U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER 5190.6B Change 3

Effective Date:
September 15, 2023

SUBJ: Airport Compliance Manual

1. Purpose

The Airport Compliance Manual provides guidance to FAA employees on the implementation of the FAA's airport compliance program. Under the program, the FAA has the responsibility to assure airport sponsors comply with certain obligations that arise from FAA grant agreements and from deeds of property conveyance for airport use.

2. Distribution

The Airport Compliance Manual is located on the FAA Office of Airports website where it is available to all interested parties. See:
https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/

3. Cancellation

This Order cancels and replaces the following chapters of the Airport Compliance Manual:

Chapter 16, Resolution of Unlawful Revenue Diversion
Chapter 17, Self-sustainability
Chapter 18, Airport Rates and Charges
Chapter 19, Airport Financial Reports

4. Explanation of Changes

Since 2009, there have been changes to the laws and policies relating to the Federal obligations of airport sponsors and revisions to the procedures for investigating and resolving complaints that allege noncompliance. To incorporate any changes and provide the most useful and current program guidance to FAA employees, the Office of Airport Compliance and Management Analysis is undertaking a review of the Order and will publish updates as the chapter reviews are completed.

The Office of Airport Compliance and Management Analysis issued two previous changes to the Airport Compliance Manual - on December 3, 2021 Change 1 was issued and on December 9, 2022 Change 2 was issued. This Change 3 to the Airport Compliance Manual is issued to address the following:

- After review of public comments offered on the 2009 update, and subsequent experience with using Order 5190.6B as guidance for the airport compliance program, and issuance of Change 1 and Change 2 to the Order, the FAA is now updating Chapters 16, 17, 18 and 19 of the Order.

- Changes included are editorial, based on suggestions in the public comments or recommendations from FAA staff for more effective ways of expressing policy guidance. In applicable sections of the Order, the revised chapters:
    - Add updated references to other FAA guidance documents on the same subject where applicable.
    - Add updated references to applicable law where applicable.
    - Add reference to new grant programs.
- In other cases, the Order has been updated to reflect policy changes adopted by the agency since 2009 to remain current with Federal statutes.
- When the FAA revises its policy on a specific compliance issue or issues a new policy statement to clarify the agency position on an issue, the agency will issue a separate policy statement after public notice and comment.
- Edits and additions to the revised chapters are intended to provide accurate and useful guidance on airport compliance policy for FAA Airports staff, and not to adopt significant changes in compliance policy. As additional chapters are revised, a summary of the changes will be posted on the FAA website.
- At this time, all photographs have been removed from the Order as FAA addresses accessibility for compliance with Section 508 of the Rehabilitation Act. FAA will review all photographs for Section 508 compliance and intends to include the photographs in a future update to the Order.

- Edits to Chapter 16, *Resolution of Unlawful Revenue Diversion*, include:
    - Section 16.1 - Background - is revised to move language that discusses the responsibilities of the FAA Regional Airports Division and Airport District Office to Section 16.5 Responsibility; also, added a reference to Chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*, to assist the reader.
    - Section 16.2 - FAA Authorization - is retitled to Legislative History and edited for clarity.
        - Section 16.2.b(4) - 1994 Reauthorization Act - is removed as it is appropriately discussed in Section 15.10 – Grandfathering from Prohibitions on Use of Airport Revenue.
        - Section 16.2.c(2) -1996 Reauthorization Act - is revised to clarify that imposition of a civil penalty is assessed against an airport sponsor pursuant to 49 U.S.C. § 46301.
    - Section 16.4 - Agency Policy - is clarified to add reference to the FAA's *Policy and Procedures Concerning the Use of Airport Revenue: Proceeds from Taxes on Aviation Fuel*, 79 Fed. Reg. 66282 (November 7, 2014) which formally adopts, through an amendment to the *Revenue Use Policy*, the FAA's interpretation of the Federal requirements for use of revenue derived from taxes on aviation fuel.
    - Section 16.5 – Responsibilities - is revised to include former Section 16.1 discussion of the responsibilities of the FAA Regional Airports Division and Airport District Office; also, added reference to Chapter 19, *Airport Financial Reports*, and that The Office of Inspector General (OIG) may also conduct audits and issue reports on revenue diversion.
    - Section 16.6 – Detection of Airport Revenue Diversion.

- Section 16.6.a. – Sources of Information – added chapter references to assist the reader.
- Section 16.6.b – Reports - the paragraph discussing single audit is removed and the reader is directed to Chapter 19, *Airport Financial Reports*, for single audit reports.
- Section 16.6.e – Interest - is deleted as duplicative with discussion of interest on revenue diversion in Section 16.10.d - Interest.
- Section 16.6.f - added subtitle - Published Airport Financial Data.

o Section 16.7 – Investigation of a Complaint of Unlawful Revenue Diversion.
- Sections 16.7.b – Formal Investigation - and 16.7.c - Corrective Action – are combined to clarify if the sponsor takes corrective action to resolve the unlawful revenue diversion prior to the issuance of a Director's Determination the complaint may be dismissed.

o Section 16.10 – Civil Penalties and Interest.
- Section 16.10.a – Civil Penalties Up to Three Times the Diverted Amount – is retitled as Civil Penalties.

o Section 16.12 - Statute of Limitations on Enforcement - is retitled as Statue of Limitations on Recovery of Funds.
o Other editorial changes for clarification purposes, including updates to citations and addition of hyperlinks, if applicable and nomenclature consistency.

- Edits to Chapter 17, *Self-Sustainability*, include:
In order to align with FAA's Revenue Use Policy, some sections of this chapter have been reordered and retitled. Please see the attached Chapter 17, Self-Sustainability, Section Renumbering and Retitling Chart. The sections referred to below are the new section numbers:
  - Section 17.2 - Statutory Requirements – is edited to include a citation to FAA's *Policy Regarding Airport Rates and Charges*, 78 Fed. Reg. 55330 (September 10, 2013).
  - Section 17.3 – Related Grant Assurance and FAA Policies – combines the former 17.3 – Applicability - and 17.4 – Related FAA Policies – into a single section.
  - Section 17.5 - Airport Circumstances – added a reference to Section 17.9 for additional information.
  - Section 17.8 - Revenue Surpluses – added a reference to Chapter 15 for information on permitted uses of airport revenue.
  - Section 17.9 - Aeronautical Use Rates - added references to Grant Assurance 22, *Economic Nondiscrimination* and FAA's *Revenue Use Policy* regarding aeronautical charges.
  - Section 17.12 - Exceptions to the Self-Sustaining Rule: General – reorders the exceptions to align with the FAA's *Revenue Use Policy* and reminds airport sponsors to use the land in accordance with their grant obligations and property conveyance restrictions, also refers the reader to Chapter 22.
  - Section 17.13 - Exceptions to the Self-Sustaining Rule: Providing Property for Public Community Purposes.
    - Combines the former Section 17.14 – Property for Community Purposes – and 17.15 – Exception for Community Use –into a single

section.
    - Adds a reference to 49 U.S.C. § 47107(v).
  - Other editorial changes for clarification purposes, including updates to citations and addition of hyperlinks, if applicable and nomenclature consistency.

- Edits to Chapter 18, *Airport Rates and Charges*, include:
  Some sections of this chapter have been consolidated, reordered and/or retitled to improve readability. Please see the attached Chapter 18, Airport Rates and Charges, Section Renumbering and Retitling chart. The Sections referred to below are the new section numbers.
  - Section 18.1 – Introduction - is added to clarify that this chapter summarizes the provisions of the FAA *Policy Regarding Rates and Charges*, 78 Fed. Reg. 55330 (September 10, 2013)(hereinafter referred to as the 2013 Policy).
  - Section 18.2 - Background - added and revised language to be consistent with the 2013 Policy.
    - Sections 18.2.a and 18.2.c – 1994 Authorization Act - are consolidated into an introductory paragraph.
    - Section 18.2.a – 1996 Policy – the subtitle is added and a reference to the 1996 policy is provided.
    - Section 18.2.d – 2013 *Rates and Charges Policy* Full Text Publication – is added to acknowledge FAA's publication of the full text of the Rates and Charges Policy.
  - Section 18.4 – Definitions.
    - Combined the former 18.3 – Aeronautical Use and Users - and 18.4 – Definitions – into a single section.
    - Updated the definitions to reflect those in the 2013 Policy and added citations to the 2013 Policy.
    - Added a reference to Appendix Z for the definition of "Aeronautical Activity."
  - Section 18.5 - Key Concepts.
    - 18.5.b is retitled as Not Unjustly Discriminatory.
  - Section 18.6 - Fair and Reasonable.
    - Combines subsections 18.6.a General, 18.6.b Method, and 18.6.c Type into a single subsection 18.6.a - Type.
    - Subsection 18.6.b – Residual – clarified that cross-credit of non-aeronautical revenue to aeronautical revenue without a written agreement is permissible if transparency is provided.
    - Subsection 18.6.c – Compensatory – Added explanation of how compensatory rate structures may be imposed and added a reference to the 2013 Policy on this topic.
  - Section 18.11 – Causation - edited to align with the 2013 Policy and added a citation to the 2013 Policy.
  - Section 18.13 - Costs of Another Airport - added a citation to the 2013 Policy.
  - Section 18.15 – Costs Related to Closing an Airport while Building a Replacement Airport – combines the former Sections 18.17 – Closed Airport – and 18.18 – Maintenance of Closed Airport.

- Section 18.19 - Self-Sustaining Rate Structure – combined subsections 18.22.b – Revenue Surpluses – and 18.22.d – Surplus.
- Section 18.20 – Local Negotiation and Resolution.
  - Subsection 18.20.c. Alternative Dispute Resolution – added reference to the 2013 Policy which encouraged inclusion of alternative dispute resolution in lease and use agreements.
- Section 18.21- Complaints – added a reference to filing informal complaints under 14 CFR §13.2.
- Other editorial changes for clarification purposes, including updates to citations and addition of hyperlinks, if applicable and nomenclature consistency.

- Edits to Chapter 19, *Airport Financial Reports*, include:
  - Section 19.2 - Legislative History is retitled as Statutory Authority and eliminates the ACO-1 Annual Report to Congress previously required by the Reauthorization Act of 2012 given that ACO-1 provides summary and financial data with its NPIAS report to Congress.
    - Section 19.2.c Single Audit Requirements consolidates discussion of the Single Audit from Chapter 16 and updates references to Single Audit requirements as set forth in 2 CFR part 200 as updated by the OMB's Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
  - Section 19.5 – Annual Financial Reports.
    - Section 19.5.c – Filing Date - clarified that if audited financial statements are not available, airport sponsors should complete the forms with available data, and notate they are "unaudited." Once audited statements are available, then sponsors need to replace the "unaudited" data with the audited data in CATS.
  - Section 19.7 - Single Audit Reports - added language from Chapter 16 that FAA has 30 days to resolve single audit findings.
  - Other editorial changes for clarification purposes, including updates to citations and addition of hyperlinks, if applicable and nomenclature consistency.

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Chapter 17, *Self-Sustainability*: Section Renumbering and Retitling

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17.12	Fair Market Value	17.11	Fair Market Value
17.13	Exceptions to the Self-sustaining Rule: General	17.12	Exceptions to the Self-Sustaining Rule: General
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17.17	Exception for Transit Projects	17.16	Exception to the Self-Sustaining Rule: Transit Projects
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Chapter 18, Airport Rates and Charges: Section Renumbering and Retitling

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Part I: Background

Chapter 1: Scope and Authority

Updated November 2021

1.1. Purpose. This Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. The Order, *inter alia,* analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

1.2. Audience. FAA personnel having responsibility for monitoring airport sponsor compliance with the sponsor's federal obligations.

1.3. Where Can I Find This Order? The current Order is available on the FAA website and will be updated electronically at this location.

1.4. Cancellation. This Order cancels and replaces the following chapters of FAA Order 5190.6B, dated September 30, 2009: Chapter 1, Scope and Authority; Chapter 9, Unjust Discrimination Between Aeronautical Users; Chapter 10, Reasonable Commercial Minimum Standards; Chapter 11, Self-Service and Chapter 23, Reversions of Airport Property.

1.5. Introduction. This chapter discusses the scope of the Order, the sources of sponsor[1] federal obligations, and the FAA's authority to administer the Airport Compliance Program within the FAA Office of Airports (ARP). The FAA Airport Compliance Program is contractually based, and it does not attempt to control or direct the operation of airports. Rather, the program is designed to monitor and enforce obligations agreed to by airport sponsors in exchange for valuable benefits and rights granted by the United States in return for substantial direct grants of funds and for conveyances of federal property for airport purposes. The Airport Compliance Program is designed to protect the public interest in civil aviation. Grants and property conveyances are made in exchange for binding commitments (federal obligations) designed to ensure that the public interest in civil aviation will be served. The FAA bears the important responsibility of seeing that these commitments are met. This Order addresses the types of these commitments, how they apply to airports, and what FAA personnel are required to do to ensure compliance with Federal obligations.

1.6. Scope. This Order provides guidance, policy, and procedures for conducting a comprehensive and effective FAA Airport Compliance Program to monitor and ensure airport sponsor compliance with the applicable federal obligations assumed in the acceptance of airport

[1] A sponsor is any public agency that applies for federal financial assistance, or private owner of a public use airport, as defined in the Airport and Airway Improvement Act of 1982 (AAIA), codified at 49 U.S.C. § 47102(26).

development assistance.

Grants and property conveyances are made in exchange for binding commitments (federal obligations) designed to ensure the public interest in civil aviation will be served.

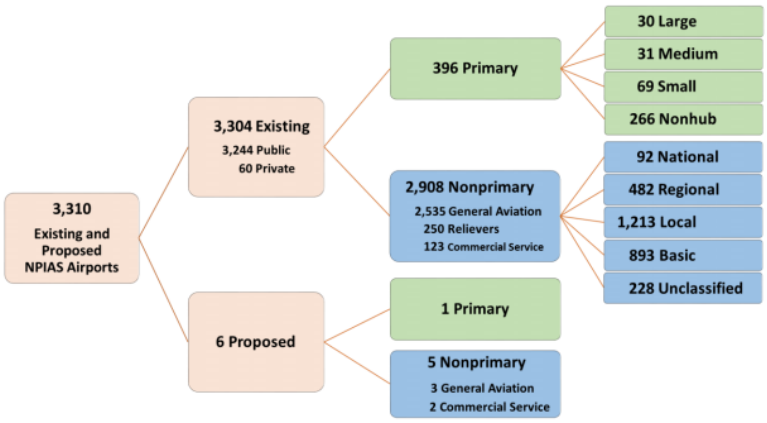
1.7. Background. The Air Commerce Act of 1926 was the cornerstone of the federal government's regulation of civil aviation. This landmark legislation was passed at the urging of the aviation industry, whose leaders believed that aviation could not reach its full commercial potential without federal action to improve and maintain safety standards. The Air Commerce Act charged the Secretary of Commerce with fostering air commerce, issuing and enforcing air traffic rules, licensing pilots, certificating aircraft, establishing airways, and operating and maintaining aids to air navigation. A new Aeronautics Branch of the Department of Commerce assumed primary responsibility for aviation oversight.

In 1938, the Civil Aeronautics Act transferred the federal civil aviation responsibilities from the Commerce Department to a new independent agency, the Civil Aeronautics Authority. The legislation also expanded the government’s role by giving the Civil Aeronautics Authority the power to regulate airline fares and to determine the routes that air carriers would serve. In 1940, President Franklin Roosevelt split the Civil Aeronautics Authority into two agencies, the Civil Aeronautics Administration (CAA) and the Civil Aeronautics Board (CAB). The CAA was responsible for air traffic control (ATC), airman and aircraft certification, safety enforcement, and airway development. The CAB was entrusted with safety rulemaking, accident investigation, and economic regulation of the airlines. Both organizations were part of the Department of Commerce. Unlike the CAA, however, the CAB functioned independent of the Secretary of Commerce. On the eve of America's entry into World War II, the CAA began to extend its ATC responsibilities to takeoff and landing operations at airports. This expanded role eventually became permanent after the war. The application of radar to ATC helped controllers keep abreast of the postwar boom in commercial air transportation.

In the Federal Airport Act of 1946 (1946 Airport Act), Congress gave the CAA the added task of administering the Federal Aid to Airports Program (FAAP), the first peacetime program of financial assistance aimed exclusively at promoting development of the nation's civil airports. The approaching introduction of jet airliners and a series of midair collisions spurred passage of the Federal Aviation Act of 1958 (FA Act). This legislation transferred the CAA's functions to a new independent agency, the Federal Aviation Agency, which had broader authority to address aviation safety through rulemaking and enforcement. It also gave the Federal Aviation Agency sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control, a responsibility the CAA had shared with others.

In 1966, Congress authorized the creation of a cabinet department that would combine federal transportation responsibilities for all public modes of transportation. This new Department of Transportation (DOT) began full operations on April l, 1967. On that day, the Federal Aviation Agency became one of several modal administrations within the DOT and received a new name, the Federal Aviation Administration (FAA). At the same time, the CAB's accident investigation function was transferred to the new National Transportation Safety Board (NTSB).

NPIAS Airports by Category and Role (2021-2025)



The table shown above depicts the extent of the country's public-use airport system. The NPIAS reports are available online at https://www.faa.gov/airports/planning_capacity/npias/current/. (Graphics: FAA)

The FAA has gradually assumed responsibilities not originally contemplated by the FA Act. For example, the hijacking epidemic of the 1960s brought the agency into the field of aviation security. That function was later transferred to the Transportation Security Administration (TSA) in 2001 after the events of 9/11. In 1968, Congress vested in the FAA Administrator the power to prescribe aircraft noise standards. The Airport and Airway Development Act of 1970 (1970 Airport Act) placed the agency in charge of a new airport aid program funded by a special aviation trust fund. The 1970 Airport Act also made the FAA responsible for safety certification of airports served by air carriers. In 1982, Congress enacted the current grant statute, the Airport and Airway Improvement Act (AAIA), which established the Airport Improvement Program (AIP). The FAA's mission expanded again in 1995 with the transfer of the Office of Commercial Space Transportation from the Office of the Secretary to the FAA.

The airport system envisioned in the first National Airport Plan, issued in 1946, has been developed and nurtured by close cooperation between federal, state, and local agencies. The general principles guiding federal involvement[2] have remained largely unchanged for the National Plan of Integrated Airport Systems (NPIAS). The airport system should have the following attributes to meet the demand for air transportation:

- Airports should be safe and efficient, located at optimum sites, and be developed and maintained to appropriate standards.

- Airports should be operated efficiently both for aeronautical users and the government, relying primarily on user fees and placing minimal burden on the general revenues of the local, state, and federal governments.

[2] Extracted from the Report to Congress, National Plan of Integrated Airport Systems (NPIAS) (2009-2013).

- Airports should be flexible and expandable, able to meet increased demand and accommodate new aircraft types.
- Airports should be permanent, with assurance that they will remain open for aeronautical use over the long term.
- Airports should be compatible with surrounding communities, maintaining a balance between the needs of aviation and the requirements of residents in neighboring areas.
- Airports should be developed in concert with improvements to the air traffic control system.
- The airport system should support national objectives for defense, emergency readiness, and postal delivery.
- The airport system should be extensive, providing as many people as possible with convenient access to air transportation, typically not more than 20 miles of travel to the nearest NPIAS airport.
- The airport system should help air transportation contribute to a productive national economy and international competitiveness.

Airports should be permanent with assurance that they will remain open for aeronautical use over the long term.

In addition to these principles specific to airport development, a guiding principle for federal infrastructure investment, as stated in Executive Order 12893, *Principles for Federal Infrastructure Investments* (January 26, 1994), is that such investments must be cost beneficial, *i.e.*, must have a positive ratio of benefits to costs. The FAA implements these principles using program guidance to ensure the effective use of federal aid.

A national priority system guides the distribution of funds. Information used to establish the priority is supplemented by specific requirements for some additional analysis or justification. For example, in certain cases the airport sponsor must prepare a benefit-cost analysis for airport capacity development projects to be funded under the Airport Improvement Program (AIP).

1.8. Compliance Program Background. The Civil Aeronautics Act of 1938, as amended, and the FA Act, as amended, charge the FAA Administrator with broad responsibilities for the regulation of air commerce in the interests of safety and national defense and for the development of civil aeronautics. Under these broad powers, the FAA was tasked with regulation of airmen, aircraft, navigable airspace, and airport operations. The federal interest in advancing civil aviation has been augmented by various legislative actions that authorize programs for granting property, funds, and other assistance to local communities to develop airport facilities.

In each program, the airport sponsor assumes certain federal obligations, either by contract or by restrictive covenants in property deeds, to maintain and operate its airport facilities safely and

efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in deeds or grant agreements have been generally successful in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance. The FAA Airport Compliance Program establishes the policy and guidelines for monitoring the compliance of airport sponsors with their obligations to the United States and for ensuring that airports serve the needs of civil aviation.

The federal obligations a sponsor assumes in accepting FAA administered airport development assistance are mandated by federal statute.

1.9. Sources of Airport Sponsor Federal Obligations. The federal obligations a sponsor assumes in accepting FAA-administered airport development assistance are mandated by federal statute and incorporated in the grant agreements and property conveyance instruments entered into by the sponsor and the United States Government, including:

a. Grant agreements issued under the various FAA-administered airport development grant programs through the years. These include, but are not limited to, the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), and the Airport Improvement Program (AIP) under 49 U.S.C. § 47101, et seq. This statutory provision provides for federal airport financial assistance for the development of public use airports under the AIP established by the AAIA. Section 47107 sets forth assurances that FAA must include in every grant agreement as the sponsor's conditions for receiving federal financial assistance. (The current version of 49 U.S.C. § 47107 can be found online.) Pursuant to and consistent with, 49 U.S.C. § 47107(g) and (h), the FAA has prescribed some additional assurances or requirements for sponsors beyond those specifically enumerated in 49 U.S.C. § 47107. These include requirements set forth in 49 U.S.C. § 47106 and other statutes.

Occasionally, there are special funding programs authorized by Congress to provide federal grants to airports for a specific purpose such as economic development or recovery (*e.g.*, American Recovery and Reinvestment Act of 2009 (ARRA); Coronavirus Aid, Relief, and Economic Security Act (CARES), *etc.*). The grant agreements under these programs set forth the conditions for receiving the federal assistance and will vary depending on the purpose of the grant.

Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government.

b. Instruments of surplus property transfer issued under the provisions of section 13(g) of the Surplus Property Act of 1944, as amended, 49 U.S.C. §§ 47151-47153.

c. Instruments of nonsurplus conveyance issued under section 16 of the 1946 Airport Act, as amended; under section 23 of the 1970 Airport Act, as amended; or under section 516 of the AAIA, as amended, codified at 49 U.S.C. § 47125.

d. Exclusive Rights under section 303 of the Civil Aeronautics Act of 1938, as amended, and section 308(a) of the FAA Act, as amended, codified at 49 U.S.C. § 40103(e).

e. Title VI of the Civil Rights Act of 1964, as amended.

1.10. FAA Authority to Administer the Compliance Program. Responsibility for monitoring and ensuring airport sponsor compliance with applicable federal obligations is vested in the Secretary of Transportation by statute and delegated to the FAA under 49 CFR § 1.83:

a. Surplus Property Transfers. Surplus property instruments of transfer were issued by the War Assets Administration (WAA) and are now issued by its successor, the General Services Administration (GSA). However, section 3 of Public Law (Pub. L.) 81-311 specifically vests the FAA with the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is, or has been, conveyed to nonfederal public agencies pursuant to the Surplus Property Act of 1944, as amended.

b. Nonsurplus Property Transfers. Nonsurplus property transfers are conveyances under section 16 of the 1946 Airport Act, under section 23 of the 1970 Airport Act, or under section 516 of the AAIA, codified at 49 U.S.C. § 47125. These are also referred to as nonsurplus property conveyances. Instruments of property conveyance issued under these sections are also issued by agencies other than the FAA. The conveyance instrument, deed, or quitclaim document assigns monitoring and enforcement responsibility to the FAA.

c. Grant agreements from the FAAP, ADAP, and the AIP programs (*e.g.*, ARRA, CARES, etc.). The FAA is vested with jurisdiction over monitoring and enforcing grant agreements that the FAA and its predecessor, the CAA, executed on behalf of the United States.

d. Exclusive Rights Prohibition. The FAA is also charged with responsibility for monitoring and enforcing compliance with the provisions prohibiting exclusive rights set forth in section 303 of the Civil Aeronautics Act of 1938, as amended, and in section 308(a) of the FAA Act, as amended, codified at 49 U.S.C. § 40103(e).

e. Amendment, Modification, or Release of Airport Sponsor Federal Obligations. The authority of the FAA to release or modify the terms and conditions of airport sponsor grant agreements varies based on the respective types of agreements. Pub. L. 81-311 prescribes specific circumstances and conditions under which the FAA may release, modify, or amend the terms and conditions of surplus property conveyances. While the FAA has the ability to amend, modify, or release an airport sponsor from a federal obligation, the FAA is not required to do so.

The FAA exercises its discretion when releasing a sponsor from any of its obligations. For additional information, refer to chapter 22 of this Order, *Releases from Federal Obligations*.

1.11. Statutory Limitation on FAA Authority

The FAA Reauthorization Act of 2018 (Pub. L. 115-254), Section 163 narrowed the scope of the FAA's authority over airport land uses.

1.12 through 1.14 reserved.

Chapter 2: Compliance Program

Updated November 2022

2.1. Introduction. This chapter is an introduction to the Federal Aviation Administration (FAA) Airport Compliance Program. The basis of sponsor federal obligations resides with federal statute, the Airport Improvement Program (AIP) grant program, land transfer documents, and surplus property agreements. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to advise sponsors of their compliance requirements and to ensure that sponsors comply with their federal obligations.

2.2. Background. The FAA Airport Compliance Program enforces contractual federal obligations that a sponsor accepts when receiving federal grant funds or the transfer of federal property. These contractual federal obligations serve to protect the public's interest in civil aviation and achieve compliance with federal statutes. Given the great number of federally obligated airports and the variety of federal obligations, the compliance program primarily focuses on education with the goal of achieving voluntary compliance. The program supplements this educational approach with periodic compliance monitoring and vigorous investigation of potential violations.

2.3. Determining if an Airport is Federally Obligated.

a. General Information. Historically, the FAA published FAA Order 5190.2, *List of Public Airports Affected by Agreements with the Federal Government*, which provided a listing of all publicly and privately owned public use airports that were affected by agreements with the federal government and handled by the FAA. In addition, Form 5010, The Airport Master Record, includes information on whether the airport is federally obligated. Form 5010 is available online at https://adip.faa.gov/agis/public/#/public.

b. Information Codes. The FAA presents federal obligation data is in the form of codes, such as G, R, S or P. Each code represents a particular federal obligation type. The Federal Obligation Codes and their corresponding definitions are available at: https://www.faa.gov/airports/airport_compliance/compliance_guidance/agreements_code_definitions

2.4. Objectives of the Compliance Program.

a. Voluntary Compliance and Enforcement Actions. Most violations of sponsor federal obligations are not a deliberate attempt to circumvent federal obligations. Generally, violations occur because sponsors do not understand specific requirements or how a requirement applies to a specific circumstance. Therefore, the program works to ensure sponsors are fully informed of their federal obligations and of the applicability of those obligations to the circumstances at a given airport. Informal resolution is the preferred course of action. (See chapter 5 of this Order, *Initiating, Accepting, and Investigating Informal and Formal Complaints*.)

When reasonable efforts have failed to achieve voluntary compliance on the part of the sponsor, the FAA may take more formal compliance actions. This may result in withholding federal funds, issuing a Notice of Investigation (NOI) under 14 Code of Federal Regulations (CFR) Part 16, or initiating judicial action if warranted.

Issuing a NOI or initiating formal legal action are options exercised by the FAA Headquarters (HQ) Airport Compliance Division (ACO-100)) in accordance with 14 CFR part 16 procedures.

b. Advisory Services. Generally, the FAA will not substitute its judgment for that of the airport sponsor in matters of administration and management of airport facilities.

However, the FAA is in a position to assist airport sponsors in achieving voluntary compliance through guidance and counsel about the nature and applicability of federal compliance obligations affecting their airports.

c. Compliance Oversight. Given the approximately 3,500 federally obligated airports, the FAA cannot practically conduct compliance oversight with an annual visit or review at each airport.

However, periodic monitoring of a certain number of federally obligated airports is necessary to identify individual issues and problems that may be indicative of system deficiencies.

d. Enforcement Action. FAA personnel involved in compliance should make every effort to obtain voluntary compliance.

When enforcement action is taken, it must be fair and applied in a uniformmanner. When safety issues are identified, however, prompt corrective action is expected.

When safety issues are identified, prompt corrective action is expected.

2.5. Program Elements. Education is the primary tool for achieving program compliance. However, to maintain program integrity, FAA personnel must also include limited surveillance to detect recurring deficiencies, system weaknesses, or prohibited actions by sponsors. Investigation and resolution of complaints is the most important tool of the compliance program.

When FAA efforts fail to obtain voluntary compliance, enforcement actions must be pursued.

a. Education. The education of sponsors may take many forms, beginning when the sponsor receives its first federal grant or transfer of federal property. ADOs and FAA regional airports divisions should discuss with first-time sponsors the impact of specific grant assurances and/or land transfer federal obligations and let them know that the offices will continue to provide advisory services.

At least once every three years, FAA personnel should advise sponsors in writing to review their grant or land-transfer federal obligations. Compliance personnel should also provide sponsors with information or material to aid sponsors' understanding of their federal obligations.

Finally, sponsors should be encouraged to conduct or participate in periodic seminars or courses for federally obligated airports. In many instances, FAA regional airports divisions host or sponsor airport-related events, such as conferences, that are good opportunities to disseminate information regarding airport compliance.

b. Inspections and Surveillance. Surveillance is the process of gathering data on the condition or operation of an airport to determine the sponsor's compliance with federal obligations. FAA personnel routinely gather suchinformation during their site visits to airports. In addition, information is gathered from other sources, including other FAA offices, state inspectors, airport tenants, and information forms, such as FAA Form 5010, *Airport Master Record.*[1]

FAA personnel may also conduct surveillance by means of telephone discussions or written correspondence with appropriate airport officials to learn if potential problems exist. Further follow up through inspection may or may not be necessary depending on the information obtained. The information received should be documented and maintained for future reference. Alternately, FAA personnel may provide sponsors with printed material that identifies and explains the federal obligations accepted by that sponsor.

c. Investigations of Complaints. ADOs and regional airports divisions must investigate complaints from aeronautical users alleging that an airport is not complying with its federal obligations. FAA personnel should complete the investigation in a timely manner and notify the complainant in writing of the outcome of any investigation. Informal complaints need to be addressed in a timely manner. When an investigation reveals a violation of a federal obligation, ADOs and regional airports divisions should initiate a timely dialogue with the airport sponsor and attempt to achieve voluntary compliance as soon as practicable. See Chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*, for more information.

Safety-related issues may require expedited action on the part of the FAA. Where appropriate, airport sponsors should also use an airport safety self-inspection checklist as a means to assist in ensuring safe airport operations.

2.6. Priorities and Emphasis. When pursuing remedial or enforcement actions, the FAA considers all federal airport obligations important. However, consistent with the FAA mission, the most important objective in FAA's oversight of the compliance program is to ensure and preserve safety at all federally obligated airports.

Ensuring safe airport operations includes maintaining runways, taxiways, and other operational areas in a safe and usable condition; keeping runway approaches cleared; providing operable and well-maintained marking and lighting; etc.

In developing priorities for compliance surveillance in the region, FAA personnel should direct attention to those airports with the greatest potential for compliance problems and to those issues that have the largest impact on aeronautical users.

2.7. Responsibilities.

a. a. The Airport Compliance Division (ACO-100) within FAA's Office of Airport Compliance and Management Analysis (ACO-1), administers the airport compliance program and provides the following:

- overall guidance and direction for conducting the compliance program.

[1] In many instances, state aviation inspectors gather the data for inclusion in FAA Form 5010 on behalf of the FAA.

- conducts evaluations to determine compliance with federal statutes, regulations and grant assurances.
- looks for opportunities to improve the quality of the compliance program.
- offers recurrent training and on- request training to Regions and ADOs and regional airports divisions.
- develops compliance policy, supporting ADOs and regional airports divisions in conducting informal resolution, and resolving formal complaints.
- directs the formal enforcement of FAA grant obligations, as well as surplus and nonsurplus property conveyances.
- prepares generalized educational materials for ADOs and regional airports divisions to use in their compliance programs..

ADOs and regional airports divisions are responsible for the day-to-day conduct of the compliance program in accordance with the direction provided in this Order. This guidance establishes the basic requirements and goals to be achieved in the compliance program. Compliance is an essential component in safeguarding both the federal investment and the public's interest in civil aviation. This also includes ensuring public access to the national system of airports.

2.8. Analyzing Compliance Status.

a. Data Analysis. FAA compliance personnel should carefully analyze accumulated data in evaluating a sponsor's compliance performance and identifying appropriate actions to correct any deficiencies noted. More often than not, when apprised of a deficiency, a sponsor will ask for recommendations to correct the problem.

b. Preliminary assessment. FAA must make a judgment call in all cases as to whether a sponsor is reasonably meeting its federal commitments. A sponsor meets its commitments when:

(1). the federal obligations are fully understood;

(2). a program (*e.g.*, preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments;

(3). the sponsor satisfactorily demonstrates that such a program is being carried out; and,

(4). past compliance issues have been addressed.

c. Follow-up.

(1). Each ADO or regional airports division should develop a system to follow up and ensure that airports take action on any identified compliance deficiencies until the airport sponsor achieves compliance. Failing to follow up on compliance

issues at the ADO or regional airports division level may lead to unnecessary and resource-intensive formal complaints.

(2). FAA compliance personnel must initiate action at those airports that are not being maintained or operated in accordance with the sponsor's commitments, especially if safety is involved. There should be an effort to help the sponsor voluntarily meet these commitments. When the sponsor has demonstrated an unwillingness to make the corrections necessary to achieve compliance, FAA may pursue corrective enforcement and document such actions.

(3). FAA may undertake a formal compliance inspection in response to a complaint. Such an inspection may also take place whenever the FAA has any reason to believe that a sponsor may be in violation of one or more of its federal obligations. Appendix G of this Order, *Formal Compliance Inspection*, contains the procedures and form(s) to follow in a formal compliance inspection.

2.9. Compliance Determination. FAA personnel must remain aware of which airports are not in compliance in their areas of responsibility. Before the ADO or regional airports division can issue a federal airport grant, it must make an official determination that the sponsor is in compliance with its federal obligations.

A determination of compliance is based on a review of all available data concerning the airport and the circumstances involving its operation. The review need not include a formal compliance inspection or a formal compliance determination. It should, however, include the properly documented review of available data on hand. The ADO or regional airports division may rely on a sponsor's self-certification of compliance when making a compliance determination prior to issuing a grant. However, it is important that all data used to support this determination, including informal complaints and related materials, be analyzed and recorded in the appropriate files.

a. Notification. When the ADO's or regional airports division's assessment of the sponsor's performance concludes that the sponsor is not meeting its federal compliance obligations, the ADO or regional airports division must give the sponsor notification of potential noncompliance. Failure to provide such notice delays the corrective action and the problem may become more difficult to resolve at a future date. Prompt communication between the ADO or regional airports division and the sponsor about compliance deficiencies is essential to solving problems early before they become more difficult to resolve. See Chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*, for more information.

b. Actions Needed to Correct Noncompliance. The ADO or regional airports division notification must clearly spell out the actions needed to correct the potential noncompliance. The office should also perform a timely follow-up review to ensure completion of the corrective action.

c. Withholding AIP Payments and Grant Application Approval. Through the formal Part 16 process, the FAA can initiate the withholding of a payment on an AIP grant or approval of an AIP grant application. Additionally, the ADOs and regional airports divisions – in conjunction

with ACO-100 – can make decisions to suspend discretionary funding, including nonprimary entitlement grants.

2.10. Grants Watch List. As a result of its compliance functions, ACO-100 maintains the *Grants Watch List*.

The Grants Watch List lists those obligated airports with egregious violations where the airport sponsor has been informally determined to be in noncompliance with its grant assurances and/or surplus property obligations as of a particular date. An airport is placed on the Grants Watch List if it falls in one or more of the following categories and the violations are so egregious as to preclude additional federal financial assistance until the issues are resolved:

a. Airports with a formal finding of noncompliance under 14 CFR Part 16 if corrective action has not been taken,

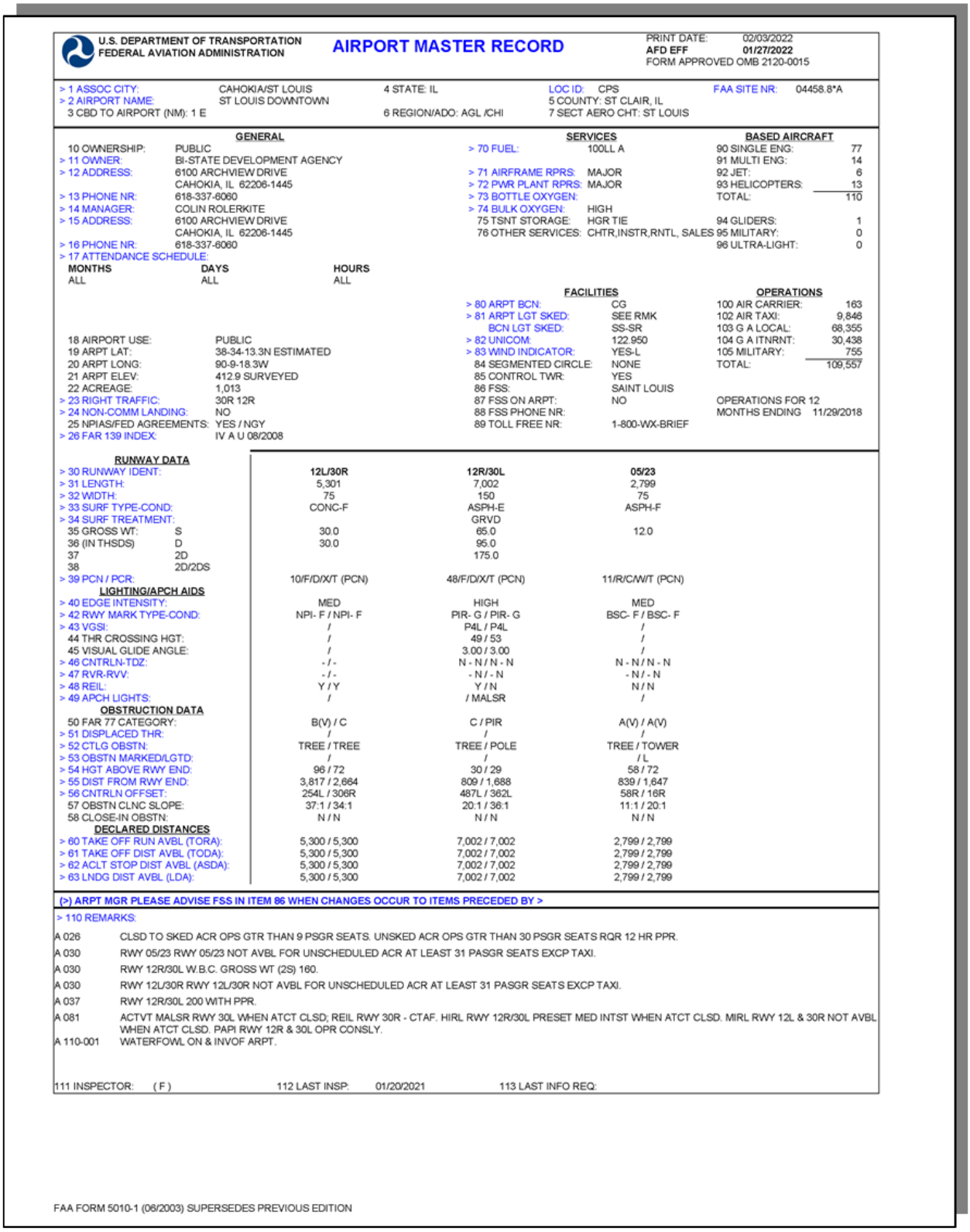
b. Airports listed in the Airport Improvement Program (AIP) Report to Congress under 49 U.S.C. § 47131 for certain for violations of their grant assurances or other requirements with respect to airport lands; and

c. Airports that are clearly in noncompliance despite FAA requests to the sponsor for corrective action,.

The Grants Watch List is essentially an internal notification from ACO-100 to other FAA Airports offices regarding which airports are not to receive any further discretionary grants authorized under 49 U.S.C. § 47115 and the General Aviation $150,000 apportionment under 49 U.S.C. § 47114(d)(3)(A) until corrective action is achieved. The Grants Watch List may also include formal findings of noncompliance under 14 CFR Part 16 that support the withholding of grants under 49 U.S.C. § 47114(c). The Grants Watch List is updated on an as-needed basis.

2.11 through 2.15 reserve

Sample FAA Form 5010 Airport Master Record



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AIRPORT MASTER RECORD

PRINT DATE: 02/03/2022
AFD EFF 01/27/2022
FORM APPROVED OMB 2120-0015

> 1 ASSOC CITY:	CAHOKIA/ST LOUIS	4 STATE: IL	LOC ID: CPS	FAA SITE NR: 04458.8*A
> 2 AIRPORT NAME:	ST LOUIS DOWNTOWN		5 COUNTY: ST CLAIR, IL	
3 CBD TO AIRPORT (NM): 1 E		6 REGION/ADO: AGL /CHI	7 SECT AERO CHT: ST LOUIS	

GENERAL

10 OWNERSHIP:	PUBLIC
> 11 OWNER:	BI-STATE DEVELOPMENT AGENCY
> 12 ADDRESS:	6100 ARCHVIEW DRIVE CAHOKIA, IL 62206-1445
> 13 PHONE NR:	618-337-6060
> 14 MANAGER:	COLIN ROLERKITE
> 15 ADDRESS:	6100 ARCHVIEW DRIVE CAHOKIA, IL 62206-1445
> 16 PHONE NR:	618-337-6060

> 17 ATTENDANCE SCHEDULE:

MONTHS	DAYS	HOURS
ALL	ALL	ALL

18 AIRPORT USE:	PUBLIC
19 ARPT LAT:	38-34-13.3N ESTIMATED
20 ARPT LONG:	90-9-18.3W
21 ARPT ELEV:	412.9 SURVEYED
22 ACREAGE:	1,013
> 23 RIGHT TRAFFIC:	30R 12R
> 24 NON-COMM LANDING:	NO
25 NPIAS/FED AGREEMENTS:	YES / NGY
> 26 FAR 139 INDEX:	IV A U 08/2008

SERVICES

> 70 FUEL:	100LL A
> 71 AIRFRAME RPRS:	MAJOR
> 72 PWR PLANT RPRS:	MAJOR
> 73 BOTTLE OXYGEN:	
> 74 BULK OXYGEN:	HIGH
75 TSNT STORAGE:	HGR TIE
76 OTHER SERVICES:	CHTR,INSTR,RNTL, SALES

FACILITIES

> 80 ARPT BCN:	CG
> 81 ARPT LGT SKED:	SEE RMK
BCN LGT SKED:	SS-SR
> 82 UNICOM:	122.950
> 83 WIND INDICATOR:	YES-L
84 SEGMENTED CIRCLE:	NONE
85 CONTROL TWR:	YES
86 FSS:	SAINT LOUIS
87 FSS ON ARPT:	NO
88 FSS PHONE NR:	
89 TOLL FREE NR:	1-800-WX-BRIEF

BASED AIRCRAFT

90 SINGLE ENG:	77
91 MULTI ENG:	14
92 JET:	6
93 HELICOPTERS:	13
TOTAL:	110
94 GLIDERS:	1
95 MILITARY:	0
96 ULTRA-LIGHT:	0

OPERATIONS

100 AIR CARRIER:	163
102 AIR TAXI:	9,846
103 G A LOCAL:	68,355
104 G A ITNRNT:	30,438
105 MILITARY:	755
TOTAL:	109,557

OPERATIONS FOR 12 MONTHS ENDING 11/29/2018

RUNWAY DATA

		12L/30R	12R/30L	05/23
> 30 RUNWAY IDENT:				
> 31 LENGTH:		5,301	7,002	2,799
> 32 WIDTH:		75	150	75
> 33 SURF TYPE-COND:		CONC-F	ASPH-E	ASPH-F
> 34 SURF TREATMENT:			GRVD	
35 GROSS WT:	S	30.0	65.0	12.0
36 (IN THSDS)	D	30.0	95.0	
37	2D		175.0	
38	2D/2DS			
> 39 PCN / PCR:		10/F/D/X/T (PCN)	48/F/D/X/T (PCN)	11/R/C/W/T (PCN)
LIGHTING/APCH AIDS				
> 40 EDGE INTENSITY:		MED	HIGH	MED
> 42 RWY MARK TYPE-COND:		NPI- F / NPI- F	PIR- G / PIR- G	BSC- F / BSC- F
> 43 VGSI:		/	P4L / P4L	/
44 THR CROSSING HGT:		/	49 / 53	/
45 VISUAL GLIDE ANGLE:		/	3.00 / 3.00	/
> 46 CNTRLN-TDZ:		- / -	N - N / N - N	N - N / N - N
> 47 RVR-RVV:		- / -	- N / - N	- N / - N
> 48 REIL:		Y / Y	Y / N	N / N
> 49 APCH LIGHTS:		/	/ MALSR	/
OBSTRUCTION DATA				
50 FAR 77 CATEGORY:		B(V) / C	C / PIR	A(V) / A(V)
> 51 DISPLACED THR:		/	/	/
> 52 CTLG OBSTN:		TREE / TREE	TREE / POLE	TREE / TOWER
> 53 OBSTN MARKED/LGTD:		/	/	/ L
> 54 HGT ABOVE RWY END:		96 / 72	30 / 29	58 / 72
> 55 DIST FROM RWY END:		3,817 / 2,664	809 / 1,688	839 / 1,647
> 56 CNTRLN OFFSET:		254L / 306R	487L / 362L	58R / 16R
57 OBSTN CLNC SLOPE:		37:1 / 34:1	20:1 / 36:1	11:1 / 20:1
58 CLOSE-IN OBSTN:		N / N	N / N	N / N
DECLARED DISTANCES				
> 60 TAKE OFF RUN AVBL (TORA):		5,300 / 5,300	7,002 / 7,002	2,799 / 2,799
> 61 TAKE OFF DIST AVBL (TODA):		5,300 / 5,300	7,002 / 7,002	2,799 / 2,799
> 62 ACLT STOP DIST AVBL (ASDA):		5,300 / 5,300	7,002 / 7,002	2,799 / 2,799
> 63 LNDG DIST AVBL (LDA):		5,300 / 5,300	7,002 / 7,002	2,799 / 2,799

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

> 110 REMARKS:

A 026	CLSD TO SKED ACR OPS GTR THAN 9 PSGR SEATS. UNSKED ACR OPS GTR THAN 30 PSGR SEATS RQR 12 HR PPR.
A 030	RWY 05/23 RWY 05/23 NOT AVBL FOR UNSCHEDULED ACR AT LEAST 31 PASGR SEATS EXCP TAXI.
A 030	RWY 12R/30L W.B.C. GROSS WT (2S) 160.
A 030	RWY 12L/30R RWY 12L/30R NOT AVBL FOR UNSCHEDULED ACR AT LEAST 31 PASGR SEATS EXCP TAXI.
A 037	RWY 12R/30L 200 WITH PPR.
A 081	ACTVT MALSR RWY 30L WHEN ATCT CLSD; REIL RWY 30R - CTAF. HIRL RWY 12R/30L PRESET MED INTST WHEN ATCT CLSD. MIRL RWY 12L & 30R NOT AVBL WHEN ATCT CLSD. PAPI RWY 12R & 30L OPR CONSLY.
A 110-001	WATERFOWL ON & INVOF ARPT.

111 INSPECTOR: (F) 112 LAST INSP: 01/20/2021 113 LAST INFO REQ:

FAA FORM 5010-1 (06/2003) SUPERSEDES PREVIOUS EDITION

Part II: Types of Federal Agreements

Chapter 3: Federal Obligations from Property Conveyances

Updated November 2022

3.1. Introduction. This chapter discusses the various types of conveyances the federal government has used to transfer personal and real property to airport sponsors. The types of transfers include surplus property and nonsurplus property conveyances.

Surplus property refers to U.S. property that was conveyed to the airport sponsor under the Surplus Property Act of 1944, as amended. Nonsurplus property refers to U.S. property that was conveyed to the airport property by other means, such as under 49 U.S.C. § 47125 and its predecessors.

This chapter also discusses the sponsor's federal obligations under the various types of federal conveyances, the duration of the associated federal obligations, and the need for FAA regional airports divisions (Regions) and Airports District Offices (ADOs) to review the specific conveyance instrument when assessing sponsor's federal obligations.

In general, property conveyances require the sponsor to:

- Maintain the airport in good and serviceable condition,
- Use specific lands approved by the FAA for nonaeronautical use to generate revenue to support the airport's aviation needs,
- Operate the airport in the public's interest, and
- Ensure there is no grant of an exclusive right for any aeronautical purpose or use.

It is the responsibility of the Regions and ADOs to:

- Ensure that the sponsors operate and maintain their airports in accordance with the conveyance instruments,
- Evaluate sponsor requests for release,
- Release qualifying property from sponsor federal obligations only when appropriate, and
- Consider any planning and environmental actions needed.

In addition to any airport-specific federal obligations, surplus and nonsurplus property federal obligations will, for the most part, mirror language found today in most grant agreements with respect to the basic compliance requirements, *i.e.*, exclusive rights, reasonable access, and unjust discrimination.

3.2. Background. Prior to the enactment of Public Law (Pub. L.) 80-289 in 1947, surplus property conveyance instruments were issued under the Surplus Property Act of 1944 (Surplus Property Act). As later amended, the Surplus Property Act was codified at 49 U.S.C. §§ 47151-47153. The Surplus Property Act was the primary legislative effort by the U.S. Government to dispose of excess military equipment and infrastructure as World War II was coming to an end. The Surplus Property Act authorized the conversion of surplus military airports to civilian public use airports. The FAA recommends to the General Services Administration (GSA) which property should be transferred for airport purposes to public agencies. Prior to 1958, the Civil

Aeronautics Authority (CAA) made these recommendations. Neither the FAA nor the federal government owns the properties in question once they are transferred, but the government may retain a property interest.

The ownership of such property is generally transferred to the new public-entity owner (i.e., city, county, state, or airport authority) by instruments of property conveyance issued by the GSA. GSA has statutory jurisdiction over the disposal of properties that are declared to be surplus to the needs of the federal government. Prior to the establishment of the GSA in 1949, the War Assets Administration issued the property conveyance instruments.

3.3. The War Assets Administration (WAA). Upon enactment of the Surplus Property Act, the WAA, under general authority granted by the Surplus Property Act, conveyed significant amounts of federally owned surplus properties to public agencies. Before conveyance, the responsible government entity issued a declaration of surplus real property. For surplus airport properties conveyed under this authority, the WAA established certain terms and conditions and prescribed them in Regulation 16.[1] A copy of Regulation 16 is provided as Appendix I.

Public Law (P.L.) No. 80-289, adopted in 1947, amended the 1944 Surplus Property Act to authorize the Administrator of the WAA (and later GSA) to convey to any state, political subdivision, municipality, or tax-supported institution surplus federally owned real and personal property for airport purposes without monetary consideration to the United States.

These conveyances of surplus property are subject to the terms, conditions, reservations, and restrictions prescribed in the instruments of conveyance. In other words, the properties were conveyed with strings attached, which are the sponsor's federal obligations.

Conveyances of surplus property are subject to the terms, conditions, reservations, and restrictions prescribed in the instruments of conveyance. In other words, the properties were conveyed with strings attached, which are the sponsor's federal obligations.

3.4. Nonairport Property. Prior to the amendment of the Surplus Property Act by P.L. No. 80-289, the WAA took the position that it had no authority to convey to public agencies any property other than that which had been, and was intended to be, used solely for the operation and maintenance of an airport. This precluded the transfer of some types of buildings, facilities, and other nonairport properties comprising parts of surplus military air bases formerly operated by the federal government.

[1] Note: Regulation 16 from the Surplus Property Act is different from section 16 of the Federal Airport Act of 1946.

Each conveyance of revenue-production property federally obligates the public agency recipient to use the revenue generated by the property for the operation, maintenance, or development of the airport.

3.5. The Use of Property for Revenue Production. Public Law 80-289 specifically authorized the GSA to transfer such surplus nonairport property as needed to develop sources of revenue from nonaeronautical commercial businesses at a public use airport. This essentially became the point at which the FAA began tracing the requirement to use airport property for aeronautical purposes. If the property is not used for aeronautical purposes directly, the property must be used to generate revenue for the benefit of the airport consistent with FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 (February 16, 1999) (*Revenue Use Policy*). Unless specifically permitted by the deed of conveyance, the FAA must approve the use for nonaeronautical purposes before such use is allowed.

As a precondition to a land conveyance, the WAA (and later the GSA) needed to determine that such surplus nonairport property was needed by the airport and would be used as a source of revenue to defray the cost of operation, maintenance, and development of the public use airport. Originally, the GSA conveyance instrument made no distinction between federal obligations imposed on property conveyed for aeronautical use and those imposed on property conveyed for nonaeronautical, revenue-production purposes.

Each federal conveyance of revenue production property obligates the public-agency sponsor to use the revenue generated by the nonaeronautical use for the operation, maintenance, or development of the airport. Consequently, if the property conveyed has been determined by the GSA, with FAA concurrence, to be used for revenue-production purposes, the airport sponsor must use the revenue generated by the property for airport purposes by depositing the revenues in an airport fund designated for airport use. This is true even if the property is not specifically identified as revenue producing in the conveyance instrument.

3.6. Highest and Best Use and Suitability for Airport Use. In order for any surplus real or personal property to be transferred, the FAA must determine that it is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport. This includes real property needed to develop sources of revenue from nonaeronautical commercial businesses at a public airport. (*See* 49 U.S.C. § 47151(a).)

Highest and best use has been defined – when appraising the market value of real property – as the "reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value." (*See Dictionary of Real Estate Appraisal*, 4th Edition, Appraisal Institute; *see also Olson v. United States*, 292 U.S. 246, 255, 1934) ("The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future."); *Bloom Company v. Patterson*, 98 U.S. 403, 408 (1878). The highest and best use must be based on:

a. the economic potential of the property;

b. qualitative values (social or environmental) of the property; and

c. use factors affecting land use (*e.g.*, zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations).

It is the task of an appraiser to evaluate competing land uses and determine the "highest and best" use of the land and appraise the fair market value of the property at its "highest and best" use based on sales of property that sold and were used at that same "highest and best" use. Any "highest and best use" determination should consider the probability of achieving such use and should not be speculative.

3.7. Types of Conveyance Instruments for Surplus Property. The federal government has used three basic instruments to transfer ownership of federally owned surplus property for public use airport purposes:

a. The WAA instrument prescribed in Regulation 16 conveyed surplus real property for public use airport purposes prior to the amendment of the Surplus Property Act of 1944 by Pub. L. 80-289.

b. The GSA real property instrument issued under Pub. L. 80-289 conveyed surplus real property, or a combination of surplus real and airport-related personal property for public use airport purposes.

c. The GSA personal property instrument issued under Pub. L. 80-289 conveyed only surplus airport-related personal property for public use airport purposes.

Each instrument of conveyance of surplus property for public use airport purposes sets forth the particular rights retained by the federal government and the specific federal obligations assumed by the airport sponsor following the transfer of ownership.

Each federal instrument of conveyance of surplus property for public use airport purposes, regardless of its form or format, sets forth the particular rights retained by the federal government and the specific federal obligations assumed by the airport sponsor following the transfer of ownership.

3.8. Sponsor Federal Obligations for Surplus Property. A conveyance document may contain one or more special conditions. Special conditions are in addition to the conditions required by the Surplus Property Act. Also, at different times, the WAA and the GSA may have used different wording of the statute or a requirement in their various types of property conveyance instruments.

a. War Assets Administration Regulation 16 Conveyance. Instruments of conveyance, also known as instruments of disposal, issued under WAA Regulation 16 are not consistently

uniform. One common variation in WAA conveyance instruments is the provision relating to joint military use of the airport. Some WAA property conveyance instruments give the federal government the right to unlimited use of the airport by federally owned aircraft without charge. Others stipulate that the use by federally owned aircraft may not exceed a specified percentage of the capacity of the airport if such use interferes with other authorized uses. Regulation 16 conveyances are typically the most restrictive. In some cases, they incorporate reversion clauses (see chapter 23, Reversions of Airport Property). Regulation 16 properties must be operated for public airport purposes. Property, as well as structures, cannot be used for any other purposes – including revenue-producing, manufacturing, or industrial purposes – without FAA written concurrence . (For additional Regulation 16 information, see Appendix I of this Order, *SPA Reg. 16*.)

b. GSA Public Law 80-289 Conveyance. Instruments of conveyance under Pub. L. 80-289 issued by the GSA are generally similar in form and content. In some cases, however, certain terms and conditions may be different. Therefore, the actual obligating documents must be reviewed in the initial phase of an investigation. (See https://uscode.house.gov for a copy of Pub. L. 80-289.)

c. Operation of the Entire Airport. Most of the property conveyance instruments issued by the WAA and GSA that conveyed real and airport-related personal property contain provisions obligating the sponsor to operate and maintain the entire airport where the property is located, regardless of the amount of property conveyed.

d. National Emergency Use Provision (NEUP). Practically all WAA and GSA conveyance instruments transferring ownership of surplus real and airport-related personal property to airport sponsors for public use airport purposes contain the NEUP. This provision retains the right of the United States to make exclusive or joint use of the airport, or any portion thereof, during a war or national emergency. This has actually happened several times since World War II, particularly after the United States' involvement in the Korean War began in 1951. Two examples of airports that were reactivated are Sanford, Florida, and Brown Field, California. However, while the authorizing statutes require this provision to be included in all such conveyance instruments, it has been discovered that the NEUP was omitted from a few conveyance instruments issued by WAA and GSA. (For additional information, refer to Chapter 22, Releases from Federal Obligations.)

e. NEUP Case Study: Sanford Naval Air Station. The City of Sanford is in the northwestern portion of Seminole County, approximately 16 nautical miles (or 18 statute miles) northeast of Orlando, Florida. The Orlando Sanford Airport is in the southeastern portion of the City of Sanford. The Airport began its history prior to the 1940s as an 865-acre airport equipped with two runways. On June 11, 1942, the City of Sanford deeded the airport to the U.S. Navy and the airport became a Naval Air Station. The Navy acquired an additional 615 acres of land for the station and immediately began construction of its facilities. Many of these facilities are still present at the airport today. Some of these facilities currently serve as storage hangars. In 1943, active flight operations began at the Naval Air Station; the station served as a fighter and dive-bomber training base. Following World War II, the Naval Air Station was decommissioned. The City of Sanford reacquired the land and the facility, now known as the Orlando Sanford Airport. After the Korean War began in 1951, the Navy once again acquired the airport and purchased an additional 164 acres, bringing the total acreage of the airport to 1,644. The airport operated as a

training base for fighter, attack, and reconnaissance aircraft until it closed in June of 1968. The City of Sanford realized that closing the base would pose an economic threat to the local economy. To limit this threat, the City negotiated with the federal government for the property purchase. It was ultimately purchased for the sum of $1.00. This case study illustrates the U.S. Government exercising its option to reactivate a former military facility in case of national need.

3.9. Duration of Surplus Property Federal Obligations. The duration of the federal obligations assumed by airport sponsors for surplus federal property depends on the type of property conveyed.

a. Real Property. The federal obligations set forth in surplus airport property conveyance instruments (except those conveying only personal property) provide that the covenants assumed by the sponsor regarding the use, operation, and maintenance of the airport and the property transferred shall be deemed to run with the land. This means that subsequent owners or successors of the land would be subject to the covenants. Accordingly, such covenants continue in full force and effect until released under the Surplus Property Act, as amended. (See 49 U.S.C. § 47153.)

b. Personal Property. In most cases, conveyance instruments transferring ownership of surplus real property also convey airport-related personal property. Accountability for the personal property conveyed in this manner is for its useful life not to exceed one year.[2]

c. Trade-in of Personal Property. Airport sponsors may dispose of conveyed personal property that has outlived its useful life. If the sponsor uses such property for trade-in on new equipment, the FAA will not hold that sponsor accountable for that new equipment.

3.10. Review of Specific Federal Surplus Property Obligations. In order to identify the specific federal obligations assumed by a nonfederal public agency in accepting surplus federal property conveyed for public use airport purposes, the office assessing the compliance status of a federally obligated airport sponsor must consult the actual surplus property conveyance instruments.

a. Public agencies may receive surplus property from the GSA for public airport purposes. FAA has a key role in making recommendations to GSA regarding the suitability and amount of property considered necessary for airport purposes. FAA Order 5150.2, *Federal Surplus Property for Public Airport Purposes,* provides detailed guidance on FAA participation in the conveyance of surplus federal property.

The obligating document may grant a fee simple interest through a quitclaim deed, or, alternatively, a lease from the U.S. Government. The actual obligations of the airport sponsor can vary significantly based on the kind of conveyance at issue.

In addition to any deed obligations, sponsors that have accepted an AIP grant have certain rights and responsibilities under AIP Grant Assurance 27, *Use by Government Aircraft*. Grant Assurance 27 requires a sponsor to accommodate operations by Federal government aircraft

[2] FAA Order 5150.2A, *Federal Surplus Property for Public Airport Purposes*, Section 6, paragraph 87, Termination of Accountability.

without charge unless Federal agencies are making "substantial" use of the airport. See Section 3.20.a below.

3.11. Nonsurplus Federal Land Conveyances. Federally owned or controlled land that is not surplus (not in excess of federal needs) may be conveyed for airport purposes under the authority contained in section 516 of the Airport and Airway Improvement Act of 1982 (AAIA). (See 49 U.S.C. § 47125 for current provision.) Prior to the effective date of the AAIA, similar authority existed in section 16 of the Federal Airport Act of 1946 and section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act).[3] There are many instances where a government entity, such as the Department of Interior's (DOI) Bureau of Land Management (BLM) agreed to convey nonsurplus land for public use, including use as an airport. This is particularly common in the western states. FAA records indicate that about 170 airports have benefited from nonsurplus conveyances.

3.12. Land Conveyance Federal Obligations. Instruments of conveyance transferring ownership of nonsurplus federal land issued under sections 16, 23, 516 or under 49 U.S.C. § 47125 impose upon the airport sponsor certain federal obligations regarding the use of the lands conveyed. There are terms, conditions, and covenants included in the property conveyance instruments, deeds, or quitclaim instruments. These terms include requirements that:

a. The airport sponsor will use the conveyed property for airport purposes and will develop that property for airport purposes within one year or as set forth in the conveyance instrument, deed, or quitclaim instrument.

b. The airport sponsor will operate the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as a public use airport on fair and reasonable terms and without unjust discrimination.

c. The airport sponsor will not grant or permit any exclusive right in the operation and use of the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as required by section 303 of the Federal Aviation Act of 1938, as amended, and section 308(a) of the Federal Aviation Act of 1958 (FAA Act) 85 Pub. L. 726 (1958), as amended 49 U.S.C §4010 *et seq*.

d. Any subsequent transfer of the conveyed property interest to another nonfederal public entity will be subject to the terms, conditions, and covenants set forth in the original instrument of conveyance.

e. In the event of a breach of any term, condition, or covenant contained in the conveyance instrument, the airport sponsor will, on demand, take such action as required to transfer

[3] Prior to 1986, FAA Order 5170.1, *Transfer of Federal Lands, Section 23 of the Airport and Airway Development Act of 1970*, issued March 18, 1977, provided detailed guidance for the FAA in reviewing and processing applications by nonfederal public agencies to receive federally owned land conveyed for the development, improvement, or future use of a public airport. This Order was cancelled on January 10, 1986.

ownership of the conveyed premises to the U.S. Government. *See also* 49 U.S.C. § 49125(a) (providing the property interest reverts to the U.S. Government, at the option of the Secretary).

f. All or any part of the property interest conveyed under section 16 shall automatically revert to the U.S. Government (through the GSA for assignment) in the event that the land in question is not developed for airport purposes or used in a manner consistent with the terms of the conveyance.

3.13. Bureau of Land Management. Many airports in the western states are located on public land. The Bureau of Land Management (BLM) has statutory authority in the Airport Act of 1928 to lease up to 2,560 acres of public lands for use as a public airport.

Under the AAIA, the BLM may continue to convey, subject to reversion, lands to a public agency for an airport. These leases are located near small towns, mining operations, and ranches. Local governments hold many of these leases. The FAA is involved in the approval of these leases and conveyances.

3.14. Federal Obligations Imposed by Other Government Agencies. In some instances, the government agency issuing the conveyance instrument may impose special conditions or federal obligations. Therefore, consult the particular deed by which the lands were conveyed to determine all the conditions and covenants.

3.15. Duration of Nonsurplus Federal Obligations. Terms, conditions, covenants, and other federally obligating provisions in conveyance instruments issued under sections 16, 23, and 516 remain in force and effect as long as the land is held by a nonfederal public agency, its successors, or assignees. Section 817 of Pub. L. 112-95 (FAA Modernization and Reform Act of 2012) gave the FAA the authority to grant releases from sections 16 and 23. Section 141 of Pub.L. 115-254 (FAA Reauthorization Act of 2018) gave FAA the authority to grant releases from Section 516, codified at 49 U.S.C. § 47125.

In addition, obligations may be amended or modified to provide for a greater or lesser property interest as dictated by the needs of the airport.

Nonsurplus federal land conveyance instruments issued under sections 16, 23, and 516 provide for reversion to the U.S. Government in the event the lands are not developed, or cease to be used, for airport purposes.

3.16. Reversion Provisions. Nonsurplus federal land conveyance instruments issued under sections 16, 23, and 516 provide for reversion to the U.S. Government in the event the lands are not developed, or cease to be used, for airport purposes. If the land conveyed under sections 16, 23, and 516 is no longer used or needed for any airport purpose, the FAA must invoke the reversion provision in accordance with the terms of the deed unless the airport sponsor willingly agrees to reversion of the property voluntarily. (See chapter 23 of this Order, *Reversions of Airport Property*, for additional details on reversions.)

a. Section 16 Conveyances. The Federal Airport Act of 1946 required that conveyances of nonsurplus federal land under section 16 be subject to the condition that, if the land is not

developed as an airport or ceases to be used for airport purposes, the property interest conveyed shall automatically revert to the U.S. Government.

b. Section 23/516 Conveyances. Conveyance instruments issued under section 23 of the 1970 Airport Act or section 516 of the AIAA do not contain the automatic property reversion requirement contained in conveyance instruments issued under section l6. They do, however, provide the Secretary of Transportation the option of reverting nonsurplus federal land undeveloped or not used for airport purposes by the airport sponsor. The Secretary has assigned this discretionary authority to the FAA Administrator. The Administrator will decide, on behalf of the U.S. Government, whether to recover title to all or any part of the property interests conveyed.

3.17. Airport Sponsor Compliance. The range of terms, conditions, and covenants contained in the instruments of nonsurplus property conveyance under sections 16, 23, and 516, can have significant differences. There are variations of nonsurplus conveyance federal obligations because of different authorizing legislation, amendments over time, as well as special conditions and obligations imposed by the conveying federal agency in response to airport-specific circumstances. Therefore, in assessing an airport sponsor's compliance status, the FAA must review each instrument of nonsurplus federal property conveyance under sections 16, 23, and 516 entered into by the airport sponsor.

3.18. The AP-4 Land Agreements. Federal legislation enacted between 1939 and 1944 authorized the *Development of Landing Areas for National Defense* (DLAND) and the *Development of Civil Landing Areas* (DCLA) programs. The Work Project Administration and the CAA jointly administered the DLAND programs. In general, under these two federal programs (DLAND and DCLA), existing publicly owned airports were transferred to the federal government for development and use at its discretion, subject to the terms and conditions of an instrument known as an AP-4 Agreement. The AP-4 Agreement contained the applicable federal obligations. After considering the types of improvements, design standards, construction methods, and normal deterioration, the FAA has administratively determined that the useful life of all improvements on airports subject to AP-4 Agreements has expired. Termination of an AP-4 Agreement relieved the airport sponsor only of the contractual federal obligations imposed in the agreement. The sponsor remains subject to the exclusive rights prohibition for as long as the airport is operated as an airport.

3.19. Base Conversion and Surplus Property. The FAA works with the Department of Defense (DoD) (the Army, Air Force, and Navy) and local civil airport sponsors to convert military airfields to civil use.[4] The agency also works with the GSA on airport property disposals under the Surplus Property Act, as amended. (See 49 U.S.C. § 47151, *et seq.*). (See Appendix J of this Order, *DoD Base Realignment and Closure (BRAC)*, for a listing of air bases converted from military to civil use under the BRAC laws.) The FAA manages surplus property transfers

[4] Since 1989, approximately 32 military airfields have been converted to civil use by local communities. This includes two military airfields that recently converted to civil aviation use (Roosevelt Roads Naval Air Station, PR, and Brunswick Naval Air Station, ME). Fifteen of the surplus military airfields have become commercial service airports, and four have significant cargo service (Sacramento Mather, CA; Rickenbacker International, OH; Stewart International, NY; and Guam International, GU). The remaining surplus airfields are in areas where additional general aviation airports are needed

for airports, military base conversions, and the promotion of joint use of existing military air bases. A sample of a recent surplus property conveyance or deed is provided in Appendix V of this Order, *Sample Deed of Conveyance*. (Note: Information in samples is for example only.) The FAA also administers the Military Airport Program (MAP).[5] The MAP provides financial assistance to the civilian sponsors who are converting, or have already converted, military airfields to civilian or joint military/civilian use. To aid in this process, MAP grants may be used for projects not generally funded by the Airport Improvement Program (AIP), such as buildings, rehabilitating surface parking lots, fuel farms, hangars, utility systems, access roads, and cargo buildings.

3.20. Joint Use and Federal Use of Obligated Airports.

FAA also works with the various DoD military departments on the joint use of existing military airports when a civil sponsor wants to use the military airfield. Under 49 U.S.C. § 47175, a "Joint-Use Airport" as an airport owned by the DoD,[6] at which both military and civilian aircraft make shared use of the airfield.[7] It is noted however, that the term "Joint Use" is also commonly used in situations addressing military use of civilian airports where the military is a tenant at a civilian airport.[8]

There are three types of agreements under which the government has the right to joint use of airport facilities, either with or without charge.

a. Grant Agreements. The sponsor's assurances, which accompany the project application, provide that all facilities of the airport developed with federal aid and all those usable for the landing and taking off of aircraft will be available to the United States at all times without charge for use by government aircraft in common with others. However, the assurances provide that if such use is deemed substantial, a reasonable share of the cost of operating and maintaining the facilities used, in proportion to the use, may be charged. Substantial use is defined in the assurances as: (1) five or more government aircraft are regularly based at the airport or on land adjacent thereto; or (2) the total number of calendar month operations (counting each landing and each takeoff as a separate operation) of government aircraft is 300 or more; or (3) the gross accumulative weight of government aircraft using the airport in a calendar month (the total

[5] Under 49 U.S.C. § 47118, the Secretary can designate up to 15 current or former military airports for inclusion in the Military Airport Program (MAP). These general aviation, commercial service, or reliever airports can receive grants for projects necessary to convert the airports to civilian use or to reduce congestion, including grants for projects not generally funded by the Airport Improvement Program (AIP).

[6] For the purposes of this Order, the DoD includes all the Armed Forces, including the Coast Guard. (10 U.S.C. § 101(a)(4))

[7] 49 U.S.C. § 47175; 14 CFR § 139.5.

[8] Not all Joint Use Airfields are federally obligated.

operations of government aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

b. Pub. L. 80-289. Surplus Airport Property Instruments of Transfer issued under P.L. No. 80-289 provide that:

> The United States shall at all times have the right to make nonexclusive use of the landing area (runways, taxiways and aprons) of the airport without charge, except that such use may be limited as may be determined at any time by the Administrator of FAA to be necessary to prevent undue interference with use by other authorized aircraft and provide further that the United States shall be obligated to pay for any damage caused by its use, and if the use is substantial[9], to contribute a reasonable share of the cost of maintaining and operating the landing area, in proportion to such use.

c. Regulation 16 Transfer. Surplus Airport Property Instruments of Transfer issued under WAA Regulation 16 (*i.e.*, prior to the effective date of P.L. No. 80-289) provide that the government shall at all times have the right to use the airport in common with others provided that such use may be limited as determined by the FAA Administrator to be necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict government use to less than 25 percent (25%) of the capacity of the airport. These instruments of transfer further provide that government use of the airport to this extent shall be without charge of any nature other than payment for any damage caused.

d. Negotiation Regarding Charges. In all cases where the airport owner proposes to charge the government for use of the airport under the joint use provision, negotiations should be between the airport owner and the government agency or agencies using that airport.

e. Joint Use Agreements. The airport sponsor (including the sponsor of a federally obligated civil airport or sponsor of a DoD-owned facility for which AIP has funded infrastructure improvements for civil use) must take care not to enter into agreements that will preclude the sponsor from receiving future AIP grants. For example, if the airport sponsor agrees to certain limitations on the number of civilian aircraft takeoffs and landings or agrees to Prior Permission Requirements (PPRs), this may effectively prevent or limit general aviation access in a way that is impermissible under the grant assurances. The FAA Regions and ADOs are available upon request to review proposed joint use agreements between the DoD and airport sponsors to ensure that the airport's interests are protected and to preserve the sponsor's eligibility for grant assistance. This review is effective only if done before any agreements are signed. The FAA is not a party to and does not approve joint use agreements. Remember, the DoD is responsible for protecting its interests; the airport sponsor is responsible for preserving and protecting the airport's interests and complying with the grant assurances and other federal requirements. It is important to remember that in cases involving military units, the military entity in question may be subject to military regulations relating to fee negotiations. For example, Appendix J-1 of this Order provides a hyperlink to Air National Guard Pamphlet 32-1001, 2 August 2013, entitled Airport Joint Use Agreements for Military Use of Civilian Airfields. This pamphlet implements AFPD 10-10, Civil Aircraft Use of United States Air Force Airfields, and AFPD 32-10,

[9] For guidance on substantial use, see Chapter 7 of this Order.

Installations and Facilities, and applies to Air National Guard flying units that operate on public airports. This pamphlet provides guidance for negotiating fair and reasonable charges to the government for joint use of the public airport's flying facilities.

f. Provision for altered military use. The airport sponsor should review deed language and the provisions of any DoD agreements to determine if there is any provision for a change in military use of the airport.

3.21. through 3.25. reserved.

Sample Surplus Property Conveyance - Page 1

(Information in samples is for example only.)

QUITCLAIM DEED

THIS INDENTURE, made this 17th day of June 1948, between THE UNITED STATES OF AMERICA, acting by and through the WAR ASSETS ADMINISTRATOR, under and pursuant to Reorganization Plan One of 1947 (12 F.R. 4534), and the powers and authority contained in the provisions of the Surplus Property Act of 1944 (58 Stat. 765), as amended, and applicable rules, regulations, and orders, GRANTOR, and PINAL COUNTY, a body corporate and politic under the laws of the State of Arizona, acting by and through its BOARD OF SUPERVISORS, GRANTEE.

WITNESSETH: That the said GRANTOR, for and in consideration of the assumption by the GRANTEE of all the obligations and its taking subject to certain reservations, restrictions, and conditions and its covenant to abide by and agreement to certain other reservations, restrictions, and conditions, all as set out hereinafter, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim unto the said GRANTEE, its successors, and assigns, under and subject to the reservations, restrictions, and conditions, exceptions, and reservation of fissionable materials and rights hereinafter set out, all its right, title, and interest in the following described property situated in the County of Pinal, State of Arizona, to wit:

I

All of Sections 32 and 33; the South Half of the South Half ($S\frac{1}{2}$ $S\frac{1}{2}$) of Section 28; the South Half of the South Half ($S\frac{1}{2}$ $S\frac{1}{2}$) of Section 29; the North Half ($N\frac{1}{2}$) of Section 34; the North Half of the South Half ($N\frac{1}{2}$ $S\frac{1}{2}$) of Section 34, in Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, containing 2080 acres more or less.

TOGETHER WITH all buildings, structures, and improvements located thereon, and that certain personal property set forth in Schedule "A" annexed hereto and made a part hereof as though fully set forth hereat.

The above described premises are transferred subject to all existing easements for roads, highways, public utilities, railways, and pipelines.

II

That certain air-space safety zoning restriction (avigation easement) established by agreement dated 23 July 1942, signed by Fok Yut, Demetrio P. Lopez, H. B. Aguirre, and Anita Aguirre in consideration of one dollar ($1.00) paid to them by the United States of America, affecting the following described properties to wit:

The Southeast Quarter of the Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}$) and the South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$), of Section Thirt Township Ten (10) South, Range Ten (10) East, of the Gila and Salt River Base and Meridian; and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$) of Section Thirty-five (35), Township Ten (10) South, Range Ten(10) East, and the Northeast Quarter of the Southwest Quarter ($NE\frac{1}{4}SW\frac{1}{4}$), and

Chapter 4: Federal Grant Obligations and Responsibilities

Updated November 2022

4.1. Introduction. This chapter provides a brief description of the three FAA grant programs for airports, the duration of federal obligations, the useful life of grant funded projects, and the legislatively mandated sponsor compliance requirements. It is the responsibility of the FAA Airports District Offices (ADOs) and regional airports divisions to ensure that the sponsors understand and comply with their grant assurances.

4.2. Sponsor Federal Obligations Under Various Grant Agreements. Under the various federal grant programs, the sponsor of a project agrees to assume certain federal obligations pertaining to the operation and use of the airport. These federal obligations are embodied in the application for federal assistance as sponsor assurances. The federal obligations become a part of the grant offer, binding the grant recipient when it accepts federal funds for airport development.

a. Grant Programs Since 1946, the FAA has administered three primary grant programs for development of airports:

(1). The Federal Aid to Airports Program (FAAP) pursuant to the Federal Airport Act of 1946, as amended, until repealed in 1970.

(2). The Airport Development Aid Program (ADAP) pursuant to the Airport and Airway Development Act of 1970 (1970 Airport Act), as amended, until repealed in 1982.

(3). The Airport Improvement Program (AIP) pursuant to the Airport and Airway Improvement Act of 1982 (AAIA), as amended. (See 49 U.S.C. § 47101, *et seq.*) Grants issued to airports under Public Law 117-58-Infrastructure Investment and Jobs Act referred to as the Bipartisan Infrastructure Law (BIL)[1], contained the same sponsor assurances as the AIP program.

(4). Occasionally, there are time limited special funding programs authorized by Congress to provide federal grants to airports for a specific purpose such as economic development or recovery. These have included: American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5); Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748, Public Law 116-136), Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA) (Public Law 116-260), American Rescue Plan Act of 2021 (ARPA) (H.R. 1319, Public Law 117-2). These grants were generally time limited and the specific grant agreement should be reviewed to determine the federal obligations associated with the grant.

In addition, the FAA has on occasion issued additional grant programs. These were primarily focused national economic recovery (*e.g.*, Coronavirus Aid, Relief, and Economic Security Act (CARES Act), American Recovery and Reinvestment Act (ARRA), Coronavirus Response and

[1] BIL funds were split into different funding buckets for Airport Infrastructure Grants (AIG), Federal Contract Tower program (FCT), and Airport Terminal Program grants (ATP).

Relief Supplemental Appropriations (CRRSA)) and contained certain federal obligations for the life of the grant.

b. Assurances Pertaining to Grant Agreements. Each of these FAA administered federal airport financial assistance programs required airport sponsors to agree to certain assurances under the authorizing legislation of the grant programs. Certain assurances remain consistent from one grant program to the next. Other assurances were added by legislative mandate as the grant programs developed. Some assurances were superseded over time. In addition, the FAA has statutory authority to prescribe additional assurances or requirements for sponsors. (*See* 49 U.S.C. § 47107(g).) Also, some grant agreements contain special covenants or conditions intended to address an airport-specific situation.

c. Special Project Conditions. This Order generally does not address special conditions under which the FAA funded a particular project. An example of a special condition might be that funds are not available to a sponsor until the sponsor provides an updated Airport Layout Plan (ALP). Special conditions are enforced in the same manner as other federal obligations. (*See* FAA Order: 5100.38, Airport Improvement Program Handbook, Paragraph 5.23(e) Special Conditions.)

4.3. The Duration of Federal Grant Obligations. Federal obligations relating to the use, operation, and maintenance of the airport remain in effect throughout the useful life of the facilities developed under the project, but not to exceed 20 years, unless otherwise defined in the grant assurances or special conditions of the grant. .

a. Obligations with Land Acquisition. In regard to land acquired with federal assistance (*e.g.*, FAAP, ADAP, AIP), so long as the airport sponsor has taken an ADAP or AIP grant since May 1980, the federal obligations on the acquired land remain in effect until released by the FAA.[2] The following background information is helpful to understanding this requirement:

> **(1).** An airport sponsor who accepted an ADAP or AIP grant after 1980 agreed that the covenants on real property acquired with Federal funds are unlimited. This is consistent with federal grant law generally, which provides that a grant of real property must be used for its intended purpose until and unless released by the government. The public has been on notice of this since at least 1980.
>
> **(2).** The "Duration and Applicability" section for the current grant assurances[3] and in every set of assurances for an ADAP and AIP grant since 1980 has contained the following language:
>
> The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed

[2] There is no limit on the duration of terms, conditions, and assurances with respect to real property acquired with federal funds. (*See* FAA Grant Assurances, *Duration and Applicability;* 14 CFR Part 152, Airport Aid Program, Appendix D, Paragraph 17).

[3] The current grant assurances are available at: www.faa.gov/airports/aip/grant_assurances/

within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. *There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds.* Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances. [italics added.]

(3). These assurances apply to all property on the airport acquired with federal funds, not just property acquired with that project. The assurances thus apply to any "real property acquired with Federal funds."

(4). The regulations implementing the ADAP program also contain the same basic assurance as to real property acquired with "federal funds." 14 CFR Part 152, Appendix D, paragraph 17 provides as follows:

17. Effective date and duration. These covenants shall become effective upon acceptance by the sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project. However, these limitations on the duration of the covenants do not apply to the covenant against exclusive rights and real property acquired with Federal funds.

(5). 14 CFR § 200.311, Real Property, sets forth the requirements applicable to federal grants for real property generally. It confirms the requirements of Grant Assurance 31, (Disposal of Land,) with respect to the disposition of real property purchased with a federal grant when the property is no longer needed for the originally authorized purpose. This regulation applies to all federally financed lands and provides additional support for the concept that the FAA is entitled to be reimbursed for the value of its share of the land, just like Grant Assurance 31 provides. For example, an airport sponsor would have to reimburse the FAA for the Fair Market Value (FMV) of the real property acquired with FAA's FAAP and ADAP grants, if the airport land is no longer used for airport purposes.

(6). The FAAP and ADAP grant assurances provide that they shall not exceed 20 years with respect to facilities developed with the grants. However, the 20-year limitation arguably applies only to "facilities developed under this Project"- not to the underlying land - (which always has had an unlimited useful life). The language from the Sponsor Assurances section of FAA Form 1624, Project Application (for Federal Aid for Development of Public Airports), p. 5, dated September, 1964, which was included in the FAAP grants, states:

> 1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

One of the reasons ADAP regulations and grant assurances were revised in 1980 was to clarify and confirm that limitations upon the use of federally purchased land do not expire and must be used for its originally intended purpose. See 45 Fed. Reg. 34784 which explains the 1980 ADAP assurances were revised to be consistent with OMB Circular A-102 which requires that the grantee use that property for the authorized purpose of the original grant.

b. Additional Continuing Obligations. There are also two assurances for which the obligation continues without limit as long as the airport is used as a public use airport: Grant Assurance 23, Exclusive Rights, and Grant Assurance 25, Airport Revenues. Grant Assurance 30, Civil Rights remains in effect until the sponsor disposes of the property regardless if the airport has been closed. Grant Assurance 31, Disposal of Land, remains in effect until all airport land acquired with assistance under AIP has been sold and the FAA has prescribed the use of the federal government's share of the sales proceeds as required by the Grant Assurance.

c. Private Sponsor Obligations. Private sponsors' useful life of federally assisted projects shall be no less than 10 years from the date of acceptance of federal aid. The actual grant agreement should be consulted to verify the federal obligations sponsors agreed to and to ensure the sponsor is being held to those assurances. This Order does not replace reading the obligating documents.

d. Obligations through other Programs. While this chapter primarily discusses the standard grant assurances for airport sponsors, other obligations may also apply, such as, the Passenger Facility Charge (PFC) program, the Aviation Block Grant Program, Planning Agency Sponsors and Non-Airport Sponsors Undertaking Noise Compatibility Program Projects. Other obligations may also include grant agreement special conditions, covenants in property deeds, and agency or court orders.

4.4. The Useful Life of Grant Funded Projects. The useful life is the period during which an asset or property is expected to be useable for the purpose it was acquired. It may or may not correspond with the item's actual physical life or economic life. (See FAA Order: 5100.38, *AIP Handbook*, Appendix A-1). The AIP Handbook provides the minimum useful life for grant funded projects. (See FAA Order: 5100.38, Table 3-7, Minimum Useful Life). An airport sponsor cannot shorten its obligations by allowing projects to deteriorate.

Reconstruction, rehabilitation, or major repair of a federally funded airport project without additional federal aid does not automatically extend the duration of its useful life as it applies to grant agreements. Generally, improvements are presumed to last at least 20 years because they are built to FAA standards. If new grants are issued for reconstruction, rehabilitation, or major repair, a new useful life period begins.

An airport sponsor cannot shorten its obligations by allowing projects to deteriorate. FAA regional airports divisions make the determination of when the useful life has expired on a federally funded project that needs reconstruction, rehabilitation, or major repair in order to continue serving the purpose for which it was developed. See paragraph 4.3 of this chapter for detailed guidance on the duration of grant obligations.

4.5. Airport Sponsor Compliance. Legislatively mandated sponsor assurances have varied over time due to statutory amendments and project specific circumstances. Therefore, in assessing an airport sponsor's compliance status, the FAA must review each grant agreement entered into by the airport sponsor and the FAA in order to determine the airport sponsor's federal obligations accurately and to assess the sponsor's compliance with the applicable assurances.

4.6. Federal Obligations under the Basic Grant Assurance Requirements. This section discusses the different assurance lists and airport grant programs. The current grant assurances are available at: www.faa.gov/airports/aip/grant_assurances/.

When the airport sponsor accepts the grant, the assurances become binding contractual federal obligations between the sponsor and the FAA. It is the responsibility of the ADOs and regional airports divisions to ensure sponsors understand and comply with their assurances. The AIP Handbook, Table 2-4, Applicable Grant Assurances (by Sponsor and Project Type), outlines the applicability of the grant assurances to the type of sponsor and project.

a. Standard Sponsor Assurances. FAA uses three separate sets of standard sponsor assurances: Airport Sponsors (owners/operators).

(1). Airport Sponsors (owners/operators).

(2). Planning Agency Sponsors.

(3). Nonairport Sponsors Undertaking Noise Compatibility Program Projects (referred to as nonairport sponsor assurances).

b. Types of Grant Programs or Projects. There are four types of airport grant programs or projects that include assurances from one of the three sets of standard assurances:

(1). Airport Development or Noise Compatibility Undertaken by an Airport Sponsor. Requirements for airport development and noise compatibility programs undertaken by airport sponsors are the same. All 39 standard grant assurances for airport sponsors apply. See FAA Order 5100.38, Table 2-5 for more information.

(2). Airport Planning Undertaken by an Airport Sponsor. Requirements for airport sponsor planning projects are different from those that apply to airport sponsor development or noise compatibility grants. Several of the numbered assurances for airport sponsors apply to airport planning projects: Grant Assurance 1, *General Federal Requirements*; Grant Assurance 2, *Responsibility and Authority of the Sponsor*; Grant Assurance 3, *Sponsor Fund Availability*; Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 6, *Consistency with Local Plans*, Grant Assurance 13, *Accounting System, Audit, and Record Keeping Requirements*; Grant Assurance 18, *Planning Projects*; Grant

Assurance 25, *Airport Revenues;* Grant Assurance 30, *Civil Rights*; Grant Assurance 32, *Engineering and Design Services*; Grant Assurance 33, *Foreign Market Restrictions*; and Grant Assurance 34, *Policies, Standards, and Specifications*. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the planning project. In addition, Grant Assurances 23, *Exclusive Rights* and 25, *Airport Revenues*, are applicable to planning grants issued to a specific airport and remain in effect as long as the airport remains as an airport.

(3). Planning Projects Undertaken by Planning Agency Sponsors. A planning agency sponsor is a governmental entity that has planning responsibilities for an area that includes an airport, but is not the airport sponsor (FAA Order 5100.38 Table 2-6, *Duration and Applicability of Grant Assurances (Planning Agency Sponsors)*). A separate set of standard assurances applies to planning agency sponsors. Several of the applicable assurances mirror the assurance topics for airport sponsor planning projects, but the language is slightly different.

(4). Noise Compatibility Programs Undertaken by Nonairport Sponsors.[4] The FAA also may award grants to nonairport sponsor government entities for noise compatibility programs. These include government entities of adjacent communities impacted by aircraft noise, but which are not sponsors of that airport. The assurances for these grants bind the sponsors to specific federal obligations. While these assurances are similar to the airport sponsor assurances, there are some differences. *See* FAA Order 5100.38, Table 2-7.

Specifically, the assurances for nonairport sponsors that undertake a noise program follow a different numbering scheme and exclude airport-specific requirements. For example, airport sponsor Grant Assurance 19, *Operation and Maintenance*, includes a section on operating the airport to serve aeronautical users. This applies only to airport sponsors and is not part of the assurance for nonairport sponsors. For nonairport sponsors, the comparable assurance on operation and maintenance includes only the last section of Grant Assurance 19, *Operation and Maintenance*, which requires the grant recipient to operate and maintain noise compatibility items or noise program implementation items obtained with federal funds. Even though the assurances for airport sponsors and nonairport sponsors have different numbering and vary slightly, the subjects addressed are consistent.

c. Groupings. Grant agreements list the assurances in three separate groups:

(1). Group "A" *General*, sets forth the basic requirement binding the sponsor to all federal grant assurances all applicable assurances as a condition of accepting a federal grant for airport development, noise compatibility, and airport planning. The general assurance requires the sponsor to include these assurances as part of its grant application. When the sponsor accepts the grant offer, FAA incorporates

[4] See grant assurances for Non-Airport Sponsors Undertaking Noise Compatibility Program Projects

these assurances into the grant agreement. When the sponsor accepts, the agreement binds both the federal government and the sponsor to its terms.

(2). Group "B" *Duration and Applicability*, establishes the length of time that assurances remain in effect and identifies which assurances apply to the various programs or projects. The applicability of the general federal requirements will vary depending on the type of agreement and scope of the project.

(3). Group "C" *Sponsor Certification*, lists all of the standard assurances that the sponsor must adhere to under the grant agreement. There are 39 numbered assurances in the *Sponsor Certification* group. Grant Assurance 1, *General Federal Requirements*, covers several other obligations found in Executive Orders, Federal Legislation, and Regulations.

d. Agency Responsibilities. The Office of Airport Compliance and Management Analysis (ACO-100) deals primarily with the set of standard assurances for airport sponsors. The FAA Office of Airport Planning and Programming (APP) handles issues involving standard grant assurances for planning agencies and nonairport sponsors. The ADOs and regional airports divisions ensure that the sponsor understands and complies with the applicable assurances.

4.7 through 4.10 reserved.

Part III: Complaint Resolution

Chapter 5: Initiating, Accepting and Investigating Informal and Formal Complaints

Updated November 2022

5.1. Introduction. This chapter discusses both informal and formal resolution of complaints involving federally assisted airports. It discusses the FAA process under *Investigative and Enforcement Procedures*, 14 CFR part 13 ("Part 13") for informal complaints and the process under *Rules of Practice for Federally-Assisted Airport Enforcement Procedures*, 14 CFR part 16 ("Part 16") for formal complaints. More discussion is devoted to informal resolution since Part 16 procedures are described in detail in that regulation and because regional personnel will primarily be involved in informal resolution.

Under 14 CFR § 13.2,[1] anyone may report compliance violations of federal laws affecting air transportation, including any regulations, rules, policies, or orders issued under those laws. When appropriate, the Airports District Office (ADO) and regional airports division (Region)[2] will investigate complaints to ensure that each reported violation is properly evaluated and that sponsors are in compliance with their federal obligations.

This chapter will focus on the process for investigating complaints under the jurisdiction of the Office of Airports (see Section 5.3.a, below).[3]

5.2. Background. Under 14 CFR § 13.2, any person who knows of a violation of federal aviation laws, regulations, rules, policies, or orders may report the violation to the FAA informally as a "report of violation." The remaining sections of Part 13 provide for the investigation of formal complaints to the FAA for matters not covered by 14 CFR part 16.[4] For example, Part 13.5 would be used to file a formal complaint against an airport operator for a violation of safety regulations, including Part 139, but not a violation of obligations under grant assurances or deeds. Section 13.2, however, applies to reports of violations and informal complaints relating to matters covered under either Part 13 or Part 16. A person reporting a violation under Section 13.2 does not need to be affected by the violation alleged in the complaint. A Section 13.2 informal complaint simply represents a report to the FAA of an alleged violation; the violation is not necessarily against or affecting the complainant.

The process for reporting an informal complaint under Section 13.2 is not as prescriptive as the regulatory process for formal complaints filed under Part 16.

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[1] Effective November 30, 2021, the procedural rules governing FAA investigations and enforcement actions were revised to include updates to statutory and regulatory references, updates to agency organization structure, elimination of inconsistencies, clarification of ambiguity, increases in efficiency and improved readability. *See* 86 FR 188 (p. 54514) re 14 CFR Part 13 (Docket No. FAA-2018-1051, October 1, 2021). Accordingly, prior reference to Section 13.1 is now referenced as Section 13.2.

[2] State Block Grant program participants must implement the same actions as the Region or ADO.

[3] *See also* the current version of Compliance Guidance Letter - *Procedures for Initiating and/or Accepting and Investigating 14 CFR Part 13 Informal Complaints Concerning Violations of Grant Assurance Obligations and Surplus property Deed Restrictions*.

[4] See 14 CFR § 13.3(d)

It is important to note that every question, inquiry or scenario that an individual brings to the attention of the Region or ADO regarding compliance is not necessarily a reviewable complaint. Some tenants or aviation users may not be familiar with the interpretation of an airport's federal obligations and may simply require clarification on these issues. In order to be a reviewable complaint, the allegations, if substantiated, would lead to the airport sponsor being in violation of an airport obligation.

Section 13.2 does not provide specific timeframes for completion of an investigation. However, most can be completed with 120 days or less.

A complainant may file a Part 16 formal complaint while a Section 13.2 investigation is underway or after it has been concluded. If the complainant files a Part 16 complaint regarding the same set of allegations being investigated during a Section 13.2 investigation, the Section 13.2 investigation may be suspended in favor of the Part 16 investigation. A final agency decision under Part 16 will enable judicial review.

5.3. The Basics

a. What is an Informal Complaint under Part 13? [5] An informal complaint may be initiated under Section 13.2 to report a violation of a wide range of federal laws and regulations under the jurisdiction of the FAA. Matters under the jurisdiction of the Office of Airports include but are not limited to an airport sponsor's alleged violations of grant assurances, grant agreement special conditions, federal property conveyance deed restrictions, or other violation of regulations, rules, policies, or orders. Hereafter, the matters under the jurisdiction of the Office of Airports will be referred to as "airport obligations" or "Federal obligations".

Not every question, inquiry, or scenario that an individual brings to the attention of the Region or ADO is necessarily a reviewable complaint. Many tenants and aviation users may not be familiar with airport obligations and the situation may simply require clarification or education on these issues. Reviewable complaints include allegations that, if true, would constitute a violation of an airport obligation.

b. Who can File an Informal Complaint? Anyone who is aware of or suspects a violation of a Federal obligation may file an informal complaint. The person or entity filing the complaint need not be directly affected by the alleged violation. In addition, the person or entity filing the complaint does not need to know which specific airport obligation has been violated, but should identify the airport and the details surrounding the complaint.

c. How does an Informal Complaint get Filed? The informal filing process under 14 CFR § 13.2 allows the reporting party to submit its complaint verbally or in writing (e.g., telephone call, in-person conversation, letter, or email).**Who Receives the Informal Complaint?** The complaint may be received by a Regional Office, ADO or ACO-100. If ACO-100 receives a complaint, it can provide general guidance regarding the process to the complainant but should refer the complaint to the appropriate region. If a Region/ADO receives a complaint about an airport in another region, it should refer that complaint to the appropriate regional office. When a Region or ADO receives a complaint about an airport sponsor covered by a State Block Grant

[5] A report of a violation under Section 13.2, is commonly referred to as an informal complaint.

state, the FAA office should refer the complaint to the appropriate State Department of Transportation or aviation office. While state participation is essential, the FAA remains responsible for ensuring the integrity of the Part 13.2 process.

e. Who is Responsible for Handling the Informal Complaint? Each Region and/or ADO is responsible for determining which personnel handles informal complaints. Depending on the nature of the complaint, the Region or ADO may elevate issues and coordinate with other FAA offices. Coordination may include FAA general counsel (AGC), ACO-100 and other FAA offices as appropriate. If a complaint includes allegations involving complex operational safety issues, other subject matter experts may be included in the discussion depending on the issue. In general, a condition, issue, or situation that can affect aircraft operations, including deviations from normal airport operations, can be characterized as an operational safety issue. Depending on the issue, assistance from other FAA personnel or Line of Business (LOB) may be necessary early in the process. These can include or involve Part 139 Safety Inspectors, the Flight Standards Division, or Air Traffic Control (ATC) specialists/functions. These entities should be able to assist in determining how to proceed.

When resolution may have national policy implications, the Region and/or ADO will coordinate the response with the AGC, ACO-100, and other affected headquarters offices.

f. When Should Informal Complaints be Referred to other Offices/Agencies? If complaints involve the following allegations, they should be referred to the appropriate offices/agencies as detailed below:

- Alleged violations associated with civil rights should be referred to the FAA Office of Civil Rights, including allegations regarding Disadvantaged Business Enterprise (DBE)/Airport Concessions DBE (ACDBE) or Title VI Nondiscrimination & Airport Disability Accessibility Compliance issues.
- Complaints regarding the reasonableness of fees charged by the airport sponsor to an airline may either be handled under 14 CFR part 16 or by the Department of Transportation (DOT) under 14 CFR part 302.
- Complaints regarding violations of Federal aviation regulations governing the operation or maintenance of aircraft, and/or conduct aboard aircraft, should be forwarded to the appropriate Flight Standards District Office.
- Complaints regarding violations of regulations governing the transportation of hazardous materials should be forwarded to the Security and Hazardous Materials Safety Division.
- Complaints regarding an FAA employee's conduct in the scope of their duties, or otherwise, should be referred to the Associate Administrator for Airports.

g. When should Regions/ADOs Initiate Investigations under Part 13 when a Part 13 Complaint has not been Filed? The Region/ADO may learn of possible violations of airport

obligations from various sources. For example, Region/ADO personnel may obtain information from:

- Personal observations of an airport and/or airport documentation,
- Reports from FAA employees from other lines of business,
- NASA reports,
- Safety hotline reports,
- Whistleblower disclosures from airport employees, or
- News media or social media.

If, after reviewing the information, the Region/ADO determines that an airport may have violated a Federal obligation, it should initiate investigations under Section 13.2.

5.4. Part 13: Resolution through Informal Discussions. The Section 13.2 process is intended to help airport users and airport sponsors resolve issues in an informal and expedient manner without the need to elevate it to a formal Part 16 process. Title 14 CFR § 16.21(a) requires complainants to "initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties' expense, mediation, arbitration, a dispute resolution board, or other form of third-party assistance." Regions or ADOs can assist with informal resolution through the process explained in this chapter.

