



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

# Memorandum

Subject: **ACTION:** Program Guidance Letter 08-02

Date: February 1, 2008

From: Manager, Airports Financial Assistance Division,  
APP-500

Reply to  
Attn. of:

To: PGL Distribution List

We are issuing this Program Guidance Letter distributing the guidance on the Management of Acquired Noise Land: Inventory, Reuse, Disposal. This has been coordinated with AGC.

If you would like a training session at your region or in your ADO on this guidance, please contact APP-1.

Barry L. Molar

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**Management of Acquired Noise Land:  
Inventory - Reuse - Disposal**

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**Federal Aviation Administration  
Office of Airport Planning and Programming  
Airport Financial Assistance Branch**

**January 30, 2008**

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## Introduction

Land acquired under airport noise compatibility programs is unique.

When this land, also known as noise land, is acquired with Airport Improvement Program (AIP) grant funds, it is subject to Grant Assurance 31, Written Assurances on Acquiring Land.<sup>1</sup> The purpose of the assurance, which is based on 49 USC §47107(c)(2)(A), is to assure that optimal use is made of the federal share of the proceeds from the disposal of noise land (disposal proceeds).

The assurance requires that when noise land is no longer needed for noise compatibility, the land will be disposed of and that the federal share of the disposal proceeds will be either paid to the Airport and Airway Trust Fund or will be used for another noise compatibility project. "Disposal" of noise land does not mean that an airport must sell the property to another. Whether unneeded noise land is sold, kept by the airport and leased, or exchanged is the airport's decision.

**Purpose of this Guidance:** This guidance provides airport sponsors and the FAA with the information needed to meet the requirements of Grant Assurance 31.

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<sup>1</sup> Noise land that is acquired without AIP funds is not subject to the grant assurance.

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**SUMMARY OF CHANGES**

**2/27/08**

**PAGE 27 - DATE CHANGE**

**2/27/08**

**PAGE 24 – WORDING CORRECTION**

**3/26/09**

**PAGE 14 – DELETED TEXT**

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## **Section 1. Obligations Associated with the Acquisition of Noise Land**

Noise land is real property<sup>2</sup> that an airport acquires in a noise-impacted area<sup>3</sup> around an airport. Under federal land use compatibility guidelines<sup>4</sup>, residences (and other sensitive land uses such as amphitheaters) are generally not compatible with noise levels measured in day-night average sound levels of 65 decibels (dB) or greater.

To reduce or eliminate incompatible uses, an airport may acquire land that falls within a certain noise contour (usually the 65 dB contour) in order to convert the use of the land to a use that is compatible with airport operations. These projects may also include relocation of the homeowners and residential tenant-occupants to a comparable replacement dwelling located outside of the incompatible airport noise contours under the terms of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and the implementing DOT regulations contained in Title 49 CFR, Part 24.

As explained in FAA Order 5100.38C, the Airport Improvement Program Handbook,<sup>5</sup> there are two cases when acquiring noise land is eligible for Airport Improvement Program (AIP) grant funds:

- If it is a Part 150 Noise Compatibility Program (NCP) measure.
- If it is a mitigation measure in a Finding of No Significant Impact (FONSI) or a Record of Decision (ROD)) for an airport development project where approval of the project is conditioned upon implementation of the mitigation measure.

### **A. Noise Land Grant Assurance.**

Noise land acquired with AIP grant funds<sup>6</sup> is subject to Grant Assurance 31, Written Assurances on Acquiring Land which is based on the statute found at 49 USC §47107 (c)(2)(A), . Section 47107(c)(2)(A) states:

The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport

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<sup>2</sup> Real Property, another term for real estate, includes land, the rights in land and things permanently attached to the land, such as trees and buildings. Anything that is not real property is termed personal property.

<sup>3</sup> Land acquisition procedures and requirements are not included in this guidance. They may be found in the AIP Handbook, FAA Order 5100.38C and Land Acquisition and Relocation Assistance for Airport Projects, FAA Order 5100.37B.

<sup>4</sup> Federal Aviation Regulations Part 150 Airport Noise Compatibility Planning, Appendix A, Table 1.

<sup>5</sup> FAA Order 5100.38C may be found online at the FAA website.

<sup>6</sup> Sound insulating projects are not subject to the grant assurance for the disposal of noise land.



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owner or operator has received, or will receive a grant for acquiring land and

If the land was or will be acquired for a noise compatibility purpose --

The owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

The disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

The part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under §9502 of the Internal Revenue Code of 1986 (26 U.S.C. §9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.

The purpose of the grant assurance is to ensure that when the land is no longer needed for noise compatibility purposes, it is converted to an airport-compatible use and the federal share of the Fair Market Value (FMV) of the land is recycled or is returned to the Trust Fund.

#### **B. Special Condition for Noise Land Grants.**

All noise land grants must include the special grant condition to require sponsor submittal of a Noise Land Inventory and Reuse Plan to FAA. Starting in Fiscal Year 2006, this special condition<sup>7</sup> must be included in all noise land grants:

**ACQUISITION OF NOISE LAND:** The Sponsor hereby agrees that upon completion of the land acquisition in this project, it will prepare a Noise Land Inventory and Reuse Plan to standards satisfactory to the Federal Aviation Administration (FAA) and submit said documentation in final form to the FAA. It is further mutually agreed that the reasonable cost of developing said Noise Land Inventory and Reuse/Disposal Plan is an eligible administrative cost for participation within the scope of this project.

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<sup>7</sup> Special Condition for Noise Land Grants previously included the phrase "Noise Land Inventory Map." This has been revised to read, "Noise Land Inventory" which includes a map and other documentation. This Special Condition will be Paragraph Y in Appendix 7 of FAA Order 5100-38C, the Airport Improvement Program Handbook.

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### **C. Noise Land, Airport Development Land and Airport Land**

When discussing land acquired by an airport, it is critical to understand that there is a difference between Noise Land and Airport Development Land.

Airport development land (Development Land) is defined in 49 USC §47102(3)(C) as land that is needed to carry out airport development or to remove or mitigate an existing airport hazard or prevent or limit the creation of a new airport hazard. Noise Land is land that is acquired as a Part 150 Noise Compatibility Program (NCP) measure or as a mitigation measure as described in this section.

Noise Land is land that is acquired to remove or prevent an incompatible land use and then disposed of so that it can be developed compatibly. Development land is land that is acquired to allow an airport to undertake its airport development projects or to mitigate a hazard.

FAA may write four kinds of AIP grants – airport planning; airport development; airport noise compatibility planning; and carrying-out noise compatibility measures.<sup>8</sup> . Either airport development grants or noise compatibility grants may include land acquisition.

Another difference between Noise Land and Development Land is that noise land is not intended to become part of the airport and is not intended to be kept indefinitely. Development Land is intended to become part of the airport.

Also, Noise Land is not required to be shown on an Airport Layout Plan (ALP) while development land must be shown on an ALP. However Noise Land must be shown on the Exhibit A, Airport Property Map to document airport ownership of the land.

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<sup>8</sup> See 49 USC §48103.

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## **Section 2. Management of Noise Land**

An airport sponsor manages the acquisition, disposal and reuse determinations of its noise land through the Noise Land Inventory and Noise Land Reuse Plan.

### **A. Noise Land Inventory.**

An airport sponsor must keep an up-to-date Noise Land Inventory that accurately reflects all of the noise land parcels that were acquired with AIP grant funds.

The Inventory fully accounts for all grant-acquired noise land<sup>9</sup>. It is also a tool to help the sponsor manage and dispose of excess noise land in compliance with the FAA grant assurance. If an airport has an existing Geographic Information Systems (GIS) or other document management system, it may use that system to develop and maintain the Inventory. Where feasible, the Inventory should be electronically accessible to FAA.

The Inventory must be up to date and reflect the most current FAA accepted Reuse plan. A copy of the Noise Land Inventory must be kept with the latest Exhibit "A" Airport Property Map<sup>10</sup> in the Airports District Office or Regional Office.

Each disposal parcel shall clearly be shown on a Noise Land Inventory Map and referenced to the parcel numbers of the acquired noise land, as found on the AIP grant Exhibit A property map. The Inventory shall list all acquired noise land parcels comprising the disposal parcels, identify the grant(s) under which the noise land parcels were acquired, and indicate relevant data associated with the acquisition of the individual parcels, including date acquired, current use of the parcel, and parcel acquisition cost. It may also be convenient to include a column showing the total grant amount of the grant in which the land was acquired.

A Noise Land Inventory Requirements List is provided in Attachment B.

