assurances) to the Secretary of Transportation. Failure to comply with grant provisions can result in grant funds being withheld. Section 47107 states:

(a)(13) . . . the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport--(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; . . . .

(b)(1) . . . revenues generated by a public airport will be expended for the capital or operating costs of (A) the airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

The Federal Aviation Administration (FAA) Authorization Act of 1994 (Public Law 103-305, August 23, 1994) added new airport financial reporting requirements and policies for the enforcement against prohibited diversion of airport revenue. Section 112(a)(2) of the FAA Authorization Act of 1994 prohibits the diversion of airport revenue through:

- (A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;
- (B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;
- (C) payments in lieu of taxes or other assessments that exceed the value of services provided; or
- (D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

---

<sup>1</sup> An airport sponsor is generally a public agency (e.g., a city or local authority) that owns the airport.



In the Airport Revenue Protection Act of 1996, Congress passed legislation requiring FAA to impose interest on airport revenue illegally diverted by sponsors. Civil penalties can be assessed if diverted funds are not returned.

The Denver Municipal Airport opened in 1929. Renamed Stapleton International Airport (Stapleton), it was replaced after 66 years of use by Denver International Airport (Airport) in February 1995. The City and County of Denver is sponsor to the Airport which generated \$389 million of operating revenues and had \$276 million of operating expenses during Fiscal Year<sup>2</sup> (FY) 1996. The Airport generated operating revenues of \$414 million and had operating expenses of \$287 million during FY 1997. The revenues and expenses included those associated with the disposal of Stapleton. Stapleton remains an Airport asset and net sale proceeds from Stapleton will be used to retire bonds issued to fund construction of the new Airport. In FYs 1996 and 1997, FAA awarded the sponsor a total of \$9.8 million in entitlement grants and \$50.4 million in discretionary grants for the Airport.

### Objectives, Scope, and Methodology

The objectives of the audit were to determine if (1) revenues generated at the Airport were used for airport operating and capital costs, and (2) the fee and rental structure was sufficient to make the Airport as self-sustaining as possible, in accordance with Federal regulations.

We conducted the audit at the FAA Denver Airports District Office (ADO), sponsor offices, and Airport offices. We also contacted the Stapleton Development Corporation (Corporation), an agent of the sponsor charged with redeveloping and disposing of Stapleton property. We evaluated the sponsor's use of Airport revenues and fee and rental structure for the period January 1, 1996 through December 31, 1997. We expanded our audit coverage to prior years when deemed necessary.

We evaluated the sponsor's management controls for collecting and disbursing Airport revenues and for establishing land and facility leases to ensure compliance with airport revenue requirements in 49 U.S.C. 47107. To review fee and rental structures, we: (1) reviewed 57 leases at the Airport and Stapleton, (2) determined lease rates and terms, (3) determined revenue received from tenants, (4) toured leased properties, and (5) reviewed current Airport property and layout maps. We interviewed officials at the ADO, sponsor, Airport, Corporation, certified public accountant who performed the annual single audit of the sponsor, and local real

---

<sup>2</sup> The sponsor's Fiscal Year is January 1 through December 31.

estate offices. We did not evaluate terminal leases or landing fees. We performed the audit in accordance with the Government Auditing Standards prescribed by the Comptroller General of the United States.

### Prior Audit Coverage

Office of Inspector General (OIG) audit report “Use of Airport Revenues, Stapleton International Airport, Denver, Colorado”, Report Number R6-FA-6-006, dated February 8, 1996, disclosed the sponsor properly supported \$23.6 million in Airport-related charges. The sponsor also properly recorded aviation fuel tax and telephone revenues, and accounted for equipment, except three items costing \$159,500. However, approximately \$6.5 million of Airport revenue was diverted for charges not Airport-related or not supported as Airport-related. Further, the audit identified at least \$1.8 million in potential diversions for FAA consideration. As a result of the audit, the sponsor agreed to reimburse the Airport \$320,124. Corrective actions are completed for all recommendations except for the recommendation dealing with medical clinic services. The corrective action for this recommendation was agreed to by FAA but was not complete as of December 9, 1998.

OIG “Advisory Memorandum on Disposal of Stapleton International Airport”, Report Number R0-FA-6-005, dated August 13, 1996, found that FAA effectively monitored the initial Stapleton sale of approximately 80 acres (1.7 percent of the total 4,700 acres), and the use of sale proceeds.

## FINDINGS AND RECOMMENDATIONS

We found the sponsor: (1) used Airport revenues to redevelop Stapleton property beyond that necessary to dispose of the property, (2) used Airport revenues for prohibited purposes, and (3) did not maintain a fee and rental structure sufficient to make the Airport as self-sustaining as possible.

