

NEVADA COUNTY AIRPORT

REASON FOR INVESTIGATION

This report is a follow-up on responses to last year's Grand Jury report on Nevada County Airport Management, which can be found on the following website:
<http://courts.co.nevada.ca.us/civilgrandjury.htm>

PROCEDURE FOLLOWED

The Grand Jury interviewed the current airport manager, a former acting airport manager, an engineer from the Department of Transportation and Sanitation (DOTS), and a senior administrative analyst. We also reviewed plans, board minutes, minute orders, and other related documents.

FINDINGS

1. A permanent, full-time airport manager was hired in February 2001.
2. On June 26, 2001, the Board of Supervisors passed and adopted the Nevada County Airport Policy 03-01 No. 1, in compliance with the Federal Aviation Administration (FAA) Part 77 Regulations, detailing standards for property owners whose trees intrude on airspace (Appendix A).
3. After County Government took approximately six years and spent in excess of \$453,000 out of the general fund to remedy unsafe conditions, The Nevada County Air Park received a permanent operating permit from the FAA on November 16, 2001.
4. Existing Public Utilities Code, paragraph 21659 (a), mandates the County to require property owners to comply with FAA Part 77 Regulations.
5. Property owners have the responsibility to trim trees intruding on the airport's airspace at their own expense.
6. There is no evidence that the County has legally notified the property owners of the requirements stated in Finding 5.
7. The airport is considered an Enterprise Fund. Enterprise Funds are financed and operated in a manner similar to private enterprises where revenues should cover the cost of operation
8. On January 8, 2002, the Board approved a 13 percent increase in fees for tie-downs and hangar rentals. This went into effect February 1, 2002.

CONCLUSIONS

1. The Grand Jury commends the Board of Supervisors for hiring a permanent, full-time airport manager.
2. The airport manager has developed a comprehensive Nevada County Airport Business and Development Plan, approved by the Airport Commission. This plan is presently under consideration by the Board.
3. At the time of this report, the Grand Jury was unable to find documented legal notification to the current owners of their responsibility to maintain compliance with FAA Part 77 Regulations. This would also affect future property owners.

RECOMMENDATIONS

1. The current Public Utilities Code, FAA, and County regulations should be strictly enforced.
2. Within 120 days from the issuance of this report, County Counsel should investigate legal alternatives to enforce compliance of Public Utilities Code, FAA, and County regulations.
3. To limit the use of County general funds for airport operation, the Airport Commission and the airport manager are encouraged to develop additional sources of revenue.

REQUIRED RESPONSES

Airport Manager due by August 12, 2002

Board of Supervisors due by September 10, 2002

County Counsel due by August 12, 2002

**RESOLUTION No.****01-305**

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

**RESOLUTION ADOPTING NEVADA COUNTY AIRPORT POLICY 03-01 NO. 1.
NEVADA COUNTY AND ADJACENT PROPERTY OWNER COMPLIANCE
WITH FEDERAL AVIATION ADMINISTRATION PART 77 REGULATIONS**

WHEREAS, it is in the best interest of the Citizens of Nevada County that the Nevada County Airport operate 24 hours a day and not be limited in operations by trees that have grown to a height that present a safety issue for the airport and:

WHEREAS, it is important that a Policy be in place that ensures that the Nevada County Airport remains in constant compliance with Federal Aviation Administration Part 77 Regulations which govern the height of obstructions around airports and:

WHEREAS, said Policy must clearly define responsibilities for identifying and abating nuisances created by trees allowed to obtain excessive height in the vicinity of the Nevada County Airport and:

WHEREAS, the Nevada County Airport Commission in its advisory role to the Nevada County Board of Supervisors has approved Airport Policy 03-01- No.1 for the Nevada County Airport and believes that it is in the best interest of the Nevada County Airport and the Citizens of Nevada County to request that the Nevada County Board of Supervisors approve said Policy:

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Board of Supervisors adopts Airport Policy 03-01- No.1 for Nevada County as the document that will set forth standards for Nevada County and adjacent airport property owners to remain in Compliance with Federal Aviation Administration Part 77 Regulations Aviation.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 26th day of June 2001 by the following vote of said Board:

