

CHAPTER 6. ANALYSIS AND ENFORCEMENT

Section 1. Analysis of Leases and Use Agreements

6-1. GENERAL. In analyzing leases and use agreements, it is important to be aware of the interrelationship of material covered in other portions of this Handbook, such as that contained in Chapter 3 on Exclusive Rights; Chapter 4, Section 4, Availability on Fair and Reasonable Terms, and Chapter 4, Section 5, Use of Airport Property. Principles discussed therein have a direct bearing on the material contained in this Section.

6-2. BASIC AIRPORT RELATIONSHIPS. The operation of a public airport involve complex relationships that are frequently misunderstood. One can safely land an aircraft on the airport, but unless there are services and conveniences available to attract and encourage flight activity, the investment may be hard to justify. In most instances the public agency owning the airport must turn to private enterprise to provide those services which will make the use of the airport by the public attractive and convenient.

a. Rights Granted by Contract. Airport use agreements usually reflect a grant of three rights or privileges for an appropriate consideration:

(1) The right for the licensee or tenant to use the landing area and public airport facilities in common with others so authorized.

(2) The right to occupy as a tenant and to use exclusively certain designated premises.

(3) The commercial privilege or the franchise right to offer goods and services to the public who use the airport.

b. Consideration for Rights Granted. The basic obligation of the public airport owner is to make available to the public landing and parking areas. However, a charge or fee may be imposed on users in order to recover the costs of providing these facilities. The charge may be a landing fee (which is similar to the toll charge on a highway, bridge, or tunnel) or an indirect charge. Quite frequently the airport owner recovers this use charge indirectly as part of the consideration received from commercial tenant operators who provide direct services to users of the public areas. It may, for example, take the form of a gallonage fee in which case fuel consumption is regarded as a measure of relative usage or benefit derived from the availability of the public landing area. It may also take the form of a monthly flat charge or a variable charge using the volume of business—rather than fuel gallon-

age—as the yardstick of benefit derived. In addition to these use charges there is normally an intent to recover some element of rent for the occupancy of specific premises referred to in paragraph a(2) above and also some element of a business franchise fee referred to in paragraph a(3) above. The latter is justified on the basis that, having invested substantial public funds in the capital airport plant, the public owner has thereby created a business opportunity for aviation services which otherwise would not exist.

c. Operator/Manager Agreements. Commercial airport operator agreements become still more complex when the owner, for various reasons, chooses to rely on one of his commercial licensees or tenants to carry out his own obligations with respect to the airport. The airport owner may contract with a commercial tenant to perform all or part of the airfield maintenance. He may delegate to the tenant the responsibility to collect landing fees, publish NOTAMS on his behalf, or even assign to him the full authority of an airport manager. It is highly recommended that the FBO responsibilities and obligations be in a separate agreement from the airport managerial responsibilities.

When all of these relationships are incorporated in a simple agreement granting specified rights for a specified consideration, it becomes difficult to evaluate. For example, an airport owner may grant general FBO rights to an individual for \$100 per month. An analysis, in the light of this discussion, however, may reveal that the true intent of the agreement was that the lessee also would perform certain maintenance worth \$200 per month to the owner. The total consideration agreed to was \$300 of which \$100 is for rent for the building space occupied, \$100 for landing fees and \$100 for a franchise fee. After deduction of the \$200 credit for maintenance performed, the monthly agreement was \$100. From this illustration, it is apparent that the intended relationship is far more complex than that expressed.

6-3. REVIEW OF LEASES AND USE AGREEMENTS. The FAA should not solicit or retain copies of all lease agreements. However, a compliance inspection should include sufficient discussion and review of the relationships existing at the airport to understand the rights granted for the use of public airport property. Where there is any doubt as to the nature of the arrangements, a review of the actual documents (contracts, leases, permits, etc.) should be made.

a. Scope of FAA Interest in Leases.

(1) As part of spot surveillance and compliance inspections, or when requested by an airport owner, FAA will review lease agreements. This review will be for the following purposes:

(2) To determine whether such arrangements have the effect of granting or denying rights to use airport facilities contrary to the requirements of law and applicable obligations to the Government. The review is also intended to ensure that the airport owner does not surrender by contract his capability to sufficiently control the airport in order to carry out his commitments to the Government.

(3) 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 owner's ability to meet his obligations to the Government.

b. Form of Lease or Agreement. The type of document or written instrument used to grant airport privileges is the sole responsibility of the airport owner. In reviewing such documents, FAA personnel should concentrate on determining the nature of the arrangements established.

c. Term of Agreement.

(1) FMV for any lease of nonaeronautical revenue production airport property transferred to under the Surplus Property Act of 1944, as amended, must be established. Appraisals as discussed in paragraph 7-8d(3) is one acceptable method of establishing FMV. However, the FMV requirement does not apply when the land involved was owned in fee by the airport owner, leased to the Federal Government for a term of years and then included with other properties and improvements conveyed back to the owner in a surplus property deed. In this case, there is no requirement that the owner account for the income from this particular property. However, FAA should encourage the use of the money for airport operation and development.

(2) Except for reverter or recapture rights which may be reserved to the Government and as described in subparagraph (4) below, there is normally no compliance requirement restricting the duration or term of an agreement. Where the licensee or tenant is expected to make a substantial investment in property improvements or installed equipment, they will usually seek an agreement for a term of years long enough to amortize the investment. From the airport owner's point of view, the stability of a long-term agreement with key service activities is highly desirable.

(3) All leases for a term of more than 5 years should contain provisions for periodic readjustment of rates.

(4) Terminal side concession agreements (food, convenience or ground transportation) must conform to Department of Transportation OST regulation if the lessee is a minority. (See AC 150/5100-15.)

d. Notification to Airport Owner. Since the FAA interest in a lease is confined to its impact on the airport owner's obligations to the Government, the acceptability of the lease for such purposes should in no way be construed as an endorsement of the entire document. When a lease has been referred by an airport owner, reviewed in the appropriate FAA office, and found not to violate any compliance obligation, the owner should be advised that the FAA has no objection to it. The word "approved" should not be used for this purpose.

6-4. AGREEMENTS COVERING SERVICES TO THE PUBLIC. In reviewing airport leases and agreements, special consideration must be given to those arrangements conveying the right to offer services and commodities to the public. The FAA is concerned that the airport owner maintain a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible. The airport owner is obligated to the Government to ensure that the facilities of the airport are made available to the public on fair and reasonable terms without unjust discrimination. 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 patrons will be treated fairly. This applies not only to the purveyors of aeronautical services but to restaurants, shops, parking lots, ground transportation, and any establishment retaining commodities and/or services to the public.

a. Nonaeronautical Service to the Public. The lease of premises or an agreement granting rights to offer nonaeronautical services to the public need not incorporate specific language prohibiting unfair practices other than those Civil Rights assurances as outlined in AC 150/5100-15.

b. Aeronautical Services to the Public. At airports subject to airport grant agreements, the standard project application requires that in any contractual arrangement to render to the public services or commodities essential to the operation of aircraft the sponsor will insert and enforce specific language as therein indicated. (It has previously been determined by the Chief Counsel that the transportation service offered by a scheduled air carrier is not subject to this provi-

sion) The failure to include the language required by the sponsor's assurances—when the agreement grants the right to offer services and commodities essential to flight operations—is a violation of the grant agreement. In the review of leases and agreements at airports subject to surplus airport property deeds or Section 16 and 23 deeds, the standard contractual language must be included.

6-5. USE AGREEMENTS INVOLVING AN ENTIRE AIRPORT.

a. **Contracts to Perform Airport Maintenance or Administrative Functions.** The conditions under which an airport owner may transfer compliance obligations to another qualified party are covered in paragraph 4-2c. The delegation of maintenance and management responsibility is discussed in paragraphs 4-2c and 6-2c. The important point in such arrangements is that the airport owner may delegate or contract with an agent of its choice to perform any element of maintenance or operating supervision but—the owner—is in no way relieved of its own obligations to the Government. When the owner elects to rely upon one of the commercial operators or tenants of airport to carry out the maintenance and operating responsibilities it assumed from the Government, there is a potential conflict of interest. Any agreement conferring such responsibilities on a tenant must contain adequate safeguards to preserve the owner's control over the actions of its agent. It should preferably be in a contract separate from that which leases property or grants airfield use privileges.

b. **Total Delegation of Airport Administration.** In certain cases consideration may be given to entrusting the administration of a publicly-owned airport to a management corporation. Whether the 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 may be the subject of a grant agreement or other source of obligation. These agreements should be reviewed carefully to ensure that the owners rights are protected.

c. **Restrictions on Lease of Entire Airport.** If it is contemplated that the management corporation may itself engage in one or more aeronautical activities such an arrangement must be carefully evaluated. The leasing of all available land or improvements suitable for aeronautical activity to one person will, under certain conditions, be construed as evidence of an intent to exclude others (Order 5190.1). Such evidence may be overcome—in a lease to a management corporation—if the substance of the following provisions is included:

(1) The lessee (second party, manager, etc.) agrees to operate the airport in accordance with the obligations of the lessor (owner) to the Federal Government under (insert here any existing grant agreements or Surplus Property Deeds outstanding at the time of the execution of the lease; or any outstanding Section 23 or Section 16 deeds, if the airport is not also subject to either a grant agreement or surplus property deed). In furtherance of this general covenant, but without limiting its general applicability, the lessee (second party, manager, etc.) specifically agrees to operate the airport for the use and benefit of the public; to make available all airport facilities and services to the public on fair and reasonable terms and without discrimination; to provide space on the airport, to the extent available; and to grant rights and privileges for use of the landing area facilities of the airport to all qualified persons, firms and corporations desiring to conduct aeronautical operations on the airport.

(2) It is specifically understood and agreed that nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act.

(3) The lessor (owner) reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent the lessee from erecting, or permitting to be erected, any building or other structures on the airport which, in the opinion of the lessor, would limit the usefulness of the airport or constitute a hazard to aircraft.

