



U.S. Department
of Transportation

**Federal Aviation
Administration**

Memorandum

**Subject: Compliance Guidance Letter 2002- 01
Regional Land-Use Inspections Program -
Unauthorized Use of Airport Property**

Date: May 15, 2002

From: AAS-400

To: Regional Division Managers

I - SUMMARY: This Compliance Guidance Letter (CGL) provides information related to the methodology and procedures that may be used to conduct land use inspections at federally obligated airports. The purpose of a land use inspection is to ascertain an airport sponsor's compliance with the terms of applicable Federal obligations incurred through grant agreements, surplus property, and non-surplus property conveyances dealing specifically with the use of airport property.

This CGL expands upon existing guidance in FAA Order 5190.6A (Order). Although Section 5-8 and Appendix 6 of the Order outline the processes relating to a formal full-fledged compliance inspection and establishing the status of compliance, the guidance herein is specific to the requirements associated with the inspection of an airport for unauthorized use of airport property. It establishes the basic elements of the Regional Land Use Inspections Program.

This program serves as a compliance oversight and surveillance tool pertaining to airport land use. It includes several processes, including airport selection, data gathering, pre-inspection procedures, onsite inspection procedures, and corrective actions, resulting in the compilation of a land use inspection report. Land use inspections are necessary steps toward standardized reporting formats, completeness of land use records, and supporting data for eventual compliance determinations, both informal and formal.

II - RESPONSIBILITIES: FAA regional Airports divisions, with the assistance of Airports District Offices (ADO) and State Block Grant State (SBGS) aeronautical agencies, when applicable, are responsible for conducting land-use inspections in accordance with the guidance provided herein. AAS-400 will provide overall guidance and technical support in the conduct of the Regional Land Use Inspections Program and provide opportunities to improve the quality of the program. AAS-400 is available to assist FAA regional airports offices in the interpretation of this policy, the applicability of conditions or assurances to a particular airport, and for guidance and assistance, as needed, in pursuing and requesting corrective action or enforcement.

III - BACKGROUND and AUTHORITY: In May 1999, the General Accounting Office (GAO) issued Report GAO/RCED-99-109 entitled *"Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement."* The Report questioned FAA's monitoring of general aviation airport compliance with land use obligations and states FAA does not have internal controls in place to ensure such compliance, that self-certification is not sufficient, and that unauthorized land uses impact airport revenue and safety.¹ In addition, language in Senate Report No. 106-55, also issued in May 1999, directed FAA to conduct inspections of airports on land acquired with Federal assistance, and to report the scope of unauthorized use of airport land and the extent of FAA-approved land releases.

The FAA implemented this compliance oversight by adopting a program that requires FAA regional Airports divisions on an annual basis to conduct land-use inspections and target a minimum of 18 airports (two per FAA region per year). However, regions are encouraged to conduct additional inspections when specific land use compliance issues surface and when available personnel and resources would allow it.

The data collected by these inspections will be combined with relevant information FAA regions may have on any other unauthorized land uses, and used to compile the *"Land Use Compliance Report,"* Section 737 of AIR-21, now codified under 49 USC § 47131. It will be included in the Annual AIP Report to Congress submitted by APP. This report must include *"a detailed statement listing airports that are not in compliance with grant assurances or other requirements with respect to airport lands and including the circumstances of such noncompliance, the timelines for corrective action, and the corrective action the Secretary intends to take to bring the airport sponsor into compliance."*²

IV - SELECTING AIRPORTS: A purely random process in selecting airports for land use inspections is not considered to be efficient due to the limited number of inspections to be conducted on a yearly basis in each FAA Region. By selectively targeting "problem airports," the positive impact of the inspection program can be maximized. A "one size fits all" approach is not necessarily the most efficient. Selection criteria should be defined and then utilized to provide FAA regional Airports offices with the needed flexibility to adapt to each case while yielding the necessary data required to meet the statutory requirements under 49 USC § 47131.

Therefore, each region should develop its own selection process using the variables, conditions, and recommendations listed herein. When appropriate, coordination, especially pre-inspection coordination, with the ADOs and state aeronautical

¹ Report GAO/RCED-99-109 *"Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement,"* p. 2.

² See 49 USC § 47131 (5).

agencies would be appropriate. Such coordination will allow the regional office to make final adjustments to its airport selection process since ADOs and SBGS's aeronautical agencies may be the most knowledgeable and familiar with specific airport conditions and potential compliance problems.

Assistance from, and the involvement of SBGS officials are essential when conducting inspections in those states for other reasons. When and if non-compliance situations are uncovered as a result of the land use inspections, the SBGS should be in a position to play a role in requesting and supervising corrective action, notification, as well as informal resolution.