### **B. Reuse Plan.**

The sponsor's Reuse Plan identifies the proposed use of all noise land. All disposal parcels on the Noise Land Inventory must be listed in the Reuse Plan. For parcels that will be bundled into a larger parcel for disposal, the individual parcel identification must be clearly retained, although the overall larger disposal parcel may be renumbered (i.e. Assessor's Parcel Number (APN) for replatted disposal parcel).

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<sup>9</sup> An airport may choose to show noise land acquired with other sources of funds on the Noise Land Inventory

<sup>10</sup> See FAA Advisory Circular 150/5100.17 for Exhibit A specifications

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The requirements for a Reuse Plan are listed in Attachment C. Sponsors may submit their plans for FAA acceptance using the Requirements List as a checklist.

### **C. Categories of Noise Land.**

All airport acquired noise land falls into one of the following categories with the repayment requirements, which are described in more detail in later sections.

- Disposal through Conversion to AIP-Eligible Airport Development Land (Development Land) – repayment of the FMV of the federal share is not required in this case.
- Disposal by Exchange for Development Land – repayment of the FMV of the federal share is not required if the exchanged value of the land meets or exceeds the value of the noise land. If the FMV of the development land is less than the FMV of the noise land exchanged, the Federal share of the difference is subject to repayment under Assurance 31.
- Disposal through Sale in fee and repayment of the FMV of the federal share to comply with Grant Assurance
- Disposal through Long Term Lease or Conversion to AIP-ineligible airport-owned land - An airport sponsor retains the land for lease or AIP-ineligible use, but repays the FMV of the federal share of the land. (For example, an airport sponsor may keep the land to construct a revenue-producing public parking facility. By repaying the federal share of the FMV, the land is no longer categorized as noise land, and thus is “disposed of.”
- Retained - needed for noise compatibility. An airport sponsor shall review the parcels that are designated as noise land at least once every five years, when there is a change to the Reuse Plan, when the airport undertakes a Master Plan update, or when the noise contours are changed, whichever is more frequent.

## Section 3. Retaining Noise Land

Noise land may be retained and categorized as noise land only if it is still needed for noise compatibility. Land that is no longer needed for noise compatibility purposes is considered to be “unneeded.”

There are three distinct steps in determining when and how to dispose of noise land. The first step is to determine whether the land is needed for noise compatibility.

The next step is to determine its future use, including whether the land is needed for AIP-eligible airport or aeronautical use. Land that is no longer needed for noise compatibility but that is needed for AIP-eligible airport use is disposed of by converting it to airport development land<sup>11</sup>, and ownership of the land remains with the airport. The final step is to determine the optimal means of disposal of unneeded noise land that is not converted to airport development land.

### Defining “Disposal”

“Disposal” of noise land does not mean that an airport must sell the property to another. Whether unneeded noise land is sold, kept by the airport and leased, or disposed of by other means is the airport’s decision.

### A. Defining “No Longer Needed for Noise Compatibility.”

A parcel is no longer needed for noise compatibility when its use is compatible with noise levels as reflected by the location of the parcel in the associated noise contour. A parcel’s use is defined as the uses of building or development that are allowed on the property, and may include categories such as residential use, agricultural, or commercial.

The most current noise contours accepted by the FAA under 14 CFR Part 150 for existing and future conditions at the airport or prepared as part of a final EA or EIS must be used to determine whether a parcel is still needed for noise compatibility purposes.<sup>12</sup> The airport must also revise the Noise Land Inventory and Reuse Plan when noise contours are updated.

Example: An airport is in the middle of constructing a major modernization project. The final environmental impact statement for the project includes noise contours for the existing (2002) and future condition (2013). Although both the current and future noise contours would normally be used when reviewing parcels for noise compatibility, only the future contour should be used here because 2002 is no longer the existing condition.

<sup>11</sup> Development Land is land that is needed for AIP-eligible airport development projects. Further information on development land may be found in FAA Order 5100-38C, the AIP Handbook.

<sup>12</sup> This contour may be a different contour than the one used to initially acquire the parcel.

### **1. Parcels within the 75 dB Contour.**

Undeveloped parcels within the 75 dB contour on an FAA-accepted noise map may still be needed for noise compatibility if they cannot be compatibly developed.

Parcels that are within the 75 dB contour that have been developed into a compatible use, or that can be developed for a compatible use, are no longer needed for noise compatibility.

Example: An airport has developed an industrial park on land that was acquired for noise compatibility that is within the 75 dB contour. Because the land now has a use that is compatible with its noise levels, it is no longer needed for noise compatibility.

Example: Airport noise land within the 75dB contour has been zoned for industrial use and industrial park could be developed on the site. This land is no longer needed for noise compatibility.

Example: An airport has parcels of land within the 75 dB contour that cannot be reasonably developed and therefore will be left undeveloped as green space. Because the land is within the 75 dB contour and left undeveloped, the land may be considered as needed for noise compatibility.

### **2. Parcels outside of the 75 dB Contour.**

The noncompatible use of parcels outside the 75 dB contour will have been eliminated when the airport acquired the parcels. These parcels can then be developed compatibly and are subject to disposal. In addition, the airport is required, through exercise of any authority to regulate land use, deed restrictions, easements or lease terms to prevent future noncompatible development.

### **3. Areas of Uncertainty.**

An airport may be preparing updated noise contours that are likely to change noise levels in the areas surrounding the airport. In that case, FAA interprets 49 USC §47107(c)(2)(A) to permit an airport to retain undeveloped land for noise compatibility purposes temporarily until the new contours are complete. At that point, the parcels will be evaluated based upon the new noise contours. A delay of a determination pending update of the airport's noise contours must be reviewed by the FAA for validity every two years, and may not exceed four years.

### **4. Land Used as Noise Buffer.**

A locally-adopted noise buffer is established when land use jurisdictions adopt noise compatibility guidelines that are more stringent than the federal

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guidelines<sup>13</sup>. An airport may have previously acquired noise land that now falls within a subsequently established local noise buffer area. In this case, the airport should consider the local standards for compatibility when determining future use of the parcels. However, in keeping with the intent of the grant assurance, the airport should encourage compatible development of the land. As with compatible development within a 75 dB contour, the land is considered as no longer needed for noise purposes if the land can reasonably be compatibly developed within the local land use requirements.

### **5. Summary of “No Longer Needed for Noise Compatibility.”**

The flow chart on the following page details the steps that are made to determine if a parcel is no longer needed for noise compatibility.

#### **B. Reserving Adequate Property Rights to Prevent Incompatible Land Use.**

Paragraph (ii) of the grant assurance requires:

The disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport.

To comply with the assurance, the airport must retain sufficient control of the land so that its use will always be compatible with airport operations.

An airport sponsor shall retain adequate property rights including, but not limited to, an adequate easement, deed restriction, covenant or other property right or reservation. This is to ensure the noise land will not be put into incompatible land use or conflict with the airport's use, operation or development.

