


REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

239.1

ENFORCEMENT OF
CALIFORNIA AERONAUTICS LAWS
BY THE DIVISION OF AERONAUTICS
CALIFORNIA DEPARTMENT OF TRANSPORTATION

DECEMBER 1975

Respectfully submitted,



Glen H. Merritt
Chief Deputy Auditor General

Date December 22, 1975

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SUMMARY

This report reviews the Department of Transportation, Division of Aeronautics. The primary objectives of the Division of Aeronautics are to encourage the development of air transportation and to foster and promote aeronautics safety.

<u>Findings</u>	<u>Page</u>
Management personnel at the Department of Transportation (Caltrans) have not required the Division of Aeronautics to adequately enforce aviation laws. Instead, they have allowed airports to operate without permits and in violation of aeronautics laws. Reasons for this lack of enforcement are (1) formalized enforcement policy or procedures have not been developed, (2) the objectives and responsibilities of the Division may be incompatible, and (3) only a small enforcement staff is assigned to cover the entire State.	5
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INTRODUCTION

In the nation, California ranks number one in aviation. One of every six planes and pilots in the United States is based in California. This aviation activity creates problems with aircraft noise, hazards to pilots and the public. In response to a legislative request for a review of the Department of Transportation, we have reviewed the activities of its Division of Aeronautics.

According to the Federal Aviation Administration, 25,169 civil aircraft, or one-sixth of those in the United States, are registered to owners with California addresses. Of these, 368 are owned by airline companies. There were 101,606 certified pilots with California addresses as of December 31, 1974.

The authority and responsibility for regulating California aviation is vested with the Division of Aeronautics in the Department of Transportation. On July 1, 1973, the Department of Aeronautics became the Division of Aeronautics, a part of the California Department of Transportation (Caltrans).^{1/}

The primary objectives of the Division of Aeronautics, as outlined by Section 21002 of the Public Utilities Code, are to protect the public interest in aeronautics by (1) encouraging the development of

^{1/} Chapter 1253, Statutes of 1972, Sections 1400 et seq. of the Government Code.

air transportation; and (2) fostering and promoting safety in aeronautics. The Division is doing an adequate job promoting aviation. This report is concerned about the lack of enforcement efforts of the Division related to aviation safety.

The Division is charged with assuring that California airports do not operate without an airport permit. For this permit, airports must meet all safety requirements, including federal minimum standards.

Division officers are authorized to enforce the provisions of the Public Utilities Code relating to aeronautics laws by arresting, without a warrant, persons who have violated these laws.^{1/}

Assembly Bill 2014, effective January 1, 1976, will change Section 21252 of the Public Utilities Code from "shall enforce" to "may enforce" aeronautics laws. (Although this removes the requirement for enforcement, we believe there is need for the Division to continue its enforcement activities to protect the public safety.)

The State Aeronautics Board was created in accordance with Section 21215 of the Public Utilities Code. Its seven members are appointed by the Governor for four-year terms with the advice and consent of the Senate. At least four members must have five or more years of practical experience in aeronautics.

^{1/} Section 21252, Public Utilities Code.

The Board advises and assists the Director of Caltrans in all aeronautics matters in the State. The Board has the authority to hear appeals from any persons of actions taken by Caltrans. Appeals decisions by the Board are final, subject only to judicial review.

Recent Board policy states that the primary goal of the Division should be to save, maintain, and promote the development of aircraft landing sites, both new and existing.

The Federal Aviation Administration (FAA) issues and enforces rules, regulations and minimum standards related to the manufacture, operation and maintenance of aircraft as well as certifying pilots. A primary objective is the safe and efficient use of airspace. To meet this objective, the agency operates a system of air traffic control and air navigation for both civilian and military aircraft. It publishes information on airways and airport service and issues technical publications for improving flight safety, and airport planning and design.

FAA officials told us that they have responsibility to certify airports serving air carriers certified by the Civil Aeronautics Board. Airports receiving federal grant funds are subject to federal agreements and FAA conducts compliance programs. If airports are not complying with the agreements, future federal funds may not be allowed. FAA has no control over privately or publicly owned airports not receiving federal funds. However, it is responsible for controlling airspace over all airports to assure there is not conflict of airspace with other airports.

The federal Civil Aeronautics Board authorizes interstate and foreign air commerce and permits foreign air carriers to engage in air transportation between the U.S. and foreign countries. It determines the rates paid by the postal service for shipping mail by air and sets minimum rates paid by the Department of Defense for contract services by civil air carriers.

