

# Project Application



City Of Sedona

Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

The following application is for:

Conceptual Review

Final Review

Appeal

Time Extension

Development Review

Subdivision

Variance

Conditional Use Permit

Zone Change

Major Community Plan Amendment

Minor Community Plan Amendment

PROJECT CONTACT:	JOHN TOLLIVER	Phone:	554.5902	App. #:	PZ16-00003
Address:	1105 AIRPORT RD	Cell Phone:	554.5902	Date Rec'd:	
E-mail:	JT@SKYRANCHLODGE.COM	Fax:		Rec'd by:	
PROJECT NAME:	SKY RANCH LODGE EXPANSION	Parcel #:	408 27001	Fee Pd:	
Project Address/Location:	1105 AIRPORT RD	Acres:	4.5	Zoning:	

Project Description:	40 UNIT ROOM ADDITION AND CONFERENCE ROOM
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OWNER NAME:	SEDONA AIRPORT AUTHORITY	APPLICANT NAME:	SKY RANCH OPERATIONS, LLC
Address:	AIRPORT WEST TERMINAL DR	Company Name:	SKY RANCH LODGE
Phone:	282-4487	Address:	1105 AIRPORT RD
Cell Phone:		Phone:	282.6400
E-mail:	AMANDA@SEDONA AIRPORT.ORG	Cell Phone:	554.5902
		E-mail:	JT@SKYRANCHLODGE.COM
ARCHITECT/ENGINEER:		AUTHORIZED AGENT/OTHER:	JOHN TOLLIVER
Company Name:		Company Name:	SKY RANCH LODGE
Address:		Address:	1105 AIRPORT RD
E-mail:		E-mail:	JT@SKYRANCHLODGE.COM
Phone:		Phone:	554-5902
Cell Phone:		Cell Phone:	554-5902
ID #/Exp. Date:			
City Business License #:			



April 21, 2016

Cari Meyer, Senior Planner

Community Development Department

Re: PZ-13-00014

Thanks for your help, Cari...

...in advising us as to the required documents for requesting and extension on the proposed project at Sky Ranch Lodge I have attached three items you requested:

1. Letter from Sedona Airport Authority in support of the extension.
2. Letter from Yavapai County in support of the extension.
3. Timeline to explain why the extension is being requested.
4. And equally important a check for the processing fee.

As you read the Timeline, it will be abundantly clear that, to coin a phrase from the Godfather movie, "What we have here is a failure to communicate". There have so many parties involved in delaying any construction in spite of City approval on April 22, 2014. Without notifying Sky Ranch Lodge of any non-compliance issues with the project/lease, the FAA, under a cloud of secrecy, stopped the completion of the required Environmental Assessment. The FAA found that the most recent extension of our lease did not comply with FAA rules, I have attached a 17 page letter from the FAA to the Sedona Airport Authority finally disclosing the issues.

Additionally there is inadequate Fire Flow preventing any construction at the airport until corrected as evidenced by the Sedona Fire Marshall on Jan 7, 2014 via letter to you. There has been no effort to address the Fire Flow problem.

Permitting an extension will give us adequate time to address the FAA position and the Fire Suppression System and hopefully begin construction.

Again, thanks for your guidance through the process.

Respectfully



John Tolliver, General Manager

Timeline PZ-13-00014 2013 through 2016

- Aug 7, 2012 Sky Ranch Lodge, Third Addendum to lease, item 5 "Construction of Improvement" specifies both the terms and conditions including a deadline requiring completion of phase nu Jan 1, 2018. This would be 20 guestrooms, conference center and a certificate of occupancy.
- Dec 11, 2013 Zone change request, Letter of Intent and 13 page description of project submitted by the Design Group.
- Jan 7, 2014 Letter from the Fire Marshall to Cari Meyer outlining Fire Code Requirements for the Airport Mesa.
- Apr 5, 2014 email from the City Fire Marshall stating, "Current water systems, Oak Creek Water or Airport waterare not capable of meeting this demand." Further stating, "Until this situation is resolved no construction will be approved."
- Apr 22, 2014 City Council approves expansion project for Sky Ranch Lodge.
- Jul 7, 2014 In a letter from the Airport Hangar Association to Anthony Garcia, FAA Compliance Officer, stating that most recent addendum to our lease extending the lease to 2015 was improperly conducted and therefore not FAA compliant
- Aug 4, 2014 A second letter from the Airport Hangar Association providing detail description of what they believed were non-compliance issues was submitted to Mr. Garcia..
- Aug 18, 2014. Email from Rod Probst, Airport GM, to his Board of Directors explaining how and why the lease extension was considered and conducted. According to Mr. Probst, he had written many leases in his 21 year airport career and never sought the approval of the FAA.

Sep 30, 2014 Letter to Rod Probst from Steven Cole providing an after the fact Airport Appraisal to determine "Fair Market Rent" for all of the airport tenants. Mr. Probst felt that providing this to the FAA would satisfy the Airport Hangar Associations objections and eliminate the non-compliant issues with the FAA and the matter would be closed.

Dec 18, 2014 Letter to Rod Probst from Mr Garcia of the FAA, " Notice of Informal Non-Compliance Evaluation" outlining several Sedona Airport non-compliant issues including the Sky Ranch Lodge lease.

Jan, 2015 Abrupt change of the Airport General Manager and the entire Board of Directors. The new Board hired Russ Widmar asan interim General Manager for a one year contract.

May, 2015 I met with Russ Widmar and was informed he wanted to negotiate a new lease for Sky Ranch Lodge but declined to divulge what in particular required such an action. He did mention the FAA was holding up completion of the required Environmental Assessment until he could resolve the non-compliant issues with our lease. When pressed for specifics to present to the owners of Sky Ranch Lodge, Mr. Widmar refused to discuss or present some identification, in writing of the FAA or Airport stance.

Jun 23, 2015 The FAA officer, Mr. Garcia, visited with Mr. Widmar for what was described as a "FAA Compliance Meeting" to specifically the lease non-compliance issues, which Mr. Widmar again refused to divulge.

Jul 1, 2015 The Design Group resigned from the Sky Ranch Lodge. They had spearheaded the project up to this point, leaving Sky Ranch Lodge to pick up the pieces.

Jul 9, 2015 Mr. Widmar, in a Airport Board Meeting, stated, "Non-Arepnautical use will carry thr airport into the future." Furthermore he would "Develop a plan at the request of Yavapai County."

Aug 24, 2015 Mr. Widmar reported to his Board that he had offered to meet with the owners of Sky Ranch Lodge to discuss a new lease and they declined. The reason we declined was there was no official notice from Sedona Airport Authority, the FAA or Yavapai County addressing any non-compliance issues and until such notice was served there were no specifics to discuss and we had a firm lease extension until 2015. Mr. Widmar again refused to divulge any

specifics requiring any revision of the Sky Ranch Lodge Lease, although he did state the "He could fix the problem,"

Jan 22, 2016

In a 17 page letter from Mr. Garcia, FAA Compliance Officer, to Mr Widmar stated on page 17, "The FAA will not take any official action to release land at SEZ for the proposed expansion of the Sky Ranch property. This will be held in abeyance until such time as the FAA determines that the parties have committed to implement a corrective action plan for the Lodge (Masonic) and Sky Ranch."

Jan 31, 2016

Mr. Widmar's contract expired.

Early 2016

Met with Amanda Shankland the new Airport General Manager and began discussion to resolve the FAA non-compliant issues. Had a subsequent meeting with the President of the Sedona Airport Authority, Mrs. Shankland, John Graham, Managing Partner for Sky Ranch Lodge and myself to discuss the lease negotiations, at least the high points.

Realizing that it would be meaningless to proceed with any resolution without an extension from the City which would allow for additional time to address the FAA concerns and time to begin construction, I submitted a Request for Extension Application.



