

## Part VII: Releases and Property Reversions

### Chapter 23. Reversions of Airport Property

#### 23.1 Introduction.

This chapter provides guidance on the reversion of real property originally conveyed by the United States to an airport sponsor or other entity. The term reversion generally refers to the process by which title to real property is returned to the original conveyer of land (e.g., the U.S.) if a specific event occurs. The right of reversion is based upon a reversionary clause contained in the instrument of conveyance or deed from the U.S. The reversionary clause sets forth the conditions, or occurrences, by which title to the property may revert (*i.e.*, return) back to the U.S. Reversionary clauses are typically found in surplus (49 U.S.C. §§ 47151-47153) and non-surplus (49 U.S.C. § 47125) property conveyances. In some cases (typically involving non-surplus property), reversion is automatic under the terms of the reversionary clause. In these cases, the FAA does not have discretion. Reversion may also be at the discretion of the government. Reversion may occur when the U.S. determines it requires property back for its own use for national defense or national security purposes (DoD, HHS, etc.). Also, the FAA may initiate reversion when an airport sponsor fails to meet property conveyance conditions or federal obligations. In all cases, the actual conveyance documents must be reviewed to determine the exact nature of the obligations and applicable regulations or policies (e.g., Regulation 16, 14 CFR part 155, 41 CFR part 102-75).

In some cases, there may be amendments to the property conveyance or supplemental agreements attached to property deeds of release. These may include additional requirements or obligations not found in the original conveyance document, such as requirements on using proceeds from the sale or lease of airport property for revenue generation, protecting the airport's navigable airspace, or limitations on imposing land-use restrictions.

It is FAA policy to cooperate with the grantee to the extent reasonable to resolve a dispute expeditiously. The FAA's policy is to first seek a resolution without reverting the property, as noted by the United States Government Accountability Office (GAO) in

2006.<sup>1</sup> Generally, the FAA should provide the airport sponsor an opportunity to cure the default before reverting the property.

The FAA uses its discretion to serve the public interest in aviation when exercising its right to revert a property interest. The specific circumstances of the case, costs and benefits of the action, and likelihood to affect the intended outcome should be carefully considered before reverting the property. In all cases, contact the FAA Office of Airports Compliance and Management Analysis, Airports Compliance Division (ACO-100) for assistance.

### **23.2 General.**

This chapter reflects information obtained from the four federal agencies that are major sources of federal property for public airport purposes: (a) General Services Administration (GSA), (b) Department of Agriculture (USDA), (c) Department of Interior's (DOI) Bureau of Land Management (BLM), and (d) Department of Defense (DoD).

### **23.3 Authority to Revert a Property Interest.**

The Secretary's authority to revert a property interest is based upon the specific terms of the instrument of conveyance or deed and, in some cases, the statutes, such as 49 U.S.C. § 47125 and the Surplus Property Act. The Secretary's discretionary authority to revert a property interest conveyed for public airport purposes may arise if a condition in the deed is not met or is violated. This authority only extends to the title, right of possession, or other rights vested in the United States at the time the federal government transferred the property to the grantee. Each reversion is controlled by the instrument of conveyance, applicable laws, federal regulations, and FAA orders. The reversion may be exercised at the option of the United States – with or without the cooperation of the grantee – against all or part of the property in question.

### **23.4 Instruments of Conveyance.**

The U.S. issues instruments of conveyance that may include a right of reverter of an airport property interest and a right to revert title in the United States under the authority of one or more of the following:

- a. Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA), Public Law (Pub. L.) No. 97-248 (49 U.S.C. § 47125);

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<sup>1</sup> See United States Government Accountability Office, "[Report to the Committee on Government Reform, House of Representatives: Federal Real Property](#)", (June 2006) (also referencing the FAA's procedures as described in this chapter).