FINDINGS

THE DIVISION OF AERONAUTICS HAS NOT ADEQUATELY ENFORCED LAWS RELATED TO AVIATION SAFETY.

Management personnel at the Department of Transportation (Caltrans) have not required the Division of Aeronautics to adequately enforce aviation laws. Instead, they have allowed airports to operate without permits and in violation of aeronautics laws. Reasons for this lack of enforcement are (1) formalized enforcement policy or procedures have not been developed, (2) the objectives and responsibilities of the Division may be incompatible, and (3) only a small enforcement staff is assigned to cover the entire State.

The Division has no formal policies and procedures to enforce California aeronautics laws. Division officials told us that enforcement policies and procedures are being developed; however, as of December 9, 1975 they had not been approved by Caltrans management.

The Division is required to promote aviation and encourage the establishment of airports and air navigation facilities. It is also required to enforce the state aeronautics laws. The same individual (aviation consultant) is responsible both for promoting aviation and for enforcing aviation regulations. This dual role may be incompatible since the aviation consultant assists an airport operator in developing

or expanding airport facilities and may then be required by law to close the facility or cite the owner or operator for not complying with applicable laws.

Of 23 professional man-years budgeted for DOA for the fiscal year 1975-76, only five have been committed by the Division to the safety and regulation program. Less than one man-year has been allocated for statewide enforcement and compliance. Restated in dollars, the Division has budgeted \$531,000 for the 23 man-years, of which \$107,000 has been allocated to the safety and regulation program and only \$4,300 has been committed to enforcement and compliance activity.

Operating Airports Without
State Airport Permits

Section 21663 of the Public Utilities Code states:

It is unlawful for any political subdivision, any of its officers or employees, or any person to operate an airport unless an appropriate airport permit required by rule of the department has been issued by the department and has not subsequently been revoked.

The Division may exempt certain airports, if compliance would be an undue burden on the airport, and if it is not required in the interest of public safety.

On July 21, 1975, the Division had files on 813 airports in California: 406 had been issued state permits and 44 had state exemptions issued by the Division. The remaining 363 airports had no state permits or exemptions. Agricultural airstrips are exempt from state permitting requirements and are not included in the above figures. The Division does not know how many airports or agricultural airstrips there are in California.

Airports Have Been Allowed to Operate
In Violation of Aeronautics Laws.

Any person violating any provisions of aeronautics laws may be fined not more than \$1,000 or imprisoned for not more than six months, or both.

According to Division officials, Caltrans' legal staff has filed only one injunction against an airport owner or operator. Division officials have never arrested or cited a pilot for any violations of aeronautics laws. Local law enforcement agencies have arrested and cited pilots for violations of aeronautics laws. For example, the Simi Valley police have cited numerous violators at Santa Susana Airport.

We visited 18 airports during our review. Eight of these airports were operating with state permits, eight had not been issued permits and two had been issued state exemptions.

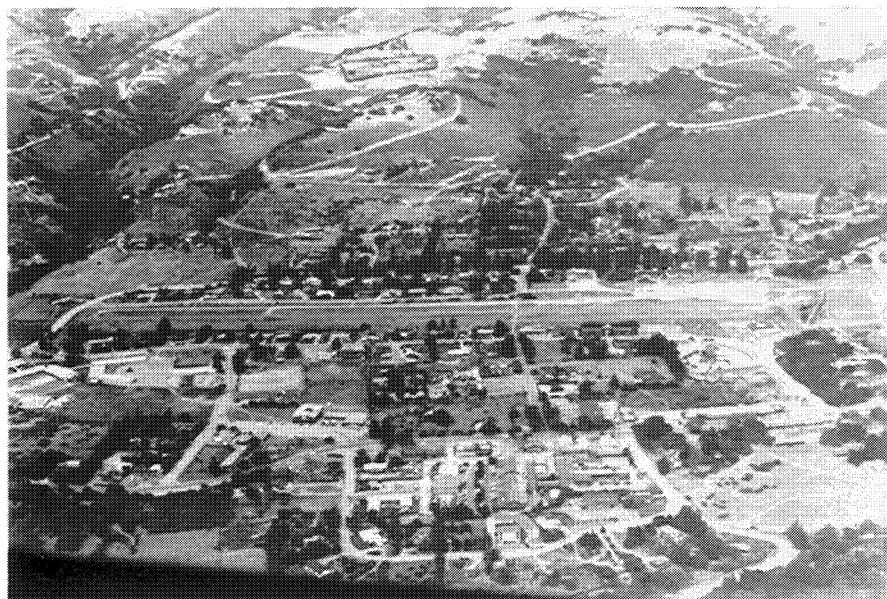
A Division aviation consultant accompanied us on these visits. Of the 18 airports visited, 17 had violations of California aeronautics regulations; only one had no apparent violation. The violations ranged from insignificant technical violations, such as changing the use of an airport without amending the airport permit (Gallagher Airport), to airport safety hazards which create excessive risks to both pilots and the public including: (1) unfenced airport allowing the public, especially children, to cross the runway at will (Carmel Valley Airport); and (2) airports not properly identified as private and closed to the public (Flite Strip Resort Airport and Pinnacles Airport). See Appendix, page 21 for listing of airports visited.