## Sedona–Oak Creek Airport Authority

235 Air Terminal Drive • Sedona, Arizona 86336

Tel: 928-282-4487 • Fax: 928-204-1292

4/20/2016

Attention: Cari Meyer, COS Senior Planner

To whom it may concern,

In regard to the Permits for Sky Ranch Lodge PZ-13-00014, The Sedona Airport Authority has no issue in allowing the City to provide an extension for the above project.

If you have any questions or concerns, please reach out to us at (928)282-4487.

Thank you,

A handwritten signature in black ink, appearing to read 'Amanda Shankland', is written over a faint, larger version of the same signature.

Amanda Shankland, CEO/General Manager

Sedona-Oak Creek Airport Authority



Sky Ranch Lodge on Airport Mesa

Time Extension Request

March 23, 2016

Sky Ranch Lodge expansion was approved by the City Council on April 22, 2014 with construction to commence in November of 2014.

Through no fault of their own, there have been extensive delays in acquiring final FAA approval of the proposed expansion. The FAA is "holding in abeyance" completion of the required environmental assessment pending resolution of noncompliance issues with the applicant's lease with the Sedona Airport Authority.

In a 17 page letter addressed to Russ Widmar, interim Airport General Manager, the FAA spelled out non-compliance issues with two leases between the Sedona Airport Authority and the Masonic Lodge and Sky Ranch Lodge. This was the first time any official notification from the FAA, although not addressed to the applicant, came to the attention of Sky Ranch Lodge.

A copy of the FAA letter dated January 22, 2016 that acknowledges the FAA's actions on page 17 and the impact on the Sky Ranch Lodge expansion has been attached in support of our request for a time extension.

Sky Ranch Lodge is actively pursuing lease modifications with the Sedona Airport Authority and Yavapai County to resolve the FAA's concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Tolliver', is written over a horizontal line.

John Tolliver

General Manager

Sky Ranch Lodge



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

Western-Pacific Region  
Airports Division

P. O. Box 92007  
Los Angeles, CA 90009-2007

January 22, 2016

Russ Widmar  
General Manager  
Sedona-Oak Creek Airport Authority  
235 Air Terminal Drive  
Sedona, Arizona 86336

Jack Fields  
Asst. Administrator/Deputy County Attorney  
Yavapai County Administration Building  
1015 Fair Street  
Prescott, AZ 86305-1852

Gentlemen:

### **Land-Use Inspection Report Sedona Airport Arizona**

This letter is to inform Sedona-Oak Creek Airport Authority (Authority) and Yavapai County (County) officials of the results of the Federal Aviation Administration (FAA) land-use inspection at Sedona Airport (SEZ) that took place on June 23 and 24, 2015. Prior to the inspection, an investigation into land-use practices at SEZ was initiated as a result of an informal disclosure alleging that SEZ was not in compliance with the FAA Grant Assurances. Specifically, the disclosure alleged that the Authority was not complying with the requirements of Grant Assurance 24, *Fee and Rental Structure*, because the authority's leasing practices are not making the airport as self-sustaining as possible in terms of the specific circumstances existing at the airport.

In response, the FAA conducted an inquiry to confirm whether or not there was any validity to the allegations since SEZ had previously had a similar compliance problem that it had pledged to correct. The FAA inquiry disclosed that the Authority and the County had not taken corrective action intended to eliminate a non-compliant condition that had been identified decades earlier. As a result, the condition was never corrected, exists today, and has even been prolonged for several more decades. As a result of this finding, the scope of the inquiry was expanded to include airport leasing practices, in general. The result was the discovery of another similar compliance shortcoming with the airport hotel lease agreement.

The report that prompted the FAA inquiry alleged that leasing standards and rental rates do not truly reflect the market conditions in Sedona and, as a result, did not make the airport as self-sustaining as possible, thereby failing to comply with Grant Assurance 24. Our inquiry quickly discerned that the Authority had not complied with Assurance 24 with regard to its leasing practices because rental rates of non-aeronautical tenants were not all based on the fair market value of the leasehold property. The lease agreement with the Central Arizona Lodge does not require the payment of rent and another with the Sky Ranch Lodge did not assure that market-based rents would be collected.

The inquiry led to some disquieting disclosures. The County, and subsequently the Authority, failed to correct a compliance deficiency that was first brought to the attention of the County in

1986 and again to the County and the Authority on subsequent occasions. The original non-compliant conditions involved the use of airport land for non-aeronautical purposes without the appropriate legislative authorization and a 50-year lease agreement with the Sedona Square and Compass Club (Lodge) at a cost-free rental rate. In 2013, the Authority, with the concurrence of the County, gave the same tenant a new cost-free, 20-year lease without regard for the corrective action plan that had been established years earlier. In addition, the Authority, with the County's approval, granted a lease extension to the Sky Ranch Lodge that included 4.5 additional acres for which there is no assurance that rental payments will ever be made.

The following is a history of events at SEZ related to the compliance issues disclosed in this report.

### History and Background

#### Central Arizona Lodge 2013 (Known as Sedona Square and Compass Club, 1964) (Lodge)

In a letter to the County dated October 1, 1986, the Federal Aviation Administration (FAA) notified the County that airport property was being improperly used for non-aviation purposes in contravention of the provisions contained in the Federal Airport Act of 1946 (Act). Section 16 of the Act, as implemented, specifies that federal land conveyed for airport purposes must be used for that purpose and may not be used to serve a non-airport purpose. The FAA letter provided relevant guidance and requested information in order to confirm that the County was complying with other pertinent federal requirements. Specifically, the County was informed that the appraised fair market rental rates were required for non-aeronautical leases and that any lease renewal option was to be conditioned on obtaining FAA consent.

Years later, when the FAA subsequently inquired, we discovered that the County had not adhered to the FAA's 1986 guidance and instructions with regard to the Lodge. Without the consent of the FAA, the Lodge lease had been renewed in 1989 for another 25 years with no obligation to pay rent. Furthermore, we learned that the Authority, with the County's consent, had entered into another non-aeronautical lease agreement in 1982 with the Joynt/Graham partnership to operate the Sky Ranch Lodge, which had not been disclosed to the FAA following the 1986 letter, although the information in the FAA letter was relevant to the Sky Ranch Lodge. The combination of the two lease agreements meant that the County and Authority had allowed more land to be used for purposes that did not comply with the provisions of the 1946 Act.

The next meaningful FAA action took place at Sedona Airport on October 8, 1997, when the FAA met with Authority officials, tenants, and users. The occasion was used to give the airport General Manager and several Board of Director officials ample information related to the land-use limitations imposed by the Act and the requirement to charge fair market value rents for non-aeronautical use airport property.

It was at this meeting that the General Manager disclosed that the Authority was trying to negotiate concession with the Lodge. The Authority was trying to get agreement to shrink the size of the Lodge's leasehold property and obtain agreement to allow the Authority to use the Lodge meeting room without cost. The General Manager suggested that the loan of the meeting room to the Authority represented a contribution towards rent, but he never justified

this arrangement as a measure to correct the compliance problem and never obtained the FAA's concurrence with the strategy.

The purported intent of the General Manager's proposal was revealed in a letter dated March 19, 1997. The General Manager disclosed that the "the airport administration and the Lodge are at a meeting of the minds ... The Lodge wants a longer stay on the airport beyond 2014 ... The non-conforming (land) use boils down to who gets the five dollars per year leasing payment the County gets now from the Lodge. Very simply, if the airport administration gets the payment, the Lodge's presence is no longer a 'non-conforming' use. It is not a Fair Market Value amount of the money, but that can be made more defensible by specifying the Lodge giving the airport administration guaranteed availability of the lodge hall facility for meeting and conferences ... It doesn't matter if the airport administration actually regularly avails itself of the Lodge facilities ... So much for resolving the non-conforming use issue."

In the same letter the General Manager stated "Upon 'transfer' or 'assignment' (of the Lodge lease agreement) to the airport administration, the Lodge and the airport administration could directly enter a new lease that 1) reduces the Lodge's leasehold size; 2) specifies the Lodge hall facility availability to the airport administration; and 3) allows the Lodge to run their tenancy on the mesa out to the end of the airport administration's lease (in 2031)."