However, informal complaints may vary in terms of their complexity, scope, and the willingness of the parties to come to a resolution. In some cases, either the airport sponsor and/or the complainant may not understand the applicable obligations. Such a situation may be subject to a quick disposition. In other cases, the airport sponsor or the complainant may be uncooperative and unwilling to resolve violations or comply with the corrective actions proposed. Due to the broad range of informal complaints and the level of cooperation by the parties, the Section 13.2 process requires flexibility. This discussion provides a suggested approach for handling Section 13.2 complaints, it is not intended to foreclose other options.

When appropriate, the Regions/ADOs may attempt to resolve the complaint through informal discussion before initiating the more structured Section 13.2 process discussed in the subsequent section. Resolving complaints through an informal discussion may foster a positive and productive relationship between the complainant and the airport sponsor.

For cases in which the Region/ADO has decided to initiate an investigation where a Part 13 complaint has not been filed, the Region/ADO may also attempt to resolve the matter through informal discussions.

a. When to use Informal Discussions. Regions/ADOs should consider several factors to help decide when to attempt to resolve complaints/FAA initiated investigations through informal discussions. The factors are summarized below:

> **(1). Complexity of the Case.** If the case is fairly simple, an informal discussion may be a more appropriate first step. However, if the case is complex (either from a legal or factual perspective), involves multiple grant assurances, and/or will require significant investigation, it may be appropriate to initiate the structured Section 13.2 process to ensure all the elements of the case are documented and investigated.
>
> **(2). Willingness of the Airport Sponsor and Complainant to Resolve the Issue Quickly without a Structured Process.** If the airport sponsor appears willing to rectify any violations and respond to the complainant's satisfaction, the informal discussion method may be most efficient. In addition, a complainant may prefer to resolve the issue quickly through informal discussions rather than opening a structured Section 13.2 investigation. However, if the parties are unwilling to entertain a quick resolution to any violation, the structured process should be initiated.

The Region/ADO may begin informal discussions, but end up following the structured Section 13.2 process if their attempts at resolving the issue are unsuccessful. If the complainant prefers to remain anonymous, the Region/ADO can still begin the informal discussion process by reaching out to the airport sponsor to inquire about the allegations and has no obligation to identify a complainant.

b. Informal Discussion Process. The informal discussion process has no prescribed method to follow. Informal discussions may include multiple conversations with the complainant and the sponsor, either individually or jointly, a review of submitted airport documents, and a site visit if needed. Ex parte communications are permissible. The goal is to come to an informal resolution that is mutually agreeable to the parties and that complies with the airport sponsor's Federal obligations.

Once satisfactory resolution has been achieved, the Region/ADO must still, if applicable, confirm that the airport sponsor has followed through with the agreed upon corrections.

c. Informal Discussion Documentation. The Region/ADO will compile a record of the informal discussion process. The record of the informal complaint will serve to demonstrate that the issue was addressed and help to inform future Section 13.2 investigations. It will also provide a record of the airport sponsor's compliance history. At a minimum, the record of complaint will include documentation of the initial complaint, any informal resolution, and/or the Part 13 decision.

5.5. Part 13 Informal Review Process. If informal discussions do not resolve the matter to the satisfaction of both parties, or if the Region/ADO made the determination to move directly to the structured Section 13.2 process, the following steps should be followed.

a. Step 1: Complaint Review. The Region/ADO will review the complaint. Although not required, complainants are encouraged to initiate their complaints in writing given that oral

communication, such as a telephone conversation, may not capture all the details or documentation of the allegations to advise potential complainants about the process and to encourage them to provide detailed information in writing.

In order to be investigated, the complaint must, at a minimum, identify the federally-obligated airport in question and contain allegations that if substantiated, would constitute a violation of airport obligations. The ADO or Region will establish whether the FAA has jurisdiction by determining if the allegations relate to the sponsor's federal obligations. Note certain allegations, such as attempts to regulate safety or airspace, may also raise issues of Federal preemption in which case ACO-100 should be consulted.

Ideally, a complaint should:

- Identify the airport sponsor against which the allegations are made. If the complainant is not able to identify the sponsor, the airport name or LOCID should be included. The FAA will only review complaints against federally obligated airports. The FAA will determine if the airport is federally obligated before investigating the complaint.
- Identify the specific airport obligations alleged to have been violated. The complainant may not know which airport obligation has been violated. If this is the case, the Region/ADO should review the complaint and identify which airport obligation may have been violated.
- Provide a comprehensive, detailed description of the actions and/or inactions taken by the airport sponsor that resulted in the alleged violation.
- Provide issue-by-issue details, supporting arguments, information, and documentation. If the complaint is taken over the telephone, the Region/ADO should request documentation to support the complaint.

Complaints that are vague, or lack the information specified above, should be returned to the complainant with a request for clarification and/or the additional information needed to initiate an investigation. If the complaint alleges violations outside of the jurisdiction of ARP, the Region/ADO should notify the complainant. There is no requirement to investigate a complaint if it is clear that there is no violation of a sponsor's obligations.

Complainants may request anonymity during an informal investigation. While the FAA will make every attempt to honor a complainant's request for anonymity, this may preclude the FAA from conducting a full investigation and the complainant should be made aware of this. Moreover, depending on the facts, the sponsor may ascertain the complainant's identity anyway.

If the complaint involves operational safety allegations, assistance from other FAA personnel or Line of Business (LOB) may be necessary. These can include or involve Part 139 Safety Inspectors, the Flight Standards Division, Air Traffic Control (ATC) specialists/functions, or ACO-100. These entities should be able to assist in determining how to proceed.

b. Step 2: Complaint Acknowledgement. Upon receipt of a complaint that meets all or most of the requirements outlined above, the Region/ADO must acknowledge its receipt of the complaint. When the Region/ADO determines that the facts alleged raise issues outside of the

scope of the Section 13.2 process and/or the jurisdiction of the Office of Airports, the complainant should be notified.

c. Step 3: Initial Review of the Allegations. The Region/ADO identifies the issues that require investigation and should review the airport obligating documents (i.e., grant agreements, property transfer documents) and supporting facts. When evaluating a complaint, the Region/ADO must separate facts from unsubstantiated allegations. Only complaints supported by facts may be considered in a finding of noncompliance.

The complaining party has the responsibility to provide sufficient factual information to support the allegation(s). A supported fact is one that can be substantiated through corroborating evidence. The following may be helpful in supporting a fact:

- The airport reference documents, such as the Airport Layout Plan (ALP) and Capital Improvement Plan (CIP);
- Contracts or leases;
- Meeting minutes;
- Grant documents;
- Letters;
- Financial statements, invoices, receipts;
- Visual inspection, photographs;
- Policy documents;
- Procedures manuals;
- Independent analysis;
- Records of conversation, sworn testimony, or corroborating statements;
- Applicable subject matter guidance contained other chapters of this Order.

The Region/ADO may also identify specific information, such as leases, minimum standards, and operating procedures that it will need from the airport sponsor to assist in the investigation. The request for this information may be included as part of Step 4 or at any time during the process.

d. Step 4: Airport Sponsor Notification. Once the initial review is complete, the Region/ADO should notify the airport sponsor of the matter and ask them to respond to each allegation. The notification letter should ask the airport sponsor to respond within 15 to 30 days from the date of the letter, depending on the urgency and/or complexity of the complaint. The complainant should receive a copy of the notification letter. If the complainant requests to remain anonymous or does not want to be involved in the investigation, the letter should not identify the complainant and the complainant need not be involved in the review or resolution of the issue.

It may be efficient for the Region/ADO to request information from the airport sponsor as part of the notification. Additional documentation such as copies of leases, minimum standards, operating procedures and/or other documentation relevant to the investigation may be requested as part of the notification step or later in the investigation, as the need arises.

Consistent with Grant Assurance 26, Reports and Inspections, airport sponsors are required to make all airport records and documents affecting the airport available to the FAA upon request. Nevertheless, there may be times during a Section 13.2 investigation where the Region/ADO

determines the airport sponsor may be refusing to make requested documents available. If such an occasion arises, the Region/ADO may deem it necessary to provide a warning to the airport sponsor concerning the requirements of Grant Assurance 26.

Complaints filed with an FAA office are not confidential, and documents filed should always be provided to both parties during the proceedings. FAA offices should not require either party to file a Freedom of Information Act (FOIA) request to obtain these documents. In fact, unnecessary burdens placed on the parties to use the FOIA process may actually derail the informal resolution process. However, if the Region or ADO has questions regarding the appropriateness of releasing specific documents, it should seek guidance from its local FOIA representative and ACO-100.

e. Step 5: Airport Sponsor Response.

The airport sponsor should respond to the investigating office within the specified timeframe, unless an extension has been granted by the ADO or Region. When granting extensions of time, the FAA staff should ensure the airport sponsor is aware of the need to respond in a timely fashion and avoid open-ended or unclear deadlines. In addition, the sponsor may:

(1). Request Additional Information. The airport sponsor may contact the investigating office to request additional information or clarify the FAA's expectations about the sponsor's response. The FAA staff should encourage the airport sponsor to respond to the complaint, in writing, in a timely fashion.

(2). Request a Meeting. In some cases, the airport sponsor may request a meeting with the FAA to explain and resolve the allegations.

The sponsor may include supporting documentation, such as, leases, minimum standards, airport rules and regulations, correspondence in its response. The airport sponsor should address each issue raised in the complaint.

f. Step 6: Investigation. The Region/ADO should review the airport sponsor's response and its obligating documents (such as grant agreements and surplus property deeds). The role of the Region/ADO is to determine the facts and may take the following action(s):

(1). Site Visit. The Region/ADO may conduct an on-site airport visit (compliance inspection) to collect evidence or investigate allegations. The FAA may or may not notify the airport sponsor prior to conducting a site visit, depending on the complexity or sensitivity of the case .

(2). Discussions with the Parties. If the facts provided by the parties vary greatly, the Region/ADO may discuss this with the parties, separately or jointly, to obtain clarification.

(3). Obtain Additional Evidence. If specific statements made by a party are unsupported or unclear, then the Region/ADO may contact that party in writing to obtain additional evidence. Some complaints may require the Region/ADO to coordinate with the Flight Standards Division or Air Traffic Organization office to conduct a safety assessment of a proposed aeronautical activity at the airport.

When necessary, the Region/ADO may also seek to obtain additional evidence from sources besides the two parties (e.g., witness statements from former airport employees, information/documentation from other individuals or entities that have had dealings with the airport).

(4). Informal Resolution. In some cases, the Region/ADO may be able to assist the parties in resolving their dispute by suggesting options that may resolve the complaint in a manner that is satisfactory to both parties and consistent with the airport sponsor's Federal obligations.

The structured Section 13.2 process should be as transparent as possible. Any correspondence including letters and emails should include both parties to the extent possible. In some cases, proprietary information or general information that does not directly impact the investigation may not be shared automatically. If a party requests all the information associated with the investigation, the Region/ADO should furnish this information. Deliberative discussions, however, may be withheld as necessary. Also, *ex parte* communications made for purposes of seeking resolution are permissible in a Part 13 proceeding.

During the investigation, the Region/ADO may find another area of noncompliance that is unrelated to the complaint. In this case, the Region/ADO should discuss this with the airport sponsor and seek resolution. Such issue shall remain separate from the current Section 13.2 matter. If the sponsor is not willing to voluntarily correct the issue and return to compliance, a separate informal investigation may be initiated.

g. Step 7: Conclusion. Upon completion of the investigation, the Region/ADO will notify the parties of the conclusions reached by the FAA.

(1). Complaint Dismissal Letter. If the investigation concludes that no further FAA action is warranted, the Region/ADO will send a dismissal letter.

(2). Complaint Resolution. At any time during the investigative process, the parties may reach a resolution. This agreement may be reached by the two parties with some or little FAA involvement. The Region/ADO should ensure that the agreement will put the sponsor in compliance with its Federal obligations and that any required actions are completed. The Region/ADO should request a copy of an agreement, if any, between the parties that addresses the resolution to be able to close out the complaint.

(3). Notice of Potential Noncompliance. If it appears that the airport sponsor may be violating its federal obligations, the Region/ADO will notify the sponsor of the potential noncompliance. This letter identifies violation(s), requests the airport sponsor take specific corrective action(s), and specifies a timeline for the corrective actions.

The Section 13.2 process will result in a dismissal, informal resolution, or potential noncompliance. These documents may later assist the Part 16 complaint certify (as required under 14 CFR §16.21(b)) that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint have been made and that there appears no

reasonable prospect for timely resolution of the dispute. The case should be closed out if it is resolved through the informal discussion method or through the structured review process.

Corrective actions may take some time for the sponsor to complete. If an airport sponsor is not completing its corrective action plan within the specified time frame or refuses to undertake the corrective actions, the Region/ADO should coordinate next steps with ACO-100. The ADO should not direct complainants to the Part 16 process without first attempting to resolve the issues at the local level. If warranted, and after consultation with the regional office, ACO may initiate its own investigation under 14 CFR § 16.101.

5.6. Part 13: Stale Complaint. An informal complaint that has been inactive for two (2) or more years is considered stale. Any complainant who lacks interest or abandoned their complaint is recognized as stale. Stale complaints may be archived or discarded with no follow-up.

5.7. FAA Initiated Informal Letter of Investigation. Section 13.2 applies only to informal complaints; 14 CFR part 16 contains the agency procedures for filing, investigating, and adjudicating formal complaints against airport operators. Part 16 covers matters within the jurisdiction of the Associate Administrator for Airports involving federal obligations incurred by an airport sponsor in accepting federal surplus property or FAA grants. This primarily involves financial compliance and reasonable and nondiscriminatory access, but includes all obligations in the federal grant assurances and surplus property deeds. As noted above, the Part 13 process can facilitate a complainant meeting the pre-complaint resolution requirements of 14 CFR § 16.21. Under that section, potential complainants are required to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a formal Part 16 complaint. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third party assistance, including regulation and policy guidance from the responsible FAA ADO or regional airports division. When filing a Part 16 complaint, the complainant must certify that good faith efforts have been made to achieve informal resolution. The Part 16 process is the formal administrative process by which the FAA may make a formal agency finding regarding an airport sponsor's status of compliance with its federal obligations.

However, Part 16 complaints may contain allegations that are the responsibility of other offices or agencies than ARP:

a. The DOT handles complaints by air carriers regarding the reasonableness of airport fees filed under 49 U.S.C. § 47129. (Refer to 14 CFR part 302, *DOT Rules of Practice in Proceedings*.) Carriers may choose whether to file a complaint over the reasonableness of airport fees with DOT under part 302 or with FAA under Part 16.

b. The FAA Office of Civil Rights handles airport matters involving civil rights, disadvantaged business enterprises, and persons with disabilities.

c. Generally, any FAA employee receiving information on criminal acts should report the information to their supervisor and the nearest FAA Servicing Security Element who will in turn

notify the FBI or appropriate Federal, State, or local law enforcement agency in accordance with FAA Order 1600.38.

d. The National Transportation Safety Board (NTSB) investigates civil aviation accidents in the United States and issues safety recommendations aimed at preventing future accidents. The NTSB is responsible for determining the probable cause of U.S. civil aviation accidents.

e. Other matters that fall outside of the Associate Administrator's jurisdiction are issues involving flight standards and airspace.

5.8. through 5.21. reserved.

Part IV: Airports and Aeronautical Users

Chapter 6: Rights and Powers and Good Title

6.1. Introduction. This chapter discusses the sponsor's federal obligation to preserve its rights and powers and to maintain good title to the airport property. This chapter also discusses related issues such as transfers to other recipients, delegation of federal obligations, subordination of title, airport management agreements, and airport privatization.

It is the responsibility of the airports district offices (ADOs) and regional airports divisions to ensure the sponsor can fulfill its federal responsibilities at all times. Accordingly, these offices will advise sponsors when the terms of any proposed lease agreements have the effect of limiting the sponsor's ability to fulfill its federal obligations. The FAA headquarters Airport Compliance Division (ACO-100) advises sponsors on the pilot program for airport privatization and approves or denies applications.

6.2. Airport Governance Structures. The sponsor determines the management and organizational structure of an airport. The type of structure employed can vary depending on whether the sponsor is a private entity or public agency, or whether the sponsor delegates all or some of its management responsibilities to a third party.

6.3. Controlling Grant Assurances.

a. Grant Assurance 4, *Good Title*. This grant assurance requires a sponsor to hold good title to the airport satisfactory to the FAA or to give satisfactory assurance to the FAA that good title will be acquired. In some cases, based on information available, the FAA may be unable to determine how the airport property was acquired or if a sponsor has title to all airport property. Adding to the confusion sometimes is an Exhibit "A" property map that may not be current or show all property interests.

Therefore, to determine a sponsor's compliance with Grant Assurance 4, *Good Title*, FAA should request that the sponsor provide the FAA with a complete Title Search Report of all airport property depicted on the current Airport Layout Plan (ALP) and Exhibit "A" maps. This should identify the actual parcels comprising the entire airport property.

When determining initial eligibility, the FAA should require a Title Search Report to ensure that the sponsor has good title to the parcels necessary to achieve the purpose of the grant and the role of the airport. When a sponsor acquires land for a project funded under an Airport Improvement Project (AIP) grant, the FAA and the sponsor must follow the FAA Advisory Circular for land acquisition to ensure the sponsor has acquired sufficient land rights. The FAA may also request a Title Search Report when the FAA has concerns about the documentation of land holdings on an Exhibit "A." Finally, when transferring sponsorship or reviewing an application to the Airport Privatization Pilot Program, the FAA may request a Title Search Report.

A lack of good title can prevent the processing of a grant – even without a finding of noncompliance – because such a sponsor would not be eligible as a threshold requirement. If a sponsor gives away good title, such action might be a violation of Grant Assurance 5, *Preserving Rights and Powers*. However, the determination of good title does not necessarily require fee simple ownership. Long-term leases may be sufficient rights to allow an AIP improvement grant.

b. Grant Assurance 5, Preserving Rights and Powers. A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. Grant Assurance 5, *Preserving Rights and Powers*, requires a sponsor not to sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit "A" without the prior written approval of the FAA.

Of particular concern to the FAA is granting a property interest to tenants on the airport. These property interests may restrict the sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations. Providing developers with an option to acquire a fee interest in federally obligated airport property is not acceptable to the FAA under Grant Assurance 5, *Preserving Rights and Powers*. An option to acquire a fee interest in airport property should be considered a sale of airport property for purposes of requiring an FAA release, since the result is potentially the same.

6.4. Interrelationship of Issues. When analyzing lease agreements, FAA personnel must be aware of the interrelationship of material covered in other federal obligations, such as Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 24, *Fee and Rental Structure*, and Grant Assurance 25, *Airport Revenues*.

6.5. Assignment of Federal Obligations. The sponsor's federal obligations discussed in this chapter apply to both public and private airport sponsors who are obligated under agreements with the federal government. Chapter 22 of this Order, *Releases from Federal Obligations*, discusses the release of federally obligated property.

6.6. Rights and Powers. Grant Assurance 5, *Preserving Rights and Powers,* requires the airport sponsor to preserve its rights and powers to control and operate the airport. The following addresses the six parts of this grant assurance:

a. Sponsor Actions. The sponsor must obtain the Secretary's written approval before taking any action that would deprive it of the rights and powers necessary to perform any terms, conditions, and assurances in the grant agreement. In addition, the sponsor must take the actions necessary to regain its rights and powers, including extinguishing rights of other parties that prevent the sponsor from complying with its federal obligations. A method a sponsor may use in this regard is to place a "subordination clause" in all of its tenant leases and agreements that subordinates the terms of the lease or agreement to the federal grant assurances and surplus property obligations. A subordination clause may assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. A typical subordination clause will state that if there is a conflict between the terms of a lease and the federal grant assurances, the grant assurances will take precedence and govern.

b. Disposals. The sponsor must obtain the FAA's written approval before it sells, leases, encumbers, transfers, destroys, or disposes of any of its interest in airport or noise compatibility

property. (See chapter 22 of this Order, *Releases from Federal Obligations*, for additional information on releases and disposal of property.)

c. Noise Compatibility Program Projects. For noise compatibility projects where the local government grantee is not the airport sponsor itself, the airport sponsor must enter into an agreement that applies the grant assurance obligations to that other local government entity.

d. Noise Compatibility Program Projects on Privately Owned Land. For noise compatibility projects on private property, the airport sponsor will enter into an agreement with the property owner that contains conditions specified by the FAA.

e. Private Airport Sponsors. If the sponsor is a private sponsor, it will assure the FAA that the airport will continue to function as a public use airport.

f. Contracting Out Airport Management. If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's grant agreement. As discussed below, the sponsor is not relieved of its responsibility under the grant assurances by such an arrangement.

If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's grant agreement.

6.7. Transfer to another Eligible Recipient.

a. Rights and Powers. Grant Assurance 5, *Preserving Rights and Powers*, prohibits the airport sponsor from entering into an agreement that would deprive it of any of its rights and powers that are necessary to perform all of the conditions in the grant agreement or other federal obligations unless another sponsor/operator assumes the obligation to perform all such federal requirements. When an airport sponsor transfers authority to another sponsor, whether public or private, the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. Before a transfer to another entity can take place, the FAA must specifically determine the recipient is eligible and willing to perform all the conditions of the grant agreements. Otherwise, the FAA will not permit the transfer to occur. As a condition of release, the FAA will require the new operator to assume all existing grant obligations, and the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. In some cases, it may be appropriate to continue the existing sponsor's obligations in effect, in full or in part, especially where the existing sponsor is the only local government entity that could assure compliance. For example, a local municipality with zoning authority may transfer the airport to an airport authority with no off-airport zoning power.

In that case it would be appropriate not to release the municipality from its existing obligations to protect the airport environs from incompatible uses and obstructions.

b. Surplus Property Transfers. Although surplus property instruments permit the conveyance to a third party, the sponsor must obtain FAA approval prior to its transfer, and the transferee must assume the federal obligations of the original grantee. In addition, a release deed will also be required. Eligibility to assume these federal obligations is contingent upon the type of sponsor and certain legal and financial requirements.[1] For example:

(1). General. Sponsors must be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other federal obligations required of sponsors and contained in the obligating documents.

(2). Authority to Act as a Sponsor. FAA will require an opinion of the sponsor's attorney as to its legal authority to act as a sponsor and to carry out its responsibilities under the applicable agreements when deemed necessary or desirable.

(3). Reassignment. The federal government grants deeds of conveyance only to public agencies, but it does not specifically restrict reassignments or transfers of the property conveyed. The donating federal agency may reassign or transfer the property to another public agency for continued airport use. When this occurs, the FAA should assume the lead in the coordination between the affected parties.

6.8. Transfer to the United States Government.

a. Conveyance to a Federal Agency The FAA cannot prohibit a sponsor from conveying to a federal agency any airport property that was transferred under the Surplus Property Act of 1944, as amended. Such a conveyance, whether voluntary or otherwise, does not place the conveying sponsor in default of any obligation to the United States. Such a conveyance has the effect of a complete release of the conveying owner.

b. FAA Objections. When a sponsor proposes such a conveyance or has accomplished the conveyance without prior notice, the ADO or regional airports division will determine if the transfer adversely impacts civil aviation. If so, it must make any objection immediately known to both the sponsor and the federal agency involved. If the ADO or regional airports division cannot obtain a satisfactory solution, it should submit a full and complete report to the Airport Compliance Division (ACO-100) without delay. ACO-100 will then continue to work with the sponsor and the federal agency to reach a satisfactory solution.

6.9. Delegation of Federal Obligations. Sponsors may enter into arrangements that delegate certain federal obligations to other parties. For example, an airport authority may arrange with the public works department of a local municipality to meet certain maintenance commitments, or a sponsor may contract with a utility company to maintain airfield lighting equipment. More prevalent at small airports are arrangements in which the sponsor relies upon a commercial

[1] For additional information, see FAA Order 5100.38, *Airport Improvement Program (AIP) Handbook*, which is available online.

tenant or franchised operator to cover a broad range of airport operating, maintenance, and management responsibilities.

None of these contractual delegations of responsibility absolves or relieves the sponsor of its primary obligations to the federal government. The sponsor should pay particular attention that delegations to other parties do not result in a conflict of interest or a violation of the federal grant assurances. The sponsor shall not delegate or transfer its authority to negotiate and enter into aeronautical and nonaeronautical leases and agreements (unless released by the FAA in connection with a formal transfer of operating responsibility).

6.10. Subordination of Title.

a. Subordination. The FAA will normally consider subordination of the sponsor's fee interest in airport property by mortgage, easement, or other encumbrance as a transaction that would deprive the sponsor of the rights and powers necessary to fulfill its federal obligations.

However, the sponsor may subordinate its interest in a tenant lease to facilitate tenant financing for development on airport property. In this case, the sponsor agrees only that the mortgage or financing is serviced ahead of the payment to the sponsor for the lease of airport property.

b. Review. If the FAA determines that an encumbrance may deprive a sponsor of its ability to fulfill its federal obligations, the Secretary may withhold approval of grant applications from the sponsor. (See chapter 2 of this Order, *Compliance Program*, paragraph 2.7.c.) The ADO or regional airports division should review such encumbrance documents and make a determination on a case-by-case basis. Determinations should be in accordance with Grant Assurance 4, *Good Title*, and Grant Assurance 5, *Preserving Rights and Powers*. It may be appropriate to consult with the Office of Chief Counsel (AGC-610).

c. FAA Determination. The FAA should predicate its concurrence with any lien, mortgage, or other encumbrance to federally obligated property on a factually based and thoroughly documented determination. Ideally, the FAA office working the issue should ask the sponsor to execute a declaration recognizing that the federal grant obligations survive a foreclosure or bankruptcy. The possibility of foreclosure or other action adverse to the airport should be so remote that it reasonably precludes the possibility that such a lien, mortgage, or other encumbrance will prevent the sponsor from fulfilling its federal obligations.

6.11. New Sponsor Document Review.

Generally the ADO or regional airports division will determine whether a potential sponsor is capable of assuming federal responsibilities. This review requires that the sponsor be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other federal obligations required of the sponsor and contained in the Airport Improvement Program (AIP) project application and grant agreement forms.

The sponsor must also show that it has the authority to act as a sponsor. The FAA must also obtain an opinion from the sponsor's attorney as to the sponsor's legal authority to act as a sponsor and whether that authority extends to fulfilling its grant assurance responsibilities.

a. Purpose. The review is intended to ensure that the new sponsor has and will maintain the necessary control of the airport needed to carry out its commitments to the federal government. During its review, the ADO or regional airports division will identify any terms and conditions of a lease, contract, or agreement that could prevent the realization of the full benefits for which the airport was constructed or that could render the sponsor noncompliant with its federal obligations. The sponsor may place a standard clause in all its agreements that the terms and conditions of the agreement shall be subordinate to the federal grant assurances and any surplus property federal obligations.

b. Aeronautical Access to Facilities. The review ensures that the sponsor will make the airport facilities available to the public on reasonable terms without unjust discrimination, as required by Grant Assurance, 22, *Economic Nondiscrimination*. Any lease, contract, or agreement granting a tenant the right to serve the public on the premises of a federally obligated airport should not interfere with the sponsor's ability to maintain sufficient control over the operation of the airport to guarantee that aeronautical users will be given fair access to the airport.

c. Self-sustaining. The review looks to ensure that the sponsor maintains a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible, as required by Grant Assurance 24, *Fee and Rental Structure*.

d. Good Title. The review will ensure that the sponsor has, or will have, good title to the airfield, as required by Grant Assurance 4, *Good Title*.

e. No Granting of Exclusive Rights. The review will ensure that the sponsor has not granted an exclusive right for aeronautical use of the airport, as required by Grant Assurance 23, *Exclusive Rights*.

f. Revenue Use. The review will ensure that the sponsor makes proper use of its airport revenues, per Grant Assurance 25, *Airport Revenues*, and FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 February 16, 1999 (*Revenue Use Policy*), found in Appendix E of this Order.

g. Examination of Documents. During the review, the ADO or regional airports division must examine the following documents:

(1). The public agency's enabling legislation or act that gives it the authority to operate and own the airport(s).

(2). The lease, operations, management, or transfer agreements for the specific airport.

(3). The Exhibit "A" map, ALP, and land inventory map identifying grant obligated land.

(4). The assumption agreement for existing grants, federal grant obligations, and disposition and status of transferred grants.

(5). Any other agreements between the parties relating to the terms of the transfer and the new sponsor's operation of the airport.

6.12. Title and Property Interest.

a. Title Requirement (Grant Assurance 4, Good Title). Section 47106(b)(1) of Title 49 U.S.C. requires that no project grant application for airport development may be approved by the Secretary unless the sponsor, a public agency, or the United States holds good title (satisfactory to the Secretary) to the airfield, or gives assurance to the Secretary that good title will be acquired. Good title is a pre-condition for award of an AIP grant, and is usually reviewed in connection with grant applications rather than as a compliance issue for a grant already awarded. The Airports Financial Assistance Division, APP-500, should be advised of any issue regarding good title.

b. Airport Property Interest. Title with respect to the airport land can be either fee simple title (free and clear of any and all encumbrances) or title with certain rights excepted or reserved, such as a long-term lease of 20 or more years.

Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations.

Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations. A deed containing a reversionary clause, (*e.g.*, "so long as the property is being used for airport purposes") does not negate good title provided that the other federal conditions or requirements are satisfied.

Where rights exempted or reserved would prevent the sponsor from carrying out its federal obligations under the grant, such rights must be extinguished prior to approval of the project subject to an AIP grant.

c. Determination of Adequate Title. A certification by a sponsor that it has acquired property interests required for a project may be accepted in lieu of any detailed title evidence. (See FAA Order 5100.37B, *Land Acquisition and Relocation Assistance*, available online.) Without such certification, the sponsor's submission of title evidence must be reviewed to determine adequacy of title. The adequacy of such title is an administrative determination made by FAA Office of Airports personnel and need not be submitted to regional counsel for review unless there is any question about the adequacy of the title.

d. Title Requirement Prior to Notice to Proceed. Authorization for the sponsor to issue a notice to proceed with grant funded work on property to be acquired by the sponsor should not be given until it has been determined that all property interests on which construction is to be performed have been, or will be, acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). (See Advisory Circular (AC) 150/5100-17, *Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects*, for additional information on this topic.)

6.13. Airport Management Agreements.

a. Responsibility Under Airport Management and Operations Agreements. Although the sponsor may delegate or contract with an agent of its choice for maintenance or supervision of operations, such arrangements do not relieve the sponsor of its federal obligations. Such arrangements also have a high potential for a conflict of interest where the tenant provides

aeronautical services itself and at the same time can exercise some control over access and competition at the airport. Consequently, any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. In addition, to avoid conflicts with a sponsor's federal obligations, the FAA strongly encourages a management contract to be a separate agreement from leases or airfield use agreements held by the agent of the sponsor. This makes the respective responsibilities for each activity clear, and also enables the sponsor to deal with a possible default in one activity (*i.e.*, management agreement) without terminating a second, separate activity not subject to a default, such as an unrelated land lease.

b. Total Delegation of Airport Administration. In certain cases a sponsor may consider contracting with a private company for the general administration of a publicly owned airport. Whether this is done by lease, concession agreement, or management contract, it has the effect of placing a private entity in a position of substantial control over airport decisions that may affect the public sponsor's grant compliance. This kind of agreement should include provisions adequately protecting and preserving the owner's rights and powers to assure grant compliance.

c. Lease of Entire Airport. If the sponsor grants a lease for the entire airport, the lease will generally include the right to sublease airport property to third-party tenants for aeronautical services and development. In such cases, the lessee may have the right to conduct a commercial business on the airport directly and also to control the granting of such commercial rights to others. This situation creates a high potential for violating Grant Assurance 23, *Exclusive Rights*, unless mitigated, and the lease should provide for the sponsor to retain sufficient rights to prevent and reverse the granting of any exclusive rights on the airport.

d. Lease Terms that Protect the Sponsor's Rights and Powers. In cases where a management contract or general lease provides a private operator with the ability to make decisions on access by other aeronautical tenants, the inclusion of contract provisions similar to the following can assure that the public sponsor retains the ability to prevent a violation of the grant assurances:

> **(1).** The lessee (second party, manager, etc.) agrees to operate the airport in accordance with the obligations of the lessor (public sponsor) to the federal government under applicable grant agreements or deeds. The lessee agrees to operate the airport for the use and benefit of the public; to make available all airport facilities and services to the public on fair and reasonable terms and without unjust discrimination; to provide space on the airport, to the extent available; and to grant rights and privileges for use of aeronautical facilities of the airport to all qualified persons and companies desiring to conduct aeronautical operations on the airport.
>
> **(2).** The lessee/management firm specifically understands and agrees that nothing contained in the lease shall be construed as granting or authorizing the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) and § 47107(a)(4).
>
> **(3).** The lease/management agreement is subordinate to the sponsor's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the airport.

6.14. Airport Privatization Pilot Program.

a. Change of Sponsorship from Public to Private. Leases or sales under the airport privatization pilot program, 49 U.S.C. § 47134, transfer the federal obligation as well as the responsibility for operation, management, and development of an airport from a public sponsor to a private sponsor. These leases and sales also transfer the federal obligations to the private operator, although the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate.

b. Exemption from Federal Obligations As an incentive for public airport operators to consider privatization under the privatization pilot program, Congress authorized the FAA to exempt a sponsor from its federal obligations to repay federal grants, to return federally acquired property, and to use the proceeds from the sale or lease of the airport for airport purposes. At commercial airports, the use of proceeds for nonairport purposes is subject to the approval of 65 percent (65%) of the air carriers serving the airport. An agency record of decision identifies all the applicable exemptions. Exemptions under the privatization pilot program are issued by the Administrator. Public inquiries on the pilot program should be referred to the Airport Compliance Division, ACO-100.

6.15. Privatization Outside of the Airport Privatization Pilot Program.

a. General. Sale or lease of a public airport to a private airport operator is not prohibited by law, and the FAA may be requested to approve a transfer of ownership or operating responsibility of a public airport to a private operator without an application for participation in airport privatization pilot program. FAA review of a request for release of the public sponsor from its obligations and for approval of a private operator as the new sponsor is conducted in accordance with the general review procedures in paragraphs 6.7 and 6.11 of this chapter. This review is similar to the review of a transfer between public airport owners and does not involve the specific requirements and findings of 49 U.S.C. § 47134.

b. Private Operator as Airport Sponsor. A privatization of a public airport by sale or long-term lease is distinguished from a management contract by the fact that the private operator becomes the airport sponsor. The private operator is the applicant for grants and is directly responsible to the FAA for compliance with the conditions and assurances in those grants. As with transfers under the privatization pilot program, the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate. For example, FAA may require a transferring public agency to maintain its ability to use its local zoning power to protect approaches to the airport.

c. Special Considerations. While reviewing a transfer of responsibility for airport operations to a private operator is in many respects similar to reviewing any transfer of ownership and operation (public or private), reviewing for privatization outside the Airport Privatization Pilot Program should consider the following:

> **(1).** The transfer will not be approved unless the private operator agrees to assume all of the existing obligations of the public sponsor under grant agreements and surplus and nonsurplus property deeds. For future grants, the private operator will agree to the assurances applicable to a private operator, but

initially will also be obligated to comply with the public operator's assurances as long as they would have remained in effect for the public operator.

(2). The FAA may not exempt the public sponsor from the requirements of Grant Assurance 25, *Airport Revenues*. Accordingly, the public sponsor may use the proceeds from the sale or lease of the airport only for purposes stated in 49 U.S.C. § 47107(b) and § 47133.

(3). It is not necessary for the public sponsor to return to the FAA the unamortized value of grant-funded projects or surplus or nonsurplus property received from the federal government, as long as the grant-funded facilities and donated property continue to be used for the original airport purposes. To assure this continued use, the private operator should be required to agree specifically to continue the airport uses of grant-funded facilities and federally donated property for the purposes described in FAA grant agreements and property deeds.

(4). The private operator will be subject to the general AIP criteria for grants to private operators, and will not be subject to or benefit from the special provisions of the airport privatization pilot program. Accordingly, the private operator should be advised that it will not be eligible for apportionment of entitlement funds under 49 U.S.C. § 47114(c) or for imposition of a passenger facility charge at the airport.

(5). As with any change of airport owner/operator, FAA certificates do not transfer. If the airport is certificated under 14 CFR Part 139, that certification will not transfer to the private operator and would need to be reissued. Also, if the airport has a security plan in effect in accordance with Transportation Security Administration (TSA) regulations, TSA should be advised of the request for approval of the transfer of airport management responsibility. TSA will advise the airport sponsor if additional amendments are necessary.

6.16. through 6.20. reserved.

Chapter 7: Airport Operations

7.1. Introduction. This chapter contains guidance on sponsor responsibilities for operation and maintenance of their airports. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to ensure that the sponsors under their jurisdiction operate and maintain their airports in accordance with federal grant assurances and federal transfer agreement obligations, including those that implicate aircraft operations and airport safety. This chapter does not cover the additional requirements that Title 14 Code of Federal Regulations (CFR) Part 139, *Certification of Airports*, imposes on airports serving certificated scheduled air carriers. (Contact the FAA Airport Safety and Operations Division, AAS-300, in Washington DC, for additional information on Part 139 compliance matters.) In addition, this chapter does not cover grant agreement special conditions, such as specific project closeout actions.

7.2. Scope of Airport Maintenance Federal Obligations.

a. Agreements Involved. Most airport agreements with the federal government impose on the sponsor a continuing federal obligation to preserve and maintain airport facilities in a safe and serviceable condition. An exception, however, may exist in transfer documents conveying federal lands under the authority of section 16 of the Federal Airport Act of 1946 (1946 Airport Act), section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act), and section 516 of the Airport and Airway Improvement Act of 1982 (AAIA). This current provision is codified at 49 U.S.C. § 47125. However, these transfers are normally followed with development grants that impose federal maintenance obligations.

Where section 16, 23, or 516 conveyances are made under circumstances that do not involve a follow-on development agreement, the maintenance and operation assurances should be incorporated into the transfer document as a special condition.

b. Airport Facilities to be Maintained. This section applies to all airport facilities shown on the Airport Layout Plan (ALP) as initially dedicated to aviation use by an instrument of transfer or federal grant agreement. Essentially this means that the sponsor cannot discontinue maintenance of a runway or taxiway or any other part of the airport used by aircraft until the FAA formally relieves the sponsor of the federal maintenance obligation. The federal obligations of the sponsor remain in force throughout the useful life of the facility, but no longer than 20 years – except for land that specifically obligates the airport in perpetuity.

However, in all cases, the actual obligating documents should be reviewed to ensure the exact terms of the applicable applications. When a facility is no longer needed for the purpose for which it was developed, the ADO or regional airports division may determine that the facility's useful life has expired in less than 20 years; the FAA may then authorize abandoning the facility or converting it to another compatible purpose.

For private airports, there is a minimum federal obligation of 10 years. If land was acquired with federal assistance, the federal obligation to maintain and operate the airport runs in perpetuity. Grants issued under programs preceding the Airport Improvement Program (AIP) may not always contain a perpetual obligation for land purchase, however, and the actual grant document should be reviewed.

Most airport agreements impose on the sponsor a continuing federal obligation to preserve and maintain airport facilities in a safe and serviceable condition.

7.3. Grant Assurance 19, Operation and Maintenance. Grant Assurance 19, *Operation and Maintenance*, is the most encompassing federal grant assurance related to airport maintenance. It requires the sponsor to operate and maintain the airport's aeronautical facilities – including pavement – in a safe and serviceable condition in accordance with the standards set by applicable federal, state, and local agencies. FAA pavement guidance applies.

7.4. Maintenance Procedures. Generally, airport agreements require the sponsor to carry out a continuing program of preventive and remedial maintenance. The maintenance program is intended to ensure that the airport facilities are at all times in good and serviceable condition to use in the way they were designed. Advisory Circular (AC) 150/5380-7A, *Airport Pavement Management Program*, discusses the Airport Pavement Management System (APMS) concept, its essential components, and how it can be used to make cost-effective decisions about pavement maintenance and rehabilitation. The airport agreement may express or imply such maintenance requirements and include specific federal obligations such as:

a. Frequently check all structures for deterioration and repair.

b. Inspect runways, taxiways, and other common-use paved areas at regular intervals to ensure compliance with operational and maintenance standards, to prevent progressive pavement deterioration, and to make routine repairs such as filling and sealing cracks.

c. Inspect gravel runways, taxiways, and common-use paved areas at regular intervals to ensure compliance with operational and maintenance standards, to prevent progressive deterioration of operation areas, and to make routine repairs including filling holes and grading.

d. Inspect turf airfields at regular intervals to ensure there are no holes or depressions, and otherwise to ensure that all turf areas are preserved through clearing, seeding, fertilizing, and mowing.

e. Maintain airfield signage in a safe and operable condition at all times.

f. Frequently inspect segmented circles and wind cones to ensure accurate readings and proper functioning.

g. Frequently inspect all drainage structures including subdrain outlets to ensure unobstructed drainage.

h. Wildlife Hazards must be identified and addressed. Repeated bird or mammal strikes require a wildlife hazard assessment to determine requirements for airport hazing procedures, habitat modifications on the airport and in its vicinity and or other measures.

i. Frequently check all approaches to ensure conformance with federal obligations.

7.5. Criteria for Satisfactory Compliance with Grant Assurance 19, Operation and Maintenance.

Although an acceptable level of maintenance is difficult to express in measurable units, the FAA will consider a sponsor compliant with its federal maintenance obligation when the sponsor does the following:

a. Fully understands that airport facilities must be kept in a safe and serviceable condition.

b. Makes available the equipment, personnel, funds, and other resources, including contract arrangements, to implement an effective maintenance program.

c. Adopts and implements a detailed program of cyclical preventive maintenance adequate to carry out this commitment.

7.6. Airport Pavement Maintenance Requirement. A parallel assurance to Grant Assurance 19, *Operation and Maintenance*, is the airport sponsor's federal obligation to maintain a pavement preventive maintenance program under Grant Assurance 11, *Pavement Preventive Maintenance*. This assurance requires sponsors with federally funded pavement projects for replacement or reconstruction approved after January 1, 1995, to implement an effective pavement maintenance and management program that runs for the useful life of any pavement constructed, reconstructed, or repaired with federal financial assistance. The program, at a minimum, must include (a) a pavement inventory, (b) annual and periodic inspections in accordance with AC 150/5380-6B, *Guidelines and Procedures for Maintenance of Airport Pavements*, (c) a record keeping and information retrieval system, and (d) identification of maintenance program funding.[1]

a. Guidelines for Inspecting Pavement. FAA places a high priority on the upkeep and repair of all pavement surfaces in the aircraft operating areas. This ensures continued safe aircraft operations. While deterioration of pavement due to usage and exposure to the environment cannot be completely prevented, a timely and effective maintenance program can reduce this deterioration. Lack of adequate and timely maintenance is the greatest single cause of pavement deterioration and, as a result, loss of federal investment.

Many failures of airport pavement and drainage features have been directly attributed to inadequate maintenance characterized by the absence of an inspection program. FAA recognizes that a maintenance program, no matter how effectively carried out, cannot overcome or compensate for a major design or construction inadequacy. Nonetheless, an effective maintenance program can prevent total and possibly disastrous failure that may result from design or construction deficiencies. Maintenance inspection can reveal problems at an early stage and provide timely warning to permit corrective action. Postponement of minor maintenance can develop into a major pavement repair project. Failing to provide basic pavement maintenance can be a compliance concern to the FAA.

This chapter presents guidelines and procedures for inspecting airport pavements.

b. Inspection Procedures. Maintenance is a continuous function and a continuous responsibility of the airport sponsor. A series of scheduled, periodic inspections or surveys conducted by experienced engineers, technicians, or maintenance personnel must be carried out for an effective

[1] See Appendix A of Advisory Circular (AC) 150/5380-6B for program funding requirements.

maintenance program. These surveys must be controlled to ensure that (i) each element or feature being inspected is thoroughly checked, (ii) potential problem areas are identified, and (iii) proper corrective measures are recommended. The maintenance program must provide adequate inspection follow-up to ensure corrective work is expeditiously accomplished and recorded. Although the organization and scope of maintenance activities will vary in complexity and degree from airport to airport, the general types of maintenance are relatively the same regardless of airport size or extent of development.

c. Inspection Schedules. The airport sponsor (often the supervisor of airport maintenance) is responsible for establishing a schedule for inspections. The inspection should be scheduled to ensure that all areas, particularly those that may not come under day-to-day observation, are thoroughly checked. Thorough inspections of all paved areas should be scheduled at least twice a year. In temperate climates, one inspection should be scheduled for spring and one for fall. Any severe storms or other conditions that may have an adverse effect on the pavement may also necessitate a thorough inspection. In addition, daily ride-down type inspections should be conducted.

d. Pavement Recordkeeping Complete information concerning all inspections and maintenance performed should be recorded and kept on file. The severity level of existing distress types, their locations, their probable causes, remedial actions, and results of follow up inspection and maintenance should be documented. In addition, the file should contain information on potential problem areas and preventive or corrective measures identified. Records of materials and equipment used to perform all maintenance and repair work should also be kept on file for future reference. Such records may be used later in identifying materials and remedial measures that may reduce maintenance costs and improve pavement serviceability.

AC 150/5320-6D, *Pavement Design and Evaluation*, and AC 150/5380-7, *Airport Pavement Management Program,* suggests procedures for performing a pavement condition survey. (Copies of FAA Advisory Circulars are available on the FAA website.) The pavement condition survey in conjunction with the Pavement Condition Index (PCI) may be used to develop pavement performance data. The PCI is a rating of the surface condition of a pavement and is a measure of functional performance with implications of structural performance. Periodic PCI determinations on the same pavement will show the changes in performance level with time.

7.7. Major Pavement Repairs.

a. Unpreventable Deterioration. The federal obligation to maintain the airport does not extend to major rehabilitation of a facility that has become unusable due to normal and unpreventable deterioration or through acts of God. Therefore, a sponsor's federal maintenance obligations do not include such requirements as restoring a building destroyed by fire, earthquake, or hurricane winds, nor do they include undertaking a major rehabilitation of a portion of the airfield inundated by floods. Likewise, airport sponsor federal obligations do not include the complete resurfacing of a runway unless it is the result of obvious neglect of routine maintenance over time. Failure to perform day-to-day airport maintenance, however, may have a cumulative effect resulting in major repairs and reconstruction that will fall under the sponsor's federal obligations.

b. Pavement Overstressing. The sponsor has a commitment to prevent gross overstressing of the airport pavement beyond the load bearing capacity. If the airport pavement deteriorates and

the sponsor is not prepared to strengthen the pavement, then the sponsor must limit the pavement's use to aircraft operations that will not overstress the pavement. Should failure occur because the sponsor failed to take timely corrective action after being advised of the pavement limitations, restoration of the failed pavement to a satisfactory condition may not be eligible for AIP funding.

c. Sponsor Determines the Level of Airport Design Standards. The sponsor – through preparation of an FAA-approved ALP – may determine the level of design standards for new construction, *i.e.*, the aircraft design category of the airport, based generally on the critical type of aircraft to be served at the airport, as long as the sponsor applies these standards consistently and in a manner that supports the development and operation of the airport over a period of time. However, introducing weight limitations after a runway or taxiway is constructed to FAA standards may be considered an access restriction. Accordingly, coordination with the FAA headquarters Airport Compliance Division (ACO-100) is highly recommended to ensure compliance with federal obligations.

7.8. Requirement to Operate the Airport. A fundamental obligation on the sponsor is to keep the airport open for public use. Grant Assurance 19, *Operation and Maintenance*, requires the sponsor to protect the public using the airport by adopting and enforcing rules, regulations, and ordinances as necessary to ensure safe and efficient flight operations. Accordingly, the sponsor is more than a passive landlord because the assurance federally obligates it to maintain and operate the aeronautical facilities and common-use areas for the benefit of the public. This responsibility includes the following:

a. Field Lighting. If field lighting is installed, the sponsor must ensure that the field lighting and associated airport beacon and lighted wind and landing direction indicators are operated every night of the year or when needed. (See paragraph 7.12, *Part-time Operation of Airport Lighting*, in this chapter.) Properly maintaining marking, lighting, and signs can reduce the potential for pilot confusion and prevent a pilot deviation or runway incursion.

b. Warnings. If any part of the airport is closed or if the use of any part of the airport is hazardous, the sponsor must provide warnings to users, such as adequate marking and issuing a Notice to Air Mission (NOTAM).

c. Safe Operations. The sponsor should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety and efficiency of aircraft operations and to protect the public using the airport. When a proposed action directly impacts the flight of an aircraft, that action should be coordinated with FAA Flight Standards and/or Air Traffic Control.

7.9. Local Rules and Procedures.

One of the most important functions of local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and people and structures on the ground.

For example, if aircraft are allowed to park too close to an active runway, aircraft themselves become a hazard to other aircraft. Rules and procedures that implement FAA airport design standards will ensure adequate separation of aircraft during ground operations. To keep motorists, cyclists, pedestrians, and animals from inadvertently wandering onto the airfield or

areas designated for aircraft maneuvering, the sponsor should install adequate controls such as fencing and signage.

As in the operation of any public service facility, there should be adequate rules covering vehicular traffic, sanitation, security, crowd control, access to certain areas, and fire protection. The sponsor is also expected to control services such as fueling aircraft, storing hazardous materials, and spray painting at a public airport to protect the public.

Sometimes, measures are needed to reduce the likelihood of a runway incursion. For example, if a runway safety problem is identified at an airport, FAA compliance personnel should coordinate corrective action not only with the airport, but also with other FAA lines of businesses, including Flight Standards and/or Air Traffic. When possible, action should also be coordinated with the local Runway Safety Action Team (RSAT).

Often, local air traffic patterns are needed to establish uniform and orderly approaches and departures from the airport. Controlling aircraft operation is an area preempted under federal law and is the exclusive responsibility of the FAA. When working on local air traffic procedures, the sponsor must coordinate with FAA Flight Standards or/and Air Traffic to ensure safe operations.

Controlling aircraft operation is an area preempted under federal law and is the exclusive responsibility of the FAA.

The FAA has a number of initiatives underway to prevent runway incursions. Several FAA documents address the airport operator's opportunity to help reduce the potential for runway incursions. These discuss runway incursion prevention measures airport operators should consider implementing.

7.10. Operations in Inclement Weather. The federal obligation to maintain the airport does not impose any *specific* responsibility to remove snow or slush or to sand icy pavements. The sponsor is responsible, however, for providing a safe, usable facility. A safe and usable facility includes protection of runway safety areas and other areas that may be compromised if snow berms are left adjacent to the pavement edge. (See AC 150/5200-30C, *Airport Winter Safety and Operations*.) Where climatic conditions render the airport unsafe, the sponsor must promptly issue a NOTAM and, if necessary, close all or parts of the airport until unsafe conditions are remedied. The sponsor should correct unsafe conditions within a reasonable amount of time.

7.11. Availability of Federally Acquired Airport Equipment. The sponsor must use its AIP-funded equipment for the purpose specified in the grant agreement. It must maintain the equipment in accordance with appropriate advisory circulars. Refer to the actual grant agreements to confirm that the equipment under scrutiny is the same as listed in the sponsor's grant agreements.

7.12. Part-time Operation of Airport Lighting.

a. Field Lighting When Needed. The airport must operate field lights whenever needed. This means that the lights must be on during the hours of darkness (dusk to dawn) every night or be available for use upon demand. This requirement can be effectively met by an attendant to turn on the proper lights when requested to do so by radio or other signal. The airport can also install

an electronic device that permits remote activation of field lighting by radio equipment in an aircraft.[2]

b. Part-time Operation. At some locations, the airport may not need to operate the lights all night. This might occur where the aeronautical demand is seasonal or where demand ceases after a certain hour each night because the airport's location is not likely to be needed in an emergency. Also, many airports have in place pilot operated or on-demand lighting that is controlled via radio signals from the aircraft operating out of or into the airport in question.

In very rare cases, circumstances may make using an airport undesirable during certain hours of darkness, such as when air traffic control is suspended during some part of the night and the local environment (obstructions or heavy en route traffic) makes using the airport hazardous during that period. Under such circumstance, the FAA may consent to a part-time operation of field lights. In cases involving safety related hours of operations, it is essential that FAA Flight Standards be involved in any validation process.

7.13. Hazards and Mitigation. Grant Assurance 20, *Hazard Removal and Mitigation*, requires airport sponsors to protect terminal airspace. Accordingly, the sponsor must protect instrument and visual flight operations, including established minimum flight altitudes. Adequate protection includes the clearing, removing, lowering, relocating, marking, lighting, or mitigating of existing airport hazards. It also includes protecting against establishment or creation of future airport hazards, including wildlife hazards

NOTE: Zoning is one means for protecting against obstructions, but may not be the best means since zoning can change and property owners may receive variances. Avigation and clearing easements may be a more effective means of protection.

If a sponsor has zoning authority and permits an obstruction to be erected near the airport that is found to be a hazard under 14 CFR Part 77, *Objects Affecting Navigable Airspace*, or that results in penetration or in any other impact upon the airport's approaches or use, the FAA may find that the sponsor is in violation of Grant Assurance 20, *Hazard Removal and Mitigation*.

a. Obstruction Hazards. Airports developed by or improved with federal funds are federally obligated to prevent the growth or establishment of obstructions in the aerial approaches to the airport. (See Grant Assurance 20, *Hazard Removal and Mitigation*.) The term "obstruction" refers to natural or manmade objects that penetrate surfaces defined in 14 CFR Part 77, *Objects Affecting Navigable Airspace*, or other appropriate citations applicable to the agreement applied to the particular airport.

In agreements issued prior to December 31, 1987, sponsors agreed to prevent as much as reasonably possible the construction, erection, alteration, or growth of an obstruction either by obtaining control of the land involved through the acquisition and retention of easements or other land interests or by the adoption and enforcement of zoning regulations. In many cases, uncontrolled growth of trees and vegetation can be a hazard. These hazards must be dealt with in conjunction with any applicable local or state requirements. The airspace allocated for protecting the airport will vary from airport to airport. FAA regional airports compliance staff should

[2] See Advisory Circular (AC) 150/5340-30D, *Design and Installation Details for Airport Visual Aids*.

contact FAA Airspace Systems Support Group in the Air Traffic Organization (ATO) Service Area for the appropriate region for guidance on how to apply this provision when an issue is raised.

b. FAA Guidance. The FAA published the following advisory circulars relating to obstruction hazards

(1). *A Model Zoning Ordinance to Limit Height of Objects Around Airports*, AC 150/5190-4A. This advisory circular provides airport sponsors with an effective zoning ordinance that can be used at the local level to protect the airport from obstructions.

AC 150/5190-4A, A Model Zoning Ordinance to Limit Height of Objects around Airports provides airport sponsors with an effective zoning ordinance that can be used at the local level to protect the airport from obstructions.

(2). *Procedures for Handling Airspace Matters,* FAA Order JO 7400.2G, provides information regarding the requirements for notifying the FAA of proposed construction or alteration under 14 CFR § 77.13. (See also FAA Order 8260.3, *United States Standard for Terminal Instrument Procedures (TERPS)* for Obstacle Clearance Surfaces.)

(3). *Obstruction Marking and Lighting*, AC 70/7460-1K. This advisory circular describes the standards for marking and lighting structures such as buildings, chimneys, antenna towers, cooling towers, storage tanks, and supporting structures of overhead wires. This advisory circular is available in the Air Traffic Division of any FAA regional office and on the FAA website.

c. Federal Communications Commission (FCC) Guidance and the Obstruction Evaluation Process.

(1). Title 47 CFR Part 17, Construction, Marking, and Lighting of Antenna Structures. Title 47 CFR Part 17 vests authority in the Federal Communications Commission (FCC) to issue public radio station licenses and prescribes procedures for antenna structure, registration, and standards. Part 17 provides the rules issued pursuant to the authority contained in Title III of the Communications Act of 1934, as amended. If the FAA determines that an antenna structure constitutes a hazard to air navigation – or there is a reasonable possibility it will constitute a hazard – Part 17 requires painting or illuminating the antenna structure. Part 17 requires notification to the FAA of certain antenna structures, including:

(a). When requested by FAA, any construction or alteration that would be in an

instrument approach area[3] or when available information indicates it might exceed an obstruction standard of the FAA.

(b). Any construction or alteration on any of the following airports, including heliports:

(i). An airport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement.

(ii). An airport under construction that is the subject of a notice or proposal on file with the FAA (except for military airports) and it is clearly indicated that the airport will be available for public use.

(iii). An airport that is operated by an armed force of the United States.

Aeronautical facilities that do not exist at the time the application for a radio facility is filed will only be considered if the proposed airport construction or improvement plans are on file with the FAA as of the application filing date for the radio facility. Additional information regarding Title 47 CFR Part 17 is available online.

(2). Obstruction Evaluation/Airport Airspace Analysis (OE/AAA). In administering Title 14 CFR Part 77, *Objects Affecting Navigable Airspace*, the FAA's prime objectives are to promote air safety and the efficient use of navigable airspace. To accomplish this mission, anyone proposing to construct or alter an object that affects airspace must notify the FAA prior to construction by filing FAA Form 7460-1, Notice of Proposed Construction or Alteration in accordance with 14 CFR Part 77. Instructions for filing FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, are described on the FAA website. The same filing contact information is used to notify the FAA of actual construction using FAA Form 7460-2, *Notice of Actual Construction or Alteration*. The proponent filing the form must submit very specific information about the project, such as a complete description of the proposed project, the latitude and longitude coordinates locating the object, height above ground level (AGL), site elevation above mean sea level (AMSL), total height, and the nearest airport.

Chapter 20 of this Order, *Compatible Land Use and Airspace Protection*, provides additional information relating to Grant Assurance 20, *Hazard Removal and Mitigation*, and obstruction protection. Typical projects include cell phone towers, top-mount antennas, buildings, power lines, radio broadcast towers, and temporary construction equipment such as cranes.

If the proposal is going to emit any electromagnetic broadcast signals, the proponent must also specify which radio frequencies will be used. The purpose of Form 7460-1 notification is to allow the FAA to conduct an airspace analysis on the proposal to

[3] The instrument approach area is defined in Advisory Circular (AC) 150/5300-13, *Airport Design*, Appendix 16, *New Instrument Approach Procedures*.

determine whether or not the object will adversely affect airspace or navigational aids (NAVAIDS). If the FAA determines that the proposed object will penetrate airspace or adversely affect NAVAID equipment, the FAA can require, as a condition to a no-hazard determination, that the proponent reduce the height of the object, change the broadcast frequency, or outfit the object with obstruction marking and lighting. In cases where the FAA determines the object will be a hazard to air navigation, the FAA can issue a hazard determination, which may have the effect of prohibiting the project from being constructed. A determination of "no hazard," however, does not ensure a safe environment. Many areas may not be addressed following a federal analysis that may affect visual flight rule (VFR) flight operations. It is the role of the state to work to address those areas, ultimately striving for the highest level of safety between the pilot and the obstruction.

(3). Guidance for Obstruction Evaluation. *Procedures for Handling Airspace Matters,* JO 7400.2G, provides information regarding the requirements for notifying the FAA of proposed construction or alteration under 14 CFR § 77.13. AC 70/7460-1K, *Obstruction Marking and Lighting,* describes the standards for marking and lighting structures such as buildings, chimneys, antenna towers, cooling towers, storage tanks, supporting structures of overhead wires, etc. These circulars may be obtained by contacting the Air Traffic Division of any FAA regional office.

(4). Filing for Proposed and Actual Construction. FAA *Form 7460-1, Notice of Proposed Construction or Alteration* must be filed with the FAA Air Traffic Division of the appropriate FAA regional office for proposed construction. To notify the FAA of actual construction, Form 7460-2, *Notice of Actual Construction or Alteration,* must be filed with the FAA Air Traffic Division of the appropriate FAA regional office.

d. Preexisting Government Recognition.

(1). Federal Government Recognition. Some airports were developed at locations where preexisting structures or natural terrain (*e.g.*, hill tops) would constitute an obstruction by currently applicable standards. If the grant agreement did not specify the removal of such obstructions as a condition of the grant, its execution by the federal government constitutes a recognition that the removal was not reasonably within the power of the sponsor.

(2). Threshold Displacement. There are many former military airports acquired as public airports under the Surplus Property Act where the existence of obstructions at the time of development was considered acceptable. At such airports where these obstructions in the approach area cannot feasibly be removed, relocated, or lowered but are declared hazardous, the FAA may consider approving a displacement or relocation of the threshold. Threshold displacement requires FAA approval.

e. Wildlife Hazards. Information about the risks posed to aircraft by certain wildlife species has increased a great deal in recent years. Improved reporting, studies, documentation, and statistics

clearly show that aircraft collisions with birds and other wildlife pose a serious public safety problem. Most public use airports have large tracts of open, undeveloped land that provide added margins of safety and noise mitigation. These areas can also present potential hazards to aviation if they encourage wildlife to enter an airport's approach or departure airspace or air operations area (AOA). Constructed or natural areas – such as poorly drained locations, detention/retention ponds, roosting habitats on buildings, landscaping, odor-causing rotting organic matter disposal operations, wastewater treatment plants, agricultural or aquaculture activities, surface mining, or wetlands – can provide wildlife with ideal habitat locations. Hazardous wildlife attractants on or near airports can jeopardize future airport expansion, which makes proper community land use planning essential.

AC 150/5200-33B, *Hazardous Wildlife Attractants on or Near Airports*, provides guidance to assess and address potentially hazardous wildlife attractants when locating new facilities and implementing certain land use practices on or near public use airports. Additional information, including accident data and *Wildlife Strikes to Civil Aircraft in the United States 1990-2007*,[4] is available on the FAA website.

Land use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife strikes.

When considering proposed land uses, airport operators, local planners, and developers must take into account whether the proposed land uses, including new development projects, will increase wildlife hazards. Land use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife strikes. As such, the airport sponsor must take appropriate action to mitigate those hazards.

(1). Airports Serving Piston-Powered Aircraft. For airports serving only piston-powered aircraft, FAA recommends a separation distance of 5,000 feet between an AOA and a hazardous wildlife attractant. This distance applies from the hazard to the existing AOA, as well as to any new and planned airport development projects meant to accommodate aircraft movement. AC 150/5200-33B, *Hazardous Wildlife Attractants on or Near Airports*, has more detail on this recommended separation.

(2). Airports Serving Turbine-Powered Aircraft. For airports selling Jet-A fuel, FAA recommends a separation distance of 10,000 feet between an AOA and a hazardous wildlife attractant. This distance applies from the hazard to the existing AOA, as well as to any new and planned airport development projects meant to accommodate aircraft movement. AC 150/5200-33B, *Hazardous Wildlife Attractants on or Near Airports*, has more detail on this recommended separation.

(3). Protection of Approach, Departure, and Circling Airspace. For all airports, the FAA recommends a distance of five (5) statute miles between the

[4] As of the date of this publication, "1990-2007" was the current version. A new version is expected soon.

farthest edge of the AOA and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure airspace.

(4). Special Requirements for Certain Landfills. Under 49 U.S.C. § 44718(d), more stringent requirements apply to the establishment of landfills near certain airports. This requirement applies to landfills constructed or established after April 5, 2000, that would be within six (6) miles of an airport that primarily serves general aviation aircraft and scheduled air carrier operations using aircraft with less than 60 passenger seats. While this situation is uncommon, it is a statutory prohibition on a new landfill. See AC 150/5200-34A for more detailed information on the application of this requirement.

7.14. Use of Airports by Federal Government Aircraft. Through various agreements, the federal government retains the right to use airport facilities jointly, either with or without charges.

a. Under Grant Agreements. Grant Assurance 27, *Use by Government Aircraft*, provides that all airport facilities developed with federal aid and usable for air operations will be available to the federal government at all times without charge. When the sponsor deems that federal government use is substantial, the assurance permits the sponsor to charge reasonable fees that are in proportion to the government's use. Substantial use is defined in the assurances as the existence of one of the following conditions:

- Five (5) or more federal government aircraft are regularly based at the airport or on land adjacent to the airport;
- Federal government aircraft make 300 or more total calendar month operations (counting each landing and each takeoff as a separate operation);
- The gross cumulative weight of federal government aircraft using the airport in a calendar month (the total operations of federal government aircraft multiplied by gross certified weights of such aircraft) exceeds of five (5) million pounds.

b. The Surplus Property Act. Title 49 U.S.C. § 47152, *Surplus Property Act*, gives the federal government the right to make nonexclusive use of the airfield without charge – except the use may not unduly interfere with other authorized aircraft. The federal government will pay for damage caused by its use and may contribute to maintaining and operating the airfield in proportion to its use.

Surplus Airport Property Instruments of Transfer issued under War Assets Administration Regulation 16 provide that the federal government shall at all times have the right to use the airport in common with others. Such use may be limited as necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict federal government use to less than 25 percent (25%) of the capacity of the airport. The regulation further provides that federal government use of the airport to this extent shall be without charge of any nature, other than payment for any damage caused.

c. Federal Government Aircraft Classification. All federal government aircraft are classified as airport users under federal obligations. Federal government aircraft include aircraft operated by the U.S. Army, U.S. Navy, Marine Corps, Air Force Reserve, all Air National Guard units, Coast Guard, National Oceanic and Atmospheric Administration (NOAA), National Aeronautics and Space Administration (NASA), Forest Service, and U.S. Customs Service.

7.15. Negotiation Regarding Charges. In all cases where the airport sponsor proposes to charge the federal government for use of the airport under the joint use provision, the sponsor should negotiate directly with the using federal government agency or agencies in question. In other words, the FAA does not assume the role of negotiator when it comes to rates and charges imposed upon other federal government agencies; rather, it oversees compliance with applicable requirements such as those under Grant Assurance 27, *Use by Government Aircraft*. It is important to remember that in cases involving military units, the military entity in question may be subject to military regulations relating to fee negotiations. For example, Appendix J-1 of this Order provides *Air National Guard Pamphlet 32-1001, 8 April 2003*, entitled *Airport Joint Use Agreements for Military Use of Civilian Airfields.* This pamphlet implements AFPD 10-10, *Civil Aircraft Use of United States Air Force Airfields*, and AFPD 32-10, *Installations and Facilities*, and applies to Air National Guard (ANG) flying units that operate on public airports. This pamphlet provides guidance for negotiating fair and reasonable charges to the government for joint use of the public airport's flying facilities.

7.16. Land for Federal Facilities.

a. Grant Agreements. Grant Assurance 28, *Land for Federal Facilities*, requires the sponsor to provide facilities for air traffic control and weather and communication activities. There are subtle differences in the terms of these assurances under the various grant programs. Therefore, when questions arise regarding the use of space, refer to the most current grant agreement.

b. No Requirement for Free Rent. Under the Airport Development Aid Program (ADAP) and the Airport Improvement Program (AIP), sponsors are not federally obligated to furnish space rent-free. However, the sponsor is required to furnish to the federal government without cost any land necessary for the construction at federal expense of facilities to house any air traffic control activities, such as very high frequency omni-directional radio range facilities (VORs),[5] Air Traffic Control (ATC) Towers or Terminal Radar Approach Controls (TRACONs), or weather reporting and communication activities related to air traffic control. This may include utility easements. The airport sponsor is not required to furnish land rent-free for parking or roads to serve the facility.

c. Other Federal Agencies. Sponsors on occasion do provide space to other federal government agencies such as postal, customs, FBI, or immigration services at no cost or at nominal rent. FAA does not view leasing space at these rates for activities that complement or support aeronautical operations as violating the self-sustaining grant assurance. However, federal agencies may not lease airport property for administrative purposes beyond the federal agencies' operational needs at no cost or nominal rent; airports should limit the leasehold to just the space necessary to conduct the federal operations, which may include some administrative space

[5] A VOR is a ground based navigational facility.

necessary to serve the operations. In most cases, an airport does not bear the expense for the space leased for customs, immigration, or agriculture operations, but rather the costs are built into the airlines' cost structure and are assessed to the airlines.

7.17. Federal Government Use during a National Emergency or War.

a. Airports Subject to Surplus Property Instrument of Transfer. The primary purpose of the Surplus Property Act is to make the property available for public airports. The Surplus Property Act also intended the transferred property and the entire airport to be available to the United States in times of a war or national emergency. Other transfer documents also reserve to the federal government the right of exclusive possession and control of the airport during war or national emergency.

b. Airports Subject to Grant Agreements. Grant agreements do not contain any provision authorizing military agencies to take control of the airport during a national emergency.

c. Negotiation Regarding Charges. Negotiations under war or national emergency clauses will be between the agency requiring the airport and the sponsor. The only compliance responsibility the FAA has with regard to such clauses is releasing the property from its federal obligations.

7.18. Airport Layout Plan (ALP). Grant Assurance 29, *Airport Layout Plan*, requires the sponsor to depict the airport's boundaries, including all facilities, and to identify plans for future development on its ALP. An FAA-approved ALP (signed and dated) is a prerequisite to the grant of AIP funds for airport development or for the modification of the terms and conditions of a surplus property instrument transfer. (See Appendix R of this Order, *Airport Layout Plan*, for additional information.)

FAA approval of the ALP represents the concurrence of the FAA in the conformity of the plan to all applicable design standards and criteria. It also reflects the agreement between the FAA and the sponsor regarding the proposed allocation of airport areas to specific operational and support functions. It does not, however, represent FAA release of any federal obligations attached to the land or properties in question. In addition, it does not constitute FAA approval to use land for nonaeronautical purposes. This requires a separate approval from the regional airports division.

In any event, the approved ALP becomes an important instrument for controlling the subsequent development of airport facilities. Any construction, modification, or improvement that is inconsistent with the plan requires additional FAA approval.

a. Compliance Requirements. Federal grant agreements require sponsors to conform airport use and development to the ALP. The erection of any structure or any alteration in conflict with the plan as approved by the FAA may constitute a violation of this federal obligation under Grant Assurance 29, *Airport Layout Plan*. The Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act) further strengthened the Airport Layout Plan assurance language.

If the sponsor makes a change in the airport or its facilities that is not reflected in the ALP, and the FAA determines the change will adversely affect the safety, utility, or efficiency of any federally owned or leased or funded property on or off the airport, the FAA may require the airport to eliminate the adverse effect or bear the cost of rectifying the situation.

Federal grant agreements require sponsors to conform their actions to the Airport Layout Plan. The erection of any structure or any alteration in conflict with the plan as approved by the FAA may constitute a violation of Grant Assurance 29, Airport Layout Plan.

b. Abandonment. The sponsor may not abandon or suspend maintenance on any operational facility currently reflected on an approved ALP as being available for operational use. The conversion of any area of airport land to a substantially different use from that shown in an approved ALP could adversely affect the safety, utility, or efficiency of the airport and constitute a violation of the federal obligation assumed. For example, the construction of a corporate hangar on a site identified on the ALP for future apron and taxiway use would be a departure from the controlling ALP. This could impair the utility of the airport and violate sponsor federal obligations. When making a periodic compliance review of an ALP, the inspector should consider whether grant acquired land is still needed for airport purposes, particularly when it is separated from the airport property by a highway or railway.

7.19. Exhibit "A" and Airport Property Map. Grant Assurance 29, *Airport Layout Plan*, requires the sponsor to submit an ALP. Airports also must have an airport property map, commonly referred to as Exhibit "A." The airport property map indicates how various tracts of airport property were acquired, including the funding source. The primary purpose of the airport property map is to provide information on the use of land acquired with federal funds and/or the use of surplus property. The airport property map is important for determining land needed for airport purposes and the proper use of land sale proceeds. In many instances, but not all, the Exhibit "A" to the ALP will include the land inventory requirements. The Exhibit "A" map delineates all airport property owned, or to be acquired, by the sponsor regardless of whether the federal government participated in the cost of acquiring any or all such land. The FAA relies on this map when considering any subsequent grant of funds. In fact, The *FAA AIP Handbook*, Order 5100.38, requires a review of the ALP during project formulation. Any land identified on the Exhibit "A" map may not be disposed of or used for any different purpose without FAA consent.

a. Land Accountability. For compliance purposes, the airport needs to be able to account for land acquired with federal funds. The ALP and Exhibit "A" together may serve this purpose. The airport sponsor may have a separate airport property map or land inventory map if the ALP and Exhibit "A" do not include all required information regarding how various tracts of land were acquired and what federal grant or federal assistance program was used to acquire the land.

b. Excess Land. If any grant-acquired land is found to be in excess of airport needs, both present and future, the sponsor must dispose of the excess land and comply with FAA direction for returning or using the grant funds.

7.20. Access by Intercity Buses. Grant Assurance 36, *Access by Intercity Buses*, requires the airport sponsor to permit, to the maximum extent practicable, access to the airport by intercity buses or other modes of transportation. However, the airport sponsor has no federal obligation to

fund special facilities for intercity buses or other modes of transportation.[6]

7.21. Temporary Closing of an Airport.

a. Closing for Hazardous Conditions Airport owners are required to mark any temporary hazardous conditions physically and to warn users adequately through the use of NOTAMs. This implies a duty to provide similar warning notices when an airport is completely closed to air traffic as a result of temporary field conditions that make using the airport hazardous. Prompt action should be taken to restore the airport facilities to a serviceable condition as soon as possible.

b. Closing for Special Events. 49 U.S.C. § 47107(a)(8), implemented by Grant Assurance 19.a, *Operation and Maintenance*, requires that any proposal to close the airport temporarily for nonaeronautical purposes must be approved by the FAA.

(1). Nonaeronautical Events. An airport developed or improved with federal funds may not be closed to use the airport facilities for special outdoor events, such as sports car races, county fairs, parades, car testing, model airplane events, etc., without FAA approval. This has been the FAA policy since 1961 as outlined in *Compliance Requirements Part 6.00* (July 1961). In certain circumstances where promoting aviation awareness through such nonaeronautical activities as model airplane flying, etc., the FAA does support the limited use of airport facilities so long as there is not total closure of the airport. In these cases, safeguards need to be established to protect the aeronautical use of the airport while the nonaeronautical activities are in progress and to ensure that safety is not compromised.

(2). Aeronautical Events There will be occasions when airports may be closed for brief periods for aeronautical events. Examples include an air show designed to promote a particular segment of aviation, or annual fly-ins, and aviation conventions. In such cases, airport management should limit the period the airport will be closed to the minimum time consistent with the activity. Such closing should be well publicized in advance including issuing NOTAMs to minimize any inconvenience to the flying public.

c. Closing Part of an Airport. In some instances, there may be sufficient justification to use part of an airport temporarily for an unusual event of local significance that does not involve closing the entire airport. *All* of the following conditions must be met:

(1). The event is to be held in an area of the airport that is not required for the normal operation of aircraft and where the event would not interfere with the airport's normal use, or in a limited operational area of an airport having a relatively small traffic volume and where it has been determined that the event can be conducted in the area without interfering with aeronautical use of the airport.

[6] For related information, refer to *Intermodal Ground Access to Airports: A Planning Guide*, DOT, December 1996.

(2). Adequate facilities for landing and taking off will remain open to air traffic, and satisfactory arrangements are made to ensure the safe use of the facilities remaining open.

(3). Proper NOTAMs are issued in advance.

(4). Necessary steps are taken by the airport owner to ensure the proper marking of the portion of the airport to be temporarily closed to aeronautical use.

(5). The airport owner notifies the appropriate FAA Flight Standards office in advance, as well as any air carrier using the airport.

(6). The airport owner agrees to remove all markings and repair all damage, if any, within 24 hours after the termination of the event, or issues such additional NOTAMs as may be appropriate.

(7). The airport owner coordinates the special activities planned for the event with local users of the airport before the event and with the Department of Defense (DoD) if there are any military activities at the airport.

(8). No obstructions determined by FAA to be hazards, such as roads, timing poles, or barricades, will be constructed for the remaining operational area of the airport.

(9). The airport sponsor is reimbursed for all additional costs incurred as a result of the event.

d. Air Show Coordination. Air shows at any airport require a Certificate of Waiver or Authorization (FAA Form 7711-1) that has been approved and issued by the appropriate FAA Flight Standards District Office (FSDO). Flight Standards, however, will not issue a Certificate or Waiver or Authorization to airports certificated under 14 CFR Part 139 until the FAA regional airports division has reviewed and concurred with the air show event.

(1). Ground Operations Plan. There must be a ground operations plan that addresses the Part 139 related requirements impacted by the air show. An airport certification inspector must approve this plan. Unless temporary arresting gear needs to be installed for military flight demonstrations, this requirement should have minimal impact on airport operators. Once the ground operations plan is approved, the airport certification inspector will send a letter to the airport operator and notify the appropriate FAA FSDO.

(2). Other Issues. Other issues to be addressed in coordinating an air show include:

(a). Air show ground operations plan guidelines,

(b). Airline operations,

(c). Aircraft rescue and fire fighting (ARFF) capability,

(d). Special emergency response procedures,

(e). Temporary arresting gear installed in a runway safety area,

(f). Integrity of runway safety areas, taxiway safety areas, and object free areas,

(g). Pyrotechnic devices,

(h). Temporary closures of runways and taxiways,

(i). Movement area maintenance,

(j). Public protection,

(k). Fueling operations,

(l). Air show ground vehicle operations,

(m). Impact to NAVAIDs,

(n). NOTAMs, and

(o). Mitigation of wildlife hazards.

7.22. Transportation Security Administration (TSA) Security Requirements.

a. General Information. The Transportation Security Administration (TSA) has instituted guidelines for general aviation (GA) airports. These guidelines provide a set of federally endorsed security enhancements, as well as a method for determining when and where these enhancements may be appropriate.

b. The Twelve-Five Rule. The Twelve-Five Rule requires that certain aircraft operators using aircraft with a maximum certificated takeoff weight (MTOW) of 12,500 pounds or more carry out a security program. Operators were required to be in compliance with the program effective April 1, 2003.

c. Private Charter Rule. The Private Charter Rule is similar to the Twelve-Five Rule, but adds requirements for aircraft operators using aircraft with an MTOW of greater than 45,500 kg (100,309.3 pounds) or with a seating configuration of 61 or more. Operator compliance was required effective April 1, 2003.

d. Compliance. The relevant compliance implications of TSA security for GA are in the form of security requirements imposed by an airport sponsor upon airport users. When a complaint is brought to FAA attention, the FAA will attempt informal resolution. This process should involve the airport, TSA, and the impacted users. The FAA may be asked to render a preliminary decision on whether the security requirements imposed by the airport are consistent with the airport's other federal obligations. Most likely, this will involve the requirements for reasonable and not unjustly discriminatory terms and conditions for using the airport.

Compliance personnel may need to assess whether security requirements are consistent with TSA requirements and recommendations. The compliance implications of security at federally

obligated airports may be in the form of security requirements covered by TSA. Coordination with ACO-100 is recommended when encountering complaints involving TSA requirements.

7.23. through 7.26 reserved.

Chapter 8: Exclusive Rights

8.1. Introduction. This chapter describes the sponsor's federal obligations under Grant Assurance 23, *Exclusive Rights*, which prohibits an airport sponsor from granting an exclusive right for the use of the airport, including granting an exclusive right to any person or entity providing or intending to provide aeronautical services to the public.

In particular, the sponsor may not grant a special privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally obligated airports.

It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to ensure that the sponsor has not extended any exclusive right to any airport operator or user.

8.2. Definition of an Exclusive Right. An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements or by another means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or right, would be an exclusive right.[1]

8.3. Legislative and Statutory History.

a. General. Through the years, the exclusive rights provision has become a federal obligation that applies in cases involving airport development grants, and surplus and nonsurplus conveyances of federal property.[2]

The prohibition against exclusive rights is contained in section 303 of the Civil Aeronautics Act of 1938 (P.L. No. 75-706, 52 Stat. 973) and applies to any airport upon which any federal funds have been expended.

b. 1938 to Date. The exclusive rights provision is the oldest federal obligation affecting federally funded airports. The legislative background for the exclusive rights provisions began in l938. The prohibition against exclusive rights was first contained in section 303 of the Civil Aeronautics Act of 1938 (Public Law (P.L.) No. 75-706, 52 Stat. 973 recodified at 49 United States Code (U.S.C.) 40103(e)) and applies to any airport upon which any federal funds have been expended.

To develop and improve airports between 1939 and 1944, Congress authorized the *Development of Landing Areas National Defense* (DLAND) and the *Development of Civil Landing Areas* (DCLA) programs. In accordance with these programs, the federal government and the sponsor

[1] 30 Fed. Reg. 13661, see also AC 150/5190-6, Appendix 1.

[2] The applicable grant programs were the Federal Aid to Airports Program (FAAP), Airport Development Aid Program (ADAP), and Airport Improvement Program (AIP).

entered into an agreement, called an AP-4 Agreement, by which the sponsor provided the land and the federal government developed the airport. AP-4 Agreements contained a covenant stating that the sponsor would operate the airport without the grant or exercise of any exclusive right for the use of the airport within the meaning of section 303 of the Civil Aeronautics Act of 1938. Although the useful life of all AP-4 improvements expired by 1969, the airports that entered into these agreements continue to be subject to the exclusive rights prohibition. An airport remains federally obligated as long as the airport continues to be operated as an airport – regardless of whether it remains under the same sponsor or not.

Following World War II, under the provisions of the Surplus Property Act of 1944 (section 13(g)) (as codified and amended by 49 U.S.C. §§ 47151-47153), large numbers of military installations were conveyed without monetary consideration to public agencies. However, in 1947, Congress amended the Surplus Property Act (Public Law (P.L.) No. 80-289 to require the following language:

"No exclusive right for the use of the airport at which the property disposed of is located shall be vested (either directly or indirectly) in any person or persons to the exclusion of others in the same class. For the purpose of this condition, an exclusive right is defined to mean: (1) any exclusive right to use the airport for conducting any particular aeronautical activity requiring the operation of aircraft; (2) any exclusive right to engage in the sale of supplying of aircraft, aircraft accessories, equipment or supplies (excluding the sale of gasoline or oil), aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, and propellers appliances)."

In accordance with the Airport and Airway Improvement Act of l982 (AAIA), 49 U.S.C. § 47101, *et seq.*, the Federal Aviation Act of 1958 (FAA Act) 49 U.S.C. § 40103(e), and the Airport Improvement Program (AIP) grant assurances, the owner or operator of any airport that has been developed or improved with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity and without granting an exclusive right. The same obligation was required in previous grant programs such as the Federal Aid to Airports Program (FAAP), in effect between 1946 and 1970, and the Airport Development Aid Program (ADAP), which was in use between 1970 and 1982.

Finally, the exclusive rights obligation also exists for airports that have received nonsurplus government property under 49 U.S.C. § 47125 and previous corresponding statutes.

c. Governing Statutes. Today, Title 49 U.S.C. subtitle VII, *Aviation Programs*, contains the prohibition against exclusive rights in three locations:

(1). 49 U.S.C. § 40103(e), *No Exclusive Rights at Certain Facilities.*

(2). 49 U.S.C. § 47107(a), *General Written Assurances.*

(3). 49 U.S.C. § 47152, *Terms of Conveyances.*

An airport remains federally obligated as long as the airport continues to be operated as an airport – regardless of whether it remains under the same sponsor.

d. Prohibition Applies Only to Aeronautical Activities. When called upon to interpret the application of section 303, the Attorney General of the United States affirmed the prohibition against exclusive rights. In an opinion dated June 4, 1941, the Attorney General stated "…it is my opinion that the grant of an exclusive right to use an airport for a particular aeronautical activity, such as an air carrier, falls within the provision of section 303 of the Civil Aeronautics Act precluding any exclusive right for the use of any landing area."

If an airport sponsor prohibits an aeronautical activity without a commercial component, coordination with ACO-1 and the Office of Chief Counsel is necessary.

8.4. Development of the Exclusive Rights Prohibition into FAA Policy.

a. Implementation of the Federal Airport Act. During the immediate post-war years, the Civil Aeronautics Board (CAB) was simultaneously engaged in processing the first Federal Aid to Airports Program (FAAP) development projects and working with the military to convey former military installations to public entities.

b. Interpretations of Aeronautical Activity.

(1). Airfield. When approving grants for airport development, the CAB (and later the FAA) interpreted the exclusive rights prohibition principally in terms of the airfield. Accordingly, they considered activities that used the airfield (*e.g.*, air carriers, flight schools, and charter service) as subject to the prohibition. All nonaeronautical activities, such as restaurants and other terminal concessions, ground transportation, and car rentals are excluded from the prohibition.

(2). Inclusion of Aeronautical Supporting Activities. In 1962, the FAA published its *Policy on Exclusive Rights* in the *Federal Register*. The policy extended the prohibition to all aeronautical activities. Such aeronautical activities are those that involve, make possible, or are required for the operation of aircraft; or that contribute to, or are required for the safety of such operations.[3] The FAA further clarified the application of the prohibition in FAA Order 5190.1, *Exclusive Rights*, on October 12, 1965.

c. Current Agency Policy. The FAA has taken the position that the existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits of competitive enterprise. The FAA considers it inappropriate to provide federal funds for improvements to airports where the benefits of such improvements

[3] AC 150/5190-6, Appendix 1, § 1.1(a).

will not be fully realized by all users due to the inherent restrictions of an exclusive monopoly on aeronautical activities.

Advisory Circular (AC) 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, provides airport sponsors with the information they need to comply with their federal obligation regarding exclusive rights.

d. Effect of the Prohibition on Airport Improvement Program (AIP) Grants. Federal statutory law prohibits sponsors from granting an exclusive right. Consequently, it does not matter how the sponsor granted the exclusive right (*e.g.*, express agreement, unreasonable minimum standards, action of a former sponsor, or other means). The FAA will not award a sponsor an Airport Improvement Program (AIP) grant until that exclusive right is removed from the sponsor's airport. The FAA may also take other actions to return the sponsor to compliance with its federal obligations.

Federal statutory law prohibits sponsors from granting an exclusive right. Consequently, it does not matter how the sponsor granted the exclusive right – express agreement, unreasonable minimum standards, action of a former sponsor, or other means.

e. Duration of Prohibition Against Exclusive Rights. Once federal funds have been expended at an airport, including through a surplus property conveyance, the exclusive rights prohibition is applicable to that airport for as long as it is operated as an airport. In other words, it runs in perpetuity at the airport even though 20 years may have passed since the airport received its last AIP grant. In fact, there are airports today where the only federal obligation is the exclusive rights prohibition.

f. Grant Assurance 23, *Exclusive Rights*. Since enactment of the AAIA, sponsor grant agreements have included the exclusive rights assurance. The grant assurance applies to public and private airport sponsors alike for as long as the airport remains an airport. It also applies to sponsor airport development and noise mitigation projects. The assurance does not extend to planning projects or to nonsponsor noise mitigation projects.

8.5. Aeronautical Operations of the Sponsor. The exclusive rights prohibition does not apply to services provided by the sponsor itself. The airport sponsor may elect to provide any or all of the aeronautical services at its airport, and to be the exclusive provider of those services. A sponsor may exercise – but may not grant – the exclusive right to provide any aeronautical service. This exception is known as the airport's "proprietary exclusive" right.[4] (See paragraph 8.9.a of this chapter.)

The sponsor may exercise a proprietary exclusive right provided the sponsor engages in the aeronautical activity as a principal using its own employees and resources. The sponsor may not

[4] The airport's proprietary exclusive right, however, may not interfere with an aeronautical users' right to self-service or self-fuel. (AC 150/5190-6, paragraph 1.3(a)(2).) Such activity must conform to an airport's minimum standards or reasonable rules and regulations.

designate an independent commercial enterprise as its agent. In other words, the sponsor may not rely on a third party or a management company to provide the services under its proprietary exclusive right. These airport sponsors must engage in such activities using their own employees.[5]

8.6. Airports Having a Single Aeronautical Service Provider. Where the sponsor has not entered into an express agreement, commitment, understanding, or an apparent intent to exclude other reasonably qualified enterprises, the FAA does not consider the presence of only one provider engaged in an aeronautical activity as a violation of the exclusive rights prohibition.[6] The FAA will consider the sponsor's willingness to make the airport available to additional reasonably qualified providers. (See paragraph 8.9.b of this chapter.)

8.7. Denying Requests by Qualified Providers.

a. Conditions for Denial. The assurance prohibiting the granting of an exclusive right does not penalize a sponsor for continuing an existing single provider when both of the following conditions exist:

> **(1).** It can be demonstrated that it would be unreasonably costly, burdensome, or impractical for more than one entity to provide the service, and
>
> **(2).** The sponsor would have to reduce the leased space that is currently being used for an aeronautical purpose by the existing provider in order to accommodate a second provider. In the case of denying additional providers, the sponsor must have adequate justification and documentation of the facts supporting its decision acceptable to the FAA.

Both conditions must be met. (See 49 U.S.C. § 47107(a)(4)(A and B).)

b. Demonstrable Need. When the service provider has space in excess of its *reasonable* needs and the sponsor claims it is justified based on the service provider's *future* needs, the FAA may find the sponsor in violation of the exclusive rights prohibition if the service provider is banking land and/or facilities that it cannot put to gainful aeronautical use in a reasonable period of time

[5] An aeronautical user exercising its right to self-service or self-fuel is also required to use its own employees and equipment.

[6] See 49 U.S.C. §§ 40103(e) and 47107(a)(4).

and/or the vacant property controlled by the service provider denies a competitor from gaining entry onto the airport.

A sponsor may exclude an incumbent on-airport service provider from responding to a request for proposals based on the sponsor's desire to increase competition in airport services. That action is not a violation of Grant Assurance 22, Economic Nondiscrimination, since the sponsor is taking a necessary step to preclude the granting of an exclusive right.

(1). Granting options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Therefore, the use of leases with options or future preferences, such as rights of first refusal, must generally be avoided. This is because a right of first refusal could allow an existing tenant to hold a claim on airport land at little or no cost. Then, when faced with the prospect of competition, that leaseholder could exercise its option to inhibit access by others and limit or prevent competition.

(2). A sponsor may exclude an incumbent on-airport service provider from responding to a Request for Proposal (RFP)by eliminating the provider from eligibility for the RFP based on the sponsor's desire to increase competition in airport services. The FAA will not consider that action a violation of Grant Assurance 22, *Economic Nondiscrimination*, since the sponsor is taking a necessary step to preclude granting of an exclusive right.

(3). When a sponsor denies a request by a service provider to conduct business on the airport based on the lack of available space, the ADO or regional airports division should conduct a site visit to confirm that the space and/or facilities leased to service providers only represent their reasonable demonstrable need and are not being banked for the long-term future.

8.8. Exclusive Rights Violations.

a. Restrictions Based on Safety and Efficiency. An airport sponsor can deny an individual or prospective aeronautical service provider the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency if the kind of activity (*e.g.*, skydiving, sailplanes, ultralights) would adversely impact the safety and efficiency of another aeronautical activity at the airport, typically fixed-wing operations. An aeronautical operator holding an FAA certificate is presumed to be a safe operator, and the airport sponsor may not deny access to an individual certificated operator on the basis of safety of its aeronautical operations. Any safety concerns with an operator would need to be brought to the attention of the FAA. However, the airport sponsor may find that an aeronautical activity as a whole is inconsistent with the safety and efficiency of the airport and may, therefore, not permit that activity at all, subject to concurrence by the FAA. The airport sponsor may also prohibit access by an individual or individual service

provider that has not complied with the airport's minimum standards or operations rules for safe use of airport property.

Any denial based on safety must be based on reasonable evidence demonstrating that airport safety will be compromised if the applicant or individual is allowed to engage in the proposed aeronautical activity. Airport sponsors should carefully consider the safety reasons for denying an aeronautical service provider or individual the opportunity to engage in an aeronautical activity if the denial has the possible effect of limiting competition or access.

The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. As such, an airport sponsor that is contemplating the denial of a proposed on-airport aeronautical activity or access is encouraged to contact the local ADO or regional airports division. Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness of the proposed action because of safety and efficiency, and to determine whether unjust discrimination or an exclusive rights violation results from the proposed restrictions.

Safety concerns are not limited to aeronautical activities but may include Occupational Safety and Health Administration (OSHA) standards, fire safety standards, building codes, or sanitation considerations. Restrictions on aeronautical operators by airport sponsors for safety must be reasonable. Examples of reasonable restrictions include, but are not limited to: (1) restrictions placed on the handling of aviation fuel and other flammable products, including aircraft paint and thinners; (2) requirements to keep fire lanes open; and (3) weight limitations placed on vehicles and aircraft to protect pavement from damage. (See chapter 14 of this Order, *Restrictions Based on Safety and Efficiency Procedures and Organization*.)

b. Restrictions on Self-Service. An aircraft owner or operator[7] may tie down, adjust, repair, refuel, clean, and otherwise service his/her own aircraft, provided the service is performed by the aircraft owner/operator or his/her employees with resources supplied by the aircraft owner or operator.

Moreover, the service must be conducted in accordance with reasonable rules, regulations or standards established by the airport sponsor. Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation. In accordance with the federal grant assurances:

> **(1).** An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment. Restrictions imposed by an airport sponsor that have the effect of

[7] For many purposes, the FAA has interpreted an aircraft owner's right to self-service to include operators with long-term possession rights. For example, a significant number of aircraft operated by airlines are not owned, but are leased under terms that give the operator airline owner-like powers. This includes operational control, exclusive use, and long-term lease terms. The same is true for other aeronautical operators such as charter companies, flight schools, and flying clubs, all of which may very well lease aircraft under terms that result in owner-like powers. If doubt exists on whether a particular "operator" can be considered as the owner for the purpose of this guidance, the ADO will make the determination. (A listing of ADOs can be found on the FAA website.)

channeling self-service activities to a commercial aeronautical service provider may be an exclusive rights violation.

An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment.

(2). An airport sponsor must reasonably provide for self-servicing activity, but is not obligated to lease airport facilities and land for such activity. That is, the airport sponsor is not required to encumber the airport with leases and facilities for self-servicing activity.

(3). An airport sponsor is under no obligation to permit aircraft owners or operators to introduce fueling equipment or practices on the airport that would be unsafe or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public.

NOTE: Fueling from a pull-up commercial fuel pump is not considered self-fueling under the federal grant assurances since it involves fueling from a self-service pump made available by the airport or a commercial aeronautical service provider.

8.9. Exceptions to the General Rule.

a. Aeronautical Activities Provided by the Airport Sponsor (Proprietary Exclusive Right). The owner of a public use airport may elect to provide any or all of the aeronautical services needed by the public at the airport. The airport sponsor may exercise, but not grant, an exclusive right to provide aeronautical services to the public. If the airport sponsor opts to provide an aeronautical service exclusively, it must use its own employees and resources. Thus, an airport owner or sponsor cannot exercise a proprietary exclusive right through a management contract. Note that while the policy technically extends to private owners of public use airports, private owners may not have the same immunity from antitrust laws as public agencies. A proprietary exclusive can be exercised only for fuel sales and support services, not for use of the landing area itself.

As a practical matter, most airport sponsors recognize that aeronautical services are best provided by profit-motivated, private enterprises. However, there may be situations that the airport sponsor believes would justify providing aeronautical services itself. For example, in a situation where the revenue potential is insufficient to attract private enterprise, it may be necessary for the airport sponsor to provide the aeronautical service. The reverse may also be true. The revenue potential might be so significant that the airport sponsor chooses to perform the aeronautical activity itself in order to become more financially self-sustaining. Aircraft fueling is a prime example of an aeronautical service an airport sponsor may choose to provide itself. While the airport sponsor may exercise its proprietary exclusive to provide fueling services, aircraft owners may still assert the right to obtain their own fuel and bring it onto the airport to service their own aircraft, but only with their own employees and equipment and in conformance with reasonable airport rules, regulations, and minimum standards.

b. Single Activity. The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. An exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider. The airport sponsor may issue a competitive offering for all qualified parties to compete for the right to be an on-airport service provider.[8] The airport sponsor is not required to accept all qualified service providers without limitation. The fact that only one qualified party pursued an opportunity in a competitive offering would not subject the airport sponsor to an exclusive rights violation. However, the airport sponsor cannot, as a matter of convenience, choose to have only one fixed-base operator (FBO)[9] to provide services at the airport regardless of the circumstances at the airport.

c. Statutory Requirement Relating to Single Activities. Since 1938, there has been a statutory prohibition on exclusive rights (49 U.S.C. § 40103(e)) [independent of the parallel grant assurance requirement at 49 U.S.C. § 47107(a)(4)]. It currently states, "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended." (An "air navigation facility" includes, among other things, an airport. See "Definitions" at 49 U.S.C. § 40102.)

This prohibition predates the parallel statutory grant assurance requirement enacted as part of the AAIA. It is independent of the grant assurance requirement.

Both statutory prohibitions contain an exception to permit single FBOs if it is unreasonably costly, burdensome, or impractical for more than one FBO to provide services, and allowing more than one FBO to provide services would reduce the space leased under an existing agreement between the airport and single FBO. Both conditions must be met for the exception to apply.

d. Space Limitation. A single enterprise may expand as needed, even if its growth ultimately results in the occupancy of all available space. However, an exclusive rights violation occurs when an airport sponsor unreasonably excludes a qualified applicant from engaging in an on-airport aeronautical activity without just cause or fails to provide an opportunity for qualified applicants to be an aeronautical service provider. An exclusive rights violation can occur through the use of leases where, for example, all the available airport land and/or facilities suitable for aeronautical activities are leased to a single aeronautical service provider who cannot put it into productive use within a reasonable period of time, thereby denying other qualified parties the opportunity to compete to be an aeronautical service provider at the airport. An airport sponsor's refusal to permit a single FBO to expand based on the sponsor's desire to open the airport to competition is not a violation of the grant assurances. Additionally, an airport sponsor may

[8] The grant assurances do not prohibit an airport sponsor from entering into long-term leases with commercial entities, by negotiation, solicitation, or other means. An airport sponsor may choose to select Fixed-Base Operators (FBOs) or other aeronautical service providers through a Request For Proposals (RFP) process. If it chooses to do so, the airport sponsor may use this process each time a new applicant is considered. This action, in and by itself, is not unreasonable or contrary to the federal obligations.

[9] A Fixed-Base Operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc. to the public.

exclude an incumbent FBO from participating under a competitive solicitation in order to bring a second FBO onto the airport to create a more competitive environment.

A lease that confers an exclusive right will be construed as having the intent to do so and, therefore, constitute an exclusive rights violation. Airport sponsors are better served by requiring that leases to a single aeronautical service provider be limited to the amount of land the service provider can demonstrate it actually needs and can be put to immediate productive use. In the event that additional space is required later, the airport sponsor may require the incumbent service provider to compete along with all other qualified service providers for the available airport land.

The grant of options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Leases with options or future preferences, such as rights of first refusal, should generally be avoided.

The grant of options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Therefore, leases with options or future preferences, such as rights of first refusal, should generally be avoided.

8.10. UNICOM. The Federal Communications Commission (FCC) authorizes use of special UNICOM[10] frequencies for air-to-ground communication at airports. The primary purpose of the communications station is to disseminate aeronautical data, such as weather, wind direction, and runway information. They are used by aircraft in the air and on the ground for both preflight and post flight activities. Since UNICOM is supposed to be subject to the airport owner's control, its use by the airport and the airport only, does not constitute a grant of exclusive rights to which the statutory prohibition of section 40103(e) would apply.

To prevent conflicting reports, the FCC will not license more than one UNICOM station at the same airport. However, unless properly controlled, allowing an aeronautical service provider to operate the sponsor’s UNICOM station on behalf of the airport sponsor could result in an advantage over competitors in attracting aeronautical users. When the sponsor fails to retain the station license in its own name and turns control of the license to a single service provider, the FAA may find the sponsor in violation of the prohibition against exclusive rights.

The FAA will not license more than one UNICOM station at the same airport.

