

Part VII: Releases and Property Reversions

Chapter 22. Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land

22.1 Introduction.

This chapter discusses the laws, regulations, policies, and procedures pertaining to an airport sponsor's request for a land use change or a release from federal obligations to permit the sale or conveyance of the land. (See 49 U.S.C. §§ 47153(a), 47125(a), and 47107(c)(2)(B)). Such obligations are contained in the federal conveyance documents and the federal grant obligations that are usually recorded with the property when federal funds are used for a land purchase.

The details of these federal obligations are discussed in chapter 3, *Federal Obligations from Property Conveyances* and chapter 4, *Federal Grant Obligations and Responsibilities*, section 4.3, *The Duration of Federal Grant Obligations*. This chapter also implements FAA's [Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land](#) (88 Fed. Reg. 85474, December 8, 2023).¹

Congress authorized financial assistance for an airport development project to acquire land, including land for future airport development. (See 49 U.S.C. §§ 47104 and 47107(c)(2)). Congress also authorized the conveyance of federal non-surplus and surplus property for developing, improving, operating, or maintaining a public airport. (See 49 U.S.C. §§ 47125 and 47151). In addition, Congress requires the FAA to submit an annual report listing airports not in compliance with airport land use restrictions and identifying necessary corrective action. (49 U.S.C. § 47103(d)).²

¹ The FAA will update this policy to remove references to the [FAA Reauthorization Act of 2018 \(Pub. L. No. 115-254\)](#) and incorporate the [FAA Reauthorization Act of 2024 \(Pub. L. No. 118-63\)](#).

² Airport sponsors that have accepted federally conveyed or federally acquired airport land have agreed to comply with certain obligations and policies included in the federal grant agreement or the federal conveyance documents regarding the use of the land. Those obligations derive from multiple statutes, deed covenants, and the grant assurances.

Under the various federal grant programs, airport sponsors agree to assume certain federal obligations pertaining to the operation and use of the airport. These federal obligations are embodied in the application for federal assistance as sponsor assurances. The federal obligations become a part of the grant offer, binding on the recipient when it accepts federal funds for airport development. (See chapter 4, *Federal Grant Obligations and Responsibilities*).

The FAA Administrator's authority to consent to or approve a change in land use or grant a release of obligations for the sale of the land depends on the type of obligating document, such as a property conveyance or grant agreement (e.g., FAAP, ADAP, AIP). If the airport sponsor has accepted an ADAP or AIP grant since May 1980, the federal obligations on federally acquired land remain in effect until released by the FAA. (See section 4.3, *Duration of Federal Obligations*, for background information to help understand these requirements).

This guidance should be used in conjunction with [FAA Order 5100.38, Airport Improvement Handbook](#); and any related policy implemented in conjunction and complementary with Airports Planning and Programming (APP) guidance. Table 22.1, *Guide to Releases*, at the end of this chapter, provides a summary of the types of releases, notice requirements, and use of the proceeds that can be used in conjunction with the detailed guidance of this chapter.

22.2 Responsibilities.

The Administrator has delegated to Regional Airports Divisions (Regions) and FAA Airports District Offices (ADOs) the authority to release, modify, or amend assurances of individual sponsor agreements under specific circumstances as prescribed in this chapter. It is the responsibility of the Regions and ADOs to review a sponsor's request to change the land use or release federal obligations. However, prior to granting a release of federally conveyed or federally acquired land for sale or conveyance, the Region or ADO must receive written concurrence from ACO-100. Regions and ADOs do not have the authority to modify the list of assurances in a grant agreement or to approve a release permitting the abandonment, sale, or disposal of a complete airport.

FAA will only release federal obligations when the airport sponsor requests a release for the sale or conveyance of airport land that meets FAA release requirements.

Additionally, compliance specialists will consult with FAA Environmental Protection Specialists (EPS) to determine what, if any, environmental obligations under relevant statutes or regulations may apply to specific land use changes or release requests.

22.3 Applicable Law.

The following statutes, regulations and orders are generally applicable to land use changes and releases:

- (a) 49 U.S.C. § 47104, *Project Grant Authority*
- (b) 49 U.S.C. § 47107, *Project Grant Application Approval Conditioned on Assurances about Airport Operations*
- (c) 49 U.S.C. § 47125, *Conveyances of United States Government Land, and Revision Note--Release from Restrictions*
- (d) 49 U.S.C. § 47103, *National Plan of Integrated Airport Systems*
- (e) 49 U.S.C. § 47151, *Authority to Transfer an Interest in Surplus Property*
- (f) 49 U.S.C. § 47152, *Terms of Conveyances*
- (g) 49 U.S.C. § 47153, *Waiving and Adding Terms*
- (h) FAA Reauthorization Act of 2024 (Pub. L. 118-63)
- (i) 14 CFR Part 155, *Release of Airport Property from Surplus Property Disposal Restrictions*
- (j) FAA Order 5190.2, *List of Public Airports Affected by Agreements with the Federal Government*

22.4 Applicable Grant Assurances.

The sponsor of any airport developed with federal financial assistance is required to follow [federal grant obligations](#) including, but not limited to:

- (a) Grant Assurance 4, *Good Title*
- (b) Grant Assurance 5, *Preserving Rights and Powers*
- (c) Grant Assurance 29, *Airport Layout Plan*
- (d) Grant Assurance 31, *Disposal of Land*

22.5 Federal Obligations Imposed with the ALP and Exhibit "A".

A sponsor has a federal obligation to maintain an up-to-date Airport Layout Plan (ALP). (See [Grant Assurance 29, Airport Layout Plan](#), and 49 U.S.C. 47107(a)(16)). The sponsor is required to continue developing the airport according to the approved land uses associated with those documents and in accordance with proposed changes submitted to the Regions/ADOs for consideration, documentation, and approval. The sponsor is obligated to maintain all property listed on the Exhibit "A" of a grant

agreement in accordance with all grant obligations. (See section 22.7, *Explanation of Terms*).

22.6 FAA Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Land.

On December 8, 2023, FAA published its final [*Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Land*](#) (88 Fed. Reg. 85474, December 8, 2023).³ The policy applies to all requests for land use changes on federally acquired or federally conveyed land as well as when a land use change impacts the safe and efficient operation of aircraft or the safety of people and property on the ground related to aircraft operations.

The policy restates FAA's position that aviation tenants and aircraft owners should not be displaced by non-aviation commercial uses that could be conducted off airport property.⁴ The FAA must consider both the existing and future aviation demand when reviewing land use changes. In all cases, the benefit to civil aviation is the FAA's prime concern and is represented by various considerations. These include the future growth in operations; capacity of the airport; the interests of aeronautical users and service providers; and the local, regional, and national interests of the airport.

The policy also restated FAA's position that residential use on airport property is incompatible with the needs of civil aviation. Incompatible land uses on the airport are prohibited by FAA policy and are contrary to federal obligations.

22.7 Explanation of Terms.

The following terms were clarified as follows in FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Land*:

a. Aeronautical Use.

The FAA considers the aeronautical use of an airport to be any use that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on

³ The FAA will update this policy to remove references to the [FAA Reauthorization Act of 2018 \(Pub. L. No. 115-254\)](#) and incorporate the [FAA Reauthorization Act of 2024 \(Pub. L. No. 118-63\)](#).

⁴ See [Policy on the Non-Aeronautical Use of Airport Hangars](#) (81 Fed. Reg. 38906-38907, June 15, 2016).

the airport. (See FAA's [Policy Regarding Rates and Charges, 78 Fed. Reg. 55330, September 10, 2013](#)).

Over time, the definition of aeronautical use has remained relatively unchanged, except when changes were needed to reflect necessary access for sky diving and new entrants. Land on which an aeronautical activity takes place is by its nature aeronautical use (e.g., drop zone, apron, hangar).

Congress authorized financial assistance for an airport development project to acquire land, including land for future airport development. (See 49 U.S.C. §§ 47104 and 47107(c)(2)(B)). Congress also authorized the conveyance of federal non-surplus and surplus property for developing, improving, operating or maintaining a public airport. (See 49 U.S.C. §§ 47125 and 47151). The Congressional intent is furthered by the FAA's policy that requires aeronautical land to be used for aeronautical purposes unless the FAA discharges the sponsor of that obligation. Limiting the use of aeronautical land and facilities to aeronautical purposes ensures that airport land and facilities are available to meet the aeronautical demand of the airport, including future demand. Also, aeronautical users should not be displaced by non-aviation commercial uses, especially those that could be conducted off airport property.

Aeronautical use lands receive additional protection and benefits. They are afforded the protection of the grant assurances and may be charged favorable below market aeronautical rates. Overall, a narrower aeronautical use definition helps protect the federal investment in aviation and ensure that non-aeronautical uses cannot easily displace aeronautical uses and thereby diminish the safety, efficiency and utility of the entire airport. Examples of aeronautical use include:

- (1) Operational uses such as aerial approaches, nav aids, runways, taxiways, aprons, hangars, or other aircraft movement areas.
- (2) Future developmental uses to reserve property interests for foreseeable aeronautical development (e.g., a planned runway extension or a planned terminal building development).
- (3) Essential services that directly support flight operations (e.g., aircraft maintenance, fueling, and servicing; mail, passenger, and cargo processing facilities; communications and air traffic control; crash rescue, firefighting, and airport maintenance).

b. Airport Purpose.

Uses of land that are (1) directly related to the actual operation or the foreseeable aeronautical development of a public airport and (2) whose nonaeronautical components do not conflict with existing or foreseeable aeronautical needs/demands.

These uses do not require FAA consent or approval of land use. These are situations where a primary aeronautical facility has some non-aeronautical components, including parking, that support that facility's core aeronautical function within its operation. These non-aeronautical components should not impact existing aeronautical uses or conflict with existing or foreseeable aeronautical needs/demands and should be paying a fair market value lease rate. Examples of airport purposes include, but are not limited to:

- (1) A terminal complex: All components of a terminal complex (including the building, terminal concessions, airline ticket and car rental counters, parking, and roads);
- (2) A Fixed Base Operator (FBO) facility, including parking and classrooms;
- (3) Parking associated with the airport purpose (e.g., passenger and employee parking);
- (4) Airport service roads; and
- (5) Truck parking for air cargo processing facilities when it is directly related to moving inbound and outbound air cargo on and off the airport.

Airport purpose does not include certain uses, such as aircraft manufacturing plants and warehouse distribution facilities, which are considered as mixed-use as defined below.

In addition, land purchased with AIP funds is considered to be needed for an airport purpose when (1) it may be needed for an aeronautical purpose, and (2) revenue from an interim use of the land contributes to the financial self-sufficiency of the airport. (See 49 U.S.C. § 47107(c)(1)). Such interim uses require FAA approval or consent as described below.

c. Non-Aeronautical Use.