Ayes: Supervisors Peter Van Zant, Sue Horne, Bruce Conkl-Elizabeth Martin, Barbara Green.
 Noes: None
 Absent: None
 Abstain: None

ATTEST:

CATHY R. THOMPSON
 Clerk of the Board of Supervisors

By: *Cathy R. Thompson*

[Signature]
 Chair Elizabeth Martin

DATE	COPIES SENT TO
6-28-01	Airport Manager <i>[initials]</i>
	Gen. Services <i>[initials]</i>
	Admin. <i>[initials]</i>
	County Counsel <i>[initials]</i>

Airport Policy 03-01 N0 1.
Nevada County and Adjacent Property Owner
Compliance with
Federal Aviation Administration Part 77 Regulations

Policy Purpose: To ensure that all trees on properties adjacent to the Nevada County Airport are maintained at a height that conforms to Federal Aviation Administration (FAA) regulations.

Background: In the past trees both on the airport and on private property adjacent to the Airport were allowed to grow to heights that created an issue of non-compliance with Federal Regulations protecting airspace around airports. (Part 77.) Non-compliance with these regulations has resulted in unsafe airspace in the airport vicinity and temporary restrictions on airport activities.

Policy: Airport Staff will arrange for the airport and surrounding environs to be surveyed every 24 to 36 months to determine if trees within Part 77 surfaces have grown to a height that results in penetration of protected areas.

If trees have penetrated the surfaces Airport Staff will immediately work with property owners on whose property these trees exist to eliminate any portion of the tree that is in violation of protected airspace.

Should any tree exist on Nevada County Airport property that penetrates Part 77 surfaces it will be removed immediately.

When contacting adjacent property owners, whose trees have penetrated Part 77 surfaces Airport Staff will:

- Immediately notify property owner by registered mail that trees on their property pose a hazard to aviation that must be resolved.
- Provide copies of County policies and Nevada County Ordinances # 686, 949 and 372, that address the responsibility of the property owners, at their expense, to eliminate that portion of the tree that is not in compliance with FAR Part 77.
- Follow up with property owners to ensure that trees are cut or eliminated, taking any and all actions supported by policies and ordinances to gain compliance.

In the future Staff will work to gain adequate legal notification to property owners in the vicinity of the airport regarding this issue. This notification is designed to occur when property changes hands so that new owners are made aware of their responsibility to maintain trees in compliance with FAA standards will occur.

**NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO
2001-2002 CIVIL GRAND JURY INTERIM REPORT NO. 11
DATED JUNE 18, 2002
RE: NEVADA COUNTY AIRPORT**

Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the responses by the Airport Manager and County Counsel, or testimony from the board chairman and county staff members.

I. GRAND JURY INVESTIGATION:

Nevada County Airport.

A. RESPONSE TO FINDINGS & RECOMMENDATIONS:

Findings:

- 1. A permanent, full time airport manager was hired in February 2001.**

Agree

Gary Peterson was appointed airport manager effective February 5, 2001.

- 2. On June 26, 2001, the Board of Supervisors passed and adopted the Nevada County Airport Policy 03-01 No. 1, in compliance with the Federal Aviation Administration (FAA) Part 77 Regulations, detailing standards for property owners whose trees intrude on airspace (Appendix A).**

Agree

Pursuant to Govt. Code (GC) §§ 50485 et seq. & 50485.3 (Airport Approaches Zoning Law), and in conformity with 14 CFR 77, Subpart C, County has established a zoning ordinance which controls certain approach, transition, horizontal, and conical zones as defined in Nevada County Land Use and Development Code (LUDC), Chapter III, Article 3, Section 3.4 (LUDC § L-III 3.4). In relation to these Zones, County has adopted height restrictions pursuant to LUDC § L-III 3.5, above which no structure or tree shall be maintained or allowed to encroach.