### Finding A. Airport Generated Revenue Was Used to Redevelop Stapleton

To accomplish the disposition and ultimately renew this urban area, the sponsor adopted a redevelopment plan and created a redevelopment corporation, financed with Airport revenues. In FYs 1996 and 1997, the Corporation was reimbursed \$9.7 million from Airport revenues<sup>3</sup>. FAA policy permits the use of Airport revenues for the reasonable costs of disposition. However, disposition associated costs were not being monitored by FAA as required, and Airport revenues were being used for Stapleton's redevelopment, beyond that which is necessary to dispose of the property. The sponsor estimates that as much as \$100 million in additional Airport revenue will be expended over the next 15 years to dispose of Stapleton property valued at \$58 million<sup>4</sup>. FAA needs to establish controls over the amount of Airport revenues being expended for Stapleton's disposal and ensure that Airport revenues are not being diverted to the sponsor's urban renewal program.

### Sponsor Plans for Disposing of Stapleton

Stapleton closed in February 1995 and the sponsor was charged with disposing of approximately 4,700 acres of land and improvements. The sponsor had the choice of either redeveloping Stapleton property or having a bulk land and improvements sale. The sponsor chose to redevelop the property according to a plan. According to the Mayor of Denver, "The plan serves as a blueprint for bringing new jobs, housing and open space amenities of a mixed-use community to . . . land centrally located in one of the nation's great urban centers." One of the redevelopment goals was to ultimately generate more dollars to retire Airport debt. However, during our review, no sponsor or FAA official would state or otherwise affirm that net revenues would ever exceed the cost of disposal.

The Stapleton Development Plan (Redevelopment Plan) was published in March 1995 and provides for a 30- to 40-year conversion to a series of mixed-use communities connected by an extensive system of open space and transportation

---

<sup>3</sup> The Corporation was reimbursed approximately \$5.8 million in Airport revenues during the first six months of FY 1998.

<sup>4</sup> The \$58 million represents fair market value for a bulk sale as of July 1, 1998.

improvements. Sixty-five percent of Stapleton property is to be used for urban redevelopment, including 17 to 20 million square feet of commercial and industrial office space, 10,000 residential units, five schools, and a transit facility. The remaining 35 percent is designated for open space redevelopment and will include formal and informal parks, an outdoor recreation complex and major ballfield, a championship golf course, an agriculture center, and an equestrian facility. Stapleton property was once an area of munitions manufacturing and is surrounded by commercial and industrial development, an interstate highway, a prison, and older residential housing. It is clear that the redevelopment activities at Stapleton, being funded with Airport revenue, amount to more than just preparing the property for sale. In fact, it appears that the Redevelopment Plan is, in effect, an urban renewal project.

To assist the sponsor's urban renewal efforts, the sponsor created the Corporation in July 1995. The sponsor's Official Statement for the sale of Airport System Revenue Bonds, dated August 18, 1997, explained that the Corporation ". . . was created to facilitate the redevelopment of Stapleton" according to the Redevelopment Plan. The Corporation was empowered to act on behalf of the sponsor in matters involving Stapleton property. The Corporation's annual contracts with the sponsor stipulate the sponsor's maximum liability and that all contract obligations will be paid solely with available Airport revenues.

In December 1995, the airlines operating at the Airport filed a formal complaint with the FAA regarding the sponsor's intent to use Airport revenues to ". . . assist in financing the redevelopment of Stapleton." The airlines alleged the sponsor ". . . intends to divert millions of dollars from DIA [Airport] to Stapleton to fund its immediate and long-term development, in violation of the Airport and Airway Improvement Act ('AAIA')." The parties to the complaint requested FAA to postpone a decision on the complaint pending settlement discussions. On March 6, 1998, a proposed agreement between the two parties was presented by the sponsor to FAA. However, the complaint was still not resolved as of December 8, 1998.

### Policy on Closing Airports

The Airport and Airway Safety and Capacity Expansion Act of 1987 (PL 100-223), which governs the disposition of Stapleton, provides that the Secretary of Transportation is authorized to grant release from any assurances made by the sponsor associated with Airport Improvement Program (AIP) projects [Section 313 (a)(1)(B) of the AAIA]. Included in the sponsor's grant agreements is an assurance that governs the disposition of Stapleton and provides the following:

To the extent practicable and cost-beneficial to the aeronautical users of the new airport, all such proceeds received from the sale or lease from the property...shall be promptly used by the Sponsor for the development, construction, and improvement of Phase I of the new airport...or for the reduction or refinancing of existing debt for the Phase I development.

In the Federal Register, Vol. 61, No. 121, published June 21, 1996, FAA issued its Policy Regarding Airport Rates and Charges. Section 2.5.4(c) of the policy provides the following:

If an airport proprietor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs of disposition of the closed airport facility may be included in the rate base of the new airport . . . . The Department [of Transportation] would not ordinarily consider redevelopment costs to be a reasonable cost of disposition.