The data needed for gathering airport compliance information leading to airport selection is available from many sources. The most valuable tool in selecting an airport for inspection is prior knowledge of compliance problems. Prior knowledge can come from several sources, including:

- **Inspections:** Previous site inspections by Airports personnel, and site visits by others outside of FAA, provided they are knowledgeable about some aspects of airport compliance (for example, state inspectors performing FAA Form 5010 inspections or FAA Airport Certification Safety Inspectors conducting a Part 139 inspection).
- **Complaints:** Telephone or written complaints or informal complaints (Part 13.1 Reports) from users or tenants and formal complaints from FAA-HQ.
- **Documents:** Historical file review, recent and updated ALP/Exhibit "A"/ Land Inventory Maps, as well as previous versions.

Notwithstanding other conditions, a regional airport office may choose to implement a rotation schedule to ensure that each obligated airport is subject to a land-use inspection once every few years, interspersed with self-certification on an annual basis, for example. In developing guidance for regional administration of the land-use inspection portion of any airport compliance program, it is reasonable to emphasize those airports with the largest potential for abuse. Although not directly determining the priority of airport selection, several factors may assist in selecting a particular airport for a land use inspection. These factors include:

- **Specific request from HQ.** AAS-400 may request an airport land use inspection when that inspection would directly benefit a current investigation or formal complaint or otherwise address a potential land use problem.
- **Excessive number of requests for airport property release.** An excessive number of requests for airport property releases and/or a significant amount of released land may require additional oversight, lead to an increase in the

potential for misuse of airport property, and could generally be indicative of systematic non-aeronautical use of the airport.

- **Size, classification, and total number of operations at an airport.** The size, classification, and the total number of operations at an airport are important elements in selecting an airport. This is because of the potential high return that can be derived from the land use inspection given the acreage, amount of federally funded property, role and importance of the facility, number of based aircraft, and level of operations.

V - PRE-INSPECTION PREPARATION: Adequate pre-inspection preparation is essential in ensuring a successful land use inspection. FAA staff assigned to conduct the land use inspection should notify the airport of the upcoming inspection, and include information regarding (a) the planned visit, (b) the purpose of the inspection and (c) what the inspection will entail.

For reasons of thoroughness, the pre-inspection preparation would last anywhere from a half day to a full day, depending on the specifics of the airport, such as airport size, number of tenants, and availability of land use property records. Several issues may be encountered during a land use inspection, usually falling within the following categories: Use of Airport Property, Conformity to ALP, Continuing Special Conditions, Disposal of Grant Acquired Land, Disposal of Surplus Property, Approach Protection, and Compatible Land Usage within airport property (not to be confused with requirements under Grant Assurance 21, which include compatible land use outside the airport).

If necessary or applicable, the FAA person conducting the inspection should obtain from the airport, ADO, or the SBGS/State aeronautical agency any relevant information or documentation for review during the pre-inspection preparation.

The first phase of the pre-inspection process should include a review of all relevant airport data available in the field offices, as suggested below:

1. **Obligating Documents.** Review applicable grant, surplus, and non-surplus documents to understand the specific commitments of the airport owner, especially any special conditions in such documents. The intent is to ensure that all airport property, including each area of surplus property or grant funded land, is used, or is available for use, for the purposes intended by the land conveyance or grant agreement.
2. **Land Use Maps/Land Files.** The bulk of the pre-inspection preparation process should be focused on inconsistencies between the ALP, Exhibit "A", Land Inventory Map, or any other land-use document relevant to an airport sponsor's land use obligations. One of the most important steps at this stage is to identify the difference between land that constitutes airport property

(actual airport site) and land the airport owns (may include other property not adjacent to the airport). For example, the airport boundary delineated on the ALP may not show property the airport owns outside that boundary, yet that property may be obligated. This knowledge will be used later, during the onsite inspection, to visually confirm the land uses. Some things to consider when reviewing land files include but are not limited to:

- a. Review the most current ALP and compare it with older ones, if necessary. There should be no actual or proposed development or use of land and facilities contrary to an ALP previously approved by the FAA. Ensure that the Exhibit "A" was updated when new grants were issued, or when a FAA land release was issued. Pay particular attention to buildings or structures that could turn into obstruction problems.
 - b. Also, determine whether the Exhibit "A" needs to be updated.
 - c. Review and compare the history of land acquisitions and releases.
 - d. Identify general land uses (current and planned) such as aeronautical versus non-aeronautical, including industrial/commercial, agricultural, buildings, and hangar uses.
 - e. If an ALP is out of date or fails to depict existing and planned land uses accurately, inquiries should be made and appropriate actions taken.
 - f. Identify all easements and all temporary and concurrent uses.
 - g. Compare FAA and SBGS records, if applicable or required.
3. **Self-Certification Documents.** If applicable, review any documents and records of self-certification. Although self-certification may be an important element of a regional Airport Compliance Program, it is not a substitute for an actual land-use inspection. However, self-certification data can be used as background or reference information.
4. **Grant Acquired Land, Surplus and Non-Surplus Property.** While reviewing airport property and land use documents such as an ALP or an Exhibit "A," particular attention should be paid in noting whether all land acquired with grant funding, including land acquired for noise protection, as well as surplus and non-surplus property is still being used for the purpose acquired. It should also be noted, if applicable, that conditions associated with any previous disposal are being adhered to.
5. **Release Documentation.** Review all documentation relating to past releases and disposal of airport property.
 - a. Identify land released by track or legal description.
 - b. Check that release conditions or requirements (i.e. environmental requirements, height restrictions, designated uses of proceeds from land sales or leases, Fair Market Value (FMV), and general compatibility requirements) are adhered to.

