



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

Airport Compliance and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

July 12, 2012

Mr. Charles R. Everett, Jr.
Executive Director
Lehigh Northampton Airport Authority
3311 Airport Road
Allentown, PA 18109-3040

Dear Mr. ^{Charles} Everett:

This is in response to your March 21 letter regarding the offer by Industrial Development International, Inc. to purchase approximately 100 acres of the Queen City Municipal Airport (XLL) from the Lehigh Northampton Airport Authority (LNAA). You requested that the Federal Aviation Administration (FAA) provide technical assistance concerning applicable regulatory issues and constraints related to the sale or transfer of all or a portion of the airport.

The sale or transfer of an entire airport requires certain thresholds be met, which vary to differing degrees from those required for the sale of a portion of an airport. I will address the requirements for each of the two options separately to ensure clarity in guidance. However, there are certain static requirements that are applicable to both options. I will address those first.

Static Requirements for Full or Partial Sale

Whether the airport is sold and transferred to another location or partially sold, the LNAA must demonstrate to the FAA that the proposed transfer/sale or partial sale results in a benefit to civil aviation. Benefits may include future growth in operations; increased capacity of the airport; advancement of the interests of the aeronautical users and service providers; and the local, regional, and national interests of the airport. This is explained in detail in chapter 22 of FAA Order 5190.6B, *Airport Compliance Handbook*.

XLL is located on Federal Surplus Property and, since 1989, has received Airport Improvement Program (AIP) funds totaling \$12.6 million. In order to sell or transfer all or a portion of XLL, the airport owner must:

- Obtain a release from its Federal Surplus Property requirements. Title 14 of the Code of Federal Regulations (CFR) part 155, prescribes the conditions that must be met by

the airport owner before the FAA may grant a release from these obligations. Summarily, the airport owner must demonstrate the property to be released no longer serves the purpose for which it was intended or the release will not prevent the airport owner from accomplishing the purpose for which the property was made available for airport purposes; and

- Comply with all Federal obligations set forth under AIP agreements executed between the airport owner, as well as its predecessor, and the FAA. These obligations require the airport owner to use all airport revenue, including proceeds from the sale of all or a portion of airport property (at highest and best use of the land) for specific purposes. The revenue must be reinvested in a replacement airport for XLL, reinvested in AIP eligible projects, or be returned to the Aviation Trust Fund. Using any portion of the proceeds for other than those prescribed under 49 United States Code (U.S.C.), sections 47107(b) and 47133 may be deemed unlawful revenue diversion and potentially subject to fines up to three times the amount of revenue diverted in accordance with 49 U.S.C. § 46301(a)(3).

Normally, the Uniform Relocation Act does not apply on the termination of leases and tenant occupancy due to an airport closure. However, the deciding factor or application may be the specific terms of the existing lease agreements.

Finally, to dispose of all or a portion of the existing XLL, including transferring the airport to another location, all related actions must be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA). The NEPA process is defined clearly in statute. The FAA cannot amend, modify, or waive any statutory requirements. The NEPA process, depending on the complexity of the project and the significance of the environmental impacts of the proposed action, may take several years to complete. If the replacement airport requires an Environmental Impact Statement, then the final determination could take three to five years or longer to accomplish. FAA Order 5050.4B, chapter 2, provides guidance for the FAA to implement NEPA.

Sale or Transfer of Entire Existing Queen City Airport

If the LNAA wishes to sell the entire airport and transfer its obligations, then an approved replacement airport of equal or greater value to the aviation system, providing at least the same level of services, must be commissioned for full use before the FAA will grant the release to close the existing airport. Due to significant planning, environmental, forecasting, construction, and other requirements, the FAA anticipates a new replacement facility would not be operational for 10 years or longer from the date of the closure request.

In accordance with the November 2000 Settlement Agreement stipulating the transfer of ownership of XLL to the LNAA, any proposal to build a new airport must be at a site other than the existing Lehigh Valley International Airport (ABE). Furthermore, the replacement facility must not be located within ABE's air traffic area. LNAA must find an appropriate replacement site, which may add additional time to the transfer and replacement process.

