ORDER

5190.6A

AIRPORT COMPLIANCE REQUIREMENTS

OCTOBER 2, 1989

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Distribution: A-W(PP/AS)-3; A-X(AS)-4; A-FAS-1(MAX)

Initiated By: AAS-300

RECORD OF CHANGES

DIRECTIVE NO. 5190.6A

CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL	CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL

FOREWORD

1. PURPOSE. This Order provides the policies and procedures to be followed in carrying out the Federal Aviation Administration's (FAA) functions related to airport compliance. It is of interest to other Government agencies, both Federal and state, who are concerned with actions associated with Federal real and personal property.

2. DISTRIBUTION. This Order is distributed to the branch level of the Office of Airport Safety and Standards, the Office of Airport Planning and Programming, to the section level of all regional Airports division, and all Airport District Offices/Field Offices.

3. CANCELLATION. Order 5190.6, Airports Compliance Requirements, dated August 24, 1973, is canceled, except for the enforcement provision (see Chapter 6, Section 2 of this Order).

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CHAPTER 1. SCOPE AND AUTHORITY

1–1. GENERAL. The airport compliance function is a contractually–based program. It does not attempt to control and direct the operation of airports. Rather it is a program to administer valuable rights obtained for the people of the United States at a substantial cost in direct grants of funds and in donations of Federal property.

Such grants and donations are made in exchange for binding commitments designed to assure that the public interest would be served. The FAA bears the important responsibility of seeing that these commitments are met. What these commitments are, how they apply to airports, and what FAA personnel are required to do about them are discussed in the following chapters.

1–2. SCOPE. A description of the several types of basic obligating documents is contained in Chapter 2. The background and guidance for implementing the statutory prohibition against exclusive rights at airports are covered by Chapter 3. An analysis of the various compliance obligations is contained in Chapter 4 together with guidance as to how they will be interpreted and applied. Chapter 5 outlines the procedures for carrying out an effective compliance program. Chapter 6 covers review of leases and enforcement procedures. Chapter 7 provides guidance for amending or releasing airport obligations, and Chapter 8 covers the reverting of airport lands to the Federal Government.

1–3. BACKGROUND OF AIRPORT OBLIGATIONS. The Federal Aviation Act of 1958 and the Civil Aeronautics Act of 1938 which preceded it charges the Administrator with broad responsibilities for the regulation of air commerce in the interests of safety and national defense and for the promotion, encouragement, and development of civil aeronautics. Under these broad powers the FAA seeks to achieve safety and efficiency of the total airspace system through direct regulation of airman, aircraft, and the airspace. The Federal interest in promoting civil aviation has been augmented by various legislative actions which authorize programs for granting property, funds, and other assistance to local communities for the development of airport facilities. In each program the recipient assumes certain 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 owners 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 Airports Compliance Program embraces the policy and guidelines of the FAA for monitoring the performance of airport owners under its obligations to the Federal Government.

1–4. SOURCES OF OBLIGATIONS. The obligations that airport owners assume in consideration of Federal aid flow from various agreements and statutes, including but not limited to:

a. Grant agreements issued under the various Federal grant programs.

b. Surplus airport property instruments of transfer issued under the provisions of Section 13g of the Surplus Property Act of 1944.

c. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Development Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

d. Section 308(a) of the Federal Aviation Act of 1958 (exclusive rights).

e. Title VI of the Civil Rights Act of 1964.

1–5. AUTHORITY. Responsibility to ensure compliance with airport owner obligations is vested in, or imposed on, the FAA by law or through FAA contractual authority.

a. Surplus Property Transfers. Surplus property instruments of transfer were, and are, issued by the War Assets Administration (WAA) and its successor, the General Services Administration (GSA). However, Public Law (P.L.) 81–311 specifically imposes upon FAA 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 non–Federal public agencies pursuant to the Surplus Property Act of 1944.

b. Section 16/23/516 Conveyances. Deeds of conveyance issued under Section 16, Section 23, or Section 516 are also issued by agencies other than the FAA. The conveyance document places the administration and enforcement responsibility on the FAA Administrator.

c. Grant Agreements. FAA is vested with jurisdiction over grant agreements because such agree-

ments are executed for and on behalf of the United States by the FAA and its predecessor, the Civil Aeronautics Administration (CAA).

d. Exclusive Right. The FAA is also charged with the responsibility of bringing about or enforcing compliance with the exclusive right provision of Section 308 of the Federal Aviation Act of 1958 and Section 303 of the Civil Aeronautics Act of 1938. Responsibility for enforcement of this provision is vested in FAA by incorporation of the provisions in both statutes under the title captioned "Powers and Duties of the Administrator."

e. To Release, Modify or Amend. The authority of the FAA to release or modify the terms and conditions of airport agreements is variable among the respective types of agreements. P.L. 81–311 prescribes specific circumstances and conditions under which the FAA may release, modify or amend the terms and conditions of surplus property deeds.

CHAPTER 2. TYPES OF AGREEMENTS

SECTION 1. GRANT AGREEMENTS.

2–1. SPONSOR'S OBLIGATIONS.

a. Under the various Federal grant programs, the sponsor of a project agrees to assume certain obligations pertaining to the operation, use and maintenance of the airport. These obligations are embodied in the application for Federal assistance as sponsor's assurances and become a part of the grant offer, and bind the grant recipient upon acceptance. The grant assurances in the several development programs (Federal Airport Aid Program (FAAP), Airport Development Aid Program (ADAP), and Airport Improvement Program (AIP)) are somewhat varied; therefore, each grant agreement should be reviewed in order to determine the airport owner's obligations.

b. Some agreements contain special covenants or conditions directed to an individual situation. This Order is generally not concerned with any special conditions under which the project is to be carried out; such as withholding of funds due to nonacquisition of clear zone areas, acquisition of additional land within a prescribed time limit, etc. However, in unusual circumstances where an assurance was contained as a special covenant or condition, the interpretation in this Order will apply.

2–2. DURATION OF GRANT AGREEMENTS.

a. Obligations relating to the use, operation, and maintenance of the airport remain in full force and effect throughout the useful life of the facilities developed under the project but in no event to exceed 20 years. However, there shall be no limit on the duration of the assurance against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with Federal funds. These provisions remain in effect so long as the airport is used as an airport. The Chief Counsel has indicated that the useful life of an airport or airport facility may be determined to have expired if it is no longer used or needed for the purpose for which it was developed, as well as if the physical life of the facility has expired. Furthermore, the duration of the Civil Rights assurances shall be as specified in the assurance.

b. The preceding subparagraph a. also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of facilities developed or equipment acquired under an airport development or noise program implementation project shall be no less than 10 years from the date of acceptance of Federal aid for the project.

2–3. PHYSICAL LIFE OF FACILITIES. The physical, useful life of a facility extends only for the period of time during which it is serviceable and usable with ordinary day–to–day maintenance. Reconstruction, rehabilitation, or major repair of a facility without Federal aid does not extend the duration of its useful life within the meaning of that term as used in grant agreements. When a facility needs reconstruction, rehabilitation or major repair in order that it may continue to serve the purpose for which it was developed, its useful life has expired. Regional Airports offices will make this determination. If new grants are issued for reconstruction, rehabilitation, or major repair, a new useful life period begins.

2–4.–2–5. RESERVED

SECTION 2. SURPLUS PROPERTY INSTRUMENTS

2–6. BACKGROUND. Surplus property instruments of disposal are issued under Section 13 of the Surplus Property Act of 1944. The Act authorizes conveyance of property surplus to the needs of the Federal Government. The FAA (or its predecessor CAA) recommends to the GSA which property should be transferred for airport purposes to public agencies. Such deeds are issued by the GSA which has jurisdiction over the disposition of properties that are declared to be surplus to the needs of the Federal Government. Prior to the establishment of the GSA in 1949, instruments of disposal were issued by the WAA.

a. **Statutory Authority.** P.L. 80–289, approved July 30, 1947, amended Section 13 of the Surplus Property Act of 1944. This authorized the Administrator of WAA (now GSA) to convey to any state, political subdivision, municipality or tax–supported institution, surplus real and personal property for airport purposes without monetary consideration to the United States. These conveyances are subject to the terms, conditions, reservations and restrictions prescribed

therein. Real property cannot be transferred for airport use if a determination has been made by GSA that the highest and best use of the land is industrial. 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, operations or maintenance of a public airport. This includes property needed to develop sources of revenue from nonaviation businesses at a public airport. Refer to Order 5150.2, Federal Surplus Property for Public Airport Purposes, for guidance on transferring Federal surplus property for public airport purposes.

Prior to the enactment of P.L. 80–289 surplus airport properties were conveyed to public agencies under general authority granted WAA by the Surplus Property Act. The terms and conditions subject to which surplus airport properties were conveyed under this authority were administratively established by WAA and prescribed in its Regulation No. 16, generally referred to as WAA – Reg. 16.

b. Nonairport Property Prior to P.L. 80–289. Prior to the enactment of P.L. 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 operation and maintenance of the airport. This precluded the transfer of some types of buildings, facilities, and other nonairport properties comprising parts of an air base as operated by the Government.

c. Revenue–Producing Property. The provision in P.L. 80–289 that includes among the types of airport property, property needed to develop sources of revenue from nonaviation businesses at a public airport, constitutes specific authorization for the transfer of such properties. This is authorized where it has been determined that they are needed and will be used as sources of revenue to defray the cost of operation, maintenance and development of the airport. Originally the form of instrument used to transfer surplus airport properties under P.L. 80–289 made no distinction between obligations imposed where property was conveyed for airport use and those imposed with respect to property conveyed for revenue purposes. The FAA takes the position that each conveyance of revenue–producing property obligates the transferees to use the revenues derived from nonairport use of the property for operation, maintenance or development of the airport. If the land has been identified and agreed upon by the FAA as revenue–producing property (even if it was not so identified on the transfer document) then the revenue must be used on the airport or put into the airport fund.

2–7. TYPES OF INSTRUMENTS OF DISPOSAL. Three basic forms of instruments of disposal have been used to convey surplus airport properties: (1) the form used under WAA – Reg 16 prior to the amendment of the Surplus Property Act of 1944 by P.L. 80–289; (2) the form issued under P.L. 80–289 to convey real or a combination of real and related personal property; and (3) the form issued to convey only personal property. Each individual instrument of disposal must be examined to determine the particular obligations of the grantee or rights of the Government.

a. Conditions Peculiar to Various Instruments. Instruments of disposal under P.L. 80–289 are all substantially similar. In a few cases the National Emergency Use Provision (NEUP) has been omitted (see paragraph c. below). One or more special conditions or restrictions other than those required by law may have been included in some instruments. The instruments of disposal issued under WAA – Regulation 16, however, are not uniform. One variation in WAA – Regulation 16 instruments is the provision relating to joint military use of the airport. Some give the Government the right to unlimited use without charge, and in others the Government use may not exceed a specified percentage of the capacity of the airport if such use interferes with other authorized use of the airport.

b. Obligation to Operate and Maintain Airport. Practically all the WAA – Regulation 16 and P.L. 80–289 instruments conveying real and related personal property contain provisions obligating the grantees to operate and maintain the entire airport where the property is located, regardless of the amount of property conveyed by the instrument. However, instruments of disposal (SF–123) for only personal property contain provisions obligating the grantee only with respect to the use and maintenance of the specific property conveyed.

c. National Emergency Use Provision (NEUP). Practically all WAA – Regulation 16 and P.L. 80–289 instruments of disposal of real and related personal property also contain the NEUP under which 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.

2–8. DURATION OF OBLIGATIONS. The duration of the obligation depends upon the properties conveyed.

a. Real Property. All surplus airport property instruments of disposal, except those conveying only personal property, provide that the covenants assumed by the grantee regarding the use, operation and maintenance of the airport and the property transferred shall

be deemed to be covenants running with the land. Accordingly, such covenants continue in full force and effect until released under P.L. 81–311 or other applicable law.

b. Related Personal Property. In most cases instruments conveying real property also convey related personal property. Accountability for this property shall be its useful life not to exceed 1 year.

c. Personal Property (Donable). The term of a surplus airport property instrument of disposal (SF–123) conveying only personal property extends for the period of time during which it is serviceable and usable with ordinary day–to–day maintenance but no longer than 1 year. Reconstruction, rehabilitation or major repair does not extend its useful life within the meaning of that term as used in surplus property instruments. Surplus personal property that has outlived its useful life should be removed from the inventory. Such property may be disposed of by tradein on new equipment. If this is done, accountability for the new property is not required.

2–9.–2.10. RESERVED.

SECTION 3. CONVEYANCES OF NONSURPLUS FEDERAL LAND

2–11. BACKGROUND. While Federal land which has been declared surplus is conveyed under the Surplus Property Act, federally–owned or controlled land which is not surplus may be conveyed for airport purposes under authority contained in Section 516 of the AAIA. Prior to the effective date of this Act, similar authority existed in Section 16 of the Federal Airport Act and Section 23 of the Airport and Airway Development Act of 1970. Unlike surplus property, this land may not be transferred for the specific purpose of revenue production.

2–12. COVENANTS. Instruments of conveyance executed under Section 516, Section 23, or Section 16 impose upon the grantees certain obligations regarding the use of the lands conveyed and the airport involved. Covenants included in the deeds or other instruments by which interests in lands are conveyed under these sections require, among other things that:

a. The grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within 1 year or as set forth in the deed.

b. The airport, together with its appurtenant areas, buildings and facilities, whether or not on the land being conveyed, will be operated as a public airport on fair and reasonable terms and without discrimination.

c. The grantee will not grant or permit any exclusive right forbidden by Section 308 of the Federal Aviation Act.

d. Any subsequent transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

e. For Section 16 transfers the whole or any part of the property interest conveyed shall revert to the United States in the event the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance.

f. In the event of a breach of any covenant or condition the grantee will, on demand, take such action as may be necessary to evidence transfer of title to the premises to the United States.

In some instances, special conditions or obligations may be imposed upon the grantee by the Government agency issuing the conveyance instrument. Therefore, it will be necessary in each case to consult the particular deed by which the lands are conveyed to determine all the conditions and covenants.

2–13. REVERTER PROVISION. Section 16/23/516 deeds provide for reversion to the United States in the event the lands are not developed or cease to be used for airport purposes.

a. Section 16 Deeds. The Federal Airport Act required that conveyances made under Section 16 "...be made on the condition that the property interest conveyed shall automatically revert to the United States..." if the land is not developed as an airport or ceases to be used for airport purposes. This provision was difficult to administer during the early years since no time limits were specified for beginning use or after ceasing use which would make the reverter operable. Beginning in the early 1960's the deeds provided that the property interest automatically reverts if the land is not developed or used for airport purposes within 3 years or if airport use ceases for a period of 6 months. The 3–year development time was changed to 5 years in 1968. At the same time, the covenants were amended to introduce a right of the Administrator, exercisable 1 year after conveyance, to repossess any part not developed for airport use. In requesting the conveyance of land for approach protection for an existing airport, the provision that the land will revert automati-

cally unless it is used for airport purposes normally was omitted. This exception was made for the reason that immediately upon acquisition the land became a part of the airport and served the approach protection purpose.

b. Section 23/516 Conveyances. Section 23/516 does not continue the automatic reversion of property interests contained in Section 16 but places reversion at the option of the Secretary. Section 16 transfers were made under the provisions of Federal Aviation Regulation (FAR) Part 153. The implementing regulations (FAR Part 154) require that the land be developed for airport purposes within 1 year of the conveyance. If the property is not so developed or used in a manner consistent with the terms of the conveyance, the Administrator may, at his discretion, enter and on behalf of the United States take title to all or any part of the property interests conveyed.

c. Determination as to Exercise of Reverter. In determining whether the reverter provision has become operable in any particular case (because of failure to develop or use the land for airport purposes or because of cessation of airport use) the deed should be examined to ascertain whether it contains applicable time limitations. If the deed does not contain such time periods, as a general rule, 1 year can be considered a reasonable time for developing or using the property for airport purposes and that 6 months of nonairport use a reasonable time for the exercise of the reverter. The regional Airports division can justify the allowance of additional time in this connection when the grantee is able to show that definite effort is being made to conform to requirements. Before a region Airports division decides to revert Section 16/23/516 property, they shall contact the Airport Safety and Operations Division (AAS–300) to discuss the proposed reversion. (See Chapter 8 for Reversion Procedures.)

2–14. DURATION OF COVENANTS AND OBLIGATIONS. Covenants and other provisions of Section 16/23/516 deeds continue in force and effect so long as the land is held by a public agency grantee, its successors or assigns. The FAA has no authority to release land transferred under Sections 16/23/516. If the land conveyed under a Section 16/23/516 deed is no longer used or needed for any airport purpose, FAA has no recourse but to invoke the reverter provision in accordance with the terms of the deed unless the grantee willingly agrees to its voluntary reconveyance. This does not mean, however, that land transferred for approach protection cannot be used for some secondary nonairport purpose (such as road or highway, farming, etc.) so long as such use does not interfere with the airport purposes for which it is needed. However, if the property is used for some secondary nonaeronautical purpose, a fair market value (FMV) should be received for such use and the proceeds used only for airport purposes.

2–15.–2–17. RESERVED

SECTION 4. AP–4 AGREEMENTS

2–18. BACKGROUND.

a. The Development of Landing Areas National Defense (DLAND) and the Development Civil Landing Areas (DCLA) Programs were authorized by various acts during the period 1939 to 1944.

b. Airports developed or improved under these programs were subject to the terms and conditions of an instrument known as an AP–4 Agreement. This was an agreement between the Government and the airport sponsor under which the sponsor provided the land and the Government planned and constructed the airport improvements. Based on consideration of the type of improvements, design standards, construction methods and normal deterioration, the FAA has administratively determined that the useful life of all AP–4 improvements has expired.

2–19. CONTINUING OBLIGATION. Although all AP–4 Agreements have expired, such airports continue to be subject to the statutory exclusive rights prohibition (Section 308(a), Federal Aviation Act). Termination of the agreement relieves the airport owner of only the contractual obligations imposed by it. Since the airport is still one upon which Federal funds have been expended, it is subject to the exclusive rights prohibition for as long as it is operated as an airport, whether or not it remains under the control and jurisdiction of the same public agency.

CHAPTER 3. EXCLUSIVE RIGHTS

SECTION 1. BACKGROUND

3–1. GENERAL. Chapter 4 of this Order describes the responsibilities assumed by the owners of public use airports developed with Federal funds. Among these is the obligation to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. This covenant enjoins the airport owner from granting any special privilege or monopoly in the use of public use airport facilities. The grant of an exclusive right to provide aeronautical services at an airport on which Federal funds have been expended is specifically forbidden by the Federal Aviation Act of 1958. Because of the widespread interest and involvement of this statutory prohibition, this entire Chapter is devoted to guidance on the application of law and FAA policy regarding exclusive rights at public use airports.

3–2. LEGISLATIVE HISTORY.

a. Origin. The Civil Aeronautics Act of 1938 contained language (Section 303) restricting the use of Federal funds for airport development (other than military) to those landing areas certified by the Administrator as being reasonably needed for air commerce or national defense. The same section of the Act also provided that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended." This identical language has since been incorporated as Section 308(a) of the Federal Aviation Act of 1958. This provision also applies to surplus and nonsurplus property transferred for public use airport purposes.

b. Recognition of Statutory Prohibition in Agreements. The AP–4 Agreements (see Section 4, Chapter 2) under which many civil airports were improved with Federal funds during the World War II period contained a covenant that such airports would be operated without the 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. Similar language is now used in airport grant agreements to specifically require conformity to this statute as part of the sponsor's assurances. Whether referenced in an agreement or not, the prohibition against exclusive right contained in Section 308 applies to any airport on which any Federal funds have been expended since August 28, 1938, the effective date of the Civil Aeronautics Act.

c. Prohibition Applied to Aeronautical Activities. In 1941, the Attorney General of the United States was called upon to interpret the application of Sec. 303 of the Civil Aeronautics Act. 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." Significantly, the Attorney General did not define what an aeronautical activity was other than to cite as an example one type of activity commonly known in 1941—"such as an air carrier." This opinion, however, made it clear that a monopoly covering one activity would not be tolerated merely because the landing area was also available to those engaged in other types of aeronautical activity.

d. Restrictions in Surplus Property Deeds. Following World War II, large numbers of former military installations were conveyed without monetary consideration to local public agencies under the provisions of the Surplus Property Act of 1944. Initially the deeds of conveyance included a covenant that there would be no exclusive right contrary to the provisions of Section 303 of the Civil Aeronautics Act. Subsequently, however, in 1947, the Surplus Property Act was amended by P.L. 80–289 to require the following specific 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 operation of aircraft; (2) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances.

3–3. DEVELOPMENT OF AGENCY POLICY.

a. Implementation of Federal Airport Act. During the immediate post war years, the CAA (the predecessor of the FAA) was simultaneously engaged in processing the first FAAP development projects and in recommending the conveyance of former military

installations under the surplus property laws. Many of the surplus property conveyances did not literally require conformity to the prohibition against exclusive rights in Section 303 of the Civil Aeronautics Act, but they contained the far more specific restrictions quoted in paragraph 31d above.

b. Early Interpretations of Aeronautical Activity. In approving grants of funds for airport development the CAA/FAA has always insisted that there could be no exclusive right for the use of such airports. Any activity which involved use of the landing area (e.g., flight school, airline, charter service, etc.) was considered to be subject to the statutory prohibition. However, a nonaeronautical activity, such as a restaurant or ground transportation service, was viewed as not subject to the prohibition. In early policy interpretations there were many activities which cater to or support flight operations, but which do not actually use the landing area (such as storage hangars, repair services, aircraft parts sales, and especially the sale of fuel and oil) and were viewed as not being subject to the prohibition. The FAA, as a matter of policy, advised against monopolies for such activities. However, in 1962 the FAA Policy on Exclusive Rights was published in the Federal Register and it declared the exclusive rights of these activities to be in violation of the law.

c. Definition of Aeronautical Activity. On July 17, 1962, the FAA issued Order 0A 5250.1 which defined those aeronautical activities prohibited on an exclusive basis by Section 308(a) of the Federal Aviation Act. On October 12, 1965, this Order was superseded by Order 5190.1, Exclusive Rights at Airports, to further clarify the application of the statutory prohibition. Section 2 of this Chapter explains in detail the types of aeronautical activity covered by the prohibition and the FAA policies for interpreting and applying Section 308(a).

3–4.–3–7. RESERVED.

SECTION 2. POLICY

3–8. BASIS OF POLICY

a. Agency Position. The FAA has concluded that the existence of exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the using public of the benefits of a competitive enterprise. Apart from legal considerations, the FAA considers it inappropriate to provide Federal funds for improvements to airports where the benefits of such improvements will not be fully realized due to the inherent restrictions of an exclusive monopoly on aeronautical activities.

b. Application of Law. The grant of an exclusive right to conduct an aeronautical activity at an airport on which Federal funds have been expended is considered a violation of Section 308(a) of the Federal Aviation Act, whether such exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means. As an exception, the existence of an exclusive right to sell only fuel and oil will not be considered to be in violation of Section 308(a) where such right is specifically exempted from the activities prohibited by a deed under the Surplus Property Act of 1944, as amended (P.L. 80–289). However, presence of such an exclusive right would preclude issuance of a grant under the AAIA Act of 1982, as amended. (See Chapter 6, Section 2.)

c. Duration of Prohibition Against Exclusive Rights. Once any Federal funds have been expended at an airport, including a surplus property conveyance, the exclusive rights prohibition is applicable for as long as it is operated as an airport.

3–9. INTERPRETATION.

a. Single Activity Not Necessarily an Exclusive Right. The presence on an airport of only one enterprise engaged in any aeronautical activity will not be considered a violation of this policy if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises. In many instances, the volume of business may not be sufficient to attract more than one such enterprise. As long as the opportunity to engage in an aeronautical activity is available to those meeting reasonable qualifications and standards relevant to such activity, the fact that only one enterprise takes advantage of the opportunity does not constitute the grant of an exclusive right.

b. Single Activity as Treated by Law. The AAIA (P.L. 97–248) includes the following sponsor assurance under Section 511(a)(2):

"...There will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of services at an airport by a single fixed–based operator shall not be construed as an exclusive right if it would be unreasonably costly, burdensome, or impractical for more

than one fixed–based operator to provide such services, and if allowing more than one fixed–based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed–based operator and such airport...''

The Chief Counsel rendered an opinion dated December 21, 1982, which concludes that this amendment to Section 308(a) applies to those airports previously obligated under Section 308(a) where a single fixed–based operator (FBO) now exists. This assurance obligates the grant recipients to the same terms and conditions of amended Section 308(a). (Reference Order 5190.1.)

The exclusive rights policies that are outlined herein remain unchanged except for those airports which have a single FBO whose lease agreement with the airport owner must be amended to delete space for a second FBO to do business on the airport. In these cases, it must be determined if it would be unreasonably costly, burdensome, or impractical for more than one FBO to provide such services on the airport. This does not apply where the lease is being amended to delete space due to lack of demonstrable need (see below).

c. Single Activity Due to Space Limitation. The leasing to one enterprise of all available airport land and improvements planned for aeronautical activities will be construed as evidence of an intent to exclude others unless: (1) the lease meets the criteria of and contains the special provisions described in paragraph 6–5c; or (2) it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease.

(1) The complete saturation of space available for the service, storage, and repair of aircraft is prima facie evidence of a serious imbalance in the development of airport facilities. At a new or recently developed airport such saturation reflects poor planning and unrealistic forecasts of need. However, an arbitrary division or restriction to create an opportunity for a competitive enterprise is not required merely to comply with the exclusive rights policy.

(2) A single aeronautical enterprise although meeting all reasonable standards and qualifications should be limited, as a result of this policy, to the lease of such space as is demonstrably needed. If the need for additional space becomes apparent at a later date, such space, as well as any new areas developed for the service and support of aeronautical activities, must be made available to all qualified proponents or bidders, including the incumbent. The advance grant of options or preferences (including right of first refusal) on all future sites to the incumbent enterprise must be viewed as an exclusive right. On the other hand, nothing in this policy should be construed as limiting the expansion of such an enterprise when space requirements become critical and where the proposed lease area will be immediately used to conduct activities, even though it could ultimately result in complete saturation of all space by the one enterprise.

d. Aeronautical Activities Conducted by the Airport Owner (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 and they may exercise but not grant the exclusive right to conduct any aeronautical activity. However, these owners must engage in such activities as principals using their own employees and resources. An independent commercial enterprise that has been designated as agent of the owner may not exercise nor be granted an exclusive right. (Reference Chief Counsel opinion dated April 13, 1984.)

(1) As a practical matter most public agencies recognize that these services are best provided by profit–motivated private enterprise. The exceptions are usually those instances in which a municipality or other public agency elects to provide fuel service or aircraft parking. If it does so, whether on an exclusive or nonexclusive basis, it may not refuse to permit an air carrier, air taxi, or flight school to fuel its own aircraft.

(2) The airport owner may establish reasonable standards covering the refueling, washing, painting, repairing, etc., of aircraft, but it may not refuse to negotiate for the space and facilities needed to meet such standards by an activity offering aeronautical services to the public. If the airport owner reserves unto itself 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. The self–service fueling by such flight operators, however, must be done with their own employees and equipment.

(3) An aircraft operator does not have a right to bring a third party, such as an oil company, on the airport to refuel his aircraft. This would be an aeronautical activity undertaken by the fuel company which has only such rights as the airport owner may confer. It should be noted that air carriers invariably insist on a standard condition in their airport contracts reserving the right to obtain fuel from a supplier of their choice. However, this is not a right guaranteed by the terms of a grant agreement.

e. **Restrictions on Self–Service.**

(1) Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment may be construed as a violation of this policy. Where no attempt has been made to perform such services for others, aircraft owners should be permitted to fuel, wash, repair, paint and otherwise take care of their own aircraft. A restriction which has the effect of diverting such business to a commercial operator amounts to an exclusive monopoly of an aeronautical activity contrary to law.

