



# Federal Aviation Administration

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## Memorandum

Date: February 2, 2023

To: Regional Compliance Specialists

From: Kevin C. Willis, Director, Office of Airport Compliance and Management  
Analysis, ACO-1 **KEVIN WILLIS** Digitally signed by KEVIN WILLIS  
Date: 2023.02.02 12:11:26 -05'00'

Subject: Compliance Guidance Letter 2022-1- The Process for the Release and  
Permanent Closure of Federally Obligated Airports

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### INTRODUCTION

This Compliance Guidance Letter (CGL) provides internal compliance guidance to personnel in the Federal Aviation Administration's (FAA's) Office of Airports about responding to an airport sponsor's request for a release to close a Federally obligated airport. This CGL discusses general principles, terms used throughout this document, relevant statutory and regulatory requirements, and the processes and procedures that airport sponsors and the FAA must follow before the FAA may grant a release of Federal obligations. This CGL also discusses agency policy on the closure of an airport where all Federal obligations have expired.

The FAA Associate Administrator for Airports' authority to grant a release of Federal obligations depends on the sponsor's obligating documents, such as a property conveyance or grant agreement.

### DISTRIBUTION:

Compliance Guidance Letter 2022-1 replaces CGL 2018-02 and CGL 2021-02. This CGL has been prepared to assist Headquarters and Regional Compliance Specialist to prepare the necessary documentation to support the release and closure of Federally Obligated Airports in a consistent and standardized manner. It is not for public distribution.

### I. GENERAL PRINCIPLES

The FAA will act on an airport sponsor's request for release and closure to the extent that such action will benefit the public interest in civil aviation within the specific authority conferred upon the Associate Administrator for Airports by law. Unless there is a proposal

for the construction of a replacement airport that will satisfactorily accommodate the loss of the aeronautical services of the airport to be closed, the FAA will not consider a release and closure for an airport:

- a. if the airport serves a unique role and there is no comparable alternative within its vicinity; or
- b. if the airport is part of a *system* of airports and the role it fulfills is important to the continued operation of the local airport system; or
- c. if the airport supports a level of activity that classifies it as either “National” or “Regional” in the current published National Plan of Integrated Airport Systems (NPIAS).

The FAA will take no public position either approving or denying a sponsor’s request to close a federally obligated airport until the FAA has completed a thorough review and analysis of the sponsor’s request. The FAA Regional Office and/or Airport District Office (ADO) should advise airport sponsors:

- a. of the types of airports generally not considered eligible for a release or closure as listed under these general principles; and
- b. the airport sponsor has an obligation to conduct its own analysis and provide a justification for its request for release and closure; and
- c. the FAA will not issue a decision on a sponsor’s request for closure until a thorough review and analysis has been completed and approved by the Associate Administrator for Airports.

## II. EXPLANATION OF TERMS USED

**A. Duration of Obligations.** An airport sponsor’s Federal obligations endure for the useful life of the grant-funded improvements at the airport. For most airport facilities built to FAA standards, the useful life will not exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. For equipment acquired with grant funds, such as certain vehicles, the useful life shall be no less than ten (10) years from the date of acceptance of a grant offer of Federal funds for the project. Certain obligations may extend beyond the useful life of the grant-funded improvements at the airport. The exclusive rights, airport revenue, and civil rights assurances extend so long as the airport is used as an airport (see *Airport Sponsor Assurances*, 2/2020, paragraph B.1).

Note: If a sponsor proposes to close an airport after expiration of its last 20-year development grant term, and then reopen the airport with the intention of operating free of Federal airport obligations, consult FAA Office of the Chief Counsel (AGC-600) for the applicability of continuing Federal requirements. See Section XI below.

When Federal grant funds are used to purchase land, or when Federal surplus or non-surplus property land is conveyed to the sponsor, the obligations tied to those

funds do not expire, as the useful life of the land is presumed not to expire<sup>1</sup>. Grants issued for land purchase under the Federal Airport Program or the Airport Development Aid Program as well as the current Airport Improvement Program (AIP) may also impose continuing obligations on airport property. Such property remains federally obligated until released by the FAA. This means that an airport sponsor that has used grant funds to purchase land or that has received a conveyance of property from the Federal government must use the airport as an airport until released by the FAA. In these cases, an airport sponsor must provide the FAA with a justification for its request to close an airport.

- B. Federally Obligated Airport Property.** Most federally obligated airports are listed in the NPIAS. However, airports can be excluded from the NPIAS and remain Federally obligated by surplus property conveyances and/or grant agreements. All property identified on an airport's Exhibit "A" property map, or on the airport's Airport Layout Plan (ALP) if no Exhibit "A" property map exists, is federally obligated airport property unless otherwise stated. If the FAA has determined it lacks certain authority over the property pursuant to Section 163 of the FAA Reauthorization Act of 2018 (P.L. 115-254), the property is still federally obligated although not all obligations continue to apply. The property depicted on Exhibit A is federally obligated regardless of whether it is airside property, was purchased with grant funds or donated under the Surplus Property Act of 1944, as amended, or was acquired with airport revenue.
- C. Release.** A release is the formal, written authorization discharging the sponsor's Federal obligations and relinquishing the FAA's right to enforce an airport's contractual obligations. In some cases, the release is limited to releasing the sponsor from a particular assurance or Federal obligation. In other cases, a release may permit the disposal of certain airport property.

### III. STATUTORY AND REGULATORY REQUIREMENTS

#### A. Statutes

1. Title 49 U.S.C. § 46319, *Permanent Closure of an Airport without Providing Sufficient Notice*
2. Title 49 U.S.C. § 47107(c)(2)(B), *Written Assurances on Acquiring Land*
3. Title 49 U.S.C. § 47107(h), *Modifying Assurances and Requiring Compliance with Additional Assurances*
4. Title 49 U.S.C. § 47107(h)(2), *Public Notice Before Waiver of Aeronautical Land-Use Assurance*
5. Title 49 U.S.C. § 47123, *Nondiscrimination*
6. Title 49 U.S.C. § 47125, *Conveyances of United States Government Land*
7. Title 49 U.S.C. § 47151, *Authority to Transfer an Interest in Surplus Property*

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<sup>1</sup> Some exceptions to airport nonsurplus conveyances exist. A review of the grant conditions and deeds is required to determine the extent of applicable Federal obligations.