(4) The lessor (owner) reserves the right to develop or improve the airport (landing area of the airport) as it sees fit, regardless of the desires or views of the lessee (second party, manager, etc.), and without interference or hindrance on the part of the lessee (second party, manager, etc.).

(5) This lease (agreement) shall be subordinate to the provisions of any existing or future agreement entered into between the lessor (owner) and the United States to obtain Federal aid for the improvement or operation and maintenance of the airport.

d. It should be made clear to all concerned that the FAA will at all times look to the airport owner for effecting such actions as may be required to conform to the owner's compliance obligations. A management corporation with a lease of the entire airport, or a tenant operator authorized to perform any of the owner's management responsibilities, shall be considered as resident agents of the airport owner and not as responsible principals.

6-6. AGREEMENTS GRANTING ACCESS TO LANDING AREA FROM ADJACENT PROPERTY (THROUGH-THE-FENCE OPERATOR). There are times when the owner of an airport will enter into an agreement which permits access to the public landing area by aircraft based on land adjacent to, but not a part of, the airport property. In some cases, special taxiways have been built for this purpose. This type of an arrangement has frequently been referred to as a "through-the-fence" operation even though the perimeter fence may be imaginary. In reviewing a lease or contract which proposes this type of arrangement, the following guidance should be followed:

a. Rights and Duties of Airport Owner. The 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 place an encumbrance upon the airport property unless the airport owner retains the legal right to, and in fact does, require the off-site property owner or occupant to conform in all respects to the requirements of any existing or proposed grant agreement.

b. Practical Considerations. The owner of an airport is entitled to seek recovery of initial and continuing costs of providing a public use landing area. The development of aeronautical enterprises on land uncontrolled by the owner of the public airport can result in a competitive advantage for the "through the fence" operator to the detriment of on airport operators. To equalize this imbalance the airport owner should obtain from any off-base enterprise a fair return for its use of the landing area.

c. Safety Considerations. Arrangements that permit aircraft to gain access to a public landing area from off-site properties complicate the control of vehicular and aircraft traffic. Special safety operational requirements may need to be incorporated in the "through-the-fence" agreement.

d. Agency Position. As a general principle, FAA will recommend that airport owners refrain from entering into any agreement which grants access to the public landing area by aircraft normally stored and serviced on adjacent property. Exceptions can be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport. Examples include:

(1) Where a bonafide airport tenant has already leased a site from the airport owner 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. In this case

actual access will be gained through the area provided by the airport owner.

(2) Where an individual or corporation, actually residing or doing business on an adjacent tract of land, proposes to gain access to the landing area solely for aircraft use incidental to such residence or business without offering any aeronautical services to the public. This situation is commonly encountered where an industrial airpark is developed in conjunction with the airport.

e. Determinations. The existence of arrangements granting access to a public landing area from off-site locations contrary to FAA recommendations shall be reported to regional Airports divisions with a full statement of the circumstances. If the regional Airports division determines that the existence of such an agreement circumvents the attainment of the public benefit for which the airport was developed, the owner of the airport will be notified that the airport may be in violation of his agreement with the Government.

6-7. AIR CARRIER AGREEMENTS AND LEASES. Unless a complaint has been made, the FAA will not attempt to judge or evaluate the fairness of any rental rate or fee structure under consideration for air carriers. However, the rights and privileges granted by contract to air carriers as distinct from the rental rate or fee structure, may involve the compliance obligations of the airport owner. When discussing these agreements, particularly in connection with their impact on other aeronautical tenants, the following considerations should be borne in mind.

a. Use in Common of Aeronautical Facilities. While the actual rates for use of the landing area are a matter of negotiation, there should be no discrimination in use rates between air carrier and general aviation using aircraft of the same type and weight.

b. Discrimination Between Carriers. Where several air carriers serve the same airport they usually cooperate in developing a consolidated position with respect to negotiations with the airport owner. For this reason, compliance violations by the owner arising from preferential treatment of one carrier are rare. On occasion, however, small local service carriers have complained that the imposition of uniform user charges or landing fees equally applicable to long-haul and short-haul operators is inequitable. Such complaints usually arise when the level of fees has been increased concurrently with the expansion of runways and other airport facilities to accommodate larger aircraft not needed in the short-haul operation. It is the position of the FAA that the requirement for user fees, under a standard schedule uniformly applied to all users, does not violate the owner's obligation to make

the airport available on fair and reasonable terms without discrimination. However, there is no violation if the owner elects to offer each carrier the choice between two or more fee schedules designed to minimize the inequities of such a situation. For example, each carrier may be given the choice of paying a specific

amount per 1,000 pounds per take-off weight or a specified percentage of ticket sales to enplaning passengers. (See paragraph 4-14 for additional information.)

6-8.-6-20. RESERVED.

SECTION 2. ENFORCEMENT.

This Section is reserved and will be issued separately for inclusion at a later date. Until then, continue to use the enforcement procedures outlined in Order 5190.6.

CHAPTER 7. RELEASE, MODIFICATION, REFORMATION OR AMENDMENT OF AIRPORT AGREEMENTS

SECTION 1. GENERAL GUIDANCE

7-1. AUTHORITY TO RELEASE, MODIFY, REFORM, OR AMEND.

a. The authority of the Administrator to release, modify, reform or amend all or part of any airport agreement and the legislative basis for such authority are discussed in Chapter 1, paragraph 5 of this Order.

b. The Administrator has delegated to regional Airports Division Managers full authority to take any action with respect to their functions and assigned responsibilities, subject only to the limitations set forth in Order 1100.5, FAA Organization—Regions and Centers, Chapter 2, Section 3.

7-2. GENERAL PRINCIPLES.

a. Within the specific authority conferred upon the Administrator by law, the FAA will, when requested, act to release, modify, reform or amend any airport agreement to the extent that such action will protect, advance, or benefit the public interest in civil aviation. Such action may involve only relief from specific limitations or covenants of an agreement or a complete and total release which authorizes a subsequent disposal of obligated airport property.

b. Any property, when described as part of an airport in an agreement with the United States or defined by an ALP, is considered to be "dedicated" or obligated for airport purposes by the terms of the agreement. If any of the property so dedicated is not needed for present or future airport purposes, an amendment to or release from the agreement may be granted in accordance with the guidance contained in this Chapter. The omission of an airport from the NPIAS is not to be construed as a determination by the FAA that such airport has ceased to be needed for present or future airport purposes.

c. A decision to release, modify, reform, or amend an airport agreement will be based on the guidelines outlined in paragraphs 7-37a and b below and on the specific factors pertinent to the type of agreement as detailed in the following sections of this Chapter. However, any release which has the effect of permitting the abandonment, sale, or disposal of a complete airport (whether or not such action contemplates the development of a replacement airport facility) must be referred to AAS-1 for ARP-1 approval (see Order 1100.5, Chapter 2, Section 3, paragraph 222h(15)).

7-3.-7-5. RESERVED.

SECTION 2. SURPLUS PROPERTY AGREEMENTS

7-6. GENERAL.

a. **Basic and General Policies and Procedures.** FAR Part 155 contains procedures which must be followed to release airport property from surplus property disposal restrictions contained in the conveyance instrument. Owners of surplus airport property should be advised to consult this regulation whenever changes in property use are being contemplated. Changes to surplus property instruments, consistent with the purpose of fostering and promoting the development, improvement, operation or maintenance of the airport are encouraged by the FAA.

b. **Authorized Uses of Surplus Property.** Section 13(g) of the Surplus Property Act of 1944 (as amended by P.L. 80-289) authorizes conveyance of surplus federal property for "airport purposes." Refer to paragraph 4-18 and Appendix 5 for a discussion of

both aeronautical property (aviation use) and nonaviation property use for revenue production.

c. **Property Identification.** Very few older deeds of conveyance separately identify nonaviation revenue use property from that transferred for aviation use. The original application for the property and the FAA's (CAA) disposal report initially established these areas. They may now differ however, as the result of changed land use plans approved by the FAA pursuant to the authority of P.L. 81-311 (see paragraph 4-18e). For compliance purposes, it is important to verify changes subsequent to the initial conveyance that has been approved by the FAA.

d. **Land Transferred Under Regulation 16, War Assets Administration.** Prior to the amendment of the Surplus Property Act in 1947 by P.L. 80-289,

surplus Federal properties were conveyed for airport purposes under the procedures of WAA Regulation 16. The conveyance documents under this regulation vary in format but many of them stipulate that existing facilities may be used for compatible nonaviation purposes until such time as the FAA decides they are needed for an aviation purpose. The regulation and the conveyance documents are silent as to the income from such nonaviation use. Income from such property, including the net proceeds of a sale following release, must be applied to the development, improvement, maintenance, or operation of a public airport.

7-7. RELEASE FROM SPECIFIC CONDITIONS.

The FAA will issue needed releases or corrections to effect the elimination of the restrictions which may have been repealed or modified by laws enacted subsequent to the Act, such as:

a. Industrial Use Restrictions. This restriction is contained in certain surplus property conveyances which prohibit the use of the property as an industrial plant, factory or similar facility. P.L. 81-311 repealed this prohibition.

b. Reservation of Fissionable Material. This reservation is contained in many surplus property agreements which reserve to the U.S. the right to explore for, mine, and extract fissionable material. Section 68 of the Atomic Energy Act of 1954, as amended, released and quitclaimed to the owner all such rights.

c. Other Reserved Subsurface Interests.

(1) **Minerals and Petroleum.** Some surplus property agreements reserve to the U.S. all subsurface minerals and petroleum other than fissionable materials. It has been determined that these reservations may not be released, conveyed or quitclaimed by the FAA under P.L. 81-311. Requests concerning these interests will be referred to the Federal agency controlling or having jurisdiction over them.

(2) **Residual Interest.** Routinely, in disposing of these reserved mineral rights to an approved applicant, the GSA imposes a prohibition against exploring for or extracting such minerals or petroleum in any way that would interfere with the operation and maintenance of the airport. Other Federal agencies would normally do the same. This has the effect of retaining for the Government a residual interest in the subsurface minerals which theoretically could be conveyed to the airport owner under P.L. 80-289. As a matter of policy, the FAA will not recommend to GSA or another Federal agency that the mineral rights reserved to the U.S. (in a surplus airport property deed) be transferred. In those cases where GSA or another Federal agency has already conveyed to other parties the min-

eral rights so conditioned, the FAA will not recommend conveyance of the Government's residual interest to the airport owner.

d. National Emergency Use Provision (NEUP).