All other uses that are not considered aeronautical use or airport purpose are deemed non-aeronautical uses. This includes any aviation-related uses that do not need to be located at an airport. (See FAA's [*Policy Regarding Rates and Charges, 78 Fed. Reg. 55330, September 10, 2013*](#)). These non-aeronautical uses will require FAA consent or approval of the land use. Examples of non-aeronautical uses include:

- (1) Car rental facilities (stand-alone);
- (2) Hotels;
- (3) Warehouse and distribution centers;
- (4) Parking associated with non-aeronautical uses (e.g., customer and employee parking for hotel, warehouse and distribution center, car rental);
- (5) Flight kitchens; and

(6) Airline reservation centers

Non-aeronautical uses commonly occur on airports, but these uses do not have the priority or protection of the grant assurances. There is no federal requirement that obligated airport sponsors accommodate non-aeronautical uses. This distinction between aeronautical and non-aeronautical is intended to protect the federal investment in aviation and ensure that non-aeronautical uses cannot easily displace aeronautical uses and thereby diminish the safety, efficiency, and utility of the airport.⁵

d. Mixed Use.

A mixed-use facility contains both aeronautical and non-aeronautical uses, but the non-aeronautical use could be located off airport property. Mixed uses will need FAA consent or approval. The FAA will take into account whether the non-aeronautical component will impact existing uses or conflict with existing or foreseeable aeronautical needs/demand. Examples of mixed uses include:

- (1) Mail distribution centers that are connected to an air cargo operation;
- (2) Cargo operations where the primary purpose of the operation goes beyond air cargo processing facilities and expands into non-aeronautical elements, such as office building complexes, sorting facilities, long-term storage (warehousing), freight forwarders and third-party logistics providers, certain access infrastructure, or certain truck parking/trailer facilities (stalls). Most of these are related to other transportation modes or aspects of the cargo business, not directly and substantially to its “aeronautical activity”.
- (3) Aircraft manufacturing facilities that include final assembly, but also significant non-aeronautical uses such as, engineering facilities, research and development facilities, parts manufacturing and storage, or office buildings.
- (4) Parking associated with the mixed uses (e.g., customer and employee parking for mail distribution, cargo operations, aircraft manufacturing).

⁵ FAA has provided guidance on the temporary non-aeronautical use of a hangar in FAA’s [Policy on the Non-Aeronautical Use of Airport Hangars, 81 Fed. Reg. 38906, June 15, 2016](#).

e. Federally Acquired Land.

This is land that was acquired with federal financial assistance including the Airport Improvement Program (AIP), Federal Aid to Airports Program (FAAP), Airport Development Aid Program (ADAP), and funding as part of an AP-4 agreement.⁶ It also includes sponsor-acquired land that was used for the sponsor match for an AIP grant or was swapped for AIP purchased land. (See chapter 4, *Federal Grant Obligations and Responsibilities*, for additional background).

f. Federally Conveyed Land.

This is land conveyed to the sponsor by the federal government through a written deed of conveyance (also called a patent or included in a lease termination, etc.) that contained specific restrictions or allowances for the use of the land. (See chapter 3, *Federal Obligations from Property Conveyances*, for additional background). This includes land transferred under:

1. Surplus Property Act, codified in 49 U.S.C. §§ 47151-47153, including former military airports conveyed to local public entities under the Defense Base Closure and Realignment Act (BRAC) program, 10 U.S.C. § 2687, or any other Federal laws; and,
2. Section 16 of the Federal Airport Act of 1946, 119 Pub. L. 79–377, Section 23 of the Airport and Airway Development Act of 1970, Pub. L. 91–258, and Section 516 of the Airport and Airway Development Act of 1982, codified in 49 U.S.C. § 47125. These transfers are sometimes referred to as non-surplus property transfers.

g. Release of Federal Obligations.

This is the formal, written authorization discharging and relinquishing all or part of the FAA's right to enforce an airport's contractual or deeded obligations. In some cases, the release is limited to releasing the sponsor from a particular assurance or federal obligation. In other cases, the release may permit the sale of certain airport property.

The FAA's authority to release, waive, or amend an obligation is contained in 49 U.S.C. §§ 47125(c), 47153 and 47107(h)(2). In general, land releases will only be issued for the sale or conveyance of federally acquired or federally conveyed land that meets FAA

⁶ In some instances, an AP-4 Agreement included a federal land purchase. The original agreement and funding should be reviewed to confirm the source of the funds.

release requirements. The Region or ADO must obtain ACO-100 concurrence to release federally conveyed and/or federally acquired land.

h. Letter of Consent or Approval.

The FAA's action on a proposed land use change will be documented in a letter of consent or a letter of approval. The letters serve the same purpose of granting a land use change. When the property was federally acquired, a letter of approval is issued. When the property was federally conveyed, a letter of consent is issued.

The reason for the difference in terms is due to statutory language, the obligating deeds or documents, and the land at issue. Surplus Property Act deeds usually require the FAA's written consent for a nonaeronautical use. Alternatively, [Grant Assurance 5, Preserving Rights and Powers](#), requires prior written approval of the Secretary for the sale or transfer of any property upon which Federal funds have been expended. The letters serve the equivalent purpose of documenting the FAA's action on the sponsor's request. These letters also serve to approve interim uses for revenue production on property acquired for an airport purpose.

22.8 FAA Land Use Approval Authority on Sponsor Acquired Land.

a. FAA Approval Authority.

Under Pub. L. 118-63, Section 743(b)(2), the FAA retains ALP approval authority on sponsor acquired land when the land use change materially impacts the safe and efficient operation of aircraft at, to, or from the airport; adversely affects the safety of people or property on the ground as a result of aircraft operations; or adversely affects the value of prior Federal investments to a significant extent. In these instances, the Region and ADO should follow section 22.9, *Process for FAA Approval of a Land Use Change on Federally Acquired Land*.

b. No FAA Approval Authority.

When FAA does not have land use approval authority, the airport sponsor remains contractually obligated to act in accordance with all its grant obligations in managing the entire airport. The sponsor should retain sufficient authority over the land to prevent uses that conflict with its federal obligations and related requirements or create conditions resulting in violations of the grant assurances. This includes but is not limited to uses of airport revenue outlined in 49 U.S.C. § 47107(b) and § 47133, and FAA's [Revenue Use Policy](#).

To retain this authority, airport sponsors should consider using subordination clauses, reservations, covenants, and/or other restrictions in deeds or other instruments, to protect the public's right to fly over the land, prohibit obstructions to air navigation or interference with the flight of aircraft, and/or assure compatible land use. The deed or other instrument containing the restrictions should be recorded in local land records. The sponsor must manage the entire airport and its property in accordance with its obligations and comply with all federal, state, and local laws and regulations.

22.9 Process for FAA Approval of a Land Use Change on Federally Acquired Land.⁷

When the airport sponsor proposes to use federally acquired property for a nonaeronautical, mixed use, or an interim use for revenue production, the airport sponsor must request and receive FAA approval. This is not a release of obligations, but approval of the use.⁸ FAA approval is not needed for a proposed land use that meets the definition of aeronautical use or airport purpose, or when the use is specifically permitted by the federal grant. The following explains the process when an airport sponsor requests a change in land use on federally acquired land:

a. What Sponsors Must Submit.

The sponsor's request needs to include the following:

- (1) identification of the property and documentation on how the land was acquired (*i.e.*, federal conveyance documents, federal grant agreements, Exhibit "A");
- (2) current use of the property;
- (3) current and future aeronautical demand of the airport and the property (*e.g.*, current Master Plan, forecasts, hangar waitlists); and,
- (4) proposed use of the property, including the anticipated length of the use.

⁷ This section does not apply to certain interim compatible recreational uses, if the airport property was purchased using funds from a Federal grant or acquiring land issued prior to January 1, 1989, and other conditions set forth in 49 U.S.C. § 47107(v) are met. In these instances, the Region or ADO should work with ACO-100.

⁸ FAA must approve interim land uses for revenue production on property acquired for an airport purpose. (See 49 U.S.C. § 47107(c)(1)).

In accordance with the Revenue Use Policy, non-aeronautical lease rates must be at fair market value. Additional information on non-aeronautical lease rates and fair market value is in chapter 17, *Self-Sustainability*.

Sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess the potential applicability of Section 4(f) under the Department of Transportation Act of 1966, Pub. L. 89-870 (See 49 U.S.C. § 303(f)).⁹

b. FAA’s Evaluation of the Request.

Upon receipt of all documents, the FAA will promptly review the sponsor’s request. The first step in evaluating a sponsor’s request is to understand how the property was acquired and for what purpose.

The review involves a certain level of discretion by the FAA and the airport sponsor, as explained below. The FAA may request additional information regarding the proposal. Major considerations in granting approval include the:

- (1) reasonableness and practicality of the sponsor's request;
- (2) effect of the request on needed aeronautical facilities;
- (3) net benefit to civil aviation;
- (4) compatibility of the proposal with the needs of civil aviation (incompatible land uses on the airport, including residential use are prohibited by FAA policy and are contrary to federal obligations); and
- (5) NEPA coordination with the Region or ADO Environmental Protection Specialist (EPS).¹⁰

⁹ Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303).

¹⁰ National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; see also [FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Actions](#).

The distinctions may vary slightly depending on the circumstances of the situation, such as intermodal functionality, business model, project integrity, available airport land, project size and location, airport planning priorities, and funding requirements and restrictions. The land use must benefit the airport and its functions in support of aeronautical uses and must not adversely affect the value of the federal investment in the airport and its facilities.

The Region or ADO Compliance/Land Specialists will work closely with the Planners to determine if the land use is compatible with the airport's current or future aeronautical use or demand. FAA approval will not be granted if the FAA determines that an aeronautical demand for the land is likely to exist within the period of the requested land use or if the use degrades, or potentially degrades, the aeronautical utility of the parcels in question.

Aeronautical demand might be demonstrated by hangar waitlist, the existence of a qualified aeronautical service provider expressing interest in such property for aeronautical use, or by projected growth in airport operations. The proposed use should not be incompatible with current or foreseen aeronautical use of the property in question or other airport property.

The duration of FAA's approval will depend on the circumstances at the airport and may be permitted for the duration of the approved use. The approval must state that the land will be returned to aeronautical use at the end of the approved period and that the sponsor will obtain a fair market value lease rate in accordance with the [Revenue Use Policy](#). (See chapter 17, *Self-Sustainability*).

c. Documentation of FAA's Decision.

Upon completion of the review, the Region/ADO will either issue a letter of approval for the use or deny the request.

The letter of approval will document the FAA's determination of the land use and outline the conditions of the approval, including the requirement that the land must be available for aeronautical use at the end of the approval period and that the sponsor will receive fair market value in accordance with the [Revenue Use Policy](#). Generally, the approval will remain for the duration of the approved use.