- 3. After County Government took approximately six years and spent in excess of \$453,000 out of the general fund to remedy unsafe conditions, the Nevada County Air Park received a permanent operating permit from the FAA on November 16, 2001.**

Partially disagree

The amount paid for the cutting of the trees and the installation of lights at the airport is closer to \$428,000. The County loaned the Airport \$375,000, and made an appropriation from the General Fund of between \$40,000 and \$53,000 relating to these airport improvements. The Airport Enterprise Fund was loaned \$375,000 from the General Fund and will be paid back by the airport according to a plan approved by the Board on August 13, 2002. (See Resolution No. 02-449). This plan will be revisited in one year and as improvements are made to the airport to ensure the debt carried by the Airport Enterprise Fund is reasonable and that enterprise fund cash flow remains adequate for normal airport operations.

This plan addresses 11 items that will bring closure to thirty years of questions regarding airport financial matters. These items include the disposition of costs and repayment of loans for the installation of obstruction lights and the cutting of trees.

In 1996 following completion of the Airport Improvement Project, Caltrans issued a conditional operating permit restricting night operations. In August 2000, Caltrans cancelled nighttime operations, but allowed the airport to continue daytime operations. In November 2001, a permanent operating permit was issued.

4. Existing Public Utilities Code, paragraph 21659 (a), mandates the County to require property owners to comply with FAA Part 77 Regulations.

Agree

Public Utilities Code, Section 21659(a) [PUC § 21659(a)] begins:

“...No person shall construct or alter any structure or permit any natural growth to grow at a height which exceeds the obstruction standards ...”, citing FAA regulation at 14 CFR 77,m Subpart C. (Underlining added.)

This code section imposes no affirmative duty upon the County. However, this code section does impose an affirmative burden upon each person to comply with its structures. This duty is not limited to property owners, but applies to all persons.

As with sponsoring entity for the airport, the County is responsible for compliance with 14 CFR 77, Subpart C. However, the County can choose to enforce the provisions of PUC § 21659(a) directly against the property owners using nuisance abatement proceedings, or it may elect to perform the maintenance itself as it did in 2000-2001.

5. Property owners have the responsibility to trim trees intruding on the airport's airspace at their own expenses.

Agree

This requirement is included in (PUC § 21659(a), Govt. Code §§ 50485 et seq. & LUDC § L-III 3.5).

6. **There is no evidence that the County has legally notified the property owners of the requirements stated in Finding 5.**

Partially disagree

There are no notice requirements set forth in PUC § 21659(a).

The Nevada County airport zoning ordinance (LUDC § L-III 3.5) sets forth the FAA control surfaces (height restrictions) which effect the nearby properties. While it is true that zoning restrictions are rarely if ever set forth in a standard home owners Title Report, virtually every responsible real estate agent will check the zoning of any property listed by them for sale. Given the recent publicity accompanying tree removal by the County from the surrounding properties at the airport, it is highly unlikely that any real estate agent would be unaware of the implication of airport zoning.

In the circumstance surrounding the recent removal of trees at the airport, the County of Nevada Department of Transportation did notify, and attempted to give actual notice to, every property owner effected by the need to remove those trees which had penetrated the FAA control surfaces.

Additionally, on June 26, 2001, when the Board of Supervisors passed and adopted the Nevada County Airport Policy 03-01, all affected property owners in the vicinity of the Airport were notified of the Board Meeting, and the topic of discussion. Additionally, the results of the Board's decisions were published in local newspapers and in official meeting records.

7. **The airport is considered an Enterprise Fund. Enterprise Funds are financed and operated in a manner similar to private enterprises where revenues should cover the cost of operation.**

Agree

8. **On January 8, 2002, the Board approved a 13 percent increase in fees for tie-downs and hangar rentals. This went into effect February 1, 2002.**

Agree (*See Resolution 02-15)

The 13% increased resulted in the following amounts being paid for the use of the airport property.

Rental	New Amount	Increase
Right of Entry	\$37.00/month	\$4.00 per month
Hangar Ground Rent (month to month)	\$50.00/month	\$6.00 per month
Tie-Downs	\$37.00/month	\$4.00 per month
6-months advance payment	5% discount	
12-months advance payment	10% discount	

Recommendations:

- 1. The current Public Utilities Code, FAA, and County regulations should be strictly enforced.**

The recommendation has been implemented.