To initiate the process to transfer and replace XLL, an Airport Master Plan, including an Airport Site Selection Study, must be undertaken by LNAA for the new facility. Elements in this process would include an inventory of the existing XLL facilities and users; forecast of aviation activity; and a determination of ultimate facility requirements. Once these steps have been completed, then a site selection study can be initiated for the new facility to meet the forecasted users' needs. Again, the new airport must be of equal or greater value to the existing facility.

Partial Sale of the Existing Queen City Airport

In your March 21 letter, you inquired specifically about the proposed sale of approximately 100 acres depicted on a sketch attached to the letter. The letter also included a general proposal from a developer regarding the purchase. After performing a review of the general proposal and attached sketch, the FAA has determined that the area depicted to be sold includes the majority of the airport's infrastructure development, including XLL's administration building, apron/tie down area, corporate hangars, and t-hangars. Both AIP and state funding have been invested in the development of these needed airport facilities, including \$5.6M since 2005. Any proposal for the FAA to release XLL from the terms and conditions of the agreements that provided this funding must demonstrate how such an action would be a net benefit to civil aviation.

In order for the FAA to thoroughly evaluate a proposal to sell any portion of the airport, LNAA will need to submit an Airport Master Planning Update for XLL that includes but is not limited to the following elements:

- (1) Precise boundaries of the property to be included in the proposed sale;
- (2) Detailed inventory of the airport facilities located on the identified property;
- (3) A wind analysis for airport operations to assure adequate wind coverage;
- (4) Updated aviation activity forecast using the current through 20-year timeframe;
- (5) A description of the use of the existing crosswind Runway 15-33 (current and forecast);
- (6) An environmental overview that evaluates the impacts of any revisions to XLL's current Airport Layout Plan (ALP) ;
- (7) Airport access analysis considering any changes needed as a result of the release of 100 acres;
- (8) Proposed easement language for protection of FAA approach and Part 77 surfaces over the 100 acres of land to be released; and
- (9) A relocation plan for all of the existing facilities on the identified property and an analysis to accommodate future needs/growth shown on the revised ALP. (As you are aware, the 2000 Settlement Agreement prohibits LNAA from relocating XLL operations to ABE.)

A newspaper article has come to the FAA's attention suggesting that the City of Allentown is interested in selling a parcel of land near XLL that includes the City's fire academy. This parcel is referenced in the November 2000 Settlement Agreement executed between LNAA, the City and the United States Department of Justice. The Settlement Agreement specifically

recognizes the City's retention and fee ownership in perpetuity of the land for the fire station and training facility. A sale of a portion of this parcel would not appear to be consistent with the express terms of the Settlement Agreement. If further clarity on the terms of the settlement is needed, please let us know.

Next Steps –

On March 2, LNAA met with FAA officials at the Harrisburg Airports District Office (ADO) to discuss the airport capital improvement plan for XLL. The plan submitted by LNAA for this current funding year includes \$551,306 in AIP non-primary entitlement funds to construct phase II of the t-hangar taxi lanes. Your March 21 letter indicates LNAA may wish to sell the property on which the proposed project would be constructed. Due to the conflicting nature of LNAA's recent inquiries and discussions with the FAA, the agency cannot act on any grant applications at this time in accordance with 49 U.S.C. § 47106(a)(1), which states:

(a) Project Grant Application Approval. — The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

The FAA needs a clear understanding of LNAA's long term intentions before the agency can commit Federal funds to a project when LNAA may not be able to fulfill the terms and conditions set forth in statute (see, 49 U.S.C. § 47107). When expending such significant sums of Federal funds on airport development, the FAA must ensure airport sponsors have the ability to abide by the obligations set forth in the grant agreements sponsors sign when they accept grant funds.

In order to come to an agreement on the future of XLL, I have asked the manager of the FAA's Harrisburg ADO, Ms. Lori Pagnanelli, to serve as your point of contact to meet with LNAA to resolve outstanding issues. At such time when LNAA has made a decision regarding XLL, please contact Ms. Pagnanelli to initiate FAA action as required.

I trust this information will provide LNAA with a solid foundation on which to base its decision and pursue the next steps. Again, the FAA stands ready to initiate action as requested by LNAA in accordance with the statute, applicable laws, and policies cited herein.

Sincerely,



Randall S. Fiertz
Director of Airport Compliance
and Management Analysis