(1) The FAA may grant a release of this provision which is often referred to as the recapture clause. However, concurrence of the DOD must be specifically requested and obtained by the FAA when the airport is listed in the current "Airports Required By Department of Defense for National Emergency Use," (see Chapter 13 of current edition of Order 5190.2, List of Public Airports Affected by Agreements with the Federal Government (RIS: AS 5190-1)).

(2) When requesting a release of the recapture clause, the airport listed in Chapter 13 of Order 5190.2 must provide FAA with five scaled drawings and two copies of other exhibits. The regional Airports office will forward the documentation required in paragraph 7-6a to AAS-300 along with four scaled drawings and one copy of the exhibits for processing to DOD.

(3) Upon receipt of the DOD concurrence, AAS-300 will forward the determination to the regional Airports office for release of the NEUP.

e. Release of Reverter Clause. Frequently, in order to promote private investment in airport facilities, the owners of surplus airports seek the removal of the provision giving the United States the option to revert title in the event of default. This is an important remedy intended to be reserved to the Government and will normally be released. Any such proposal shall be referred to AAS-300 for consideration.

f. Release of Obligations for Property Not Received. The FAA may release an airport owner of all inventory accountability obligations for specific items of property when it is determined that the items were not, in fact, received by the owner even though specified in the instrument of disposal.

7-8. RELEASE FOR SALE OR DISPOSAL.

a. General Policy. A total release, permitting the sale and disposal of real property acquired for airport purposes under the Surplus Property Act, shall not be granted unless it can clearly be shown that the sale of such property will benefit civil aviation.

(1) If any such property is no longer needed to directly support an airport purpose or activity (including the generation of revenue for the airport), it may be released for sale or disposal upon a demonstration that such disposal will produce an equal or greater benefit (to the airport or another public airport) than

the continued retention of the land. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) which better serves the purpose for which the real property was initially conveyed. This objective is not met unless an amount equal to the net sale proceeds based on the current FMV of the property is realized as a consequence of the release and such amount is committed to airport purposes.

(2) In cases where an airport has a large amount of revenue production property that has remained undeveloped due to the lack of demand for this kind of property and where there appears to be no prospect for future development, FAA should fully evaluate the merits of either reversion or complete release for sale. This must be coordinated with AAS-300.

b. Sponsor Owned Land, Leased to Federal Government During WW II, and Deeded Back Via P.L. 80-289. The FMV requirement discussed in paragraph 7-8a(1) above does not apply when the release involves land owned in fee, leased to the Federal Government for a term of years and then included with other properties and improvements conveyed back to the owner in a surplus property deed. In this case, there is no requirement that the owner account for the net proceeds from the sale or disposal of this particular property. However, FAA should encourage the use of the money for airport development.

c. Purpose of Release.

(1) As indicated in paragraph 7-3b(2), the airport owner requesting a release of surplus airport land must identify and justify the reason for which the release is requested. One such justification could be a showing that the expected net proceeds from the sale of the property at its current market value will be required to finance items of airport development and improvement; the need for which is concurred in by FAA. In approving a release on this basis, consideration will be given to the amount of funds already accumulated from prior airport revenues and the amount of land needed to be disposed of to adequately finance the development or improvement items proposed.

(2) FAA recognizes that in some instances, the conversion of unneeded airport land into a more productive asset may be justified even though no specific items of airport development or improvement are immediately required. This occurs at some airports, for instance, where land in excess of present and future aeronautical requirements does not and cannot generate adequate revenues for the airport from rentals and leases in its existing state. Frequently such land has a potential market value (if developed for specific non-

aviation uses) far exceeding that indicated by its present rental value. As an example, a tract of undeveloped land at an airport may be capable of yielding only nominal income to the airport from agricultural or grazing leases. Because of its location, it might have a much greater value for compatible industrial development. The proceeds from the sale, if invested at current interest could yield considerably more than its annual rental income. Under these circumstances, a release and sale may be justified.

d. Monetary Consideration. A sale and disposal of airport property for less than its FMV is inconsistent with the intent of the statute and shall not be authorized except as discussed in paragraph b. above. See paragraph 7-9 for information on application of sale proceeds.

(1) In determining FMV for a proposed non-aviation use of surplus airport property, the consideration need not be monetary. The value of intangible benefits may be used as an offset against FMV in determining the monetary consideration to be received for the property. For example, conveyance of a property interest in a right-of-way over surplus airport land to a railroad or highway may be consistent with the intent of the law if the resulting track or roadway will directly benefit the airport or enhance its efficiency or utility to a degree commensurate with the value of the property involved. Where intangible benefits are included in the FMV determination, the airport owner must submit:

(a) a plan identifying the intangible benefits to be derived by the airport,

(b) the amount attributed to the intangible benefits, and

(c) the merit of its application as an offset against the FMV in arriving at the monetary consideration.

(d) A plan reflecting the current and future needs for AIP funding of projects. FAA will review the information and make a determination as to the reasonableness of the proposal.

(2) **Determining Land Values.** Subject to the conditions in (1) above, 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 obligation to preserve or maintain them exists. If they have been replaced under such circumstances, or if addition-

al improvements have been added without Federal financing, the value of such improvements need not be included for purposes of determining the financial commitment of a release granted under the guidance in this paragraph.

(3) **Appraisals.** With the exceptions noted in this subparagraph, a release authorizing the sale and disposal of airport land shall not be granted unless the FMV has been supported by at least one independent appraisal report determined to be acceptable by the FAA. Appraisals shall be made by noninterested and qualified real estate appraiser. If any appraiser is involved in negotiations for the purchase or sale of the property or if there is evidence of collaboration between appraisers, such appraisal reports are invalid and shall not be considered by FAA in determining the FMV of the land. The cost of obtaining appraisals shall be borne by the airport owner but may be considered as an offset in determining net proceeds (Appendix 5) realized from the sale. The requirement for an appraisal may be waived if the FAA determines that:

(a) The approximate fair market or salvage value of the property released is less than \$25,000, or

(b) The property released is a utility system to be sold to a utility company and will accommodate the continued airport use and operational requirements, or

(c) It would be in the public interest to require public advertising and sale to the highest responsible bidder in lieu of appraisals.

(4) FAA employees must be sensitive to local economic conditions in the airport's geographical area when they are reviewing FMV issues. The fluctuation in economic conditions can cause considerable variation in FMV at a given time and in a given location.

e. **Consent to Divert Excess Revenue from Surplus Property.** See discussion of Income Accountability under paragraph 4-20c and d.

7-9. APPLICATION OF PROCEEDS.

a. FAR Part 155.7(d) requires that any release of airport land to permit its sale or disposal shall be subject to a written commitment obligating the airport owner with respect to an amount equal to the net proceeds of a sale of the property at its current FMV. FAA shall not issue a release without this commitment.

Following a release by FAA based on such a commitment, the airport owner may discount the selling price or give the land away as a subsidy or inducement to attract industrial development or other purposes, provided they are compatible with the airport operations.

b. The net proceeds realized for the sale of surplus property, or the equivalent amount, must be placed in an identifiable interest bearing account to be used for the purposes listed in c. below. The interest and dividends can be used for the operation and maintenance of the aeronautical portion of the airport or, with the concurrence of FAA, the revenue producing property, if it can be clearly shown to enhance the revenue production capability of that property.

c. The obligated amount itself 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:

(1) Eligible items of airport development set forth in the current Airport Grant Program and reflected in the airport's Capital Improvement Program (CIP).

(2) Any aeronautical items of airport development ineligible under the grant program.

(3) Retirement of airport bonds which are secured by pledges of airport revenue, including repayment of loans from other Federal agencies for such development

(4) Development of common use facilities, utilities, and other improvements on dedicated revenue production property that clearly enhance the revenue production capabilities of the property.

d. All aeronautical improvements funded by proceeds from such sale will be accomplished in accordance with current applicable FAA design criteria or such State standards that have been approved by the FAA.

7-10. RELEASES INVOLVING PERSONAL PROPERTY, STRUCTURES OR FACILITIES.

a. **General Requirements.** Surplus airport property in these categories may be released from all inventory accountability (whether or not the airport at which it is located is included in Chapter 13 of the current edition of Order 5190.2) when it has been determined that such property:

(1) has outlived 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; or

(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. Utility Systems (Includes Railroad Utilities).

(1) Utility distribution systems may be released to permit demolition or other disposal when they have deteriorated beyond economical repair or are no longer needed for the airport. Also, where an airport owner is unable to maintain a utility system because of lack of adequately skilled personnel, financial ability, etc., it may be released from restrictions of any applicable surplus property instrument of disposal to permit conveyance of the system to a utility company

for continued operation, provided the bill of sale includes the following provisions:

(a) Utility services will be supplied to all present and future occupants of the airport; and

(b) The Government shall have the option to lease or purchase the system under mutually acceptable terms upon military reactivation of the airport, and shall be granted right of entry and use of such system pending its acquisition from the utility company.

(2) In the event the airport or the utility system is subject to the NEUP and the airport is listed in Chapter 13 of the current Order 5190.2, no release of a utility system, whether to permit demolition or a sale to a utility company, shall be granted until the DOD has advised FAA in writing that it has no objection to such release.

7-11.-7-15. RESERVED.

SECTION 3. GRANT AGREEMENTS

7-16. GENERAL. This section covers the requirements and procedures to release, cancel or modify any of the sponsor's conditions or assurances as contained in a FAAP/ADAP/AIP grant agreement.