8.11. Implementation of Policy.

[10] UNICOM is a nongovernment air/ground radio communication station. It may provide airport information at public use airports where there is neither a tower nor a Flight Service Station (FSS).

a. Voluntary Compliance. When the sponsor engages in – or fails to extinguish – an exclusive right voluntarily, the FAA will find the sponsor in violation of the prohibition against exclusive rights and its federal obligations.

b. Remedies. When the FAA finds the sponsor in violation of the exclusive rights provision, and the situation remains uncorrected, FAA may withhold AIP grant assistance. In addition, FAA may withhold Facilities and Equipment (F&E) funding, except for equipment needed for safety or, generally as a last resort, seek reversion of the airport under the Surplus Property Act. (Chapter 2 of this Order, *Compliance Program*, discusses handling of grant assurance violations

Under certain circumstances, the FAA may also issue any orders it deems necessary. These orders are enforced through the federal courts.

c. FAA Exception. Where required for the national defense or deemed essential to national interest, the FAA may grant an exception to the remedies above.

8.12. Military and Special Purpose Airports.

a. Applicability to the Federal Government. The federal government is not subject to the exclusive rights prohibition. Since most federally owned airports are maintained and operated with federal funds appropriated for purposes other than the support of civil aviation (usually to accommodate a military or defense mission), such airports do not receive AIP funds and are not subject to grant assurances.

Consequently, when the federal government entity that owns the facility allows operating rights to airlines and other aeronautical activities to meet the government's own transportation and civil aviation requirements (such as moving personnel and equipment), the government is not subject to sponsor federal obligations. Similarly, the base commander of an active military base has no federal obligation to permit civilian operations at the air base.

b. JointUse Airports. When a civilian airport sponsor obligates itself under FAA grant agreements or property conveyance agreements, that entity becomes subject to the same federal obligations as other sponsors regardless of whether the facilities are located on federal installations or whether they are operated under jointuse agreements with the Department of Defense (DoD) or other federal agencies. At jointuse airports, federal grant assurance obligations do not apply to areas within exclusive DoD control.

8.13. through 8.18. reserved.

Chapter 9: Unjust Discrimination between Aeronautical Users

Updated November 2021

9.1. Introduction. This chapter contains guidance on the sponsor's responsibility to make the airport available on reasonable terms and without unjust discrimination. This guidance focuses on charging comparable rates to similarly-situated aeronautical users. Issues of unjust discrimination arising from access restrictions are addressed in Chapters 13, *Airport Noise and Access Restrictions*, and 14, *Restrictions Based on Safety and Efficiency Procedures and Organization*, of this Order, respectively. It is the responsibility of the Airports District Offices (ADOs) and regional airports divisions to advise sponsors on their obligations in this area in accordance with this guidance.

a. Federal Grant Obligations. Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to make its aeronautical facilities available to the public and its tenants on terms that are reasonable and to do so without unjustly discriminating among users. This federal obligation involves several distinct requirements.

First, the sponsor must make the airport and its facilities available for public use.

Next, the sponsor must ensure that the terms imposed on aeronautical users of the airport, including rates and charges, are reasonable for the facilities and services provided.

Finally, the terms must be applied without unjust discrimination.

The prohibition on unjust discrimination extends to all types, kinds and classes of aeronautical activities, as well as individual members of a class of operator. This is true whether these terms are imposed by the sponsor directly or by a licensee or tenant offering services or commodities normally provided at the airport. The tenant's commercial status does not relieve the sponsor of its obligation to ensure the terms for services offered to aeronautical users are fair and reasonable and without unjust discrimination. (See chapter 12, section 12.5.a of this Order.)[1]

b. Other Federal Obligations. These same requirements apply to the Federal Aid to Airports Program (FAAP)[2] and the Airport Development Aid Program (ADAP)[3] agreements. These requirements are also reflected in surplus property and nonsurplus property agreements.

The early program, the FAAP was authorized by the Federal Airport Act of 1946 and drew its funding from the general fund of the U.S. Treasury.

In 1970, the Airport and Airway Development Act of 1970 established a more comprehensive program. This Act provided grants for airport planning under the Planning Grant Program (PGP) and for airport development under the ADAP. These programs were funded by the newly

[1] The obligations under the grant assurances to afford reasonable access extends only to aeronautical users engaging in aeronautical activities. The grant assurance obligations do not extend to nonaeronautical users.

[2] Established by the Federal Airport Act of 1946, Pub. L. No. 79-377 (1946) .

[3] Established by the Airport and Airway Improvement Act of 1970, Pub. L. No. 91-258 (1970).

established Airport and Airway Trust Fund,[4] into which were deposited revenues from several aviation-user taxes on such items as airline fares, air freight, and aviation fuel.

The authority to issue grants under these two programs expired on September 30, 1981, however, it is important for an airport sponsor to review its obligating documents. *See also* the most recent FAA Order 5190.2, List of Public Airports Affected by Agreements with the Federal Government.

9.2. Rental Fees and Charges: General.

a. Comparable Rates, Fees, and Rentals. For facilities that are directly and substantially related to air transportation, regardless of whether an air carrier or user is a tenant, subtenant, or non-tenant, the sponsor must impose nondiscriminatory and substantially comparable rates, fees, rentals, and charges on all air carriers and users that assume similar obligations, use similar facilities, and make similar use of the airport.

Aside from rates, fees, and rentals, the sponsor must also impose comparable rules, regulations, and conditions on the use of the airport by its air carriers and users, regardless of whether they are tenants, subtenants, or non-tenants.

b. Signatory and Nonsignatory Air Carriers. The sponsor may establish a separate rate, fee, and rental structure for the use of airport facilities depending on whether an air carrier chooses to assume the obligations of a signatory carrier to a sponsor's airport use agreement. The primary obligation of a signatory tenant is to lease space in airport facilities and commit to long-term financial support of the development and operation of the airport. The debt for airport facilities is typically secured by signatory tenant leases. In return for their financial commitment, signatory carriers may have a rate, fee, and rental structure that differs from non-signatory carriers choosing not to make the same commitment. The sponsor cannot unreasonably deny signatory status to an air carrier willing and able to assume the obligations of a signatory carrier. *See* *Policy Regarding Airport Rates and Charges*, 78 Fed. Reg. 55330, September 10, 2013.

c. Fixed-Base Operators (FBOs).[5] The sponsor must impose the same rates, fees, rentals, and other charges on similarly-situated Fixed-Based Operators (FBOs) that use the airport and its facilities in the same or similar manner. However, FBOs under different types of sponsor agreements may have different fees and rentals. For example, an FBO leasing a sponsor-owned aeronautical facility may pay more in rent than an FBO that builds and finances its own facility. In the first case, the FBO is not servicing debt while in the second case, the FBO is servicing debt.[6]

d. Changes in Rates Over Time. A sponsor may revise its rental rate structure from time to time. An airport sponsor does not engage in unjust discrimination simply by imposing different lease terms on carriers and users whose leases have expired. FAA also recognizes rate

[4] Pub. L. No. 91-258, Sec. 208.

[5] A Fixed-Base Operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

[6] *See Penobscot Air Service, LTD,* v *County of Knox Board of Commissioners*, FAA Docket No. 16-97-04, Final Agency Decision (January 20, 1997, pp 7-8).

differences based on differences in other lease terms and facilities. Ideally, a new rate should be imposed at a time when the rates can be changed for all similarly situated tenants to avoid any claims of unjust discrimination. In some cases, however, the sponsor will have reason to revise rates even though existing contracts at lower rates have not yet expired. In such cases, the sponsor should make every effort to provide terms for new contracts that will support any difference in rates between new tenants and existing tenants. The sponsor should also consider limiting the term of new agreements to expire when existing agreements expire in order to bring all similarly situated tenants under a common rate structure at one time. While circumstances may allow differences in rental rates among tenants, landing fee schedules generally must be applied uniformly to all similarly situated users at all times.[7]

e. Air Carrier Incentive Programs. As an exception to the general requirement that air carriers making similar use of the airport be charged substantially comparable charges, the FAA allows a sponsor to attract new air service and competition at the airport by reducing or waiving fees, for a limited time period, to a carrier that agrees to provide certain new air service. An incentive program to increase air service and competition must itself be implemented in a nondiscriminatory manner. Requirements for incentive programs are discussed more fully in Chapter 15 of this Order, *Permitted and Prohibited Uses of Airport Revenue* also consult current ACO guidance for airline incentive programs.

f. Additional Information. Refer to Chapter 18 of this Order, *Airport Rates and Charges*, for a further discussion on airport rates and charges, and Chapter 15 of this Order, *Permitted and Prohibited Uses of Airport Revenue*, for use of airport revenue.

9.3. Types of Charges for Use of Airport Facilities. The sponsor may use direct charges (such as landing and tie-down fees) to charge aeronautical users for use of airport facilities. It may also use indirect charges through its FBO such as fuel flowage fees or percentages of gross receipts fees to cover the cost of providing airport facilities. For example, an FBO may have a ground lease, on which it erects hangars and other facilities, and also pays the sponsor a percentage of the receipts from fuel and aeronautical services provided to aeronautical users.

9.4. Airport Tenant and Concessionaire Charges to Airport Users. At most airports, profit-motivated private enterprise can best provide fuel, storage, and aircraft service. When negotiating agreements with tenants and concessionaires, it is the sponsor's responsibility to retain sufficient oversight to guarantee that aeronautical users will be treated fairly. A sponsor should include a "subordination clause" in its contracts. Such a clause provides that in the event of a conflict with a lease or contract term, the terms of grant assurances or other federal obligations prevail.

The sponsor has a federal obligation to ensure that aeronautical users have access to airport facilities on reasonable and not unjustly discriminatory terms. The sponsor is not obligated by federal grant agreements or property deeds with the United States to oversee the pricing and services for nonaeronautical concessions such as public parking and ground transportation, food and beverage concessions, and other terminal area concessions.

[7] *See Alaska Airlines, Inc., et al.* v. *Los Angeles World Airports, et al.*, Order 2007-6-8, No. OST-2007-27331 (June 15, 2007, pp 62-65).

9.5. Terms and Conditions Applied to Tenants Offering Aeronautical Services.

a. Signatory and Nonsignatory. An air carrier that is willing and able to assume the same obligations assumed by other tenant air carriers shall enjoy the same classification and status. This applies to rates, fees, rentals, rules, regulations, and conditions covering all the airport's aeronautical activities.

b. Signatory Fees and Rentals. The sponsor may grant lower fees and rentals to an air carrier willing and able to be a signatory to a sponsor's airport use agreement. When an air carrier is unwilling or unable to become a signatory, the sponsor may charge the air carrier higher non-signatory rates.

c. Different Rates to Similar Users. If the sponsor can show that different rates are nondiscriminatory and if the rates are substantially comparable, it may charge airport tenants different rates for similar airport uses. For example, the rental rates in different airline terminals may vary but only to the extent justified by the difference in circumstances. Such factors that could create different rental rates are differences in debt, location of the terminals, or physical layout and the condition of rental and public space.

d. Differences of Value and Use. The FAA may consider factors such as minimum investment requirements, demand, location, capital investment risk, ownership of facilities, time remaining on contract terms, and condition of facilities as reasons that may justify differing rates. For example, a sponsor may establish two classes of FBO, one serving primarily high performance aircraft and another that caters to piston powered aircraft. However, the varying rates must be justified by the differing circumstances, and should not arbitrarily confer an advantage on one category of operator over another.[8]

e. Escalation Provision. Ground leases with terms of five (5) or more years should contain a provision for periodic adjustments based on a recognized index to reflect inflation and other changing economic conditions (*e.g.*, change in the Consumer Price Index, an appraisal, *etc.*). This will facilitate parity between new and established lessees. An escalation provision also helps the sponsor comply with Grant Assurance 24, *Fee and Rental Structure*, which requires the sponsor to make the airport as self-sustaining as possible under the circumstances.

9.6. Fixed-Base Operations and Other Aeronautical Services.

a. Similarity of Facilities. If one FBO rents office and/or hangar space from the sponsor and another leases land from the sponsor and builds its own facilities, the sponsor would have justification for applying different rental rates and fee structures. Even though the operators offer

[8] *See Rick Aviation, Inc.* v. *Peninsula Airport Comm'n,* FAA DocketNo. 16-05-18, Director's Determination (May 8, 2007, p. 28).

the same services to the public, the cost and value of the facilities are different due to circumstance.

b. Location. If one FBO is in a prime location and another FBO is in a less advantageous area, the sponsor could logically charge different rental rates and fees to reflect the advantage of the location.

c. Similarity of Services. An airport might have an FBO that provides aeronautical services to air carriers and private operators such as fueling, ramp services, aircraft parking, crew transport, and catering while another FBO may focus only on general aviation (GA) services such as the sale of aviation fuel and oil, tie-down and aircraft parking, ramp services, flight training, aircraft sales, or avionics repair. These differing services may require different space, facilities, and other requirements based on business needs. If the services are not similar, sponsors are not required to charge the FBOs the same rates. Nonetheless, all rates charged must be equitable.

If FBOs at the airport are making the same or similar uses of the airport facilities under the same circumstances, then, absent some other distinguishing characteristic, the same rates, fees, and rental structure should apply.

To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards for conduct of a commercial aeronautical activity on the airport.

d. Minimum Standards. To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards applicable to aeronautical activities on the airport. Such standards must not unreasonably deny access to conduct aeronautical activities. For example, insurance requirements have to be reasonably attainable and relevant to the aeronautical activity and cannot have significantly higher requirements than other similarly situated activities. (*See*, Advisory Circular (AC) 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities* available on the FAA website, as listed in Appendix O of this Order.)

e. Incentive Rates. At a general aviation airport without commercial aeronautical services, FBOs may not be profitable for some time. In order to secure FBO services for aeronautical users, the sponsor may provide an incentive rate during an initial startup period, which should run for a specific period of time and be reflected in a written agreement. Once the startup period ends, the airport sponsor should charge standard rates and charges based on current values.

f. Unreasonable Restraint. If the sponsor requires an FBO to procure fuel, services, or supplies from a source specified by the sponsor, the FAA may deem the requirement an unreasonable restraint on the FBO's use of the airport and inconsistent with Grant Assurance 22, *Economic Nondiscrimination* or Grant Assurance 23, *Exclusive Rights*.

g. Aeronautical Activities conducted by the Airport Sponsor (Proprietary Exclusive). The sponsor of a public use airport may elect to provide any or all of the aeronautical services needed by the public at the airport. As discussed in Chapter 8 of this Order, Exclusive Rights, the

statutory prohibition against exclusive rights does not apply to the sponsor itself. The airport owner may itself exercise, but may not grant to another entity, the exclusive right to conduct any aeronautical activity.

However, sponsors must use their own employees and resources to conduct aeronautical activities under this exclusive right. An independent commercial enterprise, designated as agent of the owner, may neither exercise nor be granted an exclusive right at the airport.

(1). As a practical matter, most sponsors recognize that commercial aeronautical services are best provided by private enterprise. However, there are times an airport will choose to either exercise a full proprietary exclusive or offer some services while allowing competing services.

(2). The airport owner may establish reasonable standards applicable to the refueling, washing, painting, repairing, etc., of aircraft. However, unless the airport owner provides these services on an exclusive basis, it may not refuse to negotiate for the space and facilities needed to meet such standards by an operator willing and qualified to provide aeronautical services to the public.

If the airport sponsor reserves the exclusive right to sell fuel, it can prevent an airline or air taxi from selling fuel to others, but it must deal reasonably to permit such operators to refuel their own aircraft.

If the airport owner reserves the exclusive right to sell fuel, it may prevent an airline or air taxi from selling fuel to others, but it must permit such operators to refuel their own aircraft. Self-service fueling by flight operators, however, must be accomplished with their own employees and equipment. For information regarding fueling, refer to the current version of Advisory Circular (AC) 150/5230-4, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*. (See Chapter 11 of this Order, *Self-service*, for additional information.)

Aircraft operators do not have a right to bring a third party, such as an oil company, onto the airport to refuel their aircraft. This refueling would constitute an aeronautical activity undertaken by the fuel company, which has only such rights as the airport owner may confer. . Under this arrangement, the air carrier-owned fuel can be delivered to the airport fuel farm with fueling handled by the airport's contractors.

9.7. Availability of Leased Space. The sponsor cannot satisfy its federal obligation under Grant Assurance 22, *Economic Nondiscrimination,* to operate the airport for the public's use and benefit simply by keeping the runways open to all classes of users. The assurance obligates the sponsor to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public (*e.g.*, air carrier, air taxi, charter, flight training, or crop dusting services) or support services (*e.g.*, fuel, storage, tie-down, or flight line maintenance services) to aircraft operators. Sponsors are also obligated to make space available to support aeronautical activity of noncommercial aeronautical users (*i.e.*, hangars and tie-down space for individual aircraft owners). This means that unless it undertakes to provide these

services itself, the sponsor has a duty to negotiate in good faith for the lease of premises available to conduct aeronautical activities.[9] Since the scope of this federal obligation is frequently misunderstood, the following guidance is offered:

a. Servicing of Aircraft. All grant agreements contain an assurance that the sponsor will neither exercise nor grant any right or privilege that would have the effect of preventing the operator of an aircraft from servicing its own aircraft with its own employees. This does not, however, obligate the sponsor to lease an unlimited amount of space to every aircraft operator using the airport. The sponsor may decline to lease space when it has a reasonable and not unjustly discriminatory reason for doing so. The assurance requires only that any aircraft operator entitled to use the airfield is also entitled to tie down, adjust, repair, refuel, clean, perform self-service maintenance, and otherwise service its own aircraft, provided it does so with its own employees and conducts self-servicing in accordance with the sponsor's reasonable rules or standards established for such work. Accordingly, the assurance establishes a privilege of self-service, but it does not, by itself, compel the sponsor to lease the facilities necessary to exercise that privilege where the sponsor has a reasonable and not unjustly discriminatory reason for denying a request to do so.

b. Facilities Not Providing Service to the Public. When adequate facilities are otherwise available for lease, Grant Assurance 22, *Economic Nondiscrimination*, does not compel sponsors to lease vacant property to entities seeking to construct facilities for private aeronautical use. Examples include making property available to construct private use hangars while vacant hangars are available on the airport that can meet the potential tenant's needs. (*See* Grant Assurance 38, *Hangar Construction*, regarding hangars for private aircraft storage.) Therefore, when neither the airport owner or the tenant FBOs can provide adequate storage, fueling, and other basic services to an airport users, the user may not be denied the right to lease space, if available, on reasonable terms to install such facilities at its own expense. For further information, see Chapter 12 of this Order.

c. Activities Offering Services to the Public. Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to negotiate in good faith and on reasonable terms with prospective aeronautical service providers.

An airport sponsor must make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. If adequate space is available on the airport and the sponsor is not already providing identical aeronautical services, Grant Assurance 22, Economic Nondiscrimination,

[9] *See Boston Air Charter* v. *Norwood Airport Comm'n*, FAA Docket No. 16-07-03, Director's Determination (April 11, 2008, p 28), *aff'd* Final Decision (August 14, 2008).

requires the sponsor to negotiate in good faith and on reasonable terms with prospective aeronautical service providers.

The FAA interprets the willingness of a prospective provider to lease space and invest in facilities as sufficient evidence of a public need for those services. In such a situation, the FAA does not accept a sponsor's claim of insufficient business activity as a valid reason to restrict the prospective provider's access to the airport.

d. Leasing General Aviation Apron Constructed with Federal Assistance. Federally financed airport facilities, including aprons, are designated as public use areas.

(1). Management Agreements. The airport sponsor may want an FBO to manage tie-down spaces, maintain the apron area, remove snow, and perform other similar functions. Since the relationship between the airport sponsor and anyone conducting management duties is that of principal and agent, a management agreement, rather than a lease, is appropriate. Such an agreement should clearly specify respective responsibilities and provide for acceptable practices, such as nondiscriminatory waiting lists for tie-down or hangar spaces and designation of an itinerant tie down area. Waiting lists should be available for review by existing and prospective airport tenants to ensure transparency and avoid the appearance of unjust discrimination in the selection of tenants. The tie-down fee schedule should be established or approved by the airport sponsor and must be reasonable.

(2). Lease Agreements. Tie-downs or spaces on the apron may be leased by the airport sponsor to individual aircraft owners and/or to FBOs for space necessary to service their aircraft. Apron areas may be leased provided the terms of the lease do not restrict the airport sponsor from complying with its grant obligations. If AIP funding is used in the construction of public-use ramp areas, prior to leasing such areas the sponsor will need to provide justification to FAA and receive approval if the proposed use of the public use ramp area might violate the applicable grant agreement.

In general, the lease should contain provisions to ensure that the public will be served by the lessee in a manner consistent with the grant agreements. A demonstrated, immediate need for the space to be leased should be documented by the FBO to preclude attempts to limit competition or to create an exclusive right. The lease of any apron area to an FBO should not result in activity or use contrary to the approved Airport Layout Plan (ALP) and or the intended use of AIP funded infrastructure.[10]

Public-use areas, such as taxiways and self-fueling areas, may not be leased.

[10] Pavement funded with AIP is intended for public use. Proposals to use AIP obligated paved areas as part of exclusive use lease areas require prior FAA approval and reimbursement of ineligible costs is required (FAA Order 5100.38D, Appendix I, I-2).

The lease should include conditions to assure that the apron area will be maintained in a safe and serviceable condition; that snow or ice will be promptly removed; that services will be provided on a fair and equal and not unjustly discriminatory basis; and that charges for services will be fair, reasonable, and not unjustly discriminatory.

Any lease arrangement must protect availability for public use, including nondiscriminatory practices for assignment of tie-down space and provide for the accommodation of itinerant users.

The lease must preclude the lessee from requiring that users of the leased area exclusively procure goods and services from that lessee. However, the lease need not require that a competitor must be allowed to enter the leased area to perform a service, including fueling, if a user can freely get that service at another location on the airport. The competitor, however, must be allowed to assist the user of a disabled aircraft in taxiing or towing the aircraft away from the leased area.

The sponsor may not lease to an FBO more apron space than that for which the FBO has shown an immediate demonstrated need. Where there is only one FBO on an airport and there is more apron space than required for that operation, only that space actually required should be leased to the existing FBO. This ensures that apron space is available if a future tenant requests it.

The lessee must not prohibit or restrict the use the area for tie-down for those servicing their own aircraft. See Grant Assurance 22f.

9.8. Air Carrier Airport Access. With the passage of the Airline Deregulation Act of 1978 (Deregulation Act),[11] air carriers may freely enter new domestic markets. Even before the Deregulation Act's passage, however, many airports already operated at or near capacity in terms of ticket counter, gate, and ramp space. New air carriers wishing to serve an airport often faced a lack of available facilities. In some instances, established air carriers made space available for the newcomers. However, in other cases, no space was made available, and sponsors subsequently denied the newcomers access to the airport.

a. Air Carrier Accommodation. In accordance with Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, which prohibits a sponsor from directly or indirectly conveying an exclusive right to an air carrier, the FAA determined that a sponsor may not deny an air carrier access solely based on the nonavailability of existing facilities. The sponsor must make arrangements for accommodations if reasonably possible. Consequently, access issues can often be complex and are not always easy to resolve. For obligations that may exist in competition plans at certain "covered" airports please see FAA Order 5100.38D, Appendix W, Section W-3.

b. Reports of Denial of Access. Grant Assurance 39, *Competitive Access*, requires operators of large and medium hub airports to report to the Secretary any denial of a request by an air carrier for access to the airport. A report is due each February and August if there has been any denial of

[11]Airline Dergulation Act of 1978, Pub. L. 95-504, as codified at 49 U.S.C. §41713 *et seq*. (October 24, 1978).

access in the preceding six-month period (FAA Order 5100.38D, Appendix W, Table W-2).[12] For obligations that may exist in competition plans at certain "covered" airports please see FAA Order 5100.38D, Appendix W; Sections W-5, W-6, and W-7.

c. FAA Headquarters Airport Compliance Division (ACO-100) Review. The ADOs or regional airports divisions should notify ACO-100 if the region cannot develop a feasible solution to the denial or potential denial of an air carrier access request. ACO-100 will coordinate the effort of the regional airports division with the FAA Office of Chief Counsel to resolve the problem.

9.9. Civil Rights. The Office of Civil Rights, in coordination with the ADOs or regional airports divisions, is responsible for enforcing Grant Assurance 30, *Civil Rights*. More information is available at 49 C.F.R. part 21 *Nondiscrimination in Federally Assisted Programs of the Department of Transportation*.

The Office of Civil Rights advises, represents, and assists the FAA Administrator on civil rights, diversity, and equal opportunity matters that ensure the elimination of unlawful discrimination on the basis of race, color, national origin, sex, age, religion, creed, and individuals with disabilities in federally-operated and federally-assisted transportation programs. https://www.faa.gov/about/office_org/headquarters_offices/acr/.

9.10. FAA Policy on Granting Preferential Treatment Based on Residency. The FAA has received complaints about a sponsor's policy of granting preferential treatment in the assignment of aircraft storage hangars or other services to residents of the sponsor's locality. Such preferential practices are unreasonable and unjustly discriminatory, and can result in the granting of an exclusive right contrary to Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, implementing 49 U.S.C. §§ 47107(a) and 40103(e).

A federally obligated airport sponsor has received federal aid in support of the national air transportation system. All users of the national airport system pay taxes to support and maintain the system and all its component airports, including the airport in question. The fact that certain users at a particular airport pay district or other local taxes, while others do not, does not justify preferential treatment, differential rates, or other unjustly discriminatory practices having the effect of unreasonably restricting or excluding users who do not pay those local taxes.

Nonresident aeronautical users have the same rights as resident aeronautical users regarding reasonable access to, and services provided at, a federally obligated airport. Accordingly, the airport must be available on reasonable terms to all public aeronautical users, and a local tax obligation does not establish a reasonable basis upon which to discriminate between resident and nonresident airport users.

The national air transportation system is dependent on each airport properly functioning as part of the whole system. Allowing airport sponsors to invoke local preferences, such as granting preferential treatment in the assignment of aircraft storage hangars to resident aeronautical users,

[12] *See Tropical Aviation Ground Services, Inc., and Air Sunshine, Inc.* v. *Broward County, Florida,* FAA Docket No. 16-12-15, Director's Determination (April 27, 2015,) pp. 27-28.

could result in a patchwork of local preferences that would be inconsistent with a national air transportation system.

9.11. through 9.14. reserved.

Chapter 10: Reasonable Commercial Minimum Standards

Updated November 2021

10.1. Introduction. This chapter describes the sponsor's discretion to establish minimum standards for commercial service providers and airport regulations for all other airport activities. Flying clubs are not-for-profit commercial operations and are not normally covered by commercial minimum standards. However, flying clubs are covered within this chapter since a majority of federally obligated airports where flying clubs exist have historically addressed the issue in their minimum standards.

While minimum standards are developed by airport sponsors, the regional airports divisions (Regions) and airports district offices (ADOs) are available to advise sponsors on the proposed standards including whether the standards appear to protect or convey an exclusive right. The FAA does not provide formal approval of minimum standards.

10.2. FAA Recognition of Minimum Standards. A sponsor's establishment of minimum standards and airport regulations contribute to nondiscriminatory treatment of airport tenants and users. It also helps the sponsor avoid granting an exclusive right.[1] When the sponsor imposes reasonable and not unjustly discriminatory minimum standards for airport operations, and the sponsor then denies access or services based on those standards, the FAA will not find the sponsor in violation of the assurances regarding exclusive rights and unjust discrimination, provided those standards:

a. Apply uniformly to all similarly situated providers of aeronautical services including full service Fixed-Base Operators (FBOs)[2] and Specialized Aviation Service Operators (SASOs).

b. Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA guidance when available.

c. Are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect providers of aeronautical services from unreasonable competition.

d. Are relevant to the activity for which they apply.

e. Provide the opportunity for others who meet the standards to offer aeronautical services.

Note: There is no requirement to include nonaeronautical activities (such as a restaurant, parking or car rental) in minimum standards since those activities are not covered under the grant assurances or covenants in conveyances of federal property.

10.3. Use of Minimum Standards to Protect an Exclusive Right. When the sponsor implements minimum standards for the purpose of protecting an exclusive right, the FAA may find the sponsor in violation of the exclusive rights prohibition. Evidence of intent to grant an

[1] See chapter 8 of this Order, *Exclusive Rights*, and chapter 9 of this Order, *Unjust Discrimination between Aeronautical Users,* and chapter 11 of this Order*, Self-Service*.

[2] An FBO is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. See section 10.5(f) for more information on SASOs.

exclusive right might be, for example, the adoption of a standard that only one particular operator can reasonably or practically meet.

10.4. Benefits of Minimum Standards. The FAA strongly recommends developing minimum standards because these standards typically:

a. Promote safety in all airport activities and maintain a higher quality of service for airport users.

b. Protect airport users from unlicensed and unauthorized products and services.

c. Enhance the availability of adequate services for all airport users.

d. Promote the orderly development of airport land.

e. Provide a clear and objective distinction between service providers that will provide a satisfactory level of service and those that will not.

f. Prevent disputes between aeronautical providers and reduce potential complaints.

10.5. Developing and Applying Minimum Standards.

a. Advisory Circular (AC) on Minimum Standards. When developing minimum standards, the most critical consideration is the particular nature of the activity and the operating environment at the airport. Airport sponsors should tailor their minimum standards to their individual airports. For example, consider the requirements for an FBO located at a small, rural airport that serves only small General Aviation (GA) aircraft. A minimum standard requiring the FBO to make jet fuel available if there were few jet operations at the airport would likely be unreasonable. If that same FBO serviced ultralight vehicles, light-sport aircraft, or type-certificated aircraft that use automotive fuel, it would be unreasonable to establish a commercial aeronautical activity standard that would prevent the FBO from selling ethanol-free premium unleaded automotive fuel (commonly referred to as MoGas) or ASTM 6227 standard aviation gasoline (commonly referred to as AvGas), or establish a minimum fuel storage tank size that is unreasonable for the type of fuel sold.

The potential imposition of unreasonable requirements illustrates why "fill-in-the-blank" minimum standards and the blanket adoption of another airport's standards are usually not effective. This could result in the imposition of irrelevant and unreasonable standards. Instead, the FAA has provided guidance in the form of AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, to illustrate an approach to developing and implementing minimum standards.

b. Safety and Efficiency Standards. Federal law and policies requiring airport sponsors to provide airport access to all types, kinds, and classes of aeronautical activity, as well as to the general public, include certain exceptions. Exceptions to the general rule may apply when airport safety or efficiency would be compromised.

However, a restriction imposed for safety or efficiency purposes that is subsequently challenged by an aeronautical user will require concurrence from FAA Flight Standards (FS) and/or Air Traffic (AT) before the FAA headquarters Airport Compliance Division (ACO-100) or the

Region or ADO can determine the restriction is reasonable and approve the restriction. This is because the federal government, through this exercise of its constitutional and statutory powers (49 U.S.C. § 40103(a)), has preempted the areas of airspace use and management, air traffic control, and aviation safety.[3]

c. Aircraft Weight Restrictions. A sponsor may impose a restriction based on specified maximum gross weight or wheel loading based on the design load bearing capacity of the pavement. Any restrictions should allow for occasional operations by aircraft above the weight limit that do not result in excessive wear or deterioration. Before imposing a weight-based restriction, however, the FAA recommends the sponsor seek FAA review of the proposal to ensure compliance with federal obligations.

d. Public Access. The sponsor may also impose restrictions that apply to the general public. For example, the public is generally subject to restrictions concerning vehicle and pedestrian access, security, and crowd control when using airport facilities.

e. Availability of FAA Assistance. Airport sponsors can obtain assistance from Regions and ADOs in determining the reasonableness of restrictions imposed through minimum standards.

f. Specialized Aviation Service Operations. When Specialized Aviation Service Operations (SASOs), sometimes known as single-service providers or special FBOs, apply to do business on an airport, "all" provisions of the published minimum standards may not apply. This is not to say that all SASOs providing the same or similar services should not equally comply with all applicable minimum standards. However, an airport should not, without adequate justification, require that a service provider desiring to provide a single service or less than full service also meet the criteria for a full-service FBO. Examples of these specialized services may include for profit aircraft flying clubs, flight training, aircraft airframe and powerplant repair/maintenance, aircraft charter, air taxi or air ambulance, aircraft sales, avionics, instrument or propeller services, or other specialized commercial flight support businesses. Airport sponsors are not required to permit a SASO for fuel sales alone. The right to sell fuel is generally bundled with other required services.[4]

g. Independent Operators. If independent operators[5] are to be allowed to perform a single-service aeronautical activity[6] on the airport (aircraft washing, maintenance, etc.), the airport sponsor should have a licensing or permitting process in place that provides a level of regulation and compensation satisfactory to the airport. Frequently, a yearly fee or percentage of the gross receipts fee is a satisfactory way of monitoring this type of operation.

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[3] See chapter 14 of this Order, *Restrictions Based on Safety and Efficiency Procedures and Organization;* Grant Assurance 19*, Operation and Maintenance* (for safe and serviceable airport), and Grant Assurance 29, *Airport Layout Plan* (adverse effects on airport safety, utility, or efficiency not in conformity with the ALP).

[4] AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*.

[5] Independent operators also may be termed "freelance" operators and generally are self-employed persons who are not employed continuously but hired to do specific assignments or jobs.

[6] See chapter 8 of this Order, *Exclusive Rights*, and Section 8.6, "Airports Having a Single Aeronautical Service Provider".

10.6. Flying Clubs.

a. Definition. The FAA defines a flying club as a nonprofit entity (*e.g.*, corporation, association, or partnership) organized for the express purpose of providing its members with aircraft for their personal use and enjoyment only. (*See* 81 Fed. Reg. 13719 (March 15, 2016).

b. General. The ownership of the club aircraft must be vested in the name of the flying club or owned by all its members. The property rights of the members of the club shall be equal; no part of the net earnings of the club will inure to the benefit of any individual in any form, including salaries, bonuses, etc. The flying club may not derive greater revenue from the use of its aircraft than the amount needed for the operation, maintenance and replacement of its aircraft.

c. Policies. A flying club qualifies as an individual under the grant assurances and, as such, has the right to fuel and maintain the aircraft with its members. The airport owner has the right to require the flying club to furnish documents, such as insurance policies and a current list of members, as may be reasonably necessary to assure that the flying club is a nonprofit organization rather than an FBO or other commercial entity.

The FAA suggests several definitions and items as guidance for inclusion by airports in their minimum standards and airport rules and regulations. (See Appendix O of this Order, *Minimum Standards for Commercial Aeronautical Activities*, and Appendix P, *Sample Airport Rules and Regulations*. Note: Information in samples is for example only.) These items include:

(1). All flying clubs desiring to base their aircraft and operate at an airport must comply with the applicable provisions of airport specific standards or requirements. However, flying clubs will not be subject to commercial FBO requirements provided the flying club fulfills the conditions contained in the stated airport standards or requirements satisfactorily.

(2). Flying clubs may not offer or conduct charter, air taxi, or aircraft rental operations. They may conduct aircraft flight instruction for regular members only, and only members of the flying club may operate the aircraft.

(3). A flying club may permit its aircraft to be used for flight instruction (1) in a club-owned aircraft as long as both the instructor providing instruction and person receiving instruction are members of the club owning the aircraft, or (2) when the instruction is given by a lessee based on the airport who provides flight training and the person receiving the training is a member of the flying club. In either circumstance, a flight instructor may receive monetary compensation for instruction or may be compensated by credit against payment of dues or flight time; however that individual may not receive both compensation and waived or discounted dues or flight time concurrently. The airport sponsor may set limits on the amount of instruction that may be performed for compensation.

(4). A qualified mechanic who is a registered member and part owner of the aircraft owned and operated by a flying club may perform maintenance work on aircraft owned by the club. The mechanic may receive monetary compensation for such maintenance work or may be compensated by credit against payment of dues or flight time; however that individual may not receive both compensation and

waived or discounted dues or flight time concurrently. The airport sponsor may set limits on the amount of maintenance that may be performed for compensation.

(5). All flying clubs and their members are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of such club at the airport, except that said flying club may sell or exchange its capital equipment.

(6). A flying club at any airport shall comply with all federal, state, and local laws, ordinances, regulations and the rules and regulations of the airport.

(7). The flying club should file periodic documents as required by the sponsor, including tax returns, insurance policies, membership lists, and other documents that the sponsor reasonably requires.

(8). Flying clubs may not hold themselves out to the public as fixed based operators, a specialized aviation service operation, maintenance facility or a flight school and are prohibited from advertisements as such or be required to comply with the appropriate airport minimum standards.

Flying clubs may not indicate in any form of marketing and/or communications that they are a flight school, and flying clubs may not indicate in any form of marketing and/or communications that they are a business where people can learn to fly.

d. Violations. A flying club that violates the requirements for a flying club – or that permits one or more members to do so – may be required to terminate all operations as a flying club at all airports controlled by the airport sponsor.

10.7. Illegal Air Charters.

a. Definition. The FAA broadly recognizes "illegal air charters" as unauthorized air charter operations. Illegal Part 135 charters operate without meeting the safety requirements of a certificated air carrier. These include aircraft owners that in order to generate revenue, allow the use of their aircraft temporarily for charters or by management companies as a loaner without meeting the FAA requirements. An illegal air charter also can present as flight instruction or aircraft demonstration flights.

b. General Airport sponsors that suspect an illegal charter should discuss concerns or questions with local FAA Flight Standards District Office since the FAA is the investigator and final decision maker on aviation safety. The FAA does not want airport sponsors to investigate suspected illegal aeronautical activities such illegal air charters. The sponsors do not have the responsibility or expertise to conduct investigations of suspected illegal aeronautical activities.

Some airport sponsors have incorporated language in their tenant leases, airport rules and regulations, and minimum standards that prohibit illegal commercial aeronautical activities such as illegal charter operations. These airport documents contain language that:

1. Requires all users will abide by all FAA regulations and requirements while operating at the airport.

2. Requires tenants to provide listing of aircraft used for commercial activities and their owners.

3. Require copies of the current FAA-issued Air Operating Certificate if the tenant is a commercial operator. This helps ensure that the airport sponsor charges the appropriate rates and charges to the commercial operator.

10.8. through 10.10. reserved.

Chapter 11: Self-Service

Updated November 2021

11.1. General. The sponsor of a federally obligated airport must permit airport aeronautical users, including air carriers, the right to self-service and to use any of the airport's Fixed-Base Operators (FBOs).[1]

11.2. Restrictions on Self-servicing Aircraft. Grant Assurance 22(f), *Economic Nondiscrimination,* provides that a sponsor "will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance, repair, and self-fueling)[2] that it may choose to perform." (See Appendix Z for the definitions of Self-fueling and Self-service.)

The FAA considers the right to self-service as prohibiting the establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment.

Aircraft owners and operators must be permitted to tie down, adjust, refuel, clean, perform self-service repair and preventative maintenance, and otherwise take care of their own aircraft, provided that they or their employees perform these tasks. The sponsor is obligated to operate the airport in a safe and efficient manner. The sponsor should establish reasonable rules and standards, and the aircraft owner or operator must conduct self-servicing in accordance with those rules and standards for such work.

The establishment of reasonable rules, applied in a not unjustly discriminatory manner, that restrict the introduction of equipment, personnel, or practices that would be unsafe, detrimental to the public welfare, or that would affect the efficient use of airport facilities by others, will not be considered a violation of Grant Assurance 22(f), *Economic Nondiscrimination*.

11.3. Permitted Activities. Generally, the following activities are permitted by an aircraft owner or operator, including but not limited to individuals, air carriers, air taxis, corporate flight departments, charter operators, and flight schools so long as the activities are conducted in accordance with local, state, and federal health, safety, and environmental regulations:

a. Perform its own self-fueling activities, including bringing fuel to the airport to include ethanol-free premium automotive gasoline and other approved fuels, with its own employees in conformance with the sponsor's rules and regulations pertaining to self-service operations. (See Appendix P, *Sample Airport Rules and Regulations*. Note: Information in samples is for example only.)

b. Perform self-service on the owner or operator's own aircraft, including ground handling,

[1] A Fixed-Base Operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

[2] For information regarding preventative maintenance, refer to Advisor Circular (AC) 43-12A, *Preventative Maintenance*. For information regarding fueling, refer to Advisory Circular (AC) 150/5230-4B, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*.

servicing, painting, and cleaning.

c. Use its own sources for parts and supplies.

d. Perform self-service maintenance in accordance with 14 CFR part 43 and Advisor Circular (AC) 43-12A, *Preventative Maintenance*.

(1). A general aviation aircraft owner or operator may perform the activities listed in the definition of preventive maintenance in paragraph (c) of Appendix A to 14 CFR part 43. A general aviation aircraft owner or operator may also perform aircraft restoration, major repairs, and alterations if the owner or operator performing those actions holds an appropriate certificate under 14 CFR part 65, as required by part 43.

(2). The holder of an operating certificate issued under parts 121 or 135 may perform maintenance, preventive maintenance, and alterations on its own aircraft with its own employees, as provided in parts 121 or 135 respectively.

(3). The holder of a sport pilot certificate who owns or operates a light sport category aircraft may perform preventive maintenance on that light sport category aircraft.

(4). The owner or operator of an aircraft for which an experimental certificate has been issued may perform maintenance, repair, and alteration of the aircraft if the owner or operator holds an experimental aircraft repairman certificate for the aircraft.

11.4. Contracting to a Third Party. Self-service activities generally cannot be contracted out to a third party. Self-service activities must be performed by the owner or employees of the entity involved. Where third-party contracting of self-servicing activities is proposed for aircraft under long-term lease, the airport sponsor should request clarifying information to confirm that sufficient interest in and control over the aircraft is maintained. Airport sponsors should also confirm that the aircraft operator retains sufficient control over third-party contracted employees for the purposes of self-servicing. Airport sponsors may not allow third-party contracting of self-service activities where the owner/operator of the aircraft does not retain ultimate control over contracted personnel, including interviewing, hiring, assigning duties, and termination of the employee assigned to the aircraft. The FAA may, upon request, assist the airport sponsor in evaluating sufficient control for the purposes of evaluating self-servicing by a contracted third party.[3]

11.5. Restricted Service Activities. The sponsor may require an aircraft owner or operator to:

a. Observe reasonable rules and regulations pertaining to self-service operations, including local

[3] Self-servicing of aircraft regulated by 14 CFR part 91 subpart K (fractional aircraft ownership programs) are addressed at paragraph 11.10 *Fractional Aircraft Ownership Programs.*

fire safety and federal and/or state environmental requirements.[4]

b. Perform aircraft maintenance, painting, and fueling operations in appropriate locations using appropriate equipment. (For information regarding fueling, refer to AC 150/5230-4B, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*.)

c. Limit equipment, personnel, or practices that are unsafe, or detrimental to the public welfare or that would affect the efficient use of airport facilities by others.

d. Pay the same fuel flowage fees that the sponsor charges providers selling fuel to the public. This practice alleviates the potential for claims of unjust discrimination.

11.6. Reasonable Rules and Regulations. The sponsor should design its self-service rules and regulations to ensure safe operations, preservation of facilities, and the protection of the public interest. Examples of such rules and regulations may include:

Aircraft owners or operators, including individuals, air carriers, air taxis, corporate flight departments, charter operators, and flight schools should conduct activities in accordance with the local, state, and federal health, safety and environmental regulations.

a. Confining the use of paints, dopes, and thinners to structures that meet appropriate safety and environmental criteria.

b. Establishing safe practices for storing and transporting fuel.

c. Restricting hangars to related aeronautical activities.

d. Placing restrictions on the use of solvents to protect sewage and drainage facilities.

e. Establishing weight limitations on vehicles and equipment to protect airport roads and paving, including limits on delivery trucks, fuel trucks, and construction equipment.

f. Setting time limits on the open storage of nonairworthy aircraft, wreckage, and major components.[5]

g. Maintaining minimum requirements for taxiing an aircraft, *e.g.*, a requirement to hold an FAA pilot, mechanic, repairman light sport repairman, or experimental aircraft repairman

[4] FAA Order 1050.15A, *Fuel Storage Tanks at FAA Facilities*, dated April 30, 1997, establishes agency policy, procedures, responsibilities, and implementation guidelines to comply with regulations pertaining to Underground Storage Tanks (UST) of the Federal Aviation Administration as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), as amended by the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616) and other acts, and as implemented by the U.S. Environmental Protection Agency's Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules regulation, 40 CFR parts 280 and 281.

[5] S*ee BMI Salvage Corporation and Blueside Services, Inc.* v. *Miami-Dade County Florida*, No. 16-05-16 (July 25, 2006), Final Agency Decision aff'd on remand pp. 46-47(April 15, 2011).

certificate.

h. Setting requirements for escorting passengers and controlling vehicular access.

i. Requiring certain regulations that mirror FAA regulations. Requirements inconsistent with FAA regulations may not be reasonable. For example, requiring a pilot license or medical certificate as a condition for self-servicing aircraft is inconsistent with 14 CFR part 61 (*i.e.*, an aircraft *owner* is not required to be a licensed pilot or to hold a medical certificate). The aircraft *pilot* or *operator* would have to meet FAA licensing requirements. The aircraft *owner* must simply *own* the aircraft to self-service it.

j. Defining permitted locations for maintenance engine runups or otherwise operating an aircraft with no intent to taxi.

An airport sponsor is under no obligation to permit aircraft owners to introduce equipment, personnel, or practices that would be unsafe, or detrimental to the public welfare.

11.7. Restrictions Based on Safety and Location. An airport sponsor is under no obligation to permit aircraft owners to introduce onto the airport any equipment, personnel, or practices that would be unsafe, or detrimental to the public welfare or that would affect the efficient use of airport facilities by others. Reasonable rules and regulations should be adopted to confine aircraft maintenance and fueling operations to appropriate locations with equipment commensurate to the job being done. In addition, aircraft owners that are subtenants of an airport tenant, such as an FBO, may not be able to self-fuel on the tenant or FBO premises without the approval of the airport owner and tenant. However, the subtenant may be directed by the airport owner to an alternative location on the airport to self-fuel.

11.8. Activities Not Classified as Self-service. Activities not classified as self-service include servicing aircraft and parts for others, providing parts and supplies to others, receiving services and supplies from fuel Cooperative Organizations (CO-OPs), and delivery of fuel to owners or operators by off-airport suppliers.

11.9. Sponsor Self-service Prerogatives.

a. A sponsor may establish reasonable minimum standards and rules and regulations to be followed when conducting self-service operations, including specifying equipment and personnel training requirements. Where an owner or operator does not have the equipment or personnel to meet the sponsor's self-service requirements, the sponsor may deny the owner or operator the opportunity to perform the specific self-service activity. In such cases, the FAA will not find the sponsor in violation of its grant assurances regarding self-service operations. In other words, the fact that a particular operator cannot meet requirements that the FAA finds reasonable does not constitute a violation of federal obligations on the part of the sponsor. The sponsor's self-service rules and regulations, when established specific for its airport, will support and ensure safe operations, preservation of facilities, and protection of the public interest.

b. Fuel Cooperative Organizations (CO-OPs). An airport sponsor is not required to permit a CO-OP to self-service. If a sponsor does permit CO-OPs to self-service, the CO-OP will have to

observe the same minimum standards and rules and regulations applicable to all self-service activities. In addition, if self-fueling is allowed for CO-OPs, the sponsor may require the CO-OP to demonstrate joint ownership of the fuel tank and the fuel. The sponsor may also require the CO-OP to document that all personnel involved in fueling operations are adequately trained and that self-fueling is conducted only for that CO-OP business partner for which the employee actually works.

c. When an owner or operator obtains a certificate that authorizes it to fuel with ethanol-free premium automotive gasoline, the sponsor may impose the same rules and regulations on that owner or operator as it imposes on the airport's other self-service operations. The requirements must be reasonable for the operation.

d. Flying Club. When an organization claims self-service status by virtue of its status as a flying club, the sponsor may hold the organization to the same rules and regulations that it established for its other self-service operations.[6]

11.10. Fractional Aircraft Ownership Programs.

a. Summary. The regulatory definitions and safety standards for fractional ownership programs are established in 14 CFR part 91 subpart K. This regulation defines the program elements, allocates operational control responsibilities and authority to the owners and program manager, and provides increased operational and maintenance safety requirements for fractional ownership programs. (Additional requirements can be found in part 91 subpart F.)

b. Background. The fractional ownership concept began in 1986 with the creation of an industry program that offered increased flexibility in aircraft ownership and operation. This program used existing aircraft acquisition concepts, including shared aircraft ownership, with the aircraft being managed by an aircraft management company.

The aircraft owners participating in the program purchase a minimum share of an aircraft, share that specific aircraft with others having an ownership interest in that aircraft, and participate in a lease aircraft exchange program with other owners in the program. The aircraft owners use a common management company to maintain the aircraft, to administer aircraft leasing among the owners, and to provide other aviation expertise and professional management services. Flight Standards Service definitions and policies on fractional ownership are summarized in AC 91-84, *Fractional Ownership Programs*.

c. Policy. FAA has found companies engaged in fractional ownership operations under part 91 subpart K to be aircraft owners for purposes of the self-service provisions of Grant Assurance 22(f), *Economic Nondiscrimination*, and entitled to self-fuel fractionally owned aircraft, as well as to perform other self-service functions.

11.11. Air Carriers. Self-service requirements for air carrier operations (*i.e.* 14 CFR Part 121) may present additional issues which may differ or impact the applicability of certain concepts which are normally acceptable for general aviation. Air carrier operations may involve aircraft leasing terms which vary significantly from one carrier to another and may involve fueling

[6] *See also, Petition of the Aircraft Owner and Pilots Association (AOPA) To Amend FAA Policy Concerning Flying Club Operations at Federally Obligated Airports,* 81 Fed. Reg. 13719 (March 15, 2016).

arrangements normally not found in other types of operations.

11.12. through 11.14. reserved.

Chapter 12: Review of Aeronautical Lease Agreements

12.1. Introduction. This chapter discusses procedures for reviewing lease agreements between the sponsor and aeronautical users. As part of the compliance program, the FAA airports district office (ADO) or regional airports division may review such agreements, advising sponsors of their federal obligations, and ensuring that the terms of the lease do not violate a sponsor's federal obligations.

12.2. Background. The operation of a federally obligated airport involves complex relationships between the sponsor and its aeronautical tenants. In most instances, the sponsor will turn to private enterprise to provide the aeronautical services that make the airport attractive and self-sustaining.

a. Rights Granted by Contract. Airport lease agreements usually reflect a grant of three basic rights or privileges:

(1). The right for the licensee or tenant to use the airfield and public airport facilities in common with others so authorized.

(2). The right to occupy as a tenant and to use certain designated premises exclusively.

(3). The commercial privilege to offer goods and services to airport users.

b. Consideration for Rights Granted. The basic federal obligation of the sponsor is to make public landing and aircraft parking areas available to the public. However, the sponsor may impose a fee to recover the costs of providing these facilities. (Refer to chapter 18 of this Order, *Airport Rates and Charges*, for a further discussion on rates and charges.) Frequently, the sponsor recovers its airfield costs indirectly from rents or fuel flowage fees that it charges its commercial tenants. The sponsor's substantial capital investment and operating expense necessitates assessing airport fees to recover these costs.

c. Operator/Manager Agreements. Sometimes a sponsor may, for various reasons, rely on commercial tenants to carry out certain sponsor federal obligations. For instance, a sponsor may (i) contract with a commercial tenant to perform all or part of its airfield maintenance, or (ii) delegate to the tenant responsibility for collecting landing fees, publishing notices to airmen, or (iii) contract for airport management. When this occurs, the FAA highly recommends that the sponsor and tenant enter into separate agreements: one agreement for the right to operate an aeronautical business on the airport, and a separate management agreement if the tenant provides management services on behalf of the sponsor.

12.3. Review of Agreements.

a. Scope of FAA Interest in Leases. The FAA does not review all leases, and there is no requirement for a sponsor to obtain FAA approval before entering into a lease. However, when

the ADO or regional airports division does review a lease agreement, the review should include the following issues:

(1). Determine if a lease has the effect of granting or denying rights that are contrary to federal statute, sponsor federal obligations, or FAA policy. For example, does the lease grant options or rights of first refusal that preclude the use of airport property by other aeronautical tenants?

(2). Ensure the sponsor has not entered into a contract that would surrender its capability to control the airport.

(3). Identify terms and conditions that could prevent the airport from realizing the full benefits for which it was developed.

(4). Identify potential restrictions that could prevent the sponsor from meeting its grant and other obligations to the federal government. For example, does the lease grant the use of aeronautical land for a nonaeronautical use?

b. Form of Lease or Agreement. The type of document or written instrument used to grant airport privileges is the sole responsibility of the sponsor. In reviewing such documents, the FAA office should concentrate on determining the nature of the rights granted and whether granting those rights may be in violation of the sponsor's federal obligations. The most important articles of a lease to review include:

(1). Premises. What is being leased – land or facilities or both? Does the lease include only the land and/or facilities that the aeronautical tenant can reasonably use or has the tenant been granted options or rights of first refusal for other airport property and/or facilities that it will not immediately require? Do options or rights of first refusal grant the tenant an exclusive right by allowing the tenant to control a majority or all of the aeronautical property on the airport that can be developed?

(2). Rights and Obligations. Does the lease grant the tenant an explicit or implied exclusive right to conduct a business or activity at the airport? Does the lease state the purpose of the lease, such as "the noncommercial storage of the owner's aircraft?" Does the lease require any use to be approved by the airport sponsor? This will prevent future improper nonaeronautical uses of airport property.

(3). Term. Does the term exceed a period of years that is reasonably necessary to amortize a tenant's investment? Does the lease provide for multiple options to the term with no increased compensation to the sponsor? Most tenant ground leases of 30 to 35 years are sufficient to retire a tenant's initial financing and provide a reasonable return for the tenant's development of major facilities. Leases that exceed 50 years may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property. FAA offices should not consent to proposed lease terms that exceed 50 years.

(4). Payment of Fees to the Sponsor. Does the lease assess the tenant rent for leasing airport property and/or facilities and a concession fee if the tenant provides products and/or services to aeronautical users? Does the lease provide for the periodic adjustment of rent? Has the rental of airport land and/or facilities been assessed on a reasonable basis (*e.g.*, by an appraisal)?

(5). Title. Does the title to tenant facilities vest in the sponsor at the expiration of the lease? Do any lease extension or option provisions provide for added facility rent once the title of facilities vests in the sponsor?

(6). Subordination. Is the lease subordinate to the sponsor's federal obligations? Subordination may enable the sponsor to correct tenant activity through the terms of its lease that otherwise would put the sponsor in violation of its federal obligations.

(7). Assignment and Subletting. Has the sponsor maintained the right to approve in advance an assignment (sale of the lease) or sublease by the tenant? For example, could the sponsor intervene if (a) a dominant fixed-base operator (FBO)[1] decides to acquire all other competing FBOs on the airfield or (b) an aeronautical tenant decides to lease aeronautical space to a nonaeronautical tenant?

12.4. FAA Opinion on Review. Since the FAA's interest in a lease is confined to the lease's impact on the sponsor's federal obligations, the sponsor should not construe the acceptance of the lease as an endorsement of the entire document. When the ADO or regional airports division reviews a lease and determines it does not appear to violate any federal compliance obligations, that office will advise the sponsor that FAA has no objection to the agreement. The FAA does not approve leases, nor does it endorse or become a party to tenant lease agreements.

12.5. Agreements Covering Aeronautical Services to the Public. In reviewing airport leases and agreements, the ADO or regional airports division should give special consideration to those arrangements that convey to aeronautical tenants the right to offer services and commodities to the public. In particular, ensure that (a) the sponsor maintains a fee and rental structure in the lease agreements with its tenants that will make the airport as self-sustaining as possible and that (b) the facilities of the airport are made available to the public on reasonable terms without unjust discrimination. Any lease or agreement granting the right to serve the public on the airport should be subordinate to the sponsor's federal obligations. That is, the lease should provide that it will be interpreted to preserve its compliance with the federal obligations. This will enable the sponsor to preserve its rights and powers and to maintain sufficient control over the airport to guarantee aeronautical users are treated fairly.

a. Required Nondiscrimination Provision. Grant Assurance 22.b, *Economic Nondiscrimination*, requires the airport sponsor to include specific provisions in any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted. The intent of this provision is to ensure aeronautical service providers engage in reasonable and

[1] A Fixed-Base Operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

nondiscriminatory practices and to provide the airport sponsor with authority to correct unreasonable and discriminatory practices by tenants should they occur. When reviewing lease agreements, ADOs and regional airports divisions should ensure that the agreement contains the required provision and, if it is missing, instruct the airport sponsor to insert the provision in the agreement.

b. Nonaeronautical Service to the Public. Although the grant assurances and property deed restrictions are not generally applicable to nonaeronautical leases and agreements (as compared to aeronautical agreements), the lease of premises or an agreement granting rights to offer nonaeronautical services to the public must incorporate specific language prohibiting unfair practices regarding civil rights assurances as outlined in 49 CFR Parts 23 and 26.

12.6. Agreements Involving an Entire Airport.

a. Contracts to Perform Airport Maintenance or Administrative Functions. The important point in such arrangements is that the sponsor may delegate or contract with an agent of its choice to perform any element of airport maintenance or operation. However, such arrangements in no way relieve the sponsor of its federal obligations. The sponsor has the ultimate responsibility for the management and operation of the airport in accordance with federal obligations and cannot abrogate these responsibilities. When the sponsor elects to rely upon one of its commercial operators or tenants to carry out airport maintenance or operating responsibilities, there is the potential for a conflict of interest and the potential for a violation of the sponsor's federal obligations.

Any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. The agent's contract should be separate and apart from any other lease or contract with the sponsor that grants property or commercial rights on the airport.

b. Total Delegation of Airport Administration. In certain cases, the ADO or regional airports division may be asked to give consideration to entrusting the operation of a publicly owned airport to a management corporation. Whether the document establishing this kind of a relationship is identified as a lease, concession agreement, management contract, or otherwise, it has the effect of placing a third party in a position of substantial control over a public airport that may be subject to a grant agreement or other federal obligation. The ADO or regional airports division should review these agreements carefully to ensure that the rights of the sponsor and other tenants are protected. See paragraph 6.13, *Airport Management Agreements*, in chapter 6 of this Order, *Rights and Powers and Good Title*, for a discussion of the requirements applicable to such agreements.

c. Resident Agent. The FAA will, at all times, look to the sponsor to ensure the actions of its management corporation contractor conform to the sponsor's federal obligations. The FAA will consider a management corporation with a lease of the entire airport, or a tenant operator authorized to perform any of the sponsor's management responsibilities, as a resident agent of the airport sponsor and not as a responsible principal.

12.7. Agreements Granting "Through-the-Fence" Access. There are times when the sponsor will enter into an agreement that permits access to the airfield by aircraft based on land adjacent

to, but not a part of, the airport property. This type of an arrangement has frequently been referred to as a “through-the-fence" operation even though a perimeter fence may not be visible. “Through-the-fence” arrangements can place an encumbrance upon the airport property and reduce the airport’s ability to meet its federal obligations. As a general principle, the FAA does not support agreements that grant access to the public landing area by aircraft stored and serviced offsite on adjacent property. Thus this type of agreement is to be avoided since these agreements can create situations that could lead to violations of the airport’s federal obligations. (“Through-the-fence” access to the airfield from private property also may be inconsistent with Transportation Security Administration security requirements.)

Under no circumstances is the FAA to support any “through-the-fence” agreement associated with residential use since that action will be inconsistent with the federal obligation to ensure compatible land use adjacent to the airport.

The federal obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property.

a. Rights and Obligations of Airport Sponsor. The federal obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property. The existence of such an arrangement could conflict with the sponsor’s federal obligations unless the sponsor retains the legal right to require the off-site property owner or occupant to conform in all respects to the requirements of any existing or proposed grant agreement. For example, in any “through-the-fence” agreement, the airport sponsor must retain the ability to take action should a safety or security concern require fencing around the airport. In some cases, airport sponsors have been unable to install actual fencing to mitigate wildlife hazards due to pre-existing “through-the-fence” agreements.

b. Economic Discrimination Considerations. The sponsor is entitled to seek recovery of capital and operating costs of providing a public use airfield. The development of aeronautical enterprises on land off airport and not controlled by the sponsor can result in an economic competitive advantage for the “through-the-fence” operator to the detriment of on-airport tenants. To equalize this imbalance, the sponsor should obtain from any off-base enterprise or entity a fair return for its use of the airfield by assessing access fees from those entities having “through-the-fence” access. For example, if the airport sponsor charges $100 per month for a single-engine aircraft tie-down on the airport to pay for the costs of airport operation, then any other single-engine aircraft operator using the airport “through-the-fence” should be charged no less than a similar fee. The same is true for the ground lease on a privately owned hangar and the fees charged to “through-the-fence” operators with a hangar off the airport. The airport sponsor must not discriminate against those aeronautical users within the airport. NOTE: “Through-the-fence” operators are not protected by the grant assurances. The airport sponsor may assess any level of fee it deems appropriate for “through-the-fence” operators so long as that fee is not less than the comparable fee paid by on-airport tenants.

c. Safety Considerations. Arrangements that permit aircraft to gain access to the airfield from off-site properties complicate the control of vehicular and aircraft traffic. In some cases, they

may create unsafe conditions. The sponsor may need to incorporate special safety operational requirements in its "through-the-fence" agreements. (For example, a safety requirement may be needed to prevent aircraft and vehicles from sharing a taxiway.) When required, FAA Flight Standards should be consulted on safety and operational matters. In all cases, in any "through-the-fence" agreement, the airport sponsor must retain the ability to intervene if a safety concern arises and take all the necessary actions.

d. Off-Airport Aeronautical Businesses. As a general principle, the ADO or regional airports division should not support sponsor requests to enter into any agreement that grants "through-the-fence" access to the airfield for aeronautical businesses that would compete with an on-airport aeronautical service provider such as an FBO. Exceptions may be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport and subordinate the agreement to the grant assurances and grant agreement. Examples of "through-the-fence" uses that would not compete with an on-airport business include:

(1). At the sponsor's option, if a bona fide airport tenant has already leased a site from the sponsor and has negotiated airfield use privileges but also desires to move aircraft to and from a hangar or manufacturing plant on adjacent off-airport property, the tenant may gain access through an area provided by the sponsor.

(2). Although not encouraged by the FAA, if an individual or corporation actually residing or doing business on an adjacent tract of land proposes to gain access to the airfield solely for aircraft use without offering any aeronautical services to the public, the sponsor may agree to grant this access. Airports commonly face this situation when an industrial airpark or manufacturing facility is developed in conjunction with the airport.

Under no circumstances is the FAA to support any "through-the-fence" agreement associated with residential use since that action will be inconsistent with the federal obligation to ensure compatible land use adjacent to the airport.

e. FAA Determinations. The FAA regional airports division will determine whether arrangements granting access to the airfield from off-site locations are consistent with applicable federal law and policy. If the FAA regional airports division determines that such an agreement lessens the public benefit for which the airport was developed, the FAA regional airports division will notify the sponsor that the airport may be in violation of its federal obligations if it grants such "through-the-fence" access. If necessary, the FAA headquarters Airport Compliance Division (ACO-100) will be able to provide assistance in such cases.

f. Reasonable Access is Not Required. It is important to remember that users having access to the airport under a "through-the-fence" agreement are *not* protected by the sponsor's federal obligations to the FAA. This is because the federal obligation to make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities without granting an exclusive right does not impose any requirement to

permit access by aircraft from adjacent property. In fact, the airport sponsor may simply deny "through-the-fence" access if it so chooses. The airport may also charge any fee it sees fit to those outside the airport.

Since federal obligations do not require that access be granted under these circumstances, the FAA will not normally entertain complaints from entities operating from adjacent property with a "through-the-fence" access agreement. The FAA should not support or agree to requests to enter into any agreement that grants access to the airfield for the establishment of a residential airpark since this would raise a compliance issue under Grant Assurance 21, *Compatible Land Use*.

The FAA will not support any agreement that grants access to a public airfield by aircraft stored and serviced on adjacent nonairport property, and strongly recommends that airport owners and aeronautical users refrain from entering into such an agreement. A "through-the-fence" access agreement may result in the violation of a number of the sponsor's federal obligations. Among other things, "through-the-fence" agreements can have the effect of:

(1). Placing contractual and legal encumbrances or conditions upon the airport property, in violation of Grant Assurance 5, *Preserving Rights and Powers*;

(2). Limiting the airport's ability to ensure safe operations in both movement and non-movement areas, in violation of Grant Assurance 19, *Operation and Maintenance*;

(3). Creating unjustly discriminatory conditions for on-airport commercial tenants and other users by granting access to off-airport competitors or users in violation of Grant Assurance 22, *Economic Nondiscrimination*;

(4). Effectively granting an exclusive right to the "though-the-fence" operator in violation of Grant Assurance 23, *Exclusive Rights,* if the operator conducts a commercial business and no on-airport operator is able to compete because the terms given to the "through-the-fence" operator are so much more favorable;

(5). Affecting the airport's ability to be self-sustaining, in violation of Grant Assurance 24, *Fee and Rental Structure,* because the airport may not be in a position to charge "through-the-fence" operators adequately for the use of the airfield;

(6). Weakening the airport's ability to remove and mitigate hazards and incompatible land uses, in violation of Grant Assurance 20, *Hazard Removal and Mitigation*, and Grant Assurance 21, *Compatible Land Use*.

(7). Making it more difficult for an airport sponsor to implement future security requirements that may be imposed on airports.

g. While FAA does not support "through-the-fence" access, should a sponsor choose to proceed, it should do so only under the following conditions:

(1). FAA Review. Seek FAA review to ensure that its decision will not result in a violation of its federal obligations, either now or in the future. It has been the FAA's experience that airport sponsors find it difficult to correct grant assurance violations that result from "through-the-fence" access. The inability to correct such violations could result in an airport losing its eligibility to receive Airport Improvement Program (AIP) grant funds.

(2). Access Agreement Provisions. Sponsors should consider the following provisions in preparing an access agreement to grant a right of "through-the-fence" access:

(a). The access agreement should be a written legal document with an expiration date and signed by the sponsor and the "through-the-fence" operator. It may be recorded. Airports should never grant deeded access to the airport.

(b). The right of access should be explicit and apply only to the "through-the-fence" operation (*i.e.*, right to taxi its aircraft to and from the airfield).

(c). The "through-the-fence" operator shall not have a right to grant or sell access through its property so other parties may gain access to the airfield from adjacent parcels of land. Only the airport sponsor may grant access to the airfield, which should be consistent with Transportation Security Administration (TSA) requirements.

(d). The access agreement should have a clause making it subordinate to the sponsor's grant assurances and federal obligations. Should any provision of the access agreement violate the sponsor's grant assurances or federal obligations, the sponsor shall have the unilateral right to amend or terminate the access agreement to remain in compliance with its grant assurances and federal obligations.

(e). The "through-the-fence" operator shall not have a right to assign its access agreement without the express prior written approval of the sponsor. The sponsor should have the right to amend the terms of the access agreement to reflect a change in value to the off-airport property at the time of the approved sale if the "through-the-fence" access is to continue.

(f). The fee to gain access to the airfield should reflect the airport fees charged to similarly situated on-airport tenants and aeronautical users. For example, landing fees, ground rent, or tie-down fees paid to the sponsor by comparable on-airport aeronautical users or tenants to recover the capital and operating costs of the airport should be reflected in the access fee assessed the "through-the-fence" operator, including periodic adjustments. In addition, if the "through-the-fence" operator is granted the right to conduct a commercial business catering to aeronautical users either on or off the airport, the sponsor shall assess, at a minimum, the same concession terms and fees to the "through-the-fence" operator as assessed to all similarly situated on-airport commercial operators. As previously stated, the FAA does not support granting "through-the-fence" access to aeronautical commercial operators that compete with on-airport operators.

(g). The access agreement should contain termination and insurance articles to benefit the

sponsor.

(h). The expiration date of the access agreement should not extend beyond a reasonable period from the sponsor's perspective. It should not depend upon the full depreciation of the "through-the-fence" operator's off-airport investment (*i.e.*, 30 years), as would be the case had the investment been made inside the airport. In any case, it should not exceed the appraised useful life of the off-airport facilities. Should the access agreement be renegotiated at its expiration, the new access fee should reflect an economic rent for the depreciated off-airport aeronautical facilities (*i.e.*, hangar, ramp, etc.) comparable to what would be charged by the sponsor for similar on-airport facilities. That is, when on-airport facilities are fully amortized and title now vests with the airport instead of the tenant, the airport may charge higher economic rent for the lease of its facility. The access fee for a depreciated off-airport facility should be adjusted in a similar fashion notwithstanding that title still vests with the off-airport operator. However, there is no limitation on what the airport sponsor may charge for "through-the-fence" access.

h. Access Not Permitted. No exception will be made to permit "through-the-fence" access for certain purposes.

(1). The FAA will not approve any "through-the-fence" access for residential airpark purposes since that use is an incompatible land use. Refer to chapter 20 of this Order, *Compatible Land Use and Airspace Protection*, for additional details concerning the FAA's position on residential airparks. The FAA will not approve a release of airport land for "through-the-fence" access to the airport by aircraft. Airport land may only be released if the land no longer has an airport purpose; if the land would be used for the parking and operation of aircraft, it would not qualify for a release. A release of airport land for an aeronautical use would simply serve to reduce the sponsor's control over the use and its ability to recover airport costs from the user.

12.8. through 12.12. reserved.

Response to Request for Residential "Through-the-Fence" – Page 1

U.S. Department
of Transportation
Federal Aviation
Administration

Office of Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 29 2005

Mr. Hal Shevers
Chairman
Clermont County-Sporty's Airport
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than $300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because

Response to Request for Residential "Through-the-Fence" – Page 2

they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Associations (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally* obligated airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

Original signed by:
Woodie Woodward

Woodie Woodward
Associate Administrator
for Airports

Sample Response to Request Release for "Through-the-Fence" Purposes - Page 1

U.S. Department of Transportation
Federal Aviation Administration

San Francisco Airports District Office
831 Mitten Road, Room 210
Burlingame, California 94010-1303

March 28, 2003

Mr. Sam Scheider
Airport Manager
Madera Municipal Airport
205 West 4th Street
Madera, California 93637

Dear Mr. Scheider:

Madera Municipal Airport
Release Determination

This is in regard to a request by the City of Madera (City) for the release of 1.332 acres of land at Madera Municipal Airport from its federal obligations. The proposed release would allow the land to be sold to a buyer who intends to develop the property with, among other things, aircraft storage hangars. As part of the proposed sale, the city has agreed to grant the buyer a through-the-fence permit that will authorize exclusive access to the airport from the private property. Upon review of all available information regarding this request, the Federal Aviation Administration (FAA) finds it cannot approve the City's request. This decision is a result of our review and analysis of the following factors:

We have determined that the release proposed by the City does not meet the criteria set by law or by FAA policy. First, the use of the land once it is released incorporates an aviation-related function. Therefore, the purpose of the release demonstrates that the land is still needed for airport purposes. By law, the FAA cannot approve such a release.

Second, the City also proposes to grant the buyer through-the-fence access to the airport from the private property. This proposal does not comply with the FAA policy that advocates against through-the-fence arrangements whereby airport owners enter into an agreement with a private property owner to grant access to the airport by aircraft normally stored and serviced on the adjacent non-airport property. Based on the terms of the City's release proposal, the City is asking the FAA to approve a through-the-fence agreement that the FAA, by policy, recommends be avoided. (See FAA Order 5190.6A, Section 6-6) Since the Madera proposal relies on through-the-fence access, approving the release would conflict with current FAA policy. Although there are some exceptions to this policy, those exceptions are not intended to

Sample Response to Request Release for "Through-the-Fence" Purposes - Page 2

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apply to cases where through-the-fence access was the result of an FAA-approved release of federal surplus property.

In addition, the proposed use of the parcel would not qualify for an exemption to the policy. The City's through-the-fence request is not incidental to an existing land use arrangement adjacent to the airport. The city wishes to create through-the-fence access to permit the released land to be used for an aviation-related purpose. The FAA policy rests on the likelihood that through-the-fence access for the purpose of providing aviation services to the public will create conditions that result in the violation of the sponsor's federal obligations. Therefore, based on the policy, the release cannot be approved.

Suitable alternatives to a land release exist. The FAA supports a proposal that would consider offering a private developer a ground lease upon which tenant improvements would be made. We recognize that the City stated in its release request that the airport is not willing to make the investment necessary to finance the project. However, we must assume that the developer is prepared to make an investment if the land were released. Therefore, why not just make an investment in airport land under the terms of a favorable lease agreement? The leasing option would not only establish a long-term revenue stream for the airport, but would also allow the airport to retain ownership of the property and avoid through-the-fence access.

In conclusion, although our determination may not have been timely, the FAA cannot approve the City's release request or waive the regulatory requirements to permit a release or through-the-fence access. We trust that the City will conclude that there are suitable alternatives other than a release to satisfy the airport's development needs and to serve the City's public airport interests.

If you have any questions, please contact Racior R. Cavole, Airports Compliance Specialist, at (650) 876-2804.

Sincerely,

ORIGINAL SIGNED BY
ANDREW M. RICHARDS

Andrew M. Richards, Manager
San Francisco Airports District Office

Chapter 13: Airport Noise and Access Restrictions

13.1. Introduction and Responsibilities. This chapter contains guidance on the sponsor's responsibility with regard to restrictions on airport noise and access. Access restrictions have the potential to violate the federal obligation to make the airport available for public use on reasonable terms and without unjust discrimination as required by Grant Assurance 22, *Economic Nondiscrimination*.

It is the responsibility of the airports district offices (ADOs) and regional airports divisions to advise sponsors on the laws and policies that apply to access restrictions and to ensure that the sponsor extends equitable treatment to all of the airport's aeronautical users.

13.2. Background.

a. The legal framework with respect to abatement of aviation noise may be summarized as follows:

(1). The federal government has preempted the areas of airspace use and management, air traffic control, safety, and the regulation of aircraft noise at its source. The federal government also has substantial power to influence airport development through its administration of the Airport Improvement Program (AIP).

(2). Other powers and authorities to control aircraft noise rest with the airport proprietor – including the power to select an airport site, acquire land, assure compatible land use, and control airport design, scheduling and operations – subject to constitutional prohibitions against creation of an undue burden on interstate and foreign commerce, and unreasonable, arbitrary, and unjust discriminatory rules that advance the local interest, other statutory requirements, and interference with exclusive federal regulatory responsibilities over safety and airspace management.

(3). State and local governments may protect their citizens through land use controls and other police power measures not affecting airspace management or aircraft operations. In addition, to the extent they are airport proprietors, they have the powers described in paragraph b(2) below:

b. The authorities and responsibilities of the parties may be summarized as follows:

(1). The federal government has the authority and responsibility to control aircraft noise by the regulation of source emissions, by flight operational procedures, and by management of the air traffic control system and navigable airspace in ways that minimize noise impact on residential areas, consistent with the highest standards of safety and efficiency. The federal government also provides financial and technical assistance to airport proprietors for noise reduction planning and abatement activities and, working with the private sector, conducts continuing research into noise abatement technology.

(2). Airport sponsors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce.

(3). State and local governments and planning agencies should provide for land use planning and development, zoning, and housing regulations that are compatible with airport operations.

(4). Air carriers are responsible for retirement, replacement or retrofit for older jets that do not meet federal noise level standards, and for scheduling and flying airplanes in a way that minimizes the impact of noise on people.

(5). Air travelers and shippers generally should bear the cost of noise reduction, consistent with established federal economic and environmental policy that the costs of complying with laws and public policies should be reflected in the price of goods and services.

(6). Residents and prospective residents in areas surrounding airports should seek to understand the noise problem and what steps can be taken to minimize its effect on people. Individual and community responses to aircraft noise differ substantially and, for some individuals, a reduced level of noise may not eliminate the annoyance or irritation. Prospective residents of areas impacted by aircraft noise, thus, should be aware of the potential effect of noise on their quality of life and act accordingly.

(7). Airport sponsors have limited proprietary authority to restrict access as a means of reducing aircraft noise impacts in order to improve compatibility with the local community. To accomplish this, airport sponsors must comply with the national program for review of airport noise and access restrictions under the Airport Noise and Capacity Act of 1990 (ANCA). ANCA requires that certain review and approval procedures be completed before a proposed restriction that impacts Stage 2 or Stage 3 aircraft is implemented. The FAA regulation that implements ANCA is 14 Code of Federal Regulations (CFR) Part 161, *Notice and Approval of Airport Noise and Access Restrictions*. An airport sponsor may use an airport noise compatibility study pursuant to 14 CFR Part 150 to fulfill certain notice and comment requirements under ANCA.

13.3. Overview of the Noise-Related Responsibilities of the Federal Government.
Responsibility for the oversight and implementation of aviation laws and programs is delegated to the FAA under the Federal Aviation Act of 1958 (FAA Act), as amended, 49 United States Code (U.S.C.) § 40101 *et seq.* The basic national policies intended to guide FAA actions under the FAA Act are set forth in 49 U.S.C. § 40101(d), which declares that certain matters are in the public interest. To achieve these statutory purposes, 49 U.S.C. §§ 40103(b), 44502, and 44721 provide extensive and plenary authority to the FAA concerning use and management of the

navigable airspace, air traffic control, and air navigation facilities.

The FAA has exercised this authority by promulgating wide-ranging and comprehensive federal regulations on the use of navigable airspace and air traffic control. Similarly, the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under 49 U.S.C. § 44701 *et seq.* by extensive federal regulatory action.

The federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and aviation safety. Under the legal doctrine of federal preemption, which flows from the Supremacy Clause of the Constitution, state and local authorities do not generally have legal power to act in an area that already is subject to comprehensive federal regulation.

Because of the increasing public concern about aircraft noise that accompanied the introduction of turbojet powered aircraft in the 1960s and the constraints such concern posed for the continuing development of civil aeronautics and the air transportation system of the United States, the federal government in 1968 sought, and Congress granted, broad authority to regulate aircraft for the purpose of noise abatement.

This authority, codified at 49 U.S.C. § 44715, constitutes the basic authority for federal regulation of aircraft noise.

13.4. CFR Part 36, Noise Standards for Aircraft Type and Airworthiness Certification. Under 49 U.S.C. § 44715, the FAA may propose rules considered necessary to abate aircraft noise and sonic boom. Aircraft noise rules must be consistent with the highest degree of safety in air commerce and air transportation, economically reasonable, technologically practicable, and appropriate for the particular type of aircraft. On November 18, 1969, the FAA promulgated the first aircraft noise regulations, which were codified in 14 CFR Part 36. The new Part 36 became effective on December 1, 1969. It prescribed noise standards for the type certification of subsonic transport category airplanes and for subsonic turbojet powered airplanes regardless of category. Part 36 initially applied only to new types of aircraft. As soon as the technology had been demonstrated, the standard was to be extended to all newly manufactured aircraft of already certificated types.

In 1973, the FAA amended Part 36 to extend the applicability of the noise standards to newly produced airplanes irrespective of type certification date. In 1977, the FAA amended Part 36 to provide for three stages of aircraft noise levels (Stage 1, Stage 2, and Stage 3), each with specified limits. This regulation required applicants for new type certificates applied for on or after November 5, 1975, to comply with Stage 3 noise limits, which were stricter than the noise limits then being applied. Airplanes in operation at the time that did not meet the Stage 3 noise limits were designated either as Stage 2 or Stage 1 airplanes.

In 1976, the FAA amended the aircraft operating rules in 14 CFR Part 91 to phase out operations in the United States, by January 1, 1985, of Stage 1 aircraft weighing more than 75,000 pounds. These aircraft were defined as civil subsonic aircraft that did not meet Stage 2 or Stage 3 Part 36 noise standards. Effectively, the Stage 1 category is composed of transport category and jet airplanes that cannot meet the noise levels required for Stage 2 or Stage 3 under Part 36, Appendix B. It also includes aircraft that were never required to demonstrate compliance with

Part 36 because they were certificated prior to the requirement for Part 36 noise certification. Stage 1 aircraft include some corporate jets, some transport category turbo-prop, and some transport category piston airplanes. Aircraft certificated under Part 36 Subpart F, *Propeller Driven Small Airplanes and Propeller-Driven, Commuter Category Airplanes,* do not have a stage classification, and as such are referred to as nonstage. The vast majority of small general aviation (GA) aircraft and many propeller-driven commuter aircraft flying in the United States are nonstage aircraft. In addition, some aircraft to which Part 36 does not apply, regardless of method of propulsion, can be aircraft certificated in the experimental category. For example, most jet war birds, military aircraft types and World War II aircraft are also classified as nonstage aircraft.

As a result of congressional findings, ANCA revised CFR Part 91 to include the provision that no civil subsonic turbo aircraft weighing more than 75,000 pounds may be operated within the 48 contiguous states after January 1, 2000, unless it was shown to comply with the Stage 3 noise standards of CFR Part 36.

In July 2005, the FAA adopted more stringent Stage 4 standards for certification of aircraft, effective January 1, 2006. Any aircraft that meets Stage 4 standards will meet Stage 3 standards. Accordingly, policies for review of noise restrictions affecting Stage 3 aircraft may be applied to Stage 4 aircraft as well.

13.5. The Aircraft Noise Compatibility Planning Program. In 1979, Congress enacted the Aviation Safety and Noise Abatement Act (ASNA). In ASNA, Congress directed the FAA to: (1) establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise; (2) establish a single system for determining the exposure of individuals to noise from airport operations; and (3) identify land uses that are normally compatible with various exposures of individuals to noise. (See Table 1 of Part 150 at the end of this chapter.) FAA promulgated 14 CFR Part 150 to implement ASNA. Part 150 established the "day-night average sound level" (DNL) as the noise metric for determining the exposure of individuals to aircraft noise. It identifies residential land uses as being normally compatible with noise levels below DNL 65 decibels (dB). ASNA also provided for federal funding and other incentives for airport operators to prepare noise exposure maps voluntarily and institute noise compatibility programs. Under ASNA, noise compatibility programs "shall state the measures the [airport] operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the [noise exposure] map."

Consistent with ASNA, Part 150 requires airport operators preparing noise compatibility programs to analyze the following alternative measures:

> **(1).** Acquisition of land in fee, and interests therein, including but not limited to air rights, easements, and development rights;
>
> **(2).** Construction of barriers and acoustical shielding, including the soundproofing of public buildings;

(3). Implementation of restrictions on the use of the airport by type or class of aircraft based on the noise characteristics of the aircraft;

(4). Implementation of a preferential runway system; use of flight procedures to control the operation of aircraft to reduce exposure of individuals or specific noise sensitive areas[1] to noise in the area around the airport;

(5). Other actions or combinations of actions that would have a beneficial noise control or abatement impact on the public; and

(6). Other actions recommended for analysis by the FAA for the specific airport.

Under Part 150, an airport operator "shall evaluate the several alternative noise control actions" and develop a noise compatibility program that:

(1). Reduces existing noncompatible uses and prevents or reduces the probability of the establishment of additional noncompatible uses;

(2). Does not impose an undue burden on interstate and foreign commerce;

(3). Does not derogate safety or adversely affect the safe and efficient use of airspace;

(4). To the extent practicable, meets both local interests and federal interests of the national air transportation system; and

(5). Can be implemented in a manner consistent with all of the powers and duties of the FAA Administrator.

As a matter of policy, FAA encourages airport proprietors to develop and implement aircraft noise compatibility programs under Part 150. Where an airport proprietor is considering an airport use restriction, Part 150 provides an effective process for determining whether the proposed restriction is consistent with applicable legal requirements, including the grant assurances in airport development grants. However, while a restriction might meet the Part 150 criteria, that does not necessarily mean it will meet the Part 161 criteria. ASNA and Part 150 set forth an appropriate means of defining the noise problem, recognizing the range of local and federal interests, ensuring broad public and aeronautical participation, and balancing all of these interests in a manner to ensure a reasonable, nonarbitrary, and nondiscriminatory result that is consistent with the airport proprietor's federal obligations. Accordingly, the FAA included in 14 CFR Part 161, the regulations that implement ANCA, an option to use the Part 150 process to provide public notice and opportunity to comment on a proposed Stage 2 or Stage 3 restriction. The FAA encouraged the use of Part 150 for meeting the notice and comment requirements of Part 161, noting that the Part 150 process "is more comprehensive in scope in that it includes compatible land use planning, as well as restrictions on aircraft operation." The FAA further noted, in the preamble to the Part 161 final rule, that a Part 150 determination "may provide

[1] These are land uses that may be adversely affected by cumulative noise levels at or above 65 DNL such as residential neighborhoods, educational, health, or religious structures or sites, and outdoor recreational, cultural and historic sites.

valuable insight to the airport operator regarding the proposed restriction's consistency with existing laws, and the position of the FAA with respect to the restriction."

13.6. Compliance Review. As part of a Part 150 study, the FAA requires the sponsor to analyze fully the anticipated impact of any proposed restriction. The FAA must evaluate whether the restriction places an undue burden on interstate or foreign commerce or the national aviation system, and whether the restriction affects the sponsor's ability to meet its federal obligations. Certain restrictions may have little impact at one airport and a great deal of impact at others. Accordingly, the sponsor must clearly present the impact of the restriction at the affected airport. A sponsor with a multiple airport system may designate different roles for the airports within its system. That designation in itself does not authorize restrictions on classes of operations, and the sponsor should first present its plan to FAA to ensure compliance with grant assurances and other federal obligations.

13.7. Mandatory Headquarters Review. The FAA headquarters staff shall review proposed noise restrictions, especially those that are proposed without using the Part 150 process. Accordingly, if the ADOs or regional airports divisions identify a restriction that potentially impacts the sponsor's federal obligations, it must coordinate its actions with the Airport Planning and Environmental Division (APP-400) through the FAA headquarters Airport Compliance Division (ACO-100).

13.8. Balanced Approach to Noise Mitigation. Proposed noise-based airport use restrictions must consider federal interests in the national air transportation system as well as the local interests they are intended to address.

a. FAA Policy. The FAA has encouraged a balanced approach to address noise problems and has discouraged unreasonable airport use restrictions. It is FAA policy that airport use restrictions should be considered only as a measure of last resort when other mitigation measures are inadequate to satisfactorily address a noise problem and a restriction is the only remaining option that could provide noise relief. This policy furthers the federal interest in maintaining the efficiency and capacity of the national air transportation system and, in particular, the FAA's responsibility to ensure that federally funded airports maintain reasonable public access in compliance with applicable law.

b. Federal Methodology. Failure to consider a combination of measures, such as land acquisitions, easements, noise abatement procedures, and sound insulation could result in a finding that a balanced approach was not used in addressing a noise problem. A sponsor's acceptance of federal funds places upon it certain federal obligations, which require it first to consider a wide variety of options to alleviate a local noise problem. Consistent with these federal requirements and policies, the FAA interprets the requirement in 49 U.S.C. § 47107(a)(1) that a federally funded airport will be "available for public use on reasonable conditions" as requiring that a regulation restricting airport use for noise purposes: (1) be justified by an existing noncompatible land use problem; (2) be effective in addressing the identified problem without restricting operations more than necessary; and (3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.

c. The Role of ASNA and Part 150. Aircraft under ASNA involves consideration of a range of alternative mitigation measures, including aircraft noise and other restrictions. For example,

under Part 150, the airport operator could, among other things, recommend constructing noise barriers, installing acoustical shielding, and acquiring land, easements, air rights, and development rights to mitigate the effects of noise consistent with 49 U.S.C. § 47504. The FAA does not need to examine nonrestrictive measures to see if they are consistent with ANCA and Grant Assurance 22, *Economic Nondiscrimination*, or related federal obligations.

d. Reasonable Alternatives. Developing reasonable alternatives is the nucleus of the compatibility planning process. The objective is to explore a wide range of feasible options and alternative compositions of land use patterns, noise control actions, and noise impact patterns, seeking optimum accommodation of both airport users and airport neighbors within acceptable safety, economic, and environmental parameters. It is unlikely that any single option, by itself, will be capable of totally solving the problem(s) without having objectionable impacts of its own. Some options may have little or no value in the situation, especially if used alone. Realistic alternatives, then, will normally consist of combinations of the various options in ways that offer more complete solutions with more acceptable impacts or costs.

A balanced approach – using a combination of nonrestrictive measures and considering use restrictions only as a last resort – is inherently reasonable and is used nationally and internationally. On the other hand, bypassing nonrestrictive measures and only relying on restrictive alternatives can be an inherently unreasonable approach to addressing a noise problem.

13.9. Cumulative Noise Metric. In ASNA, Congress directed the Secretary of Transportation to "establish a single system for determining the exposure of individuals to noise resulting from airport operations" and "identify land uses normally compatible with various exposures of individuals to noise."

As directed by Congress in ASNA, the FAA has established DNL as the metric for "determining the exposure of individuals to noise resulting from airport operations." Also in compliance with ASNA, the FAA has established the land uses normally compatible with exposures of individuals to various levels of aircraft noise. The FAA determined that residential land use is "normally compatible" with noise levels of less than DNL 65 dB. In other words, a sponsor should demonstrate that a proposed restriction will address a noise problem within the 65 dB DNL contour.

Realistic alternatives will normally consist of combinations of the various options in ways that offer more complete solutions with more acceptable impacts or costs.

A restriction designed to address a noise problem must be based on significant cumulative noise impacts, generally represented by an exposure level of DNL 65 dB or higher in an area not compatible with that level of noise exposure. A community is not precluded from adopting a cumulative noise exposure limit different than DNL 65 dB, but cannot apply a different standard to aircraft noise than it does to all other noise sources in the community. This is not common, and most noise mitigation measures can be expected to address cumulative noise exposure of DNL 65 dB and higher.

13.10. General Noise Assessment. In assessing the reasonableness and unjustly discriminatory aspect of a proposed noise restriction, FAA may need to answer the following:

a. Is Part 150 documentation available for review and consideration? Has the sponsor completed the required analysis, public notice, and approval process under 14 CFR Part 161? Has the sponsor implemented the measures?

b. Is the proposed restriction a rational response to a substantiated noise problem?

c. Were nonrestrictive land use measures considered first?

d. Is proper methodology being used in comparing alternatives?

Is there consistency between guidelines governing the establishment of compatible land use and those governing an access restriction? Do they work together to solve the noise problem?

e. Are existing local land use standards designed to achieve the same level of compatibility sought by the restriction (*i.e.*, does the community tolerate a higher level of noise for nonaviation uses and place a higher burden of noise mitigation on the airport and its users than it does on other noise sources)?

f. Are the restrictions intended to achieve noise reductions above 65 dB or below? Is guidance from the Federal Interagency Committee on Aviation Noise (FICAN) being used?[2]

g. Has the sponsor demonstrated any exposure to financial liability for noise impact as a result of a noise problem?

h. Is the restriction based on a qualifier other than noise? For example, noise-based restrictions have to be justified on the grounds of aircraft noise. A restriction based on aircraft weight or any other qualifier other than noise emission might be unjustly discriminatory if the purpose is to address a noise problem.

13.11. Residential Development. In reviewing the reasonableness of airport access restrictions, the FAA must consider whether the sponsor has fulfilled its responsibilities regarding compatible land use under Grant Assurance 21, *Compatible Land Use*. Airport sponsors are obligated to take appropriate action, including the adoption of zoning laws, to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations. Local land use planning, as a method of determining appropriate (and inappropriate) use of properties around airports, should be an integral part of the land use policy and regulatory tools used by state and local land use planning agencies. Very often, such land use planning coordination is hampered by the fact that an airport can be surrounded by multiple individual local governmental jurisdictions, each with its own planning process. Some airport authorities have the authority to control land use, but many do not. If the airport sponsor does not have authority to control local land use, FAA will not hold the actions of independent land use authorities against the airport sponsor. However, FAA expects the airport sponsor to take

[2] The Federal Interagency Committee on Aviation Noise (FICAN) was formed in 1993 to provide forums for debate over future research needs to better understand, predict, and control the effects of aviation noise, and to encourage new technical development efforts in these areas. Additional information may be available online.

reasonable actions to encourage independent land use authorities to make land use decisions that are compatible with aircraft operations. The airport sponsor should be proactive in opposing planning and proposals by independent authorities to permit development of new noncompatible land uses around the airport.

13.12. Impact on Other Airports and Communities. In evaluating the significance of a restriction, the FAA will consider the degree to which the restriction may affect other airports in two general ways: (1) whether it establishes a precedent for restrictions at more airports, possibly resulting in significant effects on the national air transportation system, and (2) whether other airports in the region will be impacted by traffic diverted from the restricted airport, either by shifting noise impact from one community to another or by burdening a hub airport with general aviation traffic that should be able to use a reliever airport.

13.13. The Concept of Unjust Discrimination. Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed grant assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Consistent with Grant Assurance 22, *Economic Nondiscrimination*, airport sponsors are prohibited from unjustly discriminating among airport users when implementing a noise-based restriction. The FAA has determined – and the federal courts have held – that the use of noise control regulations to ban aircraft on a basis unrelated to noise is unjustly discriminatory and a violation of the federal grant assurances and federal surplus property obligations.

For example, in *City and County of San Francisco* v. *FAA*, the airport adopted an aircraft noise regulation that resulted in the exclusion from the airport of a retrofitted Boeing 707 that met Stage 2 standards while permitting use of the airport by 15 other models of aircraft emitting as much or more noise than the 707. The Ninth Circuit Court of Appeals affirmed the FAA's determination that the airport regulation was unjustly discriminatory because it allowed aircraft that were equally noisy or noisier than the aircraft being restricted to operate at the airport and to increase in number without limit while excluding the 707 based on a characteristic that had no bearing on noise (date of type-certification as meeting Stage 2 requirements).

In *Santa Monica Airport Association* v. *City of Santa Monica*, the Court struck down the airport's ban on the operation of jet aircraft on the basis of noise under the Commerce and Equal Protection clauses of the U.S. Constitution. The Court found that, "… in terms of the quality of the noise produced by modern type fan-jets and its alleged tendency to irritate and annoy, there is absolutely no difference between the noise of such jets and the noise emitted by the louder fixed-wing propeller aircraft which are allowed to use the airport."

13.14. Part 161 Restrictions Impacting Stage 2 or Stage 3 Aircraft.

a. Stage 2 or Stage 3 Aircraft. Airport noise/access restrictions on operations by Stage 2 or Stage 3 aircraft must comply with ANCA, as implemented by 14 CFR Part 161.

ANCA does not require FAA approval of restrictions on Stage 2 aircraft operations; however, FAA determines whether applicable notice, comment, and analysis requirements have been met.

The FAA also separately reviews proposed Stage 2 restrictions for compliance with grant assurance and surplus property obligations. For this purpose, the FAA relies upon the standards under ASNA, as implemented by 14 CFR 150.

ANCA prescribes a more stringent process for national review of proposed restrictions on Stage 3 aircraft operations, including either FAA approval or, alternatively, agreement by all operators at the airport. If FAA approval is required, then the process for review of restrictions on Stage 3 aircraft operations includes consideration of environmental impacts. The statutory criteria for FAA approval of Stage 3 restrictions includes the criteria used under 14 CFR Part 150 to determine compliance with the grant assurance and Surplus Property Act obligations. For Stage 3 restrictions, the ANCA review considers compliance with grant assurance and surplus property obligations.

Proposals to restrict operations by Stage 3 aircraft must (1) be agreed upon by the airport and all users at the airport or (2) satisfy procedural requirements similar to proposals to restrict Stage 2 operations and be approved by FAA. To be approved, restrictions must meet the following six statutory criteria:

- The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory.
- The proposed restriction does not create an undue burden on interstate or foreign commerce.
- The proposed restriction maintains safe and efficient use of the navigable airspace.
- The proposed restriction does not conflict with any existing federal statute or regulation.
- The applicant has provided adequate opportunity for public comment on the proposed restriction.
- The proposed restriction does not create an undue burden on the national aviation system.

b. ANCA Grandfathering. ANCA contains special provisions that "grandfather" restrictions on Stage 2 aircraft operations that were proposed before October 1, 1990. ANCA also grandfathers restrictions on Stage 3 aircraft that were in effect on October 1, 1990. Airport sponsors who adopted restrictions before ANCA was enacted on November 5, 1990, may amend these restrictions without complying with ANCA provided the amendment does not reduce or limit aircraft operations or affect aircraft safety. However, amendments to existing restrictions and new restrictions are subject to review for compliance with the federal grant assurances and federal surplus property obligations.

c. Consistency of Part 161 and Grant Assurance Determinations on Proposed Restrictions of Operations by Stage 2 Aircraft. It is possible for a proposed Stage 2 restriction to meet the requirements of Part 161, which are essentially procedural, but fail to comply with the grant assurance requirements to provide access on reasonable terms without unjust discrimination. Accordingly, in reviewing a restriction on operations by Stage 2 aircraft, it is important that FAA regional airports divisions coordinate with the FAA headquarters Airport Compliance Division (ACO-100), the FAA Airport Planning and Environmental Division (APP-400), and to assure consistency between agency Part 161 and grant assurance determinations.

13.15. Undue Burden on Interstate Commerce. The FAA is responsible for reviewing and

evaluating an airport sponsor's noise restrictions to determine whether there is an undue burden on interstate or foreign commerce contrary to the airport's federal requirements under the grant assurances, the Surplus Property Act, and ANCA.

a. General. An airport restriction must not create an undue burden on interstate commerce. The FAA will make the determination on whether it is an undue burden. While airport restrictions may have little impact at one airport, they may have a great deal of impact at others by adversely affecting airport capacity or excluding certain users from the airport. The magnitude of both impacts must be clearly presented. Any regulatory action that causes an unreasonable interference with interstate or foreign commerce could be an undue burden.

b. Analysis and Process. In all cases, it is essential to determine whether there are interstate operations into and out of the airport in question, as well as the level of air carrier service. For example, the airport may have Part 121 operations or others engaged in Part 135 commercial operations of an interstate commerce nature. While some kinds of operations may be entirely local, *e.g.*, air tours or crop dusting, most commercial aviation will involve interstate commerce to some degree.

In determining whether a particular restriction would cause an undue burden on interstate commerce, it may be necessary to consider the total number of based aircraft and aircraft operations, the role of the airport, and the capabilities of other airports within the system (*i.e.*, reliever airport, General Aviation (GA), or commercial service airport), and the number of operators engaged in interstate commerce. The analysis of a proposed restriction should also quantify the economic costs and benefits and the regional impact in terms of employment, earnings, and commerce.

13.16. Use of Complaint Data. Complaint data (*i.e.*, from homeowner complaints filed with the airport) are generally not statistically valid indicators or measurements of a noise problem. Therefore, complaint data is usually not an acceptable justification for a restriction. Congress, in ASNA, directed the FAA to establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise.

In 14 CFR Part 150, the FAA adopted DNL to fulfill this statutory federal obligation. While complaints may be a valid indication of *individual* annoyance, they do not accurately measure *community* annoyance. Reactions of individuals to a particular level of noise vary widely, while community annoyance correlates well with particular noise exposure levels. As the FAA stated in a 1994 report to Congress on aircraft noise:

The attitudes of people are actually more important in determining their reactions to noise than the noise exposure level. Attitudes that affect an individual’s reactions include:

a. Apprehension regarding their safety because of the noise emitter,

b. The belief that the noise is preventable,

c. Awareness of non-noise environmental problems, and

d. A general sensitivity to noise, and the perceived economic importance of the noise emitter.

The resultant variability in the way individuals react to noise makes it essentially impossible to predict with any accuracy how any one *individual* will respond to a given noise. For example, some people object to noise emitted by jets, regardless of the actual noise energy level, while others complain about helicopter noise only. When *communities* are considered as a whole, however, reliable relationships are found between reported annoyance and noise exposure. This relationship between community annoyance and noise exposure levels "…remains the best available source of predicting the social impact of noise on communities around airports …". As the Federal Interagency Committee on Noise (FICON) noted in its 1992 report, "the best available measure of [community annoyance] is the percentage of the area population characterized as 'highly annoyed' (%HA) by long-term exposure to noise of a specified level (expressed in terms of DNL)."