8. Title 49 U.S.C. § 47133, *Restriction on Use of Revenues*
9. Title 49 U.S.C. § 47153, *Waiving and Adding Terms*
10. Title 49 U.S.C. § 46319, *Permanent Closure of an Airport without Providing Sufficient Notice*

## **B. Code of Federal Regulations**

1. 2 CFR Part 200.311, *Real Property*
2. 14 CFR Part 157, *Notice of Construction, Alteration, Activation, and Deactivation of Airports*
3. 14 CFR Part 155, *Release of Airport Property from Surplus Property Disposal Restrictions*

## **C. Grant Assurances**

1. Grant Assurance 5, *Preserving Rights and Powers*
2. Grant Assurance 19, *Maintenance and Operations*
3. Grant Assurance 20, *Hazard Removal and Mitigation*
4. Grant Assurance 25, *Airport Revenues*
5. Grant Assurance 29, *Airport Layout Plan*
6. Grant Assurance 30, *Civil Rights*

## **D. Policy**

1. FAA Order 5190.6B, *Airport Compliance Manual*
2. *Policy and Procedures Concerning the Use of Airport Revenue* (64 Fed. Reg. 7696), February 16, 1999

# **IV. FAA OFFICE RESPONSIBILITIES FOR CLOSING ENTIRE AIRPORT**

- A. Approval Authority.** The FAA Associate Administrator for Airports (ARP-1) is the FAA approving official for a sponsor's request to be released from its Federal obligations for the purpose of closing, replacing, or disposing of an entire airport. That authority is not delegated. Each request to release the airport sponsor from its Federal obligations for an entire airport shall be considered by ARP-1 on a case-by-case basis under the specific circumstances of the proposed closure. A copy of the sponsor's request, including related exhibits and documents, and a copy of the FAA Regional Airports Division Director's recommendation regarding the proposed action shall be provided to the Director of the Office of Airport Compliance and Management Analysis (ACO-1), who will forward copies of the airport closure request package to the other offices in Airports.
- B. Headquarters Review.** Any release having the effect of permitting the closure, sale, replacement, or disposal of a complete airport must also include recommendations from ACO-1, the Director of the Office of Airport Planning and

Programming (APP-1), and the Director of the Office of Airport Safety and Standards (AAS-1) before being submitted for consideration and disposition by ARP-1.

- C. Applicability.** This CGL applies to all NPIAS or Non-NPIAS federally obligated airports as a result of a property conveyance or a grant agreement.

## **V. FAA CONSIDERATION OF CLOSING ENTIRE AIRPORT**

- A. General.** Within the specific authority conferred upon the FAA Associate Administrator for Airports by law, the Associate Administrator will, when requested, consider a release of a sponsor from any airport agreement to the extent that such action has the potential to protect, advance, or benefit the public interest in civil aviation. Such action may involve a complete and total release to an airport sponsor that authorizes closure of an airport and subsequent disposal of federally obligated airport property.

In all cases, the FAA's prime concern is the benefit to civil aviation and is represented by various considerations. These include the future growth in operations; capacity of the airport; the interests of aeronautical users and service providers; the state aviation agency; the local, regional, and national interests of the airport; and the impact on the airport system (State and national). It is the responsibility of the FAA Airports District Offices (ADOs) and/or regional airports divisions to analyze and consider a course of action on the release request to ACO-1. Major considerations in the analysis of a release request include:

1. The reasonableness and practicality of the sponsor's request.
2. The disposition and effect of the request on all airport assets.
3. The net benefit to civil aviation.
4. The compatibility of the proposal with the needs of civil aviation.
5. The existing airport being in a safe and operable condition. A sponsor may not allow an airport to fall into disrepair while considering closure or awaiting a decision on a closure request.
6. The state aeronautical agency's recommendation on the sponsor's request.

- B. Federal Obligations.** Generally, a sponsor and airport property can be federally obligated by the following actions:

1. Accepting a Federal AIP grant for an aeronautical improvement, including a grant for the purchase of land for aeronautical use.
2. Having the property listed on the Exhibit "A" property map. Such property is obligated regardless of how it was acquired or the purpose for which it is used.
3. Accepting a conveyance of Federal land of any kind, including a conveyance under the Surplus Property Act, section 16 of the Federal Airport Act of 1946, section 23 of the Airport and Airway Development Act of 1970, or section 516 of the Airport and Airway Improvement Act of 1982.

4. Accepting a Federal grant under the Military Airport Program (MAP) or for noise compatibility or planning. However, planning grants contain a limited list of assurances and do not impose all of the obligations of a development grant. The sponsor of a planning grant may not be an airport sponsor.
5. Acquiring property with airport revenue, regardless of whether the property is on an airport's Exhibit "A" property map or ALP.
6. Designating property for aeronautical purposes on an ALP at a federally obligated airport. Once designated for aeronautical use, the property may not be used for nonaeronautical purposes without FAA approval.
7. However, the FAA's regulatory authority over a particular parcel may be limited under Section 163 of the FAA Reauthorization Act of 2018 (P.L. 115-254).

## VI. CATEGORIES OF PROPOSED ACTION

**A. Release of Federal Obligations.** Before any action is taken to close a federally obligated airport, the FAA must first decide whether or not to release a sponsor from its Federal obligations. A release of Federal obligations may result in a closure of the airport and disposal of the property. The FAA must determine the disposition of the sale proceeds on the property. The FAA may require the airport sponsor to either reimburse the Aviation Trust Fund for a newly constructed public airport or another existing public airport, or use the sale proceeds and the unamortized value of the Federal share of grant-funded improvements to fund an AIP eligible airport development project in the local airport system. The proceeds from the sale of real airport property and net airport revenues may be used for specific infrastructure improvements at another NPIAS airport, usually in the same local region, subject to the FAA approval. The unamortized value of the Federal share of grant-funded improvements will be reinvested as a grant that will be subject to the standard requirements for grants under the AIP. The sponsor must place those funds in escrow to be administered for use at other NPIAS airports. Airports obligated by the grant assurances must consider all their airport assets, such as airport revenue accounts and personal property, as subject to Federal obligations.

