

AVIATION-ALERT

January 15, 2013



G | D | B

Gatzke Dillon & Ballance LLP
LAWYERS

FAA RELEASES DRAFT GUIDANCE ON HAZARDOUS WILDLIFE ATTRACTANTS

By Lori D. Ballance and Danielle K. Morone

On December 7, 2012, the Federal Aviation Administration (FAA) released Advisory Circular 150/5200-33C, *Protocol for the Conduct and Review of Wildlife Hazard Site Visits, Wildlife Hazard Assessments, and Wildlife Hazards Management Plans* (Draft AC). The Draft AC is available at http://www.faa.gov/airports/resources/draft_advisory_circulars/, and cancels Advisory Circular 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports* (August 28, 2007).

General Scope: This Draft AC should be closely reviewed by airport operators, land use planners, project applicants, and other interested parties to ensure that on- and off-airport development is compatible with airport operations. The Draft AC provides information regarding particularly hazardous wildlife species; specific land uses with the potential to attract hazardous wildlife; reporting and planning requirements applicable to airport operators; and, appropriate manners to coordinate and mitigate potential and existing hazards at the federal and local levels. The Draft AC is briefly summarized below:

Section 1, General Separation Criteria and Assessment of Hazardous Wildlife Attractants On or Near Airports. Figure 1 and the related text of this section of the Draft AC recommend a hazardous wildlife attractant separation distance of: 5,000 feet at airports serving piston-powered aircraft; 10,000 feet at airports serving turbine-powered aircraft; and, 5 statute miles if the attractant could cause hazardous wildlife movement into or across the approach or departure airspace. These separation distances are based on: (1) typical flight patterns; (2) the altitude at which most strikes occur; and, (3) National Transportation Safety Board recommendations.

Section 2, Land-Use Practices On or Near Airports That Potentially Attract Hazardous Wildlife. In this section of the Draft AC, the FAA addresses the following land uses that have the potential to attract hazardous wildlife: (i) waste disposal operations; (ii) water management facilities; (iii) wetlands; (iv) dredge spoil containment areas; (v) agricultural activities; and, (vi) golf courses and landscaping. The FAA also references the FAA and U.S. Department of Agriculture's *Wildlife Hazard Management at Airports*, as well as the University of Nebraska Cooperative Extension Division's *Prevent and Control of Wildlife Damage*, as sources of relevant information.

Section 3, Procedures for Wildlife Hazard Management by Operators of Public-Use Airports. In Section 3 of the Draft AC, the FAA outlines the Wildlife Hazard Site Visit (WHSV), Wildlife Hazard Assessment (WHA), and Wildlife Hazard Management Plan (WHMP) requirements, including the timetables applicable to completion of such studies. As provided in Section 3, the results of WHSVs and WHAs must be submitted to the FAA for review and approval; the FAA will relatedly determine the need for further study.

Section 4, Recommended Procedures for Airports Regarding Off-Airport Attractants. In this section, the FAA expresses that, as a matter of policy, it encourages the operators of public-use airports and project applicants to promptly notify the FAA of proposed land use changes within 5 statute miles that may attract hazardous wildlife – via FAA Form 7460-1, *Notice of Proposed Construction or Alteration*. The FAA further underscores that federally-funded airports are required by their grant assurances to take appropriate actions to ensure that land next to or near the airport is only subject to compatible uses.

Applicability: Part 139-certificated airports *may* use the standards, practices, and recommendations contained in the Draft AC to comply with the wildlife hazard management requirements of Part 139 of Title 14 of the Code of Federal Regulations. All airports that have received federal assistance and/or that have authority to impose and/or utilize passenger facility charges *must* comply with the standards in Section 1. The FAA also "recommends" that land use planners and project developers utilize the Draft AC.

Opportunity For Public Comment: Written comments on the Draft AC may be submitted to John Weller, FAA National Wildlife Biologist, at 800 Independence Avenue SW, AAS-300 Room 618, Washington, D.C. 20591 or john.weller@faa.gov. Comments received by January 31, 2013 will be considered and evaluated by the FAA prior to release of the final document.

[The information contained in this transmission does not constitute a legal opinion and should not be relied upon as legal advice.]

AIRPORT PRACTICE

Lori D. Ballance
lbalance@gdandb.com

Mark J. Dillon
mdillon@gdandb.com

David P. Hubbard
dhubbard@gdandb.com

Danielle K. Morone
dmorone@gdandb.com

Gatzke Dillon & Ballance LLP
2762 Gateway Road
Carlsbad, California 92009
760.431.9501
www.gdandb.com