In 1995, FAA issued Compliance Policy 95-04. The document's purpose was to present regional policy for FAA oversight of the disposal of Stapleton. The ADO was directed to: (1) periodically review Stapleton accounts, (2) require the sponsor to develop a marketing and development plan based on the best use for each Stapleton area, (3) monitor the sponsor's appraisals to ensure fair market value is obtained, (4) ensure infrastructure development is cost effective, and (5) monitor the ownership of parks and open spaces. No specific time limits or maximum amount of Airport revenues allowed for the disposal were prescribed.

The ADO partially complied with this policy and monitored the sponsor's appraisals and ownership of parks and open spaces as required. However, contrary to FAA's policy, the ADO did not sufficiently review accounts for Stapleton to ensure no revenue diversions occurred. Nor did the ADO ensure the sponsor developed a marketing and development plan based on the best use for Stapleton property or that infrastructure development was cost effective. In addition, the ADO was aware that millions of dollars in Airport revenues were being expended by the Corporation with no resulting land sales, but took no action to impose a time limit on the disposal, or limit the amount of Airport revenue available for the disposal.

## Airport Revenues Expended for Urban Renewal Efforts

For FYs 1996 and 1997, the Corporation was reimbursed \$9.7 million from Airport revenues to facilitate the disposition of Stapleton. However, the Corporation's efforts primarily included planning the redevelopment of Stapleton according to the Redevelopment Plan, instead of selling the property. As a result, not all Corporation costs were within the scope of permitted expenditures. For example, of the 90 work items included in the Corporation's 1997 Work Program, just 4 pertained to marketing Stapleton property and none related to actually selling property. Also, at the time of audit fieldwork, just 1 of 18 Corporation staff was responsible for selling Stapleton property. Corporation staff salaries and benefits totaled about \$2.4 million (25 percent of the total \$9.7 million) for FYs 1996 and 1997. No sales have been made by the Corporation since it was created.

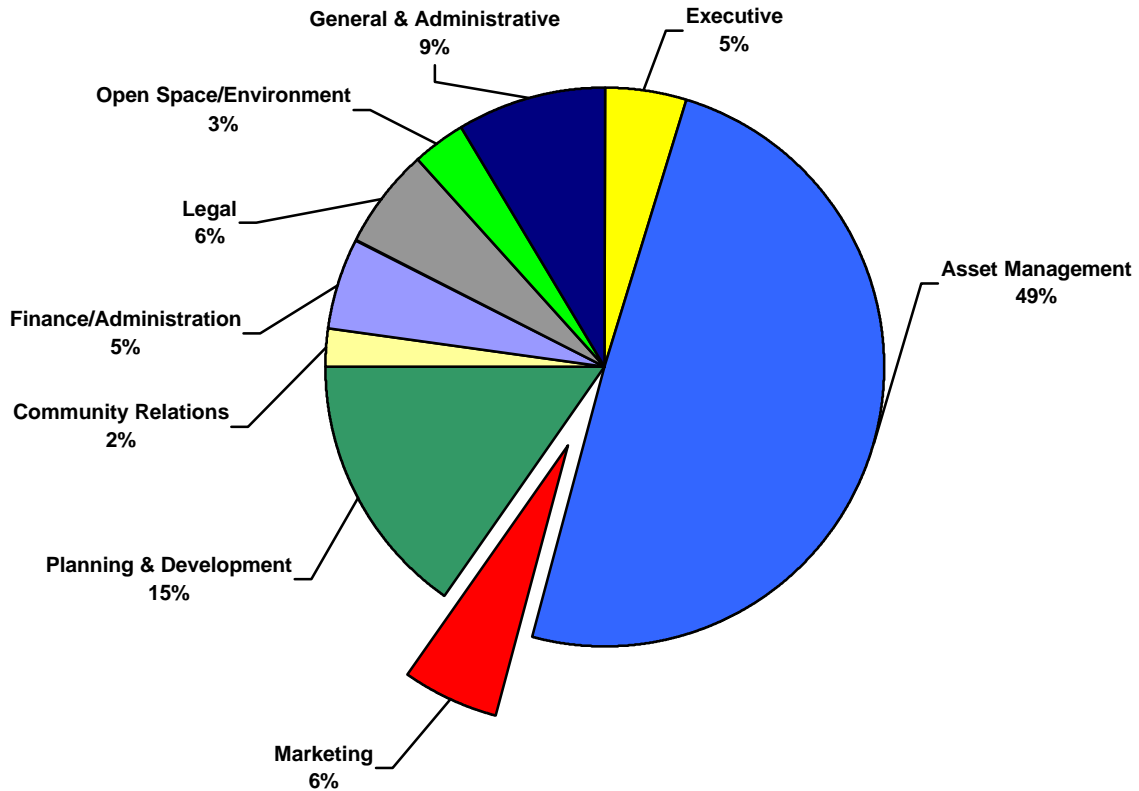
Corporation expenditures for FY 1997 totaled \$8.13 million<sup>5</sup>. The following chart shows the percentage of expenditures by work project area, including allocated staff salaries and benefits.