13.17. Use of Advisory Circular (AC) 36-3H. Advisory Circular (AC) 36-3H provides listings of estimated airplane noise levels in units of A-weighted sound level in decibels (dBA), ranked in descending order under listed conditions and assumptions. A-weighted noise levels refer to the level of noise energy in the frequency range of human hearing, rather than total noise energy. The advisory circular provides data and information both for aircraft that have been noise type certificated under 14 CFR Part 36 and for aircraft for which FAA has not established noise standards.

While 14 CFR Part 36 requires turbojet and large transport category aircraft noise levels to be reported in units of Effective Perceived Noise Level in decibels (EPNdB) and the reporting of propeller-driven small airplanes and commuter category airplanes to be reported using a different method [A-weighted noise levels], many airports and communities use a noise rating scale that is stated in A-weighted decibels. For this reason, FAA has provided a reference source for aircraft noise levels expressed in A-weighted noise levels.

The noise levels in AC 36-3H expressed in A-weighted noise levels are estimated as they would be expected to occur during type certification. Aircraft noise levels that occur under uniform certification conditions provide the best information currently available to compare the relative noisiness of airplanes of different types and models. AC 36-3H should be used as the basis for comparing the noise levels of aircraft that are not subject to noise certification rules to aircraft that are certificated as Stage 1, Stage 2, or Stage 3 under 14 CFR Part 36.

Advisory Circular (AC) 36-3H allows an "apple-to-apple" comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport operator's plan, and it is widely used and understood by the layman.

Table 13.1 in AC 36-3H provides an example of comparisons of aircraft. AC 36-3H provides the data in dBA, which is the base metric for DNL. It tabulates noise levels for a broad variety of aircraft in A-weighted sound level, retaining the advantage of the Part 36 testing methodology and procedures (standardization, repeatability). AC 36-3H allows an "apple-to-apple" comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport sponsor's noise compatibility plan, and it is widely used and understood in both the aviation industry and community planning agencies. However, the noise levels in AC 36-3H are not intended to determine what noise levels are acceptable or unacceptable for an individual community.

ESTIMATED MAXIMUM A-WEIGHTED SOUND LEVELS
MEASURED IN ACCORDANCE WITH PART-36 APPENDIX -C- PROCEDURES
TAKEOFF

MANUFACTURER	AIRPLANE	ENGINE	TOGW 1000 LBS	EST DBA	FLAPS	NOT
BEECH	35-C33A	I0-520-B	3.30	70.0	-	
BEECH	F33A	I0-520-B	3.40	70.0	-	
BEECH	K35,M35	IO-470-C	3.00	70.0	-	
CESSNA	182P	O-470-S	3.00	70.0	-	1
CESSNA	320C	TSI0-470-D	5.20	70.0	-	
CESSNA	337H	IO-360-G	4.60	70.0	-	
PIPER	601P	IO-540-S1A5	6.00	70.0	-	
PIPER	PA-31-325	TIO-540-F2BD	6.50	70.0	-	
PIPER	PA-32R-301	IO-540-K1G5D	3.60	70.0	-	
PIPER	PA-46-31P MALIBU	TSIO-520-BE	4.10	70.0	-	
BOEING	B-757-200	PW-2037(BG-3)	220.00	69.9	5	
DASSAULT	FALCON 900	TFE731-5BR-1C	46.50	69.9	20	
FOKKER	F100	RR TAY MK650-15	98.00	69.9	-	
FOKKER	F100	RR TAY MK650-15	98.00	69.9	-	
AVRO	146-RJ 70	LF507-1F	84.00	69.8	18	8,1
AVRO	146-RJ 70	LF507-1F	84.00	69.8	18	8,1

Table 13.1 Comparison of Aircraft Using Advisory Circular (AC) 36-3

13.18. Integrated Noise Modeling. The FAA's Office of Environment and Energy (AEE-100) has developed the Integrated Noise Model (INM) for evaluating aircraft noise impacts in the vicinity of airports. INM has many analytical uses, such as (a) assessing changes in noise impact resulting from new or extended runways or runway configurations, (b) assessing changes in traffic demand and fleet mix, and (c) evaluating other operational procedures. The INM has been the FAA's standard tool since 1978 for determining the predicted noise impact in the vicinity of airports. Requirements for INM use are defined in FAA Order 1050.1E, *Policies and Procedures for Considering Environmental Impacts*; FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*; and 14 CFR Part 150, *Airport Noise Compatibility Planning*.

The INM produces noise exposure contours that are used for land use compatibility maps. The INM program includes built-in tools for comparing contours; it also has features that facilitate easy export to a commercial Geographic Information System (GIS). The INM can also calculate

predicted noise levels at specific sites of interest, such as hospitals, schools, or other noise-sensitive locations. For these grid points, the INM reports detailed information for the analyst to determine which events contribute most significantly to the noise level at that location. The INM supports 16 predefined noise metrics that include cumulative sound exposure, maximum sound level, and time above metrics from the A-Weighted, C-Weighted, and the Effective Perceived Noise Level families. The user may also create the Australian version of the Noise Exposure Forecast (NEF).[3]

13.19. Future Noise Policy. Federal policy on noise measurement methodology and noise mitigation is not static, but can change with new legislation or reconsideration of past agency policy. ACO-100 should be consulted when reviewing a proposed aircraft noise restriction to ensure that current policy is applied to the review.

13.20. through 13.25 reserved.

[3] Additional information on the Integrated Noise Model (INM) and its use is available from the FAA Office of Environment and Energy (AEE-100) or online on the FAA website.

Land Use Compatibility with Yearly Day-Night Average Sound Levels Table

TABLE 1

LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land Use	*Yearly Day-Night Average Sound Level (L_{dn}) in Decibels*					
	Below 65	*65-70*	*70-75*	*75-80*	*80-85*	*Over 85*
Residential						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
Public Use						
Schools	Y	N1)1	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
Commercial Use						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
Manufacturing And Production						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
Recreational						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

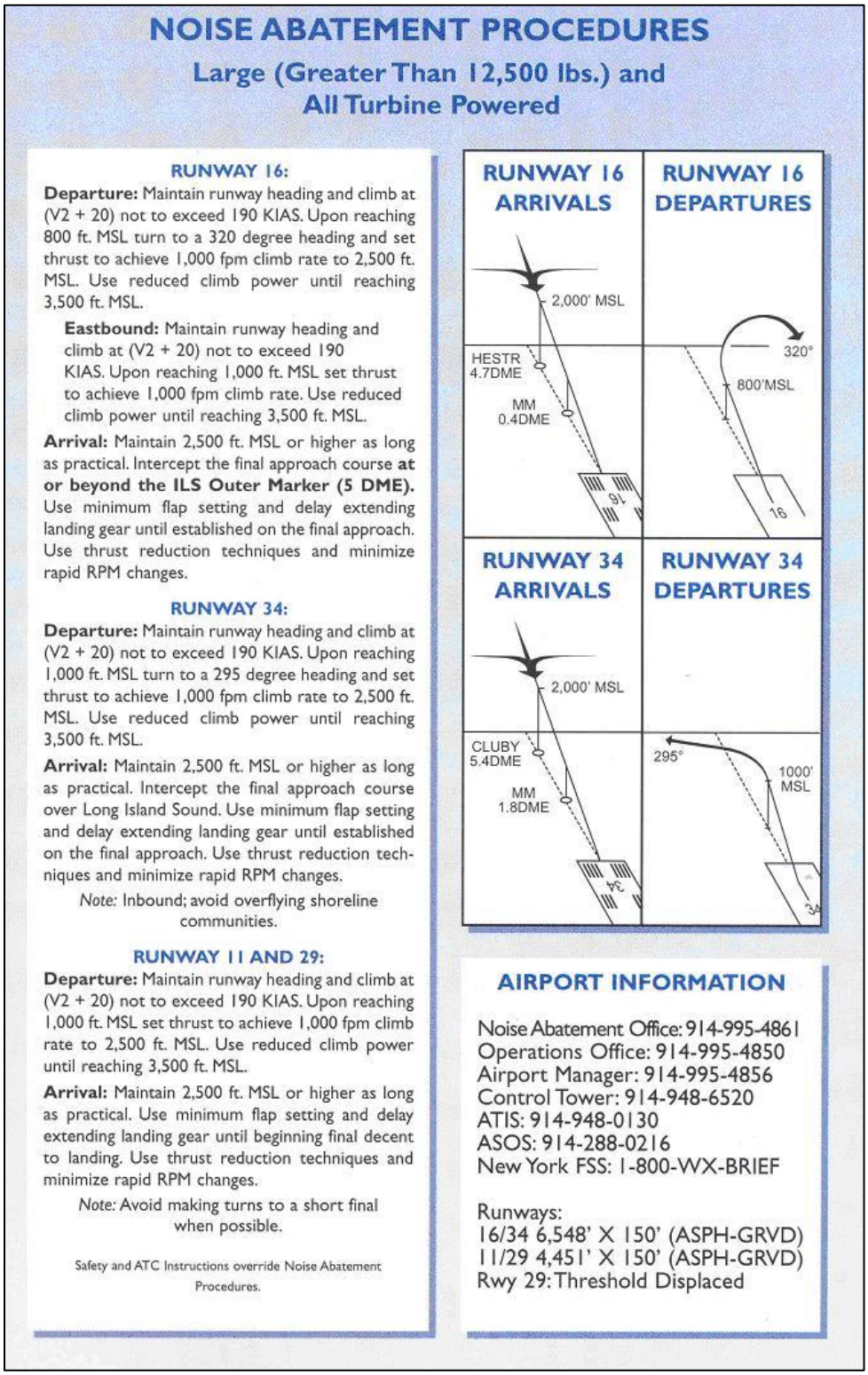
* The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM	Standard Land Use Coding Manual.
Y (Yes)	Land Use and related structures compatible without restrictions.
N (No)	Land Use and related structures are not compatible and should be prohibited.
NLR	Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35	Land used and related structures generally compatible; measures to achieve NLR or 25, 30, or 35 dB must be incorporated into design and construction of structure.

In the Aviation Safety and Noise Abatement Act (ASNA), Congress directed the FAA, among other things, to identify land uses that are normally compatible with various exposures of individuals to noise. The result was Table 1 in 14 CFR Part 150, as depicted above. (Graphic: FAA)

Noise Abatement Procedures



As mentioned in this voluntary noise abatement pilot handout, safety of flight and Air Traffic Control (ATC) instruction always override noise abatement procedures. (Source: Panorama Flight Service, Westchester County Airport, New York)

Chapter 14: Restrictions Based on Safety and Efficiency Procedures and Organization

14.1. Introduction. This chapter outlines guidance and standard methodology by which FAA reviews existing or proposed restrictions on aeronautical activities at federally obligated airports on the basis of safety and efficiency for compliance with federal obligations. It does not address other airport noise and access restrictions, which are discussed in chapter 13 of this Order, *Airport Noise and Access Restrictions*.

14.2. Applicable Law. The sponsor of any airport developed with federal financial assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination.[1] Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances, implements the provisions of 49 United States Code (U.S.C.) § 47107(a) (1) through (6). Grant Assurance 22(a) requires that the sponsor of a federally obligated airport:

> …will make its airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Grant Assurance 22(h) provides that the sponsor:

> …may establish such reasonable, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

The Airport Noise and Capacity Act (ANCA), as implemented by 14 Code of Federal Regulations (CFR) Part 161, establishes a national program for review of airport noise and access restrictions on operations by Stage 2 and 3 aircraft.[2] In reviewing proposed safety and efficiency restrictions affecting such operations, airports district offices (ADOs) and regional airports divisions should consult with the Airport Compliance Division (ACO-100) for possible referral to the Airport Planning and Environmental Division (APP-400) and Assistant Chief Counsel for Airports and Environmental Law (AGC-600).

14.3. Restricting Aeronautical Activities. While the airport sponsor must allow use of its airport by all types, kinds, and classes of aeronautical activity, as well as by the general public, Grant Assurance 22, *Economic Nondiscrimination*, also provides for a limited exception: "the airport sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is reasonable and necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." A prohibition or limit may be based on

[1] The FAA shall develop plans and policy for the use of navigable airspace to ensure the safety of aircraft and efficient use of airspace. (49 U.S.C. § 40103.) The U.S. Government has exclusive sovereignty over airspace of the United States and thus makes the final decision regarding safety of aircraft.

[2] Safety and efficiency restrictions are typically imposed at generally aviation (GA) airports on aircraft that are not designated Stage 2 or 3 (*e.g.*, hang gliding and banner towing aircraft). Accordingly, most safety and efficiency restrictions will be subject to review only for compliance with grant assurance and Surplus Property Act obligations, and not ANCA.

safety or on a conflict between classes or types of operations. This generally occurs as a conflict between fixed-wing operations and another class of operator that results in a loss of airport capacity for fixed-wing aircraft. Any restriction proposed by an airport sponsor based upon safety and efficiency, including those proposed under Grant Assurance 22(i) must be adequately justified and supported. Prohibitions and limits are within the sponsor's proprietary power only to the extent that they are consistent with the sponsor's obligations to provide access to the airport on reasonable and not unjustly discriminatory terms and other applicable federal law.

The Associate Administrator for Airports, working in conjunction with Flight Standards and/or the Air Traffic Organization, will carefully analyze supporting data and documentation and make the final call on whether a particular activity can be conducted safely and efficiently at an airport. In all cases, the FAA is the final arbiter regarding aviation safety and will make the determination regarding the reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport.

The FAA, not the sponsor, is the authority to approve or disapprove aeronautical restrictions based on safety and/or efficiency at federally obligated airports.

14.4. Minimum Standards and Airport Regulations. An airport proprietor may adopt reasonable minimum standards for aeronautical businesses and adopt routine regulations for use and maintenance of airport property by aeronautical users and the public. These kinds of rules typically do not restrict aeronautical operations, and therefore would generally not require justification under Grant Assurance 22(i). For example, an airport sponsor may require a reasonable amount of insurance as part of their minimum standards.

a. Type, Kind, or Class. Grant Assurance 22(i) refers to the airport sponsor's limited ability to prohibit or limit aeronautical operations by whole classes or types of operation, not individual operators. If a class or type of operation may cause a problem, all operators of that type or class would be subject to the same restriction. For example, if the sponsor of a busy airport finds that skydiving unacceptably interferes with the use of the airport by fixed-wing aircraft, and the FAA agrees, the sponsor may ban skydiving at the airport. However, the sponsor could not ban some diving operators and allow others to operate. If a sponsor believes there is a safety issue with the flight operations of an individual aeronautical operator, rather than a class of operations, the sponsor should report the issue to the Flight Standards Service as well as bringing it to the attention of the operator's management.

The term "kind" in Grant Assurance 22(i) is not defined in the Federal Aviation Act of 1958 (FAA Act), the Airport and Airway Improvement Act of 1982 (AAIA), or in FAA regulations, and has been interpreted not to add any meaning distinct from "class" and "type" of operation or operator.

b. Multi-Airport Systems. The operator of a system of airports may have some ability to accommodate operations at its other airports if those operations are restricted at one airport in the system. However, any access restrictions must still be fully justified, based on a safety or efficiency problem at the airport where the restrictions apply. Such restrictions must also comply

with ANCA. The operator may not simply allocate classes or types of operations among airports based on preference for each airport's function in the system.

c. Purpose. A prohibition or limit on aeronautical operations justified by the sponsor on the basis of safety or efficiency, under Grant Assurance 22(i) will be evaluated based on the stated purpose, justification, and support offered by the sponsor. If it appears that the sponsor actually intends the restriction to partially or wholly serve other purposes, such as noise mitigation, the safety and efficiency basis of the restriction should receive special scrutiny.

d. Examples of Grant Assurance 22(i) Restrictions.

(1). Examples of airport rules approved by the FAA prohibiting, limiting, or regulating operations under Grant Assurance 22(i) have included:

(a). Limiting skydiving, soaring, and banner towing operations to certain times of the day and week to avoid the times of highest operation by fixed-wing aircraft.

(b). Banning skydiving, soaring, ultralights, or banner towing when the volume of fixed-wing traffic at the airport would not allow those activities without significant delays in fixed-wing operations.

(c). Limiting skydiving, soaring, and ultralight operations to certain areas of the airfield and certain traffic patterns to avoid conflict with fixed-wing patterns.

(d). Restricting agricultural operations due to conflict with other types of operations or lack of facilities to handle pesticides safely that are used in this specialized operation.

(2). Examples of restrictions which the FAA has found were not justified for safety or efficiency under Grant Assurance 22(i) have included:

(a). A nighttime curfew for general aviation operations, based on safety, when Part 121 operators were allowed to operate in night hours.

(b). A ban on scheduled commercial operations, based partly on safety grounds, when nonscheduled commercial operations were permitted.

(c). A ban on certain categories of aircraft, based on safety, where the banned categories of operator were defined solely by aircraft design group, which is an airport planning and design criterion based on approach speed for each aircraft type.

(d). A total ban on skydiving when skydiving could be accommodated safely at certain times of the week with no significant effect on fixed-wing traffic.

(3). Examples of operational restrictions that generally do not require justification under Grant Assurance 22(i).

(a). Examples of airport rules approved by the FAA prohibiting, limiting, or regulating aeronautical operations that would not require justification under Grant Assurance 22(i) have included:

(i). Designated runways, taxiways, and other paved areas that may be restricted to aircraft of a specified maximum gross weight or wheel loading.

(ii). Designated areas for maintenance, fueling, and aircraft painting.

(iii). Use of airport facilities by the general public may be restricted by vehicular, security, or crowd control rules.

14.5. Agency Determinations on Safety and System Efficiency. The FAA airports district office (ADO) or regional airports division will make the informal (Part 13.1) determination and the Office of Compliance and Field Operations (ACO) will make the formal (Part 16) determination on whether a particular access restriction is a violation of the airport sponsor's grant assurances, subject to appeal to the Associate Administrator for Airports. However, when an informal Part 13.1 report or formal Part 16 complaint is filed regarding an access restriction based on safety or air traffic efficiency, the FAA Office of the Associate Administrator for Airports should obtain assistance from the appropriate FAA office, usually Flight Standards for safety issues and Air Traffic for efficiency and utility issues. While Flight Standards has jurisdiction for safety determinations, coordination with Air Traffic or other FAA offices might be required in cases where the aeronautical activity being denied has an impact on the efficient use of airspace and the utility of the airport.

14.6. Methodology. The goal of this guidance is to provide a standard procedure for addressing technical safety and efficiency claims in support of an airport access restriction. It is often appropriate to ask Flight Standards to conduct a safety review or to ask Air Traffic for an airspace study to determine the impact of a restriction on the safety, efficiency, and utility of the airport. The determinations provided by these offices may be an important part of the decision making process and material record used as part of a Director's Determination (DD) and Final Agency Decision (FAD) and possibly for a decision subject to judicial review.

A sponsor's justification for a proposed restriction should be fully considered, but should also be subjected to an independent analysis by appropriate FAA offices. Early contact with Flight Standards as part of an investigation is desirable since it is possible that a safety determination may already have been made. For example, certain operators may already possess a "Certificate of Waiver or Authorization" from Flight Standards to conduct the aeronautical activity the airport is attempting to restrict, such as banner towing. Such a document would allow certain operations to remain in compliance with Part 91, *General Operating and Flight Rules*. These "waivers" or "authorizations" are de facto safety determinations; their issuance implies that the activity in question can be safely accommodated provided specified conditions are followed.

Similarly, if applicable, the FAA Office of the Associate Administrator for Airports should check with Air Traffic early in the investigation in order to determine whether or not any Air Traffic special authorization or study affecting the aeronautical activity in question was issued or exists.

However, when neither an FAA Flight Standards safety nor an Air Traffic determination or study exists, a review process that includes Flight Standards and/or Air Traffic should be coordinated by the FAA Office of the Associate Administrator for Airports to address the issue of accommodating the aeronautical activity in question at the airport. Depending on Flight

Standards/Air Traffic familiarity with the affected airport and its operation, a site inspection may or may not be required. After an evaluation, Flight Standards and/or Air Traffic may or may not decide that a particular activity may be able to be safely conducted at the airport. The ADO, regional airports division, or ACO will issue a determination based on the analysis of all responses.

14.7. Reasonable Accommodation. The purpose of any investigation regarding a safety-based or efficiency-based restriction of an aeronautical use is to determine whether or not the restricted activity can be safely accommodated on less restrictive terms than the terms proposed by the airport sponsor without adversely affecting the efficiency and utility of the airport. If so, the sponsor will need to revise or eliminate the restriction in order to remain in compliance with its grant assurances and federal surplus property obligations.

A complete prohibition on all aeronautical operations of one type, such as ultralights, gliders, parachute jumping, balloon and airship operations, acrobatic flying, or banner towing should be approved only if the FAA concludes that such operations cannot be mixed with other traffic without an unacceptable impact on safety or the efficiency and utility of the airport.

When it is determined that there are less restrictive ways or alternative methods of accommodating the activity while maintaining safety and efficiency, these alternative measures can be incorporated in the sponsor's rules or minimum standards for the activity in question at that airport.

a. Other Agency Guidance. Any accommodation should consider 14 Code of Federal Regulations (CFR) Part 91, as well as specific FAA regulations and advisory circulars for the regulated activity. These include:

(1). For ultralight operations: 14 CFR Part 103, *Ultralight Vehicles;* Advisory Circular (AC) 103-6, *Ultralight Vehicle Operations, Airports, Air Traffic Control, and Weather;* and AC 90-66A, *Recommended Standard Traffic Patterns and Practices for Aeronautical Operations at Airports Without Operating Control Towers*.

(2). For skydiving: 14 CFR Part 105, *Parachute Operations;* and AC 105-2C, *Sport Parachute Jumping*.

(3). For balloon operations: AC 91-71, *Operation of Hot Air Balloons with Airborne Heaters*.

(4). For banner towing operations: Flight Standards Publication *Information for Banner Tow Operations*, available online on the FAA website.

b. Examples of Accommodation Measures. Some measures that airports have used to accommodate activities safely and efficiently in lieu of a total ban include:

(1). Establishing designated operations areas on the airport. An airport can designate certain runways or other aviation use areas at the airport for a particular class or classes of aircraft as a means of enhancing airport capacity or ensuring safety.

(2). Alternative traffic patterns and touchdown areas. Examples of this would be a glider operating area next to a runway or a helicopter practice area next to a runway as long as there is proper separation to maintain safety.

(3). Special NOTAM (Notice to Air Mission) requirements.

(4). Special handheld radio requirements.

(5). Special procedures and required training.

(6). Seasonal authorization or special permission.

(7). Waivers issued by Flight Standards under 14 CFR section 103.5 or other applicable regulations and policies.

(8). Special use permit, pilot registration, and fees.

(9). Limits on the total number of operations in the restricted class. (It might be easier to accommodate just a few operations.)

(10). Letters of agreement with Air Traffic Control (ATC), if applicable.

(11). Restricted times of operations and prior notification.

(12). Weather limitations.

(13). Nighttime limitations.

14.8. Restrictions on Touch-and-Go Operations. A touch-and-go operation is an aircraft procedure used in flight training. It is considered an aeronautical activity. As such, it cannot be prohibited by the airport sponsor without justification. For an airport sponsor to limit a particular aeronautical activity for safety and efficiency, including touch-and-go operations, the limitation must be based on an analysis of safety and/or efficiency and capacity, and meet any other applicable requirements for airport noise and access restrictions explained in chapter 13 of this Order, *Airport Noise and Access Restrictions*.

14.9. Sport Pilot Regulations.

a. General. In 2004, the FAA issued new certification requirements for light-sport aircraft, pilots, and repairmen. The FAA created two new aircraft airworthiness certificates: one for special light-sport aircraft, which may be used for personal as well as for commercial use; and a separate certificate for experimental light-sport aircraft (including powered parachutes and other light aircraft such as weight-shift and some homebuilt types), which may be used only for personal use. The rule also establishes requirements for maintenance, inspections, pilot training, and certification. The FAA worked with the General Aviation (GA) community to create a rule that sets safety standards for people who will now earn FAA certificates to operate more than

15,000 uncertificated, ultralight-like aircraft. The rule's safety requirements should also give this segment of the GA community better access to insurance, financing, and airports.

b. Compliance Implications. A proposed restriction affecting these aircraft should be analyzed like the other cases addressed in this chapter, with coordination with Flight Standards and/or Air Traffic as appropriate.

14.10. Coordination. The sample correspondence at the end of this chapter will assist in coordinating action with either Flight Standards or Air Traffic. Sample correspondence includes a request for a safety determination, a Flight Standards response, an Air Traffic assessment and response, and an FAA objection to a proposed accommodation of an aeronautical activity.

14.11 through 14.15 reserved.

Sample Request for Safety Determination **- Page 1**

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Subject: **ACTION:** Request for Safety Determination - Formal Complaint 16-00-11

Date: APR 10 2001

Mr. William Dean Bardin
v.
County of Sacramento

From: Director, Airport Safety and Standards AAS-1

Reply to Attn. of: Wayne Heibeck (202) 267-3187

To: Manager, Western Pacific Airports Division - AWP-600

It is our responsibility to review and issue a Director's Determination on the above-mentioned complaint under FAR Part 16. The complaint relates to Sacramento County, prohibiting ultralight vehicles at Franklin Field (Q53 - uncontrolled airport) on the grounds that such operations are unsafe.

We believe that insufficient safety related information relating to this case exists for a compliance determination. The complaint filed requires the FAA to determinate whether or not the prohibition instituted by the airport sponsor violates the requirement "to make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical uses." Flight Standards assistance in the form of a safety determination and/or recommendation is required. It would:

1. Substantiate a FAA (AAS-1) decision on the reasonableness of the restriction.
2. Be worthwhile as both parties in the complaint disagree on whether or not ultralight operations at Franklin are safe.
3. Would permit AAS-1 to adhere to FAA order 5190.6A, section 4-8, which addresses safety related restriction at federally-obligated airport and specifies the role(s) of other FAA entities, one of which is Flight Standards. Specifically, FAA Order 5190.6A,Section 4-8 states:

> In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the airport owner's restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when

Sample Request for Safety Determination - Page 2

considering the proposed restriction. In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.

4. Strengthen the record given that the current complaint could lead to a Final Agency Decision, which in turn may be subjected to judicial review.

Given the existing situation, please coordinate with the region's Flight Standards Division, AWP-200, to have them conduct an analysis of options regarding the possibility of safely accommodating ultralight operations and the compatibility of ultralight operations with other aeronautical uses at Franklin Field as soon as possible.

Attached is a copy of the complaint documents we have received. Please notify us as soon as practicable of AWP-200's timeframe for completion of this analysis.

David L. Bennett

Attachment

Sample Flight Standards Response

The following is the suggested response to the Airports Division request for a safety review of Franklin Field.

Personnel of the Sacramento Flight Standards District Office (FSDO) have conducted a safety review of the Franklin Field Airport as request in the Memo dated April 10, 2001.

An Inspector reviewed the available safety related material provided by the users of Franklin Field, maps and the comments from the County of Sacramento. A site inspection was conducted and revealed an area on the northwest part of the airport could accommodate ultralight operations.

Franklin Field is a heavily used uncontrolled airport for pilot training and agricultural operations. Flight schools both helicopter and airplanes use the field. The mix of ultralight and aircraft traffic has generated numerous complains.

On June 5, 2001, the FSDO inspector met with the SFO-ADO and personnel for the County of Sacramento, Division of Airports. Another site visit was concluded with the above organizations and all parties agree it was possible for ultralights to operate within specific guidelines.

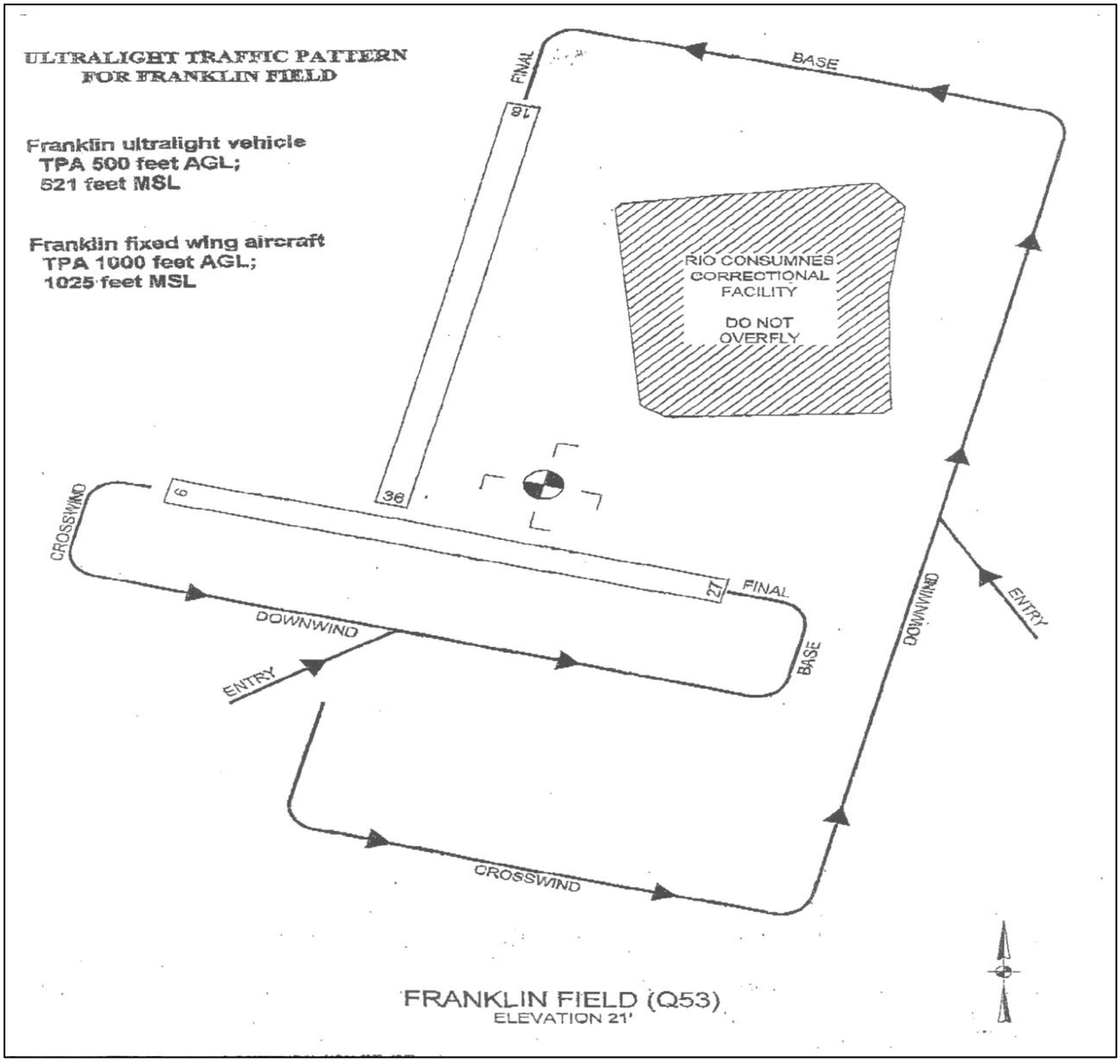
The area northwest along the airport boundaries is large enough to provide reasonable accommodation for ultralight operations. An area in the grass could be graded for a landing and ramp areas. The traffic pattern altitude should no higher than 400 feet; this would keep the ultralights away from the normal aircraft flow.

In addition, the following should be considered by the County of Sacramento in the effort to make reasonable accommodations for the ultralight activities:

- Establish designated operations area.
- Transient versus based ultralight operations.
- Alternative traffic patterns as per AC 90-66A.
- NOTAM requirements.
- Special use permits for pilot and aircraft.
- Level of purposed operations the airport.
- Times of operation and prior notification if required.
- Weather limitation.
- Daytime versus nighttime operations.

It is recommended that a meeting with the County of Sacramento, SFO-ADO, Sacramento FSDO and the ultralight users group be schedule, as soon as possible, to work out the details and any special provisions for the operation of ultralights at Franklin Field.

Sample Visual Depiction of Flight Standards-Approved Flight Pattern to Accommodate Ultralight **Operations**



Sample Air Traffic Assessment and Response - Page 1

Memorandum

U. S. Department
of Transportation
Federal Aviation
Administration

Air Traffic Control Tower
St. Petersburg-Clearwater Int'l Airport
Clearwater, FL 33762

Subject: INFORMATION: Review Aeronautical Study No. 01-ASO-3059-NRA **Date:** 4/25/01

From: Air Traffic Manager,
ATCT, Clearwater , Florida

To: Lee Blaney, ORL-610A

When I took over the position of Air Traffic Manager for St. Petersburg-Clearwater Air Traffic Control Tower (PIE) in 1996, I was briefed by my predecessor that the Pinellas County Airport Director did not allow banner towing operations at the airport. To my knowledge there have not been any banner towing operations, with the exception of one emergency landing by a banner tower. *I highly recommend that the Pinellas County Airport Authority continue its present policy to prohibit banner tow operations at PIE due to safety concerns.*

PIE Control Tower handled 229,215 operations in 2000. This is over a 30% increase in air carrier, corporate jet and general aviation since 1996. The layout of PIE runways makes this a very complex operation, which can only be worked safely under certain conditions. There are three crossing runways, which mean aircraft landing or departing one runway will cross the traffic path of one or more other runways. The determination of which runways to use is dependent upon the type of traffic at the time and the existing meteorological conditions. We try to use two or three runways at a time in pre-established patterns and this requires very precise timing. The preferred runway configuration is Runways 4, 9, 35R simultaneously. This configuration generally allows the controller to work the maximum number of aircraft and minimize delays. However, at times only one runway can be used. Because of the increased volume of traffic and existing runway configuration, the tower intermittently reaches a maximum safe number of aircraft operating at one time. The individual controller working the tower determines that number, based on the volume and complexity at the time. When that level is reached, any further aircraft movements are denied or curtailed. Presently, we estimate that occurs at PIE more than 10% of the time. As our volume increases, the frequency of denying services will increase.

We expect the volume of traffic to continue to increase at an even higher rate than in the past due to several upcoming events. First, we will be installing a CAT II ILS this year. The capability for pilots to shoot a CAT II ILS practice approach will attract more aircraft from other airports to make these practice approaches. Second, the three flight schools on the field are expanding. In fact, the number of practice operations increased by 7% in the last year. One of the flight schools has applied for a permit to open a new Part 141 school. Third, Embry Riddle Aeronautical University (ERAU) has recently gone into partnership

Sample Air Traffic Assessment and Response – Page 2

with St. Petersburg Junior College to provide bachelor's and master's degrees in professional aeronautics. This program is expected to draw students not only from the entire west cost of Florida, but also internationally. We anticipate ERAU's presence on the west coast will attract student activity similar to that experienced by ERAU at Daytona Beach Airport/Air Traffic Control Tower, on the east coast. The St. Petersburg-Clearwater Airport agreed to provide classroom and hanger space for ERAU's airplanes in the future and have already given approval for construction of a large building for classrooms on land adjacent to the airport.

In addition to flight training, the Airport is actively looking for additional commercial flights, both passenger and cargo. Funds have been appropriated to extend the main runway to 10,000 feet in order to accommodate overseas flights and heavy cargo planes. The Airport has been negotiating with various companies that would like to take advantage of the extended runway for their operations. There are plans to build a joint military reserve training center on the airport this year, which includes locally based helicopters and the probability of additional itinerant military traffic.

Banner towing operations would not readily fit into the patterns of established operations at PIE, practice or itinerant flights. They're low flying, slow moving operations that don't mix well with other flights. They also involve having a ground crew go out onto the airfield twice, to set up and later remove the banner. If the banner pick- up area is in the safety area of a runway, the runway is essentially closed from the time the crew goes out onto the airfield until the banner has been picked up and the site cleared. From a safety standpoint, banner towing is suited to small airfields without commercial flights.

In 2000, PIE had 229,215 operations and Tampa International Airport had 277,863 operations. The Hillsborough County Aviation Authority has not allowed banner towing for many years due to safety issues and traffic volume. When airports reach the volume that Tampa and St. Petersburg-Clearwater have, banner-towing operations cannot safely be worked into the traffic. High volume airports with commercial flights do not allow banner towing because it would result in interruption of the traffic flow and untenable delays for other aircraft in order to clear the way for banner-towing aircraft. Commercial jets are designed for fast flight and do not maneauver quickly when in landing or take-off configurations. It compromises their safety to mix in operations that have the potential to interrupt the traffic flow and cause aborted take-off's or landings. In addition to the airlines and air taxis, there are at least three air ambulance companies based at PIE. When they file as "Life Guard", they cannot be delayed for other aircraft. The Coast Guard has search and rescue flights that require priority handling. When any inbound commercial flights are delayed, they back up into Tampa's already congested airspace. For controllers to work several aircraft safely, they need routine procedures and flights. Whenever they have to interrupt the established flow, it is a distraction, and distractions always decrease safety. If banner towing were permitted at PIE, there are conceivably a minimum of two companies that intend to conduct some or all of their operations from PIE. They have a significant potential to interrupt air traffic and impact safety. Additionally, if banner towing were allowed at PIE, it would undoubedly attract other banner tow companies due to PIE's

Sample Air Traffic Assessment and Response - Page 3

geographical location. There are no Hillsborough County airports which permit banner towing.

Traffic volume at PIE is quite variable. As stated above, there are times when PIE is forced to deny operations for safety reasons, and we do this by curtailing the number of aircraft making practice approaches or touch-and-go's. At times, touch-and-go's are not permitted due to traffic volume and complexity. Volume variations are intermittent and cannot be predicted in advance. While not optimal, student pilots can tolerate interruptions to their practice flights and they reschedule for another flight time. Banner towing is a commercial enterprise that could not operate in an environment where they were subject to having their flight requests denied.

We highly recommend that the Pinellas County Airport Authority continue its present policy to prohibit banner tow operations at PIE due to safety concerns.

Sandra L. Bathon

Sandra L. Bathon

Sample FAA Objection to a Proposed Overreaching Accommodation of an Aeronautical Activity - Page 1

(Information in samples is for example only)

U.S. Department of Transportation
Federal Aviation Administration

Orlando Airports District Office
5950 Hazeltine National Dr., Suite 400
Orlando, FL 32822-5003
Phone: (407) 812-6331
Fax: (407) 812-6978

December 5, 2006

Mr. Nickolis A. Landgraff
Airport Manager
City of DeLand
1777 Langley Ave.
DeLand, FL 32724

Dear Mr. Landgraff:

RE: Agency Review
DeLand Skydiving Agreement

We received your November 14, 2006 correspondence regarding the proposed agreement between the City of DeLand, the skydiving operators of DeLand Airport, and the proposed airport traffic control tower (ATCT). While we applaud the sponsor for its proactive efforts to come to agreement with the operators of skydiving operations at the airport, we are concerned that the structure of the document removes the airport's ability to adhere to its grant agreements into the future. Specifically, there are a number of provisions of the Agreement that concern the Federal Aviation Administration (FAA), which we have listed below.

- The FAA must review any agreement that includes safety requirements that differ from those required by federal regulation. This is true regardless if the requirements will be more or less stringent, and the requirements are continually subject to review, considering constantly changing circumstances. This review would not only include ATC, as the agreement states, but also Flight Standards and Airports Divisions.

- While the agreement states that it will seek FAA concurrence, it appears that the parties only intended to seek input from the local FAA ATCT. FAA Flight Standards and Airports Divisions *must* be consulted. Therefore, once a final draft of this agreement is made, it should be coordinated through the Orlando ADO.

- II.C. – Both Skydive Deland and the city of Deland must understand that any provision agreed to in this document cannot overrule the applicable Federal Aviation Regulations. Specifically, one provision needing further review by Flight Standards includes #3, which states:

  *"The **first radio communication of the day by a Jump Aircraft shall activate the DZ. When the Deland Drop Zone is activated, the Tower Operator is***

Sample FAA Objection to a Proposed Overreaching Accommodation of an Aeronautical Activity - Page 2

> ***deemed to have authorized all Jump Aircraft, their pilots and Parachutists for continuous operations*** *in the Deland Class 'D' airspace.* ***This authorization will remain in effect until the last load of the day.***" [emphasis added.]

FAR Part 105 requires the pilot-in-command to maintain radio communications with air traffic control at least 5 minutes before the parachute operations begin and must, during each flight, advise air traffic control when the last parachutist or object exits the aircraft. Specific information must be provided to air traffic control under certain circumstances as required by FAR Part 105.15 and Part 105.25.

There is no guarantee that transient aircraft will hear the first communication of the day activating the drop zone. Also, there may be times that the drop zone may need to be closed to conduct airfield inspections or to pick up foreign object debris. Again, FAA Flight Standards must review these provisions to ensure continued flight safety.

- II.D. – The Agreement specifies what the tower operator shall commit to. For example,

  > *"The Tower Operator* ***shall comply*** *with the following: The Tower Operator* ***shall not impose unreasonable limitations because of wind speed or direction****...the Tower Operator and the Skydiving Industry* ***stipulate and agree*** *that* ***aircraft operations and skydiving operations shall operate concurrently*** *as a preferred policy and that all parties shall act and engage in conduct that optimizes concurrent operation of flight and skydiving operation,* ***without unnecessary delays****."*

  Who determines the reasonableness of limitations imposed by ATC? An operating control tower makes decisions based on operational safety and efficiency. Additionally, during a given situation, it may not be operationally efficient or safe for the concurrent operation of flight and skydiving activities -- those determinations must be made by Air Traffic, Flight Standards, and the pilot-in-command, not the airport or skydiving industry.

- The City cannot preempt the right to use the airport by skydivers above all other users in perpetuity. The federal obligations require access for *all* aeronautical users, not just skydivers. While the skydiving community provides large economic stimulus for the airport and surrounding community, any unreasonable restrictions limiting access to other aeronautical users would be a violation of grant assurance and will not be accepted.

- III. – The Agreement includes provisions for an advisory committee and specifies the members of that committee. Under the current Agreement, there are no provisions for an airport or FAA ATC representative to be part of the committee. While there is no regulation or statute to mandate inclusion, the airport should be

(Information in samples is for example only)

Sample FAA Objection to a Proposed Overreaching Accommodation of an Aeronautical Activity - Page 3

advised of this oversight and guided to include members of these two important parties to ensure a complete representation of those involved in operations at the airport.

- The FAA is concerned that this agreement is a contract, which appears to be an enforceable agreement. The agreement should not be a contract.

- While it is acceptable that the Airport can promulgate procedures and policies, it is a violation of Grant Assurance 5 (Rights and Powers) to PREVENT the sponsor from ever changing the policies and procedures in response to the interests of the public in civil aviation. This contract would prevent such changes. While some of these procedures could be adopted (with the exceptions discussed above) as minimum standards and policies, the airport sponsor cannot give away its discretion to manage this airport in the interests of civil aviation. For example, commercial service airports cannot force themselves to deny general aviation because they've agreed to with certain wishes of commercial operators. There must be other conditions, and even then they can only encourage the use of relievers for general aviation.

If you have any questions regarding these comments, please feel free to call me.

Once you have addressed these comments and revised the agreement, please forward the final draft to this office in my attention for agency review.

Sincerely,

Original Signed By

Rebecca R. Henry
Program Manager
Planning and Compliance

Part V: Financial Responsibilities

Chapter 15: Permitted and Prohibited Uses of Airport Revenue

15.1. Introduction. This chapter discusses the sponsor's use of airport revenue. It supplements, but does not supersede, the guidance issued in FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 February 16, 1999 (*Revenue Use Policy*).

The U.S. Congress has established the general requirements for the use of airport revenue and has identified the permitted and prohibited uses of airport revenues. These statutory requirements are incorporated in the standard grant assurances and have been interpreted by the FAA and the General Counsel's Office, Office of the Secretary, in policy statements and compliance decisions. It is the responsibility of the FAA airports district offices (ADOs) and regional offices to advise sponsors on the statutes, grant assurances, and policies that outline the permitted and prohibited uses of airport revenue and to ensure that sponsors are not in violation of their federal obligations in the use of their airport revenue. This chapter describes the legislative history, defines airport revenue, and describes the allowable and prohibited uses of airport revenue.

15.2. Legislative History. Congress placed restrictions on the use of airport revenue in four separate acts:

a. Airport and Airway Improvement Act of 1982 (AAIA). Congress first placed restrictions on the use of airport revenue in the AAIA (Public Law (P.L.) No. 97-248) . The AAIA established the basic rules for the use of airport revenue, which are still largely in effect today:

"All revenues generated by the airport, if it is a public airport, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property."

See 49 U.S.C. §§ 47107(b) and 47133 for current provision.

b. Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act). In the 1987 Airport Act, (P.L. No. 100-223), Congress extended the restriction on the use of airport revenue to include any local taxes on aviation fuel. Consequently, the taxing authorities must use local aviation fuel taxes (except taxes in effect on December 30, 1987) for airport capital and operating costs or for a state aviation program or for noise mitigation purposes on or off the airport. The AAIA and the 1987 Airport Act do allow for some preexisting "nonoperating or noncapital" uses of airport revenue. The *Revenue Use Policy* refers to these preexisting arrangements as "grandfathered." Paragraph 15.10 of this chapter discusses requirements for airports with grandfathered status. With the general recodification of Title 49 of the U.S.C in 1994, the revenue use provisions were codified as 49 U.S.C. § 47107(b).

c. FAA Authorization Act of 1994 (1994 Authorization Act). In the 1994 Authorization Act, (P.L. No. 103-305), Congress (i) defined certain unlawful uses of airport revenue, (ii) required airports to be as self-sustaining as possible, and (iii) required the FAA to publish a policy on the

use of airport revenue. (The self-sustaining requirement is discussed in Chapter 17 of this Order, *Self-Sustainability*.)

d. FAA Reauthorization Act of 1996 (1996 Reauthorization Act). In the 1996 Reauthorization Act (P.L. No. 104-264), Congress extended the restrictions on the uses of airport revenue to private airports that have received federal assistance. The provision is codified at 49 U.S.C. §§ 47107(b) and 47133.

15.3. Privatization. Also under the 1996 Reauthorization Act, Congress adopted a new statute, § 47134, establishing the Pilot Program on Private Ownership of Airports (privatization pilot program). The program provides for up to five publicly owned airports to participate in the program. Of the five eligible airports, only one airport can be a large hub airport. (Air carrier airports can only be leased.) One of the five airports must be a general aviation airport. (General aviation airports can either be leased or sold.) As an incentive to participation in the program, the Secretary may grant a sponsor three exemptions: (a) an exemption from the revenue-use rules to permit the sponsor to recover a specified amount from the lease or sale if approved by a super majority of air carriers, (b) an exemption waiving the obligation to repay federal grants or return property transferred from the federal government, and (c) an exemption permitting the private operator to earn compensation from airport operations.

15.4. Grant Assurance. Under the AAIA, sponsors, as a condition of receiving Airport Improvement Program (AIP) grants, must agree to the grant assurance on the use of airport revenue. Grant Assurance 25, *Airport Revenues*, incorporates the requirements described in the above legislation.

The Revenue Use Policy defines airport revenue and describes the permitted and prohibited uses of airport revenue.

15.5. FAA Policy. The *Revenue Use Policy* implements the requirements of the above acts, and incorporates the public comments from two earlier proposed versions of the policy. In addition, the *Revenue Use Policy* defines airport revenue and describes the permitted and prohibited uses of airport revenue (The final policy, dated February 16, 1999, is available online.)

15.6. Airport Revenue Defined. Airport revenue generally includes those revenues paid to or due to the airport sponsor for use of airport property by the aeronautical and nonaeronautical users of the airport. It also includes revenue from the sale of airport property and resources and revenue from state and local taxes on aviation fuel.

a. Revenue Generated by the Airport. Revenue generated by the airport for the aeronautical and nonaeronautical use of the airport includes, but is not limited to, the fees, charges, rents, or other payments received by or accruing to the sponsor from air carriers, tenants, concessionaires, lessees, purchasers of airport properties, airport permit holders making use of the airport property and services, etc. (Note: Revenue generated by the tenant in the course of that tenant's business is the tenant's revenue and not airport revenue under the *Revenue Use Policy*. The airport

sponsor's revenue from that tenant's occupancy and business rights would be paid in the form of fees, rentals, lease agreement, etc.)

Taxes assessed by a special taxing district surrounding the airport and dedicated for support of the airport, but not derived from the use of the airport, are generally not considered airport revenue subject to the *Revenue Use Policy*. These tax revenue funds should be kept separate from airport revenue accounts and may be used for purposes other than those listed in 49 U.S.C. § 47107(b) and § 47133.

c. Parking Fines. Under the *Revenue Use Policy*, "airport revenue" constitutes money received by the airport for the use of the airport. All of the revenues within the definition represent some form of payment for airport property or use of airport property, whether it is rent, concession fees, aeronautical fees, or mineral rights. However, parking fines and penalties result from law enforcement activity; they are designed to penalize and change behavior, not to serve as a source of revenue. They are assessed by an airport using its police powers, not its proprietary powers as owner of an airport. As a result, the FAA does not generally consider parking fines and penalties to be a revenue-producing activity. For example, the FAA would not consider fines or penalties from other types of law enforcement (such as fines levied for drug possession or intoxication) to constitute "airport revenue." Nor would the FAA consider fines levied for building code violations, improper food handling, or fees from city-issued permits for utility or building use to be "airport revenue."

15.7. Applicability of Airport Revenue Requirements.

a. Airport Revenue. The rules regarding the use of airport revenue are applicable to:

(1). Public Agencies that Receive AIP Grants. The rules on airport revenue apply to public agencies that have received an AIP grant since September 3, 1982, if the obligations of that grant were in effect on or after October 1, 1996.

(2). Public Agencies that Collect Taxes on Aviation Fuel. The rules on aviation fuel apply to state and local agencies that have received an AIP grant since December 30, 1987, and had federal grant obligations for the use of aviation fuel in effect on October 1, 1996.

(3). Any Airport that Received Federal Financial Assistance. The rules on airport revenue apply to a public or private airport that has received federal financial assistance (as defined in paragraph 15.8 of this chapter) and the federal obligations for use of airport revenue incurred as a result of that assistance were in effect on or after October 1, 1996.

15.8. Federal Financial Assistance. Federal financial assistance includes:

a. AIP development grants and other grants issued under predecessor programs.

b. Airport planning grants that relate to a specific airport.

c. Aircraft noise mitigation grants received by an airport operator.

d. The transfer of federal property under the Surplus Property Act; the transfer of federal nonsurplus property under deeds of conveyance issued under section 16 of the Federal Airport Act of l946 (1946 Airport Act), under section 23 of the Airport and Airway Development Act of l970 (1970 Airport Act), or under section 516 of the AAIA.

15.9. Permitted Uses of Airport Revenue.

a. General. Sponsors may use their airport revenue for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of the *Revenue Use Policy*. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

b. Promotion of the Airport. Sponsors may use their airport revenue to promote public and industry awareness of the airport's facilities and services. Airport revenue may be used to promote new air service and competition at the airport, but it may not directly subsidize air carrier operations. A sponsor may use its revenue to pay the salary and expenses of airport or sponsor employees engaged in efforts to promote air service at the airport. The sponsor may participate in cooperative advertising where the airport advertises new services with or without matching funds. The name of the airport must be prominently featured in the marketing and promotional material. The sponsor may pay a share of promotional expenses designed to increase use of the airport. The promotion must include specific information about the airport. In addition, the sponsor may support promotional events, such as a Super Bowl hospitality tent for corporate aircraft at a sponsor-owned general aircraft terminal. The sponsor may use airport revenue to pay for promotional items bearing airport logos distributed at various aviation industry events. The *Revenue Use Policy* does not prohibit a sponsor from spending airport revenue from one airport for promotion of another within that sponsor’s airport system.

c. Repayment of the Sponsor. A sponsor may use its airport revenue to repay funds it contributed to the airport from general accounts or to repay loans from the general account to the airport provided the sponsor makes its request for reimbursement within six (6) years of the date on which it made the contribution. (See 49 U.S.C. § 47107(l).)

When the sponsor asks the airport to repay an interest-bearing loan, the airport may repay the loan with interest only if the sponsor clearly documented that the loan was interest-bearing at the time the loan was made. The interest rate may not exceed the interest rate on the sponsor's other investments for that time period.

For other contributions, the FAA must determine whether the sponsor made the contribution for the benefit of the airport. The FAA must determine the date from which the airport may commence payment of interest. The interest that the airport may pay for the other contributions is limited to the U.S. Treasury investment interest rate. (See 49 U.S.C. § 47107(o) and (p).)

d. Lobbying and Attorney Fees. A sponsor may use airport revenue to pay lobbying and attorney fees to the extent these fees are for services in support of airport capital or operating costs that are otherwise allowable.

e. Cost Incurred by Government Officials. A sponsor may pay for costs that government officials incur on the airport's behalf. For example, the cost of travel for city council members to meet with FAA officials about AIP funding is an allowable use of airport revenue.

f. General Government Costs. A sponsor may pay for a portion of the general costs of government, including executive offices and the legislative branches, provided the sponsor allocates such costs to the airport in accordance with an acceptable cost allocation plan. The FAA may require special scrutiny of allocated costs to assure that the airport is not paying a disproportionate share.

g. Central Service Costs. A sponsor may use airport revenue to pay for costs such as accounting, budgeting, data processing, procurement, legal services, disbursing, and payroll services that it bills to the airport through an acceptable cost allocation plan. The *Revenue Use Policy* and OMB Circular A-87 are our references for evaluating sponsor cost allocation plans. Such costs must meet the standard of being airport capital or operating costs. The allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

h. Community Activities. A sponsor may use airport revenue to support community activities and to participate in community events if such expenditures are directly and substantially related to the operation of the airport. For example, it may purchase tickets for an annual community luncheon at which the airport director delivers a speech reviewing the state of the airport. The airport may also contribute to a golf tournament sponsored by a “friends of the airport” committee. The FAA also recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance and that a benefit of that nature is intangible and not quantifiable. Consequently, where the amount of contribution is minimal, the FAA will not question the value of the benefit so long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category is a $250 fee for a booth focusing on the operation of the airport and career opportunities in aviation at a local school fair. An airport may use its revenue to support a community's use of airport property if the expenditures are directly and substantially related to the operation of the airport.

i. Ground Access Projects. It is the policy of the United States to encourage the development of intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development. (See 49 U.S.C. § 47101(a)(5).) Consistent with this policy, a sponsor may use airport revenue to pay for the airport's share of a ground access project in two general cases: (1) if the project qualifies as an integral part of an airport capital project, and (2) if

the project is owned or operated by the sponsor and is directly and substantially related to the air transportation of passengers or property.

(1). Airport Capital Project. An example of an airport capital project would be the construction of an airport transit station incorporated into a new airport passenger terminal to provide direct transit access to the airport terminal building. The station is designed and intended exclusively for airport ground access and is effectively part of the terminal building.

(2). Other facilities directly and substantially related to air transportation. A facility may extend for a distance off airport property or be used in part by nonairport passengers. Such cases can be complex, and a three-part analysis should be applied:

First, is the facility owned or operated by the airport sponsor?

Second, is the facility directly and substantially related to air transportation? The facility must be a primary means of ground access to the airport even if the facility will not be used exclusively by airport passengers, employees, and visitors. The facility must be designed and intended for airport use even if others will also make use of it once the project is built. Airport funding is limited to the portion (road or rail line) from the airport to the nearest line of mass capacity, typically a highway or rail line adjacent to or close to the airport boundary. City streets and local highways may be used by passengers on the way to the airport, but they are not designed or intended for airport access and are not directly and substantially related to air transportation.

Third, is the airport contribution prorated to the forecast use of the facility? If 50 percent (50%) of the passengers on a transit line with a stop at the airport will be airport passengers, then the airport can contribute up to 50 percent (50%) of the cost of the rail line across airport property. For example, where a transit line was designed to run through airport property in order to provide an airport station, the FAA has approved the use of airport revenue for 100 percent (100%) of the actual costs incurred for structures and equipment associated with the airport terminal building station, as well as for a portion of the costs of the rail line through the airport, prorated for the percentage of airport passengers using the system in relation to total transit passengers using that segment of the line.

The permissibility of using airport revenue for a ground access project is reviewed and accepted or rejected on a case-by-case basis.

15.10. Grandfathering from Prohibitions on Use of Airport Revenue.

a. General. Certain airports may use airport revenue for otherwise impermissible expenditures when the airport qualifies as “grandfathered.” An airport is deemed “grandfathered” when provisions establishing certain financial arrangements between the airport and sponsor exist that were in effect prior to the enactment of the AAIA on September 3, 1982. (See 49 U.S.C.

§ 47107(b)(2).) Grandfathered airports are grandfathered only as to what was in effect of September 3, 1982. A list of airports considered to be grandfathered is at the end of this chapter.

A grandfathered airport is permitted to pay the sponsor for costs that are for purposes other than the airport's capital and operating costs. However, under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds the fact that a grandfathered airport has exercised its rights to use airport revenue for nonairport purposes when, in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted for changes in the Consumer Price Index (CPI). In making this determination, the FAA will evaluate the grandfathered payments for the fiscal year preceding the date of the application.

Payments made by an independent authority or state department of transportation that owns or operates other transportation facilities in addition to airports with debt obligations or legislation governing financing that predate AAIA may be grandfathered.

Grandfathered arrangements include:

(1). Debt. An independent authority or state department of transportation that owns or operates other transportation facilities in addition to airports and has debt obligations or legislation governing financing and providing for use of airport revenue for nonairport purposes predating the AAIA. (Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering, which FAA would consider in its review.)

(2). DOT Interpretations. Previous Department of Transportation (DOT) interpretations have found the following legislation certifying financial arrangements predating the AAIA legislation to qualify for the grandfather exception:

(a). Bonds. Bond obligations and city ordinances requiring a five percent (5%) "gross receipts" fee from airport revenue. In this case, the city instituted the payments in 1954 and continued them in 1968.

(b). State Statute. A 1955 state statute assessing a five percent (5%) surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

(3). City Legislation. City ordinance authorizing the payment of a percentage of airport revenue. City legislation permitting an air carrier settlement agreement in which the airport pays to the city 15 percent (15%) of airport concession revenue.

(4). Multi Modal Authority. A 1957 state law establishing financing and operations of a multi modal state transportation program and authority – including

airport, highway, port, rail, and transit facilities. State revenues (including airport revenue) support the state's transportation-related and other facilities. The funds flow from the airports to a state transportation trust fund comprising all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

(5). Enabling Provision. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes, requires annual payments in lieu of taxes to several local governments, and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for servicing debt, for facilities of the authority, and for its expenses, reserves, and the payment in lieu of taxes.

(6). Aviation Fuel Tax. Grandfathered arrangements also include local taxes on aviation fuel that were in effect before the 1987 Airport Act (*i.e.*, fuel taxes in effect on December 30, 1987).

15.11. Allocation of Indirect Costs. An airport may use its revenue to pay capital or operating costs that the sponsor charges the airport through a cost allocation plan. In an acceptable cost allocation plan, the sponsor allocates costs in a manner consistent with Attachment A to Office of Management and Budget (OMB) Circular A-87,[1] except substitute the phrase "airport revenue" for the phrase "grant award" wherever the latter phrase occurs in Attachment A. In addition, the sponsor may not disproportionately allocate general government costs to the airport and may not indirectly bill costs through the cost allocation plan that are also billed directly to the airport. The sponsor must bill its other comparable units of government in a similar manner for the same costs it allocates to the airport; such allocations must be in proportion to the benefit that each receives from the allocated costs.

15.12. Standard for Documentation. The airport must ensure that billings from government entities meet the FAA requirement for documentation. The standards require the entity to maintain evidence to support its direct and indirect charges to the airport. Such evidence may include the underlying accounting data (such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses) as well as corroborating evidence (such as invoices, vouchers, and indirect cost allocation plans).

The FAA accepts audited financial statements as supporting evidence. However, the statement's underlying accounting records must clearly show the amounts that the entity billed to the airport. The entity's budget estimates are not sufficient to establish a claim for reimbursement. The entity may use budget estimates to establish predetermined indirect cost allocation rates as part of an indirect cost allocation plan, provided estimates are adjusted to actual expenses in the subsequent accounting period.

[1] OMB Circular A-87, *Cost Principles Applicable to Grants and Contracts with States and Local Governments*.

15.13. Prohibited Uses of Airport Revenue.

a. Unlawful Revenue Diversion. Unlawful revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs or the costs of other facilities owned or operated by the sponsor and directly and substantially related to air transportation. Revenue diversion violates federal law and AIP grant assurances unless: (1) it is grandfathered within the scope of grandfathered financial authority established before 1982, or, (2) it is authorized under an exemption issued by the FAA as part of the airport privatization pilot program.

Revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs.

b. General. Prohibited uses of airport revenue include direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value. For example, the DOT Office of Inspector General (OIG) and the FAA found a city sponsor to be diverting revenue where the sponsor charged the airport for investment management at the rate that would have been charged for commercial services when services to the airport were actually provided by city employees at a much lower cost.

c. Cost Allocation. Payments under a plan are a prohibited use of airport revenue when the allocation is based on a formula that is not consistent with the *Revenue Use Policy* or when the payment is not calculated consistently and equitably for the airport and other comparable units or cost centers of government.

d. General Economic Development. Using airport revenue for general economic development is a prohibited use of airport revenue.

e. Market and Promotion. When unrelated to airport operations, marketing and promotion costs are prohibited uses of airport revenue Examples include participating financially in marketing as destinations city or regional attractions such as hotels, convention centers, sports arena, theaters, and other entertainment attractions having no connection to the promotion of the airport.

f. Payments in Lieu of Taxes (PILOTs). Payments in lieu of taxes or other assessments that exceed the value of services or are not based on an acceptable cost allocation formula (*i.e.*, reasonable and transparent), are prohibited uses of airport revenue.

g. Lost Tax Revenues. Payments to compensate nonsponsoring governmental bodies for lost tax revenues, to the extent the payments exceed the stated tax rates applicable to the airport, are prohibited uses of airport revenue Note that many Payments In Lieu Of Taxes (PILOTs) by airports are voluntary, not assessed, and should be evaluated under the lost tax provisions of 49 U.S.C. § 47107(l)(2)(D) rather than § 47107(l)(2)(C), which pertains to “payments in lieu of

taxes or other assessments….” In each case the nature of the payment, rather than its title, should determine the appropriate analysis.

h. Loans and Investments. Loans to, or investment of, airport funds in a state or local agency at less than the prevailing rate of interest are prohibited uses of airport revenue.

i. Sponsor Aeronautical Use. Use of land for free or nominal rental rates by the sponsor for aeronautical purposes (*e.g.*, a sponsor-owned fixed-base operator[2]) – except to the extent permitted under the *Revenue Use Policy* section on the self-sustaining requirement – is prohibited use of airport revenue.

j. Sponsor Nonaeronautical Use. Rental of land to, or use of land by, the sponsor for nonaeronautical purposes at less than fair market value rent is considered a subsidy of local government and is a prohibited use of airport revenue.

k. Impact Fees. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport are prohibited uses of airport revenue. However, the airport may pay for environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project or for constructing a ground access facility that would otherwise be eligible for the use of airport revenue. When such fees meet the other allowability and documentation requirements, the sponsor may use airport revenue to pay for impact fees. In determining appropriate corrective action for an impact fee payment that is not consistent with the revenue use requirements, the FAA will consider whether a nonsponsoring governmental entity imposed the fee and whether the sponsor has the ability under local law to avoid paying the fee.

l. Community Activities. Using airport funds to support community activities and to participate in community events or using airport property for community purposes – except to the extent permitted under the *Revenue Use Policy* – is a prohibited use of airport revenue.

m. Subsidy of Air Carriers. The direct subsidy of air carrier operations is a prohibited use of airport revenue. Prohibited direct subsidies do not include support for airline advertising or marketing of new services to the airport as described in paragraph 15.9.b above.

n. Airport Fee Waivers during Promotion Periods.

(1). Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. However, the airport must offer any promotional fee waiver or discount to all similarly situated users of the airport willing to provide the same type and level of new service consistent with the promotional offering.

(2). The cost of offering discounted fees or waivers cannot be shifted to other air carriers not participating in the promotional incentive program. When developing

[2] A Fixed-Base Operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

its rate base, the airport may not consider in its calculations the promotional discounted fees and waivers.

The airport may need a discretionary source of airport revenue – or revenue from another external source – to fund promotions. This requirement is consistent with the FAA's *Policy Regarding the Establishment of Airport Rates and Charges* (*Rates and Charges Policy*), which provides that airport sponsors may not recover the costs associated with one group of aeronautical users from fees of another aeronautical user or group of aeronautical users unless agreed to by all aeronautical users in that group. (See *Rates and Charges Policy*, section 3.1.)

Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. However, the airport must offer any promotional fee waiver or discount to all similarly situated users of the airport willing to provide the same type and level of new service consistent with the promotional offering.

15.14. through 15.19 reserved.

Grandfathered Airport List

1. State of Maryland—Baltimore/Washington International and Martin State.
2. Massachusetts Port Authority—Boston-Logan and Hanscom Field.
3. Port Authority of New York and New Jersey—JFK, Newark, LaGuardia, and Teterboro.
4. City of Saint Louis, Missouri—Lambert-St. Louis.
5. State of Hawaii—all publicly owned/public use airports.
6. City and County of Denver—Denver International.
7. City of Chicago—Chicago O'Hare and Midway.
8. City and County of San Francisco—San Francisco International.
9. Port of San Diego—San Diego International.
10. Niagara Frontier Transportation Port Authority, NY—Greater Buffalo and Niagara Falls.
11. City and Borough of Juneau, AK—Juneau International.
12. Texarkana Airport Authority, AR—Texarkana Regional

Chapter 16: Resolution of Unlawful Revenue Diversion

Updated August 2023

16.1. Background. This chapter describes the FAA's responsibility for detecting and resolving unlawful revenue diversion. Unlawful revenue diversion is subject to the standard investigation and determination procedures discussed in Chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*.

16.2. FAA Authorization.

a. 1982 Authorization Act. The Airport and Airway Improvement Act of 1982, Pub. L. 97-248, (AAIA) established the general requirement for public airport owners and operators to use all revenues generated by the airport for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. (Codified at 49 U.S.C. § 47107(b).)

b. 1994 Authorization Act. In the 1994 Authorization Act, Pub. L. 103-305, Section 111, Congress strengthened the revenue use requirement by adding a new assurance requiring airport owners or operators to submit an annual report listing all amounts paid by the airport to other units of government, and required the FAA to issue a policy on the use of airport revenue. Congress also established the following actions that the FAA is authorized to take when a sponsor fails to correct unlawful revenue diversion:

(1). Withholding Airport Improvement Program (AIP) grants and approval of applications to impose and use passenger facility charges (PFCs). (See 49 U.S.C. § 47111, § 47107(n).)

(2). Assessing a civil penalty for unlawful revenue diversion of up to $50,000. (See 49 U.S.C. § 46301.)

(3). Seeking judicial enforcement for violation of any grant assurance. (See 49 U.S.C. §§ 46106 and 47111(f).)

c. 1996 Reauthorization Act. Section 804 of the 1996 Reauthorization Act (codified at 49 U.S.C. § 47133) broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government There is a limited exception to the revenue use prohibition, which is discussed in detail in Chapter 15, *Grandfathering from Prohibitions on Use of Airport Revenue*, section 15.10.

Additionally, as noted in the *Revenue Use Policy*, airport sponsors that have accepted only surplus property from the federal government, and did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue use requirement by operation of § 47133. However, if that airport accepted additional federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue use requirement. Moreover, in accordance with 49 U.S.C. § 47153(b), the FAA does include the revenue use requirement as a required term

in Surplus Property Instruments of Conveyance in order to protect and advance the interests of the United States in civil aviation. Congress also established the following actions that the FAA is authorized to take when a sponsor fails to correct unlawful revenue diversion:

> **(1).** Withholding any amount available to the sponsor under Title 49 of the United States Code, including transit or multimodal transportation grants. (See 49 U.S.C. § 47107(n) (3).)

and/or

> **(2).** Assessing a civil penalty up to three times the amount of diverted revenue. The Administrator may impose a civil penalty up to $50,000. The FAA must apply to a U.S. district court for enforcement of a proposed civil penalty that exceeds $50,000. (See 49 U.S.C. § 46301.)

and/or

> **(3).** Requiring assessment of interest on the amount of diverted revenue. (See 49 U.S.C. § 47107(o).)

16.3. Section 47133 and Grant Assurance 25, Airport Revenues. As stated above, since enactment of the AAIA in 1982, sponsors – as a condition of receiving AIP grants – have been required to comply with Grant Assurance 25, *Airport Revenues*. In the 1996 Reauthorization Act, Congress broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government. These revenue use requirements are codified at 49 U.S.C. § 47133.

Accordingly, revenue use violations may be enforced as a violation of contract obligations under the grant assurances, as a violation of federal law under 49 U.S.C. § 47107(k) and § 47133, or as a violation of a Surplus Property Deed or other federal land conveyances when applicable.

16.4. Agency Policy. The FAA's Revenue Use Policy implements the requirements of the AAIA and the above laws. (See Chapter 15, *Permitted and Prohibited Uses of Airport Revenue*.) Additionally, FAA's *Policy and Procedures Concerning the Use of Airport Revenue: Proceeds from Taxes on Aviation Fuel*, 79 Fed. Reg 66282 (November 7, 2014) formally adopts, through an amendment to the Revenue Use Policy, FAA's interpretation of the Federal requirements for use of revenue derived from taxes on aviation fuel.

16.5. Responsibility. It is the responsibility of the FAA Regional Airports Division (Region) and Airports District Office (ADO) to identify unlawful revenue diversion, to seek sponsor compliance informally before initiating formal investigation, and to monitor corrective action plans from informal complaints. The FAA Director of the Office of Airport Compliance and Management Analysis (ACO-1) is responsible for issuing Notices of Investigation, assessing interest and penalties, issuing formal compliance determinations, and arranging for hearings to be conducted when appropriate.

As discussed in Chapter 19, *Airport Financial Reports*, ACO, Regions and ADOs are responsible for resolving single audit findings. ACO is the liaison between the Office of the

Secretary (OST) and Region's and ADOs on single audits. Regions and ADOs are responsible for resolving airport specific single audit findings. The FAA must ensure the sponsors took appropriate and timely corrective action on all single audit findings. FAA is required to resolve single audit findings within 30 days.

The Office of Inspector General (OIG) may also conduct audits and issue reports on revenue diversion. National reports with revenue diversion findings will be sent to ACO; audits on individual airports may be sent to the Regions. ACO will monitor the follow-up to those reports. The DOT/OIG provides a semi-annual report to Congress on the status of the FAA's responsiveness and resolution of those revenue diversion findings.

16.6. Detection of Airport Revenue Diversion.

a. Sources of Information. To determine if a sponsor has unlawfully diverted revenue, the FAA depends primarily on various sources of information, including:

(1). Annual financial reports submitted by sponsor. (See Chapter 19, *Airport Financial Reports*.)

(2). Single audit reports conducted in accordance with 2 CFR part 200. (See Chapter 19, *Airport Financial Reports*.)

(3). Part 16 formal complaints (under 14 CFR Part 16). (See Chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*.)

(4). Audits conducted by the DOT/OIG.

(5). Formal or informal financial reviews.

(6). Part 13 informal complaints (under 14 CFR Part 13). (See Chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*.)

(7). Land-use inspections. (See Chapter 21, *Land Use Compliance Inspection*.)

(8). Airport staff.

(9). Inquiries from relevant non-profit associations.

(10). News reports.

b. Reports. FAA may identify revenue diversion through audit reports issued by the DOT/OIG or by an independent auditor performing a single audit under 2 CFR part 200. See Chapter 19, *Airport Financial Reports* for additional information on single audits.

The OIG may also conduct audits and issue reports on revenue diversion. National reports with revenue diversion findings will be sent to ACO; audits on individual airports may be sent to the regional airports division. ACO will monitor the follow-up to those reports. DOT/OIG reports to Congress on the status of the FAA's responsiveness and resolution of those revenue diversion findings.

c. Release of Audit Reports. Regions, ADOs, and ACO must coordinate the release of any audit report prepared by the OIG to the public with the Assistant Chief Counsel for Airports and Environmental Law to ensure that the release is in accordance with the Trade Secrets Act (18 U.S.C. § 1905) and the Freedom of Information Act (FOIA) (5 U.S.C. § 552).

d. Compliance Reviews. ACO conducts financial compliance review(s) of selected airports each fiscal year.

e. Published Airport Financial Data. In cases where the FAA must ascertain compliance with the Federal revenue requirements, reviewing published airport financial data may be useful. In each case, differences among the audit report or complaint, published financial data, and information presented by the sponsor should be discussed and resolved to the extent possible.

16.7. Investigation of a Complaint of Unlawful Revenue Diversion.

a. General. The FAA enforces the requirements imposed on sponsors as a condition of their acceptance of federal grant funds or property through the administrative procedures set forth in 14 CFR part 16. As such, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel sponsors to produce evidence, and adjudicate matters of compliance within the jurisdiction of the Associate Administrator for Airports. (See Chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*.)

b. Formal Complaint. When the FAA receives a formal complaint against a sponsor for unlawful revenue diversion, the Airport Compliance Division follows the procedures in part 16 for adjudicating the complaint. If, at any point prior to completion of the investigation, the airport sponsor resolves the unlawful revenue diversion, the Director may dismiss the complaint. This is consistent with the objectives outlined in paragraph 2.4, Objectives of the Compliance Program. After conducting an investigation, the Director of Airport Compliance and Management Analysis will either dismiss the complaint or issue a Director's Determination, which can impose immediate sanctions or propose future action, or both.

16.8. Investigation without a Formal Complaint.

a. General. When a formal complaint has not been filed, but the FAA has an indication from one or more sources that unlawful revenue diversion has occurred, the Region or ADO will notify the sponsor and request that it respond to the allegations. If, after evaluating the sponsor's arguments and submissions, the Region or ADO determines that unlawful diversion of revenue did not occur, then it will notify the sponsor and take no further action.

b. Finding. If the Region or ADO makes a preliminary finding that there has been unlawful revenue diversion, and the sponsor has not taken corrective action (or has not agreed to take corrective action), the Region or ADO may forward the matter to ACO for investigation under Part 16. If, after further investigation, ACO finds there is reason to believe there is, or has been, unlawful revenue diversion, and the sponsor refuses to terminate or correct the diversion, the Director will issue a Director's Determination. In cases where the airport sponsor agrees to

implement the corrective actions to prevent further revenue diversion and return the diverted revenue amount plus interest the Director may dismiss the investigation.

c. Office of the Inspector General (OIG). When the OIG issues a report of an investigation with a revenue diversion finding, ACO will proceed with an investigation and attempt to resolve the finding.

16.9. Administrative Sanctions. When the ACO-1 makes a finding of unlawful revenue diversion through a Director's Determination, ACO will first seek corrective action by the sponsor. Should that fail, the Director may pursue any or all of the following enforcement remedies at his/her discretion subject to any appeal and affirmation by the Associate Administrator for Airports following appeal:

a. Withholding approval of an application for future grants.[1] (See 49 U.S.C. § 47106(d).)Withholding approval of a new grant application or proposed modification to an existing grant that would increase the amount of funds available. (See 49 U.S.C. § 47111(e).)

c. Withholding payments under existing grants. (See 49 U.S.C. § 47111(d).)

d. Withholding approval of any new application to impose a passenger facility charge. (See 49 U.S.C. § 47111(e).)

e. Withholding any amount from funds otherwise available to the sponsor, including funds for other transportation projects, such as transit or multimodal projects. (See 49 U.S.C. § 47107(n)(3).)

f. For violations of the grant assurance or 49 U.S.C. § 47133, the Associate Administrator for Airports may file suit for enforcement in the U.S. district court. (See 49 U.S.C. § 47111(f).)

g. Exercising its right of reverter and, on behalf of the United States, taking title to all or any part of the property interests conveyed. (See 49 U.S.C. §§ 47133 and 47151, *et seq.*) Reverter is discussed in detail in Chapter 23 of this Order, *Reversions of Airport Property*.

16.10. Civil Penalties and Interest.

a. Civil Penalties. The Associate Administrator for Airports may seek a civil penalty for a violation of the AIP sponsor assurance on revenue diversion of up to three times the amount of unlawful revenue diversion. Civil penalties up to $50,000 are imposed and adjudicated under 14 CFR part 13 subparts B and C. For a proposed civil penalty in excess of $50,000, the FAA must

[1] As stated in the policy document, *Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding*, 64 Fed. Reg. 31031 (June 9, 1999), it is the intent of the FAA generally to withhold AIP discretionary funding to those airports requesting such funding that are being investigated by the FAA for misuse of airport generated revenue.

file a civil action in the U.S. district court to enforce the penalty. (See 49 U.S.C. § 46301, § 46305.)

b. Office of the Chief Counsel. The FAA Office of the Chief Counsel files civil penalty actions. AGC-600 must be consulted when considering whether to impose a civil penalty action for airport revenue diversion.

c. Use of Authority. In general, a civil penalty sanction may be appropriate when two conditions apply:

(1). Sponsor Noncompliance. ACO-1 has identified a violation to the airport sponsor and has given the sponsor a reasonable period of time to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, but the sponsor has not complied.

(2). Other Remedies Fail. Other enforcement actions against the sponsor, such as withholding grants and payments, would be unlikely to achieve compliance.

d. Interest. The amount necessary for a sponsor to come into compliance includes interest calculated in accordance with 49 U.S.C. § 47107(n). The maximum civil penalty allowed under § 46301(a)(3) is three times the amount unlawfully diverted and may also include interest calculated in accordance with 49 U.S.C. § 47107(n).

16.11. Compliance with Reporting and Audit Requirements. The Regions and ADOs will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements, as described in *Policy and Procedures Concerning the Use of Airport Revenue*. Failure to comply with these requirements can result in withholding future AIP grant awards and further payments under existing AIP grants.

16.12. Statute of Limitations on Enforcement. The 1996 Reauthorization Act included a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. (See 49 U.S.C. § 47107(m)(7).) Accordingly, the FAA may bring an action for recovery of unlawfully diverted funds within six (6) years of the date on which the diversion occurred.

16.13 through 16.17 reserved.

Chapter 17: Self-Sustainability

Updated August 2023

17.1. Introduction. This chapter provides guidance on the requirement that an airport remain as self-sustaining as possible under its specific circumstances. The FAA Regional Airports Divisions (Regions), Airports District Offices (ADOs) and the Office of Airport Compliance and Management Analysis (ACO) provide guidance to airport sponsors regarding the requirement to be as self-sustaining as possible and to ensure that the airport maintains a rate and fee schedule that conforms to the grant assurances and is consistent with the FAA's *Policy Regarding Airport Rates and Charges*, Fed. Reg. 55330 (September 10, 2013) (Rates and Charges Policy).

17.2. Statutory Requirements. Congress established the self-sustainability requirement in:

a. Section 511(a)(9) of the Airport and Airway Improvement Act of 1982 (AAIA), Pub. L. 97-248, (codified at 49 U.S.C. § 47107(a)(13)) requires airports accepting FAA grants to be as self-sustaining as possible under the circumstances at that airport. (See Grant Assurance 24, *Fee and Rental Structure*.)

b. Section 112(a)(3) of the Federal Aviation Administration Authorization Act of 1994, Pub. L. 103-305, (1994 Authorization Act) (codified at 49 U.S.C. § 47107(k)(3)) requires that the FAA's *Revenue Use Policy* take into account whether sponsors – when entering into new or revised agreements otherwise establishing rates, charges, and fees – have undertaken reasonable efforts to be self-sustaining in accordance with 49 U.S.C. § 47107(a)(13).

17.3. Related Grant Assurance and FAA Policies. The self-sustaining requirement, Grant Assurance 24, *Fee and Rental Structure*, applies to both publicly and privately owned airports that are obligated under an Airport Improvement Program (AIP) grant.

The FAA has included the self-sustaining rule in two policies:

1. FAA's *Policy Regarding Airport Rates and Charges* 78 Fed. Reg. 55330 (September 10, 2013).

2. FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 (February 16, 1999), as amended 79 Fed. Reg. 66282 (November 07, 2014) (Revenue Use Policy).

17.4. Self-sustaining Principle. Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at that airport.[1] The requirement recognizes that individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport. The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.

17.5. Airport Circumstances. At some airports, market conditions may not permit a sponsor to establish fees that are high enough to recover aeronautical costs, but still low enough to attract and retain commercial aeronautical services. In these circumstances, an airport may establish

[1] 49 U.S.C. 47107(a)(13).

fees lower than what is needed to achieve self-sustainability in order to assure that services are provided to the public (see section 17.9).

17.6. Long-term Approach. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the sponsor should establish long-term goals and strategies to make the airport as financially self-sustaining as possible.

17.7. New Agreements. Sponsors are encouraged to undertake reasonable efforts to make their particular airports as self-sustaining as possible when entering into new or revised agreements or when otherwise establishing rates, charges, and fees.

17.8. Revenue Surpluses. Some airports may have sufficient market power to charge fees that exceed total airport costs. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenue may be spent. See Chapter 15 for more information on permitted uses of airport revenue.

Reasonable reserves and other funds, which facilitate financing and cover contingencies, are not considered revenue surpluses. The sponsor must use any surplus funds accumulated in accordance with the *Revenue Use Policy*.

Additionally, the progressive accumulation of substantial amounts of surplus aeronautical revenue could warrant an FAA inquiry into whether the aeronautical fees are consistent with the sponsor's obligation to make the airport available on fair and reasonable terms. Moreover, the FAA may review aeronautical fees if an airport's rate base includes charges to maintain levels of reserve funds that are not warranted by the airport's debt obligations or other circumstances at the airport.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.9. Aeronautical Use Rates. Consistent with Grant Assurance 22, *Economic Nondiscrimination*, charges for aeronautical use of the airport must be reasonable. This reasonableness requirement takes precedence over the requirement for a self-sustaining rate structure with respect to aeronautical users. Accordingly, the FAA does not consider the self-sustaining requirement to require the sponsor to charge fair market value rates to aeronautical users. For aeronautical users, the FAA considers charges that reflect the cost of the services or facilities to satisfy the self-sustaining requirement.[2]

As explained in more detail in chapter 18 of this Order, *Airport Rates and Charges*, fees for the use of the airfield generally may not exceed the airport's capital and operating costs of providing the airfield. Aeronautical fees for landside or non-movement area airfield facilities (*e.g.*, hangars and aviation offices) may be at a fair market rate, but are not required to be higher than a level that reflects the cost of services and facilities. In other words, those charges can be somewhere between cost and fair market value. In part, this is because hangars and aviation offices are

[2] *See* FAA's Revenue Use Policy, Section VII.B.5.

exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.

17.10. Nonaeronautical Rates. Rates charged for nonaeronautical use of the airport (e.g., concessions) must be based on fair market value (i.e., lease of land at fair market rent subject to the specific exceptions listed in this chapter).

If fair market rent for nonaeronautical uses results in surplus revenue, the sponsor may elect to use that surplus revenue to subsidize aeronautical costs of the airport, such as, a residual rates agreement. Subsidization by nonaeronautical revenues benefits aviation and the traveling public because aeronautical users can use the airport at rates and charges below the cost of providing the aviation facilities and services. See, for example, *Bombardier Aerospace, et al.* v. *City of Santa Monica*, FAA Docket No. 16-03-11, January 3, 2005, (available online) where the FAA noted that it promotes the practice of using nonaviation revenues to subsidize aeronautical activities since it reduces the economic impact on aviation users and the aviation public.

17.11. Fair Market Value. Fair market fees for use of the airport are the required minimum for nonaeronautical use of the airport. Fair market pricing of airport facilities can be determined by reference to negotiated fees charged for similar uses of the airport or by appraisal of comparable properties. Appraisers should account for airport-specific circumstances (*e.g.*, limits on the use of airport property, height restrictions), when comparing on-airport with off-airport commercial nonaeronautical properties in making fair market value determinations. The market rate for nonaeronautical users should be different from, and usually higher than, the aeronautical rates.

17.12. Exceptions to the Self-sustaining Rule: General. While the general rule requires market rates for nonaeronautical uses of the airport, several limited exceptions to the general rule have been defined by congressional direction and agency policy based on longstanding airport practices and public benefit. These limited exceptions include (a) property for community purposes and (b) not-for-profit aviation organizations, (c) transit projects and systems, and (d) military aeronautical units, all of which are discussed in the following paragraphs.

17.13. Exceptions to the Self-Sustaining Rule: General. While the general rule requires market rates for nonaeronautical uses of the airport, several limited exceptions to the general rule have been defined by Congress and through agency policy based on longstanding airport practices and public benefit. These limited exceptions include providing property for (a) public community purposes, (b) not-for-profit aviation organizations, (c) military aeronautical units, (d) transit projects, and (e) private transit systems. (See FAA *Revenue Use Policy*, Sections VII.D - H)

These are exceptions to the self-sustaining rule requirement and are further described in the paragraphs below. In addition, airport sponsors must ensure that they are using the land in accordance with their grant obligations and property conveyance restrictions. More information is available in Chapter 22.

17.14. Exceptions to the Self-Sustaining Rule: Providing Property for Public Community Purposes. A sponsor may make airport property available for community purposes at less than fair market value on a limited basis provided all of the following conditions exist: (a) the property is not needed for an aeronautical purpose, (b) the property is not producing airport revenue and there are no near-term prospects for producing revenue, (c) allowing the community

purpose will not impact the aeronautical use of the airport, (d) allowing the community purpose will maintain or enhance positive community relations in support of the airport, (e) the proposed community use of the property is consistent with the Airport Layout Plan (ALP), and (f) the proposed community use of the property is consistent with other requirements, such as certain surplus and nonsurplus property federal obligations requiring the production of revenue by all airport parcels.

In addition to the statutory exception under 49 U.S.C § 47107(v)[3], the circumstances in which below-market rental rates of airport land for community purposes will be considered consistent with the grant assurances are listed below.[4] Agreements for community use of airport land should incorporate these requirements as conditions of use:

a. Acceptance. The local community must use the land in a way that enhances the community's acceptance of the airport; the use may not adversely affect the airport's capacity, security, safety, or operations. Acceptable uses include public parks and recreation facilities, including bike or jogging paths.

When the use does not directly support the airport's operations, a sponsor may not provide land at less than fair market value rent. Accordingly, the airport must generally be reimbursed at fair market rent for airport land used for road maintenance or equipment-storage yards or for use by police, fire, or other government departments.

b. Minimal Revenue Potential. At the time it contemplates allowing community use, the sponsor may only consider land that has minimal revenue-producing potential. The sponsor may not reasonably expect that an aeronautical tenant will need the land or that the airport will need the land for airport operations for the foreseeable future (*i.e.*, master plan cycle). When a sponsor finds that the land may earn more than minimal revenue, but still below fair market value, the sponsor may still permit community use of the land at less than fair market value rent provided the rental rate approximates the revenue that the airport could otherwise earn.

c. Reclaiming Land. The community use does not preclude reuse of the property for airport purposes. If the sponsor determines that the land has greater value than the community's continued use, the sponsor may reclaim the land for the higher value use.

d. No Use of Airport Revenue. The sponsor may not use airport revenue to support the capital or operating costs associated with the community use. (See FAA's *Revenue Use Policy*, section VII.D.4.).

NOTE: As explained in chapter 22 of this Order, *Releases from Federal Obligations*, airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the

[3] FAA will not find airport sponsors in non-compliance if a community use agreement existed prior to February 16, 1999, providing the sponsor is acting in accordance with the conditions set forth in 49 U.S.C. § 47107(v).

[4] *See* FAA's *Revenue Use Policy*, Section VII (D), 64 Fed. Reg. 7721, February 16, 1999.

Department of Transportation Act of 1966 (codified at 49 U.S.C. § 303).[5]

17.15. Exception to the Self-Sustaining Rule: Use of Property by Not-for-Profit Aviation Organizations.[6]

a. Reduced Rent. A sponsor may charge reduced rental rates to non-profit aviation museums, and aeronautical secondary and post-secondary education programs conducted by accredited education institutions, to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. A sponsor may also charge reduced rental rates to Civil Air Patrol units operating aircraft at the airport use (see also, *Revenue Use Policy*, VII (E)).

b. In-Kind Services. The FAA expects sponsors to charge police or fire fighting units that operate aircraft at the airport reasonable aeronautical fees for their aeronautical use. However, the airport may offset the value of any services that the units provide to the airport against the applicable airport fees. The in-kind offset must be supported (*e.g.*, a Memorandum Of Understanding, logs, etc.) and reflect the cost of services received.

17.16. Exception to the Self-Sustaining Rule: Military Aeronautical Units.[7] Airport sponsors may provide land to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, the U.S. Air Force Reserve, U.S. Coast Guard, and Naval Reserve air units operating aircraft at the airport. The Search and Rescue (SAR) and disaster relief roles played by Coast Guard, the U.S. Air Force Auxiliary, and the Civil Air Patrol are also recognized as a prime aeronautical role. These units generally provide services that directly benefit airport operators and safety.

This exception does not apply to military units with no aeronautical mission on the airport.

17.17. Exception to the Self-Sustaining Rule: Transit Projects.[8] When the airport sponsor owns a transit system and its use is for the transportation of airport passengers, property, employees, and visitors, the sponsor may make its property available at less than fair market value rent for public transit terminals, right-of-way, and related facilities without violating the *Revenue Use Policy* or self-sustaining requirements. In such circumstances, the FAA would consider a lease of nominal value to be consistent with the self-sustaining requirement.

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[5] Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303.) See also, 23 CFR § 774.11(g) and FHWA and FTA *Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites*, 73 Fed. Reg. 13368-01, March 12, 2008. (Interpreting Section 4(f) not to apply to temporary use of airport property.)

[6] See FAA *Revenue Use Policy*, Section VII.E.

[7] See FAA *Revenue Use Policy*, Section VII.E.

[8] See FAA *Revenue Use Policy*, Section VII.G.

17.18. Exception to the Self-Sustaining Rule: Private Transit Systems.[9] The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, the U.S. Air Force Reserve, U.S. Coast Guard, Civil Air Patrol (CAP) and Naval Reserve air units operating aircraft at the airport. The search and rescue (SAR) and disaster relief roles played by Coast Guard, the U.S. Air Force Auxiliary, and the Civil Air Patrol are also recognized as a prime aeronautical role. These units generally provide services that directly benefit airport operators and safety.

This exception does not apply to military units with no aeronautical mission on the airport.

17.20 through 17.24 reserved.

[9] See FAA *Revenue Use Policy*, Section VII.H.

Chapter 18: Airport Rates and Charges

Updated August 2023

18.1. Introduction. For convenience, this chapter summarizes the provisions of the FAA *Policy Regarding Airport Rates and Charges (Rates and Charges Policy)*, published at 78 Fed Reg. 55330 (September 10, 2013). The Rates and Charges Policy is the official FAA policy on airport rates and charges, and should be consulted in any case where an agency opinion or determination on an airport fee is required.

18.2. Background. The *Rates and Charges Policy* provides comprehensive guidance on the legal requirement that airport fees be fair, reasonable, and not unjustly discriminatory. The reasonableness requirement is set forth in three different statutory provisions: (1) the Anti-Head Tax Act (codified at 49 U.S.C. § 40116(d)(2)(A)[1]), (2) the Airport and Airway Improvement Act of 1982 (AAIA), as amended (codified at 49 U.S.C. § 47107(a)(1), (2), and (13)), and (3) 49 U.S.C. § 47129 (implemented by 14 CFR part 302 subpart F).

Additionally, Section 113 of the FAA Authorization Act of 1994 (codified at 49 U.S.C. §47129(b)) required the Department of Transportation (DOT) to issue a policy statement establishing standards or guidelines for determining whether an airport fee is reasonable.

a. 1996 Policy. DOT and FAA published FAA's *Policy Regarding Airport Rates and Charges* (61 Fed. Reg. 31994, June 21, 1996). The *Rates and Charges Policy*, provides guidance to airport proprietors and aeronautical users, encourages direct negotiation between parties, minimizes the need for direct federal intervention, and establishes standards that the FAA applies in addressing airport fee disputes and compliance issues.

b. U.S. Court of Appeals Decision. On August 1, 1997, the U.S. Court of Appeals for the District of Columbia Circuit vacated the *Rates and Charges Policy* on the grounds that the DOT established separate policies for airfield and nonairfield aeronautical uses without sufficient justification. In a subsequent order issued on October 15, 1997, the Court clarified that only the following paragraphs of the Rates and Charges Policy were vacated: 2.4, 2.4.1(a), 2.5.1, 2.5.1(a-e), 2.5.3, 2.5.2(a), and 2.6. On August 7, 2009, in *Alaska Airlines Inc.* v. *DOT*, 575 F.3d 750 (D.C. Cir. 2009), the Court remanded another matter to DOT to justify or abandon the portion of the policy statement that permits an airport to consider opportunity cost as a measure of fair market value when setting terminal but not airfield costs.

c. 2008 Amendments. On July 8, 2008, DOT and FAA issued an amendment to the *Rates and Charges Policy*, clarifying that certain practices were permitted and establishing exceptions to the general policy to facilitate use of alternative airfield pricing at highly congested airports. *See* 73 Fed. Reg. 40430 (July 14, 2008). Specifically the amendment (1) clarified the *Rates and Charges Policy* by explicitly acknowledging that airport operators are authorized to establish a two-part landing fee structure consisting of both an operational charge and a weight based charge

[1] As amended by the FAA Reauthorization Act of 2018, Pub. L. 115-254, and codified at 49 U.S.C. § 40116(d)(2)(A)(v), a state or political subdivision of a state or an authority acting for a state may not levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that state, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.

in lieu of the standard weight based charge; (2) expanded the ability of the operator to include in the airfield fees of a congested airport a portion of the airfield costs of other, underutilized airports owned and operated by the same proprietor; and (3) permits the operator to charge users of a congested airport a portion of the cost of airfield projects under construction. The United States Court of Appeals for the D.C. Circuit upheld the amendments in the court's decision in *ATA* v. *DOT*, 613 F.3d 206 (D.C. Cir 2010).

d. 2013 *Rates and Charges Policy* Full Text Publication. As a convenience for the public and for regulated entities, the FAA published the full text of the *Policy Regarding Airport Rates and Charges* in a single document in 78 Fed. Reg. 55330 (September 10, 2013). This policy has been in effect since the most recent amendment of the policy on July 14, 2008.

18.3. Responsibilities. The FAA headquarters Office of Airport Compliance and Management Analysis (ACO) adjudicates rates and charges disputes filed in accordance with 14 CFR part 16. The Secretary of Transportation (DOT) adjudicates rates and charges disputes filed in accordance with the special procedures for air carrier rate complaints, 49 U.S.C. § 47129 and 14 CFR part 302. Neither the FAA nor the Secretary of Transportation sets the fees imposed on air carriers.

The FAA regional airports divisions (Regions) and airports district offices (ADOs) advise the aviation community with regard to the *Rates and Charges Policy* meet with parties to resolve disagreements informally, answer correspondence and inquiries, and resolve disputes that are filed (or fall) under 14 CFR § 13.2. In general, the FAA encourages sponsors and users to negotiate rates and charges agreements and to resolve disputes through alternative dispute resolution processes.

18.4. Definitions. The following definitions are found in the *Rates and Charges Policy*:

a. Aeronautical Use. The FAA defines "aeronautical use" as any activity that involves, makes possible, is required for the safety of, or is directly related to the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail, and cargo on the airport. While many of the provisions of the Rates and Charges Policy are oriented toward air carrier fees, the principles of this policy apply to all aeronautical uses of the airport.[2] Aeronautical Activity is further defined in Appendix Z of this Order under "Aeronautical Activity".

b. Aeronautical Users. Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered aeronautical users.[3]

c. Nonaeronautical Use of the Airport. All other uses of the airport are considered nonaeronautical. Aviation-related uses that do not need to be located on an airport, such as flight kitchens and airline reservation centers, are considered nonaeronautical uses. Nonaeronautical

[2] *See* FAA's Policy Regarding Rates and Charges, 78 Fed. Reg. 55330 (September 10, 2013).

[3] *See* FAA's Policy Regarding Rates and Charges, 78 Fed. Reg. 55331 (September 10, 2013).

uses include public parking, rental cars, ground transportation, as well as terminal concessions such as food and beverage and news and gift shops. Federal law and policy on reasonableness of fees and other terms of airport access do not apply to nonaeronautical uses.[4]

d. Airfield. For purposes of the *Rates and Charges Policy*, the airfield includes runways and taxiways, public aircraft parking ramps and aprons, and associated aeronautical land, such as land used for navigational aids.

e. Congested Airport. Section 6 of the 2008 amendments to the *Rates and Charges Policy* applies only to congested airports. These amendments define an airport as currently congested if it has more than one percent (1%) of national system delays, or if it is determined to be congested in the FAA's Airport Capacity Benchmark Report for 2004 or the most recent version of that report. An airport was considered a "future congested airport" if it met the defined threshold in the FAA Future Airport Capacity Task 3 (FACT 3) report, or any update to it that the FAA may publish.

Some of the reference documents cited in the 2008 amendments are no longer available for the same purpose cited. The FAA currently considers a congested airport to be an airport identified by the FAA as a Level 2 or Level 3 airport under the International Air Transportation Association (IATA) Worldwide Slot Guidelines (WSG), or otherwise as a slot-controlled or capacity-constrained airport, through a *Federal Register* notice.

18.5. Key Concepts. The *Rates and Charges Policy* discusses some key concepts listed here and summarized in the sections below.

a. Fair and Reasonable. Federal law, as implemented by the Rates and Charges Policy, requires that the rates, rentals, landing fees, and other charges that airports impose on aeronautical users for aeronautical use be fair and reasonable. Guidance on what constitutes fair and reasonable fees can be found in the *Rates and Charges Policy*. This is further discussed in section 18.6 below.

b. Not Unjustly Discriminatory. Aeronautical fees may not unjustly discriminate against aeronautical users. This is further discussed in section 18.18 below.

c. Self-sustaining. Sponsors must maintain a fee and rental structure that – in the circumstances of the airport – makes the airport as financially self-sustaining as possible. This is further discussed in section 18.19 below and Chapter 17, *Self-Sustainability*.

d. Allowable Use. A sponsor may only use its airport revenue for airport capital and operating costs and certain other facilities directly and substantially related to air transportation, as permitted by 49 U.S.C. §§ 47107(b) and 47133.[5]

e. International Operations. Fees imposed on international operations must comply with the international obligations of the United States Government under international agreements.

18.6. Fair and Reasonable. Rates, fees, rentals, landing fees, and other service charges imposed on aeronautical users for the aeronautical use of the airport must be fair and reasonable (see

[4] *See* FAA's Policy Regarding Rates and Charges, 78 Fed. Reg. 55331 (September 10, 2013).

[5] See Chapter 15, *Permitted and Prohibited Uses of Airport Revenue*, for guidance on revenue use requirements.

section 18.5(a)).

a. Type. Federal law does not require a single rate-setting approach. Accordingly, sponsors may use a residual, compensatory, hybrid, or any other rate-setting methodology. Sponsors may set fees by ordinance, statute, resolution, regulation, or agreement. The methodology and implementation must be consistent for similarly situated aeronautical users and must conform to the *Rates and Charges Policy*.

b. Residual. Agreements that permit aeronautical users to receive a cross-credit of nonaeronautical revenues are generally referred to as residual agreements. .In a residual agreement, the airport applies excess nonaeronautical revenue to the airfield costs to reduce air carrier fees; in exchange, the air carriers agree to cover any shortfalls if the nonaeronautical revenue is insufficient to cover airport costs. In a residual agreement, aeronautical users may assume part or all of the liability for nonaeronautical costs.

A sponsor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of an agreement. Cross-credits without written agreements are permissible as long as adequate transparency is provided. However, except by agreement, a sponsor may not require aeronautical users to cover losses generated by nonaeronautical facilities.

