U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER 5190.6C

Effective Date: 02/20/2026

SUBJ: Airport Compliance Manual

1. Purpose

The Airport Compliance Manual provides guidance to FAA employees on the implementation of the FAA's airport compliance program. Under the program, the FAA has the responsibility to assure airport sponsors comply with certain obligations that arise from FAA grant agreements and from deeds of property conveyance for airport use.

2. Distribution

The Office of Airports website has a link to the Airport Compliance Manual.

3. Cancellation

This Order cancels and **replaces** the Airport Compliance Manual, Order 5190.6B.

4. Explanation of Changes

Since 2009, there have been changes to the laws and policies relating to the Federal obligations of airport sponsors and revisions to the procedures for investigating and resolving complaints that allege noncompliance.

To incorporate any changes and provide the most useful and current program guidance to FAA employees, the Office of Airport Compliance and Management Analysis undertook a review of the Order and published changes to the Airport Compliance Manual, 5190.6B: Change 1 was issued on December 3, 2021, Change 2 was issued on December 9, 2022, Change 3 was issued on September 15, 2023.

This cancellation of 5190.6B and issuance of 5190.6C incorporates each of these updates as well as updates to chapters 6, 7, 8, 12, 13, 14, 15, 20, 21, 22, Appendix G, and addresses the following:

- **Public comments offered on the 2009 update**.

  FAA Reauthorization Act of 2024. On May 16, 2024, the FAA Reauthorization Act of 2024 (2024 Reauthorization Act) made certain amendments to 49 U.S.C. chapter 471. This update fully incorporates, where necessary, citations and changes due to the 2024 Reauthorization Act. To the extent there is a conflict between this updated Order and Federal statutes, the statutes shall apply. *See* FAA Reauthorization Act of 2024 for the full text.

  Editorial changes based on suggestions in the public comments or recommendations from FAA staff for more effective ways of expressing policy guidance. In applicable sections the revised Order:

  - Updated references to other FAA guidance documents on the same subject where applicable.
  - Updated references for Executive Orders and DOT directives.
  - Updated references to applicable law.
  - Updated references to new grant programs.

- Updated statutory and regulatory citation references.

- Policy changes adopted by the agency since 2009 to remain current with Federal statutes. When the FAA revises its policy on a specific compliance issue or issues a new policy statement to clarify the agency position on an issue, the agency issues a separate policy statement after public notice and comment. Those policy changes are then incorporated into this Order.

- Edits and additions to the revised chapters are intended to provide accurate and useful guidance on airport compliance policy for FAA Airports staff, and not to adopt significant changes in compliance policy.

A detailed summary of the changes in each chapter and corresponding renumbering and retitling charts as needed are available at: FAA Order 5190.6C, Airport Compliance Manual.

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Part I: Background

Chapter 1. Scope and Authority

1.1 Purpose.

This Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

1.2 Audience.

FAA personnel have responsibility for monitoring airport sponsors' compliance with the sponsor's federal obligations.

1.3 Where Can I Find This Order?

The current Order is available on the FAA website and will be updated electronically at this location.

1.4 Cancellation.

This Order cancels and replaces FAA Order 5190.6B, dated September 30, 2009, in its entirety.

1.5 Introduction.

This chapter discusses the scope of the Order, the sources of sponsor[1] federal obligations, and the FAA's authority to administer the Airport Compliance Program within the FAA Office of Airports (ARP). The FAA Airport Compliance Program is contractually based, and it does not attempt to control or direct the operation of airports. Rather, the program is designed to monitor and enforce obligations agreed to by airport

[1] A sponsor is any public agency that applies for federal financial assistance, or private owner of a public use airport, as defined in the *Airport and Airway Improvement Act of 1982* (AAIA), codified at 49 U.S.C. § 47102(26).

sponsors in exchange for valuable benefits and rights granted by the United States in return for substantial direct grants of funds and for conveyances of federal property for airport purposes. The Airport Compliance Program is designed to protect the public interest in civil aviation. Grants and property conveyances are made in exchange for binding commitments (federal obligations) designed to ensure that the public interest in civil aviation will be served. The FAA bears the important responsibility of seeing that these commitments are met. This Order addresses the types of these commitments, how they apply to airports, and what FAA personnel are required to do to ensure compliance with Federal obligations.

1.6 Scope.

This Order provides guidance, policy, and procedures for conducting a comprehensive and effective FAA Airport Compliance Program to monitor and ensure airport sponsor compliance with the applicable federal obligations assumed in the acceptance of airport development assistance.

Grants and property conveyances are made in exchange for binding commitments (federal obligations) designed to ensure the public interest in civil aviation will be served.

1.7 Background.

The Air Commerce Act of 1926 was the cornerstone of the federal government's regulation of civil aviation. This landmark legislation was passed at the urging of the aviation industry, whose leaders believed that aviation could not reach its full commercial potential without federal action to improve and maintain safety standards. The Air Commerce Act charged the Secretary of Commerce with fostering air commerce, issuing and enforcing air traffic rules, licensing pilots, certificating aircraft, establishing airways, and operating and maintaining aids to air navigation. A new Aeronautics Branch of the Department of Commerce assumed primary responsibility for aviation oversight.

In 1938, the Civil Aeronautics Act transferred the federal civil aviation responsibilities from the Commerce Department to a new independent agency, the Civil Aeronautics Authority. The legislation also expanded the government’s role by giving the Civil Aeronautics Authority the power to regulate airline fares and to determine the routes that air carriers would serve. In 1940, President Franklin Roosevelt split the Civil Aeronautics Authority into two agencies, the Civil Aeronautics Administration (CAA) and the Civil Aeronautics Board (CAB). The CAA was responsible for air traffic control (ATC), airman and aircraft certification, safety enforcement, and airway development. The CAB was entrusted with safety rulemaking, accident investigation, and economic regulation of the airlines. Both organizations were part of the Department of Commerce.

Unlike the CAA, however, the CAB functioned independent of the Secretary of Commerce. On the eve of America's entry into World War II, the CAA began to extend its ATC responsibilities to takeoff and landing operations at airports. This expanded role eventually became permanent after the war. The application of radar to ATC helped controllers keep abreast of the postwar boom in commercial air transportation.

In the Federal Airport Act of 1946 (1946 Airport Act), Congress gave the CAA the added task of administering the Federal Aid to Airports Program (FAAP), the first peacetime program of financial assistance aimed exclusively at promoting development of the nation's civil airports. The approaching introduction of jet airliners and a series of midair collisions spurred passage of the Federal Aviation Act of 1958 (FA Act). This legislation transferred the CAA's functions to a new independent agency, the Federal Aviation Agency, which had broader authority to address aviation safety through rulemaking and enforcement. It also gave the Federal Aviation Agency sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control, a responsibility the CAA had shared with others.

In 1966, Congress authorized the creation of a cabinet department that would combine federal transportation responsibilities for all public modes of transportation. This new Department of Transportation (DOT) began full operations on April 1, 1967. On that day, the Federal Aviation Agency became one of several modal administrations within the DOT and received a new name, the Federal Aviation Administration (FAA). At the same time, the CAB's accident investigation function was transferred to the new National Transportation Safety Board (NTSB).

The FAA has gradually assumed responsibilities not originally contemplated by the FA Act. For example, the hijacking epidemic of the 1960s brought the agency into the field of aviation security. That function was later transferred to the Transportation Security Administration (TSA) in 2001 after the events of 9/11. In 1968, Congress vested in the FAA Administrator the power to prescribe aircraft noise standards. The Airport and Airway Development Act of 1970 (1970 Airport Act) placed the agency in charge of a new airport aid program funded by a special aviation trust fund. The 1970 Airport Act also made the FAA responsible for safety certification of airports served by air carriers.

In 1982, Congress enacted the current grant statute, the Airport and Airway Improvement Act (AAIA), which established the Airport Improvement Program (AIP). The FAA's mission expanded again in 1995 with the transfer of the Office of Commercial Space Transportation from the Office of the Secretary to the FAA.

The National Plan of Integrated Airports Systems (NPIAS) is the FAA’s plan that identifies and contains all commercial services airports, all reliever airports and select publicly owned general aviation airports. Currently, the NPIAS identifies approximately 3,300 public-use airports. The NPIAS reports are available online at National Plan of Integrated Airport Systems (NPIAS).

The airport system envisioned in the first National Airport Plan, issued in 1946, has been developed and nurtured by close cooperation between federal, state, and local agencies. The general principles guiding federal involvement have remained largely unchanged for the National Plan of Integrated Airport Systems (NPIAS). The airport system should have the following attributes to meet the demand for air transportation:

- Airports should be safe and efficient, located at optimum sites, and be developed and maintained to appropriate standards.
- Airports should be operated efficiently both for aeronautical users and the government, relying primarily on user fees and placing minimal burden on the general revenues of the local, state, and federal governments.
- Airports should be flexible and expandable, able to meet increased demand and accommodate new aircraft types.
- Airports should be permanent, with assurance that they will remain open for aeronautical use over the long term.
- Airports should be compatible with surrounding communities, maintaining a balance between the needs of aviation and the requirements of residents in neighboring areas.
- Airports should be developed in concert with improvements to the air traffic control system.
- The airport system should support national objectives for defense, emergency readiness, and postal delivery.
- The airport system should be extensive, providing as many people as possible with convenient access to air transportation, typically not more than 20 miles of travel to the nearest NPIAS airport.
- The airport system should help air transportation contribute to a productive national economy and international competitiveness.

Airports should be permanent with assurance that they will remain open for aeronautical use over the long term.

In addition to these principles specific to airport development, a guiding principle for federal infrastructure investment, as stated in Executive Order 12893, Principles for Federal Infrastructure Investments (January 26, 1994), is that such investments must be cost beneficial, *i.e.*, must have a positive ratio of benefits to costs. The FAA implements these principles using program guidance to ensure the effective use of federal aid.

A national priority system guides the distribution of funds. Information used to establish the priority is supplemented by specific requirements for some additional analysis or justification. For example, in certain cases the airport sponsor must prepare a benefit-cost analysis for airport capacity development projects to be funded under the Airport Improvement Program (AIP).

1.8 Compliance Program Background.

The Civil Aeronautics Act of 1938, as amended, and the FA Act, as amended, charge the FAA Administrator with broad responsibilities for the regulation of air commerce in the interests of safety and national defense and for the development of civil aeronautics. Under these broad powers, the FAA was tasked with regulation of airmen, aircraft, navigable airspace, and airport operations. The federal interest in advancing civil aviation has been augmented by various legislative actions that authorize programs for granting property, funds, and other assistance to local communities to develop airport facilities.

In each program, the airport sponsor assumes certain federal obligations, either by contract or by restrictive covenants in property deeds, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in deeds or grant agreements have been generally successful in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance. The FAA Airport Compliance Program establishes the policy and guidelines for monitoring the compliance of airport sponsors with their obligations to the United States and for ensuring that airports serve the needs of civil aviation.

> The federal obligations a sponsor assumes in accepting FAA administered airport development assistance are mandated by federal statute.

1.9 Sources of Airport Sponsor Federal Obligations.

The federal obligations a sponsor assumes in accepting FAA-administered airport development assistance are mandated by federal statute and incorporated in the grant agreements and property conveyance instruments entered into by the sponsor and the United States Government, including:

a. Grant Agreements.

Grant agreements issued under the various FAA-administered airport development grant programs through the years. These include, but are not limited to, the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), and the Airport Improvement Program (AIP) under 49 U.S.C. § 47101, *et seq*. This statutory provision provides for federal airport financial assistance for the development of public use airports under the AIP established by the AAIA. Section 47107 sets forth assurances that FAA must include in every grant agreement as the sponsor's conditions for receiving federal financial assistance. Pursuant to and consistent with 49 U.S.C. § 47107(g) and (h), the FAA has prescribed some additional assurances or requirements for sponsors beyond those specifically enumerated in 49 U.S.C. § 47107. These include requirements set forth in 49 U.S.C. § 47106 and other statutes.

Occasionally, there are special funding programs authorized by Congress to provide federal grants to airports for a specific purpose such as economic development or recovery (*e.g.*, American Recovery and Reinvestment Act of 2009 (ARRA); Coronavirus Aid, Relief, and Economic Security Act (CARES), etc.). The grant agreements under these programs set forth the conditions for receiving federal assistance and will vary depending on the purpose of the grant.

Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government.

b. Surplus Property.

Instruments of surplus property transfer issued under the provisions of section 13(g) of the Surplus Property Act of 1944, as amended, 49 U.S.C. §§ 47151-47153.

c. Nonsurplus Property.

Instruments of nonsurplus conveyance issued under section 16 of the 1946 Airport Act, as amended; under section 23 of the 1970 Airport Act, as amended; or under section 516 of the AAIA, as amended, codified at 49 U.S.C. § 47125.

d. AP-4 Agreements.

AP-4 agreements, as part of the Development Landing Areas National Defense (DLAND) and the Development Civil Landing Areas (DCLA) Programs, were mostly lease-based (government leasehold interest) Civil Aviation Authority (CAA)/Administration grants issued under statutory authority to civil sponsors for airport development projects (Pub. L. 76-812, 77-135, 77-247, 77-353, 77-528, 77-644 and 78-105; 31 U.S.C. § 7501; and 2 CFR § 200.1). The general obligations under AP-4 Agreements were determined to be expired by FAA in 1969, except for the exclusive rights obligation.

e. Section 303.

Exclusive Rights under section 303 of the Civil Aeronautics Act of 1938, as amended, and section 308(a) of the FAA Act, as amended, codified at 49 U.S.C. § 40103(e).

f. Title VI.

Title VI of the Civil Rights Act of 1964, as amended, codified at 42 U.S.C. §2000d, *et seq*.

1.10 FAA Authority to Administer the Compliance Program.

Responsibility for monitoring and ensuring airport sponsor compliance with applicable federal obligations is vested in the Secretary of Transportation by statute and delegated to the FAA under 49 CFR § 1.83.

a. Surplus Property Transfers.

Surplus property instruments of transfer were issued by the War Assets Administration (WAA) and are now issued by its successor, the General Services Administration (GSA). However, section 3 of Public Law (Pub. L.) 81-311 specifically vests the FAA with the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is, or has been, conveyed to nonfederal public agencies pursuant to the Surplus Property Act of 1944, as amended.

b. Nonsurplus Property Transfers.

Nonsurplus property transfers are conveyances under section 16 of the 1946 Airport Act, under section 23 of the 1970 Airport Act, or under section 516 of the AAIA, codified at 49 U.S.C. § 47125. These are also referred to as nonsurplus property conveyances. Instruments of property conveyance issued under these sections are also issued by agencies other than the FAA. The conveyance instrument, deed, or quitclaim document assigns monitoring and enforcement responsibility to the FAA.

c. Grant agreements from the FAAP, ADAP, and the AIP programs (ARRA, CARES, etc.).

The FAA is vested with jurisdiction over monitoring and enforcing grant agreements that the FAA and its predecessor, the CAA, executed on behalf of the United States.

d. Exclusive Rights Prohibition.

The FAA is also charged with responsibility for monitoring and enforcing compliance with the provisions prohibiting exclusive rights set forth in section 303 of the Civil

Aeronautics Act of 1938, as amended, and in section 308(a) of the FAA Act, as amended, codified at 49 U.S.C. § 40103(e).

e. Amendment, Modification, or Release of Airport Sponsor Federal Obligations.

The authority of the FAA to release or modify the terms and conditions of airport sponsor grant agreements varies based on the respective types of agreements. Pub. L. 81-311 prescribes specific circumstances and conditions under which the FAA may release, modify, or amend the terms and conditions of surplus property conveyances. While the FAA has the ability to amend, modify, or release an airport sponsor from a federal obligation, the FAA is not required to do so. The FAA exercises its discretion when releasing a sponsor from any of its obligations. For additional information, refer to chapter 22, *Land Use Changes and Releases on Federally Acquired and Federally Conveyed Land*.

1.11 through 1.15 Reserved.

Part I: Background

Chapter 2. Compliance Program

2.1 Introduction.

This chapter is an introduction to the Federal Aviation Administration (FAA) Airport Compliance Program. The basis of sponsor federal obligations resides with federal statute, the Airport Improvement Program (AIP) grant program, land transfer documents, and surplus property agreements. It is the responsibility of the FAA Regional Airports Divisions (Regions) and Airport District Offices (ADOs) to advise sponsors of their compliance requirements and to ensure that sponsors comply with their federal obligations.

2.2 Background.

The FAA Airport Compliance Program enforces contractual federal obligations that a sponsor accepts when receiving federal grant funds or the transfer of federal property. These contractual federal obligations serve to protect the public's interest in civil aviation and achieve compliance with federal statutes. Given the great number of federally obligated airports and the variety of federal obligations, the compliance program primarily focuses on education with the goal of achieving voluntary compliance. The program supplements this educational approach with periodic compliance monitoring and vigorous investigation of potential violations.

2.3 Determining if an Airport is Federally Obligated.

a. General Information.

Historically, the FAA published FAA Order 5190.2, *List of Public Airports Affected by Agreements with the Federal Government*, which provided a listing of all publicly and privately owned public use airports that were affected by agreements with the federal government and handled by the FAA. In addition, the Airport Master Record includes information on whether the airport is federally obligated. To view an Airport Master Record (previously referred to as a Form 5010) or download a PDF version of the Airport Master Record, use the Facility Search within the Airport Data and Information Portal and select “Download AMR Report”.

b. Information Codes.

The FAA presents federal obligation data in the form of codes, such as G, R, S or P. Each code represents a particular federal obligation type. The Federal Obligation Codes and their corresponding definitions are available at: Agreements with the Federal Government - Code Definitions.

2.4 Objectives of the Compliance Program.

a. Voluntary Compliance and Enforcement Actions.

Most violations of sponsor federal obligations are not a deliberate attempt to circumvent federal obligations. Generally, violations occur because sponsors do not understand specific requirements or how a requirement applies to a specific circumstance. Therefore, the program works to ensure sponsors are fully informed of their federal obligations and of the applicability of those obligations to the circumstances at a given airport. Informal resolution is the preferred course of action. (*See* chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*.)

When reasonable efforts have failed to achieve voluntary compliance on the part of the sponsor, the FAA may take more formal compliance actions. This may result in withholding federal funds, issuing a Notice of Investigation (NOI) under 14 CFR part 16, or initiating judicial action if warranted.

Issuing a NOI or initiating formal legal action are options exercised by the FAA Office of Airports Compliance and Management Analysis in accordance with 14 CFR part 16 procedures.

b. Advisory Services.

Generally, the FAA will not substitute its judgment for that of the airport sponsor in matters of administration and management of airport facilities. However, the FAA is in a position to assist airport sponsors in achieving voluntary compliance through guidance and counsel about the nature and applicability of federal compliance obligations affecting their airports.

c. Compliance Oversight.

Given the approximately 3,500 federally obligated airports, the FAA cannot practically conduct compliance oversight with an annual visit or review at each airport. However, periodic monitoring of a certain number of federally obligated airports is necessary to identify individual issues and problems that may be indicative of system deficiencies.

d. Enforcement Action.

FAA personnel involved in compliance should make every effort to obtain voluntary compliance. When enforcement action is taken, it must be fair and applied in a uniform manner. When safety issues are identified, however, prompt corrective action is expected.

When safety issues are identified, prompt corrective action is expected.

2.5 Program Elements.

Education is the primary tool for achieving program compliance. However, to maintain program integrity, FAA personnel must also include limited surveillance to detect recurring deficiencies, system weaknesses, or prohibited actions by sponsors. Investigation and resolution of complaints is the most important tool of the compliance program. When FAA efforts fail to obtain voluntary compliance, enforcement actions must be pursued.

a. Education.

The education of sponsors may take many forms, beginning when the sponsor receives its first federal grant or transfer of federal property. FAA Regions and ADOs should discuss with first-time sponsors the impact of specific grant assurances and/or land transfer federal obligations and let them know that the offices will continue to provide advisory services.

At least once every three years, FAA personnel should advise sponsors in writing to review their grant or land-transfer federal obligations. Compliance personnel should also provide sponsors with information or material to aid sponsors' understanding of their federal obligations.

Finally, sponsors should be encouraged to conduct or participate in periodic seminars or courses for federally obligated airports. In many instances, FAA Regions host or sponsor airport-related events, such as conferences, that are good opportunities to disseminate information regarding airport compliance.

b. Inspections and Surveillance.

Surveillance is the process of gathering data on the condition or operation of an airport to determine the sponsor's compliance with federal obligations. FAA personnel routinely gather such information during their site visits to airports. In addition, information is gathered from other sources, including other FAA offices, state inspectors, airport tenants, and information forms, such as the Airport Master Record.[1]

FAA personnel may also conduct surveillance by means of telephone discussions or written correspondence with appropriate airport officials to learn if potential problems exist. Further follow up through inspection may or may not be necessary depending on

[1] In many instances, state aviation inspectors gather the data for inclusion in the Airport Master Record on behalf of the FAA.

the information obtained. The information received should be documented and maintained for future reference. Alternately, FAA personnel may provide sponsors with printed material that identifies and explains the federal obligations accepted by that sponsor.

c. Investigations of Complaints.

Regions and ADOs must investigate informal complaints from aeronautical users alleging that an airport is not complying with its federal obligations. FAA personnel should complete the investigation in a timely manner and notify the complainant in writing of the outcome of any investigation. When an investigation reveals a violation of a federal obligation, Regions and ADOs should initiate a timely dialogue with the airport sponsor and attempt to achieve voluntary compliance as soon as practicable. *See* chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*, for more information. Safety-related issues may require expedited action on the part of the FAA. Where appropriate, airport sponsors should also use an airport safety self-inspection checklist as a means to assist in ensuring safe airport operations.

2.6 Priorities and Emphasis.

When pursuing remedial or enforcement actions, the FAA considers all federal airport obligations important. However, consistent with the FAA mission, the most important objective in FAA's oversight of the compliance program is to ensure and preserve safety at all federally obligated airports.

Ensuring safe airport operations includes maintaining runways, taxiways, and other operational areas in a safe and usable condition; keeping runway approaches cleared; providing operable and well-maintained marking and lighting; etc.

In developing priorities for compliance surveillance in the region, FAA personnel should direct attention to those airports with the greatest potential for compliance problems and to those issues that have the largest impact on aeronautical users.

2.7 Responsibilities.

The Airports Compliance Division (ACO-100) within FAA’s Office of Airports Compliance and Management Analysis (ACO-1), administers the airport compliance program and provides the following:

- overall guidance and direction for conducting the compliance program.
- conducts evaluations to determine compliance with federal statutes, regulations and grant assurances.

- looks for opportunities to improve the quality of the compliance program.
- offers recurrent training and on-request training to Regions and ADOs.
- develops compliance policy, supporting Regions and ADOs in conducting informal resolution, and resolving formal complaints.
- directs the formal enforcement of FAA grant obligations, as well as surplus and nonsurplus property conveyances.
- prepares generalized educational materials for Regions and ADOs to use in their compliance programs.

Regions and ADOs are responsible for the day-to-day conduct of the compliance program in accordance with the direction provided in this Order. This guidance establishes the basic requirements and goals to be achieved in the compliance program. Compliance is an essential component in safeguarding both the federal investment and the public's interest in civil aviation. This also includes ensuring public access to the national system of airports.

2.8 Analyzing Compliance Status.

a. Data Analysis.

FAA compliance personnel should carefully analyze accumulated data in evaluating a sponsor's compliance performance and identifying appropriate actions to correct any deficiencies noted. More often than not, when apprised of a deficiency, a sponsor will ask for recommendations to correct the problem.

b. Preliminary assessment.

FAA must make a judgment call in all cases as to whether a sponsor is reasonably meeting its federal commitments. A sponsor meets its commitments when:

(1) the federal obligations are fully understood;

(2) a program (*e.g.*, preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments;

(3) the sponsor satisfactorily demonstrates that such a program is being carried out; and,

(4) past compliance issues have been addressed.

c. Follow-up.

(1) Each Region or ADO should develop a system to follow up and ensure that airports take action on any identified compliance deficiencies until the airport sponsor achieves compliance. Failing to follow up on compliance issues at the Region or ADO level may lead to unnecessary and resource-intensive formal complaints.

(2) FAA compliance personnel must initiate action at those airports that are not being maintained or operated in accordance with the sponsor's commitments, especially if safety is involved. There should be an effort to help the sponsor voluntarily meet these commitments. When the sponsor has demonstrated an unwillingness to make the corrections necessary to achieve compliance, FAA may pursue corrective enforcement and document such actions.

(3) FAA may undertake a formal compliance inspection in response to a complaint. Such an inspection may also take place whenever the FAA has any reason to believe that a sponsor may be in violation of one or more of its federal obligations.

2.9 Compliance Determination.

FAA personnel must remain aware of which airports are not in compliance in their areas of responsibility. Before the Region or ADO can issue a federal airport grant, it must make an official determination that the sponsor is in compliance with its federal obligations.

A determination of compliance is based on a review of all available data concerning the airport and the circumstances involving its operation. The review need not include a formal compliance inspection or a formal compliance determination. It should, however, include the properly documented review of available data on hand. The Region or ADO may rely on a sponsor's self-certification of compliance when making a compliance determination prior to issuing a grant. However, it is important that all data used to support this determination, including informal complaints and related materials, be analyzed and recorded in the appropriate files.

a. Notification.

When the Region's or ADO's assessment of the sponsor's performance concludes that the sponsor is not meeting its federal compliance obligations, the Region or ADO must give the sponsor notification of potential noncompliance. Failure to provide such notice delays the corrective action and the problem may become more difficult to resolve at a future date. Prompt communication between the Region or ADO and the sponsor about compliance deficiencies is essential to solving problems early before they become more difficult to resolve. *See* chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*, for more information.

b. Actions Needed to Correct Noncompliance.

The Region or ADO notification must clearly spell out the actions needed to correct the potential noncompliance. The office should also perform a timely follow-up review to ensure completion of the corrective action.

c. Withholding AIP Payments and Grant Application Approval.

Through the formal Part 16 process, the FAA can initiate the withholding of a payment on an AIP grant or approval of an AIP grant application. Additionally, the Regions and ADOs – in conjunction with ACO-100 – can make decisions to suspend discretionary funding, including nonprimary entitlement grants.

2.10 Grants Watch List.

As a result of its compliance functions, ACO-100 maintains a Grants Watch List.

The Grants Watch List lists obligated airport sponsors that have been determined through various surveillance method to be in noncompliance with its grant assurances and/or surplus property obligations. An airport is placed on the Grants Watch List if it falls in one or more of the following categories and the violations are so egregious as to preclude additional federal financial assistance until the issues are resolved:

- Airports with a formal finding of noncompliance under 14 CFR part 16 if corrective action has not been taken; and/or
- Airports listed in the National Plan of Integrated Airport Systems, Non-compliant Airports under 49 U.S.C. § 47103(d) for certain unresolved violations of their grant assurances or other requirements with respect to airport lands; and/or
- Airports with persistent unresolved compliance deficiencies despite FAA requests to the sponsor for corrective action.

The Grants Watch List is an internal notification from ACO-100 to other FAA Airports offices regarding which airports are not to receive any further discretionary grants authorized under 49 U.S.C. § 47115 and the General Aviation $150,000 apportionment under 49 U.S.C. § 47114(d)(2)(A) until corrective action is achieved. The Grants Watch List may also include formal findings of noncompliance under 14 CFR part 16 that support the withholding of grants under 49 U.S.C. § 47114(c). The Grants Watch List is updated on an as-needed basis and is in addition to other FAA Office of Airports (ARP) generated watch lists concerning airport sponsor compliance and eligibility for grants.

2.11 through 2.15 Reserved.

Part II: Types of Federal Agreements

Chapter 3. Federal Obligations from Property Conveyances

3.1 Introduction.

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

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

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

In general, property conveyances require the sponsor to:

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

It is the responsibility of the Regions and ADOs to:

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

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

3.2 Background.

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

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

3.3 The War Assets Administration (WAA).

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

[1] **NOTE:** Regulation 16 from the Surplus Property Act is different from section 16 of the Federal Airport Act of 1946.

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

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

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

3.4 Nonairport Property.

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

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

3.5 The Use of Property for Revenue Production.

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

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

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

3.6 Highest and Best Use and Suitability for Airport Use.

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

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

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

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

3.7 Types of Conveyance Instruments for Surplus Property.

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

a. Regulation 16.

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

b. Real Property.

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

c. Personal Property.

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

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

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

3.8 Sponsor Federal Obligations for Surplus Property.

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

a. War Assets Administration Regulation 16 Conveyance.

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

b. GSA Public Law 80-289 Conveyance.

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

c. Operation of the Entire Airport.

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

d. National Emergency Use Provision (NEUP).

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

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

e. NEUP Case Study: Sanford Naval Air Station.

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

3.9 Duration of Surplus Property Federal Obligations.

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

a. Real Property.

The federal obligations set forth in surplus airport property conveyance instruments (except those conveying only personal property) provide that the covenants assumed by the sponsor regarding the use, operation, and maintenance of the airport and the property transferred shall be deemed to run with the land. This means that subsequent owners or successors of the land would be subject to the covenants. Accordingly, such covenants continue in full force and effect until released under the Surplus Property Act, as amended. (*See* 49 U.S.C. § 47153; For information on releases *see* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

b. Personal Property.

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

c. Trade-in of Personal Property.

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

3.10 Review of Specific Federal Surplus Property Obligations.

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

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

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

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

[2] FAA Order 5150.2A, *Federal Surplus Property for Public Airport Purposes*, Section 6, paragraph 87, Termination of Accountability.

3.11 Nonsurplus Federal Land Conveyances.

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

3.12 Land Conveyance Federal Obligations.

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

(a) The airport sponsor will use the conveyed property for airport purposes and will develop that property for airport purposes within one year or as set forth in the conveyance instrument, deed, or quitclaim instrument.

(b) The airport sponsor will operate the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as a public use airport on fair and reasonable terms and without unjust discrimination.

(c) The airport sponsor will not grant or permit any exclusive right in the operation and use of the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as required by section 303 of the Federal Aviation Act of 1938, as amended, and section 308(a) of the Federal Aviation Act of 1958 (FAA Act) Pub. L. 85-726 (1958), as amended, 49 U.S.C. § 40101 et seq.

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

(d) Any subsequent transfer of the conveyed property interest to another nonfederal public entity will be subject to the terms, conditions, and covenants set forth in the original instrument of conveyance.

(e) In the event of a breach of any term, condition, or covenant contained in the conveyance instrument, the airport sponsor will, on demand, take such action as required to transfer ownership of the conveyed premises to the U.S. Government. See also 49 U.S.C. § 47125(a) (providing the property interest reverts to the U.S. Government, at the option of the Secretary).

(f) All or any part of the property interest conveyed under section 16 shall automatically revert to the U.S. Government (through the GSA for assignment) in the event that the land in question is not developed for airport purposes or used in a manner consistent with the terms of the conveyance.

3.13 Bureau of Land Management.

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

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

3.14 Federal Obligations Imposed by Other Government Agencies.

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

3.15 Duration of Nonsurplus Federal Obligations.

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

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

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

3.16 Reversion Provisions.

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

a. Section 16 Conveyances.

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

b. Section 23/516 Conveyances.

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

3.17 Airport Sponsor Compliance.

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

3.18 The AP-4 Land Agreements.

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

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

3.19 Base Conversion and Surplus Property.

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

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

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

3.20 Joint Use and Federal Use of Obligated Airports.

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

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

a. Grant Agreements.

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

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

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

[7] 49 U.S.C. § 47175; 14 CFR § 139.5.

[8] Not all Joint Use Airfields are federally obligated.

government aircraft is 300 or more; or (3) the gross accumulative weight of government aircraft using the airport in a calendar month (the total operations of government aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

b. Pub. L. 80-289.

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

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

c. Regulation 16 Transfer.

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

d. Negotiation Regarding Charges.

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

[9] *See* chapter 7, *Airport Operations and Maintenance,* for guidance on substantial use.

e. Joint Use Agreements.

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

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

f. Provision for Altered Military Use.

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

3.21 through 3.25 Reserved.

Sample Surplus Property Conveyance Introduction Language

(Information in samples is for example only.)

Quitclaim Deed

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

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

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

Part II: Types of Federal Agreements

Chapter 4. Federal Grant Obligations and Responsibilities

4.1 Introduction.

This chapter provides a brief description of the three FAA grant programs for airports, the duration of federal obligations, the useful life of grant funded projects, and the legislatively mandated sponsor compliance requirements. It is the responsibility of the FAA Regional Airports Divisions (Regions) and Airports District Offices (ADOs) to ensure that the sponsors understand and comply with their grant assurances.

4.2 Sponsor Federal Obligations Under Various Grant Agreements.

Under the various federal grant programs, the sponsor of a project agrees 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 the grant recipient when it accepts federal funds for airport development.

a. Grant Programs

Since 1946, the FAA has administered three primary grant programs for development of airports:

(1) The Federal Aid to Airports Program (FAAP) pursuant to the Federal Airport Act of 1946, as amended, until repealed in 1970.

(2) The Airport Development Aid Program (ADAP) pursuant to the Airport and Airway Development Act of 1970 (1970 Airport Act), as amended, until repealed in 1982.

(3) The Airport Improvement Program (AIP) pursuant to the Airport and Airway Improvement Act of 1982 (AAIA), as amended. (*See* 49 U.S.C. § 47101 et seq.). Grants issued to airport sponsors under Public Law 117-58, Infrastructure Investment and Jobs Act (IIJA)[1], contained the same sponsor assurances as the AIP program.

(4) Occasionally, there are time limited special funding programs authorized by Congress to provide federal grants to airports for a specific purpose such as economic development or recovery. These have included: American Recovery

[1] IIJA funds were split into different funding buckets for Airport Infrastructure Grants (AIG), Federal Contract Tower program (FCT), and Airport Terminal Program grants (ATP).

and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5); Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA) (Pub. L. 116-260), American Rescue Plan Act of 2021 (ARPA) (Pub. L. 117-2). These grants were generally time limited, and the specific grant agreement should be reviewed to determine the federal obligations associated with the grant.

b. Assurances Pertaining to Grant Agreements.

Each of these FAA administered federal airport financial assistance programs required airport sponsors to agree to certain assurances under the authorizing legislation of the grant programs. Certain assurances remain consistent from one grant program to the next. Other assurances were added by legislative mandate as the grant programs developed. In accordance with FAA Reauthorization Act of 2024 (Pub. L. 118-63) Section 770 “Grant Assurances”, the FAA added Grant Assurance 40, *Access to Leaded Aviation Gasoline*, beginning with 2025 grant agreements. Some assurances were superseded over time. In addition, the FAA has statutory authority to prescribe additional assurances or requirements for sponsors. (*See* 49 U.S.C. § 47107(g)). Also, some grant agreements contain special covenants or conditions intended to address an airport-specific situation.

c. Special Project Conditions.

This Order generally does not address special conditions under which the FAA funded a particular project. An example of a special condition might be that funds are not available to a sponsor until the sponsor provides an updated Airport Layout Plan (ALP). Special conditions are enforced in the same manner as other federal obligations. (*See* FAA Order 5100.38, *Airport Improvement Program Handbook*, Paragraph 5.23(e) Special Conditions).

4.3 The Duration of Federal Grant Obligations.

Federal obligations relating to the use, operation, and maintenance of the airport remain in effect throughout the useful life of the facilities developed under the project, but not to exceed 20 years, unless otherwise defined in the grant assurances or special conditions of the grant.

a. Obligations with Land Acquisition.

In regard to land acquired with federal assistance (*e.g.*, FAAP, ADAP, AIP), so long as the airport sponsor has taken an ADAP or AIP grant since May 1980, the federal obligations on the acquired land remain in effect until released by the FAA.[2] The following background information is helpful in understanding this requirement:

(1) An airport sponsor who accepted an ADAP or AIP grant after 1980 agreed that the covenants on real property acquired with Federal funds are unlimited. This is consistent with federal grant law generally, which provides that a grant of real property must be used for its intended purpose until and unless released by the government. The public has been on notice of this since at least 1980.

(2) The "Duration and Applicability" section for the current grant assurances[3] and in every set of assurances for an ADAP and AIP grant since 1980 has contained the following language:

> The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. *There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds*. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances. [Italics added].

(3) These assurances apply to all property on the airport acquired with federal funds, not just property acquired with that project. The assurances thus apply to any "real property acquired with Federal funds."

(4) The regulations implementing the ADAP program also contain the same basic assurance as to real property acquired with "federal funds." 14 CFR part 152, Appendix D, paragraph 17 provides as follows:

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[2] There is no limit on the duration of terms, conditions, and assurances with respect to real property acquired with federal funds. (*See* FAA Grant Assurances, *Duration and Applicability*; 14 CFR part 152, *Airport Aid Program*, Appendix D, Paragraph 17).

[3] The current grant assurances are available at: Grant Assurances

17. Effective date and duration. These covenants shall become effective upon acceptance by the sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project. However, these limitations on the duration of the covenants do not apply to the covenant against exclusive rights and real property acquired with Federal funds.

(5) 14 CFR § 200.311, Real Property, sets forth the requirements applicable to federal grants for real property generally. It confirms the requirements of Grant Assurance 31, *Disposal of Land*, with respect to the disposition of real property purchased with a federal grant when the property is no longer needed for the originally authorized purpose. This regulation applies to all federally financed lands and provides additional support for the concept that the FAA is entitled to be reimbursed for the value of its share of the land, just like Grant Assurance 31 provides. For example, an airport sponsor would have to reimburse the FAA for the Fair Market Value (FMV) of the real property acquired with FAA's FAAP and ADAP grants, if the airport land is no longer used for airport purposes.

(6) The FAAP and ADAP grant assurances provide that they shall not exceed 20 years with respect to facilities developed with the grants. However, the 20-year limitation arguably applies only to "facilities developed under this Project"- not to the underlying land - (which always has had an unlimited useful life). The language from the Sponsor Assurances section of FAA Form 1624, Project Application (for Federal Aid for Development of Public Airports), p. 5, dated September, 1964, which was included in the FAAP grants, states:

1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

One of the reasons ADAP regulations and grant assurances were revised in 1980 was to clarify and confirm that limitations upon the use of federally purchased land do not expire and must be used for its originally intended purpose. *See* 45 Fed. Reg. 34784 (May 22, 1980) which explains the 1980 ADAP assurances were revised to be consistent with OMB Circular A-102 which requires that the grantee use that property for the authorized purpose of the original grant.

b. Additional Continuing Obligations.

There are also two assurances for which the obligation continues without limit as long as the airport is used as a public use airport: Grant Assurance 23, *Exclusive Rights*; and Grant Assurance 25, *Airport Revenues*. Grant Assurance 30, *Civil Rights*, remains in effect until the sponsor disposes of the property regardless if the airport has been closed. Grant Assurance 31, *Disposal of Land*, remains in effect until all airport land acquired with assistance under AIP has been sold and the FAA has prescribed the use of the federal government's share of the sales proceeds as required by the Grant Assurance.

c. Private Sponsor Obligations.

Private sponsors' useful life of federally assisted projects shall be no less than 10 years from the date of acceptance of federal aid. The actual grant agreement should be consulted to verify the federal obligations sponsors agreed to and to ensure the sponsor is being held to those assurances. The information in this chapter does not replace reading the obligating documents.

d. Obligations through other Programs.

While this chapter primarily discusses the standard grant assurances for airport sponsors, other obligations may also apply, such as the Passenger Facility Charge (PFC) program, the Aviation Block Grant Program, Planning Agency Sponsors and Non-Airport Sponsors Undertaking Noise Compatibility Program Projects. Other obligations may also include grant agreement special conditions, covenants in property deeds, and agency or court orders.

4.4 The Useful Life of Grant Funded Projects.

The useful life is the period during which an asset or property is expected to be useable for the purpose it was acquired. It may or may not correspond with the item's actual physical life or economic life. (*See* FAA Order 5100.38, *AIP Handbook*, Appendix A-1). The AIP Handbook provides the minimum useful life for grant funded projects. (*See* FAA Order 5100.38, Table 3-7, *Minimum Useful Life*). An airport sponsor cannot shorten its obligations by allowing projects to deteriorate.

Reconstruction, rehabilitation, or major repair of a federally funded airport project without additional federal aid does not automatically extend the duration of its useful life as it applies to grant agreements. Generally, improvements are presumed to last at least 20 years because they are built to FAA standards. If new grants are issued for reconstruction, rehabilitation, or major repair, a new useful life period begins.

An airport sponsor cannot shorten its obligations by allowing projects to deteriorate. FAA Regional Airports Divisions make the determination of when the useful life has expired on a federally funded project that needs reconstruction, rehabilitation, or major repair in order to continue serving the purpose for which it was developed. *See* section 4.3, *The Duration of Federal Grant Obligations*, for detailed guidance on the duration of grant obligations.

4.5 Airport Sponsor Compliance.

Legislatively mandated sponsor assurances have varied over time due to statutory amendments and project specific circumstances. Therefore, in assessing an airport sponsor's compliance status, the FAA must review each grant agreement entered into by the airport sponsor and the FAA in order to determine the airport sponsor's federal obligations accurately and to assess the sponsor's compliance with the applicable assurances.

4.6 Federal Obligations under the Basic Grant Assurance Requirements.

This section discusses the different assurance lists and airport grant programs. The current grant assurances are available at: Grant Assurances.

When the airport sponsor accepts the grant, the assurances become binding contractual federal obligations between the sponsor and the FAA. It is the responsibility of the Regions and ADOs to ensure sponsors understand and comply with their assurances. The AIP Handbook, Table 2-4, *Applicable Grant Assurances* (by Sponsor and Project Type), outlines the applicability of the grant assurances to the type of sponsor and project.

a. Standard Sponsor Assurances.

FAA uses three separate sets of standard sponsor assurances:

(1) Airport Sponsors (owners/operators).

(2) Planning Agency Sponsors.

(3) Nonairport Sponsors Undertaking Noise Compatibility Program Projects (referred to as nonairport sponsor assurances).

b. Types of Grant Programs or Projects.

There are four types of airport grant programs or projects that include assurances from one of the three sets of standard assurances:

(1) Airport Development or Noise Compatibility Undertaken by an Airport Sponsor. Requirements for airport development and noise compatibility programs undertaken by airport sponsors are the same. All 40 standard grant assurances for airport sponsors apply. *See* FAA Order 5100.38, AIP Handbook, Table 2-5 for more information.

(2) Airport Planning Undertaken by an Airport Sponsor. Requirements for airport sponsor planning projects are different from those that apply to airport sponsor development or noise compatibility grants. Several of the numbered assurances below apply to airport planning projects:

- Grant Assurance 1, *General Federal Requirements*
- Grant Assurance 2, *Responsibility and Authority of the Sponsor*
- Grant Assurance 3, *Sponsor Fund Availability*
- Grant Assurance 5, *Preserving Rights and Powers*
- Grant Assurance 6, *Consistency with Local Plans*
- Grant Assurance 13, *Accounting System, Audit, and Record Keeping Requirements*
- Grant Assurance 18, *Planning Projects*
- Grant Assurance 25, *Airport Revenues*
- Grant Assurance 30, *Civil Rights*
- Grant Assurance 32, *Engineering and Design Services*
- Grant Assurance 33, *Foreign Market Restrictions*
- Grant Assurance 34, *Policies, Standards, and Specifications*

The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the planning project. In addition, Grant Assurances 23, *Exclusive Rights* and 25, *Airport Revenues*, are applicable to planning grants issued to a specific airport and remain in effect as long as the airport remains as an airport.

(3) Planning Projects Undertaken by Planning Agency Sponsors. A planning agency sponsor is a governmental entity that has planning responsibilities for an area that includes an airport, but is not the airport sponsor (FAA Order 5100.38 Table 2-6, *Duration and Applicability of Grant Assurances* (Planning Agency Sponsors)). A separate set of standard assurances applies to planning agency sponsors. Several of the applicable assurances mirror the assurance topics for airport sponsor planning projects, but the language is slightly different.

(4) Noise Compatibility Programs Undertaken by Nonairport Sponsors.[4] The FAA also may award grants to nonairport sponsor government entities for noise compatibility programs. These include government entities of adjacent communities impacted by aircraft noise, but which are not sponsors of that airport. The assurances for these grants bind the sponsors to specific federal obligations. While these assurances are similar to the airport sponsor assurances, there are some differences. *See* FAA Order 5100.38, Table 2-7.

Specifically, the assurances for nonairport sponsors that undertake a noise program follow a different numbering scheme and exclude airport-specific requirements. For example, airport sponsor Grant Assurance 19, *Operation and Maintenance*, includes a section on operating the airport to serve aeronautical users. This applies only to airport sponsors and is not part of the assurance for nonairport sponsors. For nonairport sponsors, the comparable assurance on operation and maintenance includes only the last section of Grant Assurance 19, *Operation and Maintenance*, which requires the grant recipient to operate and maintain noise compatibility items or noise program implementation items obtained with federal funds. Even though the assurances for airport sponsors and nonairport sponsors have different numbering and vary slightly, the subjects addressed are consistent.

[4] *See* grant assurances for *Non-Airport Sponsors Undertaking Noise Compatibility Program Projects*

c. Groupings.

Grant agreements list the assurances in three separate groups:

(1) Group “A” *General*, sets forth the basic requirement binding the sponsor to all federal grant assurances all applicable assurances as a condition of accepting a federal grant for airport development, noise compatibility, and airport planning.

The general assurance requires the sponsor to include these assurances as part of its grant application. When the sponsor accepts the grant offer, FAA incorporates these assurances into the grant agreement. When the sponsor accepts, the agreement binds both the federal government and the sponsor to its terms.

(2) Group “B” *Duration and Applicability*, establishes the length of time that assurances remain in effect and identifies which assurances apply to the various programs or projects. The applicability of the general federal requirements will vary depending on the type of agreement and scope of the project.

(3) Group “C” *Sponsor Certification*, lists all of the standard assurances that the sponsor must adhere to under the grant agreement. There are 40 numbered assurances in the *Sponsor Certification* group. Grant Assurance 1, *General Federal Requirements*, covers several other obligations found in Executive Orders, Federal Legislation, and Regulations.

d. Agency Responsibilities.

The Office of Airport Compliance and Management Analysis, Airports Compliance Division (ACO) deals primarily with the set of standard assurances for airport sponsors. The FAA Office of Airport Planning and Programming (APP) handles issues involving standard grant assurances for planning agencies and nonairport sponsors. The Regions and ADOs ensure that the sponsor understands and complies with the applicable assurances.

4.7 through 4.11 Reserved.

Part III: Complaint Resolution

Chapter 5. Initiating, Accepting and Investigating Informal and Formal Complaints

5.1 Introduction.

This chapter discusses both informal and formal resolution of complaints involving federally assisted airports. It discusses the FAA process under *Investigative and Enforcement Procedures*, 14 CFR part 13 ("Part 13") for informal complaints and the process under *Rules of Practice for Federally-Assisted Airport Enforcement Procedures*, 14 CFR part 16 ("Part 16") for formal complaints. More discussion is devoted to informal resolution since Part 16 procedures are described in detail in that regulation and because regional personnel will primarily be involved in informal resolution.

Under 14 CFR § 13.2,[1] anyone may report compliance violations of federal laws affecting air transportation, including any regulations, rules, policies, or orders issued under those laws. When appropriate, the Regional Airports Division (Region) and Airports District Office (ADO) will investigate complaints to ensure that each reported violation is properly evaluated and that sponsors are in compliance with their federal obligations.

This chapter will focus on the process for investigating complaints under the jurisdiction of the Office of Airports (*see* Section 5.3.a, *The Basics*).[2]

5.2 Background.

Under 14 CFR § 13.2, any person who knows of a violation of federal aviation laws, regulations, rules, policies, or orders may report the violation to the FAA informally as a "report of violation." The remaining sections of Part 13 provide for the investigation of

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[1] Effective November 30, 2021, the procedural rules governing FAA investigations and enforcement actions were revised to include updates to statutory and regulatory references, updates to agency organization structure, elimination of inconsistencies, clarification of ambiguity, increases in efficiency and improved readability. *See* 86 Fed. Reg. 54514 regarding 14 CFR part 13 (Docket No. FAA-2018-1051, October 1, 2021). Accordingly, prior reference to Section 13.1 is now referenced as Section 13.2.

[2] *See also* the current version of Compliance Guidance Letter - Procedures for Initiating and/or Accepting and Investigating 14 CFR part 13 Informal Complaints Concerning Violations of Grant Assurance Obligations and Surplus Property Deed Restrictions.

formal complaints to the FAA for matters not covered by 14 CFR §16.3. For example, Section 13.5 would be used to file a formal complaint against an airport operator for a violation of safety regulations, including Part 139, but not a violation of obligations under grant assurances or deeds. Section 13.2, however, applies to reports of violations and informal complaints relating to matters covered under either Part 13 or Part 16. A person reporting a violation under Section 13.2 does not need to be affected by the violation alleged in the complaint. A Section 13.2 informal complaint simply represents a report to the FAA of an alleged violation; the violation is not necessarily against or affecting the complainant.

The process for reporting an informal complaint under Section 13.2 is not as prescriptive as the regulatory process for formal complaints filed under Part 16.

It is important to note that every question, inquiry or scenario that an individual brings to the attention of the Region or ADO regarding compliance is not necessarily a reviewable complaint. Some tenants or aviation users may not be familiar with the interpretation of an airport's federal obligations and may simply require clarification on these issues. In order to be a reviewable complaint, the allegations, if substantiated, would lead to the airport sponsor being in violation of an airport obligation.

Section 13.2 does not provide specific timeframes for completion of an investigation. However, most can be completed within 120 days.

A complainant may file a Part 16 formal complaint while a Section 13.2 investigation is underway or after it has been concluded. If the complainant files a Part 16 complaint regarding the same set of allegations being investigated during a Section 13.2 investigation, the Section 13.2 investigation may be suspended in favor of the Part 16 investigation. A final agency decision under Part 16 will enable judicial review.

5.3 The Basics.

a. What is an Informal Complaint under Part 13[4]

An informal complaint may be initiated under Section 13.2 to report a violation of a wide range of federal laws and regulations under the jurisdiction of the FAA. Matters under the jurisdiction of the Office of Airports include but are not limited to an airport sponsor's alleged violations of grant assurances, grant agreement special conditions, federal property conveyance deed restrictions, or other violation of regulations, rules, policies,

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[3] *See* 14 CFR § 13.3(d).

[4] A report of a violation under Section 13.2, is commonly referred to as an informal complaint.

or orders. Hereafter, the matters under the jurisdiction of the Office of Airports will be referred to as “airport obligations” or “Federal obligations”.

b. Who can File an Informal Complaint?

Anyone who is aware of or suspects a violation of a Federal obligation may file an informal complaint. The person or entity filing the complaint need not be directly affected by the alleged violation. In addition, the person or entity filing the complaint does not need to know which specific airport obligation has been violated but should identify the airport and the details surrounding the complaint.

c. How does an Informal Complaint get Filed?

The informal filing process under 14 CFR § 13.2 allows the reporting party to submit its complaint verbally or in writing (*e.g.*, telephone call, in-person conversation, letter, or email).

d. Who Receives the Informal Complaint?

The complaint may be received by a Regional Office, ADO or ACO-100. If ACO-100 receives a complaint, it can provide general guidance regarding the process to the complainant but should refer the complaint to the appropriate region. If a Region or ADO receives a complaint about an airport in another region, it should refer that complaint to the appropriate regional office. When a Region or ADO receives a complaint about an airport sponsor covered by a State Block Grant state, the Region or ADO should contact the State Department of Transportation or the state aviation office for assistance. While state input is essential, the FAA remains responsible for ensuring the integrity of the Part 13.2 process and adjudicating the complaint.

e. Who is Responsible for Handling the Informal Complaint?

Each Region and/or ADO is responsible for determining which personnel handles informal complaints. Depending on the nature of the complaint, the Region or ADO may elevate issues and coordinate with other FAA offices. Coordination may include FAA general counsel (AGC), ACO-100 and other FAA offices as appropriate. If a complaint includes allegations involving complex operational safety issues, other subject matter experts may be included in the discussion depending on the issue. In general, a condition, issue, or situation that can affect aircraft operations, including deviations from normal airport operations, can be characterized as an operational safety issue. Depending on the issue, assistance from other FAA personnel or Line of Business (LOB) may be necessary early in the process. These can include or involve Part 139 Safety Inspectors, the Flight Standards Division, or Air Traffic Control (ATC) specialists/functions. These entities should be able to assist in determining how to proceed.

When resolution may have national policy implications, the Region or ADO will coordinate the response with the AGC, ACO-100, and other affected headquarters offices.

f. When Should Informal Complaints be Referred to other Offices/Agencies?

If complaints involve the following allegations, they should be referred to the appropriate offices/agencies as detailed below:

- Alleged violations associated with civil rights should be referred to the FAA Office of Civil Rights, including allegations regarding Disadvantaged Business Enterprise (DBE)/Airport Concessions DBE (ACDBE) or Title VI Nondiscrimination & Airport Disability Accessibility Compliance issues.
- Complaints regarding the reasonableness of fees charged by the airport sponsor to an airline may either be handled under 14 CFR part 16 or by the Department of Transportation (DOT) under 14 CFR part 302.
- Complaints regarding violations of Federal aviation regulations governing the operation or maintenance of aircraft, and/or conduct aboard aircraft, should be forwarded to the appropriate Flight Standards District Office.
- Complaints regarding violations of regulations governing the transportation of hazardous materials should be forwarded to the Security and Hazardous Materials Safety Division.
- Complaints regarding an FAA employee's conduct in the scope of their duties, or otherwise, should be referred to the Associate Administrator for Airports.

g. When should Regions or ADOs Initiate Investigations under Part 13 when a Part 13 Complaint has not been Filed?

The Region or ADO may learn of possible violations of airport obligations from various sources. For example, Region or ADO personnel may obtain information from:

- Personal observations of an airport and/or airport documentation,
- Reports from FAA employees from other lines of business,
- NASA reports,
- Safety hotline reports,
- Whistleblower disclosures from airport employees, or
- News media or social media.

If, after reviewing the information, the Region or ADO determines that an airport may have violated a Federal obligation, it should initiate investigations under Section 13.2.

5.4 Part 13: Resolution through Informal Discussions.

The Section 13.2 process is intended to help airport users and airport sponsors resolve issues in an informal and expedient manner without the need to elevate it to a formal Part 16 process. 14 CFR § 16.21(a) requires complainants to "initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties' expense, mediation, arbitration, a dispute resolution board, or other form of third-party assistance." Regions or ADOs can assist with informal resolution through the process explained in this chapter.

However, informal complaints may vary in terms of their complexity, scope, and the willingness of the parties to come to a resolution. In some cases, either the airport sponsor and/or the complainant may not understand the applicable obligations. Such a situation may be subject to a quick disposition. In other cases, the airport sponsor or the complainant may be uncooperative and unwilling to resolve violations or comply with the corrective actions proposed. Due to the broad range of informal complaints and the level of cooperation by the parties, the Section 13.2 process requires flexibility. This discussion provides a suggested approach for handling Section 13.2 complaints, it is not intended to foreclose other options.

When appropriate, the Regions or ADOs may attempt to resolve the complaint through informal discussion before initiating the more structured Section 13.2 process discussed in the subsequent section. Resolving complaints through an informal discussion may foster a positive and productive relationship between the complainant and the airport sponsor.

For cases in which the Region or ADO has decided to initiate an investigation where a Part 13 complaint has not been filed, the Region or ADO may also attempt to resolve the matter through informal discussions.

a. When to use Informal Discussions.

Regions or ADOs should consider several factors to help decide when to attempt to resolve complaints/FAA initiated investigations through informal discussions. The factors are summarized below:

(1) **Complexity of the Case.** If the case is fairly simple, an informal discussion may be a more appropriate first step. However, if the case is complex (either from a legal or factual perspective), involves multiple grant assurances, and/or will require significant investigation, it may be appropriate to initiate the structured Section 13.2 process to ensure all the elements of the case are documented and investigated.

(2) Willingness of the Airport Sponsor and Complainant to Resolve the Issue Quickly without a Structured Process. If the airport sponsor appears willing to rectify any violations and respond to the complainant's satisfaction, the informal discussion method may be most efficient. In addition, a complainant may prefer to resolve the issue quickly through informal discussions rather than opening a structured Section 13.2 investigation. However, if the parties are unwilling to entertain a quick resolution to any violation, the structured process should be initiated.

The Region or ADO may begin informal discussions but end up following the structured Section 13.2 process if their attempts at resolving the issue are unsuccessful. If the complainant prefers to remain anonymous, the Region or ADO can still begin the informal discussion process by reaching out to the airport sponsor to inquire about the allegations and has no obligation to identify a complainant.

b. Informal Discussion Process.

The informal discussion process has no prescribed method to follow. Informal discussions may include multiple conversations with the complainant and the sponsor, either individually or jointly, a review of submitted airport documents, and a site visit if needed. *Ex parte* communications are permissible. The goal is to come to an informal resolution that is mutually agreeable to the parties and that complies with the airport sponsor's Federal obligations.

Once satisfactory resolution has been achieved, the Region or ADO must still, if applicable, confirm that the airport sponsor has followed through with the agreed upon corrections.

c. Informal Discussion Documentation.

The Region or ADO will compile a record of the informal discussion process. The record of the informal complaint will serve to demonstrate that the issue was addressed and help to inform future Section 13.2 investigations. It will also provide a record of the airport sponsor's compliance history. At a minimum, the record of complaint will include documentation of the initial complaint, any informal resolution, and/or the Part 13 decision.

5.5 Part 13 Informal Review Process.

If informal discussions do not resolve the matter to the satisfaction of both parties, or if the Region or ADO made the determination to move directly to the structured Section 13.2 process, the following steps should be followed.

a. Step 1: Complaint Review.

The Region or ADO will review the complaint. Although not required, complainants are encouraged to initiate their complaints in writing given that oral communication, such as a telephone conversation, may not capture all the details or documentation of the allegations to advise potential complainants about the process and to encourage them to provide detailed information in writing.

In order to be investigated, the complaint must, at a minimum, identify the federally obligated airport in question and contain allegations that if substantiated, would constitute a violation of airport obligations. The Region or ADO will establish whether the FAA has jurisdiction by determining if the allegations relate to the sponsor's federal obligations. Note certain allegations, such as attempts to regulate safety or airspace, may also raise issues of Federal preemption in which case ACO-100 should be consulted.

Ideally, a complaint should:

- Identify the airport sponsor against which the allegations are made. If the complainant is not able to identify the sponsor, the airport name or LOCID should be included. The FAA will only review complaints against federally obligated airports. The FAA will determine if the airport is federally obligated before investigating the complaint.
- Identify the specific airport obligations alleged to have been violated. The complainant may not know which airport obligation has been violated. If this is the case, the Region or ADO should review the complaint and identify which airport obligation may have been violated.
- Provide a comprehensive, detailed description of the actions and/or inactions taken by the airport sponsor that resulted in the alleged violation.
- Provide issue-by-issue details, supporting arguments, information, and documentation. If the complaint is taken over the telephone, the Region or ADO should request documentation to support the complaint.

Complaints that are vague, or lack the information specified above, should be returned to the complainant with a request for clarification and/or the additional information needed to initiate an investigation. If the complaint alleges violations outside of the jurisdiction of ARP, the Region or ADO should notify the complainant. There is no requirement to investigate a complaint if it is clear that there is no violation of a sponsor's obligations.

Complainants may request anonymity during an informal investigation. While the FAA will make every attempt to honor a complainant's request for anonymity, this may preclude the FAA from conducting a full investigation and the complainant should be made aware of this. Moreover, depending on the facts, the sponsor may ascertain the complainant's identity anyway.

If the complaint involves operational safety allegations, assistance from other FAA personnel or Line of Business (LOB) may be necessary. These can include or involve Part 139 Safety Inspectors, the Flight Standards Division, Air Traffic Control (ATC) specialists/functions, or ACO-100. These entities should be able to assist in determining how to proceed.

b. Step 2: Complaint Acknowledgement.

Upon receipt of a complaint that meets all or most of the requirements outlined above, the Region or ADO must acknowledge its receipt of the complaint. When the Region or ADO determines that the facts alleged raise issues outside of the scope of the Section 13.2 process and/or the jurisdiction of the FAA Office of Airports, the complainant should be notified.

c. Step 3: Initial Review of the Allegations.

The Region or ADO identifies the issues that require investigation and should review the airport obligating documents (*i.e.*, grant agreements, property transfer documents) and supporting facts. When evaluating a complaint, the Region or ADO must separate facts from unsubstantiated allegations. Only complaints supported by facts may be considered in a finding of noncompliance.

The complaining party has the responsibility to provide sufficient factual information to support the allegation(s). A supported fact is one that can be substantiated through corroborating evidence. The following may be helpful in supporting a fact:

- The airport reference documents, such as the Airport Layout Plan (ALP) and Capital Improvement Plan (CIP)
- Contracts or leases
- Meeting minutes
- Grant documents
- Letters
- Financial statements, invoices, receipts
- Visual inspection, photographs
- Policy documents
- Procedures manuals
- Independent analysis

- Records of conversation, sworn testimony, or corroborating statements
- Applicable subject matter guidance contained in other chapters of this Order

The Region or ADO may also identify specific information, such as leases, minimum standards, and operating procedures that it will need from the airport sponsor to assist in the investigation. The request for this information may be included as part of Step 4 or at any time during the process.

d. Step 4: Airport Sponsor Notification.

Once the initial review is complete, the Region or ADO should notify the airport sponsor of the matter and ask them to respond to each allegation. The notification letter should ask the airport sponsor to respond within 15 to 30 days from the date of the letter, depending on the urgency and/or complexity of the complaint. The complainant should receive a copy of the notification letter. If the complainant requests to remain anonymous or does not want to be involved in the investigation, the letter should not identify the complainant, and the complainant need not be involved in the review or resolution of the issue.

It may be efficient for the Region or ADO to request information from the airport sponsor as part of the notification. Additional documentation such as copies of leases, minimum standards, operating procedures and/or other documentation relevant to the investigation may be requested as part of the notification step or later in the investigation, as the need arises.

Consistent with Grant Assurance 26, *Reports and Inspections*, airport sponsors are required to make all airport records and documents affecting the airport available to the FAA upon request. Nevertheless, there may be times during a Section 13.2 investigation where the Region or ADO determines the airport sponsor may be refusing to make requested documents available. If such an occasion arises, the Region or ADO may deem it necessary to provide a warning to the airport sponsor concerning the requirements of Grant Assurance 26.

Complaints filed with an FAA office are not confidential, and documents filed should always be provided to both parties during the proceedings. FAA offices should not require either party to file a Freedom of Information Act (FOIA) request to obtain these documents. In fact, unnecessary burdens placed on the parties to use the FOIA process may actually derail the informal resolution process. However, if the Region or ADO has questions regarding the appropriateness of releasing specific documents, it should seek guidance from its local FOIA representative and ACO-100.

e. Step 5: Airport Sponsor Response.

The airport sponsor should respond to the investigating office within the specified timeframe, unless an extension has been granted by the Region or ADO. When granting extensions of time, the FAA staff should ensure the airport sponsor is aware of the need to respond in a timely fashion and avoid open-ended or unclear deadlines. In addition, the sponsor may:

(1) Request Additional Information. The airport sponsor may contact the investigating office to request additional information or clarify the FAA's expectations about the sponsor's response. The FAA staff should encourage the airport sponsor to respond to the complaint, in writing, in a timely fashion.

(2) Request a Meeting. In some cases, the airport sponsor may request a meeting with the FAA to explain and resolve the allegations.

The sponsor may include supporting documentation, such as, leases, minimum standards, airport rules and regulations, and correspondence in its response. The airport sponsor should address each issue raised in the complaint.

f. Step 6: Investigation.

The Region or ADO should review the airport sponsor's response and its obligating documents (such as grant agreements and surplus property deeds). The role of the Region or ADO is to determine the facts and may take the following action(s):

(1) Site Visit. The Region or ADO may conduct an on-site airport visit (compliance inspection) to collect evidence or investigate allegations. The FAA may or may not notify the airport sponsor prior to conducting a site visit, depending on the complexity or sensitivity of the case.

(2) Discussions with the Parties. If the facts provided by the parties vary greatly, the Region or ADO may discuss this with the parties, separately or jointly, to obtain clarification.

(3) Obtain Additional Evidence. If specific statements made by a party are unsupported or unclear, then the Region or ADO may contact that party in writing to obtain additional evidence. Some complaints may require the Region or ADO to coordinate with the Flight Standards Division or Air Traffic Organization office to conduct a safety assessment of a proposed aeronautical activity at the airport. When necessary, the Region or ADO may also seek to obtain additional evidence from sources besides the two parties (*e.g.*, witness statements from former airport employees, information/documentation from other individuals or entities that have had dealings with the airport).