7-17. RELEASE FROM SPECIFIC CONDITIONS OR ASSURANCES.

a. Maintenance Obligation Release. A release may be granted to an airport owner to remove the obligation to maintain specific areas of an airport. (See paragraph 7-37c(5).)

b. Consent to Permit Interim Use. The FAA may consent to the interim use for nonaviation purposes of dedicated aeronautical property whether or not acquired with grant funds. Such consent or approval must be based upon a determination that the property as a whole has not ceased to be used or needed for airport purposes within the meaning of the applicable statute. Consent to such use may be granted under the guidelines outlined in paragraph 7-37a.

c. Abandonment, Demolition or Conversion of Grant Funded Improvements, Other Than Land.

(1) Paragraph 2-3 of this Order points out that the sponsor/owner obligation under a FAAP/ADAP/AIP grant agreement remains in full force and effect throughout the useful life of the facilities improved under such FAAP/ADAP/AIP project, but in any event not to exceed the 20-year life of the grant agreement except for the privately-owned airport

which requires that the useful life of the improvements will be at least 10 years. This does not apply to land purchased or reimbursed under the grant programs, which has no such 20-year limitation. The FAA has legally determined that the useful life of an airport or airport facility may be determined to have expired when it is no longer used or needed for the purpose for which it was developed, or if the physical useful life of the facility has expired.

(2) The physical useful life of such a facility extends only during the time it is serviceable and useable with ordinary day-to-day maintenance, and is not extended by reconstruction, rehabilitation or major repair of that facility. Under the foregoing guidelines, the determinations as to the expiration of the useful life and physical useful life of such facilities (see paragraph 2-3) is a responsibility of the regional Airports offices.

(3) Releases to permit abandonment, demolition or conversion to another compatible use of FAAP/ADAP/AIP developed or improved facilities shall be approved or granted provided the appropriate regional Airports office determines that:

(a) The grant agreement involved has expired, or

(b) the facility in question is no longer needed for the purpose for which it was developed under FAAP/ADAP/AIP, or

(c) the useful physical life of the facility in question has expired as above defined.

d. Release from Obligation to Furnish Rent-Free Space or Cost Free Land. A sponsor may be released from its obligation to furnish rent-free space when space or facilities have been constructed at Federal expense and are actually occupied in areas provided by the sponsor in accordance with section 11(5) of the Federal Airport Act. A release may also be granted from the obligation to furnish areas of land, water or estate therein or rights in buildings as provided by section 18a(6) of the Airport and Airway Development Act of 1970 and section 511(a)(7) of the Airport and Airway Improvement Act of 1982. However, prior to such a release, a determination should be made on the basis of all pertinent facts and circumstances that such area is not needed and will not be needed in the foreseeable future. In this regard, internal elements of the FAA and the National Oceanic and Atmospheric Administration must concur in the release. A release under either circumstance may be accomplished either unilaterally by the FAA waiving its rights or by a formal amendment to the grant agreement. See paragraph 4-23 of this Order.

7-18. TOTAL RELEASE TO PERMIT SALE AND DISPOSAL. All land described in a project application and shown on an Exhibit A constitutes the airport property obligated for compliance under the terms and covenants of a grant agreement. A sponsor is obligated to obtain FAA consent to delete any land so described and shown. FAA consent shall be granted only if it is determined that the property is not needed for present or foreseeable public airport purposes. When obligated land is deleted, the Exhibit A and the approved ALP should be revised as appropriate. Where the action involves the deletion of land not acquired with Federal financial assistance, there is no required disposition of net revenues from sale or disposal. However, in view of the ADAP/AIP requirement that airports become as financially self-sustaining as possible, the FAA should encourage the owner to use any net revenues for needed airport development and to consider an exchange of released property for needed property.

7-19. SALE OR OTHER DISPOSAL OF AIRPORT LAND ACQUIRED WITH FAAP/ADAP/AIP FUNDS.

a. Sponsors Not Receiving a Grant After December 30, 1987.

(1) **Applicability.** This paragraph is applicable to any request for release of part or all of an airport which would permit the sale at the current FMV or other disposal of any airport land acquired with

FAAP/ADAP/AIP funds. It also applies to an AIP programming request which may commit the FAA to a subsequent release. A sponsor's request in either case must assure that:

(a) the Government shall be reimbursed (see subparagraph (2) below); or

(b) the total net proceeds will be reinvested in the airport, in a replacement airport, or in another operating public airport (see subparagraph (3) below).

(2) **Reimbursement.** The requirement for reimbursement shall apply only where there is no replacement or operating public airport owned or to be owned by the sponsor (see also paragraph 7-20). However, the sponsor may elect to reinvest the total amount due for reimbursement in any other public airport by a contract between the respective airport owners which has the written concurrence of the FAA. FAA concurrence in such a contract is contingent upon such funds being used for airport development specified in paragraph 7-9c at an airport subject to a grant agreement or equivalent obligation. Except where the applicable grant agreement specifically provides otherwise (a special condition dealing with land acquired for future development or noise), the amount to be reimbursed to the Government shall be a share of the net proceeds of a sale or disposal of the property at its current FMV based on the percentage used to compute the amount of Federal participation under the project(s) in which the land(s) was acquired.

(3) **Reinvestment.** Reinvestment of the total net proceeds (Federal and sponsor share) is required if the sponsor continues to own or control, or will own or control in part or in whole, a replacement or an operating public airport. Reinvestment shall be accomplished by a firm agreement to expend within 5 years or a timeframe satisfactory to the Administrator an amount equal to the total net proceeds from the sale or disposal of FAAP/ADAP/AIP acquired land for specified items of airport improvement in the order of priority established for releases of surplus airport property in paragraph 7-9c. Unlike surplus property, the purposes for which land acquisition is authorized under FAAP/ADAP/AIP projects do not include income production. If reinvestment cannot be accomplished within 5 years or if the net proceeds derived exceed the cost of needed airport development, reimbursement of the Federal prorata share of such excess as in (2) above will be required.

b. Sponsors Receiving a Grant After December 30, 1987.

(1) **Land for Airport Purposes (Other than Noise Compatibility Purposes).** Once a sponsor

enters into a grant after December 30, 1987, under the AAIA of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, it will dispose of land at FMV when no longer needed for airport purposes (see paragraph 4-17d). This applies to land purchased under FAAP, ADAP, as well as AIP. There will be retained or reserved any interest or right necessary to ensure that the land will only be used for purposes which are compatible with the noise levels generated by the airport. The portion of the proceeds which is proportionate to the Government's share of the cost of acquisition of such land is to be deposited in the Trust Fund.

(2) **Land for Noise Compatibility Purposes.** Once a sponsor enters into a grant after December 30, 1987, under the AAIA of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, it will dispose of land at FMV when the land is no longer needed for noise compatibility purposes. This applies to land purchased under FAAP, ADAP, or AIP (see paragraph 4-17e). There will be retained or reserved any interest or right necessary to ensure that the land will only be used for purposes which are compatible with the noise levels generated by the airport. The portion of the proceeds which is proportionate to the Government's share of the cost of acquisition of such land is to be deposited in the Trust Fund or may be reinvested in an approved noise compatibility project.

7-20. RELEASE OF ENTIRE AIRPORT.

a. **Approval Authority.** The concurrence of the Associate Administrator for Airports (ARP-1) is required before granting any release from the obligations of a grant agreement which would enable a sponsor to abandon or dispose of an entire airport for non-airport purposes. Each request to release an entire airport shall be considered by ARP-1 on a case-by-case basis without limitation to the guidelines contained herein. A copy of the sponsor's request, including exhibits and documents related thereto, and a copy of the regional summary statement (paragraph 7-6a) justifying the action, if recommended, shall be provided.

b. **Replacement Airport.** On receipt of a request to release an entire airport that is to be replaced by another new or existing airport, the applicable requirements of the Airport Improvement Program (AIP) for Authority, Program Policy, Eligibility, and Allowability Criteria, shall be considered in recommending

appropriate action. In this situation, the general policy is to treat the proposal as a trade-in of the land and facilities developed with Federal aid at the old airport toward the acquisition and development of better facilities at the new airport. If an airport which accommodates local civil aviation requirements, as well as or better than an existing FAAP/ADAP/AIP airport can be acquired or developed at a cost less than the present market value of federally-financed land and facilities, a complete release can be granted on the old airport provided that the continuing grant obligations are transferred to the new airport. The release would become effective when the new airport is placed in operation. Development costs for the new airport in excess of the value of existing land and facilities at the old airport would be eligible for AIP assistance. In these circumstances, the availability for public-use of a new and better airport is the basis for determining that the old one is no longer needed and that its useful life having expired, the original grant agreement is terminated.

c. **Nineteen Year Disposals.** Except for ADAP and AIP grants for land, most grant agreements expire 20 years after their execution. Following the expiration of such an agreement, provided no other obligations to the Federal Government are involved, the owner may legally abandon and dispose of the airport. Frequently, due to changes in land use or values, an airport sponsor may look forward to an imminent termination of a grant agreement as an opportunity to realize substantial funds from disposal of the airport. In some instances, the sponsor may seek a release on the old airport before the grant agreement has expired with the intent to use the proceeds of the disposal as matching funds for AIP development of a replacement airport. Obviously, such an arrangement is contrary to the trade-in concept of existing policies. Where such a proposal is made, or where the sponsor is apparently deferring needed airport development or replacement in the hope of realizing a substantial windfall when the old grant agreement expires, he should immediately be notified that such actions may preclude Federal assistance for the development of a replacement airport. AIP funds are not assured for the development of a new airport when the community willfully disposes of an adequate functioning public airport upon the termination of its legal obligation to maintain it.

7-21.-7-25. **RESERVED.**

SECTION 4. AMENDMENT OR MODIFICATION OF SECTIONS 16, 23, AND 516

7-26. GENERAL. Release of the conditions in an instrument of conveyance of any lands pursuant to Section 16, Section 23, or Section 516 (refer to the application FARs as discussed in paragraph 7-27b.) is not authorized. They may, however, with the approval of the controlling Federal agency, be amended or modified to provide for a greater or lesser property interest as dictated by the needs of the airport; e.g., change from easement, right-of-way or permit to fee, or vice versa.

