

BCC Meeting

Collier County Airport Authority

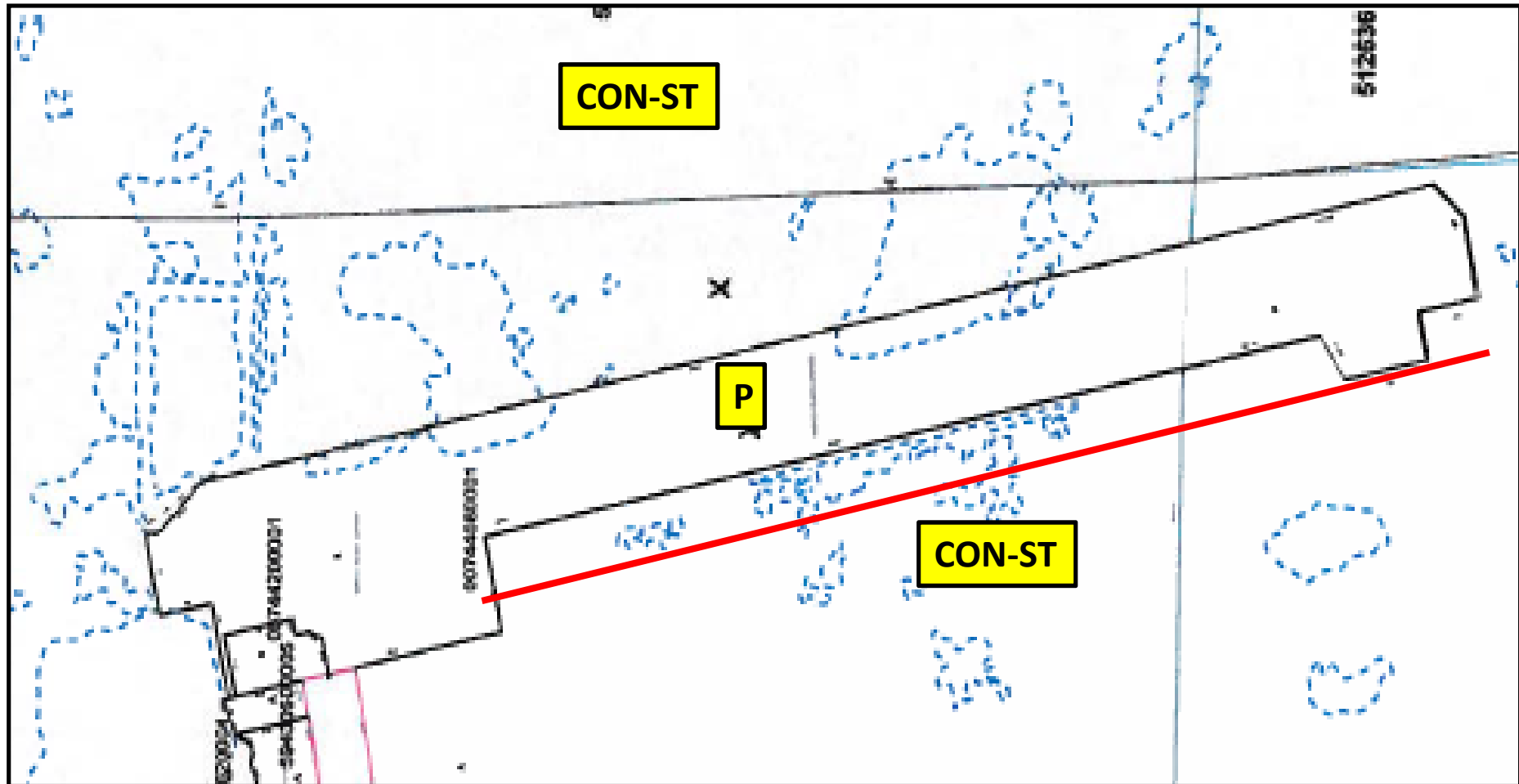
Audit Report 2012-2 Marco Island Parallel
Taxiway Expansion – Grant Funding



February 26, 2013

Dwight E. Brock

Marco Island Parallel Taxiway - Zoning



Summary of Findings

1. FAA and FDOT grant assurances and attestations were submitted without validation.
2. ST Overlay Permit had not been obtained prior to completion of the Marco Island Parallel Taxiway Expansion project.
3. The Memorandum of Understanding conditions/terms required were not completed prior to the construction.
 - Conservation Easement was not executed or recorded
 - Vegetation Management Program was not completed.

FAA and FDOT grant assurances and attestations were submitted without validation.

- 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 been the Land Development Code (LDC).
 - LDC is CON-ST zoned
 - Airport is not a permitted use under CON-ST zoning

FAA Grant Application for the Taxiway Project

Marco Island Executive Airport TAXIWAY PROJECT ATTACHMENT "A"

Grant Application Grant Description

- The Marco Shores PUD was not applicable to the project.
- The Land Development Code was the governing requirement for zoning.