Clearly, the letter discloses that the Authority had hatched a plan to ignore Federal law and the Grant Assurances and was describing how the County could participate in the ploy and circumvent the FAA's admonitions and federal requirements. Unfortunately, the General Manager's divergent plan to circumvent federal obligations would not serve to eliminate the compliance problems and was not deemed an acceptable cure by the FAA. However, the record shows that the County and Authority never abandoned this plan although it was never approved by the FAA as sufficient to correct the compliance problems. The FAA clearly informed both that the plan was an interim strategy until the Lodge lease expired, after which the Lodge would have to pay market-based rent or vacate the property.

In a letter to the County dated October 29, 1997, the FAA advised County officials, "While non-aviation use of the airport remains inappropriate in itself, the terms of the Masonic Lodge lease do not meet additional FAA policy requirements. There is a further obligation to ensure that airport property, if not used for aviation purposes, produces fair market value returns for the airport." Additionally, "it is expected that the County will endeavor to negotiate a fair market rental rate, shorten the term of the current lease agreement, and refrain from entering into any new lease agreement with the Masonic Lodge ... Any lease for non-aviation use of the airport must be approved by the FAA prior to its execution."

On November 13, 1998, the FAA spoke with the airport General Manager and informed the Authority that the County, although it agreed to implement interim measures to mitigate the non-compliant lease with the Lodge, had not yet done so. Furthermore, the Authority was informed that a final corrective action would require the County to negotiate a new lease at fair market value, but no later than when the current lease expired.

On November 19, 1998, the FAA wrote to the County to provide feedback regarding the Lodge proposal, put forward by the General Manager in March 1997. The FAA advised that "The (General Manager's) proposed corrective action plan represents an interim strategy to mitigate this compliance issue at Sedona Airport. Ultimately, the FAA cannot approve a

renewal of the lease with the Masonic Lodge.” Clearly, the FAA disclosed candidly and repeatedly that the Lodge lease could not be justified and action was needed to correct the offending terms of the lease.

On February 6, 1998, the Assistant County Administrator/Board Counsel wrote to the FAA to provide assurances that the County was “reviewing the terms and conditions of leases and subleases in order to ensure that they are in compliance with FAA guidelines.”

On April 16, 1998, the County wrote to a representative of the Lodge to offer changes to the Lodge lease agreement that reflected the deal points proposed by the General Manager in March 1997. The County advised that “the SAA (Authority) and the Lodge would enter into a sublease agreement that would include the following proposed changes.” Among the provisions in the new sublease agreement would be “SAA access to the Lodge’s meeting facilities,” ... “a reduction in the area of the leased premises,” ... and “an extension of the term of the Lodge/SAA agreement to a date later than the current 2014 expiration date.” The County went on to point out, “Once the sublease has been executed, it would be submitted to the Board of Supervisors for approval. This would ensure that the Lodge would be able to occupy the premises for the complete sublease term even if the SAA ceased to exist as an entity.” The County’s offer disclosed its intention to perpetuate the Lodge’s presence at the airport through the 2014 end date of the lease agreement and even beyond its 2014 expiration date.

On November 25, 1998, the Assistant County Administrator/Board Counsel advised in a letter that plans were being formulated to amend the Lodge lease agreement and assign it from the County to the Authority. It would appear that the County was implementing the proposal put forth by the General Manager in 1997 that involved shrinking the Lodge’s leasehold property, obtaining permission to use a Lodge meeting room, and transferring the Lodge lease agreement from the County to the Authority.

The FAA responded to the County on December 7, 1998 by stating, “We encourage you to continue the negotiations with all the parties so a comprehensive agreement can be reached that accommodates the airport’s interests while correcting, or at a minimum, mitigating the compliance issues at Sedona Airport.” It should be noted that the letter referred to both the compliance issues associated with the Lodge as well as the resolution of number of commercial tenant complaints, not relevant to the topic of this letter.

The December 7<sup>th</sup> letter contains an important FAA clarification provided to the County with regard to the resolution of the shortcoming with the Lodge’s lease agreement. It became evident that the County and Authority could not or would not completely correct the compliance problems created by the Lodge before the lease expired in 2014. As a result, both proposed to reduce the magnitude of the non-compliant conditions by amending the Lodge lease and assigning it to the Authority. The County and Authority may have concluded, although incorrectly, that the plan would resolve the compliance issues. This was never the case. First, the General Manager’s 1997 proposal was flawed because it did not eliminate the compliance problems. Second, the FAA never accepted the proposed plan as a solution to the compliance problems. The FAA’s December 7<sup>th</sup> letter specifically disclosed that the compliance issues should be corrected or, if not corrected, should be mitigated. The County and Authority’s proposed action to amend and assign the lease merely represented a mitigation

measure that might reduce the magnitude of the non-complaint conditions, but would not fully eliminate them.

In a County letter to a representative of the Lodge dated March 2, 1999, the Assistant County Administrator/Board Counsel attempted to propose terms and conditions that might mitigate the lease agreement problems. Overall the letter communicates a desire by the County to accommodate the Lodge and perpetuate its presence at the airport, rather than put the Lodge on notice that the existing arrangement was untenable and would have to be corrected when the lease expired, if not sooner. The letter suggested ways to keep the Lodge at the airport rather than communicate the County's intention to correct the non-compliant aspects of the lease agreement. For example, the County suggested that use of the Lodge meeting room could be substituted for actual rental payments. The County might be able to satisfy the Lodge's desire for a lease extension or a new lease after the 2014 expiration of the current lease. Of course, these proposed County actions would need FAA concurrence, but the FAA never agreed they represented suitable corrective measures to eliminate the non-compliant conditions.

On March 26, 1999, the County announced to the FAA that it had negotiated changes to the Lodge lease and Lodge officials had proposed the following: (i) a reduction in the size of the leasehold property, (ii) a Lodge meeting facility would be available to the Authority for four days each month without charge in lieu of lease rental payments, (iii) the Lodge would be given the opportunity to extend the lease agreement beyond the 2014 expiration date.

The FAA advised the County in a letter dated April 15, 1999 that an extension of the Lodge's lease beyond its expiration date in 2014 was not a tenable arrangement. The letter advised that a future temporary agreement might be possible if the agreement did not exceed three years, if the property were not needed for an aeronautical purpose, and if the Lodge agreed to pay market rates for its use.

On July 7, 1999, the FAA responded to a representative of the Lodge and provided a lengthy explanation of the County's legal obligations and the non-compliant aspects of the Lodge's lease agreement. It was further pointed out that an extension of the lease beyond the 2014 expiration date under the same terms and conditions was unacceptable.

On November 8, 1999, the airport General Manager reported that the Authority planned to petition Congress for waiver from the requirements of Section 16 of the Federal Airport Act so airport land could legally be used for non-aeronautical purposes. In addition, the General Manager disclosed that the Lodge lease would be allowed to run until its expiration in 2014 because litigation to end the lease would be too costly.

On April 5, 2000, Section 749 of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (Public Law 106-181) granted the FAA authority to grant waivers from any term contained in the airport deed of conveyance dated October 31, 1956. The original conveyance deed required that all land deeded to the County had to be used for airport purposes, a provision that could not be amended by the FAA. The legislation gave the FAA authority to waive provisions of the deed, such as the approval for non-aeronautical use of airport land as a source of revenue for the airport. Section 749 of the 2000 Act also stipulated that the County must receive fair market value compensation for the non-aeronautical uses of airport land.

The Lodge lease was amended on April 26, 2001 and incorporated revisions that downsized the leasehold property and made a Lodge meeting facility available to the Authority for four days each month.