7-27. PROCEDURES.

a. An application with supporting exhibits for amendment or modification of a property interest pre-

viously conveyed shall be filed with the FAA. The application should reference the original application and the conveyance instrument.

b. FAR Part 153 (FAAP) shall be followed in requesting changes to Section 16 instruments. FAR Part 154 (ADAP) governs Section 23 conveyances and shall also be followed in making original applications for acquisition under Section 516 as well as when requesting an amendment or modification. (See Order 5170.1, Transfer of Federal Lands, Section 23, of Airport and Airway Development Act of 1970.)

7-28.-7-35. RESERVED

SECTION 5. PROCEDURES

7-36. DOCUMENTATION.

a. **General Procedures.** FAA release, modification, reformation, or amendment of an airport agreement represents a material alteration of an important contractual relationship that is governed by statutes and which affects the measure of benefits to the public from the operation of a civil airport. All actions must be fully documented. The Airports field office compliance files shall contain the following:

- (1) The airport owner's justification for release, modification, reformation, or amendment;
- (2) FAA's determination on the request; and
- (3) The endorsement of the FAA official authorized to grant the request.

b. **Owner Requests.** Any release, modification, reformation or amendment of an airport agreement must be based on a written request signed by a duly authorized official of the airport owner.

(1) **Number of Copies.** Normally, the original request and supporting material should be submitted to the Airports District/Field Office by the airport owner. Additional copies of the request and supporting material may be required if action is required by the regional office or headquarters. In addition, where DOD concurrence is required, the additional material outlined in paragraph 7-7d will be provided.

(2) **Content of Written Owner Requests.** Although no special form is required, an owner's request must be specific and indicate, as applicable, the following:

- (a) What agreement(s) with the United States are involved.
- (b) What is requested.
- (c) Why the release, modification, reformation or amendment is requested.
- (d) What facts and circumstances justify the request.
- (e) What requirements of state or local law should be provided for in the language of an FAA issued document if the request is consented to or granted.
- (f) What property or facilities are involved.
- (g) How the property was acquired or obtained by the airport owner.
- (h) What is the present condition and what present use is made of any property or facilities involved.
- (i) What use or disposition will be made of the property or facilities.
- (j) What is the FMV of the property or facilities.
- (k) What proceeds are expected from the use or disposition of the property and what will be done with any net revenues derived.
- (l) A comparison of the relative advantage or benefit to the airport from sale or other disposition as opposed to retention for rental income.

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(m) A plan identifying the intangible benefits, if any, accruing to the airport, the amount attributed to the intangible benefits and the merit of their application as an offset against the FMV of the property to be released. The plan should also include as a minimum:

(i) a statement of the airport's source and application of funds for the preceding 3 years,

(ii) a statement of future sources and application of funds needed for the continued operation and maintenance of the airport,

(iii) a statement of the financial capability and intent to accomplish the airport development included in the current NPIAS, and

(iv) must be shown to be in accordance with the ALP.

(3) Exhibits to be Furnished by Owner.

(a) Each copy of the request will have attached two scaled drawings (see (4) below) showing all airport property and airport facilities which are currently obligated for airport purposes by agreements with the United States. Other exhibits supporting or justifying the request, such as maps, photographs, plans and appraisal reports, shall be attached, as appropriate.

(b) Height data computations (see paragraph 7-37c(3)(c) using a fixed height.

(c) If the release action requested would permit a sale or other disposition of airport property, see paragraphs 7-9 and 7-19.

(4) **Scaled Drawing.** The scaled drawing required to support a request for release need not fully meet the criteria for ALP's, although this is desirable. The drawing serves to graphically explain or depict the effect on the airport if the requested release is granted. It is not the document by which the release is granted and no FAA approval shall be given to any drawing inconsistent with the airport owner's current obligations until a release has been executed in accordance with the guidance contained in this Chapter.

7-37. FAA ACTION ON OWNER REQUESTS.

a. **Evaluation.** When a request has been received, supported by the appropriate documentation and exhibits, an evaluation of the total effect of the owner's proposal shall be made. This evaluation shall be based on the general policy stated in paragraph 7-2 and shall include consideration of pertinent factors such as:

(1) The past and present owner's compliance record under all its airport agreements and its actions to make available a safe and usable airport for maximum aeronautical use by the public; and evidence that the owner has taken or agreed to take all actions possible to correct noncompliance situations at the airport, if applicable.

(2) The reasonableness and practicality of the owner's request in terms of aeronautical facilities which are needed and the priority of the need.

(3) The net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation.

(4) Consistency with the guidelines for specific types of releases as discussed in this Chapter.

b. **Determinations.** The FAA will not release more than that which the owner requests. The decision to grant or deny the request, based on the above evaluation factors, must be guided by the statutes, regulations and policy applicable to the specific types of agreements involved. In addition, it must be determined if an environmental assessment is required under Order 5050.4, Airport Environmental Handbook. Further, it must be determined that either:

(1) The public purpose for which a term, condition, or covenant of an agreement, or the agreement itself, was intended to serve is no longer applicable, or

(2) 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 obligated, and such action is necessary to protect or advance the interest of the United States in civil aviation, or

(3) The release, modification, reformation or amendment will obligate the airport owner 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, or

(4) The release, modification, reformation or amendment will conform the rights and obligations of the owner to the statutes of the United States and the intent of the Congress consistent with applicable law.

c. **Completion of Action on Owner's Request.** Upon completion of the review, and following concurrence of the regional office, Washington headquarters, or the DOD, as applicable, the Airports field office will advise the airport owner that its request is granted

or denied. Any special conditions, qualifications or restrictions to an approval shall be included.

(1) **FAA Approval Action.** If the request or an acceptable modification of the request is approved, the necessary instruments or documents will be prepared conforming to the extent possible with the guidance of the Chief Counsel memorandum to all regional counsels dated April 30, 1965 (Appendix 4 to this Order). Parallel action will be initiated to amend all related FAA documents, e.g., NPIAS, ALP, land use plans, airport property map, FAA Form 5010, as required, to achieve consistency with the release. The owner shall thereafter provide the FAA with any acknowledgment (such as a notary) or copies of executed instruments or documents as required for FAA record purposes. The approval procedure may include a FAA letter of intent to approve the request, if so, see paragraph c(4) below.

(2) **Content of Release Document.** The formal release by FAA shall cite the agreements thereby affected and should identify specific areas or facilities involved. The owner shall be notified of the binding effect of the revised obligations.

(3) **Content of Release Document for Sale or Disposal.** A total release permitting sale or disposal of obligated land must specify that the owner is obligated to:

(a) Include in any deed, lease or other conveyance of a property interest to others, a reservation assuring the public right to fly aircraft over the land released, and to cause inherent aircraft noise over the land released. The following language shall be used:

“There is hereby reserved to the (grantor) (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 (conveyed)(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 name) Airport.”

(b) Include in any deed, lease or other conveyance of a property interest to others a restriction:

(i) Prohibiting the erection of structures or growth of natural objects that would constitute an obstruction to air navigation, and

(ii) Prohibiting 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 interfere with air navigation and to communication facilities serving the airport, and

(iii) Incorporating the Sponsors' Title VI Civil Rights Assurance obligations into all leases and other conveyances except fee title deeds. Fee title deeds transfer ownership of the property and it no longer serves an airport purpose. Accordingly, the Sponsors' Civil Rights Assurance obligations are not required to be transferred to the new owner. (DOT General Counsel and Acting Departmental Director of Civil Rights' letter of August 21, 1971, to The Secretary regarding Standard DOT Title VI Assurances.)

(c) These restrictions shall set forth in the instrument of release the applicable height limits above which no structure or growth should be permitted. These limits shall be computed according to the currently effective FAA criteria as applied to the airport. Advisory circulars, design manuals, FAR's, or other such documents shall not be incorporated by reference in the instruments or releases issued by the FAA. Neither should this be done in leases, deeds, or conveyances of property interests used by the airport owner. The specification of actual height limits will avoid a burdensome or confusing encumbrance on the title to the land. When the applicable height limits cannot be computed from available data at the Airports field office, the airport owner shall be required to supply any additional data needed to specify the correct computations.

(4) **FAA Consent by Letter of Intent to Release.**

(a) **Basis for Use.**

(i) Release and disposal of facilities developed through Federal assistance is often necessary to finance replacement facilities. Airport owners may have to assure the availability of the old facilities for disposal in order to obtain responsive proposals to acquire or encumber the existing facilities. The owner may therefore request a letter of intent as to such release. Such a letter may be requested merely to permit the owner to determine the market demand for portions of the available surplus revenue producing airport property.

(ii) The FAA may issue such a Letter of Intent (LOI) to release appropriately conditioned and specifically contingent upon adequate replacement facilities being developed and becoming operable.

(b) **Content.** An LOI issued by the FAA represents a binding commitment and an advance decision to release the property when specific conditions have been accomplished. The use of such a letter is not encouraged. It should only be used when all of the required conditions (as pertinent to the type of release sought as outlined in this Chapter) have been met or

are specifically made a condition of the pledge contained in the LOI. In addition, such a letter of intent should cite any specific understandings reached on anticipated problems in achieving the substitution of airport properties (e.g., who pays for relocation of various facilities and equipment, the cost of abating existing leases). A reasonable time limit on the commitment to release should be specified in the letter of intent.

(5) **Release of Maintenance Obligation.** A release may be granted to relieve an airport owner

from a continuing obligation to maintain an improvement to airport property when the improvement is no longer needed for civil aviation requirements, regardless of its existing condition. Such a release:

(a) Does not constitute a release of the land from the other applicable terms and conditions or covenants of the applicable compliance agreements;

(b) Must be conditioned on an agreement to discontinue use when it becomes unsafe for aeronautical purposes.

CHAPTER 8. REVERSION OF AIRPORT PROPERTY – REVESTMENT OF TITLE IN THE UNITED STATES

SECTION 1. GENERAL GUIDANCE

8-1. GENERAL. This Chapter furnishes FAA program guidance for use in effecting the reversion of airport property to the United States. This process is ordinarily the last resort when a grantee of Federal property for airport purposes continues in default. All other proper and available remedies to correct a default shall be explored prior to exercising the right to revert airport property. Contents of this Chapter reflects information obtained from the Federal agencies that represent four major sources of Federal property for public airport purposes; namely, General Services Administration (GSA), United States Department of Agriculture (USDA), Department of Interior's Bureau of Land Management (BLM), and DOD.

