

Are FAA rules only for pilots?

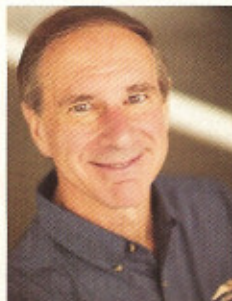
Outside of operating a nuclear reactor, aviation is one of the most tightly regulated and controlled industries in existence

today. As pilots we are "governed" in pursuit of our passion to fly by myriad FAA regulations from pre-flight to shutdown. But we deal with these as they come—even though at times these requirements make little sense to us. The FAA has standards that cover a broad range of activities besides our pilot regulations, and one has to question why those governed by these additional rules can't adhere to them, as we must as pilots. The FAA regulations on airports protect the surrounding airspace from encroachment that has the potential to be hazardous to the general good. Two California issues have received considerable AOPA attention, and the implications of these issues are significant for all of us at every airport in the United States.

When construction projects are planned near airports, federal law requires that the project sponsor file a Notice of Proposed Construction for any structure that exceeds 200 feet agl at the project site. In broad terms this form is to be filed prior to the start of construction, and this triggers an airspace study under FAR Part 77 to determine if the building or structure will be a hazard to air navigation.

Until December 2004, a 760-foot agl radio tower sat 1.5 nm northwest of the runway at the Fullerton, California, airport. Tragically, two pilots lost their lives when, in VFR conditions, their single engine aircraft struck the tower, bringing to the ground both the airplane and the tower. This was the second time the tower had been struck since its construction in 1947. Shockingly, the tower owner filed papers with the FAA seeking to rebuild the tower at the exact same height. After pressure from AOPA, which stated the tower should not be built on that site, the owner worked with the FAA. Right now the owner has agreed to reduce the height of the tower in order to receive the FAA "no-hazard" determination. Even though the FAA is now satisfied with its somewhat loose standards in this instance, AOPA attorneys are studying legal options to prevent the tower from going up in that location at all.

A unique situation in San Diego places AOPA, the FAA, the California Department of Transportation, and the San Diego City Attorney on the same side in a nasty legal fight with a local developer (California members, see "Action in California," page 16-A). The Sunroads-Centrum project, a mere seven-tenths of a mile northwest of Montgomery Field, has been declared a haz-



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ard to air navigation by the FAA. Some instrument approaches at the airport will have to have minimums raised as a result of the building—the shortest of three planned for the site. Where this issue gets dicey is that the proponent failed to file the necessary forms with the FAA prior to construction. Sunroads received a hazard determination, filed for construction at a lower height, and then received a no-hazard determination. However, the builder applied to the city building department for permits to the original hazard's height. Sunroads has refused to shorten the building by two floors in order to remove the hazard to air navigation at the airport. The next two buildings will create an even greater hazard to aircraft operating from Montgomery Field—as well as those office workers occupying the top floors.

Although the FAA regulates us as pilots and can enforce compliance through certificate revocation, suspension, and civil and criminal penalties, there is little it can do when a structure has been declared a hazard to air navigation. The FAA cannot prevent the hazard from being built; therefore

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the only recourse for the FAA is to raise instrument approach minimums. Essentially, the mitigation measure becomes a punitive action against those of us who need and use the facility, rather than fixing the actual hazard. In many cases when a project receives a determination-of-hazard ruling from the FAA, the builder will modify the project so that the hazard determination is removed. With a hazard determination, the project sponsor has significant liability exposure in the event an accident occurs as a result of its structure. But there are some project sponsors that are so arrogant and intransigent that they ignore the safety of the flying and nonflying public. Proponents of the Sunroads-Centrum project make a circular argument that with the FAA notam raising airport minimums, their building is no longer a hazard!

Protecting our nation's general aviation airports is a responsibility that we take seriously, and although we can't be everywhere on every issue, we try to pick those of significance, ones that could be precedent setting. Our victories come from a unified front not only with local officials but with national leaders and governing agencies as well. But we can't do it without local and state pilot groups who are essential to complement our efforts. Airport advocacy is a partnership that includes you. **AOPA**