

January 17, 2013

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Federal Aviation Administration (FAA)  
800 Independence Avenue, SW  
AAS-300, Room 618  
Washington, D.C. 20591

Subject: Comments - Draft FAA AC 150/5200-XX – Protocol for Hazardous Wildlife Site Visits, Wildlife Hazard Assessments, and Wildlife Hazard Management Plans

Dear Mr. Weller:

This letter conveys the comments of the Environmental Working Group (EWG) of the California Airports Council (CAC) on the proposed new Federal Aviation Administration (FAA) Advisory Circular (AC) 150/5200-XX, *Protocol for the Conduct and Review of Wildlife Hazard Site Visits, Wildlife Hazard Assessments, and Wildlife Hazard Management Plans*. As with our comment letter on the proposed draft of AC 150/5200-33C, our comments follow the order of the draft AC sections, but are first summarized in terms of suggestions, attributes of the AC, and verbiage we view as contrary to the goal of effectively and efficiently managing hazardous wildlife.

### **Suggestions**

The AC should include a glossary of terms, especially because it is a new document and will be applicable to a broad range of airports that are subject to wildlife hazard protocols for the first time. Important definitions should include several addressed in the FAA's Federal Register notice of December 10, 2012, notably the definitions of "standards" and "farthest edge of the AOA."<sup>1</sup> It may also be advantageous to include an example of a recently conducted WHA accepted by the FAA in the Appendix.

### **Attributes of the New AC**

The proposed new AC will serve as a valuable resource to airports because it combines a number of FAA policies and recommended procedures that heretofore have appeared in disparate Cert Alerts and other documents. It is also unambiguous in defining the airports to which standards, practices and recommendations apply. The AC also benefits by making it clear that the guidance should serve as a point of reference for land-use planners and developers of

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<sup>1</sup> "Clarification of Wildlife Hazard Management Requirements for Non-Certificated Federally Obligated Airports in the National Plan of Integrated Airport Systems (NPIAS)." *Federal Register*, Vol. 77, No. 237, December 10, 2012, pages 73511 – 73514.

projects and activities on and near airports. This will reinforce the efforts of airport operators to create a broader awareness and understanding of the FAA's expectations.

### **Summary of Criticisms**

- **Consultation with Wildlife Agencies:** The draft AC conveys an explicit expectation that airport operators will consult with federal and State wildlife agencies with respect to carrying out a Wildlife Hazard Assessment (WHA), as well as in the development and implementation of a Wildlife Hazard Management Plan (WHMP). We fail to perceive any rationale or advantage to be gained from official consultation with federal and State agencies whose missions and personnel are inimical to aviation safety. Indeed, the draft AC's attempt to impose such a requirement will, without a doubt, invoke a crippling effect on the ability of both certificated and non-Part 139 airports to effectively manage hazardous wildlife, to the detriment of public safety. It has been the finding of at least several airports in California that the wildlife agencies such as the United States Fish and Wildlife Service (Service) can subtly delay if not completely thwart airport initiatives simply through passive non-response.

Assuming the wildlife agencies do respond to a request for consultation, the result could in fact be a demand by the wildlife agencies that the airport operator completely refrain from implementing some or all of the wildlife population management activities outlined in subsection 3.2.b(1) on page 26 of the draft AC and the habitat modification practices outlined in subsection 3.2.b(2) on pages 27-28, until such time as consultation has been completed to the satisfaction of those agencies. Based on these considerations, we question why the FAA would suggest participation by agencies that for the most part operate in accordance with agendas and directives that are almost completely contrary to the FAA's public safety goals.

- **Interagency MOA:** Perhaps the interagency consultation and coordination the FAA has proposed in the new AC is predicated upon the assumption that the Memorandum of Agreement (MOA) executed among the FAA and five other federal agencies in 2003 will stimulate expeditious consultation and favorable outcomes. As detailed in our comment letter on draft AC 150/5200-33C, our experience indicates that the Federal wildlife and resource protection agencies blatantly ignore the MOA and regard it with intense derision. The FAA appears to be unfortunately operating under unrealistic expectations if it believes the MOA will facilitate timely and effective consultation with those agencies.
- **Review Under the National Environmental Policy Act (NEPA):**
  - The draft AC states that a WHMP will normally be categorically exempt pursuant to NEPA. Does this mean that the FAA expects airports to submit each and every WHMP to the Airports District Office (ADO) using that ADO's prescribed Categorical

