Agenda Item: 5G1

# PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

### **AGENDA ITEM SUMMARY**

=======================================	==		
Meeting Date: December 6, 2022	-	-	[X] Regular [ ] Public Hearing
Submitted By: Department of Airports			

#### **I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** Corrective Action Plan (CAP) required by Federal Aviation Administration (FAA), Final Agency Decision (FAD) in *Forman v. Palm Beach County*, FAA Docket No. 16-17-13 for submission to the FAA for approval, providing for a commitment by the County to the repeal of Section 12-6(a) of the Airport Regulations (R-98-220, as amended) (Jet Restriction), which prohibits pure turbo-jet aircraft and aircraft in excess of 12,500 pounds engaging in air cargo operations from operating at the Palm Beach County Park Airport (Lantana Airport); removal of notations referring to the Jet Restriction from aviation facility records; continued suspension of enforcement of the Jet Restriction pending approval of the CAP by the FAA; notification to interested parties of the suspension of enforcement of the Jet Restriction; and completion of the Part 150 Noise Compatibility Study, including submission of a forecast to the FAA with the anticipated volume of jet operations.

Summary: On January 13, 2021, the FAA issued a FAD determining the Jet Restriction was adopted in violation of the Airport Noise and Capacity Act (ANCA) and the County's federal grant obligations. The FAA ordered the County to submit a CAP within 60 days, which must, subject to FAA approval, permit immediate access to jet aircraft capable of using the Lantana Airport's existing runways, and, within 180 days, provide a formal, legal commitment to rescind or not enforce the Jet Restriction. On February 9, 2021, the Board directed the County Attorney to file a petition for review with the U.S. Court of Appeals and suspended enforcement of the Jet Restriction pending review. On November 18, 2022, the U.S. Court of Appeals issued an opinion denying the County and City of Atlantis' (City) joint petition for review. As a result, the County remains in violation of federal law and its grant assurance obligations, risking further enforcement action by the FAA. Currently, the FAA will not act on any applications submitted by the County for general aviation (GA) Airport Improvement Program (AIP) entitlement funds; discretionary AIP grants; or grants created by the Bipartisan Infrastructure Law (BIL), including the County's allocated funding under Airport Infrastructure Grant (AIG) program and discretionary grants under the Airport Terminal Program (ATP) for any airport within the County's Airport System, including the Palm Beach International Airport (PBI). If the County does not submit a CAP acceptable to the FAA, the FAA may take additional enforcement action, including terminating the County's eligibility for primary airport entitlement funds under the AIP and the County's Passenger Facility Charge (PFC) collection authority for PBI. Submission of the CAP to the FAA is required to restore the County's compliance with federal law and grant assurance obligations and is strongly recommended by both the County's outside legal counsel and County Attorney's office. The CAP provides the County will adopt a resolution repealing the Jet Restriction in accordance with Florida law (Fl. Stat. 332.08(2)); remove of notations referring the Jet Restriction in aviation facility records; notify Errol Forman (Complainant) that he may operate his jet aircraft at the Lantana Airport; notify the City that the County is unable to continue to enforce the Jet Restriction as set forth in the Interlocal Governmental Agreement for Lantana Airport (Interlocal) (R-91-324D); and complete the County's LNA Part 150 Noise Compatibility Study (R-2019-1687), including the submission of a forecast of aircraft activity to the FAA with the anticipated volume jet operations and conducting a public meeting regarding the forecast. Countywide (AH)

Background and Policy Issues: (Continued on Page 3)									
Attachments: Corrective Action Plan									
Recommended By:		======== la .	 !//30/27_						
	Department Directo	r	Date						
	Dorred M. Neiller	· Ar	12/1/2027						
	County Administrate	Date							

## II. FISCAL IMPACT ANALYSIS

A. Fiv	e Year Summary of Fisca	l Impact:								
	Fiscal Years	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>				
Ope Ope Prog	ital Expenditures rating Costs rating Revenues gram Income (County) ind Match (County)									
NET	FISCAL IMPACT									
	DDITIONAL FTE SITIONS (Cumulative)									
ls Ite Doe	em Included in Current Bu s this item include the us	dget? Ye e of federal	es No _ funds? Yes	<u>x</u> No <u>_X</u>						
Bud	get Account No: Fund <u>4′</u> Reporting	<u>100                                   </u>	tment <u>120</u>	_ Unit	RSource _					
В.	Recommended Sources	of Funds/Su	mmary of Fis	scal Impact:						
C.	No fiscal impact.  Departmental Fiscal Rev	iew: Wb	<u>builure</u>	unsw						
III. REVIEW COMMENTS										
Α.	OFMB Fiscal and/or Con	tract Dev. a	nd Control C	omments:						
	Dia Mate 11/30  OFMB  NG 11/30	19092	Contract D	ev. and Cont	rol	11/3012				
В.	Legal Sufficiency:					•				
	Assistant County Attorn	6//30/z 2 ey								
C.	Other Department Review	w:								
	Department Director									
DE\/IG	SED 11/17									

