



## BOARD OF COUNTY COMMISSIONERS

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**DATE:** January 27, 2010

**TO:** Board of County Commissioners  
T. Michael Brown, County Manager

**FROM:** Steve Mokrohisky, Assistant County Manager

**SUBJECT: Proposed Airport Use Ordinance**

### **ISSUE**

This is a request to approve Airport Use Ordinance language to be placed on the 2010 ballot for consideration by Douglas County voters and to direct County staff to draft the ballot question for the November 2010 election.

### **BACKGROUND**

On April 9, 2009, the Minden-Tahoe Airport received a letter from the Federal Aviation Administration (FAA) stating that the Airport must accurately reflect the weight bearing capacity of its runways and that failure to correct inaccurate weight limits will result in non-compliance with federal regulations. The FAA states that “a finding of non-compliance would result in the loss of Airport Improvement Program grant funding.” The FAA’s letter is consistent with numerous communications that have been made to Douglas County over the past several years on this issue.

Since May 2009, Douglas County residents have been engaged in a thorough discussion about the future of the Minden-Tahoe Airport. Over the past nine months, the goal has remained the same: for Douglas County voters to adopt an Airport Use Ordinance that reflects the community’s desires for appropriate Airport use, consistent with the Airport Master Plan and the rural character of Douglas County, as well as ensuring federal compliance and critical funding to maintain the Airport. To date, the Board of County Commissioners has approved placing an item on the November 2010 ballot related to Airport use and ballot language has been drafted with public input received from approximately 40 meetings. The public input that has been received is incorporated in the final draft Airport Use Ordinance.

## **PUBLIC PROCESS**

The following is an overview of approximately 40 meetings that have been conducted to date:

- May 7, 2009 – Board public hearing to place an item on the 2010 ballot, direct staff to develop a process for public engagement and draft language for public consideration.
- May – July 2009 – conducted approximately 12 meetings with various stakeholders, including neighborhood associations, community organizations, citizen groups, local businesses, sport aviation interests and other individuals to gain initial input on the appropriate process. Examples of stakeholder groups include Saratoga Springs, Winhaven, Sunridge, Northfork and Meadowgrass neighborhood associations, Minden – Tahoe Airport Business Owners Association and Carson Valley Vanguard Coalition.
- July 2, 2009 – Board public hearing to discuss initial public input and approve process for public engagement.
- July – August 2009 – two public meetings held (Valley and Lake) to present background information and collect public input.
- August 6, 2009 – Board public hearing to discuss draft options for ballot language.
- August – November 2009 – eight public workshops held (Topaz, Genoa, CVIC, Stations 7 and 12, Lake Tahoe, Stephanie Way and Airport) to present draft options and collect public input. Several additional meetings held with various community groups and neighborhood associations.
- November 5, 2009 – Board public hearing to report on public input received from workshops and community meetings.
- December 3, 2009 – Board public hearing to present options for maintaining the Airport without federal funds.
- December 16, 2009 – additional public meeting to discuss modified draft language.
- January 2010 – several additional meetings with interested community groups to discuss additional changes based on public input from previous public meetings.
- February 4, 2010 – Board public hearing to approve Airport Use Ordinance language to be placed on the 2010 ballot for consideration by Douglas County voters.

Over the past nine months, many residents recognize the value of the Minden-Tahoe Airport as a general aviation airport that provides jobs, tax revenue, emergency services and sport aviation activities, among other benefits to the larger community. It is also clear that many residents desire some form of limitations at the Airport to maintain its operations consistent with the rural character of Douglas County. During the public workshops and other community meetings, significant discussion focused on draft option C. Several additional suggestions have been made to modify draft option C. County staff worked with the District Attorney's Office, as well as specialized legal counsel with experience in FAA compliance issues, to incorporate additional language suggested by the public. The result of these efforts will be presented to the Board on February 4, 2010. The timeline for the November 2, 2010 ballot question is attached.

### **SUMMARY OF ORDINANCE LANGUAGE**

The following is intended to provide an overview and understanding of the legislative intent in developing the language contained in the proposed Airport Use Ordinance:

- Section 1: Definitions – this section is intended to provide clarity and consistency for certain terms referred to in the document.
- Section 2: Limitations on Operational Use – this section is intended to define the appropriate operations at the Airport based on pavement capacity and provides for enforceable penalties for violations.
  - Prior Permission – restricts Overweight Aircraft from operating at the Airport, unless the Airport Manager gives permission based on a determination that the operation would not cause excessive cumulative damage to the pavement. This language puts the burden on the operator of an Overweight Aircraft to contact the Airport Manager to receive permission prior to landing. The intent here is to protect Airport pavement from damage created by Overweight Aircraft, as provided for in Grant Assurance 11.
  - Weight Bearing Capacity – requires the published weight bearing capacity of Airport pavement to be based on pavement testing that follows FAA methodologies, requires the Airport Manager to disclose the weight bearing capacity of Airport pavement, and requires aircraft owners and operators to know the certified maximum gross takeoff weight of their aircraft and the weight bearing capacity of Airport pavement.

