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April 4, 2014

Ms. Alexandra Stehl
Statewide Trails Program Manager
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296

Re: California Department of Parks and Recreation Code of Regulations Amended Draft Regulation.

Ms. Stehl,

The Aircraft Owners and Pilots Association (AOPA), the world's largest aviation membership association, opposes the California Department of Parks and Recreation's (CA DPR) proposal to regulate airspace over state parks. The proposed restriction is contained in the amended draft regulation to Title 14 of the California State Code, which would set minimum altitudes for aircraft flying over California State Parks. While AOPA recognizes CA DPR's mission to conserve and manage the State Park System, Cultural and Natural Preserves, we are concerned with the far-reaching effects and implications of this draft regulation on general aviation and the aviation industry. Based on the concerns presented below and conflicts with preemptive federal regulations, AOPA requests the immediate withdrawal of this draft regulation.

FAA's sovereign authority to regulate airspace

While the amended version of the most recent draft regulation is slightly different than what was published in 2013, CA DPR is still proposing to set minimum altitudes which are inconsistent with Federal Aviation Administration (FAA) regulations. Any attempt to regulate aircraft safety, navigable airspace or aircraft in flight would be contrary to United States Code 49 § 40103- Sovereignty and use of Airspace, which allots the FAA sole authority to regulate aircraft operations in the United States.

While it appears that CA DPR made an effort to harmonize with FAA guidance in the amended Section 4351.1 of the draft regulation, it is still in conflict with the FAA's sole authority to regulate the National Airspace System. In the National Parks Air Tour Management Act, Congress recognized the FAA has sole authority to control airspace over the United States. The Act also recognizes the FAA has authority to preserve and protect the environment by preventing the adverse effects of aircraft overflights.

A pilot operating within navigable airspace in the national airspace system and in full compliance with all Federal Aviation Regulations (FAR) could be inadvertently in conflict with CA DPR regulations. Pilots have a reasonable expectation to be familiar with applicable FAR and the operating parameters established therein. Allowing multiple agencies to control national airspace would create a patchwork quilt of overlapping and potentially contradictory regulations from Federal, State, and local municipalities, ultimately creating insurmountable barriers for pilots.

Pilots already “fly friendly” over noise sensitive areas

General aviation pilots already voluntarily follow guidance contained in the FAA’s Advisory Circular (AC) 91-36D, Visual Flight Rules (VFR) Flights near Noise Sensitive Areas. This AC provides guidance to pilots for avoiding flight operations below 2,000 feet in noise sensitive areas such as wildlife refuges and nature preserves. AOPA stands ready to assist CA DPR in performing additional outreach and education to the pilot community in California on the location of noise-sensitive areas and to “fly friendly” in accordance with the recommendations contained in the FAA’s AC.

Unknown class of airspace

The restrictions cited by the CA DPR will effectively create a special type of “restricted” airspace. This airspace is not familiar to pilots and is not charted on any publicly available aeronautical chart. Indeed, no standard exists for the depiction or operating parameters of such airspace in the FAR. At a time when pilots, industry stakeholders, and the FAA are working to reduce chart clutter and improve the readability of aeronautical charts, the above mentioned regulation by CA DPR would require new charting symbols, additional complexity on aeronautical charts, and extensive pilot outreach to educate airspace users to this previously unknown type of airspace.

Exemption for search and rescue operations

The proposed rule would affect the altitudes that search and rescue aircraft would be able to operate in the event they are conducting a low-level search for a missing hiker, boat, or aircraft. Depending on the time of day, weather conditions, and experience of the search aircraft crew they may need to be as low as 1,000 to 500 feet above ground level to adequately ensure sighting of their mission target. While the preservation of cultural and natural resources is important, the ability to save the lives of human beings outweighs the potential harm that may come to these resources. All search and rescue operations must be exempted from this rule.

Pilot notification and education

As outlined above, CA DPR is proposing to further regulate flight operations within an unknown class of restrictive airspace. Questions remain about how pilots will be notified of the boundaries of this airspace and how CA DPR plans to educate pilots about the regulatory nature of flying in this new class of airspace including any civil enforcement or penalties resulting from inadvertent incursions. Further, gauging an aircraft’s altitude with any degree of accuracy is extremely difficult. AOPA questions how CA DPR will train and equip observers to determine aircraft altitudes.

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Summary

The amended draft regulation usurps preemptive Federal Regulations and attempts to modify restrictions in airspace that currently are not considered “restricted,” assuming the FAA’s sole authority to regulate airspace. The FAA, through their Flight Safety District Office’s (FSDOs), are fully equipped to handle such issues and assist local governments in finding solutions that align with federal regulations, while retaining the appropriate level of public safety expected in any given area. AOPA would urge CA DPR to repeal the amendment and contact their local FSDO to communicate their concern. Allowing this regulation to move forward will interfere with an already established process, confuse aviators and be a disservice to the flying and general public. AOPA strongly encourages the CA DPR to work collaboratively with the FAA to further educate pilots on overflights of sensitive areas.

Sincerely,

A handwritten signature in black ink that reads "Melissa McCaffrey". The signature is written in a cursive, flowing style.

Melissa McCaffrey
Senior Government Analyst
Air Traffic Services