As shown in the chart, asset management was the largest cost area, accounting for 49 percent of total expenditures. Asset management included maintenance, security, snow removal, utilities, landscaping, and leasing Stapleton properties<sup>6</sup>. Planning and development totaled 15 percent, while marketing was just 6 percent of the total.

---

<sup>5</sup> Approximately \$300,000 of the \$8.13 million was provided by non-Airport sources.

<sup>6</sup> Stapleton properties include improved parcels leased on a short-term basis and an event center developed by the Corporation and rented to the general public for weddings and other non-Airport related community functions.



According to the Corporation’s FY 1996 Statement of Functional Expenses, no expenditures were attributed to marketing. Corporation expenditures were for staff compensation, office and travel expense, outside professional fees, an executive search, and support for the organization that designed the Redevelopment Plan.

Estimated Disposal Costs and Sale Proceeds

In August 1997, the sponsor estimated that more than \$63 million in Airport bond proceeds would be needed to maintain, remediate, and develop Stapleton property for sale in accordance with the Redevelopment Plan. The sponsor also estimated net proceeds from Stapleton’s disposal would be \$75 million over a 15-year period starting in 2001. The net proceeds would be used to retire Airport debt.

In March 1998, the sponsor briefed FAA on a proposed settlement to the airlines’ complaint and revised its cost estimate. The sponsor’s revised plan called for using Airport revenues totaling \$100 million for demolition, remediation, and operations and maintenance costs over an unspecified period of time. In addition, airport funds would be used to purchase insurance for unforeseen remediation and

demolition, and Stapleton lease revenues (approximately \$2.1 million per year) would be used for operations and maintenance costs of Stapleton. Further, construction and improvements deemed necessary for disposition of Stapleton would be funded from gross land sale proceeds. The sponsor did not specify to what degree, if any, net sales revenues were expected to exceed disposal costs.

In July 1998, the sponsor entered into a Master Lease and Disposition Agreement (Agreement) with the Corporation. The Agreement specifies the Corporation will lease Stapleton for a maximum of 15 years. During the lease term, the Corporation will manage and dispose of Stapleton property. The sponsor will give the Corporation up to \$1.5 million in Airport revenues per year for 10 years to help pay for overhead and the operation and maintenance of the Stapleton site. In addition, the Corporation will retain a declining percentage of Stapleton lease revenues and net sale revenues during the lease term for reasonable disposition tasks including the construction of necessary site improvements approved by the sponsor.

The Agreement specifies that Corporation overhead expenses are capped at \$3.2 million per year for 1999 and 2000 and the cap decreases by 10 percent every 2 years. However, the Corporation can exceed the cap with approval of the sponsor's Manager of Aviation. No other expenses are capped, including total expenditures. On September 15, 1998, the sponsor met with FAA to discuss the Agreement and gain FAA approval. As of November 10, 1998, FAA had not approved the Agreement.

Following the September 15, 1998 meeting with FAA, the sponsor's Washington, D.C. counsel provided FAA with answers to questions regarding the Stapleton disposition process. According to the response, the sponsor estimated the following:

. . . approximately \$100 million of airport revenue will be needed to dispose of the Stapleton property [including Corporation costs and sponsor costs<sup>7</sup>]. Costs reasonably necessary to dispose of the Stapleton site include nonattributable environmental remediation, demolition of obsolete aviation infrastructure, installing basic site improvements necessary to provide access and trunk utilities, operating and maintaining the Stapleton site, zoning, marketing and closing sales of Stapleton property.

---

<sup>7</sup> The sponsor plans to use Airport Capital Funds for nonattributable environmental remediation and demolition and will charge these costs to the Airport's rate base.



Neither the counsel's response to FAA or the Agreement specified dollar estimates for disposal cost areas or revenues to be generated from sale and leasing activities. We asked the sponsor's Director of Airport Legal Affairs and outside legal counsel in Washington, D.C. to itemize the \$100 million estimate by cost area. They stated they could not provide specific dollar amounts.

We asked the sponsor's disclosure attorney for an estimate of net sale proceeds that will be paid to the Airport. The counsel provided a copy of the sponsor's Official Statement utilized in connection with the recent sale of Airport System Revenue Bonds, dated November 1, 1998, that disclosed the following:

Several economic and financial factors will affect the timing and amount of additional net proceeds available from the disposition of Stapleton, including, among other things, the nature, extent and cost of public improvements required to develop the properties and the cost of environmental remediation. The City does not have estimates as to the timing or ultimate amount of additional net proceeds from the disposition of Stapleton.