(2) Servicing one's own aircraft is not an aeronautical activity that can be preempted by the airport owner which elects to exercise the exclusive right to sell fuel. Quite apart from the prohibition against exclusive rights, the sponsor of an obligated airport is required to operate the airport for the use and benefit of the public on fair and reasonable terms. It may not, as a condition for the use of its airport, impose unreasonable requirements on aircraft operators to procure parts, supplies or services from specified sources. It can however, require the self–fueler, both individuals and operators, to pay the same fuel flowage fee as those operators on the airport who provide fueling services to the public. As long as the aircraft operators do not attempt to offer commodities or services to others, they have a right to furnish their own supplies and to do what is necessary to their aircraft in order to use the facilities of a public use airport.

(3) An airport owner is under no obligation to permit aircraft owners to introduce on the airport equipment, personnel or practices which would be unsafe, unsightly, detrimental to the public welfare, or which 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. Unless the aircraft owner is in a position to meet such standards with his own equipment and personnel, his right to service his own aircraft does not override the prerogative of the airport owner to control the sources of providing fuel and other aeronautical services. For example, airport agreements do not permit the owner of a private aircraft to contract with an off–airport company to enter upon the airport and refuel his aircraft. This would clearly be the conduct of an aeronautical activity, not by the aircraft owner, but by the fuel company. Also, the airport owner is under no obligation by the terms of the grant assurances to recognize a "CO–OP" (an organization formed by several aircraft owners for the purpose of self fueling) as a single aircraft owner for self fueling purposes. However, fueling activities by a "CO–OP" could be allowed by the airport owner provided appropriate agreements (safety standards, fees, conditions, etc.) were consummated. Where the sponsor has retained, on an exclusive basis, this right to fuel or service the aircraft of others it may prohibit such entries. With respect to fuel, therefore, the aircraft owner may assert the right to obtain fuel where he pleases and bring it onto the airport to service his own aircraft, but only with his own employees and only in conformance with the reasonable safety standards or other reasonable requirements of the airport. This policy also applies to aircraft owners who have obtained supplemental type certificates authorizing the use of automotive gasoline (mogas) in their aircraft and who wish to self service their aircraft with mogas.

(4) Local airport regulations may and should include such restrictions as are reasonably necessary for safety, preservation of facilities and protection of the public interest. For example:

(a) The use of paints, dopes, and thinners should be confined to structures meeting appropriate safety criteria.

(b) Storage and transport of aviation fuel, though not procured for resale, should be subject to reasonable restrictions and minimum standards for equipment, location and handling practices.

(c) Restraints should be placed on the use of aircraft washing solvents to protect sewage and drainage facilities.

(d) Weight limitations should be imposed on delivery trucks (including fuel trucks) and special purpose vehicles such as cranes where needed to protect airport roads and paving.

(e) Time limits should be placed on the open storage of nonairworthy aircraft, wreckage, or unsightly major components.

(f) Such restrictions as may be required by appropriate Federal or state agencies to protect the environment and minimize pollution or other adverse effects.

(g) Restraints should be placed on the storage of nonaeronautical vehicles such as boats, cars, trailers and mobile homes, etc., in hangars or on the aeronautical facilitie areas.

f. **Licenses Not Controlled by Airport Owner.** The Federal Communications Commission (FCC) authorizes use of special UNICOM 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, runway information, etc. To preclude the issuance of

conflicting reports, the FCC will not license more than one UNICOM station at the same airport. An aeronautical activity having a UNICOM station or similar exclusive privilege has an advantage over competitors in attracting aeronautical users. However, since such an exclusive right is not subject to the airport owner's control, it does not constitute a grant of exclusive rights to which the statutory prohibition of Section 308(a) applies. Airport owners should be encouraged to obtain the UNICOM license in their own names. Through droplines they can make the facility available to all FBO's on an equal basis.

g. Flying Clubs. Flying clubs are nonprofit entities (corporations, associations or partnerships) organized for the express purpose of providing its members with an aircraft or aircraft for their personal use and enjoyment only. The ownership of the aircraft, or aircraft, must be vested in the name of the flying club (or owned ratable by all its members). The property rights of the members of the club shall be equal and no part of the net earnings of the club will inure to the benefit of any form (salaries, bonuses, etc.). The club may not derive greater revenue from the use of its aircraft than the amount for the operation, maintenance and replacement of its aircraft. 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 such documents, insurances policies, and maintain a current list of members as reasonably necessary to assure that the flying club is a nonprofit organization rather than a FBO masquerading as a flying club. (See Appendix 8, Sample Flying Club Lease.)

3–10. IMPLEMENTATION OF POLICY.

a. Voluntary Compliance. The FAA will consider as a breach of compliance obligations by the airport owner, any grant of an exclusive right in violation of the policy outlined herein at any airport obligated to the United States as a result of a grant agreement (FAAP/ADAP/AIP), AP–4 agreement, or a conveyance of Federal property under the Surplus Property Act, or under Section 16, 23, or 516. Every reasonable effort shall be made to influence a voluntary termination of the objectionable exclusive right using the guidance and techniques suggested in Chapter 5.

b. Remedies. At any airport where there has been a grant of an exclusive right contrary to law and this policy, that airport and any other airport owned or controlled by the offending airport owner will be ineligible for assistance under AIP and the FAA will not expend Facilities and Equipment (F&E) funds for installations designed to benefit traffic at such airports unless necessary to remedy a safety problem. See Chapter 6, Section 2 for discussion of procedural enforcement matters.

c. Exceptions. Nothing herein shall be construed as precluding the grant of Federal funds where required for the national defense, or when determined by the Administrator to be essential to the national interest.

3–11. IMPROVEMENTS BY OTHER FEDERAL AGENCIES.

a. Expenditures on Civil Airports. From time to time various Federal agencies and activities other than the FAA have expended Federal funds to bring about permanent or temporary improvement of civil airports, usually in furtherance of essential Federal programs for which they are responsible. The Chief Counsel of the FAA has determined that any such expenditures which result in the improvement of airport facilities constitute an expenditure of funds within the meaning of the Federal Aviation Act. Consequently, such action has the effect of imposing the prohibition against the grant of exclusive rights at such an airport. In instances of this kind, the Chief Counsel has concluded that the FAA has primary responsibility for enforcing the prohibition regardless of the source of the Federal funds.

b. Statutory Requirement. As noted in paragraph 31a of this Order the language of Section 308(a) of the Federal Aviation Act not only prohibits exclusive rights but restricts the use of Federal funds for airport development (other than military) to those landing areas certified by the FAA Administrator as being reasonably needed for air commerce or national defense. FAA approval of the National Plan of Integrated Airport System (NPIAS) satisfies this requirement for federally–funded airport development projects. Federal agencies proposing to expend Federal funds on airport improvements not included in the NPIAS are responsible for obtaining a Certificate of Air Navigation Facility Necessity.

c. FAA Responsibility. Whenever consulted, FAA personnel will advise the representatives of other Federal agencies contemplating the improvement of airport facilities as to the applicability of the above described statutory provision. Both the airport owner and the Federal agency involved should understand that the expenditure of such funds will result in the imposition of the prohibition against exclusive rights at such airports.

d. Federally–Owned Airports.

(1) Military and Special Purpose Airports. The prohibition against exclusive rights contained in the Federal Aviation Act does not apply to the actions

of the Federal Government itself. Most federally–owned airports are maintained and operated with funds appropriated for purposes other than the support of civil aviation, usually to accommodate a military or defense related mission. Many of these installations grant operating rights to airlines and other aeronautical activities in order to meet the transportation and civil aviation requirements of on–base activities and residents. This is a secondary use of the airport facilities incidental to their prime mission.

(2) **Joint–Use Arrangements.** At many locations, arrangements are in effect to accommodate the civil aviation requirements of a local community at a military or other federally–owned airport. These arrangements usually involve a lease of space at the Government installation to a non–Federal public agency or private concern. Such a lessee, in granting privileges to conduct aeronautical activities, is subject to applicable Federal statutes and may not grant an exclusive right in violation of Section 308(a) of the Federal Aviation Act.

(3) **Agency Actions.** If a local public agency which operates civil airport facilities under a joint–use lease at a Federal installation is also a party to an agreement with the FAA for development of such facilities, the FAA has the same monitoring and enforcement responsibilities as at locally owned airports with similar agreements.

3–12. ADMINISTRATION OF POLICY. The foregoing policies are not intended to expose purveyors of aeronautical services to irresponsible competition. A prudent airport management should establish minimum standards to be met by all who would engage in a commercial aeronautical enterprise at the airport. It is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must, however, be fair, equal and not unjustly discriminatory. That is to say, they must be relevant to the proposed activity, reasonably attainable, and uniformly applied. FAA's position is that the opportunity to offer those aeronautical services not provided by the airport owner must be available to those who meet acceptable standards.

3–13.–3–16. RESERVED.

SECTION 3. QUALIFICATIONS AND STANDARDS

3–17. USE OF MINIMUM STANDARDS.

a. Airport owners should be encouraged to develop and publish minimum standards to be met by commercial operators in advance of negotiations with any prospective tenant or operator. (See Advisory Circular (AC) 150/5190–1, Minimum Standards for Commercial Aeronautical Activities on Public Airports) This will establish a basis for practical negotiations.

b. Where minimum standards are proposed, the FAA representative may comment on the relevance and/or reasonableness of the standards. However, it should be made clear that such opinions are not to be construed as an official endorsement of the proposed minimum standards. The FAA should make an official determination only when the effect of a standard denies access to a public–use airport, and the determination should be limited to a judgment as to whether failure to meet the qualifications of the standard is a reasonable basis for such denial or the standard results in an attempt to create an exclusive right.

c. In the early stages of airport development the community may encounter difficulty in attracting a competent service agency and it may be necessary to waive standards which, after a period of initial development, would be perfectly reasonable. As a practical matter, the airport owner may quite properly increase the standards from time to time in order to ensure a higher quality of service to the public. Manipulating the standards solely to protect the interest of an existing tenant is incompatible with this objective. A standard which a tenant operator is required to meet must be uniformly applicable to all operators seeking the same franchise privileges.

CHAPTER 4. OBLIGATIONS OF AIRPORT OWNERS

SECTION 1. GENERAL

4–1. PURPOSE. This Chapter contains basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. It does not cover the standards to be met by those airports certificated under FAR Part 139. Generally, it does not apply to special conditions incorporated in a grant agreement since these usually reflect specific actions to be accomplished before a project can be closed out.

4–2. ASSIGNMENT OF OBLIGATIONS. The airport obligations discussed in this Chapter apply to the recipients including private owners of public use airports that are signatory parties to an agreement with the Federal Government. The actual release of these parties from any such obligations is treated in Chapter 7. However, the various agreements contemplate that under certain conditions there may be a transfer of the obligations to another eligible party.

a. Transfer to Another Eligible Recipient

(1) Grant agreements provide that the owner/sponsor will not enter into any transaction which would deprive it of any of the rights and powers necessary to perform all of the conditions in the agreement unless the obligation to perform all such conditions is assumed by another recipient. In the case of grant agreements, the recipient must specifically be found eligible by the FAA.

(2) Surplus property instruments of disposal permit conveyance of the property but only to another transferee who assumes all of the obligations imposed on the original grantee. The airport owner must obtain FAA approval of all such transfers of obligations.

(3) Deeds of Conveyance under Section 16, 23, or 516 are made to public agencies only, but do not specifically restrict reassignments or retransfers of the property conveyed. The original donor (Federal agency) may reassign or retransfer the property to another public agency for continued airport use. The FAA should assume the lead in coordination between the affected parties.

b. Transfer to the United States.

(1) The FAA cannot legally prohibit an airport owner from conveying to a Federal agency any airport property which was transferred under the Surplus Property Act of 1944, as amended. The Chief Counsel has indicated that such a conveyance, whether voluntary or otherwise, does not place the conveying airport owner in default of any obligation to the United States. Such a conveyance has the effect of a complete release of the conveying owner. The procedures applicable to such transfers are covered in Chapter 7.

(2) When such a conveyance is proposed, or has been accomplished without prior notice to the FAA, and it is determined there would be or is an adverse effect on civil aviation, FAA objections should immediately be made known to both the airport owner and the Federal agency involved. If a satisfactory solution to an adverse effect on civil aviation cannot be obtained at the field office level, a full and complete report should be submitted to the Office of Airport Safety and Standards (AAS–1) without delay. The FAA shall make appropriate objection and take timely action with the Federal agency involved.

c. Delegation of Obligations. Airport owners subject to continuing obligations to the Federal Government may enter into arrangements which have the effect of delegating certain of these obligations to other parties. For example, an airport authority may arrange with the Public Works Department of a local municipality to meet certain of its maintenance commitments, or an airport owner may contract with a utility company to maintain airfield lighting equipment. More prevalent at small airports are arrangements in which the owner relies upon a commercial tenant or franchised operator to cover a broad range of airport operating, maintenance and management responsibilities. None of these contractual delegations of responsibility absolve or relieve the airport owner from the primary obligations to the Government. As principal party to the agreement the owner alone is accountable for conformity to its terms and conditions. Particular attention should be directed to ensure that such delegations to a proprietary enterprise do not result in a conflict of interest or a violation of the statute prohibiting certain exclusive rights. The airport owner shall not delegate its authority to one FBO to negotiate an operating agreement (lease) with another FBO. (See paragraph 6–5.)

d. Subordination of Title.

(1) The subordination of airport property by mortgage, easement, or other encumbrance will normally be considered as a transaction which would de-

prive the owner of the rights and powers necessary to perform the covenants in the agreement with the Government. However, the prior existence of such an encumbrance may under certain circumstances be considered as not inconsistent with the eligibility requirement for land interest in connection with the development of airport facilities under the grant program.

The Secretary is authorized to determine whether a specific encumbrance might create an undue risk of depriving the potential sponsor of the rights and powers otherwise required. Wherever it is proposed to subsequently encumber obligated airport property, a complete summary of the pertinent facts, together with recommendations of the appropriate regional Airports office, should be forwarded to the regional Airports division for determination on a case–by–case basis. The determination should be consistent with criteria for determining good land title set forth in appropriate FAA directives (see Order 5100.38, Airport Improvement Program (AIP) Handbook). A legal review of the case may be appropriate.

(2) FAA concurrence as to any such lien, mortgage or other encumbrance of airport obligated property should be predicated on a factually based and thoroughly documented determination. The possibility of foreclosure or other action adverse to the airport should be so remote to reasonably preclude the possibility that such lien, mortgage or other encumbrance will prevent the owner from fulfilling its assurances and obligations under applicable airport instruments.

4–3.–4–4. RESERVED.

SECTION 2. MAINTENANCE AND OPERATION

4–5. SCOPE OF MAINTENANCE OBLIGATION.

a. Agreements Involved. Most airport agreements impose on the airport owner a continuing obligation to preserve and maintain airport facilities in a safe and serviceable condition. An exception is the transfer document conveying Federal lands under the authority of Section 16, 23, or 516. These transfers normally contemplate further development of the property involving a grant agreement imposing maintenance obligations. It is preferred that such obligations be imposed as a contractual commitment rather than a covenant running with the land. However, where a Section 516 conveyance is made under circumstances that do not involve a follow–on development agreement, the maintenance and operation assurances should be incorporated into the transfer document.

b. Facilities to be Maintained. This Section applies to all airport facilities shown on a current Airport Layout Plan (ALP) which were initially dedicated to aviation use (see definition in Appendix 5) by an instrument of transfer or agreement with the United States. This means that the airport owner cannot discontinue maintenance of a taxiway stub or any part of the airport until formally relieved of the maintenance obligation. The obligations of the owner under a grant agreement remain in force throughout the useful life of the facility but no longer than 20 years, except for land which is obligated for the life of the airport. When a facility is no longer needed for the purpose for which it was developed, the regional Airports division may make the determination that its useful life has expired in less than 20 years and authorize its abandonment or conversion to another compatible purpose. For private airports, the obligation extends for a minimum of 10 years. (The procedure for obtaining release from these maintenance obligations is explained in Chapter 7.)

4–6. PHYSICAL MAINTENANCE.

a. Maintenance Procedures. Generally, airport agreements require the owner or grantee to carry out a continuing program of preventive maintenance and minor repair activities which will ensure that the airport facilities are at all times in a good and serviceable condition for use in the way they were designed to be used. Such requirements may be expressed or implied in the agreement and include such things as:

(1) All structures should be checked frequently for deteriorations. Where necessary, repairs should be made.

(2) Runways, taxiways, and other common–use paved areas should be inspected at regular intervals for compliance with operational and maintenance standards. Routine repairs including crack filling and sealing shall be made to prevent progressive deterioration of the pavement.

(3) Gravel runways, taxiways, and other common–use paved areas should be inspected at regular intervals for compliance with operational and maintenance standards. Routine repairs including hole filling and grading shall be performed to prevent progressive deterioration of the operational areas.

(4) All turfed areas should be preserved through clearing, seeding, fertilizing and mowing. Turfed landing areas which are used for aircraft oper-

ations should be inspected at regular intervals to assure that there are no holes or depressions.

(5) Field lighting and VASI's must be maintained in a safe and operable condition at all times. The VASI's must be aligned on a regular basis and at times when conditions dictate.

(6) Segmented circles and wind cones should be inspected on a regular basis to ensure proper serviceability.

(7) All drainage structures should be inspected, particularly sub–drain outlets, to ensure unobstructed drainage.

(8) All approaches must be checked to assure conformance with the approach obligations incurred.

b. Criteria for Satisfactory Compliance.

(1) What constitutes an acceptable level of maintenance is difficult to express in measurable units. A standard yardstick of satisfactory maintenance effort will not apply in all circumstances. Grass cut to a height of 8 inches may be acceptable at some airports but it could impair safety and efficiency at others. A one–half inch crack in runway paving may be inconsequential under certain circumstances. Depending on its location, the volume of traffic, the age of the pavement, climatic and other conditions, it could be the forerunner of serious pavement failure implying an obligation to apply immediate corrective measures. The degree of maintenance effort required of an airport owner is a matter of professional judgment.

(2) Compliance with this maintenance obligation is considered satisfactory when the airport owner:

(a) Fully understands that airport facilities must be kept in a safe and serviceable condition;

(b) Has adopted and implemented a sufficiently detailed program of cyclical preventive maintenance that in the judgment of FAA is adequate to carry out this commitment; and

(c) Has available the equipment, personnel, funds and other resources including contract arrangements to effectively implement such a program.

c. Major Repair.

(1) The 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, the restoration of a building destroyed by fire or windstorm or a major rehabilitation of a portion of the landing area inundated by floods is not included in the sponsor's maintenance obligations. Likewise, the complete resurfacing of a runway, unless it is the result of obvious neglect of routine maintenance, is not included in the sponsor's obligations. Failure to perform day–to–day maintenance may have a cumulative effect resulting in major repairs and reconstruction.

(2) The airport owner has a commitment to prevent gross overstressing of the airport pavement. If the owner is not prepared to strengthen the pavement, then its use must be limited to aircraft operations which will preclude overstressing the pavement. Should pavement failure occur because the sponsor failed to take timely corrective action after being advised of the pavement limitations, any cost required to restore the failed pavement to a satisfactory condition will not be eligible for AIP funding. Strengthening of the pavement, after correction of the failure, would be eligible for consideration for AIP funding.

4–7. REQUIREMENT TO OPERATE THE AIRPORT.

a. General. The owner of an airport developed with Federal assistance is more than a passive landlord of specialized real estate. The obligation to maintain the airport includes the responsibility to operate the aeronautical facilities and common use areas for the benefit of the public. This means, for example, that:

(1) If field lighting is installed, the owner is responsible for making arrangements for it and the associated airport beacon and lighted wind and landing direction indicators to be operated throughout each night of the year or when needed in accordance with subparagraph 4–7e below.

(2) If any part of the airport is closed or hazardous to use, the owner is responsible for providing warning to users, such as adequate marking and issuing a Notice to Airmen (NOTAM) to advise pilots of the condition.

(3) The owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety and efficiency of flight operations and to protect the public using the airport.

b. Local Regulations. The prime requirement for local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and to people on the ground. For example, aircraft themselves become a hazard to other aircraft if allowed to park too close to an active runway. There should be adequate controls such as fencing and other facilities to keep motorists, cyclists, pedestrians, and animals from inadvertently wandering onto the landing area or areas designated for aircraft maneuvering. Frequently local air traffic patterns are needed to establish uniform and orderly approaches and departures from the airport. As in the operation of any public service facil-

ity, there should be adequate rules covering vehicular traffic, sanitation, security, crowd control, access to certain areas and fire protection. The fueling of aircraft, storing of hazardous materials, spray painting, etc., at a public airport should be controlled by the airport owner in the interests of protecting the public.

c. Operations in Inclement Weather. The obligation to maintain the airport does not impose any specific responsibility to remove snow or slush, or to provide sanding of icy pavements. The owner is responsible for providing a safe, usable facility, and where climatic conditions render airport unsafe, the owner will promptly notify airman by proper notices and, if necessary, to close all or a part of the airport until the conditions are corrected. However, the conditions should be corrected within a reasonable amount of time.

d. Aircraft Rescue and Firefighting Responsibility. The agreements under which airports are acquired or developed with Federal assistance do not specifically impose a responsibility to provide rescue or firefighting capabilities. Beginning in 1988 aircraft rescue and firefighting (ARFF) equipment became eligible under AIP for airports being served by air carriers using aircraft designed for more than 20 passenger seats and not certificated under FAR Part 139. Such an airport owner acquiring ARFF equipment under AIP must assure that it will maintain sufficiently trained personnel to operate the equipment; have the equipment available during scheduled operations of the air carrier; and to notify the air carriers using the airport when the equipment is not available due to being out of service for maintenance or repair.

e. Part-Time Operation of Airport Lighting.

(1) As noted in subparagraph 4-7a above, field lights must be operated 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. One effective arrangement is an attendant with authority and capability to turn on the proper lights when requested to do so by the radio or other signal. An acceptable alternative is the installation of an electronic device which permits remote activation of field lighting by radio equipment in an aircraft. (See AC 150/5340-14, Economy Approach Lighting Aids, and AC 150/5340-27, Air to Ground Radio Control of Airport Lighting Systems.)

(2) At some locations it may not be necessary to operate the lights all night. This might occur where the aeronautical demand is seasonal, or where it ceases after a certain hour each night because the airport's off airway location is not likely to be needed for emergency use. In very rare cases it may be undesirable to permit use of an airport during certain hours of darkness. An example might be where air traffic control is suspended during some part of the night and the local environment (such as obstructions or heavy enroute traffic) makes use of the airport hazardous during that period. Under such circumstance FAA may consent to a part-time operation of field lights.

4-8. RESTRICTIONS ON AERONAUTICAL USE OF AIRPORT.

a. Safety and Efficiency.

(1) While the airport owner must allow its use by all types, kinds, and classes of aeronautical activity as well as by the general public (passengers, visitors, etc.), the obligation agreements do provide for exceptions as discussed in this paragraph. When complaints are filed with FAA regarding restrictions imposed by the airport owner in the interest of safety and/or efficiency, assistance of the appropriate local Flight Standards and Air Traffic representatives should be obtained in determining the reasonableness of the restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when 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.

(2) In the interest of safety, the airport owner may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. This allows the imposition of reasonable rules or regulations (see paragraph 4-7b) to restrict use of the airport. For example, they may prohibit aircraft not equipped with a reasonable minimum of communications equipment from using the airport. They may restrict or deny use of the airport for student training, for taking off with towed objects, or for some other purpose deemed to be incompatible with safety under the local conditions peculiar to that airport. Agricultural operations may be excluded due to conflict with other types of operations or lack of facilities to safely handle the pesticides used in this specialized operation. (The regional enforcement office of the Environmental Protection Agency (EPA) should be contacted in cases pesticide use and control problems.) Also, designated runways, taxiways, and other paved areas may be restricted to aircraft of a specified maximum gross weight or wheel loading. Likewise, use of airport facilities by the general public may be restricted by vehicular, security, and crowd control regulations. 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 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.

b. Parachute Jumping. Parachute jumping is an aeronautical use and requests to airport owners from parachute jumping clubs, organizations, or individuals to establish a drop zone within the boundaries of an airport should be evaluated on the same basis as other aeronautical uses of the airport. Any restriction, limitation, or ban against parachute jumping on the airport must be based on the grant assurance which provides that the sponsor may prohibit or limit an aeronautical use "for the safe operation of the airport or when necessary to serve the civil aviation needs of the public" (see paragraph 4–8a). Among the reasonable limitations on parachute jumping that an airport owner might require are:

(1) The airport owner designate reasonable time periods for jumping and specific areas for drop zones.

(2) Jumpers (or requesting organization) agree to pay a reasonable fee that is not unjustly discriminatory.

(3) Jumpers hold a general liability insurance policy that names the airport owner as an additional ensured party, with the amount of insurance to be reasonable and not unjustly discriminatory. The airport owner is not required to permit this activity if, in his judgment, it creates a safety hazard to the normal operations of aircraft arriving or departing from the airport, nor is the airport owner required to close the airport to provide a safe environment for the parachute jumpers. 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 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.

c. Ultralight Vehicles. Ultralight vehicle operations are considered an aeronautical activity (FAR Part 103) and, as such, must be normally accommodated on airports which have been developed with Federal assistance. This doesn't necessarily mean that they must be operated on conventional runways if ultralight operations can be safely accomplished at a designated ultralight operations area on the airport. An airport operator may make the determination that proposed ultralight operations are unsafe and not allow them to conduct flight operations on the airport. 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 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.

Another obligation of the airport operator is to ensure that users of the airport contribute a fair share towards the operation of the airport. The operator of an obligated airport should impose a fee for the use of airport facilities by ultralight vehicle operators. This is consistent with FAA policy provided the charges and fees are not discriminatory.

d. Congestion. Where the volume of air traffic is approaching or exceeding the maximum practical capacity of an airport, an airport owner may designate a certain airport in a multiple airport system (under the same ownership and serving the same community) for use by a particular class or classes of aircraft. The owner must be in a position to assure that all classes of aeronautical needs can be fully accommodated within the system of airports under the owner's control and without unreasonable penalties to any class and that the restriction is fully supportable as being beneficial to overall aviation system capacity. For example, a reliever general aviation airport in a community where the same airport sponsor owns and operates another full–service airport could restrict regularly scheduled air carrier services from the general aviation reliever airport. This might be justifiable as a means of ensuring the reliever airport's attractiveness as a general aviation facility.

However, in no case may an airport receiving air carrier service use this concept to support a total ban or prohibition on general aviation access to primary air carrier airport(s). The right for general aviation access at an air carrier airport is a long established interpretation of the assurance relating to the prohibition against discrimination of classes or types of aeronautical activities.

Any application of this specific provision should be coordinated with the Assistant Chief Counsel in the region for applicability, given a specific case under review.

Additionally, an airport does have the right to designate certain runways or other aviation use areas at the

airport to a particular class or classes of aircraft as a means of enhancing airport capacity or ensuring safety. Any such restrictions should be clearly supportable based on operational considerations and not instituted as a means of deliberately discriminating against a particular class.

e. Temporary Closing of an Airport.

(1) Closing for Hazardous Conditions. Airport owners are required to physically mark any temporary hazardous conditions and to adequately warn users 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 use of the airport hazardous. The basic obligation requires that prompt action be taken to restore the airport facilities to a serviceable condition as soon as possible.

(2) Closing for Special Events. Section 511 (a) (3) of the AAIA requires that any proposal to temporarily close the airport for nonaeronautical purposes must be approved by the FAA. For example, an airport developed or improved with Federal funds may not be closed for the purpose of using the airport facilities for special outdoor events, such as sports car races, county fairs, parades, etc., without FAA approval. However, in certain circumstances where promoting aviation awareness through such 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. There will be occasions when airports may be closed for brief periods of time for aeronautical purposes. Examples are: an air show designed to promote a particular segment of aviation; to celebrate an official occasion held in connection with an aviation activity such as exhibits; or annual fly-ins and aviation conventions. In such cases, airport management should be encouraged to 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 issuance of NOTAM to minimize any inconvenience to the flying public.

(3) Closing of a Part of an Airport. In some instances, reasons may be presented to justify the temporary use of a part of an airport for an unusual event of local significance which does not involve closing the entire airport. In such cases, all the following conditions must be met:

(a) The event is to be held in an area of the airport which 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 interference with aeronautical use of the airport.