- Exclusion application? If so, then this expectation should be clearly articulated in the new AC.
- Further, the draft AC's discussion of NEPA seemingly implies that the FAA is departing from its traditional position that NEPA is applicable to only two types of "federal action" by the FAA: (1) providing federal grant-in-aid funds for airport improvement projects; and (2) approval of new and amended Airport Layout Plans (ALPs). As described in detail below, the FAA San Francisco ADO determined that a NEPA document was needed for the 2007 revision of the WHMP for Sacramento International Airport (SMF). A WHMP has traditionally not been regarded as a "project," so the Sacramento County Airport System (County Airport System) strongly questioned the need for NEPA at that time.

To carry out the NEPA process mandated by the FAA, the County Airport System issued an RFP, for which only two responses were received. The bids were \$121,000 and slightly over \$140,000 respectively. After much time-consuming effort and expenditure of more than \$41,000, the ADO reversed course and informed the County Airport System that its previous directive for NEPA analysis of the WHMP had been incorrect. We stand by the County Airport System in asserting that its 2007 opinion remains correct. That is, a WHMP is a document that fundamentally describes how an airport operates, and is therefore not a "project" subject to NEPA.

### **Detailed Analysis and Comments**

1. Section 1.3.c – Habitat Attractants. This paragraph is beneficial because it clearly spells out the broad range of seemingly innocuous facilities and land uses that are capable of attracting hazardous wildlife.
2. Section 1.4. – Site Visit Report.
  - a. Subsection f. – Recommendations. Six potential recommendations are recommended. The fifth recommendation deals with potential alteration of aircraft operations, including locations and scheduling of flights to avoid identified hazardous wildlife concentrations. This recommendation is unrealistic in many situations because an airport does not control when aircraft arrive or depart. Scheduling is a matter solely controlled by the commercial carriers, with precise arrival and departure times dictated by each airport's FAA Air Traffic Control Tower (ATCT).

An airport can produce data showing when certain species of birds are more likely to be present in the airspace above or near the airport, but cannot dictate when aircraft utilize that airspace. Further, if an airport is located within a heavy bird migration corridor such as the Pacific Flyway, during certain times of the year birds

will be virtually everywhere. Changing the timing of arrivals and departures would therefore do little more than move the risk to a different time period.

3. Section 2.4 – Necessary Elements of a WHA

- a. The fourth paragraph states, “When applicable, airports should be strongly encouraged to maintain Federal and State depredation permits.”
  - i. “Strongly encouraged” by whom? The FAA? A consulting wildlife biologist who has conducted the WHA?
  - ii. We suggest changing the verbiage to a requirement to maintain Federal and State depredation permits, not a recommendation. Obtaining a Federal depredation permit clearly demonstrates that the airport operator takes its responsibility to public safety seriously, and also provides clear authorization to remove wildlife pursuant to the California Fish and Game Code.

4. Section 2.b. – Basic Wildlife Survey Techniques for WHAs

Subsection b states that the FAA has established an 8km (5 mile) radius around the airport as the major area of concern. We suggest that even though the rationale for the 5-mile separation is articulated in AC 150/5200-33C, it should not be assumed by the FAA that the two ACs will necessarily always be consulted in tandem. The rationale for the 5-mile radius should also be explained in the new AC, either in this section or in an appendix. It is a parameter worth repeating whenever possible.

5. Section 2.7. – Basic Habitat Surveys for WHAs

- a. The third paragraph states that the FAA recommends the separations in AC 150/5200-33B for land use-practices that attract hazardous wildlife. Again, we recommend that the rationale for these separation distances be further described in this AC, rather than merely referring to another AC. This AC should stand on its own without necessitating reference to another AC.
  - i. The AC should also include the “farthest from the edge of the AOA” definition that appears on page 73513 of the Federal Register notice published by the FAA on December 10, 2012.

6. Section 2.7.c. – Food

The second and third paragraphs in this subsection provide a useful summary of potential food sources. Some CAC member airports find it necessary to periodically send letters to airport tenants about the need for their employees to refrain from leaving food out for birds and feral cats and dogs. Including quotes from this section in future letters will give even greater authority and legitimacy to the efforts of airport operators.

7. Section 2.7.e. – Water

This paragraph likewise reinforces key principles that the County Airport System conveys in comment letters on proposed projects near airports, and will be useful in this regard in future efforts by CAC member airports.

