U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUL - 9 2010

Mr. Don Marcostica
Executive Director
Colorado Office of Economic
Development and International Trade
1625 Broadway
Suite 2700
Denver, CO 80202

Dear Mr. Marcostica:

Thank you for your February 23, 2010, letter seeking an opinion on actions by Pitkin County, Colorado concerning helicopter flights over the county for commercial filming.

In the letter, you state that you have been notified by several production companies that they have been denied multiple permits by Pitkin County to conduct filming operations using helicopters as platforms for cameras. You further state that in your conversations with Pitkin county officials, the county officials believe they have the right to ban flights over their county for commercial filming and that "they allude to noise and safety concerns as their reasons for denying these film permit applications."

We have also reviewed the two documents that you forwarded; the minutes of the December 15 Pitkin County Commissioners Work Session (Agenda Item Summary from Lance Clarke, Assistant Community Development Director) and the Nissan NG Helicopter, Determination No. 99-2009.

As discussed below, the Federal Aviation Administration (FAA) has plenary authority over matters of aviation safety. The information you provided is not detailed sufficiently for us to determine Pitkin County's basis for denying filming permits, which may have effectively resulted in banning certain helicopter operations within the county. We have contacted the FAA's Denver Flight Standards District Office (FSDO), which has oversight of flight operations occurring within the Pitkin County area. The FSDO has not received any complaints or questions from helicopter operators about their flight operations in that area.

Your letter indicates that county officials have alluded to safety and noise concerns as a basis for denying filming permits by helicopter operators. Under Title 49 of the United States Code (USC) § 40103(a)(1), the United States Government possesses exclusive sovereignty of the airspace. In addition, the Federal Aviation Administration (FAA) has broad authority to "develop plans and policy for the use of the navigable airspace and assign

by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace (49 U.S.C. § 40103(b)(2). The FAA also has authority to relieve and protect the public health and welfare from aircraft noise and sonic boom by prescribing standards to measure aircraft noise and sonic boom and regulations to control and abate such noise and sonic boom (49 U.S.C. § 44815(a).) These provisions, implemented by comprehensive regulations, establish a pervasive and exclusively federal regime over management and use of the navigable airspace, safety, noise, and aircraft operations. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973). Local jurisdictions do not have authority to regulate the use of the navigable airspace or the safety of flight operations and local actions to do so would raise preemption questions.

If you have further questions concerning this response, please contact Lorelei Peter on my staff at 202-267-3134.

Sincerely,

Rebecca MacPherson
Assistant Chief Counsel for Regulations, AGC-200