

# Murray Ranch Inc.

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July 5, 2007

Gallatin County Commissioners

Gallatin County Courthouse—Room 306

211 West Main Street

Bozeman, MT 59715

RE: Proposed Three Forks Airport Affected Area (AAA) Regulations

Dear Commissioners:

I am writing to you in my capacity as Secretary of Murray Ranch Inc. in Three Forks regarding the proposed regulations that will deal with the Three Forks Airport Affected Area (the AAA). These proposed regulations are referred to in the 26-page “Pogreba Field/Three Forks Airport Affected Area Regulations” draft report that has apparently been in the process of being prepared since 2000. Our corporation has several concerns with the proposed regulations. *First*, depending on how the regulations are interpreted and enforced, they could have a very adverse impact on the ability of our ranch corporation to continue our efforts to develop land near the airport that has been in the Murray Family for over 150 years. *Second*, again, depending on how the regulations are interpreted and enforced, will prospective lot buyers be allowed to live near the airport? That is, is the real reason for these regulations to prevent any more people from living close to the airport? *Third*, is the immunity provision discussed at the bottom of page 15. The immunity provision being proposed states, “After the designation of an AAA, a person may not recover damages from a local government, an airport authority, an airport operator, or an airport owner for any injury caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations. “Normal” and “anticipated normal” airport operations were not defined in the draft copy of the

regulations reviewed. However, crop spraying is listed as a permitted use of the airport on page 21. If all crop spraying activities were forced to be relocated from Gallatin Field to the Three Forks Airport, the possibility of a serious chemical release over the city limits of Three Forks would increase. The reason for this is because houses are located far closer to the end of the runway at Three Forks than at Belgrade. Why should those who suffer personal and/or property damages not be compensated? It may be in the interest of FAA not to pay compensation, but is it in the interest of the residents of Three Forks not to receive compensation? In addition, it seems inconceivable to me that the immunity regulation would be constitutional. *Fourth*, these proposed regulations allow for individual taxpayers to appeal from decisions made by the envisioned Enforcement Officer (see E. 1. on page 14). The appeal could result from the Enforcement Officer simply granting relief from a particularly onerous provision of the proposed regulations to a nearby landowner that is objected to by some taxpayer. The regulations appear to allow the taxpayer to be located anywhere in the nation. Presumably, each taxpayer will be given standing in the judicial process by virtue of federal funds having been paid for part of the “transportation infrastructure provided to the community by the Airport” (see I. C. on page 1). This provision appears to have been adopted from the activists’ playbook used in filing endless lawsuits against the Forest Service over timber cutting contracts. Even though it cost the activists and their supporters only \$25-30 to file each lawsuit, and there was no additional cost if the suit was later dismissed because it had no merits, it tied up the contracts for months and cost the Forest Service and those who had been awarded contracts untold legal fees in fighting these activists. Hopefully airports and their activist supporters will not resort to these tactics in resolving how best to co-exist with adjoining property owners.

Footnote 55 at the bottom of page 18 states, “One of the paragraphs in the Airport Improvement Plan grant assurances reads as follows: *Compatible Land Use*. It (airport owner) will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport

operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.” In other words, once federal funds have been accepted and used by an airport, that airport must adopt all sorts of regulations, no matter how onerous or detrimental to nearby landowners or to the nearby community, to protect the interests of the FAA.

Using a hypothetical example, what if an airport had been allowed to be built adjacent to a small town with a population of approximately 1,000 to 1,500? At the time the airport was first operated, there were few planes using the airport. There was also little concern expressed that the airport was located adjacent to the town and that planes would have to fly over the town at low elevations to take off and land. After years of use, because it was so conveniently located, no one associated with the airport wanted to see it moved significantly further from town. The one time the runway was moved, additional houses were constructed between the end of the new runway and the town. To keep the airport in place, those managing the airport decided that they would obtain land to widen the airport property by using the threat of eminent domain to acquire the needed land. This was done and all was well—for awhile. As the town grew in population and more land was needed to be developed to provide housing choices for the increased population, it became apparent that conflicts could develop between the interests of nearby property owners located adjacent to the city limits who wanted to satisfy the housing needs of an expanding population and the interests of the small airport that was also located adjacent to the city limits. “To protect the transportation infrastructure provided to the community by the Airport from incompatible development and protect the Airport from personal and property injury claims due to noise and hours of operations” (see Sec. I, C. on page 1) new regulations would have to be developed. The new regulations would have to contain provisions for a new bureaucracy consisting of a “joint airport affected area regulatory board, and that board shall administer and enforce these regulations” (see I. E. on page 2), and an “Enforcement Officer –that

