

## **Part II: Types of Federal Agreements**

### **Chapter 3. Federal Obligations from Property Conveyances**

#### **3.1 Introduction.**

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

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

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

In general, property conveyances require the sponsor to:

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

It is the responsibility of the Regions and ADOs to:

- Ensure that the sponsors operate and maintain their airports in accordance with the conveyance instruments,
- Evaluate sponsor requests for release,
- Follow FAA policy concerning approval for the release of qualifying property from sponsor federal obligations, and
- Consider any planning and environmental actions needed.

In addition to any airport-specific federal obligations, surplus and nonsurplus property federal obligations will, for the most part, mirror language found today in most grant agreements with respect to the basic compliance requirements, *i.e.*, exclusive rights, reasonable access, and unjust discrimination. (For information on releases see chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

### **3.2 Background.**

Prior to the enactment of Public Law 80-289 in 1947 (Pub. L. 80-289), surplus property conveyance instruments were issued under the Surplus Property Act of 1944 (Surplus Property Act). As later amended, the Surplus Property Act was codified at 49 U.S.C. §§ 47151-47153. The Surplus Property Act was the primary legislative effort by the U.S. Government to dispose of excess military equipment and infrastructure as World War II was coming to an end. The Surplus Property Act authorized the conversion of surplus military airports to civilian public use airports. The FAA recommends to the General Services Administration (GSA) which property should be transferred for airport purposes to public agencies. Prior to 1958, the Civil Aeronautics Authority (CAA) made these recommendations. Neither the FAA nor the federal government owns the properties in question once they are transferred, but the government may retain a property interest.

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

### **3.3 The War Assets Administration (WAA).**

Upon enactment of the Surplus Property Act, the WAA, under general authority granted by the Surplus Property Act, conveyed significant amounts of federally owned surplus properties to public agencies. Before conveyance, the responsible government entity issued a declaration of surplus real property. For surplus airport properties conveyed under this authority, the WAA established certain terms and conditions and prescribed them in Regulation 16.<sup>1</sup> A copy of Regulation 16 is provided as Appendix B.

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<sup>1</sup> **NOTE:** Regulation 16 from the Surplus Property Act is different from section 16 of the Federal Airport Act of 1946.

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

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

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### **3.4 Nonairport Property.**

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

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

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### **3.5 The Use of Property for Revenue Production.**

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

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

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

### **3.6 Highest and Best Use and Suitability for Airport Use.**

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

Highest and best use has been defined – when appraising the market value of real property – as the “reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value.” (See Appraisal Institute, *The Dictionary of Real Estate Appraisal* (4th ed. 2002); see also *Olson v. United States*, 292 U.S. 246, 255 (1934)) (“The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.”)); *Bloom Company v. Patterson*, 98 U.S. 403, 408 (1878). The highest and best use must be based on:

- the economic potential of the property;
- qualitative values (social or environmental) of the property; and
- use factors affecting land use (e.g., zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations).

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

### **3.7 Types of Conveyance Instruments for Surplus Property.**

The federal government has used three basic instruments to transfer ownership of federally owned surplus property for public use airport purposes:

#### **a. Regulation 16.**

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

#### **b. Real Property.**

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

#### **c. Personal Property.**

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

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

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

### **3.8 Sponsor Federal Obligations for Surplus Property.**

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

**a. War Assets Administration Regulation 16 Conveyance.**

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

**b. GSA Public Law 80-289 Conveyance.**

Instruments of conveyance under Pub. L. 80-289 issued by the GSA are generally similar in form and content. In some cases, however, certain terms and conditions may be different. Therefore, the actual obligating documents must be reviewed in the initial phase of an investigation. (See [Pub. L. 80-289](#)).

**c. Operation of the Entire Airport.**

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

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

Practically all WAA and GSA conveyance instruments transferring ownership of surplus real and airport-related personal property to airport sponsors for public use airport purposes contain the NEUP. This provision retains the right of the United States to make exclusive or joint use of the airport, or any portion thereof, during a war or national emergency. This has actually happened several times since World War II, particularly after the United States' involvement in the Korean War began in 1951. Two examples of airports that were reactivated are Sanford, Florida, and Brown Field, California.

However, while the authorizing statutes require this provision to be included in all such conveyance instruments, it has been discovered that the NEUP was omitted from a few conveyance instruments issued by WAA and GSA. (For additional information, refer to chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