On November 19, 1998, the Corporation selected a development partner for Stapleton. Although negotiations were not complete as of December 9, 1998, we were provided a copy of the term sheet stipulating the development partner will purchase Stapleton (excluding parks and open space property) for \$83.8 million<sup>8</sup>. The development partner will also pay \$44 million for an improvement district, managed by the Corporation, to fund sewer, water and arterial improvements and \$2.5 million for the benefit of the Stapleton Redevelopment Foundation. These funds are in addition to the approximately \$100 million in Airport revenues required for Stapleton's disposal. The Airport will be paid any net sale proceeds remaining after deducting closing costs, direct maintenance of buildings and land, overhead, environmental remediation, insurance premiums for environmental liability insurance, environmental indemnity obligations, demolition work, and construction of necessary site improvements.

An agreement between the sponsor and any entity charged with the disposal of Stapleton is needed. However, it must include sufficient controls over the sponsor and the entity charged with the disposal to ensure a cost effective disposition

---

<sup>8</sup> This does not include Stapleton buildings valued at \$4.6 million to be marketed separately by the Corporation.

## Costs to the Flying Public

The disposition of a major U.S. commercial airport like Stapleton is unprecedented. Therefore, if the use of Airport generated revenues for Denver's urban renewal is allowed to continue without controls, it will be fiscally irresponsible and set a precedent for future U.S. airport closures. Corporation costs paid with Airport revenues are charged to the airlines through increased rates and charges, and ultimately passed on to the flying public. In a March 20, 1995 letter to FAA's Airports District Office Manager, the Chairman of the Denver Airlines Airport Affairs Committee stated, ". . . there is no question but that the diversion of DIA [Airport] revenues for costs of Stapleton will directly and adversely impact the costs . . . ultimately paid by the traveling public."

## FAA Action Needed

It is possible to market a property such as Stapleton without redevelopment. However, we recognize that costs such as environmental remediation and runway and terminal removal may be justified if necessary to make the property more marketable or to enhance its sale value, thereby recouping the most dollars to retire airport debt. To support such expenditures there must be some documentary evidence, such as market appraisals by real estate experts. In our opinion, costs to help the sponsor realize its goal of urban renewal and redevelop the property into a higher use for residential housing, parks, recreation and transit facilities should be borne by the sponsor.

FAA must take immediate action to control the use of Airport revenues for Stapleton's disposal and set a fiscally responsible precedent for future airport closures. FAA must require the sponsor to provide a clear, cost effective plan for disposition that specifies costs to be incurred and dollars to be generated. FAA must also ensure the disposition is effectively monitored.

If it turns out that the estimated costs of Stapleton's disposal exceed expected net sale proceeds, FAA should consider transferring all Federal interest in Stapleton at no cost to the sponsor, and thereby requiring the sponsor to assume full financial responsibility for its disposition without use of Airport revenue. An argument can be made that FAA, through the Secretary of Transportation, has the authority under current law to transfer all Federal interest in Stapleton. However, given the precedent-setting nature of such an action it would be prudent to seek clarification from Congress of FAA's authority in this type of situation.

### Recommendation

We recommend FAA monitor the disposal of Stapleton and prohibit the use of Airport revenues to finance those aspects of Stapleton's redevelopment that are beyond that which is reasonably necessary for marketing Stapleton.

### Management Position

FAA did not provide a written response to our December 15, 1998 draft report.

## Finding B. Airport Generated Revenue Was Used for Prohibited Purposes

The sponsor used \$1.2 million in Airport generated revenues for non-Airport purposes. These conditions continued to exist because FAA did not adequately monitor the sponsor's property management. The Airport will continue to lose \$600,000 annually until FAA requires the sponsor to comply with revenue use requirements. (See Exhibit A for a summary of Airport revenue diversions for FYs 1995 through 1997.)

### **Revenue Diversions Totaled \$1.2 Million**

Airport sponsors must use airport generated revenue in accordance with Federal law, FAA regulations, and grant assurances. As a recipient of FAA grant funds, the sponsor must meet the revenue requirements of 49 U.S.C. 47107. This section requires the sponsor to restrict the use of airport generated revenue to the capital or operating costs of the sponsor's airport or airport system. Assurance 25 of each grant agreement states:

. . . all revenues generated by the airport . . . will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property . . . .

We identified \$1.2 million in Airport revenues that were not used for the operating and capital costs of the Airport. This included:

- \$215,842 for ineligible and unsupported indirect administrative costs of the sponsor;
- \$522,960 for excessive investment service fees charged by the sponsor;
- \$352,465 for maintaining a facility used by a transit authority;
- \$147,617 for a study of a proposed public transit project off of Airport property; and
- \$3,168 for community activities not related to Airport operations.

### **\$215,842 Inappropriately Used for Indirect Administrative Costs**

City Attorney. Airport revenue of \$170,049 was inappropriately used to reimburse the sponsor's general fund for unsupported city attorney costs for FYs 1995 and 1996. The sponsor allocated indirect costs for city attorney tort claim services based on the number of tort claims processed each year. However, all Airport tort

claims were processed through the Airport attorney's office and charged directly to the Airport.