It should be noted that the amended Lodge lease contained the following provision: "Whereas, the United States Federal Aviation Administration (FAA), an agency with jurisdiction affecting the use of the subject premises, has recommended that certain provisions of the 1964 Agreement be amended to ensure compliance with federal statutes, rules, or regulations enforced by the FAA." It must be made clear that the FAA did not recommend or request any provisions that were incorporated into the amended lease agreement. The amended lease was the work of the County and the Authority, without the involvement of the FAA. Changes to the lease agreement were first proposed by the Authority and later adopted by the County. The FAA did not participate in their creation or inclusion into the amended lease agreement. Rather, the FAA did not object to their adoption by the Authority and the County as a means to mitigate the seriousness of the compliance issues until the non-compliance conditions were fully eliminated when the Lodge lease expired in 2014.

The County amended its lease agreement with the Authority on February 1, 2003. The agreement extended the expiration date to May 1, 2031 and granted an option to renew through June 30, 2050. The amended lease also provided for the assignment of the Lodge lease agreement from the County to Authority. It contained the following provision: "It is understood and agreed that, as long as the lease with the Lodge (Red Rock Memorial Lodge) remains in force, Lessee shall fully honor its terms and conditions." It should be noted that the County purposely imposed a legal obligation of the Authority to abide by the lease agreement rather than to seek to further mitigate or even eliminate its non-compliant provisions. Apparently, there was no urgency by the County to correct this matter in the short term and the County intended to prevent the Authority from taking corrective action on its own.

On February 10, 2004, the FAA provided the Authority with the results of an airport land-use inspection performed by the FAA on January 30, 2004. The inspection was performed to satisfy a directive contained in the FAA Director's Determination, Docket No. 16-02-02, dated March 7, 2003, that required the evaluation of airport land uses to determine if they were consistent with federal requirements. The report concluded that the Lodge and Sky Ranch still represented inappropriate land uses that had to be resolved. In brief, the report required that both leasehold properties had to be approved for non-aeronautical use in accordance with Section 749 of PL 106-181 and that both had to be subject to market-based rental rates.

Starting in April 19, 2004, and continuing on May 13, 2009 and February 27, 2010, Lodge officials made solicitations to the Authority and County asking for a new lease agreement when the current lease expired in 2014. They requested a lease duration through 2050 or even "in perpetuity." They wanted lease provisions similar to the expiring lease. They claimed, "We are not asking for charity," but were not prepared to make market rental payments.

On December 4, 2006, the FAA approved an Instrument of Release under the authority granted by Section 749 of Public Law 106-181, providing a waiver from the deed restriction that required all airport land to be used for aeronautical purposes. The Release stipulated that the waiver was granted so the land could be used for non-airport purposes and continue to be leased for non-airport purposes and earn revenue from such non-aviation uses. As a condition

of the release, the County and Administration were required to use a lease rate that is equal to the fair market value of the property.

On November 6, 2008, a Lodge representative, Larry Trotter, wrote in an e-mail to the County that the Lodge members expected a lease agreement that would be permanent or in perpetuity. The Lodge proposed a new cost-free lease from 2014 to 2051 with a right of first refusal. The Lodge would be remodeled and the Authority given permission to use the Lodge when it was not in use. Although the Lodge had a lease agreement, it appears that Lodge officials expected to be given the equivalent of fee simple ownership. Clearly, the Lodge's expectations were not realistic, but they were representative of the Lodge's repeated solicitations to the County and Authority. Unfortunately, the County and Authority did not reject the solicitations as unrealistic and provide appropriate and consistent counter proposals disclosing that the Lodge would eventually have to pay rent to stay at the airport.

On June 24, 2009, the Lodge was notified by the Authority that the Lodge lease would terminate in 2014, contrary to the Lodge's belief that the lease should run in perpetuity and not be subject to rental payments. It further stated that the terms of the existing lease could not be renewed since a new lease would have to contain a provision for the payment of fair market value rent. This is one of the rare occasions when the Lodge was actually told that market rent would be required in a new lease.

On July 7, 2010, the Authority advised the Lodge that Southwest Appraisals had appraised the Lodge leasehold property and concluded it had a rental value of \$2,617 per month. The Authority suggested that the Lodge agree to downsize the property to the footprint of the private ceremonial hall building. In exchange, the Authority might be able to offer a rent as low as \$800 to \$1,200 per month. It appears the Authority was making concessions to the Lodge rather than offer the property at market rate. Again, the Authority and County continued to accommodate the Lodge's wishes and, thereby, were not actually preparing to eliminate the compliance deficiencies.

On October 4, 2010, The Authority again offered to charge the Lodge a rent rate that was below the fair market value established by an appraisal. Southwest Appraisals had done an appraisal in 2010 and estimated the Lodge property was worth \$2,617 monthly. However, the Authority offered a rental rate of \$2000 per month. It appears that the Authority was gravitating towards the Lodge's expectation rather than demanding that a new lease agreement would require the payment of market rent.

On June 20, 2012, the Administration advised the FAA that the deal points of a new Lodge lease were being formulated since the Lodge was eligible to apply for a new lease in 2014. The Administration was proposing a short-term lease that would not exceed five years. The Lodge would be expected to bring the Lodge building up to code, provide tangible rental payments, permission to use the Lodge for Authority business, and the shrinkage of the leased premises to the size of the footprint occupied only by the tenant improvements. The FAA replied that a short-term arrangement would protect the airport's interests as long as the Lodge brought tangible benefits to the airport. A tangible benefit meant the payment of market rent because the mere presence of the Lodge on airport property did not contribute in any tangible way to airport operations or self-sustainability.

On August 26, 2013, the Authority and the Lodge entered into a new sublease agreement with an effective date of June 30, 2014, which is the date that the original 50-year Lodge lease executed on July 6, 1964 would have expired. The Administration granted the Lodge a new agreement with similar terms and conditions as the old one. The interim measures established by the County to mitigate the compliance problems until the old lease expired were incorporated into a new 20-year agreement, although the mitigation measures did not eliminate the compliance problems. The Lodge continued to use airport property for free in exchange for allowing the Authority to use a Lodge meeting room four times per month. Unfortunately, the sublease did not correct the non-compliant condition that the County and Authority had agreed to correct when the 1964 Lodge lease expired in 2014.

On July 9, 2014, the airport General Manager wrote to the FAA to explain why the Authority had executed a new agreement with the Lodge on August 26, 2013. Essentially, the Authority incorporated the interim mitigation measures from the old agreement into the new sublease agreement. As a result, the new agreement perpetuated the non-compliant conditions that were supposed to be corrected when the old lease expired.

The Authority claimed that the value derived from four days' access to the Lodge meeting room exceeded the fair market value of the leasehold property. The Authority reported that appraised value of the 6.7 acres of Lodge property was \$2,617 in 2010 while a reduced leasehold site of 1.3 acres was \$2,500 in 2014. The Authority calculated the value of the meeting room to be \$3000 per month and did so without providing any tangible evidence that access to the meeting room offered any value at all. Furthermore, the Authority claimed it was not aware that it had disregarded the "corrective action plan and (or) did it believe that the Authority should have consulted with the FAA before executing the new sublease agreement."

On June 23, 2015, during the land-use inspection meeting attended by the Authority, the County, and FAA, the County's counsel explained that the cost-free lease arrangement was granted to the Lodge as a consideration. Although the County may have considered it goodwill to give free rent to the Lodge, the gratuitous arrangement did not explain why the County and the Authority ignored the decades-old corrective action plan as well as the requirements of the US Code §47107(a)(13), §47107(l)(3), Section 749 of Public Law 106-181, and the conditions of the Instrument of Release dated December 4, 2006, all of which required a payment of rent equal to fair market value.

#### Analysis

The record clearly shows that the FAA strove consistently for almost three decades to obtain corrective action from the County and the Authority. Although the County and Authority, at times, appeared inclined to taking corrective action, the record shows they failed to do so. Rather than consistently focus on correcting the problem, the County and Authority engaged in negotiations with the Lodge to find a way to perpetuate the Lodge's presence on airport property under terms and conditions that did not fully comply with the Grant Assurances and federal statutes.