- b. Section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act) (Pub. L. No. 91-258, May 21, 1970) (84 Stat. 219 and following).
- c. Section 16 of the Federal Airport Act of 1946 (1946 Airport Act), as amended, and (49 U.S.C. § 47151 et seq.).
- d. Section 13(g) of the Surplus Property Act of 1944, as amended (49 U.S.C. § 47151 et seq.) and 49 U.S.C. § 106(l) and (n).
- e. Section 303 (c) of the Federal Aviation Act of 1958 (FAA Act), as amended (49 U.S.C. § 1344(c) and recodified as 49 U.S.C. § 4011(b)(2)(E)). Also, the precedent Civil Aeronautics Act of 1938, as amended (49 U.S.C. §§ 40110 and 40112).
- f. Special Congressional Legislation. Section 35 of the Alaska Omnibus Act (73 Stat. 149) or other enabling Acts authorizing conveyances of federal property to nonfederal public agencies for public airport purposes.

### **23.5 Voluntary Return of Property to the U.S. Government.**

In some cases, the voluntary return of a specific parcel of property may serve the public interest better than reversion of the entire airport. In such cases, the FAA should cooperate with the sponsor to achieve compliance with a selective reversion on a voluntary basis. (See section 23.11, *Voluntary Reconveyance to Correct a Default*, for additional information on voluntary reversions).

There are circumstances when only part of the airport land subject to reversion is not being used in accordance with the statutes and the deed. In this event, the FAA should consider reversion of that part of the property where misuse or nonuse comprises a default. However, the FAA Region should contact the FAA Office of Chief Counsel (AGC) before proposing measures of this type. In circumstances in which the instigating status of noncompliance can be cured by reversion of some portion of the property subject to reversion, the FAA may also consider a voluntary reconveyance, as discussed below. Once the FAA makes the determination to exercise the federal government's option for reversion of airport property, there may be no alternative but to revert title to the United States. A grantee, for good reasons, may request the FAA to issue a notice of intent to exercise its right to reversion of the property before executing a voluntary quitclaim deed or instrument of reconveyance.

### **23.6 Involuntary Reversion.**

A sponsor's refusal to cooperate with the FAA could lead to legal proceedings to effect an involuntary reversion, such as an action to quiet title or in eminent domain. This can affect some or all of the property subject to reversion.

Responsibility for any legal proceedings to effect involuntary reversion in the event of resistance on the part of a grantee generally lies with the Department of Justice (DOJ), as the representative of the United States, in conjunction with the FAA AGC.

### **23.7 Identifying the Federal Agency to Receive the Property.**

The federal agency that issued the original instrument of conveyance, or its successor, may have a right to receive the federal government title in reversion. If the federal agency is other than the GSA or FAA and declines to accept control and jurisdiction upon revestment of title (the title in the property returns to the federal agency), then the GSA may become the reversioner agent for the federal government. In such cases, the FAA should advise GSA of the impending reversion to the United States and fully coordinate revestment of title procedures consistent with GSA supplementary guidance and procedures. Where the FAA is the reversioner agent, the FAA's Logistics Service Area Managers or Real Estate Contractor Officers will handle the reversions and administer the procedures for the action in accordance with applicable regulations. It should be noted that the FAA now has direct authority to buy or sell property and a right to the proceeds from a sale under 49 U.S.C. § 40110(a) or (c). *See also* 49 U.S.C. § 106(n), *Acquisition* (authorizing acquisition of real property).

### **23.8 Determination of Default.**

The Associate Administrator for Airports must first determine a grantee is in default of the covenants of the instrument of conveyance or the terms and conditions of an agreement between the parties in order to exercise the right of reversion of a property interest conveyed for public airport purposes and revert that interest in the United States. FAA policy requires FAA offices to cooperate with the grantee to the extent reasonable to resolve a dispute expeditiously and in the interest of the United States in civil aviation. If the grantee fails to resolve the matter, then the FAA Director of Airports Compliance and Management Analysis (ACO-1) may pursue the reversion and revestment, including the issuance of a notice of reverter and revestment of title in the United States Government.

### **23.9 Perform and Document the FAA's Environmental Due Diligence.**

Environmental due diligence of the property to be reverted is required prior to revestment of the title in the United States Government. Environmental due diligence is the process of identifying, evaluating, and documenting the environmental conditions of real property to inform decision-making and minimize potential environmental liabilities associated with real property transactions.