After our visits, the Division requested several offenders to correct the safety violations.

See pages 9 through 11 for descriptions and pictures of selected airports operating with safety deficiencies and violations of aeronautics laws.

Carmel Valley Airport, Carmel Valley,
Monterey County, Privately Owned, Public
Use Airport with State Airport Permit

Footpaths crossing the runway and taxiways are being used by the public to gain access to an elementary school and a post office adjacent to the airport. Children were observed on runway and taxiway. There were no fences or signs posted to keep school children off of the runway.



Flite Strip Resort Airport, Foresthill,
Placer County, Privately Owned, Public
Use Airport with a State Permit

High trees encroach runway on all sides. Runway is not marked as private. The Federal Aviation Administration has classified this airport as dangerous. Airport also has main road to resort facilities crossing runway.



Pinnacles Airport, Soledad, Monterey
County, a Privately Owned, Public Use
Airport Without a State Permit

This airport is not acceptable for use by the public due to operational difficulties. The length of the runway is below state minimum standards for its elevation and is not appropriately marked. The east approach is blocked by a hill and cattle graze on this runway.



CONCLUSION

The Division of Aeronautics has not adequately enforced the California aeronautics laws, although the Division has the statutory authority and responsibility to do so.

RECOMMENDATION

We recommend that the Department of Transportation establish and implement policies and procedures to protect pilots and the public from unsafe conditions at airports. To the extent necessary, additional personnel should be hired to accomplish these actions.

OTHER PERTINENT INFORMATION

ALTERNATIVE SOURCES OF REVENUE

Currently, the Division's only source of revenue is the general aviation gas tax of two cents per gallon. This revenue is appropriately used to promote aviation. In order for the Division to increase enforcement efforts without a major shift in priorities, additional sources of revenue may be needed to offset the cost. Potential sources for this additional revenue include:

- Charging an annual aircraft registration fee
- Charging a fee for issuing an airport permit
- Charging fines for violations.

Annual Aircraft Registration Fees

The following revenue could be generated for the Division by charging an aircraft registration fee:

<u>Number of Aircraft As of December 31, 1974</u>	<u>Potential Revenue Based on Various Annual Registration Fees</u>			
	<u>\$5</u>	<u>\$10</u>	<u>\$20</u>	<u>\$50</u>
25,169	\$125,845	\$251,690	\$503,380	\$1,258,450

Other methods could be used to determine aircraft registration fees such as a graduated scale based on the number of engines, the number of seats in the aircraft or the weight of the aircraft. Potential revenue from each of these sources cannot be readily estimated.

Airport Permit Fees

As of July 21, 1975 there were 813 airports and 252 heliports on file with the Division. The following schedule shows the potential revenue for the 1,065 airports/heliports using various fees for the annual airport permit.

<u>Number of Airports/Heliports</u>	<u>Potential Revenue Based on Various Annual Permit Fees</u>			
	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
1,065	\$26,625	\$53,250	\$106,500	\$213,000

Airport fees could also be charged by the class of airport, such as \$500 for commercial air carrier airports, \$400 for public general aviation airports or \$300 for privately owned airports closed to the public. Potential revenue from this source cannot be readily estimated.

Section 21662 of the Public Utilities Code currently prohibits charging for airport permits and therefore legislation would be required to realize this potential source of revenue.

Fines for Violations

As stated on page 6 of this report, Division officials have never arrested or cited a pilot for any violations of aeronautical laws. The costs of increased enforcement could be offset by levying fines for violations of airport regulations and laws.