8-2. RIGHT TO REVERT. The right to revert airport property and re-vest title in the United States must be specified in an instrument of conveyance from the Federal Government. This right extends only to the title, right of possession, or other rights vested in the United States at the time the property described in the instrument of conveyance was transferred to a grantee. The right may be exercised only at the option of the United States, with or without the cooperation of a grantee, against all or part of the property in question.

8-3. AUTHORITY TO EXERCISE REVERTER. The statutory authority of the FAA Administrator to exercise the option of the United States to revert property conveyed by the Government for public airport purposes has been delegated pursuant to Order 1100.3. Each re-vestment of title to airport property is controlled by the instrument of conveyance, applicable laws, Federal regulations, and orders.

8-4. INSTRUMENTS OF CONVEYANCE INVOLVED. Instruments of conveyance that typically include a right to revert airport property and to re-vest title in the United States are issued under authority of one or more of the following:

a. Section 516, Airport and Airway Improvement Act of 1982 (P.L. 97-248, September 3, 1982).

b. Section 23, Airport and Airway Development Act of 1970 (P.L. 91-258, May 21, 1970) (84 STAT 219 and following).

c. Section 16, Federal Airport Act of 1946, as amended (49 U.S.C. 1115).

d. Section 13(g), Surplus Property Act of 1944, as amended (50 U.S.C. app 1622(g), specifically P.L. 80-289 and P.L. 81-311).

e. Section 303(c), Federal Aviation Act of 1958, as amended (49 U.S.C. 1344(c)). Also the precedent Civil Aeronautics Act of 1938, as amended.

f. Special Congressional Legislation. Section 35 of the Alaska Omnibus Act (73 STAT 149) or other enabling Acts authorizing conveyances of Federal property to non-Federal public agencies for public airport purposes.

8-5. CONSTRUCTIVE SEVERANCE. There are circumstances when only part of airport land subject to reverter is not used in accordance with the statutes and deed. In this event, consideration should be given to reverting title to only that property where misuse or nonuse comprises of default; however, Chief Counsel should be obtained before proposing measures of this type.

8-6. FORFEITURE BY VOLUNTARY RECONVEYANCE. Title to airport property may be re-vested in the United States by a voluntary reconveyance by a grantee. FAA prefers this method and it is usually in the best interest of all parties. Sometimes a grantee may be unwilling or legally unable to voluntarily re-convey title. However, once the FAA makes the determination to exercise the Government's option to revert airport property there is no alternative but to act to re-vest title in the United States. Nonetheless, make every effort to secure the cooperation of the grantee to prevent legal and administrative complications. As an example, a grantee for good and sufficient reasons may want to be served with a notice of intent to revert property or notice of reverter (see paragraphs 8-22 and 8-25) before executing a voluntary quitclaim deed or instrument of reconveyance in acknowledgment of receipt thereof.

8-7. TRANSFER OF TITLE BY GRANTEE. In lieu of a reverter action, the FAA may concur in an assignment or transfer of title to the property in question from the grantee in default to a willing non-Federal public agency eligible under the current program. The FAA must determine that the assignee is capable of fulfilling all the covenants of the instrument involved and that the transfer of title under these circumstances is essential to the continued operation, mainte-

nance, and development of a public airport and in the interests of the United States in civil aviation. The Federal agency which originally conveyed the property shall be provided a copy of the instrument of such conveyance for record purposes.

8-8. PIECEMEAL REVERSIONS. The Government's right of reversion for portions of airport property that are unused or undeveloped, or improperly used, should not be disregarded.

8-9. EFFECT OF OUTSTANDING LEASES OF AIRPORT PROPERTY.

a. Any grantee lease of airport property that is subject to one of the instruments of conveyance from the Government, referred to in paragraph 8-4 above, is subordinate and subject to that instrument.

b. It should be noted, however, that in reviewing a lease or use of surplus airport property including a nonaviation revenue producing activity consistent with the objectives of the initial deed of conveyance FAA may assure the grantee/owner and the prospective lessee, in writing, that the lease will be honored. For further details see Chapter 4, paragraph 4-18h, of this Order.

8-10. LEGAL PROCEEDINGS TO EFFECT REVERSION. Any legal proceedings to effect involuntary reversion in the event of refusal or resistance on the part of a grantee shall be the responsibility of the Department of Justice with coordination with the Chief Counsel.

8-11. CONTACT WITH THE REVERSIONER FEDERAL AGENCY. The issuing Federal agency, or successor, that issued the instrument of conveyance

has a right to receive the Government's estate in reversion. Prior to advising the grantee Federal agency will be fully coordinated with in writing outlining FAA determination of default by providing a copy of the notice of intent to revert property.

8-12. CONTACT WITH THE GENERAL SERVICES ADMINISTRATION (GSA). If the reversioner Federal agency is other than GSA or FAA and declines to accept control and jurisdiction upon revestment of title, the GSA will automatically become the reversioner agent to the Government unless FAA is involved as indicated below. The FAA must then advise GSA of the impending reversion to the United States and fully coordinate revestment of title procedures consistent with supplementary guidance and procedures from the GSA.

8-13. FAA AS REVERSIONER FEDERAL AGENCY. Where FAA is the reversioner agent of the Government such reversions of airport property will be handled by the regional Acquisitions and Logistics Division. They shall administer the procedures for this action under applicable regulations.

8-14. REPOSSESSION. In order for a reversion to take place, there must be a physical taking of property to effect possession and a constructive occupancy through posting. FAA should request sufficient signs from the reversioner Federal agency for posting upon the property by the FAA following recording of the notice of reverter to inform the public that it is U.S. Government property. (See paragraphs 8-27 and 8-28.)

8-15.-8-20. RESERVED.

SECTION 2. GENERAL PROCEDURES

8-21. DETERMINATION OF DEFAULT. To revert property conveyed for public airport purposes and revest title in the United States, the FAA shall determine that a grantee is in default under the covenants of the instrument of conveyance. To establish a default, the procedures outlined in paragraph 8-10 must be followed.

8-22. NOTICE OF INTENT TO REVERT PROPERTY. This notice is a formal style letter that informs a grantee of an FAA declaration of default and decision to revert title to property under the covenants of an instrument of conveyance. Send notice to the grantee (information copy to grantor agency) by certified or registered mail, return receipt requested. The notice shall include:

- a. The prior notice of noncompliance status.
- b. The failure of the grantee to correct the deficiencies which are the basis for noncompliance.
- c. The resulting default based on the instrument of conveyance involved.
- d. The identity of the property to be reverted to the United States.
- e. The additional time being allowed for the grantee to cure the default, usually 60 days. The FAA shall define the basis to cure the default. The grantee shall be advised to promptly notify the FAA if it does not intend to act to cure the default and thereby waive the time allowed to cure the default.

f. The minimum requirements should be established for curing the default and retain the property.

g. It is the policy of the FAA to cooperate with the grantee to the extent reasonable to resolve the matter expeditiously and in the interest of the United States in civil aviation. Failure to resolve the matter in a timely and efficient manner will require the FAA to issue a notice of reverter and re-vest title to the property involved in the Federal Government.

h. Any other relevant facts bearing on the default or potential remedies.

8-23. VOLUNTARY RECONVEYANCE TO CORRECT A DEFAULT. Grantees determined to be in default shall be given the opportunity to voluntarily reconvey the property in question to the United States. Where only part of the real property described in the instrument is involved, the FAA shall coordinate with the reversioner Federal agency and supplement the general guidance and procedures for the revestment of good title in the United States. Each voluntary reconveyance shall require the following:

a. A resolution of the governing body 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 recite the reason for reconveyance (e.g., not developed, ceased to be used, not needed).

b. An instrument of reconveyance that substantially conforms to a format suggested by the cognizant FAA counsel considering Federal, state and local requirements.

c. A legal opinion by grantee's attorney which should recite:

(1) The grantee's legal authority to reconvey the property to the United States.

(2) The status and validity of title reconveyed to the United States covering the period from the time of acquisition from the Federal Government for public airport purposes and the inclusion of outstanding encumbrances or interests in the title to the property reconveyed must be cited together with the legal and administrative means considered necessary to achieve title status the same as originally conveyed by the Government to the grantee.

(3) As an alternative to c(1)&(2), the Attorney General of the state may render such opinion, if acceptable to the reversioner Federal agency or the Attorney General of the United States.

d. Prepare a Certificate of Inspection and Possession as shown in Appendix 2.

8-24. VOLUNTARY RECONVEYANCE DOCUMENTATION. FAA shall submit the necessary documents to the cognizant official of the reversioner Federal agency. Certified or conformed copies required by the reversioner Federal agency shall be obtained by FAA from the grantee.

8-25. NOTICE OF REVERTER OF PROPERTY AND REVESTMENT OF TITLE IN THE UNITED STATES. This notice is ordinarily prepared under the direction of the cognizant FAA counsel unless otherwise determined by the Regional Airports Division Manager. The basic elements of this notice are as follows:

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. Legal description of the property conveyed and that part which is reverted to the United States.

d. Statement that the property was conveyed subject to an express provision prescribing for its reversion under certain circumstances, and set forth the reverter clause.

e. Statement that the FAA has determined that the property in question is reverted to the United States for specific reasons consistent with the reverter clause and the specific default of the grantee, and set forth any clause in the instrument of conveyance relevant to the default.

f. Statement that the property interest to which the United States has reverter rights is re-vested in the United States.

g. Statement identifying the reversioner Federal agency.

h. Reference to the notice of intent to revert property.