- Landing Fees – states that the Board will adopt reasonable landing fees to be assessed on Overweight Aircraft and that proceeds from landing fees will be set aside for preventative maintenance of pavement at the Airport.
- Civil Penalties – assesses a three tiered civil penalty on aircraft owners and operators for landing an Overweight Aircraft without permission from the Airport Manager, including \$1,000 for the first violation, \$2,000 for the second violation and \$2,500 for the third and any subsequent violation. The funds collected will be used for repair or preventative maintenance of pavement at the Airport.
- Denial of Use of Airport – this language represents the three strikes and you're out philosophy by denying individuals that are persistent violators the right to land, lease, rent or use space at the Airport for five years if they violate the ordinance three or more times within five years.
- Exclusion of Aircraft for Violations – this language represents the three strikes and you're out philosophy by denying Overweight Aircraft the right to land, tie-down, or be based at the Airport for five years if the Overweight Aircraft violates the ordinance three or more times within five years.
- Other Enforcement – allows for the provisions in the ordinance to be judicially enforced. This language is critical to ensure that Douglas County has the ability to enforce penalties as appropriate in a court of competent jurisdiction.
- Section 3: Limitations on Airport Expansion – this section resulted from extensive public input that highlighted the importance of infrastructure controls on maintaining an Airport consistent with the Airport Master Plan and the rural character of Douglas County.
  - Runways, Taxiways and Ramps – does not allow extension or widening of existing paved runways, creation of new paved runways, increasing the current weight bearing capacity of the runways, or strengthening taxiways and ramps, except as necessary to conform to the weight bearing capacity of the runways. This language restricts pavement growth so that operations at the Airport remain consistent with current capacity.

- Funding – no FAA grant funds or General Funds for anything other than maintenance, noise control, FAA standards for general aviation airports, preservation of existing pavement and infrastructure for small aircraft and sport aviation. This language also precludes utilizing funds for a permanent control tower, precision landing system or passenger security systems.
  - Air Carrier Service – shall not seek or obtain airport certification for Air Carrier service.
- Section 4: Limitations on Airport Noise – some residents expressed concern about the impact of noise from aircraft operations. This language is intended to provide reasonable efforts to mitigate noise concerns.
  - Voluntary Curfew – from 10pm to 6am, except for public health, safety or welfare situations. The Airport Manager will work with operators to comply.
  - Noise Reduction – pursue a Part 150 Noise Control and Compatibility Study to analyze and develop recommendations to reduce noise impacts.
- Section 5: Limitations on Airport Property Use – this language is intended to specify the appropriate requirements and uses of Airport property.
  - Leases and Developments – no lease or development approved without an environmental review.
  - Aviation Related Uses – leases and subleases with aviation access are required to be for aviation related uses and be compliant with Airport plans, policies and regulations.
- Section 6: Airport Protection Zone – provides for an enhanced buffer zone around the Airport to maximize the protection and separation of residential uses, and incompatible commercial and manufacturing uses from aviation uses and operations. The intent is to reduce negative environmental impacts and enhance safety.
- Section 7: Severability of Provisions – if any provision of the ordinance is determined to be invalid, illegal, or unenforceable, the other remaining provisions shall not be affected.
- Changing or Modifying Ordinance – no changes to the ordinance will be approved by the Board without prior approval from the voters of Douglas County.

As mentioned previously, in addition to thorough public input and review, the District Attorney's Office, specialized legal counsel retained by the County, Airport management and County management have extensively reviewed the proposed Ordinance to ensure that it meets the stated goal to reflect the community's desires for appropriate Airport use, consistent with the Airport Master Plan and the rural character of Douglas County, as well as ensuring federal compliance. County staff believes that efforts to engage the public in constructive dialogue about the issue over the past nine months have resulted in a proposed Airport Use Ordinance that accomplishes the stated goal. The District Attorney's Office has played a key role in determining the enforceability of the proposed Ordinance. The District Attorney's Office has stated that it will enforce and defend the proposed Ordinance. Specialized legal counsel retained by the County has indicated that the proposed ordinance complies with current federal law and grant assurances, and on its face would not likely be challenged by the FAA, but acknowledges that the proposed Ordinance must be implemented by the County in a reasonable and nondiscriminatory manner.

#### **ANALYSIS AND RECOMMENDATION**

Since May 2009, Douglas County residents have been engaged in a thorough discussion about the future of the Minden-Tahoe Airport. Over the past nine months, the goal has remained the same: for Douglas County voters to adopt an Airport Use Ordinance that reflects the community's desires for appropriate Airport use, consistent with the Airport Master Plan and the rural character of Douglas County, as well as ensuring federal compliance and critical funding to maintain the Airport. After over 40 meetings and extensive input from Douglas County residents, a proposed Airport Use Ordinance has been drafted for voter consideration. Every effort has been made to be responsive to public concerns and incorporate public input into the proposed Ordinance. The District Attorney's Office, specialized legal counsel, Airport management and County management agree that the proposed Ordinance is compliant, enforceable and defensible if implemented in a reasonable and nondiscriminatory manner.

Therefore, Douglas County staff recommends that the Board of County Commissioners approve the proposed Airport Use Ordinance to be placed on the 2010 ballot for consideration by Douglas County voters and direct County staff to draft the ballot question for the November 2010 election.