



# **Internal Audit Department**

## **Audit Report 2012-2**

**(Subsequent to Audit Report 2012-1)**

**Collier County Airport Authority**

**Marco Island Executive Airport  
Limited Scope: Marco Island Parallel Taxiway  
Expansion-FAA and FDOT Grant Funding**

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The files and draft versions of audit reports remain confidential and protected from public records requests during an active audit under *Nicolai v. Baldwin (Aug. 28, 1998 DCA of FL, 5<sup>th</sup> District)* and Florida Statute 119.0713. Workpapers supporting the observations noted within this report are public record and can be made available upon request once the final audit report has been issued.

The Draft Audit Report 2012-2 was provided to the Department for management response on December 14, 2012. Chris Curry, Airport Executive Director, provided all management responses (noted in blue) on January 11, 2012.

## BACKGROUND

The Audit Report 2012-1 Marco Island Parallel Taxiway Expansion Project – Property Ownership and Zoning was issued on March 26, 2012. The findings of the audit included: the land upon which the expansion occurred does not appear to be properly zoned for airport use and it does not appear that proper zoning was in place prior to starting construction.

The Marco Island Parallel Taxiway Expansion Project received grant funding from the Federal Aviation Administration (FAA) and the Florida Department of Transportation (FDOT). Additional review was completed subsequent to the Audit Report 2012-1 with regard to grant assurances and attestations.

The Collier County Airport Authority (CCAA) entered into a grant agreement with the FAA (Project 3-12-0142-008-2010) on September 10, 2010, based on the amended grant application assurances. The FAA agreed to provide 95% of the project costs, up to \$6,068,990.

Collier County Airport Authority entered a joint participation agreement (grant) with the FDOT (Project FM 410788-194-01) on May 5, 2011. The FDOT agreed to provide reimbursement for project costs, up to \$480,000.

The FAA has reimbursed \$6,068,922.00 in grant funding as of July 26, 2012. The FDOT has reimbursed \$181,237.81. Total grant funding received for the Marco Island Parallel Taxiway Expansion Project is \$6,250,159.81 (FDOT and FAA). The Clerk's office has made final payment to the vendor. The final close-out of the grant has been completed by the department.

On September 11, 2001, a Memorandum of Understanding (MOU) was entered into by the Collier County Airport Authority, The Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, The Conservancy of Southwest Florida, The National Audubon Society, Florida Audubon Society, Environmental Defense Fund, Izaak Walton League Florida Division, Florida Department of Environmental Protection (Successor to Florida Department of Environmental Regulation), South Florida Water Management District, Florida Department of Community Affairs (Successor to Florida Department of Community and Veterans Affairs), The Deltona Corporation, and Collier County (BCC) for the following projects: parallel taxiway on the west side of the existing runway, apron hangar area and Federal Aviation Regulations (FAR) part 77 Vegetation Management Program.

## SUMMARY

The following audit observations were generated during the review:

- FAA and FDOT grant assurances and attestations were submitted without validation.
- It does not appear a ST Overlay Permit had been obtained prior to completion of the Marco Island Parallel Taxiway Expansion Project. (Subsequent Event: an after the fact ST Overlay Permit was obtained)
- The MOU conditions/terms required prior to the construction of the parallel taxiway and alteration/trimming of mangroves does not appear to have been completed. (Subsequent Event: CCAA met the terms of the MOU)

The following additional observations were generated during the review:

- Dissemination of information relating to the audit is contrary to the documentation.

All requirements of the grant applications, assurances, and agreements should be complied with prior to allowing construction projects to commence to ensure grant funding is not jeopardized.

Failure to comply with FAA or FDOT requirements may: result in audit findings, jeopardize future grant funding, result in disbarment from receiving grant funding, require repayment of grant funds, result in termination of the grant, impact future grant awards, and/or result in liability for damages for misrepresentation.

## OBJECTIVE

The objective of the audit was to determine whether there are grant compliance implications as a result of improper zoning for the Marco Island Executive Airport Parallel Taxiway.

## SCOPE

The audit consisted of, but was not limited to, review of the following:

- Final Audit Report 2012-1 Marco Island Parallel Taxiway Expansion Project – Property Ownership and Zoning issued on March 26, 2012;
- Legal Memorandum from Woodward, Pires & Lombardo, P.A. on March 23, 2012;
- Maps for zoning and other related maps;
- Amended FAA Grant Application dated June 24, 2010;
- FAA Grant Agreement 3-12-0142-008-2010 dated September 10, 2010;
- FDOT (grant) Joint Participation Agreement dated May 5, 2011;
- Board of County Commissioner / Collier County Airport Authority meeting agendas, supporting documentation, and minutes;
- Memorandum of Understanding dated September 11, 2001;
- The Conservancy of Southwest Florida communications and records;
- Finance Records for payments made to vendor;
- Finance Records for payments received from Grantor Agencies (FAA and FDOT); and
- Florida Statute Chapter 333 – Airport Zoning.