person designated by the governing body as the owner of the airport to serve as the governing body's representative to issue permits and variances under these regulations and to administer the regulations" (see II. B. 10 on page 4).

The regulations would also have to contain lots of terms, and the terms would need to be vaguely defined or defined by referring to some FAA manual that contains self-serving definitions supplied by the FAA. But how could these new regulations be developed in such a way that it would not appear to be just a method of protecting one's turf from competing interests brought about by natural growth of population? Perhaps a "crisis" could be developed, or maybe a "crisis" would just happen on its own. In either event, the police power of the state could be used to "promote the public health, safety and general welfare of airport users and persons and property in the vicinity of the airport by addressing the effects of noise, height of structures and trees, and land use in the vicinity of the field." Out of the blue was erected a tall cell tower near a cemetery in the vicinity of the airport. This incident triggered release of a 26-page set of regulations that had been worked on in the local county attorney's office since 2000 at the apparent request of some of those involved with the local airport. This hypothetical example shows what can happen if parties that can be adversely affected by a local airport are not vigilant and do not remain informed as to what is being proposed.

Getting back to the real world situation at hand, "The AAA for the Pogreba Field/Three Forks Airport is 14,000 feet from the thresholds of Runway 2 and 20, [and] at least 9,000 feet on each side of each runway, as shown on the AAA drawing." (See Section II., B. 3. on page 3.) A distance of 14,000 feet is 2.65 miles, and a distance of 9,000 feet is 1.70 miles. Adding the length and width of the runway, the Airport Affected Area appears to be an area 6.25 miles long by 3.5 miles wide.

While I do not have a copy of the AAA in front of me, this area would appear to include the entire city of Three Forks and extend half way to Willow Creek. If the proposed regulations are implemented and enforced, several "Assistant Enforcement Officers" would be required to "issue permits and variances under these regulations and to administer the regulations." Another activity that will consume a considerable

amount of the Enforcement and Assistant Enforcement Officers time (and the time of everyone within the 20-square mile AAA) will be obtaining vicinity sketches (“an 8-1/2 x 11”, non-reduced copy of a portion of a 7.5 minute USGS Quadrangle Map that shows the location of a proposed structure, tree or land use, and identifies the ground elevation at the proposed location. The vicinity Sketch must include the name of the USGS Map copied, the Township and Range of the area shown, and the horizontal and vertical datums upon which the map is based ... “). There is nothing in the proposed regulations that suggest anything other than a separate permit, variance or waiver being mandated for each home to be constructed or remodeled, for each pole or tower to be erected, or for each tree to be planted within the AAA.

If the real reason for these proposed regulations is to protect pilots from flying into obstacles, may I make a simple suggestion? Why not publicize that the Pogreba Field/ Three Forks Airport Affected Area is protected by a height limitation of 50 feet? Numerous groups can publicize the regulations, including the home builders group and Realtors (assuming that any dwelling constructed will be in excess of 50’ tall), landscape and nursery firms (assuming any tree will grow to a height in excess of 50’), cell tower and power line erection firms (including the firm that constructed the cell tower near cemetery hill and the firm that constructed the tall electrical line along side the Willow Creek Highway in the glide path to the airport), and airports themselves. If a person or firm erects or constructs, or allows to have erected or constructed, any obstacle taller than 50 feet within this AAA, or if any tree planted grows to a height in excess of 50 feet, that person or firm would be required to bring the erected or constructed obstacle into compliance by reducing the height of the obstacle to no more than 50 feet. All the other impediments to developing land adjacent to the city limits of Three Forks, and all the other regulations that appear to have been copied from regulations that pertain to large airports, should be made relevant to the Three Forks Airport, proposed in a separate set of regulations, and justified on their own merits after proper notice is provided to the public.