A residual rate structure may be accomplished only with agreement of the users.

c. Compensatory. A compensatory rate setting approach is one in which a sponsor assumes all liability for airport costs and retains all airport revenue for its own use in accordance with federal requirements. . Aeronautical users are charged only for the costs of the aeronautical facilities they use. Compensatory rate structures may be imposed on users by ordinance, statute or resolution, regulation, or agreement (See *Rates and Charges Policy*, Section D (2.1)).

A compensatory rate structure may be imposed on users by ordinance.

d. Hybrid. .Sponsors frequently adopt a rate structure that employs elements of both residual and compensatory approaches. Such agreements may charge aeronautical users for the use of aeronautical facilities with aeronautical users assuming additional responsibility for airport costs in return for a sharing of nonaeronautical revenues that offset aeronautical costs.

e. Two-Part Landing Fees. .An airport proprietor may impose a two-part landing fee consisting of a combination of a per-operation charge and a weight-based charge provided that (1) the two-part fee reasonably allocates costs to users on a rational and economically justified basis; and (2) the total revenues from the two-part landing fee do not exceed the allowable costs of the airfield.

f. Airfield Revenue. Unless users agree otherwise, airfield fees generally may not exceed the airfield capital and operating costs of existing airfield facilities and services. Limited exceptions apply at a congested airport, where fees may include the airfield costs of another airport in the system or the costs of airfield facilities under construction. In each case, total system charges are

limited to system costs, even though current fees may exceed airfield costs at the congested airport itself.

g. Rate Base. The sponsor allocates capital and operating costs to airport cost centers and formulates rates to recover costs. The base rate is the list of costs allocated to a cost center, which are recovered from aeronautical users in aeronautical rates.

18.7. Permitted Airfield Costs. Costs properly included in the rate base for an airfield cost center are generally limited to the following:

a. Operating Costs. All operating and maintenance expenses directly and indirectly associated with providing airfield aeronautical facilities and services are operating costs. This includes direct personnel, maintenance, equipment, and utility costs, as well as indirect allocated costs such as police, airport rescue and firefighting, administrative and managerial overhead, roads and grounds, and utility infrastructure.

b. Capital Costs. Capital costs consist of costs to service debt and debt coverage for the airfield direct and indirect capital costs, including reserve and contingency funds.

18.8. Environmental Costs. Sponsors may include reasonable environmental costs in the rate base to the extent that the airport incurs a corresponding actual expense. The resulting revenues are subject to the requirements on the use of airport revenue.

18.9. Noise. Reasonable environmental costs include sponsor costs for aircraft noise abatement and mitigation measures, both on and off the airport. This includes land acquisition and acoustical insulation expenses to the extent that such measures are undertaken as part of a comprehensive aircraft noise compatibility program.

18.10. Insurance. Reasonable costs of insuring against liability, including environmental contamination. The airport may include the cost of self-insurance in the rate base to the extent that such costs are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

18.11. Causation. Unless otherwise agreed to by aeronautical users, the sponsor must allocate capital and operating costs among cost centers in accordance with the principle of cost causation. (See FAA *Rates and Charges Policy*, 2.4.5.)

Sponsors may include direct and indirect capital and operating costs of airfield facilities used by the aeronautical users in the rate base in a manner consistent with the *Rates and Charges Policy*.

18.12. Facilities under Construction. Once the sponsor puts the facility into service, it may capitalize the sponsor's costs incurred during construction and amortize the resulting debt service and carrying costs. The general rule is that a sponsor may not begin to charge for the costs of facilities until they are in use, unless users agree. However, under a limited exception for congested airports, the sponsor may include costs of airfield facilities under construction in current fees if the charges would work to relieve or avoid current congestion. The charges are limited to recovery of construction costs with future charges reduced to reflect the costs paid for in advance.

18.13. Costs of Another Airport. The costs of one airport may be combined with the costs of another airport, provided the following apply:

a. Both airports have the same sponsor.

b. Both airports are currently in use.

c. The combination of costs is expected to provide aeronautical users with aviation benefits.

This third element is presumed satisfied if the other airport is a reliever airport. The test is also presumed satisfied if the first airport meets the test in the Rates and Charges Policy as a "congested airport," the second airport has been designated by the FAA as a secondary airport serving the same region, and the higher fees would help relieve or avoid congestion at the first airport. Fees at the second airport must be reduced so that total system fees do not exceed the sponsor's system airfield costs.

18.14. Airport System. For airport system methodologies that were in place as of the effective date of the *Rates and Charges Policy*, the DOT will consider a sponsor's claim that those methodologies are reasonable.

18.15. Costs Related to Closing an Airport while Building a Replacement Airport. If a sponsor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs for disposition of the closed airport may be included in the rate base of the new airport.

Pending reasonable disposition of the closed airport, the sponsor may charge aeronautical users at the new airport for reasonable maintenance costs of the old airport for a limited time. In some cases, the closing of an airport can have revenue diversion implications. Specifically, the FAA may examine information related to costs expended for the closure and site remediation of an airport that has been closed when no replacement airport has been opened. The primary concern is whether a sponsor has unlawfully diverted airport revenue for nonairport purposes, such as improving the property for the benefit of a future, nonairport use.

18.16. Project Costs. The sponsor may not include in its rate-base costs paid from government grants or Passenger Facility Charges (PFCs).

18.17. Passenger Facility Charge (PFC) Projects. Where the sponsor funds the development of terminal facilities with PFCs, the facilities rental may not be lower than rental fees charged for similar terminal facilities not funded with PFCs. (*Rates and Charges Policy*, section 2.7.2(a).)

18.18. Prohibition on Unjust Discrimination. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

a. Consistent Methodology. Sponsors The sponsor must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the sponsor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group. A cost allocation

methodology consistent with the *Rates and Charges Policy* must be adopted by the sponsor unless aeronautical users agree otherwise.

b. Reasonable Distinctions. The prohibition on unjust discrimination does not prevent a sponsor from making reasonable distinctions among aeronautical users (such as signatory and nonsignatory air carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for nonsignatory versus signatory air carriers).

c. Foreign Air Carriers. The Chicago Convention on International Civil Aviation and other bilateral aviation agreements prohibit unjust discrimination against foreign air carriers. When domestic air carriers are engaged in similar international service, these agreements prohibit airports from imposing fees on foreign air carriers that are higher than fees imposed on domestic air carriers. When charges to foreign air carriers for aeronautical use are inconsistent with these principles, the DOT considers such charges unjustly discriminatory or unfair and unreasonable.

d. Allocation. Sponsors must allocate rate-base costs to their aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. Sponsors must apply the methodology consistently and, when practical, they must quantitatively determine cost differences.

18.19. Self-Sustaining Rate Structure. Sponsors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. (*See* Chapter 17, *Self-sustainability*.)

a. Revenue Surpluses. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts required for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. §§ 47107(b)(1) and 47133. Reasonable reserves and other funds to facilitate financing and to cover contingencies are not surplus.

Fees charged to nonaeronautical users may exceed the costs of service to those users, the sponsor must use the surplus in accordance with the revenue use requirements of 49 U.S.C. §§ 47107(b) and 47133. For example, a nonaeronautical surplus may be used to offset aeronautical costs and result in lower fees for aeronautical users or may be used for nonaeronautical airport development purposes.

The progressive accumulation of substantial amounts of surplus airport revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the sponsor's federal obligations to make the airport available on fair and reasonable terms.

b. Market Discipline. Over time, the DOT assumes that the limitations on airport revenue use, combined with effective market discipline for nonaeronautical services and facilities, will be effective in holding aeronautical costs to airport revenues while providing reasonable aeronautical fees for services and facilities.

18.20. Local Negotiation and Resolution. Although federal law provides the DOT with authority to intervene in disputes over an airport fee or charge, the DOT primarily relies on the sponsor and its aeronautical users to reach consensus on airport rates and charges. The sponsor may impose a fee unilaterally, after consultation with users, if the fee is consistent with the *Rates*

and Charges Policy. The sponsor may adopt a fee that varies from the *Rates and Charges Policy* only if all users agree.

a. Consultation. As provided for in the *Rates and Charges Policy*, the FAA and DOT encourage adequate and timely consultation with users prior to implementing rate changes. To permit aeronautical users time to evaluate proposed rate changes, consultation should be well in advance of introducing significant changes in charging systems, procedures, or level of charges. Adequate information should be provided so users can evaluate the airport's justification for the change and to assess its reasonableness. Due regard should be given to the views of both the aeronautical users and the airport and its financial needs.

b. Unilateral Action. In the absence of an agreement, sponsors may propose and implement in accordance with their proposed rate changes without prior review or approval by FAA. An air carrier may bring a complaint about the fee to Secretary of Transportation under 49 U.S.C. § 47129, and under the procedures in 14 CFR part 302. Any aeronautical user (including an air carrier) may file a complaint about a fee with FAA under 14 CFR part 16.

c. Alternative Dispute Resolution. As provided for in the *Rates and Charges Policy*, DOT encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreement, in order to facilitate local resolution and reduce the need for direct Federal intervention to resolve differences over aeronautical fees.

18.21. Complaints. Formal complaints challenging the reasonableness of an airport fee may be filed by an air carrier in a proceeding before the DOT under 49 U.S.C. § 47129, or in an FAA investigation under 14 CFR part 16.

a. Complaints Filed with the Secretary of Transportation (OST). An air carrier or foreign air carrier may file a formal complaint under 49 U.S.C § 47129, within 60 days after the carrier receives written notice of a new or increased airport fee. An airport owner or operator may file a written request for a determination as to whether a fee imposed upon one or more air carriers is reasonable. OST procedures for the adjudication of the complaints are found in 14 CFR part 302. While the OST is considering the dispute, the complainant must pay the contested amount under protest. If the OST finds against the sponsor, the sponsor would ensure the prompt repayment of the disputed fee to the air carrier unless otherwise agreed. Pending issuance of the final determination, the sponsor may not deny an air carrier currently providing air service reasonable access to the airport. Where the parties are unable to resolve their disputes, OST will issue determinations in accordance with 49 U.S.C. § 47129.

b. Complaints Filed with the FAA. Any person subject to an airport fee can file an informal complaint with the FAA Region/ADO under 14 CFR § 13.2 or a formal complaint with the FAA under 14 CFR part 16 (Part 16) concerning the fee. Part 16 complaints are filed with the Office of Airport Compliance and Management Analysis (ACO), through the Office of Chief Counsel, and investigated by ACO. The Director of the Office of Airport Compliance and Management Analysis (ACO-1), will issue an initial determination on the reasonableness of the fee. That

determination is appealable to the Associate Administrator for Airports (See Chapter 5: *Initiating, Accepting and Investigating Informal and Formal Complaints*).

c. Agency Determination. Under 49 U.S.C. § 47129(a)(3), the OST or the FAA may determine only whether a fee is reasonable or unreasonable. They may not set the level of any airport fee.

18.22. through 18.28. reserved.

Chapter 19: Airport Financial Reports

Updated August 2023

19.1. Introduction. This chapter discusses the requirement for airport owner/sponsors (airport sponsor) of commercial service airports to file annual financial reports with the Office of Airport Compliance and Management Analysis (ACO). It also provides guidance on single audits conducted under the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200).

19.2. Statutory Authority. Section 111 of the FAA Authorization Act of 1994, Public Law (Pub. L.) 103-305, (1994 Authorization Act) establishes the requirement for sponsors obligated by Airport Improvement Program (AIP) federal grant assurances to submit to the Secretary and to make available to the public certain airport financial information. Congress enacted additional provisions for monitoring and enforcing revenue use in the FAA Reauthorization Act of 1996, P. L. 104-264 (1996 Reauthorization Act). ACO provides summary and financial data for the National Plan of Integrated Airport Systems (NPIAS) report to Congress.

a. Annual Reports on Payments of Airport Funds and Services. Section 111(a) of the 1994 Authorization Act (codified as 49 U.S.C. § 47107(a)(19)) requires airport owners or operators that have received federal grants to submit to the Secretary and make available to the public (1) all amounts the airport paid to other government units, as well as the purposes for which each payment was made, and (2) all services and property the airport provided to other government units along with the compensation received for each service or property provided.

b. Annual Financial Reports. Section 111(b) of the 1994 Authorization Act requires a report in a uniform simplified format for each fiscal year of each commercial service airport's sources and uses of funds, net surplus/loss and other information that the Secretary may require.

c. Single Audit Requirements. In 1984, Congress passed the Single Audit Act, which required most governmental recipients of federal assistance (*e.g.*, state and local governments) to have an annual organization-wide financial and compliance audits. The Federal Office of Management and Budget (OMB) issued several circulars to clarify audit requirements of federal assistance recipients and required that a single independent auditor (an audit firm or a state audit agency) review all of a sponsor's Federal programs. The Single Audit Act applies only to state, local government, and nonprofit recipients that expend $750,000 or more in federal assistance in one year (2 CFR part 200, subpart F).

The Federal Aviation Reauthorization Act of 1996, Section 805 (now 49 U.S.C. § 47107(l)) required the Secretary of Transportation to promulgate regulations that require recipients of Airport Improvement Program (AIP) grants to include in their annual single audit a review and opinion on the use of airport revenues. After meeting with the OMB, the FAA determined that the best way to implement the review and opinion was to include it in the standard single audit. Consequently, the FAA requested the OMB include the review of airport revenues in the OMB A-133 Compliance Supplement, now known as 2 CFR part 200, Appendix XI, Compliance Supplement. Accordingly, whenever the single auditor conducts a review of the AIP, they will review the use of airport revenues. The single auditor's standard report will comply with the review and opinion requirement.

As part of the single audit report, 2 CFR part 200, Appendix XI Compliance Supplement (Department of Transportation) requires the auditor make an overall determination airport revenues were used for required or permitted purposes. The following procedures are suggested:

(1) Review the policy for using airport revenue.

(2) Perform tests of airport revenue generating activities (e.g., passenger facility charges, leases, and telephone contracts) to ascertain that all airport-generated revenue is accounted for.

(3) Test expenditures of airport revenue to verify that airport revenue is used for permitted purposes.

(4) Perform tests of transactions to ascertain that payments from airport revenues to the sponsors, related parties, or other governmental entities are airport-related, properly documented, and are commensurate with the services or products received by the airport.

(5) Perform tests to assure that indirect costs charged to the airport from the sponsor's cost allocation plan were allocated in accordance with the FAA policy on cost allocation.

Effective December 26, 2013, the OMB issued the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance) to clarify and streamline the federal guidance.

19.3. Grant Assurance 26, Reports and Inspections. Grant Assurance 26, *Reports and Inspections*, implements the financial reporting provisions of the 1994 Authorization Act.

Grant Assurance 26, Paragraph 26(a) requires a sponsor to make available an annual financial report in a form prescribed by the Secretary (in addition to any special financial or operations reports requested by the Secretary, as required by the 1994 Authorization Act). Form 5100-127 is used to meet this requirement.

Grant Assurance 26, paragraph 26(a) requires the sponsor to submit an annual report listing in detail (i) all amounts paid by the airport to any other unit of government along with the purposes for which each such payment was made; and (ii) all services and property provided by the airport to other units of government along with the amount of compensation received for providing each such service and property. This report is made using Form 5100-126.

Additional guidance can be found in Advisory Circular (AC) 150/5100-19D-*Guide for Airport Financial Reports Filed by Airport Sponsors*.

Grant Assurance 26, Reports and Inspections, implements provisions of the 1994 Authorization Act requiring sponsors to file financial reports with the FAA.

19.4. Applicability. All commercial service airports that have received an AIP grant since January 1, 1995, are required to comply with statutory financial reporting requirements.

Commercial airports, for reporting purposes, are those airports that enplaned 2,500 passengers in the previous calendar year and are receiving scheduled passenger aircraft service. (See 49 U.S.C. § 47102(7)).

19.5. Annual Financial Reports.

a. Form 5100-126, Financial Governmental Payment Report. The FAA requires sponsors to file Form 5100-126 as the annual report on revenue paid to other units of government and on compensation the airport received for services and property provided to other units of government, including in-kind services.

b. Form 5100-127, Operating and Financial Summary. The FAA requires sponsors to file Form 5100-127 as the annual report of their revenues, expenses, and other financial information.

c. Filing Date. The FAA requires all commercial airports to file Forms 5100-126 and 5100-127 within 120 days after the end of their fiscal year. Airport sponsors are required to upload the information on these forms directly into the report database using the Certification Activity Tracking System (CATS). CATS can be accessed on the FAA's website. Since airport sponsors may now enter their information electronically into CATS, the FAA will no longer accept hard copy forms. The FAA will make exceptions for airport sponsors that have difficulty accessing CATS.

The FAA may grant an extension of time to file the required forms of up to 60 days after the extension request date if audited financial information is not yet available by the filing due date. Airports needing an extension should request an extension online in the CATS website, but can also request an extension in writing to the FAA headquarters Airport Compliance Division (ACO). No extensions can be granted past June 30 of the calendar year following the sponsor's fiscal year end. Prior to the filing date, the option for the extension will appear in CATS. For example: the airport sponsor has a filing date of June 30 and files an extension on June 15 and it is approved for 60 days, the airport sponsor receives 60 days from June 15th, not June 30th. The new filing date will be August 14th, not August 30th. An extension will not be available after the due date except for extraordinary circumstances. The additional extension due to extraordinary circumstances will need to be requested by letter or email.

If an airport sponsor has not completed its independent annual audit, it must complete the forms in CATS, with available data, and notate they are "unaudited." Once audited statements are available, then sponsors need to replace the "unaudited" data with the audited data in CATS.

d. Responsibility. The FAA Regional Airports Divisions (Regions) and Airports District Offices (ADOs) are responsible for monitoring sponsor compliance with the financial reporting requirements. Regions and ADOs are also responsible for reviewing Single Audit reports for potential revenue diversion findings. Regions and ADOs may monitor a sponsor's compliance by downloading their region's report status in CATS. ACO is responsible for implementing and managing the airport owner/sponsor financial reporting program.

A sponsor's failure to file financial reports is a violation of the grant assurances and may be enforced using the procedures described in Chapter 5: *Initiating, Accepting and Investigating Informal and Formal Complaints*, and may ultimately result in the filing of a Part 16, Notice of Investigation.

e. Instructions. Instructions are available in Advisory Circular (AC) 150/5100-19, *Guide for Airport Financial Reports Files by Airport Sponsors*. The AC provides detailed instructions for completing the financial forms. Airport operators or owners are not required to submit a paper copy since the forms are filed electronically.

f. Electronic Reports Available for Public Inspection. Electronic versions of airport financial forms filed with the FAA are available to the public online. The online database includes only those commercial service airports required to file the financial forms.

FAA makes no representation as to the validity and accuracy of the airport financial data presented. The information presented is based on financial data submitted by each airport and certified by the principal financial officer, but may not be to the level of detail desired by individuals relying on this information for other purposes. Additional financial information should be requested directly from the airport.

19.6. Procedures for Evaluating the Airport Owners/Sponsors Financial Reporting Program. ACO will review an airport sponsors financial reports using the CATS database and identify anomalies that contain potential indicators of revenue diversion.

This analysis is performed on the preceding three years of information for comparison purposes. Inquiries will be made to the airports to provide explanations for specific anomalies. ACO will provide an informal report to the Director of Airport Compliance and Management Analysis (ACO-1) by end of the federal fiscal year.

19.7. Single Audit Reports. Local governments that expends $750,000 in federal awards in a fiscal year must obtain a Single Audit that conforms to 2 CFR part 200, subpart F. When the auditor selects the AIP as a major program, it will conduct a review of airport revenues. That audit will confirm the airport uses its revenues in accordance with the FAA *Policy and Procedures Concerning the Use of Airport Revenue*.

The single audit is an audit of the financial statements and federal awards of local governments receiving federal assistance, conducted in accordance with 2 CFR part 200. ACO serves as liaison to the OST and will provide technical support to the Region or ADO, and it will provide status reports to FAA management and to the DOT. ACO works with the Regions and ADOs to follow-up on and resolve the findings. Guidance from the Department of Transportation (DOT) requires the FAA to resolve single audit findings within 30 days. The FAA has a statutory requirement to resolve revenue diversion findings within 180 days after receiving the audit report (49 U.S.C. § 47107(m)).

Single Audit reports are uploaded by the airport sponsors into the Federal Audit Clearinghouse. When findings are identified that impact AIP programs, the FAA must ensure the sponsor took appropriate and timely corrective action. (2 CFR § 200.513). The FAA must also issue a management decision on the findings within six months of the acceptance of the audit report by the Federal Audit Clearinghouse. (2 CFR § 200.521)

ACO has the responsibility of working with the Regions to resolve these audit findings. ACO is also responsible for providing the Deputy Associate Administrator for Airports (ARP-2) with periodic status reports on these findings, when requested. The Regions' responsibilities for the

Single Audit are further discussed in, FAA Order 5100.38, *Airport Improvement Program Handbook*.

19.8. through 19.11. reserved.

Part VI: Land Use

Chapter 20: Compatible Land Use and Airspace Protection

20.1. Background. Land use planning is an important tool in ensuring that land adjacent to, or in the immediate vicinity of, the airport is consistent with activities and purposes compatible with normal airport operations, including aircraft landing and takeoff. Ensuring compatible land use near federally obligated airports is an important responsibility and an issue of federal interest. In effect since 1964, Grant Assurance 21, *Compatible Land Use*, implementing Title 49 United States Code (U.S.C.) § 47107 (a) (10), requires, in part, that the sponsor:

> …take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.

Incompatible land use at or near airports may result in the creation of hazards to air navigation and reductions in airport utility resulting from obstructions to flight paths or noise-related incompatible land use resulting from residential construction too close to the airport.

Airports present a variety of unique challenges to those involved in community planning. Height restrictions are necessary in the vicinity of airports and airways for the protection of aircraft in flight. Residential housing and other land uses near airports must remain compatible with airports and the airport approach/departure corridors. Additional concerns include the airport's proximity to landfills and wetlands that may result in hazards to air navigation created by flocks of birds attracted to the landfills or wetlands. Unusual lighting in the approach area to an airport can create a visual hazard for pilots. Also, land uses that obscure visibility by creating smoke or steam may be hazardous to flight. Each of these concerns must be addressed in community planning in order to maintain the safety of flight as well as the quality of life expected by community residents.

As communities continue to grow, areas that once were rural in nature can quickly become urbanized. A result of "urban sprawl" is the loss of open space and the resulting loss of airports and/or their utility. Many communities have relied upon their airports as an economic engine. Proximity of industrial parks and recreational areas has proven not only to be compatible, but to be mutually beneficial as well. Some communities have used the resources of an airport to contribute to the quality of life for the local community.

In addition to the basic economic value of the airport, the preservation of open space and the ability to accommodate emergency medical airlifts are specific examples of this contribution to the community. Increases in air travel are placing an increasing demand on the nation's airports. Environmental concerns and cost may prohibit the establishment of new airports. This means that to accommodate air traffic demand, maximum utility must be achieved from existing

airports. For this to happen, the land use in the vicinity of airports must be reserved for compatible uses.

Grant Assurance 21, *Compatible Land Use*, relates to the obligation of the airport sponsor to take appropriate actions to zone and control existing and planned land uses to make them compatible with aircraft operations at the airport. The FAA recognizes that not all airport sponsors have direct jurisdictional control over uses of property near the airport. However, for the purpose of evaluating airport sponsor compliance with the compatible land use assurance, the FAA does not consider a sponsor's lack of direct authority as a reason for the sponsor to decline to take any action at all to achieve land use compatibility outside the airport boundaries.

In all cases, the FAA expects a sponsor to take appropriate actions to the extent reasonably possible to minimize incompatible land. Quite often, airport sponsors have a voice in the affairs of the community where an incompatible development is located or proposed. The sponsor should make an effort to ensure proper zoning or other land use controls are in place.

20.2. Zoning and Land Use Planning.

a. Description. Zoning is an effective method of meeting the federal obligation to ensure compatible land use and to protect airport approaches. Generally, zoning is a matter within the authority of state and local governments. Where the sponsor does have authority to zone or control land use, FAA expects the sponsor to zone and use other measures to restrict the use of land in the vicinity of the airport to activities and purposes compatible with normal aircraft operations. Restricting residential development near the airport is essential in order to avoid noise-related problems.

Sponsors and local communities should consider adopting adequate guidelines and zoning laws that consider noise impacts in land use planning and development. Similarly, any airport sponsor that has the authority to adopt ordinances restricting incompatible land development and limiting the height of structures in airport approaches according to the standards prescribed in 14 CFR Part 77, *Objects Affecting Navigable Airspace*, is generally expected to use that authority.

b. Guidance. There are a number of sources that can assist an airport sponsor in dealing with noise, obstructions, and other incompatible land uses. Some of these are:

(1). *A Model Zoning Ordinance to Limit Height of Objects Around Airports*, Advisory Circular (AC) 150/5190-4A.

(2). *Citizen Participation in Airport Planning*, AC 150/5050-4.

(3). *Guidelines for Considering Noise in Land Use Planning and Control,* Federal Interagency Committee on Urban Noise, June 1980.

(4). *Hazardous Wildlife Attractants on or Near Airports*, AC 150/5200-33B, August 28, 2007.

(5). *Noise Control Planning*, FAA Order 1050.11A, January 13, 1986.

(6). *Noise Control and Compatibility Planning for Airports*, AC 150/5020-1.

(7). *Federal and State Coordination of Environmental Reviews for Airport Improvement Projects*. (RTF format) – Joint Review by Federal Aviation Administration and National Association of State Aviation Officials (NASAO), issued March 2002.

(8). *Land Use Compatibility and Airports, a Guide for Effective Land Use Planning* (PDF format), issued by the FAA Office of Environment and Energy.

(9). *Compatible Land Use Planning Initiative* (PDF format), 63 Fed. Reg. 27876 May 21, 1998.

(10). *Draft Aviation Noise Abatement Policy 2000* (PDF format) 65 Fed. Reg. 43802, July 14, 2000.

(11). *Airport Noise Compatibility Planning Toolkit – FAA's Initiative for Airport Noise and Compatibility Planning*, issued by the FAA Office of Environment and Energy.

c. Master Planning and Zoning. The airport master planning process provides a means to promote land use compatibility around an airport. Incompatible land uses around an airport can affect the safe and efficient operation of aircraft. Within an airport's noise impact areas, residential and public facilities – such as schools, churches, public health facilities, and concert halls – are sensitive to high noise levels and can affect the development of the airport. Most commercial and industrial uses, especially those associated with the airport, are compatible with airports. An airport master plan is a published document approved by the governmental agency or authority that owns/operates the airport. The airport master plan should be incorporated into local comprehensive land use plans and used by local land use planners and airport planners to evaluate new development within the airport environs. Integration of airport master plans and comprehensive land use plans begins during the development of the master plan. Local municipalities surrounding the airport boundaries must be contacted to collect information on existing land uses in and around airports. Local comprehensive land use plans are also reviewed to determine the types of land uses planned for the future.

Additionally, sponsors should monitor local zoning ordinances to determine what uses are currently permitted around the airport and whether there have been any recent changes in zoning. It is important for local land use planners to become involved in the review and development of the airport's master planning process. They can provide input on potential impacts that future airport development plans may have on communities surrounding the airport. Any conflicts or inconsistencies between airport development plans and the local comprehensive plans should be noted in the airport master plan. The information on future airport expansion and development contained in the airport's master plan should be incorporated in the development of comprehensive land use plans or their subsequent updates or amendments to ensure land use compatibility with the airport. During the development of such plans, planners should coordinate and consult with the airport staff so that the airport's future plans for expansion can be taken into consideration. Local land use planners should review the airport's master plan to determine how future airport projects could affect existing and projected land uses around the airport. Other opportunities for coordination and communication between the airport and local planning

agencies include the FAA noise compatibility planning process. (See chapter 13 of this Order, *Airport Noise and Access Restrictions*, for information on aircraft noise compatibility planning.)

Noise compatibility studies provide opportunities for input from airport users, local municipalities, communities, private citizens, and the airport sponsor on recommended operational measures and land use control measures that could minimize or prohibit the development or continuation of incompatible land uses. The airport master plan is also a tool to ensure that planning among federal, state, regional, and local agencies is coordinated. The incorporation and review of these plans provides for the orderly development of air transportation while protecting the public health, safety, and welfare. The legal structure of airport ownership will determine its power to regulate or influence land uses around the airport. Municipalities or counties with this regulatory authority need to be aware of existing and long-term airport development plans and the importance of using that authority to minimize development of incompatible land uses.

d. Reasonable Attempt. In cases where the airport sponsor does not have the authority to enact zoning ordinances, it should demonstrate a reasonable attempt to inform surrounding municipalities on the need for land use compatibility zoning. The sponsor can accomplish this through the dissemination of information, education, or ongoing communication with surrounding municipalities. Depending upon the sponsor's capabilities and authority, action could include exercising zoning authority as granted under state law or engaging in active representation and defense of the airport's interests before the pertinent zoning authorities. The sponsor may also take action with respect to implementing sound insulation, land acquisition, purchase of easements, and real estate disclosure programs or initiatives to mitigate areas to make them compatible with aircraft operations. Sponsors without zoning authority may also work to change zoning laws to protect airport interests.

e. Definition of Compatible Land Use. Compatibility of land use is attained when the use of adjacent property neither adversely affects flight operations from the airport nor is itself adversely affected by such flight operations. In most cases, the adverse effect of flight operations on adjacent land results from exposure of noise sensitive development, such as residential areas, to aircraft noise and vibration. Land use that adversely affects flight operations is that which creates or contributes to a flight hazard. For example, any land use that might allow tall structures, block the line of sight from the control tower to all parts of the airfield, inhibit pilot visibility (such as glaring lights, smoke, etc.), produce electronic aberrations in navigational guidance systems, or that would tend to attract birds would be considered an incompatible land use. For instance, under certain circumstances, an exposed landfill may attract birds. If open incineration is regularly permitted, it can also create a smoke hazard.

f. Pre-existing Obstructions. (1) Historically, some airports were developed at locations where preexisting *structures* or natural terrain (for example, hilltops) would constitute an obstruction by currently applicable standards. If such obstructions were not required to be removed as a condition for a grant agreement, the execution of the agreement by the government constitutes a recognition that the removal was not reasonably within the power of the sponsor. (2) There are many former military airports that were acquired as public airports under the Surplus Property Act, where the existence of obstructions at the time of development was considered acceptable. At such airports where obstructions in the approach cannot feasibly be removed, relocated, or

lowered, and where FAA has determined them to be a hazard, consideration may be given to the displacement or relocation of the threshold.

20.3. Residential Use of Land on or Near Airport Property.

a. General. The general rule on residential use of land on or near airport property is that it is incompatible with airport operations because of the impact of aircraft noise and, in some cases, for reasons of safety, depending on the location of the property. Nonetheless, the FAA has received proposals to locate residences immediately adjacent to airport property or even on the airport itself, as part of "airpark" developments. "Airpark" developments allow aircraft owners to reside and park their aircraft on the same property, with immediate access to an airfield. Proponents of airparks argue that airparks are an exception to the general rule because aircraft owners will accept the impacts of living near the airport and will actually support the security and financial viability of the airport.

b. FAA Position. The FAA considers residential use by aircraft owners to be no different from any residential use, and finds it incompatible with the operation of a public use airport. It is common for private airparks to impose restrictions on the use of the airfield, such as night curfews, because aircraft owners have the same interest as other homeowners in minimizing noise and sleep disturbances at home. The FAA has no problem with such restrictions at private unobligated airparks operated by the resident owners for their own benefit. At federally obligated public-use airports, however, the existence of the incompatible land use is not acceptable. First, aircraft owners are entitled to the same protection from airport impacts as any other residents of the community. Second, the likelihood that residents of an airpark will seek restrictions on the use of the airport for the benefit of their residential use is very high, whether or not they own aircraft. A federally obligated airport must provide reasonable access to all users. Restrictions on the use of the airport for the benefit of airpark residents is not consistent with the obligation to provide reasonable access to the public.

c. On-airport and off-airport residential use. The general policy against approval of on-airport and off-airport residential proposals is the same. There are, however, different considerations in the review and analysis of on-airport and off-airport land use. The FAA has received proposals for airparks or co-located homes and hangars both on the airport itself or off of the airport, with "through-the-fence" access.

20.4. Residential Airparks Adjacent to Federally Obligated Airports.

a. General. In several instances, the FAA has received requests from airport sponsors and developers interested in developing residential airparks adjacent to federally obligated airports. These types of development include "through-the-fence" access to the airport and generally include aircraft hangars or parking co-located with individual residences.

The FAA has no problem with private residential airparks since there is no federal obligation for reasonable access. Residential owners can limit access to the airport as they wish. However, FAA approval of such developments on federally obligated airports cannot be justified. First, residential property owners tend to seek to limit airport use consistent with their residential use, which is contrary to the obligation for reasonable public access to the airport. Second, developers can tend to view Airport Improvement Program (AIP) grants for the airfield as a subsidy of the

development, increasing the value of the airpark development at no cost to the developer or residents. The FAA's AIP program is not a funding mechanism for improving or subsidizing private and residential development.

Any residential use existing on the airport or any residential use granting "through-the-fence" access is an incompatible land use.

Any residential use on an airport or residential use granting "through-the-fence" access is an incompatible land use.

b. FAA Position. Permitting development of a residential airpark near a federally obligated airport, through zoning approval or otherwise, would be inconsistent with Grant Assurance 21, *Compatible Land Use*. The FAA expects sponsors to oppose zoning laws that would permit residential development near airports.

For this purpose, the FAA considers residential use to include: permanent or long-term living quarters; part-time or secondary residences; and developments known as residential hangars, hangar homes, campgrounds, fly-in communities or airpark developments – even when co-located with an aviation hangar or aeronautical facility.

Allowing residential development on federally obligated airports is incompatible with aircraft operations and conflicts with several grant assurance and surplus property requirements, as mentioned above. Residential development inside federally obligated airports is inconsistent with federal obligations regarding the use of airport property.

Accordingly, the FAA will not support requests to enter into any agreement that grants access to the airfield for the establishment of a residential airpark since that access would involve a violation of Grant Assurance 21, *Compatible Land Use*.

c. "Through-the-Fence." Off-airport residential airparks are privately owned and maintained residential facilities. They are not considered aeronautical facilities eligible for reasonable access to a federally obligated airport. The airport sponsor is under no federal obligation to allow "through-the-fence" access for these privately owned residential airparks. Allowing such access in most cases could be an encumbrance on the airport in conflict with Grant Assurance 5, *Preserving Rights and Powers*. In addition, residential hangars with "through-the-fence" access are considered an incompatible land use at federally obligated public use airports. (For additional information on "through-the-fence" agreements, see paragraph 12.7, "Agreements Granting 'Through- the-Fence' Access" in chapter 12 of this Order, *Review of Aeronautical Lease Agreements*.)

d. Releases. The FAA will not release airport property from its federal obligations so that it can be used for residential development. Also, the FAA will not release airport land for off-airport use with "through-the-fence" access to the airfield. Obligated airport land may not be released unless the FAA finds that it is no longer needed for airport purposes. Since the requested off-airport use would involve basic airport functions such as aircraft parking and taxiing, the FAA

could not find that the property was no longer needed for an airport use. A request to release airport land for a residential airpark will be denied as inconsistent with both policies.

20.5. Residential Development on Federally Obligated Airports.

a. General. This guidance sets forth FAA policy regarding residential development on federally obligated airports, including developments known within the industry as residential hangars and airpark developments. FAA airports district offices (ADOs) and regional airports divisions are responsible for ensuring that residential developments are not approved when reviewing a proposed ALP or any other information related to the airports subject to FAA review. There is no justification for the introduction of residential development inside a federally obligated airport. It is the sponsor's federal obligation not to make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the ALP, as approved by the FAA, and that might, in the opinion of the FAA, adversely affect the safety, utility, or efficiency of the airport.

b. Background. The FAA differentiates between a typical pilot resting facility or crew quarters and a hangar residence or hangar home. The FAA recognizes that certain aeronautical uses – such as commercial air taxi, charter, and medical evacuation services – may have a need for limited and short-term flight crew quarters for temporary use, including overnight and on-duty times. There may be a need for Aircraft Rescue and Fire Fighting (ARFF) quarters if there is a 24-hour coverage requirement. Moreover, an airport manager or a Fixed-Base Operator (FBO)[1] duty manager may have living quarters assigned as part of his or her official duties. Living quarters in these cases would be airport-compatible if an airport management or FBO job requires an official presence at the airport at off-duty times, and if the specific circumstances at the airport reasonably justify that requirement.

However, other than the performance of official duties in running an airport or FBO, the FAA does not consider permanent or long-term living quarters to be an acceptable use of airport property at federally obligated airports. This includes developments known as airparks or fly-in communities, and any other full-time, part-time, or secondary residences on airport property – even when co-located with an aviation hangar or aeronautical facility. While flight crew or caretaker quarters may include some amenities, such as beds, showers, televisions, and refrigerators, these facilities are designed to be used for overnights and resting periods, not as permanent or even temporary residences for flight crews, aircraft owners or operators, guests, customers, or the families or relatives of same.

The definition of flight crew is limited to those individuals necessary for the operation of an aircraft, such as Pilot-In-Command (PIC), second in command, flight engineer, flight attendants, loadmasters, Search And Rescue (SAR) flight personnel, medical technicians, and flight mechanics. It does not include the families, relatives, or guests of flight crewmembers not meeting the preceding definition.

An effort to obtain residential status for the development under zoning laws may indicate intent to build for residential use. Airport standards, rules, and regulations should prevent the introduction of residential development on federally obligated airports. The FAA expects the

[1] A Fixed-Base Operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

airport sponsor to have rules and regulations to control or prevent such uses, as well as to oppose residential zoning that would permit such uses since these uses may create hazards or safety risks between airport operations and nonaeronautical tenant activities. If doubts exist regarding the nature of a proposed facility, the airport sponsor may ask FAA to evaluate the proposed development. Also, the FAA may conduct a land use inspection to determine the true nature of the development; the FAA would then make a determination on whether the facility is compatible with the guidance provided herein.

c. Authority and Compliance Requirements. Allowing residential development, including airport hangars that incorporate living quarters for permanent or long-term use, on federally obligated airports is incompatible with airport operations. It conflicts with several grant assurance requirements.

Under Grant Assurance 5, *Preserving Rights and Powers*, an airport sponsor should not take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. The private interests of residents establishing private living can conflict with the interests of the airport sponsor to preserve its rights and powers to operate the airport in compliance with its federal obligations. It should not be assumed that the interests of the sponsor and that of a homeowner located on the airport will be the same or that because the homeowner owns an aircraft, he or she will automatically support the airport on all aviation activities. In addition, local laws relating to residences could restrict the airport operator's ability to control use of airport land and to apply standard airport regulations.

Under Grant Assurance 19, *Operation and Maintenance*, airport sponsors will not cause or permit any activity or action that would interfere with the intended use of the airport for airport purposes. Permanent living facilities should not be permitted at public airports because the needs of airport operations may be incompatible with residential occupancy from a safety standpoint.

Under Grant Assurance 21, *Compatible Land Use*, airport sponsors, to the extent possible, must ensure compatible land use both on and off the airport. Residential development in the vicinity of airports may result in complaints from residents concerned about personal safety, aircraft noise, pollution, and other quality-of-life issues. Bringing residential development onto the airport, even in the form of residential hangars, increases the likelihood that quality-of-life issues may lead to conflicts with the airport sponsor and appeals for restrictions on aircraft operations. Moreover, an airport sponsor permitting on-airport residential living quarters will have greater difficulty convincing local zoning authorities to restrict residential development off-airport. Therefore, airport sponsors are encouraged to:

(1). Explicitly prohibit the development of residential living quarters on the airport in all tenant leases and subleases.

(2). Develop minimum standards that require the explicit advanced approval of all tenant subleases by the airport sponsor.

(3). Include clauses in all tenant leases stating that unauthorized development of residential living quarters may be declared an event of default under the lease and that the airport sponsor may declare any noncomplying subleases null and void

(4). Convert any existing living quarters into nonresidential use at the earliest opportunity, especially if the airport sponsor holds title to the living quarters**.**

d. Conclusion. Permitting certain on-airport development, including residential development, conflicts with several federal grant assurances and federal surplus property obligations. Such residential development may have some or all of the following undesirable consequences:

(1). Aircraft noise complaints.

(2). Proposed restrictions or limitations on aircraft and/or airport operations brought by the residential tenants.

(3). The execution of easements, leases, and subleases that encumber airport property for nonaeronautical uses at the expense of aeronautical uses.

(4). Increased likelihood of vehicle/pedestrian deviations (V/PDs) due to residents, guests, and unsupervised children unfamiliar with an operating airfield environment; unleashed pets roaming the airfield; and the interaction between private vehicles and aircraft that compromise safe airfield operations.

Increased public safety and legal liability risks, including fire hazards, if codes have been compromised by the co-location of residential living quarters within hangars and other aeronautical facilities.

Line-of-sight obstructions and operational limitations due to the greater height of two-story hangars.

e. Summary. Residential development, either standing alone or collocated as part of a hangar or other aeronautical facility, is not an acceptable use of airport property under the federal grant assurances or surplus and nonsurplus property federal obligations. The ADOs and regional airports divisions have the responsibility for ensuring that residential development is not approved as part of a review of a proposed ALP and that airport property is not released for residential development.

20.6. through 20.10 reserved.

Sample Easement and Right-of-Way Grant

The easement and right of way hereby granted includes the continuing right in the Grantee to prevent the erection or growth upon Grantors' property of any building, structure, tree, or other object, extending into the air space above the aforesaid imaginary plane,

(OR USE THE FOLLOWING)

extending into the air space above the said Mean Sea level of (i.e., 150) feet,[1]

(OR USE THE FOLLOWING)

extending into the air space above the surface of Grantors' property;[1]

and to remove from said air space, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon Grantors' property, together with the right of ingress to, egress from, and passage over Grantors' property for the above purposes.

TO HAVE AND TO HOLD said easement and right of way, and all rights appertaining thereto unto the Grantee, its successors, and assigns, until said (full name of airport) shall be abandoned and shall cease to be used for public airport purposes.

AND for the consideration hereinabove set forth, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said easement and right of way, they will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon Grantors' property any building, structure, tree, or other object extending into the aforesaid prohibited air space, and that they shall not hereafter use or permit or suffer the use of Grantors' property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off, or maneuvering of aircraft, it being understood and agreed that the aforesaid covenants and agreements shall run with the land.

In consideration of the premises and to assure Grantee of the continued benefits accorded it under this Easement, (name of mortgagee), owner and holder of a mortgage dated _____ and recorded _____ covering the premises above described, does hereby covenant and agree that said mortgage shall be subject to and subordinate to this Easement and the recording of this Easement shall have preference and precedence and shall be superior and prior in lien to said mortgage irrespective of the date of the making or recording of said mortgage instrument.[2]

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[2] Local recordation and subordination practices must also be met. If subordination is necessary, in which case the mortgagee must join in the agreement, the above language is suggested.

FAIR DISCLOSURE STATEMENT

A disclosure statement, adhering to the form of the statement below, shall be provided to and signed by each potential purchaser of property within the Airport Influence Area as shown on the approved Airport Land Use Drawing. The signed statement will then be affixed by the Seller to the agreement of the sale.

The tract of land situated at

_____,
in _____ (County and State), consisting of approximately _____ acres which is being conveyed from _____ to _____ lies within _____ miles of _____(airport name) may be subjected to varying noise levels, as the same is shown and depicted on the official Zoning Maps.

CERTIFICATION

The undersigned purchaser(s) of said tract of land certify(ies) that (he) (they) (has) (have) read the above disclosure statement and acknowledge(s) the pre-existence of the airport named above and the noise exposure due to the operation of said airport.

SUGGESTED DISCLOSURE TO REAL ESTATE BUYERS

Customarily, someone will request a letter from the municipality about outstanding charges and assessments against a property. Something similar to this language, adapted for your airport, can be incorporated into a letter sent to buyers and title companies in preparation for closing.

"Please be advised that the subject property is located within the height restriction zone of the (blank) airport, or is located within a similar distance from the airport. It is conceivable that standard flight patterns would result in aircraft passing over (or nearly so) the property at altitudes of less than (blank) feet. Current airport use patterns suggest that the average number of takeoffs/touchdowns exceeds (blank) annually. A property buyer should be aware that use patterns vary greatly, with the possibility of increased traffic on (blank). The airport presently serves primarily recreational aircraft, and there are no current initiatives to extend any runway beyond the current (blank) length. Airport plans allow for runway extension in the future, which might impact the number and size of both pleasure and non-pleasure aircraft. Generally, it is not practical to redirect or severely limit airport usage and/or planned-for expansion, and residential development proximate to the airport ought to assume, at some indefinite date, an impact from air traffic."

Sample FAA Position Letter on Residential **Airparks - Page 1**

U.S. Department
of Transportation
Federal Aviation
Administration

Office of Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 29 2005

Mr. Hal Shevers
Chairman
Clermont County-Sporty's Airport
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than $300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because

Sample FAA Position Letter on Residential Airparks - Page 2

they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Associations (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally* obligated airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

Original signed by:
Woodie Woodward

Woodie Woodward
Associate Administrator
for Airports

Chapter 21: Land Use Compliance Inspection

21.1. Introduction. This chapter provides guidance for conducting land use inspections at federally obligated airports. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to conduct a minimum of two (2) land use inspections annually per region for General Aviation (GA) airports, and to resolve issues identified during the inspections. The FAA headquarters Airport Compliance Division (ACO-100) will report the results of these inspections to Congress.

21.2. Background. The purpose of the land use inspections is to determine whether a sponsor is in compliance with its federal obligations for land use. These federal obligations accrue to the sponsor when the sponsor accepts grants or transfers of property. Land use is an important aspect of successful and lawful airport management and operation.

21.3. Elements of the Land Use Inspection. The inspections are built on several processes – airport selection, data gathering, preinspection, onsite inspection, and corrective actions. The inspections contribute to the completeness of land use records and supporting data that may be useful for formal and informal compliance determinations.

21.4. Responsibilities. In accordance with the guidance provided below, the ADOs or regional airports divisions are responsible for conducting the land use inspections. ADOs and state block grant agencies are expected to support the regional efforts. ACO-100 will provide guidance and technical support.

21.5. Authority.

a. Congressional Requirement. In Senate Report No. 106-55 issued in May 1999, Congress directed the FAA to conduct land use inspections at all airports with lands acquired with federal assistance. It required the FAA to report on the survey results, including the scope of improper and noncompliant land use changes, the proposed enforcement and corrective actions, changes made to FAA's guidelines for use by ADOs and regional airport divisions to assure more consistent and complete monitoring and enforcement, and the extent of FAA approved land releases. Accordingly, the FAA developed the Regional Land Use Inspections Program, which requires the FAA to conduct a minimum of 18 inspections (two per region) per year, and to conduct additional inspections as needed and where resources allow.

b. Annual Report to Congress. Section 722 of Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) mandates that the FAA compile the data collected from these inspections, along with other relevant information, and report it to Congress. (See 49 United States Code (U.S.C.) § 47131, *Annual Report*.)

The report must include:

(1). a detailed statement of airport development completed;

(2). the status of each project undertaken;

(3). the allocation of appropriations;

(4). an itemized statement of expenditures and receipts; and

(5). a detailed statement listing airports that the Secretary believes are not in compliance with grant assurances or other requirements with respect to airport lands and including the circumstances of such noncompliance, the timelines for corrective action, and the corrective action the Secretary intends to take to bring the airport sponsor into compliance.

The statute also states that FAA does not have to conduct an audit or make a final determination before including an airport on the list referred to in paragraph 21.5.b(5) directly above.

(A sample post-inspection land use report is provided at the end of this chapter.)

21.6. Land Use Inspection Guidance.

a. Selection Process. A purely random process in selecting airports for land use inspections is not considered to be efficient due to the limited number of inspections to be conducted on a yearly basis in each FAA region. By selectively targeting airports, the positive impact of the inspection program can be maximized. A "one-size-fits-all" approach is not necessarily the most efficient. Selection criteria should be defined and then used to provide FAA regional airports divisions with the needed flexibility to adapt to each case while yielding the necessary data required to meet the statutory requirements under 49 U.S.C. § 47131.

Therefore, each FAA regional airports division should develop its own selection process using the variables, conditions, and recommendations listed in this chapter. Coordination – especially preinspection coordination – with the ADOs and state aeronautical agencies would be appropriate. ADOs and state block grant aeronautical agencies may be the most knowledgeable and familiar with specific airport conditions and potential compliance problems. Assistance from, and the involvement of, state block grant agency officials is essential when conducting inspections in those states. When and if noncompliance situations are uncovered as a result of the land use inspections, the state block grant agency should be in a position to play a role in requesting and supervising corrective action and notification, as well as informal resolution.

b. Selection Data. The information needed to identify airports for selection in land use inspections is available from many sources. The most valuable tool in selecting an airport for inspection is prior knowledge of compliance problems. Prior knowledge can come from several sources, including:

(1). Past Inspections. Previous site inspections may include site visits by FAA airports personnel, visits by FAA personnel outside of airport compliance (such as FAA Airport Certification Safety Inspectors conducting a Part 139 inspection), and site visits by others outside of FAA, provided they are knowledgeable about some aspects of airport compliance (such as state inspectors performing FAA Form 5010 inspections).

(2). Complaints. Telephone, written, or informal complaints (Part 13.1 Reports) from users or tenants; formal complaints filed with FAA headquarters.

(3). Documents. Historical file review, recent and updated Airport Layout Plan (ALP) and Exhibit "A," as well as previous versions of both.

c. Selecting Airports for Inspection. In developing guidance for regional administration on the land use inspection portion of any airport compliance program, it is reasonable to emphasize those airports with the largest potential for abuse. Although not directly determining the priority of airport selection, several factors may assist in selecting a particular airport for a land use inspection. These factors include:

(1). Specific Request from FAA Headquarters. ACO-100 may request an airport land use inspection when that inspection would directly benefit a current investigation or formal complaint or otherwise address a potential land use problem.

(2). Excessive Number of Requests for Airport Property Release. An excessive number of requests for airport property releases and/or a significant amount of released land may require additional oversight. This situation could lead to an increase in the potential for misuse of airport property. It could generally indicate systematic nonaeronautical use of the airport.

(3). Size, Classification, and Total Number of Operations at an Airport. The size, classification, and total number of operations at an airport are important elements in selecting an airport. This is because of the potential high return that can be derived from the land use inspection given the acreage, amount of federally funded property, role and importance of the facility, number of based aircraft, and level of operations.

d. Preinspection Preparation. Adequate preinspection preparation is essential in ensuring a successful land use inspection. FAA staff assigned to conduct the land use inspection should notify the airport of the upcoming inspection and include information regarding the planned visit, the purpose of the inspection, and what the inspection will entail. The preinspection preparation could last anywhere from a half day to a full day depending on the specifics of the airport, such as airport size, number of tenants, and availability of land use property records. Several issues may be encountered during a land use inspection. These usually fall within the following categories: Use of airport property, conformity to the ALP, continuing special conditions, disposal of grant acquired land, disposal of surplus property, approach protection**,** and compatible land usage within airport property. (This should not be confused with requirements

under Grant Assurance 21, *Compatible Land Use*, which covers compatible land use *outside* the airport.).

If necessary or applicable, the FAA person conducting the inspection should obtain from the airport, the ADO, or the state block grant aeronautical agency any relevant information or documentation to review during the preinspection preparation. The first phase of the preinspection process should include a review of all relevant airport data available in the ADO and regional airports division, as suggested below:

The bulk of the preinspection preparation process should focus on inconsistencies between the ALP, Exhibit "A," or any other land use document relevant to the airport sponsor's land use obligations. One of the most important steps at this stage is to identify the difference between land that constitutes airport property (actual airport site) and land the airport owns, which may include other property not adjacent to the airport. For example, the airport boundary delineated on the ALP may not show property the airport owns outside that boundary, yet that property may be obligated. This knowledge will be used during the onsite inspection to confirm the land uses visually. (Photos: FAA)

(1). Obligating Documents. Review applicable grant, surplus, and nonsurplus property documents to understand the specific commitments of the airport owner, especially any special conditions in such documents. The intent of the land use inspection is to ensure that all airport property, including each area of surplus property or grant funded land, is used or is available for use for the purposes intended by the land conveyance or grant agreement.

(2). Land Use Maps/Land Files. The majority of the preinspection preparation process conducted by FAA personnel should focus on inconsistencies between the ALP, Exhibit "A," parcel maps, or any other land use document relevant to the airport sponsor's land use and planning.

Documents such as airport diagrams and the airport facility directory (AFD) should also be consulted for general familiarization. One of the most important steps at this stage is to identify the difference between land that constitutes airport property (actual airport site) and land the airport owns, which may include other property not adjacent to the airport. For example, the airport boundary delineated on the ALP may not show property the airport owns outside that boundary, yet that property may be federally obligated. This knowledge will be used during the onsite inspection to confirm the land uses visually. Things to do or consider when reviewing land files include, but are not limited to:

(a). Review the most current ALP and compare it with older ones. There should be no actual or proposed development or use of land and facilities contrary to an ALP previously approved by

the FAA. Ensure that the Exhibit "A" was updated when new grants were issued or when an FAA land release was issued. Pay particular attention to buildings or structures that could turn into obstruction problems. If an ALP is out of date or fails to depict existing and planned land uses accurately, make inquiries and take appropriate actions.

(b). Determine whether the Exhibit "A" needs to be updated.

(c). Review and compare the history of land acquisitions and releases.

(d). Identify general land uses, both current and planned. This would include considerations such as whether a use is aeronautical or nonaeronautical, whether uses such as industrial/commercial and agricultural are appropriate, and how buildings and hangars built for aeronautical use are actually being used.

(e). Identify all easements and all temporary and concurrent uses.

(f). Compare FAA and state block grant records, if applicable or required.

(3). Self-certification Documents. The person conducting the inspection should review any documents and records of self-certification, if applicable. Although self-certification may be an important element of a regional airport compliance program, it is not a substitute for an actual land use inspection. However, self-certification data can be used as background or reference information.

(4). Grant-Acquired Land, Surplus and Nonsurplus Property. While reviewing airport property and land use documents such as the ALP or Exhibit "A," pay particular attention to all land acquired with grant funding, including land acquired for noise protection, as well as surplus and nonsurplus property. Is this land still being used for the purpose for which it was acquired? Also note whether the conditions associated with any previous disposal are being followed.

(5). Release Documentation. Review all documentation relating to past releases and disposal of airport property. Identify land released by tract or legal description. Check that release conditions or requirements (*i.e.*, environmental requirements, height restrictions, designated uses of proceeds from land sales or leases, Fair Market Value (FMV), and general compatibility requirements) are followed. Also look at the amount of land released (or to be released). Compare this information with correspondence files, land files, ALP and Exhibit "A." Determine if land released for sale has been sold, the deed recorded by the county recorder’s office, and proceeds deposited into the airport account.

(6). Master Plan, Part 150, and Environmental Impact Statements. Review the Master Plan, any Part 150 studies, any Environmental Impact Statements (EIS), and any other planning and environmental documents for relevant information. Environmental determinations might be relevant for understanding land uses.

(7). General Correspondence. Review recent general correspondence, including complaints, with the airport sponsor or any airport official or representative regarding issues at the airport that may be relevant to the land use inspection.

(8). Leasehold Review. Obtain a list of leaseholds, both aeronautical and nonaeronautical, so they are known to the inspection team before the onsite inspection occurs. In addition, use this leasehold information to crosscheck the ALP and Exhibit "A" for appropriate land uses.

(9). Special Requirements. Review any special requirements. These are conditions other than those controlled by project payments under the Airport Improvement Program (AIP). Such special conditions might include specific commitments regarding the disposition of proceeds from the disposal of surplus property and any other continuing pledges undertaken by the airport sponsor. It might also include compatible land use requirements or development restrictions.

e. Onsite Inspection Procedures. With adequate preinspection preparation, the actual onsite inspection will be easier and should last approximately half a day. Below are several specific activities that should be included in the onsite inspection:

(1). Determine whether any improvements being currently processed under FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, or that are under construction are inconsistent with the ALP or other land use requirements. No actual or proposed development or use of land and facilities should be contrary to the FAA-approved ALP.

(2). Confirm land uses. Each land area should be identified and verified to ensure its intended or approved use corresponds to the actual use. Such identification should extend to aeronautical service areas, industrial areas, agricultural areas, recreation areas, and those parcels that help in protecting aerial approaches.

(3). Review and compare airport property and the ALP. Specifically note whether all land acquired with federal funds, including land acquired for noise mitigation, is still being used for the purpose for which it was acquired. The FAA must approve any concurrent compatible use of land purchased with federal funds.

(4). Determine whether there are incompatible land uses on airport property. Check for Building Restriction Lines (BRL). If these are not on the ALP, recommend they be included at the next cycle.

(5). Review leases, use agreements, and applicable financial data (such as airport account records and appraisals) if appropriate or required based on inconsistencies between depicted and actual land use.

(6). Ensure that all airport property released from its federal obligations is, in fact, being used in accordance with the release document and any special conditions or requirements.

f. Problem Areas. There are many types of issues that could arise or be identified during or after a land use inspection. Several of these may be indicative of improper and noncompliant land use. Examples of these include:

(1). Missing Release Documents. Release documents cannot be found to substantiate the ALP or Exhibit "A." In several instances, specific airports have told FAA that certain property was released from federal obligations or an ALP shows airport property released from federal obligations, yet no release documents can be found. Without the actual release documents, there is no way to confirm whether the property was actually released and/or if special conditions were issued along with the release.

(2). Outdated ALP. An outdated ALP has the potential to result in many improper and noncompliant land uses.

(3). Special Conditions. Failure to comply with special conditions, restrictions, reservations, or covenants associated with land releases makes it difficult to determine whether the land is being used properly. It also makes it difficult to reconcile actual versus approved land use. For example, it would be an improper land use if the FAA released airport land under special land use conditions that include a specific use, but the airport is not using the land in accordance with the special conditions in the release. Other examples of violations of the sponsor's obligations include failing to sell FAA-released property at fair market value following an appraisal as required in the release, or not using the sale proceeds for airport purposes.

(4). ALP and Exhibit "A" Conflict. An ALP may show airport property to be a nonaeronautical leasehold while the Exhibit "A" depicts the land in question as grant acquired property. It is possible to have an actual nonaeronautical use correctly depicted on the ALP but conflicting with the Exhibit "A." In determining obligations, Exhibit "A" takes precedence since it is part of the grant agreement establishing the obligation. Where a question or conflict is found, Exhibit "A" from all grants within the 20 years prior to the inspection should be reviewed to determine if the sponsor changed the description of obligated airport property, possibly without FAA being aware.

In determining obligations, Exhibit "A" takes precedence since it is part of the grant agreement establishing the obligation.

(5). Nonaeronautical Leaseholds. The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are located on designated aeronautical use land without FAA approval or on property not released by FAA, and permitting dedicated aeronautical property to be used for nonaeronautical uses. Examples of typical uses include using hangars to store vehicles or other unrelated items. Other improper land uses found in the past have included using aeronautical land for nonaeronautical purposes such as animal

control facilities, nonairport vehicle and maintenance equipment storage, aircraft museums, and municipal administrative offices. (NOTE: Approval of an ALP showing future nonaeronautical land use does not constitute FAA approval for that nonaeronautical use when it may actually occur. The ALP is a planning document only. FAA approval will be required at the time the land is to be used for a nonaeronautical purpose.)

(6). Incompatible Land Uses. Incompatible land uses include obstructions or residential construction built on airport property or in violation of conditions of released land or residential development within grant funded aircraft noise compatibility land. Introducing a wildlife attractant or failure to take adequate steps to mitigate hazardous wildlife at the airport can also result in an incompatible land use.[1] Incompatible land uses can include wastewater ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer stations, electrical power substations, water storage tanks, golf courses, and other bird attractants. Other incompatible uses would be towers or buildings that penetrate Part 77 surfaces or are located within a Runway Protection Zone (RPZ), Runway Object Free Area (ROFA), Object Free Zone (OFZ), clearway or stopway.

(7). Eminent Domain. An improper land use may include a situation involving eminent domain. For example, a local government may have taken one or more parcels of airport property without FAA approval through eminent domain in order to widen a road.[2]

(8). Airspace Determination Cases. A favorable airspace determination on a proposed structure does not by itself satisfy land use compliance requirements. There is a misconception among airport sponsors that if a proposed structure is accepted by the FAA based on airspace standards, it constitutes FAA *de facto* approval of proposed land use. That is not the case. For example, a hangar on the airport might not pose an airspace issue, but if that hangar is intended to be used as a residential hangar, it would still represent a compliance problem as an incompatible land use. The regional airports division or ACO-100 makes the determination on land use compliance separately from any related airspace determination, and the regional airports division should advise the sponsor of the distinction between the two independent FAA determinations.

(9). Unapproved interim or concurrent uses. An unapproved use might occur following approval for farming near the RPZ if a land use inspection finds permanent structures instead of the authorized farming use. It is also an unapproved land use if nonsurplus land transferred for approach protection was approved for farming purposes for a three-year period, but the lease term is for

[1] For information related to the impact on aviation of wildlife, refer to *Hazardous Wildlife Attractants On or Near Airports*, Advisory Circular (AC) 150/5200-33B, and *Wildlife Strikes to Civil Aircraft in the United States 1990-2007*, Report of the Associate Administrator for Airports, Office of Airport Safety and Standards.

[2] See also discussion of Halfmoon Bay Airport in *Montara Water & Sanitary District* v. *County of San Mateo*, outlined in chapter 23 of this Order, *Reversions of Airport Property*.

more than three years or the lease shows a rental rate set at less than fair market value. The sponsor must resolve this type of land use issue promptly. The inspection team should pay particular attention to golf courses on airport property as an interim or concurrent use. This is because experience has shown airport sponsors are reluctant to give up the facility later on and return the land to its aeronautical function. Also, experience has shown that golf course operations create revenue use problems, particularly since golf courses may be operated at below fair market value rents. Close attention should also be exercised in cases where the proposed interim use involves shooting ranges. In most instances, shooting ranges should not be permitted at all, and should only be considered in very limited and unusual circumstances. A range can be inherently hazardous unless properly controlled and mitigated. Moreover, use as a shooting range may be difficult to discontinue later if the land is needed for an aeronautical use.

NOTE: As discussed in chapter 22 of this Order, *Releases from Federal Obligations*, care must be taken when considering recreational use to avoid encumbering the property under provisions of section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303).[3]

(10). Roads and Other Structures. A public road built through airport property without FAA approval is a problem if it impacts an RSA, Part 77 surfaces, the RPZ, or an OFZ. This is especially problematic if the property where the RSA sits was acquired with federal assistance. The sponsor may have constructed roads or allowed nonsponsor roads to be built on and through airport property, effectively isolating airport parcels from the rest of the airport and making them unsuitable for aeronautical use. At the same time, if a sponsor permits structures to be erected in the RSA, this would raise safety issues and potentially be a violation of its federal obligations.

While the purpose of the inspection is to determine the extent of improper and noncompliant land use, the person conducting the land use inspection should nonetheless advise the airport sponsor of other grant assurance violations, as well as any recommended remedies and deadlines for the sponsor to complete corrective action.

g. Corrective Action. Corrective action should be initiated when discrepancies are found following an inspection. A letter stating the results of the inspection and including all land use discrepancies should be sent to the airport sponsor as soon as practical. The letter should include detailed information on how the airport can return to compliance with its federal obligations. It should also include a timeline for completion. The letter could be as simple as requesting an updated ALP within 120 days or requesting the airport to submit a formal request for a land

[3] Section 4(f) property refers to public parks and recreation lands, wildlife and waterfowl refuges, and historic sites. It also applies to wild and scenic rivers. Section 4(f) was recodified as section 303(c).

release to correct a land use situation within 30 days. In some cases, the corrective action may be as drastic as requiring the removal of an obstruction to air navigation. Failure to take corrective action will lead to compliance action by FAA. Often, improper use of airport property could lead to violations of additional federal obligations or grant assurances, such as revenue use and exclusive rights. While the purpose of the inspection is to review land use, the person conducting the land use inspection should nonetheless advise the airport sponsor of other grant assurance violations noted, as well as any recommended remedies and deadlines for the sponsor to complete corrective action. However, only noncompliant land use needs to be reported to ACO-100 for inclusion in the annual report to Congress. ACO-100 will include noncompliant land uses in the Report to Congress if those land uses remain unresolved at the end of the fiscal year.

h. Post-Inspection Land Use Report. It is important to maintain adequate records of all land use inspections. The relevant land use information collected from the inspection should be compiled in a post-inspection land use report, which will include narrative comments.

Although there is no set format for compiling this report, suggested sections or headings of a post-inspection land use report include:

- Inspection site location
- Individual conducting the inspection
- Date of inspection
- Background
- Findings
- Required corrective action
- Timeline for corrective action
- Conclusion

Narrative comments should be included detailing any inconsistencies or noncompliance situations discovered during the inspection, as well as the necessary corrective action(s) as appropriate. Within 30 days of completing the land use inspection, but before the end of the fiscal year in which the inspection took place, the land use inspector who performed the inspection should forward a copy of the land use report to ACO-100.

21.7. Sample Correspondence. The end of this chapter has several samples of correspondence related to land use inspections.

21.18 through 21.12 reserved.

Follow-Up and Corrective Action Sample **- Page 1**

U.S. Department
Of Transportation

**Federal Aviation
Administration**

Central Region
Iowa, Kansas
Missouri, Nebraska

901 Locust
Kansas City, Missouri 64106-2325

June 7, 2004

Mr. Paul Sasse
City Manager
City of Independence
120 North 6th Street
Independence, KS 67301

Dear Mr. Sasse:

Independence Municipal Airport
Land Use Compliance Inspection
Independence, Kansas

A representative of the Federal Aviation Administration conducted a land use inspection of the Independence Municipal Airport on Wednesday, May 19, 2004. The purpose of the inspection was to ensure that the airport is in compliance with the terms of its Federal obligations dealing specifically with the use of airport property.

The inspection revealed that the City of Independence (City) has been leasing airport property to the Independence Gun Club for $1 a year. As we discussed in our meeting, this does not appear to be in compliance with the requirement that the rental of surplus airport property for non-aeronautical activities shall generate fair market rent or with the requirement that the airport owner will maintain a fee and rental structure to make the airport as self-sustaining as possible.

In order to make the airport as self-sustaining as possible, fair market value must be obtained for the lease. All revenue generated by the airport is considered to be airport revenue and must be used on the airport for airport purposes.

It is our understanding that the current lease with the Independence Gun Club is a yearly lease and will expire on September 9, 2004. We recommended, and you agreed, that the City would receive fair market value for the lease of this property when the City renegotiates the lease agreement. Your local attorney should become familiar with the provisions of the lease agreement to ensure that the leasing arrangements would not impair the City's ability to comply with its Federal obligations.

Follow-Up and Corrective Action Sample - Page 2

Overall, the Independence Municipal Airport appears to be a well-maintained and well-run airport. You are knowledgeable about the tenants, their activities, and have a good understanding of the grant assurances. Based on the land-use inspection, it appears that the City of Independence is in compliance with its land use obligations.

Thank you for your cooperation during the inspection. Please call me at (816) 329-2642, if you have any questions.

Sincerely,

Nicoletta S. Oliver
Airports Compliance Specialist

cc:
AAS-400
Mr. Tony Royse, CMC
Director of Finance-City Clerk
City of Independence
120 N. 6th Street
Independence, KS 67301

Sample Post-Inspection Land Use Report **- Page 1**

POST-INSPECTION LAND USE REPORT

Date:

Prepared By: Roger O. Hall
Airports Program Manager
Airports Division, FAA Southern Region

I. Inspection Site Location

Opa Locka Airport (OPF), Miami-Dade County, FL

II. FAA Representatives

Roger O. Hall, Airport Programs Manager, Airports Division, Atlanta, Georgia
Ilia A. Quinones, Program Manager, Orlando Airports District Office

III. Miami-Dade Aviation Department (MDAD) Contacts

Carlos F. Bonzon, Ph.D., P.E., Interim Aviation Director
Steve Baker, Deputy Aviation Director
Susan Warner Dooley, Assistant Aviation Director, Business Operations
Bruce Drum, Assistant Aviation Director, Airside Operations GA Airports
Manuel Rodriguez, Manager of Development
Jose A. Ramos, Chief, Aviation Planning
Carol Anne Klein, Professional Compliance
Ana Sotorrio, Associate Aviation Director, Governmental Affairs
Judy Seidner, Executive Assistant to the Interim Director
Greg Owens, Manager General Aviation Business Development
Chris McArthur, Airport Manager
George Manion, General Aviation Airports Supervisor

IV. Date of Inspection

April 12-14, 2005

V. Purpose

In response to a General Accounting Office report issued in May 1999 entitled *"Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement"* and language in Senate Report No. 106-55, also issued in May 1999, the FAA adopted a program to conduct annual land-use inspections at various airports where land was acquired through Federal assistance programs.

The data collected by these inspections is compiled and included in an Annual Airport Improvement Program Report to Congress. This report lists airports that are not in compliance with grant assurances or other requirements with respect to airport lands.

VI. Opa Locka Airport Land Background - The following is based on records and files kept by the FAA Orlando Airport District Office:

A. Federal Land Transferred To The County:

On November 16, 1961, the General Services Administration (Government) transferred two parcels of land to the Board of County Commissioners of Dade County. The primary tract, Parcel No. 1, contained about 1739 acres. Within this tract, the federal government retained ownership of Parcel No. 3. This is a 29.65-acre parcel (see insert below) that is the current site of the United States Coast Guard (USCG) Station, Miami.

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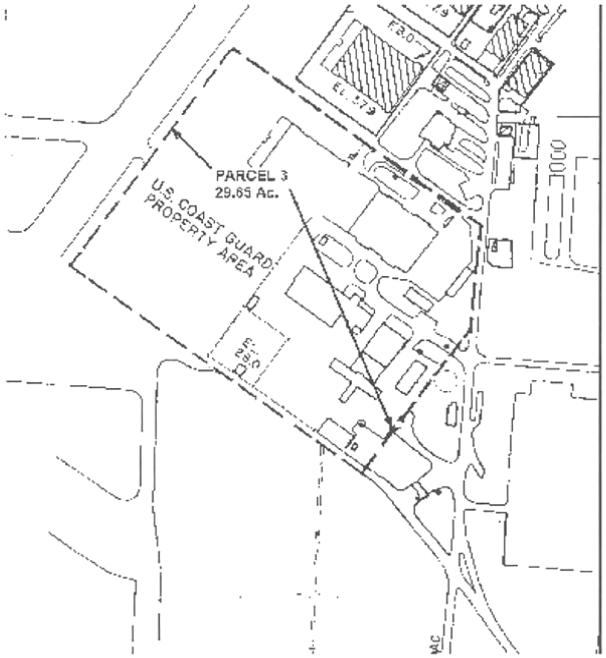
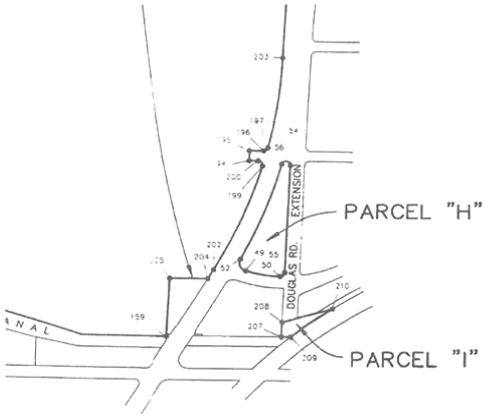
Sample Post-Inspection Land Use Report - Page 2



The other tract transferred to the County, Parcel No. 2, was a small area encompassing only about 0.36 acres. This small tract was detached from Parcel No. 1 and was located north of the Opa Locka Canal, east of the Douglas Road Extension, and north of the Seaboard rail line.



B. <u>County Land Transferred To The USCG:</u>

On April 17, 1969, the County transferred two parcels, by quitclaim deed, to the USCG. Parcel No. 3B contained 20.431 acres and adjoined the southwesterly side of Parcel No. 3 (see insert below). Parcel No. 3A consisted of 0.792 acres and adjoined the northwesterly side of Parcel No.3. No records were found to show the FAA approved disposal and transfer of Parcels 3A and 3B.

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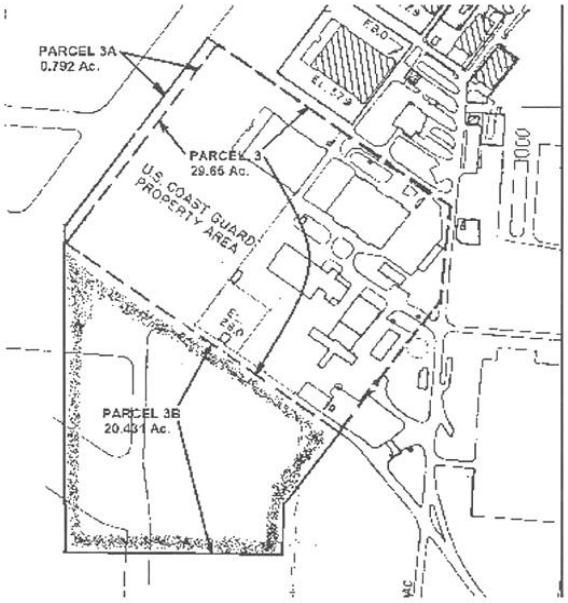
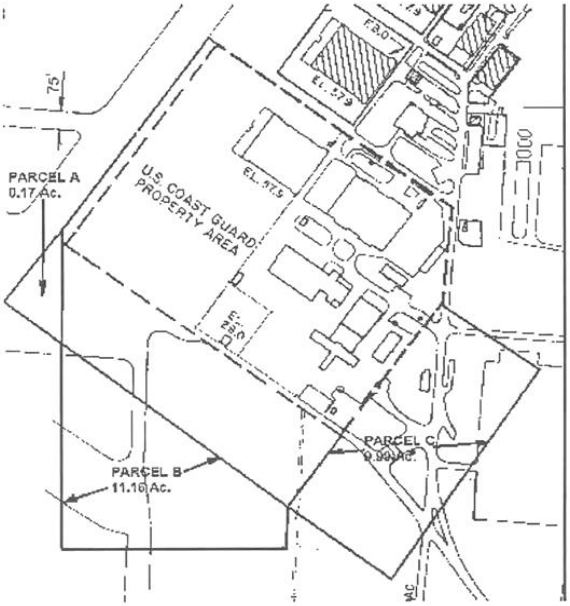
Sample Post-Inspection Land Use Report - Page 3



C. County – USCG Reciprocal Lease Agreement:

Circa 1993, the County and USCG drafted a no-cost, reciprocal lease agreement that was renewable annually for 29 years. The FAA has received a completed copy of the original agreement. The FAA also has a copy of a resolution dated July 13, 1993, in which the County Commission approved the agreement. The agreement provides the USCG will lease Parcel "B" (this is a portion of Parcel No. 3B that was transferred by the County to the USCG in 1969) to the County for purposes of expanding RW-12/30. In exchange, the County leased Parcels "A" and "C" to the USCG. The lease shows the USCG needed "A" and "C" to expand their facilities (see insert below). Parcel "B" contains 11.16 acres, Parcel "A" contains 0.17 acres, and Parcel "C" contains 9.99 acres.



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Sample Post-Inspection Land Use Report - Page 4

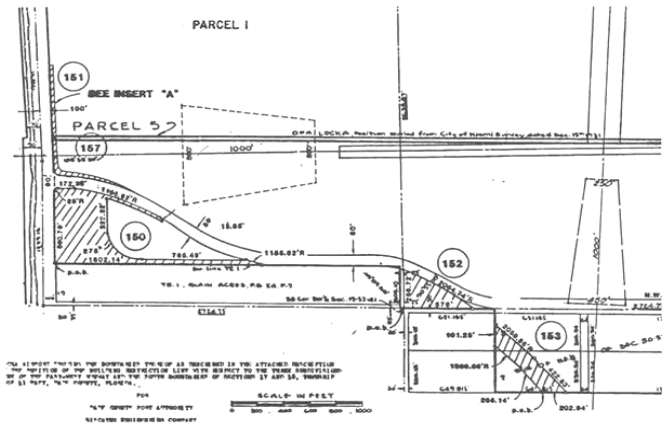
During the land-use inspection, County representatives indicated that Congress had approved the exchange of Parcel "B" for Parcels "A" and "C". However, no confirmation of Congressional approval has been provided. To FAA's corporate knowledge, the FAA did not approve this transfer. The FAA representatives conducting the inspection were concerned the boundaries of Parcel "C" may encompass several airport roads as well as a public apron and utility right of ways. Because the Airport can be damaged if the CG chooses to exercise their option to develop, occupy, or just "fence in" Parcel "C," it is important to clarify if there are plans to replace or compensate the County for the loss of these facilities if this were to happen. Paragraph 10.b of the unsigned agreement between the County and USCG provides the USCG will compensate the County for losses because of construction but it is unclear if this means the USCG will compensate the County for the loss of airport roads, apron, and possibly utilities and other improvements.

While there is a copy of the County-USCG quitclaim deed in the FAA's files for the 1969 transfer of Parcels 3A and 3B, there is no record the FAA or Congress approved the exchange of Parcel B for Parcels A and C.

D. FAA Releases of Property Transferred to The County

On March 13, 1979, the FAA executed three separate releases. These releases were for the primary electrical distribution system, the water distribution system, and the sewage treatment system. Ownership of the various utility system facilities was sent to departments of County government or to private utility companies.

On June 26, 1989, the FAA released five parcels containing 13.257 acres. The County sold these parcels to the Florida Department of Transportation to accommodate constructing Gratigny Parkway along the southwest perimeter of the airport. The parcels were labeled 150, 151, 152, 153 and 157 (see below).



E. Grant Acquired Land:

1. Federal Aid to Airport Program (FAAP)

- Project 9-08-054-D201 dated June 21, 1962 – The work description for this grant included, "Acquisition additional clear zone land runway 9-27; acquire additional land runway 9-27 development (portion of Parcel 4)." Special Condition No. 11 of the grant stated, "… the United States will not participate in the acquisition of … Lot 8, 9 and10 Venetian Acres." This special condition also provided, " … Dade County… will obtain the abandonment of all public streets to the extent that such streets are included within Parcel 4 except NW 156 Street from the West line of NW 47th Avenue to the east line of NW 42nd Avenue which NW 156 Street will remain open to public use." This appears to be the airport property purchased in fee title that is located on the north side of Biscayne Canal.

- Project 9-08-054-D603 dated June 20, 1966 – The grant work description included, "Acquire land, airport development (a fee simple title acceptable to the Administrator, to Parcel 5, 13 acres)…" Parcel 5 appears to be the Opa Locka Canal Right of Way based on a survey dated December 15th, 1931, which ran approximately due east and west between Red Road and NW 47th Avenue.

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(Information in samples is for example only.)

Sample Post-Inspection Land Use Report - Page 5

- Project 9-08-054-D705 dated June 27, 1967 – The grant work description stated, "Acquire land (fee simple title acceptable to the Administrator) in parcel 6W, 46.34 acres, for clear zone to runway 9L, and in parcel 6N, 73.69 acres, as joint clear zones to runways 18R and 18L; and an avigation easement acceptable to the Administrator in parcel 6E, 42.18 acres, as a clear zone to runway 27R."

On March 7, 1978, this grant was amended. The obligation to acquire interest in Parcel 6N was deleted, the acreage to be acquired for Parcel 6W was reduced from 46.34 acres to 41.01 acres, and the acreage to be acquired for Parcel 6E was reduced from 42.18 acres to 27.82 acres.

2. Airport Development Aid Program (ADAP)

- Project 5-12-0047-02 dated September 10, 1979 – The grant work description stated, "Reimburse land clear zone/approach protection runway 9L (5.78 acres)…"

3. Airport Improvement Program (AIP) - Development Land

- None

4. Airport Improvement Program (AIP) - Noise Compatibility Land

- None

5. Sponsor-Donated Land

- None

F. FAA Releases of Grant Obligations:

On June 22, 1989, the FAA released the five parcels mentioned earlier containing 13.257 acres from grant obligations. Again, these are the parcels that were sold to the Florida Department of Transportation to accommodate Gratigny Parkway. These parcels were designated 150, 151, 152, 153 and 157. There were no other releases of grant obligations in the FAA's files.

G. Federal Commitment and Investment

- Total Airport Improvement Program (AIP) Funding - $21,640,966.00
- 3 ILS systems, 2 approach lighting systems, and various visual approach slope indicator systems
- Design/Publication of Instrument Approach Procedures: Runways 9L, 27R, 12, and 30

H. Airport Statistics (2004 Terminal Area Forecast)

Estimated Number of Based Aircraft – 300
Estimated Number of Operations – 130,000

VII. County's obligations pertaining to use and disposal of airport property: Over the years, the County has accepted federal assistance in the form of funds and land transfers to assist in developing and protecting the airport. The following are the land-related obligations the County accepted:

A. Surplus Property

The County is obligated through quitclaim deeds to the terms and conditions listed in each, individual transfer document. These obligations require the land be used for airport purposes for the use and benefit of the public on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right. Also, the obligations include a provision prohibiting the use, leasing, or sale of the property for other than airport purposes without the written consent of the FAA. The FAA must also determine that use of released property will not adversely impact the airport. Also, general grant assurances 5, 24 and 25, contained in AIP development grants that have been accepted within the past 20 years, apply.

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(Information in samples is for example only.)

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B. FAAP land Acquired Before December 31, 1967

At OPF, the obligations in FAAP grants that were carried out before December 31, 1967, have expired except for the provisions for compliance with civil rights requirements and the prohibition against exclusive rights. However, general assurances 5, 24 and 25 contained in AIP development grants, which have been accepted within the past 20 years, apply.

C. FAAP and ADAP Land Acquired After December 31, 1967.

If obligations in a FAAP or ADAP grant were still in effect at the time the County carried out an AIP grant after December 31, 1987, the land obligations in the 1988 AIP-07 grant also apply to land acquired under those FAAP and ADAP grants.

D. Land Donated to the Airport by the Airport Owner (County).

General grant assurances 4, 5, 24 and 25 contained in AIP development grants, which have been accepted within the past 20 years, apply.

VIII. Findings:

A. Exchange of County Parcels "A" and "C" for USCG Parcel "B"

The unsigned, no-cost agreement between these parties, circa 1993, provided the County would exchange Parcels "A" and "C" for Parcel "B." The USCG appears to be using the portion of Parcel C located on the west side of NW 44th Court. Their use of this area has not impacted any County-owned facilities. The USCG has not moved into the remaining portion of Parcel "C" where County roads and public apron areas exist. The County is interested in completing this exchange with the CG. It is recommended the County ask the USCG to transfer or release the unused portion of Parcel "C" to the County with the understanding that if a future need for expansion develops, a new agreement to be approved by the FAA will be fashioned. The FAA will likely require that a new agreement contain provisions for the USCG to compensate the County for the loss of civil aviation facilities, if compensation is appropriate. The FAA has not released Parcels 3A, 3B, "A" and "C" from Surplus Property and grant obligations.

The County should request the FAA take approval action on the past net transfers of fee title (3A and 3B) to the USCG and ask that these properties be released from Surplus Property and grant obligations. If the County's fee interest in Parcels "A" and "C" has been transferred, these areas will need to be released as well. On the County's federally obligated airports, we stress that FAA approval action is required before disposing of airport property or converting aeronautical property to a nonaeronautical use.

B. Nonaeronautical uses of airport property by the County or other agencies not approved by the FAA

1. Perimeter Highways and Opa Locka Canal:

It appears three County highways were developed around the perimeter of the airport subsequent to the 1961 transfer of the airport to the County. Also, Opa Locka Canal appears to have been moved to another position on the airport some time after Parcel 5 was bought under the 1966 FAAP Project 9-08-054-D603. The highway development appears to include:

a. Expansion of Red Road (N.W. 57th Avenue) from a two-lane to a four-lane highway. This appears to have taken roughly 50 feet of airport property along almost the entire western edge of the airport,

b. Extension and expansion of N.W. 135th Street along the south side of the airport between LeJune Road (37th Avenue) to Red Road, and

c. Development of Douglas Road into a four-lane connector along the entire eastern side of the airport between N.W. 42nd Avenue and 37th Avenue.

The right-of-ways for these roads and for the Opa Locka Canal appear to be either entirely or partially on former airport property. The FAA has no record of releasing property for these purposes from grant or surplus property obligations.

While the airport does not appear to have been harmed by these changes since the roads provide improved access to the airport for aeronautical users and contribute toward higher land values for both aeronautical and nonaeronautical tenants, it is important to clarify when these actions took place and how much land is involved. It appears the FAA could have agreed with the use of airport property for development and improvements to roads and canals since they improve accessibility, property

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(Information in samples is for example only.)

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(Information in samples is for example only.)

values, and usability of the airport and may have found the value of land lost to these improvements was offset by the increase in access of airport, usable airport property, and land values. As corrective action, it is recommended the County formalize these changes to airport property by requesting the FAA release this land from federal obligations.

C. Other Non-Aeronautical Uses of Airport Property Not Approved By The FAA -

1. The FAA has not approved the arrangements between the County and the tenants or users of airport property for the large sewage pump station, the WASA easement, the prison, the parking areas in the Runway 9R runway protection zone, the organization that set up an athletic (cricket) field on the east side of the airport, and the aeronautical tenants that park nonaeronautical trailers and recreation vehicles on aeronautical lease-holds. It is recommended these agreements be formalized and submitted to the FAA for review.

RV In Hangar

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(Information in samples is for example only.)

Non-Aeronautical Trailers

Prison

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(Information in samples is for example only.)

Pump Station

The Arabian Nights Festival and other community uses and/or buffers or activities, to the extent practicable are subject to receipt of a fair market value return for the use of the land. On occasion, the FAA does concur with a community, interim use of airport property for a non-profit, non-aeronautical purpose. These proposed uses should be coordinated with the FAA.

A portion of the airport property located on the southeastern section of the airport has been determined of historical significance. We understand an archeological survey was performed on this section of the airport to meet requirements of the State Historic Preservation Office. We would normally expect the state to either release this area so development could continue or require that it remain protected for further investigation. We understand the County has met state requirements but that an organization with the County also has either formal, legal authority or informal authority over development on this archeological site as well as on the World War II era hangars near the current airport traffic control tower. We ask that the County explain what legal authority this local group has on the destiny of airport property and facilities and reevaluate the appropriateness of maintaining this local designation on the site as well as over the World War II era hangars.

2. Brothers to the Rescue. A nonaeronautical monument has been established on airport property next to LeJune Rd in memory of the Brothers to the Rescue. This memorial is not located now on prime aviation property and would have received FAA approval as an interim nonaeronautical use. However, corrective action is needed between the County and the Brothers to the Rescue organization to assure that should the current site be needed for airport purposes the memorial will be moved to another site subject to approval by the FAA. The agreement should state that airport revenues will not be used for the maintenance of the monument or to move the memorial unless a means of recovering the cost is established from nonaeronautical contributions or some other nonaeronautical source.

D. Leasing of Airport Property

Leaseholds – The County has either carried out or has under consideration three master leases. These leases have been in-place for a few years. During this land-use inspection, there was little to no development obvious on these properties. Also, the lessees have been relieved of paying a ground lease rate for the property within their respective control. For any interested party to get access to the airport for either an aeronautical or nonaeronautical purpose, they must negotiate with one of these master leaseholders.

In recent years, the FAA has conducted informal reviews under 14 CFR, Part 13 of allegations of unreasonable, discriminatory conditions being posed by the master lease arrangements. These leases are viewed as possibly forming conditions that would be the basis for potential conflicts with federal obligations about reasonable access, the prohibitions against exclusive rights, preservation of the County's rights and powers, and the airport being as self-sufficient as possible. As a result, MDAD and the

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(Information in samples is for example only.)

County have developed a heightened awareness of their federal obligations and some corrective actions are anticipated in this area. It is recommended that the County also establish current rates and charges for both aviation and non-aviation use of the Opa Locka Airport property based on current appraisals.

The external areas surrounding the perimeter of the airport have been almost completely developed. It would seem, without the benefit of a market survey, that if commercial development is going to continue to grow and prosper in this area, the airport is the last large, vacant area for potential development and growth. The demand for the use of airport property on the approach to Runway 9L for other than aviation use is reflective of this potential. The establishment of non-aviation use rates similar to those on the Miami Lakes area that abuts the airport on the west, can provide an opportunity for the County to maximize the economic development potential of the balance of the Opa Locka Airport and enhance the airport's self-sustainability.

It is recommended that these tenants' control of undeveloped areas be reduced to having no more than the amount of land needed for their own proposed development. The holding of lands by individual tenants in excess to this need, could result in 'land banking'. This is normally found to limit investment opportunities and discourage other potential tenants from negotiating directly with the County for immediate use of airport property.

D. ALP and Exhibit A Property Map

These documents should accurately reflect the airport's land inventory. The FAA representatives noted deficiencies. We recommend that the County update both of these documents as soon as possible. Corrective land use related actions involve (1) the inclusion of the Runway Protection Zone (RPZ) easements acquired to protect the ends of the runways, in particular on 9L/27R; (2) the future acquisition of an avigation easements needed on the northwest corner of the airport; (3) the losses of airport land due to road construction and due to the right of way utilized for the realignment of the Opa Locka Canal; (4) the inclusion of Parcel 1 (0.36 acres) on the southeast corner of the airport; and (5) the remnants left on the northeast corner and southeast corner when the N.W.42nd-37th Avenue Connector was built.

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Sample Notification of Violation **- Page 1**

U.S Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

March 22, 2004

Robert D. Field
Economic Development Agency
Aviation Division
44-199 Monroe Street, Suite B
Indio, CA 92201

Dear Mr. Field:

Blythe Airport (BLH)
Land Use Inspection

This letter is in regard to the Federal Aviation Administration (FAA) inspection visit to Blythe Airport (BLH) on February 19, 2004. The FAA coordinated its inspection with the 5010 compliance inspection by the Caltrans Division of Aeronautics. We wish to thank you for the time and attention your staff devoted to our visit and for their cooperation during the inspection. This letter provides the findings and recommendations resulting from the FAA land-use inspection.

The inspection serves as a means for the FAA to perform surveillance and compliance oversight of federally obligated airports in order to assess if airport land uses comply with federal requirements. The inspections are part of a national program that is being conducted pursuant to Senate Report No. 106-55, dated May 1999. Congress directed that the FAA conduct land-use inspections at airports that have received federal assistance in order to detect if unauthorized land uses exist. The FAA must disclose in its reports to Congress the identity of all airports that have unauthorized land uses, along with the FAA's plan for eliminating those unauthorized uses.

During our inspection, we toured the airport to assess the current uses of airport facilities. We found that airport land uses did not fully comply with federal requirements. Of all the non-conforming land uses observed at BLH, most were previously brought to the attention of Riverside County (County). They are:

Auto-truck stop	Drag racing sand track
County fire station	Con-Way Transportation Services
County animal shelter	U.S. Border Patrol
Skeet and Trap Club	County Sheriff shooting range
Police use of terminal	

The FAA is concerned about non-aeronautical activities at federally obligated airports because non-aeronautical uses of airport land does not represent the highest and best use of obligated airport land. More importantly, airport sponsors pledge to operate airports in accordance with specific federal

Sample Notification of Violation **- Page 2**

standards in exchange for federal airport aid. In simple terms, this means making airports available exclusively for aeronautical activities and airport purposes in the service of civil aviation, commerce, and national security.

The non-aeronautical users at BLH are conducting activities whose operational needs do not require them to be located at an airport. We are aware that BLH has vacant land. However, the availability of vacant airport land does not justify a non-aeronautical use, nor does it override the County's obligation to operate BLH for airport purposes. Without proper planning and approval, non-aeronautical uses are not justified.

In previous correspondence to the County we pointed out that the grant assurances, as well as the surplus property conveyance deed, placed specific obligations on the County. Assurance 19, Operation and Maintenance, does not permit any activity that interferes with BLH's use for airport purposes. Assurance 22, Economic Nondiscrimination, requires that BLH be available for aeronautical activities on reasonable terms. One of the conditions in the conveyance deed stipulates that the airport will be used for airport purposes.

FAA policy does permit exceptions to the above requirements. In accordance with that policy, when airport land is not immediately needed for airport purposes, the FAA may concur with its use on a temporary basis for a non-aeronautical purpose. Interim use, as it is called, is based on the premise that there is no immediate aeronautical demand, and the land is presently in excess of the airport's current needs. Therefore, a temporary non-aeronautical use will produce revenue rather than leave the land vacant and unproductive. Furthermore, the non-aeronautical use will not displace aeronautical users who could make a higher and better use of the land.

Interim use does not relieve the airport sponsor of its federal airport obligations. Rather, interim use is a temporary arrangement. It must produce revenue for the airport. Most importantly, it must be approved by the FAA. Since it is temporary, it is subject to periodic reassessment by the FAA to determine whether or not the non-aeronautical use is still justified.

Assurance 25, Fee and Rental Structure, dictates that the airport must be as self-sustaining as possible. In accordance with this principle, whenever a non-aeronautical use exists, it must generate income for the airport based on the commercial fair market value of the property. Non-aeronautical users may not be given free rent or nominal rental rates. Compensation does not always have to be monetary. If non-aeronautical users provide tangible services to the airport, the value of those services may offset a portion of the fair market rental rate. However, reciprocal arrangements that permit tenant services to offset rent must be documented in a written agreement. The agreement should identify the tenant services, the value of the services, and the amount of rent that is being offset.

We are aware that many of the non-aeronautical activities at BLH have been there for many years. This long-term use may have given the mistaken impression that these non-aeronautical activities have become a permitted use of obligated airport land. However, the federal obligations established in the conveyance deed and grant assurances, requiring aeronautical uses of the airport, have never been waived. They still require that the airport be used for airport purposes. Therefore, the non-aeronautical uses represent a non-conforming use of the airport.

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We first brought these non-conforming uses to the County's attention in 2000. In a letter to the County dated June 12, 2000, we advised the County to establish a cohesive plan for the airport's non-aeronautical uses so their presence on obligated airport land would comply with federal requirements, including the payment of fair market rent. We instructed the County to integrate a strategy for relocating, eliminating, or restricting non-aeronautical uses into the airport master planning process. We informed the County that non-aeronautical users must pay the commercial market value rent for the property they occupy. We advised the County that, henceforth, the non-aeronautical uses required FAA review and approval every three years to determine if they were still justified.

In addition, we pointed out that the airport property leased to Con-Way Transportation Services was more suitable for an aeronautical use. Con-Way was granted a lease on favorable terms that included an option to purchase its leasehold site. We advised that it was unrealistic to expect that Con-Way would be able to exercise an option to buy an airport parcel that is needed for aeronautical purposes. Furthermore, Con-way's presence is not contributing a tangible benefit to the airport or civil aviation. It may even be displacing potential aeronautical uses because of its proximity to the airfield.

Unfortunately, since 2000, the County has not implemented any corrective action measures to mitigate or eliminate the non-conforming uses at BLH. We have no evidence that all non-aeronautical tenants are paying market value rents. An Airport Master Plan was completed in 2001, and it does not contain a plan for the eventual disposition of all the non-aeronautical uses.

During the inspection, along with the above, we identified an airport maintenance shortcoming. Assurance 19, Operation and Maintenance, requires that the airport be maintained in a safe and serviceable condition at all times. We observed that the truck-auto stop property is littered with garbage and debris. It also appears that transient vehicles are using the property as a waste and refuse disposal site. Since the refuse is not being cleared and removed, winds are apparently blowing it towards the airfield, where it becomes a hazard to aircraft. The County is not exercising sufficient control to prevent a tenant from creating unsatisfactory conditions that are deleterious to the airport and its aviation users.

There is another airport land-use issue that requires reconsideration. The City of Blythe proposed to sublease an old abandoned building, along with five acres of land, to the First Composite Group (Group), d.b.a., the General Patton Army Air Museum. The Group proposes to establish an army air museum to store and display World War II memorabilia. We visited the Group's current leasehold property located at Chiriaco Summit Airport. Based on our inspection of the Group's property, we concluded that the Group does not operate an aviation museum. Therefore, the Group's tenancy would represent another non-aeronautical use of airport land at Blythe. As a consequence, the FAA objects to the proposed sublease agreement and does not approve of another non-aeronautical tenant at BLH.

To conclude, we are instructing the County to formulate a corrective action plan in accordance with the following guidance:

1. The plan should contain the actions the County will take to realign, eliminate, or relocate the non-aeronautical uses. This may include a

Sample Notification of Violation **- Page 4**

proposal identifying a non-aeronautical-use area that the FAA may approve in accordance with statutory requirements.

2. For all non-aeronautical uses, the County will prepare a statement for the FAA showing the amount of rent that each tenant is currently paying. If any of these users are providing services to the airport in lieu of rent, the statement will describe the services and the actual monetary value of the services.

3. If non-aeronautical users are to remain at the airport, the County will explain why each must be located at the airport, what benefit the airport derives from their presence, and evidence that the airport is being compensated with market rental payments.

4. If non-aeronautical users are paying no rent or below market value rent, the County will immediately impose a rental obligation on these tenants based on a fair market value assessment of the property.

5. Henceforth, non-aeronautical users who are allowed to remain on the airport will be subject to tri-annual reviews. The County will be required to justify their airport presence and obtain approval from the FAA for their continued use of the airport for non-aeronautical purposes.

6. The auto-truck stop should be directed to clean its leasehold property and keep it clean to prevent litter from migrating to the airfield.

7. If a new or revised proposal for an airport museum is contemplated, it will be submitted to the FAA for review and approval, which approval must be obtained before an agreement is executed.

We shall expect your reply containing the County's proposed plan and implementation schedule. Please mail the reply within 60 days after your receipt of this letter to:

Federal Aviation Administration
Airports Division, AWP-620.1
P.O. Box 92007
Los Angeles, CA 90009

In closing, be advised that Section 722 of Public Law 106-181 (April 5, 2000) amended 49 USC 47131 and requires, as part of the Secretary's annual report to Congress, the inclusion of a detailed statement listing airports that the FAA believes are not in compliance with grant assurances or other requirements with respect to airport land use. The report includes a description of the non-compliance issues, the timeliness of corrective actions by airports, and the actions the FAA intends take to bring the airport sponsors into compliance. Based on the Section 722 requirement, BLH will be included in the annual report to Congress. If the County chooses not to take suitable corrective action and the non-conforming conditions continue, the FAA may initiate action to enforce the grant agreements.

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We look forward to your response. In the meantime, if you have any questions or wish to discuss this matter, please call me at (310) 725-3634.

Sincerely,

Original Signed by
Tony Garcia

Tony Garcia
Airports Compliance Specialist

Ellsworth L. Chan, Manager
Safety and Standards Branch

cc: Charles Hull
Tom Turner

Part VII: Releases and Property Reversions

Chapter 22: Releases from Federal Obligations

22.1. Introduction. This chapter discusses the laws, regulations, policies, and procedures pertaining to sponsor requests for a release from federal obligations and land use requirements. The FAA Administrator's authority to grant a release depends on the type of obligating document, such as a property conveyance or grant agreement.

Any property, when described as part of an airport in an agreement with the United States or defined by an Airport Layout Plan (ALP) or listed in the Exhibit "A" property map, is considered to be "dedicated" or obligated property for airport purposes by the terms of the agreement. If any of the property so dedicated is not needed for present or future airport purposes, an amendment to, or a release from, the agreement is required.

In all cases, the benefit to civil aviation is the FAA's prime concern and is represented by various considerations. These include the future growth in operations; capacity of the airport; the interests of aeronautical users and service providers; and the local, regional, and national interests of the airport. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to review the release request and to execute the release document, if appropriate.

22.2. Definition. A "release" is defined as the formal, written authorization discharging and relinquishing the FAA's right to enforce an airport's contractual obligations. In some cases, the release is limited to releasing the sponsor from a particular assurance or federal obligation. In other cases, a release may permit disposal of certain airport property.

22.3. Duration and Authority. When the duration of the physical useful life of a specific grant improvement ends, the sponsor is automatically released from its federal obligations for that grant without any formal action from the FAA. The physical useful life of such a facility extends to the time it is serviceable and useable with ordinary day-to-day maintenance. However, airport land acquired with federal assistance under the Airport Improvement Program (AIP) and/or conveyed as surplus or nonsurplus property is federally obligated in perpetuity (forever).