(b) Adequate facilities for the landing and takeoff of aircraft will remain open to air traffic and satisfactory arrangements are made by the owner to ensure the safe use of the facilities remaining open.

(c) Proper NOTAMS are issued in advance.

(d) 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.

(e) The airport owner notifies in advance the appropriate Flight Standards office and any air carrier using the airport.

(f) 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.

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

(h) 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.

f. Noise and Environmental Restrictions. Proposed airport use restrictions are becoming more common as airports respond to community concern over environmental issues and noise problems. Airport owners often propose such restrictions as a means of reducing noise impacts when they are considering alternatives to improve compatibility. This is generally done as part of an FAR Part 150, Airport Noise Compatibility Program study, or in some cases as part of an environmental impact assessment report.

Airport use restrictions: (1) must be reasonably consistent with reducing noncompatibility of land uses around the airport; (2) must not create an undue burden on interstate or foreign commerce; (3) must not be unjustly discriminatory; (4) must not derogate safety or adversely affect the safe and efficient use of airspace; (5) meet both local needs and the needs of the national air transportation system to the extent practicable; and (6) must not adversely affect any other powers or responsibilities of the FAA Administrator prescribed by the law or any other program established in accordance with the law.

Proposed Part 150 airport use restrictions will be reviewed by FAA in Washington for consistency with Federal agreements. Where there is a potential for inconsistency with a Federal agreement, the Community and Environmental Needs Division, APP–600, will coordinate the proposed restriction with AAS–300 for input. A determination on compatibility with Federal agreements will be made by AAS–300 and the Chief Counsel's office.

The airport operator is expected to analyze fully in a Part 150 program the anticipated burden on commerce of a proposed airport use restriction. FAA will make the determination on whether the burden is undue. Similar restrictions may have little impact at one airport and a great deal of impact at others, such as occurs when a restriction adversely affects airport capacity and/or excludes or limits certain users from the airport. The magnitude of both impacts must be clearly presented. An airport owner for certain justifiable environmental reasons may designate a certain airport in a multiple airport system under the same ownership and serving the same community for use by a particular class or classes of aircraft. The same concepts as discussed in subparagraph 4–8d will apply. If this is being contemplated, it must be considered on a case–by–case basis in coordination with APP–600 and AAS–300.

If Airports offices are confronted with a proposed environmental or noise restriction outside of the FAR Part 150 process where those restrictions have the potential to be contrary to a Federal agreement, the proposed restriction must be fully reviewed to determine its compatibility with Federal agreements. If there is any concern about potential incompatibility, coordination with AAS–300 and APP–600 is necessary.

An airport owner subject to Federal agreements cannot simply use environmental or noise reasons as a means not to comply with specific Federal grant agreements.

SECTION 3. APPROACH PROTECTION AND COMPATIBLE LAND USE

4–9. PROTECTION OF APPROACHES.

a. Obstructions/Airport Hazard. The airports developed by or improved with Federal funds are obligated to prevent the growth or establishment of obstructions in the aerial approaches to the airport. The term "obstruction" refers to natural or man made objects which actually penetrate that surfaces defined in FAR Part 77, Objects Affecting Navigable Airspace, or other appropriate citation applicable to the agreement as applied to the particular airport. In agreements issued prior to December 31, 1987, airport owners agreed that insofar as it is within their power and reasonably possible, to prevent the construction, erection, alteration or growth of an obstruction. This was to be done either by obtaining the control of the land involved through the acquisition and retention of easements or other land interests or by the adoption and the enforcement of zoning regulations. Effective with the Airport and Airway Safety and Capacity Expansion Act of 1987 (P. L. 100–223) the standard approach protection assurance was changed to read:

"It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removal, lowering, relocating, marking, or lighting or otherwise mitigation of existing airport hazards and by preventing the establishing or creation of future airport hazards." (See Appendix 5 for "Airport Hazard.")

The airspace allocated will vary from airport to airport. The Regional Air Traffic, Airspace and Procedures Branch, should be contacted for guidance on application of this provision when an issue is raised.

b. Preexisting Obstructions.

(1) Historically, some airports were developed at locations where preexisting structures or natural terrain (for example, hill tops) 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) Also, 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.

c. Zoning Ordinances. One method of meeting the obligation to protect airport approaches involves appropriate height restriction zoning. Any airport owner who has the authority to adopt an ordinance restricting the height of structures in the ap-

proaches according to the standards prescribed in FAR Part 77 as applied to the particular airport should do so.

4–10. COMPATIBLE USE OF ADJACENT LAND. All grants issued after the enactment of P.L. 80–289 (78 Stat. 161), an amendment to the Surplus Property Act of 1944, contain an assurance that, to the extent reasonable, appropriate action including zoning will be taken to restrict the use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations.

4–11.–4–12. RESERVED.

SECTION 4. AVAILABILITY ON FAIR AND REASONABLE TERMS

4–13. GENERAL.

a. The owner of any airport developed with Federal grant assistance is required to operate it for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination. A parallel obligation is implicit in the terms of conveyance of Federal property for airport purposes under the Surplus Property Act. Land transfers under Section 16, Section 23, or Section 516 are authorized by the same statutes and for the same purposes as grants under FAAP, ADAP, and AIP and the same obligations will apply.

b. Grant obligations involve several distinct requirements. First, the airport and its facilities must be available for public use. The terms imposed on those who use the airport and its services, including rates and charges, must be fair, reasonable, and applied without unjust discrimination, whether by the owner or by a licensee or tenant who has been granted rights to offer services or commodities normally required at the airport. The terms and conditions which the owner imposes on those offering services and commodities to the public which are related to aeronautical activity must be fair and reasonable and applied without unjust discrimination. (See paragraph 4–15d.)

4–14. TERMS APPLIED TO AIRPORT USERS.

a. Rentals Fees and Charges. The obligation of airport management to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges "...which will make the airport as self–sustaining as possible under the circumstances existing at the particular airport...."

(1) Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rates, fees, rentals, and charges with respect to facilities directly and substantially related to providing air transportation and other such nondiscriminatory and substantially comparable rules, regulations, and conditions as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenant or nontenant, and signatory carriers and nonsignatory carriers. Such classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

(2) Each FBO at any airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBO's making the same or similar uses of such airport utilizing the same or similar facilities.

(3) Each air carrier using such airport shall have the right to service itself or to use any FBO that is authorized by the airport or permitted by the airport to serve any air carrier at such airport.

(4) Normally, the FAA will not question the fairness of rates and charges established by the owner or the comparability of the rates, fees, rentals and other charges as applied to and among air carriers, FBO's and other tenants for the same or similar space and/or services unless complaints have been made alleging that specific practices are unfair or unreasonable. Before an investigation is initiated by the FAA, the charge should be supported by factual evidence produced by the complainant.

(5) The basis for rates and charges is usually related to costs incurred by the airport owner. Rarely can it be established that an actual or proposed rate is so high that it would recover to the owner an amount unreasonable and in excess of costs. More often the FAA will be required to determine whether the rate structure, as applied, will result in discrimination.

(6) In evaluating established fees, rates, and charges for users of an airport no part of the Federal share of an airport development project for which a grant is made shall be included in the rate base.

b. Methods of Assessing User Charges. The collection of a fee or charge for public use of a runway, tiedown area, or other facility may be accomplished through a direct toll or landing fee imposed on individual users or through indirect means. The airport owner may find it practical to grant use privileges simultaneously by contract, permit, or the direct assessment of fees. In most instances, an indirect recovery of fair use charges in the form of fuel flowage, hangar rentals, percentages of gross volume of business, or through other arrangements may be the most practical method for many collections. A locally based aviation enterprise may have a lease, or contract, under which it will pay an agreed rental for the hangars and other premises it occupies plus a variable payment (related to fuel gallonage, volume of business, flight operations, etc.) for the use of the landing area by its own aircraft and those of its customers. Other visiting aircraft, such as scheduled or unscheduled air taxis, which are not covered by such a contract may be required to pay a fee or charge to cover their use of public facilities.

c. Charges Made by Airport Tenants and Concessionaires. At most airports the provision of fuel, storage, aircraft service, etc., is best accomplished by profit motivated private enterprise. It is the responsibility of the airport owner, in negotiating the privilege to offer these services and commodities at the airport, to retain sufficient control over the operation to guarantee that the patrons will be treated fairly. The owner may not have this control if, by contract or otherwise, he/she surrenders the right to approve rates, fees, and charges imposed for essential aeronautical services. In this connection, note the discussion of leasing principles in Section 1, Chapter 6. It should be understood that the obligation of the airport owner to ensure availability of services to the public on fair and reasonable terms is limited to aeronautical activities. There is no commitment in a grant agreement or deed with the United States that the prices charged by taxis, limousines, restaurants, motels, and other terminal area nonaeronautical concessions will be controlled.

d. Terms and Conditions Applied to Tenants Offering Aeronautical Services. Apart from the Civil Rights Assurances and the assurances relating to the offering of aeronautical services to the public, the FAA is not normally involved with the establishment of rates and fees to be paid by a tenant or concessionaire to an airport owner. However, in overseeing the airport owner's implementation of the assurance in subparagraph a. above, the FAA shall ensure that:

(1) At air carrier airports:

(a) As a tenant, the air carrier shall enjoy the same classification and status as any other tenant air carrier serving that airport as to rates, fees, charges, rules, regulations, and conditions covering all aeronautical activities at that airport provided the air carrier assumes obligations similar to those already imposed on the other tenant air carriers.

(b) An air carrier who is willing to sign a contract (signatory carrier) with the airport and assume appropriate financial obligations may be granted a lower fee schedule. If an air carrier is unwilling or if it is infeasible because of infrequent operations or other reasons to sign such a contract, the air carrier may then be charged the higher noncontract rates.

(c) In respect to a contractual commitment, a sponsor may charge different rates to similar users of the airport if the differences can be justified as nondiscriminatory and such charges are substantially comparable. These conclusions must be based upon the facts and circumstances involved in every case.

(d) Differences in values of properties involved and the extent of use made of the common use facilities are factors to be considered. Seldom will each user have properties of the same value nor will their use of the common facilities be the same. However, the airport in order to justify noncomparable rates must show that the differences are substantial.

(e) All leases with a term of 5 years or more should contain an escalation provision for periodic adjustments based on a recognized economic index. Future lessees may expect like treatment in that their leases will have a built-in escalation provision. This is in accordance with the sponsor assurance "...to make the airport as self-sustaining as possible under the circumstances ...."

(f) Each air carrier using the airport shall have the right to service itself or to use any FBO that is authorized by the airport or permitted by the airport to serve any air carrier at the airport.

(2) At general aviation airports:

(a) If one operator rents office and/or hangar space and another builds its own facilities, this would provide justification for different rental and fee structures. These two operators would not be considered essentially similar as to rates and charges even though they offer the same services to the public.

(b) If one FBO is in what is considered a prime location and another FBO is in a less advantageous area, there could logically be a differential in the fees and charges to reflect this advantage of location. This factor would also influence the rental value of the property.

(c) If one FBO is providing primary commercial services (sale of aviation fuel and oil, providing tiedown and aircraft parking facilities, ramp services and some capability for minor aircraft repairs) and another FBO is conducting a flight training program, or aircraft sales, or a specialty such as avionics repair and service, these FBO's may not be considered essentially similar. They may have dissimilar requirements, i.e., space requirements, building construction, or location. Therefore, different rates may be acceptable, although the rates must be equitable.

(d) If the FAA determines that the FBOs at an airport are making the same or similar uses of such airport facilities, then such FBO leases or contracts entered into by an airport owner (subsequent to July 1, 1975) shall be subject to the same rates, fees, rentals and other charges.

(e) As an aid to uniformity in rates and charges applicable to aeronautical activities on the airport, management should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport (Chapter 3, Section 3).

(f) All leases with a term exceeding 5 years shall provide for periodic review of the rates and charges for the purpose of any adjustments to reflect the then current values, based on an acceptable index. This periodic lease review procedure will facilitate parity of rates and charges between new FBO services coming on the airport and long-standing operators. It will also assist in making the airport as self-sustaining as possible under the circumstances existing at that particular airport.

(g) In the case of a new general aviation airport, it is frequently necessary for the airport owner to offer reduced rental rates and other inducements to obtain an FBO recognizing that it may well be a nonprofit venture during the pioneering period. To avoid a depressed rate scale for the future, the airport owner should be encouraged to provide the "incentive rate" only during the pioneer period. The pioneer period should be established for a specific period of time and ending on a specified date. Future operators coming on the airport following the pioneer period may be expected to pay the comparable standard rates and charges based on then current value.

(h) Except for exercise of the proprietary rights by the airport owner, any terms or conditions in an agreement between an airport owner and an aeronautical activity requiring the activity to procure fuel or other supplies and services from a specific source would be an unreasonable restraint on the use of the airport and, in certain cases, could be viewed as a grant of an exclusive right. Where an airport owner retains for itself the proprietary right to operate the fuel farm, all FBOs may be required to obtain fuel from the airport owner. However, if an FBO is running the fuel farm for the airport owner, another FBO cannot be required to obtain fuel from the airport owner's agent. In neither of these cases is the airport operator or the FBO obligated to sell fuel to an individual, corporate or other type operator performing self-fueling.

4-15. AVAILABILITY OF LEASED SPACE. The prime obligation of the owner of a federally-assisted airport is to operate it for the use and benefit of the public. The public benefit is not assured merely by keeping the runways open to all classes of users. While the owner is not required to construct hangars and terminal facilities, it has the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public (i.e., air carrier, air taxi, charter, flight training, crop dusting, etc.) or support services (i.e., fuel, storage, tie down, flight line maintenance, etc.) to aircraft operators. This means that unless it undertakes to provide these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities. Since the scope of this obligation is frequently misunderstood the following guidance is offered:

a. Servicing of Aircraft. All grant agreements contain an assurance that the sponsor will not exercise or grant any right or privilege which would have the effect of preventing the operator of an aircraft from performing any services on its own aircraft with its own employees. This is not to be interpreted as a positive obligation on the sponsor to lease space to every aircraft operator using the airport. It means simply that an aircraft operator, otherwise entitled to use the landing area, may tiedown, adjust, repair, refuel, clean and otherwise service its own aircraft, provided it does so with its own employees in accordance with reasonable rules or standards of the sponsor relating to such work. The assurance establishes a privilege (to service one's own aircraft) but does not, by itself, compel the sponsor to lease such facilities which may be necessary to exercise that right. (See paragraph 3-9e for additional details regarding restrictions on self-service.)

b. Facilities Not Providing Service to the Public. Most airport owners are anxious to lease available property to those willing to construct their own hangars and aircraft support facilities. However, the airport owner is not obligated by agreements with the Government to provide space unless the activity offers services to the public or support services actually needed by those aircraft operators otherwise entitled

to use the public landing areas. Thus, a local company operating its own aircraft for business purposes, a private flying club, or an aircraft manufacturing company seeking a site for a production plant may be a desirable and compatible tenant. However, the airport owner is not obligated to lease airport premises for these purposes if adequate facilities are otherwise available. This problem is rare and usually arises when an aircraft operator, unable to arrange satisfactory terms for hangar space and service with an existing fixed base operator, seeks to construct its own facilities. The obligation to operate an airport for the use and benefit of the public requires that reasonable provision be made for essential support services for those who use it. Therefore, when neither the airport owner nor the tenant FBOs can provide adequate storage, fueling, and other basic services to an airport user, the user may not be denied the right to lease space, if available, on reasonable terms to install such facilities at its own expense.

c. Activities Offering Services to the Public. If adequate space is available on the airport, and if the airport owner is not providing the service, it is obligated to negotiate on reasonable terms for the lease of space needed by those activities offering flight services to the public, or support services to other flight operators, to the extent that there may be a public need for such services. A willingness by the tenant to lease the space and invest in the facilities required by reasonable standards shall be construed as establishing the need of the public for the services proposed to be offered.

d. Air Carrier Airport Access. Since the passage of the Airline Deregulation Act of 1978, there has been an influx of air carriers into airports. Many of these airports were operating at capacity prior to passage of the Act insofar as counter, gate, and ramp space were concerned. New carriers wishing to serve the airport were faced with the prospect of no facilities being available. In some instances, space was made available from carriers established on the airport. However, in other cases, no space was made available and the carrier was denied access to the airport.

It was determined by the Office of Chief Counsel that a carrier may not be denied access to an airport solely based on the nonavailability of currently existing facilities and that some arrangements for accommodation must be made if reasonably possible. This can result in a complex situation which may not be easily resolved.

If an airport refuses to apply for a FAR Part 139 Airport Operating Certificate when there is clear evidence that an air carrier desires to serve the location, this fact alone does not indicate a violation of the grant agreement assurances. The regional Airports and Legal offices should determine the basis and justification for exclusion of the air carrier in the same manner as they would in other potential violation issue.

In some cases, a recommendation to the airport operator to provide temporary facilities, such as a mobile ticket office and gate facilities might relieve the situation. If it appears that the airport operator cannot possibly provide space, then the FAA in concert with the airport operator must develop a solution to the problem.

Should air carrier access situations develop at airports and where no solution developed at the region is feasible, AAS–300 should be notified. AAS–300 will coordinate with the regional Airports division and Chief Counsel for a viable solution to the problem.

4–16. CIVIL RIGHTS. The regional and headquarters Offices of Civil Rights are responsible for matters pertaining to the enforcement of the Civil Rights assurances and provisions included in the all grant agreements. For additional information see AC 150/5100–15, Civil Rights Requirements for the Airport Improvement Program (AIP).

SECTION 5. USE OF AIRPORT PROPERTY

4–17. ADHERENCE TO AIRPORT LAYOUT PLAN AND AIRPORT PROPERTY MAP

a. Airport Layout Plan (ALP). An ALP, which is required by statute (previously required by assurance) depicts the entire property and identifies the present facility and the plans for future development. The FAA requires an approved ALP as a prerequisite to the grant of AIP funds for airport development or the modification of the terms and conditions of a surplus property instrument transfer. The approval must be by the FAA and 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 FAA and the airport owner as to the proposed allocation of areas of the airport to specific operational and support functional usage. The approved ALP thus becomes an important instrument for controlling the subsequent development of airport facilities. Any construction, modification, or improvement that is inconsistent with such a plan requires FAA approval of a revision to the ALP.

b. Airport Property Map (Exhibit A). The airport property map, also called the Exhibit A to the grant agreement, is a required document to be submitted with the application for a grant and delineates all the property owned or to be acquired by the airport owner. Whether or not the Federal Government participates in the cost of acquiring any or all such land, it relies on this map in any subsequent grant of funds. Any land identified on the Exhibit A may not thereafter be disposed of or used for other than those purposes without FAA consent.

c. Land Inventory Map. There is a need to track land acquired with Federal funds for accountability purposes for compliance matters. If any grant acquired land is found to be excess to airport needs, present and future, the sponsor is required to dispose of the excess land and return the Federal share of the FMV to the Trust Fund. This land identification should show how and under what Federal grant or other Federal assistance program the land was acquired. The inventory will satisfy the FAA's requirement to maintain an inventory of land acquired with Federal assistance. (Appendix 7 is a suggested procedure for maintaining such inventory.) In disposing of such land the requirements of paragraph 7–19b apply. If the Exhibit A discussed above satisfies the land accountability requirement, there is no need for a separate land inventory map. Airport noise compatibility land acquisitions should be identified separately (see paragraph 4–17e).

d. Grant Land No Longer Needed for Airport Purposes. With the passage of The Airport and Airway Safety and Capacity Expansion Act of 1987, P.L. 100–223, Section 511a(14) provides: If the airport operator or owner receives a grant before, on, or after December 30, 1987, for the purchase of land for airport purposes (other than noise compatibility purposes).

(1) the owner or operator will, when the land is no longer needed for airport purposes, dispose of such land at FMV;

(2) the owner or operator may trade land no longer needed for airport purposes for land to be used for airport purposes. If the difference in FMV in the two parcels results in a cash difference paid to the airport owner or operator, then that portion of the proceeds of such trade which is proportionate to the United States share of the cost of acquisition of such land will be paid to the Secretary for deposit in the Trust Fund. If additional cost results from the trade it may be eligible under AIP;

(3) such disposition will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport;

(4) that portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will be paid to the Secretary for deposit in the Trust Fund; and

(5) if the old airport is being disposed of as a result the construction of a new airport, the sale land of the old airport will be treated as a "trade–in" on the cost of the new airport. (See paragraph 7–20b.)

Once an airport sponsor accepts any grant containing this assurance, it becomes obligated to this requirement for all grant acquired land, regardless of when it was acquired.

When reviewing the sponsor's request for Federal assistance, or when conducting periodic compliance oversight reviews, the FAA must review the current ALP and the Land Inventory Map (paragraph c above) to determine whether any land acquired with Federal assistance is no longer needed for airport purposes. Airport purposes could include land that, with documentation, can be justified for noise compatibility purposes. The land need not be required for the same aeronautical purpose for which it was originally acquired.

Additionally, land that was acquired for airport development in conjunction with a larger purchase may now be serving related airport support uses (such as a hotel or aviation related commercial uses which have a direct need to be located on the airport) and therefore need not be disposed of. If the land continues to provide aeronautical benefit through noise compatibility (such as within a projected 75Ldn) or where the land is contained within a larger property boundary that clearly is justified for airport purposes, disposition of such land will not be required. Judgment may determine that it is inappropriate to carve small specific parcels out of an airport property that for all reasonable purposes is already functioning as an airport unit.

In all cases the long–term future aeronautical need always must be considered. If the ALP does not reflect a future airport need for the grant acquired land, the airport sponsor should be advised in writing by FAA that the current ALP does not establish an airport purpose (existing or future) for the land acquired by Federal grant funds and reminded of the subject assurance. Before giving notice to dispose of the land the airport owner will be given 90 days to provide sufficient documentation to FAA to justify retention of the land for airport purposes. If such justification (including a revised ALP) is not provided to the FAA within the prescribed 90–day period, the airport owner should be no-

tified in writing of the necessity to dispose of such land at FMV (subject to the provisions contained in the language stated above). There may be compelling reasons such as a depressed real estate market that would justify FAA's concurrence in a delayed disposal. In these cases FAA should obtain a marketing analysis and plan from the sponsor. Subsequent review may be required. (See paragraph 7–19 for disposal procedures.) In complex situations, the airport owner may be given a reasonable extension (up to an additional 90 days) to provide the required justification.

e. Airport Noise Compatibility Land. With the passage of The Airport and Airway Safety and Capacity Expansion Act of 1987, P.L. 100–223, Section 511a(13) provides: If the airport operator or owner receives a grant before, on, or after December 30, 1987, for the purchase of land for airport noise compatibility purposes.

(1) the owner or operator will, when the land is no longer needed for such purposes, dispose of such land at FMV at the earliest practicable time;

(2) such disposition will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport and any height restrictions that are necessary to protect the airport; and

(3) that portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will, at the discretion of the Secretary.

(a) be paid to the Secretary for deposit in the Trust Fund; or

(b) be reinvested in an approved noise compatibility project as prescribed by the Secretary. Any airport accepting a grant containing this assurance obligates the airport to this requirement for *all* grant land acquired for noise compatibility regardless of when it was acquired.

When reviewing the airport sponsor's request for Federal assistance, or when conducting periodic compliance oversight reviews, the FAA must review the current ALP, the Land Inventory Map, and any Part 150 study or supporting noise compatibility information to determine whether any grant acquired noise land is no longer needed for such purposes. Land within an existing or projected 75 Ldn noise contour that has been acquired for noise compatibility purposes need not be required for disposal. Generally, because of the high level of noise associated with the contour, there is justification for it to remain under control of the airport as noise land. Land within a 65 Ldn can be retained only if it can be justified as land need for airport development.

Before giving notice to dispose of the land in accordance with the provisions of the Act (cited above), the airport owner will be advised in writing that the justification is insufficient to support the noise compatible use for the land and be given 90 days to provide sufficient documentation to FAA to justify retention of the land for noise compatibility and sufficient time to complete any Part 150 noise study that is in progress. There may be cases where the land is no longer needed for noise compatibility purposes but is needed for other airport purposes consistent with Order 5100.38 or the guidance provided in paragraph d. above. The FAA may allow retention for these purposes.

Where FAA has determined the land should be disposed of because there is no continuing need to retain fee title ownership, the airport owner should be notified in writing of the necessity to dispose of such land at FMV at the earliest practicable time. See Chapter 7, Section 5 for disposal procedures.

There may be compelling reasons, such as a depressed real estate market, that would justify FAA's concurrence in a delayed disposal. In these cases FAA should obtain a marketing analysis and plan from the sponsor. Subsequent review may be required.

f. Compliance Requirements. Continued adherence to an ALP is a compliance obligation of the airport owner. The erection of any structure or any alteration in conflict with the plan as approved by the FAA may constitute a violation of these obligations. With the passage of the Airport and Airway Safety and Capacity Expansion Act of 1987 (December 30, 1987), the ALP assurance language was strengthened. If the airport owner makes a change in the airport or its facilities which FAA has determined will adversely affect safety, utility or efficiency of any federally–owned or leased or funded property on or off the airport, and which is not in conformity with the FAA approved ALP, FAA may require:

(1) the airport eliminate the adverse effect; or

(2) bear the cost of rectifying the situation.

The airport owner may not abandon or suspend maintenance on any operational facility currently reflected on an approved plan as being available for operational use. The conversion of any area of airport land to a substantially different use than that shown in an approved layout plan could adversely affect the safety, utility, or efficiency of the airport and constitute a violation of the obligation assumed. For example, the con-

struction of a corporate hangar on a site identified on the ALP for future apron and taxiway would be considered as a departure from the controlling ALP which impairs the utility of the airport and a violation of sponsor obligations. When making a periodic compliance review of an ALP, 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.

g. Authorization for Interim Use.

(1) The FAA may approve the interim use of aeronautical property for nonaviation purposes until such time as it is needed for its primary purpose. Such approval shall not have the effect of releasing the property from any term, condition, reservation, restriction or covenant of the applicable compliance agreement. To avoid any misunderstanding, the document issued by the FAA approving interim use must so indicate.

(2) FAA approval for an interim use should be granted only if it is determined that such property will not be needed for any aviation use during the short–term period contemplated. Any option to renew an interim–use lease/agreement should be conditioned on obtaining a new FAA determination that the property will not be needed for any aviation use during the proposed renewal period. Investment by the interim user is at its risk and shall not be a factor in considering any renewal of a lease or use agreement.

(3) FAA shall condition its consent to an interim use on an agreement from the airport owner to apply the income from such use to the development, operation, and maintenance of airport facilities.

h. Concurrent Use. Aeronautical property may be used for a compatible nonaviation purpose while at the same time serving the primary purpose for which it was acquired, such as the concurrent use of runway clear zone land for low growing crops. Care must be taken when considering recreational use so as not to create a future 4(f) environmental problem. This is clearly beneficial to the airport. The primary purpose is served and the concurrent use should generate FMV revenue to be used for airport purposes.

i. Excess Odd Parcels. Section 16/23/516 deeds as well as grant funded land acquisition may include land in excess of that requested by the airport owner or recommended by the FAA for airport purposes. This usually happens because of property descriptions and title requirements of the controlling agency to avoid severance of odd parcels or areas that would have limited value or use by themselves. Use of such excess areas for nonaviation purposes may be approved as specified in a. and b. above.

j. Conformance to FAA Criteria and Standards. Any facilities developed with grant funds must be constructed to the then current applicable FAA design standards and must conform to the approved ALP in effect at the time of the grant. Improvements, alterations or additions to an airport which are accomplished without Federal aid should be designed to FAA standards, but this is not mandatory. However, any improvement or modification, regardless of how it is financed, must conform to the ALP unless the FAA can determine that it does not adversely affect the safety, utility or efficiency of an airport.

k. LEASING GENERAL AVIATION APRON CONSTRUCTED WITH FEDERAL ASSISTANCE. The airport owner has the responsibility for the management and operation of the airport and ultimately must assure that it is operated in accordance with all aspects of the grant assurances. The airport owner can not abrogate these responsibilities. Therefore, the airport owner should not enter into unconditional leasing of apron areas constructed with Federal airport grant assistance because this could result in reducing the airport owners ability to carry out their obligations under their agreements with the Federal Government.