After studying this 26-page document and understanding its possible adverse impact on our corporation and the community, I was amazed that it has gotten this far. The reason that it has gotten this far is probably because no one has read the

proposed regulations. Based on the difficulty we experienced in obtaining a copy, maybe no one had an opportunity to read even a draft copy of the regulations with all its blanks before it was discussed at a public meeting. If the document has not been read, and there is general belief that the regulations will only be enforced against others, it would tend to explain why there appears to be support for these proposed regulations. Those who support the proposed regulations without having read the document and understanding how they may affect them when they want to plant a tree or remodel their home have simply accepted the idea advanced by those who are trying to push the regulations through that the regulations are designed only to limit the height of trees, towers and houses to 50 feet in height near the airport. If this were the case, it would be a simple matter to craft regulations to address the concern of preventing excessively high obstacles from being constructed near the airport. No new bureaucracy would be required to prevent these obstacles from being erected. Keeping these onerous regulations from being adopted would also prevent mischief from being perpetrated on nearby property owners by employees of the airport owner who will have an economic incentive in the form of job security to generate fees from the issuance of permits, variances and waivers.

More focus needs to be placed on how to make the Three Forks Airport safe and compatible with the interests of citizens of Three Forks and the Gallatin Valley. Too much time, focus and taxpayer money appears to have been devoted to preparing regulations that seem to be designed to justify the continued existence and expansion of the Three Forks Airport even though it is located too close to town. Note that if the airport was not located adjacent to Three Forks, the issue of "incompatible development," even from the FAA's narrow point of view, would not be an issue.

We are looking to you, the Gallatin County Commissioners, to stop the adoption of these over-reaching and heavy-handed regulations that have a dubious justification. Their main goal appears to legitimize the creation of a potentially large, over-reaching bureaucracy to prevent nearly all activity from taking place any where close to the airport under the guise of preventing buildings and towers in excess of 50 feet

from being constructed near the airport. We are supportive of reasonable plans “to promote the public health, safety and general welfare of airport users and persons and property in the vicinity of the Pogreba Field/Three Forks Airport.” However, we are skeptical about FAA’s perceived needs to and motives for “protecting the transportation infrastructure provided to the community by the Airport from incompatible development (whenever and however it chooses to define the term) and protect the Airport from personal or property injury claims due to noise and hours of operations” (which is a very sanitized version of what they allude to later in the proposed regulations). What we and others who own land adjacent to this airport are facing is incremental confiscation of our property rights without compensation.

We had also planned to ask if you could provide us with a complete set of attachments referred to in the proposed regulations so we could inform ourselves in a more complete manner. However, it appears that the proposed regulations are not what is needed to solve real safety issues. They should be set aside and work on a new set of objectively-defined and narrowly focused regulations should be initiated that will address real safety issues and reasonable solutions to the identified safety issues that pertain to the Pogreba Field/Three Forks Airport. If we can be of assistance in this effort to the Gallatin County Commissioners, the Gallatin County Attorney’s Office, or some other group of objective-minded individuals or entities, we extend our hand of cooperation. Allowing the pro-posed regulation to be implemented in anything near their present form will likely result in several lawsuits that could affect the viability of the airport in its present location. I am confident that no one wants this to happen. We, for one, want to see the residents and businesses of the City of Three Forks thrive, and the local airport to support this growth. We also want to help provide people who want to continue to live in Three Forks, or who want to move to Three Forks, to have housing choices. The economic activity resulting from development and build-out of our proposed subdivisions, supplemented by the economic activity brought about by the local airport, could make Three Forks an even more desirable community, and one with robustness and energy.

Thank you for reviewing this letter, and in letting us know what else you may need in order to have the Pogreba Field/Three Forks Airport proposed regulations set aside so effort on a new, meaningful set of regulations can be initiated.

Yours truly,

William D. Crowley, Ph.D.

Secretary, Murray Ranch Inc.

cc: Marty Lambert, Gallatin County Attorney

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