



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

Nov 15, 1991

Mr. Wayne Ethridge, Chair
Board of County Commissioners of Pitkin County, Colorado
Suite B
506 East Main Street
Aspen, Colorado 81611

Dear Mr. Ethridge:

We have received your response to our June 21, 1991, letter from Mr. Alan Wiechmann, Manager of the Denver Airports District Office, Federal Aviation Administration ("FAA"), requesting additional information to assist us in executing our duties under Section 509(b) (1) (E) of the Airport and Airway Improvement Act of 1982 ("AAIA"), as amended, 49 U.S.C. App. Section 2208(b) (1) (E). That section prohibits the Secretary from approving a grant application unless he or she is satisfied that all project sponsorship requirements have been or ...will be met.

I regret that your response has not resolved our concerns relating to compliance with the sponsor assurances. First, the continued apparent determination of the County to regulate flight safety and aircraft noise with a local nighttime curfew appears to continue an unlawful intrusion upon the responsibility of the FAA. This agency has preempted the regulation of flight safety, the national airspace system, and air traffic management. In addition, all of the concerns we have previously expressed regarding the reasonableness and the discriminatory impacts of the current access restrictions remain unresolved with respect to the County's duties under its grant agreements.

The FAA is cognizant of the fact that its effort to resolve this matter has taken considerable time. It is not our intent to raise legal issues concerning compliance with the 180-day aspects of section 519(b) (1) of the AAIA, 49 U.S.C. App. section 2218(b) (1), with respect to approval of the County's grant application. Accordingly, this letter states our intent not to withhold approval of the grant application. Issuance of the letter of tentative allocation and the grant offer will be made under normal procedures and time frames.

However, as stated above, this action in no way reflects a lessening of our concerns regarding the underlying issues, or limits the FAA's duty to ensure compliance with

applicable grant requirements. You are accordingly advised that, pursuant to section 519(b) (2) of the AAIA, 49 U.S.C. App. section 2218(b) (2), the FAA may ultimately determine that the County is violating the sponsor assurances and that payment for work done under the grant agreements may be required to be withheld.

Our review of your letter and Pitkin County Ordinance No. 90-12 raises a further concern. On November 5, 1990, the Congress enacted the Airport Noise and Capacity Act of 1990 ("ANCA"), 49 U.S.C. App. Section 2151, et seq. In that Act, the Congress recognized that a national aviation noise policy was necessary because of the national and international nature of our aviation system. Among other things, ANCA directed the elimination of Stage 2 aircraft operating in the contiguous United States and the development of a national program to review proposed airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft.

In response to section 9304 of ANCA, the FAA issued a final rule, 14 C.F.R. Part 161, a copy of which is enclosed. That rule, entitled, "Notice and Approval of Airport Noise and Access Restrictions," prescribes, among other things, analysis and notice requirements for airport operators proposing Stage 2 aircraft noise and access restrictions; and notice, review, and approval requirements for airport operators proposing Stage 3 aircraft noise and access restrictions.

Part 161 defines a "noise or access restriction" to mean, "restrictions (including but not limited to provisions of ordinances and leases) affecting access or noise that affect the operations of Stage 2 or Stage 3 aircraft, such as ...a restriction imposing limits on hours of operations. 14 C.F.R. 161.5. Part 161 applies to restrictions on Stage 2 aircraft operations that were proposed after October 1, 1990, and to restrictions on Stage 3 aircraft operations that became effective after October 1, 1990. 14 C.F.R. 161.3.

Section 2 of Pitkin County Ordinance No. 90-12 (November 27, 1990) appears to have repealed a limited ski season exception. That exception permitted aircraft to depart from Sardy Field up to two and one-half (2-1/2) hours past sunset if operating under instrument flight rules. Normally, the Ordinance would not permit any aircraft to depart after one-half (1/2) hour past sunset.

Be advised that the provision of Pitkin County Ordinance No. 90-12 that removes the ski season exception may constitute a "noise or access restriction" within the meaning of Part 161 since that Ordinance appears to add a restriction on the hours of operation of all aircraft, which includes Stage 2 and Stage 3 aircraft. We understand that the Ordinance was proposed at a first reading on November 13, 1990, and became effective on or after November 27, 1990.

An airport operator imposing a noise or access restriction that has not complied with ANCA may not receive revenues under the AAIA or impose or collect a passenger facility charge. Subpart F of 14 C.F.R. Part 161 describes the procedures to terminate eligibility for airport grant funds and authority to impose or collect passenger facility charges. These procedures

are separate and apart from any actions that the FAA may take to enforce the grant obligations of the County.

The FAA prefers to resolve informally apparent violations of ANCA, if possible. We recommend that you carefully review the enclosed Part 161 regulation as it applies to the Ordinance provision in question, and provide us as soon as possible with satisfactory evidence of either current compliance with ANCA and Part 161 or evidence that you have taken satisfactory corrective action to bring your Ordinance into compliance. The FAA is available to assist you in interpreting ANCA or Part 161, if this would be helpful, or to advise you on corrective action that can be taken to avoid further proceedings. We also continue to invite resolution of the broader curfew issues.

Sincerely,

Leonard L. Griggs, Jr.
Assistant Administrator for Airports