After an airport sponsor receives an FAA letter of approval for a land use change, the airport sponsor will update the Exhibit "A".

The letter of approval is not a release of obligations and does not affect or negate the sponsor's federal obligations. All grant assurances and deed restrictions remain on the land, including but not limited to [Grant Assurance 20, Hazard Removal and Mitigation](#); [Grant Assurance 21, Compatible Land Use](#); and [Grant Assurance 25, Airport Revenue](#).

22.10 Process for FAA Consent to a Land Use Change on Federally Conveyed Land.

When the airport sponsor proposes to use federally conveyed property for a non-aeronautical or mixed use, the airport sponsor must request and receive FAA consent for the use. This is not a release of obligations, but consent of the use.

It is important that the Region and ADO read the original conveyance documents. FAA consent is not needed for a proposed land use that meets the definition of aeronautical use or airport purpose, or that is specifically permitted by the federal conveyance instrument. Additionally, some federally conveyed property contains an automatic reversion clause. (See chapter 3, *Federal Obligations from Property Conveyances*). This clause may need to be addressed prior to consenting to any use other than aeronautical or airport purpose. (See section 22.19, *Release of Reverter Clause*).

a. What Sponsors Must Submit.

The sponsor's request needs to include the following:

- (1) identification of the property and documentation on how the land was acquired (*i.e.*, federal conveyance documents, federal grant agreements, Exhibit "A");
- (2) current use of the property;
- (3) current and future aeronautical demand of the airport and the property (*e.g.*, current Master Plan, forecasts, hangar waitlists); and
- (4) proposed use of the property, including the anticipated length of the use.

In accordance with the [Revenue Use Policy](#), non-aeronautical lease rates must be at fair market value. Additional information on non-aeronautical lease rates and fair market value is in chapter 17, *Self-Sustainability*.

Sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess the potential applicability of Section 4(f) under the Department of Transportation Act of 1966, Pub. L. 89-670. (See 49 U.S.C. § 303(f)).¹¹

¹¹ Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303).

In addition, many federal conveyances contain a National Emergency Use Provision (NEUP). This provision provides that in the event of an emergency the federal government may take control of the property. As with all other obligations in the conveyance documents, this provision will remain on the property even during a period of FAA consent to a non-aeronautical or mixed land use. An airport sponsor seeking a release of its NEUP should follow the guidance in section 22.18, *Release of National Emergency Use Provision* (NEUP).

b. FAA's Evaluation of the Request.

Upon receipt of all documents, the FAA will promptly review the sponsor's request. If the federal property conveyance instrument allows the property to be used for revenue production or for the specific non-aeronautical use, then a letter of consent is not needed.

The review involves a certain level of discretion by the FAA and the airport sponsor. FAA may request additional information regarding the proposal. Major considerations in granting consent include the:

- (1) reasonableness and practicality of the sponsor's request;
- (2) effect of the request on needed aeronautical facilities;
- (3) net benefit to civil aviation;
- (4) compatibility of the proposal with the needs of civil aviation (incompatible land uses on the airport, including residential use are prohibited by FAA policy and are contrary to federal obligations); and
- (5) NEPA coordination with the Region/ADO EPS.¹²

The distinctions may vary slightly depending on the circumstances of the situation, such as intermodal functionality, business model, project integrity, available airport land, project size and location, airport planning priorities, and funding requirements and restrictions. The land use must benefit the airport and its functions in support of aeronautical uses and must not adversely affect the value of the federal investment in the airport and its facilities.

¹² National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; see also [FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Actions](#).

The Region and ADO Compliance/Land Specialists will work closely with the Planners to determine whether the land use is compatible with the airport's current or future aeronautical use or demand. FAA approval will not be granted if the FAA determines that an aeronautical demand for the land is likely to exist within the period of the requested land use or if the use degrades, or potentially degrades, the aeronautical utility of the parcels in question.

Aeronautical demand might be demonstrated by hangar waitlist, the existence of a qualified aeronautical service provider expressing interest in such property for aeronautical use, or by projected growth in airport operations. The proposed use should not be incompatible with current or foreseen aeronautical use of the property in question or other airport property.

The duration of FAA's consent will depend on the circumstances at the airport and may be permitted for the duration of the approved use. The consent must state that the land will be returned to aeronautical use at the end of the approved period and that the sponsor will obtain a fair market value lease rate in accordance with the [Revenue Use Policy](#). (See chapter 17, *Self-Sustainability*).

c. Documentation of FAA's Decision.

Upon completion of the review, the Region or ADO will either issue a letter of consent for the use or deny the request.

The letter of consent will document the FAA's determination of the land use on federally conveyed airport land. The letter will outline the conditions of the consent, include a requirement that the land must be available for aeronautical use at the end of the consent period and that the sponsor will receive fair market value in accordance with the [Revenue Use Policy](#). Generally, the consent will remain for the duration of the approved use.

After an airport sponsor receives an FAA letter of consent for a land use change, the airport sponsor will update the Exhibit "A".

The letter of consent is not a release of obligations and does not affect or negate the sponsor's federal obligations. All grant assurances and deed restrictions remain on the land, including but not limited to [Grant Assurance 5, Preserving Rights and Powers](#); [Grant Assurance 20, Hazard Removal and Mitigation](#); [Grant Assurance 21, Compatible Land Use](#); and [Grant Assurance 25, Airport Revenue](#).

22.11 Release of the Exclusive Rights Federal Obligation.

Any airport that has received federal assistance is subject to the exclusive rights provision discussed in chapter 8, *Exclusive Rights*, of this Order. This federal obligation exists for as long as the airport is used as an airport. Therefore, there is no provision for a release from this federal obligation without disposal of the parcel involved or disposal of the entire airport.

22.12 Process for FAA Release of Federally Acquired Land for Sale, Conveyance, or Exchange.¹³

The Region or ADO decision to release federally acquired property (FAAP/ADAP/AIP) will depend upon the procedures and guidelines outlined in this section and on the specific factors pertinent to the grant agreement and the release requested. The Region or ADO must obtain written concurrence from the ACO-100 prior to releasing property for sale or conveyance.

Federally acquired real property may also be exchanged for other property (a “land swap”) not held by the sponsor but that serves an airport purpose more effectively than the originally acquired parcel. However, a land swap cannot result in a net loss in the value of the federal interest in the grant land. Federal obligations of the federally acquired land should be formally released and transferred to the new parcel.

In no case shall a release be granted unless the FAA determines that sale of the land will not adversely affect the development, improvement, operation, or maintenance of the airport. Any release must not be in excess of the present and foreseeable needs of the airport. The nonaviation interest of the sponsor or the local community – such as making land available for economic development – does not constitute an airport benefit that can be considered in justifying a release and disposal.

¹³ This section does not apply to certain permanent compatible recreational and public park uses, if the airport property was purchased using funds from a Federal grant or acquiring land issued prior to January 1, 1989, and other conditions set forth in 49 U.S.C. § 47107(v) are met. In those instances, the Region or ADO should work with ACO-100.

a. What Sponsors Must Submit:

The sponsor's written request must be signed by an authorized official of the sponsor, submitted to the Region/ADO, and include the following:

- (1) A description of how the property was acquired or obtained including all obligating agreement(s) and land conveyance documents to which the property concerned is subject.
- (2) A description of the present condition and use of property concerned.
- (3) The purpose for which the property was originally purchased for the airport.
- (4) The purpose of the release. The sponsor must show the property is no longer needed for the purpose for which it was acquired and is not needed for present or foreseeable public airport purposes.
- (5) A statement of the circumstances justifying the release on the basis of the benefit to civil aviation, with supporting documentation.

NOTE: Only benefits to the airport may be cited as justification for the release. The non-aviation interest of the sponsor or the local community – such as making land available for economic development – does not constitute an airport benefit that can be considered in justifying a release.

- (6) Maps, photographs, plans or similar material of the airport and the property concerned that are appropriate to determine whether the release is justified.
- (7) The proposed use and disposition of the property, including the terms and conditions of the proposed sale and the status of negotiations.
- (8) A certified copy of a resolution or ordinance of the governing body of the airport sponsor obligating itself to use the proceeds of the sale exclusively for (1) any required reimbursement of the federal investment and (2) the development, improvement, operation or maintenance of a public airport. (See section 22.21, *Determining Fair Market Value for Sale or Disposal*, for information on determining fair market value and section 22.12.d, *Distribution of Proceeds from the Sale or conveyance of Federally Acquired Land*, for information on disposition of proceeds).
- (9) A suggested letter or other instrument of release that would meet the requirements of state or local law for the release requested.
- (10) A comparison of the relative advantage or benefit to the airport from the sale of the property as opposed to retention for rental income.

(11) Height limit computations to limit the height of fixed objects to ensure navigation and compatible land use. It is essential to prevent an incompatible obstruction to air navigation from being located on or near the airport on property the airport once owned.

(12) An updated Exhibit "A".

b. FAA's Evaluation and Determination of the Request.

Upon receipt of all documents, the FAA will promptly review the sponsor's request. The review involves a certain level of discretion by the FAA and the airport sponsor. The FAA may request additional information regarding the proposal.

(1) Evaluation.

This includes consideration of pertinent factors, including, but not limited to:

- (a) All of the ways in which the sponsor is federally obligated, both in its operations and its property, including specific federal agreements and use obligations.
- (b) The sponsor's past and present compliance record under all its airport agreements and its actions to make available a safe and usable airport for aeronautical use by the public. If there has been noncompliance, evidence that the sponsor has taken or agreed to take appropriate corrective action. FAA maintains the discretion to place the release request in abeyance until the sponsor takes corrective actions acceptable to the FAA.
- (c) The reasonableness and practicality of the sponsor's request in light of maintaining necessary aeronautical facilities and the priority of the airport in the National Plan of Integrated Airport Systems (NPIAS).
- (d) The net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to aeronautical users relative to the public at large. (Incompatible land uses adjacent to or in the immediate vicinity of the airport, including residential use are contrary to [Grant Assurance 21, Compatible Land Use](#) and applicable FAA policies as outlined in [chapter 20, Compatible Land Use](#)).
- (e) Determination that the property is not being used and is not needed for present or foreseeable public airport purposes.
- (f) Confirmation that the sponsor will receive at least fair market value for the sale or conveyance of the property. See section 22.21, *Determining Fair Market Value for Sale or Disposal*.

- (g) Documentation for the use of proceeds or return of the federal investment. See section 22.12.d, *Distribution of Proceeds from the Sale or Conveyance of Federally Acquired Property*.
- (h) Retention of a continuing right of flight and review the sponsor's proposed avigation easement. See section 22.12.c.1, *Continuing Right of Flight Over all Airport Land Releases*.