(1) **Management Agreements.** The airport owner may in reality only want an FBO to manage tie–down spaces, maintain the apron area, remove snow, and similar functions. Since the relationship between the airport owner and anyone conducting management duties should be that of principal/agent, a management agreement rather than a lease is the appropriate means of accomplishing what the airport owner wants accomplished. Such an agreement should clearly specify the responsibilities and provide for acceptable practices such as nondiscriminatory waiting lists for tie–down spaces and a designated itinerant tie–down area to protect public availability. The tie–down fee schedule should be established by or approved by the airport owner.

(2) **Lease Agreements.** Tie–downs or spaces on the apron can be leased by the airport owner to individual aircraft owners and/or to the FBO for space necessary to serve the needs of their aircraft in their business. Also, the apron area in the immediate vicinity of an FBO can be leased to the FBO to permit the exercise of a propriatorship over the public–use ramp area. Apron areas can be leased provided the terms of the lease will not restrict the airport owner from carrying out their grant obligations. In general the lease should contain provisions which will ensure that the public will be served by the lessee in a manner equal to that which the airport owner is required to provide under the grant agreement. A demonstrated immediate need for the space to be leased

shall be documented by the FBO to preclude attempts to limit competition or to create an exclusive right. Any area to be placed under lease shall not result in an activity or use contrary to the approved airport layout plan (ALP).

(a) Public–use areas such as airport taxiways and self–fueling areas must not be included in the lease area. However, apron taxilanes used only for maneuvering on the leased apron may be included in the lease area. If airport fueling or self–fueling facilities are included within the area to be leased, provisions must be made for the right of public access to both..

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

(c) Any lease arrangement shall protect availability for the public use, including nondiscriminatory practices for assignment of tie–down space and provide for the accommodation of itinerant users.

(d) The lease shall preclude the lessee from requiring that users of the leased area must secure goods and services only from that FBO. However, the lease need not require that a competitor must be allowed to enter the leased area to perform a service, including fueling, provided that there is adequate capability for the user to freely secure that service at another location on the airport. The competitor, however, must be allowed to assist the user of a disabled aircraft in placing the aircraft in a condition so as it can be taxied or towed away from the leased area.

(e) In no case shall an FBO be leased more apron space than that for which an immediate demonstrated need has been shown. Where there is only one FBO on an airport and there is more apron space than required for that operation, just that space actually required should be leased to the existing fixed base operator. This will ensure that apron space will be available for a future tenant, if requested.

(f) The person leasing the apron will not prohibit or restrict those using the area for tie–down from servicing their own aircraft. (Assurance 22f reference only.)

l. Installation of Portable Hangars and Sun Shades on Federally–Funded Aprons. At some locations around the country, airport sponsors have permitted the installation of portable hangars (i.e., hangars which can be readily removed and which do not require a foundation or footings) and sun shades on aprons constructed with airport grant–in–aid funds. Accordingly, FAA policy is as follows:

(1) The installation of portable hangars and sun shades on an existing federally–funded apron is not permissible except in the instances where, in the judgment of the Airports field office, changes in airport use patterns since construction of the apron are such that the apron or that portion of it proposed for the portable hangar and sun shade location is no longer needed for its original purpose. The approved ALP must show the apron area as being appropriately converted to portable hangar and/or sun shade use without having an adverse impact on the safety and efficiency of the airport.

(2) The FAA determination to permit installation of portable hangars and sun shades in exceptional instances will be conditioned on the requirement that any hangar or sun shade installed be removed within 30 days written notice from the FAA and will be based on the following considerations:

(a) The sponsor's proposal should be supported by a use plan for the installation of the portable hangars and/or sun shades.

(b) The proposed portable hangar and/or sun shade area must be in accordance with the approved ALP.

(c) Hangars and/or sun shades will be located so as not to constrain the flow of aircraft traffic any more than would exist in an aircraft tie–down area.

(d) Prior notice on FAA Form 7460–1, Notice of Proposed Construction, or through other similar notice procedure, must be given to the appropriate Airports field office of the intent to erect each structure or group of structures being installed concurrently and FAA concurrence must be received.

(e) Hangars and/or sun shades must be specifically designed for ready removal (no foundation or footings required).

(f) Hangars and/or sun shades will not cause damage to the apron. Any damage beyond normal wear and tear must be repaired by the sponsor at its expense.

(g) Hangar is designed to accommodate one aircraft.

(h) Hangar and/or sun shade design must meet local building codes.

(3) Where portable hangars and/or sun shades have been installed on federally–funded aprons without prior FAA concurrence, Airports field offices, at their

discretion, may either make an after–the–fact determination on the present utility of the affected apron as in paragraph (2) above, or may seek a remedy including:

(a) Requiring the sponsor to have portable hangars and/or sun shades removed from the apron;

(b) Seeking reimbursement for the Federal share of apron construction costs; (i.e., cost of apron replacement); or

(c) Recovering the Federal share of apron construction costs in a future project.

4–18. USE OF SURPLUS PROPERTY.

a. General. Surplus airport properties conveyed under the authority of the Surplus Property Act, as amended by P.L. 80–289, impose upon the grantee certain continuing obligations that are generally more comprehensive than the covenants and conditions discussed in previous parts of this section. Most of the surplus properties were developed as military installations and comprise a physical plant that frequently exceeds, or at least differs from, the type of development that would be undertaken to meet the demonstrable civil aviation needs of a typical community. P.L. 80–289 authorizes the conveyance of property over and above the required aeronautical facilities in order to permit the grantees to have a source of continuing airport revenue. To assure that this is accomplished, the FAA insists that surplus properties associated with a public airport including revenue generated therefrom be used to support the development, maintenance and operation of the aeronautical facilities. (See paragraph f. below.)

b. Obligations Run with the Land. There is a further distinction between the obligations assumed under a grant project and those assumed by the recipient of a surplus airport. Grant agreements are contracts with the Government relating to airport facilities. These run for a maximum specified term of years, or for the time the land is used for an airport, whereas the covenants of a surplus airport conveyance are in fact restrictions and encumbrances which condition the title to the land. Thus, every acre of a surplus airport is held in trust for a specific purpose and usage. The Surplus Property Act provides that property shall not be used, leased, sold, salvaged or disposed of for other than airport purposes without the consent of the Administrator. This reflects a degree of administrative flexibility to adjust the usage in a surplus property deed for specific areas of a surplus airport within the spirit, intent and objectives of the law.

c. Authorized Land Use. The FAA is required to assure itself that surplus land conveyed for aeronautical purposes is so used and that land conveyed for revenue purposes is actually used or available to produce revenue for the continued development, maintenance and operation of the aeronautical facilities. With the passage of time the aeronautical needs of any community will change. Therefore, the FAA is authorized to approve changes in the use of surplus airport property, including the conversion of aeronautical to revenue production and vice versa. It may relieve the recipient of its obligation to maintain parts of the airport that are no longer required for aeronautical usage within the foreseeable future. Under certain circumstances, it may grant a complete release for sale or disposal if the resulting proceeds are applied to further develop, maintain and operate the airport or other NPIAS airports which it owns as approved by the FAA. Conditions and procedures governing the release of surplus property from any of the terms and conditions of the deed are contained in Chapter 7.

d. Reduction or Change in Aviation Use Property. Changes in aviation needs may make it desirable to convert dedicated aviation use property to revenue–production property. The conversion may receive FAA approval provided the present/future civil aviation needs are met or assured and the public benefit in civil aviation is enhanced. In all such conversions, FAA shall require assurance that all such converted property will be used to produce FMV for civil airport purposes consistent with the original conveyance and in support of the owner's endeavor to make the airport as self–sustaining as possible.

e. Land Use Plans. In order to determine that all property on a surplus airport is being used as intended by the applicable law, it is necessary for the recipient to have inventory accountability. The most effective means for maintaining such a current inventory is the "land–use plan." This is a scaled layout of the entire property indicating the current use approved for each identifiable segment or area including that land which FAA has approved for revenue production. If this plan is to serve as the land inventory plan it should indicate the acquisition source of all airport land (i.e., surplus, grant purchase, etc.). For ease, it may be incorporated on an Exhibit A or on an ALP or developed as a separate document.

f. Leasing of Surplus Airport Properties. Section 1, Chapter 6 contains guidance on evaluating leases or use agreement covering aeronautical facilities at a public airport. It assists FAA personnel in advising airport owners about contracts or agreements which could affect the owner's prime responsibility to control public facilities and to make them available on fair and reasonable terms without discrimination.

(1) At airports which include Federal surplus property acquired for airport purposes, there is a further obligation to ensure that such property, if not needed to directly support an aviation use, is available for use to produce income for the airport. There is no violation of the covenants in the conveyance document (or deed) if the airport owner is unable to arrange for productive use of such property. However, when used, it must produce income for the airport. This means that any lease or other rental arrangement covering the use of surplus property at an airport must assure that the fair rental value of the property will accrue to the airport and be available to meet airport expenses. Such property may not be rented at a discount to support community nonprofit organizations or to subsidize nonairport objectives.

(2) Where revenue production land has remained undeveloped while comparable off airport land is being developed, reasonable market incentives should be considered to promote interest in developing the property. This would include a reduction in fair rental value for a limited time period or the use of a property development firm to share in the development costs or similar development incentives. In these cases, it is acceptable for the development firm to realize a reasonable share of the revenue. This method should only be used so long as it is necessary to establish the viability of the development.

(3) In determining what is the FMV, consideration should be given to the current market value of the property and to the going rate for rental of equivalent premises. The obligation to obtain fair rental income from the nonaviation use of surplus airport property relates to the property as acquired from the Government. It does not apply to the income producing potential from buildings and improvements constructed thereon without Federal assistance. Fair rental value may need to be reevaluated if airport land remains vacant while other comparable off airport property is being leased. In small communities, a faulty comparable may have been used. Fair rental/market value is clearly tied to demand and in these cases, consideration should be given to doing a market survey.

(4) Provisions should be made for periodic adjustments of the rental terms based on economic conditions.

g. Leases Contemplating Substantial Investment. Where prospective nonaviation tenants plan extensive improvements to leased surplus airport property they will normally seek long-term lease agreements, frequently in excess of 20 years. A fixed rental rate for Federal surplus property may over a period of years become unreasonably less than a fair rental value. FAA should require that leases with a term in excess of 5 years contain a reasonable escalation clause or periodic renegotiation provision to assure that the land is still producing for the airport the income for which it has a potential. The effect of such long-term commitments on defense mobilization requirements for the airport should be considered and, if appropriate, a total release from the NEUP should be obtained. (See Chapter 13, Order 5190.2). In certain circumstances where the land will never be aviation developed a complete release to permit sale of the land may be appropriate.

h. Subordination of Reversionary Interest of the United States. The existence of the contingent right of the United States to revert title for default by the airport owner has in some instances discouraged the leasing of revenue-producing surplus property to an income-producing tenant planning to invest substantial sums in construction on the property. If thoroughly justified on the record, the FAA may approve a lease which would protect the lessee's interests in the event of default and reversion of the airport to the Government.

(1) The FAA may, by letter or other written means, assure the grantee/owner and the prospective lessee that the lease will be honored in accordance with its terms for a period long enough to amortize or retire the invested amount but not for the useful life of the improvements. This assurance may not be given in connection with a lease of any property which may, in the foreseeable future, be required for aeronautical purposes or which is still subject to the NEUP provision.

(2) Whenever such action is contemplated it should be coordinated with the regional Assistant Chief Counsel.

i. Personal Property. All surplus personal property must be used, or continuously available for use, for airport purposes, during its useful life (not to exceed 1 year). To facilitate accountability the equipment should be clearly marked for identification. FAA provides decals for this purpose. When the personal property is not actually needed at the airport, FAA may consent to its use for another public purpose. It must always be available when needed for the airport. For donable property and related personal property, accountability will terminate 1 year after the transfer or earlier upon determination by FAA that items have outlived their useful life.

4-19. USE OF LANDS TRANSFERRED FROM THE UNITED STATES.

a. As compared to surplus property, much more stringent use restrictions apply to properties acquired for airport purposes under Section 16/23/516. The appli-

cable regulation defines airport purposes as uses of the property directly related to the actual operation or the foreseeable aeronautical development of a public airport. There is no authority under this legislation to convey property for the purpose of generating income from nonaviation use. Moreover, there is no authority for the FAA to modify the conditions of a conveyance or to grant release from any of its terms and conditions. A grantee who fails to develop a useful and useable airport or unit thereof on the property conveyed by the United States, within a time specified in the instrument or at the option of the FAA, is not in compliance with the terms of the conveyance. Unless the violation can be cured by granting a reasonable extension of time based upon a written and fully supported request of the grantee, the FAA shall declare a default and exercise the Government's option to revert the property. (See Chapter 8 for information on reversion.)

b. In some instances, Federal lands may be conveyed in standardized units or sections which could result in the transfer of small parcels of land in excess of that requested, or justified under the applicable regulation. Also, Section 23 and Section 516 authorize the transfer of lands for future airport development. In such instances the FAA may consent to the interim use of land acquired from Federal sources for a nonaviation purpose subject to such restrictions and conditions as may protect the national interest. This would include a requirement that any such nonaviation use must produce revenue for the airport and such proceeds shall be used only for airport purposes. This same policy does not apply in consenting to a concurrent use of Section 16, Section 23, or Section 516 land where such use is subordinate to and compatible with the purpose for which the land was conveyed and where the land continues to be used for aeronautical purpose. Other than interim or concurrent use, the FAA cannot allow the use of any of this property for generating income from nonaviation activities.

4–20. INCOME ACCOUNTABILITY.

a. Basic Policy. In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures used by airport owners. While all grant agreements contain a provision obligating the sponsor to furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested, it is the policy of the FAA not to require such reports unless there is a genuine need for the information sought, a capability to effectively use the information, and the information requested can be reported without superimposing on the airport owner a requirement for additional accounting records over those normally required to operate the airport. However, there are several situations in which the FAA, to carry out its responsibilities under law, may solicit and review certain basic financial data on airport administration and operation.

(1) Property Acquired Under the Surplus Property Act. Where an airport includes property acquired from the Federal Government under the Surplus Property Act, the law, and frequently the conveyance document itself, authorize use by nonaviation business activity (see paragraphs 4–18a and 4–18d). Such use is justified only when it produces an income which is applied to any airport operation, maintenance and development. This income can also be used to improve and develop the infrastructure (utilities, roads, basic site preparation, etc.) for airport revenue producing land when a determination is made by FAA that all operational and safety needs of the airport are being adequately met and that near term future aeronautical needs can be achieved. The airport owner should be advised that their decision to use these funds for other than direct aeronautical needs may affect the airports' ability to compete for discretionary grant money under the Airport Grant Program. To ensure that such properties are used as intended, the FAA should periodically review the financial transactions of the airport to the extent necessary to make this determination.

(2) Section 511(a)(12) of the Airport and Airway Improvement Act of 1982. To ensure that all revenue generated by a public airport is used as intended (including revenue received as a result of the interim use of land acquired for future airport development), the FAA should periodically review the financial transactions of the airport to the extent necessary to make this determination.

(a) Grants Issued Before December 30, 1987. Section 511(a)(12) of the AAIA requires that all revenue generated by the airport, if it is a public airport, be used for the capital or operating costs of the airport, the local airport system, or other local transportation facilities owned or operated by the airport owner or operator and directly related to the actual transportation of passengers or property.

(b) Grants Issued After December 30, 1987. Section 511(a)(12) of the AAIA, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, requires that all revenue generated by the airport, if it is a public airport, be used for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the airport owner or operator and directly and substantially related to the actual air transportation of passengers or property. In addition to limiting such facilities to those related to air transporta-

tion, the 1987 Act also included any local taxes on aviation fuel (other than taxes in effect on or before December 30, 1987 the date of the enactment of the Act).

(c) **Exception.**

(i) If the governing statutes controlling the owner or operator's financing in effect before September 3, 1982, provided for the use of any revenue from the airport to support not only the airport but the airport owner's general debt obligations or other facilities, then the limitation on the use of revenue generated by the airport shall not apply.

(ii) Clearly supportable and documented charges made by a governmental entity to reimburse that entity for payments of capital or operating cost of the airport may be allowed. Any charge must be supported by documented evidence. A flat payment "in lieu of taxes" without such documentation is not acceptable. If an indirect charge is levied against the airport in support of capital or operating expenses, the indirect charge must also be levied against other governmental cost centers in accordance with generally accepted accounting procedures and practices.

(iii) The Chief Counsel has determined based on legal history that revenue generated by the airport does not include revenue generating facilities which are unrelated to air operations or services which support or facilitate air transportation. This has been interpreted by the Chief Counsel to include royalties and related revenue from natural gas and would also apply to other similar natural resources. It would also apply to revenues generated by a convention center; however, the land rental paid to the airport by the convention center would be airport revenue if the convention center is located on land acquired with Federal funds or under the Surplus Property Program or land acquired without Federal assistance if shown on the Exhibit A as airport land. This would not be applicable if the revenues were generated from Federal surplus property land where the deed restrictions take precedent.

(3) As noted in paragraph 2–11, Section 16, Section 23, or Section 516 do not permit the conveyance of land for the express purpose of generating revenue. However, if conveyed, they may with FAA consent be used for a nonaviation purpose which is completely subordinate to their prime purpose. As a condition for FAA consent, all income from such use must be applied to airport development and operation and there must be a periodic review of income and expenditure records to confirm that the revenues have been so applied.

(4) Under the guidelines in Chapter 7, the FAA may grant a release from the airport obligations of surplus properties in order to permit their sale and conversion to operational assets which better serve the purpose for which they were initially obligated. As a consequence of such a release, and until the determined fair value of the released property has been fully expended on approved items of airport development, there must be a continuing accountability to FAA of the proceeds of sale or the amounts obligated for reinvestment in airport development.

(5) Section 18a(8) of the Airport and Airway Development Act and Section 511(a)(19) of the AAIA require an assurance that sponsors will maintain a fee and rental structure for facilities and services being provided to airport users which will make the airport as self–sustaining as possible. An opinion from Chief Counsel advises that Section 18a(8) of the Airport and Airway Development Act of 1970 does not require periodic statements indicating the degree to which an airport is or is not self–sufficient. The opinion goes on to say that in cases of noncompliance such statements will be required. Airports field offices shall accept at face value a sponsor's assurance that it will strive for financial self–sufficiency and shall not concern themselves in this matter except in cases of a complaint.

b. Questionable Financial Data. When the data provided does not clearly lead to a conclusion or in special circumstances needing audit expertise, the Airports office should request that the Office of the Inspector General (OIG) perform an audit of the airport's books and records or the FAA can contract with an independent Certified Public Accountant (CPA) to perform the audit.

c. Disposition of Excess Revenues. The progressive accumulation of substantial amounts of airport revenues may suggest an inquiry as to the reasonableness of user charges and fees. It may also indicate that the aeronautical facilities available to the public are not being expanded commensurate with the growth of aviation. Unless the sustained accumulation of airport revenues can be viewed as building a reserve for periodic renewal of facilities (seal coating, re–roofing, etc.), the community should be urged to convert a reasonable amount of the airport revenues into improvements that would enhance the value of the airport to the community (T–hangars, aircraft parking areas, terminal buildings, etc.). Such improvements may include types of development that are not eligible for grants of funds under the AIP.

d. Diversion of Funds. FAA consent to use or lease for nonairport purposes any land at surplus property airports (including property conveyed for revenue

production) does not constitute authority to apply the resulting income other than to maintain, operate, and further develop the airport. Even where the proceeds of such use of airport properties exceed the reasonable costs of meeting the owner's maintenance and operating commitment, any diversion of excess airport revenues to a nonairport purpose constitutes a breach of the terms and conditions of the deed of conveyance, unless specifically approved by the FAA. This approval will not be given at surplus property airports that have received a grant since the enactment of the AAIA of 1982 when the revenue assurance first appeared (except as specified in Section 511(a)(12) of the Act). When a surplus property airport has not received a grant under AAIA of 1982, approval will not be given unless:

(1) Maintenance and operation of the airport is and has been at an acceptable level and fully conforms to all established safety and certification requirements,

(2) There are no violations or defaults of the transfer deed or of subsequent agreements with the Government applicable to the airport,

(3) There are no foreseeable improvements, extensions, rehabilitations or additions to the capital plant that would be desirable to improve aeronautical services to the public or improvements to enhance the nonaeronautical use revenue production capabilities of the airport, and

(4) The airport owner is advised that such action may affect their ability to compete for grant funds other than airport entitlements under the Airport Grant Program.

4–21. MANAGEMENT OF GRANT ACQUIRED PERSONAL PROPERTY. Under the ADAP and AIP grant programs various items of personal property were eligible for acquisition. Examples of eligible items are ARFF vehicles and auxiliary equipment, security equipment and radios. The airport owner is required to maintain property records of this equipment and reconcile these records at least every 2 years by physical inventory for the first 6 years after the property was acquired.

a. Requirements of 49 CFR 18.32. 49 CFR 18.32 sets forth standards governing the use and disposition of federally–financed personal property. The sponsor's property management procedures must provide for accurate records, biannual inventories, adequate maintenance and control, and proper sales procedures.

b. Sponsor Inventory System. 49 CFR 18.32 requires sponsors to maintain property records of equipment during its useful life. The inventory should include:

(1) Description of the property;

(2) Manufacturer's serial number;

(3) Other identification numbers;

(4) Acquisition data and cost;

(5) Source of the property;

(6) Percentage of Federal funds used in the purchase of the property;

(7) Location, use, and condition of the property; and

(8) Ultimate disposition data including sales price, or the method used to determine current FMV if the grantee reimburses the grantor agency for its share.

c. Determine Sponsor's Equipment Usage. When a field compliance inspection is made, it should be determined if the sponsor is using the property for the purpose for which it was acquired. The primary means for this review will be the airport owner's inventory system. If the equipment is not being so used, action should be taken for disposition or transfer of the equipment. If the equipment is being used for unauthorized purposes, action should be taken to stop such use.

d. Methods of Disposition. 49 CFR 18.32 provides for the disposition of personal property acquired under grant agreement when such property is no longer needed. Disposition will be made as follows:

(1) Any personal property with a current per unit FMV of less than $5,000 can be retained, sold or otherwise disposed of. Any proceeds may be retained by the sponsor. The sponsor must inform FAA of disposition.

(2) Personal property with a current per unit FMV in excess of $5,000 may be retained or sold. If the property is sold, any proceeds, less the cost of selling, shall be applied to eligible project and related development in accordance with Order 5100.38.

(3) Personal property may be used as trade–in for other eligible property. No future accountability is required.

SECTION 6. USE BY THE GOVERNMENT

4–22. JOINT USE BY FEDERAL GOVERNMENT AIRCRAFT. There are three types of agreements under which the Government has the right to joint use of airport facilities, either with or without charges.

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

b. P.L. 80–289. Surplus Airport Property Instruments of Transfer issued under P.L. 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, to contribute a reasonable share of the cost of maintaining and operating the landing area, in proportion to such use." For guidance on substantial use, see a. above.

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. 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 may be determined by the Administrator of FAA 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 of the capacity of the airport. They 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 using Government agency or agencies.

4–23. SPACE FOR AIR TRAFFIC CONTROL ACTIVITIES, COMMUNICATIONS, WEATHER AND NAVAIDS. Other than the rights reserved to the Government for joint–use of airport facilities (paragraph 4–22), the only express obligation to provide space for Government activities is contained in grant agreements. The project application incorporates in the sponsor's assurances certain obligations with respect to providing facilities for air traffic control, weather and communication activities. There are subtle differences in the terms of this assurances under the various grant programs. Therefore, when questions arise regarding the use of space, refer to the most current grant agreement.

a. Under ADAP and AIP space is not required to be furnished rent free. However, the sponsor is required to furnish to the Federal Government without cost such area of land as may be necessary for the construction at Federal expense of facilities to house any air traffic control activities, or weather–reporting activities and communication activities related to air traffic control. This may include utility easements. The airport owner is not required to furnish cost–free–land for parking or roads to serve the facility. (G.C. Opinion dated March 27, 1962)

b. Under AIP grant agreements, FAA has the right to identify needed land area at any time during the life of the grant. Under ADAP, the grant agreement must identify the needed space.

c. There is no specific obligation to provide space for other Government activities such as Post Office, Customs, Immigration, etc. However, the leasing of space at nominal rental rate to such activities which complement or support aeronautical operations will not be viewed as a misuse of surplus property conveyed for revenue purposes.

4-24. GOVERNMENT USE DURING A NATIONAL EMERGENCY OR WAR.

a. Airports Subject to Surplus Property Instruments of Transfer. The primary purpose of each transfer of surplus airport property under Section 13 of the Surplus Property Act of 1944 was to make the property available for public or civil airport needs. However, it also was intended to ensure availability of the property transferred and of the entire airport for use by the United States during a war or national emergency. Most instruments of disposal of surplus airport property reserved or granted to the United States a right of exclusive possession and control of the airport during a 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. Any negotiations by the Government for the right of use of an airport under the national emergency use provision of a surplus airport property instrument of transfer should be between the Government agency requiring such use and the airport owner. The only compliance responsibility FAA has with regard to this provision is that of releasing the property from its application when such action is appropriate. (See Chapter 7.)

CHAPTER 5. THE AIRPORT COMPLIANCE PROGRAM

5–1. BASIS AND OBJECTIVES. The FAA's compliance program has as its base the enforcement of contractual obligations which an airport accepted when receiving Federal grant funds or the transfer of Federal property. These contractual obligations were levied in an effort to protect the public's interest in civil aviation or to achieve compliance with other national laws. Given the magnitude of the number of obligated airports and the variety of obligations applicable at each airport, our compliance program must primarily be centered on assisting airport owners to be knowledgeable about their Federal obligations in an effort to achieve voluntary compliance. This educational approach to achieve voluntary compliance will be supplemented with periodic or "spot" monitoring of obligated airports and a program to vigorously investigate and pursue resolution when complaints about potential violations are registered. Ultimately, when mutual resolution cannot be obtained voluntarily, we must be prepared to resort to enforcement procedures described in Section 2 of Chapter 6.

a. Basis. The various grant, land transfer, and surplus property transfer agreements discussed in previous sections, together with the numerous statutes cited form the basis for the continuing obligations of airport owners to the United States. The responsibility to monitor and enforce compliance with these many obligations rests with FAA.

b. Objectives. The basic objective of the compliance program is to assure a system of safe and properly maintained airports that are operated in a manner which protects the public's interest and investment in aviation. This can best be achieved by a positive, continuing educational program to assist sponsors in knowing what their obligations are and promoting their voluntary compliance with the many obligations.

(1) Voluntary Compliance. Most violations of sponsor obligations are not a deliberate intent to circumvent the terms of deeds or agreements with the Government. Generally, they occur because of a lack of understanding on the part of local officials as to the specific requirements involved or their applicability. Therefore, the basis of this compliance program is an educational effort to ensure that airport sponsors are fully informed of their obligations and their specific applicability to the sponsor's airport.

(2) Advisory Services. While the FAA will not substitute its judgment for that of the airport owner in matters of administration and management of airport facilities, it is in a unique position to assist airport owners in achieving voluntary compliance through prudent advice and counsel. This will be primarily directed in assisting airports to understand the nature and applicability of compliance obligations affecting their airport.

(3) Compliance Oversight. Given the approximately 2800 obligated airports, compliance oversight by an annual visit or review at each airport is not practicable. However, annual periodic or "spot" monitoring of a portion of obligated airports to ascertain individual problems and to track problems which may be indications of system deficiencies is necessary. Similarly, the Airports staff must be vigilant to potential compliance problems at obligated airports, be prepared to actively pursue compliance problems discovered or brought to their attention through a complaint process, and be prepared to take the necessary enforcement action if the issue is not voluntarily resolved to the satisfaction of FAA.

(4) Uniform Application of Remedies. In pursuing resolution through remedial or enforcement action, every effort should be made to obtain voluntary correction of the condition. Only when all appropriate measures of persuasion have been exhausted should the enforcement actions outlined in Section 2 of Chapter 6 be applied. When these are deemed necessary, FAA personnel should act swiftly and in a manner that is fair and uniform.

