



# Advisory Circular

**Subject: Land Use and Jurisdictional Issues at Aerodromes**

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## 1.0 INTRODUCTION

- (1) This Advisory Circular (AC) is provided for information and guidance purposes. It describes an example of an acceptable means, but not the only means, of demonstrating compliance with regulations and standards. This AC on its own does not change, create, amend or permit deviations from regulatory requirements, nor does it establish minimum standards.

### 1.1 Purpose

- (1) There has been considerable discussion on the definition of an “aerodrome” and the application of federal, provincial and municipal laws at aerodromes. The purpose of this document is to provide guidance for TC officials and others on land use issues and jurisdictional matters surrounding aerodromes.

### 1.2 Applicability

- (1) This document applies to Transport Canada Civil Aviation (TCCA) personnel, delegates, the aviation industry, provincial and municipal authorities and the public.

### 1.3 Description of Changes

- (1) Not applicable.

## 2.0 REFERENCES AND REQUIREMENTS

### 2.1 Reference Documents

- (1) It is intended that the following reference materials be used in conjunction with this document:
  - (a) *Aeronautics Act* (R.S.C., 1985, c. A-2);
  - (b) Part III, Subpart I of the *Canadian Aviation Regulations (CARs) — Aerodromes*;
  - (c) Part III, Subpart II of the *CARs — Airports*; and
  - (d) Part III, Subpart V of the *CARs — Heliports*.

### 2.2 Cancelled Documents

- (1) Not applicable.
- (2) By default, it is understood that the publication of a new issue of a document automatically renders any earlier issues of the same document null and void.

### 2.3 Definitions and Abbreviations

- (1) The following **definitions** are used in this document:
  - (a) **“Aerodrome”** means any area of land, water (including the frozen surface thereof) or other supporting surface used, designed, prepared, equipped or set apart for use either in whole or in part for the arrival, departure, movement or servicing of aircraft and includes any buildings, installations and equipment situated thereon or associated therewith.
  - (b) **“Airport”** means an aerodrome in respect of which a Canadian aviation document is in force;
  - (c) **“Certified Aerodrome”** for the purpose of this document, means airport, heliport or water airport; and

- (d) **“Helipport”** means an aerodrome in respect of which a heliport certificate issued under Subpart 5 of Part III is in force.
- (2) The following **abbreviations** are used in this document:
  - (a) **AC:** Advisory Circular;
  - (b) **CARs:** Canadian Aviation Regulations;
  - (c) **CFS:** Canadian Flight Supplement
  - (d) **TCCA:** Transport Canada Civil Aviation; and
  - (e) **WAS:** Water Aerodrome Supplement.

### 3.0 BACKGROUND

- (1) Under Canada’s Constitution, the federal government has jurisdiction over aeronautics, including aerodromes. This is expressed through the *Aeronautics Act*. Transport Canada’s role as regulator is to verify that aerodrome operators comply with the *Canadian Aviation Regulations* (CARs). The CARs pertaining to aerodromes are focused on aviation safety. The federal government is not involved in private property issues.
- (2) The *Canadian Aviation Regulations* (CARs) distinguish among three types of aerodromes:
  - (a) Certified Aerodromes: (airports and heliports) are those with scheduled service or which are located within built-up areas or are certified in the public interest.
  - (b) Those that are registered – those aerodromes that are published in the CFS or WAS where information, such as, location, physical characteristics, specific approaches, services, etc. is provided; and
  - (c) Those aerodromes which are neither certified nor registered.
- (3) Recently the Department has been dealing with issues surrounding the development of aerodromes and aerodrome operators/developers expressing the belief that the *Aeronautics Act* makes compliance with provincial legislation and municipal by-laws unnecessary. Questions have arisen respecting the use of contaminated fill, paint fumes, the improper disposal of solvents and paints in local drainage system, the building of hangars, etc. and the application of provincial and municipal laws to these activities.
- (4) It has consistently been the Department’s position, which has been supported by jurisprudence, that activities and structures at an aerodrome that are integral to aviation cannot be impaired by provincial or municipal laws. In circumstances other than these, valid provincial, municipal or territorial law may apply to an undertaking or activity that is conducted or occurs at an aerodrome or to a structure that is built at an aerodrome.
- (5) Two recent decisions from the Supreme Court of Canada (Lacombe and COPA) confirm and clarify the federal jurisdiction over aeronautics.
- (6) These decisions do not change the way the Department regulates aerodromes, nor do they require Transport Canada employees to give advice to air operators regarding the implications of the cases, or the application of provincial or municipal bylaws in the context of an aerodrome operation. The decisions do not preclude the application of a valid provincial, municipal or territorial law. The *Aeronautics Act* does not grant immunity to an aerodrome operator/developer from compliance with all other valid applicable provincial legislation or municipal bylaws.
- (7) There was another decision handed down in May 2011 in the Ontario Provincial Court concerning a proposed aerodrome in the Township of Scugog. This decision was a prime example of how provincial or municipal laws could apply to activities at an aerodrome. In the Scugog case, an aerodrome operator used a substantial amount of landfill to construct a runway. The township

issued a revocation order and a stop work order with respect to the fill activity. In this case, the town's by-laws were found to be valid and applicable to an aerodrome. Transport Canada's position with respect to the applicability of provincial or municipal laws has been consistent with the Scugog decision in that the jurisdiction of the federal government over aerodromes and their operation does not necessarily exclude the application of provincial or municipal laws.