The FAA generally will not release more property than the sponsor has requested and may decline to release the entirety of the parcel(s) requested. The statutes, regulations, and policies applicable to the specific types of agreements involved must guide the decision to grant or deny the request. When evaluating a sponsor's request to release property for sale or conveyance, the Region or ADO will evaluate the total impact of the sponsor's proposal on the airport and the sponsor's federal obligations.

(2) Region and ADO Actions.

After evaluating the sponsor's request, the Region or ADO need to take the following actions before issuing the letter of release:

- (a) Obtain written consent from ACO-100;
- (b) Ensure NEPA coordination with the Region or ADO Environmental Protection Specialist (EPS); and
- (c) Issue a public notice for comment, if applicable. (See section 22.17, *Procedures for Public Notice*).

(3) Determination.

In granting a release, the Region or ADO must determine if one of the following conditions exists:

- (a) The public purpose for which an agreement or a term, condition, or covenant of an agreement was intended to serve is no longer applicable. If an airport is not in the NPIAS, the FAA should not construe the omission as a determination that such an airport has ceased to be needed for present or future airport purposes;
- (b) The release, modification, reformation, or amendment of an applicable agreement will not prevent accomplishment of the public purposes for which the airport or its facilities were federally obligated, and such action is necessary to protect or advance the interest of the United States in civil aviation;

- (c) The release, modification, reformation, or amendment will federally obligate the sponsor under new terms, conditions, covenants, reservations, or restrictions determined necessary in the public interest and to advance the interests of the United States in civil aviation (such as compatible land use for land that is disposed of); or
- (d) The release, modification, reformation, or amendment will conform the rights and federal obligations of the sponsor to the statutes of the United States and the intent of the Congress, consistent with applicable law.

c. FAA Approval Action.

After completion of FAA review, ACO-100 concurrence, NEPA approval, and public notice and comment, the Region or ADO will advise the sponsor in writing that its request is approved or denied. If FAA approves the request, the Region or ADO will prepare the necessary instruments or documents, which may include a letter of release. The release will include any special conditions, qualifications, restrictions, cite the agreements affected and identify specific areas or facilities involved. The release must include provisions addressing the continuing right of flight, restrictions on the property, and approval of the distribution of the proceeds as described below.

- (1) Continuing Right of Flight Over all Airport Land Releases.** The letter of release must specify that the sponsor is obligated to include in any deed, lease, or other conveyance of a property interest to another a reservation assuring the public rights to fly aircraft over the land released and to cause inherent aircraft noise over the land released. The following language must be used:

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

Continuing Restrictions on Released Property. The letter of release must specify that the sponsor is obligated to include in any deed, lease or other conveyance of a property interest to others a restriction that (*see Sample Retained Airport Compatible Land Use Property Restrictions* at the end of this chapter):

- (a) Prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation; and
- (b) Prohibits any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. 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 Region or ADO and airport sponsor will not incorporate advisory circulars, design manuals, Federal Aviation Regulations (found in Title 14 Code of Federal Regulations (CFR)), or other such documents by reference in the instruments or releases issued by the FAA in lieu of actual computed limits.

- (2) **Proceeds.** The letter of release must include FAA's approval of how the proceeds from the sale will be allocated. (*See section 22.12.d, Distribution of Proceeds from the Sale or Conveyance of Federally Acquired Property*).

The sponsor must provide the Region or ADO with any acknowledgment or copies of executed instruments or documents as required for FAA record purposes.

d. Distribution of Proceeds from the Sale or Conveyance of Federally Acquired Property.

The airport sponsor, in its application for release, must include a plan for the application of the proceeds of the sale. (*See [FAA Order 5100.38, Airport Improvement Program Handbook](#), Table 5-39, Order of Precedence for Applying Sale Proceeds of AIP Funded Land*). The Region or ADO must approve or disapprove the sponsor's proposed distribution of the proceeds from the sale or conveyance of the property.

In accordance with 14 CFR §152.207, *Proceeds from Disposition of Land*, the sponsor's share of the proceeds from the disposal of FAAP and ADAP land may not be used as matching funds for any airport development project or airport planning grant without approval of the Administrator, but may be used for any other airport purpose.

For federally acquired property (FAAP/ADAP/AIP) this will depend upon the timing of the sponsor's receipt of federal grants:

(1) Sponsors Not Receiving a Grant after December 30, 1987.

(a) Applicability.

This paragraph is applicable to any request for release for sale or disposal of any airport land acquired with funds from the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), or the Airport Improvement Program (AIP) and where the sponsor has not received additional grants after December 30, 1987. A sponsor's request must assure that the federal government shall be reimbursed, or the federal share of the net proceeds will be reinvested (a) in the airport, (b) in a replacement airport, or (c) in another operating public airport.

(b) Reimbursement.

The requirement for reimbursement shall apply only where there is no alternative to invest in a replacement or operating public airport owned or to be owned by the sponsor. However, the sponsor may elect to reinvest the federal share of the net proceeds in any other grant-obligated public airport by contract between the respective airport sponsors with FAA concurrence. FAA concurrence in such a contract is contingent upon such funds being used for grant eligible airport development. Except where the grant agreement specifically provides otherwise (by special condition), the amount to be reimbursed shall be the amount of the federal share of the grant times the net proceeds from sale of the property at its current fair market value.

(c) Reinvestment.

Reinvestment of the total net proceeds (both federal and sponsor share) is required if the sponsor continues to own or control – or will own or control – a public airport or a replacement public airport. Reinvestment shall be accomplished within five (5) years (or a timeframe satisfactory to the FAA Administrator) for specified items of airport improvement in the order of priority established for releases of surplus airport property. (See section 22.13.d, *Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property*).

Unlike surplus property, the purposes for which land was acquired under FAAP/ADAP/AIP did not include non-aeronautical income production. If reinvestment cannot be accomplished within five (5) years (or a timeframe satisfactory to the FAA

Administrator), or if the net proceeds derived exceed the cost of grant-eligible airport development, reimbursement of the remaining share will be required.

(2) Sponsors Receiving a Grant after December 30, 1987.

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

A sponsor entering into a grant after December 30, 1987, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act), will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. (See 49 U.S.C. § 47107(c)(2)(B) and [Grant Assurance 31, Disposal of Land](#)). This also applies to land purchased prior to 1987 under FAAP/ADAP/AIP.

In approving the reinvestment or transfer of proceeds, the Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project.
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e).
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117.
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

See 49 U.S.C. § 47107(c)(4) and [Grant Assurance 31, Disposal of Land](#).

(b) Land for Noise Compatibility Purposes.

A sponsor entering into a grant after December 30, 1987, under the AAIA, as amended by the 1987 Airport Act, will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. (See 49 U.S.C. § 47107(c)(2)(A) and [Grant Assurance 31, Disposal of Land](#)). This also applies to land purchased prior to 1987 under FAAP/ADAP/AIP. An interest or right shall be reserved in the land necessary

to ensure it will be used in a way that is compatible with noise levels associated with operating the airport.

That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary.

In approving the reinvestment or transfer of proceeds, the Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project.
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e).
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117.
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

See 49 U.S.C. § 47107(c)(4) and [Grant Assurance 31, *Disposal of Land*](#).

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue. (See 49 U.S.C. § 47107(c)(4); Grant Assurance 31, *Disposal of Land*).

22.13 Process for FAA Release of Federally Conveyed Land for Sale, Conveyance or Exchange.

The Region or ADO decision to release federally conveyed property will depend upon the procedures and guidelines outlined in this section and on the specific factors pertinent to the type of agreement and the release requested. The Region or ADO must obtain written concurrence from ACO-100 prior to releasing property for sale or conveyance.

a. What Sponsors Must Submit.

The required documentation needed for a release of surplus airport property is outlined in [14 CFR § 155.11, *Form and content of requests for release*](#). The sponsor's written request must be signed by an authorized official of the sponsor, submitted to the Region or ADO, and include the following:

- (1) A description of how the property was acquired or obtained including all obligating agreement(s) and land conveyance documents to which the property concerned is subject.
- (2) A description of the present condition and use of property concerned.
- (3) The purpose for which the property was originally transferred to the airport.
- (4) The purpose of the release. The sponsor must show the property is no longer needed for the purpose for which it was acquired, and not needed for present or foreseeable airport purposes.
- (5) A statement of the circumstances justifying the release on the basis of the benefit to civil aviation, with supporting documentation. **NOTE:** Only benefits to the airport may be cited as justification for the release. The non-aviation interest of the sponsor or the local community – such as making land available for economic development – does not constitute an airport benefit that can be considered in justifying a release.
- (6) Maps, photographs, plans, or similar material of the airport and the property concerned that are appropriate to determine whether the release is justified.
- (7) The proposed use and disposition of the property, including the terms and conditions of the proposed sale and the status of negotiations.
- (8) A certified copy of a resolution, ordinance, or similar documentation of the governing body of the airport sponsor obligating itself to use the proceeds of the sale exclusively for the development, improvement, operation, or maintenance of a public airport. (See section 22.21, *Determining Fair Market Value for Sale or Disposal*, for information on determining fair market value and section 22.13.d, *Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property* for information on disposition of proceeds).
- (9) A suggested instrument of release that would meet the requirements of state or local law for the release requested.

In addition to the documents required under [14 CFR § 155.11](#), the following items must be submitted:

- (1) A comparison of the relative advantage or benefit to the airport from the sale of the property as opposed to retention for rental income.
- (2) Height limit computations to limit the height of fixed objects to ensure navigation and compatible land use. It is essential to prevent an incompatible obstruction to air navigation from being located on or near the airport on property the airport once owned.
- (3) An updated Exhibit "A".

b. FAA's Evaluation and Determination of the Request.

Upon receipt of all documents, the FAA will promptly review the sponsor's request. The review involves a certain level of discretion by the FAA and the airport sponsor. FAA may request additional information regarding the proposal.

(1) Evaluation.

This includes consideration of pertinent factors, including, but not limited to:

- (a) All of the ways in which the sponsor is federally obligated, both in its operations and its property, including specific federal agreements and use obligations.
- (b) The sponsor's past and present compliance record under all its airport agreements and its actions to make available a safe and usable airport for aeronautical use by the public. If there has been noncompliance, evidence that the sponsor has taken or agreed to take appropriate corrective action. The FAA maintains the discretion to place the release request in abeyance until the sponsor takes corrective actions acceptable to the FAA.
- (c) The reasonableness and practicality of the sponsor's request in light of maintaining necessary aeronautical facilities and the priority of the airport in the NPIAS.
- (d) The net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to aeronautical users relative to the public at large. (Incompatible land uses adjacent to or in the immediate vicinity of the airport, including residential use are contrary to [Grant Assurance 21, Compatible Land Use](#) and applicable FAA policies as outlined in [chapter 20, Compatible Land Use](#)).