The Administrator has delegated to ADOs and regional airports divisions offices the authority to release, modify, or amend assurances of individual sponsor agreements under specific circumstances as prescribed in this chapter. ADOs and regional airports divisions do not have the authority to modify the list of assurances in a grant agreement. In addition, ADOs do not have the authority to effect a release permitting the abandonment, sale, or disposal of a complete airport. (See Order 1100.5, *FAA Organization - Field*, issued February 6, 1989.)

22.4. FAA Consideration of Releases.

a. General. Within the specific authority conferred upon the FAA Administrator by law, the Administrator will, when requested, consider a release, modification, reform, or amendment of any airport agreement to the extent that such action has the potential to protect, advance, or benefit the public interest in civil aviation. Such action may involve only relief from specific limitations or covenants of an agreement or it may involve a complete and total release that

authorizes subsequent disposal of federally obligated airport property. Major considerations in granting approval of a release request include:

(1). The reasonableness and practicality of the sponsor's request.

(2). The effect of the request on needed aeronautical facilities.

(3). The net benefit to civil aviation.

(4). The compatibility of the proposal with the needs of civil aviation.

Any release having the effect of permitting the abandonment, sale, or disposal of a complete airport must be referred to the Director of Airport Compliance and Field Operations (ACO-1) for approval by the Associate Administrator for the Office of Airports (ARP-1). (See Order 1100.5, *FAA Organization – Field*, issued February 6, 1989.)

b. Types of Federal Obligations. Generally, a sponsor can be federally obligated by the following actions:

(1). Acceptance of a federal grant for an aeronautical improvement, including land for aeronautical use. Property listed on the Exhibit "A" of a grant agreement is obligated, regardless of how it was acquired or its purpose.

(2). Acceptance of a conveyance of federal land.

(3). Federal grants for a military airport program (MAP), for noise, and for planning. Planning grants contain a limited list of assurances and do not impose all of the obligations of a development grant.

(4). Acquisition of property with airport revenue, regardless of whether the property is on the Exhibit "A" or ALP.

(5). Designation of property for aeronautical purposes on an ALP. Once designated for aeronautical use, the property may not be used for nonaeronautical purposes without FAA approval.

c. Types of Release Requests. Various conditions and circumstances can affect the manner and degree of sponsor federal obligations and the procedures for release from these obligations. A sponsor can request different kinds and degrees of release, including the following general categories:

(1). Change in the use, operation, or designation of on-airport property.

(2). Release and removal of airport dedicated real or personal property or facilities for disposal and/or removal from airport dedicated use.

22.5. Request for Concurrent Use of Aeronautical Property for Other Uses. If aeronautical land is to remain in use for its primary aeronautical purpose but also be used for a compatible revenue-producing nonaeronautical purpose, no formal release request is required. This is considered a concurrent use of aeronautical property and requires FAA approval. Aeronautical property may be used for a compatible nonaviation purpose while at the same time serving the

primary purpose for which it was acquired. For example, there may be concurrent use of runway clear zone land and low growing crops to generate revenue.

Airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 United States Code (U.S.C.) § 303).[1] [2]

Airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C., recodified at section § 303).

a. Surplus Property Land and Concurrent Use. In some cases, surplus property land is designated as aeronautical use by its transfer documents. If so, a sponsor must request a release of its federal obligation to use such land for aeronautical purposes if it wishes to use it for nonaeronautical purposes exclusively. However, if the sponsor will continue to use the land for its primary aeronautical function, then a compatible nonaeronautical use could be considered a concurrent use. Such a concurrent use would not require a release from the surplus property requirement.

The FAA should review such concurrent use to ensure it is compatible with the primary aeronautical use of the surplus property land. FAA should also confirm that nonaeronautical use does not prevent the use of the land for needed aeronautical support purposes. Surplus property designated for aeronautical use should not be approved for concurrent nonaeronautical use if such use degrades – or potentially degrades – the aeronautical utility of the parcels in question.

b. Grant Land and Concurrent Use. Land purchased pursuant to an FAA grant is presumed to be in pursuit of an aeronautical purpose. However, some grant land may be suitable for concurrent use. Requests to use grant land for concurrent use should be approved by FAA. This consent can be in the form of an amendment to an ALP. Grant land may be used for a compatible

[1] Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303.)

[2] See 23 CFR § 774.11(g) and FHWA and FTA Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 73 F.R. 13368-01, March 12, 2008 (Interpreting DOT Section 4(f) not to apply to temporary use of airport property.)

nonaviation purpose while at the same time serving the primary purpose for which it was acquired.

As with surplus property, grant land designated for aeronautical use should not be approved for concurrent nonaeronautical use if such use degrades – or potentially degrades – the aeronautical utility of the parcels in question.

22.6. Request for Interim Use of Aeronautical Property for Other Uses. The ADOs and regional airports divisions may consent to the interim use (not more than five (5) years) for nonaviation purposes of dedicated aeronautical land. This is the case whether or not the land was acquired with grant funds, is surplus property, or is otherwise dedicated for aeronautical use. A request for a use that would exceed three (3) years should be subject to concurrent use guidelines. FAA approval shall not be granted if the FAA determines that an aeronautical demand is likely to exist within the period of the proposed interim use.

Aeronautical demand might be demonstrated by the existence of a qualified aeronautical service provider expressing interest in such property for aeronautical use, or by projected growth in airport operations. Interim use should not be incompatible with current or foreseen aeronautical use of the property in question or other airport property. If the land in question is grant land, FAA consent or approval must be based on a determination that the property as a whole has not ceased to be used or needed for airport purposes within the meaning of the applicable statute.

Interim use represents a temporary arrangement for the use of airport land for nonaeronautical purposes. Therefore, it must be anticipated that the interim use will end and the land will be returned to aeronautical use. If a proposed nonaeronautical use will involve granting a long-term lease or constructing capital improvements, it will be difficult – if not impossible – to recover the land on short notice if it is needed for aeronautical purposes. Such a use is not interim and should not be treated as such. Therefore, interim use should not be approved if the proposed use will prevent the land from being recovered on short notice for airport purposes. Interim use proposals should be carefully evaluated to ensure that what is being proposed as a temporary arrangement is not really a long-term or permanent change in land use.

The ADOs and regional airports divisions may consent to the interim use of dedicated aeronautical property for nonaviation purposes. Regardless of how the property was acquired, these FAA offices have the authority to decide whether the airport may use such property for nonaeronautical purposes or not.

22.7. Release of Federal Maintenance Obligation. A partial release may be granted to an airport sponsor to remove the obligation to maintain specific areas of the airport pursuant to Grant Assurance 19, *Operation and Maintenance*. Such circumstance would occur when airport facilities are no longer needed for civil aviation requirements. It is unlikely that a total release would be granted under the circumstances. Note that a release from the maintenance obligation is not a release from all the terms of Grant Assurance 19 since many of the obligations in that assurance apply to the airport as a whole.

a. Other Terms. A release of the federal maintenance obligation does not constitute a release of the land from other applicable terms and conditions or covenants with the applicable compliance agreements. The most common example of such a release is when airport sponsors request the FAA to release a particular parcel of land or facility from the federal obligation dedicating it to aeronautical use. This, in turn, may permit revenue producing nonaeronautical use of the parcel. The same result can be obtained without a formal maintenance obligation release, simply by approving a change to the ALP showing the parcel in question as nonaeronautical.

b. Unsafe. When it becomes unsafe for aeronautical purposes, the airport sponsor may have to discontinue an aviation use (*i.e.*, a dilapidated taxiway). FAA's Flight Standards office should be involved in all matters related to decisions dealing with, or relying upon, a safety assessment. If the airport sponsor no longer requires the use of the runway, it must seek a release from Grant Assurance 19, *Operation and Maintenance*.

22.8. Industrial Use Changes. Certain surplus property restrictions prohibiting the use of the property as an industrial plant, factory, or similar facility have been repealed by Public Law (P.L.) No. 81-311. The FAA will issue the releases or corrections to eliminate restrictions that may have been repealed or modified by laws, such as these industrial use restrictions.

22.9. Release of National Emergency Use Provision (NEUP)

a. General. Practically all War Assets Administration (WAA) Regulation 16 and P.L. No. 80-289 instruments of disposal of real and related personal property also contain the National Emergency Use Provision (NEUP). Under this provision, the United States has the right to make exclusive or nonexclusive use of the airport or any portion thereof during a war or national emergency. This provision is similar in all such instruments. (See a sample NEUP legal description and release request at the end of this chapter.)

b. Procedures. The FAA may grant a release from this provision, which is often referred to as the recapture clause. When requesting a release of the NEUP clause, the airport sponsor must provide the FAA with adequate information, including property drawings and property description, in duplicate. However, the concurrence of the Chairman of the Department of Defense (DoD) Airports Subgroup Office [HQ USAF/XOO-CA, 1480 Air Force Pentagon, Room 4D1010, Washington DC 20330-1480] is also required. FAA must make the request to DoD.

The FAA regional airports division will forward the documentation required to the FAA headquarters Airport Compliance Division (ACO-100). If approved, ACO-100 will then request DoD's concurrence. Upon receipt of DoD concurrence, ACO-100 will forward the determination to the FAA regional airports division for release of the NEUP.

The FAA regional airports division must provide a copy of the release instrument to the appropriate Army Corps of Engineers District Engineer's office. The FAA will not approve a request for release of the NEUP involving the whole airport. In addition, DoD generally does not concur with a request for release of the NEUP if the release involves actual runways, taxiways, or aprons. A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes.

The NEUP represents the U.S. Government's interest in and ability to reactivate an airport as a military facility in case of war or national emergency. This provision has been used several times. One example is the former Naval Air Station (NAS) Miami, which in 1952 was reactivated as a Marine Corps Air Station during the Korean War. The Navy Department took over the facility from its civilian sponsor from 1952 and 1958, after which it was returned to civilian control.

In other cases, old World War II installations decommissioned after the war were never reactivated. Since many had excessive parcels of land, the FAA granted several releases for disposal over the years and, when permitted by DoD, released the NEUP as well.

22.10. Release from Federal Obligation to Furnish Space or Land without Charge. FAA may release a sponsor from Grant Assurance 28, *Land for Federal Facilities*. Before granting this release, the ADO or regional airports division should evaluate all pertinent facts and circumstances and obtain concurrence from other offices within the FAA such as Air Traffic and Airways Facilities, the National Oceanic and Atmospheric Administration (NOAA), or other interested and qualified federal entities. The office may accomplish the release either by discharging the sponsor from the assurance or through an amendment to the grant agreement.

22.11. Release of Reverter Clause. In order to promote appropriate private investment in airport facilities, the sponsors of surplus property may seek to remove a provision giving the United States the option to revert title to itself in the event of default of the sponsor to the conditions of its surplus property federal obligations. This reverter clause is an important remedy intended to be reserved to the United States Government; it will not normally be released and the ADOs cannot grant such a release. Any such proposal to release the sponsor from the reverter clause shall be referred to ACO-1 for consideration.

22.12. Exclusive Rights Federal Obligations cannot be Released without Release and Disposal of the Parcel or Closure of Airport. Any airport that has received federal assistance is subject to the exclusive rights provision discussed in chapter 8 of this Order, *Exclusive Rights*. This federal obligation exists for as long as the airport is used as an airport. Therefore, there is no provision for a release from this federal obligation without disposal of the parcel involved or disposal of the entire airport.

22.13. Federal Obligations Imposed with the Airport Layout Plan and Exhibit "A." A sponsor has a federal obligation to maintain an up-to-date ALP and is required to present an accurate Exhibit "A" upon the execution of a federal grant. The sponsor is required to continue developing the airport according to the approved land uses associated with those documents and in accordance with proposed changes submitted to the ADO or regional airports division for consideration, documentation, and approval.

22.14. Procedures for Operational Releases or Requests for Change in Use. For releases other than land, the sponsor must begin with a formal request signed by an authorized official. Although a specific format is not required, the request should include the following:

a. Affected agreement(s)/ federal agreements.

b. Modification requested.

c. Need for the modification.

d. Facts and circumstances that justify the request.

e. State and local law pertinent to the document.

f. Description of facilities involved.

g. Source of funds for the facility's original acquisition.

h. Present condition of facilities.

i. Present use of facilities.

22.15. Release of Federal Obligations in Regard to Personal Property, Structures, and Facilities. Personal property, structures, and facilities may have been acquired through a federal surplus property conveyance, a federal grant, or through purchase with airport revenue. Personal property, structures, or facilities acquired with federal assistance require a release or federal procedure. Personal property, structures, or facilities acquired through nonfederal sources and not using airport revenue do not require a release or federal procedure. Nonetheless, these items of personal property, structures, or facilities should be considered assets of the airport account.

a. Surplus Property Releases of Personal Property, Structures, and Facilities. Surplus airport property falling into the categories of personal property, structures, and facilities may be released from all inventory accountability (whether or not the airport at which they are located is included in chapter 13, *Civil Airports Required by Department of Defense for National Emergency Use,* of FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*) when it has been determined that such property acquired with federal funds:

(1). Is beyond its useful life;

(2). Has deteriorated beyond economical repair or rehabilitation;

(3). Is no longer needed;

(4). Has been replaced;

(5). Is to be traded to obtain similar or other property needed for the airport;

(6). Has been destroyed or lost by fire or other uncontrollable cause and the ensured value, if any, has been credited to the airport fund; or

(7). Has been, or should be, removed or relocated to permit needed airport improvement or expansion, including salvage or other use, elsewhere on an airport.

b. Abandonment, Demolition, or Conversion of Grant Funded Improvements. The FAA may grant a release that permits the sponsor to abandon, demolish, or convert property (other than land) before the designated useful life expires. The ADO or regional airports division may grant the release when any of the following apply:

- The facility is no longer needed for the purpose for which it was developed.
- Normal maintenance will no longer sustain the facility's serviceability.
- The facility requires major reconstruction, rehabilitation, or repair.

c. Disposal of Grant Funded Personal Property. Grant funded personal property should be maintained on the sponsor's inventory for the useful life of the specific equipment. The federal obligation regarding personal property expires with the useful life of the specific piece of property. Should the sponsor desire to dispose of personal property prior to the expiration of its useful life, it should consult with the ADO or regional airports division prior to seeking release from its obligations.

d. Reinvestment of Federal Share. After the FAA has determined that a release of grant funded improvements is appropriate and that the release serves the interest of the public in civil aviation, the FAA may require the sponsor, as a condition of the release, to reimburse the federal government or reinvest in an approved AIP eligible project. The amount to be reimbursed or reinvested is an amount representing the unamortized portion of the useful life of the federal grant remaining at the time the facility will be removed from aeronautical use. Special circumstances involving the involuntary destruction of the improvement or equipment would be an exception. Depreciation of personal property may follow a different formula related to its useful life or actual value. The FAA will require a specific project or projects and a timeline for completion for reinvestment in a new AIP eligible project.

All land described in a project application and shown on an Exhibit "A" constitutes the airport property federally obligated for compliance under the terms and covenants of a grant agreement. A sponsor is federally obligated to obtain FAA consent to delete any land described and shown on the Exhibit "A."

22.16. All Disposals of Airport Real Property. All land described in a project application and shown on an Exhibit "A" constitutes the airport's federally obligated property. A sponsor is federally obligated to obtain FAA consent to delete any land described and shown on the Exhibit "A."

FAA consent shall be granted only if it is determined that the property is not needed for present or foreseeable public airport purposes. When federally obligated land is deleted, the Exhibit "A" and the approved ALP should be revised as appropriate. Where the action involves the deletion of land not acquired with federal financial assistance, there is no required reimbursement of grant revenues. However all proceeds are treated as airport revenue. Also, the airport account must receive Fair Market Value (FMV) compensation for all deletions of airport real property from the airport (*i.e.*, from Exhibit "A") even if the sponsor does not sell the property or sells the property below fair market value.

After airport property is released, there are continuing restrictions on the released property. The ADO or regional airports office must include in any deed, lease, or other conveyance of a property interest to others a restriction that (a) prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation, and (b) prohibits any activity on the land that would interfere with, or be a hazard to, the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. The photo above, taken from one of Cincinnati Lunken Airport's runways, illustrates the clear runway safety areas (RSAs) resulting from not permitting the erection of obstacles near runways. (Photo: FAA)

a. Continuing Right of Flight over all Airport Land Disposals. A total release permitting sale or disposal of federally obligated land must specify that the sponsor is obligated to include in any deed, lease, or other conveyance of a property interest to another a reservation assuring the public rights to fly aircraft over the land released and to cause inherent aircraft noise over the land released. The following language must be used:

> This is hereby reserved to the (full name of the grantor or lessor), its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein (state whether conveyed or leased). This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for

navigation or flight through the said airspace or landing at, taking off from, or operation on the (official airport name).

b. Continuing Restrictions on Released Property. The ADO or regional airports division must include in any deed, lease, or other conveyance of a property interest to others a restriction that:

(1). Prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation.

(2). Prohibits any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. These restrictions are set forth in the instrument of release and identify the applicable height limits above which no structure or growth is permitted. The airport sponsor will compute these limits according to the currently effective FAA criteria as applied to the airport. The ADO, regional airports division, and airport sponsor will not incorporate advisory circulars, design manuals, Federal Aviation Regulations (found in Title 14 Code of Federal Regulations (CFR)), or other such documents by reference in the instruments or releases issued by the FAA in lieu of actual computed limits.

22.17. Release of Federal Obligations in Regard to Real Property Acquired as Federal Surplus Property.

a. General Policy. A total release permitting the sale and disposal of real property acquired for airport purposes under the Surplus Property Act shall not be granted unless it can be clearly shown that the disposal of such property will benefit civil aviation. If any such property is no longer needed to support an airport purpose or activity directly (including the generation of revenue for the airport), the property may be released for sale or disposal upon a demonstration that such disposal will produce an equal or greater benefit (to the airport or another public airport) than the continued retention of the land.

In no case shall a release be granted unless the FAA determines that the land involved can be disposed of without adversely affecting the development, improvement, operation, or maintenance of the airport where the land is located. Any approved disposal must not be in excess of the present and foreseeable needs of the airport. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) that better serves the purpose for which the real property was initially conveyed. This objective is not met unless an amount equal to the current fair market value (FMV) of the property is realized as a consequence of the release and such amount is committed to airport purposes.

b. Purpose of Release. The airport owner requesting a release of surplus airport land must identify and support the reason for which the release is requested. One justification of a release could be a showing that the expected net proceeds from the sale of the property at its current

market value will be required to finance items of airport development and improvement where that need has been confirmed with FAA concurrence.

The FAA may consider requests for release from sponsors demonstrating that more value may be obtained from a disposal of specific parcels than the retention of those parcels for revenue production under leasing. Such a proposal would need to overcome the preference for holding surplus property land and leasing it for aeronautically compatible purposes that also generate airport revenue. Special care should be applied to ensure that no property that could be used for aeronautical purposes, including aeronautical protection, is released.

c. Determining Fair Market Value. A sale and disposal of airport property for less than its fair market value is inconsistent with the intent of the statute and shall not be authorized. The value to be placed on land for which a release has been requested shall be based on the present appraised value (for its highest and best use) of the land itself and any federal improvements initially conveyed with the property.

In many cases, the original buildings and improvements may have outlived their useful life and a determination may have been made by FAA that no further federal obligation to preserve or maintain them exists. If they have been replaced under such circumstances, or if additional improvements have been added without federal financing, the value of such improvements does not need to be included in the appraisal for purposes of determining the fair market value of the surplus property. However, the value realized from the disposal of any improvement owned by the airport sponsor must be treated as airport revenue.

d. Appraisals. A release authorizing the sale and disposal of airport land shall not be granted unless the fair market value has been supported by at least one independent appraisal report acceptable to the FAA. Appraisals shall be made by an independent and qualified real estate appraiser. The requirement for an appraisal may be waived if the FAA determines that:

(1). The approximate fair market or salvage value of the property released is less than $25,000;

or

(2). The property released is a utility system to be sold to a utility company and will accommodate the continued airport use and operational requirements;

or

(3). It would be in the public interest to require public advertising and sale to the highest responsible bidder in lieu of appraisals.

e. Application of Proceeds from the Sale of Surplus Real Property. Title 14 CFR Part 155.7(d) requires that any release of airport land for sale or disposal shall be subject to a written

commitment of the airport sponsor to receive a fair market value for the property. FAA shall not issue a release without this commitment. Part 155 can be found in Appendix K of this Order.

(1). The net proceeds realized from the sale of surplus property – or the equivalent amount if the property is not sold – must be placed in an identifiable interest bearing account to be used for the purposes listed in (2) below.

(2). The proceeds of sale must be used for one or more of the following purposes as agreed to by FAA and reflected in the supporting documentation for the deed of release:

(a). Eligible items of airport development set forth in the current airport grant program and reflected in the airport's capital improvement program (CIP).

(b). Any aeronautical items of airport development not eligible under the grant program.

(c). Retirement of airport bonds that are secured by pledges of airport revenue, including repayment of loans from other federal agencies.

(d). Development of common use facilities, utilities, and other improvements on dedicated revenue production property that clearly enhances the revenue production capabilities of the property.

(3). All aeronautical improvements funded by the proceeds of sale will be accomplished in accordance with current applicable FAA design criteria or such state standards as have been approved by the FAA.

(4). Any interest earned by the account holding the proceeds of sale may be used for the operating and maintenance of the aeronautical portion of the airport or to enhance the revenue producing capability of the aeronautical activities at the airport.

22.18. Release of Federal Obligations in Regard to Real Property Acquired with Federal Grant Assistance. The FAA grants funds for the purchase of real property for aeronautical use. Over time, however, such acquisitions may result in parcels that are no longer needed for aeronautical use. A sponsor may then (a) be released by FAA from the responsibility to maintain a grant-acquired parcel for its originally intended aeronautical use (making it available for nonaeronautical use to generate airport revenue), (b) be released by FAA to use the parcel for a concurrent or interim nonaeronautical use to generate airport revenue, or (c) be released by FAA to dispose of the parcel at fair market value.

Also, grant-acquired real property can be exchanged for other property not held by the sponsor but that serves an airport purpose more effectively than the originally acquired parcel. However, a grant land swap cannot result in a net loss in the value of the federal interest in the grant land. Federal obligations of the grant land should be formally released and transferred to the new parcel.

22.19. Effect of not Receiving or Receiving a Grant after December 30, 1987.

a. Not Receiving a Grant after December 30, 1987.

(1). Applicability. This paragraph is applicable to any request for release for sale or disposal of any airport land acquired with funds from the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), or the Airport Improvement Program (AIP) and where the sponsor has not received additional grants after December 30, 1987. A sponsor's request must assure that the federal government shall be reimbursed or the federal share of the net proceeds will be reinvested (a) in the airport, (b) in a replacement airport, or (c) in another operating public airport.

(2). Reimbursement. The requirement for reimbursement shall apply only where there is no alternative to invest in a replacement or operating public airport owned or to be owned by the sponsor. However, the sponsor may elect to reinvest the federal share of the net proceeds in any other grant-obligated public airport by contract between the respective airport owners with FAA concurrence. FAA concurrence in such a contract is contingent upon such funds being used for grant-eligible airport development. Except where the grant agreement specifically provides otherwise (by special condition), the amount to be reimbursed shall be the amount of the federal share of the grant times the net proceeds from sale of the property at its current fair market value.

(3). Reinvestment. Reinvestment of the total net proceeds (both federal and sponsor share) is required if the sponsor continues to own or control – or will own or control – a public airport or a replacement public airport. Reinvestment shall be accomplished within five (5) years (or a timeframe satisfactory to the FAA Administrator) for specified items of airport improvement in the order of priority established for releases of surplus airport property in paragraph 22.17.e above.

Unlike surplus property, the purposes for which land was acquired under FAAP/ADAP/AIP did not include nonaeronautical income production. If reinvestment cannot be accomplished within five (5) years or if the net proceeds derived exceed the cost of grant-eligible airport development, reimbursement of the remaining share will be required.

b. Receiving a Grant after December 30, 1987.

(1). Land for Airport Purposes (Other than Noise Compatibility Purposes). A sponsor entering into a grant after December 30, 1987, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act), is to dispose of land at fair market value when the land is no longer needed for airport purposes. This also applies to land purchased under FAAP/ADAP/AIP after December 30, 1987. The federal share of the sale proceeds of the land is to be deposited into the Trust Fund. The sponsor will retain or reserve an interest in the land to ensure it will be used only for purposes compatible with the airport.

(2). Land for Noise Compatibility Purposes. A sponsor entering into a grant after December 30, 1987, under the AAIA, as amended by the 1987 Airport Act, will dispose of noise land at fair market value when the land is no longer needed for noise compatibility purposes. This also applies to land purchased under FAAP/ADAP/AIP. An interest or right shall be reserved in the land to ensure it will be used only for purposes that are compatible with the noise levels generated by aircraft. The portion of the disposal proceeds that represent the federal government's share is to be reinvested in another approved noise compatibility project, reinvested in an approved airport development project or deposited into the Trust Fund. Disposal of noise land may be by sale, long-term lease, or exchange. (See Program Guidance Letter (PGL) 08-2, Management of Acquired Noise Land: Inventory – Reuse – Disposal, dated February 8, 2008, updated March 26, 2009 (available on the FAA website).

22.20. Release of Entire Airport.

a. Approval Authority. The FAA Associate Administrator for Airports (ARP-1) is the FAA approving official for a sponsor's request to be released from its federal obligations for the purpose of abandoning or disposing of an entire airport before disposal can occur. That authority is not delegated. A copy of the sponsor's request, including related exhibits and documents, and a copy of the FAA Airports regional statement supporting and justifying the proposed action shall be provided to ARP-1.

b. Replacement Airport. In the instance of a disposal of an entire airport that is to be replaced by a new or replacement airport, the general policy is to treat the proposal as a trade-in of the land and facilities developed with federal aid at the old airport for the acquisition and development of better facilities at a new or replacement airport.

Release under these circumstances is contingent upon transferring federal grant obligations to the new or replacement airport. The release would become effective upon the transfer of the federal grant obligations to the new airport, when the new airport becomes operational. Development costs for the new airport in excess of the value from the disposal of the old airport would be eligible for AIP assistance. In these circumstances, the availability of a new and better airport is the basis for determining that the old one is no longer needed and that its useful life has expired. The original grant agreement is then terminated with the transfer of the grant obligations. (See Appendix T of this Order, *Sample FAA Letter on Replacement Airport*, regarding replacement airport.)

22.21. Procedures for the Application, Consideration, and Resolution of Release Requests. The ADO or regional airports division will base its decision to release, modify, reform, or amend an airport agreement on the procedures and guidelines outlined in this chapter and on the specific factors pertinent to the type of agreement and the release requested.

22.22. General Documentation Procedures. The sponsor's proposed release, modification, reformation, or amendment is a material alteration of its contractual relationship with the FAA. If approved, the results may have a substantial impact on the service that the sponsor provides to the aeronautical public. Accordingly, the ADOs and regional airports divisions must fully document all such actions to include the following:

a. A complete description of the airport sponsor's federal obligations, including grant history, surplus property received, reference to appropriate planning documents (Exhibit "A" or ALP) with notations on additional land holdings and land use.

b. A complete description of all terms, conditions, and federal obligations that may need to be modified in order to achieve the result requested by the sponsor.

c. The sponsor's justification for release, modification, reformation, or amendment.

d. The ADO or regional office's determination for public notice and comment or documentation of the notice and a summary of comments received.

e. The ADO or regional office's preliminary determination on the request.

f. The endorsement of the FAA official authorized to grant the request.

22.23. Airport Sponsor Request for Release. The sponsor must submit its request for release, modification, reformation, or amendment in writing signed by a duly authorized official of the sponsor. Normally, the sponsor submits an original request and supporting material to the ADO or regional airports division. If the FAA or other federal agencies require it, the sponsor may need to submit additional copies of the request and supporting material to headquarters offices or to the offices of other federal agencies.

22.24. Content of Written Requests for Release. Although no special format is required, the sponsor must make its request specific and indicate, as applicable, the following:

a. All obligating agreement(s) with the United States.

b. The type of release or modification requested.

c. Reasons for requesting the release, modification, reformation or amendment.

d. The expected use or disposition of the property or facilities.

e. The facts and circumstances that justify the request.

f. The requirements of state or local law, which the ADO or regional office will include in the language of the approval document if it consents to, or grants, the request.

g. The involved property or facilities.

h. A description of how the sponsor acquired or obtained the property.

i. The present condition and present use of any property or facilities involved.

22.25. Content of Request for Written Release for Disposal. In addition to the above, the sponsor must include the following in its request for release involving disposal of capital items:

a. The fair market value of the property.

b. Proceeds expected from the disposal of the property and the expected use of the revenues derived.

c. A comparison of the relative advantage or benefit to the airport from the sale of the property as opposed to retention for rental income.

d. Provision for reimbursing the airport account for the fair market value of the property if the property is not going to be sold upon release, for example, if the municipality intends to use it for a new city office building or sports complex.

e. A description of any intangible benefits the airport will realize from the release. The sponsor may submit a plan substantiating a claim of intangible benefits to the airport accruing from the release, the amount attributed to the intangible benefits, and the merit of applying the intangible benefits as an offset against the fair market value of the property to be released.

NOTE: Only benefits to the airport may be cited as justification for the release, whether tangible or intangible. The nonaviation interest of the sponsor or the local community – such as making land available for economic development – does not constitute an airport benefit that can be considered in justifying a release and disposal.

The nonaviation interest of the sponsor or the local community does not constitute an airport benefit that can be considered in justifying a release and disposal.

22.26. Exhibits to the Written Request for Release.

a. Drawings. The sponsor must attach to each copy of the request scaled drawings showing all airport property and airport facilities that are currently federally obligated by agreements with the United States. The sponsor should attach other exhibits supporting or justifying the request, such as maps, photographs, plans, and appraisal reports, as appropriate.

Although desirable, the FAA does not require scaled ALP drawings to support a request for release. If the FAA grants the release, the drawing serves to explain or depict the effect on the airport graphically. The drawings do not serve as the document by which the release is granted, and unless a release has been executed in accordance with the guidance contained in this chapter, the FAA will not approve any drawing inconsistent with the sponsor's current federal obligations.

b. Height and Data Computations. If the release contemplates change of use or disposal, the sponsor must provide height limit computations to limit the height of fixed objects to ensure

navigation and compatible land use. It is essential to prevent an incompatible obstruction to air navigation from being located near the airport on property the airport once owned.

c. Application of Sale Proceeds. If the release action requested would permit a sale or disposal of airport property, the sponsor should provide documentation about the intended use of proceeds and evidence that the proceeds from disposal represent fair market value.

22.27. FAA Evaluation of Sponsor Requests. When the ADOs or regional airports divisions receive a request supported by the appropriate documentation and exhibits, they need to evaluate the total impact of the sponsor's proposal on the airport and the sponsor's federal obligations. This evaluation includes consideration of pertinent factors such as:

a. All of the ways in which the sponsor is federally obligated, both in its operations and its property. This includes specific federal agreements and use obligations.

b. The sponsor's past and present compliance record under all its airport agreements and its actions to make available a safe and usable airport for aeronautical use by the public. If there has been noncompliance, evidence that the sponsor has taken or agreed to take appropriate corrective action.

c. The reasonableness and practicality of the sponsor's request in light of maintaining necessary aeronautical facilities and the priority of the airport in the National Plan of Integrated Airport Systems (NPIAS).

d. The net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to aeronautical users relative to the public at large.

e. Consistency with the guidelines for specific types of releases, as discussed in this chapter.

22.28. FAA Determination on Sponsor Requests. The FAA will not release more property than the sponsor has requested. The statutes, regulations, and policy applicable to the specific types of agreements involved must guide the decision to grant or deny the request based on the evaluation factors. In addition, the FAA must determine if FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, requires an environmental review procedure. Further, it must be determined if one of the following conditions exists:

a. The public purpose for which an agreement or a term, condition, or covenant of an agreement was intended to serve is no longer applicable. The FAA should not construe the omission of an airport from the NPIAS as a determination that such an airport has ceased to be needed for present or future airport purposes.

b. The release, modification, reformation, or amendment of an applicable agreement will not prevent accomplishment of the public purposes for which the airport or its facilities were

federally obligated, and such action is necessary to protect or advance the interest of the United States in civil aviation.

c. The release, modification, reformation, or amendment will federally obligate the sponsor under new terms, conditions, covenants, reservations, or restrictions determined necessary in the public interest and to advance the interests of the United States in civil aviation (such as compatible land use for land that is disposed of).

d. The release, modification, reformation, or amendment will conform the rights and federal obligations of the sponsor to the statutes of the United States and the intent of the Congress, consistent with applicable law.

22.29. FAA Completion of Action on Sponsor Requests. The ADO or regional airports division will advise the sponsor that its request is granted or denied. It will also indicate if special conditions, qualifications, or restrictions apply to the approval. The approving FAA office may issue a letter of intent to approve the request in advance of the actual release, at the request of the sponsor.[3] (See also section 22.32 of this chapter, *FAA Consent by Letter of Intent to Release – Basis for Use*.)

a. FAA Approval Action. If FAA approves the request or an acceptable modification of the request, the ADO or regional airports division will prepare the necessary instruments or documents. The ADO or regional airports division will initiate parallel action to amend all related FAA documents (*i.e.*, NPIAS ALP, Exhibit "A," and FAA Form 5010, *Airport Master Record*) as required to achieve consistency with the release. The sponsor must thereafter provide the ADO or regional airports division with any acknowledgment or copies of executed instruments or documents as required for FAA record purposes.

b. Content of Release Document. The formal release will cite the agreements affected and identify specific areas or facilities involved. The ADO or regional airports division will notify the sponsor of the binding effect of the revised federal obligations.

22.30. FAA Denial of Release or Modification. When the ADO or regional airports division determines that the request is contrary to the public interest and therefore cannot grant the request, it will advise the airport sponsor in writing of the denial.

22.31. Procedures for Public Notice for a Change in Use of Aeronautical Property.

a. Summary. This section sets forth FAA guidance for public notice of the agency's intent to release aeronautical property or facilities from federal obligations under the grant assurances and surplus property agreements.

Section 125 of *The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century* (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's federal obligation to use certain airport land for nonaeronautical purposes.

[3] All such letters of intent should cite any specific understandings reached by the ADO and airport sponsor.

b. Responsibilities. The ADOs or regional airports divisions are responsible for complying with the requirements of the statute and policy guidance governing the notice and release of aeronautical property.

c. Authority. Section 125 of AIR-21 has been codified as amendments to 49 U.S.C. §§ 47107(h), 47125, 47151, and 47153.

See a sample *Notification Memo for Federal Register Notice Governing the Notification and Release of Aeronautical Property* and a *Sample Federal Register Notice Governing the Notification and Release of Aeronautical Property* at the end of this chapter.

d. Scope and Applicability. As a matter of policy, the FAA will provide public notice of a proposed release of a sponsor from its federal obligations regarding any land, facilities, and improvements used or depicted on an ALP for aeronautical use where the release would affect the aeronautical use of the property, including certain releases for which notice is not expressly required by section 125 of AIR-21. Public notice requirements apply to release of the following types of property:

(1). Land acquired for an aeronautical purpose (except noise compatibility) with federal assistance in accordance with 49 U.S.C. § 47107(c)(2)(B).

(2). Land (surplus property) provided for aeronautical purpose in accordance with 49 U.S.C. § 47151.

(3). Land conveyances of the United States Government for aeronautical purposes in accordance with 49 U.S.C. § 47125.

(4). Land used as an aircraft movement area with federally financed airport improvements.

e. Purpose. Airport property becomes federally obligated for airport purposes when an airport sponsor receives federal financial assistance. The FAA land release procedures evaluate the sponsor's request for release of land to the extent that such action will protect, advance, or benefit the public interest in civil aviation or, specifically, the public's investment in the national airport system. Section 125 of AIR-21 requires the FAA to solicit and consider public comment as a part of the agency's decision making on a sponsor's request for release.

f. Procedures. At least 30 days prior to the agency's determination of an airport sponsor's request to release aeronautical property or facilities, notice must be published in the *Federal Register* to afford the public an opportunity to comment. Public notice is also an opportunity for the FAA to obtain additional information as a part of its evaluation of the airport sponsor's request. It allows the FAA to take public comment into account in the agency's decision making. Public notice is not required for:

(1). Approval of the interim use of airport property on a short-term period, generally not exceeding five (5) years;

(2). Grant of utility or other types of easements that will have no adverse effect on the aeronautical use of the airport;

(3). Release of aeronautical property as a part of a major environmental action in which public notice and comment is an integral part of the environment review; or

(4). Release of noise compatibility land.

22.32. FAA Consent by Letter of Intent to Release – Basis for Use.

a. Use of Letter of Intent. Release and disposal of facilities developed through federal assistance is often necessary to finance replacement facilities. The sponsor may, therefore, request a letter of intent to release even if it is merely to permit the sponsor to determine the market demand for portions of the available airport property proposed for release and disposal.

b. Letter of Intent Contingencies. The ADO or regional airports division may issue such a letter of intent to release if the letter contains appropriate conditions and makes clear that actual release is specifically contingent upon adequate replacement facilities being developed and becoming operable and available for use.

c. Binding Commitment. The letter represents a binding commitment (subject to future appropriations) and an advance decision to release the property once specific conditions have been met. It should be used only when all of the required conditions pertinent to the type of release sought have been met or are specifically made a condition of the pledge contained in the letter of intent. In addition, such a letter should cite any specific understandings reached regarding anticipated problems in achieving the substitution of airport properties (*i.e.*, who pays for relocation of various facilities and equipment and the cost of extinguishing existing leases). The letter should specify a reasonable time limit on the commitment to release. The sample *Letter of Intent to Release Airport Property* at the end of this chapter will assist in drafting such a letter.

22.33. The Environmental Implications of Releases.

a. When a sponsor accepts a federal airport development grant or a conveyance of federal surplus property for airport purposes, the sponsor incurs specific federal obligations with respect to the uses of the property. FAA action is required to release a sponsor from federal obligations in the event the sponsor desires to sell the airport land. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of chapter 3, "Environmental Action Choices," of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*.

In this case, the assessment shall address the known and immediately foreseeable environmental consequences of the release action. As with other federal actions regarding land, appropriate coordination with federal, state, or local agencies shall be completed for applicable areas of environmental consideration (*i.e.*, historic and archeological site considerations, section 4(f) lands, wetlands, coastal zones, and endangered species).[4] In such cases, coordination with the State Historic Preservation Officer is required.

b. In making the final determination, the responsible federal official shall consider the effects of covenants that will encumber the title and the extent of federal ability to enforce these covenants

[4] See FAA Order 5050.4A, *Airport Environmental Handbook*, for additional information.

subsequent to the release action. The standard conditions of release relative to the right of flight, including the right to make noise from such activity and the prohibition against erection of obstructions or other actions that would interfere with the flight of aircraft over the land released, may be considered as mitigating factors and may be included in environmental assessments when required. When the intended use of released land is consistent with uses described and covered in a prior environmental assessment, the prior data and analysis may be used as input to the present assessment. When the conditions set forth in the applicable sections of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, apply, a written reevaluation may be used to support the property release.

c. In some cases, another federal agency may be the lead agency responsible for preparing an environmental assessment and environmental impact statement, if required. In these circumstances, the FAA may be a cooperating agency. To support the release action, the FAA may then adopt the environmental document prepared by the other agency in accordance with the provisions of Council of Environmental Quality (CEQ) 1506.3.

d. Long term leases that are not related to aeronautical activities or airport support services have the effect of a release for all practical purposes, and shall be treated the same as a release. Such leases include convenience concessions serving the public such as hotel, ground transportation, food and personal services, and leases that require the FAA's consent for the conversion of aeronautical airport property to revenue-producing nonaeronautical property. Long-term leases are normally those exceeding 25 years.

22.34. through 22.37. reserved.

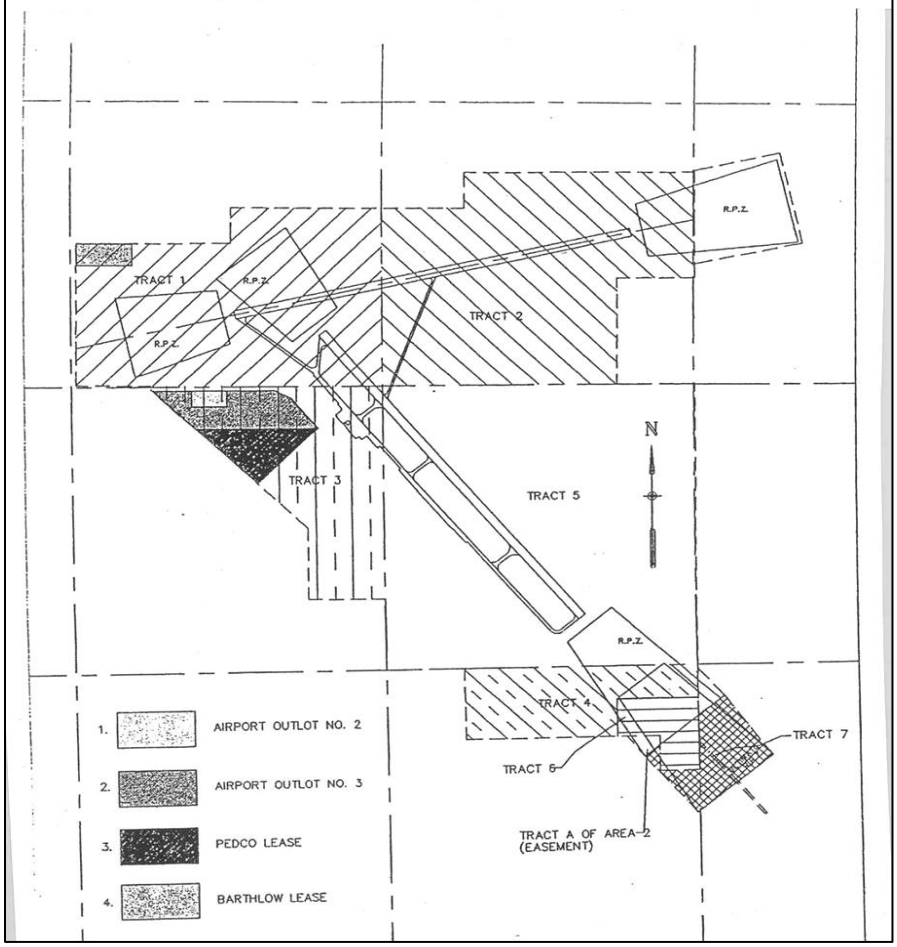
Sample NEUP Legal Description

Legal Description

1. That portion of Tract 3 of the Pierre Municipal Airport, consisting of the parcels designated as Airport Outlot 2 and Airport Outlot 3, located in the North half (1/2), Section thirty five (35), Township one hundred eleven (111) North, Range seventy nine (79) West, Hughes County, South Dakota.

2. That portion of Tract 3 of the Pierre Municipal Airport, consisting of the parcels designated as the Pedco Lease, described as starting at the southwest corner of "B" Street right of way, the point of beginning; thence south easterly along the south westerly property line of lot 6, Airport outlot 3, extended, a distance of 1441.45 feet; thence north easterly a distance of 1416.11 to the south east corner of "B" street right of way, thence west a distance of 2015.64 feet to the point of beginning.

3. That portion of Tract 1 of the Pierre Municipal Airport, consisting of the parcel designated as the Barthlow lease, located in the north 400 feet of the east 1050 feet of the west 1083 feet of the southwest quarter (1/4) of section twenty six (26), Township one hundred eleven (111) North, Range seventy nine (79) West.



The FAA will not approve a request for release of the National Emergency Use Provision (NEUP) involving the whole airport. In addition, the Department of Defense (DoD) generally does not concur with a request for release of the NEUP that involves actual runways, taxiways, or aprons. A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes. Above is a sample visual and legal description of the specific parcels of land to which the release from the NEUP would apply. (Diagram: FAA).

Sample NEUP Release Request

U.S. Department of Transportation
Federal Aviation Administration

Office of the Associate Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

JUN 23 2006

Mr. Timothy W. Bennett
Chairman, DOD Airports Subgroup
HQ USAF/XOO-CA
1480 Air Force Pentagon, Room 4D1010
Washington, DC 20330-1480

Dear Mr. Bennett:

The Federal Aviation Administration (FAA) has received a request from the Fort Wayne-Allen County Airport Authority (FWACAA) for the release of the National Emergency Use Provision (NEUP) on land at the Fort Wayne International Airport in Fort Wayne, Indiana.

The property containing the Fort Wayne International Airport, formerly known as Baer Army Airfield, was transferred to the city of Fort Wayne (the airport sponsor that later became the FWACAA) under the provisions of Section 13, Public Law 80-289 of the Surplus Property Act of 1944. The transfer document includes the NEUP provision.

As a matter of Policy, the FAA does not request a release from the NEUP for all airport property conveyed. However, we do concur with the release of the NEUP on certain designated parcels of airport property that are not currently required for aeronautical purposes. The subject land for this NEUP release request, approximately 2.44 acres, is not currently required for aeronautical purposes and is needed for the relocation of Indianapolis Road. The FAA concurs with the use of the parcel for non-aeronautical use. The attached property map and legal description depicts the subject parcel.

Consequently, in accordance with Section 7-7(d), Chapter 7, FAA Order 5190.6A *Airport Compliance Requirements*, we request the concurrence of the Department of Defense in the release of the NEUP provision on the tract of property described above and as shown in the attached documents.

Thank you in advance for your consideration. If you have any questions or need further assistance, please contact Mr. Miguel Vasconcelos at (202) 267-8730.

Sincerely,

Charles Erhard, Manager
Airport Compliance Division, AAS-400

Enclosures

Sample DoD Response to FAA NEUP Release Request

THE SECRETARY OF DEFENSE
WASHINGTON DC 20030-1480

DOD
POLICY BOARD
ON FEDERAL AVIATION

HQ USAF/A3O-AA
1480 Air Force Pentagon, Rm 4D1010
Washington DC 20330-1480

14 Jul 06

Mr. Charles C. Erhard
Manager, Airport Compliance Division, AAS-400
Federal Aviation Administration
800 Independence Avenue SW
Washington DC 20591

Mr. Erhard

This is in response to your letter of June 23, 2006, requesting the release of approximately 2.44 acres of property at the Fort Wayne International Airport, Indiana from the National Emergency Use Provision (NEUP).

The Airports Subgroup, on behalf of the Department of Defense, concurs with the FAA to release of the NEUP on the designated parcels of airport property that are not currently required for aeronautical purposes (as shown in the attached property map and legal description). A copy of the release instrument must be provided to the appropriate District Corps of Engineers' office.

Sincerely

TIMOTHY W. BENNETT
Chairman
DOD Airports Subgroup

Attachments:
1. Property Map
2. Legal Description

Notification Memo for Federal Register Notice Governing the Notification and Release of Aeronautical Property

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Airports District Office
11677 South Wayne Road
Suite 107
Romulus, MI 48174

Subject: ACTION: Federal Register Notice, Public Notice for Waiver of Aeronautical Land-Use Assurance Wood County Regional Airport, Bowling Green, Ohio

Date: July 7, 2004

From: Irene Porter, Manager
Detroit Airports District Office, DET ADO-600

Reply to Attn. of: Jagiello
734-229-2956

To: Regulations Division, Office of the Chief Counsel, AGC-200
THRU: Manager, Safety/Standards Branch, AGL-620
Regional Counsel, AGL-7

Attached are the original and two (2) copies of the Federal Register notice for Public Notice For Waiver of Aeronautical Land-Use Assurance at Wood County Regional Airport, Bowling Green, Ohio.

This notice is submitted to be docketed by the Regulations Division Staff for publication in the Federal Register.

Please insert the date, which is 30 days after the date of publication in the Federal Register, under "**DATES**: Comments must be received on or before _____."

Irene R Porter

Irene Porter

Attachment (3)

cc: AGL-620 w/attachments (for information)
AAS-400 w/attachments (for information)

Sample Federal Register Notice Governing the Notification and Release of Aeronautical Property

Federal Aviation Administration Public Notice For Waiver Of Aeronautical Land-Use Assurance

Hallock Municipal Airport, Hallock, MN

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to nonaeronautical use and to authorize the sale and/or conversion of the airport property. The proposal consists of two parcels of land containing a total of 4.18 acres located on the north side of the airport along County Road 13.

These parcels were originally acquired under Grant No. FAAP-01 in 1964. The parcels were acquired for a runway that has since been abandoned and replaced by a new primary runway in a different location. The land comprising these parcels is, therefore, no longer needed for aeronautical purposes and the airport owner wishes to sell a 4.0 acre parcel for an agricultural implement dealership and convert 0.18 acres of another parcel for use as a city wastewater lift station site. The income from the sale/conversion of these parcels will be reinvested in the airport for extending the useful life of the runway pavement.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the *Federal Register* 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATE: Comments must be received on or before [Insert date which is 30-days after date of publication in the *Federal Register*.]

ADDRESSES: Send comments on this document to Mr. Gordon L. Nelson, Program Manager, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Noel, City Administrator, 163 South 3rd Street, Hallock, MN 56728, telephone (218)843-2737; or Mr. Gordon L. Nelson, Program Manager, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706, telephone (612)713-4358/FAX (612)713-4364. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property located in Kittson County, MN: That part of Section 24, T161N, R49W described as follows: Commending at an iron monument at the NW corner of said Section 24; thence South 89 degrees 40 minutes 33 seconds East, assumed bearing, along the north line of said Section 24 a distance of 2523.77 feet; thence South 27 degrees 29 minutes 58 seconds East, a distance of 33.72 feet to an iron pipe monument; being the point of beginning of the tract to be described; thence North 89 degrees 40 minutes 34 seconds East, parallel with north line of said Section 24 a distance of 400 feet to an iron pipe monument; thence South 22 degrees 18 minutes 25 seconds East, parallel with and 40 feet perpendicular to the westerly right-of-way line of Burlington Northern, Inc. railroad, a distance of 437.34 feet to an iron pipe monument; thence South 67 degrees 41 minutes 37 seconds West 317.57 feet to an iron pipe monument; thence North 27 degrees 29 minutes 58 seconds West 589.49 feet to the point of beginning, containing 4.00 acres, more or less.

That part of the NE1/4 of the NW1/4 of Section 24, T161N, R49W bounded as follows: Beginning on the north line of said Section 24 at a point which lies 557.00 feet west of the northeast corner of the NW1/4 being the point of beginning of the tract to be described; thence South 0 degrees 19 minutes 27 seconds West, assumed bearing, along a line perpendicular to said section line a distance of 172.82 feet; thence North 27 degrees 22 minutes 40 seconds West, a distance of 195.19 feet to the north line of said Section 24, thence South 89 degrees 40 minutes 33 seconds East, a distance of 90.74 feet along the north line of said section back to the point of beginning, containing 0.18 acres, more or less.

Issued in Minneapolis, MN on December 11, 2006

Robert A. Huber
Manager, Minneapolis Airports District Office
FAA, Great Lakes Region
Manager, Detroit Airports District Office FAA, Great Lakes Region

Sample Letter of Intent to Release Airport Property - Page 1

Sample Letter of Intent to Release Airport Property - Page 2

U.S. Department of Transportation
Federal Aviation Administration

Detroit Airports District Office
11677 South Wayne Road
Suite 107
Romulus, MI 48174

April 17, 2006

Mr. Kent L. Maurer, Manager
Jackson County- Reynolds Field
3606 Wildwood Avenue
Jackson, Michigan 49202

Dear Mr. Maurer:

Jackson County Airport-Reynolds Field, Jackson, Michigan
Letter of Intent to Release Airport Property (Approximately 68 Acres)
Parcels 15A and 62

This "Letter of Intent to Release Airport Property" is being issued in response to Mr. Chip Kraus' letter, dated May 11, 2005, and supporting documentation requesting the Federal Aviation Administration (FAA) to release the County of Jackson, Michigan (hereinafter referred to as "sponsor") of its obligations to maintain as airport property 2 parcels of land (Parcels 15A and 62). This property is located in the northeast quadrant of the airport as currently depicted in the Airport Layout Plan (ALP) and Exhibit A. This land is to be sold and/or leased for proposed use as commercial development.

The FAA is authorized to grant a release of airport property from disposal restrictions if it is determined that (1) the property to which the release relates no longer serves the purpose for which it was made subject to the terms, conditions, reservations, or restrictions concerned, and (2) the release will not prevent accomplishing the purpose for which the property was made subject to the terms, conditions, reservations, or restrictions, and is necessary to protect or advance the interests of the United States in civil aviation.

The FAA finds that Parcels 15A and 62 are no longer required for current or future public airport purposes, nor would the release thereof prevent the accomplishment of the public airport purpose for which the airport facilities were obligated.

Accordingly, this Letter of Intent represents a decision by the FAA to release Parcels 15A and 62 upon submission and/or consideration of the following conditions:

a. The County should keep the FAA informed of its timetable for redevelopment of the two parcels. The County shall submit for review detailed information relating to the marketing and proposed use of the property.

b. If a sale is contemplated, present to FAA a draft sales or lease agreement or agreements the County intends to execute with a prospective buyer/lessee for the property in question and disclose the sale price or rental value to be determined based upon fair-market valuation. You should submit documented evidence (such as a rezoning application and approval) indicating that Parcels 15A and 62 are rezoned in a manner that is compatible with airport operations (for example "non-residential" i.e. C-2) and consistent with Condition a. above.

c. Federal Aviation Regulation (FAR) Part 77 (recodified as 14 Code of Federal Regulations (CFR) Part 77) surfaces must be adhered to relating to any building, structure, poles, trees, or other object on the property relating to Jackson County Airport-Reynolds Field. The County will retain a right of entry onto the property conveyed to cut, remove, or lower any object, natural or otherwise, of a height in excess of 14 CFR Part 77 surfaces relating to the airport. This public right shall include the right to mark or light as obstructions to air navigation, any and all objects that may at any time project or extend above said surfaces.

d. A notice consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1) must be filed prior to constructing any facility, structure, or other item on the property.

e. The property shall not be used to create electrical interference with communication between the installation upon the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others, impair visibility in the vicinity of the airport, or endanger the landing, taking off, or maneuvering of aircraft.

f. A right of flight for the passage of aircraft in the airspace above the surface of the property shall be maintained (easement) specifying that any noise inherent in the operation of any aircraft used for navigation shall be allowed.

g. The property shall not be used to create a potential for attracting birds and other wildlife that may pose a hazard to aircraft in accordance with current FAA guidance.

h. The Hurd-Marvin Drain has been identified on the southern portion of the subject site on both parcels. Additionally, approximately 5.48 acres of the subject property has been categorized as wetlands. These areas are specifically precluded from any development on, or disturbance of, or impacts to the Hurd-Marvin Drain, or the designated wetlands, unless they comply with the requirements of Executive Order 11990, the Fish and Wildlife Coordination Act, and the National Environmental Policy Act.

i. The MALSR approach light plane complex and line-of-sight must not be penetrated. In order to protect these surfaces, no objects shall penetrate 14 CFR

Sample Letter of Intent to Release Airport Property - Page 3

Part 77 50:1 approach slope for Runway End 24 on Parcels 15A and 62, as depicted on the attached Figure 2-0. This drawing shall be part of the release documents between you and the prospective buyer(s).

j. The Middle Marker for Runway End 24 is located approximately 3,275' from Runway End 24, on the extended runway centerline. FAA ingress/egress to this site shall be maintained.

k. The lease between the County of Jackson, Michigan, and the United States of America dated May 14, 1986 shall be maintained. The lease allows FAA personnel access to Runway 24 MALSR and Middle Marker sites to maintain these NAVAIDs. The ground easements described in the lease relating to Parcels 15A and 62 are shown on the attached Figure 1-0 and shall be maintained. A narrative description of the leased areas for the MALSR and Middle Marker is described in Attachment "A". These documents shall be part of the release documents between you and the prospective buyer(s).

l. The County will, by agreement with FAA, commit all proceeds from the sale or lease of the property to the development, maintenance and operations of the County airport system, in conformance with the FAA's revenue use policy. The revenue use policy may be accessed at the following web address:

http://www.faa.gov/airports_airtraffic/airports/resources/publications/federal_register_notices/media/obligation_final99.pdf.

Therefore, upon submission of and adherence to the above-mentioned conditions, FAA will approve the release of the property from the applicable terms, conditions, reservations, and restrictions recorded in the grant assurances.

If you need further assistance or have any questions, please contact me at (734) 229-2900.

Sincerely,

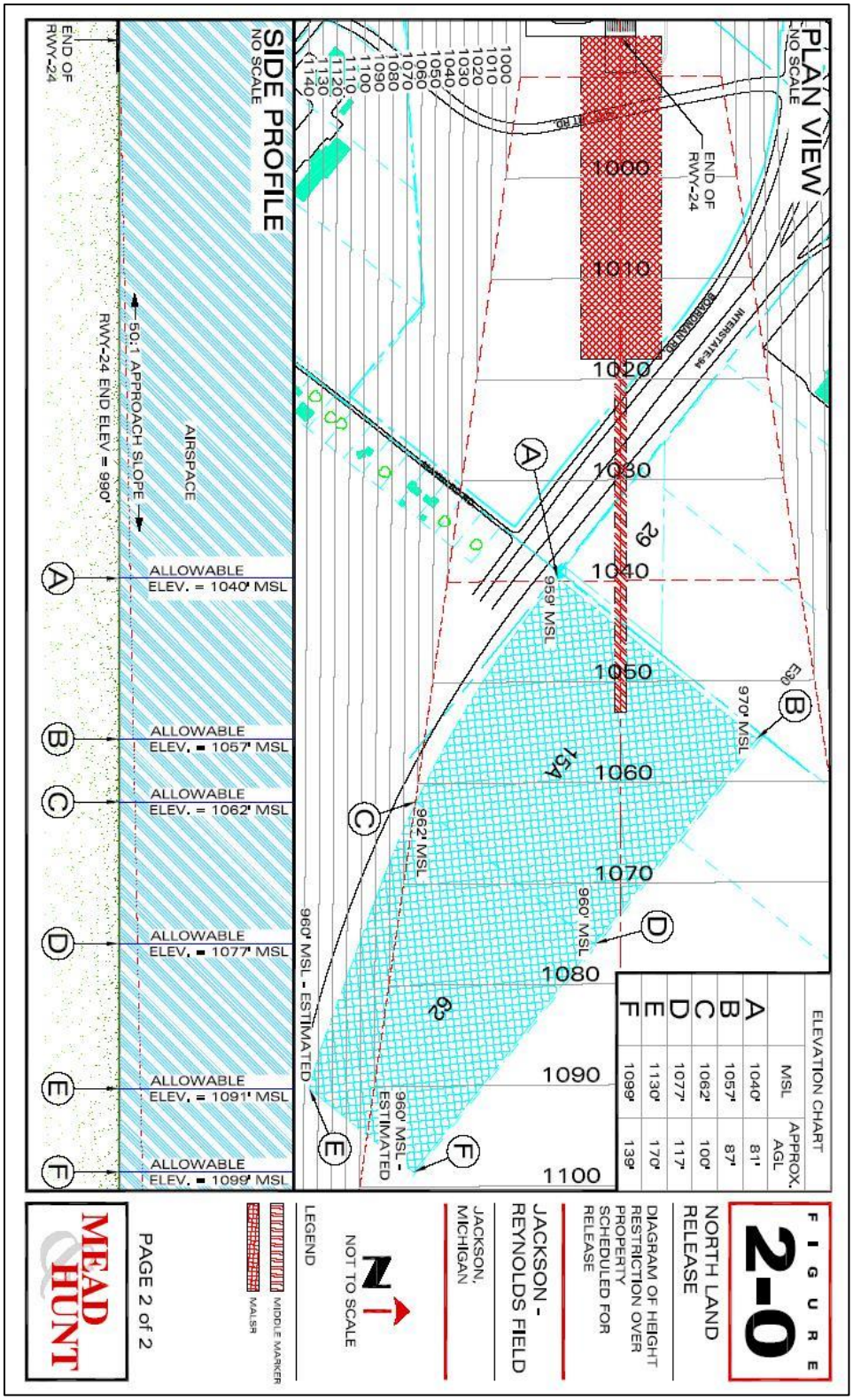
Irene R. Porter

Irene R. Porter
Manager, Detroit Airports District Office

Attachments

cc: AGL-620, AAS-400, F. Kraus, MMTSB

Sample Letter of Intent to Release Airport Property - Page 4



Sample Letter of Intent to Release Airport Property - Page 5

Attachment "A" to
Lease No. DTFA14-86-L-R955

Site Descriptions

MALSR, Runway 24:

An area 400 feet wide symmetrical about the runway centerline and beginning at the end of the runway extending 1,600 feet northeast followed by an area 60 feet wide, symmetrical about the runway centerline extending an additional 1,600 feet northeast. The Unit includes light stations at 200 feet intervals, access roads, underground cables, power and control stations, transformers, access off of Airport Road, conduit under I-94 and Airport Road. Area described includes R.O.W. along I-94. The underground cables are within the area described and extend beyond.

Middle Marker, Runway 24:

An area 60 feet wide and symmetrical about the runway centerline and extending 150 feet NE of the MALS/RAIL area. The unit includes a pole mounted marker, transformer, access road, and underground cables.

Table 22.1: Guide to Releases

Land Acquisition Circumstance	Title 49 U.S.C. Requirement to Notify Public Release of Aero Land Use Obligation	Fed Register Notice Required	Surplus Property Deed of Release Required	Grant Assurance Letter of Release Required	Required to use proceeds for AIP Elig Dev Only (Highest Priority) or Opr & Maint.	Required to use proceeds for Noise mitigation
Surplus property transferred for aeronautical purposes	47151(d), 47153(c)	Yes	Yes	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Surplus property transferred for nonaeronautical revenue production *and* shown on the ALP & Exhibit "A"	N/A	No	Yes	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Surplus property transferred for nonaeronautical revenue production and *not* Shown on the ALP & Exhibit "A"	N/A	No	Yes	No	Opr & Maint of airport	No
Land acquired with AIP assistance	47107(h)	Yes	No	Yes	AIP Elig Only	No
Land acquired with FAAP or ADAP assistance *and* land assurances have expired	N/A	No	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Unobligated land acquired without federal assistance *and* on the ALP and Exhibit "A" as airport land *and* without federally financed airport improvements.	N/A	No	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Land acquired without federal assistance and *not* on the ALP or Exhibit "A" as airport land	N/A	No	No	No	No	No

Land Acquisition Circumstance	Title 49 U.S.C. Requirement to Notify Public Release of Aero Land Use Obligation	Fed Register Notice Required	Surplus Property Deed of Release Required	Grant Assurance Letter of Release Required	Required to use proceeds for AIP Elig Dev Only (Highest Priority) or Opr & Maint.	Required to use proceeds for Noise mitigation
Land acquired without federal assistance and airport facilities exist on the land that was developed or improved less than 20 years ago with federal assistance	N/A	Yes	No	Yes, if airport has current federal grant assurances	(1) Replace federally financed development (2) AIP Elig Dev	No
Land acquired without federal assistance and airport facilities exist on the land that was developed or improved more than 20 years ago with federal assistance	N/A	Yes	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Land acquired with noise funds	N/A	No	No	No	See →	Yes
Federal government land conveyed to sponsor under U.S.C. § 47125 by a federal agency and the sponsor asks the FAA to waive the requirement that the land be used for airport purposes.	47125(a)	Yes	No	Yes, if airport has current federal grant assurances	A purpose approved by the Secretary	No
AIP acquired development land (U.S.C. § 47107(c)(2)(B)), surplus property (U.S.C. § 47151), conveyed government land (U.S.C. § 47125), or land with federally financed improvements. Land use changed (not released) to nonaeronautical.	N/A	Yes	No	No	N/A	N/A

Sample Actual Deed of Release – Page 1

DEED OF RELEASE

WHEREAS, the United States of America, acting by and through the General Services Administrator, under and pursuant to the powers and authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), and the Surplus Property Act of 1944 (58 Stat. 765), as amended, by instrument entitled "Quitclaim Deed" dated January 29, 1959, did remise, release, and forever quitclaim to the City of Sebastian of the State of Florida, its successors and assigns, all rights, title and interest of the United States of America in and to certain property known as Sebastian Municipal Airport subject to certain conditions, reservations, exceptions and restrictions; and,

WHEREAS, the City of Sebastian has requested the United States of America to release the hereinafter described property from all of the conditions, reservations, exceptions and restrictions of said instrument; and,

WHEREAS, the Administrator of the Federal Aviation Agency, under and pursuant to the powers and authority contained in Public Law 311 (63 Stat. 700) is authorized to grant a release from any of the terms, conditions, reservations and restrictions contained in, and to convey, quitclaim or release any right or interest reserved to the United States of America by any instrument of disposal under which surplus airport property was conveyed to a non-Federal public agency pursuant to Section 13 of the Surplus Property Act of 1944 (58 Stat. 765); and,

WHEREAS, the said Administrator has determined that the land described hereinafter is no longer needed for the purpose for which it was made subject to the terms, conditions, reservations and restrictions of the said surplus airport property instrument of transfer and that said land can be released without adversely affecting the aeronautical use of the said airport; and,

NOW, THEREFORE, for the considerations above expressed, the United States of America, except as hereinafter provided, does hereby quitclaim, convey and release unto the City of Sebastian, Florida, its successors and assigns, all rights, title and interest reserved or granted to the United States of America by the said Quitclaim Deed dated January 29, 1959, insofar as same pertains to the following described land, to wit:

A strip of land 53 feet wide, over, through and across Lots 62, 52, 51, the Allen Tract, Lots 44, 43, 42, 41 and 40 in Section 28; Lots 17, 16, 15 and 14 in Section 29; Lots 82, 83, 76, 75, 74, 53, 54 and 55 in Section 22, of the Fleming Grant in Township 31 South, Range 38 East, Township 30 South, Range 38 East which lies within 53 feet Easterly of the Baseline of Survey and/or centerline of construction according to the Right of Way Map of Section 88602-2601, State Road S-505, Roseland Road, as filed in Map Book 1, Pages 83 and 84 in the office of the Clerk of the Circuit Court, Indian River County, Florida, a part of said Baseline and/or Centerline being more particularly described as follows:

BEGINNING at a point on the Southwesterly line of and 100.22 feet S 44°32'44" E of the Northwest corner of Lot 62, Section 28 of the Fleming Grant in Township 31 South, Range 38 East, run N 11°39'14" W a distance of 800.62 feet to the beginning of a curve to the right; thence Northerly on said curve having a central angle of 07°10'15" and a radius of 5729.65 feet a distance of 717.08 feet to the end of said curve; thence N 04°48'59" W a distance of 5528.83 feet to the beginning of a curve to the right; thence Northeasterly on said curve having a central angle of 50°08'30" and a radius of 1562.88 feet, a distance of 1367.50 feet to the end of said curve; thence N 45°19'31" E a distance of 1704.86 feet to a point on the Northeast line of and 2636.77 feet N 44°37'29" W of the Easterly corner of Section 22 of the Fleming Grant in Township 30 South, Range 38 East;

excepting therefrom the existing 33 foot Right of Way for Roseland Road and containing 3.22 acres, more or less, Indian River County, Florida.

The release of the above described land is subject to the following terms and conditions:

1. That, in any instrument conveying title to the land, or granting any easement therein, Indian River County, Florida, will reserve for itself,

Sample Actual Deed of Release – Page 2

-2-

its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the land conveyed, together with the right to cause in said airspace such noise, as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from, or operating on the Sebastian Municipal Airport.

2. That any instrument conveying title or granting an easement in the land shall contain a provision restricting and establishing the height of structures or objects of natural growth on the said land in accordance with the currently effective Federal Aviation Agency Technical Standard Order N18 as applied to Sebastian Municipal Airport.

3. That any instrument conveying title or granting an easement in the land shall contain a provision which will prohibit any use of the land that would interfere with the operation of aircraft or adversely affect the operation or maintenance of the Sebastian Municipal Airport.

IN WITNESS WHEREOF, the United States of America has caused these presents to be executed in its name and on its behalf by the Chief, Airports Division, Southern Region, Federal Aviation Agency, all as of the 10 day of January, 1963.

UNITED STATES OF AMERICA
The Administrator of the Federal Aviation Agency

BY /s/ C. E. Hinsdale
Acting Chief, Airports Division, Southern Region

STATE OF GEORGIA)
) ss
COUNTY OF FULTON)

On this 10 day of January, 1963, before me, Mary N. Houston, a Notary Public in and for the County of Fulton, State of Georgia, personally appeared C. E. Hinsdale, known to me to be the Chief, Airports Division, Southern Region, Federal Aviation Agency, and known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same on behalf of the Administrator of the Federal Aviation Agency and the United States of America.

WITNESS my hand and official seal.

/s/ Mary N. Houston
Notary Public in and for said County & State

(SEAL)

My commission expires 9-4-66.

Chapter 23: Reversions of Airport Property

Updated November 2021

23.1. Introduction. This chapter provides guidance on the reversion of real property originally conveyed by the United States to an airport sponsor or other entity. The term reversion generally refers to the process by which title to real property is returned to the original conveyor of land (*e.g.*, the U.S.) if a specific event occurs. The right of reversion is based upon a reversionary clause contained in the instrument of conveyance or deed from the U.S. The reversionary clause sets forth the conditions, or occurrences, by which title to the property may revert (*i.e.*, return) back to the U.S. Reversionary clauses are typically found in surplus (49 U.S.C. §§ 47151-47153)) and non-surplus (49 U.S.C. § 47125) property conveyances. In some cases (typically involving non-surplus property), reversion is automatic under the terms of the reversionary clause. In these cases, the FAA does not have discretion. Reversion may also be at the discretion of the government. Reversion may occur when the U.S. determines it requires property back for its own use for national defense or national security purposes (DoD, HHS, etc.). Also, the FAA may initiate reversion when an airport sponsor's fails to meet property conveyance conditions or federal obligations. In all cases, the actual conveyance documents must be reviewed to determine the exact nature of the obligations and applicable regulations or policies (*e.g.*, Regulation 16, 14 CFR Part 155, 41 CFR Part 102-75).

In some cases, there may be amendments to the property conveyance or supplemental agreements attached to property deeds of release. These may include additional requirements or obligations not found in the original conveyance document, such as requirements on using proceeds from the sale or lease of airport property for revenue generation, protecting the airport's navigable airspace, or limitations on imposing land-use restrictions.

It is FAA policy to cooperate with the grantee to the extent reasonable to resolve a dispute expeditiously. The FAA's policy is to first seek a resolution without reverting the property, as noted by the United States Government Accountability Office (GAO) in 2006.[1] Generally, the FAA should provide the airport sponsor an opportunity to cure the default before reverting the property.

The FAA uses its discretion to serve the public interest in aviation when exercising its right to revert a property interest. The specific circumstances of the case, costs and benefits of the action, and likelihood to affect the intended outcome should be carefully considered before reverting the property. In all cases, contact the FAA headquarters Airport Compliance Division (ACO-100) for assistance.

23.2. General. This chapter reflects information obtained from the four federal agencies that are major sources of federal property for public airport purposes: (a) General Services Administration (GSA), (b) Department of Agriculture (USDA), (c) Department of Interior's (DOI) Bureau of Land Management (BLM), and (d) Department of Defense (DoD).

[1] See United States Government Accountability Office, "Report to the Committee on Government Reform, House of Representatives: Federal Real Property", (June 2006) (also referencing the FAA's procedures as described in this chapter).

23.3. Authority to Revert a Property Interest. The Secretary's authority to revert a property interest is based upon the specific terms of the instrument of conveyance or deed and, in some cases, the statutes, such as 49 U.S.C. § 49125 and the Surplus Property Act. The Secretary's discretionary authority to revert a property interest conveyed for public airport purposes may arise if a condition in the deed is not met or is violated. This authority only extends to the title, right of possession, or other rights vested in the United States at the time the federal government transferred the property to the grantee. Each reversion is controlled by the instrument of conveyance, applicable laws, federal regulations, and FAA orders. The reversion may be exercised at the option of the United States – with or without the cooperation of the grantee – against all or part of the property in question.

23.4. Instruments of Conveyance. The U.S. issues instruments of conveyance that may include a right of reverter of an airport property interest and a right to revert title in the United States under the authority of one or more of the following:

a. Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA), Public Law (P.L.) No. 97-248 (49 U.S.C. § 47125);

b. Section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act) (P.L. No. 91-258, May 21, 1970) (84 Stat. 219 and following).

c. Section 16 of the Federal Airport Act of 1946 (1946 Airport Act), as amended, and (49 U.S.C. § 47151 *et seq.*).

d. Section 13(g) of the Surplus Property Act of 1944, as amended (49 U.S.C. § 47151 *et seq.*) and 49 U.S.C. § 106(l) and §106(n).

e. Section 303 (c) of the Federal Aviation Act of 1958 (FAA Act), as amended (49 U.S.C. § 1344(c)). Also the precedent Civil Aeronautics Act of 1938, as amended (49 U.S.C. §§ 40110 and 40112).

f. Special Congressional Legislation. Section 35 of the Alaska Omnibus Act (73 Stat 149) or other enabling Acts authorizing conveyances of federal property to nonfederal public agencies for public airport purposes.

23.5. Voluntary Return of Property to the U.S. Government. In some cases, the voluntary return of a specific parcel of property may serve the public interest better than reversion of the entire airport. In such cases, the FAA should cooperate with the sponsor to achieve compliance with a selective reversion on a voluntary basis. (See paragraph 23.11 in this chapter, *Voluntary Reconveyance to Correct a Default*, for additional information on voluntary reversions).

There are circumstances when only part of the airport land subject to reversion is not being used in accordance with the statutes and the deed. In this event, the FAA should consider reversion of that part of the property where misuse or nonuse comprises a default. However, the FAA Airports office should contact the FAA Office of Chief Counsel before proposing measures of this type. In circumstances in which the instigating status of noncompliance can be cured by reversion of some portion of the property subject to reversion, the FAA may also consider a voluntary reconveyance, as discussed below. Once the FAA makes the determination to exercise the federal government's option for reversion of airport property, there may be no alternative but

to revert title to the United States. A grantee, for good reasons, may request the FAA to issue a notice of intent to exercise its right to reversion of the property before executing a voluntary quitclaim deed or instrument of reconveyance.

23.6. Involuntary Reversion. A sponsor's refusal to cooperate with the FAA could lead to legal proceedings to effect an involuntary reversion, such as an action to quiet title or in eminent domain. This can affect some or all of the property subject to reversion.

Responsibility for any legal proceedings to effect involuntary reversion in the event of resistance on the part of a grantee generally lies with the Department of Justice (DOJ), as the representative of the United States, in conjunction with the FAA Office of Chief Counsel.

23.7. Identifying the Federal Agency to Receive the Property. The federal agency that issued the original instrument of conveyance, or its successor, may have a right to receive the federal government title in reversion. If the federal agency is other than the GSA or FAA and declines to accept control and jurisdiction upon revestment of title (the title in the property returns to the federal agency), then the GSA may become the reversioner agent for the federal government. In such cases, the FAA should advise GSA of the impending reversion to the United States and fully coordinate revestment of title procedures consistent with GSA supplementary guidance and procedures. Where the FAA is the reversioner agent, the FAA's Logistics Service Area Managers or Real Estate Contractor Officers will handle the reversions and administer the procedures for the action in accordance with applicable regulations. It should be noted that the FAA now has direct authority to buy or sell property and a right to the proceeds from a sale under 49 U.S.C. §40110(a) or §40110(c). *See also* 49 U.S.C. 106(n) (authorizing acquisition of real property).

23.8. Determination of Default. The Associate Administrator for Airports must first determine a grantee is in default of the covenants of the instrument of conveyance or the terms and conditions of an agreement between the parties in order to exercise the right of reversion of a property interest conveyed for public airport purposes and revest that interest in the United States. FAA policy requires FAA offices to cooperate with the grantee to the extent reasonable to resolve a dispute expeditiously and in the interest of the United States in civil aviation. If the grantee fails to resolve the matter, then the FAA Director of Airport Compliance and Management Analysis (ACO-1) may pursue the reversion and revestment, including the issuance of a notice of reverter and revestment of title in the United States Government.

23.9. Perform and Document the FAA's Environmental Due Diligence. Environmental due diligence of the property to be reverted is required prior to revestment of the title in the United States Government. Environmental due diligence is the process of identifying, evaluating, and documenting the environmental conditions of real property to inform decision-making and minimize potential environmental liabilities associated with real property transactions.

23.10. Notice of Intent to Revert Property. The notice of intent is a formal letter informing a grantee of the FAA's determination the grantee is in default and of the FAA's decision to revest title to the property in the United States under the conveyance instrument. The FAA should send notice to the grantee (and an information copy to the grantor agency) by certified or registered mail, with return receipt requested. Before advising the grantee, the FAA should coordinate in writing with the appropriate federal agency and provide the agency with a copy of the notice. The notice shall include:

a. Prior notices of prior noncompliance.

b. A description of grantee's failure to correct the deficiencies listed in the notices of noncompliance.

c. A description of the resulting default based on grantee's noncompliance and default on the instrument of conveyance or agreement.

d. A visual and an accurate legal description of the property to be reverted.

e. The FAA's description of the cure for the default and minimum requirements for curing the default to retain the property.

f. The time allowed to cure the default to permit grantee to retain the property. The FAA usually allows a grantee 60 days to cure a default. Time may vary depending on the circumstances, but generally the cure period should not exceed 90 days.

g. The FAA's requirement for the grantee to notify the FAA promptly (set a reasonable time period for response, *i.e.*, 7, 10, 14 days) if it does not intend to act to cure the default and thereby waive the time allowed for the cure.

h. A description of any other relevant facts bearing on the default or potential remedies.

23.11. Voluntary Reconveyance to Correct a Default. The FAA should give grantees that are in default an opportunity to voluntarily reconvey the property (or a portion of the property) to the United States. In cases where it is another federal agency that holds the right to revert the property, the FAA must coordinate with that agency. It is an essential step in ensuring that the property in question will be used to serve the best public interests in aviation. In all cases, each voluntary reconveyance requires the following:

The FAA should give grantees in default an opportunity to reconvey the property voluntarily to the United States. Where only part of the real property described in the instrument is involved, the FAA must coordinate with the receiving federal agency (the reversioner agency) in order to supplement the general guidance and procedures for the revestment of good title in the United States.

a. Resolution from the Governing Body. A resolution of the grantee authorizing a reconveyance to the United States and designating an appropriate official to execute an

instrument of reconveyance acceptable to the United States. The resolution shall also cite the reason for reconveyance (*e.g.*, not developed, ceased to be used, not needed).

b. Instrument of Reconveyance. An instrument of reconveyance that substantially conforms to a format suggested by FAA counsel.

c. Title insurance or grantee Legal Opinion. Title insurance or a legal opinion by the grantee's attorney. The insurance or legal opinion shall recite:

(1). The grantee's legal authority to convey the property to the United States.

(2). The status and validity of title to the property interest conveyed to the United States. The insurance policy or attorney must cover the history of the title and property interest from the original federal conveyance to the present and include any outstanding encumbrances, liens or interests, along with the requirement or procedures for returning the title to its original form. The title insurance or legal opinion must be acceptable to the FAA and reversioner federal agency.

d. Certificate of Inspection and Possession. Prepare a certificate of inspection and possession. The FAA will submit the necessary documents to the appropriate official of the receiving federal agency. If the receiving federal agency requires a certified or conformed copy, the FAA will obtain it from the grantee.

23.12. Notice of Reverter of Property and Revestment of Title and Property Interest in the U.S. The notice of reverter of property and revestment of title and property interest to the United States is prepared under the direction of FAA counsel. The basic elements of this notice include:

a. Identification of the instrument of conveyance from the United States to the grantee.

b. Citation of the statutory authority enabling the original conveyance of federal property.

c. Accurate legal description of the property conveyed and that part which reverts to the United States.

d. Statement that the property was conveyed subject to an express provision authorizing its reversion under certain circumstances and as set forth in the reverter clause.

e. Statement that the FAA has determined that the property in question reverts to the United States for specific reasons consistent with the reverter clause.

f. Statement of the specifics which caused the default of the grantee as set forth in the clauses in the instrument of conveyance.

g. Statement that the property interest to which the United States has reverter rights is revested in the United States.

h. Statement identifying the reversioner federal agency.

i. Reference to the notice of intent for reversion of property.

See Sample Notice of Reversion of Property and Revestment of Title to the United States

included in Appendix Y.

23.13. Recording Notice of Reverter of Property and Revestment of Title and Property Interest in the U.S. After execution by the authorized FAA official, the FAA airports district office (ADO) or regional airports division will record the original executed copy of the notice in the official records of the county in which the property is located. The ADO or regional airports division will obtain the required number of certified copies or certificates of recordation from the Clerk of the Court or other custodian of the official county records. The number of copies requested must satisfy the needs of the federal agencies involved. Concurrent with recording the original copy of the notice, the ADO or regional airports division will send or deliver an executed copy to the grantee. A cover letter shall affirm that pursuant to the execution of the notice, the property involved has reverted to, and title revested in, the United States. This letter shall specifically advise the grantee that the notice has been recorded in the official records of the county in which the property is located.

23.14. Certificate of Inspection and Possession. Once the FAA completes the reversion, the ADO or regional airports division will conduct an inspection and complete the certificate of inspection and possession.

23.15. Possession, Posting, or Marking of Property. Since a property reversion requires a process similar to a physical taking of property, the federal agency must post or mark the property to indicate that it is now the property of the United States. Consequently, concurrent with the physical inspection, the ADO or regional airports division should post or mark the property, as appropriate, thus indicating that the property belongs to the United States.

23.16. Reversion Case Studies. Reversions of surplus federal property are not common, but they do occur.

a. McIntosh County Airport, Georgia. An example of such a situation was Harris Neck AFB in Georgia located 30 miles south of Savannah in McIntosh County.

In October 1946, the War Assets Administration (WAA) deeded the facility to McIntosh County for use as a civilian municipal airport. The facility was updated and one of its runways was extended to 5,400 feet. It served both civilian and military users well into the late 1950s. However, mismanagement by the sponsor – including illegal disposal of the airport's assets and restricted access, resulted in action by the federal government. The FAA exercised the reversion clause contained in the surplus property conveyance and the facility was taken over by GSA. In 1962, GSA conveyed the now-closed airport to the U.S. Bureau of Sport Fisheries & Wildlife (now known as U.S. Fish and Wildlife Service). Today, the remains of the airport are part of a migratory bird refuge.

b. Half Moon Bay Airport, California. Half Moon Bay Airport was constructed in 1942 for the Army and relinquished to the Navy at the end of World War II. In 1947, the WAA deeded the property to San Mateo County under the Surplus Property Act of 1944. The airport has continued in use as a county civil airport since that time.

For many years, the local water district paid the county an extraction fee for water from wells located on the airport. The water district then decided to use its eminent domain powers to acquire the wells by condemning the airport property on which the wells were located. The FAA

filed a notice of intent to exercise reversion rights to the property and then intervened in the condemnation proceeding. In February 2009, the U.S. District Court for the Northern District of California found that the water district's action was sufficient to trigger the FAA's right of reverter in the airport deed. The court found that title to the wells had passed to the United States through the exercise of that reversion right, and that the wells therefore could not be condemned by a local or state government agency.[2]

c. Fallbrook Community Airpark, California. A partial reverter occurred at Fallbrook Community Airpark in North San Diego County. Following a Section 16 (49 U.S.C. § 47125) conveyance of U.S. Navy land, the airport property was not developed for airport purposes in its entirety as required by the Section 16 deed. As a result, the undeveloped portion of the airport reverted to the United States.

23.17 through 23.21. reserved.

[2] *Montara Water and Sanitary District v. County of San Mateo*, 598 F.Supp. 2d 1070 (N.D. Cal. 2009)

Appendices

Appendix A: Airport Sponsors Assurances

A current copy of the Airport Sponsor Assurances is available on the FAA website at https://www.faa.gov/airports/aip/grant_assurances/.[1]

Statutory Basis for the Grant Assurances

GRANT ASSURANCES	STATUTORY BASIS
1. General Federal Requirements	Multiple
2. Responsibility/Authority	49 USC 47106 (a)(5)
3. Sponsor Fund Availability	49 USC 47106 (a)(3)
4. Good Title	49 USC 47106 (b)(1)
5. Preserving Rights and Powers	49 USC 47105 (a)(5) and 49 USC 47105 (a)(5)
6. Consistency with Local Plans	49 USC 47106 (a)(1)
7. Consideration of Local Interest	49 USC 47106 (b)(2)
8. Consultation with Users	49 USC 47105 (a)(2)
9. Public Hearings	49 USC 47106 (c)(1)(A)(i)
10. Metropolitan Planning Organization	49 U.S.C. 5303 and 49 USC 47106 (c)
11. Pavement Preventive Maintenance	49 USC 47105 (e)
12. Terminal Development Prerequisites	49 USC 44706 and 49 USC 47119 (a)
13. Accounting System, Audit, and Record Keeping	49 U.S.C. 47107(a)(14)
14. Minimum Wage Rates	49 USC 47112 (b)
15. Veteran's Preference	49 USC 47112 (c)
16. Conformity to Plans & Specifications	49 USC 47112 and 49 USC 47105 (b)(3)
17. Construction Inspection & Approval	49 USC 47112 (c) and 49 USC 47017 (b)
18. Planning Projects	49 U.S. Code § 5305, 49 USC 47106(a); 47102(5) and (17)
19. Operation and Maintenance	49 U.S.C. 47107(a)(7) and (8)
20. Hazard Removal and Mitigation	49 U.S.C. 47107(a)(9)

[1] The Airport Sponsor Assurances (2014) references “Executive Order 11998 – Flood Plains.” This should read “Executive Order 11988 – Flood Plains.”

GRANT ASSURANCES	STATUTORY BASIS
21. Compatible Land Use	49 U.S.C. 47107(a)(10), and 49 U.S.C. 47141
22. Economic Nondiscrimination	49 U.S.C. § 47107(a)(1) through (3), (5)-(6) and 49 USC 47129
23. Exclusive Rights	49 U.S.C. §§ 40103(e) and 49 U.S.C. 47107(a)(4)
24. Fee and Rental Structure	49 U.S.C. 47101 (a)(13), 49 U.S.C. 47107(k)(3)
25. Airport Revenues	49 U.S.C. § 47111 (e), 49 U.S.C. 47133, 49 U.S.C. 47107(b), 49 U.S.C. 47107(k)
26. Reports and Inspections	49 U.S.C. 47107(a)(15), (18) and (19)
27. Use by Government Aircraft	49 U.S.C. 47107(a)(11)
28. Land for Federal Facilities	49 U.S.C. 47107(a)(12)
29. Airport Layout Plan (ALP)	49 U.S.C. 47107(a)(16)
30. Civil Rights	42 U.S.C. 2000d et seq., and USC 49 47123
31. Disposal of Land	49 U.S.C. 47107(c)
32. Engineering and Design Services	49 U.S.C. 47107(a)(17)
33. Foreign Market Restrictions	49 U.S.C. 50104
34. Policies, Standards, & Specifications	49 USC 47112(a) and 49 USC 47105(b)
35. Relocation & Real Property Acquisition	42 U.S.C. 4601 et seq.
36. Access by Intercity Buses	49 U.S.C. 47107(a)(20)
37. Disadvantaged Business Enterprises	49 U.S.C. 47107(e) and 49 USC 47113
38. Hangar Construction	49 U.S.C. 47107(a)(21)
39. Competitive Access	49 USC 47106 (f), 49 U.S.C. 47107(r)(2)

Appendix B: Reserved

Appendix C: Advisory Circulars on Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities

A copy of Advisory Circular No. 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, is available on the FAA website at https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.information/documentNumber/150_5190-6.

A copy of Advisory Circular No. 150/5190-7, Minimum Standards for Commercial Aeronautical Activities, is available on the FAA website at https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.information/documentNumber/150_5190-7.

Appendix D: Policy Regarding Airport Rates and Charges

FAA's Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31994 (June 21, 1996), and as amended at 73 Fed. Reg. 40430 (July 14, 2008) (Rates and Charges Policy) is available online at https://www.faa.gov/airports/airport_compliance/.

Appendix E: Policies and Procedures Concerning the Use of Airport Revenue

FAA's Policy and Procedures Concerning the Use of Airport Revenue is located online at https://www.faa.gov/airports/airport_compliance/.

Appendix F: 14 CFR Parts 13 and 16

14 CFR Parts 13 and 16 are available online at https://www.faa.gov/airports/airport_compliance/complaints/.

Appendix F-1: Part 16 Decisions (Case Files)

The FAA maintains a Part 16 Rules and Administrative Decisions Home Page. The FAA issues final administrative decisions in cases involving complaints against federally assisted airports. The site provides access to the FAA Part 16 rules of practice and administrative decisions. The site is located online at https://part16.airports.faa.gov/.

FAA Part 16 cases filed since January 2002 can also be searched on Regulations.gov. To access this site go to https://www.regulations.gov/.

Appendix F-2: Reserved

Appendix G: Reserved

Appendix G-1: Sample Grant Watch List

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Noncompliance List No. 20XX-03 **Date:** May 15, 20XX
(Information in samples is for example only.)

Subject: **ACTION:** Distribution of Grants Watch and Noncompliance List 20XX-03 (as of May 15, 20XX)

From: Director, Airports Compliance and Management Analysis, ACO 1

INTERNAL USE ONLY

To: Director, Airport Planning and Programming, APP-1
Manager, Airports Financial Assistance Division, APP-500
Manager, Financial Analysis, APP-510
Manager, Programming Branch, AAP-520
AGI-6

The following obligated airports have been informally determined to be in noncompliance with their grant assurances and/or surplus property obligations as of May 15, 20XX. An airport is placed on the list below if it falls in one or more of the following categories: (1) airports with a formal finding of noncompliance under 14 CFR Part 16, (2) airports listed in the Airport Improvement Program (AIP) Report to Congress under 49 U.S.C. § 47131 for certain land use violations, (3) airports that clearly remain in noncompliance despite FAA requests to the sponsor for corrective action and (4) airports where the violations are so egregious as to preclude additional federal financial assistance until the issues are resolved.

As a result, we request that the following airports not receive any further discretionary grants authorized under 49 U.S.C. § 47115 until corrective action is achieved bringing the airport into compliance. At this time, there are no formal findings of noncompliance under 14 CFR Part 16 necessitating the withholding of grants under 49 U.S.C. § 47114(c).

ACO-1 will update this listing as changes occur. This listing is automatically superseded as soon as a new is issued. Your assistance in helping us bring these airports into compliance with their federal obligations is most appreciated. Additional information on those airports having land use compliance issues may be available under the Compliance Section of the System of Airports Reporting (SOAR) by using the airport ID function or by generating a Compliance Report from the same database.

If you have any questions regarding the airports listed or if you have information related to the issues described, please contact _____, Airport Compliance Specialist (ACO-100) at (202) 267-XXXX.

Director, Airport Compliance and

Airports Noncompliance – May 15, 20XX

Airport	*ID*	*FAA Region*	*Corrective Action(s) Required Since*	*Type of Finding*	*Problem Area(s)*	*Remarks*
Sponsor (GA Airport)	XXX	XXX	Oct XX	Informal Finding	Exclusive Rights, Land Use	Although the sponsor is cooperating with the FAA, and the sponsor is actively pursuing resolution of the issue, an exclusive right that has been granted to one operator for the entire airport has not yet been eliminated. Therefore, the airport is classified as in noncompliance pending adequate and timely resolution.
Sponsor (Reliever Airport)	XXX	XXX	Oct XX	Informal Finding	Airport Closure, Land Use, Safety, Fee and Rental Structure, Airport Revenues	As of Sept 20XX, the airport sponsor had not taken corrective action regarding the Oct 20XX notification of grant assurances violations, including significant nonaeronautical land uses despite several FAA requests to do so. Therefore, the airport was classified as in noncompliance. Update Aug 20XX: because the closure of the airport was authorized by Congress, not the FAA, under Section 4408 of the Transportation Equity Act (Conference Report No. 109-203 for HR3), for all practical purposes, the airport sponsor is no longer a federally obligated airport and is not an eligible sponsor either.
Sponsor (Primary)	XXX	XXX	May XX	Informal Finding	Land Use, Fee and Rental Structure, Airport Revenues	Region initiated action. As of Sept 20XX, the airport sponsor has not taken corrective action to compensate the airport for unauthorized nonaeronautical uses of airport property. Therefore, the airport is classified as in noncompliance pending adequate and timely resolution.
Sponsor (GA Airport)	XXX	XXX	Jun XX	Informal Finding	Land Use/Closure	Upon land use inspection, it was noted that airport is closed and that is extensively used for nonaeronautical purposes. There is no record of FAA approval for the closure or those uses. Therefore, the airport is classified as in noncompliance pending adequate and timely resolution.

Appendix H: Sample Audit Information

P B T K PIERCY BOWLER TAYLOR & KERN
Certified Public Accountants • Business Advisors

Independent Auditors' Report on Financial Statements and Accompanying Information

The Honorable Members of the County Commission
County Manager and Director of Aviation
Clark County, Nevada

We have audited the accompanying financial statements of the Clark County Department of Aviation - Clark County, Nevada (the Department), as of and for the years ended June 30, 2003 and 2002. These financial statements are the responsibility of the Department's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Clark County Department of Aviation - Clark County, Nevada, as of June 30, 2003 and 2002, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

The management's discussion and analysis on pages 8 through 16 is not a required part of the basic financial statements but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming an opinion on the Department's basic financial statements. The introductory section, statistical section and accompanying information in the financial section on pages 41 through 47 are presented for the purpose of additional analysis and are not a required part of the basic financial statements. The accompanying information on pages 41 through 47 has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole. The introductory section and statistical section have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on them.

In accordance with *Government Auditing Standards*, we have also issued our report dated September 22, 2003, on our consideration of the Department's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grants. That report presented on page 47, is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

Piercy, Bowler, Taylor & Kern

September 22, 2003

CLARK COUNTY DEPARTMENT OF AVIATION
CLARK COUNTY, NEVADA

MANAGEMENT'S DISCUSSION AND ANALYSIS

For the Year Ended June 30, 2003

The following Management's Discussion and Analysis provides information regarding the financial operations and financial position as reported in the Clark County Department of Aviation (Department) accompanying Comprehensive Annual Financial Report for the fiscal year ended June 30, 2003.

The Department comprises a single enterprise fund of Clark County, Nevada (the County), and operates as a separate department of the County. The Board of County Commissioners is responsible for governing the affairs of the Department.

As an enterprise fund, users of the Department facilities provide the revenues to operate, maintain and acquire necessary services and facilities. The Department is not subsidized by tax revenues of the County.

The Department's vision is to be "A Global Leader." With this vision the Department operates the Clark County Airport System.

The fiscal year ended June 30, 2003, has seen a continuation of the effects of the terrorist attacks of September 11, 2001. The commercial aviation world has faced a continued struggle for survival with hopes for a brighter tomorrow and expectations of an economic rebound for the industry.

The following is a summary of statistical and operating results and highlights for the fiscal year ended June 30, 2003.

Airline rates and charges:

	2003	% Change From Prior Year	2002	% Change From Prior Year	2001	% Change From Prior Year
Landing fee per 1000 pounds	$ 1.22	0.0%	$ 1.22	-1.6%	$ 1.24	0.0%
Terminal rental rates per square foot per annum	68.04	0.0%	68.04	-1.4%	69.00	-1.7%
Gate use fee per year	62,700	0.0%	62,700	-2.3%	64,200	-0.9%

The Department is committed (especially in these uncertain times) to manage airline rates and charges to its benefit and that of the air carriers bringing passengers to Southern Nevada. This continuing commitment is evidenced by the fact that airline rates and charges have been increased only one time in the past fourteen years.

Appendix I: SPA Reg. 16

[SPA Reg. 16]

PART 8316—SURPLUS AIRPORT PROPERTY

Sec.

8316.1 Definitions.
8316.2 Scope.
8316.3 Declaration of policy.
8316.4 Surplus airport disposal committee.
8316.5 Declarations.
8316.6 Communications after notice of transmittal.
8316.7 Withdrawals.
8316.8 Permissive use by other Government agency.
8316.9 Disposal of leasehold interests and improvements by owning agencies.
8316.10 Restrictions on use and disposition.
8316.11 Functions of the Civil Aeronautics Administration.
8316.12 Classification of property by Administrator.
8316.13 Disposal as airport property subject to reservations, restrictions, and conditions.
8316.14 Care and handling.
8316.15 Priorities.
8316.16 Permits to operate or use.
8316.17 Valuation.
8316.18 Prices.
8316.19 Submission to Attorney General.
8316.20 Form of transfer.
8316.21 Conditions in instrument of transfer.
8316.22 Records and reports.
8316.23 Regulations by agencies to be reported to the Administrator.
8316.24 Exceptions.

AUTHORITY: §§ 8316.1 to 8316.24, inclusive, issued under Surplus Property Act of 1944, 58 Stat. 765, 50 U. S. C. App. Sup. 1611, and under Pub. Law 181, 79th Cong., 1st Sess.

§ 8316.1 *Definitions*—(a) *Terms defined in act.* Terms not defined in paragraph (b) of this section which are defined in the Surplus Property Act of 1944 shall in this part have the meaning given to them in the act.

(b) *Other terms.* (1) "Airport property" means the entire interest owned by the Government in any airport.

(2) "Airport" means any area of land or water and the improvements thereon primarily used, intended to be used, or determined by the Administrator to be suitable for use for or in connection with the landing and take-off or navigation of aircraft. The term includes "landing areas", "building areas", "airport facilities", and "non-aviation facilities".

(3) "Airport facilities" means any buildings, structures, improvements, and operational equipment, other than non-aviation facilities, which are used and necessary for or in connection with the operation and maintenance of an airport.

(4) "Building area" means any land, other than a landing area, used or necessary for or in connection with the operation or maintenance of an airport.

(5) "Landing area" means any land, or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, take-offs, and parking of aircraft. The term includes, but it is not limited to, runways, strips, taxiways, and parking aprons.

(6) "Non-aviation facilities" means any buildings, structures, improvements, and equipment, located in a building area and used in connection with but not required for the efficient operation and maintenance of the landing area or the airport facilities.

(7) "State or local government" means any State, territory, or possession of the United States, the District of Columbia, and any political subdivision or instrumentality thereof.

(8) "Surplus airport property" means any airport property which has been determined to be surplus to the further needs and responsibilities of the owning agency in accordance with the act.

§ 8316.2 *Scope.* This part applies to surplus airport property located within the continental United States, its territories and possessions.

§ 8316.3 *Declaration of policy.* It is hereby declared that the national interest requires the disposal of surplus airport property in such a manner and upon such terms and conditions as will encourage and foster the development of civil aviation and provide and preserve for civil aviation and national defense purposes a strong, efficient, and properly maintained nationwide system of public airports, and will insure competition and will not result in monopoly. It is further declared that in making such disposals of surplus airport property the benefits which the public and the Nation will derive therefrom must be the principal consideration and the financial return to the Government a secondary consideration. Airports which are surplus to the needs of owning agencies may be essential to the common defense of the Nation or valuable in the maintenance of an adequate and economical national transportation system. In such cases and in accordance with the rules established herein such airports may be disposed of to State or local governments for considerations other than cash. Where airports are not desired as such by Government agencies or State or local governments, they shall be classified as airports or otherwise according to their best use and any disposition hereunder shall be for a monetary consideration.

§ 8316.4 *Surplus airport disposal committee.* (a) Pursuant to arrangements made with other interested Government agencies, there is hereby established a Surplus Airport Disposal Committee which shall function as an advisory committee to the Surplus Property Administrator and shall consist of five members, one to be designated by the Secretary of War, one by the Secretary of the Navy, one by the Administrator of the Civil Aeronautics Administration, one by the disposal agency, and one by the Surplus Property Administrator who shall serve as Chairman of the Committee.