- c. Amounts of land released (or to be released). Compare this information with correspondence files, land files, ALP and Exhibit "A."
 - d. Determine if land released for sale has been sold, the deed recorded by the county recorder's office, and proceeds deposited in the airport account.
- 6. **Master Plan/Part 150/ Environmental Impact Statements (EIS).** Review Master Plan/Part 150/EIS or other planning and environmental documents for relevant information. Environmental determinations might be relevant for understanding land uses.
- 7. **General Correspondence.** Review recent general correspondence, including complaints, with the airport sponsor or by anyone regarding issues at the airport that may be relevant to the task at hand.
- 8. **Leasehold Review.** Obtain a list of leaseholds, aeronautical and non-aeronautical, so they are known before the onsite inspection. In addition, use this aeronautical/non-aeronautical leasehold information to crosscheck ALP and Exhibit "A" for appropriate land uses.
- 9. **Special Requirements.** This refers to special conditions other than those controlled by project payments under AIP. Such special conditions might include specific commitments regarding the disposition of proceeds from the disposal of surplus property and any other continuing pledges undertaken by the airport sponsor. It might also include compatible land use requirements or development restrictions.

VI - ONSITE INSPECTION PROCEDURES: With adequate pre-inspection preparation, the actual onsite inspection will be made easier and last approximately half a day. Here are several specific activities that should be included in the onsite inspection:

- 1. Determine whether any improvements being currently being processed under the FAA Form 7460-1 process or under construction, might be inconsistent with the ALP or other land use requirements. No actual or proposed development or use of land and facilities uses should be contrary to the FAA-approved ALP.
- 2. Confirm land uses. Each land area should be identified and verified to ensure its intended or approved use corresponds to the actual use. Such identification should extend to aeronautical service areas, industrial areas, agricultural areas, recreation areas, and those parcels that help in protecting aerial approaches.

3. Review and compare airport property and the ALP. Specifically note whether all land acquired with Federal funds, including land acquired for noise mitigation, is still being used for the purpose for which it was acquired. The FAA must approve any concurrent compatible use of land purchased with Federal funds.
4. Ascertain that there are no incompatible land uses on airport property. Check for Building Restriction Lines (BRL) and, if not on ALP, recommend it be included at the next cycle.
5. Review leases, use agreements, and applicable financial data, such as airport account records and appraisals, if deemed appropriate or required due to inconsistencies between depicted and actual land use.
6. Ensure that all airport property released from its obligations is, in fact, being used in accordance with the release document and any special conditions or requirements.

VII - EXAMPLES OF PROBLEM AREAS: While there are many types of problems that could arise during or after a land use inspection, several can be very indicative of unauthorized land use. Examples of these are:

- a. Missing release documents. No release documents can be found to substantiate ALP or Exhibit "A." In several instances, specific airports have told FAA that certain property was released from obligations or an ALP shows airport property released from obligations, yet no release documents can be found. Without the actual release documents, there is no way to ascertain accurately whether the property was actually released and/or if special conditions were issued along with the release.
- b. Outdated ALP. An outdated ALP is potentially the culprit in many unauthorized land uses.
- c. Special conditions. Not complying with special conditions, restrictions, reservations or a covenant associated with releases makes ascertaining the proper land use or reconciling actual versus approved land use more difficult. An unauthorized land use would occur if, for example, the FAA releases airport land, under special land use conditions that include a specific use and the FAA then determines that the airport did not use the land as per the special conditions in the release. Other examples of unauthorized land use include failing to sell FAA-released property at FMV following an appraisal as required in the release or not using the sale proceeds for airport purposes.
- d. ALP and Exhibit "A" conflict. An ALP may show airport property to be a non-aeronautical leasehold while the Exhibit "A" depicts the land in question as

grant acquired property. It is possible to have an actual non-aeronautical use correctly depicted on the ALP but conflicting with the Exhibit "A."