**e. NEUP Case Study: Sanford Naval Air Station.**

The City of Sanford is in the northwestern portion of Seminole County, approximately 16 nautical miles (or 18 statute miles) northeast of Orlando, Florida. The Orlando Sanford Airport is in the southeastern portion of the City of Sanford. The Airport began its history prior to the 1940s as an 865-acre airport equipped with two runways. On June 11, 1942, the City of Sanford deeded the airport to the U.S. Navy and the airport became a Naval Air Station. The Navy acquired an additional 615 acres of land for the station and immediately began construction of its facilities. Many of these facilities are still present at the airport today. Some of these facilities currently serve as storage hangars. In 1943, active flight operations began at the Naval Air Station; the station served as a fighter and dive-bomber training base. Following World War II, the Naval Air Station was decommissioned. The City of Sanford reacquired the land and the facility, now known as the Orlando Sanford Airport. After the Korean War began in 1951, the Navy once again acquired the airport and purchased an additional 164 acres, bringing the total acreage of the airport to 1,644. The airport operated as a training base for fighter, attack, and reconnaissance aircraft until it closed in June of 1968. The City of Sanford realized that closing the base would pose an economic threat to the local economy. To limit this threat, the City negotiated with the federal government for the property purchase. It was ultimately purchased for the sum of \$1.00. This case study illustrates the U.S. Government exercising its option to reactivate a former military facility in case of national need.

**3.9 Duration of Surplus Property Federal Obligations.**

The duration of the federal obligations assumed by airport sponsors for surplus federal property depends on the type of property conveyed.

**a. Real Property.**

The federal obligations set forth in surplus airport property conveyance instruments (except those conveying only personal property) provide that the covenants assumed by the sponsor regarding the use, operation, and maintenance of the airport and the

property transferred shall be deemed to run with the land. This means that subsequent owners or successors of the land would be subject to the covenants. Accordingly, such covenants continue in full force and effect until released under the Surplus Property Act, as amended. (See 49 U.S.C. § 47153; For information on releases see chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

#### **b. Personal Property.**

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

#### **c. Trade-in of Personal Property.**

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

### **3.10 Review of Specific Federal Surplus Property Obligations.**

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

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

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

In addition to any deed obligations, sponsors that have accepted an AIP grant have certain rights and responsibilities under [\*AIP Grant Assurance 27, Use by Government Aircraft\*](#). Grant Assurance 27 requires a sponsor to accommodate operations by Federal government aircraft without charge unless Federal agencies are making “substantial” use of the airport. See Section 3.20.a, *Joint Use and Federal Use of Obligated Airports*.

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<sup>2</sup> [\*FAA Order 5150.2A, Federal Surplus Property for Public Airport Purposes\*](#), Section 6, paragraph 87, Termination of Accountability.

### 3.11 Nonsurplus Federal Land Conveyances.

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

### 3.12 Land Conveyance Federal Obligations.

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

- (a) The airport sponsor will use the conveyed property for airport purposes and will develop that property for airport purposes within one year or as set forth in the conveyance instrument, deed, or quitclaim instrument.
- (b) The airport sponsor will operate the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as a public use airport on fair and reasonable terms and without unjust discrimination.
- (c) The airport sponsor will not grant or permit any exclusive right in the operation and use of the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as required by section 303 of the Federal Aviation Act of 1938, as amended, and section 308(a) of the Federal Aviation Act of 1958 (FAA Act) Pub. L. 85-726 (1958), as amended, 49 U.S.C. § 40101 et seq.

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

- (d) Any subsequent transfer of the conveyed property interest to another nonfederal public entity will be subject to the terms, conditions, and covenants set forth in the original instrument of conveyance.
- (e) In the event of a breach of any term, condition, or covenant contained in the conveyance instrument, the airport sponsor will, on demand, take such action as required to transfer ownership of the conveyed premises to the U.S. Government. See also 49 U.S.C. § 47125(a) (providing the property interest reverts to the U.S. Government, at the option of the Secretary).
- (f) All or any part of the property interest conveyed under section 16 shall automatically revert to the U.S. Government (through the GSA for assignment) in the event that the land in question is not developed for airport purposes or used in a manner consistent with the terms of the conveyance.

### **3.13 Bureau of Land Management.**

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

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

### **3.14 Federal Obligations Imposed by Other Government Agencies.**

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

### **3.15 Duration of Nonsurplus Federal Obligations.**

Terms, conditions, covenants, and other federally obligating provisions in conveyance instruments issued under sections 16, 23, and 516 remain in force and effect as long as the land is held by a nonfederal public agency, its successors, or assignees. Section 817 of Pub. L. 112-95 (FAA Modernization and Reform Act of 2012) gave the FAA the authority to grant releases from sections 16 and 23. Section 141 of Pub. L. 115-254 (FAA Reauthorization Act of 2018) gave FAA the authority to grant releases from Section 516, codified at 49 U.S.C. § 47125. (For information on releases see chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*.)

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

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

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### **3.16 Reversion Provisions.**

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

#### **a. Section 16 Conveyances.**

The Federal Airport Act of 1946 requires that conveyances of nonsurplus federal land under section 16 be subject to the condition that, if the land is not developed as an airport or ceases to be used for airport purposes, the property interest conveyed shall automatically revert to the U.S. Government.