5–2. PROGRAM ELEMENTS. To be effective, a program for carrying out the FAA's continuing responsibilities for airport compliance must rely primarily on an ongoing education program. This will enhance the airport owner's knowledge of Federal compliance obligations and promote an understanding as to how these relate to the airport.

Program efforts to achieve the education of the federally–obligated airport owner will be the primary thrust of the program. Limited surveillance activities designed to detect recurring deficiencies, system weaknesses, or individual abuses need to be accomplished annually to maintain program integrity. To achieve maximum benefit, the findings of these periodic or "spot monitoring" activities need to receive maximum exposure among owners of federally–obligated airports. The investigation of complaints constitutes the third primary program element. Complaint investigation and resolution will continue to be a reasonable way for FAA Airports employees to monitor and achieve compliance with Federal obligations. When efforts to obtain voluntary compliance fail, a program of

remedial and enforcement actions shall be available as a means of obtaining compliance.

a. Education. Education of obligated airport owners may take many forms. Education begins when the owner receives the first Federal grant or transfer of Federal property. Airports personnel should discuss with first–time sponsors the impact of specific grant assurances and/or land transfer obligations. Continuing to let them know that FAA personnel are available to discuss their problems (advisory services) is also an important part of their ongoing education. At least once every 3 years, obligated airport owners should be advised in writing to review their grant or land transfer obligations, advised to contact Airports personnel to obtain further information, and should be provided with information or material to aid their understanding of the impact of these obligations. Airports personnel should take opportunities to conduct or participate in periodic seminars or courses for federally–obligated airport owners to further enhance their understanding of Federal obligations.

b. Surveillance. Surveillance is the process of gathering data on the condition or operation of an airport to determine what the airport owner is doing to achieve and maintain compliance with Federal obligations. This kind of information is available in total or in part from many sources, including: site visits by Airports personnel; site visits by FAA personnel from other offices/services; and site visits by others outside of FAA, but knowledgeable about some aspects of airport compliance (for example, state inspectors performing FAA Form 5010, Airport Master Record, inspections). Surveillance may also be achieved through the conduct of telephone discussions or written correspondence with appropriate airport personnel to ascertain if potential problems exist. Further follow up through on–site surveillance may or may not be necessary depending upon information obtained during the telephone conversation or written response. In all cases, the files should be documented to show the items discussed and the FAA's action taken or conclusions reached.

An alternate acceptable means of surveillance is to provide obligated owners with printed material which identifies and explains the obligations accepted by that airport owner. A duly authorized official of the airport would be required to certify that this individual has read and understands the material and that the airport is being operated in accordance with all obligations. In order to accept the airport owners certification, the airport official should be required to provide an explanation of what procedures or actions are in effect to assure that the airport is operated in accordance with the applicable assurances and obligations. The airport official must note any discrepancies and, if appropriate, further follow–up surveillance such as telephone calls or an on–site visit will be initiated. Use of this sponsor "self–certification" method should not be used where Airports personnel have any reason to believe that the owner is not complying with any aspect of the airport's Federal obligations. In those cases, one of the more direct forms of surveillance shall be used.

Airports personnel shall annually use one or a combination of these methods to conduct spot surveillance of at least 25 percent of their obligated airports. A rotation schedule should be established to ensure that each obligated airport is subject to a surveillance inspection once every 4 years. Generalized findings from these surveillance inspections (not noting specific airports affected) should receive maximum publicity among other obligated airports as an additional means of educating federally–obligated airport owners and in an effort to emphasize the presence of an ongoing spot surveillance program to monitor compliance.

c. Investigations of Complaints. Airports personnel must be available to investigate complaints from the aviation community that an airport is not living up to any aspect of its compliance obligations. The investigation should be completed in a timely manner with the complainant notified in writing of the outcome of the investigation. In certain circumstances, where several complainants allege the same violation of a grant or land obligation and where no new facts have been provided which indicate another review or investigation is warranted, FAA need not investigate the complaint. However, the complaint should be acknowledged and the complainant provided with a summary of our finding from the previous investigation. When an investigation discovers that a violation of a Federal obligation does exist, Airports personnel will immediately initiate dialogue with the affected airport and attempt to achieve voluntary compliance with the pertinent obligation(s).

d. Remedial and Enforcement Actions. When a violation of a Federal obligation has been discovered and all reasonable efforts by Airports personnel have failed to achieve voluntary compliance on the part of the airport owner, Airports personnel must initiate remedial and enforcement action in accordance with Chapter 6, Section 2.

5–3. PRIORITIES AND EMPHASIS. All Federal airport obligations are considered equally important when pursuing remedial or enforcement actions. 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 obligated airports. This includes maintaining runways, taxiways,

and other operational areas in a safe and usable condition, keeping the approaches cleared, providing operable and well maintained marking and lighting, etc. In developing priorities for regional administration of the surveillance portion of the compliance program, it is reasonable to direct priority emphasis to those airports with the largest potential for abuse.

5–4. RESPONSIBILITIES.

a. AAS–300 will provide overall guidance and direction for the conduct of the Airports Compliance Program and conduct regional evaluations to determine compliance with this Order and look for opportunities to improve the quality of the program. AAS–300 will be available to assist Airports offices in the interpretation of policy, the applicability of conditions or assurances to a particular airport, and for guidance and assistance, as needed, in pursuing enforcement. AAS–300 will also be responsible for preparing generalized educational material to be used by Airports offices in the conduct of their compliance program.

b. Regional and field Airports offices will be directly 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 to be achieved in the Compliance Program. However, regions are encouraged to take a more aggressive education and surveillance program as regional resources permit.

5–5. TYPES OF COMPLIANCE STATUS. The following types of Compliance status will be used to describe the airport owner's efforts in meeting its Federal obligations:

a. **Compliance.** The airport owner is meeting its commitments under the Federal obligations.

b. **Conditional Compliance.** The airport owner has been notified of compliance deficiencies on the airport and is willing to correct the deficiencies within a specified period of time.

c. **Pending Noncompliance.** The airport owner has not taken or agree to take corrective action on the compliance deficiencies noted above and is now being notified of its rights to a hearing. (See Chapter 6, Section 2.)

d. **Noncompliance and Default.** As a result of the hearing noted above or if no hearing is requested or if the airport owner has no right to a hearing, a determination will be made by the Airports Division Manager that the airport owner is in a status of noncompliance and default with its Federal obligations and appropriate sanctions or civil penalties will be taken. (See Chapter 6, Section 2.)

5–6. ANALYZING COMPLIANCE STATUS.

a. **Data Analysis.**

(1) Data accumulated for compliance purposes must be carefully analyzed to evaluate the airport owner's actual compliance performance and to identify appropriate actions to correct any deficiencies noted. More often than not an airport owner, when apprised of a deficiency, will ask for recommendations on how to correct the problem.

(2) Some confusion and lack of uniformity results from the basic problem of what constitutes noncompliance. Certainly, the height of obstructions in an approach and the condition of airfield paving and drainage may be adequate evidence of the airport owner's performance. They are, however, merely evidence. The judgment to be made in all cases is whether the airport owner is reasonably meeting the Federal commitments. It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out.

b. **Follow–up.**

(1) Each Airports field office should develop a system of procedures to ensure continuing follow–up action on any identified compliance deficiencies until compliance with obligations to the Government can be accomplished.

(2) Action must be initiated at those airports that are not being maintained or operated in accordance with their owners' commitments. An effort should be made to help the owner voluntarily meet these commitments. When the owner has demonstrated an unwillingness to correct deficient conditions necessary to obtain compliance with the Federal obligations, the Airports office must pursue corrective enforcement action. (See Chapter 6, Section 2.)

(3) A formal compliance inspection may be undertaken as part of a routine compliance surveillance inspection or initiated as a result of a complaint. It may also be initiated when FAA has any reason to believe that an airport owner may be in violation of one or more of the airport's Federal obligations. Appendix 6 contains the procedures to follow in a formal compliance inspection.

5–7. COMPLIANCE DETERMINATIONS. The Airports office must be continuously aware of which airports are not in compliance. Before a Federal airport grant can be issued an official determination must be made that the airport owner is in compliance with its

Federal obligations. This determination of compliance status is a judgment based on a review of all available data concerning the airport and the circumstances of its operation. The review need not include a formal compliance inspection. It should, however, include the review of available data on hand and be supplemented as appropriate with spot surveillance material. At the region's discretion, absent any information to the contrary, it may rely on an airport's "self certification" of compliance (paragraph 5–2b) in making its compliance determination prior to issuance of a grant. It is important that all data used to support this determination be recorded in appropriate files.

When assessment of the airport owner's performance leads to a conclusion that compliance commitments are not being met, the status of PENDING NONCOMPLIANCE must be made and proper notification given (see Chapter 6, Section 2). Failure to declare the PENDING NONCOMPLIANCE hides the fact that discrepancies exist and results in a lack of follow–up leading to correction of the problem. Prompt communication between FAA and the airport owner regarding deficiencies is essential to establish a definite understanding of FAA position and a record for future action.

The owner must, however, be clearly told that based on available data the airport owner is failing to live up to the terms of the Federal agreements. The airport should be informed that these failures could place the FAA in a position which would preclude any further consideration of Federal assistance to the airport (see Chapter 6, Section 2). The actions needed to correct the situation must be spelled out and a reasonable time proposed for their accomplishment. Most importantly, the Airports office must make a timely follow–up review and record the airport owner's response and action.

5–8. RECORD OF COMPLIANCE STATUS. The appropriate Airports office shall maintain for each obligated airport under its jurisdiction an individual record which accurately reflects the extent to which the airport owner is complying with its obligations, and the actions carried out under this Chapter to monitor its compliance with these obligations.

a. Suggested Procedures. A compliance folder for each obligated airport is a convenient means of accumulating the data needed to support the compliance determination. It should contain, or be cross–referenced to the documents creating obligations and all appropriate correspondence or inspection reports, leases, financial records, etc., that specifically relate to the compliance status of the airport. The folder should contain any surveillance compliance actions taken, complaints received, records on any formal compliance inspections undertaken, findings from other investigations, and any other pertinent records or correspondence.

b. Summary Status of Compliance (Figure 1). The suggested format in Figure 1 is the minimum record of findings and determinations that should be maintained for each airport receiving a surveillance compliance review or compliance determination prior to issuing a letter of tentative allocation under the Federal Airport Grant Program.

c. Instructions for Completing the Summary. The record should indicate the name, locations, and sponsor (or grantee) of the airport. Under "Basis of Obligations" enter a check mark immediately over each type of instrument applicable, together with the date of the latest such instrument. For each specific element of compliance identified as (a) through (j), there should be a "yes" or "no" entry indicating whether the airport owner is complying with the applicable obligation. In the three columns to the right of these elements should be entered the date of the inspection, visit, correspondence, or other form of surveillance which support this determination. Supporting evidence to make this determination should be current within the year preceding the date shown at the top of the form. Guidance for making entries against the compliance elements shown are as follows:

(1) Maintenance. The owner will be considered in compliance if the physical condition of paving, lighting, grading, runway, marking, etc., meets applicable standards and if the owner is following realistic procedures to preserve these facilities in an acceptable condition.

(2) Approach Protection. The owner will normally be considered in compliance if there are no obstructions or where an FAA aeronautical study has determined that an obstruction is not a hazard and the obstruction complies with the conditions of the determination.

(3) Use of Airport Property. All airport property, including each area of surplus property, must be reviewed to be sure it is being used or is available for use for the purposes intended by the grant agreement or land conveyance. Also, personal property accountability records are to be verified.

(4) Use of Revenues. Income from airport operations and revenue–producing property must be fully accounted for and adequate records kept to evidence its application to or reservation for airport purposes.

(5) Exclusive Rights. There must be no evidence of an intent to deny any qualified enterprise the

right to conduct an aeronautical activity. Where there is a history or a possibility of denial, the standards and qualifications which are the basis for such denial must be supportable as identified and discussed in this Order.

(6) **Control and Operations.** The owner is in compliance if the airport is available to the public under fair, equal, reasonable, and nondiscriminatory conditions, and with adequate provisions for the operation of all facilities on a continuing basis. Additionally, the owner must not have entered into any agreements which preclude the owner of its rights and powers and must not be in violation of the exclusive rights provision. The airport owner's fee and rental structure is to be reviewed for conformance with the grant assurances.

(7) **Conformity to ALP.** There should be no actual or proposed development or use of land and facilities contrary to an ALP previously approved by the FAA.

(8) **Continuing Special Conditions.** This refers to special conditions other than those controlled by project payments under ADAP/AIP. It includes specific commitments regarding the disposition of proceeds from the disposal of surplus property and any other continuing pledges undertaken by the airport owner.

(9) **Narrative Comments.** List any complaints, previously noted violations which continued uncorrected, status of actions taken, and plans and schedules for achieving the correction of deficiencies. A signature will confirm that the compliance status "Finding" and all other entries are known to be as indicated and are based upon the evidence listed.

(10) **Disposal of Grant Acquired Land.** While reviewing airport property (paragraph (3) above) and the ALP (paragraph (8) above) it should be noted whether that all land acquired with grant funding, including land acquired for noise protection, is still being used for the purpose acquired. If there is a question concerning the usage see paragraph 4–17 for guidance. The owner is in compliance if the land is being used for the purpose acquired.

(11) **Compatible Land Usage.** The owner will be considered to be in compliance if it is determined that there are no incompatible land uses in the immediate vicinity of the airport over which the airport owner has jurisdiction.

SUMMARY STATUS OF AIRPORT COMPLIANCE

As Of: MM DD YY

Airport Name:

Location: | Owner:

Basis of Obligations: *(Check box)*
☐ Reg. 16 ☐ P.L. 289 ☐ FAAP/ADAP/AIP ☐ Section 16/23/516 ☐ Other (List)_____

	Compliance Status	As Determined By:				
		Compliance Inspection:		Airport Visit:		Desk Review*
	By Items	Inspector's Name	Date	Visitor's Name	Date	
a. Maintenance	☐ Yes ☐ No					☐ Yes
b. Approach Protection	☐ Yes ☐ No					☐ Yes
c. Use of Airport Property	☐ Yes ☐ No					☐ Yes
d. Use of Revenues	☐ Yes ☐ No					☐ Yes
e. Exclusive Rights	☐ Yes ☐ No					☐ Yes
f. Control and Operation	☐ Yes ☐ No					☐ Yes
g. Conformity to ALP	☐ Yes ☐ No					☐ Yes
h. Special Conditions	☐ Yes ☐ No					☐ Yes
i. Disposal of Grant Acquired Land	☐ Yes ☐ No					☐ Yes
j. Compatible Land Use	☐ Yes ☐ No					☐ Yes

* Desk Review — If checked "Yes", discuss nature of view on reverse side of this form.

FINDING: The owner is in a status of
☐ Compliance ☐ Conditional Compliance ☐ Pending Noncompliance ☐ Noncompliance and Default.**

Narrative Comment:

** Determination made by Manager, Airports Division

Inspector's name and date of inspection:

Signature | Title | Date

FAA Form 5190-8 (10-89)

Figure 1. Summary Status of Airport Compliance (FAA Form 5190-8)

CHAPTER 6. ANALYSIS AND ENFORCEMENT

Section 1. Analysis of Leases and Use Agreements

6–1. GENERAL. In analyzing leases and use agreements, it is important to be aware of the interrelationship of material covered in other portions of this Handbook, such as that contained in Chapter 3 on Exclusive Rights; Chapter 4, Section 4, Availability on Fair and Reasonable Terms, and Chapter 4, Section 5, Use of Airport Property. Principles discussed therein have a direct bearing on the material contained in this Section.

6–2. BASIC AIRPORT RELATIONSHIPS. The operation of a public airport involve complex relationships that are frequently misunderstood. One can safely land an aircraft on the airport, but unless there are services and conveniences available to attract and encourage flight activity, the investment may be hard to justify. In most instances the public agency owning the airport must turn to private enterprise to provide those services which will make the use of the airport by the public attractive and convenient.

a. Rights Granted by Contract. Airport use agreements usually reflect a grant of three rights or privileges for an appropriate consideration:

(1) The right for the licensee or tenant to use the landing area and public airport facilities in common with others so authorized.

(2) The right to occupy as a tenant and to use exclusively certain designated premises.

(3) The commercial privilege or the franchise right to offer goods and services to the public who use the airport.

b. Consideration for Rights Granted. The basic obligation of the public airport owner is to make available to the public landing and parking areas. However, a charge or fee may be imposed on users in order to recover the costs of providing these facilities. The charge may be a landing fee (which is similar to the toll charge on a highway, bridge, or tunnel) or an indirect charge. Quite frequently the airport owner recovers this use charge indirectly as part of the consideration received from commercial tenant operators who provide direct services to users of the public areas. It may, for example, take the form of a gallonage fee in which case fuel consumption is regarded as a measure of relative usage or benefit derived from the availability of the public landing area. It may also take the form of a monthly flat charge or a variable charge using the volume of business—rather than fuel gallonage—as the yardstick of benefit derived. In addition to these use charges there is normally an intent to recover some element of rent for the occupancy of specific premises referred to in paragraph a(2) above and also some element of a business franchise fee referred to in paragraph a(3) above. The latter is justified on the basis that, having invested substantial public funds in the capital airport plant, the public owner has thereby created a business opportunity for aviation services which otherwise would not exist.

c. Operator/Manager Agreements. Commercial airport operator agreements become still more complex when the owner, for various reasons, chooses to rely on one of his commercial licensees or tenants to carry out his own obligations with respect to the airport. The airport owner may contract with a commercial tenant to perform all or part of the airfield maintenance. He may delegate to the tenant the responsibility to collect landing fees, publish NOTAMS on his behalf, or even assign to him the full authority of an airport manager. It is highly recommended that the FBO responsibilities and obligations be in a separate agreement from the airport managerial responsibilities.

When all of these relationships are incorporated in a simple agreement granting specified rights for a specified consideration, it becomes difficult to evaluate. For example, an airport owner may grant general FBO rights to an individual for $100 per month. An analysis, in the light of this discussion, however, may reveal that the true intent of the agreement was that the lessee also would perform certain maintenance worth $200 per month to the owner. The total consideration agreed to was $300 of which $100 is for rent for the building space occupied, $100 for landing fees and $100 for a franchise fee. After deduction of the $200 credit for maintenance performed, the monthly agreement was $100. From this illustration, it is apparent that the intended relationship is far more complex than that expressed.

6–3. REVIEW OF LEASES AND USE AGREEMENTS. The FAA should not solicit or retain copies of all lease agreements. However, a compliance inspection should include sufficient discussion and review of the relationships existing at the airport to understand the rights granted for the use of public airport property. Where there is any doubt as to the nature of the arrangements, a review of the actual documents (contracts, leases, permits, etc.) should be made.

a. **Scope of FAA Interest in Leases.**

(1) As part of spot surveillance and compliance inspections, or when requested by an airport owner, FAA will review lease agreements. This review will be for the following purposes:

(2) To determine whether such arrangements have the effect of granting or denying rights to use airport facilities contrary to the requirements of law and applicable obligations to the Government. The review is also intended to ensure that the airport owner does not surrender by contract his capability to sufficiently control the airport in order to carry out his commitments to the Government.

(3) To identify any terms and conditions of the arrangement which could prevent the realization of the full benefits for which the airport was constructed, or which could develop into a restriction on the owner's ability to meet his obligations to the Government.

b. **Form of Lease or Agreement.** The type of document or written instrument used to grant airport privileges is the sole responsibility of the airport owner. In reviewing such documents, FAA personnel should concentrate on determining the nature of the arrangements established.

c. **Term of Agreement.**

(1) FMV for any lease of nonaeronautical revenue production airport property transferred to under the Surplus Property Act of 1944, as amended, must be established. Appraisals as discussed in paragraph 7–8d(3) is one acceptable method of establishing FMV. However, the FMV requirement does not apply when the land involved was owned in fee by the airport owner, leased to the Federal Government for a term of years and then included with other properties and improvements conveyed back to the owner in a surplus property deed. In this case, there is no requirement that the owner account for the income from this particular property. However, FAA should encourage the use of the money for airport operation and development.

(2) Except for reverter or recapture rights which may be reserved to the Government and as discribed in subparagraph (4) below, there is normally no compliance requirement restricting the duration or term of an agreement. Where the licensee or tenant is expected to make a substantial investment in property improvements or installed equipment, they will usually seek an agreement for a term of years long enough to amortize the investment. From the airport owner's point of view, the stability of a long–term agreement with key service activities is highly desirable.

(3) All leases for a term of more than 5 years should contain provisions for periodic readjustment of rates.

(4) Terminal side concession agreements (food, convenience or ground transportation) must conform to Department of Transportation OST regulation if the lessee is a minority. (See AC 150/5100–15.)

d. **Notification to Airport Owner.** Since the FAA interest in a lease is confined to its impact on the airport owner's obligations to the Government, the acceptability of the lease for such purposes should in no way be construed as an endorsement of the entire document. When a lease has been referred by an airport owner, reviewed in the appropriate FAA office, and found not to violate any compliance obligation, the owner should be advised that the FAA has no objection to it. The word "approved" should not be used for this purpose.

6–4. AGREEMENTS COVERING SERVICES TO THE PUBLIC. In reviewing airport leases and agreements, special consideration must be given to those arrangements conveying the right to offer services and commodities to the public. The FAA is concerned that the airport owner maintain a fee and rental structure for facilities and services that will make the airport as self–sustaining as possible. The airport owner is obligated to the Government to ensure that the facilities of the airport are made available to the public on fair and reasonable terms without unjust discrimination. Any lease or agreement granting the right to serve the public on the premises of an airport so obligated should be subordinate to the authority of the owner to establish sufficient control over the operation to guarantee that patrons will be treated fairly. This applies not only to the purveyors of aeronautical services but to restaurants, shops, parking lots, ground transportation, and any establishment retaining commodities and/or services to the public.

a. **Nonaeronautical Service to the Public.** The lease of premises or an agreement granting rights to offer nonaeronautical services to the public need not incorporate specific language prohibiting unfair practices other than those Civil Rights assurances as outlined in AC 150/5100–15.

b. **Aeronautical Services to the Public.** At airports subject to airport grant agreements, the standard project application requires that in any contractual arrangement to render to the public services or commodities essential to the operation of aircraft the sponsor will insert and enforce specific language as therein indicated. (It has previously been determined by the Chief Counsel that the transportation service offered by a scheduled air carrier is not subject to this provi-

sion) The failure to include the language required by the sponsor's assurances—when the agreement grants the right to offer services and commodities essential to flight operations—is a violation of the grant agreement. In the review of leases and agreements at airports subject to surplus airport property deeds or Section 16 and 23 deeds, the standard contractual language must be included.

6–5. USE AGREEMENTS INVOLVING AN ENTIRE AIRPORT.

a. Contracts to Perform Airport Maintenance or Administrative Functions. The conditions under which an airport owner may transfer compliance obligations to another qualified party are covered in paragraph 4–2c. The delegation of maintenance and management responsibility is discussed in paragraphs 4–2c and 6–2c. The important point in such arrangements is that the airport owner may delegate or contract with an agent of its choice to perform any element of maintenance or operating supervision but—the owner—is in no way relieved of its own obligations to the Government. When the owner elects to rely upon one of the commercial operators or tenants of airport to carry out the maintenance and operating responsibilities it assumed from the Government, there is a potential conflict of interest. Any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the owner's control over the actions of its agent. It should preferably be in a contract separate from that which leases property or grants airfield use privileges.

b. Total Delegation of Airport Administration. In certain cases consideration may be given to entrusting the administration 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 the subject of a grant agreement or other source of obligation. These agreements should be reviewed carefully to ensure that the owners rights are protected.

c. Restrictions on Lease of Entire Airport. If it is contemplated that the management corporation may itself engage in one or more aeronautical activities such an arrangement must be carefully evaluated. The leasing of all available land or improvements suitable for aeronautical activity to one person will, under certain conditions, be construed as evidence of an intent to exclude others (Order 5190.1). Such evidence may be overcome—in a lease to a management corporation—if the substance of the following provisions is included:

(1) The lessee (second party, manager, etc.) agrees to operate the airport in accordance with the obligations of the lessor (owner) to the Federal Government under (insert here any existing grant agreements or Surplus Property Deeds outstanding at the time of the execution of the lease; or any outstanding Section 23 or Section 16 deeds, if the airport is not also subject to either a grant agreement or surplus property deed). In furtherance of this general covenant, but without limiting its general applicability, the lessee (second party, manager, etc.) specifically 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 discrimination; to provide space on the airport, to the extent available; and to grant rights and privileges for use of the landing area facilities of the airport to all qualified persons, firms and corporations desiring to conduct aeronautical operations on the airport.

(2) It is specifically understood and agreed that nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act.

(3) The lessor (owner) reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent the lessee from erecting, or permitting to be erected, any building or other structures on the airport which, in the opinion of the lessor, would limit the usefulness of the airport or constitute a hazard to aircraft.

(4) The lessor (owner) reserves the right to develop or improve the airport (landing area of the airport) as it sees fit, regardless of the desires or views of the lessee (second party, manager, etc.), and without interference or hindrance on the part of the lessee (second party, manager, etc.).

(5) This lease (agreement) shall be subordinate to the provisions of any existing or future agreement entered into between the lessor (owner) and the United States to obtain Federal aid for the improvement or operation and maintenance of the airport.

d. It should be made clear to all concerned that the FAA will at all times look to the airport owner for effecting such actions as may be required to conform to the owner's compliance obligations. A management corporation with a lease of the entire airport, or a tenant operator authorized to perform any of the owner's management responsibilities, shall be considered as resident agents of the airport owner and not as responsible principals.

6–6. AGREEMENTS GRANTING ACCESS TO LANDING AREA FROM ADJACENT PROPERTY (THROUGH–THE–FENCE OPERATOR). There are times when the owner of an airport will enter into an agreement which permits access to the public landing area by aircraft based on land adjacent to, but not a part of, the airport property. In some cases, special taxiways have been built for this purpose. This type of an arrangement has frequently been referred to as a "through–the–fence" operation even though the perimeter fence may be imaginary. In reviewing a lease or contract which proposes this type of arrangement, the following guidance should be followed:

a. Rights and Duties of Airport Owner. The 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 place an encumbrance upon the airport property unless the airport owner retains the legal right to, and in fact does, require the off–site property owner or occupant to conform in all respects to the requirements of any existing or proposed grant agreement.

b. Practical Considerations. The owner of an airport is entitled to seek recovery of initial and continuing costs of providing a public use landing area. The development of aeronautical enterprises on land uncontrolled by the owner of the public airport can result in a competitive advantage for the "through the fence" operator to the detriment of on airport operators. To equalize this imbalance the airport owner should obtain from any off–base enterprise a fair return for its use of the landing area.

c. Safety Considerations. Arrangements that permit aircraft to gain access to a public landing area from off–site properties complicate the control of vehicular and aircraft traffic. Special safety operational requirements may need to be incorporated in the "through–the–fence" agreement.

d. Agency Position. As a general principle, FAA will recommend that airport owners refrain from entering into any agreement which grants access to the public landing area by aircraft normally stored and serviced on adjacent property. Exceptions can be granted on a case–by–case basis where operating restrictions ensure safety and equitable compensation for use of the airport. Examples include:

(1) Where a bonafide airport tenant has already leased a site from the airport owner 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. In this case actual access will be gained through the area provided by the airport owner.

(2) Where an individual or corporation, actually residing or doing business on an adjacent tract of land, proposes to gain access to the landing area solely for aircraft use incidental to such residence or business without offering any aeronautical services to the public. This situation is commonly encountered where an industrial airpark is developed in conjunction with the airport.

e. Determinations. The existence of arrangements granting access to a public landing area from off–site locations contrary to FAA recommendations shall be reported to regional Airports divisions with a full statement of the circumstances. If the regional Airports division determines that the existence of such an agreement circumvents the attainment of the public benefit for which the airport was developed, the owner of the airport will be notified that the airport may be in violation of his agreement with the Government.