- (e) Determination that the property is not being used and is not needed for present or foreseeable public airport purposes.
- (f) Confirmation that the sponsor will receive at least fair market value for the sale or conveyance of the property. (See section 22.21, *Determining Fair Market Value for Sale or Disposal*).
- (g) Documentation for the use of proceeds or return of the federal investment. (See section 22.13.d, *Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property*).
- (h) Retention of a continuing right of flight and review the sponsor's proposed aviation easement. (See section 22.13.c.1, *Continuing Right of Flight Over all Airport Land Releases*).

The FAA generally will not release more property than the sponsor has requested and may decline to release the entirety of the parcel(s) requested. The statutes, regulations, and policy applicable to the specific types of agreements involved must guide the decision to grant or deny the request. When evaluating a sponsor's request to release property for sale or conveyance, the Region or ADO will evaluate the total impact of the sponsor's proposal on the airport and the sponsor's federal obligations.

(2) Region or ADO Actions.

After evaluating the sponsors request, the Region or ADO need to take the following actions before issuing the release documentation:

- (a) Obtain written consent from ACO-100.
- (b) Ensure NEPA coordination with the Region/ADO Environmental Protection Specialist (EPS).
- (c) Obtain a Release of any National Emergency Use Provision (NEUP) in conveyance documents, if applicable. (See section 22.18, *Release of National Emergency Use Provision (NEUP)*).
- (d) Issue a public notice for comment, if applicable. (See section 22.17, *Procedures for Public Notice*).

(3) Determination.

In granting a release from a federal property conveyance, the FAA must first determine if one of the following conditions exists:

- (a)** The public purpose for which an agreement or a term, condition, or covenant of an agreement was intended to serve is no longer applicable. If an airport is not in the NPIAS, the FAA should not construe the omission as a determination that such an airport has ceased to be needed for present or future airport purposes;
- (b)** The release, modification, reformation, or amendment of an applicable agreement will not prevent accomplishment of the public purposes for which the airport or its facilities were federally obligated, and such action is necessary to protect or advance the interest of the United States in civil aviation;
- (c)** The release, modification, reformation, or amendment will federally obligate the sponsor under new terms, conditions, covenants, reservations, or restrictions determined necessary in the public interest and to advance the interests of the United States in civil aviation (such as compatible land use for land that is disposed of); or
- (d)** The release, modification, reformation, or amendment will conform the rights and federal obligations of the sponsor to the statutes of the United States and the intent of the Congress, consistent with applicable law.

In addition, in accordance with 49 U.S.C. §§ 47125(c)(2)(c) and 47153(c), in granting a release from a federal property conveyance, the FAA must also determine that:

- (a)** The applicable airport, city, county, or other political subdivision shall agree that in conveying any interest in the federally acquired real property, the airport city, or county will receive fair market value; and
- (b)** The consideration received by the airport, city or county for the conveyance interest in real property will be used exclusively for the development, improvement, operation or maintenance of a public airport by the airport, city or county.
- (c)** The release
 - i.** will not significantly impair the aeronautical purpose of an airport;

- ii. will not result in the permanent closure of an airport (unless the Secretary determines that the waiver will directly facilitate the construction of a replacement airport); or
- iii. is necessary to protect or advance the civil aviation interests of the United States.

c. FAA Approval Action.

After completion of FAA review, ACO-100 concurrence, NEPA approval, NEUP release, and public notice and comment, the Region or ADO will advise the sponsor in writing that its request is approved or denied. If FAA approves the request, the Region or ADO will issue a letter or other instrument of release. (See *Sample Deed of Release* at the end of this chapter). The release will include any special conditions, qualifications, restrictions, cite the agreements affected and identify specific areas or facilities involved. The release must include provisions addressing the continuing right of flight, restrictions on the property, and approval of the use of the proceeds as described below.

(1) Continuing Right of Flight Over all Airport Land Releases.

The instrument of release must specify that the sponsor is obligated to include to include in any deed, lease, or other conveyance of a property interest to another a reservation assuring the public rights to fly aircraft over the land released and to cause inherent aircraft noise over the land released. The following language must be used:

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

(2) Continuing Restrictions on Released Property.

The instrument of release must specify that the sponsor is obligated to include in any deed, lease or other conveyance of a property interest to others a restriction that:

- (a) Prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation; and

(b) Prohibits any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. These restrictions are set forth in the instrument of release and identify the applicable height limits above which no structure or growth is permitted. The airport sponsor will compute these limits according to the currently effective FAA criteria as applied to the airport. The ADO, regional airports division, and airport sponsor will not incorporate advisory circulars, design manuals, Federal Aviation Regulations (found in Title 14 Code of Federal Regulations (CFR)), or other such documents by reference in the instruments or releases issued by the FAA in lieu of actual computed limits.

See Sample Retained Airport Compatible Land Use Property Restrictions at the end of this chapter.

(3) Proceeds.

FAA's approval of how the proceeds from the sale will be allocated. (See section 22.13.d, *Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property*).

The sponsor must provide the Region/ADO with any acknowledgment or copies of executed instruments or documents as required for FAA record purposes.

d. Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property.

The release of federally conveyed airport land for sale or disposal shall be at fair market value and subject to the airport sponsor's written commitment that it has obligated itself to use the proceeds from the sale exclusively for developing, improving, operating or maintaining a public airport. (See 49 U.S.C. §§ 47125, 47151; and 14 CFR § 155.7). The FAA shall not issue a release without this commitment.

- (1)** The net proceeds realized from the sale of surplus property – or the equivalent amount if the property is not sold – must be placed in an identifiable interest-bearing account to be used for the purposes listed in (2) below.
- (2)** The proceeds of sale must be used for one or more of the following purposes as agreed to by FAA and reflected in the supporting documentation for the deed of release:
 - (a)** Eligible items of airport development set forth in the current airport grant program and reflected in the airport's capital improvement program (CIP).

- (b) Any aeronautical items of airport development not eligible under the grant program.
 - (c) Retirement of airport bonds that are secured by pledges of airport revenue, including repayment of loans from other federal agencies.
 - (d) Development of common use facilities, utilities, and other improvements on dedicated revenue production property that clearly enhances the revenue production capabilities of the property.
- (3) All aeronautical improvements funded by the proceeds of sale will be accomplished in accordance with current applicable FAA design criteria or such state standards as have been approved by the FAA.
- (4) Any interest earned by the account holding the proceeds of sale may be used for the operating and maintenance of the aeronautical portion of the airport or to enhance the revenue producing capability of the aeronautical activities at the airport.

22.14 Release of Entire Airport.

a. Approval Authority.

The FAA Associate Administrator for Airports (ARP-1) is the FAA approving official for a sponsor's request to be released from its federal obligations for the purpose of closing, replacing, abandoning or disposing of an entire airport. That authority is not delegated. ARP-1's authority to grant a release of Federal obligations applies to all NPIAS or non-NPIAS federally obligated airports depending on the sponsor's obligating documents, such as a property conveyance or grant agreement. Subject to statutory requirements, each request to release an entire airport shall be considered on a case-by-case basis.

The FAA will take no 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 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 ARP-1 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 if:

- (1) the airport serves a unique role and there is no comparable alternative within its vicinity; or
- (2) 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

- (3) the airport supports a level of activity that classifies it as either “National” or “Regional” in the current published NPIAS.

b. FAA Review.

Any sponsor request for a release having the effect of permitting the closure, sale, replacement, or disposal of a complete airport must include copies of the justification, including related exhibits and documents.

It is the responsibility of the Region to analyze and consider a course of action on the release request. Major considerations include, but not limited to:

- (1) The reasonableness and practicality of the sponsor’s justification and request.
- (2) The net benefit to civil aviation.
- (3) Consultation and consideration of the aeronautical users at the airport.
- (4) The disposition and effect of the request on all airport assets.
- (5) The compatibility of the proposal with the needs of civil aviation.
- (6) 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.
- (7) The state aeronautical agency’s recommendation on the sponsor’s request.

The Regional Airports Division Director shall provide its recommendation regarding the proposed action to the Director of Airport Compliance and Management Analysis (ACO-1), along with the airport sponsor’s closure request.

The ACO-1 Director will provide copies of the request to 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), for their respective recommendations. The recommendations from ACO-1, APP-1, and AAS-1 must be included with the airport closure request package submitted for consideration and disposition by ARP-1.

In all cases, the FAA’s primary concern is the benefit to civil aviation represented by various considerations. These include the interests of aeronautical users and service providers; the local, regional, and national interests of the airport; the impact on the airport system (State and national); the future growth in operations; capacity of the airport; and the state aviation agency recommendation. The non-aviation interest of the sponsor or the local community—such as making land available for economic or community development—does not constitute a civil aviation benefit that can be considered in justifying a release.

c. Replacement Airport.

In the instance of a disposal of an entire airport that is to be replaced, the general policy is to treat the proposal as a trade for the land and facilities developed with federal aid at the old airport for the acquisition and development of improved facilities at a new airport. Federal law, pursuant to 49 U.S.C. § 47107(c)(2)(B), requires the airport sponsor to use the federal government share of AIP grants spent on land for AIP eligible projects at the new airport.

Release under these circumstances is contingent upon transferring federal grant obligations to the new or replacement airport. The release may become effective upon the transfer of the federal grant obligations to the new airport when the new airport becomes operational, subject to the sponsors compliance with the requirements for disposal of federally acquired or federally conveyed land. (See section 22.9 and 22.10). In most cases where a replacement airport is the subject of a federal AIP grant, the associated grant assurances have the same effect as a transfer of grant obligations. Development costs for the new airport in excess of the value from the disposal of the old airport may be eligible for AIP assistance. In these circumstances, the availability of a new and improved airport is the basis for determining that the old one is no longer needed and that its useful life has expired.

The original grant agreement is terminated with the transfer of the grant obligations. (See FAA [Order 5100.38, Airport Improvement Program Handbook, Table F-2, New Airport Project Requirements](#)). This process requires coordination with APP, ACO, and AGC.

22.15 Sale, Exchange, or Land Use Change of Land Acquired with Passenger Facility Charge (PFC) Funds.

For land acquired with PFC revenue, the sale or land exchange of property does not require a release of obligations. A public agency may determine that land acquired with PFC revenue is no longer necessary to meet the current or future aeronautical needs of the airport. In this instance, the land may be subsequently sold or redesignated as non-aeronautical land use.

When such land is sold or redesignated, the public agency reimburses the PFC revenue account with the fair market value of the property. The reimbursement is treated as excess PFC revenue. The public agency must contact the appropriate PFC Program Manager to address the sale or redesignation of the PFC acquired property to determine the amount to reimburse the PFC account, and a plan on how it will begin using accumulated PFC revenue.