8. Section 3.2 b.(2) – Land Use Changes

- a. We endorse the recommendation to eliminate standing water and agricultural activities on the airport, but suggest this verbiage warrants additional explanation instead of merely referring to AC 150/5200-33B. Many airports unfortunately find it financially compelling to lease buffer property and even portions of the AOA for tenant agriculture, especially in an era of declining revenue, static PFCs and airline consolidation. We suggest that either this AC or 150/5200-33C should include a detailed discussion of how virtually all aspects of agriculture (disking, plowing, harvesting, and irrigation) provide the three imperatives needed by wildlife: food, water and shelter. The AC should encourage airports to consider letting buffer land enter permanent “idle” status and discuss the advantages this approach can provide because it entails none of the land disturbance activities that provide beneficial conditions for wildlife.

9. Section 3.3 – Federal and State-Listed Threatened and Endangered Species, and Species of Special Concern

- a. Requests by State Wildlife Agencies: The introductory paragraph notes that this section describes procedures for responding to requests by state wildlife agencies to facilitate and provide habitat for state-listed species, and excellent details are provided in Section 3.3.b (page 33). As such, the draft AC essentially incorporates a previously issued Cert Alert, which we support.
- b. Section 7 Consultation: Unfortunately, the second introductory paragraph introduces the concept that FAA approval of a Plan is a “Federal action” subject to interagency consultation with the United States Fish and Wildlife Service (Service) pursuant to section 7 of the Federal Endangered Species Act (ESA). We strongly disagree with the FAA’s interpretation that approval of a WHMP is subject to ESA consultation because a “plan” is neither an “action” nor a “project.” FAA’s assertion in this regard, if included in AC, will have a chilling effect on the willingness and ability of airports to develop and implement meaningful WHMPs.

We view this proposed verbiage as perhaps reflecting a well-meaning intent on the part of the FAA, but it displays either disregard or unfamiliarity with the extreme difficulties airport operators have experienced in consulting with the Service on genuine physical projects that will permanently alter the use of land. One can only imagine the complexities airports will confront in defining and explaining the potential species and habitat impacts of a “plan” to the Service, much less the ability of the Service to understand and analyze the components of a WHMP.

10. Section 3.3.a. – Procedures for Federal Threatened or Endangered Species on Airports.

- a. Our overarching concern is that the procedures described in this section will greatly impede the ability of an airport to protect the traveling public. Having consulted with the Service on a variety of airport projects, the airports represented on the EWG believe the FAA's proposal reflects little realistic concept of the additional time, delay, and cost that will be imposed upon airports by the recommended procedures. We recognize that the FAA obviously does not want airports to blatantly damage or destroy habitat, but we do not believe such a concern warrants an implied invitation to the Service to begin regulating the day-to-day airport operations embodied in a WHMP. There are other, less intrusive ways to achieve the same intent.
  - i. For example, prior to conducting any maintenance activity on airport land, the Sacramento County Airport System's Maintenance Division submits a Biological Assistance Request (BAR) to the airport Wildlife Team (comprised of three wildlife biologists employed by the County Airport System), which analyzes the request for potential impacts on habitat and wildlife populations. When necessary, conditions are placed on the contemplated maintenance work, and if warranted a biologist monitors the work.
- b. The second paragraph in this subsection (bottom of page 31 to top of page 32) specifies that the FAA NEPA practitioner should interact with the Service if a conservation plan has been developed pursuant to Section 10 of the ESA. As noted in our comment letter on draft AC 150/5200-33C, the Sacramento County Airport System repeatedly, but unsuccessfully, tried to obtain involvement and intervention by the San Francisco ADO when the City of Sacramento and the County of Sutter were collaborating with the Service in the 1990s to create a habitat conservation plan (HCP) around the airport. Absent FAA intervention with the Service, the airport is now surrounded on three sides by over 4,000 acres of habitat preserves. Based on this experience, we seriously question whether the FAA is any better prepared now to assist airport operators on Section 10 or Section 7 matters. With only two wildlife biologists covering the entire nation, the FAA is simply ill-equipped to lend timely and meaningful assistance to airport operators.
- c. The third paragraph in this subsection states that the FAA may direct the airport operator to contact the Service to obtain information about the presence of Federally-listed habitat and designated or proposed critical habitat on or near the airport. This clause is a normal procedure that we support because it will encourage an airport to be cognizant of such species and habitat when developing a WHMP and include appropriate avoidance mechanisms, as stated in the first paragraph of subsection 3.3.a.(2). We are supportive of the FAA recommending informal consultation with the Service, as well as the FAA having the Service review a WHA/WHMP. Our opposition is to any required formal consultation which entails approval by the Service. We are concerned that this section could open the door to