6–7. AIR CARRIER AGREEMENTS AND LEASES. Unless a complaint has been made, the FAA will not attempt to judge or evaluate the fairness of any rental rate or fee structure under consideration for air carriers. However, the rights and privileges granted by contract to air carriers as distinct from the rental rate or fee structure, may involve the compliance obligations of the airport owner. When discussing these agreements, particularly in connection with their impact on other aeronautical tenants, the following considerations should be borne in mind.

a. Use in Common of Aeronautical Facilities. While the actual rates for use of the landing area are a matter of negotiation, there should be no discrimination in use rates between air carrier and general aviation using aircraft of the same type and weight.

b. Discrimination Between Carriers. Where several air carriers serve the same airport they usually cooperate in developing a consolidated position with respect to negotiations with the airport owner. For this reason, compliance violations by the owner arising from preferential treatment of one carrier are rare. On occasion, however, small local service carriers have complained that the imposition of uniform user charges or landing fees equally applicable to long–haul and short–haul operators is inequitable. Such complaints usually arise when the level of fees has been increased concurrently with the expansion of runways and other airport facilities to accommodate larger aircraft not needed in the short–haul operation. It is the position of the FAA that the requirement for user fees, under a standard schedule uniformly applied to all users, does not violate the owner's obligation to make

the airport available on fair and reasonable terms without discrimination. However, there is no violation if the owner elects to offer each carrier the choice between two or more fee schedules designed to minimize the inequities of such a situation. For example, each carrier may be given the choice of paying a specific amount per 1,000 pounds per take-off weight or a specified percentage of ticket sales to enplaning passengers. (See paragraph 4-14 for additional information.)

6-8.-6-20. RESERVED.

SECTION 2. ENFORCEMENT.

This Section is reserved and will be issued separately for inclusion at a later date. Until then, continue to use the enforcement procedures outlined in Order 5190.6.

CHAPTER 7. RELEASE, MODIFICATION, REFORMATION OR AMENDMENT OF AIRPORT AGREEMENTS

SECTION 1. GENERAL GUIDANCE

7–1. AUTHORITY TO RELEASE, MODIFY, REFORM, OR AMEND.

a. The authority of the Administrator to release, modify, reform or amend all or part of any airport agreement and the legislative basis for such authority are discussed in Chapter 1, paragraph 5 of this Order.

b. The Administrator has delegated to regional Airports Division Managers full authority to take any action with respect to their functions and assigned responsibilities, subject only to the limitations set forth in Order 1100.5, FAA Organization–Regions and Centers, Chapter 2, Section 3.

7–2. GENERAL PRINCIPLES.

a. Within the specific authority conferred upon the Administrator by law, the FAA will, when requested, act to release, modify, reform or amend any airport agreement to the extent that such action will 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 a complete and total release which authorizes a subsequent disposal of obligated airport property.

b. Any property, when described as part of an airport in an agreement with the United States or defined by an ALP, is considered to be "dedicated" or obligated 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 release from the agreement may be granted in accordance with the guidance contained in this Chapter. The omission of an airport from the NPIAS is not to be construed as a determination by the FAA that such airport has ceased to be needed for present or future airport purposes.

c. A decision to release, modify, reform, or amend an airport agreement will be based on the guidelines outlined in paragraphs 7–37a and b below and on the specific factors pertinent to the type of agreement as detailed in the following sections of this Chapter. However, any release which has the effect of permitting the abandonment, sale, or disposal of a complete airport (whether or not such action contemplates the development of a replacement airport facility) must be referred to AAS–1 for ARP–1 approval (see Order 1100.5, Chapter 2, Section 3, paragraph 222h(15)).

7–3.–7–5. RESERVED.

SECTION 2. SURPLUS PROPERTY AGREEMENTS

7–6. GENERAL.

a. Basic and General Policies and Procedures. FAR Part 155 contains procedures which must be followed to release airport property from surplus property disposal restrictions contained in the conveyance instrument. Owners of surplus airport property should be advised to consult this regulation whenever changes in property use are being contemplated. Changes to surplus property instruments, consistent with the purpose of fostering and promoting the development, improvement, operation or maintenance of the airport are encouraged by the FAA.

b. Authorized Uses of Surplus Property. Section 13(g) of the Surplus Property Act of 1944 (as amended by P.L. 80–289) authorizes conveyance of surplus federal property for "airport purposes." Refer to paragraph 4–18 and Appendix 5 for a discussion of both aeronautical property (aviation use)and nonaviation property use for revenue production.

c. Property Identification. Very few older deeds of conveyance separately identify nonaviation revenue use property from that transferred for aviation use. The original application for the property and the FAA's (CAA) disposal report initially established these areas. They may now differ however, as the result of changed land use plans approved by the FAA pursuant to the authority of P.L. 81–311 (see paragraph 4–18e). For compliance purposes, it is important to verify changes subsequent to the initial conveyance that has been approved by the FAA.

d. Land Transferred Under Regulation 16, War Assets Administration. Prior to the amendment of the Surplus Property Act in 1947 by P.L. 80–289,

surplus Federal properties were conveyed for airport purposes under the procedures of WAA Regulation 16. The conveyance documents under this regulation vary in format but many of them stipulate that existing facilities may be used for compatible nonaviation purposes until such time as the FAA decides they are needed for an aviation purpose. The regulation and the conveyance documents are silent as to the income from such nonaviation use. Income from such property, including the net proceeds of a sale following release, must be applied to the development, improvement, maintenance, or operation of a public airport.

7–7. RELEASE FROM SPECIFIC CONDITIONS. The FAA will issue needed releases or corrections to effect the elimination of the restrictions which may have been repealed or modified by laws enacted subsequent to the Act, such as:

a. **Industrial Use Restrictions.** This restriction is contained in certain surplus property conveyances which prohibit the use of the property as an industrial plant, factory or similar facility. P.L. 81–311 repealed this prohibition.

b. **Reservation of Fissionable Material.** This reservation is contained in many surplus property agreements which reserve to the U.S. the right to explore for, mine, and extract fissionable material. Section 68 of the Atomic Energy Act of 1954, as amended, released and quitclaimed to the owner all such rights.

c. **Other Reserved Subsurface Interests.**

(1) **Minerals and Petroleum.** Some surplus property agreements reserve to the U.S. all subsurface minerals and petroleum other than fissionable materials. It has been determined that these reservations may not be released, conveyed or quitclaimed by the FAA under P.L. 81–311. Requests concerning these interests will be referred to the Federal agency controlling or having jurisdiction over them.

(2) **Residual Interest.** Routinely, in disposing of these reserved mineral rights to an approved applicant, the GSA imposes a prohibition against exploring for or extracting such minerals or petroleum in any way that would interfere with the operation and maintenance of the airport. Other Federal agencies would normally do the same. This has the effect of retaining for the Government a residual interest in the subsurface minerals which theoretically could be conveyed to the airport owner under P.L. 80–289. As a matter of policy, the FAA will not recommend to GSA or another Federal agency that the mineral rights reserved to the U.S. (in a surplus airport property deed) be transferred. In those cases where GSA or another Federal agency has already conveyed to other parties the mineral rights so conditioned, the FAA will not recommend conveyance of the Government's residual interest to the airport owner.

d. **National Emergency Use Provision (NEUP).**

(1) The FAA may grant a release of this provision which is often referred to as the recapture clause. However, concurrence of the DOD must be specifically requested and obtained by the FAA when the airport is listed in the current "Airports Required By Department of Defense for National Emergency Use," (see Chapter 13 of current edition of Order 5190.2, List of Public Airports Affected by Agreements with the Federal Government (RIS: AS 5190–1)).

(2) When requesting a release of the recapture clause, the airport listed in Chapter 13 of Order 5190.2 must provide FAA with five scaled drawings and two copies of other exhibits. The regional Airports office will forward the documentation required in paragraph 7–6a to AAS–300 along with four scaled drawings and one copy of the exhibits for processing to DOD.

(3) Upon receipt of the DOD concurrence, AAS–300 will forward the determination to the regional Airports office for release of the NEUP.

e. **Release of Reverter Clause.** Frequently, in order to promote private investment in airport facilities, the owners of surplus airports seek the removal of the provision giving the United States the option to revert title in the event of default. This is an important remedy intended to be reserved to the Government and will normally be released. Any such proposal shall be referred to AAS–300 for consideration.

f. **Release of Obligations for Property Not Received.** The FAA may release an airport owner of all inventory accountability obligations for specific items of property when it is determined that the items were not, in fact, received by the owner even though specified in the instrument of disposal.

7–8. RELEASE FOR SALE OR DISPOSAL.

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 clearly be shown that the sale of such property will benefit civil aviation.

(1) If any such property is no longer needed to directly support an airport purpose or activity (including the generation of revenue for the airport), it 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. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) which better serves the purpose for which the real property was initially conveyed. This objective is not met unless an amount equal to the net sale proceeds based on the current FMV of the property is realized as a consequence of the release and such amount is committed to airport purposes.

(2) In cases where an airport has a large amount of revenue production property that has remained undeveloped due to the lack of demand for this kind of property and where there appears to be no prospect for future development, FAA should fully evaluate the merits of either reversion or complete release for sale. This must be coordinated with AAS–300.

b. Sponsor Owned Land, Leased to Federal Government During WW II, and Deeded Back Via P.L. 80–289. The FMV requirement discussed in paragraph 7–8a(1) above does not apply when the release involves land owned in fee, leased to the Federal Government for a term of years and then included with other properties and improvements conveyed back to the owner in a surplus property deed. In this case, there is no requirement that the owner account for the net proceeds from the sale or disposal of this particular property. However, FAA should encourage the use of the money for airport development.

c. Purpose of Release.

(1) As indicated in paragraph 7–3b(2), the airport owner requesting a release of surplus airport land must identify and justify the reason for which the release is requested. One such justification 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; the need for which is concurred in by FAA. In approving a release on this basis, consideration will be given to the amount of funds already accumulated from prior airport revenues and the amount of land needed to be disposed of to adequately finance the development or improvement items proposed.

(2) FAA recognizes that in some instances, the conversion of unneeded airport land into a more productive asset may be justified even though no specific items of airport development or improvement are immediately required. This occurs at some airports, for instance, where land in excess of present and future aeronautical requirements does not and cannot generate adequate revenues for the airport from rentals and leases in its existing state. Frequently such land has a potential market value (if developed for specific nonaviation uses) far exceeding that indicated by its present rental value. As an example, a tract of undeveloped land at an airport may be capable of yielding only nominal income to the airport from agricultural or grazing leases. Because of its location, it might have a much greater value for compatible industrial development. The proceeds from the sale, if invested at current interest could yield considerably more than its annual rental income. Under these circumstances, a release and sale may be justified.

d. Monetary Consideration. A sale and disposal of airport property for less than its FMV is inconsistent with the intent of the statute and shall not be authorized except as discussed in paragraph b. above. See paragraph 7–9 for information on application of sale proceeds.

(1) In determining FMV for a proposed nonaviation use of surplus airport property, the consideration need not be monetary. The value of intangible benefits may be used as an offset against FMV in determining the monetary consideration to be received for the property. For example, conveyance of a property interest in a right–of–way over surplus airport land to a railroad or highway may be consistent with the intent of the law if the resulting track or roadway will directly benefit the airport or enhance its efficiency or utility to a degree commensurate with the value of the property involved. Where intangible benefits are included in the FMV determination, the airport owner must submit:

(a) a plan identifying the intangible benefits to be derived by the airport,

(b) the amount attributed to the intangible benefits, and

(c) the merit of its application as an offset against the FMV in arriving at the monetary consideration.

(d) A plan reflecting the current and future needs for AIP funding of projects. FAA will review the information and make a determination as to the reasonableness of the proposal.

(2) **Determining Land Values.** Subject to the conditions in (1) above, 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 obligation to preserve or maintain them exists. If they have been replaced under such circumstances, or if addition-

al improvements have been added without Federal financing, the value of such improvements need not be included for purposes of determining the financial commitment of a release granted under the guidance in this paragraph.

(3) **Appraisals.** With the exceptions noted in this subparagraph, a release authorizing the sale and disposal of airport land shall not be granted unless the FMV has been supported by at least one independent appraisal report determined to be acceptable by the FAA. Appraisals shall be made by noninterested and qualified real estate appraiser. If any appraiser is involved in negotiations for the purchase or sale of the property or if there is evidence of collaboration between appraisers, such appraisal reports are invalid and shall not be considered by FAA in determining the FMV of the land. The cost of obtaining appraisals shall be borne by the airport owner but may be considered as an offset in determining net proceeds (Appendix 5) realized from the sale. The requirement for an appraisal may be waived if the FAA determines that:

(a) The approximate fair market or salvage value of the property released is less than $25,000, or

(b) 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

(c) It would be in the public interest to require public advertising and sale to the highest responsible bidder in lieu of appraisals.

(4) FAA employees must be sensitive to local economic conditions in the airport's geographical area when they are reviewing FMV issues. The fluctuation in economic conditions can cause considerable variation in FMV at a given time and in a given location.

e. **Consent to Divert Excess Revenue from Surplus Property.** See discussion of Income Accountability under paragraph 4–20c and d.

7–9. APPLICATION OF PROCEEDS.

a. FAR Part 155.7(d) requires that any release of airport land to permit its sale or disposal shall be subject to a written commitment obligating the airport owner with respect to an amount equal to the net proceeds of a sale of the property at its current FMV. FAA shall not issue a release without this commitment.

Following a release by FAA based on such a commitment, the airport owner may discount the selling price or give the land away as a subsidy or inducement to attract industrial development or other purposes, provided they are compatible with the airport operations.

b. The net proceeds realized for the sale of surplus property, or the equivalent amount, must be placed in an identifiable interest bearing account to be used for the purposes listed in c. below. The interest and dividends can be used for the operation and maintenance of the aeronautical portion of the airport or, with the concurrence of FAA, the revenue producing property, if it can be clearly shown to enhance the revenue production capability of that property.

c. The obligated amount itself 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:

(1) Eligible items of airport development set forth in the current Airport Grant Program and reflected in the airport's Capital Improvement Program (CIP).

(2) Any aeronautical items of airport development ineligible under the grant program.

(3) Retirement of airport bonds which are secured by pledges of airport revenue, including repayment of loans from other Federal agencies for such development

(4) Development of common use facilities, utilities, and other improvements on dedicated revenue production property that clearly enhance the revenue production capabilities of the property.

d. All aeronautical improvements funded by proceeds from such sale will be accomplished in accordance with current applicable FAA design criteria or such State standards that have been approved by the FAA.

7–10. RELEASES INVOLVING PERSONAL PROPERTY, STRUCTURES OR FACILITIES.

a. **General Requirements.** Surplus airport property in these categories may be released from all inventory accountability (whether or not the airport at which it is located is included in Chapter 13 of the current edition of Order 5190.2) when it has been determined that such property:

(1) has outlived 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; or

(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. Utility Systems (Includes Railroad Utilities).

(1) Utility distribution systems may be released to permit demolition or other disposal when they have deteriorated beyond economical repair or are no longer needed for the airport. Also, where an airport owner is unable to maintain a utility system because of lack of adequately skilled personnel, financial ability, etc., it may be released from restrictions of any applicable surplus property instrument of disposal to permit conveyance of the system to a utility company for continued operation, provided the bill of sale includes the following provisions:

(a) Utility services will be supplied to all present and future occupants of the airport; and

(b) The Government shall have the option to lease or purchase the system under mutually acceptable terms upon military reactivation of the airport, and shall be granted right of entry and use of such system pending its acquisition from the utility company.

(2) In the event the airport or the utility system is subject to the NEUP and the airport is listed in Chapter 13 of the current Order 5190.2, no release of a utility system, whether to permit demolition or a sale to a utility company, shall be granted until the DOD has advised FAA in writing that it has no objection to such release.

7–11.–7–15. RESERVED.

SECTION 3. GRANT AGREEMENTS

7–16. GENERAL. This section covers the requirements and procedures to release, cancel or modify any of the sponsor's conditions or assurances as contained in a FAAP/ADAP/AIP grant agreement.

7–17. RELEASE FROM SPECIFIC CONDITIONS OR ASSURANCES.

a. Maintenance Obligation Release. A release may be granted to an airport owner to remove the obligation to maintain specific areas of an airport. (See paragraph 7–37c(5).)

b. Consent to Permit Interim Use. The FAA may consent to the interim use for nonaviation purposes of dedicated aeronautical property whether or not acquired with grant funds. Such consent or approval must be based upon 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. Consent to such use may be granted under the guidelines outlined in paragraph 7–37a.

c. Abandonment, Demolition or Conversion of Grant Funded Improvements, Other Than Land.

(1) Paragraph 2–3 of this Order points out that the sponsor/owner obligation under a FAAP/ADAP/AIP grant agreement remains in full force and effect throughout the useful life of the facilities improved under such FAAP/ADAP/AIP project, but in any event not to exceed the 20–year life of the grant agreement except for the privately–owned airport which requires that the useful life of the improvements will be at least 10 years. This does not apply to land purchased or reimbursed under the grant programs, which has no such 20–year limitation. The FAA has legally determined that the useful life of an airport or airport facility may be determined to have expired when it is no longer used or needed for the purpose for which it was developed, or if the physical useful life of the facility has expired.

(2) The physical useful life of such a facility extends only during the time it is serviceable and useable with ordinary day–to–day maintenance, and is not extended by reconstruction, rehabilitation or major repair of that facility. Under the foregoing guidelines, the determinations as to the expiration of the useful life and physical useful life of such facilities (see paragraph 2–3) is a responsibility of the regional Airports offices.

(3) Releases to permit abandonment, demolition or conversion to another compatible use of FAAP/ADAP/AIP developed or improved facilities shall be approved or granted provided the appropriate regional Airports office determines that:

(a) The grant agreement involved has expired, or

(b) the facility in question is no longer needed for the purpose for which it was developed under FAAP/ADAP/AIP, or

(c) the useful physical life of the facility in question has expired as above defined.

d. Release from Obligation to Furnish Rent-Free Space or Cost Free Land. A sponsor may be released from its obligation to furnish rent-free space when space or facilities have been constructed at Federal expense and are actually occupied in areas provided by the sponsor in accordance with section 11(5) of the Federal Airport Act. A release may also be granted from the obligation to furnish areas of land, water or estate therein or rights in buildings as provided by section 18a(6) of the Airport and Airway Development Act of 1970 and section 511(a)(7) of the Airport and Airway Improvement Act of 1982. However, prior to such a release, a determination should be made on the basis of all pertinent facts and circumstances that such area is not needed and will not be needed in the foreseeable future. In this regard, internal elements of the FAA and the National Oceanic and Atmospheric Administration must concur in the release. A release under either circumstance may be accomplished either unilaterally by the FAA waiving its rights or by a formal amendment to the grant agreement. See paragraph 4-23 of this Order.

7-18. TOTAL RELEASE TO PERMIT SALE AND DISPOSAL. All land described in a project application and shown on an Exhibit A constitutes the airport property obligated for compliance under the terms and covenants of a grant agreement. A sponsor is obligated to obtain FAA consent to delete any land so described and shown. FAA consent shall be granted only if it is determined that the property is not needed for present or foreseeable public airport purposes. When 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 disposition of net revenues from sale or disposal. However, in view of the ADAP/AIP requirement that airports become as financially self-sustaining as possible, the FAA should encourage the owner to use any net revenues for needed airport development and to consider an exchange of released property for needed property.

7-19. SALE OR OTHER DISPOSAL OF AIRPORT LAND ACQUIRED WITH FAAP/ADAP/AIP FUNDS.

a. Sponsors Not Receiving a Grant After December 30, 1987.

(1) Applicability. This paragraph is applicable to any request for release of part or all of an airport which would permit the sale at the current FMV or other disposal of any airport land acquired with FAAP/ADAP/AIP funds. It also applies to an AIP programming request which may commit the FAA to a subsequent release. A sponsor's request in either case must assure that:

(a) the Government shall be reimbursed (see subparagraph (2) below); or

(b) the total net proceeds will be reinvested in the airport, in a replacement airport, or in another operating public airport (see subparagraph (3) below).

(2) Reimbursement. The requirement for reimbursement shall apply only where there is no replacement or operating public airport owned or to be owned by the sponsor (see also paragraph 7-20). However, the sponsor may elect to reinvest the total amount due for reimbursement in any other public airport by a contract between the respective airport owners which has the written concurrence of the FAA. FAA concurrence in such a contract is contingent upon such funds being used for airport development specified in paragraph 7-9c at an airport subject to a grant agreement or equivalent obligation. Except where the applicable grant agreement specifically provides otherwise (a special condition dealing with land acquired for future development or noise), the amount to be reimbursed to the Government shall be a share of the net proceeds of a sale or disposal of the property at its current FMV based on the percentage used to compute the amount of Federal participation under the project(s) in which the land(s) was acquired.

(3) Reinvestment. Reinvestment of the total net proceeds (Federal and sponsor share) is required if the sponsor continues to own or control, or will own or control in part or in whole, a replacement or an operating public airport. Reinvestment shall be accomplished by a firm agreement to expend within 5 years or a timeframe satisfactory to the Administrator an amount equal to the total net proceeds from the sale or disposal of FAAP/ADAP/AIP acquired land for specified items of airport improvement in the order of priority established for releases of surplus airport property in paragraph 7-9c. Unlike surplus property, the purposes for which land acquisition is authorized under FAAP/ADAP/AIP projects do not include income production. If reinvestment cannot be accomplished within 5 years or if the net proceeds derived exceed the cost of needed airport development, reimbursement of the Federal prorata share of such excess as in (2) above will be required.

b. Sponsors Receiving a Grant After December 30, 1987.

(1) Land for Airport Purposes (Other than Noise Compatibility Purposes). Once a sponsor

enters into a grant after December 30, 1987, under the AAIA of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, it will dispose of land at FMV when no longer needed for airport purposes (see paragraph 4–17d). This applies to land purchased under FAAP, ADAP, as well as AIP. There will be retained or reserved any interest or right necessary to ensure that the land will only be used for purposes which are compatible with the noise levels generated by the airport. The portion of the proceeds which is proportionate to the Government's share of the cost of acquisition of such land is to be deposited in the Trust Fund.

(2) **Land for Noise Compatibility Purposes.** Once a sponsor enters into a grant after December 30, 1987, under the AAIA of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, it will dispose of land at FMV when the land is no longer needed for noise compatibility purposes. This applies to land purchased under FAAP, ADAP, or AIP (see paragraph 4–17e). There will be retained or reserved any interest or right necessary to ensure that the land will only be used for purposes which are compatible with the noise levels generated by the airport. The portion of the proceeds which is proportionate to the Government's share of the cost of acquisition of such land is to be deposited in the Trust Fund or may be reinvested in an approved noise compatibility project.

7–20. RELEASE OF ENTIRE AIRPORT.

a. Approval Authority. The concurrence of the Associate Administrator for Airports (ARP–1) is required before granting any release from the obligations of a grant agreement which would enable a sponsor to abandon or dispose of an entire airport for non-airport purposes. Each request to release an entire airport shall be considered by ARP–1 on a case–by–case basis without limitation to the guidelines contained herein. A copy of the sponsor's request, including exhibits and documents related thereto, and a copy of the regional summary statement (paragraph 7–6a) justifying the action, if recommended, shall be provided.

b. Replacement Airport. On receipt of a request to release an entire airport that is to be replaced by another new or existing airport, the applicable requirements of the Airport Improvement Program (AIP) for Authority, Program Policy, Eligibility, and Allowability Criteria, shall be considered in recommending appropriate action. In this situation, 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 toward the acquisition and development of better facilities at the new airport. If an airport which accommodates local civil aviation requirements, as well as or better than an existing FAAP/ADAP/AIP airport can be acquired or developed at a cost less than the present market value of federally–financed land and facilities, a complete release can be granted on the old airport provided that the continuing grant obligations are transferred to the new airport. The release would become effective when the new airport is placed in operation. Development costs for the new airport in excess of the value of existing land and facilities at the old airport would be eligible for AIP assistance. In these circumstances, the availability for public–use of a new and better airport is the basis for determining that the old one is no longer needed and that its useful life having expired, the original grant agreement is terminated.

c. Nineteen Year Disposals. Except for ADAP and AIP grants for land, most grant agreements expire 20 years after their execution. Following the expiration of such an agreement, provided no other obligations to the Federal Government are involved, the owner may legally abandon and dispose of the airport. Frequently, due to changes in land use or values, an airport sponsor may look forward to an imminent termination of a grant agreement as an opportunity to realize substantial funds from disposal of the airport. In some instances, the sponsor may seek a release on the old airport before the grant agreement has expired with the intent to use the proceeds of the disposal as matching funds for AIP development of a replacement airport. Obviously, such an arrangement is contrary to the trade–in concept of existing policies. Where such a proposal is made, or where the sponsor is apparently deferring needed airport development or replacement in the hope of realizing a substantial windfall when the old grant agreement expires, he should immediately be notified that such actions may preclude Federal assistance for the development of a replacement airport. AIP funds are not assured for the development of a new airport when the community willfully disposes of an adequate functioning public airport upon the termination of its legal obligation to maintain it.

7–21.–7–25. RESERVED.

SECTION 4. AMENDMENT OR MODIFICATION OF SECTIONS 16, 23, AND 516

7–26. GENERAL. Release of the conditions in an instrument of conveyance of any lands pursuant to Section 16, Section 23, or Section 516 (refer to the application FARs as discussed in paragraph 7–27b.) is not authorized. They may, however, with the approval of the controlling Federal agency, be amended or modified to provide for a greater or lesser property interest as dictated by the needs of the airport; e.g., change from easement, right–of–way or permit to fee, or vice versa.

7–27. PROCEDURES.

a. An application with supporting exhibits for amendment or modification of a property interest previously conveyed shall be filed with the FAA. The application should reference the original application and the conveyance instrument.

b. FAR Part 153 (FAAP) shall be followed in requesting changes to Section 16 instruments. FAR Part 154 (ADAP) governs Section 23 conveyances and shall also be followed in making original applications for acquisition under Section 516 as well as when requesting an amendment or modification. (See Order 5170.1, Transfer of Federal Lands, Section 23, of Airport and Airway Development Act of 1970.))

7–28.–7–35. RESERVED

SECTION 5. PROCEDURES

7–36. DOCUMENTATION.

a. **General Procedures.** FAA release, modification, reformation, or amendment of an airport agreement represents a material alteration of an important contractual relationship that is governed by statutes and which affects the measure of benefits to the public from the operation of a civil airport. All actions must be fully documented. The Airports field office compliance files shall contain the following:

(1) The airport owner's justification for release, modification, reformation, or amendment;

(2) FAA's determination on the request; and

(3) The endorsement of the FAA official authorized to grant the request.

b. **Owner Requests.** Any release, modification, reformation or amendment of an airport agreement must be based on a written request signed by a duly authorized official of the airport owner.

(1) **Number of Copies.** Normally, the original request and supporting material should be submitted to the Airports District/Field Office by the airport owner. Additional copies of the request and supporting material may be required if action is required by the regional office or headquarters. In addition, where DOD concurrence is required, the additional material outlined in paragraph 7–7d will be provided.

(2) **Content of Written Owner Requests.** Although no special form is required, an owner's request must be specific and indicate, as applicable, the following:

(a) What agreement(s) with the United States are involved.

(b) What is requested.

(c) Why the release, modification, reformation or amendment is requested.

(d) What facts and circumstances justify the request.

(e) What requirements of state or local law should be provided for in the language of an FAA issued document if the request is consented to or granted.

(f) What property or facilities are involved.

(g) How the property was acquired or obtained by the airport owner.

(h) What is the present condition and what present use is made of any property or facilities involved.

(i) What use or disposition will be made of the property or facilities.

(j) What is the FMV of the property or facilities.

(k) What proceeds are expected from the use or disposition of the property and what will be done with any net revenues derived.

(l) A comparison of the relative advantage or benefit to the airport from sale or other disposition as opposed to retention for rental income.

(m) A plan identifying the intangible benefits, if any, accruing to the airport, the amount attributed to the intangible benefits and the merit of their application as an offset against the FMV of the property to be released. The plan should also include as a minimum:

(i) a statement of the airport's source and application of funds for the preceding 3 years,

(ii) a statement of future sources and application of funds needed for the continued operation and maintenance of the airport,

(iii) a statement of the financial capability and intent to accomplish the airport development included in the current NPIAS, and

(iv) must be shown to be in accordance with the ALP.

