

Mr. Etnyre.

After reviewing the information you have provided on behalf of the Truckee-Tahoe Airport District (the District), through correspondence dated September 4, 2024, it is still our position that the District's Fly Quiet Aviation Incentive Program (FQ Program) violates Grant Assurance 22, Economic Nondiscrimination, and/or should be considered an access restriction under Section 161.5 of Title 14 of the Code of Federal Regulations [14 C.F.R. Section 161.5]. Specifically, it is still our determination that the District's use of non-airport revenue to pay a \$30 per month incentive to airport tenants who participate in the FQ Program, as advertised on its website, is prohibited.

In your aforementioned correspondence you indicate that our analysis "gives short shrift to the source of funding for the FQ program" and then go on to say that the "District uses non-airport revenue... to provide an incentive". Finally, you indicate that you are not "aware of authority which permits the FAA to regulate the District's use of those community-derived funds."

Our understanding of your position is that the FAA has no power to find a sponsor in violation of Grant Assurance 22 when the sponsor is using non-airport revenue to provide an incentive and/or subsidy to airport users. Please be advised that it is our position that a sponsor's use of its non-airport revenue still needs to meet Grant Assurance obligations prohibiting unjust discrimination. In the context of Air Carrier Incentive Programs, the FAA has already taken this position. Specifically, FAA Policy Regarding Air Carrier Incentive Program, Section III B(2) provides:

Section III B. Airport v. Non-Airport Revenues and Application to Subsidies and Other Revenue Guarantees

2. A sponsor local government, state government, or other non-Federal airport sponsor may use non-airport funds for subsidies and other uses that would be prohibited if airport funds were used. However, any use of funds would still need to meet Grant Assurance obligations prohibiting unjust discrimination.

Although it may be argued that FAA's Policy Regarding Air Carrier Incentive Program does not apply to the matter at hand because the FQ Program is not an Air Carrier Incentive Program (ACIP) the logic used in the Policy referenced above is the same as the situation we are presently faced with. Certainly, it would not make sense for the FAA to prohibit a sponsor's use of non-airport revenue to provide incentives in an ACIP in an unjustly discriminatory fashion but to allow a sponsor's use of non-airport revenue to provide unjustly discriminatory incentives in support of a program designed to reduce airport noise. As you know, the whole purpose of an ACIP is to provide a narrow exception to the requirements of Grant Assurance 22 for the purpose of promoting new services at an airport and aviation in general. To the contrary, the FAA is statutorily mandated to review potential noise restrictions, which generally tend to impede aviation, with strict scrutiny. Therefore, it is our position that the language of B(2) above is a correct application of FAA policy for any situation in which a sponsor local government, state government, or other non-Federal airport sponsor seeks to use non-airport funds for subsidies.

For these reasons, as sponsor of TRK the District cannot use non-airport revenue to provide a subsidy to some TRK tenants based on compliance with the FQ Program as that would constitute unjust discrimination. Furthermore, it is our position that the \$30 per month discount provided to

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airport tenants that participate in the FQ Program functions in virtually the same way as a \$30 per month penalty would to those that don't participate in the FQ program. Effectively, those who don't participate in the FQ program are \$30 per month poorer than those who do. Hence, the unjust discrimination. As a reminder, federal grant funds have been provided to the airport based on the understanding that no access restrictions are being applied at the airport that aren't necessary for safety purposes. Because of the tendency of the incentives present in the FQ Program to limit the utility of the airport for nighttime operations, etc., the continued implementation of the FQ Program diminishes the efficacy of the investment the FAA has made to the airport.

Furthermore, in order to comply with the FQ Program, and/or to avoid trying to explain why the interests of safety required them to deviate from the FQ Program requirements, the users of the airport may operate airport in an unsafe manner. Therefore, notwithstanding the FQ Program's admonitions concerning safety, we find that the application of the FQ Program may impede safety.

By virtue of the foregoing, we request that within 45 days the District submit a corrective action plan detailing how and when it plans to terminate the FQ Program and/or modify the program to comply with FAA requirements. If you have any further questions or concerns, please don't hesitate to contact us.

Karl Zittel

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