

STATEMENT OF JOSEPH DEL BALZO, DIRECTOR, EASTERN REGION, FEDERAL AVIATION ADMINISTRATION, FOR THE RECORD OF THE OCTOBER 1 HEARING OF THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS REGARDING THE PROPOSED PORT AMERICA CONSTRUCTION. OCTOBER 1, 1986.

Mr. Chairman and Members of the Subcommittee:

I am Joseph Del Balzo, Director of the FAA's Eastern Region. I am pleased to have the opportunity to describe for the Subcommittee the procedures which the FAA follows in determining the impact of proposed structures on navigable airspace.

At the outset, I would like to describe briefly FAA's implementation of Part 77 of the Federal Aviation Regulations relating to "Objects Affecting Navigable Airspace." Part 77 provides the regulatory means through which the FAA Administrator implements §1101 of the Federal Aviation Act of 1958 (49 U.S.C. 1501). This statutory provision directs the Administrator to require adequate public notice of construction or alteration of any structure where notice would promote safety in air commerce.

Subpart B of Part 77 requires that notice of construction or alteration be provided to the director of the FAA region wherein construction is proposed. It further sets forth the circumstances under which notice is required as well as the time and form in which the notice must be provided.

When notice is filed with a regional office as prescribed by Subpart B, an air traffic specialist screens the form to determine if the notice was in fact required for the proposed construction, and acknowledges its receipt.

Upon determining that notice was in fact required under Part 77, the specialist then considers the proposed construction in light of the obstruction standards of Subpart C of Part 77. If the proposed construction does not meet those criteria, the construction proponent is advised his structure is not an obstruction. If the construction meets or exceeds the screening requirements of Subpart C, but would clearly not pose a hazard to air navigation, the specialist advises the proponent accordingly. However, if the construction could constitute a hazard to air navigation, the proponent is advised that further aeronautical study is necessary. The criteria used are fundamentally height of the structure and the consequent interference, including electromagnetic interference, with the airspace used by navigating aircraft. Pending completion of such an aeronautical study, it is presumed that construction would be a hazard to air navigation.

Normally when an aeronautical study is conducted, the Notice of Proposed Construction is circulated to other FAA regional elements responsible for flight safety in order to solicit their views and comments regarding the potential impact of the proposed structure

on air navigation. Concurrently, a Notice of Aeronautical Study, containing the Notice of Proposed Construction, is circulated to known interested persons who are invited to offer their comments to the FAA regarding the aeronautical impact of the proposal. We are not legally empowered by the FAA Act to consider other factors (such as zoning, aesthetics, or construction quality) in our obstruction determinations, nor would that be an appropriate role for an agency whose expertise is aviation safety.

If the comments which are received set forth substantial reasons why the proposed construction could have an adverse effect on air navigation, then it is determined whether an informal airspace meeting would assist in resolving the issue. When such a meeting is held, among others, those persons who initially provided comments are invited to attend. This affords the opportunity for further discussion of the matter and provides an informal forum in which differences may often be resolved. The purpose of this entire procedure is to assure that the affected persons as well as aeronautical experts are given a meaningful opportunity to participate in the FAA decision-making. Subsequently, all comments are evaluated and a determination is made by the agency as to whether the proposed construction would have substantial adverse effect on air navigation. If it is determined to have such an effect, a Determination of Hazard is made; otherwise, a

Determination of No Hazard is made. The determination is then issued to the proponent as well as to the other persons who participated in the aeronautical study. This determination becomes final unless a Petition for Discretionary Review is filed with the Administrator within 30 days after issuance. Except in the case of FCC building permits for towers, a determination of no hazard expires 18 months after its effective date.

I would like to underscore, at this time, that the FAA's determination under Part 77 does not approve, permit or prohibit construction of any proposed structure. Neither does it waive, suspend, or otherwise affect local rules, statutes, ordinances or other such requirements. The FAA has no legal basis with which to prevent construction of a structure, even one determined to be a hazard to air navigation. Authorization for construction is a matter which rests with others and is totally outside the scope of FAA's authority. Thus, the FAA determination serves merely as an advisory opinion regarding the anticipated effect of the proposed structure on aeronautical operations and the safe and efficient use of navigable airspace. The determination of hazard is merely an "administrative" announcement - not a determination of an actual safety threat - prior to altering the flight paths or use of an airport to keep aircraft away from a structure. Our responsibility is to assure that a structure will not be a hazard in actual terms - even if we term it a "hazard" administratively.

Before closing, I would like to note briefly the status of the FAA's actions on the Port America Notice of Proposed Construction. FAA Eastern Region officials have met several times with construction proponents on their proposal. Further, we have provided notice of the proposed construction to regional representatives of the Departments of Army, Air Force, and Navy as well as to the National Parks Service and the National Capital Planning Commission. We have circulated two Notices of Aeronautical Studies on the construction proposal to seek public aeronautical comments from a total of 258 interested organizations and persons.

The circularization response period ends today. An informal airspace meeting may then be held if determined by the FAA to be necessary to discuss the effects of the proposal and to gather additional facts or information relevant to the aeronautical study. We expect that it will take at least a week to review the materials provided in response to our request for aeronautical comments. Should we conclude that an informal meeting is not necessary, a determination could be issued in mid-October.

That completes my prepared statement, Mr. Chairman. The FAA would be pleased to provide such additional information as the Committee may find useful.