The public agency may also exchange the PFC acquired land with another property not held by the public agency. The land received in exchange for the PFC acquired land must meet the same objective and justification as the land purchased with PFCs. The public agency must contact the appropriate PFC Program Manager to address the exchange of PFC acquired land. For information and guidance on the sale, exchange, or change in land use of PFC funded land, contact the FAA PFC program in Headquarters.

22.16 Disposal of Land Acquired for Noise Compatibility Purposes.

A sponsor that accepted a grant after December 30, 1987, under the AAIA, as amended by the 1987 Airport Act, will dispose of noise land at fair market value when the land is no longer needed for noise compatibility purposes. (See also [Grant Assurance 31, Disposal of Land](#)). This also applies to land purchased under FAAP/ADAP/AIP.

An interest or right shall be reserved in the land to ensure it will be used only for purposes that are compatible with the noise levels generated by aircraft. The distribution of proceeds is explained above in section 22.12.d, *Process for FAA Release of Federally Acquired Land for Sale, Conveyance, or Exchange*.

The FAA's *Noise Land Management and Requirements for Disposal of Noise Land or Development Land Funded with AIP*, issued June 2014 (or current version), provides guidance on disposal and retention of noise land through the Noise Land Reuse Plan.

22.17 Procedures for Public Notice.

a. Summary.

This section sets forth FAA guidance for public notice of the agency's intent to release aeronautical property or facilities from federal obligations under the grant assurances and surplus property agreements. The Secretary must provide public notice at least 30 days before modifying or waiving any aeronautical land use assurance or condition on the conveyance of land, including surplus property. (See 49 U.S.C. §§ 47107(h)(2), 47125(a), 47151(d), and 47153(c)(1)).

b. Responsibilities.

The Regions and ADOs are responsible for complying with the requirements of the statute and policy guidance governing the notice and release of aeronautical property.

c. Scope and Applicability.

As a matter of policy, the FAA will provide public notice of a proposed release of a sponsor from its federal obligations regarding any land, facilities, and improvements used or depicted on an ALP for aeronautical use where the release would affect the aeronautical use of the property. Public notice requirements apply to release of the following types of property:

- (1) Land acquired for an aeronautical purpose (except noise compatibility) with federal assistance in accordance with 49 U.S.C. § 47107(c)(2)(B).
- (2) Land (surplus property) provided for aeronautical purpose in accordance with 49 U.S.C. § 47151.
- (3) Land conveyances of the United States Government for aeronautical purposes in accordance with 49 U.S.C. § 47125.
- (4) Land used as an aircraft movement area with federally financed airport improvements. (See 49 U.S.C. § 47107(c)(2)(B)).

d. Procedures.

At least 30 days prior to the agency's determination of an airport sponsor's request to release aeronautical property or facilities, notice must be published in the Federal Register to afford the public an opportunity to comment. Public notice is also an opportunity for the FAA to obtain additional information as a part of its evaluation of the airport sponsor's request. It allows the FAA to take public comment into account in the agency's decision making. In addition, the airport sponsor is encouraged to provide local notice and to notify tenants in a timely manner to ensure they are aware of the proposed action and have an opportunity to comment. Public notice is not required for:

- (1) Grant of utility or other types of easements that will have no adverse effect on the aeronautical use of the airport;
- (2) Release of aeronautical property as a part of a major environmental action in which public notice and comment is an integral part of the environment review;
- (3) Release of noise compatibility land; or
- (4) The sale of sponsor acquired land that does not affect the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations.

22.18 Release of National Emergency Use Provision (NEUP).

Practically all War Assets Administration (WAA) Regulation 16 and Surplus Property Act of 1944, Pub. L. No. 80-289 instruments of disposal of real and related personal property also contain the NEUP. Under this provision, the United States has the right to make exclusive or nonexclusive use of the airport or any portion thereof during a war or national emergency (see 14 CFR § 155.9, *Release from war or national emergency restrictions*). This provision is similar in all such instruments. (See *Sample FAA NEUP Release Request* at the end of this chapter).

The NEUP represents the U.S. Government's interest in and ability to reactivate an airport as a military facility in case of war or national emergency. One example is the former Naval Air Station (NAS) Miami, which in 1952 was reactivated as a Marine Corps Air Station during the Korean War. The Navy Department took over the facility from its civilian sponsor from 1952 and 1958, after which it was returned to civilian control. In other cases, old World War II installations decommissioned after the war were never reactivated. Since many had excessive parcels of land, the FAA granted many releases for disposal over the years and, when permitted by the Department of Defense (DoD), released the NEUP as well.

a. Important Limitations.

The FAA will not approve a request for release of the NEUP involving the whole airport. In addition, DoD generally will not concur with a request for NEUP release when it involves runways, taxiways, or aprons. A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes.

b. Procedures.

The FAA may grant a release from this provision, which is often referred to as the recapture clause. Under 14 CFR § 155.9(b), a release of the NEUP provision requires consultation with the DoD. Airport sponsors requesting a release of the NEUP provision must provide the FAA with adequate information, including property drawings and property description, in duplicate. However, the concurrence of the Chairman of the Airports Subgroup, Department of Defense Policy Board is also required. FAA must make the request to DoD.

The Region will forward the documentation required to ACO-100. If approved, ACO-100 will then request DoD's concurrence. Upon receipt of DoD concurrence, ACO-100 will forward the determination to the Region for release of the NEUP.

The Region or ADO must provide the sponsor with an instrument of release for this provision. If the release is part of a larger release for sale or conveyance, the NEUP release may be part of that instrument of release. The Region or ADO must provide a copy of the release instrument to the appropriate Army Corps of Engineers District (ACOE) Engineer's office.

22.19 Release of Reverter Clause.

In order to promote appropriate private investment in airport facilities, the sponsors of surplus property may seek to remove a provision giving the United States the option to revert title to itself in the event of default of the sponsor to the conditions of its surplus property federal obligations. This reverter clause is an important remedy intended to be reserved to the United States Government and will not normally be released.

Region/ADOs may not grant such a release. Any such proposal to release the sponsor from the reverter clause shall be referred to the ACO-1 for consideration. (For guidance on reversion of property see chapter 23, *Reversions of Airport Property*).

22.20 Release from Federal Obligation to Furnish Land without Charge.

[Grant Assurance 28, Land for Federal Facilities](#), requires sponsors to furnish, without cost to the Federal Government, areas of land or water for use in connection with any air traffic control or air navigation activities or weather-reporting and communication activities related to air traffic control. (See [FAA Reauthorization Act of 2018](#), Section 147, *General facilities authority*, and section 7.14 *Land for Federal Facilities* for more information on this grant assurance).

Before granting a release from Grant Assurance 28 the Region or ADO should evaluate all pertinent facts and circumstances and obtain concurrence from other offices within the FAA such as Air Traffic and Airways Facilities, the National Oceanic and Atmospheric Administration (NOAA), or other interested federal entities. The office may accomplish the release either by discharging the sponsor from the assurance or through an amendment to the grant agreement.

22.21 Determining Fair Market Value for Sale or Disposal.

Except as provided in 49 U.S.C. 47107(v), *Community Use of Airport Land*, a sale and disposal of airport property for less than its fair market value is inconsistent with the intent of the statute and shall not be authorized. (See *also* chapter 17, *Self-Sustainability*). The value to be placed on land for which a release has been requested shall be based on the present appraised value (for its highest and best use) of the land itself and any federal improvements initially conveyed with the property.

In many cases, the original buildings and improvements may have outlived their useful life and a determination may have been made by FAA that no further federal obligation to preserve or maintain them exists. If they have been replaced under such circumstances, or if additional improvements have been added without federal financing, the value of such improvements does not need to be included in the appraisal for purposes of determining the fair market value of the surplus property. However, the value realized from the disposal of any improvement owned by the airport sponsor must be treated as airport revenue.

a. Appraisals.

A release authorizing the sale or transfer of airport land shall not be granted unless the fair market value has been supported by at least one independent appraisal report acceptable to the FAA. Appraisals shall be made by an independent and qualified real estate appraiser. The requirement for an appraisal may be waived if the FAA determines that:

- (1) The approximate fair market or salvage value of the property released is less than \$25,000;
- (2) It would be in the public interest to require public advertising and sale to the highest responsible bidder in lieu of appraisals.

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

a. Use of Letter of Intent.

Release and disposal of facilities developed through federal assistance is often necessary to finance replacement facilities. The sponsor may, therefore, request a letter of intent to release even if it is merely to permit the sponsor to determine the market demand for portions of the available airport property proposed for release and disposal.

b. Letter of Intent Contingencies.

The Region/ADOs may issue such a letter of intent to release, with ACO-100 concurrence, if the letter contains appropriate conditions and makes clear that actual release is specifically contingent upon adequate replacement facilities being developed and becoming operable and available for use.

c. Binding Commitment.

The letter represents a binding commitment (subject to future appropriations) and an advance decision to release the property once specific conditions have been met. It should be used only when all of the required conditions pertinent to the type of release

sought have been met or are specifically made a condition of the pledge contained in the letter of intent. In addition, such a letter should cite any specific understandings reached regarding anticipated problems in achieving the substitution of airport properties (*i.e.*, who pays for relocation of various facilities and equipment and the cost of extinguishing existing leases). The letter should specify a reasonable time limit on the commitment to release.

22.23 Statutorily Released Obligations.

On occasion, Congress will issue a broad release of certain obligations that are in federally conveyed property deeds. The following are two examples:

a. Industrial Use Changes.

Certain surplus property restrictions prohibiting the use of the property as an industrial plant, factory, or similar facility have been repealed by Public Law No. 81-311. The FAA, as needed, will issue the releases or corrections to eliminate restrictions that may have been repealed or modified by laws, such as these industrial use restrictions.

b. Radioactive Mineral substances, Fissionable Materials or Source Material.

Certain surplus property restrictions prohibiting the mining or removal of mineral substances under [Executive Order 9613 \(dated September 15, 1945\)](#), [Executive Order 9701 \(dated March 8, 1946\)](#), the Atomic Energy Act of 1946 or [Executive Order 9908 \(dated December 9, 1947\)](#) have been released by [Pub. L. No. 83-703, Sec. 68, *Public Lands*](#).

22.24 Procedures for Requests for Change in Use of Personal Property, Structures, Equipment and Facilities.

Personal property (not land), structures, and facilities may have been acquired through a federal surplus property conveyance, a federal grant, or through purchase with airport revenue.

Personal property, structures, or facilities acquired with federal assistance require a release or federal procedure. Personal property, structures, or facilities acquired through nonfederal sources do not require a release or federal procedure. Nonetheless, these items of personal property, structures, or facilities are considered assets of the airport account. Proceeds from the disposal of these assets become airport revenue subject to Federal requirements for the use of airport revenue.