(4) Informal Resolution. In some cases, the Region or ADO may be able to assist the parties in resolving their dispute by suggesting options that may resolve the complaint in a manner that is satisfactory to both parties and consistent with the airport sponsor’s Federal obligations.

The structured Section 13.2 process should be as transparent as possible. Any correspondence including letters and emails should include both parties to the extent possible. In some cases, proprietary information or general information that does not directly impact the investigation may not be shared automatically. If a party requests all the information associated with the investigation, the Region or ADO should furnish this information. Deliberative discussions, however, may be withheld as necessary. Also, *ex parte* communications made for purposes of seeking resolution are permissible in a Part 13 proceeding.

During the investigation, the Region or ADO may find another area of noncompliance that is unrelated to the complaint. In this case, the Region or ADO should discuss this with the airport sponsor and seek resolution. Such issue shall remain separate from the current Section 13.2 matter. If the sponsor is not willing to voluntarily correct the issue and return to compliance, a separate informal investigation may be initiated.

g. Step 7: Conclusion.

Upon completion of the investigation, the Region or ADO will notify the parties of the conclusions reached by the FAA.

(1) Complaint Dismissal Letter. If the investigation concludes that no further FAA action is warranted, the Region or ADO will send a dismissal letter.

(2) Complaint Resolution. At any time during the investigative process, the parties may reach a resolution. This agreement may be reached by the two parties with some or little FAA involvement. The Region or ADO should ensure that the agreement will put the sponsor in compliance with its Federal obligations and that any required actions are completed. The Region or ADO should request a copy of an agreement, if any, between the parties that addresses the resolution to be able to close out the complaint.

(3) Notice of Potential Noncompliance. If it appears that the airport sponsor may be violating its federal obligations, the Region or ADO will notify the sponsor of the potential noncompliance. This letter identifies violation(s), requests the airport sponsor take specific corrective action(s), and specifies a timeline for the corrective actions.

The Section 13.2 process will result in a dismissal, informal resolution, or potential noncompliance. These documents may later assist the Part 16 complaint (as required under 14 CFR § 16.21(b)) that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint have been made and that there appears no reasonable prospect for timely resolution of the dispute. The case should be closed out if it is resolved through the informal discussion method or through the structured review process.

Corrective actions may take some time for the sponsor to complete. If an airport sponsor is not completing its corrective action plan within the specified time frame or refuses to undertake the corrective actions, the Region or ADO should coordinate next steps with ACO-100. The ADO should not direct complainants to the Part 16 process without first attempting to resolve the issues at the local level. If warranted, and after consultation with the Region, ACO may initiate its own investigation under 14 CFR § 16.101.

5.6 Part 13: Stale Complaint.

An informal complaint that has been inactive for two (2) or more years is considered stale. Any complainant who lacks interest or abandoned their complaint is recognized as stale. Stale complaints may be archived or discarded with no follow-up.

5.7 FAA Initiated Informal Letter of Investigation.

The Region/ADO may also initiate an informal investigation into potential violations of an airport's obligations. This can be done through an informal letter of investigation. The informal letter of investigation should provide details on the allegations, the specific airport obligations that may have been violated, a request for information, and a request for the sponsor to respond to the allegations within 15 to 30 days. Once the informal letter of investigation is issued the Region/ADO should follow section 5.5, steps 5 through 7 above.

5.8 Part 16: Formal Complaint

Section 13.2 applies only to informal complaints; 14 CFR part 16 contains the agency procedures for filing, investigating, and adjudicating formal complaints against airport operators. Part 16 covers matters within the jurisdiction of the Associate Administrator for Airports involving federal obligations incurred by an airport sponsor in accepting federal surplus property or FAA grants. This primarily involves financial compliance and reasonable and nondiscriminatory access but includes all obligations in the federal grant assurances and surplus property deeds.

As noted above, the Part 13 process can facilitate a complainant meeting the pre-complaint resolution requirements of 14 CFR § 16.21. Under that section, potential complainants are required to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a formal Part 16 complaint. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third-party assistance, including regulation and policy guidance from the responsible FAA Region or ADO.

When filing a Part 16 complaint, the complainant must certify that good faith efforts have been made to achieve informal resolution. The Part 16 process is the formal administrative process by which the FAA may make a formal agency finding regarding an airport sponsor's status of compliance with its federal obligations.

However, Part 16 complaints may contain allegations that are the responsibility of offices or agencies other than ARP:

- The DOT handles complaints by air carriers regarding the reasonableness of airport fees filed under 49 U.S.C. § 47129. (Refer to 14 CFR part 302, DOT Rules of Practice in Proceedings). Carriers may choose whether to file a complaint over the reasonableness of airport fees with DOT under Part 302 or with FAA under Part 16.
- The FAA Office of Civil Rights handles airport matters involving civil rights, disadvantaged business enterprises, and persons with disabilities.
- Generally, any FAA employee receiving information on criminal acts should report the information to their supervisor and the nearest FAA Servicing Security Element who will in turn notify the FBI or appropriate Federal, State, or local law enforcement agency in accordance with FAA Order 1600.38, *Office of Investigations (AXI) Duties and Investigative Responsibilities*.
- The National Transportation Safety Board (NTSB) investigates civil aviation accidents in the United States and issues safety recommendations aimed at preventing future accidents. The NTSB is responsible for determining the probable cause of U.S. civil aviation accidents.

- Other matters that fall outside of the Associate Administrator's jurisdiction are issues involving flight standards and airspace.

5.9 through 5.13 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 6. Rights and Powers and Good Title

6.1 Introduction.

This chapter discusses the sponsor's federal obligation to preserve its rights and powers and to maintain good title to the airport property. The sponsor's federal obligations discussed in this chapter apply to both public and private airport sponsors who are obligated under agreements with the federal government. This chapter also discusses related issues such as transfers to other recipients, delegation of federal obligations, subordination of title, airport management agreements, and Airport Investment Partnership Program (AIPP).

6.2 Responsibilities.

It is the responsibility of the Regional Airports Divisions (RO) and Airport District Offices (ADOs) to ensure the sponsor can fulfill its federal responsibilities at all times. Accordingly, these offices will advise sponsors when asked, if the terms of any proposed agreements have the effect of limiting the sponsor's ability to fulfill its federal obligations.

The FAA is also responsible for approving the transfer of an obligated airport from one sponsor to another sponsor. For general aviation and non-reliever airport transfers, the Region or ADO leads the review of the submitted documents. For all other airports, the FAA headquarters Office of Airport Compliance and Management Analysis (ACO) will take the lead, in coordination with the RO or ADO, to review the submitted documents and decide whether to concur with the transfer.

When requested, the ACO will advise sponsors on the Airport Investment Partnership Program[1] and the Associate Administrator for Airports will sign the Record of Decision for applications that are approved. *See* Airport Investment Partnership Program

6.3 Controlling Grant Assurances.

a. Grant Assurance 4, *Good Title*.

This grant assurance requires a sponsor to hold good title to the landing areas of the airport or the site thereof or will give satisfactory assurance to the FAA that good title will be acquired. (*See also* 49 U.S.C. § 47106(b)). Additionally, for noise compatibility program projects to be carried out on the property of the sponsor, the sponsor must

[1] 49 U.S.C. § 47134.

hold good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or give assurance to the Secretary that good title will be obtained. (*See* FAA Grant Assurances).

In some cases, based on information available, the FAA may be unable to determine how the airport property was acquired or if a sponsor has title to all airport property. Adding to the confusion, sometimes the sponsor's Exhibit 'A' Airport Property Inventory Map (Exhibit 'A') may not be current or show all property interests. In such cases, FAA should request that the sponsor provide the FAA with a complete title search report of all airport property depicted on the current Airport Layout Plan (ALP) and Exhibit 'A'. This should identify the actual parcels and the means of acquisition for the entire airport property.

When determining initial eligibility, the FAA should require a title search report to ensure that the sponsor has good title to the parcels necessary to achieve the purpose of the grant and the role of the airport.

When a sponsor acquires land for a project funded under an AIP grant, the FAA and the sponsor must follow the FAA Advisory Circular (AC) for land acquisition to ensure the sponsor has acquired sufficient land rights. (*See* AC 150/5100-17 - *Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects*). The FAA may also request a title search report when the FAA has concerns about the documentation of land holdings on an Exhibit 'A'. When transferring sponsorship or reviewing an application to the Airport Investment Partnership Program, the FAA may request a title search report.

A lack of good title can prevent the processing of a grant – even without a finding of noncompliance – because such a sponsor would not be eligible as a threshold requirement. If a sponsor gives away good title, such action might also be a violation of Grant Assurance 5, *Preserving Rights and Powers*. The determination of good title does not necessarily require fee simple ownership. Long-term leases may give sufficient rights to allow an AIP improvement grant. However, the lease term generally must exceed the useful life of the anticipated project. A lease may need to be extended to maintain good title.

b. Grant Assurance 5, *Preserving Rights and Powers*.

A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. Grant Assurance 5, *Preserving Rights and Powers*, requires a sponsor, not to sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in certain property shown on the Exhibit ‘A’ without the prior written approval of the FAA.[2] (*See* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

Of particular concern to the FAA is granting a property interest to tenants on the airport. These property interests may restrict the sponsor’s ability to preserve its rights and powers to operate the airport in compliance with its federal obligations. Providing developers with an option to acquire a fee interest in federally obligated airport property is not acceptable to the FAA under Grant Assurance 5, *Preserving Rights and Powers*. An option to acquire a fee interest in airport property should be considered a sale of airport property and may require an FAA release.

The sponsor must maintain its ability to ensure that it can operate the airport in compliance with its grant obligations.

6.4 Airport Governance Structures.

The sponsor determines the management and organizational structure of an airport. The type of structure employed can vary depending on whether the sponsor delegates all or some of its management responsibilities to a third party.

a. Co-Sponsorship Agreement.

Where the airport is under the control of more than one sponsoring agency, such as when the airfield and the passenger terminal are owned and operated by different agencies, the sponsors may be required to enter into an agreement satisfactory to the FAA to ensure that the joint operation of the airport will provide sufficient rights and powers to meet Airport Improvement Program (AIP) grant obligations. (*See* FAA Order 5100.38, *Airport Improvement Program Handbook, Tables 2-9, 2-10, and 2-11*).

b. Delegation of Federal Obligations.

Sponsors may enter into arrangements that delegate certain federal obligations to other parties. For example, an airport authority may arrange with the public works department of a local municipality to meet certain maintenance commitments, or a sponsor may contract with a utility company to maintain airfield lighting equipment. More prevalent at small airports are arrangements in which the sponsor relies upon a commercial tenant or franchise operator to cover a broad range of airport operating, maintenance, and management responsibilities.

[2] *See also*, FAA Reauthorization Act of 2024 (Pub. L. 118-63).

None of these contractual delegations of responsibility absolves or relieves the sponsor of its primary obligations to the federal government. The sponsor should ensure that delegations to other parties do not result in a conflict of interest or a violation of the federal grant assurances. The sponsor shall not delegate or transfer its authority to negotiate and enter into aeronautical and nonaeronautical leases and agreements unless approved by the FAA.

6.5 Rights and Powers.

As discussed above, Grant Assurance 5, *Preserving Rights and Powers*, requires the airport sponsor to preserve its rights and powers to control and operate the airport in accordance with its federal obligations. The following addresses this grant assurance:

a. Airport Sponsors.

(1) Sponsor Actions. The sponsor must obtain the Secretary's written approval before taking any action that would deprive it of the rights and powers necessary to perform any terms, conditions, and assurances in the grant agreement. In addition, the sponsor must take the actions necessary to regain its rights and powers, including extinguishing rights of other parties that prevent the sponsor from complying with its federal obligations. (*See* Grant Assurance 5(a)). A method a sponsor may use in this regard is to place a "subordination clause" in all of its tenant leases and agreements that subordinates the terms of the lease or agreement to the federal grant assurances and surplus property obligations. A subordination clause may assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. A typical subordination clause will state that if there is a conflict between the terms of a lease and the federal grant assurances, the grant assurances will take precedence and govern.

(2) Private Airport Sponsors. If the sponsor is a private sponsor, it will assure the FAA that the airport will continue to function as a public-use airport. (*See* Grant Assurance 5(e)).

(3) Changes in Property Interest. The sponsor must obtain the FAA's written approval before it sells, leases, encumbers, transfers, destroys, or disposes of any of its interest in certain airport or noise compatibility property.[3] (*See* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*). If the FAA finds the transferee eligible to assume the obligations of the grant agreement and to have the power, authority, and financial

[3] *See also*, FAA Reauthorization Act of 2024 (Pub. L. 118-63).

resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest and make binding upon the transferee all of the terms, conditions, and assurances contained in the grant agreement. (*See* Grant Assurance 5(b)). For more information on noise and privately owned land, see also section 6.5.b, *Airport Sponsors*. For more information on airport transfers see also section 6.7, *Airport Sponsor Transfers*.

(4) Contracting Out Airport Management. If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's grant agreement. The sponsor is not relieved of its responsibility under the grant assurances or agreement. (*See* Grant Assurance 5(f); see also, section 6.8, *Airport Management and Development Arrangements*).

(5) Residential Through the Fence. Residential through-the-fence (RTTF) agreements allow people who own residential property with aircraft storage facilities near an airport to access the airport from off-airport property. Grant Assurance 5(g). states, "Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Pub. L. 112-95, [FAA Modernization and Reform Act of 2012] and their sponsor assurances." (*See* chapter 12, *Review of Aeronautical Lease Agreements*, and FAA's *Residential Through-the-Fence Access Toolkit*).

b. Other Entities.

(1) Noise Compatibility Program Projects by Non-Sponsors. For noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, the grantee will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. The grantee will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement. (*See* Grant Assurance 5(d)).

(2) Noise Compatibility Program Projects on Privately Owned Land. For noise compatibility projects to be carried out on privately owned property, the grantee will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. The grantee will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement. (*See* Grant Assurance 5(e)).

6.6 Good Title.

a. Title and Property Interest.

(1) Title Requirement (Grant Assurance 4, *Good Title*). As set forth in 49 U.S.C. § 47106(b)(1), no project grant application for airport development may be approved by the Secretary unless the sponsor, a public agency, or the United States holds good title (satisfactory to the Secretary) to the airfield, or gives assurance to the Secretary that good title will be acquired. Good title is a pre-condition for award of an AIP grant and is usually reviewed in connection with grant applications rather than as a compliance issue for a grant already awarded. The Airports Financial Assistance Division, APP-500, in coordination with ACO, should be advised of any issue regarding good title.

(2) Airport Property Interest. Title with respect to the airport land can be either fee simple or title with certain rights excepted or reserved, such as a lease with a term that is at least as long as the useful life of the project. (*See* FAA Order 5100.38, *Airport Improvement Program Handbook*, Table 2-9, *Legal and Financial Requirements for Public Agencies*).

Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations. A deed containing a reversionary clause, (*e.g.*, "so long as the property is being used for airport purposes") does not negate good title provided that the other federal conditions or requirements are satisfied.

Where any rights excepted or reserved would prevent the sponsor from carrying out its federal obligations under the grant, such rights must be extinguished prior to approval of the project subject to an AIP grant.

(3) Determination of Adequate Title. A certification by a sponsor that has acquired property interests required for a project may be accepted in lieu of any detailed title evidence. (*See* FAA Order 5100.37B, *Land Acquisition and Relocation Assistance* and Advisory Circular 150/5100-17, Appendix D, *Guidelines for Sponsor Certification of Title*). Without such certification, the sponsor's submission of title evidence must be reviewed to determine adequacy of title. The adequacy of such title is an administrative determination made by FAA Office of Airports personnel.

(4) Title Requirement Prior to Notice to Proceed. Authorization for the sponsor to issue a notice to proceed with grant funded work on property to be acquired by the sponsor should not be given until it has been determined that all property interests on which construction is to be performed have been, or will be, acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). (*See* Advisory Circular 150/5100-17, *Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects*, for additional information on this topic).

b. Subordination of Title.

(1) Subordination.

The FAA will normally consider subordination of the sponsor's fee interest in airport property by mortgage, easement, or other encumbrance as a transaction that would deprive the sponsor of the rights and powers necessary to fulfill its federal obligations.

However, the sponsor, with FAA approval, may subordinate its interest in a tenant lease to facilitate tenant financing for development on airport property. In this case, the sponsor agrees only that the mortgage or financing is serviced ahead of the payment to the sponsor for the lease of airport property.

(2) Review.

If the FAA determines that an encumbrance may deprive a sponsor of its ability to fulfill its federal obligations, the Secretary may withhold approval of grant applications from the sponsor. (*See* chapter 2, *Compliance Program*, section 2.9c, *Withholding AIP Payments and Grant Application Approval*). The Region or ADO should review such encumbrance documents and make a determination on a case-by-case basis. Determinations should be in accordance with Grant Assurance 4, *Good Title*, and Grant Assurance 5, *Preserving Rights and Powers*. It may be appropriate to consult with the FAA Office of Chief Counsel (AGC-610).

(3) FAA Determination.

The FAA should base its concurrence with any lien, mortgage, or other encumbrance to federally obligated property on a factual and thorough documented determination. The FAA office working on the issue should ask the sponsor to execute a declaration recognizing that the FAA's grant obligations survive a foreclosure or bankruptcy. The FAA's grant obligations should be recorded on the property. The possibility of foreclosure or other action adverse to the airport should be so remote that it reasonably precludes the possibility that such a lien, mortgage, or other encumbrance will prevent the sponsor from fulfilling its federal obligations.

6.7 Airport Sponsor Transfers.[4]

a. Eligibility Determination for a New Sponsor.

(1) General.

Generally, the Region or ADO will determine whether a potential sponsor is capable of assuming federal responsibilities. This review requires that the sponsor be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other federal obligations required of the sponsor and contained in the Airport Improvement Program (AIP) project application and grant agreement forms.

(2) Authority to Act as a New Sponsor.

The proposed new sponsor must show it has the authority to act as a sponsor. FAA will require an opinion of the proposed sponsor's attorney as to its legal authority to act as a sponsor and to carry out its responsibilities under the applicable agreements when deemed necessary or desirable.[5]

As a condition of the release of the existing sponsor obligations, the FAA requires the new sponsor to assume all existing grant obligations and federal land conveyance obligations. The FAA will review transfer documents to ensure clarity regarding the assignment of responsibility for the federal obligations. In some instances, it may be appropriate to continue the existing sponsor's obligations in effect, in full or in part, especially where the existing sponsor is the only local government entity that could assure compliance. For example, a local municipality with zoning authority may transfer the airport to an airport authority

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[4] *See* *Guidance for Transfer of Federally Obligated Airports*.

[5] *See also*, FAA Order 5100.38, *Airport Improvement Program Handbook*.

with no off-airport zoning power. In that case it would be appropriate not to release the municipality from its existing obligations to protect the airport environs from incompatible uses and obstructions.

(a) Grant Assurance 5.

Grant Assurance 5, *Preserving Rights and Powers*, prohibits the airport sponsor from entering into an agreement that would deprive it of any of its rights and powers that are necessary to perform all of the conditions in the grant assurances or agreement or other federal obligations unless another sponsor/operator assumes the obligation to perform all such federal requirements.

When an airport sponsor transfers authority to another sponsor, whether public or private, the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. The FAA has a statutory obligation to ensure that an airport sponsor (1) is capable of assuming all grant assurances and other federal obligations; and (2) is legally and financially able to assume and carry out its obligations as sponsor and operator to maintain and operate the airport as a public-use airport in a safe manner according to FAA regulations and standards.[6] Before a transfer to another public entity can take place, the FAA must review and specifically determine that the new airport sponsor is eligible and willing to perform all the obligations of existing grant agreements and federal property conveyances. Otherwise, the FAA will not permit the transfer to occur.

(b) AIP Eligibility.

Eligibility to receive funds under the AIP is contingent upon the type of sponsor and the type of activity for which the funds are sought. For more information see FAA Order 5100.38, chapter 2, *Who can get a grant?*; see also Guidance for Transfer of Federally Obligated Airports.

[6] *See, e.g.,* the Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

b. FAA Review of the Proposed Sponsor's Application.

The FAA, as part of its review of the proposed sponsor's application will determine if the proposed sponsor can satisfy the requirements of the grant assurances. The FAA will also determine if existing sponsor's practices are consistent with its grant obligations. In cases where corrective action is required, the FAA will bring it to the attention of both parties. Grant assurances directly related to the federal funding of airport development projects will be addressed in the grant application process. The following provides a summary of the applicable grant assurances:

- **Assurance 3, *Sponsor Fund Availability*** – The review will confirm whether the sponsor has sufficient funds available to assure operation and maintenance of airport related costs not funded by the Federal Government.
- **Assurance 4, *Good Title*** – The review will confirm whether the sponsor has good title or assures good title will be acquired satisfactory to the FAA. The sponsor, a public agency, or the Federal Government must hold good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or assures good title will be acquired. A good title is a marketable title, free and clear of all liens and encumbrances (except those specified and usually agreed to by the government in advance). If the sponsor is acquiring land in the project, a property inventory map (Exhibit A) should be updated unless it is part of the approved airport layout plan.
- **Assurance 5, *Preserving Rights and Powers*** – The review will confirm whether or not the sponsor has surrendered by contract its capability to control the airport and to carry out its commitments to the Federal Government. The sponsor assures that it will not take an action that would operate to deprive it of any of the rights and powers necessary to perform its federal obligations without the written approval of the FAA. The FAA is looking to identify any terms and conditions of the arrangement which could prevent the realization of the full benefits for which the airport was constructed, or which could develop into a restriction on the new owner's ability to meet its obligations to the Federal Government.

  Any lease or agreement granting the right to serve the public on the premises of an airport so obligated should be subordinate to the authority of the owner to establish sufficient control over the operation to guarantee that airport users will be treated fairly. (*See also* section 6.5, *Rights and Powers*).

- **Assurance 19, *Operations and Maintenance*** – The review will confirm whether the sponsor will operate the airport in a safe and serviceable condition in accordance with minimum standards or as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operations. This includes operating and maintaining all facilities with due regard to climatic and flood conditions, maintain a program of regular airport inspections, and a promptly notifying pilots of any condition affecting the aeronautical use of the airport, and that the sponsor will request FAA's approval to close the airport for nonaeronautical activity.
- **Assurance 20, *Hazard Removal and Mitigation*** – The review will confirm whether the sponsor will take appropriate action to mitigate existing airport hazards and prevent the establishment or creation of future airport hazards.
- **Assurance 21, *Compatible Land Use*** – The review will confirm that the sponsor will take appropriate action, to the extent reasonable, including the adoption of zoning laws to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.
- **Assurance 22, *Economic Non-Discrimination*** – The review will confirm whether the sponsor will make the airport available as an airport for public-use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities including commercial aeronautical activities. (*See* 49 U.S.C. § 47107(a)).
- **Assurance 23, *Exclusive Rights*** – The review will confirm that no exclusive right exists or will exist for the use of the airport to provide aeronautical services to the public. (*See* 49 U.S.C. §§ 47107(a)(4) and 40103(e)).
- **Assurance 24, *Fee and Rental Structure*** – The review looks to ensure that the sponsor maintains a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible, in accordance with 49 U.S.C. § 47107(a)(13) and FAA's Policy Regarding Airport Rates and Charges, 78 Fed. Reg. 55330 (September 10, 2013).
- **Assurance 25, *Airport Revenue*** – The review will confirm whether airport revenue is used for the capital and operating cost of the airport and that all airport revenue will be transferred to the new sponsor. (*See* FAA's Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (February 16, 1999) [Revenue Use Policy]).

- **Assurance 29, *Airport Layout Plan*** – The review will confirm whether the sponsor keeps an airport layout plan up to date at all times. (*See* 49 U.S.C. § 47107(a)(16)).[7]
- **Assurance 30, *Civil Rights*** – The review will confirm whether the sponsor takes measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin (including limited English proficiency), sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, federal financial assistance to the airport. (*See* 49 U.S.C. § 47123).

c. Documents Required for FAA Review and Approval.

- Public Agency's enabling legislation or act that gives it the authority to operate and own the airport(s).
- A copy of the executed or draft Operation and Management Agreement for the specific airport, if another party conducts operation and management of airport.
- Proof of Good Title, including copy of executed deed and tract information.
  - Attorney assurance by letter to the FAA that any title issue is being cured if there are parcels for which good title cannot be confirmed.
- An executed copy of the Assignment and Assumption Agreement, including list of transferred grants if new sponsor purchased airport from a previous FAA sponsor.
- Document wherein the new sponsor must agree to assume all existing federal obligations.
  - Prior sponsor will not be released from its obligations not assumed by the new sponsor - in some circumstances, the prior sponsor is not fully released from the obligations.
- Any other agreements between the parties relating to the terms of the transfer and the new sponsor's operation of the airport.
- Public Agency's attorney legal certification that the new airport sponsor meets the legal requirements to carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors which are contained in the AIP project application and grant agreement forms.

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[7] *See also* *FAA Reauthorization Act of 2024* (Pub. L. 118-63).

- Applicant's audited financial statements for the most recent fiscal year end.
  - May include review of prior Payment in Lieu of Taxes (PILOT).
- Exhibit ‘A’ Property Inventory Map and Airport Layout Plan.
- Approval of other government agencies, if applicable.
  - As a rule, the name of the approving agency and date of approval will be sufficient.
  - When a state law requires channeling through a state aeronautics commission, the approval of that commission must be indicated by endorsement or by other means which the commission may want to use.
- Part 139 Application for Certificate, amendments to Airport Certification Manual (ACM)/Airport Certification Specifications (ACS), if applicable.
  - Certification of the new sponsor is generally a simple process if the airport already holds a Part 139 Certificate.
  - Part 139 Certificates are not transferable.
    - A new sponsor must apply for the Certificate, and FAA must issue the Certificate at the time of the transfer in order to maintain uninterrupted service.
    - FAA will not release a sponsor from obligations that occurred prior to the transfer such as revenue diversion.
- Transportation Security Administration approval and updated security manual, if applicable.
- Documentation required pursuant to the National Environmental Policy Act of 1970 (42 U.S.C. §§ 4321-4347) (NEPA) and applicable Department of Transportation and Federal Aviation Administration Orders implementing NEPA.

d. Transfer Document Review.

For general aviation and non-reliever airport transfers, the Region or ADO leads the review of the submitted documents. Once the Region/ADO completes its review, the Region or ADO provides the initial decision and completed package to ACO for final review and concurrence. For all other airports, ACO will take the lead, in coordination with the Region or ADO, to review the submitted documents, and decide whether to concur with the transfer.

The review is intended to ensure that the sponsor is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other federal obligations required of the sponsor, and will maintain the necessary control of the airport needed to carry out its commitments to the federal government.

During its review, the Region or ADO will identify any terms and conditions of a lease, contract, or agreement that could prevent the realization of the full benefits for which the airport was constructed or that could render the sponsor noncompliant with its federal obligations. The sponsor should place a standard clause in all its agreements that the terms and conditions of the agreement shall be subordinate to the federal grant assurances and any surplus property federal obligations. (*See* section 6.5, *Rights and Powers*).

FAA will require an opinion of the proposed sponsor's attorney as to its legal authority to act as a sponsor and to carry out its responsibilities under the applicable agreements when deemed necessary or desirable.[8]

e. Transfer of Federally Conveyed Property.

The federal government conveys property to public agencies for the operation of an airport. Although these property conveyance instruments may permit the conveyance to a third party, the sponsor must obtain FAA approval prior to its transfer, and the transferee must assume the federal obligations of the original grantee. FAA approval of the transfer will depend on the terms and conditions in the original instrument of transfer. (*See* chapter 3, *Federal Obligations from Property Conveyances*). FAA approval will also depend on whether the airport is subject to other existing federal agreements. In addition, a deed of release may be required. (*See* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*, for additional information).

f. Disputed Changes in Sponsorship.

The 2024 Reauthorization codified the FAA Administrator's authority to approve any change in the sponsorship of, or operational responsibility, for the airport sponsor of record to another public or private entity. Congress also outlined the conditions for the Administrator's approval of a disputed change of airport sponsorship. (*See* Pub. L. 118-63, Sec. 757(b)). These conditions generally mirror FAA's *Notice of Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports*, 81 Fed. Reg. 36144 (June 6, 2016).

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[8] *See also* FAA Order 5100.38, *Airport Improvement Program Handbook*.

A disputed change of airport sponsorship means any action that seeks to change the ownership, sponsorship, or governance of, or operational responsibility for, a federal obligated, publicly owned airport, including any such change directed by judicial action or State or local legislative action, where the airport sponsor of record initially does not consent to such change. (*See* Pub. L. 118-63, Sec. 757(d)).

Under the 2024 Reauthorization, the Administrator shall not approve any disputed change of airport sponsorship unless the Administrator receives:

(1) written documentation from the airport sponsor of record consenting to the change in sponsorship or operation;

(2) notice of a final, non-reviewable judicial decision requiring such change; or

(3) notice of a legally-binding agreement between the parties involved.

The Administrator may not evaluate or approve a disputed change of airport sponsorship where a legal dispute is pending before a court of competent jurisdiction. (*See* Pub. L. 118-63, Sec. 757(b)).

In addition, the Administrator "shall independently determine whether the proposed sponsor or operator is able to satisfy the conditions the Administrator determines necessary, that any change in the ownership, sponsorship, or governance of, or operational responsibility for, a federally obligated, publicly owned airport is consistent with existing Federal law, regulations, existing grant assurances, and Federal land conveyance obligations." (*See* Pub. L. 118-63, Sec. 757(c)).

g. Sponsor Insolvency.

In the event that an airport sponsor, (*i.e.*, the municipality), becomes insolvent and seeks reorganization pursuant to Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. § 901 et seq.), the sponsor will need to inform the FAA (Region and/or ADO). The FAA will then need to inform the bankruptcy court that the federal government has an interest in the properties of the airport sponsor. Any federal interest (such as instrument of transfer/deed/federal obligations) in the properties should have been recorded with the sponsor's local register of deeds at the time of transfer or grant issuance.

h. Transfers of Privately Owned Public-Use Airports under 49 U.S.C. § 47133.

Privately owned public-use airports receiving federal assistance are bound by many of the same laws, regulations, and grant assurances that govern publicly owned airports. Consequently, privately owned airports receiving federal assistance generally are not transferred to another entity. The FAA's Revenue Use Policy imposes restrictions on the proceeds from the sale of airport property. However, there is an exception under federal law that permits a private sponsor to be compensated for the sale of a privately owned public-use airport to a public agency.

Under 49 U.S.C. § 47133(b)(2), a private airport sponsor can sell the airport to a public agency, and if certain conditions are met, including grants fund reimbursement, the private owner can retain a portion of the sales proceeds without restriction.

Relatedly, the ACO will review the stock sale of the corporate entity managing a privately owned public-use airport to confirm there is no change to the airport sponsor. Such request should be submitted directly to ACO.

i. United States Government.

(1) Conveyance to a Federal Agency.

Unless otherwise prohibited by the obligating or transfer document, the FAA cannot prohibit a sponsor from conveying to a federal agency any airport property that was transferred under the Surplus Property Act of 1944, as amended. Such a conveyance, whether voluntary or otherwise, does not place the conveying sponsor in default of any obligation to the United States. Such a conveyance has the effect of a complete release of the conveying sponsor. These transfers are rare and historically were initiated by the Department of Defense to obtain airport property for military purposes. Regions/ADOs and airport sponsors should contact ACO when considering such a conveyance.

(2) FAA Objections.

When a sponsor proposes such a conveyance or has accomplished the conveyance without prior notice, the Region or ADO will determine if the transfer adversely impacts civil aviation. If so, it must make any objection immediately known to both the sponsor and the federal agency involved. If the Region or ADO cannot obtain a satisfactory solution, it should submit a full and complete report to ACO without delay. ACO will then continue to work with the sponsor and the federal agency to reach a satisfactory solution.

6.8 Airport Management and Development Arrangements.

This section describes the types of general arrangements a sponsor may enter into for the management and development of the airport.

Airport sponsors entering into an agreement with another entity to develop and/or operate the airport must ensure that the ultimate development or management plan is in compliance with all grant assurances, FAA's Revenue Use Policy, and 49 U.S.C. § 47133. This includes, but is not limited to, separating the agreement into discrete stand-alone agreements for airport management, airport development, and/or FBO services. It is contrary to the Revenue Use Policy, 49 U.S.C. § 47133, and Grant Assurance 25, *Airport Revenues*, to enter into any agreements for the operation and development of the airport that includes revenue sharing.

The Airport Investment Partnership Program (AIPP) is a unique program where a private operator may be exempt from the revenue use requirements to the extent necessary to permit the private operator to earn compensation from the airport operations. Additionally, under this program, the airport owner or leaseholder may be exempt from repayment of federal grants, return of property acquired with federal assistance, and the use of proceeds from the airport's sale or lease to be used exclusively for airport purposes. This program and the exemptions are explained further in section 6.9, *Airport Investment Partnership Program*.

The following is applicable to management or development arrangements that are not part of the AIPP program:

a. Types of Airport Arrangements.

Sponsors may enter into a variety of contractual arrangements to manage and/or develop the airport (*e.g.*, contract, agreement, lease). Regardless of the title of the arrangement, the purpose is to allow a third party to manage or develop the airport on behalf of the airport sponsor.

(1) Airport Management.

These are arrangements with another entity to manage all or portions of the airport. The arrangements may include airport maintenance and supervision of operations. This may have the effect of placing a private entity in a position of substantial control over airport decisions that may affect the public sponsor's grant compliance. This kind of agreement should include provisions to adequately protect and preserve the sponsor's rights and powers to assure grant compliance. In addition, these should be stand-alone agreements that do not include the provision of aeronautical services at the airport.

(2) Airport Development.

These are arrangements with another entity to develop all or portions of the airport. Such arrangements should not encumber airport property for long periods of time without putting it to active use and thereby precluding other developers or aeronautical users access to the property. The agreement may give the right to conduct commercial aeronautical services on the airport directly and to control the granting of such commercial rights to third party tenants. To be effective, these arrangements should include clear performance goals and milestones. This situation creates a high potential for violating Grant Assurance 23, *Exclusive Rights*, unless mitigated, and the sponsor should retain sufficient rights to prevent and reverse any exclusive rights on the airport.

b. Principles of Airport Agreements.

(1) Responsibility.

Although the sponsor may delegate or contract with an agent of its choice for airport management or development, such arrangements do not relieve the sponsor of its federal obligations. Such arrangements have a high potential for a conflict of interest if the agent provides aeronautical services and at the same time can exercise some control over access and competition at the airport. Consequently, any agreement conferring such responsibilities must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. In particular, the airport sponsor remains obligated to Grant Assurance 5, *Preserving Rights and Powers*, which provides, in part:

> f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.

To avoid conflicts with a sponsor's federal obligations, the FAA recommends any management or development agreement to be a separate agreement from any aeronautical services agreement. When these functions are defined in one agreement, the sponsor should make provisions for the survival and separation of management responsibilities in the case of default. This makes the respective responsibilities for each activity clear and enables the sponsor to deal with a possible default in one activity (*i.e.,* management agreement) without terminating a second, separate activity not subject to a default. An example of such an arrangement could consist of an airport management agreement with FBO services (providing these services in-house or outsourcing the services) and a development agreement for a terminal complex.

(2) Terms of the Agreement.

These agreements should include specific terms and conditions that clearly describe that the duties and responsibilities must be performed in accordance with applicable federal, state, and local laws, including applicable grant assurances. The agreement must also include a reservation of rights to the airport sponsor so that the sponsor maintains the ability to assure the airport is operated in accordance with Title 49, United States Code, the regulations and the terms, conditions and grant assurances.

(3) Protect the Sponsor's Rights and Powers.

Any agreement needs to have provisions to prevent a private operator from interfering with the airport sponsor's functions, rights, powers, and responsibilities, (*e.g.*, airport development and planning, funding, access by other aeronautical and service providers), as required under Grant Assurance 5. Inclusion of contract provisions similar to the following can assure that the public sponsor retains the ability to prevent a violation of the grant assurances:

(a) The private operator agrees to operate the airport in accordance with the airport sponsor's obligations to the federal government under applicable grant agreements or deeds and for the use and benefit of the public; to make available all airport facilities and services to the public on reasonable terms and without unjust discrimination; to provide space on the airport, to the extent available; and to grant rights and privileges for use of aeronautical facilities of the airport to all qualified persons and companies desiring to conduct aeronautical operations on the airport.

(b) The parties understand and agree that nothing contained in the agreement shall be construed as granting or authorizing the granting of an exclusive right within the meaning of 49 U.S.C. §§ 40103(c) and 47107(a)(4).

(c) The agreement is subordinate to the sponsor's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the airport.

6.9 Airport Investment Partnership Program.

a. General.

The Airport Investment Partnership Program (AIPP), 49 U.S.C. § 47134, replaced the privatization program that existed prior to 2018.[9] Under the statute, a sponsor may sell or lease a general aviation airport or lease a commercial service airport to a private operator to operate and manage the airport. Alternatively, the AIPP permits public sponsors and private operators to manage an airport jointly. It also permits a public sponsor to privatize multiple airports owned by the same sponsor. Through this program, airport sponsor may receive an exemption from repayment of federal grants, return of property acquired with federal assistance, and an exemption for the use of proceeds from the airport's sale or lease to be used exclusively for airport purposes.

[9] *FAA Reauthorization Act of 2024* (Pub. L. 118-63), Sec. 738, amended 49 U.S.C. § 47134(b).

The private operator (purchaser or lessee) may receive an exemption from the revenue use requirements to the extent necessary to permit the private operator to earn compensation from the operations of the airport. (*See* Airport Investment Partnership Program).

b. Change of Sponsorship from Public to Private.

Leases or sales under the AIPP transfer the federal obligation as well as the responsibility for operation, management, and development of an airport from a public sponsor to a private sponsor. These leases and sales also transfer the federal obligations to the private operator, although the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate.

c. Exemption from Federal Obligations.

As an incentive for public airport operators of publicly owned airports to consider privatization under the AIPP, Congress authorized the FAA to exempt federal revenue use obligations to the extent necessary (1) to permit the sponsor to recover from the sale or lease of the airport such amount as may be approved, (2) waive any obligation of the sponsor to repay federal grants or return federally acquired property; and (3) to permit the purchaser or lessee to earn compensation from operations of the airport. (*See* 49 U.S.C. § 47134(b)). At commercial service primary airports, the amount approved under (1) above, is subject to the approval of at least 65 percent (65%) of the scheduled air carriers serving the airport and by scheduled and nonscheduled air carriers whose aircraft landing at the airport during the preceding calendar year, had a total landed weight during the preceding calendar year of at least 65% of the total landed weight of all aircraft landing at the airport during such year. At a nonprimary airport the FAA may approve the amount after the airport has consulted with at least 65% of the owners of aircraft based at the airport. (*See* 49 U.S.C. § 47134(b)(1)(A)).

If the FAA grants an exemption to a sponsor from the provisions of sections 47107(b) and 47133 (and any other law, regulation, or grant assurance) to the extent necessary to permit the sponsor to recover from the sale or lease of the airport, then the FAA shall grant an exemption to the sponsor from the obligation to repay grants or return of property, and the FAA shall grant an exemption to the purchaser or lessee to permit such entity to earn compensation from the operations of the airport.

An agency record of decision (ROD) identifies all the applicable exemptions. The agency ROD also details the findings that must be made for approval of an application. Exemptions under the AIPP are issued by the FAA Administrator. Public inquiries on the AIPP should be referred to the Airport Compliance Division, ACO-100.

d. Grants for Predevelopment Costs of AIPP.

Under 49 U.S.C. § 47102(3)(R), the FAA may now consider a grant to an airport sponsor that is considering submitting an application for airport privatization under 49 U.S.C. § 47134. Specifically, 49 U.S.C. § 47134(l) explains that a grant for predevelopment planning costs relating to the preparation of an application or a proposed application cannot exceed the statutory threshold. The current version of FAA's Program Guidance Letter (PGL) 19-03, Grants for Predevelopment Costs for Airport Investment Partnership Program provides information on these grants including eligible scopes of work. (*See* PGL 19-03).

6.10 Partnership Outside of the Airport Investment Partnership Program.

a. General.

Sale or lease of a public-use airport to a private entity is not prohibited by law, and the FAA may be requested to approve a transfer of ownership or operating responsibility of a public-use airport to a private entity without an application for participation in the AIPP. FAA review of a request for the transfer of the public sponsor's obligations and approval of a private entity as the new sponsor is conducted in accordance with the general review procedures in section 6.7, *Airport Sponsor Transfers*. This review is similar to the review of a transfer between public airport owners and does not involve the specific requirements and findings of 49 U.S.C. § 47134.

b. Private Operator as Airport Sponsor.

An investment partnership of a public-use airport by sale or long-term lease is distinguished from a management contract by the fact that the private operator becomes the airport sponsor. The private operator is the applicant for grants and is directly responsible to the FAA for compliance with the conditions and assurances in those grants, including revenue use. As with transfers under the AIPP, the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate. For example, the FAA may require a transferring public agency to maintain its ability to use its local zoning power to protect approaches to the airport.

c. Special Considerations.

While reviewing a transfer of responsibility for airport operations to a private operator is in many respects similar to reviewing any transfer of ownership and operation (public or private), reviewing for privatization outside the AIPP should consider the following:

(1) The transfer will not be approved unless the private operator agrees to assume all of the existing obligations of the public sponsor under grant agreements and surplus and nonsurplus property deeds. For future grants, the private operator will agree to the assurances applicable to a private operator. In accordance with the assignment and assumption agreement, the private operator will also be obligated to comply with the public operator's assurances as long as they would have remained in effect for the public operator.

(2) The FAA may not exempt the public or private sponsor from the requirements of Grant Assurance 25, *Airport Revenues*. Accordingly, the public sponsor may use the proceeds from the sale or lease of the airport only for purposes stated in 49 U.S.C. §§ 47107(b) and 47133.

(3) In most instances, it is not necessary for the public sponsor to return to the FAA the unamortized value of grant-funded projects or surplus or nonsurplus property received from the federal government, as long as the grant-funded facilities and donated property continue to be used for the original airport purposes. To assure this continued use, the private operator will be required to agree specifically to continue the airport uses of grant-funded facilities and federally donated property for the purposes described in FAA grant agreements and property deeds.

(4) The private operator will be subject to the general AIP criteria for grants to private operators and will not be subject to or benefit from the special provisions of the AIPP. *(See* FAA Order 5100.38, *Airport Improvement Program Handbook*, for information on grant eligibility).

(5) As with any change of airport owner/operator, FAA certificates do not transfer. Also, if the airport has a security plan in effect in accordance with Transportation Security Administration (TSA) regulations, TSA should be advised of the request for approval of the transfer of airport management responsibility. TSA will advise the airport sponsor if additional amendments are necessary.

6.11 through 6.15 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 7. Airport Operations and Maintenance

7.1 Introduction.

This chapter contains guidance on an airport sponsor's airport operations and maintenance responsibilities. This chapter does not cover the additional requirements that 14 CFR part 139 (Part 139), Certification of Airports, imposes on airports serving certificated scheduled air carriers.[1]

Airport sponsors are required, under 49 U.S.C. § 47107(a)(7), to suitably operate and maintain the airport and facilities on or connected with the airport, with consideration given to climatic and flood conditions. This applies to equipment and facilities regardless of the funding source. Under that statutory authority, Grant Assurance 19, *Operation and Maintenance* requires the airport, and all facilities needed to serve aeronautical users, be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies.

7.2 Roles and Responsibilities.

It is the responsibility of the FAA Regional Airports Divisions (Regions) and Airports District Offices (ADOs) to ensure that the airport sponsors operate and maintain their airports in accordance with federal grant assurances and federal transfer agreement obligations, including those related to aircraft operations and airport safety.

7.3 Controlling Grant Assurances and Federal Guidance.

a. Grant Assurances.

(1) Grant Assurance 19, *Operation and Maintenance* is the most encompassing federal grant assurance related to airport operations and maintenance. It requires the sponsor to operate and maintain the airport's aeronautical facilities – including pavement and airfield lighting and related systems in a safe and serviceable condition in accordance with the standards set by applicable federal, state, and local agencies. FAA pavement guidance applies. Specifically, this grant assurance states:

[1] Contact the FAA Airport Safety and Operations Division, AAS-300, in Washington DC, for additional information on Part 139 matters.

The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;
2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

(2) Grant Assurance 20, *Hazard Removal and Mitigation* requires:

[The Sponsor] will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(3) Grant Assurance 11, *Pavement Preventative Maintenance-Management* requires:

> With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

As explained in this chapter, to comply with the grant assurances, an airport sponsor must have in effect arrangements for (1) operating the airport's aeronautical facilities whenever required (*e.g.*, nighttime); (2) promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; (3) promptly notifying pilots of any condition affecting aeronautical use of the airport, and (4) ensuring proper coordination with the FAA when there are operational impacts. In addition, from a policy perspective, the FAA expects airport sponsors to make available the equipment, personnel, funds, and other resources, including contract arrangements, to implement an effective maintenance program for the airport and its facilities, including adequate preventive maintenance processes to carry out its commitment under the grant assurances.

Although an acceptable level of maintenance is difficult to express in measurable units, the FAA will consider a sponsor compliant with its federal maintenance obligation when the sponsor does the following:

(1) Fully understands that airport facilities must be kept in a safe and serviceable condition.

(2) Makes available the equipment, personnel, funds, and other resources, including contract arrangements, to implement effective self-inspection and maintenance programs.

(3) Adopts and implements a detailed program of cyclical preventive maintenance that is adequate to ensure the airport complies with its obligations.

b. 47 CFR part 17, *Construction, Marking, and Lighting of Antenna Structures*.

Under 47 CFR part 17 (Part 17), the Federal Communications Commission (FCC) has the authority to issue public radio station licenses and prescribes procedures for antenna structure, registration, and standards. Antenna structure registration application requirements are outlined in 47 CFR § 17.4, *Antenna structure registration*. The types of antenna construction or alteration that require notification to the FAA are outlined in 47

CFR §17.7, *Antenna structures requiring notification to the FAA*. If the FAA determines that an antenna structure constitutes a hazard to air navigation, or there is a reasonable possibility it will constitute a hazard, Part 17 requires painting or illuminating the antenna structure.

Aeronautical facilities that do not exist at the time the application for an antenna structure is filed will only be considered if the proposed airport construction or improvement plans for these facilities are on file with the FAA as of the application filing date for the antenna structure.

c. FAA Advisory Circular 150/5300-13, *Airport Design*.

This AC provides guidelines and standards for the design of civil airports. The FAA approved Airport Layout Plan (ALP), to the extent practicable, should conform to the FAA airport design standards existing at the time of its approval. (*See* AC 150/5300-13, paragraph 5.a). The sponsor should apply these standards consistently and in a manner that supports the development and operation of the airport. However, introducing weight limitations after a runway or taxiway is constructed to the FAA standards may be considered an access restriction. Accordingly, coordination with the FAA's Office of Airports Compliance and Management Analysis (ACO) is highly recommended to ensure compliance with federal obligations. (*See* chapter 10, *Reasonable Commercial Minimum Standards*, section 10.5.c, *Developing and Applying Minimum Standards, Aircraft Weight Restrictions*).

7.4 Federal Government Use during a National Emergency or War.

a. Airports Subject to Federal Property Instruments of Transfer.

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 National Emergency Use Provision (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). This provision is similar in all such instruments. (*See* chapter 3, *Federal Obligations from Property Conveyances*).

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 DoD, released the NEUP as well.

b. Airports Subject to Grant Agreements.

FAA grant agreements do not contain any provision authorizing military agencies to take control of the airport during a national emergency.

c. Negotiation Regarding Charges.

Negotiations under war or national emergency clauses will be between the federal agency requiring the use of the airport and the sponsor. The only compliance responsibility the FAA has regarding such clauses is releasing the property from its federal obligations. (*See* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

7.5 Airport Maintenance Federal Obligations.

a. Agreements Involved.

Most airport agreements with the federal government impose on the sponsor a continuing federal obligation to preserve and maintain airport facilities in a safe and serviceable condition. An exception may exist in instrument of transfer documents conveying federal lands under the authority of section 16 of the Federal Airport Act of 1946 (1946 Airport Act), section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act), and section 516 of the Airport and Airway Improvement Act of 1982 (AAIA). This current provision is codified at 49 U.S.C. § 47125. However, these transfers are normally followed with development grants that impose federal maintenance obligations.

Where section 16, 23, or 516 conveyances are made under circumstances that do not involve a follow-on development agreement, the maintenance and operation grant assurances should be incorporated into the instrument of transfer document as a special condition.

b. Airport Facilities to be Maintained.

This section applies to all airport facilities shown on the Airport Layout Plan (ALP) as initially dedicated to aviation use by an instrument of transfer or federal grant agreement. This means that the sponsor cannot discontinue maintenance of a runway or taxiway or any other part of the airport used by aircraft until the FAA formally relieves the sponsor of the federal maintenance obligation. The federal obligations of the sponsor remain in force throughout the useful life of the facility. (*See* chapter 4, *Federal Grant Obligations and Responsibilities*, section 4.4, *The Useful Life of Grant Funded Projects*).

If land was acquired with federal assistance the obligations on the land remain in effect until released by the FAA. (*See* chapter 4, *Federal Grant Obligations and Responsibilities*, section 4.3, *Duration of Federal Grant Obligations*).

For private airports, the useful life of project items installed within a facility, or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project, shall be no less than 10 years from the date of acceptance of the Federal aid project. If land was acquired with federal assistance, the federal obligation to maintain and operate the airport will remain in effect until released by the FAA. (*See* Grant Assurance B, *Duration and Applicability*).

In all cases, the actual obligating documents should be reviewed to ensure the exact terms of the grant agreement are applied. An airport sponsor cannot shorten its obligations by allowing projects to deteriorate. The FAA Regions make the determination of when the useful life has expired on a federally funded project that needs reconstruction, rehabilitation, or major repair in order to continue serving the purpose for which it was developed. (*See* chapter 4, *Federal Grant Obligations and Responsibilities*, section 4.4, *The Useful Life of Grant Funded Projects*).

Most airport agreements impose on the sponsor a continuing federal obligation to preserve and maintain airport facilities in a safe and serviceable condition.

7.6 Maintenance Procedures.

Generally, airport grant agreements require the sponsor to carry out a continuing program of preventive and remedial maintenance. The maintenance program is intended to ensure that the airport facilities are at all times in good and serviceable condition to use in the way they were designed. This includes maintenance of airport pavement. (*See* section 7.7, *Airport Pavement Maintenance Requirement*). In addition, the FAA recommends that airport sponsors must maintain an Airport Safety Self-Inspection program as further described in section 7.10, *Airport Operations Requirements*. This includes but is not limited to inspection and maintenance of paved and unpaved areas, segmented circles and wind cones to ensure accurate readings, and drainage structures. Additionally, the airport agreement may express or imply requirements and include specific federal obligations such as:

- Frequently check all structures for deterioration and repair.
- Inspect paved and unpaved (gravel, turf, etc.) runways, taxiways, and common-use areas at regular intervals to ensure compliance with operational and maintenance standards, to prevent progressive deterioration of operation areas,

and to make routine repairs such as filling holes, mowing, grading, and crack sealing etc.

- Maintain airfield signage in a safe and operable condition at all times.
- Frequently inspect segmented circles and wind cones to ensure accurate readings and proper functioning.
- Frequently inspect all drainage structures including subdrain outlets to ensure unobstructed drainage.
- Identify and address wildlife hazards (s*ee* section 7.12.d, *Hazards and Mitigation. Wildlife Hazards*).
- Frequently check all approaches to ensure conformance with federal obligations.
- Frequently check airport markings, lighting, signs, and visual and radio navigational aids, to ensure in conformance with federal obligations.

7.7 Airport Pavement Maintenance Requirement.

A parallel assurance to Grant Assurance 19, *Operation and Maintenance*, is the airport sponsor's federal obligation to maintain a pavement preventive maintenance program under Grant Assurance 11, *Pavement Preventive Maintenance*. This assurance requires sponsors with federally funded pavement projects for replacement or reconstruction approved after January 1, 1995, to implement an effective pavement maintenance and management program that runs for the useful life of any pavement constructed, reconstructed, or repaired with federal financial assistance.

Sponsors must comply with FAA Advisory Circular AC 150/5380-7, *Airport Pavement Management* (PMP) for all projects funded with AIP funds. This AC sets forth the minimum requirements of a pavement maintenance program.

a. Guidelines for Inspecting Pavement.

Failing to provide basic pavement maintenance can be a compliance concern to the FAA. Lack of adequate and timely maintenance is the greatest single cause of pavement deterioration and, as a result, loss of federal investment. As such, the FAA places a high priority on the upkeep and repair of all pavement surfaces in the aircraft operating areas. Properly maintained pavements also ensure safe aircraft operating areas. While deterioration of pavement due to usage and exposure to the environment cannot be completely prevented, a timely and effective maintenance program can reduce this deterioration. As discussed in AC 150/5380-7, all federally obligated airports must perform a detailed inspection of airfield pavements at least once a year for the Pavement Management Program (PMP).

Many failures of airport pavement and drainage features have been directly attributed to inadequate maintenance characterized by the absence of a PMP. The FAA recognizes that a maintenance program, no matter how effectively carried out, cannot overcome or compensate for a major design or construction inadequacy. Nonetheless, an effective maintenance program is critical in preventing pavement failure that may result from design or construction deficiencies. PMP inspections can reveal problems at an early stage and provide timely warning to permit corrective action. Postponing even minor pavement maintenance can develop into the need for a major pavement rehabilitation or replacement project.

The following FAA Advisory Circulars provide guidelines and procedures for inspecting airport pavements and can be found at:

(1) AC 150/5320-6, *Airport Pavement Design and Evaluation*

(2) AC 150/5380-6, *Guidelines and Procedures for Maintenance of Airport Pavements*

(3) AC 150/5380-7, *Airport Pavement Management Program (PMP)*

(4) AC 150/5200-18, *Airport Safety Self-Inspection*

(5) AC 150/5340-26, *Maintenance of Airport Visual Aid Facilities*

b. Pavement Inspection Procedures.

Pavement maintenance is a continuous function and the responsibility of the airport sponsor. For a maintenance program to be effective, a series of scheduled, periodic inspections or surveys conducted by experienced engineers, technicians, or maintenance personnel is required. These surveys must be controlled to ensure that (i) each element or feature being inspected is thoroughly checked, (ii) potential problem areas are identified, and (iii) proper corrective measures are recommended. The maintenance program must provide adequate inspection follow-up to ensure corrective work is expeditiously accomplished and recorded. Although the organization and scope of maintenance activities will vary in complexity and degree from airport to airport, the general types of maintenance are relatively the same regardless of airport size or extent of development.

c. Pavement Inspection Schedules.

The airport sponsor is responsible for establishing a schedule for inspections. The pavement inspection should be scheduled to ensure that all paved areas, particularly those that may not come under day-to-day observation, are thoroughly checked. Thorough inspections of all paved areas should be scheduled at least twice a year. In temperate climates, one inspection should be scheduled for spring and one for fall. Any severe storms or other conditions that may have an adverse effect on the pavement may also necessitate a thorough inspection. In addition, visual pavement inspections should be included in the airport sponsor's self-inspection.

d. Pavement Recordkeeping.

Airport sponsors should record and maintain complete information concerning all pavement inspections and maintenance performed. The severity of existing pavement problems, locations, probable causes, remedial actions, and results of follow up inspection and maintenance should be documented. In addition, records should contain information on potential problem areas and preventive or corrective measures identified. Records of materials and equipment used to perform all maintenance and repair work also should be maintained for future reference. Such records can be used later in identifying materials and remedial measures that may reduce maintenance costs and improve pavement serviceability.

The suggested procedures for performing a pavement condition survey are included in AC 150/5320-6, Airport *Pavement Design and Evaluation*, and AC 150/5380-7, *Airport Pavement Management Program (PMP)*. The results of a pavement condition survey can inform pilots of existing pavement surface conditions and to help airport sponsors plan and prioritize pavement maintenance and replacement. Based on data collected from such surveys, surface pavement conditions are reported as a numerical ranking known as Pavement Condition Index (PCI). The PCI is a rating of the surface condition of a pavement and is a measure of functional performance with implications of structural performance. Periodic PCI determinations on the same pavement will show the changes in performance level with time.

7.8 Major Pavement Repairs.

a. Unpreventable Deterioration.

The federal obligation to maintain the airport does not extend to major rehabilitation of a facility that has become unusable due to normal and unpreventable deterioration or through acts of God. (*See* Grant Assurance 19, *Operation and Maintenance*). Therefore, a sponsor's federal maintenance obligations do not include such requirements as restoring a building destroyed by fire, earthquake, or hurricane winds, nor do they include undertaking a major rehabilitation of a portion of the airfield inundated by floods. Likewise, airport sponsor federal obligations do not include the complete resurfacing of a runway unless it is the result of obvious neglect of routine maintenance over time. Failure to perform day-to-day airport maintenance, however, may have a cumulative effect, resulting in major repairs and reconstruction that will fall under the sponsor's federal obligations.

b. Pavement Overstressing.

The sponsor has a commitment to prevent gross overstressing of airport pavement beyond load bearing capacity. If airport pavement deteriorates and the sponsor is not prepared to strengthen the pavement, then the sponsor must limit the pavement's use to aircraft operations that will not overstress the pavement, while the sponsor addresses the issue. Should failure occur because the sponsor failed to take timely corrective action after being advised of the pavement limitations, restoration of the failed pavement to a satisfactory condition may not be eligible for AIP funding.

7.9 Unpaved Landing Areas.

Airports can safely accommodate most general aviation activities. Aeronautical users, operators, and the airport sponsors should collaborate to find a reasonable location on the airport for safe operation of the activity, which may include unpaved landing areas. Airport sponsors have a variety of FAA regulations, policy, and guidance at their disposal to assist in safely accommodating general aviation operations from unpaved areas. Reasonable accommodations may mean providing access to areas other than the runways or taxiways as designated operating areas.

In those cases where an airport imposes a restriction on these operations, or an aeronautical user files a complaint, the FAA will review the matter. In coordination with Flight Standards, ARP will review the proposed restriction and balance the (1) specific circumstances of the case, (2) airport compliance requirements, (3) Flight Standards oversight of operational safety determinations, and (4) as applicable, the role of the airport design standard(s).

7.10 Airport Operations Requirements.

A fundamental obligation of the sponsor is to keep the airport open for public aeronautical use. Grant Assurance 19, *Operation and Maintenance*, requires the sponsor to operate the airport and all facilities necessary to serve the aeronautical users of the airport at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies for operation. This includes adopting and enforcing rules, regulations, and ordinances as necessary to ensure safe and efficient flight operations.

The sponsor must use its AIP-FAA funded equipment for the purpose specified in the grant agreement. It must maintain the equipment in accordance with appropriate advisory circulars and manufacturer recommendations. Refer to the actual grant agreements to confirm that the equipment acquired with FAA funds and reported in the airport's inventory is the same as listed in the sponsor's grant agreements during the useful life of the equipment. (*See AIP Handbook*, Order 5100.38, Table 5-31 *Project Physical Completion Requirements*, *(c) Equipment Acquisition*).

Accordingly, the sponsor is more than a passive landlord because the assurance federally obligates it to maintain and operate the aeronautical facilities and common-use areas for the benefit of the public.

This responsibility includes the following:

a. Safe Operations.

The sponsor should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety and efficiency of aircraft operations and to protect the public using the airport. When a proposed action would directly impact the flight of an aircraft, that action should be coordinated with FAA Flight Standards and/or Air Traffic Control, as well as the Region or ADO.

b. Operations in Inclement Weather.

The federal obligation to maintain the airport does not impose any specific responsibility to remove snow or slush or to sand icy pavements. Nonetheless, when the airport is expected to have snow and ice operations on a seasonal or regular basis, and AIP equipment and development has been funded for that purpose, the airport is obligated to develop snow and ice airport maintenance procedures. The sponsor is responsible for providing a safe, usable facility. A safe and usable facility includes protection of runway safety areas and other areas that may be compromised if snow berms are left adjacent to the pavement edge. (*See* AC 150/5200-30, *Airport Field Condition Assessments and Winter Operations Safety*). Where climatic conditions may affect the decision of flight, the sponsor must promptly issue a Notice to Airmen (NOTAM) and, if necessary, close all or part of the airport until unsafe conditions are remedied. Additional NOTAMs may need to be issued as field conditions change. Such NOTAMs should be canceled promptly when the airport reopens, and operations return to normal. The sponsor should correct unsafe conditions within a reasonable amount of time.

c. Airport Self-Inspections.

The FAA recommends that sponsors implement a safety self-inspection program that incorporates these requirements to operate an airport in addition to other safety items. This includes developing and using self-inspection checklist, as part of the airport's self-inspection program. The current edition of AC 150/5200-18, *Airport Safety Self-Inspection*, provides guidance on guiding airport self-inspections, including sample inspection checklists.

d. Airfield Lighting.

If airfield lighting is installed, the sponsor must ensure that the airfield lighting and associated airport beacon and lighted wind and landing direction indicators are operated every night of the year or when needed during low visibility conditions as described in pilot publications. This means that the lights must be on at night or be available for use upon demand. This requirement can be effectively met by an attendant to turn on the proper lights when requested. The sponsor can also install pilot-controlled lighting system that uses an electronic device that permits remote activation of field lighting by radio equipment in an aircraft. Properly maintaining marking, lighting, and signs can reduce the potential for pilot confusion and prevent a pilot deviation or runway incursion.

At some locations, the sponsor may not need to operate the airfield lights every night. This might occur where the aeronautical demand is seasonal or where demand ceases after a certain hour each day. However, airport lighting is not only important during periods of darkness. Airport lighting is a safety enhancement during visual operations with partial weather obscurations such as rain, fog, or snow.

In very rare cases, circumstances may make using an airport undesirable during certain hours of darkness, such as when air traffic control is suspended during some part of the night and the local environment (obstructions or heavy enroute traffic) makes using the airport hazardous during that period. Under such circumstance, the FAA may consent to a part-time operation of airfield lights. The FAA's consent must be recorded in the form of a safety determination, where the FAA Flight Standards and other FAA offices had an opportunity to comment, such as an airspace study.

e. Warnings.

If any part of the airport is closed or if the use of any part of the airport is hazardous or unserviceable, including Navigational Aids (NAVAIDs), the sponsor must provide warnings to users, such as adequate marking and promptly disseminate airport condition information using the FAA's NOTAM system and follow local procedures to disseminate information to tenants. (*See* AC 150/5200-28, *NOTAMS for Airport Operators*).

f. Transportation Security Administration (TSA) Security Requirements.

(1) General Information.

The safe operation of a federally obligated airport may require compliance with federal airport security requirements, as required under TSA regulations.

TSA prescribes security requirements for airport operators serving certain types of air carrier and on-demand charter operations. These requirements are contained in 49 CFR part 1542, *Airport Security*. Generally, airports that serve air carrier and charter operations required by TSA to have a security program under 49 CFR part 1544, *Aircraft Operator Security: Air Carriers and Commercial Operators*, and 49 CFR part 1546, *Foreign Air Carrier Security*, and are also required to comply with Part 1542. Additional information on airport security requirements is available at TSA's website.

TSA also publishes security guidelines for general aviation (GA) airports. These guidelines, Security Guidelines for General Aviation Airports, provide a set of security best practices and methods for determining when and where these enhancements would be appropriate. These guidelines are located on the TSA website and are periodically updated.

(2) Compliance.

The relevant compliance implications of TSA security for federally obligated airports are in the form of security requirements imposed by an airport sponsor upon airport users. When a complaint is brought to the FAA's attention, the FAA will attempt informal resolution. This process should involve the airport, TSA, and the impacted users. The FAA may be asked to render a preliminary decision on whether the security requirements imposed by the airport are consistent with the airport's other federal obligations. Most likely, this will involve the requirements for reasonable and not unjustly discriminatory terms and conditions for using the airport. Coordination with ACO-100 is recommended when encountering complaints involving TSA requirements.

7.11 Local Rules and Procedures.

One of the most important functions of local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft, people, and structures on the ground.

For example, if aircraft are allowed to park too close to an active runway, aircraft themselves become a hazard to other aircraft. Rules and procedures that implement FAA airport design standards will ensure adequate separation of aircraft during ground operations. To keep motorists, cyclists, pedestrians, and animals from inadvertently wandering onto the airfield or areas designated for aircraft maneuvering, the sponsor should install adequate controls such as fencing and signage.

As in the operation of any public service facility, there should be adequate rules covering vehicular traffic, sanitation, security, crowd control, access to certain areas, and fire protection. The sponsor is also expected to ensure services such as fueling aircraft, storing and dispensing hazardous materials (*e.g.*, aircraft fuel and lubricants, oxygen, deicing materials), and aircraft painting adhere to local fire safety, environmental and building codes to protect the public.