- d. demands by the Service for changes in a WHMP that could severely limit an airport operator's ability to provide a safe aviation environment, and/or mandating compensatory mitigation requirements for the airport operator's implementation of its WHMP.
- d. Subsection 3.3.a.(2)(a) requires the airport operator to prepare a Biological Assessment (BA) when developing a WHMP. Because the first step in developing a WHMP is conducting a WHA, this requirement seems redundant. A BA and WHA are essentially the same thing. They both assess the wildlife on and around an airport and identify any special status species. If special status species are present, a BA may require mitigation within the separation distances identified in AC 150/5200-33C, putting it in direct conflict with management practices in the WHMP. Another unintended consequence of this suggestion is that an airport could incur such a stringent and potentially unobtainable mitigation requirement as to render implementation of the WHMP infeasible.

If the FAA does require preparation of a BA for approval of a WHMP, we suggest that the FAA should likewise bear the responsibility and cost for doing so. Further, if a BA results in a finding that compensatory mitigation is required as a condition for WHMP implementation, we suggest that the FAA be responsible for paying the cost of such mitigation. Otherwise, the FAA would be imposing a severe and costly requirement upon airports, many of which simply lack the requisite expertise or funds.

11. Plan Not Complete Until Consultation Is Completed: Section 3.3.a.(2)(c) states that Section 7 consultation must be completed before the WHMP receives final FAA approval and returned to the airport operator for inclusion in its Airport Certification Manual. Any airport operator that has experienced the Section 7 process knows that in most cases it takes at least 12 months to receive approval from the Service. Add this to the approximately 27 months it takes to complete the WHA and WHMP reports and the entire process could consume up to 39 months. Most important, during the time the WHMP is undergoing Service review public safety would be compromised because as currently written the FAA has essentially proclaimed that the Plan cannot be implemented until the Service renders its decision.
- a. As indicated in our companion letter on draft 150/5200-33C, the Service and State wildlife agencies can passively prevent or delay implementation of airport wildlife management activities by simply failing to respond to a request for formal or informal consultation. In addition, many Service field offices are simply too understaffed to respond to requests for review of such documents (the Sacramento Valley field office is a good example).

12. Section 3.4 – National Environmental Policy Act (NEPA)

- a. This section describes proposed procedures for conducting an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if the FAA determines that a WHMP involves extraordinary circumstances that preclude a Categorical Exclusion (CatEx). To reiterate, a WHMP simply describes processes and procedures an airport will carry out to manage wildlife, for which official consultation with the resource agencies should not be suggested or expected. If a WHMP is considered a 'project' under NEPA, it would be difficult, if not impossible, to conduct the analysis necessary for a valid EA/EIS.
- b. As an example of this scenario, in 2007 the FAA San Francisco Airports District Office (ADO) informed the Sacramento County Airport System that its draft WHMP required preparation of an EA. As stated above, the consultant conducting the EA had extreme difficulty in conducting the analysis, particularly in identifying and evaluating alternatives. How can one realistically analyze alternatives for a WHMP? The airport operator must either implement the Plan or they do not—which would be unacceptable from the standpoint of public safety. In the end, the County Airport System expended over \$41,000 and the better part of a year of staff time before being informed by the FAA that the WHMP did not require NEPA analysis after all.

13. Section 3-2: Coordination with USDA Wildlife Services

This section suggests coordinating with USDA Wildlife Services to carry out a WHSV, WHA or WHMP. Utilizing another entity to prepare a WHA or WHMP requires payment pursuant to a contract. Most states and local jurisdictions require consulting agreements (contracts) to be awarded on the basis of a competitive selection process (using a Request for Proposals or Request for Qualifications). Several years ago when the FAA directed that a new WHA be prepared for Sacramento International, an RFQ was issued. The California office of USDA stated that the regulations under which it operates precluded it from responding to an RFQ, which effectively eliminated USDA from consideration despite its expertise.

This concludes the comments of the EWG on draft AC 150/5200-XX. We greatly appreciate the opportunity to submit our comments the FAA. Please feel free to contact us if you have questions or desire additional information.

Sincerely,

Environmental Working Group  
California Airports Council