**B. Transfer of Federal Obligations.** When an entire airport is disposed of and is to be replaced by a new or replacement airport, the FAA's policy is to treat the disposal as a trade-in of the land and facilities developed with Federal aid at the old airport for the acquisition and development of better facilities at the new or replacement airport. If the old airport is AIP obligated, then all airport assets (land, facilities, equipment, funds account, etc.) are considered part of the trade-in to the new or replacement airport.

Release under these circumstances is contingent upon the transfer of Federal grant obligations to the new or replacement airport. The release would become effective upon the transfer of the Federal grant obligations to the new airport after



the new airport becomes operational. In most cases where a replacement airport is itself the subject of a Federal AIP grant, the existing associated grant assurances have the same effect as a transfer of grant obligations. Portions of development costs for the new airport in excess of the value from the disposal of the old airport may be eligible for AIP funding. In these circumstances, the availability of a new and potentially better airport is the FAA's basis for determining that the old airport must be closed in exchange for the opening of the new airport. The original grant agreement is then terminated with the transfer of the grant obligations to the new or replacement airport.

**C. Stock sale to new owner.** On occasion, the FAA has received a request to release a private airport sponsor from grant obligations in order to sell the airport to another party.

1. If the acquiring owner does not agree to assume existing Federal obligations, the request is treated as a full release of the airport under VI.A., above.
2. If the transfer of the airport is by sale of airport stock ownership, and the airport sponsor agrees that the airport remains subject to all existing Federal obligations, then no release is required. The regional airports division should require the parties to the stock transaction to provide written acknowledgement that the grant obligations will continue to apply to the airport following stock transfer.

## **VII. ALL DISPOSALS OF AIRPORT REAL PROPERTY**

All land shown on an Exhibit "A" property map constitutes the airport's federally obligated property. A sponsor is federally obligated to obtain the FAA's consent to delete any land described and shown on the Exhibit "A," or the ALP if no Exhibit "A" exists, subject, however, to the FAA's determination that it lacks authority over a parcel(s) pursuant to Section 163 of the FAA Reauthorization Act of 2018 (P.L 115-254): In all instances, including instances where the FAA determines it lacks approval authority over disposal, all sale proceeds from the disposal of such land must be treated as airport revenue and deposited in the airport account. In the case of airports that are closed, these funds either are reimbursed to the Airport and Airway Trust Fund, placed in the airport account for eventual disbursement to a new sponsor, or used for the replacement airport. The airport sponsor must receive fair market value (FMV) compensation for the disposal of all airport real property. Even if the existing sponsor retains ownership of the land for a non-airport purpose, compensation is required for the disposal, through transfer of an amount equivalent to FMV of the disposal property from general funds to the airport account.

**A. Determining Fair Market Value.** The sale and disposal of airport property for less than its fair market value is inconsistent with the requirements of Grant Assurance 25, *Airport Revenues*, and 49 U.S.C. § 47107(c) (2)(B)(i) and shall not be authorized. The value of land for which a release has been requested shall be

based on the appraised value (for its highest and best use) of the land at the time of the release request and any Federal improvements initially conveyed with the property.

The value realized from the disposal of any buildings and improvements owned by the airport sponsor must be treated as airport revenue regardless of their original financing source.

A release authorizing the sale and disposal of the airport land shall not be granted unless the sponsor's assertion as to the FMV of the land has been supported by at least two independent appraisal reports and a review appraisal (if the FMV is over \$1 million) and acceptable to the FAA. Appraisals shall be made by independent and qualified real estate appraisers. The FAA will provide the sponsor a recommended scope of services, which meets the Uniform Standards of Professional Appraisal Practice. The FAA will work with the sponsor to make such determinations by using CGL 2018-3, Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property, or approved FAA Order, Handbook Chapter. The FAA will also conduct a review of the appraisals.

- B. Reinvestment of Federal Share.** After the FAA has determined that a release of grant-funded improvements is appropriate and that the release serves the interest of the public in civil aviation, the FAA may require the sponsor, as a condition of the release, to reimburse the Federal government or reinvest in an approved AIP eligible project. The minimum amount to be reimbursed or reinvested is an amount representing the unamortized portion of the useful life of the Federal grant remaining at the time the facility will be removed from aeronautical use. The FAA will require a specific project or projects and a timeline for completion for reinvestment in a new AIP eligible project.
- C. Release of Federal Obligations and Disposal of Airport Property.** The airport sponsor must show its plans for the use and possible disposal of the property benefit civil aviation to the FAA.
  - 1. General Policy.** A total release permitting the sale and disposal of airport real property shall not be granted unless it can be clearly shown that the disposal of such property will benefit civil aviation. One important factor in the justification of a net benefit to civil aviation is that the proceeds equal to the current FMV of the released property will be received and those proceeds will be used for airport purposes.
  - 2. Purpose of Release.** An airport sponsor requesting a release of airport land must identify the reason for which the release is requested and provide supporting documentation and explanation. For example, one justification for release could be a showing that the expected net proceeds from the sale of the property at its current market value will be used to finance items of airport development and improvement in the local public



airport system, where that need has been confirmed with FAA concurrence. A sponsor's request must ensure that the Federal government will be reimbursed for the Federal share of the net proceeds of the sale of the land or the Federal share will be reinvested in (a) a replacement airport or (b) another operating publicly owned airport in the NPIAS.

- a. Reimbursement.** The requirement for reimbursement shall apply only where there is no alternative to invest in a replacement or currently operating public airport that is owned or to be owned by the sponsor. However, the sponsor may elect to reinvest the Federal share of the total net proceeds in any other grant-obligated public use airport by contract between the respective airport owners with FAA concurrence. FAA concurrence to such a contract is contingent upon such funds being used for grant-eligible airport development. Except where a grant agreement specifically provides otherwise by special condition, the amount to be reimbursed shall be the unamortized amount of the Federal share of the grant.
- b. Reinvestment.** Reinvestment of the total net proceeds (both Federal and sponsor share) is required if the sponsor continues to own or control – or will own or control – a currently operating public airport or a replacement public airport.