Sometimes, additional measures are needed to reduce the likelihood of a runway incursion or address a rise in unsafe occurrences. For example, if a runway safety problem is identified at an airport, the FAA compliance personnel should coordinate corrective action not only with the airport but also with the FAA Airport Certification and Safety Inspector for an airport certificated under 14 CFR part 139, and other FAA lines of businesses, including the Regional Runway Safety Program Office, Flight Standards and/or Air Traffic. When possible, action should also be coordinated with the local Runway Safety Action Team (RSAT). Repeated incidents where the RSAT safety recommendations have been ignored by the sponsor may be a violation of Grant Assurance 19, *Operation and Maintenance*.

Often, local air traffic patterns are needed to establish uniform and orderly approaches and departures from the airport. Establishing nonstandard air traffic patterns to mitigate aircraft noise and overflight may be a violation of Grant Assurance 19 and the FAA safety standards. Controlling aircraft operation is an authority preempted under federal law and is the exclusive responsibility of the FAA. When working on local air traffic procedures, the sponsor must coordinate with the FAA Flight Standards or/and Air Traffic to ensure safe operations.

> Controlling aircraft operation is an area preempted under federal law and is the exclusive responsibility of the FAA.

The FAA has a number of initiatives underway to prevent runway incursions. Several FAA documents address the airport operator's opportunity to help reduce the potential for runway incursions. These discuss runway incursion prevention measures airport operators should consider implementing.

7.12 Hazards and Mitigation.

Grant Assurance 20, *Hazard Removal and Mitigation*, requires airport sponsors to protect terminal airspace. Accordingly, the sponsor must protect instrument and visual flight operations, including established minimum flight altitudes. Adequate protection includes clearing, removing, lowering, relocating, marking, lighting, or mitigating existing airport hazards. It also includes prevention of future airport hazards, including wildlife hazards.

NOTE: Zoning is one means to protect against obstructions outside the airport property but may not be the best means in all cases; zoning can change, and property owners may receive variances. Avigation and clearing easements may be a more effective means of protection.

If a sponsor has zoning authority and permits an obstruction to be erected near the airport that is found to be a hazard under 14 CFR part 77, *Objects Affecting Navigable Airspace*, or that results in penetration or in any other impact upon the airport's approaches or use the FAA may find the sponsor in violation of Grant Assurance 20, *Hazard Removal and Mitigation*.

The FAA will confirm that airport sponsors develop a plan for removing or mitigating obstacles and hazards to air navigation. An airport sponsor with unmitigated obstacles will develop an Obstacle Action Plan (OAP) that details how and when each of the surfaces will be cleared and maintained.

a. FAA Guidance.

The FAA published the following advisory circulars relating to obstruction hazards.

(1) AC 150/5190-4, *Airport Land Use Compatibility*

This advisory circular provides airport sponsors with an effective zoning ordinance that can be used at the local level to protect the airport from obstructions.

(2) FAA Order JO 7400.2P, *Procedures for Handling Airspace Matters*.

This order provides information regarding the requirements for notifying the FAA of proposed construction or alteration under 14 CFR § 77.13. (*See* also FAA Order 8260.3, *United States Standard for Terminal Instrument Procedures (TERPS) for Obstacle Clearance Surfaces*.)

(3) AC 70/7460-1, *Obstruction Marking and Lighting*.

This advisory circular describes the standards for marking and lighting structures such as buildings, chimneys, antenna towers, cooling towers, storage tanks, and supporting structures of overhead wires.

(4) FAA Airports Standard Operating Procedure (SOP) 9.2, *Standard Operating Procedures for FAA Aeronautical Study, Coordination and Evaluation*.

This SOP establishes procedures for the collection, maintenance, and resolutions of airport data in the FAA's Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) system and coordination of this data in required airport planning, design and construction documents, including ALPs.

(5) AC 150/5370-2, *Operational Safety on Airports During Construction*.

This advisory circular provides guidance on developing Construction Safety and Phasing Plans to ensure safety temporary construction activities does not jeopardize operational safety.

b. Preexisting Obstructions.

(1) Acknowledgement of Existing Obstructions.

Some airports were developed at locations where preexisting structures or natural terrain (*e.g.,* hill tops) would constitute an obstruction by currently applicable standards. If the grant agreement did not specify the removal of such obstructions as a condition of the grant and the ALP did not show the removal, its execution by the federal government constitutes an acknowledgement that the removal was not reasonably within the power of the sponsor at that point in time. Future master plan studies and ALP updates should re-evaluate existing obstructions to determine if they can be mitigated or removed.

(2) Threshold Displacement.

A runway threshold is the beginning of that portion of the runway available for landing. A displaced threshold is located further along the runway and is apart from the physical end of the runway. Displacement of a threshold reduces the length of the runway available for landings. The portion of a runway prior to a displaced threshold is available for takeoffs in either direction and landings from the opposite direction. There are many former military airports acquired as public airports under the Surplus Property Act where the existence of obstructions at the time of development was considered acceptable. At such airports where these obstructions in the approach surfaces do not meet airport design standards, such as threshold siting requirements, but cannot feasibly be removed, relocated, or lowered, the FAA may consider approving a displaced or relocated threshold. This requires prior FAA approval, including an airspace evaluation and an update of the ALP and Airport Master Record showing the proposed displacement. For more information on displaced threshold, see the current edition of AC 150/5300-13, *Airport Design*.

c. Obstruction Hazards.

(1) Objects Affecting Navigable Airspace.

Airport sponsors are federally obligated to take appropriate action to assure that terminal airspace will be adequately cleared and protected by removing, lowering, relocating, marking or lighting, or otherwise mitigating the obstruction hazard as required to protect instrument and visual operations to the airport. (*See* Grant Assurance 20, *Hazard Removal and Mitigation*). The term "obstruction" refers to natural or manmade objects that penetrate surfaces defined in 14 CFR part 77, *Objects Affecting Navigable Airspace*, or other appropriate citations applicable to the agreement applied to the particular airport.

In agreements issued prior to December 31, 1987, sponsors agreed to prevent, as much as reasonably possible, the construction, erection, alteration, or growth of an obstruction either by obtaining control of the land involved, by acquiring and retaining easements or other land interests, or by adopting and enforcing zoning regulations. In many cases, uncontrolled growth of trees and vegetation can be a hazard. These hazards must be dealt with in conjunction with any applicable local or state requirements. The airspace allocated for protecting the airport will vary from airport to airport. The FAA Region or ADO should contact the FAA Flight Procedures for guidance on how to apply this provision when an issue is raised. Additional information can be found in chapter 20, *Compatible Land Use*.

(2) Solar and Wind Farms. While the FAA supports solar and wind energy projects, these projects can, without proper planning, be hazardous to aircraft operations. In siting a proposed wind or solar energy system, the airport sponsor is responsible for limiting the potential for inference with Communication, Navigation, and Surveillance (CNS) facilities. The sponsor should do so by ensuring that the proposed system remains clear of the critical areas surrounding CNS facilities. (*See* AC 150/5300–13, *Airport Design*, Chapter 6, defines the critical areas for common CNS facilities located on an airport), Sponsors may need to coordinate with FAA Technical Operations for proposed projects off-airport.

The FAA's policy on *Review of Solar Energy System Projects on Federally-Obligated Airports* (*See* 86 Fed. Reg. 25801, May 11, 2021) should be used as a guide to submit the request to the FAA when considering the installation of a solar farm. Any construction or alterations, including wind farms that may constitute an obstruction according to 14 CFR part 77 must be submitted to the FAA for study within 45 days of construction or alteration. (*See* section 7.12.e, *Obstruction Evaluation/Airport Airspace Analysis (OE/AAA)*). As appropriate, the FAA will engage with other Federal agencies such as the Department of Defense, the Department of Homeland Security, the Department of Energy, and the Department of Interior to expedite any further regulatory modifications and improvements to 14 CFR part 77 to ensure there is a predictable, consistent, transparent, and timely application process for the wind industry.

d. Wildlife Hazards.

Wildlife collisions with aircraft (known as wildlife strikes) have resulted in the loss of hundreds of lives worldwide, as well as billions of dollars in aircraft damage. Further, hazardous wildlife attractants on or near airports can jeopardize future airport expansion, which makes proper community land use planning essential.

Most public-use airports have large tracts of open, undeveloped land that provide added margins of safety and noise mitigation. These areas can also present potential hazards to aviation if they encourage wildlife to enter an airport's approach or departure airspace or air operations area (AOA). In addition, an airport's proximity to landfills, wetlands, lakes, ponds, and certain crops may result in hazards to air navigation created by flocks of birds attracted to the landfills or water. Constructed or natural areas such as detention/retention ponds and wetlands can provide habitat for waterfowl and migrating bird species. Parking structures and tall lamp poles can provide roosting habitats for many species of bird, including pigeons and large birds of prey. Human activities on aircraft ramps and hangar areas can attract wildlife, particularly uncovered or overflowing trash receptables. Wastewater treatment plants and agricultural or aquaculture activities, can provide wildlife with ideal habitat locations. Even stockpiles of construction materials, including old concrete slabs saved for aggregate, can create wildlife habitat.

The FAA maintains a comprehensive program to address wildlife hazards. Information on policy guidance, accident data, research and outreach can be found at the FAA's Wildlife Hazard Mitigation website. This website provides the FAA Wildlife Strike Database, resources, Research and Development, Frequently Asked Questions (FAQs), and Wildlife Management. It also provides links to the current editions of Advisory Circulars and other resources related to wildlife hazards. This includes AC 150/5200-33, *Hazardous Wildlife Attractants on or Near Airports*, which provides guidance on assessing and addressing potentially hazardous wildlife attractants when locating new facilities and implementing certain land-use practices on or near public-use airports. In addition, AC 150/5200-34, *Construction or Establishment of Landfills near Public Airports*, provides information for the construction or establishment of certain landfills near federally funded public airports that serve air carrier operations in aircraft with less than 60 seats.

Land use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife strikes.

e. Obstruction Evaluation/Airport Airspace Analysis (OE/AAA).

In administering 14 CFR part 77, *Objects Affecting Navigable Airspace*, the FAA's prime objectives are to promote air safety and the efficient use of navigable airspace. To accomplish this mission, anyone proposing to construct or alter an object that affects airspace must notify the FAA prior to construction by filing FAA Form 7460-1, *Notice of Proposed Construction or Alteration* in accordance with 14 CFR part 77. Instructions for filing the FAA Form 7460-1, are described in the Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) portal. The same filing contact information is used to notify the FAA of actual construction using FAA Form 7460-2, *Notice of Actual Construction or Alteration*.

The FAA's Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) website provides detailed information on obstruction marking and lighting and provides the current forms and advisory circulars, including AC 70/7460-1M, *Obstruction Marking and Lighting* (*See* the Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) portal). Typical projects include cell phone towers, top-mount antennas, hangars and other buildings, power lines, radio broadcast towers, and temporary construction equipment such as cranes. The purpose of Form 7460-1 notification is to allow the FAA to conduct an obstruction evaluation on the proposal to determine whether the object will adversely affect airspace or navigational aids (NAVAIDs). Additional information relating to the airport sponsor's obligation to protect its airspace is available in chapter 20, *Compatible Land Use*.

If the proposed structure will emit any electromagnetic broadcast signals, the proponent must also specify which radio frequencies will be used. If the FAA determines that the proposed object will penetrate airspace or adversely affect NAVAID equipment, the FAA can require, as a condition to a no-hazard determination, that the proponent reduce the height of the object, change the broadcast frequency, or outfit the object with obstruction marking and lighting. In cases where the FAA determines the object will be a hazard to air navigation, the FAA can issue a hazard determination, which may have the effect of prohibiting the project from being constructed. A determination of "no hazard," however, does not ensure a safe environment. It is the role of the state sponsor to work to address those areas specified in the FAA's determination letter, including marking and lighting obstructions to ensure, ultimately striving for the highest level of safety between the pilot and the obstruction.

(1) Guidance for Obstruction Evaluation. The FAA *Order JO 7400.2, Procedures for Handling Airspace Matters*, provides procedures for FAA's Air Traffic Control Organization (ATO) on handling airspace matters, including the evaluation of requests for airspace evaluations. As discussed above, AC 70/7460-1, *Obstruction Marking and Lighting*, also provides guidance on standards for marking and lighting structures such as buildings, chimneys, antenna towers, cooling towers, storage tanks, supporting structures of overhead wires, etc.

(2) Filing Notice of Proposed and Actual Construction. As described above, sponsors must file a Form 7460-1, *Notice of Proposed Construction or Alteration* for an FAA airspace evaluation of any proposed on-airport construction or alteration. Instructions and electronic filing are available in the OE/AAA portal. The same filing contact information is used to notify the FAA of actual construction using FAA Form 7460-2, *Notice of Actual Construction or Alteration*.

Sponsors should immediately contact their ADO for on-going airport construction projects that were not evaluated by the FAA, such as private hangar construction. An airspace evaluation should be requested as soon as the sponsor discovers no airspace evaluation has been conducted as building and structure heights may have an immediate safety impact, such as raising decision heights for instrument approach and departure procedures.

f. Mitigation.

Zoning is one means to protect against obstructions outside the airport property but may not be the best means in all cases; zoning can change, and property owners may receive variances. Avigation and clearing easements may be a more effective means of protection. If a sponsor has zoning authority and permits an obstruction to be erected near the airport that is found to be a hazard under 14 CFR part 77, *Safe, Efficient Use, and Preservation of the Navigable Airspace*, or that results in penetration or in any other impact upon the airport's approaches or use to the approach and/or departure surface(s) contained in AC 150/5300-13, *Airport Design*, or a surface contained in the FAA Order 8260.3, *United States Standard for Terminal Instrument Procedures* (TERPS), the FAA may find the sponsor in violation of Grant Assurance 20, *Hazard Removal and Mitigation*. In addition, the FAA may find the sponsor is in violation of the aforementioned grant assurance if they permit an obstruction to be built on the airport without filing notice with the FAA in accordance with Part 77 or not adhering to the conditions of the FAA determination.

7.13 Use of Airports by Federal Government Aircraft.

Through various agreements, the federal government retains the right to use airport facilities jointly, either with or without charges. Both Grant Assurance 27, *Use by Government Aircraft*, and Federal property conveyance instruments require that the government retain the right to use facilities developed or conveyed with federal funds to perform government functions, unless the use is substantial. A governmental function is defined in 49 U.S.C. § 40125(a)(2) to mean "an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees,…), aeronautical research, or biological or geological resource management."

a. Federal Government Aircraft Definition.

For the purpose of Grant Assurance 27, *Use of Government Aircraft*, and Federal property conveyance obligations, government aircraft are aircraft that are owned, leased, or contracted, or chartered by the Federal Government to perform a federal mission under federal control (*e.g.*, DOD [including Air National Guard (ANG) and National Guard (NG) aircraft under 10 U.S.C. and 32 U.S.C.], U.S. Coast Guard, U.S. Forest Service (USFS), Customs and Border Protection (CBP), NOAA, NASA, FAA, Department of Agriculture Agricultural Research Service (ARS), U.S. Marshals Service, FBI, DEA, etc.). These are flights that the United States conducts or operates by its employees, or agents to execute its congressionally mandated mission for the "unique and sole purpose" of the United States. (*See United States v. King County*, 666 F.Supp. 3d 1134, 1148 (W.D. Wash. 2023), aff'd, *United States v. King County*, 9th Cir. Case No. 23-35362, Nov. 29, 2024 (2024 WL 4918128).

This includes charter flights and aircraft contracted by the Federal Government to perform governmental functions or missions (*e.g.*, firefighting, search and rescue, weather missions, mapping, transportation of prisoners, and immigration) with the specific flights under government control. Government aircraft operations may also include government aircraft operating as public aircraft, certain Civil Air Patrol missions, activated Civil Reserve Air Fleet flights, and foreign military flights in U.S. airspace and at U.S. airports.

The key part of this definition is that government aircraft are aircraft that are owned, leased or contracted to perform a federal mission under federal control. For instance, a MITRE contractor-owned aircraft, usually used to transport company employees, could be contracted to perform a NAVAID calibration flight on behalf of the FAA in which case the contracted calibration flight would be considered a government aircraft operation. However, if that same aircraft is used to transport MITRE employees, even if that travel is part of a government contract, it is not a government aircraft operation during those flights because the purpose of the flight is not to execute an operation of the United States.

b. Under Grant Agreements.

Grant Assurance 27, *Use by Government Aircraft*, provides that the airport sponsor will:

> …make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:
>
> a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
>
> b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

c. The Surplus Property Act.

49 U.S.C. § 47152, *Terms of Conveyances*, gives the federal government the right to make nonexclusive use of the landing area without charge – except the Secretary may limit use of the landing area if necessary to prevent unreasonable interference with other authorized aircraft. The federal government shall pay for substantial damage

caused by its use and contribute to maintaining and operating the landing area in proportion to its use.

Surplus Airport Property Instruments of Transfer issued under War Assets Administration Regulation 16 provide that the federal government shall at all times have the right to use the airport in common with others. The Secretary may limit such use to prevent interference with use by other authorized aircraft, so long as such limitations do not restrict federal government use to less than 25 percent (25%) of the capacity of the airport. The regulation further provides that federal government use of the airport to this extent shall be without charge of any nature, other than payment for any damage caused.

> The Surplus Property Act gives the federal government the right to make nonexclusive use of the airfield without charge – except the use may not unduly interfere with other authorized aircraft, and the federal government shall pay for damage caused by its use.

d. Joint Use Agreements for Military and Civilian Flying Facilities.

In all cases where the airport sponsor proposes to charge the federal government for use of the airport under the joint use provision, the sponsor should negotiate directly with the federal government agency or agencies in question. In other words, the FAA does not assume the role of negotiator when it comes to rates and charges imposed upon other federal government agencies; rather, it oversees compliance with applicable requirements such as those under Grant Assurance 27, *Use by Government Aircraft*. It is important to remember that in cases involving military units, the military entity in question may be subject to military regulations relating to fee negotiations. Air Force Instruction 10-1002, *Joint Use Agreements for Military and Civilian Flying Facilities*, dated August 8, 2018. This publication implements Air Force Policy Directive (AFPD) Joint Use of Military and Civilian Flying Facilities. It provides guidance for negotiating fair and reasonable charges to the Government for joint use of the flying facilities of a public airport. It applies to Air Force personnel at all levels who are involved with Air Force operations on public airports, including the Air Force Reserve and Air National Guard. In addition, it applies to individuals involved with civil aircraft operations on Air Force airfields.

7.14 Land for Federal Facilities.

a. Grant Agreements.

Grant Assurance 28, *Land for Federal Facilities*, requires the sponsor to:

> . . . furnish without cost to the Federal Government for use in connection with any provide facilities for air traffic control or air navigation activities, or and weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

There are subtle differences in the terms of these assurances under the various grant programs. Therefore, when questions arise regarding the use of space, refer to the most current grant agreement.

b. No Requirement for Free Rent.

Sponsors are not federally obligated to furnish space rent-free under the FAA Reauthorization Act of 2018 (Pub. L. 115-254), Section 147, *General facilities authority*. However, the sponsor is required to furnish to the federal government without cost any land necessary for the construction at federal expense of facilities to house any air traffic control activities, such as Very High Frequency Omni-Directional Radio Range Facilities (VORs), Air Traffic Control (ATC) Towers or Terminal Radar Approach Controls (TRACONs), or weather reporting and communication activities related to air traffic control. This may or may not include utility easements. The airport sponsor is not required to furnish land rent-free for parking or roads to serve the facility and may negotiate reasonable rates for utilities, janitorial services, or other similar services. Surplus and Non-Surplus property deeds may contain other contractual terms and/or requirements concerning rental rates for federal facilities on the deeded properties.

c. Other Federal Agencies.

Sponsors, on occasion, provide space to other federal government agencies such as postal, customs, FBI, or immigration services at no cost or at nominal rent. The FAA does not view leasing space at these rates for activities that complement or support aeronautical operations as violating the self-sustaining grant assurance. However, federal agencies may not lease airport property for administrative purposes beyond the federal agencies' operational needs at no cost or nominal rent; airports should limit the leasehold to the space necessary to conduct the federal aeronautical operations, which may include some administrative space necessary to serve the operations. Often, at commercial service airports, an airport sponsor does not bear the expense for the space leased for customs, immigration, or agriculture operations, but rather the costs are built into the airlines' cost structure and are assessed to the airlines.

7.15 Airport Layout Plan (ALP).

Pursuant to 49 U.S.C. § 47107(a)(16), the airport sponsor is required to maintain a current ALP. Grant Assurance 29, *Airport Layout Plan*, requires the sponsor to keep an up-to-date ALP showing the airport's boundaries, the location of existing and proposed airport facilities and structures, the location of all existing and proposed non-aviation areas and improvements thereon, and all proposed and existing access points used to taxi aircraft across the airport's property boundary. An FAA-approved ALP (signed and dated) is a prerequisite to the grant of AIP funds for airport development or for the modification of the terms and conditions of a surplus property instrument transfer. *See* FAA Advisory Circular 150/5070-6, *Airport Master Plans*, and FAA SOP 2.0, *Standard Procedure for FAA Review and Approval of Airport Layout Plans (ALPs)*, for guidance on the preparation of the ALP drawing set.

a. Compliance Requirements.

Federal grant agreements require sponsors to conform airport use and development to the ALP. The erection of any structure or any alteration in conflict with the plan approved by the FAA may constitute a violation of this federal obligation under Grant Assurance 29, *Airport Layout Plan*. The Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223) (1987 Airport Act) further strengthened the Airport Layout Plan assurance language. If the sponsor makes a change in the airport or its facilities that is within the scope of the FAA's review and approval authority that does not conform with the portions of the plan approved by the FAA, and the FAA determines the change adversely affects the safety, utility, or efficiency of aircraft operations or of any federally owned, leased, or funded property on or off the airport, the FAA may require the airport to eliminate the adverse effect, including the cost of mitigating that may be required.

> Federal grant agreements require sponsors to conform their actions to the Airport Layout Plan. The erection of any structure or any alteration in conflict with the plan as approved by the FAA may constitute a violation of Grant Assurance 29, *Airport Layout Plan*.

b. Abandonment.

The sponsor may not abandon or suspend maintenance on any operational facility currently reflected on an approved ALP as being available for operational use. The conversion of any area of airport land to a substantially different use from that shown in an approved ALP could adversely affect the safety, utility, or efficiency of the airport and constitute a violation of federal grant obligations. Existing and proposed on-airport land uses are required to be shown on the ALP (normally depicted on a separate, dedicated land use drawing). All land that was federally acquired or federally conveyed is considered reserved for aeronautical use unless prior approval allows use of the land for non-aeronautical purposes, or the deed of conveyance specifically allows non-aeronautical use. (*See also* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*). For example, the construction of a corporate hangar on a site identified on the ALP for future apron and taxiway use would be a departure from the controlling ALP. This could impair the utility of the airport and violate sponsor federal obligations. When making a periodic compliance review of an ALP, the inspector should consider whether grant acquired land is still needed for airport purposes, particularly when it is separated from the airport property by a highway or railway. Approval of the ALP does not constitute the FAA approval to use land for nonaeronautical purposes.

7.16 Exhibit "A" (Property Inventory Map) and Airport Property Map.

The Exhibit A (Property Inventory Map) is an exhibit to the grant application for AIP or Infrastructure Investment and Jobs Act (IIJA) funds. It delineates all airport property owned by the sponsor. An up-to-date Exhibit A (Property Inventory Map) must be on file with the ADO prior to issuing a grant at that airport because it is contractually referenced in the grant agreement. (*See* FAA Order 5100.38, *AIP Handbook*, Table 5-6 *Grant Application Contents*).

When the airport sponsor accepts the AIP or IIJA grant, this property is federally obligated to the terms of the grant assurances. The Exhibit A (Property Inventory Map) must be prepared in accordance with the current Standard Operating Procedure (SOP) 3.00 for *FAA Review of Exhibit A Airport Property Inventory Maps* and meet the requirements in the current version of Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects.

The Exhibit A is an inventory of parcels that make up dedicated airport property. The Exhibit A indicates how the land was acquired, the funding source for the land and if the land was conveyed as Federal surplus land or Federal Government Property. Other detached parcels owned by the Airport Sponsor that are dedicated to airport purposes must also be shown on the Exhibit A. The Exhibit A must show all dedicated airport property regardless of the type of funds (AIP/ADAP/FAAP, state, local, etc.) used to acquire that property.

An Airport Property Map, on the other hand, is part of the Airport Layout Plan (ALP) drawing set. It is a drawing depicting the airport property boundary, land or property interests (including method of acquisition and type of interest), and future proposed land acquisition. The Airport Property Map is required as part of the Airport Layout Plan drawing set if any of the airport land was acquired with federal funds or through an FAA administered land transfer program. An Airport Property Map is not a substitute for an

Exhibit A (Property Inventory Map), but the Exhibit A may be used as a substitute for the airport property map in the ALP drawing set.

a. Land Accountability.

For compliance purposes, the airport sponsor needs to be able to account for land acquired with federal funds or federally conveyed. The ALP and Exhibit A (Property Inventory Map) together serve this purpose. The airport sponsor may also have additional documentation including copies of deeds regarding how various tracts of land were acquired and what federal grant or federal conveyance was used to acquire the land. Such complementary property map or land inventory map should be readily accessible to the FAA.

b. Excess Land.

If any grant-acquired land is found to be in excess of airport needs, both present and future, the sponsor may dispose of the excess land and comply with the FAA direction for returning or using the grant funds. Information on disposing of grant acquired land and is available in chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*.

7.17 Temporary Closing of an Airport.

a. Closing for Hazardous Conditions.

Airport owners are required to physically mark and light any temporary hazardous conditions and to adequately notify airport tenants and warn users of current field conditions through the use of the FAA's NOTAM Manager systems. This also applies to temporary airport closures, including closures for hazardous conditions, such as conditions caused by extreme weather or natural disasters. Prompt action should be taken to restore the airport facilities to a serviceable condition as soon as possible.

b. Closing for Nonaeronautical Events.

49 U.S.C. § 47107(a)(8), implemented by Grant Assurance 19(a), requires that any proposal to close the airport temporarily for nonaeronautical purposes must be approved by the FAA.

On May 12, 2023, the FAA published its *Notice of Final Policy and Procedures on the Temporary Closure of Airports for Nonaeronautical Purposes* (*see* 88 Fed. Reg. 30640) (Policy on Temporary Closure for Nonaeronautical Purposes). As the policy states, each year sponsors of federally obligated airports request temporary closures of a ramp, taxiway, runway or an entire airport for a nonaeronautical event, typically for a period of one to three days. The FAA must approve any such request in advance before the event can take place.

The FAA's Policy on Temporary Closure for Nonaeronautical Purposes provides a detailed description of what is needed to support a request for temporary closure of airport facilities, and a clear listing of the obligations of an airport sponsor before, during and after a closure. Conducting an event on airport property is a complex undertaking. Whether the purpose is an aeronautical event (*e.g.*, air show) or nonaeronautical event, and whether the event requires a full closure of the airport or simply a closure of a ramp or taxiway, the event will require detailed planning and preparation that should not be taken lightly. The airport sponsor's primary responsibility is to operate a safe airport providing access to aviation community.

The FAA believes that the primary purpose of public airports is to serve aeronautical users and therefore, airports should remain open and available for aviation use. However, under certain circumstances, an airport sponsor may request the FAA's approval of temporary closures for non-aeronautical activities or purposes, such as car races/shows, county fairs, parades, model airplane events, running events and fireworks. The FAA will not approve a closure if it would result in a negative impact to civil aviation.

In most cases, the impact to aviation, safety, security, liability, and other risks will outweigh the financial and community goodwill benefits promised to the airport for non-aeronautical activities. Closures of entire airports or closures of the only runway at an airport should be highly scrutinized and only allowed when there is a net benefit to the airport. A non-aeronautical use of an airport should not prevent the airport from realizing its economic potential nor diminish its role in the system of airports.

Moreover, airport sponsors must not allow any non-aeronautical activity that will damage or impact the useful life of airport pavements, signs, markings, lighting, or other infrastructure. To ensure nonaeronautical events do not negatively impact the safe operation of the airport, the FAA may require the sponsor to submit an Event Ground Operation Plan to the appropriate Region or ADO for review and approval.

Under Grant Assurance 11, *Pavement Preventative Maintenance-Management*, airport sponsors are required to implement a pavement preventative maintenance program to ensure the useful life of the pavement is protected. As a result, auto racing events should not be approved on recently rehabilitated (resurfaced or reconstructed) pavements. Moreover, airports are generally unsuitable locations for high velocity auto events, such as drag racing, and are likely to require additional liability insurance and crowd protection. These high-risk events should be highly scrutinized by both the sponsor and the Region or ADO.

Airport sponsors requesting a temporary airport closure must meet with the FAA at least 120 days prior to the event to discuss the plans and develop a timeline for the FAA review and approval. No less than 60 days prior to the event the airport sponsor must submit a written request including the specific information outlined in the Policy on Temporary Closure for Nonaeronautical Purposes. Airport sponsors must provide sufficient information and assurances to indicate that each requirement has been or will be satisfied. The Policy on Temporary Closure for Nonaeronautical Purposes provides a detailed list of what the written request must address and how each item may be addressed. (*See* 88 Fed. Reg. 30640, May 12, 2023). In Block Grant states, the State will review the written request to ensure it is complete and coordinate with the sponsor to address any missing information. The State also will provide input to the ADO. The ADO will provide final approval or disapproval of the proposal.

c. Closing for Aeronautical Events.

There are occasions when airports may be closed for brief periods for aeronautical events. Examples include an air show designed to promote a particular segment of aviation, annual fly-ins, and aviation conventions. In such cases, airport management should limit the period the airport will be closed to the minimum time consistent with the activity. Such closing should be well publicized in advance including issuing NOTAMs to minimize any inconvenience to the flying public.

While 49 U.S.C. § 47107(a)(8) and Grant Assurance 19 do not require ARP approval of the temporary closure of an airport for aeronautical events, Flight Standards Service (AFS), in the process of issuing an airshow waiver, will describe the safety conditions for the FAA's approval of the event. The AFS waiver relates to aircraft operations and the separation between aircraft operations and the viewing public. AFS will coordinate the ground operations plan with Regions or ADOs as appropriate. Events that are primarily nonaeronautical with an air show or other aeronautical event as an incidental activity should be reviewed by the Region or ADO. (*See Notice of Final Policy and Procedures on the Temporary Closure of Airports for Nonaeronautical Purposes, 88* Fed. Reg. 30640, May 12, 2023).

(1) Air Show Coordination, Certificate of Waiver.

Airport sponsors proposing to hold an airshow at their airport must coordinate with the FAA in advance of the event and follow procedures on the FAA's National Aviation Events Program webpage. Airshows at any airport require a Certificate of Waiver or Authorization (FAA Form 7711-1) that has been approved and issued by the appropriate FAA Flight Standards District Office. Flight

Standards, however, will not issue a Certificate of Waiver or Authorization to applicants sponsoring the event at airports certificated under 14 CFR part 139 until the responsible Region or ADO has reviewed and approved the event ground operations plan.

(2) Air Show Coordination, Event Ground Operations Plan.

As part of the FAA Flight Standard's approval process, sponsors need to submit an Air Show Event Ground Operation Plan to their ADO for approval. This coordination must be initiated at least 90 days prior to the event.

For airports certificated under 14 CFR part 139, the assigned the FAA Airport Certification and Safety Inspector must review and approve the event ground operations plan (*see* Part 139 CertAlert 02-07). Once the event ground operations plan is approved, the Airport Certification and Safety Inspector will send a letter to the airport operator and notify the appropriate FAA Flight Standards District Office.

At a minimum, the Event Ground Operations Plan should address:

- Air carrier operations that will occur during the event.
- Prior coordination with local ATCT to close runway and taxiways.
- Description of how closed and unserviceable areas will be marked and lighted, including closed runways and taxiways.
- Description of how airport will maintain the integrity of RSAs, TSAs and object free areas during the event.
- Protection of NAVAIDS, wind indicators, lights, signs, and other equipment from the public, including equipment on runways and taxiways used for the event.
- Prevention of public access to open movement areas and safety areas.
- Procedures to ensure public protection during the event, including measures to provide public safety from aviation activities occurring in adjacent areas.
- NOTAMS for closed runways and taxiways.
- Procedures to ensure ARFF/emergency routes remain clear.
- Plan to conduct self-inspections before, during and after the event to ensure movement and safety areas are repaired and meet the FAA standards.
- Mitigation of wildlife attractants, including food service and trash during the event

7.18 Access by Intercity Buses.

Grant Assurance 36, *Access by Intercity Buses*, requires the airport sponsor to permit, to the maximum extent practicable, access to the airport by intercity buses or other modes of transportation. However, the airport sponsor has no federal obligation to fund special facilities for intercity buses or other modes of transportation.

7.19 through 7.23 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 8. Exclusive Rights

8.1 Introduction.

This chapter describes the sponsor's federal obligations under Grant Assurance 23, *Exclusive Rights*, which prohibits an airport sponsor from granting an exclusive right for the use of the airport, including granting an exclusive right to any person or entity providing or intending to provide aeronautical services to the public.

In particular, the sponsor may not grant a special privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and fair competition at federally obligated airports.

8.2 Definition of an Exclusive Right.

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements or by other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.[1] The prohibition on exclusive rights extends to all aeronautical activities.

8.3 Legislative and Statutory History.

a. General.

Through the years, the exclusive rights provision has become a federal obligation that applies in cases involving airport development grants, and surplus and nonsurplus conveyances of federal property.[2]

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[1] *Federal Aviation Agency Policy Statement, Exclusive Rights at Airports*, Order 5190.1A, as published in the Federal Register (30 Fed. Reg. 13661, October 27, 1965); *see also* Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, Appendix 1.

[2] The applicable grant programs were the Federal Aid to Airports Program (FAAP), Airport Development Aid Program (ADAP), and Airport Improvement Program (AIP).

The prohibition against exclusive rights is contained in section 303 of the Civil Aeronautics Act of 1938 (Pub. L. No. 75-706, 52 Stat. 973) and applies to any airport upon which any federal funds have been expended.

b. 1938 to Date.

The exclusive rights provision is the oldest federal obligation affecting federally funded airports. The legislative background for the exclusive rights provisions began in 1938. The prohibition against exclusive rights was first contained in Section 303 of the Civil Aeronautics Act of 1938 (Pub. L. 75-706, 52 Stat. 973 recodified at U.S.C. § 40103(e)) and applies to any airport upon which any federal funds have been expended.

During the immediate post-war years, the Civil Aeronautics Board (CAB) was simultaneously engaged in processing the first Federal Aid to Airports Program (FAAP) development projects and working with the military to convey former military installations to public entities.

To develop and improve airports between 1939 and 1944, Congress authorized the Development of Landing Areas National Defense (DLAND) and the Development of Civil Landing Areas (DCLA) programs. In accordance with these programs, the Federal Government and the sponsor entered into an agreement, called an AP-4 Agreement, by which the sponsor provided the land and the Federal Government developed the airport. AP-4 Agreements contained a covenant running with the land stating that the sponsor would operate the airport without the grant or exercise of any exclusive right for the use of the airport within the meaning of Section 303 of the Civil Aeronautics Act of 1938. Although the useful life of all AP-4 improvements expired by 1969, the airports that entered into these agreements continue to be subject to the exclusive rights prohibition. An airport remains federally obligated as long as the airport continues to be operated as an airport – regardless of whether it remains under the same sponsor or not.

Following World War II, under the provisions of the Surplus Property Act of 1944 (section 13(g)) (as codified and amended by 49 U.S.C. §§ 47151- 47153), large numbers of military installations were conveyed without monetary consideration to public agencies. However, in 1947, Congress amended the Surplus Property Act (Pub. L. 80-289) to require the following language:

> No exclusive right for the use of the airport at which the property disposed of is located shall be vested (either directly or indirectly) in any person or persons to the exclusion of others in the same class. For the purpose of this condition, an exclusive right is defined to mean: (1) any exclusive right to use the airport for conducting any particular aeronautical activity requiring the operation of aircraft; (2) any exclusive right to engage in the sale of supplying of aircraft, aircraft accessories, equipment or

supplies (excluding the sale of gasoline or oil), aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, and propellers appliances).

In accordance with the Airport and Airway Improvement Act of 1982 (AAIA), 49 U.S.C. § 47101, et seq., the Federal Aviation Act of 1958 (FAA Act) 49 U.S.C. § 40103(e), and the Airport Improvement Program (AIP) grant assurances, the owner or operator of any airport that has been developed or improved with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity and without granting an exclusive right. The same obligation was required in previous grant programs such as the Federal Aid to Airports Program (FAAP), in effect between 1946 and 1970, and the Airport Development Aid Program (ADAP), which was in use between 1970 and 1982. The exclusive rights provision also applies to additional funding programs authorized by Congress to provide federal assistance grants to airports including those described in chapter 4, *Federal Grant Obligations and Responsibilities*.

Finally, the exclusive rights obligation also exists for airports that have received nonsurplus government property under 49 U.S.C. § 47125 and previous corresponding statutes. (*See also* chapter 3, *Federal Obligations from Property Conveyances*).

> An airport remains federally obligated as long as the airport continues to be operated as an airport – regardless of whether it remains under the same sponsor.

c. Governing Statutes.

Today, Title 49 U.S.C. contains the prohibition against exclusive rights in three locations:

- 49 U.S.C. § 40103(e), *No Exclusive Rights at Certain Facilities*.
- 49 U.S.C. § 47107(a), *General Written Assurances.*
- 49 U.S.C. § 47152, *Terms of Conveyances*.

d. Grant Assurances.

The specific grant assurances associated with the exclusive rights provision include:

(1) Grant Assurance 23, *Exclusive Rights*.

Since enactment of the AAIA, sponsor grant agreements have included the exclusive rights assurance. It states, "It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public." The grant assurance applies to public and private airport sponsors alike for as long as the airport remains an airport. The assurance is not included in grant agreements to planning agency sponsors and non-airport sponsors undertaking noise mitigation projects. (*See* FAA Order 5100.38, Paragraph 2-5).

Once federal funds have been expended at an airport, including through a surplus property conveyance, the exclusive rights prohibition is applicable to that airport for as long as it is operated as an airport. In other words, the obligation remains even though 20 years may have passed since the airport received its last AIP grant. In fact, there are airports today where the only federal obligation is the exclusive rights prohibition.

(2) Grant Assurance 22, *Economic Nondiscrimination*.

Grant Assurance 22, *Economic Nondiscrimination*, requires airports to allow access to all types of aeronautical activities on reasonable terms. Often Grant Assurances 22 and 23 are considered together since denying an aeronautical user based on unreasonable terms may be granting an exclusive right to another user. However, an airport sponsor's violation of Grant Assurance 22 does not automatically mean that the airport sponsor also violated Grant Assurance 23, the outcome will depend on the specific facts of the situation.

8.4 Development of the Exclusive Rights Prohibition into FAA Policy.

a. Interpretations of Aeronautical Activity.

(1) Prohibition Applies Only to Aeronautical Activities.

When called upon to interpret the application of Section 303, the Attorney General of the United States affirmed the prohibition against exclusive rights. In an opinion dated June 4, 1941, the Attorney General stated, "...it is my opinion that the grant of an exclusive right to use an airport for a particular aeronautical activity, such as an air carrier, falls within the provision of section 303 of the Civil Aeronautics Act precluding any exclusive right for the use of any landing area." (40 Op. Att'y Gen. 71 (1941)).

If an airport sponsor prohibits an aeronautical activity without a commercial component, coordination with ACO-1 and the Office of Chief Counsel is necessary.

In 1962, the FAA published its Policy on Exclusive Rights in the Federal Register.[3] The policy extends the prohibition to all aeronautical activities. (*See* Appendix G *Explanation of Terms*, Aeronautical Activity).

(2) Airfield.

When approving grants for airport development, the CAB (and later the FAA) interpreted the exclusive rights prohibition principally in terms of the airfield. Accordingly, they considered activities that used the airfield (*e.g.*, air carriers, flight schools, and charter service) as subject to the prohibition. All nonaeronautical activities, such as restaurants and other terminal concessions, ground transportation, and car rentals are excluded from the prohibition.

(3) Inclusion of All Aeronautical Activities.

In 1962, the FAA published its Policy on Exclusive Rights in the Federal Register. The FAA further clarified the application of the prohibition in FAA Order 5190.1, *Exclusive Rights*, on October 12, 1965.

On October 27, 1965, the FAA restated the agency's interpretation of the legislation. (30 Fed. Reg. 13661). The policy extended the prohibition to all aeronautical activities. Such aeronautical activities are those that involve, make possible, or are required for the operation of aircraft; or that contribute to, or are required for the safety of such operations.

b. Current Agency Policy.

The FAA has taken the position that the existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits of competitive enterprise. The FAA considers it inappropriate to provide federal funds for improvements to airports where the benefits of such improvements will not be fully realized by all users due to the inherent restrictions of an exclusive monopoly on aeronautical activities. Advisory Circular (AC) 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, provides airport sponsors with the information they need to comply with their federal obligation regarding exclusive rights.

[3] 27 Fed. Reg. 7054 (July 17, 1962), superseded by 30 Fed. Reg. 13661 (October 27, 1965).

c. Effect of the Prohibition on Airport Improvement Program (AIP) Grants.

Federal statutory law prohibits sponsors from granting an exclusive right.[4] Consequently, it does not matter how the sponsor granted the exclusive right (*e.g.*, express agreement, unreasonable minimum standards, action of a former sponsor, or other means). The FAA will not award a sponsor an AIP grant until that exclusive right is removed from the sponsor's airport. The FAA may also take other actions to return the sponsor to compliance with its federal obligations.

Federal statutory law prohibits sponsors from granting an exclusive right. Consequently, it does not matter how the sponsor granted the exclusive right – express agreement, unreasonable minimum standards, action of a former sponsor, or other means.

8.5 Airports Having a Single Aeronautical Service Provider.

Where the sponsor has not entered into an express agreement, commitment, understanding, or an apparent intent to exclude other reasonably qualified enterprises, the FAA does not consider the presence of only one provider engaged in an aeronautical activity as a violation of the exclusive rights prohibition.[5] The FAA will consider the sponsor's willingness to make the airport available to additional reasonably qualified providers. (*See* section 8.8.b, *Single Activity*, for additional information).

8.6 Denying Requests by Qualified Providers.

a. Conditions for Denial.

The prohibition on granting an exclusive right does not penalize a sponsor for continuing an existing single provider when both of the following conditions exist:

(1) It can be demonstrated that it would be unreasonably costly, burdensome, or impractical for more than one entity to provide the service, and

(2) The sponsor would have to reduce the leased space that is currently being used for an aeronautical purpose by the existing provider in order to accommodate a second provider. In the case of denying additional providers, the sponsor must have adequate justification and documentation of the facts supporting its decision acceptable to the FAA.

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[4] *See* 49 U.S.C. §§ 47107(a)(4) and 40103(e).

[5] *See* 49 U.S.C. §§ 40103(e) and 47107(a)(4).

Both conditions must be met. (*See* 49 U.S.C. § 47107(a)(4)(A)-(B)).

b. Demonstrable Need for Available Facilities.

When a service provider has space in excess of its reasonable needs and the sponsor claims it is justified based on the service provider's future needs, the FAA may find the sponsor in violation of the exclusive rights prohibition if the service provider is banking land and/or facilities that it cannot put to gainful aeronautical use in a reasonable period of time and/or the vacant property controlled by the service provider denies a competitor from gaining entry onto the airport.

(1) Granting options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Therefore, the use of leases with options or future preferences, such as rights of first refusal, must generally be avoided. This is because a right of first refusal could allow an existing tenant to hold a claim on airport land at little or no cost. Then, when faced with the prospect of competition, that leaseholder could exercise its option to inhibit access by others and limit or prevent competition.

(2) A sponsor may exclude an incumbent on-airport service provider from responding to a Request for Proposal (RFP) by eliminating the provider from eligibility for the RFP based on the sponsor's desire to increase competition in airport services. The FAA will not consider that action a violation of Grant Assurance 22, *Economic Nondiscrimination*, since the sponsor is taking a necessary step to preclude granting of an exclusive right.

(3) When a sponsor denies a request by a service provider to conduct business on the airport based on the lack of available space, the regional airports division (Region) or ADO should confirm that the space leased to service providers represents only the service provider's reasonable and demonstrable need and is not being banked for the long-term future or simply to deny access to potential competitors.

8.7 Exclusive Rights Violations.

a. Restrictions Based on Safety and Efficiency.

An airport sponsor can deny an individual or prospective aeronautical service provider the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency[6] if the activity would adversely impact the safety and efficiency of another aeronautical activity at the airport.

An aeronautical operator holding an FAA certificate is presumed to be a safe operator. The airport sponsor may not deny access to an individual certificated operator on the basis of safety of its aeronautical operations. Any safety concerns with an operator would need to be brought to the attention of the FAA. However, the airport sponsor may find that an aeronautical activity as a whole is inconsistent with the safety and efficiency of the airport and may, therefore, not permit that activity at all, subject to concurrence by the FAA. The airport sponsor may also prohibit access by an individual or individual service provider that has not complied with the airport sponsor's minimum standards or operations rules for safe use of airport property. The airport sponsor's minimum standards and operations rules must be consistent with federal law.

Any denial based on safety must be based on reasonable evidence demonstrating that airport safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. Airport sponsors should carefully consider the safety reasons for denying an aeronautical service provider or individual the opportunity to engage in an aeronautical activity if the denial has the possible effect of limiting competition or access.

The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. As such, an airport sponsor that is contemplating the denial of a proposed on-airport aeronautical activity or access by an individual or individual service provider is encouraged to contact the local Region or ADO. Those offices will then seek assistance from FAA ACO, Flight Standards (FS) and Air Traffic Organization (ATO), and others if necessary to assess the reasonableness of the proposed denial based on safety and efficiency. This information will be used to determine whether unjust discrimination or an exclusive rights violation results from the proposed restrictions. (*See* chapter 14, *Restrictions Based on Safety and Efficiency Procedures and Organization*).

Safety concerns are not limited to aeronautical activities but may include Occupational Safety and Health Administration (OSHA) standards, fire safety standards, building codes, or sanitation considerations. Restrictions on aeronautical operators by airport sponsors for safety must be reasonable. Examples of reasonable restrictions include but are not limited to: (1) restrictions placed on the handling of aviation fuel and other

[6] The word "efficiency" refers to the efficient use of navigable airspace, which is an Air Traffic Control function. It is not meant to be an interpretation that could be construed as protecting the operation of an existing aeronautical service provider at the airport. (*See* FAA Advisory Circular 150/5190-8, *Minimum Standards for Commercial Aeronautical Activities*, dated December 7, 2023).

flammable products, including aircraft paint and thinners; (2) requirements to keep fire lanes open; and (3) weight limitations placed on vehicles and aircraft to protect pavement from damage. (*See* chapter 14, *Restrictions Based on Safety and Efficiency Procedures and Organization*.)

b. Restrictions on Self-Service.

An aircraft owner or operator[7] may tie down, adjust, repair, refuel (including AVGAS, Jet-A, electric charging, and other fueling sources), clean, perform self-service maintenance, and otherwise service his/her own aircraft, provided the service is performed by the aircraft owner/operator or his/her employees with resources supplied by the aircraft owner or operator.

Moreover, the service must be conducted in accordance with reasonable rules, regulations or standards established by the airport sponsor. Any unreasonable restrictions imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation. In accordance with the federal grant assurances:

(1) An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment. Restrictions imposed by an airport sponsor that have the effect of channeling self-service activities to a commercial aeronautical service provider may be an exclusive rights violation.

(2) Unreasonable restrictions may include actions preventing self-fueling or restrictions on the use of certain types of fuel, such as leaded or alternative fuels (*e.g.*, MoGas). Alternative fueling sources to accommodate new and emerging entrants, covered by the definition of aeronautical activity, are treated similarly to conventional fueling in regard to the self-service restriction.

FAA Reauthorization Act of 2024 (Pub. L. 118-63) Sec. 770, *Grant Assurances*, requires an airport owner or operator that made 100-octane low lead aviation gasoline (100LL) available at such airport, at any time during calendar year 2022, may not restrict or prohibit the sale of, or self-fueling with 100-octane low lead aviation gasoline. This requirement remains until the earlier of December 31,

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[7] For many purposes, the FAA has interpreted an aircraft owner's right to self-service to include operators with long-term possession rights. For example, a significant number of aircraft operated by airlines are not owned but are leased under terms that give the operator airline owner-like powers. This includes operational control, exclusive use, and long-term lease terms. The same is true for other aeronautical operators such as charter companies, flight schools, and flying clubs, all of which may very well lease aircraft under terms that result in owner-like powers.

2030, or the date on which the airport or any retail fuel seller at the airport makes available an unleaded aviation gasoline that has been authorized for use by the Administrator of the Federal Aviation Administration as a replacement for 100-octane low lead aviation gasoline for use in nearly all piston-engine aircraft and engine models; and meets either an industry consensus standard or other standard that facilitates the safe use, production, and distribution of such unleaded aviation gasoline, as determined appropriate by the Administrator.[8] Any violations are subject to civil penalties (*See* Pub. L. 118-63, Sec. 770(b)).[9]

(3) An airport sponsor must reasonably provide for self-servicing activity but is not obligated to lease airport facilities and land for such activity. That is, the airport sponsor is not required to encumber the airport with leases and facilities for a self-servicing activity.

(4) An airport sponsor is under no obligation to permit aircraft owners or operators to introduce fueling equipment or practices on the airport that would be unsafe or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public.

NOTE: Fueling from a pull-up commercial fuel pump is not considered self-fueling under the federal grant assurances since it involves fueling from a self-service pump made available by the airport or a commercial aeronautical service provider.

8.8 Exceptions to the General Rule.

a. Aeronautical Activities Provided by the Airport Sponsor (Proprietary Exclusive Right).

The sponsor of a public use airport may elect to provide any or all of the aeronautical services at the airport and be the exclusive provider of aeronautical services. However, the sponsor cannot grant another entity an exclusive right to provide aeronautical services to the public. This exception is known as the airport's "proprietary exclusive" right.[10] The sponsor may exercise a proprietary exclusive right only if it provides the aeronautical activity as a principal using its own employees and resources. The sponsor

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[8] For airports in Alaska, see FAA Reauthorization Act of 2024 (Pub. L. 118-63) Sec. 771, *Aviation Fuel in Alaska*.

[9] *See also* Grant Assurance 40, *Access to Leaded Aviation Gasoline*.

[10] The airport's proprietary exclusive right, however, may not interfere with an aeronautical user's right to self-service or self-fuel (AC 150/5190-6, paragraph 1.3(a)(2)). Such activity must conform to an airport's minimum standards or reasonable rules and regulations.

may not designate an independent commercial enterprise as its agent. In other words, the sponsor may not rely on a third party or a management company to provide the services under its proprietary exclusive right. A proprietary exclusive can be exercised only for fuel sales and support services, not for use of the landing area itself.

As a practical matter, most airport sponsors recognize that aeronautical services are best provided by profit-motivated, private enterprises. However, there may be situations that the airport sponsor believes would justify providing aeronautical services itself. For example, in a situation where the revenue potential is insufficient to attract private enterprise, it may be necessary for the airport sponsor to provide the aeronautical service. The reverse may also be true. The revenue potential might be so significant that the airport sponsor chooses to perform the aeronautical activity itself in order to become more financially self-sustaining. Aircraft fueling is a prime example of an aeronautical service an airport sponsor may choose to provide itself. While the airport sponsor may exercise its proprietary exclusive to provide fueling services, aircraft owners may still assert the right to obtain their own fuel and bring it onto the airport to service their own aircraft, but only with their own employees and equipment and in conformance with reasonable airport rules, regulations, and minimum standards.[11]

b. Single Activity.

The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. An exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider.

The airport sponsor may issue a competitive offering for all qualified parties to compete for the right to be an on-airport service provider.[12] The airport sponsor is not required to accept all qualified service providers without limitation. The fact that only one qualified party pursued an opportunity in a competitive offering would not subject the airport sponsor to an exclusive rights violation. However, the airport sponsor cannot, as a

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[11] The Government Accountability Office (GAO) conducted a survey of airport sponsors to identify the main reasons why an airport sponsor has chosen to exercise its sole proprietary right to provide fuel on the airport. GAO-21-397, AVIATION SERVICES: *Information on Airports Exercising Their Right as the Sole Provider of Fuel.*

[12] The grant assurances do not prohibit an airport sponsor from entering into long-term leases with commercial entities, by negotiation, solicitation, or other means. An airport sponsor may choose to select Fixed-Base Operators (FBOs) or other aeronautical service providers through a request for proposals (RFP) process. If it chooses to do so, the airport sponsor may use this process each time a new applicant is considered. This action, in and by itself, is not unreasonable or contrary to the federal obligations.

matter of convenience, choose to have only one Fixed-Base Operator (FBO)[13] to provide services at the airport regardless of the circumstances at the airport. A competitive offering, such as a Request for Proposals, to provide services at an airport, does not absolve a sponsor from having to comply with its broader Federal obligations on airport access. These processes "cannot be used to exclude others from some level of airport access on reasonable terms, without unjust discrimination and without granting an exclusive right."[14]

(1) Statutory Requirement Relating to Single Activities.

Since 1938, there has been a statutory prohibition on exclusive rights (49 U.S.C. § 40103(e)) [independent of the parallel grant assurance requirement at 49 U.S.C. § 47107(a)(4)]. Section 40103 currently states, "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended." An "air navigation facility" includes, among other things, an airport. (*See* "Definitions" at 49 U.S.C. § 40102). This prohibition predates the parallel statutory grant assurance requirement enacted as part of the AAIA. It is independent of the grant assurance requirement.

Both statutory exclusive rights prohibitions in 49 U.S.C. § 40103(e) and 49 U.S.C. § 47107(a)(4) contain an exception to permit a single FBO if it is unreasonably costly, burdensome, or impractical for more than one FBO to provide services, and if allowing more than one FBO would require a reduction in amount of space leased under an existing agreement between the airport and single FBO. Both conditions must be met for the exception to apply.

(2) Space Limitation.

A single enterprise may expand as needed, even if its growth ultimately results in the occupancy of all available space. However, an exclusive rights violation occurs when an airport sponsor unreasonably excludes a qualified applicant from engaging in an on-airport aeronautical activity without just cause or fails to provide an opportunity for qualified applicants to be an aeronautical service provider. An exclusive rights violation can occur through the use of leases where, for example, all the available airport land and/or facilities suitable for aeronautical

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13 A Fixed-Base Operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc. to the public.

14 See *Dakota Territory Tours* v. *Yavapai County, Arizona and Sedona-Oak Creek Airport Authority*, FAA Docket No. 16-17-18, p. 14, Final Agency Decision, May 9, 2023; appeal dismissed, *County of Yavapai, Arizona and Sedona-Oak Creek Airport Authority*, Ninth Cir. Case No. 23-1421 (8/12/2024).

activities are leased to a single aeronautical service provider who cannot put it into productive use within a reasonable period of time, thereby denying other qualified parties the opportunity to compete to be an aeronautical service provider at the airport. An airport sponsor's refusal to permit a single FBO to expand based on the sponsor's desire to open the airport to competition is not a violation of the grant assurances. Additionally, an airport sponsor may exclude an incumbent FBO from participating under a competitive solicitation in order to bring a second FBO onto the airport to create a more competitive environment.

A lease that confers an exclusive right will be construed as having the intent to do so and, therefore, constitutes an exclusive rights violation. Airport sponsors are better served by requiring that leases to a single aeronautical service provider be limited to the amount of land the service provider can demonstrate it actually needs and can be put to immediate productive use. In the event that additional space is required later, the airport sponsor may require the incumbent service provider to compete along with all other qualified service providers for the available airport land.

The grant of options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right. Therefore, leases with options or future preferences, such as rights of first refusal, should generally be avoided.

8.9 UNICOM.

The Federal Communications Commission (FCC) authorizes use of special UNICOM[15] frequencies for air-to-ground communication at airports. The primary purpose of the communications station is to disseminate aeronautical data, such as weather, wind direction, and runway information. They are used by aircraft in the air and on the ground for both preflight and post flight activities. Since UNICOM is supposed to be subject to the airport owner's control, its use by the airport and the airport only, does not constitute a grant of exclusive rights to which the statutory prohibition of 49 U.S.C. § 40103(e) would apply.

To prevent conflicting reports, the FCC will not license more than one UNICOM station at the same airport.[16] However, unless properly controlled, allowing an aeronautical

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[15] UNICOM is a nongovernment air/ground radio communication station. It may provide airport information at public use airports where there is neither a tower nor a Flight Service Station (FSS).

[16] Additional information about UNICOM and other Radio Aviation Services can be found in 47 CFR part 87, *Aviation Services*.

service provider to operate the sponsor's UNICOM station on behalf of the airport sponsor could result in an advantage over competitors in attracting aeronautical users. When the sponsor fails to retain the station license in its own name and turns control of the license to a single service provider, the FAA may find the sponsor in violation of the prohibition against exclusive rights.

8.10 Implementation of Policy.

a. Compliance.

Chapter 2, *Compliance Program*, discusses the handling of violations of grant assurances and federal property conveyance. Generally, when the sponsor engages in – or fails to extinguish – an exclusive right, the FAA will find the sponsor in violation of the prohibition against exclusive rights and its federal obligations.

b. Remedies.

When the FAA finds the sponsor in violation of the exclusive rights provision, and the situation remains uncorrected, FAA may withhold AIP grant assistance. In addition, FAA may withhold Facilities and Equipment (F&E) funding, except for equipment needed for safety. While generally as a last resort, the FAA may seek reversion of the airport under the Surplus Property Act or under the terms of a non-surplus property deed.

Under certain circumstances, the FAA may also issue any orders it deems necessary. These orders are enforced through the federal courts.

c. FAA Exception.

Where required for the national defense or deemed essential to national interest, the FAA may grant an exception to the remedies above.

8.11 Military and Special Purpose Airports.

a. Applicability to the Federal Government.

The Federal Government is not subject to the exclusive rights prohibition. Since most federally owned airports are maintained and operated with federal funds appropriated for purposes other than the support of civil aviation (usually to accommodate a military or defense mission), such airports do not receive AIP funds and are not subject to grant assurances.

Consequently, when the federal government entity that owns the facility allows operating rights to airlines and other aeronautical activities to meet the government's own transportation and civil aviation requirements (such as moving personnel and equipment), the government is not subject to sponsor federal obligations. Similarly, the base commander of an active military base has no federal obligation to permit civilian operations at the air base.

b. Joint Use Airports.[17]

When a civilian airport sponsor obligates itself under FAA grant agreements or property conveyance agreements, that airport sponsor becomes subject to the same federal obligations as other sponsors regardless of whether the facilities are located on the sponsor's real estate or on federal installations. When entering into a joint use agreement with the Department of Defense (DoD), the sponsor must ensure it does not inadvertently agree to certain provisions that will effectively violate the grant assurances and preclude the sponsor from receiving future AIP funds. FAA Regions and ADOs are available upon request to review proposed agreements between the DoD and airport sponsors so that the airport's interests are protected and to preserve the sponsor's eligibility for grant assistance. Note, however, that at joint use airports, federal grant assurance obligations do not apply to areas within exclusive DoD control (*See also* chapter 3, *Federal Obligations from Property Conveyances*, section 3.20, *Joint Use and Federal Use of Obligated Airports*).

8.12 through 8.16 Reserved.

[17] For Joint Use definition *See* 49 U.S.C. § 47175.

Part IV: Airports and Aeronautical Users

Chapter 9. Unjust Discrimination between Aeronautical Users

9.1 Introduction.

This chapter contains guidance on the sponsor's responsibility to make the airport available on reasonable terms and without unjust discrimination. This guidance focuses on charging comparable rates to similarly-situated aeronautical users. Issues of unjust discrimination arising from access restrictions are addressed in chapters 13, *Airport Noise and Access Restrictions*, and 14, *Restrictions Based on Safety and Efficiency Procedures and Organization*, respectively. It is the responsibility of the Regional Airports Divisions (Regions) and Airports District Offices (ADOs) to advise sponsors on their obligations in this area in accordance with this guidance.

a. Federal Grant Obligations.

Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to make its aeronautical facilities available to the public and its tenants on terms that are reasonable and to do so without unjustly discriminating among users. This federal obligation involves several distinct requirements.

First, the sponsor must make the airport and its facilities available for public use.

Next, the sponsor must ensure that the terms imposed on aeronautical users of the airport, including rates and charges, are reasonable for the facilities and services provided.

Finally, the terms must be applied without unjust discrimination.

The prohibition on unjust discrimination extends to all types, kinds and classes of aeronautical activities, as well as individual members of a class of operator. This is true whether these terms are imposed by the sponsor directly or by a licensee or tenant offering services or commodities normally provided at the airport. The tenant's commercial status does not relieve the sponsor of its obligation to ensure the terms for services offered to aeronautical users are fair and reasonable and without unjust discrimination. (*See* chapter 12, *Review of Aeronautical Lease Agreements*, section 12.5.a.)[1]

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[1] The obligations under the grant assurances to afford reasonable access extends only to aeronautical users engaging in aeronautical activities. The grant assurance obligations do not extend to nonaeronautical users.

b. Other Federal Obligations.

These same requirements apply to the Federal Aid to Airports Program (FAAP)[2] and the Airport Development Aid Program (ADAP)[3] agreements. These requirements are also reflected in surplus property and nonsurplus property agreements.

The early program, the FAAP was authorized by the Federal Airport Act of 1946 and drew its funding from the general fund of the U.S. Treasury.

In 1970, the Airport and Airway Development Act of 1970 established a more comprehensive program. This Act provided grants for airport planning under the Planning Grant Program (PGP) and for airport development under the ADAP. These programs were funded by the newly established Airport and Airway Trust Fund,[4] into which were deposited revenues from several aviation-user taxes on such items as airline fares, air freight, and aviation fuel.

The authority to issue grants under these two programs expired on September 30, 1981, however, it is important for an airport sponsor to review its obligating documents. (*See also* the most recent FAA Order 5190.2, *List of Public Airports Affected by Agreements with the Federal Government*.)

9.2 Rental Fees and Charges: General.

a. Comparable Rates, Fees, and Rentals.

For facilities that are directly and substantially related to air transportation, regardless of whether an air carrier or user is a tenant, subtenant, or non-tenant, the sponsor must impose nondiscriminatory and substantially comparable rates, fees, rentals, and charges on all air carriers and users that assume similar obligations, use similar facilities, and make similar use of the airport.

Aside from rates, fees, and rentals, the sponsor must also impose comparable rules, regulations, and conditions on the use of the airport by its air carriers and users, regardless of whether they are tenants, subtenants, or non-tenants.

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[2] Established by the *Federal Airport Act of 1946*, Pub. L. No. 79-377 (1946).

[3] Established by the *Airport and Airway Improvement Act of 1970*, Pub. L. No. 91-258 (1970).

[4] Pub. L. No. 91-258, Sec. 208.

b. Signatory and Nonsignatory Air Carriers.

The sponsor may establish a separate rate, fee, and rental structure for the use of airport facilities depending on whether an air carrier chooses to assume the obligations of a signatory carrier to a sponsor's airport use agreement. The primary obligation of a signatory tenant is to lease space in airport facilities and commit to long-term financial support of the development and operation of the airport. The debt for airport facilities is typically secured by signatory tenant leases. In return for their financial commitment, signatory carriers may have a rate, fee, and rental structure that differs from non-signatory carriers choosing not to make the same commitment. The sponsor cannot unreasonably deny signatory status to an air carrier willing and able to assume the obligations of a signatory carrier. (*See* Policy Regarding Airport Rates and Charges, 78 Fed. Reg. 55330, September 10, 2013).

c. Fixed-Base Operators (FBOs).[5]

The sponsor must impose the same rates, fees, rentals, and other charges on similarly situated Fixed-Based Operators (FBOs) that use the airport and its facilities in the same or similar manner. However, FBOs under different types of sponsor agreements may have different fees and rentals. For example, an FBO leasing a sponsor-owned aeronautical facility may pay more in rent than an FBO that builds and finances its own facility. In the first case, the FBO is not servicing debt while in the second case, the FBO is servicing debt.[6]

d. Changes in Rates Over Time.

A sponsor may revise its rental rate structure from time to time. An airport sponsor does not engage in unjust discrimination simply by imposing different lease terms on carriers and users whose leases have expired. FAA also recognizes rate differences based on differences in other lease terms and facilities. Ideally, a new rate should be imposed at a time when the rates can be changed for all similarly situated tenants to avoid any claims of unjust discrimination. In some cases, however, the sponsor will have reason to revise rates even though existing contracts at lower rates have not yet expired. In such cases, the sponsor should make every effort to provide terms for new contracts that will support any difference in rates between new tenants and existing tenants. The sponsor

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[5] A Fixed-Base Operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

[6] *See Penobscot Air Service, LTD,* v *County of Knox Board of Commissioners*, FAA Docket No. 16-97-04, Final Agency Decision (January 20, 1997, pp 7-8).

should also consider limiting the term of new agreements to expire when existing agreements expire in order to bring all similarly situated tenants under a common rate structure at one time. While circumstances may allow differences in rental rates among tenants, landing fee schedules generally must be applied uniformly to all similarly situated users at all times.[7]

e. Air Carrier Incentive Programs.