The Nevada County Airport Manager has been directed by the Board through the CEO to fully enforce all requirements of the Public Utilities Code, FAA, and County regulations as they relate to operation and management of the airport.

Each violation of the Nevada County Airpark Zoning Ordinance LUDC §§ L-III Article 3 constitutes a misdemeanor and is punishable by a fine of \$500.00 per day. (LUDC § L-III 3.11).

However, actual enforcement procedures are rarely needed. In the circumstance surrounding the recent removal of trees at the airport, several property owners were understandably hesitant to have their trees removed. Ultimately, only a single property owner proved recalcitrant, and that owner eventually reached a mutually satisfactory accommodation with the County.

In the future, it is believed that nuisance proceedings will prove adequate to abate any airport hazard if other voluntary efforts are unsuccessful. (Reference Govt. Code § 50485.2 declaring airport hazards a public nuisance.)

- 2. Within 120 days from the issuance of this report, County Counsel should investigate legal alternatives to enforce compliance of Public Utilities Code, FAA, and County regulations.**

The recommendation has been implemented.

Typical enforcement procedures are already in place and consist primarily of (1) personal notification, and (2) nuisance abatement proceedings, (Govt. Code § 50485.2 declares that airport hazards including obstructions, are a public nuisance). These existing procedures are more than adequate to handle the few, if any, difficulties which arise.

Other legal avenues are available such as injunctive and declaratory relief, but these “remedies” afford little if any additional relief, and are expensive, time consuming, burdensome of the judicial system, and are ultimately adversarial, often leading to unnecessary and acrimonious feelings.

Because the currently available enforcement devices have proven adequate, the County is very hesitant to engage in methods which are more onerous, less effective, unnecessarily expensive and inherently coercive.

3. To limit the use of County general funds for airport operation, the Airport Commission and the airport manager are encouraged to develop additional sources of revenue.

The recommendation has been implemented.

The CEO has directed the Airport Manager to seek out and develop additional ways to generate additional income at the Airport, reducing the need for County General Fund support. Projects currently underway include the long-term leasing of portions of airport properties for the private construction of airport hangars. Other opportunities will be aggressively pursued as they are identified.

NEVADA COUNTY AIRPORT
COUNTY OF NEVADA

(530) 273-3374

FAX: (530) 274-1003

Mail: 950 Maidu Avenue
Nevada City, CA 95959

Location: 12818 Loma Rica Drive
Grass Valley, CA 95945

July 2, 2002
Hon. Carl F. Bryan, II
Nevada County Superior Court
201 Church St.
Nevada City, CA 95959


Judge Bryan:

RE: Response to Grand Jury Report – Nevada County Airport

Attached is the Airport Manager's response to the Nevada County Grand Jury report on the Nevada County Airport. I believe my response to be accurate and appropriately detailed to address the issues raised by the Grand Jury.

If you have questions or comments, or require further information about my response please contact the airport office at 530-273-3374.

Very truly yours,



Gary E. Petersen
Airport Manager

Nevada County Airport Manager
Grand Jury Report
Response

Findings

1. A permanent, full-time airport manager was hired in February 2001.

Response: Agreed.

2. On June 26, 2001, the Board of Supervisors passed and adopted the Nevada County Airport Policy 03-01 No. 1, in compliance with the Federal Aviation Administration (FAA) Part 77 Regulations, detailing standards for property owners whose trees intrude on airspace (Appendix A).

Response: Agreed.

3. After County Government took approximately six years and spent in excess of \$453,000 out of the general fund to remedy unsafe conditions, The Nevada County Air Park received a permanent operating permit from the FAA on November 16, 2001.

Response: Partially Disagree. The amount paid for the cutting of trees and the installation of lights is closer to \$428,000. These funds were loaned to the Airport Enterprise Fund from the General Fund and will be paid back by the Airport at an amount to be determined by the Board of Supervisors.

4. Existing Public Utilities Code, paragraph 21659 (a), mandates the County to require Property owners to comply with FAA Part 77 Regulations.