### **23.10 Notice of Intent to Revert Property.**

The notice of intent is a formal letter informing a grantee of the FAA's determination the grantee is in default and of the FAA's decision to revest title to the property in the United States under the conveyance instrument. The FAA Region, in coordination with AGC and ACO-100, should send notice to the grantee (and an information copy to the grantor agency) by certified or registered mail, with return receipt requested. Before advising the grantee, the Region should coordinate in writing with the appropriate federal agency and provide the agency with a copy of the notice. The notice shall include:

- (a) Prior notices of prior noncompliance.
- (b) A description of grantee's failure to correct the deficiencies listed in the notices of noncompliance.
- (c) A description of the resulting default based on grantee's noncompliance and default on the instrument of conveyance or agreement.
- (d) A visual and an accurate legal description of the property to be reverted.
- (e) The FAA's description of the cure for the default and minimum requirements for curing the default to retain the property.
- (f) The time allowed to cure the default to permit grantee to retain the property. The FAA usually allows a grantee 60 days to cure a default. Time may vary depending on the circumstances, but generally the cure period should not exceed 90 days.
- (g) The FAA's requirement for the grantee to notify the FAA promptly (set a reasonable time period for response, *i.e.*, 7, 10, 14 days) if it does not intend to act to cure the default and thereby waive the time allowed for the cure.
- (h) A description of any other relevant facts bearing on the default or potential remedies.

### **23.11 Voluntary Reconveyance to Correct a Default.**

The FAA should give grantees that are in default an opportunity to voluntarily reconvey the property (or a portion of the property) to the United States. In cases where it is another federal agency that holds the right to revert the property, the FAA must coordinate with that agency. It is an essential step in ensuring that the property in question will be used to serve the best public interests in aviation. In all cases, each voluntary reconveyance requires the following:

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The FAA should give grantees in default an opportunity to reconvey the property voluntarily to the United States. Where only part of the real property described in the instrument is involved, the FAA must coordinate with the receiving federal agency (the reversioner agency) in order to supplement the general guidance and procedures for the revestment of good title in the United States.

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**a. Resolution from the Governing Body.**

A resolution of the grantee authorizing a reconveyance to the United States and designating an appropriate official to execute an instrument of reconveyance acceptable to the United States. The resolution shall also cite the reason for reconveyance (*e.g.*, not developed, ceased to be used, not needed).

**b. Instrument of Reconveyance.**

An instrument of reconveyance that substantially conforms to a format suggested by FAA counsel.

**c. Title insurance or grantee Legal Opinion.**

Title insurance or a legal opinion by the grantee's attorney. The insurance or legal opinion shall recite:

- (1) The grantee's legal authority to convey the property to the United States.
- (2) The status and validity of title to the property interest conveyed to the United States. The insurance policy or attorney must cover the history of the title and property interest from the original federal conveyance to the present and include any outstanding encumbrances, liens or interests, along with the requirement or procedures for returning the title to its original form. The title insurance or legal opinion must be acceptable to the FAA and reversioner federal agency.

**d. Certificate of Inspection and Possession.**

Prepare a certificate of inspection and possession. The FAA will submit the necessary documents to the appropriate official of the receiving federal agency. If the receiving federal agency requires a certified or conformed copy, the FAA will obtain it from the grantee.

**23.12 Notice of Reverter of Property and Revestment of Title and Property Interest in the U.S.**

The notice of reverter of property and revestment of title and property interest to the United States is prepared by the Region under the direction of AGC and in coordination with ACO-100. The basic elements of this notice include:

- (a) Identification of the instrument of conveyance from the United States to the grantee.
- (b) Citation of the statutory authority enabling the original conveyance of federal property.
- (c) Accurate legal description of the property conveyed and that part which reverts to the United States.
- (d) Statement that the property was conveyed subject to an express provision authorizing its reversion under certain circumstances and as set forth in the reverter clause.
- (e) Statement that the FAA has determined that the property in question reverts to the United States for specific reasons consistent with the reverter clause.
- (f) Statement of the specifics which caused the default of the grantee as set forth in the clauses in the instrument of conveyance.
- (g) Statement that the property interest to which the United States has reverter rights is revested in the United States.
- (h) Statement identifying the reversioner federal agency.
- (i) Reference to the notice of intent for reversion of property.