As an exception to the general requirement that air carriers making similar use of the airport be charged substantially comparable charges, the FAA allows a sponsor to attract new air service and competition at the airport by reducing or waiving fees, for a limited time period, to a carrier that agrees to provide certain new air service. An incentive program to increase air service and competition must itself be implemented in a nondiscriminatory manner. Requirements for incentive programs are discussed more fully in chapter 15, *Permitted and Prohibited Uses of Airport Revenue*, of this Order. Also, consult current ACO guidance for airline incentive programs.

f. Additional Information.

Refer to chapter 18, *Airport Rates and Charges*, of this Order, for a further discussion on airport rates and charges, and chapter 15, *Permitted and Prohibited Uses of Airport Revenue*, for use of airport revenue.

9.3 Types of Charges for Use of Airport Facilities.

The sponsor may use direct charges (such as landing and tie-down fees) to charge aeronautical users for use of airport facilities. It may also use indirect charges through its FBO such as fuel flowage fees or percentages of gross receipts fees to cover the cost of providing airport facilities. For example, an FBO may have a ground lease, on which it erects hangars and other facilities, and also pays the sponsor a percentage of the receipts from fuel and aeronautical services provided to aeronautical users.

9.4 Airport Tenant and Concessionaire Charges to Airport Users.

At most airports, profit-motivated private enterprise can best provide fuel, storage, and aircraft service. When negotiating agreements with tenants and concessionaires, it is the sponsor’s responsibility to retain sufficient oversight to guarantee that aeronautical users will be treated fairly. A sponsor should include a “subordination clause” in its

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[7] *See Alaska Airlines, Inc., et al.* v. *Los Angeles World Airports, et al.*, Order 2007-6-8, No. OST-2007-27331 (June 15, 2007, pp 62-65).

contracts. Such a clause provides that in the event of a conflict with a lease or contract term, the terms of grant assurances or other federal obligations prevail.

The sponsor has a federal obligation to ensure that aeronautical users have access to airport facilities on reasonable and not unjustly discriminatory terms. The sponsor is not obligated by federal grant agreements or property deeds with the United States to oversee the pricing and services for nonaeronautical concessions such as public parking and ground transportation, food and beverage concessions, and other terminal area concessions.

9.5 Terms and Conditions Applied to Tenants Offering Aeronautical Services.

a. Signatory and Nonsignatory.

An air carrier that is willing and able to assume the same obligations assumed by other tenant air carriers shall enjoy the same classification and status. This applies to rates, fees, rentals, rules, regulations, and conditions covering all the airport's aeronautical activities.

b. Signatory Fees and Rentals.

The sponsor may grant lower fees and rentals to an air carrier willing and able to be a signatory to a sponsor's airport use agreement. When an air carrier is unwilling or unable to become a signatory, the sponsor may charge the air carrier higher non-signatory rates.

c. Different Rates to Similar Users.

If the sponsor can show that different rates are nondiscriminatory and if the rates are substantially comparable, it may charge airport tenants different rates for similar airport uses. For example, the rental rates in different airline terminals may vary but only to the extent justified by the difference in circumstances. Such factors that could create different rental rates are differences in debt, location of the terminals, or physical layout and the condition of rental and public space.

d. Differences of Value and Use.

The FAA may consider factors such as minimum investment requirements, demand, location, capital investment risk, ownership of facilities, time remaining on contract terms, and condition of facilities as reasons that may justify differing rates. For example, a sponsor may establish two classes of FBO, one serving primarily high-performance aircraft and another that caters to piston powered aircraft. However, the varying rates must be justified by the differing circumstances and should not arbitrarily confer an advantage on one category of operator over another.[8]

e. Escalation Provision.

Ground leases with terms of five (5) or more years should contain a provision for periodic adjustments based on a recognized index to reflect inflation and other changing economic conditions (*e.g.*, change in the Consumer Price Index, an appraisal, etc.). This will facilitate parity between new and established lessees. An escalation provision also helps the sponsor comply with Grant Assurance 24, *Fee and Rental Structure*, which requires the sponsor to make the airport as self-sustaining as possible under the circumstances.

9.6 Fixed-Base Operations and Other Aeronautical Services.

a. Similarity of Facilities.

If one FBO rents office and/or hangar space from the sponsor and another leases land from the sponsor and builds its own facilities, the sponsor would have justification for applying different rental rates and fee structures. Even though the operators offer the same services to the public, the cost and value of the facilities are different due to circumstance.

b. Location.

If one FBO is in a prime location and another FBO is in a less advantageous area, the sponsor could logically charge different rental rates and fees to reflect the advantage of the location.

c. Similarity of Services.

An airport might have an FBO that provides aeronautical services to air carriers and private operators such as fueling, ramp services, aircraft parking, crew transport, and catering while another FBO may focus only on general aviation (GA) services such as the sale of aviation fuel and oil, tie-down and aircraft parking, ramp services, flight training, aircraft sales, or avionics repair. These differing services may require different space, facilities, and other requirements based on business needs. If the services are not similar, sponsors are not required to charge the FBOs the same rates. Nonetheless, all rates charged must be equitable.

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[8] *See Rick Aviation, Inc.* v. *Peninsula Airport Comm'n,* FAA Docket No. 16-05-18, Director's Determination (May 8, 2007, p. 28).

If FBOs at the airport are making the same or similar uses of the airport facilities under the same circumstances, then, absent some other distinguishing characteristic, the same rates, fees, and rental structure should apply.

> To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards for conduct of a commercial aeronautical activity on the airport.

d. Minimum Standards.

To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards applicable to aeronautical activities on the airport. Such standards must not unreasonably deny access to conduct aeronautical activities. For example, insurance requirements have to be reasonably attainable and relevant to the aeronautical activity and cannot have significantly higher requirements than other similarly situated activities. (*See* Advisory Circular (AC) 150/5190-8, *Minimum Standards for Commercial Aeronautical Activities*).

e. Incentive Rates.

At a general aviation airport without commercial aeronautical services, FBOs may not be profitable for some time. In order to secure FBO services for aeronautical users, the sponsor may provide an incentive rate during an initial startup period, which should run for a specific period of time and be reflected in a written agreement. Once the startup period ends, the airport sponsor should charge standard rates and charges based on current values.

f. Unreasonable Restraint.

If the sponsor requires an FBO to procure fuel, services, or supplies from a source specified by the sponsor, the FAA may deem the requirement an unreasonable restraint on the FBO's use of the airport and inconsistent with Grant Assurance 22, *Economic Nondiscrimination* or Grant Assurance 23, *Exclusive Rights*.

g. Aeronautical Activities conducted by the Airport Sponsor (Proprietary Exclusive).

The sponsor of a public use airport may elect to provide any or all of the aeronautical services needed by the public at the airport. As discussed in chapter 8, *Exclusive Rights*, the statutory prohibition against exclusive rights does not apply to the sponsor itself. The airport sponsor may itself exercise, but may not grant to another entity, the exclusive right to conduct any aeronautical activity.

However, sponsors must use their own employees and resources to conduct aeronautical activities under this exclusive right. An independent commercial enterprise, designated as agent of the owner, may neither exercise nor be granted an exclusive right at the airport.

(1) As a practical matter, most sponsors recognize that commercial aeronautical services are best provided by private enterprise. However, there are times an airport will choose to either exercise a full proprietary exclusive or offer some services while allowing competing services.

(2) The airport sponsor may establish reasonable standards applicable to the refueling, washing, painting, repairing, etc., of aircraft. However, unless the airport sponsor provides these services on an exclusive basis, it may not refuse to negotiate for the space and facilities needed to meet such standards by an operator willing and qualified to provide aeronautical services to the public.

If the airport sponsor reserves the exclusive right to sell fuel, it may prevent an airline or air taxi from selling fuel to others, but it must permit such operators to refuel their own aircraft. Self-service fueling by flight operators, however, must be accomplished with their own employees and equipment. For information regarding fueling, refer to the current version of Advisory Circular (AC) 150/5230-4, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*. (*See* chapter 11, *Self-service*, for additional information).

(3) Aircraft operators do not have a right to bring a third party, such as an oil company, onto the airport to refuel their aircraft. This refueling would constitute an aeronautical activity undertaken by the fuel company, which has only such rights as the airport sponsor may confer. Under this arrangement, the air carrier-owned fuel can be delivered to the airport fuel farm with fueling handled by the airport's contractors.

> If the airport sponsor reserves the exclusive right to sell fuel, it can prevent an airline or air taxi from selling fuel to others, but it must deal reasonably to permit such operators to refuel their own aircraft.

9.7 Availability of Leased Space.

The sponsor cannot satisfy its federal obligation under Grant Assurance 22, *Economic Nondiscrimination*, to operate the airport for the public's use and benefit, simply by keeping the runways open to all classes of users. The assurance obligates the sponsor to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public (*e.g.*, air carrier, air taxi, charter, flight training, or crop dusting services) or support services (*e.g.*, fuel, storage, tie-down, or flight line maintenance services) to aircraft operators. Sponsors are also obligated to make space available to support aeronautical activity of noncommercial aeronautical users (*i.e.*, hangars and tie-down space for individual aircraft owners). This means that unless it undertakes to provide these services itself, the sponsor has a duty to negotiate in good faith for the lease of premises available to conduct aeronautical activities.[9] Since the scope of this federal obligation is frequently misunderstood, the following guidance is offered:

a. Servicing of Aircraft.

All grant agreements contain an assurance that the sponsor will neither exercise nor grant any right or privilege that would have the effect of preventing the operator of an aircraft from servicing its own aircraft with its own employees. This does not, however, obligate the sponsor to lease an unlimited amount of space to every aircraft operator using the airport. The sponsor may decline to lease space when it has a reasonable and not unjustly discriminatory reason for doing so. The assurance requires only that any aircraft operator entitled to use the airfield is also entitled to tie down, adjust, repair, refuel, clean, perform self-service maintenance, and otherwise service its own aircraft, provided it does so with its own employees and conducts self-servicing in accordance with the sponsor's reasonable rules or standards established for such work. Accordingly, the assurance establishes a privilege of self-service, but it does not, by itself, compel the sponsor to lease the facilities necessary to exercise that privilege where the sponsor has a reasonable and not unjustly discriminatory reason for denying a request to do so.

b. Facilities Not Providing Service to the Public.

When adequate facilities are otherwise available for lease, Grant Assurance 22, *Economic Nondiscrimination*, does not compel sponsors to lease vacant property to entities seeking to construct facilities for private aeronautical use. Examples include making property available to construct private use hangars while vacant hangars are available on the airport that can meet the potential tenant's needs. (*See* Grant Assurance 38, *Hangar Construction*, regarding hangars for private aircraft storage). Therefore, when neither the airport owner or the tenant FBOs can provide adequate storage, fueling, and other basic services to an airport user, the user may not be denied the right to lease space, if available, on reasonable terms to install such facilities at its own expense. For further information, *see* chapter 12, *Review of Aeronautical Lease Agreements*.

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[9] See *Boston Air Charter v. Norwood Airport Comm'n*, FAA Docket No. 16-07-03, Director's Determination (April 11, 2008, p 28), aff'd Final Agency Decision (August 14, 2008).

c. Activities Offering Services to the Public.

Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to negotiate in good faith and on reasonable terms with prospective aeronautical service providers.

> An airport sponsor must make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

The FAA interprets the willingness of a prospective provider to lease space and invest in facilities as sufficient evidence of a public need for those services. In such a situation, the FAA does not accept a sponsor's claim of insufficient business activity as a valid reason to restrict the prospective provider's access to the airport.

d. Leasing General Aviation Apron Constructed with Federal Assistance.

Federally financed airport facilities, including aprons, are designated as public use areas.

(1) Management Agreements. The airport sponsor may want an FBO to manage tie-down spaces, maintain the apron area, remove snow, and perform other similar functions. Since the relationship between the airport sponsor and anyone conducting management duties is that of principal and agent, a management agreement, rather than a lease, is appropriate. Such an agreement should clearly specify respective responsibilities and provide for acceptable practices, such as nondiscriminatory waiting lists for tie-down or hangar spaces and designation of an itinerant tie down area. Waiting lists should be available for review by existing and prospective airport tenants to ensure transparency and avoid the appearance of unjust discrimination in the selection of tenants. The tie-down fee schedule should be established or approved by the airport sponsor and must be reasonable.

(2) Lease Agreements. Tie-downs or spaces on the apron may be leased by the airport sponsor to individual aircraft owners and/or to FBOs for space necessary to service their aircraft. Apron areas may be leased provided the terms of the lease do not restrict the airport sponsor from complying with its grant obligations. If AIP funding is used in the construction of public-use ramp areas, prior to leasing such areas the sponsor will need to provide justification to FAA and receive approval if the proposed use of the public use ramp area might violate the applicable grant agreement.

In general, the lease should contain provisions to ensure that the public will be served by the lessee in a manner consistent with the grant agreements. A demonstrated, immediate need for the space to be leased should be documented by the FBO to preclude attempts to limit competition or to create an exclusive right. The lease of any apron area to an FBO should not result in activity or use contrary to the approved Airport Layout Plan (ALP) and or the intended use of AIP funded infrastructure.[10]

(a) Public-use areas, such as taxiways and self-fueling areas, may not be leased.

(b) The lease should include conditions to assure that the apron area will be maintained in a safe and serviceable condition; that snow or ice will be promptly removed; that services will be provided on a fair and equal and not unjustly discriminatory basis; and that charges for services will be fair, reasonable, and not unjustly discriminatory.

(c) Any lease arrangement must protect availability for public use, including nondiscriminatory practices for assignment of tie-down space and provide for the accommodation of itinerant users.

(d) The lease must preclude the lessee from requiring that users of the leased area exclusively procure goods and services from that lessee. However, the lease need not require that a competitor must be allowed to enter the leased area to perform a service, including fueling, if a user can freely get that service at another location on the airport. The competitor, however, must be allowed to assist the user of a disabled aircraft in taxiing or towing the aircraft away from the leased area.

(e) The sponsor may not lease to an FBO more apron space than that for which the FBO has shown an immediate demonstrated need. Where there is only one FBO on an airport and there is more apron space than required for that operation, only that space actually required should be leased to the existing FBO. This ensures that apron space is available if a future tenant requests it.

(f) The lessee must not prohibit or restrict the use of the area for tie-down for those servicing their own aircraft. See Grant Assurance 22(f).

[10] Pavement funded with AIP is intended for public use. Proposals to use AIP obligated paved areas as part of exclusive use lease areas require prior FAA approval and reimbursement of ineligible costs (FAA Order 5100.38, Appendix I, section I-2).

9.8 Air Carrier Airport Access.

With the passage of the Airline Deregulation Act of 1978 (Deregulation Act),[11] air carriers may freely enter new domestic markets. Even before the Deregulation Act's passage, however, many airports already operated at or near capacity in terms of ticket counter, gate, and ramp space. New air carriers wishing to serve an airport often faced a lack of available facilities. In some instances, established air carriers made space available for the newcomers. However, in other cases, no space was made available, and sponsors subsequently denied the newcomers access to the airport.

a. Air Carrier Accommodation.

In accordance with Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, which prohibits a sponsor from directly or indirectly conveying an exclusive right to an air carrier, the FAA determined that a sponsor may not deny an air carrier access solely based on the nonavailability of existing facilities. The sponsor must make arrangements for accommodations if reasonably possible. Consequently, access issues can often be complex and are not always easy to resolve. For obligations that may exist in competition plans at certain "covered" airports, see FAA Order 5100.38, Appendix W, section W-3.

b. Reports of Denial of Access.

Grant Assurance 39, *Competitive Access*, requires operators of large and medium hub airports to report to the Secretary any denial of a request by an air carrier for access to the airport. A report is due each February and August if there has been any denial of access in the preceding six-month period (FAA Order 5100.38, Appendix W, Table W-2).[12] For obligations that may exist in competition plans at certain "covered" airports please see FAA Order 5100.38, Appendix W; sections W-5, W-6, and W-7.

c. FAA Headquarters Airport Compliance Division (ACO-100) Review.

The Regions or ADOs should notify ACO-100 if the region cannot develop a feasible solution to the denial or potential denial of an air carrier access request. ACO-100 will coordinate the effort of the regional airports division with the FAA Office of Chief Counsel to resolve the problem.

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[11] *Airline Deregulation Act of 1978*, Pub. L. 95-504, as codified at 49 U.S.C. §41713 et seq. (October 24, 1978).

[12] *See Tropical Aviation Ground Services, Inc., and Air Sunshine, Inc.* v. *Broward County, Florida,* FAA Docket No. 16-12-15, Director's Determination (April 27, 2015,) pp. 27-28.

9.9 Civil Rights.

The Office of Civil Rights, in coordination with the Regions or ADOs or Regional Airports Divisions, is responsible for enforcing Grant Assurance 30, *Civil Rights*. More information is available at 49 CFR part 21 *Nondiscrimination in Federally Assisted Programs of the Department of Transportation*, including any amendments thereto.

The Office of Civil Rights advises, represents, and assists the FAA Administrator on civil rights and equal opportunity matters that ensure the elimination of unlawful discrimination on the basis of race, color, national origin, sex, age, religion, creed, and individuals with disabilities in federally-operated and federally-assisted transportation programs.

9.10 FAA Policy on Granting Preferential Treatment Based on Residency.

The FAA has received complaints about a sponsor's policy of granting preferential treatment in the assignment of aircraft storage hangars or other services to residents of the sponsor's locality. Such preferential practices are unreasonable and unjustly discriminatory, and can result in the granting of an exclusive right contrary to Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, implementing 49 U.S.C. §§ 47107(a) and 40103(e).

A federally obligated airport sponsor has received federal aid in support of the national air transportation system. All users of the national airport system pay taxes to support and maintain the system and all its component airports, including the airport in question. The fact that certain users at a particular airport pay district or other local taxes, while others do not, does not justify preferential treatment, differential rates, or other unjustly discriminatory practices having the effect of unreasonably restricting or excluding users who do not pay those local taxes.

Nonresident aeronautical users have the same rights as resident aeronautical users regarding reasonable access to, and services provided at, a federally obligated airport. Accordingly, the airport must be available on reasonable terms to all public aeronautical users, and a local tax obligation does not establish a reasonable basis upon which to discriminate between resident and nonresident airport users.

The national air transportation system is dependent on each airport properly functioning as part of the whole system. Allowing airport sponsors to invoke local preferences, such as granting preferential treatment in the assignment of aircraft storage hangars to resident aeronautical users, could result in a patchwork of local preferences that would be inconsistent with a national air transportation system.

9.11 through 9.14 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 10. Reasonable Commercial Minimum Standards

10.1 Introduction.

This chapter describes the sponsor's discretion to establish minimum standards for commercial service providers and airport regulations for all other airport activities. Flying clubs are not-for-profit commercial operations and are not normally covered by commercial minimum standards. However, flying clubs are covered within this chapter since a majority of federally obligated airports where flying clubs exist have historically addressed the issue in their minimum standards.

While minimum standards are developed by airport sponsors, the Regional Airports Divisions (Regions) and airports district offices (ADOs) are available to advise sponsors on the proposed standards including whether the standards appear to protect or convey an exclusive right. The FAA does not provide formal approval of minimum standards.

10.2 FAA Recognition of Minimum Standards.

A sponsor's establishment of minimum standards and airport regulations contribute to nondiscriminatory treatment of airport tenants and users. It also helps the sponsor avoid granting an exclusive right.[1] When the sponsor imposes reasonable and not unjustly discriminatory minimum standards for airport operations, and the sponsor then denies access or services based on those standards, the FAA will not find the sponsor in violation of the assurances regarding exclusive rights and unjust discrimination, provided those standards:

(1) Apply uniformly to all similarly situated providers of aeronautical services including full service Fixed-Base Operators (FBOs)[2] and Specialized Aviation Service Operators (SASOs).

(2) Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA guidance when available.

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[1] *See* chapter 8, *Exclusive Rights*, and chapter 9, *Unjust Discrimination between Aeronautical Users,* and chapter 11*, Self-Service*.

[2] An FBO is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. *See* section 10.5(f) for more information on SASOs.

(3) Are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect providers of aeronautical services from unreasonable competition.

(4) Are relevant to the activity for which they apply.

(5) Provide the opportunity for others who meet the standards to offer aeronautical services.

NOTE: There is no requirement to include nonaeronautical activities (such as a restaurant, parking or car rental) in minimum standards since those activities are not covered under the grant assurances or covenants in conveyances of federal property.

10.3 Use of Minimum Standards to Protect an Exclusive Right.

When the sponsor implements minimum standards for the purpose of protecting an exclusive right, the FAA may find the sponsor in violation of the exclusive rights prohibition. Evidence of intent to grant an exclusive right might be, for example, the adoption of a standard that only one particular operator can reasonably or practically meet.

10.4 Benefits of Minimum Standards.

The FAA strongly recommends developing minimum standards because these standards typically:

(1) Promote safety in all airport activities and maintain a higher quality of service for airport users.

(2) Protect airport users from unlicensed and unauthorized products and services.

(3) Enhance the availability of adequate services for all airport users.

(4) Promote the orderly development of airport land.

(5) Provide a clear and objective distinction between service providers that will provide a satisfactory level of service and those that will not.

(6) Prevent disputes between aeronautical providers and reduce potential complaints.

10.5 Developing and Applying Minimum Standards.

a. Advisory Circular (AC) on Minimum Standards.

When developing minimum standards, the most critical consideration is the particular nature of the activity and the operating environment at the airport. Airport sponsors should tailor their minimum standards to their individual airports. For example, consider the requirements for an FBO located at a small, rural airport that serves only small

General Aviation (GA) aircraft. A minimum standard requiring the FBO to make jet fuel available if there were few jet operations at the airport would likely be unreasonable. If that same FBO serviced ultralight vehicles, light-sport aircraft, or type-certificated aircraft that use automotive fuel, it would be unreasonable to establish a commercial aeronautical activity standard that would prevent the FBO from selling ethanol-free premium unleaded automotive fuel (commonly referred to as MoGas) or ASTM 6227 standard aviation gasoline (commonly referred to as AvGas), or establish a minimum fuel storage tank size that is unreasonable for the type of fuel sold.

The potential imposition of unreasonable requirements illustrates why “fill-in-the-blank” minimum standards and the blanket adoption of another airport’s standards are usually not effective. This could result in the imposition of irrelevant and unreasonable standards. Instead, the FAA has provided guidance in the form of AC 150/5190-8, *Minimum Standards for Commercial Aeronautical Activities*, to illustrate an approach to developing and implementing minimum standards.

b. Safety and Efficiency Standards.

Federal law and policies requiring airport sponsors to provide airport access to all types, kinds, and classes of aeronautical activity, as well as to the general public, include certain exceptions. Exceptions to the general rule may apply when airport safety or efficiency would be compromised.

However, a restriction imposed for safety or efficiency purposes that is subsequently challenged by an aeronautical user will require concurrence from FAA Flight Standards (FS) and/or Air Traffic (AT) before the FAA headquarters Airport Compliance Division (ACO-100) or the Region or ADO can determine the restriction is reasonable and approve the restriction. This is because the federal government, through this exercise of its constitutional and statutory powers (49 U.S.C. § 40103(a)), has preempted the areas of airspace use and management, air traffic control, and aviation safety.[3]

c. Aircraft Weight Restrictions.

A sponsor may impose a restriction based on specified maximum gross weight or wheel loading based on the design load bearing capacity of the pavement. Any restrictions should allow for occasional operations by aircraft above the weight limit that do not result in excessive wear or deterioration. Before imposing a weight-based restriction,

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[3] *See* chapter 14, *Restrictions Based on Safety and Efficiency Procedures and Organization;* Grant Assurance 19*, Operation and Maintenance* (for safe and serviceable airport)*,* and Grant Assurance 29, *Airport Layout Plan* (adverse effects on airport safety, utility, or efficiency not in conformity with the ALP)*.*

however, the FAA recommends the sponsor seek FAA review of the proposal to ensure compliance with federal obligations.

d. Public Access.

The sponsor may also impose restrictions that apply to the general public. For example, the public is generally subject to restrictions concerning vehicle and pedestrian access, security, and crowd control when using airport facilities.

e. Availability of FAA Assistance.

Airport sponsors can obtain assistance from Regions and ADOs in determining the reasonableness of restrictions imposed through minimum standards.

f. Specialized Aviation Service Operations.

When Specialized Aviation Service Operations (SASOs), sometimes known as single-service providers or special FBOs, apply to do business on an airport, "all" provisions of the published minimum standards may not apply. This is not to say that all SASOs providing the same or similar services should not equally comply with all applicable minimum standards. However, an airport sponsor should not, without adequate justification, require that a service provider desiring to provide a single service or less than full service also meet the criteria for a full-service FBO. Examples of these specialized services may include for profit aircraft flying clubs, flight training, aircraft airframe and powerplant repair/maintenance, aircraft charter, air taxi or air ambulance, aircraft sales, avionics, instrument or propeller services, or other specialized commercial flight support businesses. Airport sponsors are not required to permit a SASO for fuel sales alone. The right to sell fuel is generally bundled with other required services.[4]

g. Independent Operators.

If independent operators[5] are to be allowed to perform a single-service aeronautical activity[6] on the airport (aircraft washing, maintenance, etc.), the airport sponsor should have a licensing or permitting process in place that provides a level of regulation and

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[4] AC 150/5190-8, *Minimum Standards for Commercial Aeronautical Activities*.

[5] Independent operators also may be termed "freelance" operators and generally are self-employed persons who are not employed continuously but hired to do specific assignments or jobs.

[6] *See* chapter 8, *Exclusive Rights* and section 8.6, *Airports Having a Single Aeronautical Service Provider*.

compensation satisfactory to the airport. Frequently, a yearly fee or percentage of the gross receipts fee is a satisfactory way of monitoring this type of operation.

10.6 Flying Clubs.

a. Definition.

The FAA defines a flying club as a nonprofit entity (*e.g.*, corporation, association, or partnership) organized for the express purpose of providing its members with aircraft for their personal use and enjoyment only. (*See* 81 Fed. Reg. 13719 (March 15, 2016)).

b. General.

The ownership of the club aircraft must be vested in the name of the flying club or owned by all its members. The property rights of the members of the club shall be equal; no part of the net earnings of the club will inure to the benefit of any individual in any form, including salaries, bonuses, etc. The flying club may not derive greater revenue from the use of its aircraft than the amount needed for the operation, maintenance and replacement of its aircraft.

c. Policies.

A flying club qualifies as an individual under the grant assurances and, as such, has the right to fuel and maintain the aircraft with its members. The airport owner has the right to require the flying club to furnish documents, such as insurance policies and a current list of members, as may be reasonably necessary to assure that the flying club is a nonprofit organization rather than an FBO or other commercial entity.

The FAA suggests several definitions and items as guidance for inclusion by airports in their minimum standards and airport rules and regulations. (*See* Advisory Circular (AC) 150/5190-8, *Minimum Standards for Commercial Aeronautical Activities*, and Appendix D, *Sample Airport Rules and Regulations*. **NOTE:** Information in samples is for example only.) These items include:

(1) All flying clubs desiring to base their aircraft and operate at an airport must comply with the applicable provisions of airport specific standards or requirements. However, flying clubs will not be subject to commercial FBO requirements provided the flying club fulfills the conditions contained in the stated airport standards or requirements satisfactorily.

(2) Flying clubs may not offer or conduct charter, air taxi, or aircraft rental operations. They may conduct aircraft flight instruction for regular members only, and only members of the flying club may operate the aircraft.

(3) A flying club may permit its aircraft to be used for flight instruction (1) in a club-owned aircraft as long as both the instructor providing instruction and person receiving instruction are members of the club owning the aircraft, or (2) when the instruction is given by a lessee based on the airport who provides flight training and the person receiving the training is a member of the flying club. In either circumstance, a flight instructor may receive monetary compensation for instruction or may be compensated by credit against payment of dues or flight time; however that individual may not receive both compensation and waived or discounted dues or flight time concurrently. The airport sponsor may set limits on the amount of instruction that may be performed for compensation.

(4) A qualified mechanic who is a registered member and part owner of the aircraft owned and operated by a flying club may perform maintenance work on aircraft owned by the club. The mechanic may receive monetary compensation for such maintenance work or may be compensated by credit against payment of dues or flight time; however that individual may not receive both compensation and waived or discounted dues or flight time concurrently. The airport sponsor may set limits on the amount of maintenance that may be performed for compensation.

(5) All flying clubs and their members are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of such club at the airport, except that said flying club may sell or exchange its capital equipment.

(6) A flying club at any airport shall comply with all federal, state, and local laws, ordinances, regulations and the rules and regulations of the airport.

(7) The flying club should file periodic documents as required by the sponsor, including tax returns, insurance policies, membership lists, and other documents that the sponsor reasonably requires.

(8) Flying clubs may not hold themselves out to the public as fixed based operators, a specialized aviation service operation, maintenance facility or a flight school and are prohibited from advertisements as such or be required to comply with the appropriate airport minimum standards.

(9) Flying clubs may not indicate in any form of marketing and/or communications that they are a flight school, and flying clubs may not indicate in any form of marketing and/or communications that they are a business where people can learn to fly.

d. Violations.

A flying club that violates the requirements for a flying club – or that permits one or more members to do so – may be required to terminate all operations as a flying club at all airports controlled by the airport sponsor.

10.7 Illegal Air Charters.

a. Definition.

The FAA broadly recognizes “illegal air charters” as unauthorized air charter operations. Illegal Part 135 charters operate without meeting the safety requirements of a certificated air carrier. These include aircraft owners that in order to generate revenue, allow the use of their aircraft temporarily for charters or by management companies as a loaner without meeting the FAA requirements. An illegal air charter also can present as flight instruction or aircraft demonstration flights.

b. General.

Airport sponsors that suspect an illegal charter should discuss concerns or questions with local FAA Flight Standards District Office since the FAA is the investigator and final decision maker on aviation safety. The FAA does not want airport sponsors to investigate suspected illegal aeronautical activities such illegal air charters. The sponsors do not have the responsibility or expertise to conduct investigations of suspected illegal aeronautical activities.

Some airport sponsors have incorporated language in their tenant leases, airport rules and regulations, and minimum standards that prohibit illegal commercial aeronautical activities such as illegal charter operations. These airport documents contain language that:

(1) Requires all users will abide by all FAA regulations and requirements while operating at the airport.

(2) Requires tenants to provide listing of aircraft used for commercial activities and their owners.

(3) Require copies of the current FAA-issued Air Operating Certificate if the tenant is a commercial operator. This helps ensure that the airport sponsor charges the appropriate rates and charges to the commercial operator.

10.8 through 10.12 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 11. Self-Service

11.1 General.

The sponsor of a federally obligated airport must permit airport aeronautical users, including air carriers, the right to self-service and to use any of the airport's Fixed-Base Operators (FBOs).[1]

11.2 Restrictions on Self-Servicing Aircraft.

Grant Assurance 22(f), *Economic Nondiscrimination*, provides that a sponsor "will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance, repair, and self-fueling)[2] that it may choose to perform." (*See* Appendix H, *Explanation of Terms*, for the definitions of Self-fueling and Self-service).

The FAA considers the right to self-service as prohibiting the establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment.

Aircraft owners and operators must be permitted to tie down, adjust, refuel, clean, perform self-service repair and preventative maintenance, and otherwise take care of their own aircraft, provided that they or their employees perform these tasks. The sponsor is obligated to operate the airport in a safe and efficient manner. The sponsor should establish reasonable rules and standards, and the aircraft owner or operator must conduct self-servicing in accordance with those rules and standards for such work.

The establishment of reasonable rules, applied in a not unjustly discriminatory manner, that restrict the introduction of equipment, personnel, or practices that would be unsafe, detrimental to the public welfare, or that would affect the efficient use of airport facilities by others, will not be considered a violation of Grant Assurance 22(f), *Economic Nondiscrimination*.

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[1] A Fixed-Base Operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

[2] For information regarding preventative maintenance, refer to Advisory Circular (AC) 43-12A, *Preventative Maintenance*. For information regarding fueling, refer to Advisory Circular (AC) 150/5230-4C, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*.

11.3 Permitted Activities.

Generally, the following activities are permitted by an aircraft owner or operator, including but not limited to individuals, air carriers, air taxis, corporate flight departments, charter operators, and flight schools so long as the activities are conducted in accordance with local, state, and federal health, safety, and environmental regulations:

(a) Perform its own self-fueling activities, including bringing fuel to the airport to include ethanol-free premium automotive gasoline and other approved fuels, with its own employees in conformance with the sponsor's rules and regulations pertaining to self-service operations. (*See* Appendix D, *Sample Airport Rules and Regulations*. **NOTE:** Information in samples is for example only).

(b) Perform self-service on the owner or operator's own aircraft, including ground handling, servicing, painting, and cleaning.

(c) Use its own sources for parts and supplies.

(d) Perform self-service maintenance in accordance with 14 CFR part 43, *Maintenance, Preventive Maintenance, Rebuilding, and Alteration*, and Advisory Circular (AC) 43-12A, *Preventative Maintenance*.

(1) A general aviation aircraft owner or operator may perform the activities listed in the definition of preventive maintenance in paragraph (c) of Appendix A to 14 CFR part 43. A general aviation aircraft owner or operator may also perform aircraft restoration, major repairs, and alterations if the owner or operator performing those actions holds an appropriate certificate under 14 CFR part 65, *Certification: Airmen Other Than Flight Crewmembers*, as required by Part 43.

(2) The holder of an operating certificate issued under parts 121 or 135 may perform maintenance, preventive maintenance, and alterations on its own aircraft with its own employees, as provided in parts 121 or 135 respectively.

(3) The holder of a sport pilot certificate who owns or operates a light sport category aircraft may perform preventive maintenance on that light sport category aircraft.

(4) The owner or operator of an aircraft for which an experimental certificate has been issued may perform maintenance, repair, and alteration of the aircraft if the owner or operator holds an experimental aircraft repairman certificate for the aircraft.

11.4 Contracting to a Third Party.

Self-service activities generally cannot be contracted out to a third party. Self-service activities must be performed by the owner or employees of the entity involved. Where third-party contracting of self-servicing activities is proposed for aircraft under long-term lease, the airport sponsor should request clarifying information to confirm that sufficient interest in and control over the aircraft is maintained. Airport sponsors should also confirm that the aircraft operator retains sufficient control over third-party contracted employees for the purposes of self-servicing. Airport sponsors may not allow third-party contracting of self-service activities where the owner/operator of the aircraft does not retain ultimate control over contracted personnel, including interviewing, hiring, assigning duties, and termination of the employee assigned to the aircraft. The FAA may, upon request, assist the airport sponsor in evaluating sufficient control for the purposes of evaluating self-servicing by a contracted third party.[3]

11.5 Restricted Service Activities.

The sponsor may require an aircraft owner or operator to:

- **(a)** Observe reasonable rules and regulations pertaining to self-service operations, including local fire safety and federal and/or state environmental requirements.[4]
- **(b)** Perform aircraft maintenance, painting, and fueling operations in appropriate locations using appropriate equipment. (For information regarding fueling, refer to AC 150/5230-4C, *Aircraft Fuel Storage, Handling, and Dispensing on Airports*).
- **(c)** Limit equipment, personnel, or practices that are unsafe, or detrimental to the public welfare or that would affect the efficient use of airport facilities by others.
- **(d)** Pay the same fuel flowage fees that the sponsor charges providers selling fuel to the public. This practice alleviates the potential for claims of unjust discrimination.

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[3] Self-servicing of aircraft regulated by 14 CFR part 91 subpart K, *Fractional Ownership Operations*, are addressed at paragraph 11.10 *Fractional Aircraft Ownership Programs.*

[4] FAA Order 1050.15C, *Fuel Storage Tanks at FAA Facilities*, dated October 17, 2024, establishes agency policy, procedures, responsibilities, and implementation guidelines to comply with regulations pertaining to Underground Storage Tanks (UST) of the Federal Aviation Administration as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616) and other acts, and as implemented by the U.S. Environmental Protection Agency's Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules regulation, 40 CFR parts 280 and 281.

11.6 Reasonable Rules and Regulations.

The sponsor should design its self-service rules and regulations to ensure safe operations, preservation of facilities, and the protection of the public interest. Examples of such rules and regulations may include:

> Aircraft owners or operators, including individuals, air carriers, air taxis, corporate flight departments, charter operators, and flight schools should conduct activities in accordance with the local, state, and federal health, safety and environmental regulations.

(a) Confining the use of paints, dopes, and thinners to structures that meet appropriate safety and environmental criteria.

(b) Establishing safe practices for storing and transporting fuel.

(c) Restricting hangars to related aeronautical activities.

(d) Placing restrictions on the use of solvents to protect sewage and drainage facilities.

(e) Establishing weight limitations on vehicles and equipment to protect airport roads and paving, including limits on delivery trucks, fuel trucks, and construction equipment.

(f) Setting time limits on the open storage of nonairworthy aircraft, wreckage, and major components.[5]

(g) Maintaining minimum requirements for taxiing an aircraft, *e.g.*, a requirement to hold an FAA pilot, mechanic, repairman light sport repairman, or experimental aircraft repairman certificate.

(h) Setting requirements for escorting passengers and controlling vehicular access.

(i) Requiring certain regulations that mirror FAA regulations. Requirements inconsistent with FAA regulations may not be reasonable. For example, requiring a pilot license or medical certificate as a condition for self-servicing aircraft is inconsistent with 14 CFR part 61 (*i.e.*, an aircraft owner is not required to be a licensed pilot or to hold a medical certificate). The aircraft pilot or operator would have to meet FAA licensing requirements. The aircraft owner must simply own the aircraft to self-service it.

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[5] *See BMI Salvage Corporation and Blueside Services, Inc. v. Miami-Dade County Florida*, No. 16-05-16 (July 25, 2006), Final Agency Decision aff'd on remand pp. 46-47 (April 15, 2011).

(j) Defining permitted locations for maintenance engine runups or otherwise operating an aircraft with no intent to taxi.

An airport sponsor is under no obligation to permit aircraft owners to introduce equipment, personnel, or practices that would be unsafe, or detrimental to the public welfare.

11.7 Restrictions Based on Safety and Location.

An airport sponsor is under no obligation to permit aircraft owners to introduce onto the airport any equipment, personnel, or practices that would be unsafe, or detrimental to the public welfare or that would affect the efficient use of airport facilities by others. Reasonable rules and regulations should be adopted to confine aircraft maintenance and fueling operations to appropriate locations with equipment commensurate to the job being done. In addition, aircraft owners that are subtenants of an airport tenant, such as an FBO, may not be able to self-fuel on the tenant or FBO premises without the approval of the airport owner and tenant. However, the subtenant may be directed by the airport owner to an alternative location on the airport to self-fuel.

11.8 Activities Not Classified as Self-service.

Activities not classified as self-service include servicing aircraft and parts for others, providing parts and supplies to others, receiving services and supplies from fuel Cooperative Organizations (CO-OPs), and delivery of fuel to owners or operators by off-airport suppliers.

11.9 Sponsor Self-service Prerogatives.

a. Minimum Standards and Rules and Regulations.

A sponsor may establish reasonable minimum standards and airport rules and regulations to be followed when conducting self-service operations, including specifying equipment and personnel training requirements. Where an owner or operator does not have the equipment or personnel to meet the sponsor’s self-service requirements, the sponsor may deny the owner or operator the opportunity to perform the specific self-service activity. In such cases, the FAA will not find the sponsor in violation of its grant assurances regarding self-service operations. In other words, the fact that a particular operator cannot meet requirements that the FAA finds reasonable does not constitute a violation of federal obligations on the part of the sponsor. The sponsor’s self-service rules and regulations, when established specific for its airport, will support and ensure safe operations, preservation of facilities, and protection of the public interest.

b. Fuel Cooperative Organizations (CO-OPs).

An airport sponsor is not required to permit a CO-OP to self-service. If a sponsor does permit CO-OPs to self-service, the CO-OP will have to observe the same minimum standards and rules and regulations applicable to all self-service activities. In addition, if self-fueling is allowed for CO-OPs, the sponsor may require the CO-OP to demonstrate joint ownership of the fuel tank and the fuel. The sponsor may also require the CO-OP to document that all personnel involved in fueling operations are adequately trained and that self-fueling is conducted only for that CO-OP business partner for which the employee actually works.

c. Ethanol-free Automotive Gasoline.

When an owner or operator obtains a certificate that authorizes it to fuel with ethanol-free premium automotive gasoline, the sponsor may impose the same rules and regulations on that owner or operator as it imposes on the airport's other self-service operations. The requirements must be reasonable for the operation.

d. Flying Club.

When an organization claims self-service status by virtue of its status as a flying club, the sponsor may hold the organization to the same rules and regulations that it established for its other self-service operations.[6]

11.10 Fractional Aircraft Ownership Programs.

a. Summary.

The regulatory definitions and safety standards for fractional ownership programs are established in 14 CFR part 91 subpart K. This regulation defines the program elements, allocates operational control responsibilities and authority to the owners and program manager, and provides increased operational and maintenance safety requirements for fractional ownership programs. (Additional requirements can be found in 14 CFR part 91 subpart F).

b. Background.

The fractional ownership concept began in 1986 with the creation of an industry program that offered increased flexibility in aircraft ownership and operation. This

[6] *See also, Petition of the Aircraft Owner and Pilots Association (AOPA) To Amend FAA Policy Concerning Flying Club Operations at Federally Obligated Airports,* 81 Fed. Reg. 13719 (February 9, 2016).

program used existing aircraft acquisition concepts, including shared aircraft ownership, with the aircraft being managed by an aircraft management company.

The aircraft owners participating in the program purchase a minimum share of an aircraft, share that specific aircraft with others having an ownership interest in that aircraft, and participate in a lease aircraft exchange program with other owners in the program. The aircraft owners use a common management company to maintain the aircraft, to administer aircraft leasing among the owners, and to provide other aviation expertise and professional management services. Flight Standards Service definitions and policies on fractional ownership are summarized in AC 91-84, *Fractional Ownership Programs*.

c. Policy.

FAA has found companies engaged in fractional ownership operations under Part 91 subpart K to be aircraft owners for purposes of the self-service provisions of Grant Assurance 22(f), *Economic Nondiscrimination*, and entitled to self-fuel fractionally owned aircraft, as well as to perform other self-service functions.

11.11 Air Carriers.

Self-service requirements for air carrier operations (*i.e.,* 14 CFR part 121, *Operating Requirements: Domestic, Flag, and Supplemental Operations*) may present additional issues which may differ or impact the applicability of certain concepts which are normally acceptable for general aviation. Air carrier operations may involve aircraft leasing terms which vary significantly from one carrier to another and may involve fueling arrangements normally not found in other types of operations.

11.12 through 11.16 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 12. Review of Aeronautical Lease Agreements

12.1 Introduction.

This chapter discusses procedures for reviewing lease agreements between the airport sponsor and aeronautical users. As part of the compliance program, the FAA Regional Airports Division (Region) or Airports District Office (ADO) may review such agreements upon request, advising airport sponsors of their federal obligations, and ensuring that the terms of the lease do not violate an airport sponsor's federal obligations.

12.2 Background.

The operation of a federally obligated airport involves complex relationships between the airport sponsor and its aeronautical tenants. In most instances, the airport sponsor will turn to private enterprise to provide the aeronautical services that make the airport attractive and self-sustaining.

a. Rights Granted by Contract. Airport lease agreements usually reflect a grant of three basic rights or privileges:

(1) The right for the licensee or tenant to use the airfield and public airport facilities in common with others so authorized.

(2) The right to occupy as a tenant and to use certain designated premises exclusively.

(3) The commercial privilege to offer goods and services to airport users.

b. Consideration for Rights Granted.

The basic federal obligation of the airport sponsor is to make public landing and aircraft parking areas available to the public. However, the airport sponsor may impose a fee to recover the costs of providing these facilities. (*See* chapter 18, *Airport Rates and Charges*, for a further discussion on rates and charges). Frequently, the airport sponsor recovers its airfield costs indirectly from rents or fuel flowage fees that it charges its commercial tenants. The airport sponsor's substantial capital investment and operating expense necessitates assessing airport fees to recover these costs. (*See* chapter 9, *Unjust Discrimination between Aeronautical Users*, for information on fees and terms and conditions).

c. Operator/Manager Agreements.

Sometimes an airport sponsor may, for various reasons, rely on commercial tenants to carry out certain airport sponsor federal obligations. For instance, an airport sponsor may (i) contract with a commercial tenant to perform all or part of its airfield maintenance, (ii) delegate to a tenant responsibility for collecting landing fees, publishing notices to airmen (NOTAM), or (iii) contract for airport management. When these functions are defined in one agreement, the airport sponsor should make provisions for the survival and separation of management responsibilities in the case of default. This makes the respective responsibilities for each activity clear and enables the airport sponsor to deal with a possible default in one activity (*i.e.*, management agreement) without terminating a second, separate activity not subject to a default. (*See* chapter 6, *Rights and Powers and Good Title*).

12.3 Review of Agreements.

a. Scope of FAA Interest in Leases.

The FAA does not review all leases, and there is no requirement for an airport sponsor to obtain FAA approval before entering into a lease. However, when the Region/ADO reviews a lease agreement, the review, at a minimum, should include the following issues:

(1) Determine if a lease has the effect of granting or denying rights that are contrary to federal statute, airport sponsor federal obligations, or FAA policy. For example, does the lease grant options or rights of first refusal that preclude the use of airport property by other aeronautical tenants? Does the lease extend an exclusive right in any capacity?

(2) Ensure the airport sponsor has not entered into an agreement that would surrender its ability to control the airport.

(3) Identify terms and conditions that could prevent the airport from realizing the full benefits for which it was developed.

(4) Identify potential restrictions that could prevent the airport sponsor from meeting its federal obligations from federal property conveyances and grant assurances. (*See* chapter 3, *Federal Obligations from Property Conveyances*, and chapter 4, *Federal Grant Obligations and Responsibilities*). For example, does the lease grant the use of aeronautical land for a nonaeronautical use?

b. Form of Lease or Agreement.

The type of document or written instrument used to grant airport privileges is the responsibility of the airport sponsor. In reviewing such documents, the FAA Region or ADO should concentrate on determining the nature of the rights granted and whether granting those rights may be in violation of the sponsor's federal obligations from federal property conveyances and grant assurances. The most important lease provisions to review include:

(1) Premises.

What is being leased – land or facilities or both? Does the lease include only the land and/or facilities that the aeronautical tenant can reasonably use or has the tenant been granted options or rights of first refusal for other airport property and/or facilities that it will not immediately require? Do options or rights of first refusal grant the tenant an exclusive right by allowing the tenant to control a majority or all of the aeronautical property on the airport that can be developed?

(2) Rights and Obligations.

Does the lease grant the tenant an explicit or implied exclusive right to conduct a business or activity at the airport? Does the lease state the purpose of the lease, such as "the noncommercial storage of the owner's aircraft?" Does the lease require any use to be approved by the airport sponsor? This will prevent future improper nonaeronautical uses of airport property.

(3) Term of Aeronautical Lease.

Does the term exceed a period of years that is reasonably necessary to amortize a tenant's investment? Does the lease provide for multiple options to the term with no increased compensation to the airport sponsor? Most tenant ground leases of 30 to 35 years are sufficient to retire a tenant's initial financing and provide a reasonable return for the tenant's development of major facilities. Leases that exceed 50 years may be considered a disposal of the property because it likely exceeds the useful life of the structures erected on the property. All disposals of federally acquired and federally conveyed property require concurrence of ACO-100. The Region or ADO should not consent to proposed lease terms that exceed 50 years. (For information on disposal of land, see chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

(4) Payment of Fees to the Sponsor.

Does the lease assess the tenant rent for leasing airport property and/or facilities and a concession fee if the tenant provides products and/or services to aeronautical users? Does the lease provide for the periodic adjustment of rent? Has the rental of airport land and/or facilities been assessed on a reasonable basis (*e.g.*, by an appraisal)? Additionally, all leases for a term of more than five (5) years should contain provisions for periodic adjustment of rates.

(5) Title.

Does the title to tenant facilities vest in the airport sponsor at the expiration of the lease? Do any lease extension or option provisions provide for added facility rent once the title of facilities vests in the airport sponsor?

(6) Subordination.

Is the lease subordinate to the airport sponsor's federal obligations? Subordination may enable the airport sponsor to correct tenant activity through the terms of its lease that otherwise would put the airport sponsor in violation of its federal obligations.

(7) Assignment and Subleasing.

Has the airport sponsor maintained the right to approve in advance an assignment (a sale or transfer of the lease) or sublease by the tenant? For example, could the airport sponsor intervene if (a) a dominant fixed-base operator (FBO) decides to acquire all other competing FBOs on the airfield, or (b) an aeronautical tenant decides to sublease aeronautical space to a nonaeronautical tenant?

12.4 FAA Review of Leases.

Since the FAA's interest in a lease is confined to the lease's impact on the airport sponsor's federal obligations, the airport sponsor should not construe the acceptance of the lease as an endorsement of the entire document. When the FAA reviews a lease and determines it does not appear to violate any federal compliance obligations, the FAA will advise the airport sponsor that it has no objection to the agreement. The FAA does not approve leases, nor does it endorse or become a party to the lease agreements.

12.5 Agreements Covering Aeronautical Services to the Public.

In reviewing airport leases and agreements, the Region or ADO should give special consideration to those arrangements that convey to aeronautical tenants the right to offer services and commodities to the public. In particular the review should ensure that the agreement complies with the airport sponsor's federal obligations, including (a) the airport sponsor maintains a fee and rental structure in the lease agreements with its tenants that will make the airport as self-sustaining as possible and that (b) the facilities of the airport are made available to the public on reasonable terms without unjust discrimination. Any lease or agreement granting the right to serve the public on the airport should be subordinate to the airport sponsor's federal obligations. That is, the lease should provide that it will be interpreted to preserve its compliance with the federal obligations. This will enable the airport sponsor to preserve its rights and powers and to maintain sufficient control over the airport to guarantee aeronautical users are treated fairly.

a. Required Economic Nondiscrimination Provision.

Grant Assurance 22(b), *Economic Nondiscrimination*, requires the airport sponsor to include specific provisions in any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted.[1] The intent of this provision is to ensure aeronautical service providers engage in reasonable and nondiscriminatory practices and to provide the airport sponsor with authority to correct unreasonable and discriminatory practices by tenants should they occur. When reviewing lease agreements, Regions or ADOs should ensure that the agreement contains the required provision and, if it is missing, instruct the airport sponsor to insert the provision in the agreement.

b. Nonaeronautical Service to the Public.

Although the grant assurances and property deed restrictions are not generally applicable to nonaeronautical leases and agreements (as compared to aeronautical agreements), the lease of premises or an agreement granting rights to offer nonaeronautical services to the public must incorporate specific language prohibiting unfair practices regarding civil rights assurances as outlined in 49 CFR parts 23 and 26.

12.6 Agreements Involving an Entire Airport.

a. Contracts to Perform Airport Maintenance or Administrative Functions.

The important point in such arrangements is that the airport sponsor may delegate or contract with an entity of its choice to perform any element of airport maintenance or operation. However, such arrangements in no way relieve the airport sponsor of its federal obligations. The airport sponsor has the ultimate responsibility for the management and operation of the airport in accordance with federal obligations and cannot abrogate these responsibilities. When the airport sponsor elects to rely upon one of its commercial operators or tenants to carry out airport maintenance or operating responsibilities, there is the potential for a conflict of interest and the potential for a violation of the airport sponsor's federal obligations.

Any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the airport sponsor's control over the actions of the entity. The contract should be separate and apart from any other lease or contract with the airport sponsor that grants property or commercial rights on the airport. (*See* chapter 6, *Rights*

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[1] See Procurement and Contracting Under AIP – Federal Contract Provisions | Federal Aviation Administration.

and Powers and Good Title, section 6.8, *Airport Management and Development Arrangements*, for a discussion of the requirements applicable to such agreements.)

b. Total Delegation of Airport Administration.

In certain cases, an airport sponsor may submit a contractual arrangement to the Region or ADO for the operation of a publicly owned airport by a management corporation or a tenant operator. Whether the contractual document establishing this kind of a relationship is identified as a lease, concession agreement, management contract, or otherwise, it has the effect of placing a third party in a position of substantial control over a public airport that is subject to federal obligations. The Region or ADO should review these documents carefully to ensure that the rights of the airport sponsor and other tenants are protected. (*See* chapter 6, *Rights and Powers and Good Title*, section 6.8, *Airport Management and Development Arrangements*, for a discussion of the requirements applicable to such contractual arrangements).

c. Resident Agent.

The FAA will, at all times, look to the airport sponsor to ensure the actions of its management corporation contractor conform to the airport sponsor's federal obligations. The FAA will consider a management corporation with a lease of the entire airport, or a tenant operator authorized to perform any of the airport sponsor's management responsibilities, as a resident agent of the airport sponsor and not as a responsible principal.

12.7 Agreements Granting "Through-the-Fence" Access.

There are times when the airport sponsor will enter into an agreement that permits access to the airfield by aircraft based on land adjacent to, but not a part of, the airport property. This type of an arrangement has frequently been referred to as a "through-the-fence" operation even though a perimeter fence may not be visible. "Through-the-fence" arrangements can place an encumbrance upon the airport property and reduce the airport sponsor's ability to meet its federal obligations. As a general principle, the FAA does not support agreements that grant access to the public landing area by aircraft stored and serviced offsite on adjacent property. Thus, an airport sponsor should avoid these agreements because they may violate the airport sponsor's federal obligations. ("Through-the-fence" access to the airfield from private property also may be inconsistent with Transportation Security Administration security requirements).

The FAA strongly cautions airport sponsors to research such agreements to ensure they will not inadvertently violate the airport sponsor's federal obligations. In addition, the FAA discourages airport sponsors from entering into "through-the-fence" agreements with commercial service providers (including those providing aircraft storage) that intend to compete with an on-airport service provider. (*See* FAA Policy

Regarding Access to Airports from Residential Property, 78 Fed. Reg. 42419, 42424, July 16, 2013).

In addition, residential “through-the-fence" property owners must maintain their property for residential, noncommercial use for the duration of the agreement. The FAA interprets this as a prohibition on commercial aeronautical services offered by residential “through-the-fence" users or any third party that might compete with on-airport aeronautical service providers, whether existing or not, or chill the airport sponsor’s ability to attract new commercial service providers on the airport. *See* the FAA Modernization and Reform Act of 2012, Pub. L. 112-95, Section 136, codified at 49 U.S.C. § 47107(s)(2); *see also*, FAA *Policy Regarding Access to Airports from Residential Property*, 78 Fed. Reg. 42419, 42426, July 16, 2013. For information on residential “through-the-fence” access, *see* chapter 20, *Compatible Land Use*, section 20.7, *Residential Use of Land on or Near Airport Property*.

> The federal obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property.

a. Rights and Obligations of Airport Sponsor.

The federal obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property. The existence of such an arrangement could conflict with the airport sponsor’s federal obligations unless the airport sponsor retains the legal right to require the off-site property owner or occupant to conform in all respects to the requirements of any existing or proposed grant agreement. For example, in any “through-the-fence” agreement, the airport sponsor must retain the ability to take action should a safety or security concern require fencing around the airport. In some cases, airport sponsors have been unable to install actual fencing to mitigate wildlife hazards due to pre-existing “through-the-fence” agreements.

b. Economic Discrimination Considerations.

The airport sponsor is entitled to seek recovery of capital and operating costs of providing a public use airfield. The development of aeronautical enterprises on land off airport and not controlled by the airport sponsor can result in an economic competitive advantage for the “through-the-fence” operator to the detriment of on-airport tenants. To correct this imbalance, the airport sponsor should obtain from any off-airport entity a fair return for its use of the airfield by assessing access fees from those entities having “through-the-fence” access. For example, if the airport sponsor charges $100 per month for a single-engine aircraft tie-down on the airport to pay for the costs of airport operation, then any other single-engine aircraft operator using the airport “through-the-fence" should be charged no less than a similar fee. The same is true for the ground lease on a privately owned hangar and the fees charged to "through-the-fence" operators with a hangar off the airport. The airport sponsor must not economically discriminate against those aeronautical users within the airport. **NOTE:** "Through-the-fence" operators, including users with residential "through-the-fence" agreements, are not protected by the grant assurances. The airport sponsor may assess any level of fee it deems appropriate for "through-the-fence" operators so long as that fee is not less than the comparable fee paid by on-airport tenants or users.

c. Safety Considerations.

Arrangements that permit aircraft to gain access to the airfield from off-site properties complicate the control of vehicular and aircraft traffic. In some cases, they may create unsafe conditions. The airport sponsor may need to incorporate special safety and operational requirements in its "through-the-fence" agreements. (For example, a safety requirement may be needed to prevent aircraft and vehicles from sharing a taxiway). When required, the FAA Flight Standards must be consulted on safety and operational matters. In all cases, in any "through-the-fence" agreement, the airport sponsor must retain the ability to intervene if a safety concern arises and take all the necessary actions.

d. Off-Airport Aeronautical Businesses.

As a general principle, the Region or ADO should not support airport sponsor requests to enter into any arrangement that grants "through-the-fence" access to the airfield for aeronautical businesses that would compete with an on-airport aeronautical service provider such as an FBO. Exceptions may be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport and subordinate the arrangement to the grant assurances and grant agreements. Examples of "through-the-fence" uses that would not compete with an on-airport business include:

(1) At the airport sponsor's option, if a bona fide airport tenant has already leased a site from the sponsor and has negotiated airfield use privileges but also desires to move aircraft to and from a hangar or manufacturing plant on adjacent off-airport property, the tenant may gain access through an area provided by the airport sponsor.

(2) Although not encouraged by the FAA, if an entity doing business on an adjacent tract of land proposes to gain access to the airfield solely for aircraft use without offering any aeronautical services to the public, the airport sponsor may agree to grant this access. Airports commonly face this situation when an industrial airpark or manufacturing facility is developed in conjunction with the airport.

e. FAA Determinations.

The Region will determine whether arrangements granting access to the airfield from off-site locations are consistent with applicable federal law and policy. If the Region determines that such an agreement lessens the public benefit for which the airport was developed, the Region will notify the airport sponsor that it may be in violation of its federal obligations if it grants such "through-the-fence" access. If necessary, the FAA's Office of Airport Compliance and Management Analysis (ACO-100) is available to assist in such cases.

f. Reasonable Access is Not Required.

It is important to remember that users having access to the airport under a "through-the-fence" agreement are not protected by the airport sponsor's federal obligations to the FAA. This is because the federal obligation to make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities without granting an exclusive right does not impose any requirement to permit access by users from adjacent property. In fact, the airport sponsor may simply deny "through-the-fence" access if it so chooses. The airport sponsor may also charge any fee it sees fit to those outside the airport.

Since federal obligations do not require that access be granted under these circumstances, the FAA will not normally entertain complaints from entities operating from adjacent property with a "through-the-fence" access agreement.

A "through-the-fence" access agreement may result in the violation of a number of the s airport sponsor's federal obligations. Among other things, "through-the-fence" agreements can have the effect of:

(1) Placing contractual and other legal encumbrances or conditions upon the airport property, in violation of Grant Assurance 5, *Preserving Rights and Powers*;

(2) Limiting the airport's ability to ensure safe operations in both movement and non-movement areas, in violation of Grant Assurance 19, *Operation and Maintenance*;

(3) Creating unjustly economically discriminatory conditions for on-airport commercial tenants and other users by granting access to off-airport competitors or users in violation of Grant Assurance 22, *Economic Nondiscrimination*;

(4) Effectively granting an exclusive right to the "through-the-fence" operator in violation of Grant Assurance 23, *Exclusive Rights*, if the operator conducts a commercial business and no on-airport operator is able to compete because the terms given to the "through-the-fence" operator are so much more favorable;

(5) Affecting the airport sponsor's ability to be self-sustaining, in violation of Grant Assurance 24, *Fee and Rental Structure*, because the airport may not be in a position to charge "through-the-fence" users adequately for the use of the airfield;

(6) Weakening the airport sponsor's ability to remove and mitigate hazards and incompatible land uses, in violation of Grant Assurance 20, *Hazard Removal and Mitigation*, and Grant Assurance 21, *Compatible Land Use*; and

(7) Making it more difficult for an airport sponsor to implement future security requirements that may be imposed on airports.

g. Conditions of an Access Agreement.

While FAA does not support "through-the-fence" access, should an airport sponsor choose to proceed, it should do so only under the following conditions:

(1) FAA Review.

Seek FAA review to ensure that its decision will not result in a violation of an airport sponsor's federal obligations, either now or in the future. It has been the FAA's experience that airport sponsors find it difficult to correct grant assurance violations that result from "through-the-fence" access. The inability to correct such violations could result in an airport losing its eligibility to receive Airport Improvement Program (AIP) grant funds.

(2) Access Agreement Provisions.

Airport sponsors should consider the following provisions in preparing an access agreement to grant a right of "through-the-fence" access:

(a) The access agreement or similar arrangement should be a written legal document with an expiration date and signed by the airport sponsor and the "through-the-fence" operator. It may be recorded. Airport sponsors should never grant deeded access or other legal encumbrances such as easements to the airport. Agreements should be short-term and revocable for cause.

(b) The right of access should be explicit and apply only to the "through-the-fence" operation (*i.e.*, right to taxi its aircraft to and from the airfield).

(c) The "through-the-fence" operator shall not have a right to grant or sell access through its property so other parties may gain access to the airfield from adjacent parcels of land. Only the airport sponsor may grant access to the airfield, which should be consistent with Transportation Security Administration (TSA) requirements, as applicable.

(d) The access agreement should have a clause making it subordinate to the airport sponsor's grant assurances and federal obligations. Should any provision of the access agreement violate the airport sponsor's grant assurances or federal obligations, the sponsor shall have the unilateral right to amend or terminate the access agreement to remain in compliance with its grant assurances and federal obligations.

(e) The "through-the-fence" operator shall not have a right to assign, transfer, or sell its access agreement without the express prior written approval of the airport sponsor. The airport sponsor should have the right to amend or renegotiate the terms of the access agreement.

(f) The fee to gain access to the airfield should reflect the airport fees charged to similarly situated on-airport tenants and aeronautical users. For example, landing fees, ground rent, or tie-down fees paid to the airport sponsor by comparable on-airport aeronautical users or tenants to recover the capital and operating costs of the airport should be reflected in the access fee assessed the "through-the-fence" operator, including periodic adjustments. In addition, if the "through-the-fence" operator is granted the right to conduct a commercial business catering to aeronautical users either on or off the airport, the airport sponsor shall assess, at a minimum, the same concession terms and fees to the "through-the-fence" operator as assessed to all similarly situated on-airport commercial operators. As previously stated, the FAA does not support granting "through-the-fence" access to aeronautical commercial operators that compete with on-airport operators.

(g) The access agreement should contain termination and insurance articles to benefit the airport sponsor.

(h) The expiration date of the access agreement should not extend beyond a reasonable period from the airport sponsor's perspective. Also, it should not depend upon the "through-the-fence" operator's off-airport investment (*i.e.*, 30 years), as would be the case had the investment been made inside the airport.

h. Access Not Permitted.

The FAA will not approve "through-the-fence" access for certain purposes, including:

(1) FAA will not approve new "through-the-fence" access from residential property to a commercial service airport. (*See* chapter 20, *Compatible Land Use*, for additional details concerning the FAA's position on residential airparks.)

(2) The FAA will not approve a release of airport land for “through-the-fence” access to the airport by aircraft. Airport land may only be released if the land no longer has an airport purpose; if the land would be used for the parking and operation of aircraft, it would not qualify for a release. A release of airport land for an aeronautical use would simply serve to reduce the airport sponsor’s control over the use and its ability to recover airport costs from the user.

12.8 through 12.12 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 13. Airport Noise and Access Restrictions

13.1 Introduction.

This chapter contains guidance on the sponsor's responsibility with regard to restrictions on airport noise and access. Access restrictions have the potential to violate the federal obligation to make the airport available for public use on reasonable terms and without unjust discrimination as required by Grant Assurance 22, *Economic Nondiscrimination*.

The FAA supports addressing community concerns regarding noise in ways that are consistent with the applicable federal obligations that do not trigger Airport Noise and Capacity Act of 1990 (ANCA), and do not infringe on the FAA's preemption authorities.

13.2 Responsibilities.

It is the responsibility of the Regional Airports Divisions (Regions) and Airports District Offices (ADOs) to advise sponsors on the laws and policies that apply to access restrictions and to ensure that the sponsor extends equitable treatment to all of the airport's aeronautical users.