**3. Application of Proceeds from the Sale of Real Property.** The FAA shall not issue a release without a written commitment from the airport sponsor to receive fair market value for the released airport property. If the total net proceeds from the sale of airport real property are used for local airport development and not returned to the Aviation Trust Fund, the proceeds are subject to the following conditions:

- a.** The net proceeds realized from the sale of airport property – or an amount equivalent to the fair market value of the property and based on an independent appraisal, if the property is not sold – must be placed in an identifiable interest-bearing account to be used for the aeronautical improvements at an operating NPIAS airport or replacement airport.
- b.** All aeronautical improvements funded by the proceeds of the sale shall be accomplished in accordance with currently applicable FAA design criteria or FAA approved state standards.
- c.** Any interest earned by the account holding the proceeds of sale may be used for the operation and maintenance of the aeronautical portion or to enhance the revenue producing capability of the

aeronautical activities at the receiving NPIAS airport or replacement public airport.

## **VIII. DISPOSAL OF GRANT FUNDED PERSONAL PROPERTY**

Grant-funded personal property belonging to the airport must be maintained on the sponsor's inventory. The duration of this Federal obligation may expire with the useful life of the specific piece of personal property. However, all airport personal property is considered an airport asset regardless of how it was acquired. If the sponsor desires to dispose of personal property prior to the expiration of its useful life as defined in the current version of the AIP Handbook, the sponsor must consult the ADO or regional airports division about the proposed disposal or disposition of the airport personal property prior to seeking release from its obligations.

## **IX. PROCEDURES**

**A. General Documentation Procedures.** The regional airports divisions must document and/or review a sponsor's written request for release, including the following:

1. The sponsor's formal consultations with the FAA and the state aviation agency to discuss its request for closure and the documentation required supporting their request.
2. The sponsor's justification for a release and closure of the airport.
3. The sponsor's complete description of the airport sponsor's Federal obligations, including grant history, surplus property received, and any nonsurplus property received, with reference to appropriate planning documents (Exhibit "A" or ALP) with notations on additional land holdings and land use.
4. The sponsor's complete description of all terms, conditions, and Federal obligations that may need to be modified by the FAA to achieve the result requested by the sponsor.
5. The ADO or regional airports division's disposition of comments received from other Regional Lines of Business (LOBs) through the Obstruction Evaluation/Airport Airspace Analysis (OEAAA) system.
6. The ADO or regional airports division's determination for a public notice and comments in the Federal Register or the documentation of the published notice in the Federal Register, and a summary of comments received.

7. The state aviation agency's review and recommendation of the proposed airport closure.
8. The ADO or regional airports division's analysis and preliminary consideration of the sponsor's request sent to ACO-1.

- B. Airport Sponsor Request for Release.** The sponsor must submit its request for release in writing. The request must be signed by a duly authorized official of the sponsor. In most cases, the sponsor submits two copies of an original request and supporting material to the ADO or regional airports division. At the FAA or other Federal agencies' request, the sponsor must submit additional copies of the request and supporting material to headquarters offices or the offices of other Federal agencies.
- C. Content of Written Requests for Release.** The sponsor must make its request specific. The sponsor's initial submittal should include initial supporting documents, including justification for the release as a net benefit to civil aviation. If the FAA finds the request potentially justified and practical, the FAA, through the regional airports division or ADO, will request the sponsor to submit a final financial and implementation plan.

### **1. Initial Document Submittal**

- a. All obligating agreements with the United States.
- b. A written request for a release of all Federal obligations.
- c. Reason for requesting the release and airport closure.<sup>2</sup>
- d. The facts and circumstances justifying the request.
- e. The present condition and present use of any property or facilities proposed to be involved in the release.
- f. A description of how the sponsor acquired or obtained the property, including copies of deeds or conveyances to the property.
- g. If applicable, height limit computations that limit the height of fixed objects that may later be constructed at the site of the airport to ensure navigation and compatible land use for land disposal.
- h. The state aviation agency review and recommendation of the sponsor's request.

### **2. Justification of Net Benefit to Civil Aviation**

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<sup>2</sup> Only benefits to aviation may be cited as justification for the release, whether tangible or intangible. The nonaviation interest of the sponsor or the local community – such as making land available for economic development or increased tax revenues – does not constitute a benefit that can be considered in justifying a release and disposal of the airport.

- a. Factors affecting the growth and development of the airport. Examples include a loss of air traffic to the airport; the availability of other airport facilities within the airport's catchment area; and an increasing financial burden to the airport sponsor after a concerted effort to improve the airport's management, increase revenue generation and reduce expenses. The sponsor should identify what has changed since the FAA made investments in the airport.
- b. The potential for better distribution of demand among other remaining public use airports surrounding the airport.
- c. The expected use or disposition of the property or facilities. For example, a replacement public use airport or net assets transfer to another existing public use airport. The sponsor should also define the needs of neighboring public use airports.
- d. A current appraisal indicating FMV of the property. The FAA regional office will provide a sample scope of appraisal services. The appraisal must be conducted by an experienced and state-certified appraiser.
- e. The unamortized value of federally funded grant improvements.
- f. The requirements of state or local law with regard to the property release, which the ADO or regional airports division will include in the language of the approval document if the request is granted.
- g. The Net Proceeds expected from the disposal of the property and the estimated balance of airport revenue accounts.
- h. Identification of non-Federal deed restrictions and/or non-Federal encumbrances on the property.

### **3. Financial and Implementation Plan**

- a. Proposed projects and funding requirements for a replacement airport or transfer of the net airport assets, including personal property and equipment, to neighboring NPIAS airports.
- b. A proposed budget for any proposed improvements that will happen as a result of the release. This budget should include the net proceeds of the property disposal, unamortized grants, remaining funds from airport revenue accounts and any required sponsor contributed funds.
- c. The plan must include the process for the administration of funds, including provisions for accommodating existing tenants and a timetable for completion.