8-26. RECORDING NOTICE OF REVERTER OF PROPERTY AND REVESTMENT OF TITLE IN THE UNITED STATES. After execution by the authorized FAA official, the original executed copy of the notice shall be duly recorded in the official records of the county in which the property is located. Thereupon, obtain from the Clerk of the Court or other custodian of the official county records the required number of certified copies or certificates of recordation. The number of copies required shall satisfy the needs of the Federal agencies involved. Concurrent with the recordation of the original copy of the notice, 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 thereto revested in the United States. This letter shall advise the grantee that the notice has been recorded in the official records of the country in which the property is located.

8-27. CERTIFICATE OF INSPECTION AND POSSESSION. The guidance and procedure set forth in paragraph 8-23d above shall be followed upon conclusion of the foregoing actions by the FAA to revert property and re-vest title in the United States.

8-28. POSTING OR MARKING OF PROPERTY. Concurrent with the physical inspection of the reverted property discussed in paragraph 8-27 above, it shall be posted or marked, as appropriate, to indicate that it is property of the United States. A representative of the reversioner Federal agency may assist the FAA representative if deemed appropriate or necessary by the reversioner Federal agency.

APPENDIX 1—INSTRUMENT OF RECONVEYANCE

“THIS INDENTURE, made the day of _____, between _____, _____, a body politic and corporate under the laws of the _____, as Party of the First Part, and the United States of America, as Party of the Second Part.

WHEREAS the Party of the Second Part, acting through the Secretary of the Interior, pursuant to the authority contained in Section 16 of the Federal Airport Act (60 Stat. 179; 49 U.S.C., 1115), did give and grant on or about _____, a patent to the Party of the First Part, and to its successors in function, for the lands described hereinbelow, subject to certain reservations, exceptions, limitations and conditions, as set out therein, including the following express conditions:

That the property interest hereby conveyed shall automatically revert to the United States pursuant to Section 16 of the Federal Airport Act, supra, in the event that the lands in question are not developed, or cease to be used, for airport purposes, the _____, for itself and assigns, agreeing by the acceptance of this patent or the rights granted herein, that a determination by the Administrator of the Federal Aviation Administration or his successor in function, that the lands are not developed, or have ceased to be used for airport purposes, shall be conclusive of these facts:

That the _____, State of _____, will develop an airport upon the tract herein demised;

That such airport will be operated as a public airport upon fair and reasonable terms and without unjust discrimination;

That any subsequent transfer of the property interest conveyed hereby will be made subject to all of the covenants, conditions and limitations contained in this instrument;

That in the event of a breach of any condition or covenant herein imposed, the Administrator of the Federal Aviation Administration or his successor in function may immediately enter and possess himself of title to the herein demised tract for and on behalf of the United States of America;

That in the event of a breach of any condition or covenant herein imposed the said State of _____, will, upon demand of the Administrator of the Federal Aviation Administration or his successor in function take such action including the prosecution of suit, or execute such instruments as may be necessary and required to evidence transfer of title to the herein demised tract to the United States of America.

WHEREAS the Administrator of the Federal Aviation Administration has determined that the property interest conveyed has not been developed [has ceased to be used] for airport purposes;

NOW THEREFORE, WITNESSETH: That the Party of the First Part, for and in consideration of the premises and of its being hereby released of its obligation under said patent to [use the lands conveyed thereunder for airport purposes] [develop and operate a public airport on the lands conveyed thereunder] has remised, released and quit-claimed, and by these present does remise, release and quitclaim unto the Part of the Second Part, and its successors in interest and assigns forever, all its right, title and interest in said lands referred to in the first Whereas clause hereof, as heretofore conveyed to the Part of the First Part, under said patent, being also the right, title and interest in said lands which the Party of the First Part hereby warrants it does not hold therein, said lands being described as follows:

[Property Description]

TO HAVE AND TO HOLD the property transferred hereby, unto the Party of the Second Part, its successors in interest and assigns forever.”

APPENDIX 2—CERTIFICATE OF INSPECTION AND POSSESSION

CERTIFICATE OF INSPECTION AND POSSESSION

Re:

Date:

This is to certify that I, _____, _____, _____, did on the _____ day of _____, make a physical inspection of the property known as _____ as described in a certain deed from the _____, to the United States of America, dated _____.

I further certify that I found no tenants or persons claiming or exercising possessory rights on the property.

I found no visible evidence of outstanding easements and no evidence of recent improvements upon the properties which might form the basis of laborer's, material furnisher's or mechanic's liens.

I further certify that based upon my inspection and investigation, there are no adverse interests apparent in conflict with the title and ownership of the United States of America under the deed above referred to. The statements herein made are based upon an inspection of the property after reconveyance to the United States of America referred to.

APPENDIX 3—NOTICE OF REVERSION OF TITLE

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 term "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 part, 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 premises 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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On this _____ day of _____, 19____, before me _____, a Notary Public in and for the County of Los Angeles, State of California, personally appeared _____ known to me to be the Chief, Airports Division, Western Region, Federal Aviation Agency, and known to me to be the person whose name is subscribed to the within Instrument and acknowledged that he executed the same on behalf of the Administrator of Federal Aviation Agency and the United States of America.

WITNESS my hand and official seal.

Notary Public in and for the County
of Los Angeles, State of California

My Commission Expires:

10/2/89

APPENDIX 4—FORM OF RELEASE DEED

SUBJECT: Form of Release Deed Date: April 30, 1965
FROM: General Counsel
TO: Director, Alaskan Region
Director, Central Region
Director, Eastern Region
Director, Pacific Region Attention: Regional Counsel
Director, Southern Region
Director, Southwest Region
Director, Western Region

As per our memorandum to you dated January 18, 1965, relative to the above, we have now received copies of various Forms of Release, particularly with respect to sale of a portion of an airport property, which are currently in use in the Regions, and we find that these forms are in substantial conformity to the requirements of Public Law 81-311.

In passing Public Law 81-311 Congress included a proviso that any such release authorized by that law may be granted on such conditions as the Administrator of the Federal Aviation Administration deems necessary to protect the interests of the United States in civil aviation. The question has been raised as to whether this proviso contemplated a reverter to the United States upon conveyance by the airport owner which would be in addition to the reverter provided for in Public Law 80-289 under which the Government was originally authorized to convey.

In our consideration and review of this question we have considered the policy and purposes of P.L. 81-311 as set forth in House Report No. 409 and Senate Report No. 609 dated April 7 and July 15, 1949, respectively, on H.R. 3851 which was enacted as P.L. 81-311. We have also considered the provisions of Handbook AS P 5190, Section 1, Chapter 6, which implements congressional policy in connection with such releases.

P.L. 80-289 provides for the conveyance by the United States under appropriate circumstances of real property held by the United States and it is out of such a conveyance that a right of reverter may be created as the United States is the grantor. The purpose of P.L. 81-311 is to unhamper restrictions "in such a way as would best serve the public interest of that public agency" which is the entity owning the airport (see page 4 Senate Report No. 690 dated July 15, 1949, or H.R. 3851, 81st Congress). This P.L. 81-311 contemplates that the Federal Government would utilize the power granted by that Act to remove by an Instrument of Release certain conditions contained in Instruments of Conveyance under P.L. 80-289 so as to unhamper the utility of real estate conveyed pursuant thereto.

While P.L. 81-311 provides that "* * * any such release * * * may be granted on, or may be subject to, such terms and conditions as the Administrator * * * deems necessary to protect or advance the interests of the United States in civil aviation," there is nothing in the legislative history that would contemplate an effort on the part of the United States to obtain a further reverter out of property as to which the United States had previously conveyed all of its title. Therefore, an additional reverter could not have been contemplated because as a matter of law a reverter interest can only run to the grantor which, in the instance under consideration, is the airport owner.

While forms if literally followed often create problems, there does appear to be some benefit to be derived from a Form of Release Deed which can be used as a guide and be used to some extent for the purposes of uniformity. In cooperation with regional personnel a Form of Release Deed has been developed where a portion of an airport property can be sold under circumstances where it is no longer needed for the development, operation, or maintenance of the airport.

In line with the general comment that Forms will not serve all purposes, it should be noted that there may be instances where airport owners can justify a release when there is to be no conveyance of a portion of the land for nonairport use, but rather a leasing of such by the airport. In those exceptional cases a release may be made subject to the three desired conditions: (1) that the public should have a right of flight; (2) that no structure or object of natural growth shall be allowed above a certain height; and (3) that no incompatible use shall be made of the leased property. The airport owner in making any such lease should reserve unto itself, its successors and assigns for the use and benefit of the public the right of flight, and should require the lessee to agree for itself, its successors and assigns to both restrict the height of structures and to prevent incompatible use.

The Form of Release in connection with a sale of a portion of airport property as discussed above is enclosed for your guidance and possible use.

/s/ Martin Menter (for)

Nathaniel H. Goodrich

Enclosure

DEED OF RELEASE

This instrument, a Deed of Release, made by the United States of America, acting by and through _____, Federal Aviation Administration, under and pursuant to the powers and authority contained in the provisions of Public Law 81-311 (63 Stat. 700), as amended, to the (Airport Owner), a body politic under the laws of the State of _____, Witnesseth

WHEREAS,

(Here follows the necessary recital of the facts and circumstances involved in each release, including descriptive reference to deed from United States to (Airport Owner) authorized by P.L. 80-289).

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 (Airport Owner) in the Instrument of Transfer conveying title to the hereinafter described real property of provisions as follows:

- (1) That the (Airport Owner) 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 hereinafter described, 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 the said airspace, and for use of said airspace for landing on, taking off from or operating on _____ Airport,
- (2) That 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 hereinafter described real property to a height of not more than _____ feet above sea level,
- (3) That the Grantee expressly agrees for itself, its successors and assigns to prevent any use of the hereinafter described real property which would interfere with landing or taking off of aircraft at the _____ Airport, or otherwise constitute an airport hazard,
- (4) (Here may be inserted other conditions that may appear to be necessary),

hereby releases the said real property from the conditions, reservations and restrictions as contained in the above-mentioned Instrument of Transfer from the United States of America to the (airport owner) dated _____, which real property is described as follows:

(Description)

By its acceptance of this Deed of Release the (airport owner) 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 this Deed of Release to be executed as of the _____ day of _____ 19____.