## SCOPE LIMITATION

The scope of the audit was limited to review of the implications, regarding grant assurances and attestations for grant funding, for improper zoning regarding the Marco Island Executive Airport's Marco Island Parallel Taxiway Expansion Project.

## OBSERVATION

### 1) FAA and FDOT grant assurances and attestations were submitted without validation.

The FAA Grant Application was completed on June 24, 2010 and signed by Penny Phillippi, Interim Airport Executive Director. The grant application states the parallel taxiway project will have an amendment (to zoning) to add airport and governmental services to the list of permitted uses proposed by the Marco Island Executive Airport Master Plan and Airport Layout Plan. The grant application referenced the Marco Shores PUD for zoning requirements when it should have referenced the Land Development Code.

The FDOT Joint Participation Agreement states that if “Airport Zoning” is not in place, that the CCAA will take the appropriate action necessary to ensure local government adoption of airport zoning. The Agreement also states the CCAA assures the project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport. The Marco Island Parallel Taxiway Expansion Project was built on land zoned “CON-ST” not “P” (Airport/Public Use zoned land). It does not appear that proper zoning was obtained prior to the commencement of construction.

The FDOT Joint Participation Agreement states the grantee may not make misrepresentations in information provided in the application, agreement, or any supplemental information provided and requires a construction certification. The construction certification requires that all design plans and specifications of the construction project comply with applicable federal law, state law, local law, and professional standards. The local government requirements require compliance to local zoning codes.

The FDOT Joint Participation Agreement signed by the CCAA on May 5, 2011 included a construction certification stating projects were compliant with all local zoning codes/laws. It appears the project was not compliant with local zoning codes/laws.

If the FAA determines that the CCAA is ineligible for funding as a result of improper zoning, the FDOT may render the agency ineligible for state funding. If the FAA terminates the grant or requires the CCAA to repay the grant expenditures, then the FDOT may require the reimbursement of project expenditures.

Subsequent Event: The County corrected the zoning through an LDC amendment.

#### **Recommendations:**

- FAA and FDOT grant attestations and grant assurances should be validated prior to submission to the grantor agency.

#### **Management Response:**

**In submitting the grant application, management made all reasonable and prudent measures to assure that the application was made in accordance with grant attestations and grant assurances at the time. The grant application reference to the Marco Shores PUD were for purposes of requesting additional discretionary FAA AIP grant funding in the amount of \$50,350 estimated professional services, application and administrative costs to amend the Marco Shores PUD to add airport and governmental services as additional permitted uses as required for future development of the airport in order to fully implement the Marco Island Executive Airport Master Plan. This item was deemed ineligible by FAA for discretionary grant funding under this project application and no funds were encumbered or expended on this item under this project.**

#### **Internal Audit Response:**

**The audit finding relates to validation of grant assurances and attestations applicable to the grant award for mitigation maintenance and monitoring-permit compliance, taxiway and aircraft apron (south) relocation construction, and amendment of Marco Shores Planned Unit Development (PUD). Whether or not funds**

were reimbursed for one segment of the grant award is irrelevant to the audit finding. The issue remains that the project appears to have been completed in non-compliance with local government requirements and zoning code/laws.

**2) It does not appear a ST Overlay Permit had been obtained prior to completion of the Marco Island Parallel Taxiway Expansion Project. (Subsequent Event: an after the fact ST Overlay Permit was obtained)**

The FAA Grant Application was completed on June 24, 2010 and signed by Penny Phillippi, Interim Airport Executive Director. The grant application states that the project will not “be inconsistent with any Federal, state, or local law, or administrative determination relating to the environment.” The FDOT Joint Participation Agreement states construction-related projects and design plans/specifications will comply with applicable federal, state, local, and professional standards.

The Land Development Code (LDC) Section 4.02.14 states prior to the clearing, alteration, or development of any land designated ST, the property owner or his legally designated agent shall apply for and receive approval of a site alteration plan or site development plan. The LDC Special Treatment Overlay (ST) section 2.03.07.D.1 states the purpose of the “ST” district is to assure the preservation and maintenance of these environmental and cultural resources to encourage the preservation of the intricate ecological relationships within the systems, and at the same time, permit those types of development which hold changes to the levels determined acceptable by the BCC after public hearing. It appears a site alteration or site development plan should have been completed prior to the commencement of construction.

The project manager stated they were unaware of the local permit requirements. State Permits were obtained for the project.

Subsequent Event: County Staff obtained an after-the-fact Special Treatment Permit for the airport parallel taxiway and associated structures that were constructed within the Special Treatment overlay.

**Recommendations:**

- Local permits should be obtained prior to the commencement of construction.