## **X. AGENCY ACTIONS**

**A. FAA Evaluation of Sponsor Requests.** The FAA's regional airports division will evaluate a sponsor's request for release and closure, which will include reviewing all appropriate documentation and exhibits needed to determine the total impact of the sponsor's proposal. The regional airports division may request the sponsor to provide additional information and analyses. The regional airports division will forward the results of its analysis and its recommendation to ACO-1. This evaluation will include consideration of pertinent factors such as:

1. All of the ways in which the sponsor is federally obligated, both in its operations and its property. This includes specific Federal agreements and use obligations including the National Emergency Use Provision (NEUP).
2. The sponsor's past and present compliance record under all of its airport agreements, and its actions to make available to the public a safe and usable airport for aeronautical use. If there has been past noncompliance, evidence that the sponsor has taken or has agreed to take appropriate corrective action is required. If a sponsor is currently not in compliance with its obligations and the sponsor has not taken corrective action after being instructed to do so, this non-compliant status will be taken into account; the request for release will be put into abeyance until the sponsor takes or agrees to take corrective action and has been found in compliance with its Federal obligations.
3. The reasonableness and practicality of the sponsor's request in light of the necessity to maintain sufficient aeronautical facilities in the NPIAS and the role of the airport in the NPIAS.
4. The net benefit to civil aviation to be derived by the proposal and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to aeronautical users relative to the public at large.
5. Whether the disposition of the property will yield a benefit to aviation that is equal to or greater than the property's fair market value. Generally, the primary benefit to closing an airport will be the amount of airport system funding resulting from the closure, so the amount paid for closure will be important to the FAA determination.

**B. FAA Determination on Sponsor Requests.** The statutes, regulations, and policy applicable to the specific types of agreements involved in the sponsor's request must guide the decision to grant or deny the request based on the evaluation factors. The FAA does not construe the removal of an airport from the NPIAS alone as a release of Federal obligations unless the airport is also specifically granted a release.

**C. General.** The FAA must determine that:

1. The public purpose that an agreement was intended to serve no longer benefits civil aviation, including the terms, conditions, or covenants of an agreement.
2. The release of an applicable agreement will not prevent the accomplishment of the public purposes for which the airport or its facilities were originally federally obligated, and the release will benefit the interests of the United States in civil aviation.
3. The release will federally obligate the sponsor under new terms, conditions, covenants, reservations, or restrictions determined necessary in the public interest and to advance the interests of the United States in civil aviation. For example, compatible land use obligations for land that is being disposed of or obligations to transfer assets to a new or replacement airport.
4. The release will conform the rights and Federal obligations of the sponsor to the statutes of the United States and the intent of the Congress, consistent with applicable law.

**D. Continuing Right of Flight over All Airport Land Disposals.** A total release permitting sale or disposal of Federally obligated land must specify that the sponsor is obligated to include in any deed, lease, or other conveyance of a property interest to another, a reservation assuring the public rights to fly aircraft over the land released and to cause inherent aircraft noise over the land released, if applicable. The following language must be used:

*This is hereby reserved to the (full name of the grantor or lessor), its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein (state whether conveyed or leased). This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace.*

See FAA Order 5190.6B, *Airport Compliance Manual* (September 30, 2009), Chapter 22.

**E. Continuing Restrictions on Released Property.** If continuing restrictions are required to protect the airspace, the FAA may include in the release a requirement that the sponsor:

1. Prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation.
2. Prohibits any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or that interferes with air navigation



and communication facilities. These restrictions are set forth in the instrument of release and identify the applicable height limits above which no structure or growth is permitted. The airport sponsor will compute these limits according to the currently effective FAA criteria as applied to the airport. The ADO, regional airports division, and airport sponsor will not incorporate advisory circulars, design manuals, Federal Aviation Regulations (Title 14 of the Code of Federal Regulations), or other such documents by reference in the instruments or releases issued by the FAA in lieu of actual computed limits.

**F. Environmental Review of Proposed Releases.** The FAA must determine if the current version of FAA Order 5050.4, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, requires an environmental review procedure.

1. When a sponsor accepts a Federal airport development grant or a conveyance of Federal surplus property for airport purposes, the sponsor incurs specific Federal obligations with respect to the uses of the property. FAA action is required to release a sponsor from Federal obligations in the event the sponsor desires to sell the airport land. All proposals shall be reviewed in accordance with the current FAA Order 5050.4, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*.
2. The environmental review shall address the known and reasonably foreseeable environmental consequences and connected actions of the release. As with other Federal actions regarding land, appropriate coordination with Federal, state, or local agencies shall be completed for applicable areas of environmental consideration (*i.e.*, historic and archeological site considerations, section 4(f) lands, wetlands, coastal zones, and endangered species).<sup>3</sup> Coordination with other agencies may be required.
3. In making the final determination, the responsible Federal official shall consider the effects of covenants that will encumber the title and the extent of Federal ability to enforce these covenants subsequent to the release action. The standard conditions of release relating to the right of flight, including the right to make noise from such activity and the prohibition against the erection of obstructions or other actions that would interfere with the flight of aircraft over the land released, may be considered as mitigating factors and may be included in environmental assessments when required. When the intended use of released land is consistent with uses described and covered in a prior environmental review, the prior data and analysis may be used as input to the present assessment. When the

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<sup>3</sup>See the current version of FAA Order 5050.4, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, for additional information.

conditions set forth in the applicable sections of FAA Order 5050.4 apply, a written reevaluation may be used to support the property release.

4. In some cases, another Federal agency may be the lead agency responsible for preparing an environmental assessment and/or environmental impact statement, if required. In these circumstances, the FAA may be a cooperating agency. To support the release action, the FAA may then adopt the environmental document prepared by the other agency in accordance with the provisions of Council of Environmental Quality (CEQ), 40 CFR § 1506.3.