13.3 Future Noise Policy.

The FAA is in the process of reviewing its noise policy and policy on airport noise compatibility planning. Consequently, the FAA will conduct a more detailed review and update this chapter at a later date. In the intervening time, ACO-100 should be consulted when reviewing an airport's proposed aircraft noise and access restrictions to ensure that current guidelines are followed.

13.4 Background.

a. The legal framework with respect to abatement of aviation noise may be summarized as follows:

(1) The federal government has preempted the areas of airspace use and management, air traffic control, safety, and the regulation of aircraft noise at its source. The federal government also has substantial power to influence airport development through its administration of the Airport Improvement Program (AIP).

(2) Other powers and authorities to control aircraft noise rest with the airport proprietor – including the power to select an airport site, acquire land, assure compatible land use, and control airport design, scheduling and operations – subject to constitutional prohibitions against creation of an undue burden on interstate and foreign commerce, and unreasonable, arbitrary, and unjust discriminatory rules that advance the local interest, other statutory requirements, and interference with exclusive federal regulatory responsibilities over safety and airspace management.

(3) State and local governments may protect their citizens through land use controls and other police power measures not affecting airspace management or aircraft operations. In addition, to the extent they are airport proprietors, they have the powers described in section b(2) below:

b. The authorities and responsibilities of the parties may be summarized as follows:

(1) The federal government has the authority and responsibility to control aircraft noise by the regulation of source emissions, by flight operational procedures, and by management of the air traffic control system and navigable airspace in ways that minimize noise impact on residential areas, consistent with the highest standards of safety and efficiency. The federal government also provides financial and technical assistance to airport proprietors for noise reduction planning and abatement activities and, working with the private sector, conducts continuing research into noise abatement technology.

(2) Airport sponsors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce.

(3) State and local governments and planning agencies should provide for land use planning and development, zoning, and housing regulations that are compatible with airport operations.

(4) Air carriers are responsible for retirement, replacement or retrofit for older jets that do not meet federal noise level standards, and for scheduling and flying airplanes in a way that minimizes the impact of noise on people.

(5) Air travelers and shippers generally should bear the cost of noise reduction, consistent with established federal economic and environmental policy that the costs of complying with laws and public policies should be reflected in the price of goods and services.

(6) Residents and prospective residents in areas surrounding airports should seek to understand the noise problem and what steps can be taken to minimize its effect on people. Individual and community responses to aircraft noise differ substantially and, for some individuals, a reduced level of noise may not eliminate the annoyance or irritation. Prospective residents of areas impacted by aircraft noise, thus, should be aware of the potential effect of noise on their quality of life and act accordingly.

(7) Airport sponsors have limited proprietary authority to restrict access as a means of reducing aircraft noise impacts in order to improve compatibility with the local community. To accomplish this, airport sponsors must comply with the national program for review of airport noise and access restrictions under the Airport Noise and Capacity Act of 1990 (ANCA). ANCA requires that certain review and approval procedures be completed before a proposed restriction that impacts Stage 2 or Stage 3 aircraft is implemented. The FAA regulation that implements ANCA is 14 CFR part 161, *Notice and Approval of Airport Noise and Access Restrictions*. An airport sponsor may use an airport noise compatibility study pursuant to 14 CFR part 150 to fulfill certain notice and comment requirements under ANCA.

13.5 Applicable Law and Regulation.

The following statutes, regulations and advisory circulars are generally applicable to airport noise and access restrictions:

- Airport Noise and Capacity Act (ANCA) of 1990
- Aviation Safety and Noise Abatement Act of 1979
- 49 U.S.C. § 40101, *Policy*
- 49 U.S.C. § 40103(e), *No Exclusive Rights at Certain Facilities*
- 49 U.S.C. § 40117, *Passenger facility charges*
- 49 U.S.C. § 47502, *Noise measurement and exposure systems and identifying land use compatible with noise exposure*
- 49 U.S.C. § 44701, *General requirements*
- 49 U.S.C. § 47107, *Project grant application approval conditioned on assurances about airport operations*
- 49 U.S.C. § 47504, *Noise compatibility programs*
- 14 CFR part 36, *Noise Standards: Aircraft Type and Airworthiness Certification*
- 14 CFR part 150, *Airport Noise Compatibility Planning*
- 14 CFR part 161, *Notice and Approval of Airport Noise and Access Restrictions*

- FAA Advisory Circular (AC) 36-3H, *Estimated Airplane Noise levels in A-Weighted Decibels*

13.6 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:

- Grant Assurance 21, *Compatible Land Use*
- Grant Assurance 22, *Economic Nondiscrimination*
- Grant Assurance 23, *Exclusive Rights*

13.7 Overview of the Noise-Related Responsibilities of the Federal Government.

Responsibility for the oversight and implementation of aviation laws and programs is delegated to the FAA under the Federal Aviation Act of 1958 (FAA Act), as amended, 49 U.S.C. § 40101 et seq. The basic national policies intended to guide FAA actions under the FAA Act are set forth in 49 U.S.C. § 40101(d), which declares that certain matters are in the public interest. To achieve these statutory purposes, 49 U.S.C. §§ 40103(b), 44502, and 44721 provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace, air traffic control, and air navigation facilities.

The FAA has exercised this authority by promulgating wide-ranging and comprehensive federal regulations on the use of navigable airspace and air traffic control. Similarly, the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under 49 U.S.C. § 44701 et seq., by extensive federal regulatory action.

The federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and aviation safety. Under the legal doctrine of federal preemption, which flows from the Supremacy Clause of the Constitution, state and local authorities do not generally have legal power to act in an area that already is subject to comprehensive federal regulation.

Because of the increasing public concern about aircraft noise that accompanied the introduction of turbojet powered aircraft in the 1960s and the constraints such concern posed for the continuing development of civil aeronautics and the air transportation system of the United States, the federal government in 1968 sought, and Congress granted, broad authority to regulate aircraft for the purpose of noise abatement.

This authority, codified at 49 U.S.C. § 44715, constitutes the basic authority for federal regulation of aircraft noise.

13.8 CFR part 36, Noise Standards for Aircraft Type and Airworthiness Certification.

Under 49 U.S.C. § 44715, the FAA may propose rules considered necessary to abate aircraft noise and sonic boom. Aircraft noise rules must be consistent with the highest degree of safety in air commerce and air transportation, economically reasonable, technologically practicable, and appropriate for the particular type of aircraft. On November 18, 1969, the FAA promulgated the first aircraft noise regulations, which were codified in 14 CFR part 36. The new Part 36 became effective on December 1, 1969. It prescribed noise standards for the type certification of subsonic transport category airplanes and for subsonic turbojet powered airplanes regardless of category. Part 36 initially applied only to new types of aircraft. As soon as the technology had been demonstrated, the standard was to be extended to all newly manufactured aircraft of already certificated types.

In 1973, the FAA amended Part 36 to extend the applicability of the noise standards to newly produced airplanes irrespective of type certification date. In 1977, the FAA amended Part 36 to provide for three stages of aircraft noise levels (Stage 1, Stage 2, and Stage 3), each with specified limits. This regulation required applicants for new type certificates applied for on or after November 5, 1975, to comply with Stage 3 noise limits, which were stricter than the noise limits then being applied. Airplanes in operation at the time that did not meet the Stage 3 noise limits were designated either as Stage 2 or Stage 1 airplanes.

In 1976, the FAA amended the aircraft operating rules in 14 CFR part 91 to phase out operations in the United States, by January 1, 1985, of Stage 1 aircraft weighing more than 75,000 pounds. These aircraft were defined as civil subsonic aircraft that did not meet Stage 2 or Stage 3 Part 36 noise standards. Effectively, the Stage 1 category is composed of transport category and jet airplanes that cannot meet the noise levels required for Stage 2 or Stage 3 under Part 36, Appendix B. It also includes aircraft that were never required to demonstrate compliance with Part 36 because they were certificated prior to the requirement for Part 36 noise certification. Stage 1 aircraft include some corporate jets, some transport category turbo-prop, and some transport category piston airplanes. Aircraft certificated under 14 CFR part 36 subpart F, *Propeller Driven Small Airplanes and Propeller-Driven, Commuter Category Airplanes*, do not have a stage classification, and as such are referred to as nonstage. The vast majority of small general aviation (GA) aircraft and many propeller-driven commuter aircraft flying in the United States are nonstage aircraft. In addition, some aircraft to which Part 36 does not apply, regardless of method of propulsion, can be aircraft certificated in the experimental category. For example, most jet war birds, military aircraft types and World War II aircraft are also classified as nonstage aircraft.

As a result of congressional findings, ANCA revised CFR part 91 to include the provision that no civil subsonic turbo aircraft weighing more than 75,000 pounds may be operated within the 48 contiguous states after January 1, 2000, unless it was shown to comply with the Stage 3 noise standards of Part 36.

In July 2005, the FAA adopted more stringent Stage 4 standards for certification of aircraft, effective January 1, 2006. Any aircraft that meets Stage 4 standards will meet Stage 3 standards. Accordingly, policies for review of noise restrictions affecting Stage 3 aircraft may be applied to Stage 4 aircraft as well.

13.9 The Aircraft Noise Compatibility Planning Program.

In 1979, Congress enacted the Aviation Safety and Noise Abatement Act (ASNA). In ASNA, Congress directed the FAA to: (1) establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise; (2) establish a single system for determining the exposure of individuals to noise from airport operations; and (3) identify land uses that are normally compatible with various exposures of individuals to noise. (*See* Table 1 of 14 CFR part 150.) FAA promulgated 14 CFR part 150 to implement ASNA. Part 150 established the "day-night average sound level" (DNL) as the noise metric for determining the exposure of individuals to aircraft noise. It identifies residential land uses as being normally compatible with noise levels below DNL 65 decibels (dB). ASNA also provided for federal funding and other incentives for airport operators to prepare noise exposure maps voluntarily and institute noise compatibility programs. Under ASNA, noise compatibility programs "shall state the measures the [airport] operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the [noise exposure] map."

Consistent with ASNA, Part 150 requires airport operators preparing noise compatibility programs to analyze the following alternative measures:

(1) Acquisition of land in fee, and interests therein, including but not limited to air rights, easements, and development rights;

(2) Construction of barriers and acoustical shielding, including the soundproofing of public buildings;

(3) Implementation of restrictions on the use of the airport by type or class of aircraft based on the noise characteristics of the aircraft;

(4) Implementation of a preferential runway system; Use of flight procedures to control the operation of aircraft to reduce exposure of individuals or specific noise sensitive areas[1] to noise in the area around the airport;

(5) Other actions or combinations of actions that would have a beneficial noise control or abatement impact on the public; and

(6) Other actions recommended for analysis by the FAA for the specific airport.

Under Part 150, an airport operator "shall evaluate the several alternative noise control actions" and develop a noise compatibility program that:

(1) Reduces existing noncompatible uses and prevents or reduces the probability of the establishment of additional noncompatible uses;

(2) Does not impose an undue burden on interstate and foreign commerce;

(3) Does not derogate safety or adversely affect the safe and efficient use of airspace;

(4) To the extent practicable, meets both local interests and federal interests of the national air transportation system; and

(5) Can be implemented in a manner consistent with all of the powers and duties of the FAA Administrator.

As a matter of policy, FAA encourages airport proprietors to develop and implement aircraft noise compatibility programs under Part 150. Where an airport proprietor is considering an airport use restriction, Part 150 provides an effective process for determining whether the proposed restriction is consistent with applicable legal requirements, including the grant assurances in airport development grants. However, while a restriction might meet the Part 150 criteria, that does not necessarily mean it will meet the Part 161 criteria. ASNA and Part 150 set forth an appropriate means of defining the noise problem, recognizing the range of local and federal interests, ensuring broad public and aeronautical participation, and balancing all of these interests in a manner to ensure a reasonable, nonarbitrary, and nondiscriminatory result that is consistent with the airport proprietor's federal obligations. Accordingly, the FAA included in 14 CFR part 161, the regulations that implement ANCA, an option to use the Part 150 process to provide public notice and opportunity to comment on a proposed Stage 2 or Stage 3 restriction. The FAA encouraged the use of Part 150 for meeting the notice and comment requirements of Part 161, noting that the Part 150 process "is more

[1] These are land uses that may be adversely affected by cumulative noise levels at or above 65 DNL such as residential neighborhoods, educational, health, or religious structures or sites, and outdoor recreational, cultural and historic sites.

comprehensive in scope in that it includes compatible land use planning, as well as restrictions on aircraft operation.” The FAA further noted, in the preamble to the Part 161 final rule, that a Part 150 determination “may provide valuable insight to the airport operator regarding the proposed restriction’s consistency with existing laws, and the position of the FAA with respect to the restriction.”

13.10 Compliance Review.

As part of a Part 150 study, the FAA requires the sponsor to analyze fully the anticipated impact of any proposed restriction. The FAA must evaluate whether the restriction places an undue burden on interstate or foreign commerce or the national aviation system, and whether the restriction affects the sponsor’s ability to meet its federal obligations. Certain restrictions may have little impact at one airport and a great deal of impact at others. Accordingly, the sponsor must clearly present the impact of the restriction at the affected airport. A sponsor with a multiple airport system may designate different roles for the airports within its system. That designation in itself does not authorize restrictions on classes of operations, and the sponsor should first present its plan to FAA to ensure compliance with grant assurances and other federal obligations.

13.11 Mandatory Headquarters Review.

The FAA headquarters staff shall review proposed noise restrictions, especially those that are proposed without using the Part 150 process. Accordingly, if the Regions or ADOs identify a restriction that potentially impacts the sponsor’s federal obligations, it must coordinate its actions with the Airport Planning and Environmental Division (APP-400) through the FAA headquarters Airport Compliance Division (ACO-100).

13.12 Balanced Approach to Noise Mitigation.

Proposed noise-based airport use restrictions must consider federal interests in the national air transportation system as well as the local interests they are intended to address.

a. FAA Policy.

The FAA has encouraged a balanced approach to address noise problems and has discouraged unreasonable airport use restrictions. It is FAA policy that airport use restrictions should be considered only as a measure of last resort when other mitigation measures are inadequate to satisfactorily address a noise problem and a restriction is the only remaining option that could provide noise relief. This policy furthers the federal interest in maintaining the efficiency and capacity of the national air transportation system and, in particular, the FAA’s responsibility to ensure that federally funded airports maintain reasonable public access in compliance with applicable law.

b. Federal Methodology.

Failure to consider a combination of measures, such as land acquisitions, easements, noise abatement procedures, and sound insulation could result in a finding that a balanced approach was not used in addressing a noise problem. A sponsor's acceptance of federal funds places upon it certain federal obligations, which require it first to consider a wide variety of options to alleviate a local noise problem. Consistent with these federal requirements and policies, the FAA interprets the requirement in 49 U.S.C. § 47107(a)(1) that a federally funded airport will be "available for public use on reasonable conditions" as requiring that a regulation restricting airport use for noise purposes: (1) be justified by an existing noncompatible land use problem; (2) be effective in addressing the identified problem without restricting operations more than necessary; and (3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.

c. The Role of ASNA and Part 150.

Aircraft under ASNA involves consideration of a range of alternative mitigation measures, including aircraft noise and other restrictions. For example, under Part 150, the airport operator could, among other things, recommend constructing noise barriers, installing acoustical shielding, and acquiring land, easements, air rights, and development rights to mitigate the effects of noise consistent with 49 U.S.C. § 47504. The FAA does not need to examine nonrestrictive measures to see if they are consistent with ANCA and Grant Assurance 22, *Economic Nondiscrimination*, or related federal obligations.

d. Reasonable Alternatives.

Developing reasonable alternatives is the nucleus of the compatibility planning process. The objective is to explore a wide range of feasible options and alternative compositions of land use patterns, noise control actions, and noise impact patterns, seeking optimum accommodation of both airport users and airport neighbors within acceptable safety, economic, and environmental parameters. It is unlikely that any single option, by itself, will be capable of totally solving the problem(s) without having objectionable impacts of its own. Some options may have little or no value in the situation, especially if used alone. Realistic alternatives, then, will normally consist of combinations of the various options in ways that offer more complete solutions with more acceptable impacts or costs.

A balanced approach – using a combination of nonrestrictive measures and considering use restrictions only as a last resort – is inherently reasonable and is used nationally and internationally. On the other hand, bypassing nonrestrictive measures and only relying on restrictive alternatives can be an inherently unreasonable approach to addressing a noise problem.

13.13 Cumulative Noise Metric.

In ASNA, Congress directed the Secretary of Transportation to "establish a single system for determining the exposure of individuals to noise resulting from airport operations" and "identify land uses normally compatible with various exposures of individuals to noise."

As directed by Congress in ASNA, the FAA has established DNL as the metric for "determining the exposure of individuals to noise resulting from airport operations." Also in compliance with ASNA, the FAA has established the land uses normally compatible with exposures of individuals to various levels of aircraft noise. The FAA determined that residential land use is "normally compatible" with noise levels of less than DNL 65 dB. In other words, a sponsor should demonstrate that a proposed restriction will address a noise problem within the 65 dB DNL contour.

> Realistic alternatives will normally consist of combinations of the various options in ways that offer more complete solutions with more acceptable impacts or costs.

A restriction designed to address a noise problem must be based on significant cumulative noise impacts, generally represented by an exposure level of DNL 65 dB or higher in an area not compatible with that level of noise exposure. A community is not precluded from adopting a cumulative noise exposure limit different than DNL 65 dB, but cannot apply a different standard to aircraft noise than it does to all other noise sources in the community. This is not common, and most noise mitigation measures can be expected to address cumulative noise exposure of DNL 65 dB and higher.

13.14 General Noise Assessment.

In assessing the reasonableness and unjustly discriminatory aspect of a proposed noise restriction, FAA may need to answer the following:

(1) Is Part 150 documentation available for review and consideration? Has the sponsor completed the required analysis, public notice, and approval process under 14 CFR part 161? Has the sponsor implemented the measures?

(2) Is the proposed restriction a rational response to a substantiated noise problem?

(3) Were nonrestrictive land use measures considered first?

(4) Is proper methodology being used in comparing alternatives?

(5) Is there consistency between guidelines governing the establishment of compatible land use and those governing an access restriction? Do they work together to solve the noise problem?

(6) Are existing local land use standards designed to achieve the same level of compatibility sought by the restriction (*i.e.*, does the community tolerate a higher level of noise for nonaviation uses and place a higher burden of noise mitigation on the airport and its users than it does on other noise sources)?

(7) Are the restrictions intended to achieve noise reductions above 65 dB or below? Is guidance from the Federal Interagency Committee on Aviation Noise (FICAN) being used?[2]

(8) Has the sponsor demonstrated any exposure to financial liability for noise impact as a result of a noise problem?

(9) Is the restriction based on a qualifier other than noise? For example, noise-based restrictions have to be justified on the grounds of aircraft noise. A restriction based on aircraft weight or any other qualifier other than noise emission might be unjustly discriminatory if the purpose is to address a noise problem.

13.15 Residential Development.

In reviewing the reasonableness of airport access restrictions, the FAA must consider whether the sponsor has fulfilled its responsibilities regarding compatible land use under Grant Assurance 21, *Compatible Land Use*. Airport sponsors are obligated to take appropriate action, including the adoption of zoning laws, to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations. Local land use planning, as a method of determining appropriate (and inappropriate) use of properties around airports, should be an integral part of the land use policy and regulatory tools used by state and local land use planning agencies. Very often, such land use planning coordination is hampered by the fact that an airport can be surrounded by multiple individual local governmental jurisdictions, each with its own planning process. Some airport authorities have the authority to control land use, but many do not. If the airport sponsor does not have authority to control local land use, FAA will not hold the actions of independent land use

[2] The Federal Interagency Committee on Aviation Noise (FICAN) was formed in 1993 to provide forums for debate over future research needs to better understand, predict, and control the effects of aviation noise, and to encourage new technical development efforts in these areas. Additional information may be available online.

authorities against the airport sponsor. However, FAA expects the airport sponsor to take reasonable actions to encourage independent land use authorities to make land use decisions that are compatible with aircraft operations. The airport sponsor should be proactive in opposing planning and proposals by independent authorities to permit development of new noncompatible land uses around the airport.

13.16 Impact on Other Airports and Communities.

In evaluating the significance of a restriction, the FAA will consider the degree to which the restriction may affect other airports in two general ways: (1) whether it establishes a precedent for restrictions at more airports, possibly resulting in significant effects on the national air transportation system, and (2) whether other airports in the region will be impacted by traffic diverted from the restricted airport, either by shifting noise impact from one community to another or by burdening a hub airport with general aviation traffic that should be able to use a reliever airport.

13.17 The Concept of Unjust Discrimination.

Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed grant assurances, implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Consistent with Grant Assurance 22, *Economic Nondiscrimination*, airport sponsors are prohibited from unjustly discriminating among airport users when implementing a noise-based restriction. The FAA has determined – and the federal courts have held – that the use of noise control regulations to ban aircraft on a basis unrelated to noise is unjustly discriminatory and a violation of the federal grant assurances and federal surplus property obligations.

For example, in *City and County of San Francisco* v. *FAA*, the airport adopted an aircraft noise regulation that resulted in the exclusion from the airport of a retrofitted Boeing 707 that met Stage 2 standards while permitting use of the airport by 15 other models of aircraft emitting as much or more noise than the 707. The Ninth Circuit Court of Appeals affirmed the FAA's determination that the airport regulation was unjustly discriminatory because it allowed aircraft that were equally noisy or noisier than the aircraft being restricted to operate at the airport and to increase in number without limit while excluding the 707 based on a characteristic that had no bearing on noise (date of type-certification as meeting Stage 2 requirements).

In *Santa Monica Airport Association* v. *City of Santa Monica*, the Court struck down the airport's ban on the operation of jet aircraft on the basis of noise under the Commerce and Equal Protection clauses of the U.S. Constitution. The Court found that, "… in terms of the quality of the noise produced by modern type fan-jets and its alleged tendency to irritate and annoy, there is absolutely no difference between the noise of such jets and the noise emitted by the louder fixed-wing propeller aircraft which are allowed to use the airport."

13.18 Part 161 Restrictions Impacting Stage 2 or Stage 3 Aircraft.

a. Stage 2 or Stage 3 Aircraft.

Airport noise/access restrictions on operations by Stage 2 or Stage 3 aircraft must comply with ANCA, as implemented by 14 CFR part 161.

ANCA does not require FAA approval of restrictions on Stage 2 aircraft operations; however, FAA determines whether applicable notice, comment, and analysis requirements have been met. The FAA also separately reviews proposed Stage 2 restrictions for compliance with grant assurance and surplus property obligations. For this purpose, the FAA relies upon the standards under ASNA, as implemented by 14 CFR part 150.

ANCA prescribes a more stringent process for national review of proposed restrictions on Stage 3 aircraft operations, including either FAA approval or, alternatively, agreement by all operators at the airport. If FAA approval is required, then the process for review of restrictions on Stage 3 aircraft operations includes consideration of environmental impacts. The statutory criteria for FAA approval of Stage 3 restrictions includes the criteria used under 14 CFR part 150 to determine compliance with the grant assurance and Surplus Property Act obligations. For Stage 3 restrictions, the ANCA review considers compliance with grant assurance and surplus property obligations.

Proposals to restrict operations by Stage 3 aircraft must (1) be agreed upon by the airport and all users at the airport or (2) satisfy procedural requirements similar to proposals to restrict Stage 2 operations and be approved by FAA. To be approved, restrictions must meet the following six statutory criteria:

- The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory.
- The proposed restriction does not create an undue burden on interstate or foreign commerce.
- The proposed restriction maintains safe and efficient use of the navigable airspace.
- The proposed restriction does not conflict with any existing federal statute or regulation.

- The applicant has provided adequate opportunity for public comment on the proposed restriction.
- The proposed restriction does not create an undue burden on the national aviation system.

b. ANCA Grandfathering.

ANCA contains special provisions that “grandfather” restrictions on Stage 2 aircraft operations that were proposed before October 1, 1990. ANCA also grandfather’s restrictions on Stage 3 aircraft that were in effect on October 1, 1990. Airport sponsors who adopted restrictions before ANCA was enacted on November 5, 1990, may amend these restrictions without complying with ANCA provided the amendment does not reduce or limit aircraft operations or affect aircraft safety. However, amendments to existing restrictions and new restrictions are subject to review for compliance with the federal grant assurances and federal surplus property obligations.

c. Consistency of Part 161 and Grant Assurance Determinations on Proposed Restrictions of Operations by Stage 2 Aircraft.

It is possible for a proposed Stage 2 restriction to meet the requirements of Part 161, which are essentially procedural, but fail to comply with the grant assurance requirements to provide access on reasonable terms without unjust discrimination. Accordingly, in reviewing a restriction on operations by Stage 2 aircraft, it is important that FAA Regions coordinate with the FAA Airport Compliance Division (ACO-100), the FAA Airport Planning and Environmental Division (APP-400), and to assure consistency between agency Part 161 and grant assurance determinations.

13.19 Undue Burden on Interstate Commerce.

The FAA is responsible for reviewing and evaluating an airport sponsor's noise restrictions to determine whether there is an undue burden on interstate or foreign commerce contrary to the airport's federal requirements under the grant assurances, the Surplus Property Act, and ANCA.

a. General.

An airport restriction must not create an undue burden on interstate commerce. The FAA will make the determination on whether it is an undue burden. While airport restrictions may have little impact at one airport, they may have a great deal of impact at others by adversely affecting airport capacity or excluding certain users from the airport. The magnitude of both impacts must be clearly presented. Any regulatory action that causes an unreasonable interference with interstate or foreign commerce could be an undue burden.

b. Analysis and Process.

In all cases, it is essential to determine whether there are interstate operations into and out of the airport in question, as well as the level of air carrier service. For example, the airport may have Part 121 operations or others engaged in Part 135 commercial operations of an interstate commerce nature. While some kinds of operations may be entirely local, *e.g.*, air tours or crop dusting, most commercial aviation will involve interstate commerce to some degree.

In determining whether a particular restriction would cause an undue burden on interstate commerce, it may be necessary to consider the total number of based aircraft and aircraft operations, the role of the airport, and the capabilities of other airports within the system (*i.e.*, reliever airport, General Aviation (GA), or commercial service airport), and the number of operators engaged in interstate commerce. The analysis of a proposed restriction should also quantify the economic costs and benefits and the regional impact in terms of employment, earnings, and commerce.

13.20 Use of Complaint Data.

Complaint data (*i.e.*, from homeowner complaints filed with the airport) are generally not statistically valid indicators or measurements of a noise problem. Therefore, complaint data is usually not an acceptable justification for a restriction. Congress, in ASNA, directed the FAA to establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise.

In 14 CFR part 150, the FAA adopted DNL to fulfill this statutory federal obligation. While complaints may be a valid indication of individual annoyance, they do not accurately measure community annoyance. Reactions of individuals to a particular level of noise vary widely, while community annoyance correlates well with particular noise exposure levels. As the FAA stated in a 1994 report to Congress on aircraft noise:

The attitudes of people are actually more important in determining their reactions to noise than the noise exposure level. Attitudes that affect an individual's reactions include:

- **(a)** Apprehension regarding their safety because of the noise emitter,
- **(b)** The belief that the noise is preventable,
- **(c)** Awareness of non-noise environmental problems, and
- **(d)** A general sensitivity to noise, and the perceived economic importance of the noise emitter.

The resultant variability in the way individuals react to noise makes it essentially impossible to predict with any accuracy how any one individual will respond to a given noise. For example, some people object to noise emitted by jets, regardless of the actual noise energy level, while others complain about helicopter noise only. When communities are considered as a whole, however, reliable relationships are found between reported annoyance and noise exposure. This relationship between community annoyance and noise exposure levels "…remains the best available source of predicting the social impact of noise on communities around airports …". As the Federal Interagency Committee on Noise (FICON) noted in its 1992 report, "the best available measure of [community annoyance] is the percentage of the area population characterized as 'highly annoyed' (%HA) by long-term exposure to noise of a specified level (expressed in terms of DNL)."

13.21 Use of Advisory Circular (AC) 36-3H.

Advisory Circular (AC) 36-3H provides listings of estimated airplane noise levels in units of A-weighted sound level in decibels (dBA), ranked in descending order under listed conditions and assumptions. A-weighted noise levels refer to the level of noise energy in the frequency range of human hearing, rather than total noise energy. The advisory circular provides data and information both for aircraft that have been noise type certificated under 14 CFR part 36 and for aircraft for which FAA has not established noise standards.

While 14 CFR part 36 requires turbojet and large transport category aircraft noise levels to be reported in units of Effective Perceived Noise Level in decibels (EPNdB) and the reporting of propeller-driven small airplanes and commuter category airplanes to be reported using a different method [A-weighted noise levels], many airports and communities use a noise rating scale that is stated in A-weighted decibels. For this reason, FAA has provided a reference source for aircraft noise levels expressed in A-weighted noise levels.

The noise levels in AC 36-3H expressed in A-weighted noise levels are estimated as they would be expected to occur during type certification. Aircraft noise levels that occur under uniform certification conditions provide the best information currently available to compare the relative noisiness of airplanes of different types and models. AC 36-3H should be used as the basis for comparing the noise levels of aircraft that are not subject to noise certification rules to aircraft that are certificated as Stage 1, Stage 2, or Stage 3 under 14 CFR part 36.

Advisory Circular (AC) 36-3H allows an “apple-to-apple” comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport operator’s plan, and it is widely used and understood by the layman.

Table 13.1 in AC 36-3H provides an example of comparisons of aircraft. AC 36-3H provides the data in dBA, which is the base metric for DNL. It tabulates noise levels for a broad variety of aircraft in A-weighted sound level, retaining the advantage of the Part 36 testing methodology and procedures (standardization, repeatability). AC 36-3H allows an “apple-to-apple” comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport sponsor’s noise compatibility plan, and it is widely used and understood in both the aviation industry and community planning agencies. However, the noise levels in AC 36-3H are not intended to determine what noise levels are acceptable or unacceptable for an individual community.

13.22 through 13.26 Reserved.

Part IV: Airports and Aeronautical Users

Chapter 14. Restrictions Based on Safety and Efficiency Procedures and Organization

14.1 Introduction.

This chapter outlines guidance and standard methodology by which FAA reviews existing or proposed restrictions on aeronautical activities at federally obligated airports on the basis of safety and efficiency for compliance with federal obligations. It does not address other airport noise and access restrictions, which are discussed in chapter 13, *Airport Noise and Access Restrictions*. This chapter also discusses justification and review of restrictions on a specific class of activity, *e.g.*, banning all parachute operations on an airport.

14.2 Applicable Law.

Section 47107(a) of Title 49 of the United States Code sets forth statutory requirements for an airport sponsor's obligations under written grant assurances. The sponsor of any airport developed with federal financial assistance is required to operate and maintain the airport and all facilities which are necessary to serve the aeronautical users of the airport in a safe and serviceable condition. Grant Assurance 19, *Operation and Maintenance*, implements 49 U.S.C. § 47107(a)(7).

Grant Assurance 19(a) requires,

> The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions...

In addition, the sponsor is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination.[1] Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances, implements the provisions of 49 U.S.C. § 47107(a) (1) through (6).

Grant Assurance 22(a) requires that the sponsor of a federally obligated airport:

> …will make its airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Grant Assurance 22(h) provides that the sponsor:

> …may establish such reasonable, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

Grant Assurance 23, *Exclusive Rights* provides that the sponsor:

> …will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. . .

In addition, airport sponsors must comply with federal obligations from federal surplus and non-surplus property conveyances as discussed in chapter 3, *Federal Obligations from Property Conveyances*.

14.3 Restricting Aeronautical Activities.

While the airport sponsor must allow use of its airport by all types, kinds, and classes of aeronautical activity, as well as by the general public, Grant Assurance 22, *Economic Nondiscrimination*, also provides for a limited exception: “the airport sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is reasonable and necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.”

[1] The FAA shall develop plans and policy for the use of navigable airspace to ensure the safety of aircraft and efficient use of airspace. (49 U.S.C. § 40103). The U.S. Government has exclusive sovereignty over airspace of the United States and thus makes the final decision regarding safety of aircraft.

Any restriction proposed by an airport sponsor based upon safety and efficiency, including those proposed under Grant Assurance 22(i) must be adequately justified and supported.[2] If a proposed aeronautical activity cannot be safely accommodated based on FAA's Flight Standards Service (Flight Standards) review, ARP will make a determination that the activity may be restricted or prohibited without violating Grant Assurance 22, *Economic Nondiscrimination*. Prohibitions and limits are within the sponsor's proprietary power only to the extent that they are consistent with the sponsor's obligations to provide access to the airport on reasonable and not unjustly discriminatory terms and other applicable federal law.

Working in conjunction with Flight Standards and/or the Air Traffic Organization, ARP will carefully analyze supporting data and documentation and make the final call on whether a particular activity can be conducted safely and efficiently at an airport and whether an access restriction is reasonable. The FAA determines all issues on Aviation Safety.

> At federally obligated airports, ARP, not the sponsor, is the authority to approve or disapprove aeronautical restrictions under Grant Assurance 22, *Economic Nondiscrimination*, based on safety and/or efficiency and the reasonableness of the restriction.

14.4 Minimum Standards and Airport Regulations.

An airport sponsor may adopt reasonable minimum standards for aeronautical businesses and adopt routine regulations for use and maintenance of airport property by aeronautical users and the public.[3] These kinds of rules typically do not restrict aeronautical operations, and therefore would generally not require justification under Grant Assurance 22(i). For example, an airport sponsor may require a reasonable amount of insurance as part of their minimum standards.

[2] The word "efficiency" refers to the efficient use of navigable airspace, which is an Air Traffic Control function. It is not meant to be an interpretation that could be construed as protecting the operation of an existing aeronautical service provider at the airport. (*See* FAA Advisory Circular 150/5190-8, *Minimum Standards for Commercial Aeronautical Activities*, December 7, 2023).

[3] *See* chapter 10, *Reasonable Commercial Minimum Standards*.

a. Type, Kind, or Class.[4]

Grant Assurance 22(i) refers to the airport sponsor's limited ability to prohibit or limit aeronautical operations by whole classes or types of operation, not individual operators. If a class or type of operation may cause a problem, all operators of that type or class would be subject to the same restriction. For example, if the sponsor of a busy airport finds that skydiving unacceptably interferes with the use of the airport by fixed-wing aircraft, and the FAA agrees, the sponsor may ban skydiving at the airport. However, the sponsor could not ban some diving operators and allow others to operate. If a sponsor believes there is a safety issue with the flight operations of an individual aeronautical operator, rather than a class of operations, the sponsor should report the issue to the Flight Standards Service as well as bringing it to the attention of the operator's management.

b. Multi-Airport Systems.

The operator of a system of airports may have some ability to accommodate operations at its other airports if those operations are restricted at one airport in the system. However, any access restrictions must still be fully justified under the applicable federal obligations, and must be approved by the FAA, which includes safety or efficiency considerations at the airport where the restrictions apply. In addition, such restrictions must also comply with ANCA. The operator may not simply allocate classes or types of operations among airports based on preference for each airport's function in the system.

c. Rationale for Restrictions.

A prohibition or limit on aeronautical operations justified by the sponsor on the basis of safety or efficiency, under Grant Assurance 22(i), will be evaluated by ARP based on the stated purpose of the limitation, the justification, and the reasonableness of the restriction under the given circumstance and review of the available evidence. Prior permission requirements (PPR), Notice to Airmen (NOTAM) or remarks in the chart supplement shall not be used as a cover to restrict access. If it appears that the sponsor intends the restriction to serve other purposes, such as safety, ARP will give special scrutiny to the safety and efficiency basis of the restriction when evaluating the reasonableness of the sponsor's request to limit a given authority.

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[4] The term "kind" in Grant Assurance 22(i) is not defined in the Federal Aviation Act of 1958 (FAA Act), the Airport and Airway Improvement Act of 1982 (AAIA), or in FAA regulations, and has been interpreted not to add any meaning distinct from "class" and "type" of operation or operator.

14.5 Agency Determinations on Safety and System Efficiency.

Complaints on the reasonableness of restrictions based on safety and efficiency are investigated by the Regional Airports Division (Region) or local FAA Airports District Office (ADO).

The Region or ADO will make an informal determination on a 14 CFR part 13 (Part 13) complaint. ACO will issue a Director's Determination on a formal complaint filed under 14 CFR part 16 (Part 16). (*See* chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*). In both cases, the determination will address whether a particular access restriction is a violation of the airport sponsor's grant assurances. The Part 16 Director's Determination is subject to appeal to the Associate Administrator for Airports.

For a complaint regarding an access restriction based on safety or air traffic efficiency, ACO should obtain assistance from the appropriate FAA office, usually Flight Standards for safety issues and Air Traffic for efficiency issues. While Flight Standards has jurisdiction for safety determinations, coordination with Air Traffic or other FAA offices will likely be required in cases where the aeronautical activity being denied may have an impact on the efficient use of the airport and nearby airspace.

An airport sponsor may request an FAA assessment in advance on whether a proposed restriction on aeronautical activity would be justified and consistent with the sponsor's grant assurances. An FAA team comprised of ARP, Flight Standards, and sometimes Air Traffic, conducts an assessment to determine the risk level for a particular aeronautical activity at an airport. The results of the risk assessment, along with the suggested mitigations, can help Regions and ADOs determine whether a particular access restriction is a violation of the airport sponsor's grant assurances.

14.6 FAA Review of an Airport Sponsor's Safety and Efficiency Justification.

The goal of this guidance is to provide a standard procedure for the FAA to review technical, safety and efficiency justifications offered by an airport sponsor in support of an airport access restriction. This review may be conducted at the request of the airport sponsor, or during an informal or formal complaint under 14 CFR parts 13 or 16.

When evaluating the reasonableness of a restriction, Office of Airports (ARP) will consider a sponsor's justification for the proposed restriction. As appropriate, ARP, through the Airport Compliance Division (ACO-100), will coordinate with Flight Standards, to conduct a safety review, or with Air Traffic to issue an airspace study, to determine the impact of a restriction on the safety, efficiency, and utility of the airport.

Since Flight Standards may have made a safety determination, ARP should coordinate early in the investigatory process. For example, certain operators may already possess a "Certificate of Waiver or Authorization" from Flight Standards to conduct the aeronautical activity the airport is attempting to restrict, such as banner towing. Such a document would allow certain operations to remain in compliance with 14 CFR part 91, General Operating and Flight Rules. These “waivers” or “authorizations” are de facto safety determinations; their issuance implies that the activity in question can be safely accommodated provided specified conditions are followed.

Similarly, as appropriate, ARP coordinating with Air Traffic early in the investigation will help determine whether Air Traffic issued a special authorization or study affecting the aeronautical activity in question.

However, when neither an FAA Flight Standards safety determination nor an Air Traffic study exists, a review process that includes Flight Standards and/or Air Traffic will be coordinated by ARP to address the issue of accommodating the aeronautical activity in question at the airport. In some instances, an FAA site inspection may be required. After an evaluation, Flight Standards and/or Air Traffic will decide whether a particular activity represents a high, medium, or low risk. The final determination of the reasonableness of the restriction under Grant Assurance 22, *Economic Nondiscrimination*, will be made by ARP and may be issued under a Part 13 or Part 16, based on the analysis of all responses.

14.7 Reasonable Accommodation.

The purpose of any investigation regarding a safety-based or efficiency-based restriction of an aeronautical use is to determine whether the restricted activity can be safely accommodated on less restrictive terms than the terms proposed by the airport sponsor without adversely affecting the efficiency and utility of the airport. If so, the sponsor will need to revise or eliminate the restriction in order to remain in compliance with its grant assurances and federal surplus property obligations.

When it is determined that there are less restrictive ways or alternative methods of accommodating the activity while maintaining safety and efficiency, these alternative measures can be incorporated in the sponsor’s rules or minimum standards for the activity in question at that airport.

a. Other Agency Guidance.

Any accommodation should consider 14 CFR part 91, *General Operating and Flight Rules*, as well as specific FAA regulations and advisory circulars for the regulated activity. These include, but is not limited to:

(1) For ultralight operations: 14 CFR part 103, Ultralight Vehicles; *Advisory Circular (AC) 103-6, Ultralight Vehicle Operations, Airports, Air Traffic Control, and Weather*; and AC 90-66C, *Non-Towered Airport Flight Operations*.

(2) For skydiving: 14 CFR part 105, *Parachute Operations*; and *AC 105-2E, Sport Parachuting*.

(3) For balloon operations: *AC 91-71, Operation of Hot Air Balloons with Airborne Heaters*.

(4) For banner towing operations: Flight Standards Publication FS-I-8700-1, *Information for Banner Tow Operations*.

(5) For sport pilot information: Sport Pilot and 14 CFR part 61, Subpart J, *Sport Pilots*.

b. Examples of Accommodation Measures.

Some measures that airports have used to accommodate activities safely and efficiently include:

(1) Establishing designated operations areas on the airport. An airport can designate certain runways or other aviation use areas at the airport for a particular class or classes of aircraft as a means of enhancing airport capacity or ensuring safety.

(2) Alternative traffic patterns and touchdown areas. Examples of this would be a glider operating area next to a runway or a helicopter practice area next to a runway as long as there is proper separation to maintain safety.

(3) Special NOTAM (Notice to Airmen) requirements.

(4) Special handheld radio requirements.

(5) Special procedures and required training.

(6) Seasonal authorization or special permission.

(7) Waivers issued by Flight Standards under 14 CFR § 103.5 or other applicable regulations and policies.

(8) Special use permit, pilot registration, and fees.

(9) Limits on the total number of operations in the restricted class. (It might be easier to accommodate just a few operations).

(10) Letters of agreement with Air Traffic Control (ATC), if applicable.

(11) Restricted times of operations and prior notification.

(12) Weather limitations.

(13) Nighttime limitations.

14.8 Restrictions on Touch-and-Go Operations.

A touch-and-go operation is an aircraft procedure used in flight training. It is considered an aeronautical activity. As such, it cannot be restricted by the airport sponsor without justification. For an airport sponsor to limit a particular aeronautical activity for safety and efficiency, including touch-and-go operations, the restriction must be based on an analysis of safety and/or efficiency and capacity, and meet any other applicable requirements for airport noise and access restrictions explained in chapter 13, *Airport Noise and Access Restrictions*.

14.9 Restrictions on Banner Towing, Powered Parachutes, Gliders, Light Sport Aircraft, Parachute Operations, and Ultralights.

An airport sponsor that intends to deny or restrict access to the airport for an aeronautical activity should be prepared to demonstrate the restriction is reasonable by presenting supporting information to the local Region or ADO. This includes denial of or access restrictions on banner towing, powered parachutes, gliders, light sport aircraft, parachute operations (including drop zones) and ultralights.

The airport sponsor must adequately justify and support any proposed denial or restriction. ARP, Flight Standards and/or Air Traffic, will analyze supporting data and documentation submitted by the airport sponsor and determine whether a particular activity can be conducted safely at an airport. The FAA, not the sponsor, is the final approval authority to approve or disapprove restrictions on aeronautical activity based on established Federal safety standards at federally obligated airports. In all cases, the FAA will make the final determination regarding the reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport.

14.10 Unpaved Landing Areas.

Certain aeronautical operations may take place on/from an airport's unpaved areas such as from grass areas adjacent to runways or taxiways. There is some misperception that these operational practices are inherently unsafe or risky.

In those cases where an airport imposes a restriction on these operations, or an aeronautical user files a Part 13 or Part 16 complaint, the FAA will review the matter. If so, it must be done in a consistent manner and balance the (1) specific circumstances of the case, (2) airport compliance requirements, (3) Flight Standards oversight of operational safety determinations, and (4) as applicable, the role of the airport design standard(s).

14.11 through 14.15 Reserved.

Part V: Financial Responsibilities

Chapter 15. Permitted and Prohibited Uses of Airport Revenue

15.1 Introduction.

This chapter discusses the sponsor's use of airport revenue. It supplements, but does not supersede, the guidance issued in FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 (February 16, 1999) (Revenue Use Policy), and subsequent updates. This chapter also discusses FAA's *Policy and Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel*, 79 Fed. Reg. 66282 (November 7, 2014) (Aviation Fuel Tax Policy); and FAA's *Policy Regarding Air Carrier Incentive Program*, 88 Fed. Reg. 85344 (December 7, 2023) (ACIP Policy).

Statutory requirements for the permitted and prohibited use of airport revenue are incorporated in the standard grant assurances and have been interpreted by the FAA and the Office of the Secretary of Transportation in policy statements and compliance decisions.

15.2 Responsibilities.

It is the responsibility of the FAA Regional Airports Divisions (Regions) and Airports District Offices (ADOs) to advise sponsors on the statutes, grant assurances, and policies that outline the permitted and prohibited uses of airport revenue, and to ensure that sponsors are not in violation of their federal obligations in the use of their airport revenue.

15.3 Statutory Requirements.

Congress placed restrictions on the use of airport revenue and further defined certain programs impacting airport revenue through the following acts:

a. Airport and Airway Improvement Act of 1982 (AAIA).

Congress first placed restrictions on the use of airport revenue in the AAIA (Pub. L. 97-248, Sec. 511). The AAIA established the basic principles for the use of airport revenue, which are still largely in effect today. All revenues generated by the airport, if it is a public airport, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. *See* 49 U.S.C. §§ 47107(b) and 47133 for the current provision.

b. Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act).

In the 1987 Airport Act, (Pub. L. 100-223, Sec. 109), Congress extended the restriction on the use of airport revenue to include any local taxes on aviation fuel. Consequently, taxing authorities must use the proceeds of state and local aviation fuel taxes (except taxes in effect on December 30, 1987) for airport capital and operating costs. However, the proceeds of state aviation fuel taxes may be used to support a state aviation program, and airport revenue can be used for noise mitigation on or off the airport. The AAIA and the 1987 Airport Act do allow for some preexisting "nonoperating or noncapital" uses of airport revenue. The Revenue Use Policy refers to these preexisting arrangements as "grandfathered." Sections 15.16 and 15.17 discuss requirements for grandfathered airports.

c. FAA Authorization Act of 1994 (1994 Authorization Act).

In the 1994 Authorization Act, (Pub. L. 103-305, Sec. 110-112, codified at 49 U.S.C. § 47107), Congress (i) defined certain unlawful uses of airport revenue, (ii) required airports to be as self-sustaining as possible, and (iii) required the FAA to publish a policy on the use of airport revenue. (The self-sustaining requirement is discussed in chapter 17, *Self-sustainability*).

d. FAA Reauthorization Act of 1996 (1996 Reauthorization Act).

In the 1996 Reauthorization Act, (Pub. L. 104-264, Secs. 149 and 804), Congress authorized an airport privatization pilot program, extended the restrictions on the uses of airport revenue to private airports that have received federal assistance and adopted a civil penalty. The provisions are codified at 49 U.S.C. §§ 47133 and 47134.

e. FAA Modernization and Reform Act of 2012 (2012 Reauthorization Act).

In the 2012 Reauthorization Act, (Pub. L. 112-95, Sec. 813), Congress authorized the FAA to exempt airport revenue generated from mineral extraction activities in certain circumstances. This is further described in section 15.15, *Mineral Rights Revenue Exemption*.

f. FAA Reauthorization Act of 2018 (2018 Reauthorization Act).

In the 2018 Reauthorization Act, (Pub. L. 115-254, Sec. 160), Congress renamed the Airport Privatization Pilot Program to the Airport Investment Partnership Program (AIPP) and removed the limitation on the number of participating airports. (*See* section 15.14, *Airport Investment Partnership Program*, and chapter 6, *Rights and Powers and Good Title*, section 6.9, for details on AIPP).

g. FAA Reauthorization Act of 2024 (2024 Reauthorization Act).

In the 2024 Reauthorization Act, (Pub. L. 118-63, Sec. 703), Congress revised the civil penalty for airport revenue diversion to be an amount equal to double the illegal diversion in question plus interest. This revision does not apply to illegal diversion of airport revenues that occurred prior to the date of enactment of the act. In addition, Congress, in section 738, amended the AIPP program to include that the Secretary may require a benefit-cost analysis. (*See* section 15.14, *Airport Investment Partnership Program*, and chapter 6, *Rights and Powers and Good Title*, section 6.9, *Airport Investment Partnership Program*, for details on AIPP).

15.4 Applicable Grant Assurances.

Under the AAIA, sponsors, as a condition of receiving Airport Improvement Program (AIP) grants, must agree to Grant Assurance 25, *Airport Revenues*, which incorporates the requirements described in the above statutory requirements.

15.5 Applicable FAA Policy.

The FAA's Revenue Use Policy implements the statutory requirements of the AAIA and above laws. In addition, the Revenue Use Policy defines airport revenue and describes the permitted and prohibited uses of airport revenue.

The FAA's *Policy and Procedures Concerning the Use of Airport Revenue: Proceeds from Taxes on Aviation Fuel*, 79 Fed. Reg. 66282 (November 7, 2014) (Aviation Fuel Tax Policy) formally adopts, through an amendment to the Revenue Use Policy, the Federal requirements for use of derived from taxes on aviation fuel.

The FAA's *Policy Regarding Air Carrier Incentive Program*, 88 Fed. Reg. 85344 (December 7, 2023) (ACIP Policy). This policy updated the FAA policy regarding incentives offered by airport sponsors to air carriers for improved air service. (*See* section 15.14, and the ACIP Policy for more information).

15.6 Airport Revenue Defined.

Airport revenue generally includes those revenues generated by the airport, including revenue paid to or due to the airport sponsor for use of airport property by the aeronautical and nonaeronautical users of the airport. It also includes revenue from the sale of airport property and resources and revenue from state and local taxes on aviation fuel (excluding taxes on aviation fuel in effect on December 30, 1987).

a. Revenue Generated by the Airport.

Revenue generated by the airport for the aeronautical and nonaeronautical use of the airport includes, but is not limited to, the fees, charges, rents, or other payments received by or accruing to the sponsor from air carriers, tenants, concessionaires, lessees, purchasers of airport properties, airport permit holders making use of the airport property and services, etc. (**NOTE:** Revenue generated by the tenant in the course of that tenant's business is the tenant's revenue and not airport revenue under the Revenue Use Policy. The airport sponsor's revenue from that tenant's occupancy and business rights would be paid in the form of fees, rentals, lease agreement, etc.).

Additionally, the Revenue Use Policy specifies that:

…Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

(1) For the right to conduct an activity on the airport or to use or occupy airport property;

(2) For the sale, transfer, or disposition of airport real property (as specified in the applicability section of the Revenue Use Policy) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

(3) For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

(4) For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (*e.g.*, a downtown duty-free shop).

Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

(1) From any activity conducted by the sponsor on airport property acquired with Federal assistance;

(2) From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or

(3) From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement (49

U.S.C. §§ 47107(b) and 47133). However, revenues from state taxes on aviation fuel may be used to support state aviation programs. In addition, airport revenue may be used for noise mitigation purposes on or off the airport. *See* Revenue Use Policy, Section II.B.1.a.-B.2.

b. Tax Revenue.

Taxes collected by a taxing district surrounding the airport and dedicated for support of the airport, but not derived from the use of the airport, are generally not considered airport revenue subject to the Revenue Use Policy. These tax revenues should be kept separate from airport revenue accounts and may be used for purposes other than those listed in 49 U.S.C. §§ 47107(b) and 47133.

c. Parking Fines, and Other Fines and Penalties.

Parking fines and penalties result from law enforcement activity and are intended to penalize and change behavior, not as compensation for use of the airport (as is the case with rent, concession fees, aeronautical fees, and other airport revenue). Fines are assessed by an airport sponsor or another state or local jurisdiction using its police powers, not the sponsor's proprietary powers as owner of an airport. Accordingly, the FAA does not generally consider parking fines and penalties to be a revenue-producing activity. Similarly, the FAA does not consider fines or penalties from other types of law enforcement (such as fines levied for drug possession or intoxication) to constitute "airport revenue." Nor does the FAA consider fines levied for building code violations, improper food handling, or fees from city-issued permits for utility or building use to be "airport revenue." Jurisdictions are not precluded from sharing proceeds from parking fines and other fines and penalties with the airport.

d. Sale of Land Acquired with Federal Assistance.

While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, the FAA may consider the Revenue Use Policy as a relevant factor specifying the permissible use or uses of the proceeds. (*See* Revenue Use Policy, Section II.B.3; see also chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*.)

15.7 Applicability of Airport Revenue Requirements.

The rules regarding the use of airport revenue are applicable to:

a. Public Agencies that Receive AIP Grants.

The rules on airport revenue apply to public agencies that have received an AIP grant since September 3, 1982, if the obligations of that grant were in effect on or after October 1, 1996.

b. Public Agencies that Collect Taxes on Aviation Fuel.

The rules on airport revenue apply to state or local government taxing authorities imposing taxes on sales of aviation fuel. Proceeds from taxes on the sales of aviation fuel (except for taxes in effect on December 30, 1987) imposed by a state or local government taxing authority (regardless of whether acting as an airport sponsor or non-sponsor, owner, or operator) are subject to the revenue use requirements. This requirement applies only to the proceeds of the tax collected on aviation fuel sales and not on sales of other products under the same general state or local law. These requirements apply to a new assessment or imposition of a tax on aviation fuel even if the tax could have been imposed before December 30, 1987. (*See* Aviation Fuel Tax Policy).

c. Any Airport that Received Federal Financial Assistance.

The rules on airport revenue apply to a public or private airport that has received federal financial assistance (as defined in section 15.8) and the federal obligations for use of airport revenue incurred as a result of that assistance were in effect on or after October 1, 1996.

15.8 Federal Financial Assistance.

Federal financial assistance[1] includes the following:

(1) AIP development grants and other grants issued under predecessor or subsequent programs.

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[1] In 31 U.S.C. § 7501, federal financial assistance is defined as: "…assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, or other assistance, but does not include amounts received as reimbursement for services rendered to individuals in accordance with guidance issued by the Director." See also 2 CFR § 200.1, *Definitions*.

(2) Airport planning grants that relate to a specific airport.

(3) Aircraft noise mitigation grants received by an airport operator.

(4) The transfer of federal property under the Surplus Property Act; as amended, 49 U.S.C. §§ 47151-47153.

(5) The transfer of federal nonsurplus property under deeds of conveyance issued under section 16 of the Federal Airport Act of 1946 (1946 Airport Act), under section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act), or under section 516 of the AAIA, as amended, codified at 49 U.S.C. § 47125.

(6) AP-4 Agreements.

(7) Lease agreements between the Federal government and the airport sponsor.

15.9 Permitted Uses of Airport Revenue.

a. General.

Sponsors may use their airport revenue for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of the Revenue Use Policy. Operating costs for an airport may be both direct and indirect, and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

b. Promotion of the Airport.

Sponsors may use their airport revenue to promote public and industry awareness of the airport's facilities and services. Airport revenue may be used to promote new air service and competition at the airport, but it may not directly subsidize air carrier operations. The Revenue Use Policy distinguishes between subsidizing air carriers and the waiver of fees as incentives. (*See* Revenue Use Policy, and Policy Regarding Air Carrier Incentive Program).

A sponsor may use its revenue to pay the salary and expenses of airport or sponsor employees engaged in efforts to promote air service at the airport. In addition, the sponsor may support promotional events, such as a Super Bowl hospitality tent for corporate aircraft at a sponsor-owned general aircraft terminal. The sponsor may use airport revenue to pay for promotional items bearing airport logos distributed at various aviation industry events. The Revenue Use Policy does not prohibit a sponsor from spending airport revenue from one airport for promotion of another airport within that sponsor's airport system.

A share of promotional expenses, which may include local or regional marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of the Revenue Use Policy and includes specific information about the airport. (*See* Revenue Use Policy , Section V.A.3. *Permitted Uses of Airport Revenue*).

c. Airport/Airline Advertising of Existing Service.

In some cases, cooperative airport/airline advertising of air services may be permissible, but the portions paid by the airport must showcase facilities and services offered by the airport and avoid unjust discrimination in providing access to the airport. This type of marketing may be difficult to carry out because of the potential for promoting one airline over another. For example, if an airport engaged in joint marketing with a particular carrier for an existing airline service and did not offer the same opportunity to other carriers, this arrangement could be construed as unjust discrimination in violation of Grant Assurance 22, *Economic Non-Discrimination*.

d. Repayment of the Sponsor.

Airport revenue may be used to repay the airport owner or sponsor for funds contributed by such airport owner or sponsor for capital and operating costs of the airport and not already reimbursed. An airport owner or sponsor can seek reimbursement of contributed funds only if the request is made within six (6) years of the date on which the expense is incurred or contribution made. (*See* 49 U.S.C. § 47107(k)(5)). Reimbursements for capital and operating costs of the airport made by sponsor must meet the standard of documentation and must be supported by adequate documentary evidence. (*See* Revenue Use Policy, Section V.C. *Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports*).

If the contribution was a loan to the airport, and structured and documented as an interest-bearing loan at the time the transfer was made, the sponsor may repay the loan principal and interest from airport funds. Loans may be repaid over an extended period of time exceeding six years. The interest rate of the loan may not exceed the interest rate on the sponsor's other investments at the time of the contribution.

For other contributions to the airport, the sponsor may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. The FAA determines the date from which the airport may commence payment of interest. The interest that the airport may pay for the other contributions is limited to the U.S. Treasury investment interest rate. (*See* 49 U.S.C. § 47107(n) and (o)).

e. Lobbying and Attorney Fees.

A sponsor may use airport revenue to pay lobbying and attorney fees to the extent these fees are for services in support of airport capital or operating costs that are otherwise allowable.

f. Costs Incurred by Government Officials.

A sponsor may pay for costs that government officials incur on the airport's behalf. For example, the cost of travel for city council members to meet with FAA officials about AIP funding is an allowable use of airport revenue.

g. General Government Costs.

A sponsor may pay for a portion of the general costs of government, including executive offices and the legislative branches, provided the sponsor allocates such costs to the airport in accordance with an acceptable cost allocation plan. The FAA may require special scrutiny of allocated costs to assure that the airport is not paying a disproportionate share.

h. Central Service Costs.

A sponsor may use airport revenue to pay for costs such as accounting, budgeting, data processing, procurement, legal services, disbursing, and payroll services that it bills to the airport through an acceptable cost allocation plan. The Revenue Use Policy and applicable sections of 2 CFR part 200, subpart E, Cost Principles[2] are our references for evaluating sponsor cost allocation plans. Such costs must meet the standard of being airport capital or operating costs. The allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

[2] 2 CFR part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon state and local governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code. Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

i. Community Activities.

A sponsor may use airport revenue to support community activities and to participate in community events if such expenditures are directly and substantially related to the operation of the airport. For example, it may purchase tickets for an annual community luncheon at which the airport director delivers a speech reviewing the state of the airport. The airport sponsor may also contribute to a golf tournament sponsored by a “friends of the airport” committee.

The FAA also recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance and that a benefit of that nature is intangible and not quantifiable. Consequently, where the amount of contribution is minimal, the FAA will not question the value of the benefit so long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category is a $250 fee for a booth focusing on the operation of the airport and career opportunities in aviation at a local school fair.

j. Ground Access Projects.

It is the policy of the United States to encourage the development of intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development. (*See* 49 U.S.C. § 47101(a)(6)). Consistent with this policy, a sponsor may use airport revenue to pay for the airport’s share of a ground access project if: (1) if the project qualifies as an integral part of an airport capital project, and (2) if the project is owned or operated by the sponsor and is directly and substantially related to the air transportation of passengers or property.

(1) Airport Capital Project. An example of an airport capital project would be the construction of an airport transit station incorporated into a new airport passenger terminal to provide direct transit access to the airport terminal building. The station must be designed and intended exclusively for airport ground access and is effectively part of the terminal building.

(2) Other Facilities Directly and Substantially Related to Air Transportation. A facility may extend for a distance off airport property or be used in part by nonairport passengers. Such cases can be complex, and a three-part analysis should be applied:

First, is the facility owned or operated by the airport sponsor?

Second, is the facility directly and substantially related to air transportation? The facility must be a primary means of ground access to the airport even if the facility will not be used exclusively by airport passengers, employees, and visitors. The facility must be designed and intended for airport use even if others will also make use of it once the project is built. Airport funding is limited to the portion (road or rail line) from the airport to the nearest line of mass capacity, typically a highway or rail line adjacent to or close to the airport boundary. City streets and local highways may be used by passengers on the way to the airport, but they are not designed or intended for airport access and are not directly and substantially related to air transportation.

Third, is the airport contribution prorated to the forecast use of the facility? If 50% of the passengers on a transit line with a stop at the airport will be airport passengers, then the airport can contribute up to 50% of the cost of the rail line across airport property. For example, where a transit line was designed to run through airport property in order to provide an airport station, the FAA has approved the use of airport revenue for 100% of the actual costs incurred for structures and equipment associated with the airport terminal building station, as well as for a portion of the costs of the rail line through the airport, prorated for the percentage of airport passengers using the system in relation to total transit passengers using that segment of the line.

The FAA reviews the permissibility of using airport revenue for a ground access project on a case-by-case basis. Regions and ADOs should consult with ACO on issues involving use of airport revenue for major ground access projects.

15.10 Allocation of Indirect Costs.

An airport sponsor may use its revenue to pay capital or operating costs that the sponsor charges the airport through a cost allocation plan. In an acceptable cost allocation plan, the sponsor allocates costs in a manner consistent with the Revenue Use Policy and applicable sections of 2 CFR part 200, subpart E, Cost Principles. The sponsor may not disproportionately allocate general government costs to the airport and may not indirectly bill costs through the cost allocation plan that are also billed directly to the airport. The sponsor must bill its other comparable units of government in a similar manner for the same costs it allocates to the airport; such allocations must be in proportion to the benefit that each receives from the allocated costs.

15.11 Standard for Documentation for Reimbursement to Government Entities.

The airport sponsor must ensure that reimbursement for capital and operating costs made by a government entity, both direct and indirect, is supported by adequate documentary evidence. Such evidence may include the underlying accounting data (such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses) as well as corroborating evidence (such as invoices, vouchers, and indirect cost allocation plans). (*See* Revenue Use Policy, Section V.C., *Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports*).

The FAA accepts audited financial statements as supporting evidence if such statements clearly identify the expenses as having been incurred for airport purposes consistent with revenue use requirements. If not, the statement's underlying accounting records must support and substantiate transactions between the entity billed to the airport. The entity's budget estimates are not sufficient to establish a claim for reimbursement. The entity may use budget estimates to establish predetermined indirect cost allocation rates as part of an indirect cost allocation plan, provided estimates are adjusted to actual expenses in the subsequent accounting period.

15.12 Prohibited Uses of Airport Revenue.

a. Unlawful Revenue Diversion.

Unlawful revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs or the costs of other facilities owned or operated by the sponsor and directly and substantially related to air transportation. Revenue diversion violates federal law and AIP grant assurances unless: (1) it is grandfathered within the scope of grandfathered financial authority established before 1982, or, (2) it is authorized under an exemption issued by the FAA as part of the airport privatization pilot program.

Revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs.

b. General.

Prohibited uses of airport revenue include direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value. For example, the DOT Office of Inspector General (OIG) and the FAA found a city sponsor to be diverting revenue where the sponsor charged the airport for investment management at the rate that would have been charged for commercial services when services to the airport were actually provided by city employees at a much lower cost.

c. Cost Allocation.

Payments under a cost allocation plan are a prohibited use of airport revenue when the allocation is based on a formula that is not consistent with the Revenue Use Policy or when the payment is not calculated consistently and equitably for the airport and other comparable units or cost centers of government.

d. General Economic Development.

Using airport revenue for general economic development is a prohibited use of airport revenue.

e. Market and Promotion.

When unrelated to airport operations, marketing and promotion costs are prohibited uses of airport revenue. Examples include participating financially in marketing as a destination city or regional attractions, such as hotels, convention centers, sports arena, theaters, and other entertainment attractions having no connection to the promotion of the airport.

f. Payments in Lieu of Taxes (PILOTs).

Payments in lieu of taxes or other assessments that exceed the value of services provided to the airport or are not based on an acceptable cost allocation formula (*i.e.*, reasonable and transparent) are prohibited uses of airport revenue. (*See* 49 U.S.C. § 47107(k)(2)(C)).

g. Lost Tax Revenues.

Payments to compensate non-sponsoring governmental bodies for lost tax revenues, to the extent the payments exceed the stated tax rates applicable to the airport, are prohibited uses of airport revenue. Note that many PILOTs by airports are voluntary, not assessed, and should be evaluated under the lost tax provisions of 49 U.S.C. § 47107(k)(2)(D) rather than § 47107(k)(2)(C), which pertains to payments in lieu of taxes or other assessments. In each case the nature of the payment, rather than its title, should determine the appropriate analysis.

h. Loans and Investments.

Loans to, or investment of, airport funds in a state or local agency at less than the prevailing rate of interest are prohibited uses of airport revenue.

i. Sponsor Aeronautical Use.