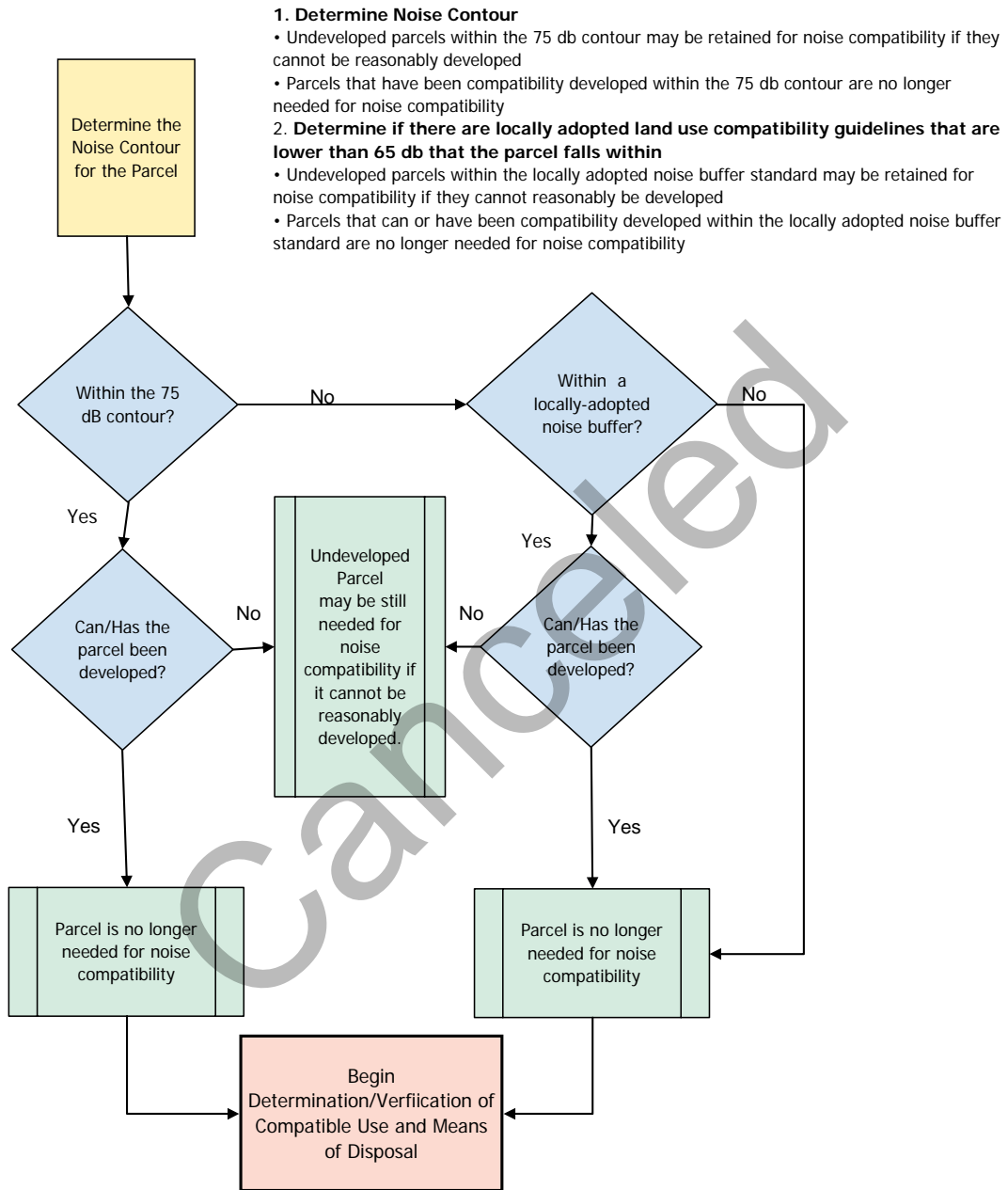
The retained property rights shall be enforceable and recorded in the local public land records. When the airport sells or otherwise transfers title to the property, the airport sponsor shall certify to FAA that the property is adequately restricted to prevent incompatible development or use that might conflict with the airport operations. In the case of a lease, the airport may use provisions in the lease to protect against incompatible land use.

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<sup>13</sup> The FAA has adopted the federal standard, published at 14 CFR Part 150, Table 1 (Attachment A).



## Determining whether a Parcel is Needed for Noise Compatibility\*



\* This flow chart applies prospectively. Land which has been disposed of is subject to repayment in accordance with this guidance.

## Section 4. Disposal of Unneeded Noise Land.

### A. General Guidance for Disposal.

Determining when to dispose of noise land is different from determining that the land is no longer needed for noise compatibility. These general rules will guide the schedule for disposal of noise land.

#### 1. Assembled Disposal Parcels.

In many cases for noise compatibility, an airport will acquire multiple parcels in a noise impacted neighborhood. As these parcels are acquired and the residences are cleared, the land is assembled for conversion to compatible land use. It is unlikely that individual residential lots are feasible candidates for disposal or reuse until most of the residences within a neighborhood are acquired and the parcels are bundled into larger redevelopment parcels.

Once an assembled parcel has been put together, the group of parcels would then be available for disposal.

#### 2. Reviewing Current Market Conditions When Considering Disposal.

Generally, unless an airport is gathering parcels to have a developable larger parcel, airports should not delay the disposal through sale of noise land. It is unreasonable for an airport sponsor to delay disposing of unneeded noise land solely for its financial benefit. An airport must diligently pursue the assemblage of the parcels in order to complete the disposal of noise land as soon as it is practical to do so.

There may be compelling reasons for a short-term delay in disposal by sale, such as a severely depressed real estate market because of a specific geographic circumstance. An example would be a closing by the major employer in the area. That would justify a short-term delay in disposal by sale. In those cases, the airport must provide a market analysis and plan to the FAA, and then schedule a follow-up review to evaluate market conditions.

#### PROTECTING FUTURE OPTIONS

Airports may want to retain land that was acquired as noise land to protect their options for future development or to protect against incompatible development. An airport can still do that. However, if the land is no longer needed for noise purposes, it cannot continue to be held indefinitely as noise land. The airport may choose to lease the land or use some other means of disposal that allows the airport to keep control of the land while still meeting the requirements of Grant Assurance 31.

If the airport is holding the land to assemble a developable parcel, it must pursue acquisition of the parcels that are needed to complete the assemblage in a timely manner.

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## **B. Acceptable Disposal Methods.**

Grant Assurance 31 requires that an airport owner or operator dispose of unneeded noise land at fair market value (FMV) as early as is practical after the determination that the land is unneeded. The federal share of the FMV value of the land (including any increase in FMV) is the disposal proceeds. The proceeds will be placed in an escrow account where the funds can then be used in accordance with current law for either use by the airport for other noise compatibility projects, for use by another airport for noise compatibility projects or returned to the Trust Fund.

Unneeded noise land may also be disposed of by converting the land to AIP-eligible airport development land.

### **1. Current Market Sale at the Highest and Best Use of the Property.**

Parcels may be marketed and sold on the real estate market at its highest and best use of the land for compatible development. Property shall be appraised and the sale will be offered at the appraised FMV of the property.

### **2. Long Term Lease.**

Land leased for long-term noise compatible development is a disposal because the original noise incompatibility has been mitigated with new, long-term development that is noise compatible. If an airport elects to use a long-term lease as a means of disposal, the FMV of the land must be returned at the beginning of the lease, when the disposal takes place.

Long-term ground leases frequently involve a third-party developer who develops real property improvements and then leases them over the term of the lease. The airport retains title to the land and the developer (lessee) holds title to the improvements until the ground lease expires.

For purposes of noise land disposal, ground lease terms of 25 years or greater, including options, are considered "long-term" leases.

Because a long-term ground lease is considered a disposal, the disposal proceeds must be returned in accordance with the grant assurance. However, an airport may not have the funds on hand to repay the federal share of the disposal. To repay the federal share, an airport may choose to issue bonds or other debt. The proceeds from the bond sale are used to repay the federal share and the bond is repaid from the ground lease payments. This is the same as placing a mortgage on a rental property and using the rent to pay the mortgage payment.

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The *FAA Policy and Procedures Concerning the Use of Airport Revenue* (section VII C) requires, “to the extent practicable payment for non-aeronautical facilities and services should be at fair market value,” therefore, the rent must be at FMV.

Example: An airport enters a ground lease with a developer who will build a commercial office complex. The lease is for 30 years with two 10-year extensions that are at the airport’s option. The appraised useful life of the building is 50 years. The ground lease is considered a disposal as the land is encumbered for up to 50 years with a permanent noise-compatible improvement. In such cases, the useful life of the improvement is as important as the term of the lease. That is, the lease term must be sufficient (25 or more years) to secure the financing for the permanent improvement. If the ground lease was for a term less than 25 years, the developer may have difficulty in securing financing to amortize the investment of a permanent structure.

Example: An airport enters into a ground lease with a developer using modular buildings. This is generally not considered a disposal by lease since the structures can be removed, returning the property to its original condition. However, if the lease terms prevent incompatible use for at least 25 years or if other controls (such as rezoning) prevent incompatible use if the modular buildings are removed, the lease may be considered a disposal.

Example: An airport enters into a ground lease with a developer to construct an industrial building with an expected useful life of 25 years. The developer lease is for 15 years with two 10 year renewal options. The lease requires the property and building to be maintained in rentable condition throughout the lease terms. In this example the improvement to the property is a building that is designed to last at least 25 years and this lease would be considered an acceptable disposal.

Example: An airport disposes of 20 acres of noise land by leasing it to a developer for 30 years. The developer will build an office complex and lease space to airport tenants. The FMV of the federal share of the noise land on the effective date of the lease is \$50,000 per acre or \$1 million for the 20 acres. The airport is required to repay the federal share of the noise land promptly through borrowed funds or some other means.

It will take the tenant approximately 12.5 years to repay the \$1 million principal assuming a ground rental of \$80,000 per year, not including the interest that will be incurred. Additional time (or rent) will be required to repay the interest due on the unpaid balance of the principal.

The airport can repay the borrowed funds, including interest, from the ground rent.

### **3. Conversion to AIP-Eligible Airport Development Land.**

Noise land that is no longer needed for noise compatibility may be disposed of through conversion to land that is needed for AIP-eligible Airport Development Land (Development Land). In this case, airport development is defined as development that is depicted as future airport development land on the FAA-approved ALP for projects that are eligible for AIP grant funds.