Mayor's Office of Contract Compliance. We found Airport revenue of \$45,793 was inappropriately used to reimburse the sponsor's general fund for unsupported costs of the mayor's office of contract compliance (office) in FY 1996. The sponsor used an estimate of services provided as the basis for allocating indirect costs for the office's disadvantaged, minority and women business enterprise program (program). This allocation method is contrary to FAA Order 5190.6A, Section 4-20.a.(2)(c)(ii) Income Accountability, which states:

Clearly supportable and documented charges made by a governmental entity to reimburse that entity for payments of capital or operating cost of the airport may be allowed. Any charge must be supported by documented evidence.

In FY 1996, the Airport was allocated \$320,554 (70 percent of total program costs of \$457,934) based on estimated office services provided in processing program applications. The basis for the estimate was not documented. To determine the reasonableness of the estimate, we reviewed a judgmental sample of 10 percent of the total services for FY 1996 and determined the cost allocation to the Airport should have been 60 percent of total costs. As a result, the Airport was overcharged \$45,793 (10 percent) for FY 1996.

#### \$522,960 Inappropriately Used for Investment Service Fees

Airport revenue of \$522,960 was inappropriately used to pay the sponsor for unsupported investment services. In 1984, the sponsor legislated an investment fee “. . . to account for services rendered and expenses incurred in the administration, management and investment of the nonsubsidized enterprise funds. . . .” The sponsor stated the fee, 0.00375 times the average monthly investment, was established after performing an informal survey of commonly charged fees by private investors. The Airport is a recipient of investment services provided by the sponsor.

FAA Order 5190.6A requires documented support for any charges to the Airport. Further, the FAA Authorization Act of 1994 states that:

Prohibited uses of airport revenue include but are not limited to:  
A. Direct or indirect payments, other than payments that reflect the value of services and facilities provided to the airport. . . .

We concluded the investment fees charged the Airport were not supportable or documented, and did not reflect the actual cost of providing the services. The Airport paid \$1,104,000 in FYs 1996 and 1997, which represented 89.1 percent of the annual budgeted cost<sup>9</sup> of \$1,239,000 for investment services provided by the sponsor's Treasury Division. However, the Airport's investment was only 66 percent and 70 percent, respectively, of the total pooled investment for those two years. Therefore, the investment fees should have been \$817,740 for FY 1996 and \$867,300 for FY 1997. As a result, \$522,960 in Airport revenue was inappropriately used to pay for sponsor investment service fees during FYs 1996 and 1997.

#### \$352,465 Inappropriately Used to Maintain a Public Transit Facility

Airport revenue totaling \$352,465 was inappropriately used in FYs 1996 and 1997 to maintain a public transit facility on Airport property leased at no charge. According to the lease between the sponsor and the Regional Transit District (Transit District), the sponsor is responsible for maintenance, security, and certain improvement costs for the Transit District's bus transfer station located at Stapleton. However, these sponsor costs were inappropriately billed to the Airport.

On March 19, 1998, the official charged with managing Stapleton assets notified the Transit District it must either purchase the facility for fair market value or assume responsibility for costs of maintaining the facility effective April 1, 1998. As of June 18, 1998, no agreement had been reached and Airport revenues continue to be expended for the facility, contrary to FAA policy, which only permits expenditures for the operating and capital costs of the Airport.

#### \$147,617 Inappropriately Used to Fund a Public Transit System Study

We found Airport revenue of \$147,617 was inappropriately used in FY 1997 for a right-of-way study off Airport property for a proposed light rail project, referred to as Air Train. Air Train was intended to provide passenger service, 23.1 miles in length, between downtown Denver and the Airport, but not exclusively for Airport passengers. As of June 17, 1998, no expenditures had been made to acquire land and the future of the project is in doubt. Since the right-of-way study did not benefit the operation of the Airport or include Airport property, it was a prohibited use of Airport revenue.

---

<sup>9</sup> The sponsor did not determine actual costs of its investment services.

### \$3,168 Inappropriately Used for Community Activities

Airport revenue of \$3,168 was inappropriately used to fund community activities. In 1996, at the request of the Denver Chamber of Commerce, the Airport sponsored the Straw Hat Golf Classic at a cost of \$3,168. FAA Policy, issued in the Federal Register, December 18, 1996, states that expenditures of airport funds to support community activities are prohibited unless directly related to the operation of the airport. The Golf Classic expenditure was not directly related to the operation of the Airport. Therefore, Airport revenues totaling \$3,168 were used for prohibited purposes.

### Recommendations

We recommend that FAA:

1. Require the sponsor to reimburse the Airport \$1.2 million for expenditures prohibited by 49 U.S.C. 47107, plus interest as required by the Airport Revenue Protection Act of 1996.
2. Instruct the sponsor to allocate indirect costs in accordance with FAA policy.
3. Conduct periodic reviews of transactions between the sponsor and Airport to ensure the sponsor charges the Airport only for supportable Airport-related costs.