**Management Response:**

**The Collier County Airport Authority engaged the professional services Q Grady Minor & Associates for the purpose of obtaining required local land use permits. Application was made and on September 20, 2010 Collier County Growth Management, Land Development Services reviewed and issued Final Site Development Plan Approval # PL 2010-418 to the commencement of project construction in May of 2011.**

**3) The MOU conditions/terms required prior to the construction of the parallel taxiway and alteration/trimming of mangroves does not appear to have been completed. (Subsequent Event: CCAA met the terms of the MOU)**

The Memorandum of Understanding (MOU) was completed on September 11, 2001. One term of the MOU required the County and Airport Authority to complete a Conservation Easement to prohibit all development and mangrove activities for areas adjacent to the “development area.” The MOU stipulated the Airport shall not commence or commit resources toward the commencement or implementation of the projects, unless the MOU has been fully executed and all conditions met. The MOU required the Conservation Easement be completed within 30 days of the MOU being signed by all parties.

It does not appear a Conservation Easement was executed and recorded. In the Collier County Planning Commission meeting on May 3, 2012, The Conservancy of Southwest Florida stated they were working with the

Airport Authority to execute and complete a Conservation Easement for the conservation land located to the east of the runway. After subsequent geographic information system (GIS) mapping completed by the Conservancy, it was determined that no conservation easement was necessary because all lands to the east of the runway were outside the limits of development and were already State owned conservation land subject to oversight for the terms of the Deltona Settlement Agreement.

The MOU also required, prior to the cutting, trimming, removing, or modification of vegetation outside the Development Areas, a Vegetation Management Program approved by the FAA and FDOT. In the CCPC meeting on May 3, 2012, it was also stated a Vegetation Management Program needed to be executed within 6 months as a requirement of the ST Overlay Permit.

The FAA grant application required all plans and specifications of the project be in accordance with the approved environmental documents. The MOU was relied upon to provide environmental approval for the construction of the parallel taxiway. In order to be compliant with the grant application and assurances, compliance with the terms of the MOU is required. The Airport Authority did not have environmental permission to complete the construction of the parallel taxiway until the CCAA met the terms of the MOU.

Subsequent Event: After non-compliance with the MOU was identified The Conservancy of Southwest Florida met with all Deltona stakeholders and the Airport Authority and they believe the terms of the MOU have been sufficiently met based on after-the-fact corrective actions.

**Recommendations:**

- All conditions of a Memorandum of Understanding must be complete prior to the commencement of conditional projects.

**Management Response:**

**All terms/conditions of the September 11, 2011 MOU required of the Collier County Airport Authority have been met.**

## OTHER OBSERVATIONS

### 1) The Conservancy of Southwest Florida confirmed audit findings.

It does not appear that a Conservation Easement was executed. On May 3, 2012, during the Collier County Planning Commission meeting the Conservancy of Southwest Florida stated they were working with the Airport Authority to execute and complete a Conservation Easement for the conservation land located to the east of the runway to be compliant with the Memorandum of Understanding. This indicates the project was not in compliance with the conditions of the Memorandum of Understanding.

On the July 24, 2012 Board of County Commissioners (BCC) meeting a commissioner read into the record an email received on July 23, 2012 from the Conservancy of Southwest Florida. The email from the Conservancy is as follows: “the mapping shows that the limit of development is indeed greater than the boundaries of land under the County’s ownership. While the limit of development is directly against the western boundary of the airport’s property, on the eastern side, the development area extends for a number of feet into State lands.” The email goes on to state “this map confirms there was no land available for a conservation easement, since an easement was to cover property owned by the County outside of the limits of development.”

The email shows the construction of the Marco Island Parallel Taxiway was approved by the limits of development (allows the construction project), but had not received the proper zoning and was built on state owned conservation land, which was a violation of the conditions required by the Memorandum of Understanding. The project had not originally complied with the terms of the Memorandum of Understanding.

## CONCLUSION

All requirements of the grant applications, assurances, and agreements should be complied with prior to allowing construction projects to commence to ensure grant funding is not jeopardized.

Failure to comply with FAA or FDOT requirements may: result in audit findings, jeopardize future grant funding, result in disbarment from receiving grant funding, require repayment of grant funds, result in termination of the grant, impact future grant awards, and/or result in liability for damages for misrepresentation.

Audits do not relieve management of their responsibilities. It is the ultimate responsibility of management to understand and implement the proper processes to comply with the grant requirements, zoning, and permitting requirements. The Clerk's Office may suggest recommendations in audit reports, but it is the duty and decision of management to formulate processes to ensure compliance.

Subsequent events are noted for corrective actions taken.

### **Additional Management Response:**

**The staff of the Collier County Airport Authority undertook and executed this project in good faith and with the understanding that all applicable grant funding, environmental and local land use approvals were in place at the time of commencement through due diligence review of all available information and documentation. This project had evolved over a period of more than 15 years of planning, permitting, engineering, design and implementation, during which time multiple changes of management, consultants and governance structure had occurred within the organization. An individual project development/implementation of this duration for typical airport capital improvements is highly unusual and not likely to occur in the future.**

### **Internal Audit Comments:**

**Internal Audit gratefully acknowledges the cooperation and assistance from the Airport Authority. The Airport Authority's quick response for providing and communicating information greatly assisted with the Audit.**