#### **b. Section 23/516 Conveyances.**

Conveyance instruments issued under section 23 of the 1970 Airport Act or section 516 of the AIAA do not contain the automatic property reversion requirement contained in conveyance instruments issued under section 16. They do, however, provide the Secretary of Transportation the option of reverting nonsurplus federal land undeveloped or not used for airport purposes by the airport sponsor. The Secretary has assigned this discretionary authority to the FAA Administrator. The Administrator will decide, on behalf of the U.S. Government, whether to recover title to all or any part of the property interests conveyed.

### **3.17 Airport Sponsor Compliance.**

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

### 3.18 The AP-4 Land Agreements.

Federal legislation enacted between 1939 and 1944 authorized the Development of Landing Areas for National Defense (DLAND) and the Development of Civil Landing Areas (DCLA) programs. In coordination with the War Department (Army) and the Navy Department the Work Project Administration (WPA) and the CAA jointly administered the DLAND programs. In general, under these two federal programs (DLAND and DCLA), existing publicly owned airports were transferred to the federal government for development and use at its discretion, subject to the terms and conditions of an instrument known as an AP-4 Agreement. The AP-4 Agreement contained the applicable federal obligations.

After considering the types of improvements, design standards, construction methods, and normal deterioration, in 1969, the FAA has administratively determined that the useful life of all improvements on airports subject to AP-4 Agreements has expired. Termination of an AP-4 Agreement relieved the airport sponsor only of the contractual federal obligations imposed in the agreement. The sponsor remains subject to the exclusive rights prohibition for as long as the airport is operated as an airport. Current obligations will apply if a sponsor has since accepted federal assistance.

### 3.19 Base Conversion and Surplus Property.

The FAA works with the Department of Defense (DoD) (the Army, Air Force, and Navy) and local civil airport sponsors to convert military airfields to civil use.<sup>4</sup> The agency also works with the GSA on airport property disposals under the Surplus Property Act, as amended. (See 49 U.S.C. § 47151, et seq.). (See Appendix C *DoD Base Realignment and Closure (BRAC)*, for a listing of air bases converted from military to civil use under the BRAC laws). The FAA manages surplus property transfers for airports, military base conversions, and the promotion of joint use of existing military air bases. A sample of a recent surplus property conveyance or deed is provided in Appendix E, *Sample Deed of Conveyance*, of this Order. (**NOTE:** Information in samples is for example only).

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

The FAA also administers the Military Airport Program ([MAP](#)).<sup>5</sup> The [MAP](#) provides financial assistance to the civilian sponsors who are converting, or have already converted, military airfields to civilian or joint military/civilian use. To aid in this process, [MAP](#) grants may be used for projects not generally funded by the [Airport Improvement Program](#) (AIP), such as buildings, rehabilitating surface parking lots, fuel farms, hangars, utility systems, access roads, and cargo buildings.

### **3.20 Joint Use and Federal Use of Obligated Airports.**

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

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

#### **a. Grant Agreements.**

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

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

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

<sup>7</sup> 49 U.S.C. § 47175; 14 CFR § 139.5.

<sup>8</sup> Not all Joint Use Airfields are federally obligated.

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. Pub. L. 80-289.**

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

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

**c. Regulation 16 Transfer.**

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

**d. Negotiation Regarding Charges.**

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

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<sup>9</sup> See chapter 7, *Airport Operations and Maintenance*, for guidance on substantial use.

**e. Joint Use Agreements.**

The airport sponsor (including the sponsor of a federally obligated civil airport or sponsor of a DoD-owned facility for which AIP has funded infrastructure improvements for civil use) must take care not to enter into agreements that will preclude the sponsor from receiving future AIP grants. For example, if the airport sponsor agrees to certain limitations on the number of civilian aircraft takeoffs and landings or agrees to Prior Permission Requirements (PPRs), this may effectively prevent or limit general aviation access in a way that is impermissible under the grant assurances. The FAA Regions and ADOs are available upon request to review proposed joint use agreements between the DoD and airport sponsors to ensure that the airport's interests are protected and to preserve the sponsor's eligibility for grant assistance. This review is effective only if done before any agreements are signed. The FAA is not a party to and does not approve joint use agreements. Remember, the DoD is responsible for protecting its interests; the airport sponsor is responsible for preserving and protecting the airport's interests and complying with the grant assurances and other federal requirements.

It is important to remember that in cases involving military units, the military entity in question may be subject to military regulations relating to fee negotiations. For example, [Air Force Instruction 10-1002](#), dated August 8, 2018, entitled Airport Joint Use Agreements for Military and Civilian Flying Facilities implements Air Force Policy Directive (AFPD) 10-10, Joint Use of Military and Civilian Flying Facilities. It provides guidance for negotiating fair and reasonable charges to the Government for joint use of the flying facilities of a public airport.

**f. Provision for Altered Military Use.**

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

**3.21 through 3.25 Reserved.**

**Sample Surplus Property Conveyance Introduction Language**

(Information in samples is for example only.)

**Quitclaim Deed**

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

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

*[Property description follows. Additional language not provided in this sample.]*