The terms of the new 2013 Lodge lease agreement are overly generous considering the Lodge had already enjoyed 50 years with no rental obligation and received another 20 years of free rent. Although the leasehold site was reduced in size, the Lodge received considerable tangible benefits. For example, based on the terms of the 1964 lease, all the improvements on the Lodge lease site became the property of the airport. Yet all the facilities, now owned by

the airport, were leased to the Lodge without charge. The leasehold property was leased without an exclusive area for Lodge parking. Therefore, airport land for Lodge parking is also being provided for free.

The airport General Manager claimed that the Authority's use of the Lodge meeting room has a purported value of \$3000 monthly. In reality, the Authority gets no value from the meeting room because the Authority does not use it. Three Authority General Managers have already reported to the FAA that the Authority does not use the Lodge meeting room and is not allowed to rent the space to third parties so the Authority can derive income from the meeting room. Furthermore, there is no need for the Authority to use the Lodge meeting room because the Authority has its own conference room in the Terminal Building.

More importantly, the County and the Administration never provided any tangible evidence to demonstrate that the meeting room had any tangible value that could realistically substitute for actual rental payments. The fair market value of the Lodge site was never established until 2010. So, prior to 2010, there was no way to determine if access to the Lodge meeting room equaled the market value of the leasehold property. There was no explanation describing how they calculated and agreed upon the value of the meeting room. There was no bookkeeping methodology being used to record when the meeting room was used, for how long, and for what purpose. There was no reconciliation to demonstrate that the actual value derived from the meeting room equaled or exceeded the fair market value of the leasehold property. Without an accounting of the value derived from the meeting room, there is no credible way to determine if the meeting room could have had any tangible value to be credited in lieu of rental payments. Since the meeting room was not used, it has no value and cannot be substituted for rent.

Lastly, the meeting room arrangement actually exacerbates the value of free rent already granted to the Lodge. In accordance with the terms of the 1964 Lodge lease, the airport became the owner of all the improvements on the Lodge lease site. Pursuant to the 2013 Lodge agreement, the improvements were subleased to the subtenant without charge. As a consideration, the Lodge granted the Authority the privilege of using a Lodge meeting room each month. This arrangement amounts to paying to use one's own property.

The Authority provided the Lodge with the free use of the leasehold improvements that are effectively airport property. At the same time, the Authority gets to use a meeting room in the property it owns. For this consideration, the Authority gave free rent to the Lodge. In effect, the Administration is giving away \$2,500 monthly in rent in exchange for using a meeting room that it owns. This arrangement is not equitable for the airport and does not make good business sense either. Clearly, the tangible benefits flow to the Lodge and not the airport.

It is important to reiterate that the Authority's proposed use of the meeting room was merely a mitigation measure established by the County and Authority as a step in the right direction to demonstrate their intention to eventually correct the non-compliant arrangement. The FAA never recognized or accepted the interim measure as a final solution to the non-compliant condition. The FAA realized that the County could not unilaterally amend the Lodge lease and require rental payments. In the spirit of forbearance, the FAA allowed the County and the Authority to postpone the appropriate corrective action measures until the Lodge lease expired. In the interim, the FAA accepted the County and Administration mitigation measures as a

goodwill gesture by both of their intention to correct the non-compliant conditions when the Lodge lease expired.

Unfortunately, the Authority disregarded its obligation and willingly proceeded to perpetuate the non-compliant condition that it had previously said it would correct. The Authority in its recent correspondence to the FAA claimed to be ignorant of a corrective action plan and saw no need to confer with the FAA before executing the 2013 sublease with the Lodge. Contrary to the Authority's claim that it did not know the problem had to be corrected, the record is replete with evidence that undermines this claim. Furthermore, the obligation to correct the deficiencies was clear and amply communicated to the County and the Authority.

The Authority further claimed that there was no need for the 2013 sublease to be reviewed by the FAA before it was executed. This claim was based on the General Manager's belief, as stated in a July 9, 2014 letter, that "in over 21 years of writing airport leases, I have never sent a lease to the FAA Regional Compliance Specialist for review." Clearly, if there was ever a lease that deserved to be reviewed, it was the 2013 Lodge sublease. This omission clearly allowed the County and the Administration to execute a new lease with the Lodge that violated the Grant Assurances, left uncorrected the decades-old non-compliant condition, and perpetuated the non-compliance condition for another 20 years.

The County and the Authority could have easily negotiated a new agreement with the Lodge as long as the Lodge agreed to pay a market rental rate. Alternatively, if the Lodge refused to pay rent, the Authority would have been left with no alternative but to direct the Lodge to vacate the premises. Instead, the Administration, with the County's approval, executed a new agreement with the Lodge that perpetuated the non-compliant conditions of the old lease. Rather than negotiate new terms and conditions with the Lodge, the County and Authority needlessly acquiesced to the Lodge desire for a long-term, cost-free agreement and, thereby, disregarded their legal obligations to the FAA.

Based on an appraisal commissioned by the Authority in 2014, the Lodge leasehold site had a market rental value of \$30,000 annually or \$2,500 monthly, as of August 26, 2014, the date of the evaluation.

In accordance with Title 49 United States Code 47107(1)(3), the County and Administration have a duty to make the airport as self-sustaining as possible, especially when past policies have failed to comply with the self-sustaining principle.

*...owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, (should) have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.*

Since past airport pricing policies failed to comply with the requirements of the Grant Assurances, new airport policies should have been established to eliminate the compliance deficiency and, thereby, ensure that rates and charges came into compliance with the Grant Assurances to enhance the airport's self-sustainability.

Preliminary Conclusion:

With regard to the Lodge, the County and Authority have failed to meet their compliance obligation and, although instructed to take appropriate corrective action, willingly failed to do so when the opportunity to correct the compliance deficiency was available.

Sky Ranch Lodge 2012 (Known as John & Isabel Joynt and Gary & Cheryl Graham, Sedona Airport Motel Lease, 1982) (Sky Ranch)

On June 15, 1982, the Authority executed a 25-year lease agreement with John and Isabel Joynt and Gary and Cheryl Graham to operate a motel and resort lodge (Sky Ranch), along with a visitor center, real estate office, and broker service. In addition to a minimum monthly payment, six percent of gross annual income was established as rent, except for income from the real estate and broker services. At the expiration of the lease, all the improvements would become the property of the airport.

At the time the lease was executed in 1982 and until 2006, the lease agreement created a legal conflict with the terms and conditions of the conveyance deed under which federal land was conveyed to Yavapai County for airport purposes. Pursuant to the Federal Airport Act of 1946, federal land conveyed for airport purposes under Section 16 of the Act could not be used for non-aeronautical purposes. The purpose of the law was to make land available for the development of airports as long as the beneficiary of the gift pledged to use the land exclusively for airport purposes. The law did not provide for any waiver or way to circumvent this obligation.

Unfortunately, the terms of the conveyance deed and the restrictive nature of the Act did not prevent the County and Authority from executing the lease with the Sky Ranch, much the same as was done in 1964 with the Lodge lease. Fortunately, Congressional legislation in 2000, and a subsequent FAA-approved release action in 2006, authorized the long-term use of airport land by the Lodge and Sky Ranch for non-aeronautical purposes. These official federal actions corrected one of the compliance deficiencies at SEZ, but others remained.

On June 12, 2006, the Sky Ranch lease exercised a 25-year option and extended the lease to May 1, 2031 under the same terms and conditions as the original 1982 lease. The lease was amended on July 1, 2010 to allow the Sky Ranch to add food and beverage services to the permitted uses of the leasehold property, but prohibited general food and restaurant services to patrons who were not guests of the hotel. Rent was based on six percent of gross income on all business activities except for income derived from real estate and brokerage services performed on the premises. The Sky Ranch would pay reasonable rent for the use of the premises for the real estate and brokerage services that would be set by negotiations by the two parties.