Amendment of Marco Shores Planned Unit Development (PUD)

I. Grant Description

A. Mitigation Maintenance and Monitoring: Permit Compliance

Perform maintenance and monitoring at off-site mitigation site (Rookery Bay National Estuarine Research Reserve) for five-years as required by Army Corps of Engineers Permit No. SAJ-1997-2362. This work is required in order to comply with permit requirements and will allow for the construction of a parallel taxiway that will greatly enhance safety at the Marco Island Executive Airport.

B. Taxiway and Aircraft Apron (South) Relocation Construction

Construct 5,000' x 35' parallel taxiway to serve the full length of runway 17/35, and expand and relocate the existing aircraft apron at the southwest quadrant of the airport to accommodate aircraft parking that will be displaced by the construction of the taxiway. This project will greatly reduce the risk of runway incursions and potential collisions between arriving, departing and taxiing aircraft and will significantly enhance safety by providing sufficient aircraft operational, movement and apron areas.

C. Amendment of Marco Shores Planned Unit Development (PUD)

Amend the Marco Shores Golf Course Community Planned Unit Development (PUD) to add airport and governmental service to the list of permitted uses. Currently, the general plan of development of Marco Shores is for a planned residential community and golf course. In order to fully implement the Marco Island Executive Airport Master Plan an amendment to the existing PUD is required.

FDOT Joint Agreement for the Taxiway Project

- The MIPT was constructed on land zoned “CON-ST” not “P” (Airport/Public Use zoned land).
- The FDOT requirements required compliance with local zoning codes.
- The project was non-compliant with local zoning codes, violating the FDOT requirements.

- Chapter 163, F.S., Local Government Comprehensive Planning and Land Development
- Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
- Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
- Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
- Chapter 332, F.S., Airports and Other Air Navigation Facilities
- Chapter 333, F.S., Airport Zoning
- b. **Florida Administrative Code (FAC)**
 - Chapter 9J-5, FAC, Review of Comprehensive Plans and Determination of Compliance
 - Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
 - Section 62-256.300(5) FAC, Open Burning, Prohibitions, Public Airports
 - Section 62-701.320(13), FAC, Solid Waste Management, Permitting, Airport Safety
- c. **Local Government Requirements**
 - Airport Zoning Ordinance
 - Local Comprehensive Plan
- d. **Department Requirements**
 - Eight Steps to Building a New Airport
 - Florida Airport Financial Resource Guide
 - Florida Aviation Project Handbook
 - Guidebook for Airport Master Planning
 - Guidelines for Plan Development

2. **Construction Certification:** The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and project standards...

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**b. Local Government Requirements
-Local Zoning Codes**

Airport Management Response

- Management made all reasonable and prudent measures to assure the application was made in accordance with grant attestations and assurances at the time.
- The grant application reference to the Marco Shores PUD were for purposes of requesting additional discretionary FAA AIP grant funding to add airport use to the PUD for future development.
- The item was deemed ineligible by the FAA and no funds (*for Marco Shores PUD amendment*) were received or expended. (clarification added)

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.

Internal Audit Response

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- Whether or not funds were reimbursed is irrelevant to the audit finding.
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An ST Overlay Permit had been obtained prior to completion of the MIPT Expansion Project.

- The FDOT joint participation agreement required compliance with applicable federal, state, local, and professional standards.
- A ST Overlay Permit was not obtained prior to the construction of the Marco Island Parallel Taxiway Expansion project.
- Subsequently, on June 12, 2012, an after-the-fact ST Overlay Permit was obtained.

Memorandum of Understanding

- On September 11, 2001, a Memorandum of Understanding (MOU) was entered into by the CCAA and multiple other parties for the following projects:
 - Parallel taxiway on the west side of the existing runway
 - Apron hangar area
 - Federal Aviation Regulations (FAR) part 77 Vegetation Management Program
- All requirements of the MOU had to be met in order for the project to be compliant.

The Conservancy of Southwest Florida confirmed the audit findings.

- On May 3, 2012, during the Collier County Planning Commission meeting the Conservancy stated they were working with the Airport to complete a Conservation Easement to be compliant with the MOU.
- This indicates the project was not in compliance with the conditions of the MOU.
- On July 24, 2012, in the BCC meeting, a Conservancy email was entered into the records.
- The email stated the mapping shows that the limit of development is indeed greater than the boundaries of land under the County's ownership...extending into State lands.
- The email shows the MIPT was approved by the limits of development, but had not received the proper zoning and was built on State owned conservation land, which is a violation of the conditions required by the MOU.
- The project had not originally complied with the terms of the MOU.

CONCLUSION

- All requirements of 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, result in termination of the grant, impact future grant awards, and/or result in liability for damages for misrepresentation.

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.

Thank you