**G. Public Notice for a Change in Use of Aeronautical Property.** Section 125 of P.L. 106-181 (April 5, 2000), *The Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century* (AIR-21), requires the FAA to provide an opportunity for public notice and comments prior to the waiver of a sponsor's Federal obligation to use certain airport land for nonaeronautical purposes. Section 125 of AIR-21 has been codified as amendments to 49 U.S.C. §§ 47107(h), 47125, 47151, and 47153.

As a matter of policy, the FAA will provide public notice of a proposed release of a sponsor from its Federal obligations regarding the closure of a federally obligated airport. At least 30 days prior to the agency's determination of an airport sponsor's request to release aeronautical property or facilities, notice must be published in the Federal Register to afford the public an opportunity to comment. Public notice provides an opportunity for the FAA to obtain additional information as a part of its evaluation of the airport sponsor's request and allows the FAA to take public comment into account in the agency's decision making. In addition, the airport sponsor is encouraged to provide local notice and notify tenants in a timely manner to ensure they are aware of the proposed action and have an opportunity to comment.

The regional airports divisions are responsible for complying with the requirements of the statute and policy guidance governing public notice of the release of aeronautical property.

**H. Permanent Closure of Airport.** Section 185 of Pub. L. 108-176 (December 12, 2003), *Vision 100—Century of Aviation Reauthorization Act*, requires that a public agency may not permanently close an airport listed in the National Plan of Integrated Airport Systems without providing written notice to the Administrator of the FAA at least 30 days before the date of the closure, which the FAA shall publish the permanent airport closure notice in the Federal Register. This Federal Register Notice should be separate from the FRN for Section 125 of Pub. L. 106-181 since they serve different purposes and may not coincide.

**I. FAA Completion of Action on Sponsor Requests.** The FAA Associate Administrator for Airports (ARP-1) is the FAA approving official for a sponsor's request to be released from its Federal obligations for the purpose of closing or

disposing of an entire airport. The following actions will also be part of the FAA's review process.

1. **Regional Review.** The release request and all applicable information collected will be initially analyzed by the region. If the region has found the request justified after all pertinent information has been considered, it will forward the request and suggested course of action to ACO-1 for Headquarters Review.
2. **FAA Headquarters Review.** Each request to release an entire airport shall be considered by ARP-1 on a case-by-case basis and must include a copy of the sponsor's request, including related exhibits and documents; a copy of the FAA Regional Airports Division Director's statement about the proposed action; and recommendations from the Director of the Office of ACO-1, the Director of the Office of Airport Planning and Programming (APP-1), and the Director of the Office of Airport Safety and Standards (AAS-1) before being submitted for consideration and disposition by ARP-1.
3. **FAA Approval Action.** ARP-1, through the ADO or regional airports division, will advise the sponsor that its request is granted or denied. This notification will also indicate if special conditions, qualifications, or restrictions apply to the approval. ARP-1 may issue a letter of intent to approve the request in advance of the effective date of the actual release, at the request of the sponsor.<sup>4</sup> If the FAA approves the request or an acceptable modification of the request, then the ADO or regional airports division will prepare the necessary instruments or documents. The ADO or regional airports division will initiate parallel action to amend all related FAA documents (*i.e.*, NPIAS, ALP, Exhibit "A," and FAA Form 5010, *Airport Master Record*) as required to achieve consistency with the release. The sponsor must provide the ADO or regional airports division with any acknowledgment or copies of executed instruments or documents as required for FAA record-keeping purposes. The regional airports division will confirm that the sponsor has completed all requirements and provide the airport sponsor with written verification that all requirements have been fulfilled. Copies of the final verification by the regional airports division director shall be provided to ACO-1.
4. **Content of Release Document.** The formal release will cite the agreements affected and identify specific areas of land or facilities involved. The ADO or regional airports division will notify the sponsor of the binding effect of the revised federal obligations.
5. **FAA Denial of Release.** If the FAA determines that the request is contrary to the public interest and therefore the agency cannot grant the

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<sup>4</sup> All such letters of intent should cite any specific understandings reached between the FAA and airport sponsor.

request, ARP-1, through the FAA's ADO or regional airports division, will advise the airport sponsor in writing of the denial.

**J. FAA Consent by Letter of Intent to Release – Basis for Use.**

1. **Use of Letter of Intent.** Release and disposal of facilities developed through Federal assistance is often necessary to finance replacement facilities. The sponsor may, therefore, request a letter of intent to release even if it is merely to permit the sponsor to determine the market demand for portions of the available airport property proposed for release and disposal.
2. **Letter of Intent Contingencies.** After approval by the Associate Administrator for Airports, the ADO or regional airports division may issue such a letter of intent to release if the letter contains appropriate conditions and makes clear that actual release is specifically contingent upon adequate replacement facilities being developed and becoming operable and available for use.
3. **Binding Commitment.** A letter of intent to consent to release represents a binding commitment and an advance decision to release the property once specific conditions have been met. It should be used only when all of the required conditions pertinent to the type of release sought have been met or are specifically made a condition of the pledge contained in the letter of intent. In addition, such a letter should cite any specific understandings reached about anticipated problems in achieving the substitution of airport properties (*i.e.*, who pays for relocation of various facilities and equipment and the cost of extinguishing existing leases). The letter should specify a reasonable time limit on the commitment to release.

**K. Release Agreement.** The release agreement document is the formal agreement used in cases where the sponsor of a closing airport is transferring assets to another sponsor of a NPIAS airport in the region. The release agreement is signed by the Associate Administrator for Airports.

**L. Deactivation of a Federally Obligated Airport.** An airport sponsor who successfully obtains a release of its entire airport with the intent to close the airport must submit an FAA Form 7480-1, *Notice for Construction, Alteration and Deactivation of Airports*, and written letter to the FAA regional office at least 90 days before the deactivation of the airport.

**XI. CLOSURE OF AN AIRPORT WHERE CURRENT GRANT AND DEED OBLIGATIONS NO LONGER APPLY**

If the airport does not include any land acquired with Federal assistance and all AIP grants have expired, the FAA may not be able to prevent closure of the airport but may still have some involvement, depending on the former sponsor's future use of the airport property.

