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March 17, 2022

VIA Email hharrison@comcast.net

Huntley Harrison, Chair
Chatham Airport Commission
221 Crowell Road
Chatham, MA 02663

Re: Proposed Petition Articles

Dear Mr. Harrison:

You asked for our opinion regarding the legality of two proposed petition articles, one prohibiting use of the Chatham Municipal Airport (the “Airport”) by any aircraft other than aircraft within Airplane Design Group I (“ADG-I”), and another moving the thresholds at each end of the Airport’s runway by 800 feet, thereby shortening the runway’s 3001 foot useable length to 1401 feet. Both these petition articles are inconsistent with federal law.

I. The ADG-I Proposal

The proposal to limit operations at the Airport to ADG-I aircraft (*i.e.*, aircraft with a wingspan less than 49 feet), provides in principal part as follows:

No real property owned by the Town of Chatham at 240 George Ryder Road, at the site known as the Chatham Municipal Airport, may be used as a landing site for any airplane which is larger than a Federal Aviation Administration Airplane Design Group (ADG) I airplane. No airplane larger than a Federal Aviation Airplane Design Group I airplane may land on or at the real property at Chatham Municipal Airport.

The ADG-I proposal further provides for financial penalties and injunctive relief to block non-conforming aircraft from using the Airport. The purported rationale for the access restriction is to “preserve and promote safety.” We understand that last year there were hundreds of operations at the Airport of aircraft larger than those in design category ADG-I.

The Airport is the recipient of federal Airport Improvement Program (“AIP”) grants, and is therefore contractually bound to the Grant Assurances imposed by the Federal Aviation

Administration (“FAA”). 49 U.S.C. § 47107(a). A proposed access restriction such as that at issue here is governed by Grant Assurance 22, “Economic Discrimination.” That assurance provides that the airport sponsor “will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities.” Grant Assurance 22(a); 49 U.S.C. § 47107(a)(1). There is a limited exception, providing that “the sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.” Grant Assurance 22(i). This exception is narrowly construed by the FAA.

First, the FAA’s Airport Compliance Manual (“ACM”), FAA Order 5190.6B, § 14, strictly limits a sponsor’s ability to enact an access restriction, and provides in particular that “a ban on certain categories of aircraft, based on safety, where the banned categories of operator were defined solely by aircraft design group” is “not justified.” ACM § 14.4(d), at 14-3. On that basis alone, the ADG-I proposal violates Grant Assurance 22.

Beyond that, the ACM also makes clear that any safety rationale for a proposed access restriction, like the rationale offered here, is subject to the review and approval of the FAA’s Associate Administrator for Airports, who, working in coordination with FAA Flight Standards officials, “will carefully analyze supporting data and documentation and make the final call on whether a particular activity can be conducted safely.” ACM § 14.3, at 14-2. The FAA, and not the Town of Chatham or the Chatham Airport Commission, “is the final arbiter regarding aviation safety and will make the determination regarding the reasonableness of the sponsor’s proposed measures that restrict, limit or deny access to the airport.” *Id.*; see *In the Matter of the City of Santa Monica*, FAA Docket 16-02-08, 2009 WL 3176873, at *13-15 (Final Decision, July 8, 2009) (ban on aircraft categories C and D preempted by federal law and violates Grant Assurance 22). Unless and until FAA has analyzed and endorsed the purported safety rationale behind the ADG-I Proposal, it is beyond the power of the Town to implement.

II. The Runway Proposal

The second proposal seeks to move (or “displace”) the thresholds at each end of Runway 6/24 by 800 feet, thereby decreasing the usable length of the runway from 3001 feet to 1401 feet. This would, of course, impose a significant increase in safety risks for aircraft departing and landing at the Airport. Like the ADG-I proposal, it would also constitute a violation of the Airport’s Grant Assurances.

Grant Assurance 29 requires that every federally obligated airport maintain an Airport Layout Plan (“ALP”) showing “the location and nature of all existing and proposed airport facilities and structures,” including “runways.” Grant Assurance 29(a)(2). In addition, “[t]he sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.” Grant

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Assurance 29(a)(4). Any unauthorized change to airport facilities, such as relocation of a runway threshold, could subject the sponsor to significant liability. Grant Assurance 29(b). *See* ACM § 7.18, at 7-16 - 7-17; 49 U.S.C. § 47107(a)(16).

The Airport's ALP is attached hereto. It depicts Runway 6/24, with a length of 3001 feet from end to end. This ALP was approved and signed by the FAA on July 9, 2020. The existing thresholds are clearly depicted at each runway end. Any displacement of the runway's thresholds, in the absence of an FAA-approved amendment to the ALP, would violate Grant Assurance 29.

Please let me know if you have questions or would like to discuss.

Sincerely,

/s/ David S. Mackey

David S. Mackey

Attachment

Shanna Nealy

Subject: FW: Airport Petitions Guidance

From: Patrick Costello <pcostello@lccplaw.com>
Sent: Wednesday, February 23, 2022 12:21 PM
To: Alec Pavlakis <apavlakis@chatham-ma.gov>
Cc: Jill Goldsmith <jgoldsmith@chatham-ma.gov>; Terry Whalen <twhalen@chatham-ma.gov>; Shanna Nealy <snealy@chatham-ma.gov>
Subject: RE: Airport Petitions Guidance

Alec:

Upon quick review of the proposed petition Articles I don't believe that the Town has the legal authority to regulate the type of aircraft using CQX, nor can it deviate from FAA regulation regarding runway dimensions/ configurations by local bylaw. Each of these subject matters has been preempted by federal law. For a more definitive assessment of the legality of these proposed Articles it would be beneficial to obtain an opinion from the Commission's special aviation counsel.

As Terry has noted, these proposed restrictions would also likely violate FAA/MassDOT grant assurances.

For the above reasons, I believe that should the petitioned articles be submitted for inclusion in the Warrant, as proposed, they could be deemed by the Moderator to be out of order on legality grounds.

Pat

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From: Alec Pavlakis <apavlakis@chatham-ma.gov>
Sent: Wednesday, February 23, 2022 11:23 AM
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Cc: Jill Goldsmith <jgoldsmith@chatham-ma.gov>; Terry Whalen <twhalen@chatham-ma.gov>; Shanna Nealy <snealy@chatham-ma.gov>
Subject: Airport Petitions Guidance