STATE AVIATION ACCIDENT STATISTICS

In calendar year 1974, accidents involving 812 aircraft were reported to the Division. Of these, 109 involved 253 fatalities and 51 involved serious injuries to one or more persons. In the remaining 652 accidents there was either minor injury, no injury, or the injury status was not indicated.

How many, if any, of these accidents can be attributed to uncorrected aeronautics violations has not been determined by the Division.

Of the 812 aircraft involved in accidents, 597 were either destroyed or substantially damaged. The other 215 aircraft sustained only minor damage, no damage, or the degree of damage was not reported.

THE TEN BUSIEST
AIRPORTS IN THE NATION

Six of California's airports consistently rank among the ten busiest airports in the nation as determined by numbers of take-offs

and landings. Traffic figures for the ten busiest airports in fiscal 1974 are shown in the following tabulation:

	<u>Airport</u>	<u>Number of Take-Offs and Landings</u>		
		<u>Total</u>	<u>General Aviation</u> ^{1/}	<u>Airline</u>
1.	Chicago, O'Hare	680,763	102,795	577,968
2.	Santa Ana, CA	615,445	587,750	27,695
3.	Van Nuys, CA	582,852	579,355	3,497
4.	Long Beach, CA	546,761	526,531	20,230
5.	Atlanta, GA	502,263	79,357	422,906
6.	Los Angeles, CA	465,720	110,841	354,879
7.	Torrance, CA	428,272	427,844	428
8.	Opa Locka, FLA	419,735	408,403	11,332
9.	San Jose, CA	406,829	356,383	50,446
10.	Phoenix, AZ	404,867	311,343	93,524

^{1/} General aviation includes aircraft used for business, air taxis, rental and special purposes, commute, instruction, personal transportation and sporting activities.

Memorandum

To : Jack Merritt
Chief Deputy Auditor General

Date: December 16, 1975

File : Audit Reports

From : **DEPARTMENT OF TRANSPORTATION**
Division of Aeronautics

Subject: Response to Draft Audit Report -- Enforcement of California
Aeronautics Laws by Division of Aeronautics (DOA)

I must open these remarks with a protest to the requirement we respond to a Draft Report in only three days that was several months in preparation.

This unreasonable time constraint dictates our comments be general in nature. We will welcome the opportunity for further and more specific discussion with the staff of the Joint Legislative Audit Committee.

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ENFORCEMENT POLICY

The statement that the DOA has not enforced laws relating to aviation safety, etc., is sprinkled throughout the report. This statement is not totally correct and we feel it should be rephrased to indicate the DOA has not established a specific enforcement organization.

The term "enforcement" is itself a very generalized concept. As used in a "law enforcement" sense, it usually means achievement of desired results through the imposition of sanctions. This may or may not be the most desirable and cost-effective way of achieving results. Large expenditures in pursuing legal actions for technical violations of a nonserious nature might severely undercut the Division's ability to achieve, through other means, the desired result of airport safety. These problems are quite complex but essentially they are no different than those involved in any other program analysis. The question is one of proper allocation of resources.

1/ Comments deleted which do not pertain to information in the final report.

Jack Merrit
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December 16, 1975

Future policy analysis must come to grips with the question of whether "enforcement" activities are to be treated as ministerial or discretionary functions. The Draft Report seems to assume that any violation requires enforcement action. The question arises -- does "enforcement" imply discretion (i.e., a decision to act or not act as the situation may require), or does the term imply mandatory action whenever a specific rule or requirement is violated? We are satisfied that the existing law gives the Department discretion to act on the basis of what it considers to be in the overall public interest.

While DOA employees are authorized to enforce provisions of the PUC by arresting, without warrant, suspected violators, we are not staffed, trained, or funded to perform arrests.

For these reasons, current Departmental policy provides for prevention and cure of airport regulation violations rather than confrontation and punishment. These policies are implemented through advising airport owners of violations, withholding permits, providing financial assistance to eligible airports so they can meet safety requirements, and as a last resort, pursuing civil rather than criminal legal processes.

EXEMPT AIRPORTS

The draft report comment that 363 airports had no State permits or exemptions on July 13, 1975, does not reflect all privately owned, private-use airports in existence prior to 1970 are automatically exempt. Most of the 363 airports are in this category.

