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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

February 8, 2006

Mr. Thomas J. Madison  
Commissioner  
Department of Transportation  
50 Wolf Road  
Albany, NY 12232

Re: Report 2005-F-31 Privatization of Stewart  
International Airport - Monitoring of Lease  
Agreement

Dear Mr. Madison:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by Department of Transportation officials to implement the recommendations in our audit report, *Privatization of Stewart International Airport - Monitoring of Lease Agreement (2002-S-57)*.

**Background, Scope and Objective**

Stewart International Airport (Stewart) is located in New Windsor, New York, near the City of Newburgh, about 60 miles north of New York City. Stewart, a former Air Force Base, was acquired by the Department of Transportation (Department) in 1982, and was operated by the Department with the assistance of contractors until April 1, 2000. At that time, as part of an airport privatization program sponsored by the Federal Aviation Administration (FAA), the Department leased Stewart to SWF Airport Acquisition, Inc. (SWFAA), a subsidiary of the National Express Corporation for a period of 99 years. SWFAA's parent company was selected as the preferred bidder in response to a Request for Proposal. The lease required SWFAA pay the Department a total of \$35 million: \$24 million upon the signing of the lease; \$6 million when four parcels of property, formerly used for landfill have been fully remediated by the Department and transferred to SWFAA; and \$5 million when a contract is awarded by the State for construction of a new access road to Stewart. The lease also calls for SWFAA (1) to pay the Department a share of Stewart's operating income if the number of enplanements (the arrival or departure of airplane passengers) exceeds 1.38 million a year, and (2) to invest \$48.6 million in capital improvements at Stewart during the first five years of the lease period, subject to certain contingencies. In addition, SWFAA is to comply with certain administrative requirements, and the Department is to complete certain capital projects

that were initiated prior to the lease. The lease may be assigned to another party by SWFAA anytime after the fifth year, subject to the Department's written approval. The following table shows the number of passenger enplanements at Stewart since 2000:

<b>Calendar Year</b>	<b>Enplanements</b>	<b>Percent (Decrease)/ Increase</b>
2000	264,351	----
2001	200,878	(24%)
2002	179,468	(11%)
2003	195,472	9%
2004	263,275	35%

SWFAA activities at Stewart are monitored by a number of Department personnel on a part-time basis including the Director of Passenger Transportation and a staff member and staff from the Counsel's Office and from the Environmental Analysis Bureau. Capital projects are monitored by a staff person who is stationed at Stewart. The Department's Director of Passenger Transportation also serves as Executive Secretary of the Stewart Airport Commission, the citizen advisory body that meets bimonthly and advises the Department on its actions at Stewart.

Our initial audit report which was issued on May 20, 2004 examined whether the Department had mechanisms to adequately monitor SWFAA's compliance with lease requirements relating to capital improvements and selected administrative matters. We also determined whether the Department has mechanisms to adequately monitor its own compliance with requirements relating to capital projects. Our report identified that the Department needed to strengthen its administrative monitoring of certain activities at Stewart. This includes ensuring independent audits are conducted annually, documenting its analyses of SWFAA's quarterly reports, verifying that payments in lieu of taxes (PILOTs) to localities and documenting all building code inspections and related activities. We also reported on the failure of the Department to satisfy SWFAA officials that certain parcels had been adequately remediated before they were transferred and recommended a mechanism with Department of Environmental Conservation (DEC) be established to inform the Department of all environmental violations at Stewart Airport. The objective of our follow up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of December 15, 2005, of the four recommendations included in our initial audit report.

### **Summary Conclusions and Status of Recommendations**

The Department has made some progress in correcting problems we noted in the initial audit. As our audit tests, observations and review of the records continue to reveal some degree of non-compliance with our recommendations, we believe there is still some need for improvement. Of the four audit recommendations, two recommendations were partially implemented and two recommendations were not implemented. At the closing conference, Department officials indicated that the two recommendations reported as being not implemented require the cooperation of SWFAA officials which has not been forthcoming.

## **Follow-up Observations**

### **Recommendation 1**

*Improve the monitoring of SWFAA's compliance with lease and other requirements by:*

- *Obtaining the annual audit report in a timely manner.*
- *Formalizing and documenting the analysis of SWFAA's quarterly reports.*
- *Periodically verifying payments of PILOTs.*
- *Documenting all building code compliance inspections and related activities.*
- *Establishing a mechanism for reporting SWFAA's capital expenditures and the status of the contingencies related to the expenditures.*

Status - Partially Implemented

Agency Action - Department officials obtained the most recent three audits by the independent accounting firm and verified payments of PILOTs. A Department official obtains and signs off that the SWFAA quarterly report was reviewed. SWFAA officials indicated that annually they report the value of capital project expenditures at the airport to the Federal Aviation Administration. Department officials also provided the most recent capital project report presented to the Stewart Airport Commission.

As of the date of our visit on November 14, 2005, no building code compliance log was maintained. The DOT employee responsible for building code compliance has agreed to maintain a daily log documenting all of his activities.

### **Recommendation 2**

*Promptly resolve the disagreement about the adequacy of the remediation of Parcels A and B, and promptly collect the \$1.5 million due from SWFAA for the two parcels.*

Status - Not Implemented

Agency Action - According to SWFAA officials they are not satisfied with the adequacy of the remediation of Parcels A and B. Thus, SWFAA has not transferred the Letter of Credit to the Department. At the closing conference Department officials indicated it is their legal position that the transfer of these parcels has been legally implemented and will continue to work at getting this matter resolved.

### **Recommendation 3**

*Before proceeding with the remediation of Parcels C and D, establish to the satisfaction of both the Department and SWFAA how the remediation will be validated. Validate the remediation of the two parcels before they are scheduled to be transferred to SWFAA.*

Status - Not Implemented

Agency Action - Parcel D is still in the process of remediation. SWFAA was not satisfied with the adequacy of remediation of Parcel C. However, it is the Department's legal position that remediation is complete and that the transfer of Parcel C is effective.

**Recommendation 4**

*Coordinate with the DEC to establish a reporting mechanism that informs the Department of all environmental violations detected at Stewart.*

Status - Partially Implemented

Agency Action - DOT provided correspondence requesting DEC to inform them of environmental violations at Stewart Airport. Following up, on December 15, 2005, an attorney for DEC indicated there was one open notice of violation at Stewart Airport concerning a petroleum spill. DEC could not produce correspondence indicating the Department was notified of the petroleum spill.

The major contributor to this report is Abraham C. Markowitz.

We would appreciate your response to this report within 30 days, indicating any action planned to address the unresolved issues discussed in this report. We also thank management and the staff of the Department of Transportation for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado  
Audit Director

cc: John Samaniuk, Department of Transportation  
Robert Barnes, Division of the Budget