U.S. Department of Transportation
Federal Aviation Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

February 23, 2012

Mr. Richard Goldman
Board Member
Glendale Airport Pilots Association
241 S. Old Litchfield Road
Litchfield Park, AZ 85340

RE: Question on non-aeronautical storage in airport hangar

Dear Mr. Goldman:

Ms. Daphne A. Fuller, Assistant Chief Counsel, Airports and Environmental Law Division, asked me to respond on her behalf to your fax letter requesting a legal interpretation of FAA Order 5190.6B, the Federal Aviation Administration's (FAA) Airport Compliance Manual, as it addresses privately built and privately owned hangars on leased airport property. Specifically, you ask, on behalf of the Glendale Airport Pilots Association, whether "the existence of non-aeronautical items in the above hangar with a housed aircraft constitute a violation associated with the Grant Assurance."

The FAA issued a Director's Determination in Valley Aviation Services v. City of Glendale, FAA Docket No. 16-09-06, on May 24, 2011, which found Glendale Municipal Airport, the sponsor, to be in violation of its federal grant assurances for allowing nonaeronautical use of airport hangars for storing non-aviation items. The Director's Determination identified the applicable federal law and policy at issue. We recommend that you review the Glendale decision together with the information provided in this letter. The decision is available through the Office of Airports' webpage.

While you requested a legal interpretation of FAA Order 5190.6B, please keep in mind that the Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is neither regulatory nor controlling with regard to airport sponsor conduct. Rather it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. The Order provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. The Order, among other things, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports and facilitates interpretation of the assurances by FAA personnel.

The following provisions of the Order relate to your questions:

> **11.6. Reasonable Rules and Regulations.**
> The sponsor should design its self-service rules and regulations to ensure safe operations, preservation of facilities, and the protection of the public interest. Examples of such rules and regulations may include:
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> **c.** Restricting hangars to related aeronautical activities.
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> **21.6. Land Use Inspection Guidance.**
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> **f. Problem Areas**
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> **(5). Nonaeronautical leaseholds.** The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are located on designated aeronautical use land without FAA approval or on property not released by FAA, and permitting dedicated aeronautical property to be used for nonaeronautical uses. Examples of typical uses include using hangars to store vehicles or other unrelated items.

If the hangars are located in an area designated as "aeronautical use" on an Airport Layout Plan (ALP), or in the case where there is no ALP and the hangars are located on airport property, then the hangars must be used only for aeronautical purposes unless otherwise approved by the FAA. Where the hangars are so located, the fact that the hangars are "privately built and privately owned" is not relevant to the obligations set forth in the standard airport sponsor assurances. Storing non-aeronautical items in hangars would not constitute an aeronautical use and would be inconsistent with our policy guidance. In such a situation, the airport sponsor could be found to be in violation of, among others, Grant Assurance No. 19, "Operations and Maintenance." Also, see Ashton v. City of Concord, FAA Docket No. 16-99-09, 2000 WL 132770 (Jan. 28, 2000), where FAA concluded that aircraft manufacturing (i.e., assembling a homebuilt aircraft in an airport hangar) was not a protected aeronautical activity and therefore could not be recognized by the FAA as a legitimate "aeronautical activity," and Thermco Aviation Inc. v. County of Los Angeles, FAA Docket No. 16-06-07, 2007 WL 1893821 (June 21, 2007), in which the FAA stated that storage of automobiles was a nonaeronautical use.

As indicated in FAA Order 5190.6B, airport sponsors are required to restrict hangars to related aeronautical activities, and contrary action may be deemed to be inconsistent with the sponsor's federal grant assurance requirements.

This is not a final appealable order of the Administrator within the meaning of 49 U.S.C. § 46110.

I hope that this information will be helpful to you. If you have any further inquiries please do not hesitate to contact me at 202-267-3199.

Sincerely,

Jonathan W. Cross
Manager, Airport Law Branch
Airport and Environmental Law Division

Cc: Mr. Walt Fix, Airport Manager