**A. Continued airport operation.** If the airport operator continues to operate the airport as a public use airport:

1. Grant assurance obligations regarding civil rights, use of airport revenue, and the prohibition of exclusive rights continue to apply.
2. Other grant assurances, *e.g.*, Grant Assurance 22, *Economic Nondiscrimination*, requirements for reasonable access, expire with the last grant. However, the airport operator may be preempted from adopting restrictions that affect aircraft in flight, aircraft airworthiness, pilot qualifications, and other areas regulated by the FAA. Questions regarding adopted or proposed operating restrictions should be forwarded to AGC-600 for consideration of the applicability of preemption or other continuing Federal requirements.
3. At some point, operating restrictions imposed on reasonable aeronautical access to the airport would require reclassification of the airport as private use.

**B. Permanent closure of the airport.** If the airport is closed and the property is no longer used as an airport, no release from Federal obligations is required and there is no further involvement of the grant compliance program.

1. Requirements to notify FAA of a planned closure apply and can be enforced by a civil penalty.
2. Since there is no Federal action (*i.e.*, approval of a release of obligations), there is no requirement for environmental review.
3. The sponsor can use the remaining funds in the airport account as it desires and dispose of the airport land.
4. The remaining FAA grant obligations, such as exclusive rights, revenue use, civil rights, as well as statutory obligations relating to use of airport revenue and exclusive rights, are extinguished upon closure.

**C. Temporary closure followed by reopening.** If the airport is closed temporarily, for the purpose of extinguishing any remaining grant obligations, and then reopened as a private use airport:

1. Requirements to notify FAA both of the planned closure and the planned opening of a new airport apply. There is no minimum closure time

expressly required before reopening, so presumably the sponsor could provide a 30-day advance notice of intent to close the airport, and one day later provide a 30-day advance notice to open as a new private use airport.

2. Questions regarding applicability of obligations regarding exclusive rights, revenue use and civil rights should be referred to AGC-600.
3. FAA grant obligations other than exclusive rights, revenue use, and civil rights generally will not apply to the reopened airport. However, the airport operator is preempted from adopting restrictions that affect aircraft in flight, *e.g.*, special VFR operations, flight paths or traffic patterns.
4. The airport operator may also be preempted from adopting restrictions affecting aircraft airworthiness, pilot qualifications, and other areas regulated by the FAA. Questions regarding adopted or proposed operating restrictions should be forwarded to AGC-600 for consideration of the applicability of preemption or other continuing Federal requirements.
5. The reopened private use airport would not qualify for an FAA contract air traffic control tower.
6. The airport's instrument flight procedures (IFP) will cease to be public IFP's and will be subject to the special use IFP requirements in FAA Order 8260.43C, *Flight Procedures Management Program*.
7. As a governmental entity, the sponsor would still be subject to state and federal constitutional requirements relating to discrimination and due process, but these requirements would be enforced by courts and not by the FAA.



**Standard Initial Response to Sponsor's Request to Close Airport**

[Type the letter date here]

Anytown Airport Authority  
123 Aviation Way  
Anytown, OH 11111

Dear Commissioner Smith:

The Federal Aviation Administration (FAA) has received your [date] letter expressing intent to closing the [Name of Airport] (Airport ID), and requesting information on the FAA process for review of a closure request.

The FAA supports airport development and preservation throughout the United States, as depicted in the current National Plan of Integrated Airport Systems (NPIAS). Title 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act, as amended. Section 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance.

The FAA will act on an airport sponsor's request for release and closure to the extent that such action will benefit the public interest in civil aviation. The Agency will not consider a release and closure of an airport: (a) if the airport serves a unique role and there is no comparable alternative within the immediate vicinity; (b) if the airport is part of a *system* of airports and the role it fulfills is important to the continued operation of the local airport system; or (c) if the airport supports a level of activity that classifies it as either "National" or "Regional" in the National Plan of Integrated Airport Systems (NPIAS) Report to Congress.

The FAA has a responsibility to preserve the Federal investment made in airports such as [Name of Airport] that are funded through the AIP program. Accordingly, Congress requires the FAA to include specific contractual obligations as a requirement for AIP funding. There are currently 39 such contractual obligations, collectively known as Grant Assurances, that airport sponsors agree to fulfill as a condition of receiving an AIP grant.

Specifically, Grant Assurance 19, *Operation and Maintenance*, requires you as sponsor of [Name of Airport] to operate the airport at all times in a safe and serviceable condition. Further, Grant Assurance 22, *Economic Nondiscrimination*, requires that you make [Name of Airport]

available as an airport on a reasonable, non-discriminatory basis. Closing the airport would make it unavailable on reasonable terms.

Upon acceptance of an AIP grant, the assurances become a binding obligation between the airport sponsor and the Federal Government. In accepting Federal funding, namely AIP funds, you have agreed to specific Federal obligations, including the commitment to keep the airport open and make it available for public use as an airport. Thus, [Name of Airport] may not be closed without the FAA's formal consent.

In order for a sponsor to permanently close or dispose of an entire airport, the sponsor must be released from its Federal obligations. The FAA Associate Administrator for Airports (ARP-1) is the FAA official designated for evaluating such requests. Each request to release an entire airport shall be considered by the Associate Administrator on a case-by-case basis, taking into consideration the extent that such action has the potential to protect, advance, or benefit the public interest in civil aviation.

The benefit to civil aviation is the FAA's prime concern and is represented by various considerations, such as:

1. The reasonableness and practicality of the request for closure.
2. The effect of the request on needed aeronautical facilities.
3. The net benefit to civil aviation.
4. The compatibility of the proposal with the needs of civil aviation.
5. The state of the existing airport, which must be in a safe and operable condition, and not in a state of disrepair.

Only benefits to civil aviation may be cited as justification for the release, whether tangible or intangible. The nonaviation interest of the sponsor or the local community—such as making land available for economic development—does not constitute a civil aviation benefit that can be considered in justifying a release.

When evaluating a request to close a Federally obligated airport, the FAA takes into consideration the sponsor's past and present compliance record and its actions in making the airport available for aeronautical use by the public. The FAA will not consider any closure request for an airport that has been identified as having current compliance issues or violations.