On August 1, 2012, the Sky Ranch lease was extended to June 30, 2050, which is the same date the master lease between the County and Authority is presently set to expire. It was agreed that the leasehold site would be enlarged with an additional 4.5 acres of airport land that adjoins the Sky Ranch property, which would be used for new hotel facilities. Rent continues to be based on six percent of gross income, and commencing in 2018, gross income exceeding \$2,500,000 will be subject to a seven percent rate. Use of the premises for real

estate and brokerage services is not subject to a percentage of gross, but would be subject to rent that is based on some mutually agreed amount.

The above terms and conditions were incorporated into an agreement by the Authority and Sky Ranch without first ensuring the entire arrangement would be acceptable at a federally obligated airport. The agreement requires the conversion of 4.5 acres of airport land to long-term non-aeronautical use. This conversion requires the approval of the FAA. It appears premature that the Administration, with the County's approval, entered into an agreement with the Sky Ranch before obtaining approval for a land-use change from the FAA and obtaining FAA confirmation that the new lease provisions complied with the Grant Assurances.

The proposed expansion of the Sky Ranch property also requires approvals from the City of Sedona. As part of this process, the Sedona City Council Agenda for April 22, 2014 contained a proposed action for a public hearing and possible action on a proposed ordinance and resolution resulting from a request by Sky Ranch for a zone change from CF (Community Faculty) to L (Lodging) to permit construction of 40 new lodging units, a new meeting facility, and associated site improvements on 4.6 acres of land being added to the Sky Ranch business property. The Sky Ranch lease agreement lists the additional land at 4.5 acres. This discrepancy has yet to be reconciled.

The Agenda documents contain a Sky Ranch project description and also include an Affordable Housing and Meeting Facility Usage Development Agreement. In accordance with the Agreement, the Sky Ranch must create a minimum of two affordable housing units to be constructed on the Sky Ranch property.

The affordable housing mandate in the scope of the project is most inappropriate because residential housing is an incompatible use of airport property. Grant Assurance 21, *Compatible Land Use*, implements Title 49 United States Code 47107(a)(10), and requires that an airport sponsor will take appropriate action, to the extent reasonable, to restrict the use of land next to or near (and on) the airport to uses that are compatible with normal airport operations. This means that residential dwellings should not be built on or near an airport because residential land use and airports are not compatible. Inevitably, residents express their displeasure with the airport by complaining about noise and emissions. In view of the Grant Assurance requirement, the FAA objects to the provision in the Agreement requiring housing at the airport.

Based on the FAA's review of airport documents and information obtained from the airport officials, the extended lease has other shortcomings. The Administration gave the Sky Ranch until 2018 to develop an additional 4.5 acres without actionable conditions or penalties other than an option whereby the Administration may cancel the lease extension and the Sky Ranch's interest in the additional 4.5 acres. This is a passive provision. If the Sky Ranch does not perform and the Administration takes no corrective action, the status quo will prevail, meaning that the Sky Ranch can keep 4.5 acres of undeveloped land, possibly until 2050, the proposed development will not take place, and the airport will not earn any income from the property. On the other hand, if the Administration acts to recover the 4.5 acres after 2018, the Sky Ranch could sue to prevent the reversion of the land.

Unfortunately, the lease provisions do not provide the airport with any compensation for the 4.5 acres through 2018 and there is no guarantee that the airport will ever obtain any income after 2018 for the additional land.

The terms and conditions of the lease expose the Authority to undue risk because the lease does not guarantee regular minimum rental payments, but only requires that the Sky Ranch pay a percentage of its gross income. Without a guaranteed amount, there is no assurance that rental income will equal the market value of the leasehold property if the percentage of gross income shrinks appreciatively. Thus the financial return on the leasehold property is subject to economic and management risks. If the economy slumps, the percentage of gross income may drop below the property's market value. If management policy falters and the Sky Ranch underperforms, the percentage of gross income may fall below the property's market value. By relying solely on a percentage of gross, the Administration has made its financial return subject to forces it cannot control.

Additionally, the Sky Ranch is allowed under the terms of the lease to use the property for other commercial purposes, such as real estate and brokerage services, without an explicit amount of rent being stipulated in the lease for the supplemental commercial uses of the property. The additional rent for these added uses is subject to mutual agreement separate from the lease. If the Administration is not collecting rent for additional commercial income-producing uses that are being made of the property, the airport is forfeiting income that it should be earning.

Regarding the viability of the proposed Sky Ranch expansion, we were informed that project faces some serious challenges. Local fire code requires public facilities to have water sprinklers. The amount of water storage and water flow for fire suppression is presently inadequate on airport property. The cost and scope of work to bring enhanced water supply and pressure to airport property is formidable. There is no assurance that the Sky Ranch will undertake such a large infrastructure project to enhance water supply. A source of funding for this type of project is hard to identify. This includes FAA grant funding because this type of project, based on the expansion of a hotel property, would not be eligible under the Airport Improvement Program.

#### Preliminary Conclusion:

Clearly, the Sky Ranch lease has shortcomings that should be corrected. It is recommended that the Authority endeavor to add provisions allowing the collection of a minimum rental rate based on the land's market value for all uses of the property in addition to a percentage of gross, provide for the automatic termination of the grant of 4.5 acres if the project is not begun on schedule, and prohibit the introduction of residential housing on airport property.

#### The Airport Improvement Program and Grant Assurances

Title 49 U.S.C. § 47101, *et seq.*, provides for federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP). Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government that govern the way the airport should be operated. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order), issued

on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with federal obligations of airport sponsors. The *Policy and Procedures Concerning the Use of Airport Revenue* (64FR7696, February 16, 1999) provides guidance for interpreting the requirements of Assurances 24, *Fee and Rental Structure*, and 25, *Airport Revenue*, that are related to the ways airports earn and spend money.

The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving federal grant funds or the transfer of federal property for airport purposes. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with the federal grant assurances. The FAA considers it inappropriate to provide federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to non-compliance with the grant assurances.

The FAA Compliance Program is designed to achieve voluntary compliance with federal obligations accepted by owners of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations and seek cooperation and correction when the sponsor is not in compliance.

Certain FAA grant assurances apply to the circumstances set forth in this Report: Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 21, *Compatible Land Use*, and Grant Assurance 24, *Fee and Rental Structure*.

#### Grant Assurance 5, *Preserving Rights and Powers*

Grant Assurance 5, *Preserving Rights and Powers*, requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its federal obligations. This assurance implements the provisions of 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the owner or sponsor of a federally obligated airport "...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right that would interfere with such performance by the sponsor."

#### Grant Assurance 21, *Compatible Land Use*

Grant Assurance 21, *Compatible Land Use*, requires that the airport owner take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of or on the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. It requires airport sponsors to prevent the introduction of residential housing on or near

airports that will inevitably cause complaints by residents affected by airport noise or emissions.

#### Grant Assurance 24, *Fee and Rental Structure*

Grant Assurance 24, *Fee and Rental Structure*, requires the owner of an airport developed with federal assistance to make the airport as self-sustaining as possible. Grant Assurance 24 implements the provisions of 49 U.S.C. § 47107(a)(13) and requires that the airport owner maintain a schedule of charges for use of facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection. It also requires the airport owner to undertake reasonable efforts when entering into new and revised agreements establishing rates, charges, and fees to make the airport as self-sustaining as possible under the circumstances existing at the airport. Where non-aeronautical uses exist, the assurance requires the airport sponsor to charge rental rates that are based on fair market value.

#### Analysis

The following is an explanation of the inspection findings in the context of the relevant grant assurances:

The record indicates that the County and Authority have not complied with Grant Assurance 5 because their rights and powers to comply with the Grant Assurances were abridged by the Lodge and Sky Ranch leases. The leases prevent the County and Authority from fully complying with the Grant Assurances. Rather than eliminate the compliance deficiencies associated with the leases, the County and Authority actually entered into new agreements perpetuating the compliance problems that they failed to correct when new leases or amendments were negotiated. Effectively, both failed to execute lease agreements that allowed them to comply with the Grant Assurances.