Unneeded noise land may be part of a runway protection zone (RPZ), needed to protect missed approach surfaces, or for a near-term runway extension or other AIP eligible uses.

When reviewing whether noise land parcels may be needed for Development Land, the airport should consider the future development of the airport and airfield, including that which can reasonably be expected within the next 20 years. The conversion of noise land to Development Land does not require a return of disposal proceeds.

~~If the parcels are immediately adjacent to the RPZ or within the inner perimeter of the Code of Federal Regulations Part 77 horizontal surface (where the horizontal surface and the 20:1 conical surface meet),<sup>14</sup> it may be reasonable to retain the land to ensure the airport's ability to clear obstructions and maintain clear approaches. The airport design standards are defined in FAA Advisory Circular 5300-13, Airport Design.~~

Land may not be disposed of by conversion to Development Land and then shortly after the conversion, used for a non-AIP eligible use. This would appear to be avoiding repayment of the disposal proceeds. Non-AIP eligible development of land that has been disposed of for AIP-eligible development triggers the repayment requirement.

### **4. Exchange of Noise Land for AIP Eligible Airport Development Land.**

Noise land may be exchanged for land that is needed for future AIP-eligible airport development. Appraisals must be made to determine the fair market value of both parcels. If the noise land has a higher value than the land that the airport will receive, then the federal share of the difference in value is treated as disposal proceeds.

Example: An airport has unneeded noise land valued at \$500,000 (80% federal share = \$400,000). An adjacent property owner is willing to exchange land valued at \$350,000 plus \$150,000 in cash needed for a future AIP-eligible runway extension that is shown on the FAA-approved ALP. The airport may exchange the unneeded noise land for the future airport development land.

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<sup>14</sup> Code of Federal Regulations Title 14 Part 77 – Objects Affecting Navigable Airspace, Subchapter 77.25

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Airport Noise Land FMV =	\$500,000
Land to be Exchanged FMV =	<u>\$350,000</u>
Difference in Value =	\$150,000
Federal Share @ 80% =	\$120,000

Therefore, \$120,000 is the Disposal Proceeds.

### **5. Conversion to or Exchange for Ineligible Airport Land**

Keeping the acquired noise land may be more beneficial to the airport than selling the land. Therefore, disposal of unneeded land includes an airport converting land to a non-AIP airport development use.

If an airport sponsor wishes to convert or exchange the noise land for land needed for a project that is not AIP-eligible (such as a revenue-producing public parking lot) then the airport sponsor must obtain a FMV appraisal as described earlier and an amount equal to the Federal share of the appraised FMV is the disposal proceeds and is treated in the same manner as if the land had been sold or leased to a third party.

### **6. Combination of Conversion Methods**

There may be instances when an airport uses a combination of techniques to dispose of noise land. In those cases, contact AAS for guidance on the methods to determine the federal share of disposal proceeds.

Example: An airport relocated non-AIP eligible development to noise land to allow AIP-eligible development to be constructed on the land that was previously occupied by the non-AIP development. The non-AIP eligible development land had been acquired with local funds and was not obligated airport land.

The land vacated by the non-AIP development was then re-used for AIP eligible development.

The value and validity of an exchange may be determined as follows:

1. The current FMV of the noise land is determined.
2. The current FMV of the land previously occupied by non-AIP eligible development is determined. The FMV is valued as raw land for an aeronautical use only, exclusive of any improvements that are on the property.

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3. If the FMV of the noise land exceeds the value of the non-AIP eligible development land, the excess FMV amount is consider disposal proceeds that must be repaid in accordance with the assurance requirements.

The proposed AIP-development must be shown on a current ALP as near-term development.

### **C. Appraisal Requirements**

FAA requires that a sponsor have the disposal parcel appraised for current FMV pending its sale, long-term lease or exchange. Attachment D is a sample scope of work the sponsor may use to solicit acceptable appraisal reports from qualified real property appraisers. The following describes the appraisal requirements for the raw land and property that has been approved for redevelopment by local zoning and land development authorities.

#### **1. Property Sold in Raw Land State.**

If the property has not yet been approved for development by the local land use/development authority, the land is appraised as "raw land" anticipating redevelopment as the highest and best use of the land. The current appraised value of raw land will reflect the market cost of land for subsequent redevelopment to the highest and best use of the land. No subsequent development costs may be deducted from the raw land value.

#### **2. Property Sold Approved for Development.**

If the property has been approved for development (which developers may call the "entitlement stage"), the property is appraised as developable and buildable land. The reasonable costs to obtain development approvals, deemed permitting costs, may be offset against the sales cost.

In no case may the cost offsets lower the value of the land below its appraised raw land value. Excessive development costs do not conform to the FMV standard required by the grant assurance and may not be acceptable to FAA.

Example: An airport has 100 acres that have been approved for development at a highest and best use as industrial property. The costs for permitting to reach this stage are \$50,000. The appraised "approved for development" value of the 100 acres is \$9,000 per acre, or \$900,000 total. The appraised "raw land" value is \$3,000 per acre, or \$300,000 total.

The permitting costs, \$50,000, are deducted from the \$900,000, netting \$850,000 for the sale. The federal government share of the proceeds is taken from the \$850,000.

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Example: An airport has 100 acres, but due to a variety of factors, the costs for permitting to reach this stage are \$650,000. The appraised “approved for development” value of the 100 acres is \$9,000 per acre, or \$900,000. The appraised “raw land” value is \$3,000 per acre, or \$300,000.

The permitting costs, \$650,000, are deducted from the \$900,000, netting \$250,000 for the sale. However, because this is below the raw land value, the federal government share of the proceeds is based on the raw land value of \$300,000.

### **3. Previously Sold Property.**

Land that has previously been disposed of (sold, long term leased or exchanged) is appraised at the historic value of the land as of the date of sale, lease or exchange. The land is appraised at its highest and best use and stage of development when sold or leased. Reasonable development costs may offset against the FMV, although offsets may not reduce the land value below its raw land value as discussed above.

The appraisal must conform to “retrospective” appraisal” standards as described in Attachment D, Sample Appraisal Scope of Work.

This appraised FMV must then be advanced forward to the present date by applying the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers.<sup>15</sup> This updates the federal share from a historic date when payback was due to the current value as required to satisfy the grant assurance.

### **4. Long-Term Leased Land.**

For land that has been leased long-term<sup>16</sup>, the leased land should be appraised as described above for the FMV of property.

On existing leases, where payback has not been made, the property is appraised in the condition that the property was in when the lease term began (which will be either raw land or approved for development). The appraisal needed is a “retrospective” appraisal” as described above. Improvements that were made by the tenant (the lessee) are not factored into the appraisal.

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<sup>15</sup> The applicable Treasury rate and instructions may be found at: <http://www.fms/treas.gov/cvfr/>.

<sup>16</sup> Long-Term is considered to be 25 years or greater for noise land.



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**D. Eligible Disposal Expenses.**

Expenses that may be charged against disposal proceeds are described in the AIP Handbook. Generally, demolition and other direct costs incurred by the airport sponsor to prepare the land for actual sale or long-term lease may be an eligible offset against disposal proceeds.

Canceled

## Section 5. Use of Disposal Proceeds

Costs to hold land pending its disposal and indirect costs are not eligible disposal expenses, and may not be used to offset disposal proceeds. These types of costs include the costs for maintaining the property, such as lawn mowing, guard services, and administrative staff costs. Also costs that have been previously reimbursed in any Government assistance grant or unreimbursed expenses from the original land acquisition grant (such as unreimbursed settlement or condemnation expenses) may not be used to offset disposal proceeds.

Grant Assurance 31 provides that “the part of the proceeds from disposing of the land that is proportional to the Government’s share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project.” The preferred option is that the proceeds be used for other noise compatibility project work, rather than returning the funds to the Trust Fund.

The assurance also requires that this conversion of noise land be done quickly:

“(i) The owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;”

It is critical that the proceeds be used promptly to satisfy the intent of the assurance (earliest practicable time).<sup>17</sup> The mechanics of reusing the proceeds is discussed below.

All noise disposal proceeds will be tracked by FAA in SOAR, the FAA’s grant management system.

### A. Holding Proceeds Prior to Reinvestment

When an airport receives the proceeds from any means of disposal, including whether by sale or bond proceeds from a disposal under a long-term lease, the federal share of the funds will be tracked through the FAA’s System of Airport Reporting (SOAR), the FAA’s grant management system. This method of funds management will ensure proceeds from disposal of noise land are available to

#### Keeping Track of Disposal Proceeds

To allow FAA and an airport to track proceeds from the disposal of noise land, the disposal proceeds will be tracked in the grants management system (SOAR). This is simply a means to be able to track the funds accurately.