- (8) For those structures or activities that are determined **not** to be integral to aviation, **it is expected that the proponent of an aerodrome comply with all applicable provincial legislation and municipal by-laws. It is expected that the proponent comply with all applicable federal legislation regardless of whether or not structures or activities are integral to aviation.**
- (9) Standards Branch has developed a document providing guidance on the definition of an "aerodrome". The document is attached as Appendix A to this AC.

#### **4.0 REGULATORY REQUIREMENTS FOR AERODROMES**

- (1) **Certified Aerodromes:** Specific regulatory provisions which apply to aerodromes include CAR 302 for airports and CAR 305 for heliports.
  - (a) Meeting technical standards that include physical characteristics, obstacle limitation surfaces and visual aids for navigation, to name a few.
  - (b) Additional considerations dealing with wildlife management, rescue fire fighting, emergency planning and security, airside vehicle operations and safety management systems.
- (2) Regulatory requirements for those aerodromes that are not certified include CAR 301, and;
  - (a) The Minister may refuse to register an aerodrome where the operator of an aerodrome does not meet the requirements of sections 301.05 to 301.09 or where using the aerodrome is likely to be hazardous to aviation safety. In such a case, the Minister will not publish information with respect to that aerodrome and the aerodrome will not be registered.

#### **5.0 RECOMMENDATIONS**

- (1) The Department recommends that an aerodrome operator/developer consult with local land use authorities prior to establishing an aerodrome and seek the necessary legal advice on compliance with the applicable laws. **Any question, concerns or clarification respecting the application of law, division of powers, or jurisdictional issues should be directed to a lawyer.**

#### **6.0 INFORMATION MANAGEMENT**

- (1) Not applicable.

#### **7.0 DOCUMENT HISTORY**

- (1) Not applicable.

## 8.0 CONTACT OFFICE

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*Transport Canada documents or intranet pages mentioned in this document are available upon request through the  
Contact Office.*

**APPENDIX A — AERODROMES STANDARDS GUIDANCE FOR THE INTERPRETATION OF AN “AERODROME”**

(1) As defined in the *Aeronautics Act*:

“**aerodrome**” « aerodrome »

“aerodrome” means any area of land, water (including the frozen surface thereof) or other supporting surface used, designed, prepared, equipped or set apart for use either in whole or in part for the arrival, departure, movement or servicing of aircraft and includes any buildings, installations and equipment situated thereon or associated therewith;

As defined in the *Canadian Aviation Regulation* Part I, sub-section **101.01(1)**:

“**servicing**”, in respect of an aeronautical product, means cleaning, lubricating and the replenishment of fluids not requiring the disassembly of the product;

“**maintenance**” means the overhaul, repair, required inspection or modification of an aeronautical product, or the removal of a component from or its installation on an aeronautical product, but does not include

- (a) elementary work,
- (b) servicing, or
- (c) any work performed on an aircraft by the manufacturer prior to the issuance of whichever of the following documents is issued first
  - (i) a certificate of airworthiness,
  - (ii) a special certificate of airworthiness, or
  - (iii) an export airworthiness certificate;

**There are four activities (as defined above) that occur at an aerodrome:**

- (1) The **arrival** of an aircraft, which can only occur at a runway or in the case of helicopters to the Touch Down and Lift Off Area;
- (2) The **departure** of aircraft, which can only occur from a runway or in the case of a helicopter from a Touch Down and Lift Off Area;
- (3) The **movement** of aircraft (or helicopters), which can only occur on taxiways or an aprons; and
- (4) The **servicing** of aircraft (or helicopters), which as defined in CAR 101.01(1) only means cleaning, lubricating and the replenishment of fluids not requiring the disassembly of the [aeronautical] product.

The definition of an aerodrome **does not include “maintenance”** as defined in CAR 101.01(1). The **buildings, installations or equipment** must be located on the aerodrome or directly **associated** with the four activities identified that occur at an aerodrome.

Runways, Touch Down and Lift-Off Areas, taxiways and aprons are found at an aerodrome, which includes airports and heliports.

A “**maintenance**” facility performing an aeronautical activity not located at an aerodrome (as defined by the four activities that occur at an aerodrome) is not considered to be an aerodrome.