Use of land for free or at nominal rental rates by the sponsor for aeronautical purposes (*e.g*., a sponsor-owned fixed-base operator[3]) is a prohibited use of airport revenue, except to the extent permitted under the Revenue Use Policy, Section VII.E.

j. Sponsor Nonaeronautical Use.

Rental of land to, or use of land by, the sponsor for nonaeronautical purposes at less than fair market value rent is considered a subsidy of local government or other entities and is a prohibited use of airport revenue.

k. Impact Fees.

Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport are prohibited uses of airport revenue. However, the airport may pay for environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project or for constructing a ground access facility that would otherwise be eligible for the use of airport revenue. When such fees meet the other allowability and documentation requirements, the sponsor may use airport revenue to pay for impact fees. In determining appropriate corrective action for an impact fee payment that is not consistent with the revenue use requirements, the FAA will consider whether a nonsponsoring governmental entity imposed the fee and whether the sponsor has the ability under local law to avoid paying the fee.

l. Community Activities.

Using airport funds to support community activities and to participate in community events or using airport property for community purposes is a prohibited use of airport revenue, except to the extent permitted under the Revenue Use Policy. (*See* section 15.9, *Permitted Uses of Airport Revenue*).

m. Subsidy of Air Carriers.

The direct subsidy of air carrier operations is a prohibited use of airport revenue. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period (*see* section 15.13, *Air Carrier Incentive Program*).

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[3] A fixed-base operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

15.13 Air Carrier Incentive Program (ACIP).

The following excerpt from the ACIP Policy provides the general principles of the program:

> Many U.S. airport sponsors have found it beneficial to encourage new air service and new carriers at their airports by offering air carrier incentive programs (ACIPs), in the form of reductions or waivers of airport charges, and/or support for marketing new service.
>
> ACIPs represent a limited exception to the general rule stated in Grant Assurance 22(e), guaranteeing all carriers non-discriminatory and equivalent rates and charges for each carrier's category. The FAA has reconciled this exception with the general rule on the understanding that a new carrier operating at an airport, or a carrier starting a new route, operates at a disadvantage with established carriers until the new service becomes known and accepted. In that sense, the carrier operating new service is not similarly situated to established carriers, and a sponsor may reduce charges to the new service carrier in some circumstances, for a limited time, without violating Grant Assurances 22, 23, 24, or 25.
>
> In considering whether an ACIP complies with a sponsor's Federal grant agreements, the FAA will apply these general principles to the particular elements of the ACIP:
>
> - Discrimination between carriers participating in an ACIP and non-participating carriers must be justified and time-limited. Differences in airport charges for carriers under an ACIP from those charged to other carriers at an airport must not be unjustly discriminatory. Differences in charges must be justified by differences in the carriers' costs of starting and marketing new service at the airport and must be temporary.
> - A sponsor may not use airport revenues to subsidize air carriers. Using airport revenue for cash payments and other forms of subsidy for a carrier providing new service is considered revenue diversion and is therefore prohibited by grant agreements and Federal law. Fee reductions, fee waivers, and marketing assistance as incentives to new service are permitted to the extent described in the Revenue Use Policy.
> - A sponsor may not cross-charge non-participating carriers or other aeronautical users to subsidize ACIP carriers. Carriers not participating in an ACIP may not be charged directly or indirectly for the costs of the ACIP or for airport costs left uncovered as a result

of the reduction or waiver of charges for an ACIP carrier, unless all non-participating carriers agree.

- The terms of an ACIP should be made public. Publishing the intent to implement an ACIP, as well as information on how the ACIP is being used, ensures all eligible carriers are aware of the program, allows nonparticipating operators to review the potential effect of the ACIP on standard airport rates and charges, and minimizes the grounds for complaints of unjust discrimination.
- Use of airport funds for an ACIP must not adversely affect airport operations or maintenance. A sponsor adopting an ACIP must maintain a self-sustaining rate structure that continues to provide funds for necessary operations and maintenance responsibilities, without increasing rates charged to non-participating operators.

Guidance on particular program elements in this policy applies generally to each of those elements. For variations on those elements, or program elements not specifically addressed in this guidance, the above five principles will govern the agency's ultimate determination of whether a particular ACIP is consistent with the sponsor's AIP Grant Assurances.

15.14 Airport Investment Partnership Program (AIPP).

The 1996 Reauthorization Act authorized the FAA to establish an airport privatization pilot program. The 2018 Reauthorization Act effectively ended the pilot program and renamed it the Airport Investment Partnership Program (AIPP). This program is codified in 49 U.S.C. § 47134. The 2024 Reauthorization Act amended 49 U.S.C. § 47134(b) to include that the Secretary may require a benefit-cost analysis.

Through the AIPP, commercial service airports can only be leased and general aviation airports can be sold or leased. The AIPP continues to permit airports to explore privatization as a means to generate access to sources of private capital for airport improvement and development. Local or state governments own and operate most commercial service airports in the United States. Public-use general aviation airports are both publicly and privately owned.

As an incentive for participation in the program, the Secretary may grant an approved sponsor three exemptions: (a) an exemption from the revenue-use rules to permit the sponsor to recover a specified amount from the lease or sale if approved consistent with the statutory requirements, (b) an exemption waiving the obligation to repay federal grants or return property transferred from the federal government, and (c) an exemption permitting the private operator to earn compensation from airport operations. (*See* chapter 6, *Rights and Powers and Good Title*, section 6.9, for further discussion of the AIPP).

15.15 Mineral Rights Revenue Exemption.

a. General.

The FAA has the authority to exempt a defined amount of airport revenue generated from mineral extraction activities on general aviation airports from statutory, grant assurance, and policy obligations if specific conditions are met.[4] A sponsor of a general aviation airport (as defined in 49 U.S.C. § 47102(8)) may request to exempt revenue derived from or generated by mineral extraction, production, lease, or other means. Accordingly, the FAA Administrator may declare certain revenue derived from mineral extractions on a designated general aviation airport property to be used for other transportation purposes not related to the airport.

Unless exempted, the airport sponsor must assure that revenue generated from mineral extraction activities is collected and used in accordance with the FAA's Revenue Use Policy and in compliance with Grant Assurances 24, *Fee and Rental Structure*, and 25, *Airport Revenue*, and applicable law. Revenue generated from other sources is not eligible for this exemption.

b. Grant Assurance 25, *Airport Revenues*.

This grant assurance includes paragraph a(3):

> Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102(8)), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112–95.

c. Sponsor Application and Additional Guidance.

General aviation airport sponsors seeking to exempt mineral rights revenue must submit an application to the FAA. Additional guidance on this exemption and the application process is available at Mineral Rights Revenue Exemption Toolkit. Additional guidance on oil and gas extraction is set forth in the *AC No. 150/5100-20, Guidance on the Extraction of Oil and Gas at Federally Obligated Airports*.

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[4] *See* FAA Modernization and Reform Act of 2012 (Pub. L. 112-95, Section 813), *Use of Mineral Revenue at Certain Airports*.

15.16 Grandfathering from Prohibitions on Use of Airport Revenue.

Certain airports qualify as “grandfathered” and may use airport revenue for nonairport expenditures that would otherwise not be permissible. In accordance with 49 U.S.C. §§ 47107(b)(2) and 47133, a sponsor/airport is “grandfathered” if:

> [A] provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

Sponsors/airports are grandfathered only as to the financial arrangements, revenues, and expenditures in effect not later than September 2, 1982. A list of sponsors/airports considered to be grandfathered is available at the (CATS) Certification Activity Tracking System.

Based on previous DOT interpretations, examples of grandfathered financial arrangements of sponsors/airports may include, but are not limited to, the following:

a. Debt.

A port authority or state department of transportation that owns or operates other transportation facilities in addition to airports and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for nonairport purposes. (Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering, which the FAA would consider in its review).

b. Bonds.

Bond obligations and city ordinances requiring a five percent (5%) "gross receipts" fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

c. State Statute.

A 1955 state statute assessing a 5% surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

d. City Legislation.

City legislation authorizing the transfer of a percentage of airport revenues, permitting an air carrier settlement agreement providing for annual payments to the City of 15% of airport concession revenues.

e. Multi Modal Authority.

A 1957 state statutory transportation program governing the financing and operations of a multi modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues support the state's transportation-related and other facilities. The funds flow from the airports to a state transportation trust fund composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

f. Enabling Provision.

A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes, but requires annual payments in lieu of taxes to several local governments, and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, for facilities of the authority, and its expenses, reserves, and the payment in lieu of taxes fund.

g. Aviation Fuel Tax.

Grandfathered arrangements may also include local taxes on aviation fuel that were in effect on December 30, 1987. To support grandfathered status, state and local governments need to provide supporting documentation of the legislation that was in effect on December 30, 1987, and any amendments enacted thereafter. (*See* 49 U.S.C. §§ 47107(b)(1) and 47133).

15.17 Oversight of Grandfathered Sponsors/Airports.

a. Statutory Requirement.

Certain sponsors/airports are "grandfathered" from the revenue use requirements of 49 U.S.C. §§ 47107(b)(2) and 47133. For such sponsors/airports, the use of airport revenue for nonairport purposes under this exception does not preclude the award of AIP grants.

However, under 49 U.S.C. § 47115(f), the FAA must, in certain circumstances, consider the use of airport revenue for nonairport purposes under the "grandfather provision" as a factor militating against the distribution of discretionary AIP funding. This militating factor applies only if the airport revenue used in the sponsor's/airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of revenues used in the sponsor's/airport's first fiscal year ending after August 23, 1994, and adjusted by the Secretary for changes in the Consumer Price Index (CPI).

Many of the affected sponsors own and operate multiple airports. Because there is no Federal requirement for such sponsors to delineate the specific sources of revenue taken off the airport(s), the FAA interprets § 47115(f) to require consideration before awarding AIP discretionary funds for any airport owned by the sponsor, regardless of whether the airport is contributing to the sponsor's revenue use for non-airport purposes.

b. Responsibilities and Process.

Each year ACO will notify APP of the status of all grandfathered airports that report payments via Form 5100-126 and other correspondence sent to the FAA. In addition, ACO will advise APP-500 if a grandfathered sponsor is not exercising its rights under the grandfather provision.

ACO will also send a letter to grandfathered airport sponsors that exceeded the cap during the federal fiscal year. This letter will remind the sponsor of the FAA's statutory requirement to consider the sponsor's use of airport revenue for nonairport purposes as a factor militating against the award of AIP discretionary funds. This letter will also reiterate the deadlines and establish a requirement for these sponsors to notify ACO when they have completed their data submissions.

The letter will also explain to the sponsor that it may take up to 75 calendar days to review the financial data once it has been submitted to the FAA and make the necessary findings before considering an AIP discretionary grant. Therefore, the sponsor should factor the timeframe for this review into its capital planning process.

Like all federally-obligated commercial service airports, grandfathered sponsors/airports must submit annual financial data to the FAA using the FAA's Certification Activity Tracking System (CATS) Forms 126 and 127 within 120 days of the end of their fiscal year. Sponsors/airports may request an extension of up to 60 days. If the FAA has agreed to permit a sponsor/airport to submit grandfathered revenue data outside of Forms 126 and 127, the sponsor/airport still must meet the same deadlines.

Therefore, sponsors/airports whose fiscal year ends on June 30 must submit the data by October 28 (or, with an approved extension, by December 27). Sponsors/airports whose fiscal year ends on December 31 must submit the data by April 29 (or, with an approved extension, by June 29).

If a sponsor/airport wants to be considered for AIP discretionary funding earlier in the fiscal year, then it is the sponsor's/airport's responsibility to submit the financial data earlier.

After completing an annual review of all grandfathered sponsors/airports, ACO will prepare an annual summary report to ARP-1/-2, APP-1/-2, APP-500 and APP-520, outlining the complete set of analyses for all grandfathered sponsors/airports for the prior fiscal year.

NOTE: If the airport sponsor is replaced or the character of its makeup changes in such a way that it is no longer appropriate for the sponsor to use its revenue to pay for new costs of the previous sponsor under the grandfather provision, the FAA may determine the new sponsor is no longer eligible for grandfathering. For example, an existing grandfathered port authority was replaced in 2003 with a newly created airport authority. Airports under the jurisdiction of the newly created airport authority are not eligible for grandfathering. Their ability to grandfather expired when the new authority was created.

15.18 through 15.22 Reserved.

Part V: Financial Responsibilities

Chapter 16. Resolution of Unlawful Revenue Diversion

16.1 Background.

This chapter describes the FAA’s responsibility for detecting and resolving unlawful revenue diversion. Unlawful revenue diversion is subject to the standard investigation and determination procedures discussed in chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*.

16.2 FAA Authorization.

a. 1982 Authorization Act.

The Airport and Airway Improvement Act of 1982, Pub. L. 97-248, (AAIA) established the general requirement for public airport owners and operators to use all revenues generated by the airport for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. (Codified at 49 U.S.C. § 47107(b)).

b. 1994 Authorization Act.

In the 1994 Authorization Act, Pub. L. 103-305, Section 111, Congress strengthened the revenue use requirement by adding a new assurance requiring airport owners or operators to submit an annual report listing all amounts paid by the airport to other units of government, and required the FAA to issue a policy on the use of airport revenue. The FAA published its Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy), 64 Fed. Reg. 7696 (February 16, 1999), to implement the requirements of the AAIA and subsequent laws described below. Congress also established the following actions that the FAA is authorized to take when a sponsor fails to correct unlawful revenue diversion:

(1) Withholding Airport Improvement Program (AIP) grants and approval of applications to impose and use passenger facility charges (PFCs). (*See* 49 U.S.C. §§ 47111(d)-(e), 47106(d), and 47107(m)).

(2) Assessing a civil penalty for unlawful revenue diversion of up to $50,000. (*See* 49 U.S.C. § 46301(d)).

(3) Seeking judicial enforcement for violation of any grant assurance. (*See* 49 U.S.C. §§ 46106 and 47111(f)).

c. 1996 Reauthorization Act.

Section 804 of the 1996 Reauthorization Act (codified at 49 U.S.C. § 47133) broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government There is a limited exception to the revenue use prohibition, which is discussed in detail in chapter 15, *Grandfathering from Prohibitions on Use of Airport Revenue*, section 15.10, *Allocation of Indirect Costs*.

Additionally, as noted in the Revenue Use Policy, airport sponsors that have accepted only surplus property from the federal government, and did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue use requirement by operation of § 47133. However, if that airport accepted additional federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue use requirement. Moreover, in accordance with 49 U.S.C. § 47153(b), the FAA does include the revenue use requirement as a required term in Surplus Property Instruments of Conveyance in order to protect and advance the interests of the United States in civil aviation. Congress also established the following actions that the FAA is authorized to take when a sponsor fails to correct unlawful revenue diversion:

(1) Withholding any amount available to the sponsor under Title 49 of the United States Code, including transit or multimodal transportation grants. (*See* 49 U.S.C. § 47107(m) (3)).

(2) Assessing a civil penalty up to three times the amount of diverted revenue. The Administrator may impose a civil penalty up to $50,000 against an airport sponsor. The FAA must apply to a U.S. district court for enforcement of a proposed civil penalty that exceeds $50,000. (*See* 49 U.S.C. § 46301).

(3) Requiring assessment of interest on the amount of diverted revenue. (*See* 49 U.S.C. § 47107(n)).

d. FAA Reauthorization Act of 2024 (2024 Reauthorization Act).

In the FAA Reauthorization Act of 2024 (Pub. L. 118-63, Sec. 703), codified at 49 U.S.C. § 47107(m)(4) and (n)(1), Congress revised the civil penalty for airport revenue diversion to be an amount equal to double the illegal diversion in question plus interest. This revision does not apply to illegal diversion of airport revenues that occurred prior to the date of enactment of the act.

16.3 Section 47133 and Grant Assurance 25, *Airport Revenues*.

As stated above, since enactment of the AAIA in 1982, sponsors – as a condition of receiving AIP grants – have been required to comply with Grant Assurance 25, *Airport Revenues*. In the 1996 Reauthorization Act, Congress broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government. These revenue use requirements are codified at 49 U.S.C. § 47133.

Accordingly, revenue use violations may be enforced as a violation of contract obligations under the grant assurances, as a violation of federal law under 49 U.S.C. § 47107(k) and § 47133, or as a violation of a Surplus Property Deed or other federal land conveyances when applicable.

16.4 Agency Policy.

The FAA's Revenue Use Policy implements the requirements of the AAIA and the above laws. (*See* chapter 15, *Permitted and Prohibited Uses of Airport Revenue*). Additionally, FAA's *Policy and Procedures Concerning the Use of Airport Revenue: Proceeds from Taxes on Aviation Fuel*, 79 Fed. Reg. 66282 (November 7, 2014) formally adopts, through an amendment to the Revenue Use Policy, FAA's interpretation of the Federal requirements for use of revenue derived from taxes on aviation fuel.

16.5 Responsibilities.

It is the responsibility of the FAA Regional Airports Division (Region) and Airports District Office (ADO) to identify unlawful revenue diversion, to seek sponsor compliance informally before initiating formal investigation, and to monitor corrective action plans from informal complaints. The FAA Director of the Office of Airport Compliance and Management Analysis (ACO-1) is responsible for issuing Notices of Investigation, assessing interest and penalties, issuing formal compliance determinations, and arranging for hearings to be conducted when appropriate.

As discussed in chapter 19, *Airport Financial Reports*, ACO, Regions and ADOs are responsible for resolving single audit findings. ACO is the liaison between the Office of the Secretary (OST) and Regions and ADOs on single audits. Regions and ADOs are responsible for resolving airport specific single audit findings. The FAA must ensure the sponsors took appropriate and timely corrective action on all single audit findings.

The Office of Inspector General (OIG) may also conduct audits and issue reports on revenue diversion. National reports with revenue diversion findings will be sent to ACO; audits on individual airports may be sent to the Regions. ACO will monitor the follow-up to those reports. The DOT/OIG provides a semi-annual report to Congress on the status of the FAA's responsiveness and resolution of those revenue diversion findings.

16.6 Detection of Airport Revenue Diversion.

a. Sources of Information.

To determine if a sponsor has unlawfully diverted revenue, the FAA depends primarily on various sources of information, including:

(1) Annual financial reports submitted by sponsor. (*See* chapter 19, *Airport Financial Reports*).

(2) Single audit reports conducted in accordance with 2 CFR part 200. (*See* chapter 19, *Airport Financial Reports*).

(3) Part 16 formal complaints (under 14 CFR part 16). (*See* chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).

(4) Audits conducted by the DOT/OIG.

(5) Formal or informal financial reviews.

(6) Part 13 informal complaints (under 14 CFR part 13). (*See* chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).

(7) Land-use inspections. (*See* chapter 21, *Land Use Compliance Inspection*).

(8) Airport staff.

(9) Inquiries from relevant non-profit associations.

(10) News reports.

b. Reports.

FAA may identify revenue diversion through audit reports issued by the DOT/OIG or by an independent auditor performing a single audit under 2 CFR part 200. See chapter 19, *Airport Financial Reports*, for additional information on single audits.

The OIG may also conduct audits and issue reports on revenue diversion. National reports with revenue diversion findings will be sent to ACO; audits on individual airports may be sent to the regional airports division. ACO will monitor the follow-up to those reports. DOT/OIG reports to Congress on the status of the FAA's responsiveness and resolution of those revenue diversion findings.

c. Release of Audit Reports.

Regions, ADOs, and ACO must coordinate the release of any audit report prepared by the OIG to the public with the Assistant Chief Counsel for Airports and Environmental Law to ensure that the release is in accordance with the Trade Secrets Act (18 U.S.C. § 1905) and the Freedom of Information Act (FOIA) (5 U.S.C. § 552).

d. Compliance Reviews.

ACO conducts financial compliance review(s) of selected airports each fiscal year.

e. Published Airport Financial Data.

In cases where the FAA must ascertain compliance with the Federal revenue requirements, reviewing published airport financial data may be useful. In each case, differences among the audit report or complaint, published financial data, and information presented by the sponsor should be discussed and resolved to the extent possible.

16.7 Investigation of a Complaint of Unlawful Revenue Diversion.

a. General.

The FAA enforces the requirements imposed on sponsors as a condition of their acceptance of federal grant funds or property through the administrative procedures set forth in 14 CFR part 16. As such, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel sponsors to produce evidence, and adjudicate matters of compliance within the jurisdiction of the Associate Administrator for Airports. (*See* chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).

b. Formal Complaint.

When the FAA receives a formal complaint against a sponsor for unlawful revenue diversion, the Airport Compliance Division follows the procedures in Part 16 for adjudicating the complaint. If, at any point prior to completion of the investigation, the airport sponsor resolves the unlawful revenue diversion, the Director may dismiss the complaint. This is consistent with the objectives outlined in chapter 2, *Compliance Program*, section 2.4, *Objectives of the Compliance Program*. After conducting an investigation, the Director of Airport Compliance and Management Analysis will either dismiss the complaint or issue a Director’s Determination, which can impose immediate sanctions or propose future action, or both.

16.8 Investigation without a Complaint.

a. General.

When a formal complaint has not been filed, but the FAA has an indication from one or more sources that unlawful revenue diversion has occurred, the Region or ADO will notify the sponsor and request that it respond to the allegations. If, after evaluating the sponsor's arguments and submissions, the Region or ADO determines that unlawful diversion of revenue did not occur, then it will notify the sponsor and take no further action.

b. Finding.

If the Region or ADO makes a preliminary finding that there has been unlawful revenue diversion, and the sponsor has not taken corrective action (or has not agreed to take corrective action), the Region or ADO may forward the matter to ACO for investigation under 14 CFR part 16. If, after further investigation, ACO finds there is reason to believe there is, or has been, unlawful revenue diversion, and the sponsor refuses to terminate or correct the diversion, the Director will issue a Director's Determination. In cases where the airport sponsor agrees to implement the corrective actions to prevent further revenue diversion and return the diverted revenue amount plus interest the Director may dismiss the investigation.

c. Office of the Inspector General (OIG).

When the OIG issues a report of an investigation with a revenue diversion finding, ACO will proceed with an investigation and attempt to resolve the finding.

16.9 Administrative Sanctions.

When the ACO-1 makes a finding of unlawful revenue diversion through a Director's Determination, ACO will first seek recovery of illegally diverted funds through corrective action by the sponsor. Should that fail, the Director may pursue any or all of the following enforcement remedies at his/her discretion subject to any appeal and affirmation by the Associate Administrator for Airports following appeal:

- **a.** Withholding approval of an application for future grants.[1] (*See* 49 U.S.C. § 47106(d)).

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[1] As stated in the policy document, *Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding*, 64 Fed. Reg. 31031 (June 9, 1999), it is the intent of the FAA generally to withhold AIP discretionary funding to those airports requesting such funding that are being investigated by the FAA for misuse of airport generated revenue.

b. Withholding approval of a new grant application or proposed modification to an existing grant that would increase the amount of funds available. (*See* 49 U.S.C. § 47111(e)).

c. Withholding payments under existing grants. (*See* 49 U.S.C. § 47111(d)).

d. Withholding approval of any new application to impose a passenger facility charge. (*See* 49 U.S.C. § 47111(e)).

e. Withholding any amount from funds otherwise available to the sponsor, including funds for other transportation projects, such as transit or multimodal projects as part of grants made available under Title 49. (*See* 49 U.S.C. § 47107(m)(3)).

f. For violations of the grant assurance or 49 U.S.C. § 47133, the Associate Administrator for Airports may file suit for enforcement in the U.S. District Court. (*See* 49 U.S.C. § 47111(f)).

g. Exercising its right of reverter and, on behalf of the United States, taking title to all or any part of the property interests conveyed. (*See* 49 U.S.C. §§ 47133 and 47151, et seq.). Reverter is discussed in detail in chapter 23, *Reversions of Airport Property*.

16.10 Civil Penalties and Interest.

a. Civil Penalties.

The Associate Administrator for Airports may seek a civil penalty for a violation of the AIP sponsor assurance on revenue diversion of up to three times the amount of unlawful revenue diversion. For a proposed civil penalty in excess of $50,000, the FAA must file a civil action in the U.S. District Court to enforce the penalty. (*See* 49 U.S.C. §§ 46301 and 47107).

b. Office of the Chief Counsel.

The FAA Office of the Chief Counsel files civil penalty actions. AGC-600 must be consulted when considering whether to impose a civil penalty action for airport revenue diversion.

c. Use of Authority.

In general, a civil penalty sanction may be appropriate when two conditions apply:

(1) Sponsor Noncompliance.

ACO-1 has identified a violation to the airport sponsor and has given the sponsor a reasonable period of time to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, but the sponsor has not complied.

(2) Other Remedies Fail.

Other enforcement actions against the sponsor, such as withholding grants and payments, would be unlikely to achieve compliance.

d. Interest.

The amount necessary for a sponsor to come into compliance includes interest calculated in accordance with 49 U.S.C. § 47107(n). The maximum civil penalty allowed under § 46301(a)(3) is three times the amount unlawfully diverted and may also include interest calculated in accordance with 49 U.S.C. § 47107(n). The maximum civil penalty allowed under 49 U.S.C. 47107(m) is double the illegal diversion plus interest calculated in accordance with 49 U.S.C. §47107(n).[2]

16.11 Compliance with Reporting and Audit Requirements.

The Regions and ADOs will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements, as described in the Revenue Use Policy. Failure to comply with these requirements can result in withholding future grant awards and further payments under existing grants.

16.12 Statute of Limitations on Recovery of Funds.

The 1996 Reauthorization Act included a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. (*See* 49 U.S.C. § 47107(m)(7)). Accordingly, the FAA may bring an action for recovery of unlawfully diverted funds within six (6) years of the date on which the diversion occurred.

16.13 through 16.17 Reserved.

[2] This is not applicable to illegal diversion of airport revenues that occurred prior to the enactment of FAA Reauthorization Act of 2024.

Part V: Financial Responsibilities

Chapter 17. Self-Sustainability

17.1 Introduction.

This chapter provides guidance on the requirement that an airport remain as self-sustaining as possible under its specific circumstances. The FAA Regional Airports Divisions (Regions), Airports District Offices (ADOs) and the Office of Airport Compliance and Management Analysis (ACO) provide guidance to airport sponsors regarding the requirement to be as self-sustaining as possible and to ensure that the airport maintains a rate and fee schedule that conforms to the grant assurances and is consistent with the FAA's Policy Regarding Airport Rates and Charges, 78 Fed. Reg. 55330 (September 10, 2013) (Rates and Charges Policy).

17.2 Statutory Requirements.

Congress established the self-sustainability requirement in:

a. 1982 Authorization Act.

Section 511(a)(9) of the Airport and Airway Improvement Act of 1982 (AAIA), Pub. L. 97-248, (codified at 49 U.S.C. § 47107(a)(13)) requires airports accepting FAA grants to be as self-sustaining as possible under the circumstances at that airport. (*See* Grant Assurance 24, *Fee and Rental Structure*).

b. 1994 Authorization Act.

Section 112(a)(3) of the Federal Aviation Administration Authorization Act of 1994, Pub. L. 103-305, (codified at 49 U.S.C. § 47107(k)(3)) requires that the FAA's Revenue Use Policy take into account whether sponsors – when entering into new or revised agreements otherwise establishing rates, charges, and fees – have undertaken reasonable efforts to be self-sustaining in accordance with 49 U.S.C. § 47107(a)(13).

17.3 Related Grant Assurance and FAA Policies.

The self-sustaining requirement, Grant Assurance 24, Fee and Rental Structure, applies to both publicly and privately owned airports that are obligated under an Airport Improvement Program (AIP) grant.

The FAA has included the self-sustaining rule in two policies:

1. FAA's *Policy Regarding Airport Rates and Charges* 78 Fed. Reg. 55330 (September 10, 2013) (Rates and Charges Policy).

2. FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 (February 16, 1999), as amended, 79 Fed. Reg. 66282 (November 07, 2014) (Revenue Use Policy).

17.4 Self-Sustaining Principle.

Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at that airport.[1] The requirement recognizes that individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport. The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.

17.5 Airport Circumstances.

At some airports, market conditions may not permit a sponsor to establish fees that are high enough to recover aeronautical costs, but still low enough to attract and retain commercial aeronautical services. In these circumstances, an airport may establish fees lower than what is needed to achieve self-sustainability in order to assure that services are provided to the public (*see* section 17.9, *Aeronautical Use Rates*).

17.6 Long-Term Approach.

If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the sponsor should establish long-term goals and strategies to make the airport as financially self-sustaining as possible.

17.7 New Agreements.

Sponsors are encouraged to undertake reasonable efforts to make their particular airports as self-sustaining as possible when entering into new or revised agreements or when otherwise establishing rates, charges, and fees.

17.8 Revenue Surpluses.

Some airports may have sufficient market power to charge fees that exceed total airport costs. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenue may be spent. (*See* chapter 15, *Permitted and Prohibited Uses of Airport Revenue*, for more information on permitted uses of airport revenue).

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[1] 49 U.S.C. § 47107(a)(13).

Reasonable reserves and other funds, which facilitate financing and cover contingencies, are not considered revenue surpluses. The sponsor must use any surplus funds accumulated in accordance with the Revenue Use Policy.

Additionally, the progressive accumulation of substantial amounts of surplus aeronautical revenue could warrant an FAA inquiry into whether the aeronautical fees are consistent with the sponsor’s obligation to make the airport available on fair and reasonable terms. Moreover, the FAA may review aeronautical fees if an airport’s rate base includes charges to maintain levels of reserve funds that are not warranted by the airport’s debt obligations or other circumstances at the airport.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport’s fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.9 Aeronautical Use Rates.

Consistent with Grant Assurance 22, *Economic Nondiscrimination*, charges for aeronautical use of the airport must be reasonable. This reasonableness requirement takes precedence over the requirement for a self-sustaining rate structure with respect to aeronautical users. Accordingly, the FAA does not consider the self-sustaining requirement to require the sponsor to charge fair market value rates to aeronautical users. For aeronautical users, the FAA considers charges that reflect the cost of the services or facilities to satisfy the self-sustaining requirement.[2]

As explained in more detail in chapter 18, *Airport Rates and Charges*, fees for the use of the airfield generally may not exceed the airport's capital and operating costs of providing the airfield. Aeronautical fees for landside or non-movement area airfield facilities (*e.g.*, hangars and aviation offices) may be at a fair market rate, but are not required to be higher than a level that reflects the cost of services and facilities. In other words, those charges can be somewhere between cost and fair market value. In part, this is because hangars and aviation offices are exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.

17.10 Nonaeronautical Use Rates.

Rates charged for nonaeronautical use of the airport (*e.g.*, concessions) must be based on fair market value (*i.e.*, lease of land at fair market rent subject to the specific exceptions listed in this chapter).

If fair market rent for nonaeronautical uses results in surplus revenue, the sponsor may elect to use that surplus revenue to subsidize aeronautical costs of the airport, such as,

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[2] *See* FAA’s Revenue Use Policy, Section VII.B.5.

a residual rates agreement. Subsidization by nonaeronautical revenues benefits aviation and the traveling public because aeronautical users can use the airport at rates and charges below the cost of providing the aviation facilities and services. *See*, for example, *Bombardier Aerospace, et al.* v. *City of Santa Monica*, FAA Docket No. 16-03-11, January 3, 2005, (available online) where the FAA noted that it promotes the practice of using nonaviation revenues to subsidize aeronautical activities since it reduces the economic impact on aviation users and the aviation public.

17.11 Fair Market Value.

Except as provided in 49 U.S.C. § 47107(v), Community Use of Airport Land, fair market fees for use of the airport are the required minimum for nonaeronautical use of the airport. Fair market pricing of airport facilities can be determined by reference to negotiated fees charged for similar uses of the airport or by appraisal of comparable properties. Appraisers should account for airport-specific circumstances (*e.g.*, limits on the use of airport property, height restrictions), when comparing on-airport with off-airport commercial nonaeronautical properties in making fair market value determinations. The market rate for nonaeronautical users should be different from, and usually higher than, the aeronautical rates.

17.12 Exceptions to the Self-Sustaining Rule: General.

While the general rule requires market rates for nonaeronautical uses of the airport, several limited exceptions to the general rule have been defined by Congress and through agency policy based on longstanding airport practices and public benefit. These limited exceptions include providing property for (a) public community purposes, (b) not-for-profit aviation organizations, (c) military aeronautical units, (d) transit projects, and (e) private transit systems. (*See* FAA Revenue Use Policy, Sections VII.D - H).

These are exceptions to the self-sustaining rule requirement and are further described in the sections below. In addition, airport sponsors must ensure that they are using the land in accordance with their grant obligations and property conveyance restrictions. More information is available in chapter 22, *Land Use Changes and Releases on Federally Acquired and Federally Conveyed Land*.

17.13 Exceptions to the Self-Sustaining Rule: Providing Property for Public Community Purposes.

After coordination with the Region/ADO on a land use change to non-aeronautical use as described in chapter 22, *Land Use Changes and Releases on Federally Acquired and Federally Conveyed Land*, a sponsor may make airport property available for community purposes at less than fair market value on a limited basis provided all of the following conditions exist:

(1) the property is not needed for an aeronautical purpose,

(2) the property is not producing airport revenue and there are no near-term prospects for producing revenue,

(3) allowing the community purpose will not impact the aeronautical use of the airport,

(4) allowing the community purpose will maintain or enhance positive community relations in support of the airport,

(5) the proposed community use of the property is consistent with the Airport Layout Plan (ALP), and

(6) the proposed community use of the property is consistent with other requirements, such as certain surplus and nonsurplus property federal obligations requiring the production of revenue by all airport parcels.

In addition to the statutory exceptions for certain interim compatible recreational purposes and certain permanent compatible recreational and public park uses under 49 U.S.C § 47107(v)[3], the circumstances in which below-market rental rates of airport land for community purposes will be considered consistent with the grant assurances are listed below.[4] Agreements for community use of airport land should incorporate these requirements as conditions of use:

a. Acceptance.

The local community must use the land in a way that enhances the community's acceptance of the airport; the use may not adversely affect the airport's capacity, security, safety, or operations. Acceptable uses include public parks and recreation facilities, including bike or jogging paths.

When the use does not directly support the airport's operations, a sponsor may not provide land at less than fair market value rent. Accordingly, the airport must generally be reimbursed at fair market rent for airport land used for road maintenance or equipment-storage yards or for use by police, fire, or other government departments.

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[3] FAA will not find airport sponsors in non-compliance for certain interim or permanent compatible recreational and public park uses if the airport property was purchased using funds from a Federal grant for acquiring land issued prior to January 1, 1989 and other conditions set forth in 49 U.S.C. § 47107(v) are met.

[4] *See* FAA's Revenue Use Policy, Section VII (D), 64 Fed. Reg. 7696, 7721, February 16, 1999.

b. Minimal Revenue Potential.

At the time it contemplates allowing community use, the sponsor may only consider land that has minimal revenue-producing potential. The sponsor may not reasonably expect that an aeronautical tenant will need the land or that the airport will need the land for airport operations for the foreseeable future (*i.e.*, master plan cycle). When a sponsor finds that the land may earn more than minimal revenue, but still below fair market value, the sponsor may still permit community use of the land at less than fair market value rent provided the rental rate approximates the revenue that the airport could otherwise earn.

c. Reclaiming Land.

The community use does not preclude reuse of the property for airport purposes. If the sponsor determines that the land has greater value than the community's continued use, the sponsor may reclaim the land for the higher value use.

d. No Use of Airport Revenue.

The sponsor may not use airport revenue to support the capital or operating costs associated with the community use. (*See* FAA's Revenue Use Policy, section VII.D.4.).

NOTE: As explained in chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*, airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (codified at 49 U.S.C. § 303).[5]

[5] 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.) See also, 23 CFR § 774.11(g) and FHWA and FTA *Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites*, 73 Fed. Reg. 13368-01, (March 12, 2008) (interpreting Section 4(f) not to apply to temporary use of airport property.)

17.14 Exception to the Self-Sustaining Rule: Use of Property by Not-for-Profit Aviation Organizations.[6]

a. Reduced Rent.

A sponsor may charge reduced rental rates to non-profit aviation museums, and aeronautical secondary and post-secondary education programs conducted by accredited education institutions, to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. A sponsor may also charge reduced rental rates to Civil Air Patrol units operating aircraft at the airport use (*see also*, Revenue Use Policy, Section VII (E)).

b. In-Kind Services.

The FAA expects sponsors to charge police or fire fighting units that operate aircraft at the airport reasonable aeronautical fees for their aeronautical use. However, the airport may offset the value of any services that the units provide to the airport against the applicable airport fees. The in-kind offset must be supported (*e.g.*, a Memorandum Of Understanding, logs, etc.) and reflect the cost of services received.

17.15 Exception to the Self-Sustaining Rule: Military Units.[7]

a. Military Aeronautical Units.

Airport sponsors may provide land to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, the U.S. Air Force Reserve, U.S. Coast Guard, and Naval Reserve air units operating aircraft at the airport. The Search and Rescue (SAR) and disaster relief roles played by Coast Guard, the U.S. Air Force Auxiliary, and the Civil Air Patrol are also recognized as a prime aeronautical role. These units generally provide services that directly benefit airport operators and safety.

This exception does not apply to military units with no aeronautical mission on the airport.

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[6] *See* FAA Revenue Use Policy, Section VII.E.

[7] See FAA Revenue Use Policy, Section VII.E.

b. Military Nonaeronautical Units.

49 U.S.C. § 47107(t), *Renewal of Certain Leases*, allows an airport owner or operator to renew a covered lease at a nominal lease rate. A covered lease is a lease that:

(A) originally entered into before October 7, 2016;

(B) under which a nominal lease rate is provided;

(C) under which the lessee is a Federal or **State** government entity; and

(D) that—

- **(i)** supports the operation of military aircraft by the Air Force or Air National Guard—
  - **(I)** at the **airport**; or
  - **(II)** remotely from the **airport**; or
- **(ii)** is for the use of nonaeronautical land or facilities of the **airport** by the National Guard.

17.16 Exception to the Self-Sustaining Rule: Transit Projects.[8]

When the airport sponsor owns a transit system and its use is for the transportation of airport passengers, property, employees, and visitors, the sponsor may make its property available at less than fair market value rent for public transit terminals, right-of-way, and related facilities without violating the Revenue Use Policy or self-sustaining requirements. In such circumstances, the FAA would consider a lease of nominal value to be consistent with the self-sustaining requirement.

17.17 Exception to the Self-Sustaining Rule: Private Transit Systems.[9]

Airports generally charge private ground transportation providers fair market value rental rates. However, a sponsor may, without violating the Revenue Use Policy or self-sustaining requirements, charge private operators less than fair market value rent when the service is extremely limited and where the private transit service – such as bus, rail, or ferry – provides the primary source of public transportation to the airport.

17.18 through 17.22 Reserved.

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[8] See FAA Revenue Use Policy, Section VII.G.

[9] See FAA Revenue Use Policy, Section VII.H.

Part V: Financial Responsibilities

Chapter 18. Airport Rates and Charges

18.1 Introduction.

For convenience, this chapter summarizes the provisions of the FAA *Policy Regarding Airport Rates and Charges*, (78 Fed Reg. 55330, September 10, 2013) (Rates and Charges Policy). The Rates and Charges Policy is the official FAA policy on airport rates and charges, and should be consulted in any case where an agency opinion or determination on an airport fee is required.

18.2 Background.

The Rates and Charges Policy provides comprehensive guidance on the legal requirement that airport fees be fair, reasonable, and not unjustly discriminatory. The reasonableness requirement is set forth in three different statutory provisions:

(1) the Anti-Head Tax Act (codified at 49 U.S.C. § 40116(d)(2)(A)[1]),

(2) the Airport and Airway Improvement Act of 1982 (AAIA), as amended (codified at 49 U.S.C. § 47107(a)(1), (2), and (13)), and

(3) 49 U.S.C. § 47129 (implemented by 14 CFR part 302, subpart F).

Additionally, Section 113 of the FAA Authorization Act of 1994 (codified at 49 U.S.C. § 47129(b)) required the Department of Transportation (DOT) to issue a policy statement establishing standards or guidelines for determining whether an airport fee is reasonable.

a. 1996 Policy.

DOT and FAA published FAA's *Policy Regarding Airport Rates and Charges* (61 Fed. Reg. 31994, June 21, 1996)(Rates and Charges Policy). The Rates and Charges Policy, provides guidance to airport proprietors and aeronautical users, encourages direct negotiation between parties, minimizes the need for direct federal intervention,

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[1] As amended by the FAA Reauthorization Act of 2018, Pub. L. 115-254, and codified at 49 U.S.C. § 40116(d)(2)(A)(v), a state or political subdivision of a state or an authority acting for a state may not levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that state, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.

and establishes standards that the FAA applies in addressing airport fee disputes and compliance issues.

b. U.S. Court of Appeals Decision.

On August 1, 1997, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Rates and Charges Policy on the grounds that the DOT established separate policies for airfield and nonairfield aeronautical uses without sufficient justification. In a subsequent order issued on October 15, 1997, the Court clarified that only the following paragraphs of the Rates and Charges Policy were vacated: 2.4, 2.4.1(a), 2.5.1, 2.5.1(a-e), 2.5.3, 2.5.2(a), and 2.6. On August 7, 2009, in *Alaska Airlines Inc.* v. *DOT*, 575 F.3d 750 (D.C. Cir. 2009), the Court remanded another matter to DOT to justify or abandon the portion of the policy statement that permits an airport to consider opportunity cost as a measure of fair market value when setting terminal but not airfield costs.

c. 2008 Amendments.

On July 8, 2008, DOT and FAA issued an amendment to the Rates and Charges Policy, clarifying that certain practices were permitted and establishing exceptions to the general policy to facilitate use of alternative airfield pricing at highly congested airports. *See* 73 Fed. Reg. 40430 (July 14, 2008). Specifically, the amendment

(1) clarified the Rates and Charges Policy by explicitly acknowledging that airport operators are authorized to establish a two-part landing fee structure consisting of both an operational charge and a weight-based charge in lieu of the standard weight-based charge;

(2) expanded the ability of the operator to include in the airfield fees of a congested airport a portion of the airfield costs of other, underutilized airports owned and operated by the same proprietor; and

(3) permits the operator to charge users of a congested airport a portion of the cost of airfield projects under construction. The United States Court of Appeals for the D.C. Circuit upheld the amendments in the court's decision in *ATA* v. *DOT*, 613 F.3d 206 (D.C. Cir 2010).

d. 2013 Rates and Charges Policy Full Text Publication.

As a convenience for the public and for regulated entities, the FAA published the full text of the *Policy Regarding Airport Rates and Charges* in a single document in 78 Fed. Reg. 55330 (September 10, 2013). This policy has been in effect since the most recent amendment of the policy on July 14, 2008.

18.3 Responsibilities.

The FAA headquarters Office of Airport Compliance and Management Analysis (ACO) adjudicates rates and charges disputes filed in accordance with 14 CFR part 16. The Secretary of Transportation (DOT) adjudicates rates and charges disputes filed in accordance with the special procedures for air carrier rate complaints, 49 U.S.C. § 47129 and 14 CFR part 302. Neither the FAA nor the Secretary of Transportation sets the fees imposed on air carriers.

The FAA Regional Airports Divisions (Regions) and Airports District Offices (ADOs) advise the aviation community with regard to the Rates and Charges Policy meet with parties to resolve disagreements informally, answer correspondence and inquiries, and resolve disputes that are filed (or fall) under 14 CFR § 13.2. In general, the FAA encourages sponsors and users to negotiate rates and charges agreements and to resolve disputes through alternative dispute resolution processes.

18.4 Definitions.

The following definitions are found in the Rates and Charges Policy:

a. Aeronautical Use.

The FAA defines "aeronautical use" as any activity that involves, makes possible, is required for the safety of, or is 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 the airport. While many of the provisions of the Rates and Charges Policy are oriented toward air carrier fees, the principles of this policy apply to all aeronautical uses of the airport.[2] Aeronautical Activity is further defined in Appendix G, *Explanation of Terms*, under "Aeronautical Activity".

b. Aeronautical Users.

Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered aeronautical users.[3]

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

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

c. Nonaeronautical Use of the Airport.

All other uses of the airport are considered nonaeronautical. Aviation-related uses that do not need to be located on an airport, such as flight kitchens and airline reservation centers, are considered nonaeronautical uses. Nonaeronautical uses include public parking, rental cars, ground transportation, as well as terminal concessions such as food and beverage and news and gift shops. Federal law and policy on reasonableness of fees and other terms of airport access do not apply to nonaeronautical uses.[4]

d. Airfield.

For purposes of the Rates and Charges Policy, the airfield includes runways and taxiways, public aircraft parking ramps and aprons, and associated aeronautical land, such as land used for navigational aids.

e. Congested Airport.

Section 6 of the 2008 amendments to the Rates and Charges Policy applies only to congested airports. These amendments define an airport as currently congested if it has more than one percent (1%) of national system delays, or if it is determined to be congested in the FAA's Airport Capacity Benchmark Report for 2004. An airport was considered a "future congested airport" if it met the defined threshold in the FAA Future Airport Capacity Task 3 (FACT 3, January 2015) report, or any update to it that the FAA may publish. The capacity profiles replace the Airport Capacity Benchmark Report, first published in 2001 and revised in 2004. This 2014 update was necessitated by changes in aviation trends, new runways that have been added to the National Airspace System (NAS), and improved modeling techniques.

Some of the reference documents cited in the 2008 amendments are no longer available for the same purpose cited. The FAA currently considers a congested airport to be an airport identified by the FAA as a Level 2 or Level 3 airport under the International Air Transportation Association (IATA) Worldwide Airport Slot Guidelines (WASG), or otherwise as a slot-controlled or capacity-constrained airport, through a Federal Register Notice.

18.5 Key Concepts.

The Rates and Charges Policy discusses some key concepts listed here and summarized in the sections below.

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

a. Fair and Reasonable.

Federal law, as implemented by the Rates and Charges Policy, requires that the rates, rentals, landing fees, and other charges that airports impose on aeronautical users for aeronautical use be fair and reasonable. Guidance on what constitutes fair and reasonable fees can be found in the Rates and Charges Policy. This is further discussed in section 18.6, *Fair and Reasonable*.

b. Not Unjustly Discriminatory.

Aeronautical fees may not unjustly discriminate against aeronautical users. This is further discussed in section 18.18, *Prohibition on Unjust Discrimination*.

c. Self-Sustaining.

Sponsors must maintain a fee and rental structure that – in the circumstances of the airport – makes the airport as financially self-sustaining as possible. This is further discussed in section 18.19, *Self-Sustaining Rate Structure*, and chapter 17, *Self-Sustainability*.

d. Allowable Use.

A sponsor may only use its airport revenue for airport capital and operating costs and certain other facilities directly and substantially related to air transportation, as permitted by 49 U.S.C. §§ 47107(b) and 47133.[5]

e. International Operations.

Fees imposed on international operations must comply with the international obligations of the United States Government under international agreements.

18.6 Fair and Reasonable.

Rates, fees, rentals, landing fees, and other service charges imposed on aeronautical users for the aeronautical use of the airport must be fair and reasonable (*see* section 18.5(a), *Fair and Reasonable*).

[5] See chapter 15, *Permitted and Prohibited Uses of Airport Revenue*, for guidance on revenue use requirements.

a. Type.

Federal law does not require a single rate-setting approach. Accordingly, sponsors may use a residual, compensatory, hybrid, or any other rate-setting methodology. Sponsors may set fees by ordinance, statute, resolution, regulation, or agreement. The methodology and implementation must be consistent for similarly situated aeronautical users and must conform to the Rates and Charges Policy.

b. Residual.

Agreements that permit aeronautical users to receive a cross-credit of nonaeronautical revenues are generally referred to as residual agreements. In a residual agreement, the airport applies excess nonaeronautical revenue to the airfield costs to reduce air carrier fees; in exchange, the air carriers agree to cover any shortfalls if the nonaeronautical revenue is insufficient to cover airport costs. In a residual agreement, aeronautical users may assume part or all of the liability for nonaeronautical costs.

A sponsor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of an agreement. Cross-credits without written agreements are permissible as long as adequate transparency is provided. However, except by agreement, a sponsor may not require aeronautical users to cover losses generated by nonaeronautical facilities.

A residual rate structure may be accomplished only with agreement of the users.

c. Compensatory.

A compensatory rate setting approach is one in which a sponsor assumes all liability for airport costs and retains all airport revenue for its own use in accordance with federal requirements. Aeronautical users are charged only for the costs of the aeronautical facilities they use. Compensatory rate structures may be imposed on users by ordinance, statute or resolution, regulation, or agreement (*see* Rates and Charges Policy, Section D (2.1)).

A compensatory rate structure may be imposed on users by ordinance.

d. Hybrid.

Sponsors frequently adopt a rate structure that employs elements of both residual and compensatory approaches. Such agreements may charge aeronautical users for the use of aeronautical facilities with aeronautical users assuming additional responsibility for airport costs in return for a sharing of nonaeronautical revenues that offset aeronautical costs.

e. Two-Part Landing Fees.

An airport proprietor may impose a two-part landing fee consisting of a combination of a per-operation charge and a weight-based charge provided that (1) the two-part fee reasonably allocates costs to users on a rational and economically justified basis; and (2) the total revenues from the two-part landing fee do not exceed the allowable costs of the airfield.

f. Airfield Revenue.

Unless users agree otherwise, airfield fees generally may not exceed the airfield capital and operating costs of existing airfield facilities and services. Limited exceptions apply at a congested airport, where fees may include the airfield costs of another airport in the system or the costs of airfield facilities under construction. In each case, total system charges are limited to system costs, even though current fees may exceed airfield costs at the congested airport itself.

g. Rate Base.

The sponsor allocates capital and operating costs to airport cost centers and formulates rates to recover costs. The base rate is the list of costs allocated to a cost center, which are recovered from aeronautical users in aeronautical rates.

18.7 Permitted Airfield Costs.

Costs properly included in the rate base for an airfield cost center are generally limited to the following:

a. Operating Costs.

All operating and maintenance expenses directly and indirectly associated with providing airfield aeronautical facilities and services are operating costs. This includes direct personnel, maintenance, equipment, and utility costs, as well as indirect allocated costs such as police, airport rescue and firefighting, administrative and managerial overhead, roads and grounds, and utility infrastructure.

b. Capital Costs.

Capital costs consist of costs to service debt and debt coverage for the airfield direct and indirect capital costs, including reserve and contingency funds.

18.8 Environmental Costs.

Sponsors may include reasonable environmental costs in the rate base to the extent that the airport incurs a corresponding actual expense. The resulting revenues are subject to the requirements on the use of airport revenue.

18.9 Noise.

Reasonable environmental costs include sponsor costs for aircraft noise abatement and mitigation measures, both on and off the airport. This includes land acquisition and acoustical insulation expenses to the extent that such measures are undertaken as part of a comprehensive aircraft noise compatibility program.

18.10 Insurance.

Reasonable costs of insuring against liability, including environmental contamination. The airport may include the cost of self-insurance in the rate base to the extent that such costs are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

18.11 Causation.

Unless otherwise agreed to by aeronautical users, the sponsor must allocate capital and operating costs among cost centers in accordance with the principle of cost causation. (*See* FAA Rates and Charges Policy, section 2.4.5).

Sponsors may include direct and indirect capital and operating costs of airfield facilities used by the aeronautical users in the rate base in a manner consistent with the Rates and Charges Policy.

18.12 Facilities under Construction.

Once the sponsor puts the facility into service, it may capitalize the sponsor's costs incurred during construction and amortize the resulting debt service and carrying costs. The general rule is that a sponsor may not begin to charge for the costs of facilities until they are in use, unless users agree. However, under a limited exception for congested airports, the sponsor may include costs of airfield facilities under construction in current fees if the charges would work to relieve or avoid current congestion. The charges are limited to recovery of construction costs with future charges reduced to reflect the costs paid for in advance.

18.13 Costs of Another Airport.

The costs of one airport may be combined with the costs of another airport, provided the following apply:

- **(a)** Both airports have the same sponsor.
- **(b)** Both airports are currently in use.
- **(c)** The combination of costs is expected to provide aeronautical users with aviation benefits.

This third element is presumed satisfied if the other airport is a reliever airport. The test is also presumed satisfied if the first airport meets the test in the Rates and Charges Policy as a "congested airport," the second airport has been designated by the FAA as a secondary airport serving the same region, and the higher fees would help relieve or avoid congestion at the first airport. Fees at the second airport must be reduced so that total system fees do not exceed the sponsor's system airfield costs.

18.14 Airport System.

For airport system methodologies that were in place as of the effective date of the Rates and Charges Policy, the DOT will consider a sponsor's claim that those methodologies are reasonable.

18.15 Costs Related to Closing an Airport while Building a Replacement Airport.

If a sponsor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs for disposition of the closed airport may be included in the rate base of the new airport.

Pending reasonable disposition of the closed airport, the sponsor may charge aeronautical users at the new airport for reasonable maintenance costs of the old airport for a limited time. In some cases, the closing of an airport can have revenue diversion implications. Specifically, the FAA may examine information related to costs expended for the closure and site remediation of an airport that has been closed when no replacement airport has been opened. The primary concern is whether a sponsor has unlawfully diverted airport revenue for nonairport purposes, such as improving the property for the benefit of a future, nonairport use.

18.16 Project Costs.

The sponsor may not include in its rate-base costs paid from government grants or Passenger Facility Charges (PFCs).

18.17 Passenger Facility Charge (PFC) Projects.

Where the sponsor funds the development of terminal facilities with PFCs, the facilities rental may not be lower than rental fees charged for similar terminal facilities not funded with PFCs. (Rates and Charges Policy, section 2.7.2(a)).

18.18 Prohibition on Unjust Discrimination.

Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

a. Consistent Methodology.

The sponsor must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the sponsor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group. A cost allocation methodology consistent with the Rates and Charges Policy must be adopted by the sponsor unless aeronautical users agree otherwise.

b. Reasonable Distinctions.

The prohibition on unjust discrimination does not prevent a sponsor from making reasonable distinctions among aeronautical users (such as signatory and nonsignatory air carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for nonsignatory versus signatory air carriers).

c. Foreign Air Carriers.

The Chicago Convention on International Civil Aviation and other bilateral aviation agreements prohibit unjust discrimination against foreign air carriers. When domestic air carriers are engaged in similar international service, these agreements prohibit airports from imposing fees on foreign air carriers that are higher than fees imposed on domestic air carriers. When charges to foreign air carriers for aeronautical use are inconsistent with these principles, the DOT considers such charges unjustly discriminatory or unfair and unreasonable.

d. Allocation.

Sponsors must allocate rate-base costs to their aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. Sponsors must apply the methodology consistently and, when practical, they must quantitatively determine cost differences.

18.19 Self-Sustaining Rate Structure.

Sponsors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. (*See* chapter 17, *Self-Sustainability*).

a. Revenue Surpluses.

In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts required for airport system purposes and for other purposes for which airport revenue may be spent under 49

U.S.C. §§ 47107(b)(1) and 47133. Reasonable reserves and other funds to facilitate financing and to cover contingencies are not surplus.

Fees charged to nonaeronautical users may exceed the costs of service to those users, the sponsor must use the surplus in accordance with the revenue use requirements of 49 U.S.C. §§ 47107(b) and 47133. For example, a nonaeronautical surplus may be used to offset aeronautical costs and result in lower fees for aeronautical users or may be used for nonaeronautical airport development purposes.

The progressive accumulation of substantial amounts of surplus airport revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the sponsor's federal obligations to make the airport available on fair and reasonable terms.

b. Market Discipline.

Over time, the DOT assumes that the limitations on airport revenue use, combined with effective market discipline for nonaeronautical services and facilities, will be effective in holding aeronautical costs to airport revenues while providing reasonable aeronautical fees for services and facilities.

18.20 Local Negotiation and Resolution.

Although federal law provides the DOT with authority to intervene in disputes over an airport fee or charge, the DOT primarily relies on the sponsor and its aeronautical users to reach consensus on airport rates and charges. The sponsor may impose a fee unilaterally, after consultation with users, if the fee is consistent with the Rates and Charges Policy. The sponsor may adopt a fee that varies from the Rates and Charges Policy only if all users agree.

a. Consultation.

As provided for in the Rates and Charges Policy, the FAA and DOT encourage adequate and timely consultation with users prior to implementing rate changes. To permit aeronautical users time to evaluate proposed rate changes, consultation should be well in advance of introducing significant changes in charging systems, procedures, or level of charges. Adequate information should be provided so users can evaluate the airport’s justification for the change and to assess its reasonableness. Due regard should be given to the views of both the aeronautical users and the airport and its financial needs.

b. Unilateral Action.

In the absence of an agreement, sponsors may propose and implement in accordance with their proposed rate changes without prior review or approval by FAA. An air carrier may bring a complaint about the fee to Secretary of Transportation under 49 U.S.C. §

47129, and under the procedures in 14 CFR part 302, *Rules of Practice in Proceedings*. Any aeronautical user (including an air carrier) may file a complaint about a fee with FAA under 14 CFR part 16.

c. Alternative Dispute Resolution.

As provided for in the Rates and Charges Policy, DOT encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreement, in order to facilitate local resolution and reduce the need for direct Federal intervention to resolve differences over aeronautical fees.

18.21 Complaints.

Formal complaints challenging the reasonableness of an airport fee may be filed by an air carrier in a proceeding before the DOT under 49 U.S.C. § 47129, or in an FAA investigation under 14 CFR part 16.

a. Complaints Filed with the Secretary of Transportation (OST).

An air carrier or foreign air carrier may file a formal complaint under 49 U.S.C. § 47129, within 60 days after the carrier receives written notice of a new or increased airport fee. An airport owner or operator may file a written request for a determination as to whether a fee imposed upon one or more air carriers is reasonable. OST procedures for the adjudication of the complaints are found in 14 CFR part 302. While the OST is considering the dispute, the complainant must pay the contested amount under protest. If the OST finds against the sponsor, the sponsor would ensure the prompt repayment of the disputed fee to the air carrier unless otherwise agreed. Pending issuance of the final determination, the sponsor may not deny an air carrier currently providing air service reasonable access to the airport. Where the parties are unable to resolve their disputes, OST will issue determinations in accordance with 49 U.S.C. § 47129.

b. Complaints Filed with the FAA.

Any person subject to an airport fee can file an informal complaint with the FAA Region or ADO under 14 CFR § 13.2 or a formal complaint with the FAA under 14 CFR part 16 (Part 16) concerning the fee. Part 16 complaints are filed with the Office of Airport Compliance and Management Analysis (ACO), through the Office of Chief Counsel, and investigated by ACO. The Director of the Office of Airport Compliance and Management Analysis (ACO-1), will issue an initial determination on the reasonableness of the fee. That determination is appealable to the Associate Administrator for Airports. (*See* chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).

c. Agency Determination.

Under 49 U.S.C. § 47129(a)(3), the OST or the FAA may determine only whether a fee is reasonable or unreasonable. They may not set the level of any airport fee.

18.22 through 18.26 Reserved.

Part V: Financial Responsibilities

Chapter 19. Airport Financial Reports

19.1 Introduction.

This chapter discusses the requirement for airport owner/sponsors (airport sponsor) of commercial service airports to file annual financial reports with the Office of Airports Compliance and Management Analysis (ACO). It also provides guidance on single audits conducted under the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200).

19.2 Statutory Authority.

Section 111 of the FAA Authorization Act of 1994, Pub. L. 103-305, (1994 Authorization Act) establishes the requirement for sponsors obligated by Airport Improvement Program (AIP) federal grant assurances to submit to the Secretary and to make available to the public certain airport financial information. Congress enacted additional provisions for monitoring and enforcing revenue use in the FAA Reauthorization Act of 1996, Pub. L. 104-264 (1996 Reauthorization Act). ACO provides summary and financial data for the National Plan of Integrated Airport Systems (NPIAS) report to Congress.

a. Annual Reports on Payments of Airport Funds and Services.

Section 111(a) of the 1994 Authorization Act (codified as 49 U.S.C. § 47107(a)(19)) requires airport owners or operators that have received federal grants to submit to the Secretary and make available to the public (1) all amounts the airport paid to other government units, as well as the purposes for which each payment was made, and (2) all services and property the airport provided to other government units along with the compensation received for each service or property provided.

b. Annual Financial Reports.

Section 111(b) of the 1994 Authorization Act requires a report in a uniform simplified format for each fiscal year of each commercial service airport's sources and uses of funds, net surplus/loss and other information that the Secretary may require.

c. Single Audit Requirements.

In 1984, Congress passed the Single Audit Act, which required most governmental recipients of federal assistance (*e.g.*, state and local governments) to have an annual organization-wide financial and compliance audits. The OMB issued several circulars to clarify audit requirements of federal assistance recipients and required that a single independent auditor (an audit firm or a state audit agency) review all of a sponsor's Federal programs. The Single Audit Act applies only to state, local government, and nonprofit recipients that expend $1,000,000 or more in federal assistance in one year (2 CFR part 200, subpart F).

The Federal Aviation Reauthorization Act of 1996, Section 805 (now 49 U.S.C. § 47107(l)) required the Secretary of Transportation to promulgate regulations that require recipients of Airport Improvement Program (AIP) grants to include in their annual single audit a review and opinion on the use of airport revenues. After meeting with the OMB, the FAA determined that the best way to implement the review and opinion was to include it in the standard single audit. Consequently, the FAA requested the OMB include the review of airport revenues in the OMB A-133 Compliance Supplement, now known as 2 CFR part 200, Appendix XI, *Compliance Supplement*. Accordingly, whenever the single auditor conducts a review of the AIP, they will review the use of airport revenues. The single auditor's standard report will comply with the review and opinion requirement.

As part of the single audit report, 2 CFR part 200, Appendix XI *Compliance Supplement* (Department of Transportation) requires the auditor to make an overall determination that airport revenues were used for required or permitted purposes. The following procedures are suggested:

(1) Review the policy for using airport revenue.

(2) Perform tests of airport revenue generating activities (*e.g.*, passenger facility charges, leases, and telephone contracts) to ascertain that all airport-generated revenue is accounted for.

(3) Test expenditures of airport revenue to verify that airport revenue is used for permitted purposes.

(4) Perform tests of transactions to ascertain that payments from airport revenues to the sponsors, related parties, or other governmental entities are airport-related, properly documented, and are commensurate with the services or products received by the airport.

(5) Perform tests to assure that indirect costs charged to the airport from the sponsor's cost allocation plan were allocated in accordance with the FAA policy on cost allocation.

Effective December 26, 2013, the OMB issued 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (Uniform Guidance) to clarify and streamline the federal guidance.

19.3 Grant Assurance 26, Reports and Inspections.

Grant Assurance 26, *Reports and Inspections*, implements the financial reporting provisions of the 1994 Authorization Act.

Grant Assurance 26(a) requires a sponsor to make available an annual financial report in a form prescribed by the Secretary and submit an annual report listing in detail (i) all amounts paid by the airport to any other unit of government along with the purposes for which each such payment was made; and (ii) all services and property provided by the airport to other units of government along with the amount of compensation received for providing each such service and property (in addition to any special financial or operations reports requested by the Secretary, as required by the 1994 Authorization Act). Form 5100-126 and Form 5100-127 are used to meet this requirement. (*See* section 19.5, *Annual Financial Reports*, for information on each form).

Additional guidance can be found in Advisory Circular (AC) 150/5100-19D, *Guide for Airport Financial Reports Filed by Airport Sponsors*.

> Grant Assurance 26, *Reports and Inspections*, implements provisions of the 1994 Authorization Act requiring sponsors to file financial reports with the FAA.

19.4 Applicability.

All commercial service airports that have received an AIP grant since January 1, 1995, are required to comply with statutory financial reporting requirements. Commercial airports, for reporting purposes, are those airports that enplaned 2,500 passengers in the previous calendar year and are receiving scheduled passenger aircraft service. (*See* 49 U.S.C. § 47102(7)).

19.5 Annual Financial Reports.

a. Form 5100-126, Financial Governmental Payment Report.

The FAA requires sponsors to file Form 5100-126 as the annual report on revenue paid to other units of government and on compensation the airport received for services and property provided to other units of government, including in-kind services.

b. Form 5100-127, Operating and Financial Summary.

The FAA requires sponsors to file Form 5100-127 as the annual report of their revenues, expenses, and other financial information.

c. Filing Date.

The FAA requires all commercial airports to file Forms 5100-126 and 5100-127 within 120 days after the end of their fiscal year. Airport sponsors are required to upload the information on these forms directly into the report database using the Certification Activity Tracking System (CATS). CATS can be accessed on the FAA's website. Since airport sponsors may now enter their information electronically into CATS, the FAA will no longer accept hard copy forms. The FAA will make exceptions for airport sponsors that have difficulty accessing CATS.