<sup>17</sup> This guidance is being issued in final draft form before passage of the upcoming FAA reauthorization bill (Fiscal Years 2008 – 2011). Any changes resulting from the final bill will be incorporated as a revision to this guidance.

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the airport when needed for other noise compatibility projects. The sponsor's financial management procedures must also be auditable and account for the proceeds and confirm their subsequent use in new eligible projects.

There are two ways that the funds can be held until the airport is ready to use them for an airport noise compatibility project. The first method is to have FAA hold the funds. The funds will be categorized as Noise Proceeds funds, and will be issued following the usual grant process. However, because these funds are always available, they can be used regardless of appropriations cycles. Since the preference is to reuse these funds at the airport where the funds were generated, there is no competition from other airports when an airport wishes to use the funds for an approved noise compatibility project on the airport.

The noise land disposal proceeds will not expire the way that an airport's entitlement funds expire. However, in keeping with the assurance requirements, these funds must be used quickly for other noise compatibility work.

Noise disposal proceeds may also be held in a separate dedicated escrow account that secures the funds for disbursement for FAA approved expenditures on eligible projects. This method must be used for any funds that are in excess of the original grant amount. A sample Escrow Account Agreement is provided in Attachment E. Escrow accounts and the escrow agent must meet applicable Federal and state standards and requirements for secure insurable cash accounts.

### **B. Using the Disposal Proceeds for an AIP-eligible Noise Compatibility Project.**

The disposal proceeds may be used for AIP-eligible noise compatibility projects in lieu of AIP grant funds and may be combined with AIP grant funds if there are insufficient disposal proceeds to fund the project.

When using noise land proceeds for an AIP-eligible project that will also have entitlement or discretionary grant funds, the amount of the proceeds must be listed separately on the grant application form, Standard Form 424. The proceeds are a direct offset from the amount of federal funds that would normally be used for the grant. Therefore, the combination of noise land funds and federal grant funds will equal the federal share for the proposed project.

Example: Airport A is planning a \$100,000 eligible AIP project. The federal share at the airport for the project is 80%, or \$80,000. The airport has \$50,000 in noise land proceeds to fund a portion of the project. Therefore, the amount of grant funds will be \$30,000, which combined with the noise proceeds will equal the total federal funding for the project. In order to keep track of the use of noise proceeds, the noise proceeds should be listed on Block 15.e Other, with an explanatory note added:

15. ESTIMATED FUNDING:	
a. Federal	\$ 30,000.00
b. Applicant	
c. State	Source of sponsor share \$20,000 will be determined by the sponsor, but may not be from proceeds from disposal of noise land
d. Local	
e. Other	\$ 50,000.00* * Proceeds from Disposal of Noise Land
f. Program Income	
g. TOTAL	\$100,000.00

Example: Airport A is planning a \$100,000 eligible AIP project. The federal share at the airport for the project is 80%, or \$80,000. The airport has more than \$80,000 in noise land proceeds that may be used to fund the federal share of the project. In order to keep track of the use of noise proceeds, the noise proceeds should be listed on Block 15.e Other, with an explanatory note added:

15. ESTIMATED FUNDING:	
a. Federal	\$ 0.00
b. Applicant	
c. State	Source of sponsor share (\$20,000.00) will be determined by the sponsor, but may not be from proceeds from disposal of noise land
d. Local	
e. Other	\$ 80,000.00* * Proceeds from Disposal of Noise Land
f. Program Income	
g. TOTAL	\$100,000.00

An accounting code for noise disposal proceeds will be provided to FAA offices to track the proceeds.

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**C. Transferring Disposal Proceeds to Another Airport.**

If disposal proceeds from noise land have not or cannot be reinvested in an AIP eligible noise project at the airport, the federal share of the FMV of the proceeds may be transferred with FAA approval, to another airport noise project at another airport. This is similar to current AIP policy on transferring entitlements.

Cancelled

## **Section 6. FAA Oversight of Noise Land**

The following steps are required to ensure sponsor disposal of airport noise land is in accordance with 49 USC §47107(c)(2)(A).

FAA will review and accept the Noise Land Inventory and the Reuse Plan. FAA will also review and approve the changes that are made to the Airport Layout Plan and the Exhibit "A" Airport Property Map to incorporate the accepted Noise Inventory and Reuse Plan.

The Region may delegate the FAA review and concurrence (or non-concurrence) to the Airports District Office.

### **A. FAA Review of Noise Land Inventory.**

The FAA reviewer must first confirm that all AIP-funded noise land parcels are shown on the Noise Land Inventory (see Attachment B for requirements). The airport must provide a list of the parcels and their associated AIP grants when the Noise Land Inventory is provided.

### **B. FAA Review of the Reuse Plan.**

FAA must review the Reuse Plan and accept it provided that the proposed disposal of the noise land parcels meets the statutory criteria. When reviewing the Plan, the FAA reviewer must assess whether parcels being retained by the sponsor are still needed for noise compatibility. This review is based on the most recent available current and future noise contours for the airport as defined in section 3.A.(3) above.

The next step is the review of the land that is a proposed Conversion to AIP-Eligible Airport Development Land. Accepting a re-characterization of noise land to AIP-eligible development land must be based on the most recent FAA-approved forecasts for the airport, as well as the FAA-approved ALP. FAA may accept such a re-characterization of noise lands only for development projects that are AIP-eligible. Noise land that is converted to airport land for non-AIP eligible projects or for projects that are not supported by the forecast is treated as a Conversion to Ineligible Airport Land.

Following that, FAA must review and accept the proposed means of disposal - by sale, long term lease or exchange (or not accept the plan and return it to the airport for revision).

The airport will generally determine the means of disposal. However, the FAA review must ensure:

- Adequate property rights (easement/deed restrictions) are retained by the airport to prevent incompatible use or development of the land disposed.

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- Sale, lease or exchange of the unneeded land will be at the Fair Market Value, and;
- Disposal proceeds will be used for an FAA-approved AIP-eligible noise compatibility project or returned to the Trust Fund.
- Sponsors may dispose of noise land by long-term lease provided the sponsor arranges to repay the federal share of the current FMV of the property at the time it enters into the lease as a lump sum. Repayment of the federal share over time is not allowed.

### **C. Environmental Review.**

FAA's funding and approval to amend ALPs to acquire noise land and funding and/or approval to amend ALPs to depict Conversion to AIP-Eligible Airport Development Land, ~~Conversion to or Exchange for ineligible~~ **AIP-eligible** Airport Land, or Conversion to or Exchange for Ineligible Airport Land must conform to FAA Order 5050.4B, National Environmental Policy Act Implementing Instructions for Airport Actions, and other applicable requirements. Other FAA actions, such as acceptance of Reuse Plans and Noise Land Inventories, including acceptance of noise land disposals, do not involve discretionary FAA action subject to NEPA. These are discussed in more detail below.

#### **1. Prior Acquisition Approval**

FAA approval to fund and amend ALPs and associated drawings to depict acquisition of noise land is subject to NEPA and is normally categorically excluded under FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 307d. Alternatively, these actions may be addressed as part of an environmental assessment or impact statement.

#### **2. Noise Land Inventory and Reuse Plan**

The FAA's role in reviewing and accepting an airport sponsor's Noise Land Inventory and Reuse Plan is limited to assuring compliance with the statutory criteria for disposal. As such, FAA's actions are administrative, not discretionary in nature. Therefore, the application of NEPA is not triggered.

#### **3. Disposal of Unneeded Noise Land**

The disposal of noise land by airport sponsors does not involve Federal action subject to NEPA or other federal environmental laws, regulations, or executive order except in situations where FAA approves a grant for, or amends an ALP to depict, new airport or aeronautical uses<sup>18</sup> of these noise lands.

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<sup>18</sup> Airspace reviews, including those under 14 CFR Part 77 associated with disposal of noise land, are advisory actions per FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 301.

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Airport sponsors are required to dispose of noise lands as soon as practicable when they are no longer needed for noise compatibility purposes (subject to reservation of adequate property rights to preclude incompatible land use) under 49 USC §47107(c)(2)(A). FAA has no discretion or practical control over the disposal and reuse of noise land under these circumstances. The FAA approval to revise ALPs and associated drawings to reflect the disposal of unneeded noise land in accordance with section 47107(c)(2)(A) is merely ministerial in nature. NEPA would not help inform any discretionary decision on the part of the FAA when sponsors are engaged in the mandatory disposal of noise lands for uses unrelated to their operation of the airport.