*See Sample Notice of Reversion of Property and Revestment of Title to the United States* included in Appendix F.

**23.13 Recording Notice of Reverter of Property and Revestment of Title and Property Interest in the U.S.**

After execution by the authorized FAA official, the FAA Region will record the original executed copy of the notice in the official records of the county in which the property is located. The Region will obtain the required number of certified copies or certificates of recordation from the Clerk of the Court or other custodian of the official county records.

The number of copies requested must satisfy the needs of the federal agencies involved. Concurrent with recording the original copy of the notice, the Region will send or deliver an executed copy to the grantee. A cover letter shall affirm that pursuant to the execution of the notice, the property involved has reverted to, and title revested in, the United States. This letter shall specifically advise the grantee that the notice has been recorded in the official records of the county in which the property is located.

#### **23.14 Certificate of Inspection and Possession.**

Once the FAA completes the reversion, the Region will conduct an inspection and complete the certificate of inspection and possession.

#### **23.15 Possession, Posting, or Marking of Property.**

Since a property reversion requires a process similar to a physical taking of property, the federal agency must post or mark the property to indicate that it is now the property of the United States. Consequently, concurrent with the physical inspection, the Region should post or mark the property, as appropriate, thus indicating that the property belongs to the United States.

#### **23.16 Reversion Case Studies.**

Reversions of surplus federal property are not common, but they do occur.

##### **a. McIntosh County Airport, Georgia.**

An example of such a situation was Harris Neck AFB in Georgia located 30 miles south of Savannah in McIntosh County.

In October 1946, the War Assets Administration (WAA) deeded the facility to McIntosh County for use as a civilian municipal airport. The facility was updated and one of its runways was extended to 5,400 feet. It served both civilian and military users well into the late 1950s. However, mismanagement by the sponsor – including illegal disposal of the airport's assets and restricted access, resulted in action by the federal government. The FAA exercised the reversion clause contained in the surplus property conveyance and the facility was taken over by GSA. In 1962, GSA conveyed the now-closed airport to the U.S. Bureau of Sport Fisheries & Wildlife (now known as U.S. Fish and Wildlife Service). Today, the remains of the airport are part of a migratory bird refuge.

**b. Half Moon Bay Airport, California.**

Half Moon Bay Airport was constructed in 1942 for the Army and relinquished to the Navy at the end of World War II. In 1947, the WAA deeded the property to San Mateo County under the Surplus Property Act of 1944. The airport has continued in use as a county civil airport since that time.

For many years, the local water district paid the county an extraction fee for water from wells located on the airport. The water district then decided to use its eminent domain powers to acquire the wells by condemning the airport property on which the wells were located. The FAA filed a notice of intent to exercise reversion rights to the property and then intervened in the condemnation proceeding. In February 2009, the U.S. District Court for the Northern District of California found that the water district's action was sufficient to trigger the FAA's right of reverter in the airport deed. The court found that title to the wells had passed to the United States through the exercise of that reversion right, and that the wells therefore could not be condemned by a local or state government agency.<sup>2</sup>

**c. Fallbrook Community Airpark, California.**

A partial reverter occurred at Fallbrook Community Airpark in North San Diego County. Following a Section 16 (49 U.S.C. § 47125) conveyance of U.S. Navy land, the airport property was not developed for airport purposes in its entirety as required by the Section 16 deed. As a result, the undeveloped portion of the airport reverted to the United States.

**23.17 through 23.21 Reserved.**

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<sup>2</sup> [\*Montara Water and Sanitary District v. County of San Mateo\*, 598 F.Supp. 2d 1070 \(N.D. Cal. 2009\)](#)