Response: Agreed.

5. Property owners have the responsibility to trim trees intruding on the airport's airspace at their own expense.

Response: Partially Disagree. The Board of Supervisors may elect to use General Fund Money or Airport Enterprise Fund Money to pay for the cutting of trees on private property. They may also choose to enforce existing laws that require property owners to pay for cutting their own trees.

6. There is no evidence that the County has legally notified the property owners of the Requirements stated in Finding 5.

Response: Partially Disagree. On June 26, 2001, when the Board of Supervisors passed and adopted the Nevada County Airport Policy 03-01 all affected property owners in the vicinity of the Airport were notified of the Board Meeting, and the topic of discussion. Additionally the results of the Boards decisions were published in local newspapers.

7. The airport is considered an Enterprise Fund. Enterprise Funds are financed and operated in a manner similar to private enterprises where revenues should cover the cost of operation.

Response: Agreed.

8. On January 8, 2002, the Board approved a 13 percent increase in fees for tie-downs and hangar rentals. This went into effect February 1, 2002.

Response: Agreed.

CONCLUSIONS

1. The Grand Jury commends the Board of Supervisors for hiring a permanent, full-time airport manager.

Response: Agreed.

2. The airport manager has developed a comprehensive Nevada County Airport Business and Development Plan, approved by the Airport Commission. This plan is presently under consideration by the Board.

Response: Agreed.

3. At the time of this report, the Grand Jury was unable to find documented legal notification to the current owners of their responsibility to maintain compliance with FAA Part 77 Regulations. This would also affect future property owners.

Response: Partially Disagree. On June 26, 2001, when the Board of Supervisors passed and adopted the Nevada County Airport Policy 03-01 all affected property owners in the vicinity of the Airport were notified of the Board Meeting, and the topic of discussion. Additionally the results of the Boards decisions were published in local newspapers. It is unlikely that this would be construed as legal notification, however the meeting notices mailed to local property owners were distributed according to Brown Act Requirements

RECOMMENDATIONS

1. The current Public Utilities Code, FAA, and County regulations should be strictly enforced.

Response: Agreed.

2. Within 120 days from the issuance of this report, County Counsel should investigate legal alternatives to enforce compliance of Public Utilities Code, FAA, and County regulations.

County Counsel Response Required

3. To limit the use of County general funds for airport operation, the Airport Commission and the airport manager are encouraged to develop additional sources of revenue.

Response: Agreed.

OFFICE OF THE COUNTY COUNSEL
COUNTY OF NEVADA

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MICHAEL D. CASTELLI, SPECIAL COUNSEL

June 26, 2002

The Honorable M. Kathleen Butz
Presiding Judge of the Nevada County Courts
Nevada County Court House
Nevada City, Ca 95959

Re: Requested Response of County Counsel to the 2001-2002 Nevada County Civil Grand Jury Interim Report No. 11, dated June 18, 2002 regarding Nevada County Airport and Interim Report No. 14, dated June 18, 2002 regarding Nevada County Utility Franchises

Dear Judge Butz:

Interim Report Nos. 11 and 14 of the 2001-2002 Nevada County Civil Grand Jury purport to require responses from County Counsel as well as from the Board of Supervisors. However, in our opinion we believe that Grand Jury responses regarding the Nevada County Airport and Utility Franchises should properly be requested and come from the Board of Supervisors, not from our office. A copy of an opinion dated June 21, 2002 from myself to Ted Gaebler, CEO, explaining this determination is attached hereto. In view of this determination and the unique relationship of our office in providing legal services to both the Grand Jury and the Board of Supervisors, we will be submitting input on Interim Report Nos. 11 and 14 to the CEO and to the Board for the Board response, but will not be preparing or submitting a separate response solely from our office.

Sincerely,


HAROLD E. DeGRAW
Assistant County Counsel

Attachment

Gjno11.doc

cc: Foreman, Grand Jury
Ted Gaebler, CEO
Charles J. McKee, County Counsel
Gary Jacobsen, Airport Manager
Bruce Bielefeldt, Auditor-Controller