FAA approval occurs only in cases where such a release would provide a net benefit to civil aviation, such as closing for the purpose of developing a replacement airport. Should the FAA allow release and disposal of the airport, you would be required to sell the airport property and assets for at least Fair Market Value (FMV). The proceeds from the sale would be considered airport revenue, subject to the Airport Revenue Use Policy (see *Policy and Procedures Concerning the Use of Airport Revenue*, 64 FR 7697, February 16, 1999) and must be used to reimburse the Federal Government or reinvest in AIP eligible airport development elsewhere.

Chapter 22 of FAA Order 5190.6B, Airport Compliance Manual, contains more information about the release of a Federally obligated airport. If you are interested in pursuing an application for closure of the airport, we recommend you contact the local FAA airports district office.

Sincerely,

[Type name of person letter is from]

[Type Title]

## **FAA CHECKLIST FOR FEDERALLY OBLIGATED AIRPORT CLOSURE**

1. **General Documentation Procedures.** The ADOs and regional airports divisions must fully document all actions related to a sponsor's request for release, including the following:
  - A. The sponsor's informal consultation with the FAA to discuss their request for closure and the documentation required supporting their request.
  - B. The sponsor's justification for a release and closure of the airport.
  - C. A complete description of the airport sponsor's Federal obligations, including grant history, surplus property received, and any nonsurplus property received, with reference to appropriate planning documents (Exhibit "A" or ALP) with notations on additional land holdings and land use.
  - D. A complete description of all terms, conditions, and Federal obligations that may need to be modified in order to achieve the result requested by the sponsor.
2. **Airport Sponsor Request for Release.** The sponsor must submit its request for release in writing; it must be signed by a duly authorized official of the sponsor. In most cases, the sponsor submits an original request and supporting material to the ADO or regional airports division. If the FAA or other Federal agencies require it, the sponsor may need to submit additional copies of the request and supporting material to headquarters offices or to the offices of other Federal agencies.
  - A. Initial Document Submittal.**
    - i. All obligating agreement(s) with the United States.
    - ii. A request for a release of all Federal obligations.
    - iii. Reason for requesting the release and airport closure.
    - iv. The facts and circumstances that justify the request.
    - v. The present condition and present use of any property or facilities proposed to be involved in the release.
    - vi. A description of how the sponsor acquired or obtained the property.
    - vii. If applicable, height limit computations that limit the height of fixed objects that may later be constructed at the site of the airport to ensure navigation and compatible land use for land disposal.

## **B. Justification of Net Benefit to Civil Aviation.**

- i. Factors affecting the growth and development of the airport. Examples include a loss of air traffic to the airport, the availability of other airport facilities within the airport's market area, and an increasing financial burden to the airport sponsor after a concerted effort to improve the airport's management, increase revenue generation, and reduce expenses. The sponsor should identify what has changed since the FAA made investments in the airport.
- ii. The potential for better distribution of demand among other remaining airports.
- iii. The expected use or disposition of the property or facilities. For example, a replacement airport or net assets transfer to another existing airport. The sponsor should also define the needs of neighboring airports.
- iv. A current appraisal indicating fair market value of the property at its highest and best use, which the appraised value will be reimbursed back into the regional airport system or returned to the Aviation Trust Fund. The FAA will provide a sample scope of services. The appraisal must be conducted by an experienced and state certified appraiser.
- v. The unamortized value of Federally funded grant improvements, which the unamortized value will be reimbursed back into the regional airport system or returned to the Aviation Trust Fund.
- vi. The requirements of state or local law with regard to the property release, which the ADO or regional airports division will include in the language of the approval document if the request is granted.
- vii. The Net Proceeds expected from the disposal of the property and the estimated balance of airport revenue accounts.
- viii. Identification of non-Federal deed restrictions and/or non-Federal encumbrances on the property.

## **C. Financial and Implementation Plan.**

- i. Proposed projects and funding requirements for a replacement airport or a net asset transfer to neighboring airports.
- ii. A proposed budget for any proposed improvements that will happen as a result of the release. This budget should include the net proceeds of the property disposal, unamortized grants, remaining funds from airport revenue accounts, and any required sponsor contributed funds.
- iii. The plan must include the process for the administration of funds, including provisions for accommodating existing tenants and a timetable for completion.

3. **Continuing Right of Flight over all Airport Land Disposals.** A total release permitting sale or disposal of Federally obligated land must specify that the sponsor is

obligated to include in any deed, lease, or other conveyance of a property interest to another a reservation assuring the public rights to fly aircraft over the land released and to cause inherent aircraft noise over the land released, if applicable.

4. **Continuing Restrictions on Released Property.** If continuing restrictions are required to protect the airspace, the FAA may include in the release a requirement that the sponsor:
  - i. Prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation.
  - ii. Prohibits any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or that interferes with air navigation and communication facilities. These restrictions are set forth in the instrument of release and identify the applicable height limits above which no structure or growth is permitted. The airport sponsor will compute the actual limits according to the currently effective FAA criteria as applied to the airport.



**Notice of Closure of (Name of Airport), (City, State)  
Date**

**Notice of Permanent Closure**

**AGENCY:** Federal Aviation Administration, Department of Transportation

**ACTION:** Notice of permanent closure.

**SUMMARY:** The Federal Aviation Administration (FAA) received written notice, (Date), from the (Name of Airport Sponsor) advising that on (Date), it was permanently closing (Name of Airport) (Airport Code), (City and State); the notice was in excess of 30 days before the closure in accordance with 49 USC § 46319(a). The FAA hereby publishes the (Name of Airport Sponsor) notice of permanent closure of (Name of Airport) in accordance with 49 USC § 46319(b).

**DATES:** The permanent closure of the airport is effective as of (Date).

**FOR FURTHER INFORMATION CONTACT:** (Name of Regional Airports Division Director), Airports Division, (Region), (Telephone Number).

**SUPPLEMENTARY INFORMATION:** (The Airport Sponsor's Notice of Closure of (Name of Airport), (Name of City and State), (Date), is attached.

Issued in Washington, DC, on (Date).

Name of Authorized Regional Airports Division Director or Airports District Manager,