VIOLATIONS

In the course of the audit activities, an auditor conducted inspections of 18 airports. The report states 17 of these 18 had violations of the aeronautics regulations and several of these violations include safety hazards creating excessive risks to both pilots and the public. It would be very helpful if the report could include the code sections being violated and an indication if whether or not the Auditor General's legal staff believes these sections can be legally enforced.

ARRESTS

The report seems to imply DOA should be making arrests as a method of enforcement. It would assist us in shaping future enforcement policy if the report could provide instances where violators should have been arrested by DOA personnel.

Jack Merritt
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Arrests and criminal sanctions are expected to be carried out by local law enforcement officers and District Attorneys. To assist them, we have prepared and distributed "California Laws Relating to Aeronautics, A Guide for California Aviation Law Enforcement, 1975," to local law enforcement bodies.

The activities of the Simi Valley Police in citing violators at Santa Susana are discussed. It appears it would be helpful if information could be included on how many of these citations resulted in convictions. It is our understanding the Ventura County District Attorney has refused to prosecute.

ACCIDENT ANALYSIS

While not reflected in the files, all accident reports are reviewed to determine if they were caused by uncorrected aeronautics violations. During the past seven years, those reviewed have disclosed two minor accidents resulting from such violations.^{2/} Corrective action was taken immediately.

RESOURCE ALLOCATION

The report discusses the budgeting of five positions for the Safety and Regulation Program. This should be stated as five man-years. It further states that less than one full-time position has been allocated for enforcement and compliance activities. This statement could be misinterpreted because there are no positions with the sole duty of enforcement and regulation. The budget has .25 man-year for activities in conjunction with last resort legal proceedings. Excluding the Deputy Chief and the Chief of the Division, there are nine Aviation Consultants whose duties include enforcement and compliance.

The report discussed potential sources of funding for enforcement, but no suggestions or recommendations on funding level for enforcement. In this connection, it would be very helpful if some recommendations on enforcement at minimal cost could be included.

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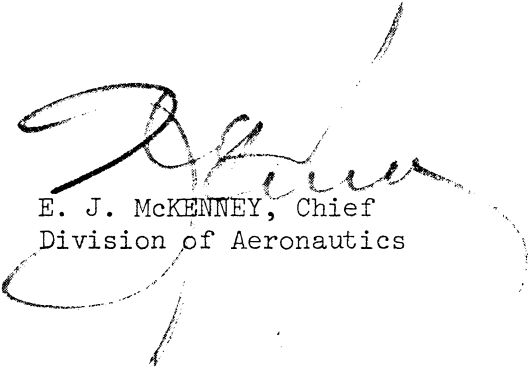
1/ Comments deleted which do not pertain to information in the final report.

2/ Auditor General's Note: A responsible Division official stated that on the basis of the information made available from the accident investigation report, it is not always possible to determine if the accident resulted from pilot error or other conditions. In the official's judgment, a very small percentage of accidents can be attributed to airport conditions, and even then these may not involve violations of aeronautics laws.

Jack Merritt
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I would like to take this opportunity to thank you and your staff for the courtesy and consideration shown DOA during your audit activities. Should you wish additional information, do not hesitate to contact me.



E. J. McKENNEY, Chief
Division of Aeronautics

cc: Sidney C. McCausland
Gilbert C. Victor
Ed Connor
Gerald Barbar
Lee F. Deter
Gordon A. Miller

1/ Comments deleted which do not pertain to information in the final report.

LISTING OF CALIFORNIA
AIRPORTS VISITED

<u>Airport</u>	<u>Nearest City</u>
1. Antioch (P)	Antioch
2. Auberry (e)	Auberry
3. Carmel Valley (P)	Carmel
4. Delta Air Park (N)	Brentwood
5. Flite Strip (P)	Foresthill
6. Frog Town (P)	Angels Camp
7. Gallagher (P)	Tulare
8. Hummingbird Haven Glider Port (N)	Livermore
9. Las Trancas (E)	Davenport
10. Lofty Redwoods (E)	Ukiah
11. Pinnacles (N)	Soledad
12. Quail Creek - Atwood (N)	Salinas
13. Quail Creek - Polts (N)	Salinas
14. Ringer (E)	Ione
15. Turlock Air Park (P)	Turlock
16. Vettters Sky Ranch (N)	Galt
17. Weaverville (P)	Weaverville
18. Woodlake (P)	Woodlake

(P) Permit
(N) No Permit
(E) Exempt