The FAA's role in reviewing and accepting an airport sponsor's Noise Land Inventory and Reuse Plans is limited to assuring compliance with the statutory criteria for disposal. As such, FAA's actions are administrative, not discretionary in nature. Therefore, the application of NEPA is not triggered.

#### **4. Conversion or Exchange of Unneeded Noise Land for Airport Development Land.**

Converting noise land to airport development land or the exchange of noise land for airport development land requires FAA approval to depict the changes to the ALP and the Airport Property Map, including any necessary airspace or other restrictions on use of disposed unneeded land. FAA personnel must consult FAA Order 5050.4B to determine the level of environmental review under NEPA required for these projects. The level of review will depend in each case upon the specific airport or aeronautical purpose for which the sponsor proposes to use the noise land.

Where land is converted or exchanged for land needed for airport development not eligible under the AIP, the sponsor's cost of the environmental review is not eligible for grant funding nor may it be deducted from the appraised FMV of the unneeded noise land.

#### **5. FAA Acceptance Letter.**

Upon completing a satisfactory review of the Noise Land Inventory and Reuse Plan, the FAA reviewing office will issue an FAA acceptance letter to the airport sponsor accepting the submitted documentation as meeting FAA standards (see grant condition). The acceptance letter must also require the sponsor to keep the Noise Land Inventory and Reuse Plan current by revising and resubmitting the Noise Land Inventory for any new acquisitions, disposals, or other changes to the Inventory or Plan.

Depending on the size and scope of its noise compatibility programs and projects, the airport sponsor may maintain its Noise Land Inventory Map on its existing Geographic Information System (GIS), if the airport has GIS, and submit map updates on appropriate digital media or via web based documentation. The



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FAA will verify the approved Inventory and Plan periodically on visits and field inspections at the airport.

Cancelled

## Section 7. Compliance and Reporting

The 11 airports that were included in the 2005 OIG audit report were required to submit their Noise Land Inventory by April 2007. The Reuse Plan must be submitted to FAA by ~~June 2008~~ August 2008.

The 11 airports are:

- Bellingham International Airport
- Charlotte/Douglas International Airport
- Cincinnati/Northern Kentucky International Airport
- Detroit Metropolitan Wayne County Airport
- Las Vegas McCarran International Airport
- Palm Beach International Airport
- Phoenix Sky Harbor International Airport
- Reno-Tahoe International Airport
- Seattle-Tacoma International Airport
- Toledo Express Airport
- Tucson International Airport

Other airports that have noise land grants will complete their Reuse Plan by ~~August~~ October 2009. The Noise Land Inventory will be completed prior to the Reuse Plan and will be agreed upon between the FAA and the individual airport.

For grants issued in FY 2006 or later, Noise Land Inventories and Reuse Plans must be completed or updated by project completion, in accordance with the grant special condition.

The detailed schedule for this work is as follows:

- Quarterly Reporting  
Will continue on audited airports.
- August 2008

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Reuse Plans must be completed and submitted to region or ADO for the 11 airports. (Noise land inventories were due April 2007).

- March 2009

FAA Review of Reuse Plans for 11 airports completed. For the remaining airports, regions and ADOs should have completed a preliminary review of the adequacy of the airports' recordkeeping for noise land parcels.

- October 2009

Noise Land Inventory and Reuse Plans for remaining airports submitted to FAA.

- June 2010

Review of Reuse Plans for remaining airports completed.

Cancelled

## Attachment A: Land Use Compatibility

**TABLE 1. LAND USE COMPATIBILITY WITH YEARLY DAY-NIGHT  
AVERAGE SOUND LEVELS**

Land Use	Yearly Day-Night Average Sound Level (L <sub>dn</sub> ) in decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
<b>Residential</b>						
Residential, other than mobile homes and transient lodgings	YES	NO (1)	NO (1)	NO	NO	NO
Mobile home parks	YES	NO	NO	NO	NO	NO
Transient lodgings	YES	NO (1)	NO (1)	NO (1)	NO	NO
<b>Public Use</b>						
Schools	YES	NO (1)	NO (1)	NO	NO	NO
Hospitals and nursing homes	YES	25	30	NO	NO	NO
Churches, auditoriums, and concert halls	YES	25	30	NO	NO	NO
Government services	YES	YES	25	30	NO	NO
Transportation	YES	YES	YES (2)	YES (3)	YES (4)	YES (4)
Parking	YES	YES	YES (2)	YES (3)	YES (4)	NO
<b>Commercial Use</b>						
Offices, business and professional	YES	YES	25	30	NO	NO
Wholesale and retail- building materials, hardware and farm equipment	YES	YES	YES (2)	YES (3)	YES (4)	NO
Retail trade-general	YES	YES	25	30	NO	NO
Utilities	YES	YES	YES (2)	YES (3)	YES (4)	NO
Communication	YES	YES	25	30	NO	NO
<b>Manufacturing and Production</b>						
Manufacturing, general	YES	YES	YES (2)	YES (3)	YES (4)	NO
Photographic and optical	YES	YES	25	30	NO	NO
Agriculture (except livestock) and forestry	YES	YES (6)	YES (7)	YES (8)	YES (8)	YES (8)
Livestock farming and breeding	YES	YES (6)	YES (7)	NO	NO	NO
Mining and fishing, resource production and extraction	YES	YES	YES	YES	YES	YES
<b>Recreational</b>						
Outdoor sports arenas and spectator sports	YES	YES (5)	YES (5)	NO	NO	NO
Outdoor music shells, amphitheaters	YES	NO	NO	NO	NO	NO
Nature exhibits and zoos	YES	YES	NO	NO	NO	NO
Amusements, parks, resorts, and camps	YES	YES	YES	NO	NO	NO
Golf courses, riding stables and water recreation	YES	YES	25	30	NO	NO

Numbers in parenthesis refer to notes; see continuation of Table 1 for notes and key.

NOTE: The designations in this table do not constitute a Federal determination that any use of land is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with local land use authorities. FAA determinations under Part 150 are guidelines and are not intended to substitute for land uses determined to be suitable by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

**TABLE 1. LAND USE COMPATIBILITY WITH YEARLY DAY-NIGHT  
AVERAGE SOUND LEVELS**

<b>Key to Table 1</b>	
YES	Land Use and related structures compatible without restrictions.
NO	Land Use and related structures are not compatible and should be prohibited.
NLR	Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35	Land use and related structures generally compatible; measures to achieve NLR of 25, 30 or 35 dB must be incorporated into design and construction of structure.
<b>Notes for Table 1</b>	
(1)	Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.
(2)	Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(3)	Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(4)	Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(5)	Land use compatible provided special sound reinforcement systems are installed.
(6)	Residential buildings require an NLR of 25.
(7)	Residential buildings require an NLR of 30.
(8)	Residential buildings not permitted.
<b>(End of Table 1)</b>	

Source: FAR Part 150 Airport Noise Compatibility Planning, Appendix A, Table 1.

## Attachment B: Requirements for Noise Land Inventory

<p><b>All noise land parcels must be shown on the Noise Land Inventory and referred back to the Exhibit "A" Airport Property Map. The following information must be included for each parcel.</b></p>
<p>1. Parcel Number</p>
<p>2. AIP Grant Number under which parcel was acquired, and Federal Share for the AIP grant (generally 80% for large or medium hub airports, 90% or 95% for all others)</p>
<p>3. Current accepted noise contours for the airport. (These contours may be from the airport sponsor's most current documentation that meets FAA map preparation requirements. For example, FAA-accepted Part 150 Noise Exposure Maps (NEMs), NEPA project contours from an FAA-issued EIS, or airport-generated annual contours used to meet state or local reporting requirements.)</p>
<p>4. Current Use (for example - vacant, being used for airport materials storage, etc) and Proposed Categorization (for example, to be disposed of, to be retained for noise compatibility, and for parcels that were previously disposed of, list "Disposed of by {sale, lease, exchange – as appropriate} on {date of disposal}")</p>
<p>5. Date of FAA acceptance of the Current and Proposed Parcel Use (for new approvals, this will be the date of the letter to the sponsor accepting the Reuse Plan)</p>
<p>6. A current aerial photograph identifying all parcels. For individual parcels with significant development or other special circumstances, ground level photographs should also be provided</p>
<p>7. Map Reference for the Parcel</p>
<p>8. APN (Assessor's Parcel Number) and Sale Recording Information (Deed book and page number, etc) for sold land</p>

Cancelled

## Attachment C: Requirements for Reuse Plan

### A. Noise Land Parcels that are still needed for Noise Compatibility

1. Identify the acquired noise land parcels to be retained by Exhibit A reference.
2. Provide the local land records reference (deed recordation data) for the source acquisition parcels.
3. Provide the grant number for the acquired land parcels.
4. Identify the current noise contour and use of the property.
5. Identify the FAA approval date for land that is still needed for noise compatibility.
6. Given no current feasible aeronautical use or current market for disposal, identify any land to be held as noise mitigation land pending disposal or retention.<sup>19</sup> Clearly identify the date when the retention is to be reviewed again. Noise land shall be reviewed at least once every five years, or whenever there is a change to the approved noise contours, Reuse Plan, master plan,

<sup>19</sup> For FAA acceptance criteria, see Airport Compliance, Order 5190.6 at paragraph 4-17(e), *Adherence to Airport Layout Plan and Airport Property Map, Land Acquired for Noise Compatibility*.