The County and Authority have allowed the Sky Ranch to submit an application to the City of Sedona for development of 4.5 acres of airport land that includes an agreement whereby the Sky Ranch will build residential housing units on its leasehold site. The County has an obligation to prevent the introduction of an incompatible land use on airport property and should endeavor to have the residential housing removed from the project scope. Failure to do so will put the County and Administration at odds with Assurance 21.

Most serious of the compliance deficiencies is the continued failure of the County and Authority to collect market-based rents from non-aeronautical tenants. *The Policy and Procedures Concerning the Use of Airport Revenue* implements Grant Assurance 24 and requires the payment of market value rents when airport land is used for non-aeronautical purposes. This is not an onerous requirement because it makes good business sense in that it is intended to help airports recover their costs and then contribute to the airport's operating and capital needs. The County and Authority have failed to collect rent from the Lodge for 50 years and perpetuated this shortcoming by granting the Lodge another cost-free, 20-year

lease. The Sky Ranch has been provided with lease extensions with no assurance that the market rental rates will be guaranteed or that payments will be collected for all uses being made of airport property.

In addition, the County and Authority ignored the statutory provision in Section 749 of Public Law 106-181, which authorized a land release at SEZ, and required the County and the Authority to receive fair market value compensation for the non-aeronautical uses of airport land. In addition, the County and Authority ignored the conditions of the Instrument of Release dated December 4, 2006 that required the use of a lease rate that is equal to the fair market value of the airport property.

### Summary and Conclusion

It has been disconcerting that these compliance issues have festered unabated for decades, culminating in the County and Authority's failure to take proper corrective action with the Lodge lease when the opportunity arose. The long-standing compliance problem with the Lodge lease was compounded by the compliance inadequacies with the Sky Ranch lease.

As a result, we shall expect the County and Authority to quickly implement corrective action that will eliminate the compliance problems once and for all. Considering that both failed to do anything to eliminate the compliance deficiencies in spite of the FAA's exhortations over the years, we can identify only one corrective action to resolve this matter fully and quickly.

The County must make up the rent that the Lodge is not paying to the airport. It is the County that originally provided free rent to the Lodge for 50 years and was complicit in allowing the Lodge to occupy airport land without paying rent for another 20 years. The Authority cannot be called upon to pay the Lodge's rental obligation because it cannot use airport revenue to satisfy a compliance deficiency that is due to its failure to collect rent in the first place.

The County should devise a corrective action plan to begin paying rent to the airport commencing on the effective date of the Lodge lease in 2013 and continuing for 20 years until the expiration of the lease, if not terminated sooner. The payment plan should include a schedule when payments will be made, whether monthly, quarterly, or annually.

The rental repayment plan should contain a provision to adjust the rent periodically in accordance with changes in the consumer price index. The index can be one that is appropriate for Arizona and should stipulate how often the adjustment will be made, whether annually, biennially, or at five-year intervals. The adjustment shall apply to increases in the index, but not decreases, should any occur.

With regard to the Sky Ranch lease, the Authority and County should initiate negotiations to amend the lease terms (i) to guarantee reversion of the 4.5 acres if development does not take place by 2018, (ii) to seek a regular guaranteed minimal rental payment, in addition to a percentage of gross, to ensure that the rental income, at a minimum, always equals the leased property's fair market value, (iii) impose similar rental terms on all supplemental permitted uses of the property to include real estate and brokerage services so rental payments are collected for all uses of the property, and (iv) to prevent the introduction of any residential uses on airport property.

## Follow-Up

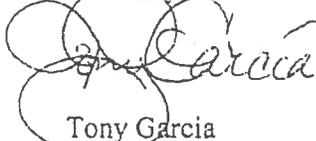
Please send the County and Authority's corrective action plan and implementing schedule within 60 days of receipt of this letter. We believe that two months will permit County and Authority officials and the Board of Supervisors to examine this report and agree on a response.

In closing, please be advised that Section 722 of Public Law 106-181 (April 5, 2000) amended 49 USC 47131 and requires, as part of the DOT Secretary's annual report to Congress, the inclusion of a detailed statement listing airports that the FAA believes are not in compliance with grant assurances or other requirements with respect to airport land use. The report includes a description of the non-compliance issues, the timeliness of corrective actions by the airports, and the actions the FAA intends to take to bring the airport sponsors into compliance. With the County's cooperation, we shall be able to report that the County is correcting its non-conforming land uses. Conversely, without cooperation, the FAA would have to take these shortcomings into account when evaluating the award of grant assistance and will further assess whether future grant awards are justified in view of the County's past and ongoing performance of its compliance obligations.

In accordance with Section 22.27 of FAA Order 5190.6B, *Airport Compliance Manual*, during the pendency of this matter and until the County provides an acceptable corrective action plan, the FAA will not take any official action to release land at SEZ for the proposed expansion of the Sky Ranch property. This will be held in abeyance until such time as the FAA determines that the parties have committed to implement a corrective action plan for the Lodge and Sky Ranch. Since the land subject to the proposed release is not earning any income, and may likely not earn any in the future, this deferral of action to release the land does not have a financial impact of any consequence for the airport.

We look forward to your response. If you have any questions or wish to discuss this matter, please call me at (310) 725-3620 or Tony Garcia at (310) 725-3634.

Sincerely,



Tony Garcia  
Airports Compliance Program Manager  
Airports Division, Western-Pacific Region

cc: Airports Compliance Division, ACO-100  
Safety and Standards Branch, AWP-620  
Phoenix Airports District Office, PHX-ADO

## John Tolliver

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**From:** Gary Johnson <GJohnson@sedonafire.org>  
**Sent:** Tuesday, April 05, 2016 2:35 PM  
**To:** John Tolliver  
**Subject:** Fire flow requirements for new conference center and addtional lodging  
**Attachments:** PZ 13-00014 Sky Ranch Lodge 1105 Airport Rd #2.pdf

Mr. Tolliver,

As we discussed the new construction project proposed for Sky Ranch Lodge, 1105 Airport Road, Sedona, AZ under the City of Sedona case #PZ 13-00014 is required to meet the required fire flow requirements as outline in comment #5 in the attached review letter dated January 7, 2014. It has come to my attention the current water systems, Oak Creek Water or Airport Water, are not capable of meeting this demand. Until this situation is resolved no construction will be approved.

If you have any questions please feel free to contact me.

Gary J. Johnson  
District Fire Marshal  
Sedona Fire District  
(928) 204-8907  
(928) 300-0686



## SEDONA FIRE DISTRICT

2860 SOUTHWEST DRIVE • SEDONA, AZ 86336 • TEL: (928) 282-6800 • FAX: (928) 282-6857

January 7, 2014

Ms. Cari Meyer  
Associate Planner, Current Planning  
City of Sedona Community Development  
City of Sedona  
104 Road Runner Drive  
Sedona, Arizona 86336

Dear Ms. Meyer:

A conceptual review has been completed for the project listed below.

**Description:** Sky Ranch Lodge  
**Address:** 1105 Airport Road, Sedona, Arizona 86336  
**SFD Occ. #:** SKYR01  
**Case#:** PZ 13-00014  
**APN:** 408-27-001  
**Proposal:** New Conference Center and Additional Lodging

Based on the submitted information the following fire code requirements shall be applicable.

1. Fire department access roadways shall be provided. Roadways shall meet the listed requirements.
  - A. Roadways shall be at least 20 feet wide.
  - B. Grades shall not exceed 6% for gravel, 12% for blacktop and 15% for concrete surfaces.
  - C. Overhead obstructions shall not be lower than 13 feet 6 inches.
  - D. Obstructions such as low water crossings, security gates and speed bumps require buildings served by such roads to be equipped with automatic fire sprinklers.
  - E. Turning radii shall be no less than 20 feet inside, 40 outside.
  - F. Dead-ends longer than 150 feet shall be equipped with turn-a-rounds.
  - G. Bridges shall be designed to carry the imposed loads of fire apparatus.
  - H. Approved signs shall mark roads by name.
  - I. Vehicles shall not park in a fashion to obstruct fire lanes. No parking signs shall be installed where parking presents such obstructions.