(b) It shall be the duty of the Surplus Airport Disposal Committee to advise the Surplus Property Administrator as to the manner in which and the conditions upon which the disposal agency should be authorized to dispose of particular airport properties, and as to all other matters upon which advice may be requested by the Administrator.

§ 8316.5 *Declarations.* (a) Declarations of surplus airport property including leasehold interests under leases or similar rights of occupancy not cancelled by the owning agency pursuant to § 8316.9 hereof, shall be filed with the Surplus Property Administrator as provided in Part 8301.[1] The Administrator will transmit two copies of the declaration to the appropriate disposal agency with directions, and will notify the owning agency thereof.

(b) The owning agency may give to the Surplus Airport Disposal Committee a pre-declaration notice accompanied by a tentative statement of the conditions, reservations, and restrictions which it may request, pursuant to § 8316.10 hereof, to be imposed on the disposal of the airport property.

§ 8316.6 *Communications after notice of transmittal.* After the owning agency receives notice of transmittal to a disposal agency of a declaration of surplus airport property, communications of the owning agency with respect to such airport property shall be addressed to the disposal agency, except where communication with the Administrator is required hereunder.

§ 8316.7 *Withdrawals.* If the owning agency wishes to withdraw surplus airport property before it has received notice of the transmittal of the declaration to the disposal agency, it may do so by filing Form SPB–5 with the Administrator. After the owning agency has received notice of such transmittal, it may withdraw such property by filing the form with the disposal agency. Such withdrawals may be made only with the consent of the Administrator if the property has not been assigned to a disposal agency or with the consent of the disposal agency thereafter, except as hereinafter provided.

§ 8316.8 *Permissive use by other Government agency.* When a Government agency utilizing Government-owned real property for or in connection with an airport, under some form of arrangement with the Government agency having primary jurisdiction over the property, no longer needs the property for airport purposes, such real property and any interest therein shall be returned to the agency having primary jurisdiction in accordance with the arrangement made between such agencies. Where, however, the property has been substantially improved while being so utilized, the agency utilizing the property shall make a report of the facts to the Administrator for his determination as to the disposition of the improvements; and such report shall be treated as a declaration of surplus as to such improvements.

[1] SPA Reg. 1 (10 F.R. 14064).

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§ 8316.9 *Disposal of leasehold interests and improvements by owning agencies.* (a) At any time after thirty (30) days prior notice to the Surplus Airport Disposal Committee, no objection thereto having been made by such committee, an owning agency may dispose of airport property in the manner provided in this section without declaring it surplus; provided that such property is held only under lease or other similar right of occupancy which is for the duration of the war or the national emergency and six months thereafter, or is for an unexpired period of not more than twelve months and has no renewal or purchase privilege.

(b) Any such leasehold interest or similar right of occupancy shall be terminated or cancelled by the owning agency and any Government-owned improvements disposed of by any one or more of the following methods:

(1) By transfer to the lessor or owner of the premises in full or partial satisfaction of any obligation to restore the premises, provided the lessor or owner shall pay for any excess value.

(2) By disposition in accordance with contractual commitments.

(3) By sale intact.

(4) By transfer to another Government agency intact.

(5) By disposal of all readily severable property in accordance with any other applicable regulations of the Administrator.

(6) By demolition contract let only on competitive bids whereby title to material not readily severable passes to the demolition contractor.

(7) By demolition of property not readily severable and disposal of surplus used building and construction materials by competitive bidding and of other resulting materials in accordance with any other applicable regulations of the Administrator. Any competitive bidding shall be conducted under rules and regulations prescribed by the owning agencies containing provisions, among others, requiring lots to be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms, requiring wide public notice concerning such sales and time intervals between notice and sale adequate to give all interested purchasers a fair opportunity to buy, and reserving the right to reject all bids.

(8) By abandonment if the owning agency has no obligation to remove such improvements and it finds in writing that such property is without commercial value or that the estimated cost of its care, handling, removal, and disposition would exceed the estimated proceeds of sale.

(c) Disposals of improvements by owning agencies hereunder shall be made at prices that are fair and reasonable under all the circumstances taking into account the limited sale value of the property in place and its special value, if any, to the purchaser. In all cases, prior to disposal a written estimate shall be made of both the value of the improvements for use in place and their salvage value. The disposal agencies for industrial and marine real property shall, upon request, furnish advice and assistance to the owning agencies in the establishment of fair and reasonable prices hereunder.

(d) Where an airport consists of property a portion of which is owned by the Government and the balance of which is property under lease to the Government, such lease shall not be cancelled by the owning agency, but the leasehold interest as well as the Government-owned property shall be declared surplus.

§ 8316.10 *Restrictions on use and disposition.* When an owning agency declares airport property surplus, such owning agency, the Civil Aeronautics Administration, or the Surplus Airport Disposal Committee may submit to the Administrator a request that the disposal be made subject to any or all of the following reservations, restrictions, and conditions:

(a) *Use by the transferee.* (1) That the airport shall be used for public airport purposes on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of section 303 of the Civil Aeronautics Act of 1938.

(2) That the entire landing area and all improvements, facilities, and equipment of the airport shall be maintained at all times in good and serviceable condition to assure its efficient operation.

(3) That insofar as is within its powers and reasonably possible the transferee shall prevent any use of land either within or outside the boundaries of the airport, including the construction, erection, alteration, or growth, or any structure or other object thereon, which use would be a hazard to the landing, taking off, or maneuvering of aircraft at the airport, or otherwise limit its usefulness as an airport.

(4) That the building areas and nonaviation facilities shall be used, altered, modified, or improved only in a manner which does not interfere with the efficient operation of the landing area and of the airport facilities.

(b) *Use by the Government.* (1) That the Government shall at all times have the right to use the airport in common with others; *Provided, however,* That such use may be limited as may be determined at any time by the Civil Aeronautics Administration or the successor Government agency to be necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict Government use to less than twenty-five (25) per centum of capacity of the airport. Government use of the airport to this extent shall be without charge of any nature other than payment for damage caused by Government aircraft.

(2) That during the existence of any emergency declared by the President or the Congress, the Government shall have the right without charge except as indicated below to the full, unrestricted possession, control, and use of the landing area, building areas, and airport facilities or any part thereof, including any additions or improvements thereto made subsequently to the declaration of the airport property as surplus; *Provided, however,* That the Government shall be responsible during the period of such use for the entire cost of maintaining all such areas, facilities, and improvements, or the portions used, and shall pay a fair rental for the use of any installations or structures which have been added thereto without Federal aid.

§ 8316.11 *Functions of the Civil Aeronautics Administration.* In the disposal of surplus airport property under this part, the disposal agency may avail itself of the services of representatives of the Civil Aeronautics Administration in all negotiations for the disposal of the property and shall consult with and obtain the recommendations of the Civil Aeronautics Administration as to all decisions pertaining to civil aviation. In addition the Civil Aeronautics Administration shall furnish such technical assistance as the Surplus Property Administrator or the disposal agency may request and the Civil Aeronautics Administration is in a position to provide.

§ 8316.12 *Classification of property by Administrator.* (a) Upon receipt of a declaration of surplus airport property, the Surplus Property Administrator shall consider any requests for reservations, restrictions, and conditions submitted by the owning agency, or by the War and Navy Departments, or by the Civil Aeronautics Administration, or by the Surplus Airport Disposal Committee, and shall determine the future uses for which the property is best adapted, how the property can best be disposed of to meet the objectives of the act, and whether any or all of the requests for reservations, restrictions and conditions should be imposed.

(b) If the Administrator classifies the property for disposal as an airport, it shall be disposed of under this part; if the Administrator classifies it for disposition otherwise than as airport property and the owning agency does not withdraw it as hereinafter provided, it shall be assigned to the appropriate disposal agency and disposed of under other applicable regulations of the Administrator. Where a landing area is used in connection with an industrial installation, the Administrator shall determine whether to classify such landing area and its airport facilities as airport properties for disposal under this part, or whether to classify the landing area otherwise and assign it for disposal by the appropriate disposal agency.

§ 8316.13 *Disposal as airport property subject to reservations, restrictions, and conditions.* (a) If the Administrator classifies the property for disposal as an airport, there shall be imposed on the disposal of the airport property a condition that there shall be no exclusive right for the use of any landing area or air navigation facilities upon which Federal funds have been expended; and there shall also be imposed any or all of the reservations, restrictions, and conditions requested pursuant to § 8316.10 hereof and approved by the Administrator; and the disposal agency shall immediately undertake to so dispose of it as such. Notice of availability shall be given to Government agencies listed in Exhibit A hereto; and to the State and political

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subdivisions and any municipality in which it is situated and to all municipalities in the vicinity thereof; and to the general public.

(b) In the event (1) the Administrator does not classify the property for disposal as airport property when so requested, or (2) does not approve any or all of the requested reservations, restrictions, and conditions, or (3) the disposal agency finds that it is unable to dispose of the property with the reservations, restrictions, and conditions imposed under § 8316.10 or as an airport, the owning agency shall be notified, and the owning agency may, if it desires, withdraw such airport property from surplus on making reimbursement for the cost of care and handling, or recommend the elimination or modification of such reservations, restrictions, and conditions, or the disposal of the property otherwise than as an airport. In cases arising under subparagraph (3) above, the disposal agency shall also notify the Administrator.

(c) Where the owning agency has withdrawn the airport property from surplus pursuant to the provisions of paragraph (b), and later re-declares such property surplus, with or without requesting conditions for its disposition, the Administrator shall determine the terms and conditions upon which it shall be disposed of and the proper classification to be given and shall assign it to the appropriate disposal agency for disposal.

(d) The disposal agency shall widely publicize the airport property, giving information adequate to inform interested or prospective transferees as to the general nature of the property, and any reservations, restrictions, or conditions that have been imposed as to its future use. Such publicity shall be by public advertising, and may include press releases, direct circularization to potential transferees, and personal interviews. The disposal agency shall upon request supply to bona fide prospective transferees all available information. The disposal agency shall establish procedures so that all prospective transferees showing due diligence will be given full and complete opportunity to bid.

(e) All priority holders and any other persons interested in purchasing the airport property shall submit their proposals in writing, setting forth the details of their offers and their willingness to abide by the terms, conditions, and restrictions upon which the property is offered.

§ 8316.14 *Care and handling.* (a) (1) Until the disposal agency is prepared to assume responsibility for care and handling and accountability and so notifies the owning agency, the owning agency shall continue to be responsible therefor. The disposal agency shall have access to the property and the records of the owning agency with respect thereto.

(2) The agency then charged with the responsibility for care and handling shall make or cause to be made repairs necessary for the protection and maintenance of the property. It shall give careful consideration to what improvements or changes may be necessary for the completing, converting, or rehabilitating of the property in order best to attain the applicable objectives of the act, and . , make commitments and expenditures within its budgetary allotment for such purposes to effect such improvements or changes; *Provided, however,* That no commitments for more than $10,000 of any such budgetary allotment shall be made by such agency for any such changes and improvements in connection with any one airport without prior approval of the Administrator in writing.

(3) The agency then charged with the responsibility for care and handling of surplus airport property shall submit to the Administrator for consideration and direction the renewal of leases or the exercise of options relating to surplus airport property, with the recommendations of such agency.

(4) The disposal agency shall pay the owning agency for the cost of care and handling surplus airport property subsequent to its declaration as such under Part 8301, including rental and taxes when due, until accountability and responsibility for such property is assumed by the disposal agency.

(b) *Transfer of title papers, documents, etc.* Upon request of the disposal agency, the owning agency shall immediately supply the disposal agency with the originals or true copies of all information and documents pertaining to the airport property which are in the possession of the owning agency and copies of which have not been filed with the declaration. These shall include appraisal reports, abstracts of title, maps, surveys, tax receipts, deeds, affidavits of title, copies of judgments, declarations of taking in condemnation proceedings, and all other title papers relating to the property. All such papers and documents which may still be needed by the owning agency shall be returned to it as soon as the needs of the disposal agency have been satisfied. The disposal agency may transfer to the purchaser of airport property, as part of the disposal transaction, any abstract of title or title guarantee which relates to the property being transferred and which is no longer needed either by the owning or by the disposal agency.

§ 8316.15 *Priorities.* (a) Government agencies shall be accorded first priority, and State and local governments, including any municipality in which the property is located and all municipalities in the vicinity thereof, second priority to acquire surplus airport properties. If the airport is offered for disposition subject to any or all of the conditions contained in § 8316.10, all priorities shall be exercised subject to such conditions.

(b) *Time and method of exercise.* The time for exercise of priorities by Government agencies or State or local governments shall be a period of thirty (30) days after the date of notices of availability given to them respectively, which notices may run concurrently; or such additional period as the disposal agency or the Administrator may allow when necessary or appropriate to complete proposals made, and in order to facilitate disposition of the property. Within such period the priority holder shall indicate his intention to exercise the priority by making an offer or by submitting to the disposal agency a written application requesting that the airport property be held for disposal to it. Such offer or application shall state the terms on which the applicant is willing to acquire the property, or state that a transfer without reimbursement or transfer of funds is authorized by law, and shall contain all pertinent facts pertaining to the applicant's need for the property. If the applicant requires time to acquire funds or to obtain authority to take the property, it shall so state and indicate the length of time needed for that purpose. Upon receipt of an offer or an application, with such a statement, the disposal agency shall review the application, determine what time, if any, shall be allowed the applicant to conclude the acquisition of the property, and advise the applicant of such determination. All priorities shall expire if not exercised within the priority period and such additional time as the disposal agency may allow.

(c) *Determination between claimants having same priority.* Whenever two or more Government agencies or two or more State or local governments, respectively, shall during the priority period make acceptable offers for the same property, the matter shall be determined on the basis of the relative needs of the claimants and the public interest to be served. If the matter cannot be determined by agreement between the claimants, disposal of such property shall not be made until the disposal agency shall have reported the matter in writing to the Administrator, setting forth its recommendations and all the facts, including the basis of the respective claims, together with any statements in writing that the claimants or any of them may wish to file with the Administrator. The Administrator will review the matter and report his determination to the disposal agency. The Administrator's determination shall be final for all purposes.

§ 8316.16 *Permits to operate or use.* (a) Pending the disposition of surplus airport property by sale or lease, the owning agency, prior to the date accountability is assumed by the disposal agency, and the disposal agency thereafter, may (1) grant a revocable permit to maintain and operate the landing area and airport facilities included within any surplus airport property as a public airport to a Government agency or State or local government evincing an interest in acquiring the property with or without cash payment and on such terms as the accountable agency deems proper, or (2) grant a revocable permit for the landing area and airport facilities to be used for the landing, take-off, servicing, and operation of duly licensed aircraft.

(b) Permits or licenses to operate the property under subparagraph (1) or to use the facilities under subparagraph (2) shall be subject to the approval of the Administrator and to compliance by the licensees with all laws, ordinances, or other applicable regulations.

§ 8316.17 *Valuation.* (a) No appraisal need be made where transfer to a Government agency without reim-

bursement or transfer of funds or disposal to a State or local government without a cash payment is contemplated. If it is determined that the property will not be so transferred or disposed of, the disposal agency shall establish its estimate of the fair value of the property.

(b) The estimate of fair value shall represent the maximum price which a well-informed buyer, acting intelligently and voluntarily, would be warranted in paying if he were acquiring the property for long-term investment or for continued use in the light of the obligations to be assumed by the buyer.

(c) If at any time prior to the sale of an airport property conditions affecting its value change, the disposal agency shall modify its estimate accordingly.

(d) For the purpose of establishing its estimate of fair value of the property, the disposal agency may utilize the services of its own staff, the staff of another Federal agency or, where deemed necessary, independent appraisers, and shall maintain an adequate written record to support its estimate. Each such appraisal record or report shall contain the appraiser's certificate that he has no interest, direct or indirect, in the property or its sale. In cases where owning agencies submit appraisal reports which contain adequate and reliable information, the disposal agency may use such information in establishing its estimate of the fair value of the property.

§ 8316.18 *Prices.* (a) The disposal agency shall determine the price at which a disposal of an airport property shall be made.

(b) Sale of an airport property as an airport to a buyer entitled to a priority shall be at a price which is substantially the same as the estimate of fair value, except that (1) a transfer to another Government agency without reimbursement or transfer of funds may be made where authorized by law, or (2) upon the authorization of the Administrator the disposal agency shall dispose of airport property to any State or local government without a cash payment in consideration of the acceptance by such State or local government of all reservations, restrictions, and conditions imposed by the Administrator.

(c) Sale of an airport property as an airport to any purchaser other than a buyer entitled to a priority shall be at a price approximating the estimate of fair value as established by the disposal agency and shall be made at the highest price obtainable, except that the applicable objectives of the act may be taken into consideration in rejecting offers regardless of their amounts or in selecting a buyer from among equal bidders. Sales under this paragraph shall be for a monetary consideration.

§ 8316.19 *Submission to Attorney General.* Whenever any disposal agency shall begin negotiations for the disposition to private interests of an airport property which cost the Government $1,000,000 or more, the disposal agency shall promptly notify the Attorney General of the proposed disposition and the probable terms or conditions thereof, and of the extent and nature of the facilities installed or provided thereon.

§ 8316.20 *Form of transfer.* Deeds or instruments of transfer shall be in the form approved by the Attorney General. Transfers of title shall be by quit-claim deed where the airport property is transferred without a cash payment. If in other cases the disposal agency finds that a warranty deed is necessary to obtain a reasonable price for the property or to render the title marketable, such form of deed may be used where recommended and approved by the Attorney General as provided in the act.

§ 8316.21 *Conditions in instrument of transfer.* Any deed, lease, or other instrument executed to transfer airport property pursuant to any disposal made under this part, containing reservations, restrictions, or conditions as to the future use or maintenance of the property, shall contain provisions in effect:

(1) That upon a breach of any of the reservations, restrictions, or conditions by the immediate or any subsequent transferee, the title, right of possession, or other right transferred shall at the option of the Government revert to the Government upon demand; and

(2) That any such airport property may be successively transferred only with the approval of the Civil Aeronautics Administration or the successor Government agency and with the proviso that any such transferee assumes all the obligations imposed by the disposal agency in the disposal to the original purchaser.

§ 8316.22 *Records and reports.* Owning and disposal agencies shall prepare and maintain such records as will show full compliance with the provisions of this part as to each disposal transaction. The information in such records shall be available at all reasonable times for public inspection. Reports shall be prepared and filed with the Surplus Property Administrator in such manner as may be specified by order issued under this part subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

§ 8316.23 *Regulations by agencies to be reported to the Administrator.* Each owning agency and each disposal agency shall file with the Administrator copies of all regulations, orders, and instructions of general applicability which they may issue in furtherance of the provisions, or any of them, of this part.

§ 8316.24 *Exceptions.* Exceptions to any portion of the procedure herein may be made by direction of the Administrator where such exception would not be in violation of the act.

This part shall become effective November 16, 1945.

W. STUART SYMINGTON,
Administrator.

NOVEMBER 16, 1945.

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Appendix J: DoD Base Realignment and Closure (BRAC)

Fiscal Years 1988, 1991, 1993, 1995

Status of Transition of Military Airfields to Civil Airports

Military Airport Property Transferred to Civil Sponsor by Deed

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*Arpt Role*	*Loc. ID*
1	Fritzsche AAF	Marina, CA	91	95	1	Marina Municipal	GA	OAR
2	Norton AFB	San Bernardino, CA	88	94	1	San Bernardino Intl	R	SBD
3	Williams AFB	Phoenix, AZ	91	93	3	Williams Gateway	R	IWA
4	Cecil Field NAS	Jacksonville, FL	93	98	4	Cecil Field	R	VQQ
5	K.I. Sawyer AFB	Gwinn, MI	93	95	1	Sawyer Airport	PR	SAW
6	Memphis NAS	Millington, TN	93	95	1	Millington Municipal	GA	NQA
7	England AFB (50%)	Alexandria, LA	91	92	2	Alexandria International	PR	AEX
8	Bergstrom AFB (37%)	Austin, TX	91	93	2	Austin-Bergstrom International	PR	AUS
9	Barbers Point NAS	Oahu, HI	93	97	3	Kalaeloa	GA	JRF
10	Agana NAS	Agana, GU	93	98	2	Guam International	PR	GUM

Military Airport Property Transferred to Civil Sponsor by Long Term Lease

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*Arpt Role*	*Loc. ID*
11	Chanute AFB,	Rantoul, IL	88	93	2	Rantoul National Aviation Center	GA	2I5
12	George AFB	Victorville, CA	88	92	2	Southern California Logistics	R	VCV
13	Mather AFB	Sacramento, CA	88	93	2	Sacramento Mather	R	MHR
14	Pease AFB	Portsmouth, NH	88	91	1	Pease International Tradeport	CM	PSM
15	Castle AFB	Merced, CA	91	95	1	Castle Airport	GA	MER
16	Eaker AFB	Blytheville, AR	91	92	1	Arkansas International	GA	BYH
17	Myrtle Beach AFB	Myrtle Beach, SC	91	93	1	Myrtle Beach International	PR	MYR
18	Rickenbacker AFB	Columbus, OH	91	94	2	Rickenbacker International	R	LCK
19	Wurtsmith AFB	Oscoda, MI	91	93	1	Oscoda-Wurtsmith	GA	OSC
20	Tipton AAF	Odenton, MD	88	95	1	Tipton Airport	R	FME
21	Plattsburgh AFB	Plattsburgh, NY	93	95	1	(Runway currently closed to Public)	GA	PBG

Military Airport Property Transferred to Civil Sponsor Joint Use Agreement

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*Arpt Role*	*Loc. ID*
22	Grissom AFB	Peru, IN	91	94	1	Grissom ARB (Grissom Aeroplex)	GA	GUS
23	March AFB	Riverside, CA	93	96	1	March ARB (March Inland Port)	R	RIV
24	Blackstone AAF	Blackstone, VA	95	97	2	Allen C. Parkinson / BAAF	GA	BKT

Military Airport Property Expected to be Transferred to Civil Sponsor

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*Arpt Role*	*Loc. ID*
25	Griffiss AFB	Rome, NY	93	95	1		GA	RME

Military Airport Property That Could be Transferred to Civil Sponsor Planning Underway

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*Arpt Role*	*Loc. ID*
26	El Toro MCAS	Santa Ana, CA	93	98	5		R	OCX
27	Dallas NAS	Ft. Worth, TX	93	95	1		R	NBE
28	Warminster NADC	Philadelphia. PA	91	94	1		GA	NJP
29	Adak NAS	Adak Island,AK	95	98	2		CM	ADK
30	Allen AAF	Fort Greely, AK	95		1	Realigned Airfield	GA	BIG

Military Airfields With Potential for Joint Civil/Military Use

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*Arpt Role*	*Loc. ID*
31	Gray AAF (Ft Hood)	Killeen, TX	Not	BRAC	1	Use by ACs – suppl'ent Killeen Muni	PR	BIF
32	Phillips AAF	Aberdeen Prov. MD	Not	BRAC	1	Harford County	GA	APG
33	Malmstrom AFB	Great Falls, MT	95		1	Realigned airfield	GA	GFA

Military Airfields Converting to Civil Use – Not Open for Public Use

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*Arpt Role*	*Loc. ID*
34	McClellan AFB	Sacramento, CA	95	00	1	(Private Use)	GA	MCC
35	Kelly AFB	San Antonio, TX	95	99	1	(Private Use Airport)	GA	SKF
36	Moffett NAS	San Jose, CA	91	94	2	Transferred to NASA	NA	NUQ
37	Loring AFB	Loring, Maine	91	94	1	Loring International (Private use)	GA	LIZ
38	Reese AFB	Lubbock, TX	95	97	3		GA	REE
39	Calverton NWIRP	Calverton, NY	N/A		2	--Surplused by Special Legislation	GA	CTO

Excess Military Assets With Minimal Conversion Potential for Civil Airport Use

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*	*Civilian Airport Name*	*ArptRole*
40	Hamilton AAF	San Francisco, CA	88	93	1	No local airport sponsor	SRF
41	Alameda NAS	Alameda, CA	91	97	2	No local airport sponsor	NGZ
42	Chase NAS	Beeville, TX	91	92	3	No local airport sponsor	NIR
43	Moore AAF (Ft. Devens)	Boston, MA	91	95	1	No local airport sponsor	AYE
44	Richards-Gebaur ARB	Kansas City, MO	91	94	1	Richards-Gebaur Memorial (Closed Jan2000)	GVW
45	Tustin MCAS	Tustin, CA	91	99	1	No local airport sponsor	NTK
46	Glenview NAS	Glenview, IL	93	97	2	No local airport sponsor	NBU
47	So. Weymouth NAS	So. Weymouth, MA	95	97	2	No local airport sponsor	NZW
48	Seneca AAF	Romulus, NY	95	00	1	No local airport sponsor	SSN
49	Homestead AFB	Homestead, FL	93	94	1	Homestead Regional	HST

Former Military Airfields Receiving Military Airport Program Funding (Non-BRAC) and Hence Obligated by Grant Assurances

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*
1.	Stewart Int'l (SWF)	Newburgh, N.Y.	05-30-91	1995	21.0
2.	Ellington Field (EFD)	Houston, TX	07-03-91	1995	15.81
3.	Albuquerque Int'l (ABQ)	Albuquerque, NM	09-20-91	1995	14.20
4.	Manchester (MHT)	Manchester, NH	09-24-91	1995	15.63
5.	Lincoln Municipal (LNK)	Lincoln, NE	09-26-92	1996	11.76
6.	Laredo Int'l (LRD)	Laredo, TX	09-20-93	1997	18.53
7.	Smyrna Airport (MQY)	Smyrna, TN	09-20-93	1997	6.73762
8.	Chippewa Co. Int'l (CIU) (Kincheloe, MI)	SaultSte Marie, MI	09-30-98	2002	3.130445

Joint Use Military Airfields Receiving Military Airport Program Funding And Hence Obligated by Grant Assurances

#	*Military Airfield Name (% deeded)*	*Location*	*Closure Approve*	*Mission Move*	*No. R/Ws*
1.	Mid America (Scott AFB) (BLV)	Belleville, IL	09-19-91	1995	25.0
2.	Gray AAF	Killeen, TX			0

How Can Base Realignment and Closure (BRAC) Property be Used for a Public Airport?

One of the most common and effective reuses of an Air Force installation is as a public airport. This reuse extensively uses existing facilities and can be obtained at no cost through a public airport conveyance, subject to support by the Federal Aviation Administration (FAA).

Who can receive a public airport conveyance?

The appropriate public agency that will operate the airport (*e.g.*, an airport authority) will generally be the recipient. If a local redevelopment authority (LRA) has such powers, it may receive the airport property.

What's the process for obtaining property as a public airport?

An LRA should consult with the Air Force Real Property Agency (AFRPA) and the FAA as soon as a public airport is identified as a likely reuse. AFRPA provides the FAA with a description of the installation property and facilities. FAA reviews the regional and national air traffic patterns, plans, and projections and considers the effects (beneficial and adverse) of converting the installation to a public airport. Based on these considerations, the FAA determines whether the installation airfield is suitable for conversion to public use. FAA then informs AFRPA and the LRA of its findings. If the FAA finds that the installation is suitable for use as a public airport, the LRA may request FAA funding of an Airport Master Plan. Funding of plans is provided through the Airport Improvement Program (AIP), from the Aviation Trust Fund. If funding is granted, the LRA (or other local airport authority) may proceed with development of its Airport Master Plan, including an Airport Layout Plan, in cooperation with the FAA. The Master Plan will include the property and facilities specifically required for aviation operations, as well as additional property needed to develop sources of revenue from nonaviation businesses (nonaviation revenue-generating property) in order to support aviation operations. The plan should be coordinated with other ongoing redevelopment planning to ensure that all proposed land uses are compatible. The authority submits the completed plan and application for public airport conveyance to AFRPA for review, and AFRPA forwards the application to FAA. The application must demonstrate a financial need for the nonaviation revenue-generating property, *i.e.*, the cost of supporting aviation operations requires the income that would be created on the additional real estate. AFRPA, if necessary, can help facilitate resolution of any conflicts among the two parties (FAA and LRA) regarding property boundaries, particularly with respect to the amount of nonaviation revenue-generating property.

Who decides whether to grant a public airport conveyance?

Upon request from AFRPA, the FAA formally recommends to AFRPA, in writing, whether the property should be conveyed for public airport purposes, with the use conditions it deems appropriate. If the FAA accepts the authority's application, it will recommend that AFRPA transfer the property at no cost to the appropriate local authority. The accepted application and Airport Master Plan should be incorporated into the community's redevelopment plan. AFRPA will issue a formal Record of Decision (ROD) if it decides to grant a public airport conveyance. FAA issues its own ROD to indicate that the property is essential, suitable, or desirable for airport purposes. AFRPA is then responsible for ultimate transfer of the airport property directly to the recipient airport authority, although FAA may request an opportunity to review the proposed deed of conveyance.

What conditions apply to public airports?

Property conveyed for use as a public airport will be subject to restrictions imposed by the FAA. Standard provisions include that the property may not be used for other purposes without FAA consent, and that the airport must be for use by the general public. Failure to comply with the FAA's use restrictions will result in the property reverting to the federal government. In addition, FAA will only recommend for transfer those parcels that are directly necessary for aviation operations or for those nonaviation revenue-generating activities that are required to offset the costs of the aviation operations. Disputes concerning appropriate property boundaries should be resolved among FAA, AFRPA, and the airport sponsor. Funds from the Aviation Trust Fund can be used for Airport Improvement Program (AIP) eligible construction projects at public airports included in the National Plan of Integrated Airport Systems.

What if FAA doesn’t approve the public airport?

If FAA initially determines the airfield to be unsuitable for public use, FAA will not consider the property further for public airport use and will not make a positive recommendation to the Air Force. Without the FAA's recommendation, the Air Force cannot convey property by a public airport conveyance. The LRA may wish to seek alternate disposal mechanisms for the airfield, including sale for private use.

Appendix J-1: Airport Joint Use Agreement for Military Use of Civilian Airfields

FOR EXAMPLE ONLY

NATIONAL GUARD BUREAU
AIR NATIONAL GUARD PAMPHLET 32-1001
8 APRIL 2003

AIRPORT JOINT USE AGREEMENTS FOR MILITARY USE OF CIVILAN AIRFIELDS

This pamphlet implements AFPD 10-10, *Civil Aircraft Use of United States Air Force Airfields*, and AFPD 32-10, *Installations and Facilities*, and applies to Air National Guard (ANG) flying units that operate on public airports. This pamphlet provides guidance for negotiating fair and reasonable charges to the government (AF) for joint use of the flying facilities of a public airport.

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed. It adds clarification of responsibilities, standard forms and processes, allowable costs and calculation procedures. It corrects policy with regard to local operations agreements, joint participation projects and long-term leases.

1. General.

1.1. Title 49, United States Code (U.S.C.), Chapter 471, Airport Development (Title 49 U.S.C., §§ 47101-47129), provides that each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by government aircraft in common with other aircraft, except that if the use is substantial, the government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used.

1.2. Federal Aviation Administration (FAA) Grant Assurance 27, *Use by Government Aircraft*, defines substantial use as any one of the following:

1.2.1. Five (5) or more government aircraft regularly based at the airport or on land adjacent thereto

1.2.2. The total number of movements (counting each landing as a movement) of government aircraft is 300 or more in a month.

1.2.3. The gross accumulative weight of government aircraft using the airport (the total movement of government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds in a month.

1.3. Where the ANG has aircraft permanently assigned on a civilian airport, substantial use will be acknowledged and a payment agreement made to reimburse the airport for a reasonable share, proportionate to the total military use (assigned and transient), of the cost of operating and maintaining the facilities used.

2. Responsibilities and Authorities.

2.1. Deputy Assistant Secretary of the Air Force Installations, (SAF/IEI), is responsible for policy and oversight for the Air Force's installation programs and is the approval authority for Airport Joint Use Agreements (AJUAs). All negotiated agreements must be submitted in writing to SAF/IEI for approval prior to signature by the concerned parties

2.2. Air Force General Counsel, (SAF/GCN) will be a coordinating office on negotiated agreements to ensure they are legally sufficient prior to approval by SAF/IEI.

2.3. The Air National Guard Civil Engineer, (ANG/CE) is responsible for negotiation of agreements where a based ANG unit is the host. Negotiations will be coordinated with all other military units assigned at or operating from the location. Authority to negotiate agreements and renewals will not be delegated to the field unit.

2.4. United States Property and Fiscal Officer (USPFO), will act in a advisory role during negotiations for ANG and Army National Guard units, but will have no authority to conduct negotiations or agree to terms and conditions for the AJUA.

2.5. ANG Units. The Base Civil Engineer (BCE) will facilitate data collection and meetings, but will have no authority to conduct negotiations or agree to terms and conditions for the AJUA. Operations personnel will assist in collecting flight data and validating percentage of flying by non-ANG units. Various base offices will assist in calculating the value of ANG provided services

3. Standard Procedures and Formats.

To ensure consistency among agreements, all AJUAs will follow a standard process for calculation of fees and a standard format agreement (**Attachment 2**).

3.1. Air National Guard Civil Engineer Programs Division (ANG/CEP) will initiate renewal negotiations with airport owner/operators not less than one (1) year prior to the expiration of the AJUA then in effect. The new AJUA should be signed by all parties prior to the expiration of the existing agreement.

3.1.1. When a renewal can not be completed prior to expiration of the existing agreement, the unit must take steps to ensure all payments are terminated.

3.1.2. If fiscal years are crossed while negotiations are ongoing, funds in the budget for each year should obligated via AF Form 406, *Miscellaneous Obligation/Reimbursement Document (MORD)*, in accordance with Defense Finance and Accounting Service DFAS-DE 7010.2-R, *Commercial Transactions at Base Level*, until a final fee is agreed to. Missed payments are then made with these properly obligated funds.

3.1.3. When a renewal can not be completed prior to expiration of the existing agreement, Title 42 U.S.C., Chapter 15A, Subchapter 1, Sec. 1856b allows a unit that is the primary source of fire protection on the airport to continue to respond to civil aircraft emergencies.

3.2. Mid-term renewals can be requested by either the government (ANG) or the airport if services provided or costs incurred have changed significantly. Both parties must agree to a mid-term renegotiation.

3.3. The renewal process will be completed in four phases.

3.3.1. Phase 1 - Data Collection. A copy of this pamphlet and associated cost worksheet will be provided to each airport prior to negotiations. The cost worksheet and control tower operations information must be collected by the airport and unit and forwarded to ANG/CEP prior to scheduling a negotiation meeting.

3.3.1.1. If the airport has an alternative budget document that clearly delineates joint use area operations and maintenance costs, it can be submitted in lieu of the cost worksheet.

3.3.1.2. Control tower operations information should include, as a minimum, the total number of military operations for an entire fiscal or calendar year and the total number of all operations for the same period.

3.3.2. Phase 2 - Negotiation. A team from ANG/CEP will meet with unit representatives and airport officials to reach an agreement in principal – new fee and term of agreement. This phase generally concludes in a single meeting, but can require several meetings if additional data is required or there is disagreement over the cost calculation.

3.3.3. Phase 3 - Draft Agreement. When an agreement in principal is reach, ANG/CEP will produce a draft document using the standard format at **Attachment 2**. This draft will be sent electronically to the unit and airport officials for review. When the draft is approved by all parties, it will be sent to SAF/IEI for approval to execute.

3.3.4. Phase 4 - Final Agreement. After SAF/IEI approval, three originals of a final document will be forwarded to the unit for signatures. Following final signature by ANG/CE, originals will be provided to the unit base civil engineer (BCE), the airport authority and one will be maintained in ANG/CEP.

3.3.4.1. Government signatures on the document are the Adjutant General, the United States Property and Fiscal Officer (coordination only) and ANG Civil Engineer (final signature on behalf of the Chief, Air National Guard).

3.3.4.2. Airport signatures can vary depending on local requirements. Requested signature blocks should be identified by the airport during the draft review.

3.4. If negotiations reach an impasse, the issue will be referred to the Air Force Audit Agency (AFAA) for a management advisory service (MAS). AFAA will review all airport and military costs and operations and issue a determination on the appropriate fee. This determination will be binding on the ANG and will limit any further negotiations.

4. Allowable Costs and Cost Sharing

4.1. The AJUA is not a contract or federal award. It is a payment document. As such it does not require a contracting warrant for execution and is not subject to the cost accounting principals of Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments.*

4.2. The AJUA fee will be determined by multiplying the airport's operations and maintenance costs for the jointly used areas by the percentage of military operations and subtracting appropriate credits for military provided services.

4.3. ANG will share in appropriate direct costs of operating and maintaining the jointly used areas. **Attachment 3** is a guide to calculating allowable costs. This is just a guide and is not necessarily all inclusive. Additional categories may be included, but must be accompanied by supporting documentation. Alternative budget documents produced by the airport for other purposes may be submitted in lieu of this worksheet if they clearly delineate direct joint use area costs from all other airport costs.

4.3.1. Direct costs do not include the overhead costs of operating the airport such as:

4.3.1.1. Indirect costs (consulting fees, professional fees, environmental fines, training, facility maintenance, etc.)

4.3.1.2. Administrative overhead (administrative salaries, marketing, travel, postage, janitorial, telephone, office supplies, uniforms etc.)

4.3.1.3. Authority accounting (profit, overhead, debt service, depreciation, deferred maintenance, contingencies, etc.)

4.3.1.4. Insurance (liability or fire)

4.3.2. The jointly used areas are generally only the runways and taxiways of the airfield.

4.3.2.1. Jointly used area costs do not include commercial areas such as terminals, parking ramps, maintenance hangars, parking garages, etc.

4.3.2.2. Certain features of the airfield will not be excluded from the cost calculation simply because they are not routinely used by the based military aircraft. Example: the maintenance costs and traffic counts associated with a runway that is too short for the based aircraft will not be excluded since it could be used by military aircraft from other units.

4.3.3. Where the airport, at the military's written request, provides a service specifically and solely for the benefit of the military, 100% of the airport's expense can be claimed under the AJUA. Specific supporting documentation of actual costs must be provided by the airport to justify these 100% line items.

4.4. Proportionate use is defined as the percentage of military operations. This will be calculated by dividing the total number of military operations by the total number of all operations as shown in a tower count for an entire fiscal year or calendar year.

4.4.1. Weight based calculations will not be allowed. The operations and maintenance costs covered by the AJUA are not affected by aircraft weight so it is not an appropriate metric for determining the military proportionate use.

4.4.2. Each unit that contributes to the total percentage of military operations, regardless of service, component or home station, will be individually responsible for their portion of the fee. The host, in most cases ANG, will be responsible for negotiating on behalf of all military users, but is not responsible for paying the whole fee. The total fee will be prorated to all military users based on their proportion of the military tower count.

4.4.3. Where helicopter operations are included in the military tower count, each helicopter operation will be counted on an equal basis with fixed wing aircraft. No discount will be given

since the costs covered under the AJUA are not dependent on the weight of the aircraft. The only exception to this rule would be a location where the helicopter unit has it's own landing pads and does not use the joint areas of the airport in any way. In this case, the helicopter count should be eliminated from the tower counts.

4.5. Proportionate use by the government will be offset by any significant contributions in kind provided by the military (fire protection services, control tower operations, weather services, snow removal equipment and operations, etc.).

4.5.1. The offset for provided services is based on the value of the cost avoidance to the airport. Only the portion of a service the airport would be required to supply per FAA rules can be considered an offset to the AJUA fee. Example: if the military fire department is primary on the airfield and the station has 24 people, but FAA would only require a station with 16, then the offset would be the value of salaries, vehicles, equipment, etc., for 16 people.

4.5.2. Where fire protection is provided under a mutual aid agreement, the costs for either party (airport or ANG unit) will be considered as offsetting. Fire protection will not be a part of the cost calculation and the final agreement will only make reference to the mutual aid agreement.

4.5.3. Only direct costs of providing the services will be considered when determining the offset since only direct airport costs are allowed as part of the AJUA fee.

4.6. An inflation clause can be added to the calculated fee if all calculations are done using past year actual cost figures. If the calculation uses projected budget figures then inflation is already included and will not be added again.

4.6.1. The maximum inflation allowable is the Air Force (AF) recognized consumer price index value. This will be added to each year's fee over the term of the agreement and then converted back to a level annual payment to simplify accounting.

5. Terms and Conditions.

5.1. AJUA payments can be made in a variety of ways depending on local requirements or desires (monthly, quarterly, annually). The standard document assumes payments will be made in arrears. Payment in advance can be allowed if additional language is added to the agreement stipulating a pro-rata return of the payment in the event of early termination.

5.2. AJUAs will normally be for a period of five (5) years. AJUAs may be negotiated for a shorter period if there is sufficient justification provided by the airport. Longer AJUAs may be negotiated at the mutual agreement of both parties.

5.3. If requested by both parties, a separate operations agreement can be drafted and signed at the local level. This operations agreement can cover such issues as airfield access and security, emergency procedures, snow plans, master planning arrangements, etc. but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

5.4. Where fire protection is provided by the ANG or the airport exclusively, the local unit may draft and sign a separate fire operations agreement. This agreement can cover operational issues but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

5.5. Where air traffic control services are provided by the ANG, either through an air traffic control squadron or by contract services, the local unit may draft and sign a separate air traffic control operations agreement. This agreement can cover operational issues but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

6. Related Issues - Major Repairs, New Construction and Leases.

6.1. The AJUA covers operations and maintenance costs only. Major repair and/or new construction projects required in the jointly used areas of the airport are not included in the AJUA. ANG contribution to any such project will be negotiated and covered in a separate written agreement with the owner/operator of the airport at the time the work is required. No offsets to the AJUA fee will be sought for joint participation in these projects. No increase in the AJUA fee will be granted for projects completed by the airport or the depreciation associated with them.

6.1.1. Joint participation projects will be completed using a military construction cooperative agreement (MCCA). These agreements are separate and distinct from the AJUA and must be able to stand the audit test on their own merit. MCCAs can be initiated by the local BCE and are submitted to ANG/CEP for approval and programming.

6.1.2. Joint participation projects will be evaluate for approval based on three criteria. There must be a military need for the project, the project must not be eligible for Airport Improvement Project (AIP) funding through FAA, and there must be federal funds available for the project.

6.1.2.1. If a project is eligible for FAA funding under the AIP program then the maximum federal participation will be provided by FAA. ANG will not offset the FAA share of the project and cannot, by law, offset the minimum contribution required by the airport.

6.2. Long-term leases for property occupied by ANG units are separate and distinct from the AJUA. While some AJUAs do run concurrently with the lease, they are separate programs and are not dependent upon each other. No offset to the AJUA fee will be sought for lease payments made and no increase in AJUA fee will be granted to the airport to supplement lease payments.

6.2.1. In most cases, lease payments for property occupied by the ANG unit is at a nominal rate ($1 per year). This is consistent with FAA policy, which states that aviation related military units are not required to pay fair market value for leased property. This practice does not violate FAA Grant Assurances.

DANIEL JAMES, III, Lieutenant General, USAF
Director, Air National Guard

Attachment 1

Glossary of References and Supporting Information

References

AFPD 10-10, Civil Aircraft Use of United States Air Force Airfields
AFPD 32-10, Installations and Facilities
AFI 10-1001, Civil Aircraft Landing Permits
AFI 10-1002, Agreements for Civil Aircraft Use of Air Force Airfields
AFRCPAM, 32-1001, Airport Joint Use Agreements

Abbreviations and Acronyms

AF—Air Force
AFAA—Air Force Audit Agency
FAA—Federal Aviation Administration
AIP—Airport Improvement Program
ANG—Air National Guard
AJUA—Airport Joint Use Agreement
BCE—Base Civil Engineer
DFAS—Defense Finance and Accounting Service
FAA—Federal Aviation Administration
MAS ——Management Advisory Service
MCCA ——Military Construction Cooperative Agreement
MORD ——Miscellaneous Obligation/Reimbursement Document
OMB—Management and Budget
U.S.C.—United States Code
USPFO—United States Property and Fiscal Officer

Terms

Airport Joint Use Agreement (AJUA)—An agreement between a military unit stationed at a civilian airport that delineates responsibilities and outlines payment arrangements pursuant to the requirements of Title 49 U.S.C., §§ 47101-47129.

Joint Participation Project—Major repair or new construction efforts done on the jointly used areas that are jointly funded by the airport and the military.

Joint Use Areas—The areas of a civilian airport that are jointly used by civilian and military aircraft. This area is generally limited to the runways and taxiways.

Operations and Maintenance Costs—Costs incurred in the daily operation and recurring maintenance of jointly used areas.

Percentage of Military Operations—Taking numbers from the official control tower counts, divide the total number of military operations (local and itinerant) by the total number of all operations (air carrier, air cargo, general aviation and military in both local and itinerant categories).

Substantial Use—A situation where a military unit has s significant enough impact on a civilian airport that reimbursement for operations and maintenance costs is warranted. It is further defined by FAA Grant Assurance 27, *Use by Government Aircraft*.

Attachment 2

STANDARD TEMPLATE AIRPORT JOINT USE AGREEMENT BETWEEN AIRPORT AUTHORITY AND UNITED STATES OF AMERICA

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AIRPORT JOINT USE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 200_, by and between the_____("Authority"); and the UNITED STATES OF AMERICA, acting by and through the Chief, National Guard Bureau, and the STATE OF _____, acting by and through its Adjutant General (collectively, "Government").

RECITALS

a. The (Authority) owns and operates _____ Airport ("Airport"), located in the City of _____, State of _____.

b. Title 49, United States Code, Chapter 471, "Airport Development," (Title 49 U.S.C., §§

47101-47129), provides that each of the Airport's facilities developed with financial assistance from the United States Government and each of the Airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by government aircraft in common with other aircraft, except that if the use is substantial, the government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facilities used.

c. The government requires substantial use of the flying facilities at the Airport for the _____ Air National Guard, as well as for other occasional transient government aircraft.

d. The (Authority) is agreeable to such substantial use, in common with other users of the Airport, of the flying facilities by the government under this agreement.

e. The government and the (Authority) desire to provide for the delineation of responsibility for operation and maintenance of the flying facilities jointly used in common with others at the Airport,

and to establish the government's reasonable share, proportional to such use, of the cost of operating and maintaining such jointly used flying facilities.

AGREEMENT:

1. DEFINITIONS

For purposes of this Agreement, the Jointly Used Flying Facilities of the Airport are the runways, taxiways, lighting systems, navigational aids, markings and appurtenances open to public use and use by the government, including all improvements and facilities pertaining thereto and situated thereon and all future additions, improvements, and facilities thereto as may be added or constructed from time to time. The Jointly Used Flying Facilities do not include land areas used exclusively by the government or the terminal buildings, hangars, non-government parking aprons and ramps, or other areas or structures used exclusively by the (Authority) or its lessees, permittees, or licensees for civilian or commercial purposes.

2. JOINT USE

Subject to the terms and conditions of this Agreement, the government shall have the use, in common with other users of the Airport, present and prospective, of the Jointly Used Flying Facilities, together with all necessary and convenient rights of ingress and egress to and from the Jointly Used Flying Facilities and the Air National Guard installation and other government facilities located on the Airport. Routes for ingress and egress for the government's employees, agents, customers and contractors shall not unduly restrict the government in its operations.

3. (AUTHORITY) RESPONSIBILITIES

The (Authority) will be responsible for the following services and functions, to standards in accordance with Paragraph 6 below:

a. Furnishing all personnel, materials and equipment required in the rendering of the services to be provided under the Agreement.

b. Performing any and all maintenance of the Jointly Used Flying Facilities, including but not limited to:

(1) Joint sealing, crack repair, surface repairs, airfield markings and repair or replacement of damaged sections of airfield pavement;
(2) Runway, taxiway, and approach lighting and the regulators and controls therefore;
(3) Beacons, obstruction lights, wind indicators, and other navigational aids;
(4) Grass cutting and grounds care, drainage, and dust and erosion control of unpaved areas, adjacent to runways and taxiways;
(5) Sweeping runways and taxiways;
(6) Controlling insects and pests;
(7) Removing snow, ice and other hazards from runways and taxiways within a reasonable time after such runways and taxiways have been so encumbered.

c. Furnishing utilities necessary to operate the Jointly Used Flying Facilities.

d. Removing disabled aircraft as expeditiously as possible, subject to the rules and regulations of the National Transportation Safety Board, in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

4. GOVERNMENT RESPONSIBILITIES

a. The government will be responsible for the following:

(1) Removing disabled government aircraft as expeditiously as possible in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

(2) Removing snow and ice from all ramps, aprons, and taxiways used exclusively by government aircraft.

(3) Subject to availability of appropriations therefore, repairing within a reasonable time damage to the Jointly Used Flying Facilities to the extent that such damage is caused solely by government aircraft operations and is in excess of the fair wear and tear resulting from the military use contemplated under this Agreement.

5. PAYMENTS

a. In consideration of and for the faithful performance of this Agreement, and subject to the availability of federal appropriations, the government shall pay to the (Authority) as its proportionate share of operating and maintaining the Jointly Used Flying Facilities, the following: (TO BE NEGOTIATED)

b. Payments for the periods set out in Paragraph 5a above shall be made upon submission of appropriate invoices to the government as designated in Paragraph 5c below; provided, however, that if during the term of this Agreement, sufficient funds are not available through the annual appropriations at the beginning of any fiscal year to carry out the provisions of this Agreement, the government will so notify the (Authority) in writing.

c. Bills for the payments provided hereunder shall be directed to: Payer Identification, or to such other address as the government may from time to time provide to the (Authority) in writing.

d. Either party may request renegotiation if either party, at the request or with the formal concurrence of the other, as the case may be, requires services not contemplated by this Agreement, or reduces or eliminates services it undertakes to provide under this Agreement.

6. AIRFIELD MANAGEMENT

a. The (Authority) agrees that maintenance of the Jointly Used Flying Facilities shall, at all times, be in accordance with Federal Aviation Administration (FAA) standards for the operation of a commercial airport and operation of jet aircraft.

b. The government agrees that any markings and equipment installed by it pursuant to Paragraph 7 of the Agreement shall be coordinated with the (Authority), and not be in conflict with FAA standards.

7. GOVERNMENT RESERVED RIGHTS

a. The government reserves the right, at its sole cost and expense and subject to Paragraph 6b above, to:

(1) Provide and maintain in the Jointly Used Flying Facilities airfield markings required solely for military aircraft operations.

(2) Install, operate and maintain in the Jointly Used Flying Facilities any and all additional equipment, necessary for the safe and efficient operation of military aircraft including but not limited to arresting systems and navigational aids.

8. FIRE PROTECTION AND CRASH RESCUE

The parties to this Agreement have entered into a separate reciprocal fire protection agreement, which sets forth each party's responsibilities of fire protection and crash rescue services.

or

The parties to this Agreement have entered into a separate mutual aid fire protection agreement, which sets forth each party's responsibilities of fire protection and crash rescue services.

or

a. The government maintains a fire fighting and crash rescue organization in support of military operations at the Airport. Within the limits of the existing capabilities of this organization, the government agrees to respond to fire and crash rescue emergencies involving civil aircraft, subject to subparagraphs 8b, 8c, and 8d below.

b. The (Authority) agrees to release, acquit, and forever discharge the government, its officers, agents, and employees for all liability arising out of or connected with the use of or failure to supply in individual cases, government fire fighting and crash rescue equipment or personnel for fire control and crash rescue activities at or in the vicinity of the Airport. The (Authority) further agrees to the extent allowed under applicable law to indemnify, defend, and hold harmless the government, its officers, agents, and employees against any and all claims, of whatever description, arising out of or connected with such use of or failure to supply in individual cases, government fire fighting and crash rescue equipment or personnel, except where such claims arise out of or result from the gross negligence or willful misconduct of the officers, agents, or employees of the United States, without contributory fault on the part of any person, firm, or corporation. The (Authority) agrees to execute and maintain in effect a hold harmless agreement as required by applicable Air Force instructions for all periods during which emergency fire fighting and crash rescue service is provided to civil aircraft by the government.

c. The (Authority) will reimburse the government for expenses incurred by the government for fire fighting and crash rescue materials expended in connection with providing such service to civil aircraft.

d. The government’s responsibility under this Paragraph 8 shall continue only so long as a fire fighting and crash rescue organization is authorized for military operations at the Airport. The government shall have no obligation to maintain any fire fighting and crash rescue organization or to provide any increase in fire fighting and crash rescue equipment or personnel or to conduct any training or inspection for the purposes of this Paragraph. It is further understood that the

government's fire fighting and crash rescue equipment shall not be routinely parked on the Jointly Use Flying Facilities during non-emergency landings of civil aircraft.

e. Notwithstanding the foregoing, so long as the government operates and maintains a fire fighting and crash rescue organization for military operations at the Airport, the government will, consistent with military operations as determined by the government, cooperate with the federal government agencies having jurisdiction over civil aircraft in the conduct of periodic inspections of fire fighting and crash rescue response time.

9. RECORDS AND BOOKS OF ACCOUNT

The (Authority) agrees to keep records and books of account, showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures made in fulfilling the obligations of this Agreement. The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of three (3) years after final payment, have access at all times to such records and books of account, or to any directly pertinent books, documents, papers, and records of any of the (Authority)'s contractors or subcontractors engaged in the performance of and involving transactions related to this Agreement. The (Authority) further agrees that representatives of the Air Force Audit Agency or any other designated representative of the government shall have the same right of access to such records, books of account, documents and papers as is available to the Comptroller General.

10. TERM

This Agreement shall be effective for a term of five (5) years beginning (month/day, year), and ending (month/day, year).

11. TERMINATION

a. This Agreement may be terminated by the government at any time by giving at least thirty (30) days' notice thereof in writing to the (Authority).

b. The government, by giving written notice to the (Authority), may terminate the right of the (Authority) to proceed under this Agreement if it is found, after notice and hearing by the Secretary of the Air Force or his or her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the (Authority), or any agent or representative of the (Authority), to any officer or employee of the government with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such agreement, provided that the existence of the facts upon which the Secretary of the Air Force or his or her duly authorized representative makes such findings shall be an issue and may be reviewed in any competent court.

c. In the event this Agreement is terminated as provided in subparagraph 11a above, the government shall be entitled to pursue the same remedies against the (Authority) as it could pursue in the event of a breach of the Agreement by the (Authority) and in addition to any other damages to which it may be entitled by law, the government shall be entitled to exemplary damages in an amount (as determined by the Secretary of the Air Force or his or her duly authorized representative) which shall be not less than three (3) or more than ten (10) times the costs incurred by the (Authority) in providing any such gratuities to any such officer or employee.

d. The rights and remedies of the government provided in subparagraph 11c above shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. GENERAL PROVISIONS

a. Compliance with Law. The (Authority) shall comply with all federal, state and local laws, rules and regulations applicable to the activities conducted under this Agreement.

b. Assignment. The (Authority) shall neither transfer nor assign this Agreement without the prior written consent of the government, which shall not be unreasonably withheld or delayed.

c. Liability. Except as otherwise provided in this Agreement, neither party shall be liable for damages to property or injuries to persons arising from acts of the other in the use of the Jointly Used Flying Facilities or occurring as a consequence of the performance of responsibilities under this Agreement.

d. Third Party Benefit. No member or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

e. Entire Agreement. It is expressly agreed that this written instrument embodies the entire financial arrangement and agreement of the parties regarding the use of the Jointly Used Flying Facilities by the government, and there are no understandings or agreements, verbal or otherwise, between the parties in regard to it except as expressly set forth herein. Specifically, no landing fees or other fees not provided in this Agreement will be assessed by the (Authority) against the government in the use of the Jointly Used Flying Facilities during the term of this Agreement.

f. Modification. This Agreement may only be modified or amended by mutual agreement of the parties in writing and signed by each of the parties hereto.

g. Waiver. The failure of either party to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, covenants, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, covenants, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

h. Paragraph Headings. The brief headings or titles preceding each Paragraph and subparagraph are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Agreement.

13. MAJOR REPAIRS AND NEW CONSTRUCTION

Major repair projects and/or new construction projects required for the Jointly Used Flying Facilities (collectively, "Joint Use Projects") are not included under this Agreement. Any government contribution to Joint Use Projects shall be the subject of separate negotiations and written agreement between the (Authority) and the government at such time as the work is required. Any government participation in the costs of Joint Use Projects is subject to the availability of federal funds for such purpose at the time the work is required.

14. NOTICES

a. No notice, order, direction, determination, requirement, consent or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

b. Written communications to the (Authority) shall be addressed to:

Name of Airport
Street or P.O. Box
City/State/Zip Code

c. Written communications to the government shall be in duplicate with copies to the United States of America and the State of (name) addressed respectively, as follows:

(1) To the United States of America:

ANG/CE
3500 Fetchet Avenue
Andrews AFB, MD 20762-5157

(2) To the State of (name):

The Adjutant General

Street or P.O. Box

City/State/Zip Code

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth opposite their respective signatures.

Dated: _____ (AIRPORT OWNER/OPERTOR NAME)

By: _____

(Title) _____

Approved as to form and legal sufficiency:

_____

Dated: _____ STATE OF (NAME)

Coordinated with:

_____ By: _____

U.S. Property & Fiscal Officer The Adjutant General

Dated: _____ UNITED STATES OF AMERICA

By: _____

For the Chief, National Guard Bureau

Appendix K: Part 155 – Release of Airport Property from Surplus Property Disposal Restrictions

A current copy of Part 155 – Release of Airport Property from Surplus Property Disposal Restrictions is available on the eCFR website at https://www.ecfr.gov/current/title-14/chapter-I/subchapter-I/part-155.

Appendix L: Reserved

Appendix M: Reserved

Appendix N: Reserved

Appendix O: Minimum Standards for Commercial Aeronautical Activities

A copy of Advisory Circular No. 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, is available on the FAA website at https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentNumber/150_5190-7.

Appendix P: Sample Airport Rules and Regulations

FARMINGTON, Minnesota

ARTICLE 1. IN GENERAL

Sec. 3-1-1. Purpose of airport.

The Four Corners Regional Airport--Farmington (FMN) shall be conducted as a terminal facility for the promotion and accommodation of air commerce and shall be operated as a public air terminal without discrimination against any person because of race, color, creed, age, sex, religious or political affiliation or national origin. (Code 1969, § 20-1)

State law reference(s)--Authority to purchase, establish, construct, maintain and operate an airport, NMSA 1978, § 3-39-4.

Sec. 3-1-2. Appointment and authority of airport manager.

(a) The operation of the airport shall be under the direction of the airport manager who shall be appointed by the city manager and who shall be a person professionally competent by experience and training to manage the airport.

(b) The airport manager is delegated authority to take reasonable steps for handling, policing and protecting the public while present at the airport, subject to review by the city manager. (Code 1969,§20-4) Cross reference(s)--Officers and employees, § 2-3-1 *et seq.*

Sec. 3-1-3. Penalty for violation.

It shall be unlawful for any person to violate this chapter. Any person convicted of violating this chapter shall be punished in the manner specified in Section 1-1-10. (Code 1969, § 20-16)

Sec. 3-1-4. Hours of use.

The airport shall be open for public use at all hours of the day, subject to reasonable restrictions for security, inclement weather, conditions of the airfield and other reasonable restraints. (Code 1969, § 20-2)

Sec. 3-1-5. Obedience to regulations.

The use or occupancy of the airport or any of its facilities in any manner creates an obligation on the part of the user to obey all lawful regulations promulgated with reference thereto. (Code 1969, § 20-3)

Sec. 3-1-6. Airport rules generally.

At the airport, no person shall:

(1) Solicit funds, alms or fares at the airport for any purpose unless a permit has been issued by the city manager.

(2) Post, distribute or display signs, advertising circulars, printed or written matter on the airport unless a permit has been received from the city manager.

(3) Take any still, motion or sound pictures on the airport for commercial purposes unless a permit has been received from the city manager.

(4) Commence any construction, improvement or remodeling activity at or upon the airport without prior approval of the city manager.

(5) Fail to report as soon as possible any damage, injury or destruction caused by any such person to any property on the airport, including real property, personal property, improvements, fixtures or equipment owned or controlled by the city or owned or controlled by any other person or governmental agency and used in connection with the landing, takeoff, control or safety of aircraft. (Code 1969, § 20-12)

Sec. 3-1-7. Sanitation.

At the airport, no person shall:

(1) Release, deposit, blow or spread any bodily discharge on the floor, wall, partition, furniture or any part of a public toilet, comfort station, terminal building, hangar or other building or place on the airport, other than directly into a fixture provided for that purpose.

(2) Place any foreign object in any plumbing fixture of a public toilet, comfort station, terminal building, hangar or other building on the airport.

(3) Dispose of any sewage, garbage, refuse, paper or other material at the airport, except in a container provided for such purpose. (Code 1969, § 20-13)

Cross reference(s)--Solid waste management, ch. 23; utilities, ch. 26.

Sec. 3-1-8. Unauthorized use of property.

No person shall take or use any aircraft or any part or accessory thereof or any tools or other equipment owned or controlled by any other person or stored or otherwise left at the airport without the consent of the owner or operator thereof or other satisfactory evidence of his right to do so. (Code 1969, § 20-14)

Sec. 3-1-9. Unauthorized entrance into restricted areas.

No person shall enter upon the field area, the control tower area, the airline service area, the airport utilities service area, the fire department control area or any other area of the airport which has been designated and posted as restricted to the public unless such person has been duly authorized to enter such area or place. (Code 1969, § 20-15)

ARTICLE 3. AIRCRAFT

Sec. 3-3-1. Operator's conduct when tower in operation.

No person shall, while the federal aviation tower located at the Four Corners Regional Airport is in operation:

(1) Navigate any aircraft over, land upon, takeoff from or service, repair or maintain any aircraft other than in conformity with the rules and regulations of the Federal Aviation Administration of the United States.

(2) Fail to taxi while under full control and at reasonable speeds while the aircraft is being operated. Following a landing or prior to takeoff and while taxiing, every pilot shall ensure that there is no danger of collision with other aircraft.

Appendix Q: Reserved

Appendix R: Airport Layout Plan (ALP)

Detailed information on the Airport Layout Plan (ALP) can be found in Advisory Circular No. 150/5070-6, *Airport Master Plans*, available on the FAA website at https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.information/documentID/22329, and Standard Operating Procedure 2.00, *Standard Procedure for FAA Review and Approval of Airport Layout Plans (ALPs)*, available on the FAA website at https://www.faa.gov/airports/resources/sops/.

Appendix S: Reserved

Appendix T: Sample FAA Letter on Replacement Airport

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

Office of the Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

SEP 19 2017

The Honorable Ron Blum
Mayor of St. Clair
#1 Paul Parks Drive
St. Clair, MO 63077

Re: St. Clair Regional Airport, St. Clair, Missouri
Conditional Release of All Federal Airport Improvement Program Obligations

Dear Mayor Blum:

The Federal Aviation Administration (FAA) has completed its review of the city of St. Clair's actions in order to release the city from its Federal Airport Improvement Program (AIP) obligations associated with St. Clair Regional Airport, and as a result, conditionally releases the city from its Federal AIP obligations with the expectation that the city completes the below actions. The following provides the basis for this FAA decision.

1. Statutory Requirement

Public Law 113-285 was enacted on December 18, 2014, and directed the FAA to release the city of St. Clair from all restrictions, conditions, and limitations on the use, encumbrance, conveyance, and closure of the airport. The Public Law further directed the FAA to remove the runway end indicator lighting system and to preserve the notice and closure requirements under title 49 United States Code (U.S.C.), §§ 46319 and 47107(h)(2), and title 14 Code of Federal Regulations (CFR), part 157. Lastly, the Public Law provided that it not limit the applicability of the National Environmental Policy Act of 1969 (NEPA) (codified at title 42 U.S.C., § 4321, *et seq.*).

The Public Law required the city to transfer the following to the Missouri Department of Transportation (MoDOT) before the FAA executes the final release:

- All airport and aviation-related equipment of the airport that is owned by the city and determined to be salvageable for use by MoDOT;
- An amount equal to the fair market value (FMV) for the highest and best use of the airport property determined in good faith by an independent and qualified real estate appraiser on or after the date of the enactment of the Public Law;

- An amount equal to the unamortized portion of any Federal development grants other than land paid to the city for use at the airport; and
- An amount equal to the airport revenue remaining in the airport account for the airport as of the date of the enactment of the Public Law and otherwise due to or received by the city of St. Clair after such date of enactment pursuant to title 49 U.S.C., §§ 47107(b) and 47133.

2. Release and Closure Process

The FAA supports airport development and preservation throughout the United States. The National Plan of Integrated Airport Systems (NPIAS) identifies nearly 3,400 existing and proposed airports that are significant to national air transportation and eligible to receive Federal AIP grants. It includes estimates of AIP money needed to fund development projects that will bring these airports up to current design standards and add capacity to congested airports. Title 49 U.S.C., § 47101, *et seq.*, provides for Federal airport financial assistance for developing public use airports under the AIP, which was established by the Airport and Airway Improvement Act of 1982, as amended. The statute sets forth assurances, which an airport sponsor agrees to as a condition precedent to the receipt of Federal financial assistance.

After accepting an AIP grant, the assurances become a binding obligation between the airport sponsor and the Federal Government. In accepting Federal financial assistance, the city agreed to specific Federal obligations, including the commitment to keep the airport open and make it available for public use as an airport. Other requirements apply because the airport bought land with Federal financial assistance.

The FAA considers every request to close an airport on a case-to-case basis. The FAA must apply all statutes, regulations, and FAA policies, including FAA Order 5190.6B, FAA Airport Compliance Manual, chapter 22. The FAA's review includes all Federal obligations of the airport and its demonstrated benefit to civil aviation. The FAA also considers nearby airports or new replacement airports of at least equal value to the national aviation system.

In this case, the Public Law required the FAA to release the city from all restrictions, conditions, and limitations on the use, encumbrance, conveyance, and closure of the airport once the city completed certain actions. The FAA, the State of Missouri (acting through MoDOT), and the city have been working cooperatively to comply with the Public Law.

3. Background on Airport

The airport currently is in the NPIAS. The airport is just north of the city of St. Clair. This nontowered, general aviation airport consists of approximately 77 acres.

The airport has hangar facilities, and in 2013, it had 8 based aircraft and 2,780 operations. Since 1963, the city received about $1.1 million in Federal aid grants. There are no surplus property obligations. The airport is located within 20 nautical miles of two other airports serving the same general aviation function, specifically Washington Regional Airport and

Sullivan Regional Airport. If evaluated today, St. Clair Regional Airport would be ineligible as a new entrant into the NPIAS. Therefore, the airport removal will not impact the national system of airports.

The State of Missouri does not oppose the city's request to close the airport. MoDOT also participates in the Federal State Block Grant Pilot Program (title 14 CFR, part 156).

4. Disposal and Future Airport Development

The city selected an independent and qualified appraiser to determine the FMV of airport property. The FAA received this appraisal for review on August 8, 2016, and determined that the appraisal meets all Federal requirements on the acquisition and disposal of real property interests of the United States. The appraised FMV of the property is $456,325. The FAA accepts this value as the FMV. The local Industrial Development Authority will buy the land at FMV after the airport closes.

The city will provide the funds listed below to MoDOT before the parties sign the release agreement and fulfill their respective obligations. MoDOT plans to invest the funds in other NPIAS airports in Missouri, thereby providing a benefit to civil aviation.

- The FMV ($456,325) of the St. Clair Regional Airport property, as established by appraisal minus approved expenses of approximately $198,400 (appraisal $4,000, environmental assessment $176,000, removal of unsafe structures $18,400). The total amount due to MoDOT is approximately $257,925.
- An amount equal to the unamortized portion of any AIP grants provided to the city to assist in the development of St. Clair Regional Airport is estimated to be $233,526 based on a closure date of November 1, 2017.
- An amount equal to the airport revenue remaining in the airport account on the date of enactment of the Public Law (December 18, 2014) and otherwise due to or received by the city through the date on which the airport is closed is estimated to be $5,000.

5. Environmental Findings

The FAA requires an environmental assessment (EA) to be prepared under NEPA to close an airport. The city completed the EA to consider the impacts of closing the airport. The FAA issued a Finding of No Significant Impact/Record of Decision ((FONSI/ROD) on April 12, 2017. The city placed a public notice of the FONSI/ROD in the local newspaper, The Missourian, on May 10, 2017.

FAA Response

Based on these applicable facts, the FAA is conditionally releasing the city of St. Clair from all restrictions, conditions, and limitations on the use, encumbrance, conveyance, and closure

of St. Clair Regional Airport. The city will take the following actions prior to the permanent closure of the airport:

- Terminate all existing tenant agreements in accordance with the terms of the lease agreements. Ensure all airworthy aircraft are removed from the airport prior to permanent closure of the airport;
- Submit FAA Form 7480-1 to the FAA regional office at least 90 days prior to deactivation of the airport;
- Issue any Notice to Airmen (NOTAM) that may be needed to facilitate the airport closure, as agreed upon and approved by the FAA's Central Regional Airports Division;
- Complete the physical closure of the airport in accordance with FAA Advisory Circular 150/5340-1L, Standards for Airport Markings, section 5.6, Marking and lighting of permanently closed runways and taxiways;
- Transfer to MoDOT all airport and aviation-related equipment/structures determined to be salvageable by MoDOT; and
- Provide the necessary funds to MoDOT before or on the day all parties sign the agreement and fulfill their respective obligations.

The FAA's Central Regional Airports Division will confirm the city has completed the actions listed above. The FAA will provide the city with the final notice of the airport release at the signing of the agreement between the FAA, the State of Missouri (acting through MoDOT), and the city.

Should you have any questions or need additional information, please contact Mr. Jim Johnson, Manager, Central Regional Airports Division, at (816) 329-2600.

Sincerely,

FOR

Winsome A. Lenfert
Acting Associate Administrator
for Airports

cc: Kevin C. Willis, Office of Airport Compliance and Management Analysis
Elliott Black, Office of Airport Planning and Programming
Jim Johnson, Central Regional Airports Division
Amy Ludwig, Missouri Department of Transportation

Appendix U: Sample Joint-Use Agreement

For Example Only

BY ORDER OF THE CHIEF,
NATIONAL GUARD BUREAU

AIR NATIONAL GUARD PAMPHLET 32-1001

8 APRIL 2003
Certified Current 2 August 2013
Civil Engineering

AIRPORT JOINT USE AGREEMENTS FOR MILITARY USE OF CIVILAN AIRFIELDS

NOTICE: This publication is available digitally on the AFDPO WWW site at: **http://www.e-publishing.af.mil.**

OPR: ANG/CEP (Ms. Terry Beam)
Supersedes ANGPAM 32-1001, 15 July 1996

Certified by: NGB/CFS (Col Larrabee)
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Distribution: F

This pamphlet implements AFPD 10-10, *Civil Aircraft Use of United States Air Force Airfields*, and AFPD 32-10, *Installations and Facilities*, and applies to Air National Guard (ANG) flying units that operate on public airports. This pamphlet provides guidance for negotiating fair and reasonable charges to the Government (AF) for joint use of the flying facilities of a public airport.

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed.

It adds clarification of responsibilities, standard forms and processes, allowable costs and calculation procedures. It corrects policy with regard to local operations agreements, joint participation projects and long term leases.

1. General .

1.1. Title 49, United States Code (USC), Chapter 471, 'Airport Development (Title 49 USC, Sections 47101-47129), provides that each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used.

1.2. Federal Aviation Administration (FAA) Grant Assurance 27 defines substantial use as any one of the following:

1.2.1. Five (5) or more Government aircraft regularly based at the airport or on land adjacent thereto

1.2.2. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more in a month.

For Example Only

1.2.3. The gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds in a month.

1.3. Where the ANG has aircraft permanently assigned on a civilian airport, substantial use will be acknowledged and a payment agreement made to reimburse the airport for a reasonable share, proportionate to the total military use (assigned and transient), of the cost of operating and maintaining the facilities used.

2. Responsibilities and Authorities.

2.1. Deputy Assistant Secretary of the Air Force Installations, (SAF/IEI), is responsible for policy and oversight for the Air Force's installation programs and is the approval authority for Airport Joint Use Agreements (AJUAs). All negotiated agreements must be submitted in writing to SAF/IEI for approval prior to signature by the concerned parties

2.2. Air Force General Counsel, (SAF/GCN) will be a coordinating office on negotiated agreements to ensure they are legally sufficient prior to approval by SAF/IEI.

2.3. The Air National Guard Civil Engineer, (ANG/CE) is responsible for negotiation of agreements where a based ANG unit is the host. Negotiations will be coordinated with all other military units assigned at or operating from the location. Authority to negotiate agreements and renewals will not be delegated to the field unit.

2.4. United States Property and Fiscal Officer (USPFO), will act in a advisory role during negotiations for ANG and Army National Guard units, but will have no authority to conduct negotiations or agree to terms and conditions for the AJUA.

2.5. ANG Units. The Base Civil Engineer (BCE) will facilitate data collection and meetings, but will have no authority to conduct negotiations or agree to terms and conditions for the AJUA. Operations personnel will assist in collecting flight data and validating percentage of flying by non-ANG units. Various base offices will assist in calculating the value of ANG provided services

3. Standard Procedures and Formats. To ensure consistency among agreements, all AJUAs will follow a standard process for calculation of fees and a standard format agreement (**Attachment 2**).

3.1. Air National Guard Civil Engineer Programs Division (ANG/CEP) will initiate renewal negotiations with airport owner/operators not less than one (1) year prior to the expiration of the AJUA then in effect. The new AJUA should be signed by all parties prior to the expiration of the existing agreement.

3.1.1. When a renewal can not be completed prior to expiration of the existing agreement, the unit must take steps to ensure all payments are terminated.

3.1.2. If fiscal years are crossed while negotiations are ongoing, funds in the budget for each year should obligated via AF Form 406, *Miscellaneous Obligation/Reimbursement Document (MORD)*, in accordance with Defense Finance and Accounting Service DFAS-DE 7010.2-R, *Commercial Transactions at Base Level*, until a final fee is agreed to. Missed payments are then made with these properly obligated funds.

For Example Only

3.1.3. When a renewal can not be completed prior to expiration of the existing agreement, Title 42 USC, Chapter 15A, Subchapter 1, Sec. 1856b allows a unit that is the primary source of fire protection on the airport to continue to respond to civil aircraft emergencies.

3.2. Mid-term renewals can be requested by either the Government (ANG) or the airport if services provided or costs incurred have changed significantly. Both parties must agree to a mid-term renegotiation.

3.3. The renewal process will be completed in four phases.

3.3.1. Phase 1 - Data Collection. A copy of this pamphlet and associated cost worksheet will be provided to each airport prior to negotiations. The cost worksheet and control tower operations information must be collected by the airport and unit and forwarded to ANG/CEP prior to scheduling a negotiation meeting.

3.3.1.1. If the airport has an alternative budget document that clearly delineates joint use area operations and maintenance costs, it can be submitted in lieu of the cost worksheet.

3.3.1.2. Control tower operations information should include, as a minimum, the total number of military operations for an entire fiscal or calendar year and the total number of all operations for the same period.

3.3.2. Phase 2 - Negotiation. A team from ANG/CEP will meet with unit representatives and airport officials to reach an agreement in principal – new fee and term of agreement. This phase generally concludes in a single meeting, but can require several meetings if additional data is required or there is disagreement over the cost calculation.

3.3.3. Phase 3 - Draft Agreement. When an agreement in principal is reach, ANG/CEP will produce a draft document using the standard format at **Attachment 2**. This draft will be sent electronically to the unit and airport officials for review. When the draft is approved by all parties it will be sent to SAF/IEI for approval to execute.

3.3.4. Phase 4 - Final Agreement. After SAF/IEI approval, three originals of a final document will be forwarded to the unit for signatures. Following final signature by ANG/CE, originals will be provided to the unit base civil engineer (BCE), the airport authority and one will be maintained in ANG/CEP.

3.3.4.1. Government signatures on the document are the Adjutant General, the United States Property and Fiscal Officer (coordination only) and ANG Civil Engineer (final signature on behalf of the Chief, Air National Guard).

3.3.4.2. Airport signatures can vary depending on local requirements. Requested signature blocks should be identified by the airport during the draft review.

3.4. If negotiations reach an impasse, the issue will be referred to the Air Force Audit Agency (AFAA) for a management advisory service (MAS). AFAA will review all airport and military costs and operations and issue a determination on the appropriate fee. This determination will be binding on the ANG and will limit any further negotiations.

4. Allowable Costs and Cost Sharing .

4.1. The AJUA is not a contract or Federal award. It is a payment document. As such it does not require a contracting warrant for execution and is not subject to the cost accounting principals of

For Example Only

Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments.*

4.2. The AJUA fee will be determined by multiplying the airport's operations and maintenance costs for the jointly used areas by the percentage of military operations and subtracting appropriate credits for military provided services.

4.3. ANG will share in appropriate direct costs of operating and maintaining the jointly used areas. **Attachment 3** is a guide to calculating allowable costs. This is just a guide and is not necessarily all inclusive. Additional categories may be included, but must be accompanied by supporting documentation. Alternative budget documents produced by the airport for other purposes may be submitted in lieu of this worksheet if they clearly delineate direct joint use area costs from all other airport costs.

4.3.1. Direct costs do not include the overhead costs of operating the airport such as:

4.3.1.1. Indirect costs (consulting fees, professional fees, environmental fines, training, facility maintenance, etc.)

4.3.1.2. Administrative overhead (administrative salaries, marketing, travel, postage, janitorial, telephone, office supplies, uniforms etc.)

4.3.1.3. Authority accounting (profit, overhead, debt service, depreciation, deferred maintenance, contingencies, etc.)

4.3.1.4. Insurance (liability or fire)

4.3.2. The jointly used areas are generally only the runways and taxiways of the airfield.

4.3.2.1. Jointly used area costs do not include commercial areas such as terminals, parking ramps, maintenance hangars, parking garages, etc.

4.3.2.2. Certain features of the airfield will not be excluded from the cost calculation simply because they are not routinely used by the based military aircraft. Example: the maintenance costs and traffic counts associated with a runway that is too short for the based aircraft will not be excluded since it could be used by military aircraft from other units.

4.3.3. Where the airport, at the military's written request, provides a service specifically and solely for the benefit of the military, 100% of the airport's expense can be claimed under the AJUA. Specific supporting documentation of actual costs must be provided by the airport to justify these 100% line items.

4.4. Proportionate use is defined as the percentage of military operations. This will be calculated by dividing the total number of military operations by the total number of all operations as shown in a tower count for an entire fiscal year or calendar year.

4.4.1. Weight based calculations will not be allowed. The operations and maintenance costs covered by the AJUA are not affected by aircraft weight so it is not an appropriate metric for determining the military proportionate use.

4.4.2. Each unit that contributes to the total percentage of military operations, regardless of service, component or home station, will be individually responsible for their portion of the fee. The host, in most cases ANG, will be responsible for negotiating on behalf of all military users, but is not responsible for paying the whole fee. The total fee will be prorated to all military users based on their proportion of the military tower count.

For Example Only

4.4.3. Where helicopter operations are included in the military tower count, each helicopter operation will be counted on an equal basis with fixed wing aircraft. No discount will be given since the costs covered under the AJUA are not dependent on the weight of the aircraft. The only exception to this rule would be a location where the helicopter unit has it's own landing pads and does not use the joint areas of the airport in any way. In this case, the helicopter count should be eliminated from the tower counts.

4.5. Proportionate use by the government will be offset by any significant contributions in kind provided by the military (fire protection services, control tower operations, weather services, snow removal equipment and operations, etc.).

4.5.1. The offset for provided services is based on the value of the cost avoidance to the airport. Only the portion of a service the airport would be required to supply per FAA rules can be considered an offset to the AJUA fee. Example: if the military fire department is primary on the airfield and the station has 24 people, but FAA would only require a station with 16, then the offset would be the value of salaries, vehicles, equipment, etc., for 16 people.

4.5.2. Where fire protection is provided under a mutual aid agreement, the costs for either party (airport or ANG unit) will be considered as offsetting. Fire protection will not be a part of the cost calculation and the final agreement will only make reference to the mutual aid agreement.

4.5.3. Only direct costs of providing the services will be considered when determining the offset since only direct airport costs are allowed as part of the AJUA fee.

4.6. An inflation clause can be added to the calculated fee if all calculations are done using past year actual cost figures. If the calculation uses projected budget figures then inflation is already included and will not be added again.

4.6.1. The maximum inflation allowable is the Air Force (AF) recognized consumer price index value. This will be added to each year's fee over the term of the agreement and then converted back to a level annual payment to simplify accounting.

5. Terms and Conditions.

5.1. AJUA payments can be made in a variety of ways depending on local requirements or desires (monthly, quarterly, annually). The standard document assumes payments will be made in arrears. Payment in advance can be allowed if additional language is added to the agreement stipulating a pro-rata return of the payment in the event of early termination.

5.2. AJUAs will normally be for a period of five (5) years. AJUAs may be negotiated for a shorter period if there is sufficient justification provided by the airport. Longer AJUAs may be negotiated at the mutual agreement of both parties.

5.3. If requested by both parties, a separate operations agreement can be drafted and signed at the local level. This operations agreement can cover such issues as airfield access and security, emergency procedures, snow plans, masterplanning arrangements, etc. but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

5.4. Where fire protection is provided by the ANG or the airport exclusively, the local unit may draft and sign a separate fire operations agreement. This agreement can cover operational issues but will

For Example Only

not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

5.5. Where air traffic control services are provided by the ANG, either through an air traffic control squadron or by contract services, the local unit may draft and sign a separate air traffic control operations agreement. This agreement can cover operational issues but will not include any financial provisions. This agreement can be referenced in the AJUA if the signed document is submitted with the AJUA for staffing.

6. Related Issues - Major Repairs, New Construction and Leases.

6.1. The AJUA covers operations and maintenance costs only. Major repair and/or new construction projects required in the jointly used areas of the airport are not included in the AJUA. ANG contribution to any such project will be negotiated and covered in a separate written agreement with the owner/operator of the airport at the time the work is required. No offsets to the AJUA fee will be sought for joint participation in these projects. No increase in the AJUA fee will be granted for projects completed by the airport or the depreciation associated with them.

6.1.1. Joint participation projects will be completed using a military construction cooperative agreement (MCCA). These agreements are separate and distinct from the AJUA and must be able to stand the audit test on their own merit. MCCAs can be initiated by the local BCE and are submitted to ANG/CEP for approval and programming.

6.1.2. Joint participation projects will be evaluate for approval based on three criteria. There must be a military need for the project, the project must not be eligible for Airport Improvement Project (AIP) funding through FAA, and there must be federal funds available for the project.

6.1.2.1. If a project is eligible for FAA funding under the AIP program then the maximum federal participation will be provided by FAA. ANG will not offset the FAA share of the project and can not, by law, offset the minimum contribution required by the airport.

6.2. Long term leases for property occupied by ANG units are separate and distinct from the AJUA. While some AJUAs do run concurrently with the lease, they are separate programs and are not dependent upon each other. No offset to the AJUA fee will be sought for lease payments made and no increase in AJUA fee will be granted to the airport to supplement lease payments.

6.2.1. In most cases, lease payments for property occupied by the ANG unit is at a nominal rate ($1 per year). This is consistent with FAA policy which states that aviaition related military units are not required to pay fair market value for leased property. This practice does not violate FAA Grant Assurances.

DANIEL JAMES, III, Lieutenant General, USAF
Director, Air Naitonal Guard

For Example Only

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

AFPD 10-10, Civil Aircraft Use of United States Air Force Airfields

AFPD 32-10, Installations and Facilities

AFI 10-1001, Civil Aircraft Landing Permits

AFI 10-1002, Agreements for Civil Aircraft Use o f Air Force Airfields

AFRCPAM, 32-1001, Airport Joint Use Agreements

Abbreviations and Acronyms

AF—Air Force

AFAA—Air Force Audit Agency

FAA—Federal Aviation Administration

AIP—Airport Improvement Program

ANG—Air National Guard

AJUA—Airport Joint Use Agreement

BCE—Base Civil Engineer

DFAS—Defense Finance and Accounting Service

FAA—Federal Aviaition Administration

MAS —-Management Advisory Service

MCCA —-Military Construction Cooperative Agreement

MORD —-Miscellaneous Obligation/Reimbursement Document

OMB—Management and Budget

USC—United States Code

USPFO—United States Property and Fiscal Officer

Terms

Airport Joint Use Agreement (AJUA)—An agreement between a military unit stationed at a civilian airport that delineates responsibilities and outlines payment arrangements pursuant to the requirements of Title 49 USC, Section 47101-47129.

Joint Participation Project—Major repair or new construction efforts done on the jointly used areas that are jointly funded by the airport and the military.

Joint Use Areas—The areas of a civilian airport that are jointly used by civilian and military aircraft. This area is generally limited to the runways and taxiways.

For Example Only

Operations and Maintenance Costs—Costs incurred in the daily operation and recurring maintenance of jointly used areas.

Percentage of Military Operations—Taking numbers from the official control tower counts, divide the total number of military operations (local and itinerant) by the total number of all operations (air carrier, air cargo, general aviation and military in both local and itinerant categories).

Substatial Use—A situation where a military unit has s significant enough impact on a civilian airport that reimbursement for operations and maintenance costs is warranted. It is further defined by FAA Grant Assurance 27.

For Example Only

Attachment 2

STANDARD TEMPLATE AIRPORT JOINT USE AGREEMENT

AIRPORT JOINT USE
AGREEMENT

BETWEEN

AUTHORITY

AND

UNITED STATES OF AMERICA

AND

STATE OF

(AIRPORT)

For Example Only

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For Example Only

AIRPORT JOINT USE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 200_, by and between the _____("Authority"); and the UNITED STATES OF AMERICA, acting by and through the Chief, National Guard Bureau, and the STATE OF _____, acting by and through its Adjutant General (collectively, "Government").

RECITALS

a. The (Authority) owns and operates _____ Airport ("Airport"), located in the City of _____, State of _____.

b. Title 49, United States Code, Chapter 471, "Airport Development," (Title 49 USC, Sections 47101-47129), provides that each of the Airport's facilities developed with financial assistance from the United States Government and each of the Airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facilities used.

c. The Government requires substantial use of the flying facilities at the Airport for the _____ Air National Guard, as well as for other occasional transient government aircraft.

d. The (Authority) is agreeable to such substantial use, in common with other users of the Airport, of the flying facilities by the Government under this Agreement.

e. The Government and the (Authority) desire to provide for the delineation of responsibility for operation and maintenance of the flying facilities jointly used in common with others at the Airport, and to establish the Government's reasonable share, proportional to such use, of the cost of operating and maintaining such jointly used flying facilities.

AGREEMENT:

1. DEFINITIONS

For purposes of this Agreement, the Jointly Used Flying Facilities of the Airport are the runways, taxiways, lighting systems, navigational aids, markings and appurtenances open to public use and use by the Government, including all improvements and facilities pertaining thereto and situated thereon and all future additions, improvements, and facilities thereto as may be added or constructed from time to time. The Jointly Used Flying Facilities do not include land areas used exclusively by the Government or the terminal buildings, hangars, non-government parking aprons and ramps, or other areas or structures used exclusively by the (Authority) or its lessees, permittees, or licensees for civilian or commercial purposes.

For Example Only

2. JOINT USE

Subject to the terms and conditions of this Agreement, the Government shall have the use, in common with other users of the Airport, present and prospective, of the Jointly Used Flying Facilities, together with all necessary and convenient rights of ingress and egress to and from the Jointly Used Flying Facilities and the Air National Guard installation and other Government facilities located on the Airport. Routes for ingress and egress for the Government's employees, agents, customers and contractors shall not unduly restrict the Government in its operations.

3. (AUTHORITY) RESPONSIBILITIES

The (Authority) will be responsible for the following services and functions, to standards in accordance with Paragraph 6 below:

a. Furnishing all personnel, materials and equipment required in the rendering of the services to be provided under the Agreement.

b. Performing any and all maintenance of the Jointly Used Flying Facilities, including but not limited to:

(1) Joint sealing, crack repair, surface repairs, airfield markings and repair or replacement of damaged sections of airfield pavement;

(2) Runway, taxiway, and approach lighting and the regulators and controls therefor;

(3) Beacons, obstruction lights, wind indicators, and other navigational aids;

(4) Grass cutting and grounds care, drainage, and dust and erosion control of unpaved areas, adjacent to runways and taxiways;

(5) Sweeping runways and taxiways;

(6) Controlling insects and pests;

(7) Removing snow, ice and other hazards from runways and taxiways within a reasonable time after such runways and taxiways have been so encumbered.

c. Furnishing utilities necessary to operate the Jointly Used Flying Facilities.

d. Removing disabled aircraft as expeditiously as possible, subject to the rules and regulations of the National Transportation Safety Board, in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

4. GOVERNMENT RESPONSIBILITIES

a. The Government will be responsible for the following:

(1) Removing disabled Government aircraft as expeditiously as possible in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

(2) Removing snow and ice from all ramps, aprons, and taxiways used exclusively by Government aircraft.

For Example Only

(3) Subject to availability of appropriations therefore, repairing within a reasonable time damage to the Jointly Used Flying Facilities to the extent that such damage is caused solely by Government aircraft operations and is in excess of the fair wear and tear resulting from the military use contemplated under this Agreement.

5. PAYMENTS

a. In consideration of and for the faithful performance of this Agreement, and subject to the availability of Federal appropriations, the Government shall pay to the (Authority) as its proportionate share of operating and maintaining the Jointly Used Flying Facilities, the following: (TO BE NEGOTIATED)

b. Payments for the periods set out in Paragraph 5a above shall be made upon submission of appropriate invoices to the Government as designated in Paragraph 5c below; provided, however, that if during the term of this Agreement, sufficient funds are not available through the annual appropriations at the beginning of any fiscal year to carry out the provisions of this Agreement, the Government will so notify the (Authority) in writing.

c. Bills for the payments provided hereunder shall be directed to: Payer Identification, or to such other address as the Government may from time to time provide to the (Authority) in writing.

d. Either party may request renegotiation if either party, at the request or with the formal concurrence of the other, as the case may be, requires services not contemplated by this Agreement, or reduces or eliminates services it undertakes to provide under this Agreement.

6. AIRFIELD MANAGEMENT

a. The (Authority) agrees that maintenance of the Jointly Used Flying Facilities shall, at all times, be in accordance with Federal Aviation Administration (FAA) standards for the operation of a commercial airport and operation of jet aircraft.

b. The Government agrees that any markings and equipment installed by it pursuant to Paragraph 7 of the Agreement shall be coordinated with the (Authority), and not be in conflict with FAA standards.

7. GOVERNMENT RESERVED RIGHTS

a. The Government reserves the right, at its sole cost and expense and subject to Paragraph 6b above, to:

(1) Provide and maintain in the Jointly Used Flying Facilities airfield markings required solely for military aircraft operations.

(2) Install, operate and maintain in the Jointly Used Flying Facilities any and all additional equipment, necessary for the safe and efficient operation of military aircraft including but not limited to arresting systems and navigational aids.

8. FIRE PROTECTION AND CRASH RESCUE

The parties to this Agreement have entered into a separate reciprocal fire protection agreement, which sets forth each party's responsibilities of fire protection and crash rescue services.

For Example Only

Or

The parties to this Agreement have entered into a separate mutual aid fire protection agreement, which sets forth each party's responsibilities of fire protection and crash rescue services.

Or

a. The Government maintains a fire fighting and crash rescue organization in support of military operations at the Airport. Within the limits of the existing capabilities of this organization, the Government agrees to respond to fire and crash rescue emergencies involving civil aircraft, subject to subparagraphs 8b, 8c, and 8d below.

b. The (Authority) agrees to release, acquit, and forever discharge the Government, its officers, agents, and employees for all liability arising out of or connected with the use of or failure to supply in individual cases, Government fire fighting and crash rescue equipment or personnel for fire control and crash rescue activities at or in the vicinity of the Airport. The (Authority) further agrees to the extent allowed under applicable law to indemnify, defend, and hold harmless the Government, its officers, agents, and employees against any and all claims, of whatever description, arising out of or connected with such use of or failure to supply in individual cases, Government fire fighting and crash rescue equipment or personnel, except where such claims arise out of or result from the gross negligence or willful misconduct of the officers, agents, or employees of the United States, without contributory fault on the part of any person, firm, or corporation. The (Authority) agrees to execute and maintain in effect a hold harmless agreement as required by applicable Air Force instructions for all periods during which emergency fire fighting and crash rescue service is provided to civil aircraft by the Government.

c. The (Authority) will reimburse the Government for expenses incurred by the Government for fire fighting and crash rescue materials expended in connection with providing such service to civil aircraft.

d. The Government's responsibility under this Paragraph 8 shall continue only so long as a fire fighting and crash rescue organization is authorized for military operations at the Airport. The Government shall have no obligation to maintain any fire fighting and crash rescue organization or to provide any increase in fire fighting and crash rescue equipment or personnel or to conduct any training or inspection for the purposes of this Paragraph. It is further understood that the Government's fire fighting and crash rescue equipment shall not be routinely parked on the Jointly Use Flying Facilities during non-emergency landings of civil aircraft.

e. Notwithstanding the foregoing, so long as the Government operates and maintains a fire fighting and crash rescue organization for military operations at the Airport, the Government will, consistent with military operations as determined by the Government, cooperate with the Federal Government agencies having jurisdiction over civil aircraft in the conduct of periodic inspections of fire fighting and crash rescue response time.

9. RECORDS AND BOOKS OF ACCOUNT

The (Authority) agrees to keep records and books of account, showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures made in fulfilling the obligations of this Agreement. The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of three (3) years after final payment, have access at all times to such records and books of account, or to any directly pertinent books, documents, papers, and records of any of the (Authority)'s contractors or subcontractors engaged in the performance of and involving trans-

For Example Only

actions related to this Agreement. The (Authority) further agrees that representatives of the Air Force Audit Agency or any other designated representative of the Government shall have the same right of access to such records, books of account, documents and papers as is available to the Comptroller General.

10. TERM

This Agreement shall be effective for a term of five (5) years beginning (month/day, year), and ending (month/day, year).

11. TERMINATION

a. This Agreement may be terminated by the Government at any time by giving at least thirty (30) days' notice thereof in writing to the (Authority).

b. The Government, by giving written notice to the (Authority), may terminate the right of the (Authority) to proceed under this Agreement if it is found, after notice and hearing by the Secretary of the Air Force or his or her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the (Authority), or any agent or representative of the (Authority), to any officer or employee of the Government with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such agreement, provided that the existence of the facts upon which the Secretary of the Air Force or his or her duly authorized representative makes such findings shall be an issue and may be reviewed in any competent court.

c. In the event this Agreement is terminated as provided in subparagraph 11a above, the Government shall be entitled to pursue the same remedies against the (Authority) as it could pursue in the event of a breach of the Agreement by the (Authority) and in addition to any other damages to which it may be entitled by law, the Government shall be entitled to exemplary damages in an amount (as determined by the Secretary of the Air Force or his or her duly authorized representative) which shall be not less than three (3) or more than ten (10) times the costs incurred by the (Authority) in providing any such gratuities to any such officer or employee.

d. The rights and remedies of the Government provided in subparagraph 11c above shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. GENERAL PROVISIONS

a. Compliance with Law. The (Authority) shall comply with all Federal, state and local laws, rules and regulations applicable to the activities conducted under this Agreement.

b. Assignment. The (Authority) shall neither transfer nor assign this Agreement without the prior written consent of the Government, which shall not be unreasonably withheld or delayed.

c. Liability. Except as otherwise provided in this Agreement, neither party shall be liable for damages to property or injuries to persons arising from acts of the other in the use of the Jointly Used Flying Facilities or occurring as a consequence of the performance of responsibilities under this Agreement.

For Example Only

d. Third Party Benefit. No member or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

e. Entire Agreement. It is expressly agreed that this written instrument embodies the entire financial arrangement and agreement of the parties regarding the use of the Jointly Used Flying Facilities by the Government, and there are no understandings or agreements, verbal or otherwise, between the parties in regard to it except as expressly set forth herein. Specifically, no landing fees or other fees not provided in this Agreement will be assessed by the (Authority) against the Government in the use of the Jointly Used Flying Facilities during the term of this Agreement.

f. Modification. This Agreement may only be modified or amended by mutual agreement of the parties in writing and signed by each of the parties hereto.

g. Waiver. The failure of either party to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, covenants, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, covenants, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

h. Paragraph Headings. The brief headings or titles preceding each Paragraph and subparagraph are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Agreement.

13. MAJOR REPAIRS AND NEW CONSTRUCTION

Major repair projects and/or new construction projects required for the Jointly Used Flying Facilities (collectively, "Joint Use Projects") are not included under this Agreement. Any Government contribution to Joint Use Projects shall be the subject of separate negotiations and written agreement between the (Authority) and the Government at such time as the work is required. Any Government participation in the costs of Joint Use Projects is subject to the availability of Federal funds for such purpose at the time the work is required.

14. NOTICES

a. No notice, order, direction, determination, requirement, consent or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

b. Written communications to the (Authority) shall be addressed to:

Name of Airport

Street or P.O. Box

City/State/Zip Code

c. Written communications to the Government shall be in duplicate with copies to the United States of America and the State of (name) addressed respectively, as follows:

(1) To the United States of America:

ANG/CE

For Example Only

ANGPAM32-1001 8 APRIL 2003 **17**

3500 Fetchet Avenue
Andrews AFB, MD 20762-5157
(2) To the State of (name):
The Adjutant General
Street or P.O. Box
City/State/Zip Code

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth opposite their respective signatures.

Dated:_____ (AIRPORT OWNER/OPERTOR NAME)

By:_____

(Title)_____

Approved as to form and legal sufficiency:

_____

Dated:_____ STATE OF (NAME)

Coordinated with:

_____ By:_____
U.S. Property & Fiscal Officer The Adjutant General

Dated:_____ UNITED STATES OF AMERICA

By:_____
For the Chief, National Guard Bureau

For Example Only

Attachment 3

ALLOWABLE COST ITEMS

A3.1. Allowable Cost Items.

A3.1.1. **Salaries - Labor/Contract** : Salaries for general labor used in grass cutting, snow removal, and trade labor providing maintenance/ repair of joint use facilities. Salaries limited to costs incurred in joint use area (i.e., landscaping/grass cutting, snow removal around the terminal, etc. not allowed). Submit list of employees-type and total number.

A3.1.2. **Pavement Maintenance** : Maintenance to runways, taxiways, overruns, shoulders of runways and taxiways (i.e., joint sealing, broken/shattered slabs repair or replacement, patching, tar/rubber removal, and paint restriping.) Do not include salaries already listed above.

A3.1.3. **Airfield Sweeping** : Supplies and fuels for sweeping joint use runways and taxiways. Do not include salaries already listed above.

A3.1.4. **Grass Cutting** : Supplies and fuels for mowing joint-use area (i.e., between runways, taxiways, clear zone, etc.). Do not include salaries already listed above.

A3.1.5. **Snow Plowing and Removal** : Supplies and fuels for snow removal in joint-use area. Do not include salaries already listed above.

A3.1.6. **Airfield Equipment Maintenance** : Maintenance of equipment used in joint use area (i.e., mowers, sweepers, snow removal equipment). Does not include general purpose vehicles used for overall airport operations. Please attach a list of equipment. Do not include salaries already listed above.

A3.1.7. **Airfield Lighting Maintenance** : Maintenance and parts such as bulbs, wiring, etc., for runways and taxiway lighting. Do not include salaries already listed above.

A3.1.8. **Navigational Aids Maintenance** : Maintenance and parts for those that are not maintained by FAA or military (windsock, indicators, VORs, VASI, etc.). Please attach a list of applicable navigational aids. Do not include salaries already listed above

A3.1.9. **Utilites Maintenance** : Maintenance and parts for utility lines (electrical, water, etc.) in the joint use areas. Do not include salaries already listed above.

A3.1.10. **Airfield Supplies** : General supply items to include small equipment/tools and ground fuels not already included in other categories above.

A3.1.11. **Utilities** : Utility bills directly supporting joint use area -- primarily electricity for airfield lighting.