### Management Position

FAA did not provide a written response to our December 15, 1998 draft report.

### Finding C. Airport Was Not as Self-Sustaining as Possible

The Airport was not as self-sustaining as possible because (1) Airport property was leased at less than fair market value, (2) services were not provided to the Airport as specified by lease agreements, and (3) utility costs were not billed as specified by lease agreements. These conditions continued to exist because FAA did not adequately monitor the sponsor's property management. As a result, the Airport did not receive approximately \$1.2 million in Airport revenue during a 2- to 3-year period and will continue to lose about \$500,000 annually until FAA requires the sponsor to change its fee and rental structure. (See Exhibit B for a summary of uncollected Airport revenues.)

#### **Uncollected Airport Revenues Totaled \$1.2 Million**

As a recipient of FAA grant funds, the sponsor is required to establish fee and rental structures that assure the airport is as self-sustaining as possible. Assurance 24 of each grant agreement requires the sponsor to:

. . . maintain a fee and rental structure . . . which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport . . . .

We identified uncollected Airport revenues totaling approximately \$1.2 million. This included:

- \$559,000 for property rented at less than fair market value;
- \$281,200 for services not provided by sponsor departments in lieu of rent; and
- \$347,052 for utility costs not billed to Stapleton tenants.

#### **Rent Received for Airport Property Was Less Than Fair Market Value**

We found the Airport received less than fair market value for property used by the sponsor's Parks and Recreation Department and FAA. As a result, the Airport lost revenue totaling \$559,000 for FYs 1996 and 1997.

FAA clarified its policy on a sponsor's use of airport land for nonaeronautical purposes in a supplemental notice of proposed policy issued on December 18, 1996. The policy stated "Prohibited uses of airport revenue include . . . Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than the amount that would be charged a commercial tenant . . . ."



The Parks and Recreation Department did not pay the Airport for property at Stapleton, which was used for office and storage space and a tree nursery since the late 1970's. On the 1996 Financial Governmental Payment Report<sup>10</sup>, the sponsor valued the office and storage space at \$129,000 annually. In addition, we estimated the rental value of the nursery property at \$120,000 annually, based on current Stapleton land values. Therefore, total Airport revenue uncollected for FYs 1996 and 1997 was \$498,000 (\$249,000 per year).

FAA's Technical Operations Center, located on Airport property, was leased at \$0.10 per square foot (\$13,821 per year) in FYs 1996 and 1997. The Airport valued the property on the 1996 Financial Governmental Payment Report at \$0.32 per square foot (\$44,504 per year). As a result, total Airport revenue uncollected was \$61,366 (\$30,683 per year) for FYs 1996 and 1997. Additionally, the lease term is 20 years with the option to extend for six successive 5-year periods with rental fee increases limited to 10 percent within any 5-year period. Therefore, the maximum lease rate paid by FAA in 2040 through 2045 would be \$0.24 per square foot, which is just 75 percent of the 1996 fair market value.

#### Services Were Not Provided in Exchange for Use of Airport Property at No Rent

Services valued at \$281,200, in lieu of rent, were not provided for two properties used by the sponsor's Department of Public Safety. The Denver Police Academy used Stapleton property valued by the Airport on the 1996 Financial Governmental Payment Report at \$125,000 annually. As compensation for using the property, the Police Academy agreed to provide security services at Stapleton. However, the services were not provided and it was necessary for the Airport to pay an outside firm to provide security at Stapleton. Therefore, the Airport should receive \$250,000 in rental income for services not performed in FYs 1996 and 1997 (\$125,000 per year).

Also, the Denver Sheriff's Academy used Stapleton property valued at \$76,000 annually on the Financial Governmental Payment Report. Compensation was to include payments of \$36,000 per year plus trash pick-up services by prison inmates and police security services. The police services were not performed. The Airport valued the police services at \$15,600 per year. Therefore, the Airport should receive \$31,200 in rental income for services not performed in FYs 1996 and 1997.

---

<sup>10</sup> The Financial Governmental Payment Report is submitted in compliance with Section 111 of the Federal Aviation Administration Authorization Act of 1994, which requires airport sponsors to report annually to the Secretary of Transportation amounts and purposes of payments by their airports to other units of government, and compensation received for services and property provided to other governmental units.

### Utility Costs Were Not Billed to Airport Tenants

Utility costs totaling \$347,052 were not billed to Stapleton tenants as required by the terms of lease agreements. Lease agreements required tenants at Stapleton to be charged for water, sewage, electricity and gas usage. However, 36 of 50 tenants at Stapleton had not been billed since Stapleton closed in 1995. According to the Stapleton Asset Manager, some tenants were not billed for utility charges because of an oversight plus difficulty in determining exact amounts owed by each tenant. As a result, Airport revenues totaling \$347,052 for FYs 1995 through 1997 were uncollected. After our audit field work in March 1998, the Stapleton Asset Manager began billing the tenants for past due charges.