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

Background and Policy Issues: (Continued on Page 3) The County adopted the Jet Restriction in 1973. The County has successfully defended the Jet Restriction against several challenges, dating back to at least 2000. However, the FAD and the U.S. Court of Appeals have now determined that the County repealed the Jet Restriction in 1988 ANCA became effective in 1990, significantly limiting an airport (Ordinance 88-11). sponsor's legal authority to adopt restrictions on aircraft operations. In March 1991, the County and City entered into the Interlocal, providing the County would enforce the Jet Restriction to the extent of its authority. In 1992, the Airport Director issued a directive restricting jet aircraft from operating at the Lantana Airport. In 1998, the County passed a resolution adopting the Airport Rules and Regulations with the Jet Restriction (R-98-220, as amended). The Jet Restriction has been subject to several legal challenges over a period of more than 20 years. In August 2017, a formal complaint was filed with the FAA alleging, among other things, that the Jet Restriction was not adopted in accordance with ANCA. In February 2019, the FAA issued a Director's Determination, concluding the Jet Restriction was repealed in 1988, its post-ANCA reenactment was subject to and did not comply with ANCA, and the Jet Restriction violates the County's federal grant obligations. The County appealed the Director's Determination. On January 13, 2021, the FAA's Associate Administrator issued the FAD, affirming the earlier Director's Determination. The U.S. Court of Appeals denied the County and City's petition for review of the FAD. As a result, the County remains in violation of federal law and its grant assurance obligations. The County's outside legal counsel and County Attorney's office have advised that there are no viable options for further appeal of this matter.

#### **CORRECTIVE ACTION PLAN**

Palm Beach County, Florida, as the Sponsor of the Palm Beach County Park (Lantana) Airport

- 1. The Palm Beach County Board of County Commissioners ("BOCC") will adopt a resolution repealing Section 12-6(a) of the Airport Regulations, which provides "[p]ure turbo-jet aircraft and aircraft in excess of 12,500 pounds engaging in air cargo operations are prohibited" at LNA ("Jet Restriction") at a public meeting of the BOCC and direct the County Clerk to deliver the resolution to the Municipal Code Corporation for codification upon receipt of an affidavit that the requirements of Florida law (Fl. Stat. 332.08(2)) related to posting or publication have been satisfied. Following the BOCC's adoption of the resolution, the resolution will be publicly posted for a period of four weeks or published in a newspaper once a week for four weeks, in accordance with Florida law (Fl. Stat. 332.08(2)). At the end of that waiting period, the Department of Airports will prepare and file an affidavit with the County Clerk certifying the posting or publication requirements have been satisfied so that the resolution may be provided to the Municipal Code Corporation for codification in the Palm Beach County Code.
- 2. The County will promptly notify the Complainant by letter (U.S. Mail and email to his counsel), that he may operate his Cessna 500 Citation at LNA.
- 3. The County will promptly submit a request through the FAA's Airport Data and Information Portal to remove the text "ARPT CLSD TO JET ACFT & ALL ACFT OVER 12500 MAX GWT" notation from LNA's Master Record.
- 4. The County will submit a request with the Florida Department of Transportation's Aviation and Spaceports Office to remove the notation "Airport CLSD to Jet tfc & acft over 12500 max GWT" notation from LNA's facility information sheet.
- 5. The County will remove language from the Palm Beach County Park Airport web page, which states that "jet aircraft are prohibited from operating at Park Airport."
- 6. The County will continue to suspend its enforcement of the Jet Restriction (*e.g.*, will not issue warnings, notices of violations, or citations).
- 7. The County Attorney will inform the City of Atlantis that it is unable to continue to enforce the Jet Restriction as set forth in the "Interlocal Governmental Agreement for Lantana Airport" (1991) pursuant to FAA order.
- 8. If required, the County will update the forecast submitted to the FAA in accordance with the County's LNA Part 150 Noise Compatibility Study and resubmit the updated forecast for FAA approval.
- 9. Upon FAA approval of the forecast, the County will schedule, post notice of, and conduct, at least one public meeting announcing and discussing the forecast, which includes jet operations at LNA. The primary purpose of this meeting will be to explain the introduction of jet aircraft to LNA. The County will request FAA ADO participation in this meeting to explain the

agency's requirement that the County rescind the Jet Restriction and its effect on aircraft operations and the Part 150 process.

10. The County will complete the Part 150 Noise Compatibility Study and submit to FAA.