A3.1.12. **Erosion Control/Storm Drainage** : Such items as grass seeding, grading, minor ditching and earthwork for sloping, and drainage in joint use areas. Repair/upgrade of storm drain system such as pipes, catch basins, ditches, etc. Environmental permits, sampling and analysis fees for joint use areas only.

A3.1.13. **Entomology/Animal Control** : Pest and animal control measures within the joint use areas.

A3.1.14. **Air Traffic Control/Weather Services** : Only where they are not provided by FAA or the military.

For Example Only

A3.1.15. **Fire Protection** : Only where the Airport exclusively provides fire protection (no mutual aid or reciprocal fire agreement).

A3.1.16. **Other** : Provide a detailed explanation of the additional cost item and appropriate supporting documentation.

A3.2. This is only a guide. Alternative budget breakouts can be submitted with justification and supporting documentation.

A3.3. The following items occurring within or without the joint-use area(s) are not allowable costs.

A3.3.1. **Operations and maintenance of non-joint use facilities** (terminals, parking facilities, commercial ramps and hangars, fuels facilities, etc.)

A3.3.2. **Indirect costs** (consulting fees, professional fees, environmental fines, training, facility maintenance, etc.)

A3.3.3. **Administrative overhead** (administrative salaries, marketing, travel, postage, janitorial, telephone, office supplies, uniforms etc.)

A3.3.4. **Authority accounting** (profit, overhead, debt service, depreciation, deferred maintenance, contingencies, etc.)

A3.3.5. **Insurance** (liability or fire)

Appendix V: Sample Deed of Conveyance

FORMER BERGSTROM AIR FORCE BASE, TRAVIS COUNTY, TEXAS

I. PARTIES

This Deed made this _____ day of _____, 2004, by and between the United States of America, acting by and through the Secretary of the Air Force whose address is Washington, D.C., under and pursuant to the Federal Property and Administrative Services Act of 1949, approved June 30, 1949, (63 Stat. 377), 40 U.S.C. § 101, *et seq.*, as amended, and regulations and orders promulgated there under; the Defense Base Closure and Realignment Act of 1990, P.L. No. 101-510, as amended, and regulations and orders promulgated there under; and a delegation from the Administrator of General Services to the Secretary of Defense, and a subsequent delegation from the Secretary of Defense to the Secretary of the Air Force, party of the first part, as Grantor, and the City of Austin, Texas, a body politic created, operating, and existing under and by virtue of the laws of the State of Texas, party of the second part, as Grantee.

WITNESSETH THAT:

WHEREAS, the Grantor is the owner of the real property described herein, located within the former Bergstrom Air Force Base, situated in Travis County, Texas; and

WHEREAS, the Grantee provided to the United States the money to purchase the real property described herein, under the condition that the United States retain title until such property was abandoned as a permanent Air Base, at which time the Grantee could elect to require the Grantor to convey such land and the improvements thereon to the Grantee; and

WHEREAS, the real property described herein was duly declared surplus and available for disposal pursuant to the powers and authority contained in the provisions of the Defense Base Closure and Realignment Act of 1990, P.L. No. 101-510, as amended, and orders and regulations promulgated there under; and

WHEREAS, pursuant to the resolution passed by the City Council of the Grantee dated February 27, 1947, the Grantee requests full legal title to such real property be conveyed to the Grantee.

II. CONSIDERATION AND CONVEYANCE

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby REMISE, RELEASE and FOREVER QUITCLAIM, Without Warranty or representation, express or implied except as expressly stated herein, and excluding all warranties that might arise by common law and the warranties under Section 5.023 of the Texas Property Code (or its successor) unto the Grantee, its successors and assigns forever, all such right and title as the Grantor has or ought to have, in and to the real property described in Exhibit “A” and depicted

on the survey drawing attached as Exhibit "B" of this Deed Without Warranty ("Deed") and situated in Travis County, Texas.

III. APPURTENANCES AND HABENDUM

TO HAVE AND TO HOLD, together with all the buildings and improvements erected thereon, except for monitoring wells, treatment wells, and treatment facilities and related piping, and all and singular the tenements, hereditaments, appurtenances, and improvements hereunto belonging, or in any wise appertaining, (which, together with the real property described herein, known as Parcel H called the "Property" in this Deed) the Property to the Grantee.

IV. RESERVATIONS

A. RESERVING UNTO THE GRANTOR, including the State of Texas (the "State"), and its and their respective officials, agents, employees, contractors, and subcontractors, the right of access to the Property (including the right of access to, and use of, utilities at reasonable cost to the Grantor), for the following purposes and for such other purposes as are necessary to ensure that a response or corrective action found to be necessary, either on the Property or on adjoining lands, after the date of transfer by this Deed will be conducted:

1. To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities relating to any such response or corrective action.

2. To inspect field activities of the Grantor and its contractors and subcontractors in implementing any such response or corrective action.

3. To conduct any test or survey required by the state relating to any such response or corrective action, or to verify any data submitted to the EPA or the state by the Grantor relating to any such actions.

4. To conduct, operate, maintain, or undertake any other response, corrective action as required or necessary under applicable law or regulation, or the covenant of the Grantor in Section VI of this Deed, but not limited to, the installation, closing, or removal of monitoring wells, pumping wells, and treatment facilities that will be owned or operated by the Grantor and its officials, agents, employees, contractors, and subcontractors.

B. PROVIDED, HOWEVER, this Deed is expressly made subject to the following restrictions, covenants, and agreements of the parties affecting the aforesaid Property, which shall run with the land.

V. CONDITIONS

A. The Grantee acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, "as is," "where is," without any representation, promise, agreement, or warranty on the part of the Grantor regarding such

condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions. The Grantee further acknowledges that the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

B. The Grantee and its successors and assigns hereby understand and agree that all costs associated with removing any restrictions of any kind whatsoever contained in this deed, whether necessitated by an environmental or other law or regulation, shall be the sole responsibility of Grantee, its successors and assigns, without any cost whatsoever to the United States.

VI. NOTICES AND COVENANTS RELATED TO SECTION 120(h)(3) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), AS AMENDED, (42 U.S.C. § 9620(h)(3).

A. Pursuant to Section 120(h)(3) of CERCLA of 1980, as amended (42 U.S.C. § 9620(h)(3)), the following is notice of hazardous substances on the Property and the description of remedial action taken concerning the Property:

1. The Grantor has made a complete search of its files and records. Exhibits C and D contain tables with the names of hazardous substances stored for one year or more, or known to have been released or disposed of, on the Property; the quantity in kilograms or pounds of the hazardous substance stored for one year or more, or known to have been released, or disposed of, on the Property; and the date(s) on which such storage, release, or disposal took place.

2. Pursuant to Section 120(h)(3)(A)(ii) of CERCLA, the United States covenants and warrants:

(a) That all remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the Property has been taken before the date of this Deed: and

(b) Any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States. This covenant will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party with respect to the Property before the date on which any grantee acquired an interest in the Property, or is a potentially responsible party as a result of an act of omission affecting the Property. For the purposes of this covenant, the phrase “remedial action necessary” does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in Section VII below.

3. The United States has reserved access to the Property in the Reservation Section of this deed in order to perform any remedial or corrective action as required by CERCLA Section 120(h)3(A)(ii).

VII. OTHER COVENANTS AND NOTICES

A. General Lead-Based Paint and Lead-Based Paint-Containing Materials and Debris (collectively "LBP")

1. Lead-based paint was commonly used prior to 1978 and may be located on the Property. The Grantee is advised to exercise caution during any use of the Property that may result in exposure to LBP.

2. The Grantee agrees that in its use and occupancy of the Property, the Grantee is solely responsible for managing LBP, including LBP in soils, in accordance with all applicable federal, state, and local laws and regulations. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, contact, disposition, or other activity involving LBP on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured. The Grantee further agrees to notify the Grantor promptly of any discovery of LBP in soils that appears to be the result of Grantor activities and that is found at concentrations that may require remediation. The Grantor hereby reserves the right, in its sole discretion, to undertake an investigation and conduct any remedial action that it determines is necessary.

B. Asbestos-Containing Materials ("ACM"). The Grantee is warned that the Property may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground that may contain ACM. The Grantee covenants and agrees that in its use and occupancy of the Property, it will comply with all applicable federal, state, and local laws relating to asbestos. The Grantee is cautioned to use due care during property development activities that may uncover pipelines or other buried ACM. The Grantee covenants and agrees that it will notify the Grantor promptly of any potentially friable ACM that constitutes a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*). The Grantor's responsibility under this deed for friable ACM is limited to friable ACM in demolition debris associated with past Air Force activities and is limited to the actions, if any, to be taken in accordance with the covenant contained in Section VI herein.

The Grantee is warned that the Grantor will not be responsible for removing or responding to ACM in or on utility pipelines. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured.

C. Soils and Groundwater Access. The Grantee covenants for itself, its successors and assigns and every successor in the interest to the property herein described, or any part thereof as follows:

1. Conducting any type of surface or subsurface activity on the Property, such as, but not limited to, the excavation of soils, use of soils, installation of groundwater wells, or other access to groundwater, installation or repair of utilities, installation of foundation piers, because such actions may cause an exposure to the contaminants or waste left in place. Performance of any type of access to the Property that would interfere with or damage the remedies in place or the conducting of intrusive activity on the Property is prohibited unless the following requirements are adhered to:

The current owner or future owner of the Property, in instances when surface or subsurface construction activities must be taken; any such owner must comply with all the applicable environmental, worker protection and other laws, rules and regulation. The owner must prepare a Work Plan describing the activities proposed within the Property. The owner of the Property must also develop and adhere to a Health and Safety Plan that addresses worker protection and contingencies for possible potential releases of contaminants from the affected media that may be encountered when conducting the aforementioned activities. The Work Plan and Health and Safety Plan must be approved by the Air Force prior to initiating any such activities within the Property.

2. Due to the presence of contamination and waste left in place, exposure to the soil and groundwater within the Property may pose an increased risk to human health and environment; therefore, residential use of the property is prohibited.

D. Access to Fenced Area. The Grantee covenants for itself, its successors and assigns and every successor in the interest to the property herein described, or any part thereof not to enter the fenced area located on the parcel, depicted in Exhibit B, without the express, written permission of the Air Force. This area is restricted in order to protect the remedy selected and to minimize risk to human health and environment.

E. Nondiscrimination. The Grantee covenants not to discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property.

F. Hazards to Air Navigation. Prior to commencing any construction on, or alteration of, the Property, the Grantee covenants to comply with 14 CFR Part 77 entitled “Objects Affecting Navigable Airspace”, under the authority of the Federal Aviation Act of 1958 (FAA Act), as amended.

NOTICE ONLY:

G. Energy/ Infrastructure Lines.

The Grantee is hereby notified that areas within the Parcel have the potential for containing buried utility lines not indicated on maps used for locating subsurface utilities, with an increasing likelihood for such unidentified locations on the Property near the former industrial areas of the Former Bergstrom AFB. Hazards associated with these unmapped utility lines include contact with materials of construction, as well as contact with materials conveyed such as pressurized natural gas, petroleum fuel products, and high voltage electricity.

Note, if the transfer is to a private party, meaning any person or entity other than the City of Austin, the utility company owns an easement that may not be included in the transfer. In such a case, the utility company should be consulted prior to any excavation or drilling into the subsurface. Any activity conducted on the Property, which will include excavation, or drilling into the subsurface should be conducted in accordance with all appropriate industry safety precautions in consideration of the potential presence of such unmarked utility lines.

H. Radon. The Grantee is hereby informed and does acknowledge that currently the Property contains a natural occurrence of radon at levels that require no action. The base was considered a medium-risk area due to radon concentrations between 4-20 pCi/l.

VIII. AIRPORT COVENANTS:

A. Grantee covenants and agrees, on behalf of itself and its successors and assigns, with regard to use of the Property, that the following covenants, conditions and restrictions will run with the land and be enforceable by Grantor acting through the Administrator of the Federal Aviation Administration (FAA) against the Grantee, and each successor, assign, or transferee of the Grantee, including without limitation, any tenant or licensee of the Grantee who may claim a possessory interest in any portion of the Property.

1. Except as provided in Section VIII.A.4 of this Quitclaim Deed, the Property shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for the use of the Property within the meaning of the term "exclusive right" as used in Section VIII.A.6.

2. Except as provided in Section VIII.A.4 hereof, the entire airfield, as defined in 49 United States Code (U.S.C.) § 40102(a)(28), as amended, and Federal Aviation Regulations pertaining thereto, and all structures, improvements, facilities and equipment in which any interest is transferred, shall be maintained for the use and benefit of the public at all times in safe and serviceable condition so as to assure its efficient operation and use; provided, however, that such maintenance shall be required to structures, improvements, facilities, and equipment only during the useful life thereof as determined by the Administrator of the FAA or his or her successor in function. In the event materials are required to rehabilitate or repair certain of the aforementioned structures,

improvements, facilities, or equipment, they may be procured by demolition of other structures, improvements, facilities, or equipment transferred as a result of this Quitclaim Deed and located on the Property, which have outlived their use as a public airport in the opinion of the Administrator of the FAA or his or her successor in function. Notwithstanding any other provision of this Quitclaim Deed:

a. With the prior written approval of the FAA, the Grantee may close or otherwise limit use or access to any portion of the Property that it deems appropriate if such closure or use limitation is related to airport operating considerations or is based upon insufficient demand for such portion of the Property; and

b. With respect to any such portion of the Property, the Grantee shall be under no obligation to maintain the same other than as may be required to maintain adequate public safety conditions.

3. Insofar as it is within its power and to the extent reasonable, the Grantee shall adequately clear and protect the aerial approaches to the Property. The Grantee will, either by the acquisition and retention of easements or other interest in or rights for the use of land airspace, or by seeking the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways on the Property which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Part 77 of the Federal Aviation Administration regulations or 14 CFR Part 77, as applicable, according to the currently approved Airport Layout Plan. In addition, the Grantee will not erect, or permit the erection of, any permanent structure or facility which would interfere materially with the use, operation, or future development of the Property, in any portion of a runway approach area in which the Grantee has acquired, or may hereafter acquire, a property interest permitting it to so control the use made of the surface of the land. Insofar as it is within its power to the extent reasonable, the Grantee will take action to restrict the use of the land adjacent to or in the immediate operations, including landing and takeoff of aircraft.

4. No land or improvements included in the Property shall be used, leased, sold, salvaged, or disposed of by the Grantee for other than airport purposes without the written consent of the Administrator of the FAA or his or her successor in function. This consent shall be granted only if the Administrator of the FAA or his or her successor in function determines that the land or improvements can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Property. The term "Property" as used in this deed, is deemed to include revenues or proceeds (including any insurance proceeds) derived from the Property.

5. Land and improvements transferred for the development, improvement, operation or maintenance of the Property as an airport shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without unjust discrimination. In

furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees:

a. That it will keep the Property open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes. However, the Grantee may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Property as may be necessary for the safe and efficient operation of the Property; and provided, that the Grantee may prohibit or limit any given type, kind, or class of aeronautical use of the Property if such action is necessary for the safe operation of the Property or necessary to serve the civil aviation needs of the public;

b. That, in its operation and the operation of the Property, neither it nor any person or organization occupying space or facilities thereupon, will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public at the Property;

c. That, in any agreement, contract, lease, or other arrangement under which a right or privilege at the Property is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Property, the Grantee will insert and enforce provisions requiring the contractor:

(1) To furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit for service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers;

d. That, the GRANTEE will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Property from performing any services on its own aircraft with its own employees (including, but not limited to maintenance and repair) that it may choose to perform; and

e. That, in the event the Grantee, itself exercises any of the rights and privileges referred to in Section VIII.A.5.c., above, the services involved will be provided on the same conditions as would apply to the furnishing of such Section X.A.5.c.

6. The Grantee will not grant or permit any exclusive right for the use of the Property which is forbidden by 49 U.S.C. § 47107(a)(4) by any person or applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees that, unless authorized by the Administrator of FAA or his or her successor in function, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right to conduct any aeronautical activity on the Property, including but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising, and surveying, air carrier

operations, aircraft sales and services, sale of aviation petroleum products, whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity. The Grantee further agrees that it will terminate as soon as possible and no later than the earliest renewal, cancellation, or expiration date applicable thereof, any exclusive right existing at any airport owned or controlled by the Grantee or hereinafter acquired, and that, thereafter, no such right shall be granted. However, nothing contained in this deed shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any services of a nonaeronautical nature, or to obligate the Grantee to furnish any particular nonaeronautical service at the Property.

7. The Grantee will operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by the Administrator of the FAA or his or her successor in function, the Property and all facilities thereon and connected therewith which are necessary to service the aeronautical users of the airport other than facilities owned or controlled by the United States, and the Grantee shall not permit any activity thereon which would interfere with its use for airport purposes. Nothing contained herein shall be construed to require:

a. That the Property be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; or

b. The repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstances beyond the control of the Grantee.

8. The Grantee will:

a. Furnish the FAA with annual or special airport financial and operational reports as may be reasonably requested using either forms furnished by the FAA or in such manner as it elects so long as the essential data are furnished; and

b. Upon reasonable request of the FAA, make available for inspection by any duly authorized representative of the FAA the Property and all airport records and documents affecting the Property, including deeds, leases, operation and use agreements, regulations, and other instruments, and will furnish to the FAA a true copy of any such document which may be reasonably requested.

9. The Grantee will not enter into any action which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the covenants and conditions set forth in this deed unless by such transaction the obligation to perform or comply with all such covenants and conditions is assumed by another public agency found by the FAA to be eligible as a public agency, as defined in 49 U.S.C. § 47102(15),

to assume such obligations and have the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Property by any agency or person other than the Grantee, the Grantee shall reserve sufficient rights and authority to insure that such airport will be operated and maintained in accordance with these covenants and conditions, applicable federal statutes, and applicable provisions of the Federal Aviation Regulations.

10. The Grantee will at all times keep an up-to-date Airport Layout Plan of the airport operated by it on the Property, showing:

a. The boundaries of the airport and all proposed additions thereto, together with the boundaries of all off-site areas owned or controlled by the Grantee for airport purposes and proposed additions thereto;

b. The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and

c. The location of all existing and proposed nonaviation areas and all existing improvements and uses. The Airport Layout Plan and each amendment shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the Airport Layout Plan. The Grantee will not make, or permit the making of, any changes or alternations in the airport or any of its facilities other than in conformity with the Airport Layout Plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the airport.

11. If at any time it is determined by the FAA that there is any outstanding right, or claim of right, in or to the Property described herein, the existence of which creates an undue risk of interference with the operation of the Property as an airport or the Grantee will, to the extent practicable, acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

12. The Grantee covenants and agrees for itself, its successors and assigns that:

a. The program for or in connection with which this deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to, the regulations of the United States Department of Transportation ("DOT") in effect on the date of the transfer (49 CFR Part 21) issued under the provisions of Title VI of the Civil Rights Act of 1964, as amended;

b. This covenant shall be subject in all respects to the provisions of such regulations;

c. The Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant;

d. The United States shall have the right to seek judicial enforcement of this covenant; and

e. The Grantee, its successors and assigns, will:

(i) Obtain from any person, including any legal entity, who, through contractual or other arrangement with the Grantee, its successors and assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the service or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant;

(ii) Furnish the original of such agreement to the Administrator of the FAA or his or her successor in function, upon his or her request therefore; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor against the Grantee, its successors, and assigns.

13. Grantee covenants for itself, its successors and assigns, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with 14 CFR Part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958 (FAA Act), as amended.

B. Grantee covenants and agrees, on behalf of itself and its successors and assigns, that it will with regard to future use of the property by the United States:

1. Whenever so requested by the FAA, furnish without cost to the United States, for construction, operation and maintenance of facilities for air traffic control, weather reporting activities, or communication activities related to air traffic control, such areas of the Property or rights in buildings on the Property, as the FAA may consider necessary or desirable for construction at federal expense of space or facilities for such purposes, and the Grantee will make available such areas or any portion thereof for the purposes provided in this deed within four (4) months after receipt of written request from the FAA, if such are or will be available.

2. Make available all facilities at the Property developed with federal aid, and all those usable for the landing and taking off of aircraft, to the United States at all times, without charge, and for use by aircraft of any agency of the United States in common with other aircraft, except that if the use by aircraft of any agency of the United States in common with other aircraft, is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Grantee and the using federal agency, substantial use of an airport by United States aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the authorized aircraft or, that during any calendar month:

a. Either five (5) or more aircraft of any agency of the United States are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of aircraft of any agency of the United States is three hundred (300) or more; or

c. The gross accumulative weight of aircraft of any agency of the United States using the Airport (total movement of such federal aircraft multiplied by gross certified weights thereof) is in excess of five million pounds "5,000,000 lbs".

1. During any national emergency declared by the President of the United States, or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the Property and its improvements, as it then exists, or of such portion thereof as it may desire. However, the United States shall be responsible for the entire cost of maintaining such part of the Property as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession or control and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of the Property as it may use nonexclusively or over which it may have nonexclusive control and possession. The United States shall also pay a fair rental for use, control or possession, exclusively or nonexclusively, of any improvements to the property made without United States aid and never owned by the United States.

C. Release from Airport Liability Claims. The Grantee does hereby release the Grantor, and will take whatever action may be required by the Administrator of the FAA or his or her successor in function, to assure the complete release of the GRANTOR, from any and all liability the Grantor may be under for restoration or other damages under any lease or other agreement covering the use by the Grantor of any other airport, or part thereof, owned, controlled or operated by the Grantee, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used. However, no such release shall be construed as depriving the Grantee of any right it may otherwise have to receive reimbursement for the necessary rehabilitation or repair of public airports previously, or hereafter substantially damaged by any federal agency.

D. Reverter and Conveyance by Grantee of the Property.

1. In the event that any of the terms, conditions reservations, or restrictions in this deed are not met, observed, or complied with by the Grantee or any subsequent transferee, whether caused by the legal inability or the Grantee or subsequent transferee to perform any of the obligations herein set out or otherwise, the title, right of possession and all other rights transferred by this instrument to the Grantee, or any portion thereof, shall at the option of the Grantor revert to the Grantor in its then-existing condition sixty (60) days following the date upon which demand to this effect is made in writing by the

Administrator of the FAA or his or her successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been met, observed, or complied with, or if the Grantee shall have commenced the actions necessary to bring it into compliance with such terms, conditions, reservations and restrictions in accordance with a compliance schedule approved by the Administrator of the FAA or his or her successor in function, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the Grantee, its transferees, successors and assigns.

2. Any of the property included in the Property may be successively transferred to successors and assigns of the Grantee only with the approval of the Administrator of the FAA or his or her successor in function to the extent required-by the provisions of Section VIII, subsection A4 hereof, with the proviso that any such subsequent transferee assumes all the obligations imposed herein unless released in writing there from by the Administrator of the FAA or his or her successor in function.

E. Construction of Provisions of This Quitclaim Deed. If the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservation or restrictions in question shall be construed instead merely as conditions, the breach of which the United States may exercise its options to cause the title, interest, right of possession, and all other rights transferred to the Grantee, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

IX. MISCELLANEOUS

A. Each covenant of this Deed shall be deemed to touch and concern the land and shall run with the land.

B. It is the intent of the Grantor and the Grantee that the covenants in Section VIII are between the FAA and the Grantee to this Deed, and those covenants are not intended to run with the land or to bind the successors and assigns of the Grantee to this Deed.

X. THE FOLLOWING EXHIBITS are attached to and made a part of this document:

Exhibit A	Legal Description of Property Conveyed
Exhibit B	Survey Drawing
Exhibit C	Notice of Hazardous Substance(s) Stored
Exhibit D	Notice of Hazardous Substance(s) Released

IN WITNESS WHEREOF, the party of the first part has caused this Deed to be executed in its name and on its behalf the day and year first above written.

Appendix W: Reserved

Appendix X: 14 CFR Part 161

PART 161 -- NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS

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Authority: 49 U.S.C. §§ 106(g), 47523-47527, 47533.

Source: Docket No. 26432, 56 FR 48698, Sept. 25, 1991, unless otherwise noted.

Subpart A – General Provisions

§ 161.1 Purpose.

This part implements the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2153, 2154, 2155, and 2156). It prescribes:

(a) Notice requirements and procedures for airport operators implementing Stage 3 aircraft noise and access restrictions pursuant to agreements between airport operators and aircraft operators;

(b) Analysis and notice requirements for airport operators proposing Stage 2 aircraft noise and access restrictions;

(c) Notice, review, and approval requirements for airport operators proposing Stage 3 aircraft noise and access restrictions; and

(d) Procedures for Federal Aviation Administration reevaluation of agreements containing restrictions on Stage 3 aircraft operations and of aircraft noise and access restrictions affecting Stage 3 aircraft operations imposed by airport operators.

§ 161.3 Applicability.

(a) This part applies to airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airports imposing restrictions on Stage 3 aircraft operations that became effective after October 1, 1990.

(b) This part also applies to airports enacting amendments to airport noise and access restrictions in effect on October 1, 1990, but amended after that date, where the amendment reduces or limits aircraft operations or affects aircraft safety.

(c) The notice, review, and approval requirements set forth in this part apply to all airports imposing noise or access restrictions as defined in § 161.5 of this part.

§ 161.5 Definitions.

For the purposes of this part, the following definitions apply:

Agreement means a document in writing signed by the airport operator; those aircraft operators currently operating at the airport that would be affected by the noise or access restriction; and all affected new entrants planning to provide new air service within 180 days of the effective date of the restriction that have submitted to the airport operator a plan of operations and notice of agreement to the restriction.

Aircraft operator, for purposes of this part, means any owner of an aircraft that operates the aircraft, *i.e.*, uses, causes to use, or authorizes the use of the aircraft; or in the case of a leased aircraft, any lessee that operates the aircraft pursuant to a lease. As used in this part, aircraft operator also means any representative of the aircraft owner, or in the case of a leased aircraft, any representative of the lessee empowered to enter into agreements with the airport operator regarding use of the airport by an aircraft.

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport noise study area means that area surrounding the airport within the noise contour selected by the applicant for study and must include the noise contours required to be developed for noise exposure maps specified in 14 CFR Part 150.

Airport operator means the airport proprietor.

Aviation user class means the following categories of aircraft operators: air carriers operating under Part 121 or Part 129 of this chapter; commuters and other air carriers operating under Part 135 of this chapter; general aviation, military, or federal government operations.

Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m. and midnight, local time, as defined in 14 CFR Part 150. (The scientific notation for DNL is Ldn).

Noise or access restrictions means restrictions (including but not limited to provisions of ordinances and leases) affecting access or noise that affect the operations of Stage 2 or Stage 3 aircraft, such as limits on the noise generated on either a single-event or cumulative basis; a limit, direct or indirect, on the total number of Stage 2 or Stage 3 aircraft operations; a noise budget or noise allocation program that includes Stage 2 or Stage 3 aircraft; a restriction imposing limits on hours of operations; a program of airport-use charges that has the direct or indirect effect of controlling airport noise; and any other limit on Stage 2 or Stage 3 aircraft that has the effect of controlling airport noise. This definition does not include peak-period pricing programs where the objective is to align the number of aircraft operations with airport capacity.

Stage 2 aircraft means an aircraft that has been shown to comply with the Stage 2 requirements under 14 CFR Part 36.

Stage 3 aircraft means an aircraft that has been shown to comply with the Stage 3 requirements under 14 CFR Part 36.

[Doc. No. 26432, 56 FR 48698, Sept. 25, 1991, as amended by Amdt. 161-2, 66 FR 21067,

Apr. 27, 2001]

§ 161.7 Limitations.

(a) Aircraft operational procedures that must be submitted for adoption by the FAA, such as preferential runway use, noise abatement approach and departure procedures and profiles, and flight tracks, are not subject to this part. Other noise abatement procedures, such as taxiing and engine runups, are not subject to this part unless the procedures imposed limit the total number of Stage 2 or Stage 3 aircraft operations, or limit the hours of Stage 2 or Stage 3 aircraft operations, at the airport.

(b) The notice, review, and approval requirements set forth in this part do not apply to airports with restrictions as specified in 49 U.S.C. App. 2153(a)(2)(C):

(1) A local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on November 5, 1990.

(2) A local action to enforce a negotiated or executed airport aircraft noise or access restriction the airport operator and the aircraft operators agreed to before November 5, 1990.

(3) An intergovernmental agreement including airport aircraft noise or access restriction in effect on November 5, 1990.

(4) A subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on November 5, 1990, where the amendment does not reduce or limit aircraft operations or affect aircraft safety.

(5) A restriction that was adopted by an airport operator on or before October 1, 1990, and that was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction, or a part thereof, is subsequently allowed by a court to take effect.

(6) In any case in which a restriction described in paragraph (b)(5) of this section is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990.

(7) A local action that represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction, where the initial portion of such program was adopted during calendar year 1988 and was in effect on November 5, 1990.

(c) The notice, review, and approval requirements of subpart D of this part with regard to Stage 3 aircraft restrictions do not apply if the FAA has, prior to November 5, 1990, formed a working group (outside of the process established by 14 CFR Part 150) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is then entered into between the airport proprietor and an air carrier or air carrier constituting a majority of the air carrier users of such airport, the requirements of subparts B and D of this part with respect to restrictions on Stage 3 aircraft operations do apply to local actions to enforce such agreements.

(d) Except to the extent required by the application of the provisions of the Act, nothing in this part eliminates, invalidates, or supersedes the following:

(1) Existing law with respect to airport noise or access restrictions by local authorities;

(2) Any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) The authority of the Secretary of Transportation to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

§ 161.9 Designation of noise description methods.

For purposes of this part, the following requirements apply:

(a) The sound level at an airport and surrounding areas, and the exposure of individuals to noise resulting from operations at an airport, must be established in accordance with the specifications and methods prescribed under appendix A of 14 CFR Part 150; and

(b) Use of computer models to create noise contours must be in accordance with the criteria prescribed under appendix A of 14 CFR Part 150.

§ 161.11 Identification of land uses in airport noise study area.

For the purposes of this part, uses of land that are normally compatible or noncompatible with various noise-exposure levels to individuals around airports must be identified in accordance

with the criteria prescribed under appendix A of 14 CFR Part 150. Determination of land use must be based on professional planning, zoning, and building and site design information and expertise.

Subpart B – Agreements

§ 161.101 Scope.

(a) This subpart applies to an airport operator's noise or access restriction on the operation of Stage 3 aircraft that is implemented pursuant to an agreement between an airport operator and all aircraft operators affected by the proposed restriction that are serving or will be serving such airport within 180 days of the date of the proposed restriction.

(b) For purposes of this subpart, an agreement shall be in writing and signed by:

(1) The airport operator;

(2) Those aircraft operators currently operating at the airport who would be affected by the noise or access restriction; and

(3) All new entrants that have submitted the information required under § 161.105(a) of this part.

(c) This subpart does not apply to restrictions exempted in § 161.7 of this part.

(d) This subpart does not limit the right of an airport operator to enter into an agreement with one or more aircraft operators that restricts the operation of Stage 2 or Stage 3 aircraft as long as the restriction is not enforced against aircraft operators that are not party to the agreement. Such an agreement is not covered by this subpart except that an aircraft operator may apply for sanctions pursuant to subpart F of this part for restrictions the airport operator seeks to impose other than those in the agreement.

§ 161.103 Notice of the proposed restriction.

(a) An airport operator may not implement a Stage 3 restriction pursuant to an agreement with all affected aircraft operators unless there has been public notice and an opportunity for comment as prescribed in this subpart.

(b) In order to establish a restriction in accordance with this subpart, the airport operator shall, at least 45 days before implementing the restriction, publish a notice of the proposed restriction in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport vicinity or airport noise study area, if one has been delineated; post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; affected operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the vicinity of the airport, or the airport noise study area, if one has been delineated;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each direct notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including sanctions for noncompliance and a statement that it will be implemented pursuant to a signed agreement;

(3) A brief discussion of the specific need for and goal of the proposed restriction;

(4) Identification of the operators and the types of aircraft expected to be affected;

(5) The proposed effective date of the restriction and any proposed enforcement mechanism;

(6) An invitation to comment on the proposed restriction, with a minimum 45-day comment period;

(7) Information on how to request copies of the restriction portion of the agreement, including any sanctions for noncompliance;

(8) A notice to potential new entrant aircraft operators that are known to be interested in serving the airport of the requirements set forth in § 161.105 of this part; and

(9) Information on how to submit a new entrant application, comments, and the address for submitting applications and comments to the airport operator, including identification of a contact person at the airport.

(d) The Federal Aviation Administration will publish an announcement of the proposed restriction in the Federal Register.

[Docket No. 26432, 56 FR 48698, Sept. 25, 1991; 56 FR 51258, Oct. 10, 1991]

§ 161.105 Requirements for new entrants.

(a) Within 45 days of the publication of the notice of a proposed restriction by the airport operator under § 161.103(b) of this part, any person intending to provide new air service to the airport within 180 days of the proposed date of implementation of the restriction (as evidenced

by submission of a plan of operations to the airport operator) must notify the airport operator if it would be affected by the restriction contained in the proposed agreement, and either that it --

(1) Agrees to the restriction; or

(2) Objects to the restriction.

(b) Failure of any person described in § 161.105(a) of this part to notify the airport operator that it objects to the proposed restriction will constitute waiver of the right to claim that it did not consent to the agreement and render that person ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years following the effective date of the restriction. The signature of such a person need not be obtained by the airport operator in order to comply with § 161.107(a) of this part.

(c) All other new entrants are also ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years.

§ 161.107 Implementation of the restriction.

(a) To be eligible to implement a Stage 3 noise or access restriction under this subpart, an airport operator shall have the restriction contained in an agreement as defined in § 161.101(b) of this part.

(b) An airport operator may not implement a restriction pursuant to an agreement until the notice and comment requirements of § 161.103 of this part have been met.

(c) Each airport operator must notify the Federal Aviation Administration of the implementation of a restriction pursuant to an agreement and must include in the notice evidence of compliance with § 161.103 and a copy of the signed agreement.

§ 161.109 Notice of termination of restriction pursuant to an agreement.

An airport operator must notify the FAA within 10 days of the date of termination of a restriction pursuant to an agreement under this subpart.

§ 161.111 Availability of data and comments on a restriction implemented pursuant to an agreement.

The airport operator shall retain all relevant supporting data and all comments relating to a restriction implemented pursuant to an agreement for as long as the restriction is in effect. The airport operator shall make these materials available for inspection upon request by the FAA. The information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

§ 161.113 Effect of agreements; limitation on reevaluation.

(a) Except as otherwise provided in this subpart, a restriction implemented by an airport operator pursuant to this subpart shall have the same force and effect as if it had been a restriction implemented in accordance with subpart D of this part.

(b) A restriction implemented by an airport operator pursuant to this subpart may be subject to reevaluation by the FAA under subpart E of this part.

Subpart C – Notice Requirements for Stage 2 Restrictions

§ 161.201 Scope.

(a) This subpart applies to:

(1) An airport imposing a noise or access restriction on the operation of Stage 2 aircraft, but not Stage 3 aircraft, proposed after October 1, 1990.

(2) An airport imposing an amendment to a Stage 2 restriction, if the amendment is proposed after October 1, 1990, and reduces or limits Stage 2 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 2 restriction specifically exempted in §161.7 or a Stage 2 restriction contained in an agreement as long as the restriction is not enforced against aircraft operators that are not parties to the agreement.

§ 161.203 Notice of proposed restriction.

(a) An airport operator may not implement a Stage 2 restriction within the scope of § 161.201 unless the airport operator provides an analysis of the proposed restriction, prepared in accordance with § 161.205, and a public notice and opportunity for comment as prescribed in this subpart. The notice and analysis required by this subpart shall be completed at least 180 days prior to the effective date of the restriction.

(b) Except as provided in § 161.211, an airport operator must publish a notice of the proposed restriction in an area wide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 2 restriction, and where the complete text of the restriction, and any sanctions for noncompliance, are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the operators and the types of aircraft expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (*e.g.*, city ordinance, airport rule, lease), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction, as required by § 161.205 of this subpart, or an announcement of where the analysis is available for public inspection;

(7) An invitation to comment on the proposed restriction and analysis, with a minimum 45-day comment period;

(8) Information on how to request copies of the complete text of the proposed restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator, including identification of a contact person at the airport.

(d) A t the time of notice, the airport operator shall provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance.

(e) The Federal Aviation Administration will publish an announcement of the proposed Stage 2 restriction in the *Federal Register*.

§ 161.205 Required analysis of proposed restriction and alternatives.

(a) Each airport operator proposing a noise or access restriction on Stage 2 aircraft operations shall prepare the following and make it available for public comment:

(1) An analysis of the anticipated or actual costs and benefits of the proposed noise or access restriction;

(2) A description of alternative restrictions; and

(3) A description of the alternative measures considered that do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to costs and benefits of the proposed noise or access restriction.

(b) In preparing the analyses required by this section, the airport operator shall use the noise measurement systems and identify the airport noise study area as specified in §§ 161.9 and

161.11, respectively; shall use currently accepted economic methodology; and shall provide separate detail on the costs and benefits of the proposed restriction with respect to the operations of Stage 2 aircraft weighing less than 75,000 pounds if the restriction applies to this class. The airport operator shall specify the methods used to analyze the costs and benefits of the proposed restriction and the alternatives.

(c) The kinds of information set forth in § 161.305 are useful elements of an adequate analysis of a noise or access restriction on Stage 2 aircraft operations.

§ 161.207 Comment by interested parties.

Each airport operator shall establish a public docket or similar method for receiving and considering comments, and shall make comments available for inspection by interested parties upon request. Comments must be retained as long as the restriction is in effect.

§ 161.209 Requirements for proposal changes.

(a) Each airport operator shall promptly advise interested parties of any changes to a proposed restriction, including changes that affect noncompatible land uses, and make available any changes to the proposed restriction and its analysis. Interested parties include those that received direct notice under § 161.203(b), or those that were required to be consulted in accordance with the procedures in § 161.211 of this part, and those that have commented on the proposed restriction.

(b) If there are substantial changes to the proposed restriction or the analysis during the 180-day notice period, the airport operator shall initiate new notice following the procedures in § 161.203 or, alternatively, the procedures in § 161.211. A substantial change includes, but is not limited to, a proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.203(c), new notice must indicate that the airport operator is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction. The effective date of the restriction must be at least 180 days after the date the new notice and revised analysis are made available for public comment.

§ 161.211 Optional use of 14 CFR Part 150 procedures.

(a) An airport operator may use the procedures in Part 150 of this chapter, instead of the procedures described in §§ 161.203(b) and 161.209(b), as a means of providing an adequate public notice and comment opportunity on a proposed Stage 2 restriction.

(b) If the airport operator elects to use 14 CFR Part 150 procedures to comply with this subpart, the operator shall:

> (1) Ensure that all parties identified for direct notice under § 161.203(b) are notified that the airport's 14 CFR Part 150 program will include a proposed Stage 2 restriction under Part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR Part 150 program;

(2) Provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance, at the time of the notice;

(3) Include the information in § 161.203 (c)(2) through (c)(5) and 161.205 in the analysis of the proposed restriction for the Title 14 CFR Part 150 program;

(4) Wait 180 days following the availability of the above analysis for review by the consulted parties and compliance with the above notice requirements before implementing the Stage 2 restriction; and

(5) Include in its 14 CFR Part 150 submission to the FAA evidence of compliance with paragraphs (b)(1) and (b)(4) of this section, and the analysis in paragraph (b)(3) of this section, together with a clear identification that the 14 CFR Part 150 program includes a proposed Stage 2 restriction under Part 161.

(c) The FAA determination on the 14 CFR Part 150 submission does not constitute approval or disapproval of the proposed Stage 2 restriction under Part 161.

(d) An amendment of a restriction may also be processed under 14 CFR Part 150 procedures in accordance with this section.

§ 161.213 Notification of a decision not to implement a restriction.

If a proposed restriction has been through the procedures prescribed in this subpart and the restriction is not subsequently implemented, the airport operator shall so advise the interested parties. Interested parties are described in § 161.209(a).

Subpart D – Notice, Review, and Approval Requirements for Stage 3 Restrictions

§ 161.301 Scope.

(a) This subpart applies to:

(1) An airport imposing a noise or access restriction on the operation of Stage 3 aircraft that first became effective after October 1, 1990.

(2) An airport imposing an amendment to a Stage 3 restriction, if the amendment becomes effective after October 1, 1990, and reduces or limits Stage 3 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 3 restriction specifically exempted in § 161.7, or an agreement complying with subpart B of this part.

(c) A Stage 3 restriction within the scope of this subpart may not become effective unless it has been submitted to and approved by the FAA. The FAA will review only those Stage 3 restrictions that are proposed by, or on behalf of, an entity empowered to implement the restriction.

§ 161.303 Notice of proposed restrictions.

(a) Each airport operator or aircraft operator (hereinafter referred to as applicant) proposing a Stage 3 restriction shall provide public notice and an opportunity for public comment, as prescribed in this subpart, before submitting the restriction to the FAA for review and approval.

(b) Except as provided in § 161.321, an applicant shall publish a notice of the proposed restriction in an area wide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction (and any alternatives, in order of preference), including a statement that it will be a mandatory Stage 3 restriction; and where the complete text of the restriction, and any sanctions for noncompliance, are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the operators and types of aircraft expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (*e.g.*, city ordinance, airport rule, lease, or other document), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction, in accordance with § 161.305 of this part, or an announcement regarding where the analysis is available for public inspection;

(7) An invitation to comment on the proposed restriction and the analysis, with a minimum 45-day comment period;

(8) Information on how to request a copy of the complete text of the restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator or aircraft operator proposing the restriction, including identification of a contact person.

(d) Applicants may propose alternative restrictions, including partial implementation of any proposal, and indicate an order of preference. If alternative restriction proposals are submitted, the requirements listed in paragraphs (c)(2) through (c)(6) of this section should address the alternative proposals where appropriate.

§ 161.305 Required analysis and conditions for approval of proposed restrictions.

Each applicant proposing a noise or access restriction on Stage 3 operations shall prepare and make available for public comment an analysis that supports, by substantial evidence, that the six statutory conditions for approval have been met for each restriction and any alternatives submitted. The statutory conditions are set forth in 49 U.S.C. App. 2153(d)(2) and paragraph (e) of this section. Any proposed restriction (including alternatives) on Stage 3 aircraft operations that also affects the operation of Stage 2 aircraft must include analysis of the proposals in a manner that permits the proposal to be understood in its entirety. (Nothing in this section is intended to add a requirement for the issuance of restrictions on Stage 2 aircraft to those of subpart C of this part.) The applicant shall provide:

(a) The complete text of the proposed restriction and any submitted alternatives, including the proposed wording in a city ordinance, airport rule, lease, or other document, and any sanctions for noncompliance;

(b) Maps denoting the airport geographic boundary, and the geographic boundaries and names of each jurisdiction that controls land use within the airport noise study area;

(c) An adequate environmental assessment of the proposed restriction or adequate information supporting a categorical exclusion in accordance with FAA orders and procedures regarding compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321);

(d) A summary of the evidence in the submission supporting the six statutory conditions for approval; and

(e) An analysis of the restriction, demonstrating by substantial evidence that the statutory conditions are met. The analysis must:

(1) Be sufficiently detailed to allow the FAA to evaluate the merits of the proposed restriction; and

(2) Contain the following essential elements needed to provide substantial evidence supporting each condition for approval:

(*i*) *Condition 1: The restriction is reasonable, nonarbitrary, and nondiscriminatory.*

(A) Essential information needed to demonstrate this condition includes the following:

(*1*) Evidence that a current or projected noise or access problem exists, and that the proposed action(s) could relieve the problem, including:

(*i*) A detailed description of the problem precipitating the proposed restriction with relevant background information on factors contributing to the proposal and any court-ordered action or estimated liability concerns; a description of any noise agreements or noise or access restrictions currently in effect at the airport; and measures taken to achieve land use compatibility, such as controls or restrictions on land use in the vicinity of the airport and measures carried out in response to 14 CFR Part 150; and actions taken to comply with grant assurances requiring that:

(*A*) Airport development projects be reasonably consistent with plans of public agencies that are authorized to plan for the development of the area around the airport; and

(*B*) The sponsor give fair consideration to the interests of communities in or near where the project may be located; take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land near the airport to activities and purposes compatible with normal airport operations; and not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility (with respect to the airport) of any noise compatibility program measures upon which federal funds have been expended.

(*ii*) An analysis of the estimated noise impact of aircraft operations with and without the proposed restriction for the year the restriction is expected to be implemented, for a forecast timeframe after implementation, and for any other years critical to understanding the noise impact of the proposed restriction. The analysis of noise impact with and without the proposed restriction including:

(*A*) Maps of the airport noise study area overlaid with noise contours as specified in §§ 161.9 and 161.11 of this part;

(*B*) The number of people and the noncompatible land uses within the airport noise study area with and without the proposed restriction for each year the noise restriction is analyzed;

(*C*) Technical data supporting the noise impact analysis, including the classes of aircraft, fleet mix, runway use percentage, and day/night breakout of operations; and

(*D*) Data on current and projected airport activity that would exist in the absence of the proposed restriction.

(*2*) Evidence that other available remedies are infeasible or would be less cost-effective, including descriptions of any alternative aircraft restrictions that have been considered and rejected, and the reasons for the rejection; and of any land use or other nonaircraft controls or restrictions that have been considered and rejected, including those proposed under 14 CFR Part 150 and not implemented, and the reasons for the rejection or failure to implement.

(*3*) Evidence that the noise or access standards are the same for all aviation user classes or that the differences are justified, such as:

(*i*) A description of the relationship of the effect of the proposed restriction on airport users (by aviation user class); and

(*ii*) The noise attributable to these users in the absence of the proposed restriction.

(B) At the applicant's discretion, information may also be submitted as follows:

(*1*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section (Condition 2) that there is a reasonable chance that expected benefits will equal or exceed expected cost; for example, comparative economic analyses of the costs and benefits of the proposed restriction and aircraft and nonaircraft alternative measures. For detailed elements of analysis, see paragraph (e)(2)(ii)(A) of this section.

(*2*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section that the level of any noise-based fees that may be imposed reflects the cost of mitigating noise impacts produced by the aircraft, or that the fees are reasonably related to the intended level of noise impact mitigation.

(ii) *Condition 2: The restriction does not create an undue burden on interstate or foreign commerce*.

(A) Essential information needed to demonstrate this statutory condition includes:

(*1*) Evidence, based on a cost-benefit analysis, that the estimated potential benefits of the restriction have a reasonable chance to exceed the estimated potential cost of the adverse effects on interstate and foreign commerce. In preparing the economic analysis required by this section, the applicant shall use

currently accepted economic methodology, specify the methods used and assumptions underlying the analysis, and consider:

(*i*) The effect of the proposed restriction on operations of aircraft by aviation user class (and for air carriers, the number of operations of aircraft by air carrier), and on the volume of passengers and cargo for the year the restriction is expected to be implemented and for the forecast timeframe.

(*ii*) The estimated costs of the proposed restriction and alternative nonaircraft restrictions including the following, as appropriate:

(*A*) Any additional cost of continuing aircraft operations under the restriction, including reasonably available information concerning any net capital costs of acquiring or retrofitting aircraft (net of salvage value and operating efficiencies) by aviation user class; and any incremental recurring costs;

(*B*) Costs associated with altered or discontinued aircraft operations, such as reasonably available information concerning loss to air carriers of operating profits; decreases in passenger and shipper consumer surplus by aviation user class; loss in profits associated with other airport services or other entities: and/or any significant economic effect on parties other than aviation users.

(*C*) Costs associated with implementing nonaircraft restrictions or nonaircraft components of restrictions, such as reasonably available information concerning estimates of capital costs for real property, including redevelopment, soundproofing, noise easements, and purchase of property interests; and estimates of associated incremental recurring costs; or an explanation of the legal or other impediments to implementing such restrictions.

(*D*) Estimated benefits of the proposed restriction and alternative restrictions that consider, as appropriate, anticipated increase in real estate values and future construction cost (such as sound insulation) savings; anticipated increase in airport revenues; quantification of the noise benefits, such as number of people removed from noise contours and improved work force and/or educational productivity, if any; valuation of positive safety effects, if any; and/or other qualitative benefits, including improvements in quality of life.

(B) At the applicant's discretion, information may also be submitted as follows:

(*1*) Evidence that the affected air carriers have a reasonable chance to continue service at the airport or at other points in the national airport system.

(*2*) Evidence that other air carriers are able to provide adequate service to the airport and other points in the system without diminishing competition.

(*3*) Evidence that comparable services or facilities are available at another airport controlled by the airport operator in the market area, including services available at other airports.

(*4*) Evidence that alternative transportation service can be attained through other means of transportation.

(*5*) Information on the absence of adverse evidence or adverse comments with respect to undue burden in the notice process required in § 161.303, or alternatively in § 161.321, of this part as evidence that there is no undue burden.

(iii) *Condition 3: The proposed restriction maintains safe and efficient use of the navigable airspace*. Essential information needed to demonstrate this statutory condition includes evidence that the proposed restriction maintains safe and efficient use of the navigable airspace based upon:

(A) Identification of airspace and obstacles to navigation in the vicinity of the airport; and

(B) An analysis of the effects of the proposed restriction with respect to use of airspace in the vicinity of the airport, substantiating that the restriction maintains or enhances safe and efficient use of the navigable airspace. The analysis shall include a description of the methods and data used.

(iv) *Condition 4: The proposed restriction does not conflict with any existing federal statute or regulation*. Essential information needed to demonstrate this condition includes evidence demonstrating that no conflict is presented between the proposed restriction and any existing federal statute or regulation, including those governing:

(A) Exclusive rights;

(B) Control of aircraft operations; and

(C) Existing federal grant agreements.

(v) *Condition 5: The applicant has provided adequate opportunity for public comment on the proposed restriction*. Essential information needed to demonstrate this condition includes evidence that there has been adequate opportunity for public comment on the restriction as specified in § 161.303 or § 161.321 of this part.

(vi) *Condition 6: The proposed restriction does not create an undue burden on the national aviation system*. Essential information needed to demonstrate this condition includes evidence that the proposed restriction does not create an undue burden on the national aviation system such as:

(A) An analysis demonstrating that the proposed restriction does not have a substantial adverse effect on existing or planned airport system capacity, on observed or forecast airport system congestion and aircraft delay, and on airspace system capacity or workload;

(B) An analysis demonstrating that non aircraft alternative measures to achieve the same goals as the proposed subject restrictions are inappropriate;

(C) The absence of comments with respect to imposition of an undue burden on the national aviation system in response to the notice required in § 161.303 or § 161.321.

§ 161.307 Comment by interested parties.

(a) Each applicant proposing a restriction shall establish a public docket or similar method for receiving and considering comments, and shall make comments available for inspection by interested parties upon request. Comments must be retained as long as the restriction is in effect.

(b) Each applicant shall submit to the FAA a summary of any comments received. Upon request by the FAA, the applicant shall submit copies of the comments.

§ 161.309 Requirements for proposal changes.

(a) Each applicant shall promptly advise interested parties of any changes to a proposed restriction or alternative restriction that are not encompassed in the proposals submitted, including changes that affect noncompatible land uses or that take place before the effective date of the restriction, and make available these changes to the proposed restriction and its analysis. For the purpose of this paragraph, interested parties include those who received direct notice under § 161.303(b) of this part, or those who were required to be consulted in accordance with the procedures in § 161.321 of this part, and those who commented on the proposed restriction.

(b) If there are substantial changes to a proposed restriction or the analysis made available prior to the effective date of the restriction, the applicant proposing the restriction shall initiate new notice in accordance with the procedures in § 161.303 or, alternatively, the procedures in § 161.321. These requirements apply to substantial changes that are not encompassed in submitted alternative restriction proposals and their analyses. A substantial change to a restriction includes, but is not limited to, any proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.303(c), a new notice must indicate that the applicant is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction.

(d) If substantial changes requiring a new notice are made during the FAA's 180-day review of the proposed restriction, the applicant submitting the proposed restriction shall notify the FAA in writing that it is withdrawing its proposal from the review process until it has completed

additional analysis, public review, and documentation of the public review. Resubmission to the FAA will restart the 180-day review.

§ 161.311 Application procedure for approval of proposed restriction.

Each applicant proposing a Stage 3 restriction shall submit to the FAA the following information for each restriction and alternative restriction submitted, with a request that the FAA review and approve the proposed Stage 3 noise or access restriction:

(a) A summary of evidence of the fulfillment of conditions for approval, as specified in § 161.305;

(b) An analysis as specified in § 161.305, as appropriate to the proposed restriction;

(c) A statement that the entity submitting the proposal is the party empowered to implement the restriction, or is submitting the proposal on behalf of such party; and

(d) A statement as to whether the airport requests, in the event of disapproval of the proposed restriction or any alternatives, that the FAA approve any portion of the restriction or any alternative that meets the statutory requirements for approval. An applicant requesting partial approval of any proposal should indicate its priorities as to portions of the proposal to be approved.

§ 161.313 Review of application.

(a) *Determination of completeness*. The FAA, within 30 days of receipt of an application, will determine whether the application is complete in accordance with § 161.311. Determinations of completeness will be made on all proposed restrictions and alternatives. This completeness determination is not an approval or disapproval of the proposed restriction.

(b) *Process for complete application*. When the FAA determines that a complete application has been submitted, the following procedures apply:

> (1) The FAA notifies the applicant that it intends to act on the proposed restriction and publishes notice of the proposed restriction in the Federal Register in accordance with § 161.315. The 180-day period for approving or disapproving the proposed restriction will start on the date of original FAA receipt of the application.
>
> (2) Following review of the application, public comments, and any other information obtained under § 161.317(b), the FAA will issue a decision approving or disapproving the proposed restriction. This decision is a final decision of the Administrator for purpose of judicial review.

(c) *Process for incomplete application*. If the FAA determines that an application is not complete with respect to any submitted restriction or alternative restriction, the following procedures apply:

(1) The FAA shall notify the applicant in writing, returning the application and setting forth the type of information and analysis needed to complete the application in accordance with § 161.311.

(2) Within 30 days after the receipt of this notice, the applicant shall advise the FAA in writing whether or not it intends to resubmit and supplement its application.

(3) If the applicant does not respond in 30 days, or advises the FAA that it does not intend to resubmit and/or supplement the application, the application will be denied. This closes the matter without prejudice to later application and does not constitute disapproval of the proposed restriction.

(4) If the applicant chooses to resubmit and supplement the application, the following procedures apply:

(i) Upon receipt of the resubmitted application, the FAA determines whether the application, as supplemented, is complete as set forth in paragraph (a) of this section.

(ii) If the application is complete, the procedures set forth in § 161.315 shall be followed. The 180-day review period starts on the date of receipt of the last supplement to the application.

(iii) If the application is still not complete with respect to the proposed restriction or at least one submitted alternative, the FAA so advises the applicant as set forth in paragraph (c)(1) of this section and provides the applicant with an additional opportunity to supplement the application as set forth in paragraph (c)(2) of this section.

(iv) If the environmental documentation (either an environmental assessment or information supporting a categorical exclusion) is incomplete, the FAA will so notify the applicant in writing, returning the application and setting forth the types of information and analysis needed to complete the documentation. The FAA will continue to return an application until adequate environmental documentation is provided. When the application is determined to be complete, including the environmental documentation, the 180-day period for approval or disapproval will begin upon receipt of the last supplement to the application.

(v) Following review of the application and its supplements, public comments, and any other information obtained under § 161.317(b), the FAA will issue a decision approving or disapproving the application. This decision is a final decision of the Administrator for the purpose of judicial review.

(5) The FAA will deny the application and return it to the applicant if:

(i) None of the proposals submitted are found to be complete;

(ii) The application has been returned twice to the applicant for reasons other than completion of the environmental documentation; and

(iii) The applicant declines to complete the application. This closes the matter without prejudice to later application, and does not constitute disapproval of the proposed restriction.

§ 161.315 Receipt of complete application.

(a) When a complete application has been received, the FAA will notify the applicant by letter that the FAA intends to act on the application.

(b) The FAA will publish notice of the proposed restriction in the Federal Register, inviting interested parties to file comments on the application within 30 days after publication of the Federal Register notice.

§ 161.317 Approval or disapproval of proposed restriction.

(a) Upon determination that an application is complete with respect to at least one of the proposals submitted by the applicant, the FAA will act upon the complete proposals in the application. The FAA will not act on any proposal for which the applicant has declined to submit additional necessary information.

(b) The FAA will review the applicant's proposals in the preference order specified by the applicant. The FAA may request additional information from aircraft operators, or any other party, and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will evaluate the proposal and issue an order approving or disapproving the proposed restriction and any submitted alternatives, in whole or in part, in the order of preference indicated by the applicant. Once the FAA approves a proposed restriction, the FAA will not consider any proposals of lower applicant-stated preference. Approval or disapproval will be given by the FAA within 180 days after receipt of the application or last supplement thereto under § 161.313. The FAA will publish its decision in the Federal Register and notify the applicant in writing.

(d) The applicant's failure to provide substantial evidence supporting the statutory conditions for approval of a particular proposal is grounds for disapproval of that proposed restriction.

(e) The FAA will approve or disapprove only the Stage 3 aspects of a restriction if the restriction applies to both Stage 2 and Stage 3 aircraft operations.

(f) An order approving a restriction may be subject to requirements that the applicant:

(1) Comply with factual representations and commitments in support of the restriction; and

(2) Ensure that any environmental mitigation actions or commitments by any party that are set forth in the environmental documentation provided in support of the restriction are implemented.

§ 161.319 Withdrawal or revision of restriction.

(a) The applicant may withdraw or revise a proposed restriction at any time prior to FAA approval or disapproval, and must do so if substantial changes are made as described in § 161.309. The applicant shall notify the FAA in writing of a decision to withdraw the proposed restriction for any reason. The FAA will publish a notice in the Federal Register that it has terminated its review without prejudice to resubmission. A resubmission will be considered a new application.

(b) A subsequent amendment to a Stage 3 restriction that was in effect after October 1, 1990, or an amendment to a Stage 3 restriction previously approved by the FAA, is subject to the procedures in this subpart if the amendment will further reduce or limit aircraft operations or affect aircraft safety. The applicant may, at its option, revise or amend a restriction previously disapproved by the FAA and resubmit it for approval. Amendments are subject to the same requirements and procedures as initial submissions.

§ 161.321 Optional use of 14 CFR Part 150 procedures.

(a) An airport operator may use the procedures in Part 150 of this chapter, instead of the procedures described in §§ 161.303(b) and 161.309(b) of this part, as a means of providing an adequate public notice and opportunity to comment on proposed Stage 3 restrictions, including submitted alternatives.

b) If the airport operator elects to use 14 CFR Part 150 procedures to comply with this subpart, the operator shall:

(1) Ensure that all parties identified for direct notice under § 161.303(b) are notified that the airport's 14 CFR Part 150 program submission will include a proposed Stage 3 restriction under Part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR Part 150 program;

(2) Include the information required in § 161.303(c) (2) through (5) and § 161.305 in the analysis of the proposed restriction in the 14 CFR Part 150 program submission; and

(3) Include in its 14 CFR Part 150 submission to the FAA evidence of compliance with the notice requirements in paragraph (b)(1) of this section and include the information required for a Part 161 application in § 161.311, together with a clear identification that the 14 CFR Part 150 submission includes a proposed Stage 3 restriction for FAA review and approval under §§ 161.313, 161.315, and 161.317.

(c) The FAA will evaluate the proposed Part 161 restriction on Stage 3 aircraft operations included in the 14 CFR Part 150 submission in accordance with the procedures and standards of

this part, and will review the total 14 CFR Part 150 submission in accordance with the procedures and standards of 14 CFR Part 150.

(d) An amendment of a restriction, as specified in § 161.319(b) of this part, may also be processed under 14 CFR Part 150 procedures.

§ 161.323 Notification of a decision not to implement a restriction.

If a Stage 3 restriction has been approved by the FAA and the restriction is not subsequently implemented, the applicant shall so advise the interested parties specified in § 161.309(a) of this part.

§ 161.325 Availability of data and comments on an implemented restriction.

The applicant shall retain all relevant supporting data and all comments relating to an approved restriction for as long as the restriction is in effect and shall make these materials available for inspection upon request by the FAA. This information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

Subpart E – Reevaluation of Stage 3 Restrictions

§ 161.401 Scope.

This subpart applies to an airport imposing a noise or access restriction on the operation of Stage 3 aircraft that first became effective after October 1, 1990, and had either been agreed to in compliance with the procedures in subpart B of this part or approved by the FAA in accordance with the procedures in subpart D of this part. This subpart does not apply to Stage 2 restrictions imposed by airports. This subpart does not apply to Stage 3 restrictions specifically exempted in § 161.7.

§ 161.403 Criteria for reevaluation.

(a) A request for reevaluation must be submitted by an aircraft operator.

(b) An aircraft operator must demonstrate to the satisfaction of the FAA that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria in § 161.305 is therefore justified.

(1) A change in the noise environment sufficient to justify reevaluation is either a DNL change of 1.5 dB or greater (from the restriction's anticipated target noise level result) over noncompatible land uses, or a change of 17 percent or greater in the noncompatible land uses, within an airport noise study area. For approved restrictions, calculation of change shall be based on the divergence of actual noise impact of the restriction from the estimated noise impact of the restriction predicted in the analysis required in § 161.305(e)(2)(i)(A)(1)(ii). The change in the noise environment or in the noncompatible land uses may be either an increase or decrease in noise or in noncompatible land uses.

An aircraft operator may submit to the FAA reasons why a change that does not fall within either of these parameters justifies reevaluation, and the FAA will consider such arguments on a case-by-case basis.

(2) A change in the noise environment justifies reevaluation if the change is likely to result in the restriction not meeting one or more of the conditions for approval set forth in § 161.305 of this part for approval. The aircraft operator must demonstrate that such a result is likely to occur.

(c) A reevaluation may not occur less than 2 years after the date of the FAA approval. The FAA will normally apply the same 2-year requirement to agreements under subpart B of this part that affect Stage 3 aircraft operations. An aircraft operator may submit to the FAA reasons why an agreement under subpart B of this part should be reevaluated in less than 2 years, and the FAA will consider such arguments on a case-by-case basis.

(d) An aircraft operator must demonstrate that it has made a good faith attempt to resolve locally any dispute over a restriction with the affected parties, including the airport operator, before requesting reevaluation by the FAA. Such demonstration and certification shall document all attempts of local dispute resolution.

[Docket No. 26432, 56 FR 48698, Sept. 25, 1991; 56 FR 51258, Oct. 10, 1991]

§ 161.405 Request for reevaluation.

(a) A request for reevaluation submitted to the FAA by an aircraft operator must include the following information:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction and any sanctions for noncompliance, whether the restriction was approved by the FAA or agreed to by the airport operator and aircraft operators, the date of the approval or agreement, and a copy of the restriction as incorporated in a local ordinance, airport rule, lease, or other document;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.305;

(5) The aircraft operator's status under the restriction (*e.g.*, currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection; and

(6) A description and evidence of the aircraft operator's attempt to resolve the dispute locally with the affected parties, including the airport operator.

(b) The FAA will evaluate the aircraft operator's submission and determine whether or not a reevaluation is justified. The FAA may request additional information from the airport operator or any other party and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will notify the aircraft operator in writing, with a copy to the affected airport operator, of its determination.

(1) If the FAA determines that a reevaluation is not justified, it will indicate the reasons for this decision.

(2) If the FAA determines that a reevaluation is justified, the aircraft operator will be notified to complete its analysis and to begin the public notice procedure, as set forth in this subpart.

§ 161.407 Notice of reevaluation.

(a) After receiving an FAA determination that a reevaluation is justified, an aircraft operator desiring continuation of the reevaluation process shall publish a notice of request for reevaluation in an area wide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated); post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) The airport operator, other aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, potential new entrants that are known to be interested in serving the airport, and aircraft operators known to be routinely providing nonscheduled service;

(2) The Federal Aviation Administration;

(3) Each federal, state, and local agency with land use control jurisdiction within the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated);

(4) Fixed-base operators and other airport tenants whose operations may be affected by the agreement or the restriction;

(5) Community groups and business organizations that are known to be interested in the restriction; and

(6) Any other party that commented on the original restriction.

(b) Each notice provided in accordance with paragraph (a) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport operator and aircraft operators, and the date of the approval or agreement;

(3) The name of the aircraft operator requesting a reevaluation, and a statement that a reevaluation has been requested and that the FAA has determined that a reevaluation is justified;

(4) A brief discussion of the reasons why a reevaluation is justified;

(5) An analysis prepared in accordance with § 161.409 of this part supporting the aircraft operator's reevaluation request, or an announcement of where the analysis is available for public inspection;

(6) An invitation to comment on the analysis supporting the proposed reevaluation, with a minimum 45-day comment period;

(7) Information on how to request a copy of the analysis (if not in the notice); and

(8) The address for submitting comments to the aircraft operator, including identification of a contact person.

§ 161.409 Required analysis by reevaluation petitioner.

(a) An aircraft operator that has petitioned the FAA to reevaluate a restriction shall assume the burden of analysis for the reevaluation.

(b) The aircraft operator's analysis shall be made available for public review under the procedures in § 161.407 and shall include the following:

(1) A copy of the restriction or the language of the agreement as incorporated in a local ordinance, airport rule, lease, or other document;

(2) The aircraft operator's status under the restriction (*e.g.*, currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection to the restriction;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.305; and

(5) Sufficient data and analysis selected from § 161.305, as applicable to the restriction at issue, to support the contention made in paragraph (b)(4) of this section. This is to include either an adequate environmental assessment of the impacts of discontinuing all or part of a restriction in accordance with the aircraft operator's petition, or adequate

information supporting a categorical exclusion under FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).

(c) The amount of analysis may vary with the complexity of the restriction, the number and nature of the conditions in § 161.305 that are alleged to be unsupported, and the amount of previous analysis developed in support of the restriction. The aircraft operator may incorporate analysis previously developed in support of the restriction, including previous environmental documentation to the extent applicable. The applicant is responsible for providing substantial evidence, as described in § 161.305, that one or more of the conditions are not supported.

§ 161.411 Comment by interested parties.

(a) Each aircraft operator requesting a reevaluation shall establish a docket or similar method for receiving and considering comments and shall make comments available for inspection to interested parties specified in paragraph (b) of this section upon request. Comments must be retained for two years.

(b) Each aircraft operator shall promptly notify interested parties if it makes a substantial change in its analysis that affects either the costs or benefits analyzed, or the criteria in § 161.305, differently from the analysis made available for comment in accordance with § 161.407. Interested parties include those who received direct notice under paragraph (a) of § 161.407 and those who have commented on the reevaluation. If an aircraft operator revises its analysis, it shall make the revised analysis available to an interested party upon request and shall extend the comment period at least 45 days from the date the revised analysis is made available.

§ 161.413 Reevaluation procedure.

(a) Each aircraft operator requesting a reevaluation shall submit to the FAA:

(1) The analysis described in § 161.409;

(2) Evidence that the public review process was carried out in accordance with §§ 161.407 and 161.411, including the aircraft operator's summary of the comments received; and

(3) A request that the FAA complete a reevaluation of the restriction and issue findings.

(b) Following confirmation by the FAA that the aircraft operator's documentation is complete according to the requirements of this subpart, the FAA will publish a notice of reevaluation in the *Federal Register* and provide for a 45-day comment period during which interested parties may submit comments to the FAA. The FAA will specifically solicit comments from the affected airport operator and affected local governments. A submission that is not complete will be returned to the aircraft operator with a letter indicating the deficiency, and no notice will be published. No further action will be taken by the FAA until a complete submission is received.

(c) The FAA will review all submitted documentation and comments pursuant to the conditions of § 161.305. To the extent necessary, the FAA may request additional information from the aircraft operator, airport operator, and others known to have information material to the reevaluation, and may convene an informal meeting to gather facts relevant to a reevaluation finding.

§ 161.415 Reevaluation action.

(a) Upon completing the reevaluation, the FAA will issue appropriate orders regarding whether or not there is substantial evidence that the restriction meets the criteria in § 161.305 of this part.

(b) If the FAA's reevaluation confirms that the restriction meets the criteria, the restriction may remain as previously agreed to or approved. If the FAA's reevaluation concludes that the restriction does not meet the criteria, the FAA will withdraw a previous approval of the restriction issued under subpart D of this part to the extent necessary to bring the restriction into compliance with this part or, with respect to a restriction agreed to under subpart B of this part, the FAA will specify which criteria are not met.

(c) The FAA will publish a notice of its reevaluation findings in the *Federal Register* and notify in writing the aircraft operator that petitioned the FAA for reevaluation and the affected airport operator.

§ 161.417 Notification of status of restrictions and agreements not meeting conditions-of-approval criteria.

If the FAA has withdrawn all or part of a previous approval made under subpart D of this part, the relevant portion of the Stage 3 restriction must be rescinded. The operator of the affected airport shall notify the FAA of the operator's action with regard to a restriction affecting Stage 3 aircraft operations that has been found not to meet the criteria of § 161.305. Restrictions in agreements determined by the FAA not to meet conditions for approval may not be enforced with respect to Stage 3 aircraft operations.

Subpart F – Failure to Comply With This Part

§ 161.501 Scope.

(a) This subpart describes the procedures to terminate eligibility for airport grant funds and authority to impose or collect passenger facility charges for an airport operator's failure to comply with the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2151 *et seq.*) or this part. These procedures may be used with or in addition to any judicial proceedings initiated by the FAA to protect the national aviation system and related federal interests.

(b) Under no conditions shall any airport operator receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 (AAIA) or impose or collect a passenger facility charge under Section 1113(e) of the Federal Aviation Act of 1958 (FAA Act) if the FAA determines that the airport is imposing any noise or access restriction not in compliance with the

Airport Noise and Capacity Act of 1990 or this part. Recission of, or a commitment in writing signed by an authorized official of the airport operator to rescind or permanently not enforce, a non complying restriction will be treated by the FAA as action restoring compliance with the Airport Noise and Capacity Act of 1990 or this part with respect to that restriction.

§ 161.503 Informal resolution; notice of apparent violation.

Prior to the initiation of formal action to terminate eligibility for airport grant funds or authority to impose or collect passenger facility charges under this subpart, the FAA shall undertake informal resolution with the airport operator to assure compliance with the Airport Noise and Capacity Act of 1990 or this part upon receipt of a complaint or other evidence that an airport operator has taken action to impose a noise or access restriction that appears to be in violation. This shall not preclude a FAA application for expedited judicial action for other than termination of airport grants and passenger facility charges to protect the national aviation system and violated federal interests. If informal resolution is not successful, the FAA will notify the airport operator in writing of the apparent violation. The airport operator shall respond to the notice in writing not later than 20 days after receipt of the notice, and also state whether the airport operator will agree to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

§ 161.505 Notice of proposed termination of airport grant funds and passenger facility charges.

(a) The FAA begins proceedings under this section to terminate an airport operator's eligibility for airport grant funds and authority to impose or collect passenger facility charges only if the FAA determines that informal resolution is not successful.

(b) The following procedures shall apply if an airport operator agrees in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of a noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the Federal Register. This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 60 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. The FAA will consult with the airport operator to attempt resolution and may request

additional information from other parties to determine compliance. The review and consultation process shall take not less than 30 days. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the Federal Register.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the FAA will notify the airport operator in writing of such determination. Where appropriate, the FAA may prescribe corrective action, including corrective action the airport operator may still need to take. Within 10 days of receipt of the FAA's determination, the airport operator shall –

(i) Advise the FAA in writing that it will complete any corrective action prescribed by the FAA within 30 days; or

(ii) Provide the FAA with a list of the domestic air carriers and foreign air carriers operating at the airport and all other issuing air carriers, as defined in § 158.3 of this chapter, that have remitted passenger facility charge revenue to the airport in the preceding 12 months.

(4) If the FAA finds that the airport operator has taken satisfactory corrective action, the FAA will notify the airport operator in writing and publish notice of compliance in the Federal Register. If the FAA has determined that the airport operator has imposed a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part and satisfactory corrective action has not been taken, the FAA will issue an order that –

(i) Terminates eligibility for new airport grant agreements and discontinues payments of airport grant funds, including payments of costs incurred prior to the notice; and

(ii) Terminates authority to impose or collect a passenger facility charge or, if the airport operator has not received approval to impose a passenger facility charge, advises the airport operator that future applications for such approval will be denied in accordance with § 158.29(a)(1)(v) of this chapter.

(5) The FAA will publish notice of the order in the Federal Register and notify air carriers of the FAA's order and actions to be taken to terminate or modify collection of passenger facility charges in accordance with § 158.85(f) of this chapter.

(c) The following procedures shall apply if an airport operator does not agree in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the Federal Register. This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 30 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the Federal Register.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the procedures in paragraphs (b)(3) through (b)(5) of this section will be followed.

Appendix Y: Sample Notice of Reversion of Property and Revestment of Title to the United States

NOTICE OF REVERTER

To the State of Arizona:

THIS NOTICE OF REVERTER, issued this 31st day of January, 1962, by the United States of America to the State of Arizona, WITNESSETH:

THAT, WHEREAS, the United States of America, hereinafter called the Party of the First Part, by a Quitclaim Deed dated November 17, 1949, unrecorded among the land records of the County of Cochise, Arizona, did convey to the State of Arizona, hereinafter called the party of the second part (subject, however, to the easements for all rights-of-way for public roads, highways, utility lines, railways and pipelines of record) certain airport property commonly known as Webb Airport (Douglas Auxiliary No. 3) situated in the County of Cochise, State of Arizona, which said airport property is described in said Quitclaim Deed on Page 1 thereof as follows:

> The North One-Half of Section 21, Township 19 South, Range 26 East, Gila and Salt River Base and Meridian, Cochise County, Arizona, containing 320 acres, more or less.
>
> TOGETHER WITH the following listed buildings and improvements located on the above described property and property described as the South One-Half of Section 16, Township 19 South, Range 26 East, Gila and Salt River Base and Meridian, Cochise County, Arizona:
>
> BUILDINGS
> T-3001
> T-3002
> T-3003
> T-3004
>
> IMPROVEMENTS
>
> All runways and taxiways, dust control, clearing and grubbing, field drainage, fences, access road, and electrical distribution system.

AND WHEREAS, said Quitclaim Deed contains among other reservations, restrictions, and conditions, the following paragraphs on Page 3 thereof pertaining to the operation and maintenance obligations of the State of Arizona, which said paragraphs are as follows:

(1) That, except as provided in subparagraph (6) of the next succeeding unnumbered paragraph, the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the tern "exclusive right" as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term "airport"

shall be deemed to include at least all such land, buildings, structures, improvements and equipment.

(2) That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in WAA Regulation 5, as amended, and all structures, improvements, facilities and equipment in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable conditions, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the remainder of their estimated life, as determined by the Civil Aeronautics Administrator or his successor. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities or equipment, they may be procured by demolition of other structures, improvements, facilities or equipment transferred hereby and located on the above-described premises which have outlived their use as airport property in the opinion of the Civil Aeronautics Administrator or his successor.

AND WHEREAS, the said Quitclaim Deed contains on Page 5 thereof a paragraph setting forth the reverter rights of the United States which may be exercised at its option in the event of default by the State of Arizona in complying with its obligations, which said paragraph is as follows:

(1) That in the event that any of the aforesaid terms, conditions, reservations, or restrictions are not met, observed, or complied with by the party of the second part or any subsequent transferee, whether caused by the legal inability of said party of the second part or subsequent transferee to perform any of the obligations herein set out. or otherwise, the title, right of possession and all other rights transferred by this instrument of the party of the second part. or any portion thereof, shall at the option of the party of the first part, revert to the party of the first part sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administration or its successor in function, unless within said sixty (60) days such default or violation shall have been curred and all such terms, conditions, reservations and restrictions shall have been met, observed or complied with, in which event said reversion shall not occur and title, right or possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the party of the second pan. its transferees, successors and assigns.

AND WHEREAS, there has been placed of record a Quitclaim Deed from the State of Arizona to the United States dated December 12, 1960. and recorded on March 14, 1961, among the land records of Cochise County, Arizona, in Docket No. 270 at Page 53, under which deed all of the premised described in the above-noted Quitclaim Deed to the State of Arizona were quitclaimed to the United States subject to certain reservations, restrictions and conditions and the assumption by the United States of certain obligations;

AND WHEREAS, a question has arisen as to the authority of the State of Arizona to reconvey the unencumbered title to the premises described in the aforesaid quitclaim deed to the United States so that there shall be vested in the United States the same title to the said premises which the United States had prior to the conveyance of such property to the State of Arizona;

AND WHEREAS, the Federal Aviation Agency (as successor to the Civil Aeronautics Administration) through its duly authorized Agent, Charles S. Benson. Chief, Airports Branch, Aviation Facilities Division, Federal Aviation Agency, Western Region, Los Angeles, California, by letter dated November 8, 1961, did notify the State of Arizona through its State Land Commissioner, Honorable Obed M. Lassen, that the State of Arizona was in default of its obligations under said Quitclaim Deed in that the airport was no longer being operated or maintained as a public airport. and had been abandoned for public airport purposes;

AND WHEREAS, the State of Arizona continues to be in default of its obligations under said Quitclaim Deed in that the airport has not been operated or maintained as a public airport subsequent to the date of said letter, and has in fact closed and marked as abandoned the property, as such, although, a period of time in excess of sixty (60) days, has elapsed since said date;

NOW THEREFORE, the Administrator of the Federal Aviation Agency through its duly authorized Agent, Chief, Airports Division. Western Region, Federal Aviation Agency, does hereby notify the State of Arizona that all of the rights, title, and interest in and to the above-described airport property commonly known as Webb Airport (Douglas Auxiliary No. 3) and as hereinabove described situated in the County of Cochise, Arizona, does by this Notice and as of the date of the recording of this Notice revert to the United States of America.

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA has caused this Instrument to be executed

as of the __ day of ____, 1961.

UNITED STATES OF AMERICA

The Administrator of the Federal Aviation Agency

By _____ _

Chief. Airports Division, Western Region

Appendix Z: Definitions and Acronyms

§	Section
%HA	Percentage of area population characterized as "highly annoyed" by long-term exposure to noise of a specified level.
1970 Airport Act	Airport and Airway Development Act of 1970; (P.L. No. 91-258); (Section 23, nonsurplus property)
1987 Airport Act	Airport and Airway Safety and Capacity Expansion Act of 1987; (P.L. No. 100-223)
1994 Authorization Act	FAA Authorization Act of 1994; (P.L. No. 103-305)
1996 Reauthorization Act	FAA Reauthorization Act of 1996; (P.L. No. 104-264)
Act of 1987	Airport and Airway Safety and Capacity Expansion Act of 1987; (P.L. No. 100-223)
AAIA	Airport and Airway Improvement Act of 1982; (P.L. No. 97-248); (Section 516, nonsurplus property)
AC	Advisory circular. A document published by the Federal Aviation Administration (FAA) giving guidance on aviation issues.
ACO	FAA Office of Airport Compliance and Field Operations
Act of 1987	Airport and Airway Safety and Capacity Expansion Act of 1987; (P.L. No. 100-223)
AAIA	Airport and Airway Improvement Act of 1982; (P.L. No. 97-248); (Section 516, nonsurplus property)
AC	Advisory circular. A document published by the Federal Aviation Administration (FAA) giving guidance on aviation issues.
ACO	FAA Office of Airport Compliance and Management Analysis
Act of 1938	Civil Aeronautics Act of 1938
Act of 1944	Surplus Property Act (SPA) of 1944; (regulation 16)

Act of 1946	Federal Airport Act of 1946; (P.L. No. 79-377)); (Section 16, nonsurplus property)
Act of 1958	Federal Aviation Act of 1958 (FAA Act)
Act of 1970	Airport and Airway Development Act of 1970; (P.L. No. 91-258); (Section 23, nonsurplus property)
Act of 1973	Airport Development Acceleration Act of 1973 (P.L. No. 93-44)
Act of 1982	Airport and Airway Improvement Act of 1982 (AAIA); (P.L. No. 97-248); (Section 516, nonsurplus property)
Act of 1987	Airport and Airway Safety and Capacity Expansion Act of 1987; (P.L. No. 100-223)
Act of 1990	Aviation Safety and Capacity Expansion Act of 1990 (P.L. No. 101-508)
Act of 1994	FAA Authorization Act of 1994; (P.L. No. 103-305)
Act of 1996	FAA Reauthorization Act of 1996; (P.L. No. 104-264)
ADAP	Airport Development Aid Program
ADO	Airports district office. These offices are outlying units or extensions of regional airport divisions.
ADR	Alternative Dispute Resolution
AEE	FAA Office of Environment and Energy (AEE-100)
Aeronautical Activity	Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations. It includes, but is not limited to: • Air taxi and charter operations. • Scheduled or nonscheduled air carrier services. • Pilot training. • Aircraft rental and sightseeing. • Aerial photography. • Crop dusting. • Aerial advertising and surveying. • Aircraft sales and service. • Aircraft storage. • Sale of aviation petroleum products.

	• Repair and maintenance of aircraft. • Sale of aircraft parts. • Parachute activities. • Ultralight activities. • Sport pilot activities • Military flight operations
AFD	Airport facility directory
AFRPA	Air Force Real Property Agency
AGL	Height above ground level
AIP	Airport Improvement Program. The AIP is authorized by the Airport and Airway Improvement Act of 1982 (AAIA) (P.L. No. 97-248, as amended). The broad objective of the AAIA is to assist in the development of a nationwide system of public use airports adequate to meet the current and projected growth of civil aviation. The AAIA provides funding for airport planning and development projects at airports included in the National Plan of Integrated Airport Systems. The AAIA also authorizes funds for noise compatibility planning and to carry out noise compatibility programs as set forth in the Aviation Safety and Noise Abatement Act of 1979 (P.L. No. 96-143).
AIR-21	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century
Airport	An area of land or water which is used, or intended to be used, for the aircraft takeoff and landing. It includes any appurtenant areas used, or intended to be used, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. It also includes any heliport.
Airport Hazard	Any structure or object of natural growth located on or in the vicinity of a public use airport, or any use of land near such an airport that obstructs the airspace required for the flight in landing or taking off at such airport or is otherwise hazardous to such landing or taking off of aircraft.
Airport Noise Compatibility Program	That program and all revisions thereto, reflected in documents (and revised documents) developed in accordance with Appendix B to Part 150, Airport Noise

	Compatibility Planning,, including the measures proposed or taken by the airport owner to reduce existing incompatible land uses and to prevent the introduction of additional incompatible land uses within the area.
Airport Sponsor	A public agency or tax-supported organization such as an airport authority, that is authorized to own and operate the airport, to obtain property interests, to obtain funds, and to be able to meet all applicable requirements of current laws and regulations both legally and financially.
ALP	Airport Layout Plan. A plan showing the orientation and location of key airport facilities, such as runways and navigational aids, that must be planned with consideration for approach zones, prevailing winds, airspace use, land contours and many other special factors. The dimensional relationships even within the airport boundaries, between operational and support facilities and allocation of reasonable space to allow for orderly expansion of individual functions must be clearly established in advance. This is essential if such facilities are to be subsequently positioned where they can best serve their intended purposes while conforming to applicable safety and construction criteria.
ALUC	Airport Land Use Commission
AMSL	Site elevation above mean sea level
ANCA	Airport Noise and Capacity Act of 1990
ANG	Air National Guard
AOPA	Aircraft Owners and Pilots Association
A&P	Airframe and power plant mechanic
AP-4 Agreement	Agreement between the sponsor and the federal government in which the airport sponsor provided the land and the federal government developed the airport.
Approach Surface	A surface defined by FAR Part 77 “Objects Affecting Navigable Airspace,” that is longitudinally centered on the runway centerline and extends outward and upward from each end of the primary surface. An approach surface is

	applied to each end of each runway based on the type of approach available or planned for that runway end.
ARC	Air Reserve Component
ARFF	Aircraft Rescue and Fire Fighting
ARP	FAA Office of Airports
ASAC	Aviation Security Advisory Committee
ASNA	Aviation Safety and Noise Abatement Act of 1979; (P.L. No. 96-193).
Assurance	An assurance is a provision contained in a federal grant agreement to which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.
AT	Air Traffic
ATA	Air Transport Association of America
ATC	Air Traffic Control
ATCT	Air Traffic Control Tower
ATSA	Aviation and Transportation Security Act
Aviation Easement	A grant of a property interest in land over which a right of unobstructed flight in the airspace is established.
Aviation Use of Real Property	Aeronautical property. All property comprising the land, airspace, improvements, and facilities used or intended to be used for any operational purpose related to, in support of, or complementary to the flight of aircraft to or from the airfield. It is not confined to land areas or improvements eligible for development with federal aid (FAAP/ADAP/AIP) or to property acquired from federal sources. In addition to the areas occupied by the runways, taxiways, and parking aprons, aeronautical property includes any other areas used or intended to be used for supporting services and facilities related to the operation of aircraft. It also includes property normally required by those activities that are complementary to flight activity such as convenience concessions serving the public

	including, but not limited to, shelter, ground transportation, food, and personal services.
AWOS	Automated Weather Observation System
Based Aircraft	An aircraft permanently stationed at an airport by agreement between the aircraft owner and the airport management.
BLM	Bureau of Land Management
BRAC	Base Realignment and Closure
BRL	Building restriction lines
Building Codes	Codes, either local or state, that control the functional and structural aspects of buildings and/or structures. Local ordinances typically require proposed buildings to comply with zoning requirements before building permits can be issued under the building codes.
CAA	Civil Aeronautics Administration
CAB	Civil Aeronautics Board
CAP	Civil Air Patrol
CEQ	Council of Environmental Quality
CFI	Certificated Flight Instructor
CFR	Code of Federal Regulations
CGL	Compliance Guidance Letter
CIP	Capital Improvement Program. It consists of the five-year eligible capital requirements at designated airports. It is not a funding plan since the actual funding of development will depend on annual limitations for the Airport Improvement Program (AIP) as imposed by Congress. The CIP provides a systematic approach to identify unmet needs, determine optimum distribution of available grant funds, foster cooperation among states, local, and federal authorities, advise and inform the public, identify problems and determine their impacts on the system, and provide FAA with a rational, need-based process for distribution of

	limited airport grant funds. It also provides a basis for responding to new legislative proposals
Concurrent Land Use	Land that can be used for more than one purpose at the same time. For example, portions of land needed for clear zone purposes could also be used for agriculture purposes at the same time.
CNEL	Community Noise Equivalent Level
CO-OP	Fuel cooperative organization
CPI	Consumer Price Index
CWA	Civil Works Administration
dB	decibel
dBA	A-weighted sound levels in decibels
DBE	Disadvantaged Business Enterprise
DCLA	Development of Civil Landing Areas
DD	Director’s Determination
DLAND	Development of Landing Areas for National Defense
DNL	Day-night average sound level
DoD	Department of Defense
DOI	Department of Interior
DOJ	Department of Justice
DOT	Department of Transportation
EA	Environmental Assessment
EIR	Environmental Impact Report
EIS	Environmental Impact Statement. A document that provides full and fair discussion of the significant environmental impacts that would occur as a result of a proposed project and informs decision makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts.

Enplanement	Counting of a passenger boarding of a commercial flight.
EPA	Environmental Protection Agency
EPNdB	Effective Perceived Noise Level in decibels
Exclusive Right	A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.
Exhibit "A"	A detailed airport property inventory map that is prepared in accordance with the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects. Note that this is a more detailed drawing than the airport property map that is sometimes required in the airport layout plan drawing set, and an Exhibit A can be substituted for an airport property inventory map. (5100.38D Appendix A)
FAA	Federal Aviation Administration
FAA Act	Federal Aviation Act of 1958
FAAP	Federal Aid to Airports Program
FAD	Final Agency Decision; Final Decision and Order
FAR	Federal Aviation Regulations. (These are found in Title 14 Code of Federal Regulations (CFR).
FBI	Federal Bureau of Investigation
FBO	Fixed-base operator. A
FCC	Federal Communications Commission
F&E	Facilities and Equipment (funding source)
Federal Agency	For purposes of the compliance program, an agency of the federal government. This does include the certain elements of the National Guard or the Air Guard as they may be

	controlled by the National Guard Bureau in Washington, DC, as an element of the Department of Defense.
Federal Funds	Money or property conveyed from the United States Government. Any airport that consists in whole or in part of property, improvements, or other assets conveyed by the United States Government -- without monetary consideration -- for airport purposes, or that was acquired, developed, or improved with federal assistance must be considered as an airport upon which federal funds have been expended.
FICAN	Federal Interagency Committee on Aviation Noise
FICON	Federal Interagency Committee on Noise
FICUN	Federal Interagency Committee on Urban Noise
FMV	Fair Market Value. The highest price estimated in terms of money that a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser or tenant who buys or rents with knowledge of all the uses to which it is adapted and for which it is capable of being used. It is also frequently referred to as the price at which a willing seller would sell and a willing buyer buy, neither being under abnormal pressure. FMV will fluctuate based on the economic conditions of the area.
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact. A document briefly explaining the reasons an action will not have a significant effect on the human environment and therefore justifies the decision not to prepare an Environmental Impact Statement (EIS). A FONSI is issued by the federal agency following the preparation of an environmental assessment.
FR	Federal Register
FS	Flight Standards
FSDO	Flight Standards District Office
FSS	Flight Service Station
FY	Fiscal Year

GA	General Aviation
Government Aircraft	For purposes of the compliance program, federal government aircraft is defined as aircraft owned or leased to the federal government. This includes all aircraft operated by National Guard Army units and Air National Guard units.
Grant Agreement	A grant agreement represents any agreement made between the FAA (on behalf of the United States) and an airport sponsor in which the airport sponsor agrees to certain assurances. In general, the airport sponsor assures it will operate the airport for the use and benefit of the public as an airport for aeronautical purposes. The grant agreement and assurances will apply whether the airport sponsor receives the grant of federal funding or a conveyance of land.
GSA	General Services Administration
HQ	Headquarters
ICAO	International Civil Aviation Organization
IFR	Instrument Flight Rules
Independent Operator	A commercial operator offering a single aeronautical service but without an established place of business on the airport. An airport sponsor may or may not allow this type of servicing to exist on the airport.
INM	Integrated Noise Model. The FAA computer model used by the civilian aviation community for evaluating aircraft noise impacts near airports. The INM uses a standard database of aircraft characteristics and applies them to an airport's average operational day to produce noise contours.
Instrument Approach	A series of predetermined maneuvers for the orderly transfer of an aircraft under instrument flight conditions from the beginning of the initial approach to a landing or to a point from which a landing may be made visually.
Interim Use	Interim use of aeronautical property for nonaviation purposes. An interim use is defined as a temporary short term (normally not to exceed 3 years) nonaviation use of

	aeronautical property conveyed to, or acquired by, the airport sponsor..
IP	Information Publication
Land Use Compatibility	The coexistence of land uses surrounding the airport with airport-related activities.
Land Use Controls	Measures established by state or local government that are designed to carry out land use planning. Among other measures, the controls include: zoning, subdivision regulations, planned acquisition, easements, covenants or conditions in building codes and capital improvement programs, such as establishment of sewer, water, utilities or their service facilities.
Land Use Management Measures	Land use management techniques that consist of both remedial and preventive measures. Remedial or corrective measures typically include sound insulation or land acquisition. Preventive measures typically involve land use controls that amend or update the local zoning ordinance, comprehensive plan, subdivision regulations and building code.
Landing Area/Airfield	Any locality, either of land or water, including airports and intermediate landing fields, used or intended to be used for taking off and landing aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo. (Definition in Federal Aviation Act, Section 101.)
Landside	That part of an airport used for activities other than the movement of aircraft, such as vehicular access roads and parking.
LEP	Limited English proficiency
Local Operation	Any operation performed by an aircraft that: • operates in the local traffic pattern or within sight of the tower or airport, or • is known to be departing for, or arriving from, flight in local practice areas located within a 20-mile radius of the control tower or airport, or

	• executes a simulated instrument approach or low pass at the airport.
LOI	Letter of Intent.
Long Term Lease	A lease with a term of five (5) years or more.
LRA	Local Redevelopment Authority
MAP	Military Airport Program
Mediation	The use of a mediator or co-mediators to facilitate open discussion between disputants and assist in negotiating a mutually agreeable resolution. Mediation is a method of alternative dispute resolution that provides an initial forum to settle disputes informally prior to regulatory intervention on the part of the FAA.
Minimum Standards	The qualifications or criteria that may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities.
Mitigation	The avoidance, minimization, reduction, elimination, or compensation for adverse environmental effects of a proposed action.
MoGas	Automotive gasoline
MTOW	Maximum certificated takeoff weight
NADP	Noise Abatement Departure Procedures
NAS	National Airspace System
NAS	Naval Air Station
NASA	National Aeronautics and Space Administration
NASAO	National Association of State Aviation Officials
NATA	National Air Transportation Association
NBAA	National Business Aviation Association
NCP	Noise Compatibility Plan. The NCP consists of an optimum combination of preferred noise abatement and land use management measures and a plan for the implementation of the measures. For planning purposes,

	the implementation plan also includes the estimated cost for each of the recommended measures to the airport sponsor, the FAA, airport users, and the local units of government.
NDB	Nondirectional beacon
NEF	Noise exposure forecast
NEM	Noise Exposure Map. The NEM is a scaled map of the airport, its noise contours and surrounding land uses. The NEM depicts the levels of noise exposure around the airport, both for the existing conditions and forecasts for the five-year planning period. The area of noise exposure is designated using the DNL (day-night average sound level) noise metric.
NEPA	National Environmental Policy Act of 1969. The original legislation establishing the environmental review process.
Net Proceeds	The sum derived from a lease sale, salvage or other disposal of airport property at fair market value (FMV) after deductions or allowances have been made for directly related expenses such as advertising, legal services, surveys, appraisals, taxes, commissions, title insurance, and escrow services.
NEUP	National Emergency Use Provision
NLR	Noise Level Reduction. The amount of noise level reduction in decibels achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Investigation
Noise Exposure Contours	Lines drawn about a noise source indicating constant energy levels of noise exposure. DNL is the measure used to describe community exposure to noise.
Noise-sensitive Area	Area where aircraft noise may interfere with existing or planned use of the land. Whether noise interferes with a particular use depends upon the level of noise exposure and the types of activities that are involved. Residential neighborhoods, educational, health, and religious

	structures and sites, outdoor recreational, cultural and historic sites may be noise sensitive areas.
NOTAM	Notice to Airmen
NPIAS	National Plan of Integrated Airport Systems. The National Plan of Integrated Airport Systems (NPIAS) identifies nearly 3,310 existing and proposed airports that are included in the national airport system, the roles they currently serve, and the amounts and types of airport development eligible for Federal funding under the Airport Improvement Program (AIP) over the next 5 years. The FAA is required to publish a 5-year estimate of AIP eligible development every two years.
NPRM	Notice of Proposed Rule Making
NRA	Non-Rulemaking Actions/Airports Airspace Analysis
NTSB	National Transportation Safety Board
Obstruction	Natural or manmade objects that penetrate surfaces defined in 14 CFR Part 77, Objects Affecting Navigable Airspace.
OE	Operational Error
OE/AAA	Obstruction Evaluation/Airport Airspace Analysis
OFZ	Object free zone
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPI	Office of Primary Interest
PD	Pilot Deviation
PCI	Pavement Condition Indicator
PFC	Passenger ChargeFacility . The PFC program, first authorized by the Aviation Safety and Capacity Expansion Act of 1990 and now codified under Section 40117 of Title 49 U.S.C., provides a source of additional capital to improve, expand, and repair the nation’s airport infrastructure. The legislation allows public agencies controlling commercial service airports to charge enplaning passengers using the airport a facility charge.

	The FAA must approve any facility charges imposed on enplaning passengers.
PGP	Planning Grant Program
PIC	Pilot-in-command
P.L.	Public Law
Private-use Airport	A publicly owned or privately owned airport not open to the public.
Proprietary Exclusive	The owner of a public use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. In fact, the statutory prohibition against exclusive rights does not apply to these owners; they may exercise, but not grant, the exclusive right to conduct any aeronautical activity. However, the sponsor that elects to engage in a proprietary exclusive must use its own employees and resources to carry out its venture. An independent commercial enterprise that has been designated as agent of the owner may not exercise, nor be granted, an exclusive right.
Public Airport	An airport used or intended to be used for public purposes: • that is under the control of a public agency and • that is used or intended to be used for the landing, taking off, or surface maneuvering of aircraft.
Public-use Airport	A public airport or a privately owned airport used or intended to be used for public purposes. Examples: • a reliever airport • an airport determined by the Secretary of Transportation to have at least 2,500 passenger enplanements each year and offering scheduled passenger aircraft service.
Quitclaim Deed	A deed that transfers the exact interest in real estate of one to another.
RAA	Regional Airline Association
RIAT	Runway Incursion Action Team
ROFA	Runway object free area.

RPZ	Runway Protection Zone. A trapezoidal-shaped area centered on the extended runway centerline that is used to enhance the safety of aircraft operations. It begins 200 feet beyond the end of the runway or area usable for takeoff or landing. The RPZ dimensions are functions of the design aircraft, type of operation, and visibility minimums.
RSA	Runway Safety Area. The RSA is a rectangular area surrounding the runway that is intended to provide a measure of safety in the event of an aircraft's excursion from the runway by significantly reducing the extent of personal injury and aircraft damage during overruns, undershoots and veer-offs. RSA dimensions are established in AC 150/5300-13, Airport Design and are based on the Runway Design Code (RDC).
RSP	Runway Safety Program
RSAT	Runway Safety Action Team
Runway incursion	Any occurrence at an airport with an Air Traffic Control Tower involving an aircraft, vehicle, person, or object on the ground that creates a collision hazard or results in a loss of separation with an aircraft taking off, intending to take off, landing, or intending to land.
SAR	Search and Rescue
SBGA	State block grant agencies
SBGP	State block grant program
SBGS	State block grant state
SEL	Sound Exposure Level. A measure of the physical energy of the noise event that takes into account both intensity and duration. By definition SEL values are referenced to a duration of one second. SEL is higher than the average and the maximum noise levels as long as the event is longer than one second. Sound exposure level is expressed in decibels (dB). People do not hear SEL.
Self-fueling and Self-service	The fueling or servicing of an aircraft by the owner of the aircraft or the owner's employee. Self-fueling means using fuel obtained by the aircraft owner from the source of his/her preference. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources

	supplied by the aircraft owner. Part 43 of the Federal Aviation Regulations permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.
SPA	Surplus Property Act of 1944 (P.L. No. 80-289)
Tenant	A person or organization occupying space or property on an airport under a lease or other agreement.
TRACON	Terminal Radar Approach Control
TSA	Transportation Security Administration
TSR	Transportation Security Regulations
UNICOM	Non-government air/ground radio communication station. It may provide airport information at public use airports where there is neither a tower nor a Flight Service Station.
Uniform Act	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
U.S.	United States
U.S.C.	United States Code
U.S.D.A.	Department of Agriculture
USGS	United States Geological Survey
USN	United States Navy
Variance	An authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance or use of land that is prohibited by a zoning ordinance. This is a lawful exception from specific zoning ordinance standards and regulations predicated on the practical difficulties and/or unnecessary hardships on the petitioner being required to comply with those regulations and standards from which an exemption or exception is sought.
VASI	Visual Approach Slope Indicator
VFR	Visual Flight Rule
Visual Approach	An approach to an airport conducted with visual reference to the terrain.
VOR	Very High Frequency Omnidirectional Radio Range. (A dead reckoning ground based navigational aid.)

V/PD	Vehicle Pedestrian Deviation
WAA	War Assets Administration
Zoning	The partitioning of land parcels in a community by ordinance into zones, and the establishment of regulations in the ordinance to govern the land use and the location, height, use, and land coverages of buildings within each zone. The zoning ordinance usually consists of text and zoning maps. A zoning ordinance is primarily a legal document that allows a local government effective and legal regulation over uses of property while protecting and promoting the public interest.

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