(3) Exhibits to be Furnished by Owner.

(a) Each copy of the request will have attached two scaled drawings (see (4) below) showing all airport property and airport facilities which are currently obligated for airport purposes by agreements with the United States. Other exhibits supporting or justifying the request, such as maps, photographs, plans and appraisal reports, shall be attached, as appropriate.

(b) Height data computations (see paragraph 7–37c(3)(c) using a fixed height.

(c) If the release action requested would permit a sale or other disposition of airport property, see paragraphs 7–9 and 7–19.

(4) Scaled Drawing. The scaled drawing required to support a request for release need not fully meet the criteria for ALP's, although this is desirable. The drawing serves to graphically explain or depict the effect on the airport if the requested release is granted. It is not the document by which the release is granted and no FAA approval shall be given to any drawing inconsistent with the airport owner's current obligations until a release has been executed in accordance with the guidance contained in this Chapter.

7–37. FAA ACTION ON OWNER REQUESTS.

a. Evaluation. When a request has been received, supported by the appropriate documentation and exhibits, an evaluation of the total effect of the owner's proposal shall be made. This evaluation shall be based on the general policy stated in paragraph 7–2 and shall include consideration of pertinent factors such as:

(1) The past and present owner's compliance record under all its airport agreements and its actions to make available a safe and usable airport for maximum aeronautical use by the public; and evidence that the owner has taken or agreed to take all actions possible to correct noncompliance situations at the airport, if applicable.

(2) The reasonableness and practicality of the owner's request in terms of aeronautical facilities which are needed and the priority of the need.

(3) The net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation.

(4) Consistency with the guidelines for specific types of releases as discussed in this Chapter.

b. Determinations. The FAA will not release more than that which the owner requests. The decision to grant or deny the request, based on the above evaluation factors, must be guided by the statutes, regulations and policy applicable to the specific types of agreements involved. In addition, it must be determined if an environmental assessment is required under Order 5050.4, Airport Environmental Handbook. Further, it must be determined that either:

(1) The public purpose for which a term, condition, or covenant of an agreement, or the agreement itself, was intended to serve is no longer applicable, or

(2) 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 obligated, and such action is necessary to protect or advance the interest of the United States in civil aviation, or

(3) The release, modification, reformation or amendment will obligate the airport owner 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, or

(4) The release, modification, reformation or amendment will conform the rights and obligations of the owner to the statutes of the United States and the intent of the Congress consistent with applicable law.

c. Completion of Action on Owner's Request. Upon completion of the review, and following concurrence of the regional office, Washington headquarters, or the DOD, as applicable, the Airports field office will advise the airport owner that its request is granted

or denied. Any special conditions, qualifications or restrictions to an approval shall be included.

(1) FAA Approval Action. If the request or an acceptable modification of the request is approved, the necessary instruments or documents will be prepared conforming to the extent possible with the guidance of the Chief Counsel memorandum to all regional counsels dated April 30, 1965 (Appendix 4 to this Order). Parallel action will be initiated to amend all related FAA documents, e.g., NPIAS, ALP, land use plans, airport property map, FAA Form 5010, as required, to achieve consistency with the release. The owner shall thereafter provide the FAA with any acknowledgment (such as a notary) or copies of executed instruments or documents as required for FAA record purposes. The approval procedure may include a FAA letter of intent to approve the request, if so, see paragraph c(4) below.

(2) Content of Release Document. The formal release by FAA shall cite the agreements thereby affected and should identify specific areas or facilities involved. The owner shall be notified of the binding effect of the revised obligations.

(3) Content of Release Document for Sale or Disposal. A total release permitting sale or disposal of obligated land must specify that the owner is obligated to:

(a) Include in any deed, lease or other conveyance of a property interest to others, a reservation assuring the public right to fly aircraft over the land released, and to cause inherent aircraft noise over the land released. The following language shall be used:

"There is hereby reserved to the (grantor) (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 (conveyed)(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 name) Airport."

(b) Include in any deed, lease or other conveyance of a property interest to others a restriction:

(i) Prohibiting the erection of structures or growth of natural objects that would constitute an obstruction to air navigation, and

(ii) Prohibiting 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 interfere with air navigation and to communication facilities serving the airport, and

(iii) Incorporating the Sponsors' Title VI Civil Rights Assurance obligations into all leases and other conveyances except fee title deeds. Fee title deeds transfer ownership of the property and it no longer serves an airport purpose. Accordingly, the Sponsors' Civil Rights Assurance obligations are not required to be transferred to the new owner. (DOT General Counsel and Acting Departmental Director of Civil Rights' letter of August 21, 1971, to The Secretary regarding Standard DOT Title VI Assurances.)

(c) These restrictions shall set forth in the instrument of release the applicable height limits above which no structure or growth should be permitted. These limits shall be computed according to the currently effective FAA criteria as applied to the airport. Advisory circulars, design manuals, FAR's, or other such documents shall not be incorporated by reference in the instruments or releases issued by the FAA. Neither should this be done in leases, deeds, or conveyances of property interests used by the airport owner. The specification of actual height limits will avoid a burdensome or confusing encumbrance on the title to the land. When the applicable height limits cannot be computed from available data at the Airports field office, the airport owner shall be required to supply any additional data needed to specify the correct computations.

(4) FAA Consent by Letter of Intent to Release.

(a) Basis for Use.

(i) Release and disposal of facilities developed through Federal assistance is often necessary to finance replacement facilities. Airport owners may have to assure the availability of the old facilities for dispcsal in order to obtain responsive proposals to acquire or encumber the existing facilities. The owner may therefore request a letter of intent as to such release. Such a letter may be requested merely to permit the owner to determine the market demand for portions of the available surplus revenue producing airport property.

(ii) The FAA may issue such a Letter of Intent (LOI) to release appropriately conditioned and specifically contingent upon adequate replacement facilities being developed and becoming operable.

(b) Content. An LOI issued by the FAA represents a binding commitment and an advance decision to release the property when specific conditions have been accomplished. The use of such a letter is not encouraged. It should only be used when all of the required conditions (as pertinent to the type of release sought as outlined in this Chapter) have been met or

are specifically made a condition of the pledge contained in the LOI. In addition, such a letter of intent should cite any specific understandings reached on anticipated problems in achieving the substitution of airport properties (e.g., who pays for relocation of various facilities and equipment, the cost of abating existing leases). A reasonable time limit on the commitment to release should be specified in the letter of intent.

(5) **Release of Maintenance Obligation.** A release may be granted to relieve an airport owner from a continuing obligation to maintain an improvement to airport property when the improvement is no longer needed for civil aviation requirements, regardless of its existing condition. Such a release:

(a) Does not constitute a release of the land from the other applicable terms and conditions or covenants of the applicable compliance agreements;

(b) Must be conditioned on an agreement to discontinue use when it becomes unsafe for aeronautical purposes.

CHAPTER 8. REVERSION OF AIRPORT PROPERTY – REVESTMENT OF TITLE IN THE UNITED STATES

SECTION 1. GENERAL GUIDANCE

8–1. GENERAL. This Chapter furnishes FAA program guidance for use in effecting the reversion of airport property to the United States. This process is ordinarily the last resort when a grantee of Federal property for airport purposes continues in default. All other proper and available remedies to correct a default shall be explored prior to exercising the right to revert airport property. Contents of this Chapter reflects information obtained from the Federal agencies that represent four major sources of Federal property for public airport purposes; namely, General Services Administration (GSA), United States Department of Agriculture (USDA), Department of Interior's Bureau of Land Management (BLM), and DOD.

8–2. RIGHT TO REVERT. The right to revert airport property and revest title in the United States must be specified in an instrument of conveyance from the Federal Government. This right extends only to the title, right of possession, or other rights vested in the United States at the time the property described in the instrument of conveyance was transferred to a grantee. The right may be exercised only at the option of the United States, with or without the cooperation of a grantee, against all or part of the property in question.

8–3. AUTHORITY TO EXERCISE REVERTER. The statutory authority of the FAA Administrator to exercise the option of the United States to revert property conveyed by the Government for public airport purposes has been delegated pursuant to Order 1100.3. Each revestment of title to airport property is controlled by the instrument of conveyance, applicable laws, Federal regulations, and orders.

8–4. INSTRUMENTS OF CONVEYANCE INVOLVED. Instruments of conveyance that typically include a right to revert airport property and to revest title in the United States are issued under authority of one or more of the following:

a. Section 516, Airport and Airway Improvement Act of 1982 (P.L. 97–248, September 3, 1982).

b. Section 23, Airport and Airway Development Act of 1970 (P.L. 91–258, May 21, 1970) (84 STAT 219 and following).

c. Section 16, Federal Airport Act of 1946, as amended (49 U.S.C. 1115).

d. Section 13(g), Surplus Property Act of 1944, as amended (50 U.S.C. app 1622(g), specifically P.L. 80–289 and P.L. 81–311).

e. Section 303(c), Federal Aviation Act of 1958, as amended (49 U.S.C. 1344(c)). Also the precedent Civil Aeronautics Act of 1938, as amended.

f. Special Congressional Legislation. Section 35 of the Alaska Omnibus Act (73 STAT 149) or other enabling Acts authorizing conveyances of Federal property to non–Federal public agencies for public airport purposes.

8–5. CONSTRUCTIVE SEVERANCE. There are circumstances when only part of airport land subject to reverter is not used in accordance with the statutes and deed. In this event, consideration should be given to reverting title to only that property where misuse or nonuse comprises of default; however, Chief Counsel should be obtained before proposing measures of this type.

8–6. FORFEITURE BY VOLUNTARY RECONVEYANCE. Title to airport property may be revested in the United States by a voluntary reconveyance by a grantee. FAA prefers this method and it is usually in the best interest of all parties. Sometimes a grantee may be unwilling or legally unable to voluntarily reconvey title. However, once the FAA makes the determination to exercise the Government's option to revert airport property there is no alternative but to act to revest title in the United States. Nonetheless, make every effort to secure the cooperation of the grantee to prevent legal and administrative complications. As an example, a grantee for good and sufficient reasons may want to be served with a notice of intent to revert property or notice of reverter (see paragraphs 8–22 and 8–25) before executing a voluntary quitclaim deed or instrument of reconveyance in acknowledgment of receipt thereof.

8–7. TRANSFER OF TITLE BY GRANTEE. In lieu of a reverter action, the FAA may concur in an assignment or transfer of title to the property in question from the grantee in default to a willing non–Federal public agency eligible under the current program. The FAA must determine that the assignee is capable of fulfilling all the covenants of the instrument involved and that the transfer of title under these circumstances is essential to the continued operation, mainte-

nance, and development of a public airport and in the interests of the United States in civil aviation. The Federal agency which originally conveyed the property shall be provided a copy of the instrument of such conveyance for record purposes.

8–8. PIECEMEAL REVERSIONS. The Government's right of reversion for portions of airport property that are unused or undeveloped, or improperly used, should not be disregarded.

8–9. EFFECT OF OUTSTANDING LEASES OF AIRPORT PROPERTY.

a. Any grantee lease of airport property that is subject to one of the instruments of conveyance from the Government, referred to in paragraph 8–4 above, is subordinate and subject to that instrument.

b. It should be noted, however, that in reviewing a lease or use of surplus airport property including a nonaviation revenue producing activity consistent with the objectives of the initial deed of conveyance FAA may assure the grantee/owner and the prospective lessee, in writing, that the lease will be honored. For further details see Chapter 4, paragraph 4–18h, of this Order.

8–10. LEGAL PROCEEDINGS TO EFFECT REVERSION. Any legal proceedings to effect involuntary reversion in the event of refusal or resistance on the part of a grantee shall be the responsibility of the Department of Justice with coordination with the Chief Counsel.

8–11. CONTACT WITH THE REVERSIONER FEDERAL AGENCY. The issuing Federal agency, or successor, that issued the instrument of conveyance has a right to receive the Government's estate in reversion. Prior to advising the grantee Federal agency will be fully coordinated with in writing outlining FAA determination of default by providing a copy of the notice of intent to revert property.

8–12. CONTACT WITH THE GENERAL SERVICES ADMINISTRATION (GSA). If the reversioner Federal agency is other than GSA or FAA and declines to accept control and jurisdiction upon revestment of title, the GSA will automatically become the reversioner agent to the Government unless FAA is involved as indicated below. The FAA must then advise GSA of the impending reversion to the United States and fully coordinate revestment of title procedures consistent with supplementary guidance and procedures from the GSA.

8–13. FAA AS REVERSIONER FEDERAL AGENCY. Where FAA is the reversioner agent of the Government such reversions of airport property will be handled by the regional Acquisitions and Logistics Division. They shall administer the procedures for this action under applicable regulations.

8–14. REPOSSESSION. In order for a reversion to take place, there must be a physical taking of property to effect possession and a constructive occupancy through posting. FAA should request sufficient signs from the reversioner Federal agency for posting upon the property by the FAA following recording of the notice of reverter to inform the public that it is U.S. Government property. (See paragraphs 8–27 and 8–28.)

8–15.–8–20. RESERVED.

SECTION 2. GENERAL PROCEDURES

8–21. DETERMINATION OF DEFAULT. To revert property conveyed for public airport purposes and revest title in the United States, the FAA shall determine that a grantee is in default under the covenants of the instrument of conveyance. To establish a default, the procedures outlined in paragraph 8–10 must be followed.

8–22. NOTICE OF INTENT TO REVERT PROPERTY. This notice is a formal style letter that informs a grantee of an FAA declaration of default and decision to revert title to property under the covenants of an instrument of conveyance. Send notice to the grantee (information copy to grantor agency) by certified or registered mail, return receipt requested. The notice shall include:

a. The prior notice of noncompliance status.

b. The failure of the grantee to correct the deficiencies which are the basis for noncompliance.

c. The resulting default based on the instrument of conveyance involved.

d. The identity of the property to be reverted to the United States.

e. The additional time being allowed for the grantee to cure the default, usually 60 days. The FAA shall define the basis to cure the default. The grantee shall be advised to promptly notify the FAA if it does not intend to act to cure the default and thereby waive the time allowed to cure the default.

f. The minimum requirements should be established for curing the default and retain the property.

g. It is the policy of the FAA to cooperate with the grantee to the extent reasonable to resolve the matter expeditiously and in the interest of the United States in civil aviation. Failure to resolve the matter in a timely and efficient manner will require the FAA to issue a notice of reverter and revest title to the property involved in the Federal Government.

h. Any other relevant facts bearing on the default or potential remedies.

8–23. VOLUNTARY RECONVEYANCE TO CORRECT A DEFAULT. Grantees determined to be in default shall be given the opportunity to voluntarily reconvey the property in question to the United States. Where only part of the real property described in the instrument is involved, the FAA shall coordinate with the reversioner Federal agency and supplement the general guidance and procedures for the revestment of good title in the United States. Each voluntary reconveyance shall require the following:

a. A resolution of the governing body 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 recite the reason for reconveyance (e.g., not developed, ceased to be used, not needed).

b. An instrument of reconveyance that substantially conforms to a format suggested by the cognizant FAA counsel considering Federal, state and local requirements.

c. A legal opinion by grantee's attorney which should recite:

(1) The grantee's legal authority to reconvey the property to the United States.

(2) The status and validity of title reconveyed to the United States covering the period from the time of acquisition from the Federal Government for public airport purposes and the inclusion of outstanding encumbrances or interests in the title to the property reconveyed must be cited together with the legal and administrative means considered necessary to achieve title status the same as originally conveyed by the Government to the grantee.

(3) As an alternative to c(1)&(2), the Attorney General of the state may render such opinion, if acceptable to the reversioner Federal agency or the Attorney General of the United States.

d. Prepare a Certificate of Inspection and Possession as shown in Appendix 2.

8–24. VOLUNTARY RECONVEYANCE DOCUMENTATION. FAA shall submit the necessary documents to the cognizant official of the reversioner Federal agency. Certified or conformed copies required by the reversioner Federal agency shall be obtained by FAA from the grantee.

8–25. NOTICE OF REVERTER OF PROPERTY AND REVESTMENT OF TITLE IN THE UNITED STATES. This notice is ordinarily prepared under the direction of the cognizant FAA counsel unless otherwise determined by the Regional Airports Division Manager. The basic elements of this notice are as follows:

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. Legal description of the property conveyed and that part which is reverted to the United States.

d. Statement that the property was conveyed subject to an express provision prescribing for its reversion under certain circumstances, and set forth the reverter clause.

e. Statement that the FAA has determined that the property in question is reverted to the United States for specific reasons consistent with the reverter clause and the specific default of the grantee, and set forth any clause in the instrument of conveyance relevant to the default.

f. Statement that the property interest to which the United States has reverter rights is revested in the United States.

g. Statement identifying the reversioner Federal agency.

h. Reference to the notice of intent to revert property.

8–26. RECORDING NOTICE OF REVERTER OF PROPERTY AND REVESTMENT OF TITLE IN THE UNITED STATES. After execution by the authorized FAA official, the original executed copy of the notice shall be duly recorded in the official records of the county in which the property is located. Thereupon, obtain from the Clerk of the Court or other custodian of the official county records the required number of certified copies or certificates of recordation. The number of copies required shall satisfy the needs of the Federal agencies involved. Concurrent with the recordation of the original copy of the notice, 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 thereto revested in the United States. This letter shall advise the grantee that the notice has been recorded in the official records of the country in which the property is located.

8–27. CERTIFICATE OF INSPECTION AND POSSESSION. The guidance and procedure set forth in paragraph 8–23d above shall be followed upon conclusion of the foregoing actions by the FAA to revert property and revest title in the United States.

8–28. POSTING OR MARKING OF PROPERTY. Concurrent with the physical inspection of the reverted property discussed in paragraph 8–27 above, it shall be posted or marked, as appropriate, to indicate that it is property of the United States. A representative of the reversioner Federal agency may assist the FAA representative if deemed appropriate or necessary by the reversioner Federal agency.

APPENDIX 1—INSTRUMENT OF RECONVEYANCE

"THIS INDENTURE, made the day of _____ , between _____ , _____ , a body politic and corporate under the laws of the _____ , as Party of the First Part, and the United States of America, as Party of the Second Part.

WHEREAS the Party of the Second Part, acting through the Secretary of the Interior, pursuant to the authority contained in Section 16 of the Federal Airport Act (60 Stat. 179; 49 U.S.C., 1115), did give and grant on or about _____ , a patent to the Party of the First Part, and to its successors in function, for the lands described hereinbelow, subject to certain reservations, exceptions, limitations and conditions, as set out therein, including the following express conditions:

That the property interest hereby conveyed shall automatically revert to the United States pursuant to Section 16 of the Federal Airport Act, supra, in the event that the lands in question are not developed, or cease to be used, for airport purposes, the _____ , for itself and assigns, agreeing by the acceptance of this patent or the rights granted herein, that a determination by the Administrator of the Federal Aviation Administration or his successor in function, that the lands are not developed, or have ceased to be used for airport purposes, shall be conclusive of these facts:

That the _____ , State of _____ , will develop an airport upon the tract herein demised;

That such airport will be operated as a public airport upon fair and reasonable terms and without unjust discrimination;

That any subsequent transfer of the property interest conveyed hereby will be made subject to all of the covenants, conditions and limitations contained in this instrument;

That in the event of a breach of any condition or covenant herein imposed, the Administrator of the Federal Aviation Administration or his successor in function may immediately enter and possess himself of title to the herein demised tract for and on behalf of the United States of America;

That in the event of a breach of any condition or covenant herein imposed the said State of , will, upon demand of the Administrator of the Federal Aviation Administration or his successor in function take such action including the prosecution of suit, or execute such instruments as may be necessary and required to evidence transfer of title to the herein demised tract to the United States of America.

WHEREAS the Administrator of the Federal Aviation Administration has determined that the property interest conveyed has not been developed [has ceased to be used] for airport purposes;

NOW THEREFORE, WITNESSETH: That the Party of the First Part, for and in consideration of the premises and of its being hereby released of its obligation under said patent to [use the lands conveyed thereunder for airport purposes] [develop and oeprate a public airport on the lands conveyed thereunder] has remised, released and quitclaimed, and by these present does remise, release and quitclaim unto the Part of the Second Part, and its successors in interest and assigns forever, all its right, title and interest in said lands referred to in the first Whereas clause hereof, as heretofore conveyed to the Part of the First Part, under said patent, being also the right, title and interest in said lands which the Party of the First Part hereby warrants it does not hold therein, said lands being described as follows:

[Property Description]

TO HAVE AND TO HOLD the property transferred hereby, unto the Party of the Second Part, its successors in interest and assigns forever."

APPENDIX 2—CERTIFICATE OF INSPECTION AND POSSESSION

CERTIFICATE OF INSPECTION AND POSSESSION

Re: Date:

This is to certify that I, _____ , _____ , _____ _____ , _____ , _____, did on the day of _____ , make a physical inspection of the property known as _____ as described in a certain deed from the _____ , to the United States of America, dated _____ _____ .

I further certify that I found no tenants or persons claiming or exercising possessory rights on the property.

I found no visible evidence of outstanding easements and no evidence of recent improvements upon the properties which might form the basis of laborer's, material furnisher's or mechanic's liens.

I further certify that based upon my inspection and investigation, there are no adverse interests apparent in conflict with the title and ownership of the United States of America under the deed above referred to. The statements herein made are based upon an inspection of the property after reconveyance to the United States of America referred to.

APPENDIX 3—NOTICE OF REVERSION OF TITLE

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 term "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 e 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 part, 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 permises 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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On this _____ day of _____, 19___, before me _____, a Notary Public in and for the County of Los Angeles, State of California, personally appeared _____ known to me to be the Chief, Airports Division, Western 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 Federal Aviation Agency and the United States of America.

WITNESS my hand and official seal.

_____
Notary Public in and for the County
of Los Angeles, State of California

My Commission Expires:

_____

APPENDIX 4—FORM OF RELEASE DEED

SUBJECT: Form of Release Deed Date: April 30, 1965

FROM: General Counsel

TO: Director, Alaskan Region
Director, Central Region
Director, Eastern Region
Director, Pacific Region Attention: Regional Counsel
Director, Southern Region
Director, Southwest Region
Director, Western Region

As per our memorandum to you dated January 18, 1965, relative to the above, we have now received copies of various Forms of Release, particularly with respect to sale of a portion of an airport property, which are currently in use in the Regions, and we find that these forms are in substantial conformity to the requirements of Public Law 81–311.

In passing Public Law 81–311 Congress included a proviso that any such release authorized by that law may be granted on such conditions as the Administrator of the Federal Aviation Administration deems necessary to protect the interests of the United States in civil aviation. The question has been raised as to whether this proviso contemplated a reverter to the United States upon conveyance by the airport owner which would be in addition to the reverter provided for in Public Law 80–289 under which the Government was originally authorized to convey.

In our consideration and review of this question we have considered the policy and purposes of P.L. 81–311 as set forth in House Report No. 409 and Senate Report No. 609 dated April 7 and July 15, 1949, respectively, on H.R. 3851 which was enacted as P.L. 81–311. We have also considered the provisions of Handbook AS P 5190, Section 1, Chapter 6, which implements congressional policy in connection with such releases.

P.L. 80–289 provides for the conveyance by the United States under appropriate circumstances of real property held by the United States and it is out of such a conveyance that a right of reverter may be created as the United States is the grantor. The purpose of P.L. 81–311 is to unhamper restrictions "in such a way as would best serve the public interest of that public agency" which is the entity owning the airport (see page 4 Senate Report No. 690 dated July 15, 1949, or H.R. 3851, 81st Congress). This P.L. 81–311 contemplates that the Federal Government would utilize the power granted by that Act to remove by an Instrument of Release certain conditions contained in Instruments of Conveyance under P.L. 80–289 so as to unhamper the utility of real estate conveyed pursuant thereto.

While P.L. 81–311 provides that "* * * * any such release * * * * may be granted on, or may be subject to, such terms and conditions as the Administrator * * * * deems necessary to protect or advance the interests of the United States in civil aviation," there is nothing in the legislative history that would contemplate an effort on the part of the United States to obtain a further reverter out of property as to which the United States had previously conveyed all of its title. Therefore, an additional reverter could not have been contemplated because as a matter of law a reverter interest can only run to the grantor which, in the instance under consideration, is the airport owner.

While forms if literally followed often create problems, there does appear to be some benefit to be derived from a Form of Release Deed which can be used as a guide and be used to some extent for the purposes of uniformity. In cooperation with regional personnel a Form of Release Deed has been developed where a portion of an airport property can be sold under circumstances where it is no longer needed for the development, operation, or maintenance of the airport.

In line with the general comment that Forms will not serve all purposes, it should be noted that there may be instances where airport owners can justify a release when there is to be no conveyance of a portion of the land for nonairport use, but rather a leasing of such by the airport. In those exceptional cases a release may be made subject to the three desired conditions: (1) that the public should have a right of flight; (2) that no structure or object of natural growth shall be allowed above a certain height; and (3) that no incompatible use shall be made of the leased property. The airport owner in making any such lease should reserve unto itself, its successors and assigns for the use and benefit of the public the right of flight, and should require the lessee to agree for itself, its successors and assigns to both restrict the height of structures and to prevent incompatible use.

The Form of Release in connection with a sale of a portion of airport property as discussed above is enclosed for your guidance and possible use.

/s/ Martin Menter (for)
Nathaniel H. Goodrich

Enclosure

DEED OF RELEASE

This instrument, a Deed of Release, made by the United States of America, acting by and through (_____), Federal Aviation Administration, under and pursuant to the powers and authority contained in the provisions of Public Law 81–311 (63 Stat. 700), as amended, to the (Airport Owner), a body politic under the laws of the State of _____, Witnesseth

WHEREAS,

(Here follows the necessary recital of the facts and circumstances involved in each release, including descriptive reference to deed from United States to (Airport Owner) authorized by P.L. 80–289).

NOW, THEREFORE,

For and in consideration of the above–expressed recitals and of the benefits to accrue to the United States and to civil aviation, the United States of America, upon inclusion by the (Airport Owner) in the Instrument of Transfer conveying title to the hereinafter described real property of provisions as follows:

(1) That the (Airport Owner) reserves unto itself, 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 real property hereinafter described, 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 said airspace, and for use of said airspace for landing on, taking off from or operating on _____ Airport,

(2) That the Grantee expressly agrees for itself, its successors and assigns to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to a height of not more than _____ feet above sea level,

(3) That the Grantee expressly agrees for itself, its successors and assigns to prevent any use of the hereinafter described real property which would interfere with landing or taking off of aircraft at the _____ Airport, or otherwise constitute an airport hazard,

(4) (Here may be inserted other conditions that may appear to be necessary),

hereby releases the said real property from the conditions, reservations and restrictions as contained in the above–mentioned Instrument of Transfer from the United States of America to the (airport owner) dated _____, which real property is described as follows:

(Description)

By its acceptance of this Deed of Release the (airport owner) convenants and agrees for itself, its successors and assigns, to comply with and observe all of the conditions and limitations hereof, which are expressly limited to the above–described real property.

IN WITNESS WHEREOF the United States of America has caused this Deed of Release to be executed as of the _____ day of _____ 19____.

UNITED STATES OF AMERICA

By _____

Federal Aviation Administration

Accepted:
City of _____

By_____
Title

APPENDIX 5—DEFINITIONS

a. Aeronautical Activity – any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. For example:

(1) The following are aeronautical activities:

(a) Air taxi and charter operations.

(b) Scheduled or nonscheduled air carrier services.

(c) Pilot training.

(d) Aircraft rental and sightseeing.

(e) Aerial photography.

(f) Crop dusting.

(g) Aerial advertising and surveying.

(h) Aircraft sales and service.

(i) Aircraft storage.

(j) Sale of aviation petroleum products.

(k) Repair and maintenance of aircraft.

(l) Sale of aircraft parts.