## Attachment C: Requirements for Reuse Plan

(Continued)

### **B. Unneeded Noise Land To Be Disposed Through Market Sale, Long Term Lease or Exchanged**

1. Identify the disposal parcels by Exhibit A reference. Provide the local land records reference (deed recordation data) for the acquisition parcels. Provide the grant number and total grant amount for the acquired land parcels.

2. Identify the marketable land parcels (Disposal Parcels) that are assembled to be sold or leased long term.

3. For disposal parcels that are not yet fully assembled for sale/lease, identify the additional noise land or other land acquisition planned to complete the disposal parcel. Indicate date of expected completion for sale.

4. Identify the current zoning and land use designation and the proposed or anticipated land use for disposal parcel (best indication available) from local regional land use plans.

5. Identify the property rights retained to restrict the disposal property to compatible land use. Provide the recordation data for the restrictions, e.g. easement, covenants or deed restrictions.

6. Identify the proposed disposal method: Market Sale, Long term Lease, Exchange

## Attachment C: Requirements for Reuse Plan

(Continued)

7. While disposal is pending, identify the current use of the property, i.e. vacant, use under interim lease, etc. For some parcels such as those with significant existing development, ground level photographs should be provided.

8. Identify the appraised value and date of appraisal or expected date when appraisals will be made.

9. When disposed of, identify the FMV of federal share for disposal of by sale, lease or exchange. Indicate the date of disposal and current owner and use of the property, the recordation data on the transaction (APN number, recording document number or book and page number).

10. Identify the eligible disposal expenses that are proposed to offset against disposal proceeds.

11. Identify how the net disposal proceeds will be held.

## Attachment C: Requirements for Reuse Plan

(Continued)

### **C. Noise Land Parcels that will be disposed of through conversion to AIP-eligible land**

1. Identify the acquired noise land parcels to be converted by Exhibit A reference.
2. Provide the local land records reference (deed recordation data) for the source acquisition parcels.
3. Provide the grant number for the acquired land parcels.
4. Identify the current noise contour and use of the property.
5. Identify the eligible airport development use for the land parcel(s).
6. Provide the date (current, past or proposed) for the conversion.<sup>20</sup>
7. Identify the FAA approval date to retain the land. Note any ALP change and approval date.
8. For any converted land that is currently leased, identify lease terms (period of lease, options, ground lease rate, escalator adjustments) and proposed application of lease proceeds as airport revenue.
9. Provide the environmental actions needed for the conversion to AIP-eligible land.

<sup>20</sup> The AIP Handbook describes eligible airport development land uses. See paragraphs 701 and 705.

## Attachment D: Appraisal Scope of Work Statement

### Disposal of Unneeded Noise Land

The property to be appraised is roughly X acres of land located at \_\_\_\_\_ . Attached are the legal description and a copy of the plat of the property (and if applicable a copy of the proposed lease). The airport sponsor currently owns (or had owned or leased) this property in fee and the real property will be conveyed or leased subject to the identified retained real property rights and encumbrances (see assumptions and limiting conditions).

This appraisal of the property is subject to the following scope of work, intended use, intended user, definition of market value, certifications and statement of assumptions and limiting conditions. The appraiser may expand the scope of work to include any additional research or analysis determined necessary for a credible appraisal of the fair market value of the subject property and to meet the identified standards and requirements.

**SCOPE OF WORK:** The appraiser will provide an appraisal and appraisal report in accordance with Uniform Standards of Professional Appraisal Practice and FAA requirements. The appraiser must, at a minimum:

- Inspect the neighborhood and local area noting utility and transportation infrastructure to the extent required for the highest and best use of the property.
- Adequately describe the physical characteristics of the property being appraised including known and observed encumbrances, title information, location, zoning (current, proposed and probability of rezoning), present use, stage of development, concurrency with local and regional land use plans, an analysis and supported determination of highest and best use, and adequate sales history of the property (e.g. when acquired, amount paid, etc).
- Adequately describe and analyze all relevant market data and activity as of the date of value.
- Inspect, research, analyze, and verify comparable sales with public sources and with a party to the transaction, buyer, seller, or broker or attorney.
- Appraise the current fair market value of the property, as defined below. If the property is to be appraised based on a date in the past, the “retrospective appraisal” specification should be met by

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the appraiser (see below under Assumptions and Limiting Conditions).

- Analyze current or proposed leases, if any, and prepare an estimate of the leased fee value of the property. Explain any variance between the leased fee and the fee simple market value of the property, if any.
- Report the appraiser's analysis, opinions, and conclusions in the appraisal report. The appraisal report must include the plat or a sketch of the property and provide the location and dimensions of any improvements. The appraisal report shall include adequate photographs of the subject property and of the comparable sales and provide location maps of the property and comparable sales. The appraisal report shall contain an adequate description of the physical characteristics of the property being appraised including items identified as personal property, a statement of the known and observed encumbrances, title information, location, zoning (current and proposed), present use, stage of development, concurrency with local and regional land use plans, an analysis of highest and best use, and adequate sales history of the property (e.g. when acquired, amount paid, etc).

**INTENDED USE:** The intended use of this appraisal is to provide an appraised current fair market value (or as of the date of value specified for a retrospective appraised fair market value) of the fee simple and leased fee interest, as is applicable.

**INTENDED USER:** The intended user of this appraisal report is the airport sponsor and the FAA. The airport sponsor and FAA will rely on the appraisal and appraisal report to document the current fair market value of the real property.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest;
- A reasonable time is allowed for exposure in the open market;

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- Payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**CERTIFICATION:** The appraiser shall provide a certification consistent with USPAP requirements. Modifications or deletions to the certifications are not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization are permitted.

**ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser shall state all relevant assumptions and limiting conditions necessary. In addition the (airport sponsor) may provide other assumptions and conditions that may be required for the particular appraisal assignment, such as:

- The data search requirements and parameters that may be required for the assignment.
- The (airport sponsor) will advise and provide the appraiser the legal description of the airports retained property rights (recorded or to be recorded), e.g. easements, deed restrictions or other restrictions and encumbrances on the property to protect and enhance airport operations and to acknowledge and protect over flight of the property. The appraiser shall appraise the market value of the property subject to the airport retention of the described property rights.
- Identification of the technology requirements, including approaches to value, to be used to analyze the data.
- Needed soil studies, potential zoning changes, etc.
- As applicable include any information on property contamination to be provided and considered by the appraiser in making the appraisal.
- Retrospective Appraisal Requirements: If a value for a date or event in the past is required (e.g. as of past lease date or disposal date) the following specification should be inserted into the scope of work:

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- The date of value for this appraisal is (specific date in the past). This appraisal assignment is for a “retrospective” appraisal of the fair market value of the fee simple interest in the property as of (specific date in the past). In conformance to USPAP<sup>21</sup>, market data subsequent to this effective date may be considered in developing a retrospective value as a confirmation of trends that would reasonably be considered by a buyer or seller as of the date of value. For this retrospective appraisal, the appraiser will determine a logical cut-off date after which subsequent market data does not reflect the relevant market as of the date of value. The appraiser shall study and report the market conditions as of the date of value of the appraisal to support this determination of the cut-off date for consideration of market data. In the absence of evidence in the market that data subsequent to the effective date is consistent with and confirmed market expectations as of the date of value, the date of value of (specific date in the past) may be used as the cut-off date for data considered by the appraiser

Cancelled

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<sup>21</sup> Statement of Appraisal Standards #3, Retrospective Value Opinions, 2006 Uniform Standards of Appraisal Practice, Appraisal Foundation

## Attachment E: Sample Escrow Account

### ESCROW AGREEMENT

This ESCROW AGREEMENT (the “Escrow Agreement”) is made by and among —

(1) The UNITED STATES OF AMERICA, acting by and through the Federal Aviation Administration of the United States Department of Transportation (the “FAA”);

(3) [AIRPORT SPONSOR], located in the County [or Parish] of \_\_\_\_\_ in the State [or Commonwealth] of \_\_\_\_\_ (the “Sponsor”); and

(2) [AIRPORT], located in the County [or Parish] of \_\_\_\_\_ in the State [or Commonwealth] of \_\_\_\_\_ (the “Airport”);

(4) [BANK], acting as Escrow Agent by and through its duly authorized representative located in the County [or Parish] of \_\_\_\_\_ in the State [or Commonwealth] of \_\_\_\_\_ (the “Agent”);

(collectively, the “Parties”).