### FAA Monitoring Was Not Sufficient

FAA did not perform reviews of the sponsor's property management system to ensure the Airport was as self-sustaining as possible. In July 1997, FAA performed an informal review of the Airport's 1996 Financial Governmental Payment Report and asked the sponsor to justify leases at less than fair market value. According to FAA, the sponsor contended that leases at less than fair market value were justified based on services provided to the Airport, lack of demand for Airport property, and the value of property not being known when leases were negotiated. FAA took no further action to verify the Airport's assertions.

### Recommendations

We recommend that FAA:

1. Require the sponsor to:
  - a. Develop and implement property management procedures that will ensure FAA regulations and grant assurances associated with financial self-sustainability are adhered to.
  - b. Require the sponsor to reimburse the Airport \$778,000 for lease payments not made by sponsor's Parks and Recreation (\$498,000) and Public Safety departments (\$281,200) in violation of 49 U.S.C. 47107, plus interest as required by the Airport Revenue Protection Act of 1996.
  - c. Establish a fair market value lease for Airport property used by the Parks and Recreation Department in accordance with FAA requirements.

- d. Ensure services to be provided in lieu of rent by the Public Safety Department are performed or fair market value is collected.
2. Pay fair market value for Airport property occupied by the Technical Operations Center.
3. Ensure the sponsor collects \$347,052 from Stapleton tenants for past utility services.
4. Review the sponsor's compliance with its property management procedures and follow-up on deficiencies.

#### Management Position

FAA did not provide a written response to our December 15, 1998 draft report.

## OTHER MATTERS

During the course of our audit, we noted the sponsor was not in compliance with AIP Grant Assurance Number 25. In the Federal Register, dated June 2, 1997, FAA published proposed modifications to AIP grant assurances, effective the date of publication. Grant Assurance Number 25, Airport Revenues, was modified to include:

- (b.) As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes . . . .

The sponsor signed and accepted a grant on September 30, 1997 for \$363,750, and thereby, agreed to comply with the modified grant assurances attached to the offer. However, the sponsor did not direct its Independent Auditor to review the use of Airport revenue and taxes as required by Grant Assurance Number 25. Therefore, the sponsor's FY 1997 Single Audit Report will not provide an opinion concerning the use of Airport revenue and taxes as required.

FAA needs to direct the sponsor to contract with its Independent Auditor to perform the additional audit work for FY 1997 and report an opinion on the use of Airport revenue and taxes.

## DENVER AIRPORT REVENUE DIVERSIONS

ACTIVITY	RECIPIENT	FYs	TOTAL DOLLARS	ANNUAL DOLLARS <sup>1</sup>
INDIRECT COSTS – ATTORNEY	SPONSOR	95-96	170,049	85,025
INDIRECT COSTS – MOCC <sup>2</sup>	SPONSOR	96	45,793	45,793
INVESTMENT FEE	SPONSOR	96-97	522,960	261,480
BUS TRANSFER FACILITY	TRANSIT DISTRICT	96-97	352,465	207,465 <sup>3</sup>
AIR TRAIN	TRANSIT DISTRICT	97	147,617	0
GOLF CLASSIC	CHAMBER OF COMMERCE	96	3,168	0
<b>TOTAL</b>			<b>\$1,242,052</b>	<b>\$599,763</b>

<sup>1</sup> Projected future costs per year.

<sup>2</sup> Mayor's Office of Contract Compliance.

<sup>3</sup> Based on estimated costs for FY 1997.

**UNCOLLECTED AIRPORT REVENUES AT DENVER**

<b>LEASED PROPERTY</b>	<b>ENTITY</b>	<b>FYs</b>	<b>TOTAL DOLLARS</b>	<b>ANNUAL DOLLARS<sup>1</sup></b>
PARKS & RECREATION	SPONSOR	96-97	\$ 498,000	\$ 249,000
TECHNICAL OPERATIONS CENTER	FAA	96-97	61,366	30,683
POLICE ACADEMY	SPONSOR	96-97	250,000	125,000
SHERIFF'S ACADEMY	SPONSOR	96-97	31,200	15,600
STAPLETON – UTILITY COSTS	VARIOUS TENANTS	95-97	347,052	115,684
<b>TOTAL</b>			<b>\$1,187,618</b>	<b>\$ 535,967</b>

<sup>1</sup> Projected future costs per year.

MAJOR CONTRIBUTORS TO THIS REPORT

These individuals participated in the Review of Airport Revenue, Denver International Airport.

Robin K. Hunt	Program Director
Larry Arata	Project Manager
A. Robert Lund	Auditor
Terri Ahuruonye	Auditor
Paul Nagulko	Auditor Intern
Connie Chang	Auditor Intern
Joyce Mayeda	Administrative Support