(m) Parachute activies

(n) Ultralight activies

(2) The following are not aeronautical activities: ground transportation (taxis, car rentals, limousines); restaurants; in–flight food catering; barber shops; and auto parking lots.

b. Airport – an area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended of use, for airport buildings or other airport facilities or right–of–way, together with all airport buildings and facilities located thereon; and includes any heliport.

c. 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, which obstructs the airspace required for the flight in landing or take off at such airport or is otherwise hazardous to such landing or taking off of aircraft.

d. Airport Layout Plan (ALP) – shows the orientation and location of key facilities, such as runways and navigational aids, must be planned with consideration for approach zones, prevailing winds, airspace utilization, 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.

e. 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 landing area. 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 which are complementary to flight activity such as convenience concessions serving the public including, but not limited to shelter, ground transportation, food and personal services.

f. **Capital Improvement Program** (CIP) – consists of the 5–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 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/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.

g. **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. For all practical purposes the adverse effect of flight operations on adjacent land is attributable to noise and vibration (residential, schools, etc.). Land usage which adversely affects flight operations is that which creates or contributes to a flight hazard. For example, any land use which might block the line of sight from the control tower to all parts of the landing area, inhibits pilot visibility (such as glaring lights, smoke, etc. produces electronic aberrations of navigational guidance systems, or which tends to attract birds must be considered an incompatible land usage. Similarly under certain circumstances an exposed garbage dump may not only attract birds but, if open incineration is regularly permitted, can create a smoke hazard.

h. **Concurrent Land Use** – means that the land 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.

i. **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 may 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.

j. **Fair Market Value (FMV)** – the highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys ith 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.

k. **Federal Agency** – means an agency of the Federal Government. This does not include the National Guard or the Air Guard when they are not mobilized by the United States into the active military.

l. **Federal Funds** – any airport which 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 which was acquired, developed or improved with Federal assistance must be considered as an airport upon which Federal funds have been expended.

m. **Fixed–Base Operator (FBO)** – an individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, ground and flight instructions, etc.

n. **Government Aircraft** – for purposes of the compliance program, Government aircraft is defined as aircraft owned or leased to the Federal Government.

o. **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 property conveyed to or acquired by the owner for aviation use.

p. **Landing Area** – any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and takeoff of 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).

q. **Long Term Lease** – a lease with a term of 5 years or more.

r. **Minimum Standards** – as used herein, this refers to the qualifications which may be established by an airport owner as the minimum requirements to be met as a condition for the right to conduct a commercial aeronautical activity on the airport.

s. **Net Proceeds** – net proceeds means the sum derived from a lease sale, salvage or other disposal of airport property at FMV after deductions or allowances have been made for intangible benefits and directly related expenses such as advertising, legal services, surveys, appraisals, taxes, commissions, title insurance, escrow services.

t. **Public Airport** – means any airport which is used or to be used for public purposes, under control of a public agency, the landing area of which is publicly–owned.

u. **Public–use Airport** – means (a) any public airport; (b) any privately–owned reliever airport; or (c) any privately–owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft, which is used or to be used for public purposes.

v. **Quit Claim Deed** – a deed that transfers the exact interest in real estate of one to another.

w. **Revenue Use of Nonaviation Use Real Property** – is all property described and dedicated in an airport agreement, except aviation use property as defined above. Such property may, with FAA consent, be used for nonaviation activities compatible with airport operations. At airports obligated under surplus property instruments of disposal (Regulation 16 or P.L. 80–289) the income from such property must be used to support the maintenance, operation, or development costs of the aeronautical property, since no other usage was contemplated by the statute.

x. **Tenant** – the term tenant shall mean a person or organization occupying space or property on an airport under a lease or other agreement.

APPENDIX 6—FORMAL COMPLIANCE INSPECTION

1. Prior to conducting a compliance inspection visit to the airport, the responsible Airports employee shall perform a preinspection office review. It should normally include the following element:

a. Preinspection Preparation. The first step is to review airport data available in the files. The inspector should review all conveyance documents and grant agreements in order to fully understand the specific commitments of the airport owner. This will include any continuing special conditions of grant agreements and the terms and conditions of release granted by the FAA. Previous inspection records should be reviewed to determine the owner's past performance in such matters as operation of the airport. physical maintenance and financial activities. This information will assist in determining whether the existing airport condition is static, improving or deteriorating. If it has not already been done, the inspector will want to draw up a list of leases in effect showing dates of renewal or expiration. The inspector should review recent correspondence with the owner to see what followup may be needed during the inspection. It will also be helpful to study the ALP, property use maps and land–use and operating plans, if any. A review of recent grant–funded projects will also be helpful. A list of known airport obstructions will be useful during the airport visit.

b. Compliance Worksheet. The standard worksheet, Figure A–1, was designed to be used as a simple, concise record of an airport's condition as observed during a "screening" inspection. It is not a statement of the owner's compliance status, but rather is a source of information for determining the compliance status. The actual finding shall be recorded in a format similar to Figure 1 in Chapter 5. The method to be used in collecting essential compliance data must be adapted to the situation. Thus, at larger airports with more complex factors to be considered or at those with a history of poor compliance performance, a screening inspection might be inappropriate. In such cases, a more comprehensive, locally prepared worksheet may be preferable. The choice of whether to use a worksheet at all is left to the discretion of field offices. If one is used, it usually is best not to fill it out in the owner's presence since it may cause unwarranted apprehension, thus restricting the flow of information. Regardless of the method use to collect and record data, adequate records must be maintained to clearly document what was reviewed and what was discovered.

c. Use of the Worksheet. While many of the items included in the worksheet (Figure A–1) are self–explanatory, the following guidance is helpful.

Item I: Entries here give the inspector's general impression as to whether the airport is developing, deteriorating, or stagnant. Observed changes which are undesirable or have an unsatisfactory general appearance should be explained on the back of the form.

Item II: Record here an evaluation of the physical condition of the airport's facilities in light of the owner's maintenance effort. This calls for a realistic appraisal of whether the facilities are being properly preserved. Any which are rated unsatisfactory should be explained on the back of the form. Other data sources, such as FAA Form 5010 inspections, other records, or FAR Part 139 inspection findings can be used to further substantiate findings.

Item III: Any individual approach slope which fails to meet applicable criteria should be identified on the back of the form, together with comments on whether the owner can be required to correct the condition. Similarly, any unmarked obstruction or incompatible activity on adjacent land should be explained. Determine if clear zone interests and zoning, if any, are adequate and if not, what future requirements should be considered.

Item IV: The operations plan and land–use plan listed here are discussed in paragraph 4–17. Although such plans are not a mandatory requirement, their use will facilitate effective administration of any airport. The inspector should review those that exist, together with airport regulations and minimum standards, to determine whether they can be considered satisfactory in light of the owner's obligations. If such plans are not satisfactory, the owner should be advised of necessary modifications.

Item V: Observe whether the owner is complying with exclusive rights policy (see Chapter 3) and with civil rights requirements of DOT Regulations, Part 21 (see paragraph 4–16).

Item VI: This item requires collection of data on new leases or agreements executed since the most recent past compliance inspection. Basic data to include on the back of the form are identity of lessee, date of execution, term of lease, and nature of occupancy or activity covered. If the screening inspector is not qualified to judge the acceptability of the lease or

agreement or if procedure calls for review by the regional Counsel, defer the entry in Item VI.B. until a decision can be outlined. Where a contract for airport management has been entered into, it must be reviewed to assure that the owner has retained enough control to enable it to meet its continuing obligations to the Government. Nonaviation leases of surplus airport property should be reviewed in connection with Item VIII.

Item VII: Requires the inspector to compare the ALP to existing and planned development of the airport and determine whether they are consistent. An explanation is necessary if the ALP is out of date or fails to depict accurately existing and planned facilities.

Item VIII: Calls for the inspector to review the uses being made of real surplus property and to determine whether such uses are proper. The inspector must determine if income is being realized from land conveyed for revenue production and if it is being applied to or reserved for airport purposes.

Item IX: Concerns a review of the current financial report, if available, as an indicator of the airport's financial condition. By observing recent physical improvements (or lack thereof), the inspector can verify unusual capital expenditures. By noting the presence of activities which normally would generate revenues, the inspector should be able to judge whether all income is being reflected in the financial records (reference paragraph 4–20). Conclusions should be entered in IX.B. The status of any funds committed as a condition of a release will be checked and noted in IX.C.

Item X: Refers primarily to any other specific commitments undertaken by the airport owner as a condition of an FAA action. Special conditions of grant agreements, although normally controlled by project payments, are included because they become compliance factors if they continue in effect beyond the closeout of the project.

2. SCOPE OF DETERMINATIONS. To accurately determine the compliance status of an airport, the responsible FAA official must have available comprehensive information on all compliance matters. In evaluating this data, the official will want to pay particular attention to the following:

a. Maintenance and Operation. If the public is to realize the operational benefit contemplated by the various Federal programs to develop and improve airport facilities, there must be an effective application of effort to assure the proper operation and maintenance of the airport. It is not enough merely to observe and record the physical condition of facilities as they appear at the time of the inspection. The FAA's responsibility requires consideration of the following:

(1) **Preservation.** Compare the actual conditions as noted with those of previous observations and records on the airport to determine whether the preventive maintenance measures being taken are effectively preserving the facility.

(2) **Maintenance Plan.** Look into plans and arrangements relied on by the airport owner to meet maintenance commitments. Do they fix responsibility? Do they adequately provide for cyclical preventive repairs on a realistic schedule? Does the airport owner actually have the capability to meet these obligations? Is there an annual budget or other evidence that adequate resources are being applied to maintenance?

(3) **Acceptable Level.** Develop with the owner mutually agreeable criteria for acceptable maintenance of the airport. Such an agreement may take into consideration the duration of the owner's obligation to the Government, any plans for extending the useful life of airport facilities, and the type of aeronautical usage to which the facility is subjected. For example, we might agree that to arrest the deterioration of a runway surface, a seal coat on only certain portions of the runway would be adequate for a stated period of time. This constitutes an acknowledgment by the FAA that during such a period accomplishment of the specified seal coating would be an acceptable level of maintenance. Any such understandings should be recorded in the compliance files.

(4) **Operating Procedures.** Check into procedures for operating the airport. Are they adequate and effective? What arrangements are in effect to turn on any field lighting equipment; mark and light temporary airfield hazards; issue NOTAMS when required, etc.? Is use of the airfield controlled by adequate ground safety regulations? Has the owner established operating rules including appropriate restrictions to protect airfield paving from excessive wheel loads? What plans are in effect to clear the landing area of disabled aircraft?

b. Approach Protection. Each of the airport's aerial approaches must be examined to determine whether any obstructions (as defined in current FAA criteria) exist and, if so, whether they violate a compliance obligation. Many obstructions do not violate a compliance obligation. Some have been there for many years and actually predate development of the airport. There is no obligation to remove these unless such removal was made a specific condition of a grant agreement. Some are located a considerable distance from the runway on land not controlled by the airport owner, or are otherwise not reasonably within the air-

port's power to correct. Still others may have been the subject of an FAA airspace review that determined they were not a hazard or they were not a hazard if marked and lighted in accordance with FAA standards.

(1) **Owner's Status.** Where an approach surface is affected by an obstruction and the owner is obligated to maintain clear approaches, that owner is in noncompliance unless FAA can determine that elimination of the obstruction is not reasonably within the owner's power and/or the obstruction is not a hazard to navigation. The airport owner's primary obligation is to prevent or remove hazards.

(2) **Future Outlook.** Recent trends in uses of adjacent properties should be reviewed to see whether probable developments might pose a threat to any runway approaches. Measures being taken by the owner to protect these approaches should be reviewed. Is the owner doing everything that can reasonably be done to protect them?

(3) **Effect of Obstructions.** If obstructions exist, the records should indicate whether the object has been reviewed by FAA under a coordinated airspace review to determine its effect on the safe and efficient use of airspace. If FAA has determined the object is not a hazard, the airport owner will not be required to move or lower the object.

(4) **Zoning.** Where the airport relies on local zoning ordinances, the review should cover the effectiveness of the ordinances and the status of any legal proceedings involving them. Are the zoned areas appropriate to protect all existing and planned approaches?

c. **Surplus Property Income.** Income from property acquired under P.L. 80–289 and used to produce nonaviation revenues or funds derived from the disposal of such property must be applied to airport purposes. Thus the compliance review of a surplus property airport must include an evaluation of the owner's stewardship of properties conveyed for specific purposes. Most surplus airports conveyed under P.L. 80–289 contain significant areas deeded to the grantee for the purpose of generating revenue to support and further develop the aeronautical facilities. Since no other land uses were intended by the Act, it must be assumed that any property not needed for aeronautical activity was conveyed to produce revenue. There should be an agreement between the FAA and the owner as to which areas are for aeronautical activity and which for revenue production. This agreement should be reflected in the land use plan or property map or other document acceptable to FAA. (See paragraph 4–17).

(1) **Revenue Production.**

(a) If a surplus airport includes revenue production property, a detailed review of available financial records shall be made. As a very minimum, these records should be carefully screened to ensure that the grantee has established an airport fund, or at least a separate airport account in which all transactions affecting the surplus property have been recorded. Where financial records are obscure or inconclusive, the grantee shall be required to produce whatever supplemental data are needed to clearly reveal the disposition of airport revenues.

(b) The grantee must make a reasonable effort to develop a net revenue (i.e., an amount over and above expenses in connection therewith) from such property. However, there is no violation if the property is not used. It may not be donated or leased for nominal consideration, but if used at all must produce a reasonable net revenue. The compliance report must clearly reveal whether the current usage of the property conforms to this criteria. Where excess revenues accumulate, the guidance contained in Chapter 4 shall be followed.

(c) **Proceeds of Disposal.** The law prohibits the sale or other disposal of surplus airport property without the written consent of the FAA. When given, such consent will obligate the owner to expend an amount equal to the FMV of the property for airport purposes (see Chapter 7). Where a transaction of this kind has been authorized by an FAA release, the compliance review shall include a thorough check into the status of the funds involved. Are they fully accounted for, and are the owner's actions to properly apply them satisfactory?

d. **Availability of Airport Facilities.** The reviewer should note whether the full benefits of the airport are being made available to users. This requires more than the opportunity to land an aircraft on a safe, well–constructed runway. To add utility and purpose of flight and to fully realize the intended benefits of airport development, there should be, depending on the type of airport, a reasonable variety of supporting services such as aircraft fuel, storage or tie down and minor repair capabilities. At some locations the availability of a telephone may be all that can be economically justified. There is no criteria for measuring the adequacy of essential supporting services, and the owner of a public airport has not specific obligation to provide any of them. However, there is a basic obligation to ensure that, whatever arrangements are in effect, such services as are provided are available on fair, reasonable, and nondiscriminatory terms.

e. **Adherence to Airport Layout Plan.**

(1) In considering the compliance status of a Federal obligated airport, the FAA approved ALP or land use plan should be consulted. At some airports subject only to surplus property compliance obligations, an FAA approved ALP may not have been required. At these airports, see whether there is any comparable plan or layout, such as a master development plan, which might reveal the ultimate development objectives of the airport owner. Where appropriate, the premises should be inspected to determine whether there have been any improvements, or whether any are being considered, which might be inconsistent with such plans. If an airport includes grant acquired land, specific consideration will be given to whether all of it still is needed for airport purposes (see paragraph 4–17c).

(2) Whenever an actual or proposed variation from an approved ALP is found, determine whether it is significant; violates design or safety criteria; precludes future expansion needed for the foreseeable aeronautical use potential of the airport; or impairs the ability of the airport owner to comply with any of the airport's obligations under agreements with the Government.

(3) The results of these determinations shall be recorded and one of the following actions taken:

(a) Determine that the variation is not significant and requires no further action;

(b) Obtain a modified ALP incorporating required changes; or

(c) Notify the airport owner that unless adherence to the previously approved ALP is effected within a specified, reasonable time, it will be in violation of its agreement with the Government.

(4) There is no obligation to review an ALP to reflect development recommended by the FAA if the airport owner does not propose to carry it out. FAA's opinion of what development is desirable is not incumbent on the owner. However, the ALP must reflect existing conditions and those alterations currently planned by the owner which have received FAA approval and the ALP must be formally approved by the FAA.

COMPLIANCE WORKSHEET

Name of Airport and Location

Site No.

Inspected By (*Name*)

Date Inspected

Name of Officials Contacted

I. PHYSICAL/OPERATION CONDITIONS

A. Substantially unchanged since last inspection
☐ Yes ☐ No (*If "NO" explain*)

B. General appearance is satisfactory
☐ Yes ☐ No (*If "NO" explain*)

II. MAINTENANCE (*check applicable boxes*)

	PAVING (A)	MARKING (B)	LIGHTING (C)	TURF AREAS (D)	DRAINAGE (E)	FENCING (F)	BEACON (G)	WIND INDICATOR (H)	SEGMENTED CIRCLE (I)	BLDGS (J)	UTILITIES (K)	ACCESS ROAD (L)
1 None												
2 Satisfactory												
3 Unsatisfactory (*Explain on reverse*)												

INSTRUCTIONS — Explain in spaces below any "NO" answer preceded by a "•". — Enter "NA" if applicable.

		YES	NO		YES	NO
III. APPROACHES	A. Consistent with FAA Design Criteria, or/on Approved ALP	•		D. Compatible Use of Adjacent Land		•
				E. Existing Obstructions Marked/Lighted		•
	B. Adequate Clear Zone Interests Held					
	C. Adequate Zoning Established					
IV. CONTROL AND OPERATION	*Satisfactory (Based On)*					
	1 Satisfactory Operation Plan			3 Airport Regulations Published		
	2 Satisfactory Land-Use Plan			4 Minimum Standards		
V. EXCLUSIVE AND CIVIL RIGHTS	A. Complying with Exclusive Rights Policy	•		B. Complying with Civil Rights Regulations		•
VI. LEASES AND AGREEMENTS	A. New Leases Are Acceptable (*List leases on reverse side if reviewed with comments.*)	•		B. Airport Mgmt. Agreement in Effect		
				C. Owner Has Retained Adequate Control		•
VII. CONFORMANCE TO ALP	A. Plan Is Substantially Up-To-Date and Approved	•		B. Reflects Existing/Planned Facilities		•
VIII. SURPLUS PROPERTY	A. Proper Use of Real, Personal Property	•		C. Personal Property Marked/Maintained		•
	B. Satisfactory Accounting for Revenues	•		D. Personal Property Inventory Accurate		•
IX. AIRPORT FUNDS	A. Financial Report Reviewed			C. Proceeds of Releases Accounted For		•
	B. Report Reflects Observed Conditions	•				
X. CONTINUING SPECIAL CONDITIONS	A. Conditions Have Been Satisfied			B. Progress is Satisfactory		•

FAA Form 5190-7 (10-89)

Figure A–1. Compliance Worksheet (FAA Form 5190–7)

APPENDIX 7—FEDERAL LAND INVENTORY

1. BACKGROUND. Airport Property Maps are identified in AC 150/5070–6, Airport Master Plans, as a component of the ALP. The "Exhibit A" is a component part of the application for grant funds.

The AAIA, as amended in 1987, imposes new obligations on airport sponsors who have received Federal grants for land acquisition. One of these obligations requires the disposal of land no longer needed for airport purposes and returning to the Trust Fund that portion of the proceeds which is proportionate to the U.S. share of the cost of acquisition of such land.

The ALP is the primary vehicle for determining if there are land areas within the airport boundary which are no longer needed for airport purposes. Heretofore, ALP's normally have made no distinction between land acquired with and without Federal funds. Adding graphics to make such distinction on the ALP drawing would tend to "clutter up" the drawing and adversely affect its utilization for other purposes. A separate property map, drawn to the same scale as the ALP drawing, and with appropriate graphics to indicate the type of acquisition of various land areas, will provide the information needed without impairing the legibility of the airport layout drawing. Making this drawing a component part of an ALP drawing set will also tend to make the airport planner more conscious of the need to carefully plan the total airport layout and ensure that land which might be needed in the future is not disposed of prematurely. This drawing will be compared to the "Exhibit A" attached to the latest grant agreement and all future "Exhibit A's."

2. DEFINITION. A drawing indicating how various tracts of land within the airport boundaries were acquired (i.e., Federal funds, surplus property, local funds only, etc.). Easement interests in areas outside the fee property line should also be included.

3. PURPOSE. The primary purpose of this drawing is to provide an inventory and information for analyzing the current and future aeronautical use of land acquired with Federal funds.

4. PREPARATION GUIDELINES.

a. Sheet Size. Same as Airport Layout Drawing.

b. Scale. Same as Airport Layout Drawing.

c. Title and Revision Block. Same as Airport Layout Drawing.

d. Legend. Use drafting symbols (i.e., shading, cross hatching or other tonal effects) and legend table to indicate the type of acquisition involved with each tract or area.

e. Data Table. A data table with a numbering or lettering system should be used to show pertinent data applicable to property acquisitions. As a minimum, the following data should be included:

(1) Date the property was acquired.

(2) Federal grant project number under which the property was acquired. Like property interests acquired with Federal funds under the same project may be grouped together and shown as one tract or area.

(3) Identify the date of deed and federally–assisted program surplus and nonsurplus land was acquired.

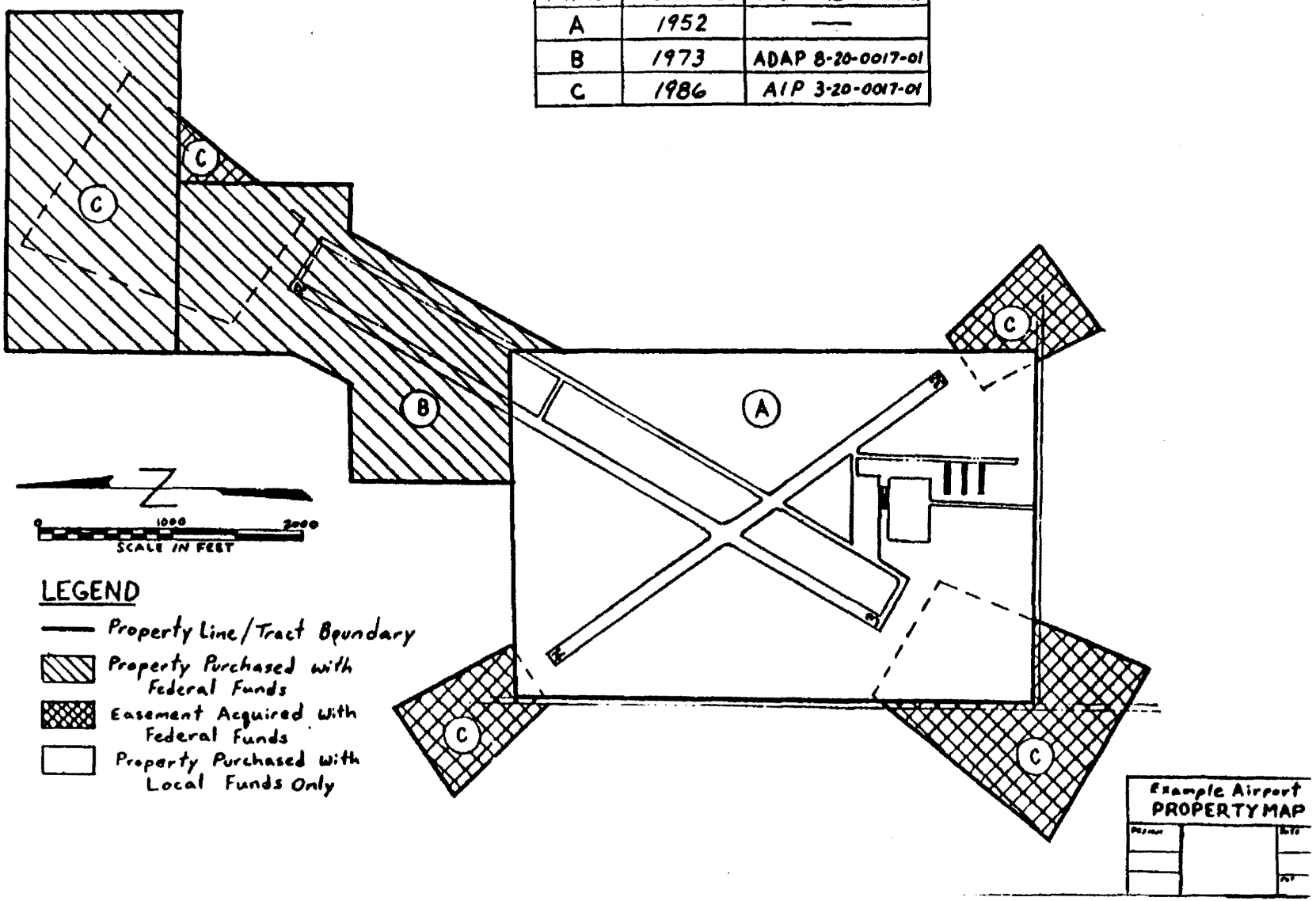
f. Drawing Details. Normally limited to existing and future airport features (i.e., runways, taxiways, aprons, clear zones, terminal buildings and NAVAIDS) which would indicate aeronautical need for airport property.

(1) Details should be subordinated to property lines and tract outlines by half–toning, screening, or other similar techniques.

(2) A screened reproducible of the Airport Layout Drawing may be used as the base for the ALP property map.

(3) Airport boundary lines and lines depicting property interest areas should be bold so as to stand out from background details. (See attached sketch.)

PROPERTY DATA		
TRACT	DATE ACQUIRED	FEDERAL PROJ NO.
A	1952	—
B	1973	ADAP 8-20-0017-01
C	1986	AIP 3-20-0017-01



APPENDIX 8—FLYING CLUB

The following definition of flying clubs is suggested for inclusion in Minimum Standards applying to federally–obligated airports.

CATEGORY — FLYING CLUB

In an effort to foster and promote flying for pleasure, develop skills in aeronautics, including pilotage, navigation, and an awareness and appreciation of aviation requirements and techniques, the category of Flying Clubs is added to the Rules, Regulations and Minimum Standards of the airport.

All flying clubs desiring to base their aircraft and operate on the airport must comply with the applicable provisions of these Standards and Requirements. However, they shall be exempt from regular FBO requirements upon satisfactory fulfillment of the conditions contained herein.

a. The club shall be a nonprofit entity (corporation, association or partnership) organized for the express purpose of providing its members with an aircraft, or aircraft, for their personal use and enjoyment only. The ownership of the aircraft, or aircraft, must be vested in the name of the flying club (or owned ratably by all of its members). The property rights of the members of the club shall be equal and no part of the net earnings of the club will inure to the benefit of any member in any form (salaries, bonuses, etc.). The club may not derive greater revenue from the use of its aircraft than the amount necessary for the operations, maintenance and replacement of its aircraft.

b. Flying clubs may not offer or conduct charter, air taxi, or rental of aircraft operations. They may not conduct aircraft flight instruction except for regular members, and only members of the flying club may operate the aircraft. No flying club shall permit its aircraft to be utilized for the giving of flight instruction to any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instructions, except when instruction is given by a lessee based on the airport and who provides flight training. Any qualified mechanic who is a registered member and part owner of the aircraft owned and operated by a flying club shall not be restricted from doing maintenance work on aircraft owned by the club and the club does not become obligated to pay for such maintenance work except that such mechanics and instructors may be compensated by credit against payment of dues or flight time.

c. 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.

d. The flying club, with its permit request, shall furnish the airport management a copy of its charter and by–laws, articles of association, partnership agreement or other documentation supporting its existence; a roster, or list of members, including names of officers and directors, to be revised on a semi–annual basis; evidence of insurance in the form of a certificate of insurance in the following minimum amounts: Public Liability ($100,000/$50,000) per person; public liability ($300,000/$100,000) per accident; property damage ($100,000/$20,000), with hold harmless clause in favor of the airport, its officers and employees (10 days prior notice of cancellation shall be filed with airport management); number and type of aircraft; evidence that aircraft are property certificated; evidence that ownership is vested in the club; and operating rules of the club. The books and other records of the club shall be available for review at any reasonable time by airport management or his authorized agent.

e. A flying club, at any airport controlled by this same airport management shall abide by and comply with all Federal, State and local laws, ordinances, regulations and the rules and regulations of this airport management.

f. A flying club which violates any of the foregoing, or permits one or more members to do so, will be required to terminate all operations at all airports controlled by this airport management. A public hearing should be held for the purpose of considering such termination.

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