### RECITALS

**WHEREAS**, the [BANK] is a financial institution regulated by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Controller of the Currency, and the Escrow Agent is the Trust Department of [BANK]; and

**WHEREAS**, the Escrow Agent has consented to act as escrow depository, and to receive and hold certain funds (the “Federal Share”, as defined below) to be deposited in escrow in an Escrow Account to be established under terms and conditions set forth in this Escrow Agreement (the “Escrow Account”) and to make disbursements from the Escrow Account only in accordance with such terms and conditions; and

**WHEREAS**, Sponsor has executed the FAA Grant Agreement or Agreements identified in **Schedule A**, as appended, and as may be from time to time amended by agreement of the Parties; and

**WHEREAS**, Sponsor has received financial assistance for the benefit of Airport under the Airport Improvement Program pursuant to such Grant Agreement or Agreements for acquiring land for a noise compatibility purpose; and



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**WHEREAS**, each such Grant Agreement contains the following assurance made by the Sponsor to the Secretary of Transportation (acting through the FAA), as required by section 47107(c)(2)(A) of title 49, United States Code —

- (A) if the land was or will be acquired for a noise compatibility purpose—
- (i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;
  - (ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and
  - (iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land [in this Escrow Agreement, the “Federal Share”] will be ... as the Secretary prescribes, reinvested in an approved noise compatibility project, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program; and

**WHEREAS**, Airport or Sponsor has acquired certain land with the proceeds of such financial assistance for a noise compatibility purpose, as described in **Schedule B**, as appended, and as may be from time to time amended by agreement of the Parties; and

Note: Schedule B identifies the acquired land according to paragraphs 1,2, 7, and 8 of the Noise Land Inventory shown as Attachment B to the document “Management of Acquired Noise Land: Inventory – Reuse – Disposal” (insert complete document reference.)

**WHEREAS**, Airport or Sponsor has disposed of such land in accordance with section 47107(c)(2)(A) of title 49, United States Code, as shown in **Schedule C**, as appended, and as may be from time to time amended by agreement of the Parties; and

Note: Schedule C should identify the sale date, buyer, and total proceeds for each parcel, with correlation to the information on Schedule B.

**WHEREAS**, the Secretary of Transportation, acting through the FAA, has decided, under section 47107(c)(2)(A)(iii) of title 49, United States Code, that the Federal Share shall be reinvested in an approved noise compatibility project; and

**WHEREAS**, the Parties intend to execute this Escrow Agreement to the effect that the Federal Share shall be held in the Escrow Account pending such reinvestment in an approved noise compatibility project; and

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**WHEREAS**, the Parties intend to execute this Agreement to the effect that the Federal Share shall be paid directly to the Escrow Agent for deposit in the Escrow Account upon closing the disposition of land described in Schedule B; and.

**WHEREAS**, the Parties intend to execute this Agreement to the effect that funds shall be disbursed from the Escrow Account only at the direction of the FAA and only for expenditure in and for a noise compatibility program approved or to be approved by the FAA.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows —

### **1. ESCROW AGENT APPOINTMENT.**

The parties hereby appoint Escrow Agent to serve as escrow holder, and Escrow Agent hereby accepts such appointment, pursuant to and subject to this Escrow Agreement.

### **2. NOTICES AND DEPOSITS.**

2.1 The Sponsor agrees to provide to the Parties complete, accurate, and current executed copies of Schedules B and C, by amending from time to time the appended Schedules B and C, respectively. The other Parties shall affirmatively accept or reject any such amendment.

2.2 In particular, the Sponsor agrees to provide to the Parties an accurate and complete Schedule C showing the sale date, location of sale, name of buyer, and amount of total proceeds for each parcel that is identified in schedule B and is to be sold, with correlation to the information on Schedule B, not later than five (5) days before the closing date of any such sale.

2.3 At the closing of the disposition of any real property identified in Schedule C, the Sponsor shall cause the Federal Share to be paid immediately and directly to the Escrow Agent for credit to the Escrow Account.

### **3. ESCROW ACCOUNT INVESTMENT.**

The Escrow Agent shall hold the Escrow Account and shall invest and reinvest any amount in the Escrow Account only in securities issued by the Department of the Treasury of the United States Government. Interest earned by such investments shall be credited only to the Escrow Account. The proceeds of liquidating such investments shall be immediately credited to the Escrow Account. Investments shall be liquidated prior to maturity only when immediately required to fund a disbursement, or to fund a reinvestment at a greater yield.

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#### **4. ESCROW ACCOUNT DISBURSEMENTS.**

The Escrow Agent shall retain the Escrow Account and shall make disbursements only in accordance with the following provisions —

4.1 The Escrow Agent shall disburse all or any part of the balance in the Escrow Account only at the written direction of the FAA, and in the manner provided in such direction.

4.2 All such disbursements shall be made by electronic funds transfer or official check issued immediately upon liquidation of an Escrow Account investment, payable to the account of the Sponsor, unless otherwise directed in writing by the FAA.

#### **5. ESCROW AGENT'S COMPENSATION.**

The Escrow Agent's compensation shall be \_\_\_\_\_, exclusively, and shall be paid \_\_\_\_\_ (specify amount or rate, times, and sources).

Note: Normally a bank would receive a percentage of the invested assets as a yearly fee ranging from 0.25% - 1.5% of the amount in the account, with the percentage fee decreasing as the amount in the account increases. As an alternative to a percent of the account, the bank may also be paid a flat fee to accept the account (generally \$25,000) and a set fee (approximately \$15,000) per year to maintain the account.

#### **6. TERM.**

This Escrow Agreement shall take effect on the Effective Date defined in paragraph 7.9, below, and shall remain in effect until its termination is directed by the FAA, or the conclusion of the period of five (5) years commencing on the Effective Date, whichever occurs first.

#### **7. MISCELLANEOUS.**

**7.1 Severability.** If any one or more provisions of this Escrow Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Escrow Agreement, and this Escrow Agreement shall be construed as if it had never contained such invalid, illegal, or unenforceable provision.

**7.2 Applicable law.** This Escrow Agreement shall be governed by and construed under the laws of the [State, Commonwealth] of \_\_\_\_\_.

**7.3 Notice and Direction.** Except as provided in paragraph 7.4, below, any of the Parties shall transmit any notice or direction under this Escrow Agreement to any other Party by certified mail, addressed as follows to —

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- (a) The FAA:
  
- (b) The Sponsor:
  
- (c) The Airport:
  
- (d) The Escrow Agent:

**7.4 Facsimile.** This Escrow Agreement, and any notices or directions as to disbursements under paragraph four (4) may be delivered to the Escrow Agent via facsimile transmission.

**7.5 Amendment.** This Escrow Agreement may be altered, modified, or amended only in writing agreed to by all the Parties. In no event shall any Party have the power to amend this Escrow Agreement without the concurrence of all the other Parties.

**7.6 Additional Acts and Documents.** The Parties agree to execute whatever documents and to perform whatever acts may reasonably be required to fulfill the requirements or intents of this Escrow Agreement.

**7.7 No Presumption Against Interest.** This Escrow Agreement has been negotiated, drafted, edited, and reviewed by each of the Parties, and therefore no provision arising directly or indirectly from this Escrow Agreement shall be construed against any Party as having been drafted by that Party.

**7.8 Counterparts.** This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same instrument.

**7.9 Effective date.** This Escrow Agreement shall take effect on the date on which the Escrow Agent first receives an Escrow Amount.

Note: This effective date will depend on the specific details negotiated with the bank handling the account.

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**EXECUTED** by the duly authorized representatives of the Parties on the dates set forth below.

**The United States of America**, by \_\_\_\_\_ (typed name)

I affirm that I am duly authorized to execute this Escrow Agreement on behalf of my principal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**The Sponsor**, by \_\_\_\_\_ (typed name)

I affirm that I am duly authorized to execute this Escrow Agreement on behalf of my principal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**The Airport**, by \_\_\_\_\_ (typed name)

I affirm that I am duly authorized to execute this Escrow Agreement on behalf of my principal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**The Escrow Agent**, by \_\_\_\_\_ (typed name)

I affirm that I am duly authorized to execute this Escrow Agreement on behalf of my principal.

\_\_\_\_\_

1/30/2008

Signature

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Date

Canceled