For releases other than land, the sponsor must begin with a formal request signed by an authorized official and submitted to the Region/ADO. Although a specific format is not required, the request should include the following, but not limited to:

- (1) affected agreement(s)/ federal agreements,
- (2) modification requested,
- (3) need for the modification,
- (4) facts and circumstances that justify the request,
- (5) state and local law pertinent to the document,
- (6) description of facilities involved,
- (7) source of funds for the facility's original acquisition,
- (8) present condition of facilities, and
- (9) present use of facilities.

a. Federally Conveyed Personal Property, Structures, and Facilities.

Surplus airport property falling into the categories of personal property, structures, and facilities may be released from all inventory accountability (whether or not the airport at which they are located is included in chapter 13, *Civil Airports Required by Department of Defense for National Emergency Use*, of FAA Order 5190.2, *List of Public Airports Affected by Agreements with the Federal Government*) when it has been determined that such property acquired with federal funds:

- (1) is beyond its useful life;
- (2) has deteriorated beyond economical repair or rehabilitation;
- (3) is no longer needed;
- (4) has been replaced;
- (5) is to be traded to obtain similar or other property needed for the airport;
- (6) has been destroyed or lost by fire or other uncontrollable cause and the ensured value, if any, has been credited to the airport fund; or
- (7) has been, or should be, removed or relocated to permit needed airport improvement or expansion, including salvage or other use, elsewhere on an airport.

b. Federally Funded Personal Property, Structures, and Facilities**(1) Abandonment, Demolition, or Conversion of Grant Funded Improvements.**

The FAA may grant a release that permits the sponsor to abandon, demolish, or convert property (other than land) before the designated useful life expires. The Region or ADO may grant the release when any of the following apply:

- (a) the facility is no longer needed for the purpose for which it was developed,
- (b) normal maintenance will no longer sustain the facility's serviceability, or
- (c) the facility requires major reconstruction, rehabilitation, or repair.

(2) Disposal of Grant Funded Personal Property. Grant funded personal property must be maintained on the sponsor's inventory for the useful life of the specific equipment. The federal obligation regarding personal property maintenance expires with the useful life of the specific piece of property. Should the sponsor desire to dispose of personal property prior to the expiration of its useful life, it should consult with the Region/ADO prior to seeking release from its obligations. However, property that has exceeded its useful life continues to be part of the airport inventory and remains obligated by the airport revenue policy and must be disposed at fair market value (FMV). (See [FAA Order 5100.38, Airport Improvement Program Handbook](#)).

(3) Reinvestment of Federal Share. After the FAA has determined that a release of grant funded improvements is appropriate and that the release serves the interest of the public in civil aviation, the FAA may require the sponsor, as a condition of the release, to reimburse the federal government or reinvest in an approved AIP eligible project.

The amount to be reimbursed or reinvested is an amount representing the unamortized portion of the useful life of the federal grant remaining at the time the facility will be removed from aeronautical use. Special circumstances involving the involuntary destruction of the improvement or equipment would be an exception. Depreciation of personal property may follow a different formula related to its useful life or actual value. The FAA will require a specific project or projects and a timeline for completion for reinvestment in a new AIP eligible project.

22.25 through 22.29 Reserved.

Table 22.1: Guide to Releases

Land Release Circumstance	Requirement to Notify Public Title 49 U.S.C. Section	Federal Register Notice Required	Instrument of Release Required	Grant Assurance Letter of Release Required	Use of Proceeds
Release of surplus property conveyed by the federal government for aeronautical purposes (49 U.S.C. §§ 47151-47153).	47151(d), 47153(c)	Yes	Yes	No	Use for developing, improving, operating, or maintaining a public airport (14 CFR part 155, Pub. L. 118-63, section 719); (See section 22.13.d, <i>Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property</i>).
Release of surplus property conveyed by the federal government for nonaeronautical revenue production (49 U.S.C. §§ 47151-47153).	N/A	No	Yes	No	Use for developing, improving, operating, or maintaining a public airport (14 CFR part 155, Pub. L. 118-63, section 719); (See section 22.13.d, <i>Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property</i>).

Land Release Circumstance	Requirement to Notify Public Title 49 U.S.C. Section	Federal Register Notice Required	Instrument of Release Required	Grant Assurance Letter of Release Required	Use of Proceeds
<p>Release of non-surplus property conveyed by the federal government (49 U.S.C. § 47125).</p>	<p>47125(a)</p>	<p>Yes</p>	<p>Yes</p>	<p>No</p>	<p>Use exclusively for the development, improvement, operation, or maintenance of a public airport by the airport, city or county (Pub. L. 118-63, section 719).</p> <p><i>(See section 22.13.d, Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property).</i></p>

Land Release Circumstance	Requirement to Notify Public Title 49 U.S.C. Section	Federal Register Notice Required	Instrument of Release Required	Grant Assurance Letter of Release Required	Use of Proceeds
<p>Release of land acquired for development with FAAP/ADAP/AIP and sponsor has not received a grant after 12/30/1987.</p>	47107(h)(2)	Yes	No	Yes	<p>Reinvest in the airport, a replacement, or another operating public airport in order of priority established for releases of surplus property. (See section 22.12.d.(1), <i>Sponsors Not Receiving a Grant after December 30, 1987</i>).</p> <p>The sponsor's share of the proceeds from FAAP and ADAP land may not be used as matching funds for any airport development project or airport planning grant without the approval of the Administrator but may be used for any other airport purpose. (See 14 CFR § 152.207, <i>Proceeds from disposition of land</i>).</p>
<p>Release of land acquired for development with FAAP/ADAP/AIP and sponsor has received a grant after 12/30/1987.</p>	47107(h)(2)	Yes	No	Yes	<p>Reinvest in accordance with 49 U.S.C. § 47107(c)(4) and Grant Assurance 31. (See section 22.12.d.(2), <i>Sponsors Receiving a Grant after December 30, 1987</i>).</p> <p>The Sponsor's share of the proceeds from FAAP and ADAP land may not be used as matching funds for any airport development project or airport planning grant without approval of the Administrator but may be used for any other airport purpose. (See 14 CFR § 152.207, <i>Proceeds from disposition of land</i>).</p>

Land Release Circumstance	Requirement to Notify Public Title 49 U.S.C. Section	Federal Register Notice Required	Instrument of Release Required	Grant Assurance Letter of Release Required	Use of Proceeds
Sale of sponsor acquired land without federally financed airport improvements.	N/A	No	No	No	<p>Proceeds are airport revenue (See FAA Revenue Use Policy, Section B.1.a.ii).</p> <p>Use for capital & operating costs of the airport, local airport system, or other local facilities owned or operated by the airport owner/sponsor or operator and directly and substantially related to the air transportation of passengers or property.</p>
Release of sponsor acquired land developed with AIP funds less than 20 years ago.	N/A	Yes, if in the movement area.	No	Yes	<p>Reinvest the unamortized portion of the useful life of the federal grant in an approved AIP eligible project. (See section 22.24.b.(3), <i>Reinvestment of Federal Share</i>).</p> <p>Remaining proceeds are airport revenue. (See FAA Revenue Use Policy, Section B.1.a.ii).</p> <p>Use for capital & operating costs of the airport, local airport system, or other local facilities owned or operated by the airport owner/sponsor or operator and directly and substantially related to the air transportation of passengers or property. (49 U.S.C. §§ 47107(b) and 47133).</p>

Land Release Circumstance	Requirement to Notify Public Title 49 U.S.C. Section	Federal Register Notice Required	Instrument of Release Required	Grant Assurance Letter of Release Required	Use of Proceeds
Release of sponsor acquired land developed with AIP funds more than 20 years ago.	N/A	Yes, if in the movement area.	No	No	Proceeds are airport revenue. (See FAA Revenue Use Policy, Section B.1.a.ii). Use for capital & operating costs of the airport, local airport system, or other local facilities owned or operated by the airport owner/sponsor or operator and directly and substantially related to the air transportation of passengers or property. (49 U.S.C. §§ 47107(b) and 47133).
Release of land acquired with noise compatibility funds.	N/A	No	No	Follow Reuse Plan (See section 22.16, <i>Disposal of Land Acquired for Noise Compatibility Purposes</i>).	Reinvest in accordance with 49 U.S.C. § 47107(c)(4) and Grant Assurance 31. (See section 22.12.d.(2), <i>Sponsors Receiving a Grant after December 30, 1987</i>).
Release of National Emergency Use Provision (NEUP). 49 U.S.C. § 47152(5)	N/A	No	Yes	No	N/A (No sale proceeds involved).
Release of reverter clause in an instrument of conveyance by a federal agency. 49 U.S.C. § 47125(a)	N/A	No	Yes	No	N/A (No sale proceeds involved).

Sample Retained Airport Compatible Land Use Property Restrictions

These covenants must run with the described land conveyed to the GRANTEE, for the benefit of the GRANTOR [sponsor] and its successors and assigns in the ownership and operation of the AIRPORT.

1. The [sponsor] reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in said airspace, and for use of said airspace for landing at, taking off from, or operating from Airport.
2. The [sponsor] reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of Federal Aviation Regulation (FAR) Part 77 surfaces relating to Airport. This public right must include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.
3. Grantee expressly agrees for itself, its successors and assigns that the Property only be used for purposes that is compatible with noise levels of airport operations. The Property must not be used for residential purposes, which purposes include single family, multifamily or mobile home development; for educational facilities (as described in state law); or other noise sensitive land use not compatible with airport noise as described in 14 CFR part 150, as amended.
4. The grantee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the property to a height which does not exceed the height requirements set forth in FAR Part 77 of the FAA Regulations, as amended, or any similar regulations which may hereinafter be enacted relating to the Airport.
5. The grantee expressly agrees for itself, its successors and assigns, to file a notice consistent with requirements of FAR Part 77 (FAA Form 7460-1) prior to constructing any facility, structure, or other item on the land described above.
6. The grantee expressly agrees for itself, its successors and assigns, to not hereafter use, permit, or suffer use of the land described above in such a manner as to create electrical interference with radio communication between the installation upon the airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others.

7. The grantee expressly agrees for itself, its successors and assigns, to not hereafter use, permit, or suffer use of the land described above in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.

8. The grantee expressly agrees for itself, its successors, and assigns, to not hereafter use, permit, or suffer use of the land described above in such a manner, as to impair visibility in the vicinity of the airport, that may interfere or degrade any navigational and communication facilities/equipment, or as to introduce light glare/reflections or emissions (smoke/steam/vapor) effects, or otherwise to endanger the landing, taking off, or maneuvering of aircraft.

[9. etc... Plus other retained rights, or controls or restrictions on the land conveyed that FAA concurs does not affect and does not conflict with grant obligations on the disposal land.]

The aforesaid covenants and agreements must run with the land, as hereinabove described, for the benefit of the [Sponsor] and its successors and assigns in the ownership and operation of the Airport.

Conveyance procedures must incorporate applicable requirements under state and local law to ensure enforceable property rights are retained by the airport to prevent incompatible land use.