- e. Non-aeronautical leaseholds. The most common unauthorized land uses are situations where non-aeronautical leaseholds are located on designated aeronautical use land without FAA approval, not shown on the ALP or on property not released by FAA. Identify potential problems with non-aeronautical facilities such as animal control facilities, non-airport vehicle and maintenance equipment storage, aircraft museums, and municipal administrative offices.
- f. Incompatible land uses. Incompatible land uses include obstructions or residential construction built on airport property or in contradiction to conditions of released land or residential development within grant-funded airport noise compatibility land. Introducing a wildlife attractant or failure to take adequate steps to mitigate hazardous wildlife at the airport can also be construed as incompatible land uses. Typical incompatible land uses can include waste water ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer station, electrical power substations, water storage tanks, gold course water ponds hazards, towers or buildings obstructing Part 77 surfaces, the Runway Protection Zone (RPZ), Runway Object Free Area (ROFA), Object Free Zone (OFZ), or Clearways and Stopways.
- g. Eminent Domain. An example would be for local government to take parcel(s) of airport property without FAA approval (ALP/Release) through eminent domain in order to widen a road.
- h. Airspace Determination Cases. A favorable airspace determination on a proposed structure does not by itself satisfy land use compliance requirements. There is a misconception among airport sponsors that if a proposed structure is accepted by the FAA based on airspace standards, it constitutes FAA *de facto* approval of proposed land use. The land use compliance must be determined separately and the sponsor must be informed accordingly.
- i. Un-approved interim or concurrent uses. An un-approved use might occur following approval for farming near the RPZ, when a land use inspection finds permanent structures instead of the authorized farming use. Similarly, if a land use inspection disclosed that non-surplus land was transferred for approach protection used for farming purposes in the interim, i.e. 3 years, is indeed under a non-negotiable lease for more than 3 years and/or subject to less than FMV, this type of land use issue must be promptly resolved by the sponsor.

- j. Roads. A public road built through airport property without FAA approval is now a problem because it impacts Part 77 surfaces, an RPZ, or an OFZ. The airport may have constructed roads or allowed non-sponsor roads to be built on and through airport property, effectively isolating airport parcels from the rest of the airport, making them unsuitable for aeronautical use.

VIII - CORRECTIVE ACTION: Corrective action should be initiated when discrepancies are found following an inspection. A letter stating the results of the inspection and including all land use discrepancies should be sent to the airport sponsor as soon as practicable. The letter should include detailed information on how the airport can return to compliance with its obligations. It should also include a timeline for completion. The letter could be as simple as requesting an updated ALP within 120 days, or requesting the airport to submit a formal request for a land release to regularize or correct a land use situation within 30 days. In some cases, the corrective action may be as drastic as requiring the removal of an obstruction to air navigation. Failure to take corrective action will lead to compliance action by FAA.

Often, the unauthorized use of airport property could lead to violations of other Federal obligations or grant assurances, such as revenue use and exclusive rights. While the purpose of the inspection is to ascertain the extent of unauthorized land use, the person conducting the land use inspection should nonetheless advise the airport sponsor of other grant assurance violations, including any recommended remedies and deadlines for the sponsor to complete corrective action. However, only unauthorized land use needs to be reported to AAS-400 for inclusion in the annual report to Congress.

IX - POST-INSPECTION LAND USE REPORT: It is important to maintain adequate record keeping of all land use inspections. The relevant land use information collected from the inspection should be compiled into a post-inspection land use report, which is to include narrative comments. Although there is no set format for the purpose of assisting in compiling this report, the appropriate sections of Forms 5190-8 and 5190-7³ may be used as a starting point.

Suggested sections or headings of a post-inspection land use report should include:

- Inspection site location
- Individual conducting the inspection
- Date of inspection
- Background
- Findings
- Required corrective action

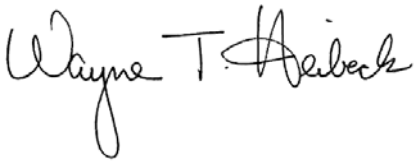
³ Form 5190-8 "Summary Status of Airport Compliance" (FAA Order 5190.6A, Chapter 5, p. 40) and Form 5190-7 "Compliance Worksheet" (FAA Order 5190.6A, Appendix 6, p. 5).

- Timeline for corrective action
- Conclusion

Narrative comments should be included in detailing any inconsistencies or noncompliance situations discovered during the inspection as well as the necessary corrective action(s) as appropriate.

Within 30 days of the date of the land use inspection, but before the end of the fiscal year in which the inspection took place, the land use inspector who performed the inspection should forward a copy of the land use report to AAS-400.

Wayne T. Heibeck

A handwritten signature in black ink that reads "Wayne T. Heibeck". The signature is written in a cursive style with a large, looped "W" and a distinct "H".

Manager
Airport Compliance Division