**NOTE:** Roadways for emergency access shall be made available through the site during the construction process.

Safe....Friendly....Dedicated

**NOTE:** Access from the first driveway does not meet minimum road width of 20 feet. Overhead obstructions are lower than 13 feet 6 inches. This driveway provides access to the conference building. Minimum road width and overhead height limits shall be maintained for all existing driveways and roadways throughout the property.

2. Gates are noted on the plan at the meeting facility. These gates shall be equipped with a Sedona Fire District key over-ride cylinder. This cylinder shall be keyed to the type presently employed by the Sedona Fire District. Operation of the key shall open the gates and the gates shall remain open until such time that the key is returned to its normal position. One clockwise turn shall open the gate. One counterclockwise turn shall return the gate to normal operation. Provide proper key cylinder. This cylinder is available for purchase through this office.

In addition to the key operation, a TOMAR (TOMAR Industries, <http://TOMAR.com>) optical sensor 2091-SD or similar, shall be installed. This sensor allows for emergency apparatus to enter the property having the gate automatically open upon the approach of emergency apparatus. The actuation of the gate is through a signal sent via the strobe lights on the emergency apparatus. The gate will remain open for as long as the signal is being transmitted by the emergency apparatus. Provide proper optical sensor.

A battery backup system shall be provided to open the gate one time upon a power failure. Provide proper battery backup.

3. All commercial buildings hereafter constructed shall be equipped with an approved automatic fire sprinkler system. Systems shall be installed in accordance with the National Fire Protection Association's pamphlet #13, "Standard for the Installation of Sprinkler Systems" the 2002 edition or the National Fire Protection Association's pamphlet #13R, "Standard for the Installation of Fire Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height" the 2002 edition depending on the occupancy classification. Plans, specifications and hydraulic calculations shall be submitted to this office for review prior to installation.
4. All valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electronically monitored where the number of sprinklers is one hundred or more in all occupancies. If applicable, provide electronic monitoring of the water flow switch.
5. An approved water supply capable of supplying the required fire-flow shall be provided. Fire hydrants shall be installed in accordance with the local water purveyor and as required by this office. Hydrants shall be situated on at least six-inch mains, eight-inch if dead-end.

**NOTE:** Required fire-flows shall be made available prior to any combustible construction materials being brought on site. Fire flow is based on the size and construction type of the proposed buildings.

Fire hydrants shall be installed as directed by this office. An approved water main shall be provided to support the required fire flow for this project. Fire flows are determined by Appendix B, Table B105.1, of the IFC, 2003 edition.

6. Water mains and their appurtenances shall be installed in accordance with the National Fire Protection Association's pamphlet #24, "**Standard for the Installation of Private Fire Service Mains and Their Appurtenances**" the 2002 edition. Plans and specifications shall be submitted for review and approval prior to any installation.
7. All buildings equipped with automatic fire sprinklers, fire alarms or commercial kitchen cooking fire suppression systems shall be provided with an approved KNOX key box. This box is available for purchase through the Sedona Fire District.
8. Dumpsters, larger than 1.5 cubic yard capacity, shall not be located within five feet of the nearest structure. Provide proper separation for dumpsters from buildings.
9. All buildings shall be provided with UL listed or equivalent portable fire extinguishers. Fire extinguishers shall be installed in accordance with the National Fire Protection Association's pamphlet #10, "**Standard for Portable Fire Extinguishers**" the 2002 edition. The travel distance to any fire extinguisher shall not exceed 75 feet from any point in a building. Extinguishers shall be classified at least 2A10BC or greater, containing at least 5 pounds of dry chemical agent. Units shall be serviced and tagged by a reputable fire extinguisher company prior to the unit being displayed for use. Provide a unit near each exit on each floor.
10. Premises-identification shall be clearly posted prior to final occupancy. Numbers shall be visible and legible from the street. Number colors shall be contrasting to their background. Provide proper address numbers. All lodging units shall be clearly identified. Additional signage shall be provided, as needed, for lodging units not directly accessed from the parking area.
11. A vegetation plan shall be submitted to this office. **FIREWISE** concepts shall be used as part of the vegetation plan. Provide proper plans for review.
12. A fire alarm system shall be installed in the conference center. The system shall be installed in accordance with the National Fire Protection Association's pamphlet #72, "**National Fire Alarm Code**" the 2002 edition and Section 907 of the IFC, 2003 edition. Plans, specifications and battery calculations shall be provided to this office for review.
13. Kitchen equipment, which produces grease-laden vapors, shall be protected in accordance with the National Fire Protection Association's pamphlet #96, "**Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations**" the 2004 edition and National Fire Protection Association's (NFPA) pamphlet #17A, "**Standard for Wet Chemical Extinguishing Systems**" the 2002 edition. Plans and specifications shall be submitted to this office for review and comment. A complete description of the equipment being protected and its intended location under the hood shall be provided. Provisions for

fuel supply shut down devices for both gas and electricity shall be made. Provide plans for review.

14. The phone system shall meet the requirements of Section 611, Enhanced 911 for Multi-line Telephone Systems.

**611.2 Shared Residential Voice System Service.** Operators of shared system service serving residential customers are required to assure that the telecommunications system is connected to the public switched network such that calls to 9-1-1 result in one distinctive Automatic Number Identification (ANI) and Automatic Location Identification (ALI) for each living unit.

**Exception:** At all times, if the facility maintains an Alternative Method to Support Enhanced 9-1-1.

**611.3 Business Voice Systems.** For Voice Systems connected to the public switched network and serving business locations of one employer, the Operator shall deliver the 9-1-1 call with an Emergency Location Identification Number (ELIN) which will result in one of the following:

- a. An Emergency Response Location (ERL) which provides a minimum of the building and floor location of the caller, or
- b. An ability to direct response through an alternative and adequate means of signaling by the establishment of a private answering point, or
- c. A connection to a switchboard operator, attendant or a designated individual which provides for the establishment of Local Notification capability.

**Exceptions:**

- a. Workspace less than 7000 square feet and located on a single contiguous property is not required to provide more than one ERL.
- b. Key Telephone Systems are not required to provide more than one ERL.
- c. MTLIS Operators with less than 49 stations installed and occupying not more than 40,000 square feet and located on a single contiguous property are not required to provide more than one ERL.

**611.4 Shared Telecommunications Services.** Providers of shared Telecommunications Services shall assure that the system is connected to the public switched network such that calls to 9-1-1 from any telephone result in Automatic Location identification for each respective ERL, as defined in this section, of each entity sharing the telecommunications services.

15. Pool: A hazardous materials inventory shall be supplied to this office. All pool related chemicals shall be included in the inventory. Provide inventory.
16. Pool: An emergency telephone shall be provided at the pool which is capable of dialing 911 for the reporting of emergencies. Provide approved telephone.

These comments shall not be meant to exclude any applicable requirements adopted by the Sedona Fire District or other regulatory agency. The adopted fire code is based on the 2003 edition of the International Fire Code with amendments as approved by the Arizona State Fire Marshal.

Inspections required by the fire code, to ensure that these requirements have been satisfied, shall be scheduled through this office. Proof of these inspections shall be submitted by you to the City of Sedona Community Development Department prior to a certificate of occupancy being issued.

**As of February 27, 2008 the Sedona Fire District adopted a fee for service schedule. Service fees include construction plan reviews. A construction permit is required to be obtained from this office prior to any commencement of work. Construction permits will not be issued until such time that fee payments are received.**

If you have any questions concerning these comments please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Johnson", written in a cursive style.

Gary J. Johnson  
District Fire Marshal

C: City of Sedona Community Development