The FAA may grant an extension of time to file the required forms of up to 60 days after the extension request date if audited financial information is not yet available by the filing due date. Airports needing an extension should request an extension online in the CATS website but can also request an extension in writing to the FAA headquarters ACO. No extensions can be granted past June 30 of the calendar year following the sponsor's fiscal year end. Prior to the filing date, the option for the extension will appear in CATS. For example, if the airport sponsor has a filing date of June 30 and files an extension on June 15 and it is approved for 60 days, then the airport sponsor receives 60 days from June 15th, not June 30th. The new filing date will be August 14th, not August 30th. An extension will not be available after the due date except for extraordinary circumstances. The additional extension due to extraordinary circumstances will need to be requested by letter or email.

If an airport sponsor has not completed its independent annual audit, it must complete the forms in CATS, with available data, and notate they are "unaudited." Once audited statements are available, then sponsors need to replace the "unaudited" data with the audited data in CATS.

d. Responsibility.

The FAA Regional Airports Divisions (Regions) and Airports District Offices (ADOs) are responsible for monitoring sponsor compliance with the financial reporting requirements. Regions and ADOs are also responsible for reviewing Single Audit reports for potential revenue diversion findings. Regions and ADOs may monitor a sponsor's compliance by downloading their region's report status in CATS. ACO is responsible for implementing and managing the airport owner/sponsor financial reporting program.

A sponsor's failure to file financial reports is a violation of the grant assurances and may be enforced using the procedures described in chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*, and may ultimately result in the filing of a Part 16, Notice of Investigation.

e. Instructions.

Instructions are available in Advisory Circular (AC) 150/5100-19D, *Guide for Airport Financial Reports Files by Airport Sponsors*. The AC provides detailed instructions for completing the financial forms. Airport operators or owners are not required to submit a paper copy since the forms are filed electronically.

f. Electronic Reports Available for Public Inspection.

Electronic versions of airport financial forms filed with the FAA are available to the public online. The online database includes only those commercial service airports required to file the financial forms.

FAA makes no representation as to the validity and accuracy of the airport financial data presented. The information presented is based on financial data submitted by each airport and certified by the principal financial officer but may not be to the level of detail desired by individuals relying on this information for other purposes. Additional financial information should be requested directly from the airport.

19.6 Procedures for Evaluating the Airport Owners/Sponsors Financial Reporting Program.

ACO will review an airport sponsor's financial reports using the CATS database and identify anomalies that contain potential indicators of revenue diversion.

This analysis is performed on the preceding three years of information for comparison purposes. Inquiries will be made to the airports to provide explanations for specific anomalies. ACO will provide an informal report to the Director of Airports Compliance and Management Analysis (ACO-1) by end of the federal fiscal year.

19.7 Single Audit Reports.

Local governments that expends $1,000,000 in federal awards in a fiscal year must obtain a Single Audit that conforms to 2 CFR part 200, subpart F, *Audit Requirements*. When the auditor selects the AIP as a major program, it will conduct a review of airport revenues. That audit will confirm the airport uses its revenues in accordance with the FAA *Policy and Procedures Concerning the Use of Airport Revenue*.

The single audit is an audit of the financial statements and federal awards of local governments receiving federal assistance, conducted in accordance with 2 CFR part 200. ACO serves as liaison to the Office of the Secretary of Transportation (OST) and will provide technical support to the Region or ADO, and it will provide status reports to FAA management and to the Department of Transportation (DOT). ACO works with the Regions and ADOs to follow-up on and resolve the findings. Guidance from the DOT requires the FAA to resolve single audit findings within 30 days. The FAA has a statutory requirement to resolve revenue diversion findings within 180 days after receiving the audit report (49 U.S.C. § 47107(m)).

Single Audit reports are uploaded by the airport sponsors into the Federal Audit Clearinghouse. When findings are identified that impact AIP programs, the FAA must ensure the sponsor took appropriate and timely corrective action. (2 CFR § 200.513). The FAA must also issue a management decision on the findings within six months of the acceptance of the audit report by the Federal Audit Clearinghouse. (2 CFR § 200.521).

ACO has the responsibility of working with the Regions to resolve these audit findings. ACO is also responsible for providing the Deputy Associate Administrator for Airports (ARP-2) with periodic status reports on these findings, when requested. The Regions' responsibilities for the Single Audit are further discussed in, FAA Order 5100.38, *Airport Improvement Program Handbook*.

19.8 through 19.12 Reserved.

Part VI: Land Use

Chapter 20. Compatible Land Use

20.1 Background.

Land use planning is an important tool in ensuring that land on, adjacent to, or in the immediate vicinity of the airport is consistent with activities and purposes compatible with normal airport operations. Airport operations includes aircraft landing and takeoff. Ensuring compatible land use on or near federally obligated airports is an important responsibility and an issue of Federal interest.

Incompatible land use at or near airports may result in hazards to air navigation and reductions in airport utility resulting from obstructions to flight paths. Also, incompatible land use may result from residential construction in close proximity to the airport.

As communities grow, areas that were rural in nature can quickly become urbanized. A result of “urban sprawl” is the loss of open space and the resulting loss of airports and/or their utility. Many communities have relied upon their airports as an economic engine. Proximity of industrial parks and recreational areas to an airport has proven to be compatible and mutually beneficial.

20.2 Responsibilities.

It is the airport sponsor’s responsibility to ensure compatible land use on, adjacent, and in the immediate vicinity of the airport. It is also the sponsor’s Federal obligation not to make or permit any changes or alterations in the airport or any of its facilities that do not conform with the ALP, as approved by the FAA, and that might, in the opinion of the FAA, adversely affect the safety, utility, or efficiency of the airport.

The FAA Regional Airports Divisions (Regions) and Airport District Offices (ADOs) are responsible for ensuring that the sponsor fulfills its Federal obligations and will advise sponsors, when requested, regarding compatible land use. Regions and ADOs are also responsible for ensuring that residential developments on airport property are not approved. In addition, Regions and ADOs are responsible for ensuring that airport property is not released for residential development. There is no justification for the introduction of residential development on or near a federally obligated airport.

20.3 Controlling Grant Assurances and Additional Resources.

Grant Assurance 5, *Rights and Powers*, requires in part that:

a. [The airport sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

* * *

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 (FAA Modernization and Reform Act of 2012) and the sponsor assurances.

Grant Assurance 19, *Operation and Maintenance*, requires in part that:

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity thereon which would interfere with its use for airport purposes. * * *

Grant Assurance 21, *Compatible Land Use*, implementing 49 U.S.C. § 47107(a)(10) requires, in part, that the sponsor:

> [T]ake appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

The FAA recognizes that not all airport sponsors have direct jurisdictional control over uses of property near the airport. However, for the purpose of evaluating airport sponsor compliance with the compatible land use assurance, the FAA does not consider a sponsor's lack of direct authority as a reason for the sponsor to decline to take action to achieve land use compatibility outside the airport boundaries.

Grant Assurance 31, *Disposal of Land*, requires that land purchased under a grant for airport development or noise compatibility purposes that is disposed of,

> d. [W]ill be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

Additional resource information is available at the following:

- AC 150/5190-4, *Airport Land Use Compatibility Planning*
- Compatible Land Use (faa.gov)
- AC 150/5070-6, *Airport Master Plans*
- Wildlife Regulations, Guidance, and Resources (faa.gov)
- Airport Airspace Analysis (AAA) (faa.gov)

20.4 Compatible Land Use.

Compatibility of land use is attained when the use of adjacent property neither adversely affects flight operations from the airport nor is itself adversely affected by such flight operations. In most cases, the adverse effect of flight operations on adjacent land results from exposure of noise sensitive development, such as residential areas, to aircraft noise and vibration.

Land use that adversely affects flight operations is that which creates or contributes to a flight hazard. For example, any land use that might allow tall structures, block the required line of sight from the control tower, inhibit pilot visibility (such as glaring lights, smoke, etc.), produce electronic aberrations in navigational guidance systems, or that would tend to attract birds would be considered an incompatible land use. For example, solar and wind energy projects, without proper land use planning can be hazardous to aircraft operations.[1] (*See* chapter 7, *Airport Operations and Maintenance* and FAA's policy on *Review of Solar Energy System Projects on Federally Obligated Airports*, 86 Fed. Reg. 25801, May 11, 2021).

Additionally, under certain circumstances, an exposed landfill may attract birds. If open incineration is regularly permitted, it can also create a smoke hazard. It is possible, by properly addressing concerns and hazards, to mitigate some hazardous land use to a level that the FAA deems to be safe. (*See* chapter 7, *Airport Operations and Maintenance*, for additional information).

20.5 Zoning and Land Use Planning

a. Zoning.

Zoning is an effective method of meeting the Federal obligation to ensure compatible land use and to protect airport approaches. Generally, zoning is a matter within the authority of state and local governments. Where the sponsor has authority to zone or control land use, the FAA expects the sponsor to restrict the use of land in the vicinity of the airport to activities and purposes compatible with normal aircraft operations. Even if the airport sponsor does not have zoning authority, FAA expects them to take reasonable efforts to oppose any zoning proposal that introduces incompatible land uses near or adjacent to an airport.

The majority of state and local zoning laws generally are in alignment with FAA land use compatibility guidance and recommendations. Most localities zone airports as commercial industrial, light manufacturing, public, or even open space. The objective of zoning land on and around the airport is to ensure that future uses of the land are compatible with airport operations to protect and preserve the airport and the public investment in the airport. Proper zoning strives to prevent incompatible uses, including residential and other noise sensitive uses and uses of land on the airport that interfere with areas needed for aviation related activities.

Sponsors and local communities should adopt adequate guidelines and zoning laws that consider noise impacts in land use planning and development. Similarly, any airport

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[1] See, *e.g., Paskar* v. *U.S. DOT*, 714 F.3d 90 (2nd Cir. 2013), in which the owner of a coastal garbage facility implemented the FAA's recommended changes, making the facility safe for air navigation.

sponsor that has the authority to adopt ordinances restricting incompatible land development and limiting the height of structures in airport approaches according to the standards prescribed in 14 CFR part 77, *Safe, Efficient Use, and Preservation of the Navigable Airspace*, is expected to use that authority. (*See also* chapter 7, *Airport Operations and Maintenance*).

b. Land Use Planning and Master Planning.

An airport master plan is a published document approved by the local governmental agency or authority that owns or operates the airport. The airport master planning process provides a means to promote land use compatibility around an airport. Incompatible land uses around an airport can affect the safety and utility of airport operations. Within an airport's noise impact areas, residential and public facilities – such as schools, churches, public health facilities, and concert halls – are sensitive to high noise levels and can affect the development of the airport. Generally, commercial and industrial uses, are compatible with airports. FAA's AC 150/5190-4, *Airport Land Use Compatibility Planning* provides general guidance on airport compatible land use planning.

It is important for the sponsor to involve local land use planners in the review and development of the airport's master plan. They can provide input on potential impacts that future airport development plans may have on communities surrounding the airport. (*See* AC 150/5070-6, *Airport Master Plans*, for additional guidance). Other opportunities for coordination and communication between the airport and local planning agencies include the FAA noise compatibility planning process. (*See* chapter 13, *Airport Noise and Access Restrictions*, for information on aircraft noise compatibility planning).

20.6 Minimizing Incompatible Land Use.

In all cases, the FAA expects a sponsor to take appropriate actions to the extent reasonably possible to minimize incompatible land use.

In cases where the airport disposes airport property, they are required under Grant Assurance 5, *Rights and Powers*, and Grant Assurance 31, *Disposal of Land*, to ensure that upon the sale or conveyance of airport property they retain adequate property rights, including, but not limited to, an adequate easement, deed restriction, covenant, or other property right or reservation to ensure compatible land use.

In cases where the airport sponsor does not have authority to enact zoning ordinances, the sponsor should demonstrate a reasonable attempt to inform surrounding jurisdictions on the need for land use compatibility zoning. Quite often, airport sponsors have a voice in the affairs of the community where an incompatible development is located or proposed. The sponsor can accomplish this through the dissemination of information, education, or ongoing communication with surrounding municipalities.

Depending upon the sponsor's capabilities and authority, action could include exercising zoning authority as granted under state law or engaging in active representation and defense of the airport's interests before the pertinent zoning authorities. The sponsor may also act with respect to implementing sound insulation, land acquisition, purchase of easements, and real estate disclosure programs or initiatives to mitigate areas to make them compatible with aircraft operations. Sponsors without zoning authority may also work to change zoning laws to protect airport interests. The sponsor should be able to demonstrate that it pursued reasonable efforts to ensure proper zoning or other land use controls.

Airports present a variety of unique challenges to those involved in community planning. Height restrictions are necessary in the vicinity of airports and airways to protect aircraft in flight. Residential housing and other land uses near airports must remain compatible with airports and the airport approach/departure corridors. Additional concerns include the airport's proximity to landfills and wetlands that may result in hazards to air navigation created by flocks of birds attracted to the landfills or wetlands. Unusual lighting in the approach area to an airport can create a visual hazard for pilots. Also, land uses that obscure visibility by creating smoke or steam may be hazardous to flight. (*See* chapter 7, *Airport Operations and Maintenance*). Each of these concerns must be addressed in community planning to maintain the safety, utility, and efficiency of the airport as well as the quality of life expected by community residents.

20.7 Residential Use of Land on or Near Airport Property.

a. General.

The FAA's longstanding policy is that residential use on or near a federally obligated airport, whether permanent or transient, is incompatible with airport operations and not permissible. Allowing residential use is inconsistent with Grant Assurance 19, *Operations and Maintenance*, which states that an airport sponsor will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. This is because it can result in noise exposure that exceeds guidelines for residential land use, create encroachment, and residents may seek restrictions on airport operations that limit the existing or future utility of the airport.

Residential use typically involves persons that live on or near the airport but have no association with the airport. For this purpose, the FAA considers residential use to include permanent or long-term living quarters; part-time or secondary residences; residential hangars; hangar homes; campgrounds; permanent or transient accommodation of people experiencing homelessness; fly-in communities; or airpark developments – even when co-located with an aviation hangar or aeronautical facility. Additionally, the FAA considers residential use of airport property, and through-the-fence access from a residence to the property of a commercial service airport, to be incompatible with airport operations.

The FAA expects the airport sponsor to have rules and regulations to control residential use, as well as to oppose residential zoning that would permit such uses since these uses may create hazards or safety risks between airport operations and nonaeronautical tenant activities. If doubts exist regarding the nature of a proposed facility, the airport sponsor may ask the FAA to evaluate the proposed development. Also, the FAA may conduct a land use inspection to determine the true nature of the development; the FAA would then determine whether the facility is compatible with the guidance provided herein.

b. Private Airparks.

It is common for private airparks to impose restrictions on the use of the airfield, such as night curfews, that would be considered a violation of reasonable access at a public use airport. A private airport that has not received Federal assistance has no obligation to provide reasonable access to the public and may impose restrictions at private unobligated airparks operated by the resident owners for their own benefit.

c. Residential-Through-The-Fence.

(1) Federally Obligated General Aviation Airports.

In 2012, Congress amended the Airport and Airway Improvement Act to add 49 U.S.C. § 47107(s), which provides that the sponsor of a federally obligated general aviation airport will not be in violation of the grant assurances for entering into an agreement for residential through-the-fence access to the airfield, on certain conditions. Under this statute, an acceptable agreement for residential through-the-fence access must provide, at a minimum, for the resident's payment of an access fee comparable to the charges of on-airport users; the resident's acceptance of the cost of any infrastructure necessary for access to the airport; the use of the property only for residential, non-commercial purposes; a prohibition on access for others through the resident's property; and a prohibition on aircraft refueling on the property. (*See* chapter 12, *Review of Aeronautical Lease Agreements* and the FAA's *Residential Through-the-Fence Access Toolkit*).

(2) Commercial Service Airports.

The FAA considers through-the-fence access from a residence to a commercial service airport to be incompatible with the operation of the airport. For that reason, the FAA will not approve new through-the-fence access from residential property to a commercial service airport.

At the same time, the FAA has recognized that there are existing residential through-the-fence arrangements at a small number of commercial airports, and that termination of these arrangements could be disruptive and have a potential adverse effect on property values. In July 2013, the FAA published a *Final Policy on Existing Through-the-Fence Access to Commercial Service Airports from a Residential Property* (from 78 Fed. Reg. 42419, July 16, 2013). Under that policy, the FAA will not consider the sponsor of a commercial service airport to be in violation of its grant assurances for maintaining an existing residential through-the-fence arrangement, if the FAA determines that the arrangement meets certain standards. (*See* Section II, *Standards for Compliance at Commercial Service Airports with Existing Through-the-Fence Access*, at 78 Fed. Reg. 42428.) Prior to awarding a new AIP grant to the sponsor, the FAA will review the sponsor's plan for compliance with the standards listed in the policy statement. If the sponsor's plan meets the standards, the sponsor will not lose eligibility for AIP grants. However, the FAA may consider the effect of through-the-fence access on the airport's utility as a factor in future funding decisions.

d. Crewmember Quarters and Hangar Residences.

The FAA differentiates between a typical pilot resting facility or crewmember quarters and a hangar residence or hangar home. The former is designed to be used for overnight and/or resting periods for crewmembers and not as a permanent or even temporary residence. The FAA recognizes that certain aeronautical uses – such as commercial air taxi, charter, and medical evacuation services – may have a need for limited and short-term crewmember quarters for temporary use, including overnight and on-duty times. There may be a need for Aircraft Rescue and Fire Fighting (ARFF) quarters if there is a 24-hour coverage requirement. Moreover, an airport manager or a fixed-base operator (FBO) duty manager may have living quarters assigned as part of his or her official duties. Living quarters or caretaker quarters in these cases would be airport-compatible if an airport management or FBO job requires an official presence at the airport during off-duty times, and if the specific circumstances at the airport reasonably justify that requirement.

However, other than the performance of official duties in running an airport or FBO in a remote location with off-airport housing unavailable, the FAA does not consider permanent or long-term living quarters to be an acceptable use of airport property at federally obligated airports. This includes developments known as airparks or fly-in communities, and any other full-time, part-time, or secondary residences on airport property even when co-located with an aviation hangar or aeronautical facility. While crewmember or caretaker quarters may include some amenities, such as beds, showers, televisions, and refrigerators, these facilities are designed to be used for overnights and resting periods, not as permanent or even temporary residences for crewmembers, aircraft owners or operators, guests, customers, or the families or relatives of same.

A crewmember is limited to those individuals assigned to perform duty in an aircraft during flight time (*See* 14 CFR §1.1, *General definitions*). It may include the pilot-in-command (PIC), second in command, flight engineer, flight attendants, loadmasters, search and rescue (SAR) flight personnel, medical technicians, and flight mechanics. It does not include passengers, families, relatives, or guests of crewmembers not meeting the preceding definition.

e. Releases.

The FAA will not approve a proposed release of airport property from its Federal obligations so that the property can be used for a residential development or to establish residential “through-the-fence” access to the airfield. (*See* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land* for additional information).

f. Authority and Compliance Requirements.

Allowing new residential development, including airport hangars that incorporate living quarters for permanent or long-term use, on federally obligated airports is incompatible with airport operations. It conflicts with federal surplus property obligations and several grant assurance requirements including Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 19, *Operation and Maintenance*; and Grant Assurance 21, *Compatible Land Use*. Moreover, an airport sponsor permitting on-airport residential living quarters will have greater difficulty convincing local zoning authorities to restrict residential development off-airport.

Therefore, airport sponsors are encouraged to:

(1) Explicitly prohibit the development of new residential living quarters on the airport in all tenant leases and subleases.

(2) Develop minimum standards that require the explicit advanced approval of all tenant subleases by the airport sponsor.

(3) Include clauses in all tenant leases stating that unauthorized development of residential living quarters may be declared an event of default under the lease and that the airport sponsor may declare any noncomplying subleases null and void.

(4) If possible and practical, convert any existing living quarters into nonresidential use at the earliest opportunity, especially if the airport sponsor holds title to the living quarters.

20.8 Homelessness On and Adjacent to Federally Obligated Airports.

In addition to being a nonaeronautical use of airport property, the FAA's longstanding policy is that residential use, which includes accommodating people experiencing homelessness, permanently or transiently, on federally obligated airports is not permissible and is incompatible with airport operations.

In recent years, the use of airport property to accommodate homeless activities (*e.g*., homeless camps, safe parking, and associated support services) has increased for several reasons, but a common perception is that airports are public property, accessible, and have land and facilities available to accommodate people experiencing homelessness. The FAA began advising airport sponsors on a case-by-case basis that Federal grant obligations preclude the use of airport property for such purposes and that corrective actions are required to mitigate the use.

Regions and ADOs should advise ACO-100 of existing, new, or potential homeless activities on federally obligated airports once the activity becomes known. The Region or ADO should send a formal letter of inquiry to the sponsor to initiate discussions and obtain detailed information about the status and extent of the homeless issue and to request a corrective action plan.

Homeless activities on airports vary widely in size, scope, facilities, duration, and location. Accordingly, an airport-specific Corrective Action Plan (CAP) is needed to bring the sponsor back into compliance with Federal law and FAA policy. While the FAA does not prescribe a specific or uniform set of measures to implement corrective actions, the sponsor is expected to pursue mitigation measures that are effective, timely, and acceptable to the FAA.

An initial review of the CAP should be conducted by the Region/ADO and in accordance with the applicable grant assurance and/or property obligations. In its review, ACO-100 may recommend that the Region request more detailed information or propose additional mitigations. If so, the Region/ADO should notify the airport of any changes that need to be made to the CAP. Once approved, corrective actions identified in the plan must be implemented.

The Regions and ADOs are responsible for tracking and monitoring CAPs. Particular attention should be given to due dates, sponsor attentiveness to required actions, and the disposition of corrective actions relative to the sponsor's current or projected requests for AIP grant funding. Sponsor requests for additional time to implement corrective actions, or to use an alternative means of compliance not included in the FAA accepted CAP, must be submitted in writing to the Region and coordinated with ACO-100.

20.9 through 20.13 Reserved.

Part VI: Land Use

Chapter 21. Land Use Compliance Inspection

21.1 Introduction.

This chapter provides guidance for conducting land use inspections at federally obligated airports. The purpose of the land use inspections is to determine whether a sponsor is in compliance with its federal obligations for land use. These federal obligations accrue to the sponsor when the sponsor accepts a federal grant or federal transfer of property. (*See* chapter 3, *Federal Obligations from Property Conveyances* and chapter 4, *Federal Grant Obligations and Responsibilities*). Land use is an important aspect of ensuring safe and lawful airport management and operation.

21.2 Responsibilities.

In accordance with the guidance provided below, it is the responsibility of the FAA Regional Offices (Region) and Airports District Offices (ADOs) to conduct a minimum of two land use inspections annually per region for General Aviation (GA) airports and to resolve issues identified during the inspections. ADOs and state block grant agencies support the Region's efforts. Prior to conducting a land use compliance inspection, the Regions and ADOs should review existing related internal guidance, policies, and procedures, including Office of Airport Safety and Standards (AAS) guidance on conducting a simultaneous Airfield Site Visit (ASV).

The FAA Office of Airport Compliance (ACO-100) provides overall guidance and technical support in the conduct of the land use inspections program and provide opportunities to improve the quality of the program. ACO-100 is available to assist Regions in the interpretation of compliance policy, the applicability of conditions or assurances to a particular airport, and for guidance and assistance, as needed, in pursuing and requesting corrective action or enforcement. ACO-100 reports the results of these inspections to Congress.

21.3 Authority.

a. Applicable Law.

The following statutes, regulations and orders are generally applicable to land use compliance inspections:

- 49 U.S.C. § 47107, *Project Grant Application Approval Conditioned on Assurances about Airport Operations*
- 49 U.S.C. § 47125, *Conveyances of United States Government Land, and Revision Note--Release from Restrictions*

- 49 U.S.C. § 47103, *National Plan of Integrated Airport Systems*
- 49 U.S.C. § 47151, *Authority to Transfer an Interest in Surplus Property*
- 49 U.S.C. § 47152, *Terms of Conveyances*
- 49 U.S.C. § 47153, *Waiving and Adding Terms*
- FAA Reauthorization Act of 2024 (Pub. L. 118-63)

b. Congressional Requirement.

As a result of GAO/RCED-99-109, *General Aviation Airports: Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement*, Congress issued Senate Report No. 106-55, in May 1999.[1] The Report questioned the FAA's monitoring of general aviation airport compliance with land use obligations and stated that the FAA did not have internal controls in place to ensure such compliance, that self-certification is not sufficient, and that unauthorized land uses impact airport revenue and safety. The Report directed the FAA to conduct inspections of airports on land acquired with Federal assistance and to report the scope of unauthorized use of airport land and the extent of FAA-approved land releases.

In accordance with 49 U.S.C. § 47121 and the GAO Report, the FAA implemented this compliance oversight by adopting a program that requires Regions on an annual basis to conduct land-use inspections at federally obligated airports and target a minimum of 18 airports (two per FAA region per year).

c. Report to Congress.

49 U.S.C. § 47103(d), *National Plan of Integrated Airport Systems*, non-compliant Airports requires the Secretary to provide, every two years, a detailed statement of airports that are not in compliance with grant assurances or other requirements with respect to airport lands.[2] The report must include:

- the circumstances of noncompliance;
- the timeline for corrective action with respect to such noncompliance; and

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

[2] Prior to the FAA Reauthorization Act of 2024, this list was required under Section 722 of Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), codified at 49 U.S.C. § 47131.

- any corrective action the Secretary intends to require to bring the airport sponsor into compliance.

The statute also states that the Secretary is not required to conduct an audit or make a final determination before including an airport on the list.

21.4 Elements of the Land Use Inspection.

The inspections are built on several processes – airport selection, pre-inspection, onsite inspection, potential non-compliance areas, corrective action, and post-inspection land use report. The inspections contribute to the completeness of land use records and supporting data that may be useful for formal and informal compliance determinations.

a. Airport Selection.

There are several factors that may assist in selecting a particular airport for an inspection. Due to the limited number of inspections to be conducted on a yearly basis, a random process in selecting airports is not considered to be efficient.

Therefore, each Region should develop its own selection process using the variables, conditions, and recommendations listed in this chapter. Coordination with the ADOs, State Block Grant states, and state aeronautical agencies is appropriate. ADOs and state block grant aeronautical agencies may be the most knowledgeable and familiar with specific airport conditions and potential compliance problems.

Generally speaking, preference should be given to selecting airports where it is known or suspected that the airport is not in compliance with one or more of the grant assurances, particularly where it appears that federally acquired or federally conveyed airport property has been disposed of, and/or is being used for non-aeronautical purposes, without FAA approval.

The information needed to identify airports for selection in land use inspections is available from many sources including previous site inspections, complaints, and existing documents including the Airport Layout Plan (ALP) or Exhibit “A”.

Several factors may assist the Region in selecting an airport for a land use inspection. These factors include:

(1) Specific Request from FAA Headquarters.

ACO-100 may request an airport land use inspection when that inspection would directly benefit a current investigation or formal complaint or otherwise address a potential land use problem.

(2) Excessive Number of Requests for Airport Property Release.

An excessive number of requests for airport property releases and/or a significant amount of released land may require additional oversight. This situation could lead to an increase in the potential for misuse of airport property. It could generally indicate systematic nonaeronautical use of the airport.

(3) Size, Classification, and Total Number of Operations at an Airport.

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

b. Pre-inspection.

Once the airports have been selected, the actions taken to prepare for each inspection depend on the specifics of the airport, such as airport size, number of tenants, and availability of land use property records. An adequate pre-inspection is essential in ensuring a successful land use inspection.

The Region or ADO conducting the inspection should notify the airport of the upcoming inspection and include information regarding the planned visit, the purpose of the inspection, and what the inspection will entail.

The first phase of the pre-inspection process should include a review of all relevant airport data available in the Region, ADO, or state block grant aeronautical agency.

This includes:

(1) Obligating Documents.

Review applicable grant, surplus, and nonsurplus property documents to understand the specific commitments of the airport owner, especially any special conditions in such documents. The intent of the land use inspection is to ensure that all federally acquired and federally conveyed land, is used or is available for use for the purposes intended by the land conveyance or grant agreement.

(2) Land Use Maps/Land Files.

The majority of the pre-inspection should focus on inconsistencies between the ALP, Exhibit “A,” parcel maps, or any other land use document relevant to the airport sponsor’s land use and planning. Documents such as airport diagrams and the Airport Facility Directory (AFD) should also be consulted for general familiarization.

(3) Self-certification Documents.

The person conducting the inspection should review any documents and records of self-certification, if applicable. Although self-certification may be an important element of a regional airport compliance program, it is not a substitute for an actual land use inspection. However, self-certification data can be used as background or reference information.

(4) Grant-Acquired Land, Surplus and Nonsurplus Property.

While reviewing airport property and land use documents such as the ALP or Exhibit "A," pay particular attention to all land acquired with grant funding, including land acquired for noise protection, as well as federal surplus and nonsurplus property. Is this land still being used for the purpose for which it was acquired? Also note whether the conditions associated with any previous disposal are being followed.

(5) Release Documentation.

Review all documentation relating to past releases and disposal of airport property. Identify land released by tract or legal description. Check that release conditions or requirements (*i.e.*, environmental requirements, height restrictions, designated uses of proceeds from land sales or leases, Fair Market Value (FMV), and general compatibility requirements) are followed. Also look at the amount of land released (or to be released). Compare this information with correspondence files, land files, ALP and Exhibit "A." Determine if land released for sale has been sold, the deed recorded by the county recorder’s office, and proceeds deposited into the airport account.

(6) Master Plan, Part 150, and Environmental Impact Statements.

Review the Master Plan, any Part 150 studies, any Environmental Impact Statement’s (EIS), and any other planning and environmental documents for relevant information. Environmental determinations might be relevant for understanding land uses to confirm the land is still used for the purpose for which it was acquired.

(7) General Correspondence.

Review recent general correspondence, including complaints, that may be relevant to the land use inspection.

(8) Leasehold Review.

Obtain a list of leaseholds, both aeronautical and nonaeronautical, so they are known to the inspection team before the onsite inspection occurs. In addition, use this leasehold information to crosscheck the ALP and Exhibit "A" for appropriate land uses.

(9) Special Requirements.

Review any special requirements other than those controlled by project payments under the Airport Improvement Program (AIP). Such special conditions might include specific commitments regarding the disposition of proceeds from the disposal of surplus property and any other continuing pledges undertaken by the airport sponsor. It might also include compatible land use requirements or development restrictions.

c. Onsite Inspection[3].

The onsite inspection may last from a half a day to multiple days depending on the size and complexity of the airport. Below are several items that should be included in the onsite inspection:

(1) Determine whether any improvements being currently processed under FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, or that are under construction are inconsistent with the ALP or other land use requirements. No actual or proposed development or use of land and facilities should be contrary to the FAA-approved ALP.

(2) Confirm land uses to ensure the intended or approved use corresponds to the actual use. Such identification should extend to aeronautical service areas, industrial areas, agricultural areas, recreation areas, and those parcels that help in protecting aerial approaches.

(3) Review and compare airport property and the ALP. Specifically note whether all land acquired with federal funds, including land acquired for noise mitigation, is still being used for the purpose for which it was acquired. The FAA must approve any non-aeronautical or mixed use of land purchased with federal funding or that was federally conveyed.

(4) Review leases, use agreements, and applicable financial data (such as airport account records and appraisals) if appropriate or required based on inconsistencies between depicted and actual land use.

(5) Ensure that all airport property released from its federal obligations is being used in accordance with the release document and any special conditions or requirements.

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[3] Regions may conduct an Airfield Site Visit (ASV) in conjunction with the land use inspection. However, the ASV is not part of the land use inspection and should not be included in the land use inspection report.

d. Potential Non-Compliance Areas.

There are many types of issues that may be identified during or after a land use inspection. Several of these may be indicative of improper and noncompliant land use. If non-compliance situations are uncovered as a result of the land use inspections, the state block grant agency should be in a position to play a role in requesting and supervising corrective action and notification, as well as informal resolution.

Examples of these include:

(1) Missing Release Documents.

Release documents cannot be found to substantiate the ALP or Exhibit "A." In several instances, specific airports have told FAA that certain property was released from federal obligations or an ALP shows airport property released from federal obligations, yet no release documents can be found. Without the actual release documents, there is no way to confirm whether the property was actually released and/or if special conditions were issued along with the release. (*See* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

(2) ALP or Exhibit “A”.

An outdated ALP or Exhibit “A” may be an indicator of unauthorized land uses. An ALP may show airport property to be a nonaeronautical leasehold while the Exhibit "A" depicts the land in question as grant acquired property. In determining obligations, Exhibit “A” takes precedence since it is part of the grant agreement establishing the obligation. Where a question or conflict is found, Exhibit “A” from all grants within the 20 years prior to the inspection should be reviewed to determine if the sponsor changed the description of obligated airport property, possibly without FAA being aware.

(3) Special Conditions.

Failure to comply with special conditions, restrictions, reservations, or covenants associated with land releases makes it difficult to determine whether the land is being used properly. It also makes it difficult to reconcile actual versus approved land use. For example, it would be an improper land use if the FAA released airport land under special land use conditions that include a specific use, but the airport is not using the land in accordance with the special conditions in the release. Other examples of violations of the sponsor’s obligations include failing to sell FAA-released property at fair market value following an appraisal as required in the release, or not using the sale proceeds for airport purposes.

(4) Nonaeronautical Leaseholds.

The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are located on designated aeronautical use land without FAA consent or approval or on property not released by FAA and permitting dedicated aeronautical property to be used for nonaeronautical uses. Examples of typical uses include using hangars to store vehicles or other unrelated items.[4] Other improper land uses found in the past have included using aeronautical land for nonaeronautical purposes such as animal control facilities, nonairport vehicle and maintenance equipment storage, museums, and municipal administrative offices.

NOTE: Approval of an ALP showing future nonaeronautical land use does not constitute FAA approval for that nonaeronautical use when it may actually occur. The ALP is a planning document only. FAA approval will be required at the time the land is to be used for a nonaeronautical purpose. (*See* chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

(5) Incompatible Land Uses.

Incompatible land uses include obstructions or residential construction built on airport property or in violation of conditions of released land or residential development within grant funded aircraft noise compatibility land. Introducing a wildlife attractant or failure to take adequate steps to mitigate hazardous wildlife at the airport can also result in an incompatible land use. Incompatible land uses can include wastewater ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer stations, electrical power substations, water storage tanks, golf courses, and other bird attractants. Other incompatible uses would be towers or buildings that penetrate Part 77 surfaces or are located within a Runway Protection Zone (RPZ), Runway Object Free Area (ROFA), Object Free Zone (OFZ), clearway or stopway. (*See* section 7.12, *Hazards and Mitigation*).

[4] *See* FAA's *Policy on the Non-Aeronautical Use of Airport Hangars,* 81 Fed. Reg. 38906, June 15, 2016.

(6) Eminent Domain.

An improper land use may include a situation involving eminent domain. For example, a local government may have taken one or more parcels of airport property without FAA approval through eminent domain to widen a road.[5]

(7) Airspace Determination Cases.

A favorable airspace determination on a proposed structure does not by itself satisfy land use compliance requirements. There is a misconception among airport sponsors that if a proposed structure is accepted by the FAA based on airspace standards, it constitutes FAA de facto approval of proposed land use. That is not the case. For example, a hangar on the airport might not pose an airspace issue, but if that hangar is intended to be used as a residential hangar, it would still represent a compliance problem as an incompatible land use. The Region or ACO-100 makes the determination on land use compliance separately from any related airspace determination, and the Region or ADO should advise the sponsor of the distinction between the two independent FAA determinations.

(8) Unapproved Land Uses.

An unapproved land use might occur following approval for farming near the RPZ if a land use inspection finds permanent structures instead of the authorized farming use. It is also an unapproved land use if nonsurplus land transferred for approach protection was approved for farming purposes for a three-year period, but the lease term is for more than three years or the lease shows a rental rate set at less than fair market value. The sponsor must resolve this type of land use issue promptly. The inspection team should pay particular attention to golf courses on airport property. This is because experience has shown airport sponsors are reluctant to give up the facility later on and return the land to its aeronautical function. Also, experience has shown that golf course operations create revenue use problems, particularly since golf courses may be operated at below fair market value rents.

[5] *See* also discussion of Halfmoon Bay Airport in *Montara Water & Sanitary District v. County of San Mateo*, 598 F.Supp. 2d 1070 (N.D. Cal. 2009), outlined in chapter 23, *Reversions of Airport Property*.

Close attention should also be exercised in cases where the proposed use involves shooting ranges. In most instances, shooting ranges should not be permitted at all, and should only be considered in very limited and unusual circumstances. A range can be inherently hazardous unless properly controlled and mitigated. Moreover, use as a shooting range may be difficult to discontinue later if the land is needed for an aeronautical use. (For more information on land use changes, see chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

NOTE: Care must be taken when considering recreational use to avoid encumbering the property under provisions of section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303).[6]

(9) Roads and Other Structures.

A public road built through airport property without FAA approval is a problem if it impacts a Runway Safety Area (RSA), Part 77 surfaces, the Runway Protection Zone (RPZ), or Runway Object Free Area (ROFA). This is especially problematic if the property where the RSA sits was acquired with federal assistance. The sponsor may have constructed roads or allowed nonsponsor roads to be built on and through airport property, effectively isolating airport parcels from the rest of the airport and making them unsuitable for aeronautical use. At the same time, if a sponsor permits structures to be built in the RSA, this would raise safety issues and potentially be a violation of its federal obligations.

e. Corrective Action.

Corrective action should be initiated when discrepancies are found following an inspection. A letter stating the results of the inspection, including all land use discrepancies, should be sent to the airport sponsor as soon as practical. The letter should include detailed information on how the airport can return to compliance with its federal obligations. It should also include a timeline for completion. The letter could be as simple as requesting an updated ALP within 120 days or requesting the airport to submit a formal request for a land release to correct a land use situation within 30 days.

[6] Section 4(f) property refers to public parks and recreation lands, wildlife and waterfowl refuges, and historic sites. It also applies to wild and scenic rivers. Section 4(f) was recodified as section 49 U.S.C. § 303(c).

In some cases, the corrective action may be as drastic as requiring the removal of an obstruction to air navigation. Failure to take corrective action may lead to compliance action by FAA. Often, improper use of airport property can lead to violations of additional federal obligations or grant assurances, such as revenue use and exclusive rights. While the purpose of the inspection is to review land use, the person conducting the land use inspection should nonetheless advise the airport sponsor of other grant assurance violations noted, as well as any recommended remedies and deadlines for the sponsor to complete corrective action. However, only noncompliant land uses need to be reported to ACO-100 for inclusion in the report to Congress. ACO-100 will include noncompliant land uses in the Report to Congress if those land uses remain unresolved at the end of the fiscal year.

f. Post-Inspection Land Use Report.

It is important to maintain adequate records of all land use inspections. The relevant land use information collected from the inspection should be compiled in a post-inspection land use report, which will include narrative comments. The inspection report should include: the inspection date, background, findings, required corrective action and timeline for corrective action. Narrative comments should be included detailing any inconsistencies or noncompliance situations discovered during the inspection, as well as the necessary corrective action(s) as appropriate.

If there are no required corrective actions, the inspection can be concluded and closed out. If a corrective action is required, the land use inspection will remain open until the Region or ADO finds the sponsor has completed the corrective action in a manner that is satisfactory to the FAA.

Within 30 days of completing the land use inspection, but before the end of the fiscal year in which the inspection took place, the Region should forward a copy of the land use report to ACO-100.

21.5 through 21.9 Reserved.

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]

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[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, navaids, 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.

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[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]

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[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]

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[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 avigation 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 is 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, *Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property*).
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, *Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property*).

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 non-surplus property conveyed by the federal government (49 U.S.C. § 47125).	47125(a)	Yes	Yes	No	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). (*See* section 22.13.d, *Distribution of Proceeds from the Sale or Conveyance of Federally Conveyed Property*).

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 land acquired for development with FAAP/ADAP/AIP and sponsor has not received a grant after 12/30/1987.	47107(h)(2)	Yes	No	Yes	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), *Sponsors Not Receiving a Grant after December 30, 1987*). 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, *Proceeds from disposition of land*).
Release of land acquired for development with FAAP/ADAP/AIP and sponsor has received a grant after 12/30/1987.	47107(h)(2)	Yes	No	Yes	Reinvest in accordance with 49 U.S.C. § 47107(c)(4) and Grant Assurance 31. (*See* section 22.12.d.(2), *Sponsors Receiving a Grant after December 30, 1987*). 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, *Proceeds from disposition of land*).

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	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.
Release of sponsor acquired land developed with AIP funds less than 20 years ago.	N/A	Yes, if in the movement area.	No	Yes	Reinvest the unamortized portion of the useful life of the federal grant in an approved AIP eligible project. (*See* section 22.24.b.(3), *Reinvestment of Federal Share*). Remaining 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).

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, *Disposal of Land Acquired for Noise Compatibility Purposes*).	Reinvest in accordance with 49 U.S.C. § 47107(c)(4) and Grant Assurance 31. (*See* section 22.12.d.(2), *Sponsors Receiving a Grant after December 30, 1987*).
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 I I (63 Stat. 700), as amended; and

WHEREAS, by virtue of delegation of authority, the Manager, Detroit Airport Airports District Office, Airports Divis ion, 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 comer of lands of A&N Land Company, LLC (Instrument No. 201901070000302); Thence North O I 0 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 Gran tor 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 O I 0 40'25" East continuing along said westerly line of Ridge Road a distance of61.19 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 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

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 conveyor 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.[1] 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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[1] 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 revest 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:

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.

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.[2]

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.

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

Appendix A. Airport Sponsors Assurances

A current copy of the Airport Sponsor Assurances is available on the FAA website.

Statistical Basis for the Grant Assurances

GRANT ASSURANCES	STATUTORY BASIS
1. General Federal Requirements	Multiple
2. Responsibility/Authority	49 U.S.C. § 47106 (a)(5)
3. Sponsor Fund Availability	49 U.S.C. § 47106 (a)(3)
4. Good Title	49 U.S.C. § 47106 (b)(1)
5. Preserving Rights and Powers	49 U.S.C. §§ 47106(a)(5) and 47107(g)
6. Consistency with Local Plans	49 U.S.C. § 47106 (a)(1)
7. Consideration of Local Interest	49 U.S.C. § 47106 (b)(2)
8. Consultation with Users	49 U.S.C. § 47105 (a)(2)
9. Public Hearings	49 U.S.C. § 47106 (c)(1)(A)(i)
10. Metropolitan Planning Organization	49 U.S.C. §§ 5303 and 47106 (c)
11. Pavement Preventive Maintenance	49 U.S.C. § 47105 (e)
12. Terminal Development Prerequisites	49 U.S.C. §§ 44706 and 47119 (a)
13. Accounting System, Audit, and Record Keeping	49 U.S.C. § 47107(a)(14)
14. Minimum Wage Rates	49 U.S.C. § 47112 (b)
15. Veteran's Preference	49 U.S.C. § 47112 (c)
16. Conformity to Plans & Specifications	49 U.S.C. §§ 47112 and 47105 (b)(3)
17. Construction Inspection & Approval	49 U.S.C. §§ 47112 (c) and 47017 (b)
18. Planning Projects	49 U.S.C. §§ 5305, 47106(a); 47102(5) and (17)
19. Operation and Maintenance	49 U.S.C. §§ 47107(a)(7) and (8)
20. Hazard Removal and Mitigation	49 U.S.C. § 47107(a)(9)
21. Compatible Land Use	49 U.S.C. §§ 47107(a)(10) and 47141

GRANT ASSURANCES	STATUTORY BASIS
22. Economic Nondiscrimination	49 U.S.C. §§ 47107(a)(1) through (3), (5)-(6) and 47129
23. Exclusive Rights	49 U.S.C. §§ 40103(e) and 47107(a)(4)
24. Fee and Rental Structure	49 U.S.C. §§ 47101 (a)(13) and 47107(k)(3)
25. Airport Revenues	49 U.S.C. §§ 47111 (e), 47133, 47107(b) and (k)
26. Reports and Inspections	49 U.S.C. §§ 47107(a)(15), (18) and (19)
27. Use by Government Aircraft	49 U.S.C. § 47107(a)(11)
28. Land for Federal Facilities	49 U.S.C. § 47107(a)(12)
29. Airport Layout Plan (ALP)	49 U.S.C. § 47107(a)(16)
30. Civil Rights	42 U.S.C. § 2000d *et seq*., and 49 U.S.C. § 47123
31. Disposal of Land	49 U.S.C. § 47107(c)
32. Engineering and Design Services	49 U.S.C. § 47107(a)(17)
33. Foreign Market Restrictions	49 U.S.C. § 50104
34. Policies, Standards, & Specifications	49 U.S.C. §§ 47112(a) and 47105(b)
35. Relocation & Real Property Acquisition	42 U.S.C. § 4601 *et seq*.
36. Access by Intercity Buses	49 U.S.C. § 47107(a)(20)
37. Disadvantaged Business Enterprises	49 U.S.C. §§ 47107(e) and 47113
38. Hangar Construction	49 U.S.C. § 47107(a)(21)
39. Competitive Access	49 U.S.C. §§ 47106(f) and 47107(r)(2)
40. Access to Lead Aviation Gasoline	49 U.S.C. § 47107(a)(22)

Appendix B. SPA Reg. 16

Notice:

The FAA Office of Airports could not locate an original paper or electronic version of SPA Reg. 16, Part 8316. This file has text from text recognition done on a low-quality scanned PDF and then corrected for misspellings. The text itself is unchanged from the original PDF.

This document is formatted as one column text for easy reading and meets Section 508 requirements. Due to font, font size, formatting, and margins, this SPA Reg. 16 excerpt's page numbers vary from the scanned doc.

SURPLUS PROPERTY ADMINISTRATION **SPA Reg. 16**

NOV. 16, 1945

PART 8316 – SURPLUS AIRPORT PROPERTY

Sec.

8316.1 Definitions.

8316.2 Scope.

8316.3 Declaration of policy.

8316.4 Surplus airport disposal committee.

8316.5 Declarations.

8316.6 Communications after notice of transmittal.

8316.7 Withdrawals.

8316.8 Permissive use by other Government agency.

8316.9 Disposal of leasehold interests and improvements by owning agencies.

8316.10 Restrictions on use and disposition.

8316.11 Functions of the Civil Aeronautics Administration.

8316.12 Classification of property by Administrator.

AUTHORITY: §§ 8316.1 to 8316.24, inclusive, issued under Surplus Property Act of 1944, 58 Stat. 765, 50 U.S.C. App. Sup. 1611, and under Pub Law 181, 79th Cong., 1st Sess.

§ 8316.1 ***Definitions*** – (a) *Terms defined in act*. Terms not defined in paragraph (b) of this section which are defined in the Surplus Property Act of 1944 shall in this part have the meaning given to them in the act.

(b) *Other terms*. (1) "Airport property" means the entire interest owned by the Government in any airport.

(2) "Airport" means any area of land or water and the improvements thereon primarily used, intended to be used, or determined by the Administrator to be suitable for use for or in connection with the landing and take-off or navigation of aircraft. The term includes "landing areas," "building areas", "airport facilities", and "non-aviation facilities."

(3) "Airport facilities" means any buildings, structures, improvements, and operational equipment, other than nonaviation facilities, which are used and necessary for or in connection with the operation and maintenance of an airport.

(4) "Building area" means any land, other than a landing area, used or necessary for or in connection with the operation or maintenance of an airport.

(5) "Landing area" means any land, or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, take-offs, and parking of aircraft. The term includes, but it is not limited to, runways, strips, taxiways, and parking aprons.

(6) "Non-aviation facilities" means any buildings, structures, improvements, and equipment, located in a building area and used in connection with but not required for the efficient operation and maintenance of the landing area or the airport facilities.

(7) "State or local government" means any State, territory, or possession of the United States, the District of Columbia, and any political subdivision or instrumentality thereof.

(8) "Surplus airport property" means any airport property which has been determined to be surplus to the further needs and responsibilities of the owning agency in accordance with the act.

§ 8316.2 ***Scope***. This part applies to surplus airport property located within the continental United States, its territories and possessions.

§ 8316.3 ***Declaration of policy***. It is hereby declared that the national interest requires the disposal of surplus airport property in such a manner and upon such terms and conditions as will encourage and foster the development of civil aviation and provide and preserve for civil aviation and national defense purposes a strong, efficient, and properly maintained nationwide system of public airports, and will insure competition and will not result in monopoly. It is further declared that in making such disposals of surplus airport property the benefits which the public and the Nation will derive therefrom must be the principal consideration and the financial return to the Government a secondary consideration. Airports which are surplus to the needs of owning agencies may be essential to the common defense of the Nation or valuable in the maintenance of an adequate and economical national transportation

system. In such cases and In accordance with the rules established herein such airports may be disposed of to State or local governments for considerations other than cash. Where airports are not desired as such by Government agencies or State or local governments, they shall be classified as airports or otherwise according to their best use and any disposition hereunder shall be for a monetary consideration.

§ 8316.4 ***Surplus airport disposal committee***. (a) Pursuant to arrangements made with other interested Government agencies, there is hereby established a Surplus Airport Disposal Committee which shall function as an advisory committee to the Surplus Property Administrator and shall consist of five members, one to be designated by the Secretary of War, one by the Secretary of the Navy, one by the Administrator of the Civil Aeronautics Administration, one by the disposal agency, and one by the Surplus Property Administrator who shall serve as Chairman of the Committee.

(b) It shall be the duty of the Surplus Airport Disposal Committee to advise the Surplus Property Administrator as to the manner in which and the conditions upon which the disposal agency should be authorized to dispose of particular airport properties, and as to all other matters upon which advice may be requested by the Administrator.

§ 8316.5 ***Declarations***. (a) Declarations of surplus airport property including leasehold interests under leases or similar rights of occupancy not cancelled by the owning agency pursuant to § 8316.9 hereof, shall be filed with the Surplus Property Administrator as provided in Part 8301.[1] The Administrator will transmit two copies of the declaration to the appropriate disposal agency with direct10ns, and will notify the owning agency thereof.

(b) The owning agency may give to the Surplus Airport Disposal Committee a pre-declaration notice accompanied by a tentative statement of the conditions, reservations, and restrictions which it may request, pursuant to § 8316.10 hereof, to be imposed on the disposal of the airport property.

§ 8316.6 ***Communications after notice of transmittal***. After the owning agency receives notice of transmittal to a disposal agency of a declaration of surplus airport property, communications of the owning agency with respect to such airport property shall be addressed to the disposal agency, except where communication with the Administrator is required hereunder.

§ 8316.7 ***Withdrawals***. If the owning agency wishes to withdraw surplus airport property before it has received notice of the transmittal of the declaration to the disposal agency, it may do so by filing Form SPB-5 with the Administrator. After the owning agency has received notice of such transmittal, it may withdraw such property by filing the form with the disposal agency. Such withdrawals may be made only with the consent of the Administrator if the property has not been assigned to a disposal agency or with the consent of the disposal agency thereafter, except as hereinafter provided.

§ 8316.8 ***Permissive use by other Government agency***. When a Government agency utilizing Government-owned real property for or in connection with an airport, under some form of arrangement with the Government agency having primary jurisdiction over the property, no longer needs the property for airport purposes, such real property and any interest therein shall be returned to the agency having primary Jurisdiction in

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[1] SPA Reg. 1 (10 F.R. 14064)

accordance with the arrangement made between such agencies. Where, however, the property has been substantially improved while being so utilized, the agency utilizing the property shall make a report of the facts to the Administrator for his determination as to the disposition of the improvements; and such report shall be treated as a declaration of surplus as to such improvements.

§ 8316.9 ***Disposal of leasehold interests and improvements by owning agencies***.
(a) At any time after thirty (30) days prior notice to the Surplus Airport Disposal Committee, no objection thereto having been made by such committee, an owning agency may dispose of airport property in the manner provided in this section without declaring it surplus, provided that such property is held only under lease or other similar right of occupancy which is for the duration of the war or the national emergency and six months thereafter, or is for an unexpired period of not more than twelve months and has no renewal or purchase privilege.

(b) Any such leasehold interest or similar right or occupancy shall be terminated or cancelled by the owning agency and any Government-owned improvements disposed of by any one or more of the following methods:

(1) By transfer to the lessor or owner of the premises in full or partial satisfaction of any obligation to restore the premises, provided the lessor or owner shall pay for any excess value.

(2) By disposition in accordance with contractual commitments.

(3) By sale intact.

(4) By transfer to another Government agency intact.

(5) By disposal of all readily severable property in accordance with any other applicable regulations of the Administrator.

(6) By demolition contract let only on competitive bids whereby title to material not readily severable passes to the demolition contractor.

(7) By demolition of property not readily severable and disposal of surplus used building and construction materials by competitive bidding and of other resulting materials in accordance with any other applicable regulations of the Administrator. Any competitive bidding shall be conducted under rules and regulations prescribed by the owning agencies containing provisions, among others, requiring lots to be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms, requiring wide public notice concerning such sales and time intervals between notice and sale adequate to give all interested purchasers a fair opportunity to buy, and reserving the right to reject all bids.

(8) By abandonment if the owning agency has no obligation to remove such improvements and it finds in writing that such property is without commercial value or that the estimated cost of its care, handling, removal, and disposition would exceed the estimated proceeds of sale.

(c) Disposals of improvements by owning agencies hereunder shall be made at prices that are fair and reasonable under all the circumstances taking into account the limited sale value of the property in place and its special value, if any, to the purchaser. In all cases, prior to disposal a written estimate shall be made of both the value of the improvements for use in place and their salvage value. The disposal agencies for industrial and marine real property shall, upon request, furnish advice and assistance to the owning agencies in the establishment of fair and reasonable prices hereunder.

(d) Where an airport consists of property a portion of which is owned by the Government and the balance of which is property under lease to the Government, such lease shall not be cancelled by the owning agency, but the leasehold interest as well as the Government-owned property shall be declared surplus.

§ 8316.10 ***Restrictions on use and disposition***. When an owning agency declares airport property surplus, such owning agency, the Civil Aeronautics Administration, or the Surplus Airport Disposal Committee may submit to the Administrator a request that the disposal be made subject to any or all of the following reservations, restrictions, and conditions:

(a) *Use by the transferee*. (1) That the airport shall be used for public airport purposes on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of section 303 of the Civil Aeronautics Act of 1938.

(2) That the entire landing area and all improvements, facilities, and equipment of the airport shall be maintained at all times in good and serviceable condition to assure its efficient operation.

(3) That insofar as is within its powers and reasonably possible the transferee shall prevent any use of land either within or outside the boundaries of the airport, including the construction , erection, alteration, or growth , or any structure or other object thereon, which use would be a hazard to the landing, taking off, or maneuvering of aircraft at the airport, or otherwise limit its usefulness as an airport.

(4) That the building areas a rid nonaviation facilities shall be used, altered. modified , or improved only in a manner which does not interfere with the efficient operation of the landing area and of the airport facilities.

(b) *Use by the Government*. (1) That the Government shall at all times have the right to use the airport in common with others; Provided, however, That such use may be limited as may be determined at any time by the Civil Aeronautics Administration or the successor Government agency to be necessary to prevent interference with use by other authorized aircraft, so long as such limitation does not restrict Government use to less than twenty-five (125) per centum of capacity of the airport. Government use of the airport to this extent shall be without charge of any nature other than payment for damage caused by Government aircraft.

(2) That during the existence of any emergency declared by the President or the Congress, the Government shall have the right without charge except as indicated below to the full, unrestricted possession, control, and use of the landing area, building areas, and airport facilities or any part thereof, including any additions or improvements thereto made subsequently to the declaration of the airport property as surplus; *Provided , however*, That the Government shall be responsible during the period of such use for the entire cost of maintaining all such areas, facilities, and improvements, or the portions used, and shall pay a fair rental for the use of any installations or structures which have been added thereto without Federal aid.

§ 8316.11 ***Functions of the Civil Aeronautics Administration***. In the disposal of surplus airport property under this part, the disposal agency may avail itself of the services of representatives of the Civil Aeronautics Administration in all negotiations for the disposal of the property and shall consult with and obtain the recommendations of the Civil Aeronautics Administration as to all decisions pertaining to civil aviation. In addition the Civil Aeronautics Administration shall furnish such technical assistance as the Surplus Property Administrator or the disposal agency may request and the Civil Aeronautics Administration is in a position to provide

§ 8316.12 ***Classification of property by Administrator***. (a) Upon receipt of a declaration of surplus airport property, the Surplus Property Administrator shall consider any requests for reservations, restrictions, and conditions submitted by the owning agency, or by the War and Navy Departments, or by the Civil Aeronautics Administration, or by the Surplus Airport Disposal Committee, and shall determine the future uses for which the property is best adapted, how the property can best be disposed of to meet the objectives of the act, and whether any or all of the requests for reservations, restrictions and conditions should be imposed.

(b) If the Administrator classifies the property for disposal as an airport, it shall be disposed of under this part; if the Administrator classifies it for disposition otherwise than as airport property and the owning agency does not withdraw it as hereinafter provided, it shall be assigned to the appropriate disposal agency and disposed of under other applicable regulations of the Administrator. Where a landing area is used in connection with an industrial installation, the Administrator shall determine whether to classify such landing area and its airport facilities as airport properties for disposal under this part, or whether to classify the landing area otherwise and assign it for disposal by the appropriate disposal agency.

§ 8316.13 ***Disposal as airport property subject to reservations, restrictions, and conditions***. (a) If the Administrator classifies the property for disposal as an airport, there shall be imposed on the disposal of the airport property a condition that there shall be no exclusive right for the use of any landing area or air navigation facilities upon which Federal funds have been expended; and there shall also be imposed any or all of the reservations, restrictions, and conditions requested pursuant to § 8316.10 hereof and approved by the Administrator; and the disposal agency shall immediately undertake to so dispose of it as such. Notice of availability shall be given to Government agencies listed in Exhibit A hereto; and to the State and political subdivisions and any municipality ill which it is situated and to all municipalities in the vicinity thereof; and to the general public.

(b) In the event (1) the Administrator does not classify the property for disposal as airport property when so requested, or (2) does not approve any or all of the requested reservations, restrictions, and conditions, or (3) the disposal agency finds that it is unable to dispose of the property with the reservations, restrictions, and conditions imposed under § 8316.10 or as an airport, the owning agency shall be notified, and the owning agency may, if it desires, withdraw such airport property from surplus on making reimbursement for the cost of care and handling, or recommend the elimination or modification of such reservations, restrictions, and conditions, or the disposal of the property otherwise than as an airport. In cases arising under subparagraph (3) above, the disposal agency shall also notify the Administrator.

(c) Where the owning agency has withdrawn the airport property from surplus pursuant to the provisions of paragraph (b), and later re-declares such property surplus, with or without requesting conditions for its disposition, the Administrator shall determine the terms and conditions upon which it shall be disposed of and the proper classification to be given and shall assign it to the appropriate disposal agency for disposal.

(d) The disposal agency shall widely publicize the airport property, giving information adequate to inform interested or prospective transferees as to the general nature of the property, and any reservations, restrictions, or conditions that have been imposed as to its future use. Such publicity shall be by public advertising, and may include press releases, direct circularization to potential transferees, and personal interviews. The disposal agency shall upon request supply to bona fide prospective transferees all available information. The disposal agency shall establish procedures so that all prospective transferees showing due diligence will be given full and complete opportunity to bid.

(e) All priority holders and any other persons interested in purchasing the airport property shall submit their proposals in writing, setting forth the details of their offers and their willingness to abide by the terms, conditions, and restrictions upon which the property is offered.

§ 8316.14 ***Care and handling***. (a)(1) Until the disposal agency is prepared to assume responsibility for care and handling and accountability and so notifies the owning agency, the owning agency shall continue to be responsible therefor. The disposal agency shall have access to the property and the records of the owning agency with respect thereto.

(2) The agency then charged with the responsibility for care and handling shall make or cause to be made repairs necessary for the protection and maintenance of the property. It shall give careful consideration to what improvements or changes may be necessary for the completing, converting, or rehabilitating of the property in order best to attain the applicable objectives of the act, and may make commitments and expenditures within its budgetary allotment for such purposes to effect such improvements or changes; *Provided,* however. That no commitments for more than $10,000 of any such budgetary allotment shall be made by such agency for any such changes and improvements in connection with any one airport without prior approval of the Administrator in writing.

(3) The agency then charged with the responsibility for care and handling of surplus airport property shall submit to the Administrator for consideration and direction the renewal of leases or the exercise of options relating to surplus airport property, with the recommendations of such agency.

(4) The disposal agency shall pay the owning agency for the cost of care and handling surplus airport property subsequent to its declaration as such under Part 8301, including rental and taxes when due, until accountability and responsibility for such property is assumed by the disposal agency.

(b) *Transfer of* title papers, docu*ments, etc*. Upon request of the disposal agency, the owning agency shall immediately supply the disposal agency with the originals or true copies of all information and documents pertaining to the airport property which are in the possession of the owning agency and copies of which have not been filed with the declaration. These shall include appraisal reports, abstracts of title, maps, surveys, tax receipts, deeds, affidavits of title, copies of judgments, declarations of taking in condemnation proceedings, and all other title papers relating to the property. All such papers and documents which may still be needed by the owning agency shall be returned to it as soon as the needs of the disposal agency have been satisfied. The disposal agency may transfer to the purchaser of airport property, as part of the disposal transaction, any abstract of title or title guarantee which relates to the property being transferred and which is no longer needed either by the owning or by the disposal agency.

§ 8316.15 ***Priorities.*** (a) Government agencies shall be accorded first priority, and State and local governments, including any municipality in which the property is located and all municipalities in the vicinity thereof, second priority to acquire surplus airport properties. If the airport is offered for disposition subject to any or all of the conditions contained in § 8316.10, all priorities shall be exercised subject to such conditions.

(b) *Time and method of exercise*. The time for exercise of priorities by Government agencies or State or local governments shall be a period of thirty (30) days after the date of notices of availability given to them respectively, which notices may run concurrently: or such additional period as the disposal agency or the Administrator may allow when necessary or appropriate to complete proposals made, and in order to facilitate disposition of the property. Within such period the priority holder shall indicate his intention to exercise the priority by making an offer or by submitting to the disposal agency a written application requesting that the airport property be held for disposal to it. Such offer or application shall state the term on which the applicant is willing to acquire the property, or state that a transfer without reimbursement or transfer of funds is authorized by law. and shall contain all pertinent facts pertaining to the applicant's need for the property. If the applicant requires time to acquire funds or to obtain authority to take the property, it shall so state and indicate the length of time needed for that purpose. Upon receipt of an offer or an application, with such a statement the disposal agency shall review the application. determine what time, if any, shall be allowed the applicant to conclude the acquisition of the property, and advise the applicant of such determination. All priorities shall expire if not exercised within the priority period and such additional time as the disposal agency may allow.

(c) Determination between claimants having same priority. Whenever two or more Government agencies or two or more State or local governments, respectively, shall during the priority period make acceptable offers for the same property, the matter shall be determined on the basis of the relative needs of the claimants and the public interest to be served. If the matter cannot be determined by agreement between the claimants, disposal of such property shall not be made until the disposal agency shall have reported the matter in writing to the Administrator, setting forth its recommendations and all the facts, including the basis of the respective claims, together with any statements in writing that the claimants or any of them may wish to file with the Administrator. The Administrator will review the matter and report his determination to the disposal agency. The Administrator's determination shall be final for all purposes.

§ 8316.16 ***Permits to operate or use***. (a) Pending the disposition of surplus airport property by sale or lease, the owning agency, prior to the date accountability is assumed by the disposal agency, and the disposal agency thereafter, may (1) grant a revocable permit to maintain and operate the landing area and airport facilities included within any surplus airport property as a public airport to a Government agency or State or local government evincing an interest in acquiring the property with or without cash payment and on such terms as the accountable agency deems proper, or (2) grant a revocable permit for the landing area and airport facilities to be used for the landing, take-off, servicing, and operation of duly licensed aircraft.

(b) Permits or licenses to operate the property under subparagraph (1) or to use the facilities under subparagraph (2) shall be subject to the approval of the Administrator and to compliance by the licensees with all Jaws, ordinances, or other applicable regulations.

§ 8316.17 ***Valuation***. (a) No appraisal need be made where transfer to a Government agency without reimbursement or transfer of funds or disposal to a State or local government without a cash payment is contemplated. If it is determined that the property will not be so transferred or disposed of, the disposal agency shall establish its estimate of the fair value of the property.

(b) The estimate of fair value shall represent the maximum price which a well-informed buyer, acting intelligently and voluntarily, would be warranted in paying if he were acquiring the property for long-term investment or for continued use in the light of the obligations to be assumed by the buyer.

(c) If at any time prior to the sale of an airport property conditions affecting its value change, the disposal agency shall modify its estimate accordingly.