Sample Deed of Release

This instrument, a Deed of Release, made by the United States of America, acting by and through the Administrator of the Federal Aviation Administration, Department of Transportation, under and pursuant to the powers and authority contained in the provisions of Public law 81-3 11 (63 Stat. 700), as amended, to the Western Reserve Airport Authority of Youngstown, Ohio both a body politic, created, operating, and doing business under the laws of the State of Ohio, WITNESSETH:

WHEREAS, the United States of America, acting by and through the Administrator of the Federal Aviation Administration (FAA), under and pursuant to the powers and authority contained in Article 4, Section 3, Clause 2 of the Constitution of the United States, and the provisions of the Federal Property and Administrative Services Act of 1949, approved June 30, 1949 (63 Stat. 377), as amended, and the Surplus Property Act of 1944 (58 Stat. 765), as amended, and applicable rules, regulations, and orders by instruments of transfer entitled Quitclaim Deed dated June 14, 1977 did remise, release and forever quitclaim to the City of Youngstown, its successors and assigns, and all rights, title and interest in and to that certain property located and situated in Youngstown, Ohio, subject to certain terms, conditions, reservations and restrictions, said Quitclaim Deed dated June, 14, 1977 being recorded in the public records of the Trumbull County, Ohio, Volume 105 1, Pages 80-106, reference being hereto made as if fully set out herein; and

WHEREAS, the Western Reserve Port Authority has requested the United States of America to release the hereinafter described real property from all of those terms, conditions, reservations and restrictions of the said instrument(s) of transfer; and

WHEREAS, the Administrator of the Federal Aviation Administration is authorized to grant releases pursuant to the powers and authority contained in Public Law 81-3 11 (63 Stat. 700), as amended; and

WHEREAS, by virtue of delegation of authority, the Manager, Detroit Airport Airports District Office, Airports Division, Great Lakes Region, Federal Aviation Administration, under and pursuant to the powers and authority contained in Public Law 81-3 11 (63 Stat. 700) is authorized to make determinations on requests for Deed of Release and to execute said Deeds of Release to convey, quitclaim or release any right or interest reserved to the United States of America by an instrument of disposal; and

WHEREAS, the Manager, Detroit Airports District Office, Airports Division, Great Lakes Region, Federal Aviation Administration, has determined that the release of such real property as is hereinafter described, from all of the said terms, conditions, reservations and restrictions set forth in the above identified instrument of transfer will not prevent accomplishment of the purpose for which the property was made subject to such terms, conditions, reservations and restrictions and is necessary to protect or advance the interests of the United States of America in civil aviation.

NOW THEREFORE, for and in consideration of the above expressed recitals and of the benefits to accrue to the United States and to civil aviation, the United States of America, upon inclusion by the Western Reserve Port Authority in the Instrument of Transfer conveying title to the hereinafter described real property of provisions as follows:

- A. The grantor reserves unto itself, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in said airspace, and for use of said airspace for landing at, taking off from, or operation from Youngstown/Warren Regional Airport.
- B. The grantor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of Federal Aviation Regulation (FAR) Part 77 surfaces relating to Airport. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.
- C. The grantee expressly agrees for itself, its successors and assigns that the Property only be used for purposes that are compatible with noise levels of airport operations at Youngstown/Warren Regional Airport.
- D. The grantee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the property to a height which does not exceed the height requirements set forth in Part 77 of the FAA Regulations, as amended, or any similar regulations which may hereinafter be enacted relating to the Youngstown/Warren Regional Airport.
- E. The grantee expressly agrees for itself, its successors and assigns, to file a notice consistent with requirements of FAR Part 77 (FAA Form 7460-1) prior to constructing any facility, structure, or other item on said premises.
- F. The grantee expressly agrees for itself, its successors and assigns, to not hereafter use, permit, or suffer use of the land described above in such a manner as to create electrical interference with radio communication between the installation upon the airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

- G. The grantee expressly agrees for itself, its successors and assigns, to not hereafter use, permit, or suffer use of the land described above in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.
- H. The grantee expressly agrees for itself, its successors and assigns, to prevent any use of the subject property that would interfere with landing or taking off of aircraft at the Youngstown/Warren Regional Airport or otherwise constitute an airport hazard.
- I. The aforesaid covenants and agreements shall run with the land, as hereinafter described, for the benefit of the Western Reserve Port Authority and its successors and assigns in the ownership and operation of the Youngstown/Warren Regional Airport.

HEREBY, releases the said real property from the terms, conditions, reservations, and restrictions as contained in the above-mentioned Instrument of Transfer from the United States of America to the City of Youngstown, on June 14, 1977 and subsequent ownership transfers, which real property is described as follows:

Legal Description of Parcel being released

Vienna Township, Trumbull County, State of Ohio known as being part of Section No. 44 in said Vienna Township (Township 4, Range 2) and being further bounded and described as follows: Beginning at a 518-inch iron pin found on the westerly Right-of-Way line of Ridge Road (County Road 159/Right-of-Way varies/Plat Volume 47, Page 92) said point being a northeasterly corner of lands of Antique Tractor Club of Trumbull County, Inc. (Instrument No. 2008072200 I 811 I); Thence South 89° 18'00" West along the northerly line of said lands of Antique Tractor Club of Trumbull County, Inc. a distance of 1633.23 feet to a 518- inch iron pin found at the southeasterly corner of lands of A&N Land Company, LLC (Instrument No. 201901070000302); Thence North 01° 28'55" West along the easterly line of said lands of A&N Land Company, LLC a distance of 1157.30 feet to a 518-inch iron pin set; Thence North 89° 17' 40" East through the lands of the Grantor and passing over a southerly corner of lands of the United States of America (Deed Volume 105 1, Pages 80 and 95) a distance of 756.12 feet to a 518-inch iron pin set on the said westerly Right-of-Way line of Ridge Road; Thence South 54°32'04" East along said westerly line of Ridge Road a distance of 645.46 feet to a 518-inch iron pin set at a point of curvature; Thence continuing along said westerly line of Ridge Road along a curve to the right having an arc distance of 834.88 feet a radius of 904.93 feet a delta angle of 52°51 '39" and a chord which bears South 28°06'15" East a distance of 805.59 feet to a 518- inch iron pin set; Thence South 01° 40'25" East continuing along said westerly line of Ridge Road a distance of 61.19 feet to the POINT

OF BEGINNING and containing 1,576,325.47 square feet or 36.1875 acres of land, more or less.

By its acceptance of this Deed of Release the Western Reserve Port Authority also covenants and agrees for itself, its successors and assigns, to comply with and observe all of the conditions and limitations hereof, which are expressly limited to the above described real property.

IN WITNESS WHEREOF, the United States of America has caused these presents to be executed in its name and on its behalf by the Manager, Detroit Airports District Office, Airports Division, Great Lakes Region, Federal Aviation Administration, all as of the 3rd day of October 2024.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

By: /S/

Manager, Detroit Airports District Office
Airports Division, Great Lakes Region
Federal Aviation Administration

Sample FAA NEUP Release Request

U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Compliance and
Management Analysis

800 Independence Ave., S.W.
Washington, DC 20591

DATE

Mr. Timothy W. Bennett

Chairman, DOD Airports Subgroup

HQ USAF/XOO-CA

1480 Air Force Pentagon, Room 4D1010

Washington, DC 20330-1480

Dear Mr. Bennett:

The Federal Aviation Administration (FAA) has received a request from the Syracuse Regional Airport Authority (SRAA), operator of Syracuse Hancock International Airport (SYR) in Syracuse, New York, to be released of the National Emergency Use Provision (NEUP) on 8.8 acres of airport land not needed for aeronautical uses, identified as Parcels 26, 28, and 30 on the attached Airport Layout Plan (Exhibit 1).

These portions of the Syracuse Hancock International Airport property were transferred to the City of Syracuse through the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act of 1944. The March 21, 1977, Quitclaim Deed was recorded in with the Onondaga County Clerk's Office on March 29, 1977 (Exhibit 2). The transfer document includes the NEUP provision.

The SRAA does not plan to sell the 8.8 acres, but desires to pursue a long-term lease for mixed-commercial use of this property, which is not currently required or anticipated to be required for aeronautical use. All revenues from any leases on the land will remain on the airport. The NEUP requirements present an encumbrance on the property and are not conducive to long-term leasing for the stated purposes.

As a matter of Policy, the FAA does not request a release from the NEUP for all airport property conveyed. However, we do concur with the release of the NEUP on certain designated areas of airport property that are not currently required for aeronautical purposes. The subject land for this NEUP release request, approximately 8.8 acres in total, is not currently required for aeronautical purposes. The SRAA has proposed to develop this land for mixed-commercial use. The FAA does not object to the use of the

2/20/2026

5190.6C

parcel for nonaeronautical use. The attached property map and legal description depicts the subject tracts of land to be released.

Consequently, in accordance with Chapter 22, FAA Order 5190.6, Airports Compliance Manual, we request the concurrence of the Department of Defense in the release of the NEUP and other deed restrictions associated with the Surplus Property Act of 1944 on the property described above and as shown in the attached documents.

Thank you in advance for your consideration. If you have any questions or need further assistance, please contact Compliance Specialist, Mr. Patrick Forrester.

Sincerely,

/S/

Lorraine Herson-Jones

Manager, Office of Airport Compliance and Management Analysis

Enclosures (3)

Sample DoD Response to FAA NEUP Release Request

OFFICE OF THE SECRETARY OF DEFENSE
1480 DEFENSE PENTAGON
WASHINGTON DC 20301-1480

DOD

POLICY BOARD
ON FEDERAL
AVIATION

25 January 2024

Danielle S. Hinnant
Administrative Assistant IV
Office of Airports
Airports Compliance Division
Federal Aviation Administration
800 Independence Ave. SW
Washington, DC 20591

Ms. Hinnant,

This is in response to a package dated January 22, 2024 from your office. The package is concerning a request from the Johnson County Airport Commission, operator of the New Century Air Center (IXD) in New Century, Kansas. The request is for the release of approximately 10.1 acres that is not currently required for aeronautical purposes. The FAA concurs with the release of this land for proposed nonaeronautical use. The request is to release this 10.1 acres of land near the New Century Air Center (IXD) from the National Emergency Use Provision (NEUP) and all deed restrictions associated with the Surplus Property Act of 1944.

The Airports Subgroup, on behalf of the Department of Defense, concurs with the FAA to release of the NEUP on the designated parcel of property that are not currently required for aeronautical purposes. A copy of the release instrument must be provided to the appropriate District Corps of Engineers' office.

X TIMOTHY BENNETT

Timothy W. Bennett
Chairman, Airports Subgroup, DoD Policy Board
Signed by: Bennett.Timothy.W.
Attachment:
FAA Request