(d) For the purpose of establishing its estimate of fair value of the property, the disposal agency may utilize the services of its own staff, the staff of another Federal agency or, where deemed necessary, independent appraisers, and shall maintain an adequate written record to support its estimate. Each such appraisal record or report shall contain the appraiser's certificate that he has no interest, direct or indirect, in the property or its sale. In cases where owning agencies submit appraisal reports which contain adequate and reliable information, the disposal agency may use such information in establishing its estimate of the fair value of the property.

§ 8316.18 ***Prices***. (a) The disposal agency shall determine the price at which a disposal of an airport property shall be made.

(b) Sale of an airport property as an airport to a buyer entitled to a priority shall be at a price which is substantially the same as the estimate of fair value. Except that (1) a transfer to another Government agency without reimbursement or transfer of funds may be made where authorized by law, or (2) upon the authorization of the Administrator the disposal agency shall dispose of airport property to any State or local government without a cash payment in consideration of the acceptance by such State or local government of all reservations, restrictions, and conditions imposed by the Administrator.

(c) Sale of an airport property as an airport to any purchaser other than a buyer entitled to a priority shall be at a price approximating the estimate of fair value as established by the disposal agency and shall be made at the highest price obtainable, except that the applicable objectives of the act may be taken into consideration in rejecting offers regardless of their amounts or in selecting a buyer from among equal bidders. Sales under this paragraph shall be for a monetary consideration.

§ 8316.19 ***Submission to Attorney General***. Whenever any disposal agency shall begin negotiations for the disposition to private interests of an airport property which cost the Government $1,000,000 or more, the disposal agency shall promptly notify the Attorney General of the proposed disposition and the probable terms or conditions thereof, and of the extent and nature of the facilities installed or provided thereon.

§ 8316.20 ***Form of transfer***. Deeds or instruments of transfer shall be in the form approved by the Attorney General. Transfers of title shall be by quit-claim deed where the airport property is transferred without a cash payment. If in other cases the disposal agency finds that a warranty deed is necessary to obtain a reasonable price for the property or to render the title marketable, such form of deed may be used where recommended and approved by the Attorney General as provided in the act.

§ 8316.21 ***Conditions in instrument of transfer***. Any deed, lease, or other instrument executed to transfer airport property pursuant to any disposal made under this part, containing reservations, restrictions, or conditions as to the future use and maintenance of the property, shall contain provisions in effect:

(1) That upon a breach of any of the reservations, restrictions, or conditions by the immediate or any subsequent transferee, the title, right of possession, or other right transferred shall at the option of the Government revert to the Government upon demand; and

(2) That any such airport property may be successively transferred only with the approval of the Civil Aeronautics Administration or the successor Government agency and with the proviso that any such transferee assumes all the obligations imposed by the disposal agency in the disposal to the original purchaser.

§ 8316.22 ***Records and reports***. Owning and disposal agencies shall prepare and maintain such records as will show full compliance with the provisions of this part as to each disposal transaction. The information in such records shall be available at all reasonable times for public inspection. Reports shall be prepared and filed with the Surplus Property Administrator in such manner as may be specified by order issued under this part subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

§ 8316.23 ***Regulations by agencies to be reported to the Administrator***. Each owning agency and each disposal agency shall file with the Administrator copies of all regulations, orders, and instructions of general applicability which they may issue in furtherance of the provisions, or any of them, of this part.

§ 8316.24 ***Exceptions***. Exceptions to any portion of the procedure herein may be made by direction of the Administrator where such exception would not be in violation of the act.

This part shall become effective November 16, 1945.

W. STUART SYMINGTON,

Administrator.

November 16, 1945.

Appendix C. DoD Base Realignment and Closure (BRAC)

Fiscal Years 1988, 1991, 1993, 1995

Status of Transition of Military Airfields to Civil Airports

Military Airport Property Transferred to Civil Sponsor by Deed

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	Airport Role	LOCID
1	Fritzsche AAF	Marina, CA	91	95	1	Marina Municipal	GA	OAR
2	Norton AFB	San Bernardino, CA	88	94	1	San Bernardino Intl	R	SBD
3	Williams AFB	Phoenix, AZ	91	93	3	Williams Gateway	R	IWA
4	Cecil Field NAS	Jacksonville, FL	93	98	4	Cecil Field	R	VQQ
5	K.I. Sawyer AFB	Gwinn, MI	93	95	1	Sawyer Airport	PR	SAW
6	Memphis NAS	Millington, TN	93	95	1	Millington Municipal	GA	NQA
7	England AFB (50%)	Alexandria, LA	91	92	2	Alexandria International	PR	AEX
8	Bergstrom AFB (37%)	Austin, TX	91	93	2	Austin-Bergstrom International	PR	AUS
9	Barbers Point NAS	Oahu, HI	93	97	3	Kalaeloa	GA	JRF
10	Agana NAS	Agana, GU	93	98	2	Guam International	PR	GUM

Military Airport Property Transferred to Civil Sponsor by Long Term Lease

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	Airport Role	LOCID
11	Chanute AFB,	Rantoul, IL	88	93	2	Rantoul National Aviation Center	GA	2I5
12	George AFB	Victorville, CA	88	92	2	Southern California Logistics	R	VCV
13	Mather AFB	Sacramento, CA	88	93	2	Sacramento Mather	R	MHR
14	Pease AFB	Portsmouth, NH	88	91	1	Pease International Tradeport	CM	PSM
15	Castle AFB	Merced, CA	91	95	1	Castle Airport	GA	MER
16	Eaker AFB	Blytheville, AR	91	92	1	Arkansas International	GA	BYH
17	Myrtle Beach AFB	Myrtle Beach, SC	91	93	1	Myrtle Beach International	PR	MYR
18	Rickenbacker AFB	Columbus, OH	91	94	2	Rickenbacker International	R	LCK
19	Wurtsmith AFB	Oscoda, MI	91	93	1	Oscoda-Wurtsmith	GA	OSC
20	Tipton AAF	Odenton, MD	88	95	1	Tipton Airport	R	FME
21	Plattsburgh AFB	Plattsburgh, NY	93	95	1	Plattsburgh International	GA	PBG

Military Airport Property Transferred to Civil Sponsor Joint Use Agreement

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	Airport Role	LOCID
22	Grissom AFB	Peru, IN	91	94	1	Grissom ARB (Grissom Aeroplex)	GA	GUS
23	March AFB	Riverside, CA	93	96	1	March ARB (March Inland Port)	R	RIV
24	Blackstone AAF	Blackstone, VA	95	97	2	Allen C. Parkinson / BAAF	GA	BKT

Military Airport Property Expected to be Transferred to Civil Sponsor

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	Airport Role	LOCID
25	Griffiss AFB	Rome, NY	93	95	1	Griffiss International	GA	RME

Military Airport Property That Could be Transferred to Civil Sponsor Planning Underway

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	Airport Role	LOCID
26	El Toro MCAS	Santa Ana, CA	93	98	5	Surplused	R	OCX
27	Dallas NAS	Ft. Worth, TX	93	95	1	Transferred to City of Dallas	R	NBE
28	Warminster NADC	Philadelphia. PA	91	94	1	Surplused	GA	NJP
29	Adak NAS	Adak Island, AK	95	98	2		CM	ADK
30	Allen AAF	Fort Greely, AK	95		1	Realigned Airfield	GA	BIG

Military Airfields With Potential for Joint Civil/Military Use

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	Airport Role	LOCID
31	Gray AAF (Ft Hood)	Killeen, TX	Not	BRAC	1	Killeen Municipal	PR	BIF
32	Phillips AAF	Aberdeen Prov. MD	Not	BRAC	1	Harford County	GA	APG
33	Malmstrom AFB	Great Falls, MT	95		1	Realigned airfield	GA	GFA

Military Airfields Converting to Civil Use – Not Open for Public Use

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	Airport Role	LOCID
34	McClellan AFB	Sacramento, CA	95	00	1	(Private Use)	GA	MCC
35	Kelly AFB	San Antonio, TX	95	99	1	(Private Use Airport)	GA	SKF
36	Moffett NAS	San Jose, CA	91	94	2	Transferred to NASA	NA	NUQ
37	Loring AFB	Loring, Maine	91	94	1	Loring International (Private use)	GA	LIZ
38	Reese AFB	Lubbock, TX	95	97	3		GA	REE
39	Calverton NWIRP	Calverton, NY	N/A		2	Surplused by Special Legislation	GA	CTO

Excess Military Assets With Minimal Conversion Potential for Civil Airport Use

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	LOCID
40	Hamilton AAF	San Francisco, CA	88	93	1	No local airport sponsor	SRF
41	Alameda NAS	Alameda, CA	91	97	2	No local airport sponsor	NGZ
42	Chase NAS	Beeville, TX	91	92	3	No local airport sponsor	NIR
43	Moore AAF (Ft. Devens)	Boston, MA	91	95	1	No local airport sponsor	AYE
44	Richards-Gebaur ARB	Kansas City, MO	91	94	1	Richards-Gebaur Memorial (Closed Jan2000)	GVW
45	Tustin MCAS	Tustin, CA	91	99	1	No local airport sponsor	NTK
46	Glenview NAS	Glenview, IL	93	97	2	No local airport sponsor	NBU
47	So. Weymouth NAS	So. Weymouth, MA	95	97	2	No local airport sponsor	NZW
48	Seneca AAF	Romulus, NY	95	00	1	No local airport sponsor	SSN
49	Homestead AFB	Homestead, FL	93	94	1	Homestead Regional	HST

Former Military Airfields Receiving Military Airport Program Funding (Non-BRAC) and Hence Obligated by Grant Assurances

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	LOCID
1	Stewart Int'l	Newburgh, N.Y.	05-30-91	1995	2	Stewart International	SWF
2	Ellington Field	Houston, TX	07-03-91	1995	3	Ellington Field	EFD
3	Albuquerque	Albuquerque, NM	09-20-91	1995	3	Albuquerque Int'l Sunport	ABQ
4	Manchester	Manchester, NH	09-24-91	1995	2	Manchester-Boston Regional	MHT
5	Lincoln	Lincoln, NE	09-26-92	1996	2	Lincoln Airport	LNK
6	Laredo AFB	Laredo, TX	09-20-93	1997	3	Laredo International	LRD
7	Smyrna AFB	Smyrna, TN	09-20-93	1997	2	Smyrna Airport	MQY
8	Kincheloe AFB	Kincheloe, MI	09-30-98	2002	2	Chippewa County Int'l	CIU

Joint Use Military Airfields Receiving Military Airport Program Funding and Hence Obligated by Grant Assurances

#	Military Airfield Name (% deeded)	Location	Closure Approve	Mission Move	No. Runways	Civilian Airport Name	LOCID
1	Scott AFB	Belleville, IL	09-19-91	1995	1	MidAmerica St. Louis	BLV
2	Gray AAF	Killeen, TX			1	Killeen Regional	GRK

How Can Base Realignment and Closure (BRAC) Property be Used for a Public Airport?

One of the most common and effective reuses of an Air Force installation is as a public airport. This reuse extensively uses existing facilities and can be obtained at no cost through a public airport conveyance, subject to support by the Federal Aviation Administration (FAA).

Who can receive a public airport conveyance?

The appropriate public agency that will operate the airport (*e.g.*, an airport authority) will generally be the recipient. If a local redevelopment authority (LRA) has such powers, it may receive the airport property.

What's the process for obtaining property as a public airport?

An LRA should consult with the Air Force Real Property Agency (AFRPA) and the FAA as soon as a public airport is identified as a likely reuse. AFRPA provides the FAA with a description of the installation property and facilities. FAA reviews the regional and national air traffic patterns, plans, and projections and considers the effects (beneficial and adverse) of converting the installation to a public airport. Based on these considerations, the FAA determines whether the installation airfield is suitable for conversion to public use. FAA then informs AFRPA and the LRA of its findings.

If the FAA finds that the installation is suitable for use as a public airport, the LRA may request FAA funding of an Airport Master Plan. Funding of plans is provided through the Airport Improvement Program (AIP), from the Aviation Trust Fund. If funding is granted, the LRA (or other local airport authority) may proceed with development of its Airport Master Plan, including an Airport Layout Plan, in cooperation with the FAA.

The Master Plan will include the property and facilities specifically required for aviation operations, as well as additional property needed to develop sources of revenue from nonaviation businesses (nonaviation revenue-generating property) in order to support aviation operations. The plan should be coordinated with other ongoing redevelopment planning to ensure that all proposed land uses are compatible. The authority submits the completed plan and application for public airport conveyance to AFRPA for review, and AFRPA forwards the application to FAA. The application must demonstrate a financial need for the nonaviation revenue-generating property, *i.e.*, the cost of supporting aviation operations requires the income that would be created on the additional real estate. AFRPA, if necessary, can help facilitate resolution of any conflicts among the two parties (FAA and LRA) regarding property boundaries, particularly with respect to the amount of nonaviation revenue-generating property.

Who decides whether to grant a public airport conveyance?

Upon request from AFRPA, the FAA formally recommends to AFRPA, in writing, whether the property should be conveyed for public airport purposes, with the use conditions it deems appropriate. If the FAA accepts the authority's application, it will recommend that AFRPA transfer the property at no cost to the appropriate local authority. The accepted application and Airport Master Plan should be incorporated into the community's redevelopment plan. AFRPA will issue a formal Record of Decision (ROD) if it decides to grant a public airport conveyance. FAA issues its own ROD to indicate that the property is essential, suitable, or desirable for airport purposes. AFRPA is then responsible for ultimate transfer of the airport property directly to the recipient airport authority, although FAA may request an opportunity to review the proposed deed of conveyance.

What conditions apply to public airports?

Property conveyed for use as a public airport will be subject to restrictions imposed by the FAA. Standard provisions include that the property may not be used for other purposes without FAA consent, and that the airport must be for use by the general public. Failure to comply with the FAA's use restrictions will result in the property reverting to the federal government. In addition, FAA will only recommend for transfer those parcels that are directly necessary for aviation operations or for those nonaviation revenue-generating activities that are required to offset the costs of the aviation operations. Disputes concerning appropriate property boundaries should be resolved among FAA, AFRPA, and the airport sponsor. Funds from the Aviation Trust Fund can be used for Airport Improvement Program (AIP) eligible construction projects at public airports included in the National Plan of Integrated Airport Systems.

What if FAA doesn’t approve the public airport?

If FAA initially determines the airfield to be unsuitable for public use, FAA will not consider the property further for public airport use and will not make a positive recommendation to the Air Force. Without the FAA's recommendation, the Air Force cannot convey property by a public airport conveyance. The LRA may wish to seek alternate disposal mechanisms for the airfield, including sale for private use.

Appendix D. Sample Airport Rules and Regulations

Farmington, Minnesota

ARTICLE 1. IN GENERAL

Sec. 3-1-1. Purpose of airport.

The Four Corners Regional Airport--Farmington (FMN) shall be conducted as a terminal facility for the promotion and accommodation of air commerce and shall be operated as a public air terminal without discrimination against any person because of race, color, creed, age, sex, religious or political affiliation or national origin. (Code 1969, § 20-1)

State law reference(s)--Authority to purchase, establish, construct, maintain and operate an airport, NMSA 1978, § 3-39-4.

Sec. 3-1-2. Appointment and authority of airport manager.

(a) The operation of the airport shall be under the direction of the airport manager who shall be appointed by the city manager and who shall be a person professionally competent by experience and training to manage the airport.

(b) The airport manager is delegated authority to take reasonable steps for handling, policing and protecting the public while present at the airport, subject to review by the city manager. (Code 1969, § 20-4) Cross reference(s)--Officers and employees, § 2-3-1 *et seq.*

Sec. 3-1-3. Penalty for violation.

It shall be unlawful for any person to violate this chapter. Any person convicted of violating this chapter shall be punished in the manner specified in Section 1-1-10. (Code 1969, § 20-16)

Sec. 3-1-4. Hours of use.

The airport shall be open for public use at all hours of the day, subject to reasonable restrictions for security, inclement weather, conditions of the airfield and other reasonable restraints. (Code 1969, § 20-2)

Sec. 3-1-5. Obedience to regulations.

The use or occupancy of the airport or any of its facilities in any manner creates an obligation on the part of the user to obey all lawful regulations promulgated with reference thereto. (Code 1969, § 20-3)

Sec. 3-1-6. Airport rules generally.

At the airport, no person shall:

(1) Solicit funds, alms or fares at the airport for any purpose unless a permit has been issued by the city manager.

(2) Post, distribute or display signs, advertising circulars, printed or written matter on the airport unless a permit has been received from the city manager.

(3) Take any still, motion or sound pictures on the airport for commercial purposes unless a permit has been received from the city manager.

(4) Commence any construction, improvement or remodeling activity at or upon the airport without prior approval of the city manager.

(5) Fail to report as soon as possible any damage, injury or destruction caused by any such person to any property on the airport, including real property, personal property, improvements, fixtures or equipment owned or controlled by the city or owned or controlled by any other person or governmental agency and used in connection with the landing, takeoff, control or safety of aircraft. (Code 1969, § 20-12)

Sec. 3-1-7. Sanitation.

At the airport, no person shall:

(1) Release, deposit, blow or spread any bodily discharge on the floor, wall, partition, furniture or any part of a public toilet, comfort station, terminal building, hangar or other building or place on the airport, other than directly into a fixture provided for that purpose.

(2) Place any foreign object in any plumbing fixture of a public toilet, comfort station, terminal building, hangar or other building on the airport.

(3) Dispose of any sewage, garbage, refuse, paper or other material at the airport, except in a container provided for such purpose. (Code 1969, § 20-13)

Cross reference(s)--Solid waste management, ch. 23; utilities, ch. 26.

Sec. 3-1-8. Unauthorized use of property.

No person shall take or use any aircraft or any part or accessory thereof or any tools or other equipment owned or controlled by any other person or stored or otherwise left at the airport without the consent of the owner or operator thereof or other satisfactory evidence of his right to do so. (Code 1969, § 20-14)

Sec. 3-1-9. Unauthorized entrance into restricted areas.

No person shall enter upon the field area, the control tower area, the airline service area, the airport utilities service area, the fire department control area or any other area of the airport which has been designated and posted as restricted to the public unless such person has been duly authorized to enter such area or place. (Code 1969, § 20-15)

ARTICLE 3. AIRCRAFT

Sec. 3-3-1. Operator's conduct when tower in operation.

No person shall, while the federal aviation tower located at the Four Corners Regional Airport is in operation:

(1) Navigate any aircraft over, land upon, takeoff from or service, repair or maintain any aircraft other than in conformity with the rules and regulations of the Federal Aviation Administration of the United States.

(2) Fail to taxi while under full control and at reasonable speeds while the aircraft is being operated. Following a landing or prior to takeoff and while taxiing, every pilot shall ensure that there is no danger of collision with other aircraft.

Appendix E. Sample Deed of Conveyance

FORMER BERGSTROM AIR FORCE BASE, TRAVIS COUNTY, TEXAS

I. PARTIES

This Deed made this _____ day of ___________, 2004, by and between the United States of America, acting by and through the Secretary of the Air Force whose address is Washington, D.C., under and pursuant to the Federal Property and Administrative Services Act of 1949, approved June 30, 1949, (63 Stat. 377), 40 U.S.C. § 101, *et seq.*, as amended, and regulations and orders promulgated there under; the Defense Base Closure and Realignment Act of 1990, P.L. No. 101-510, as amended, and regulations and orders promulgated there under; and a delegation from the Administrator of General Services to the Secretary of Defense, and a subsequent delegation from the Secretary of Defense to the Secretary of the Air Force, party of the first part, as Grantor, and the City of Austin, Texas, a body politic created, operating, and existing under and by virtue of the laws of the State of Texas, party of the second part, as Grantee.

WITNESSETH THAT:

WHEREAS, the Grantor is the owner of the real property described herein, located within the former Bergstrom Air Force Base, situated in Travis County, Texas; and

WHEREAS, the Grantee provided to the United States the money to purchase the real property described herein, under the condition that the United States retain title until such property was abandoned as a permanent Air Base, at which time the Grantee could elect to require the Grantor to convey such land and the improvements thereon to the Grantee; and

WHEREAS, the real property described herein was duly declared surplus and available for disposal pursuant to the powers and authority contained in the provisions of the Defense Base Closure and Realignment Act of 1990, P.L. No. 101-510, as amended, and orders and regulations promulgated there under; and

WHEREAS, pursuant to the resolution passed by the City Council of the Grantee dated February 27, 1947, the Grantee requests full legal title to such real property be conveyed to the Grantee.

II. CONSIDERATION AND CONVEYANCE

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby REMISE, RELEASE and FOREVER QUITCLAIM, Without Warranty or representation, express or implied except as expressly stated herein, and excluding all warranties that might arise by common law and the warranties under Section 5.023 of the Texas Property Code (or its successor) unto the Grantee, its successors and assigns forever, all such right and title as the Grantor has or ought to have, in and to the real property described in Exhibit "A" and depicted on the survey drawing attached as Exhibit "B" of this Deed Without Warranty ("Deed") and situated in Travis County, Texas.

III. APPURTENANCES AND HABENDUM

TO HAVE AND TO HOLD, together with all the buildings and improvements erected thereon, except for monitoring wells, treatment wells, and treatment facilities and related piping, and all and singular the tenements, hereditaments, appurtenances, and improvements hereunto belonging, or in any wise appertaining, (which, together with the real property described herein, known as Parcel H called the "Property" in this Deed) the Property to the Grantee.

IV. RESERVATIONS

A. RESERVING UNTO THE GRANTOR, including the State of Texas (the "State"), and its and their respective officials, agents, employees, contractors, and subcontractors, the right of access to the Property (including the right of access to, and use of, utilities at reasonable cost to the Grantor), for the following purposes and for such other purposes as are necessary to ensure that a response or corrective action found to be necessary, either on the Property or on adjoining lands, after the date of transfer by this Deed will be conducted:

1. To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities relating to any such response or corrective action.
2. To inspect field activities of the Grantor and its contractors and subcontractors in implementing any such response or corrective action.
3. To conduct any test or survey required by the state relating to any such response or corrective action, or to verify any data submitted to the EPA or the state by the Grantor relating to any such actions.
4. To conduct, operate, maintain, or undertake any other response, corrective action as required or necessary under applicable law or regulation, or the

covenant of the Grantor in Section VI of this Deed, but not limited to, the installation, closing, or removal of monitoring wells, pumping wells, and treatment facilities that will be owned or operated by the Grantor and its officials, agents, employees, contractors, and subcontractors.

B. PROVIDED, HOWEVER, this Deed is expressly made subject to the following restrictions, covenants, and agreements of the parties affecting the aforesaid Property, which shall run with the land.

V. CONDITIONS

A. The Grantee acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, “as is,” “where is,” without any representation, promise, agreement, or warranty on the part of the Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions. The Grantee further acknowledges that the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

B. The Grantee and its successors and assigns hereby understand and agree that all costs associated with removing any restrictions of any kind whatsoever contained in this deed, whether necessitated by an environmental or other law or regulation, shall be the sole responsibility of Grantee, its successors and assigns, without any cost whatsoever to the United States.

VI. NOTICES AND COVENANTS RELATED TO SECTION 120(h)(3) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), AS AMENDED, (42 U.S.C. § 9620(h)(3).

A. Pursuant to Section 120(h)(3) of CERCLA of 1980, as amended (42 U.S.C. § 9620(h)(3)), the following is notice of hazardous substances on the Property and the description of remedial action taken concerning the Property:

1. The Grantor has made a complete search of its files and records. Exhibits C and D contain tables with the names of hazardous substances stored for one year or more, or known to have been released or disposed of, on the Property; the quantity in kilograms or pounds of the hazardous substance stored for one year or more, or known to have been released, or disposed of, on the Property; and the date(s) on which such storage, release, or disposal took place.
2. Pursuant to Section 120(h)(3)(A)(ii) of CERCLA, the United States covenants and warrants:

(a) That all remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the Property has been taken before the date of this Deed: and

(b) Any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States. This covenant will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party with respect to the Property before the date on which any grantee acquired an interest in the Property, or is a potentially responsible party as a result of an act of omission affecting the Property. For the purposes of this covenant, the phrase “remedial action necessary” does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in Section VII below.

3. The United States has reserved access to the Property in the Reservation Section of this deed in order to perform any remedial or corrective action as required by CERCLA Section 120(h)3(A)(ii).

VII. OTHER COVENANTS AND NOTICES

A. General Lead-Based Paint and Lead-Based Paint-Containing Materials and Debris (collectively “LBP”)

1. Lead-based paint was commonly used prior to 1978 and may be located on the Property. The Grantee is advised to exercise caution during any use of the Property that may result in exposure to LBP.

2. The Grantee agrees that in its use and occupancy of the Property, the Grantee is solely responsible for managing LBP, including LBP in soils, in accordance with all applicable federal, state, and local laws and regulations. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, contact, disposition, or other activity involving LBP on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured. The Grantee further agrees to notify the Grantor promptly of any discovery of LBP in soils that appears to be the result of Grantor activities and that is found at concentrations that may require remediation. The Grantor hereby reserves the right, in its sole

discretion, to undertake an investigation and conduct any remedial action that it determines is necessary.

B. Asbestos-Containing Materials ("ACM"). The Grantee is warned that the Property may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground that may contain ACM. The Grantee covenants and agrees that in its use and occupancy of the Property, it will comply with all applicable federal, state, and local laws relating to asbestos. The Grantee is cautioned to use due care during property development activities that may uncover pipelines or other buried ACM. The Grantee covenants and agrees that it will notify the Grantor promptly of any potentially friable ACM that constitutes a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*). The Grantor's responsibility under this deed for friable ACM is limited to friable ACM in demolition debris associated with past Air Force activities and is limited to the actions, if any, to be taken in accordance with the covenant contained in Section VI herein.

The Grantee is warned that the Grantor will not be responsible for removing or responding to ACM in or on utility pipelines. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured.

C. Soils and Groundwater Access. The Grantee covenants for itself, its successors and assigns and every successor in the interest to the property herein described, or any part thereof as follows:

1. Conducting any type of surface or subsurface activity on the Property, such as, but not limited to, the excavation of soils, use of soils, installation of groundwater wells, or other access to groundwater, installation or repair of utilities, installation of foundation piers, because such actions may cause an exposure to the contaminants or waste left in place. Performance of any type of access to the Property that would interfere with or damage the remedies in place or the conducting of intrusive activity on the Property is prohibited unless the following requirements are adhered to:

a. The current owner or future owner of the Property, in instances when surface or subsurface construction activities must be taken; any such owner must comply with all the applicable environmental, worker protection and other laws, rules and regulation. The owner must prepare a Work Plan describing the activities proposed within the Property. The owner of the Property must also develop and adhere to a Health and Safety Plan that addresses worker protection and contingencies for possible potential releases of contaminants from the affected media that may be encountered when conducting the aforementioned activities. The Work Plan and Health and Safety Plan must be approved by the Air Force prior to initiating any such activities within the Property.

2. Due to the presence of contamination and waste left in place, exposure to the soil and groundwater within the Property may pose an increased risk to human health and environment; therefore, residential use of the property is prohibited.

D. Access to Fenced Area. The Grantee covenants for itself, its successors and assigns and every successor in the interest to the property herein described, or any part thereof not to enter the fenced area located on the parcel, depicted in Exhibit B, without the express, written permission of the Air Force. This area is restricted in order to protect the remedy selected and to minimize risk to human health and environment.

E. Nondiscrimination. The Grantee covenants not to discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property.

F. Hazards to Air Navigation. Prior to commencing any construction on, or alteration of, the Property, the Grantee covenants to comply with 14 CFR part 77 entitled “Objects Affecting Navigable Airspace”, under the authority of the Federal Aviation Act of 1958 (FAA Act), as amended.

NOTICE ONLY:

G. Energy/ Infrastructure Lines.

The Grantee is hereby notified that areas within the Parcel have the potential for containing buried utility lines not indicated on maps used for locating subsurface utilities, with an increasing likelihood for such unidentified locations on the Property near the former industrial areas of the Former Bergstrom AFB. Hazards associated with these unmapped utility lines include contact with materials of construction, as well as contact with materials conveyed such as pressurized natural gas, petroleum fuel products, and high voltage electricity.

Note, if the transfer is to a private party, meaning any person or entity other than the City of Austin, the utility company owns an easement that may not be included in the transfer. In such a case, the utility company should be consulted prior to any excavation or drilling into the subsurface. Any activity conducted on the Property, which will include excavation, or drilling into the subsurface should be conducted in accordance with all appropriate industry safety precautions in consideration of the potential presence of such unmarked utility lines.

H. Radon. The Grantee is hereby informed and does acknowledge that currently the Property contains a natural occurrence of radon at levels that require no action. The base was considered a medium-risk area due to radon concentrations between 4-20 pCi/l.

VIII. AIRPORT COVENANTS:

A. Grantee covenants and agrees, on behalf of itself and its successors and assigns, with regard to use of the Property, that the following covenants, conditions and restrictions will run with the land and be enforceable by Grantor acting through the Administrator of the Federal Aviation Administration (FAA) against the Grantee, and each successor, assign, or transferee of the Grantee, including without limitation, any tenant or licensee of the Grantee who may claim a possessory interest in any portion of the Property.

1. Except as provided in Section VIII.A.4 of this Quitclaim Deed, the Property shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for the use of the Property within the meaning of the term "exclusive right" as used in Section VIII.A.6.
2. Except as provided in Section VIII.A.4 hereof, the entire airfield, as defined in 49 United States Code (U.S.C.) § 40102(a)(28), as amended, and Federal Aviation Regulations pertaining thereto, and all structures, improvements, facilities and

equipment in which any interest is transferred, shall be maintained for the use and benefit of the public at all times in safe and serviceable condition so as to assure its efficient operation and use; provided, however, that such maintenance shall be required to structures, improvements, facilities, and equipment only during the useful life thereof as determined by the Administrator of the FAA or his or her successor in function. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities, or equipment, they may be procured by demolition of other structures, improvements, facilities, or equipment transferred as a result of this Quitclaim Deed and located on the Property, which have outlived their use as a public airport in the opinion of the Administrator of the FAA or his or her successor in function. Notwithstanding any other provision of this Quitclaim Deed:

a. With the prior written approval of the FAA, the Grantee may close or otherwise limit use or access to any portion of the Property that it deems appropriate if such closure or use limitation is related to airport operating considerations or is based upon insufficient demand for such portion of the Property; and

b. With respect to any such portion of the Property, the Grantee shall be under no obligation to maintain the same other than as may be required to maintain adequate public safety conditions.

3. Insofar as it is within its power and to the extent reasonable, the Grantee shall adequately clear and protect the aerial approaches to the Property. The Grantee will, either by the acquisition and retention of easements or other interest in or rights for the use of land airspace, or by seeking the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways on the Property which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Part 77 of the Federal Aviation Administration regulations or 14 CFR part 77, as applicable, according to the currently approved Airport Layout Plan. In addition, the Grantee will not erect, or permit the erection of, any permanent structure or facility which would interfere materially with the use, operation, or future development of the Property, in any portion of a runway approach area in which the Grantee has acquired, or may hereafter acquire, a property interest permitting it to so control the use made of the surface of the land. Insofar as it is within its power to the extent reasonable, the Grantee will take action to restrict the use of the land adjacent to or in the immediate operations, including landing and takeoff of aircraft.

4. No land or improvements included in the Property shall be used, leased, sold, salvaged, or disposed of by the Grantee for other than airport purposes without the written consent of the Administrator of the FAA or his or her successor in function. This consent shall be granted only if the Administrator of the FAA or his or her successor in function determines that the land or improvements can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Property. The term "Property" as used in this deed, is deemed to include revenues or proceeds (including any insurance proceeds) derived from the Property.
5. Land and improvements transferred for the development, improvement, operation or maintenance of the Property as an airport shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees:
    a. That it will keep the Property open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes. However, the Grantee may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Property as may be necessary for the safe and efficient operation of the Property; and provided, that the Grantee may prohibit or limit any given type, kind, or class of aeronautical use of the Property if such action is necessary for the safe operation of the Property or necessary to serve the civil aviation needs of the public;
    b. That, in its operation and the operation of the Property, neither it nor any person or organization occupying space or facilities thereupon, will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public at the Property;
    c. That, in any agreement, contract, lease, or other arrangement under which a right or privilege at the Property is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Property, the Grantee will insert and enforce provisions requiring the contractor:

(1) To furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit for service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers;

d. That, the GRANTEE will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Property from performing any services on its own aircraft with its own employees (including, but not limited to maintenance and repair) that it may choose to perform; and

e. That, in the event the Grantee, itself exercises any of the rights and privileges referred to in Section VIII.A.5.c., above, the services involved will be provided on the same conditions as would apply to the furnishing of such Section X.A.5.c.

6. The Grantee will not grant or permit any exclusive right for the use of the Property which is forbidden by 49 U.S.C. § 47107(a)(4) by any person or applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees that, unless authorized by the Administrator of FAA or his or her successor in function, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right to conduct any aeronautical activity on the Property, including but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising, and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products, whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity. The Grantee further agrees that it will terminate as soon as possible and no later than the earliest renewal, cancellation, or expiration date applicable thereof, any exclusive right existing at any airport owned or controlled by the Grantee or hereinafter acquired, and that, thereafter, no such right shall be granted. However, nothing contained in this deed shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any services of a nonaeronautical nature, or to obligate the Grantee to furnish any particular nonaeronautical service at the Property.

7. The Grantee will operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by the Administrator of the FAA or his or her successor in function, the Property and all facilities thereon and connected therewith which are necessary to service the aeronautical users of the airport other than facilities owned or controlled by the United States, and the Grantee shall not permit any activity thereon which would interfere with its use for airport purposes. Nothing contained herein shall be construed to require:
    a. That the Property be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; or
    b. The repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstances beyond the control of the Grantee.
8. The Grantee will:
    a. Furnish the FAA with annual or special airport financial and operational reports as may be reasonably requested using either forms furnished by the FAA or in such manner as it elects so long as the essential data are furnished; and
    b. Upon reasonable request of the FAA, make available for inspection by any duly authorized representative of the FAA the Property and all airport records and documents affecting the Property, including deeds, leases, operation and use agreements, regulations, and other instruments, and will furnish to the FAA a true copy of any such document which may be reasonably requested.
9. The Grantee will not enter into any action which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the covenants and conditions set forth in this deed unless by such transaction the obligation to perform or comply with all such covenants and conditions is assumed by another public agency found by the FAA to be eligible as a public agency, as defined in 49 U.S.C. § 47102(15), to assume such obligations and have the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Property by any agency or person other than the Grantee, the Grantee shall reserve sufficient rights and authority to insure that such airport will be operated and maintained in accordance with these covenants and conditions, applicable federal statutes, and applicable provisions of the Federal Aviation Regulations.

10. The Grantee will at all times keep an up-to-date Airport Layout Plan of the airport operated by it on the Property, showing:

    a. The boundaries of the airport and all proposed additions thereto, together with the boundaries of all off-site areas owned or controlled by the Grantee for airport purposes and proposed additions thereto;

    b. The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and

    c. The location of all existing and proposed nonaviation areas and all existing improvements and uses. The Airport Layout Plan and each amendment shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the Airport Layout Plan. The Grantee will not make, or permit the making of, any changes or alternations in the airport or any of its facilities other than in conformity with the Airport Layout Plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the airport.

11. If at any time it is determined by the FAA that there is any outstanding right, or claim of right, in or to the Property described herein, the existence of which creates an undue risk of interference with the operation of the Property as an airport or the Grantee will, to the extent practicable, acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

12. The Grantee covenants and agrees for itself, its successors and assigns that:

    a. The program for or in connection with which this deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to, the regulations of the United States Department of Transportation ("DOT") in effect on the date of the transfer (49 CFR part 21) issued under the provisions of Title VI of the Civil Rights Act of 1964, as amended;

    b. This covenant shall be subject in all respects to the provisions of such regulations;

    c. The Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant;

    d. The United States shall have the right to seek judicial enforcement of this covenant; and

    e. The Grantee, its successors and assigns, will:

(i) Obtain from any person, including any legal entity, who, through contractual or other arrangement with the Grantee, its successors and assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the service or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant;

(ii) Furnish the original of such agreement to the Administrator of the FAA or his or her successor in function, upon his or her request therefore; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor against the Grantee, its successors, and assigns.

13. Grantee covenants for itself, its successors and assigns, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with 14 CFR part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958 (FAA Act), as amended.

B. Grantee covenants and agrees, on behalf of itself and its successors and assigns, that it will with regard to future use of the property by the United States:

1. Whenever so requested by the FAA, furnish without cost to the United States, for construction, operation and maintenance of facilities for air traffic control, weather reporting activities, or communication activities related to air traffic control, such areas of the Property or rights in buildings on the Property, as the FAA may consider necessary or desirable for construction at federal expense of space or facilities for such purposes, and the Grantee will make available such areas or any portion thereof for the purposes provided in this deed within four (4) months after receipt of written request from the FAA, if such are or will be available.
2. Make available all facilities at the Property developed with federal aid, and all those usable for the landing and taking off of aircraft, to the United States at all times, without charge, and for use by aircraft of any agency of the United States in common with other aircraft, except that if the use by aircraft of any agency of the United States in common with other aircraft, is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise

agreed to by the Grantee and the using federal agency, substantial use of an airport by United States aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the authorized aircraft or, that during any calendar month:

a. Either five (5) or more aircraft of any agency of the United States are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of aircraft of any agency of the United States is three hundred (300) or more; or

c. The gross accumulative weight of aircraft of any agency of the United States using the Airport (total movement of such federal aircraft multiplied by gross certified weights thereof) is in excess of five million pounds "5,000,000 lbs".

3. During any national emergency declared by the President of the United States, or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the Property and its improvements, as it then exists, or of such portion thereof as it may desire. However, the United States shall be responsible for the entire cost of maintaining such part of the Property as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession or control and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of the Property as it may use nonexclusively or over which it may have nonexclusive control and possession. The United States shall also pay a fair rental for use, control or possession, exclusively or nonexclusively, of any improvements to the property made without United States aid and never owned by the United States.

C. Release from Airport Liability Claims. The Grantee does hereby release the Grantor, and will take whatever action may be required by the Administrator of the FAA or his or her successor in function, to assure the complete release of the GRANTOR, from any and all liability the Grantor may be under for restoration or other damages under any lease or other agreement covering the use by the Grantor of any other airport, or part thereof, owned, controlled or operated by the Grantee, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used. However, no such release shall be construed as depriving the Grantee of any right it may otherwise have to receive reimbursement for the necessary rehabilitation or repair of public airports previously, or hereafter substantially damaged by any federal agency.

D. Reverter and Conveyance by Grantee of the Property.

1. In the event that any of the terms, conditions reservations, or restrictions in this deed are not met, observed, or complied with by the Grantee or any subsequent transferee, whether caused by the legal inability or the Grantee or subsequent transferee to perform any of the obligations herein set out or otherwise, the title, right of possession and all other rights transferred by this instrument to the Grantee, or any portion thereof, shall at the option of the Grantor revert to the Grantor in its then-existing condition sixty (60) days following the date upon which demand to this effect is made in writing by the Administrator of the FAA or his or her successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been met, observed, or complied with, or if the Grantee shall have commenced the actions necessary to bring it into compliance with such terms, conditions, reservations and restrictions in accordance with a compliance schedule approved by the Administrator of the FAA or his or her successor in function, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the Grantee, its transferees, successors and assigns.
2. Any of the property included in the Property may be successively transferred to successors and assigns of the Grantee only with the approval of the Administrator of the FAA or his or her successor in function to the extent required-by the provisions of Section VIII, subsection A4 hereof, with the proviso that any such subsequent transferee assumes all the obligations imposed herein unless released in writing there from by the Administrator of the FAA or his or her successor in function.

E. Construction of Provisions of This Quitclaim Deed. If the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservation or restrictions in question shall be construed instead merely as conditions, the breach of which the United States may exercise its options to cause the title, interest, right of possession, and all other rights transferred to the Grantee, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

IX. MISCELLANEOUS

A. Each covenant of this Deed shall be deemed to touch and concern the land and shall run with the land.

B. It is the intent of the Grantor and the Grantee that the covenants in Section VIII are between the FAA and the Grantee to this Deed, and those covenants are not intended to run with the land or to bind the successors and assigns of the Grantee to this Deed.

X. THE FOLLOWING EXHIBITS are attached to and made a part of this document:

Exhibit A Legal Description of Property Conveyed

Exhibit B Survey Drawing

Exhibit C Notice of Hazardous Substance(s) Stored

Exhibit D Notice of Hazardous Substance(s) Released

IN WITNESS WHEREOF, the party of the first part has caused this Deed to be executed in its name and on its behalf the day and year first above written.

Appendix F. Sample Notice of Reversion of Property and Revestment of Title to the United States

NOTICE OF REVERTER

To the State of Arizona:

THIS NOTICE OF REVERTER, issued this 31st day of January, 1962, by the United States of America to the State of Arizona, WITNESSETH:

THAT, WHEREAS, the United States of America, hereinafter called the Party of the First Part, by a Quitclaim Deed dated November 17, 1949, unrecorded among the land records of the County of Cochise, Arizona, did convey to the State of Arizona, hereinafter called the party of the second part (subject, however, to the easements for all rights-of-way for public roads, highways, utility lines, railways and pipelines of record) certain airport property commonly known as Webb Airport (Douglas Auxiliary No. 3) situated in the County of Cochise, State of Arizona, which said airport property is described in said Quitclaim Deed on Page 1 thereof as follows:

> The North One-Half of Section 21, Township 19 South, Range 26 East, Gila and Salt River Base and Meridian, Cochise County, Arizona, containing 320 acres, more or less.
>
> TOGETHER WITH the following listed buildings and improvements located on the above described property and property described as the South One-Half of Section 16, Township 19 South, Range 26 East, Gila and Salt River Base and Meridian, Cochise County, Arizona:
>
> BUILDINGS
>
> T-3001
>
> T-3002
>
> T-3003
>
> T-3004
>
> IMPROVEMENTS
>
> All runways and taxiways, dust control, clearing and grubbing, field drainage, fences, access road, and electrical distribution system.

AND WHEREAS, said Quitclaim Deed contains among other reservations, restrictions, and conditions, the following paragraphs on Page 3 thereof pertaining to the operation and maintenance obligations of the State of Arizona, which said paragraphs are as follows:

(1) That, except as provided in subparagraph (6) of the next succeeding unnumbered paragraph, the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the tern "exclusive right" as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term "airport" shall be deemed to include at least all such land, buildings, structures, improvements and equipment.

(2) That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in WAA Regulation 5, as amended, and all structures, improvements, facilities and equipment in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable conditions, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the remainder of their estimated life, as determined by the Civil Aeronautics Administrator or his successor. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities or equipment, they may be procured by demolition of other structures, improvements, facilities or equipment transferred hereby and located on the above-described premises which have outlived their use as airport property in the opinion of the Civil Aeronautics Administrator or his successor.

AND WHEREAS, the said Quitclaim Deed contains on Page 5 thereof a paragraph setting forth the reverter rights of the United States which may be exercised at its option in the event of default by the State of Arizona in complying with its obligations, which said paragraph is as follows:

(1) That in the event that any of the aforesaid terms, conditions, reservations, or restrictions are not met, observed, or complied with by the party of the second part or any subsequent transferee, whether caused by the legal inability of said party of the second part or subsequent transferee to perform any of the obligations herein set out. or otherwise, the title, right of possession and all other rights transferred by this instrument of the party of the second part. or any portion thereof, shall at the option of the party of the first part, revert to the party of the first part sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administration or its successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been met, observed or complied with, in which event said reversion shall not occur and title, right or possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the party of the second pan. its transferees, successors and assigns.

AND WHEREAS, there has been placed of record a Quitclaim Deed from the State of Arizona to the United States dated December 12, 1960. and recorded on March 14, 1961, among the land records of Cochise County, Arizona, in Docket No. 270 at Page 53, under which deed all of the premised described in the above-noted Quitclaim Deed to the State of Arizona were quitclaimed to the United States subject to certain reservations, restrictions and conditions and the assumption by the United States of certain obligations;

AND WHEREAS, a question has arisen as to the authority of the State of Arizona to reconvey the unencumbered title to the premises described in the aforesaid quitclaim deed to the United States so that there shall be vested in the United States the same title to the said premises which the United States had prior to the conveyance of such property to the State of Arizona;

AND WHEREAS, the Federal Aviation Agency (as successor to the Civil Aeronautics Administration) through its duly authorized Agent, Charles S. Benson. Chief, Airports Branch, Aviation Facilities Division, Federal Aviation Agency, Western Region, Los Angeles, California, by letter dated November 8, 1961, did notify the State of Arizona through its State Land Commissioner, Honorable Obed M. Lassen, that the State of Arizona was in default of its obligations under said Quitclaim Deed in that the airport was no longer being operated or maintained as a public airport. and had been abandoned for public airport purposes;

AND WHEREAS, the State of Arizona continues to be in default of its obligations under said Quitclaim Deed in that the airport has not been operated or maintained as a public airport subsequent to the date of said letter, and has in fact closed and marked as abandoned the property, as such, although, a period of time in excess of sixty (60) days, has elapsed since said date;

NOW THEREFORE, the Administrator of the Federal Aviation Agency through its duly authorized Agent, Chief, Airports Division. Western Region, Federal Aviation Agency, does hereby notify the State of Arizona that all of the rights, title, and interest in and to the above-described airport property commonly known as Webb Airport (Douglas Auxiliary No. 3) and as hereinabove described situated in the County of Cochise, Arizona, does by this Notice and as of the date of the recording of this Notice revert to the United States of America.

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA has caused this Instrument to be executed

as of the __ day of ____, 1961.

UNITED STATES OF AMERICA

The Administrator of the Federal Aviation Agency

By __________

Chief. Airports Division, Western Region

Appendix G. Explanation of Terms

Advisory Circular (AC)	Advisory circular. A document published by the Federal Aviation Administration (FAA) giving guidance on aviation issues. ACs in the 150 series address airport issues. Some ACs in the 150 series establish FAA standards for a specific airport function or facilities, such airport pavement markings and signs. Compliance with such ACs may be required for Federally obligated airports and airports certificated under 14 CFR part 139.
Aeronautical Activity	Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations. It includes, but is not limited to: Air taxi and charter operations. Scheduled or nonscheduled air carrier services. Pilot training. Aircraft rental and sightseeing. Aerial photography. Crop dusting. Aerial advertising and surveying. Aircraft sales and service. Aircraft storage. Sale of aviation petroleum products. Repair and maintenance of aircraft.

	Sale of aircraft parts.
	Parachute activities.
	Ultralight activities.
	Sport pilot activities
	Military flight operations.
Aeronautical Use	Land on which an aeronautical activity takes place is by its nature aeronautical use. Any use that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft. This includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail, and cargo on the airport. (*See* FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land*, 88 Fed. Reg. 85474, December 8, 2023).
Airport	(1) An area of land or water used, or intended to be used, for the landing and taking off of aircraft; (2) an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights-of-way; and (3) airport buildings and facilities located in any of those areas. It also includes a heliport. (49 U.S.C. § 47102(2)(B)).
Airport Hazard	A structure or object of natural growth located on or near a public-use airport, or a use of land near the airport, that obstructs or otherwise is hazardous to the landing or taking off of aircraft at or from the airport. (49 U.S.C. § 47102(4)).

Airport Improvement Program (AIP)	The AIP is authorized by the Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. No. 97-248, as amended). The broad objective of the AAIA is to assist in the development of a nationwide system of public use airports adequate to meet the current and projected growth of civil aviation. The AAIA provides funding for airport planning and development projects at airports included in the National Plan of Integrated Airport Systems. The AAIA also authorizes funds for noise compatibility planning and to carry out noise compatibility programs as set forth in the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. No. 96-193).
Airport Noise Compatibility Program	That program and all revisions thereto, reflected in documents (and revised documents) developed in accordance with Appendix B to Part 150, Airport Noise Compatibility Planning, including the measures proposed or taken by the airport owner to reduce existing incompatible land uses and to prevent the introduction of additional incompatible land uses within the area.
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. Examples of airport purpose include, but are not limited to:

	A terminal complex: All components of a terminal complex (including the building, terminal concessions, airline ticket and car rental counters, parking, and roads); A fixed base operator (FBO) facility, including parking and classrooms; Parking associated with the airport purpose (*e.g.*, passenger and employee parking); Airport service roads; and Truck parking for air cargo processing facilities when it is directly related to moving inbound and outbound air cargo on and off the airport. (*See* FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land*, 88 Fed. Reg. 85474, December 8, 2023).
Airport Sponsor	A public agency that submits to the Secretary an application for financial assistance; and a private owner of a public-use airport that submits to the Secretary an application for financial assistance for the airport. (*See* 49 U.S.C. § 47102(26) and FAA Order 5100.38, *Airport Improvement Program Handbook*, paragraph 2-6, *Sponsor Qualification Criteria*).
AP-4 Agreement	Agreement between the sponsor and the federal government in which typically the airport sponsor provided the land and the federal government developed the airport.

Compatible Land Use	Land uses that can coexist with a nearby airport without constraining the safe and efficient operation of the airport or exposing people living or working nearby to significant environmental impacts. (*See* AC 150/5190-4B, *Airport Land Use Compatibility*).
Exclusive Right	A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements, or by other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right. The prohibition on exclusive rights extends to all aeronautical activities. (*See* 49 U.S.C. § 40103(e)).
Exhibit A	A snapshot of the inventory of parcels that make up dedicated airport property. The Exhibit 'A' indicates how the land was acquired, the funding source for the land and if the land was conveyed as Federal surplus land or Government Property. (*See* ARP SOP 3.0, *Standard Operating Procedure for FAA Review of Exhibit 'A' Airport Property Inventory Maps).*
Fair Market Value (FMV)	The highest price estimated in terms of money that a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser or tenant who buys or rents with knowledge of all the uses to which it

	is adapted and for which it is capable of being used. It is also frequently referred to as the price at which a willing seller would sell and a willing buyer buy, neither being under abnormal pressure. FMV will fluctuate based on the economic conditions of the area.
Federal Agency	For purposes of the compliance program, an agency of the federal government. This does include the certain elements of the National Guard or the Air Guard as they may be controlled by the National Guard Bureau in Washington, DC, as an element of the Department of Defense.
Federal Assistance	Includes the following (1) airport development grants; (2) airport planning grants that relate to a specific airport; (3) airport noise mitigation grants received by an airport operator; (4) Federal property transfers under the Surplus Property Act codified at 49 U.S.C. §§ 47151-47153; (5) Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, Section 23 of the Airport and Airway Improvement Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982, as codified at 49 U.S.C. § 47125; and (6) AP-4 Agreements. (*See* FAA's *Policy and Procedures Concerning the Use of Airport Revenue,* 64 Fed. Reg. 7696, February 16, 1999).
Federally Acquired Land	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 as part of an AP-4 agreement. 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* FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land*, 88 Fed. Reg. 85474, December 8, 2023).
Federally Conveyed Land	Land conveyed to the sponsor by the federal government through a written deed of conveyances (also called a patent or included in a lease termination etc.) that contained specific restrictions or allowances for the use of the land. This includes land transferred under: 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, 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. (*See* FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land*, 88 Fed. Reg. 85474, December 8, 2023).

Grant Agreement	A legal instrument used by the Federal Government to provide aid to an airport sponsor that obligates the sponsor and FAA to the terms and conditions of the agreement. The FAA’s grant agreements attach grant assurances.
Grant Assurance	A grant assurance is a provision contained in a federal grant agreement to which the recipient of federal airport assistance has voluntarily agreed to comply in consideration of the assistance provided.
Independent Operator	A commercial operator offering a single aeronautical service but without an established place of business on the airport. An airport sponsor may or may not allow this type of servicing to exist on the airport.
Joint Use Airport	An airport owned by the Department of Defense, at which both military and civilian aircraft make shared use of the airfield.
Land Use Controls	Measures established by state or local government that are designed to carry out land use planning. Among other measures, the controls include zoning, subdivision regulations, planned acquisition, easements, covenants or conditions in building codes and capital improvement programs, such as establishment of sewer, water, utilities, or their service facilities.
Land Use Management Measures	Land use management techniques that consist of both remedial and preventive measures. Remedial or corrective measures typically include sound insulation or land acquisition. Preventive

	measures typically involve land use controls that amend or update the local zoning ordinance, comprehensive plan, subdivision regulations and building code.
Landing Area/Airfield	A place on land or water, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo. (*See* 49 U.S.C. § 40102).
Local Operation	Any operation performed by an aircraft that: operates in the local traffic pattern or within sight of the tower or airport, or is known to be departing for, or arriving from, flight in local practice areas located within a 20-mile radius of the control tower or airport, or executes a simulated instrument approach or low pass at the airport.
Minimum Standards	The qualifications or criteria that may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities.
Mitigation	The avoidance, minimization, reduction, elimination, or compensation for adverse environmental effects of a proposed action.

Mixed-Use	A facility that contains both aeronautical and non-aeronautical uses, but the non-aeronautical use could be located off airport property. Examples include: Mail distribution centers that are connected to an air cargo operation. 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". Aircraft manufacturing facility that includes final assembly, but also significant non-aeronautical uses such as, engineering facilities, research and development facilities, parts manufacturing and storage, or office buildings. Parking associated with the mixed use (*e.g.*, customer and employee parking for mail distribution, cargo operations, aircraft manufacturing). (*See* FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land*, 88 Fed. Reg. 85474, December 8, 2023).

National Plan of Integrated Airport Systems (NPIAS)	The NPIAS identifies existing and proposed airports that are important to national air transportation, and it provides a forward-looking estimate of the type and cost of eligible Airport Improvement Program (AIP) development needed to meet the needs of civil aviation. (*See* 49 U.S.C. § 47103 and FAA Order 5090.5, *Formulation of the NPIAS and the Airports Capital Improvement Plan (ACIP)*).
Net Proceeds	The sum derived from a lease sale, salvage or other disposal of airport property at fair market value (FMV) after deductions or allowances have been made for directly related expenses such as advertising, legal services, surveys, appraisals, taxes, commissions, title insurance, and escrow services.
Noise Compatibility Plan (NCP)	An optimum combination of preferred noise abatement and land use management measures and a plan for the implementation of the measures. For planning purposes, the implementation plan also includes the estimated cost for each of the recommended measures to the airport sponsor, the FAA, airport users, and the local units of government.
Noise Exposure Map (NEM)	A scaled map of the airport, its noise contours and surrounding land uses. The NEM depicts the levels of noise exposure around the airport, both for the existing conditions and forecasts for the five-year planning period. The area of noise exposure is designated using the DNL (day-night average sound level) noise metric.

Noise Exposure Contours	Lines drawn about a noise source indicating constant energy levels of noise exposure. DNL is the measure used to describe community exposure to noise.
Noise-Sensitive Area	Area where aircraft noise may interfere with existing or planned use of the land. Whether noise interferes with a particular use depends upon the level of noise exposure and the types of activities that are involved. Residential neighborhoods, educational, health, and religious structures and sites, outdoor recreational, cultural and historic sites may be noise sensitive areas.
Non-Aeronautical Use	All other uses that are not considered aeronautical or airport purpose. This includes any aviation-related uses that do not need to be located at an airport. Examples of non-aeronautical uses include, but are not limited to: Car rental facilities (stand-alone); Hotels; Warehouse and distribution centers; Parking associated with non-aeronautical uses (*e.g.,* customer and employee parking for hotel, warehouse and distribution center, car rental); Flight kitchens; and Airline reservation centers (*See* FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land*, 88 Fed. Reg. 85474, December 8,2023).

Obstruction	Natural or manmade objects or hazards that interfere with air navigation, navigational aids, or navigation equipment. Such objects or hazards can include those that penetrate or could penetrate airfield and airspace surfaces. (*See* 14 CFR part 77, *Safe, Efficient use, and Preservation of the Navigable Airspace*).
Passenger Facility Charge (PFC) Program	The PFC program allows the collection of PFC charges up to a statutorily defined level for every eligible passenger at commercial service airports controlled by a public agency. Airports use these charges to fund FAA approved projects that enhance safety, security, or capacity; reduce noise; or increase air carrier competition. (*See* www.faa.gov/pfc).
Proprietary Exclusive	The owner of a public-use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. The statutory prohibition against exclusive rights does not apply to these owners; they may exercise, but not grant, the exclusive right to conduct any aeronautical activity. However, the sponsor that elects to engage in a proprietary exclusive must use its own employees and resources to carry out its venture. An independent commercial enterprise that has been designated as agent of the owner may not exercise, nor be granted, an exclusive right.

Public Airport	An airport used or intended to be used for public purposes (A) that is under the control of a public agency; and (B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned. (*See* 49 U.S.C. § 47102).
Public-use Airport	A public airport; or a privately-owned airport used or intended to be used for public purposes that is (i) a reliever airport, or (ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service. (*See* 49 U.S.C. § 47102).
Quitclaim Deed	A document by which a grantor conveys his or her present interest, if any, in a given parcel of real property to a grantee without representing, covenanting, or warranting that the title is good.
Release of Federal Obligations	A formal, written authorization discharging and relinquishing all or part of the FAA's right to enforce an airport's grant, 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 sale of certain airport property. (*See* FAA's *Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land*, 88 Fed. Reg. 85474, December 8, 2023).

Residential Through-the-Fence (RTTF)	Agreements that allow people who own residential property with aircraft storage facilities near an airport to access the airport from off-airport property. (*See* FAA's *Residential Through-the-Fence Access Toolkit*).
Runway Incursion	Any occurrence at an airport involving the incorrect presence of an aircraft, vehicle, or person on the protected area of a surface designated for the landing and takeoff of aircraft. (*See* AC 150/5300-13, *Airport Design*).
Runway Protection Zone (RPZ)	An area at ground level prior to the threshold or beyond the runway end to enhance the safety and protection of people and property on the ground. (*See* AC 150/5300-13, *Airport Design*).
Runway Safety Area (RSA)	A defined area surrounding the runway consisting of a prepared surface suitable for reducing the risk of damage to aircraft in the event of an undershoot, overshoot, or excursion from the runway. (*See* AC 150/5300-13, *Airport Design*).

Self-Fueling and Self-Service	The fueling or servicing of an aircraft by the owner of the aircraft or the owner's employee. Self-fueling means using fuel obtained by the aircraft owner from the source of his/her preference. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. 14 CFR part 43 permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.
Tenant	A person or organization occupying space or property on an airport under a lease or other agreement.

Appendix H. Acronyms

1938 Airport Act	Civil Aeronautics Act of 1938
1946 Airport Act	Federal Airport Act of 1946
1970 Airport Act	Airport and Airway Development Act of 1970; (Pub. L. No. 91-258)
1987 Airport Act	Airport and Airway Safety and Capacity Expansion Act of 1987; (Pub. L. No. 100-223)
1994 Authorization Act	FAA Authorization Act of 1994; (Pub. L. No. 103-305)
1996 Reauthorization Act	FAA Reauthorization Act of 1996; (Pub. L. No. 104-264)
AAIA	Airport and Airway Improvement Act of 1982; (Pub. L. No. 97-248)
AC	Advisory Circular
ACDBE	Airport Concessions Disadvantaged Business Enterprise, 49 CFR part 23
ACO	FAA Office of Airport Compliance and Management Analysis
ADAP	Airport Development Aid Program
ADO	FAA Airports District Office
AEE	FAA Office of Environment and Energy (AEE-100)
AFD	Airport Facility/Directory
AFRPA	Air Force Real Property Agency
AGC	FAA General Counsel
AGL	Above Ground Level
AIP	Airport Improvement Program
AIPP	Airport Investment Partnership Program

AIR-21	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century
ALP	Airport Layout Plan
AMSL	Above Mean Sea Level
ANCA	Airport Noise and Capacity Act of 1990
ANG	Air National Guard
AOA	Air Operations Area
AOPA	Aircraft Owners and Pilots Association
APP	FAA Office of Airport Planning and Programming
ARFF	Aircraft Rescue and Fire Fighting
ARP	FAA Office of Airports
ARP-1	Associate Administrator for Airports
ARP-2	Deputy Associate Administrator for Airports
ARPA	American Rescue Plan Act of 2021
ARRA	American Recovery and Reinvestment Act of 2009
ASNA	Aviation Safety and Noise Abatement Act of 1979; (Pub. L. No. 96-193)
AT	Air Traffic
ATC	Air Traffic Control
ATO	Air Traffic Organization
ATSA	Aviation and Transportation Security Act
AvGas	Standard aviation gasoline
BLM	Bureau of Land Management
BRAC	Base Realignment and Closure

BRL	Building Restriction Lines
CAA	Civil Aeronautics Administration
CAB	Civil Aeronautics Board
CAP	Civil Air Patrol
CARES	Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136
CATS	Certification Activity Tracking System
CEQ	Council of Environmental Quality
CFR	Code of Federal Regulations
CGL	Compliance Guidance Letter
CIP	Capital Improvement Program
CO-OP	Fuel Cooperative Organization
CPI	Consumer Price Index
CRRSAA	Coronavirus Response and Relief Supplemental Appropriation Act, Pub. L. 116-260
CWA	Civil Works Administration
dB	Decibel
dBA	A-weighted sound levels in decibels
DBE	Disadvantaged Business Enterprise
DCLA	Development of Civil Landing Areas
DD	Director’s Determination
Deregulation Act	Airline Deregulation Act of 1978, Pub. L. 95-504, as codified at 49 U.S.C. § 41713 *et seq*.
DLAND	Development of Landing Areas for National Defense

DNL	Day-night average sound level
DoD	Department of Defense
DOI	Department of Interior
DOJ	Department of Justice
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EPNdB	Effective Perceived Noise Level in decibels
FAA	Federal Aviation Administration
FAA Act	Federal Aviation Act of 1958, Pub. L. No. 85-726 (1958), as amended 49 U.S.C § 4010 *et seq*.
FAAP	Federal Aid to Airports Program, as established by the Federal Airport Act of 1946, Pub. L. No. 79-377 (1946).
FAD	Final Agency Decision
FAR	Federal Aviation Regulations
FBI	Federal Bureau of Investigation
FBO	Fixed-base operator
FCC	Federal Communications Commission
F&E	Facilities and Equipment
FICAN	Federal Interagency Committee on Aviation Noise
FICON	Federal Interagency Committee on Noise
FICUN	Federal Interagency Committee on Urban Noise
FMV	Fair Market Value

FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FR	Federal Register
FS	Flight Standards
FSDO	Flight Standards District Office
FSS	Flight Service Station
FY	Fiscal Year
GA	General Aviation
GAO	United States Government Accountability Office
GIS	Geographic Information System
GSA	General Services Administration
HQ	FAA Headquarters
IATA	International Air Transportation Association
ICAO	International Civil Aviation Organization
INM	Integrated Noise Model
LOB	Line of Business
LOCID	Location Identifier
LOI	Letter of Intent
LRA	Local Redevelopment Authority
LSA	Light-Sport Aircraft
MAP	Military Airport Program
MoGas	Ethanol-free premium unleaded automotive fuel
MTOW	Maximum certificated takeoff weight

NAS	Naval Air Station
NASA	National Aeronautics and Space Administration
NASAO	National Association of State Aviation Officials
NBAA	National Business Aviation Association
NCP	Noise Compatibility Plan
NEF	Noise Exposure Forecast
NEM	Noise Exposure Map
NEPA	National Environmental Policy Act of 1969
NEUP	National Emergency Use Provision
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Investigation
NOTAM	Notice to Airmen
NPIAS	National Plan of Integrated Airport Systems
NRA	Nonrulemaking Airport
NTSB	National Transportation Safety Board
OE/AAA	Obstruction Evaluation/Airport Airspace Analysis
OFZ	Object Free Zone
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
OST	Office of the Secretary
PCI	Pavement Condition Index
PFC	Passenger Facility Charge

PGL	Program Guidance Letter
PGP	Planning Grant Program
PIC	Pilot-in-Command
PILOT	Payment In Lieu of Taxes
Pub. L.	Public Law
PPR	Prior Permission Requirement
Region	FAA Regional Airports Division
ROD	Record of Decision
ROFA	Runway Object Free Area
RFP	Request for Proposal
RPZ	Runway Protection Zone
RSA	Runway Safety Area
RSAT	Runway Safety Action Team
SAR	Search and Rescue
SASO	Specialized Aviation Service Operators
SBGA	State Block Grant Agency
SBGP	State Block Grant Program
SBGS	State Block Grant State
SPA	Surplus Property Act of 1944; (Pub. L. No. 80-289)
TRACON	Terminal Radar Approach Control
TSA	Transportation Security Administration
Uniform Act	Uniform Relocation Assistance and Real Property
U.S.	United States

U.S.C.	United States Code
USDA	Department of Agriculture
VFR	Visual Flight Rule
VOR	Very High Frequency Omnidirectional Radio Range
V/PD	Vehicle/Pedestrian Deviations
WAA	War Assets Administration
WSG	Worldwide Slot Guidelines

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