UNITED STATES OF AMERICA

By _____

Federal Aviation Administration

Accepted:

City of _____

By _____

Title

APPENDIX 5—DEFINITIONS

a. Aeronautical Activity – any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. For example:

- (1) The following are aeronautical activities:
 - (a) Air taxi and charter operations.
 - (b) Scheduled or nonscheduled air carrier services.
 - (c) Pilot training.
 - (d) Aircraft rental and sightseeing.
 - (e) Aerial photography.
 - (f) Crop dusting.
 - (g) Aerial advertising and surveying.
 - (h) Aircraft sales and service.
 - (i) Aircraft storage.
 - (j) Sale of aviation petroleum products.
 - (k) Repair and maintenance of aircraft.
 - (l) Sale of aircraft parts.
 - (m) Parachute activities
 - (n) Ultralight activities

(2) The following are not aeronautical activities: ground transportation (taxis, car rentals, limousines); restaurants; in-flight food catering; barber shops; and auto parking lots.

b. Airport – an area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended of use, for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon; and includes any heliport.

c. Airport Hazard – any structure or object of natural growth located on or in the vicinity of a public-use airport, or any use of land near such an airport, which obstructs the airspace required for the flight in landing or take off at such airport or is otherwise hazardous to such landing or taking off of aircraft.

d. Airport Layout Plan (ALP) – shows the orientation and location of key facilities, such as runways and navigational aids, must be planned with consideration for approach zones, prevailing winds, airspace utilization, land contours and many other special factors. The dimensional relationships, even within the airport boundaries, between operational and support facilities and allocation of reasonable space to allow for orderly expansion of individual functions must be clearly established in advance. This is essential if such facilities are to be subsequently positioned where they can best serve their intended purposes while conforming to applicable safety and construction criteria.

e. Aviation Use of Real Property (Aeronautical Property) – all property comprising the land, airspace, improvements and facilities used or intended to be used for any operational purpose related to, in support of, or complementary to the flight of aircraft to or from the landing area. It is not confined to land areas or improvements eligible for development with Federal-aid (FAAP/ADAP/AIP) or to property acquired from Federal sources. In addition to the areas occupied by the runways, taxiways, and parking aprons, aeronautical property includes any other areas used or intended to be used for supporting services and facilities related to the operation of aircraft. It also includes property normally required by those activities which are complementary to flight activity such as convenience concessions serving the public including, but not limited to shelter, ground transportation, food and personal services.

- f. Capital Improvement Program (CIP)** – consists of the 5-year eligible capital requirements at designated airports. It is not a funding plan since the actual funding of development will depend on annual limitations for the AIP as imposed by Congress. The CIP provides a systematic approach to identify unmet needs, determine optimum distribution of available grant funds, foster cooperation among states/local/Federal authorities, advise and inform the public, identify problems and determine their impacts on the system, and provide FAA with a rational, need-based process for distribution of limited airport grant funds. It also provides a basis for responding to new legislative proposals.
- g. 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. For all practical purposes the adverse effect of flight operations on adjacent land is attributable to noise and vibration (residential, schools, etc.). Land usage which adversely affects flight operations is that which creates or contributes to a flight hazard. For example, any land use which might block the line of sight from the control tower to all parts of the landing area, inhibits pilot visibility (such as glaring lights, smoke, etc. produces electronic aberrations of navigational guidance systems, or which tends to attract birds must be considered an incompatible land usage. Similarly under certain circumstances an exposed garbage dump may not only attract birds but, if open incineration is regularly permitted, can create a smoke hazard.
- h. Concurrent Land Use** – means that the land can be used for more than one purpose at the same time. For example, portions of land needed for clear zone purposes could also be used for agriculture purposes at the same time.
- i. 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 the imposition of unreasonable standards or requirements, or by any 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.
- j. Fair Market Value (FMV)** – the highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys 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.
- k. Federal Agency** – means an agency of the Federal Government. This does not include the National Guard or the Air Guard when they are not mobilized by the United States into the active military.
- l. Federal Funds** – any airport which consists in whole or in part of property, improvements, or other assets conveyed by the United States Government without monetary consideration for airport purposes, or which was acquired, developed or improved with Federal assistance must be considered as an airport upon which Federal funds have been expended.
- m. Fixed-Base Operator (FBO)** – an individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, ground and flight instructions, etc.
- n. Government Aircraft** – for purposes of the compliance program, Government aircraft is defined as aircraft owned or leased to the Federal Government.
- o. Interim Use of Aeronautical Property for Nonaviation Purposes** – an interim use is defined as a temporary short term (normally not to exceed 3 years) nonaviation use of property conveyed to or acquired by the owner for aviation use.
- p. Landing Area** – any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo (Definition in Federal Aviation Act, Section 101).
- q. Long Term Lease** – a lease with a term of 5 years or more.
- r. Minimum Standards** – as used herein, this refers to the qualifications which may be established by an airport owner as the minimum requirements to be met as a condition for the right to conduct a commercial aeronautical activity on the airport.

- s. **Net Proceeds** – net proceeds means the sum derived from a lease sale, salvage or other disposal of airport property at FMV after deductions or allowances have been made for intangible benefits and directly related expenses such as advertising, legal services, surveys, appraisals, taxes, commissions, title insurance, escrow services.
- t. **Public Airport** – means any airport which is used or to be used for public purposes, under control of a public agency, the landing area of which is publicly-owned.
- u. **Public-use Airport** – means (a) any public airport; (b) any privately-owned reliever airport; or (c) any privately-owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft, which is used or to be used for public purposes.
- v. **Quit Claim Deed** – a deed that transfers the exact interest in real estate of one to another.
- w. **Revenue Use of Nonaviation Use Real Property** – is all property described and dedicated in an airport agreement, except aviation use property as defined above. Such property may, with FAA consent, be used for nonaviation activities compatible with airport operations. At airports obligated under surplus property instruments of disposal (Regulation 16 or P.L. 80-289) the income from such property must be used to support the maintenance, operation, or development costs of the aeronautical property, since no other usage was contemplated by the statute.
- x. **Tenant** – the term tenant shall mean a person or organization occupying space or property on an airport under a lease or other agreement.

APPENDIX 6—FORMAL COMPLIANCE INSPECTION

1. Prior to conducting a compliance inspection visit to the airport, the responsible Airports employee shall perform a preinspection office review. It should normally include the following element:

a. Preinspection Preparation. The first step is to review airport data available in the files. The inspector should review all conveyance documents and grant agreements in order to fully understand the specific commitments of the airport owner. This will include any continuing special conditions of grant agreements and the terms and conditions of release granted by the FAA. Previous inspection records should be reviewed to determine the owner's past performance in such matters as operation of the airport, physical maintenance and financial activities. This information will assist in determining whether the existing airport condition is static, improving or deteriorating. If it has not already been done, the inspector will want to draw up a list of leases in effect showing dates of renewal or expiration. The inspector should review recent correspondence with the owner to see what followup may be needed during the inspection. It will also be helpful to study the ALP, property use maps and land-use and operating plans, if any. A review of recent grant-funded projects will also be helpful. A list of known airport obstructions will be useful during the airport visit.

b. Compliance Worksheet. The standard worksheet, Figure A-1, was designed to be used as a simple, concise record of an airport's condition as observed during a "screening" inspection. It is not a statement of the owner's compliance status, but rather is a source of information for determining the compliance status. The actual finding shall be recorded in a format similar to Figure 1 in Chapter 5. The method to be used in collecting essential compliance data must be adapted to the situation. Thus, at larger airports with more complex factors to be considered or at those with a history of poor compliance performance, a screening inspection might be inappropriate. In such cases, a more comprehensive, locally prepared worksheet may be preferable. The choice of whether to use a worksheet at all is left to the discretion of field offices. If one is used, it usually is best not to fill it out in the owner's presence since it may cause unwarranted apprehension, thus restricting the flow of information. Regardless of the method use to collect and record data, adequate records must be maintained to clearly document what was reviewed and what was discovered.

c. Use of the Worksheet. While many of the items included in the worksheet (Figure A-1) are self-explanatory, the following guidance is helpful.

Item I: Entries here give the inspector's general impression as to whether the airport is developing, deteriorating, or stagnant. Observed changes which are undesirable or have an unsatisfactory general appearance should be explained on the back of the form.

Item II: Record here an evaluation of the physical condition of the airport's facilities in light of the owner's maintenance effort. This calls for a realistic appraisal of whether the facilities are being properly preserved. Any which are rated unsatisfactory should be explained on the back of the form. Other data sources, such as FAA Form 5010 inspections, other records, or FAR Part 139 inspection findings can be used to further substantiate findings.

Item III: Any individual approach slope which fails to meet applicable criteria should be identified on the back of the form, together with comments on whether the owner can be required to correct the condition. Similarly, any unmarked obstruction or incompatible activity on adjacent land should be explained. Determine if clear zone interests and zoning, if any, are adequate and if not, what future requirements should be considered.

Item IV: The operations plan and land-use plan listed here are discussed in paragraph 4-17. Although such plans are not a mandatory requirement, their use will facilitate effective administration of any airport. The inspector should review those that exist, together with airport regulations and minimum standards, to determine whether they can be considered satisfactory in light of the owner's obligations. If such plans are not satisfactory, the owner should be advised of necessary modifications.

Item V: Observe whether the owner is complying with exclusive rights policy (see Chapter 3) and with civil rights requirements of DOT Regulations, Part 21 (see paragraph 4-16).

Item VI: This item requires collection of data on new leases or agreements executed since the most recent past compliance inspection. Basic data to include on the back of the form are identity of lessee, date of execution, term of lease, and nature of occupancy or activity covered. If the screening inspector is not qualified to judge the acceptability of the lease or

agreement or if procedure calls for review by the regional Counsel, defer the entry in Item VI.B. until a decision can be outlined. Where a contract for airport management has been entered into, it must be reviewed to assure that the owner has retained enough control to enable it to meet its continuing obligations to the Government. Nonaviation leases of surplus airport property should be reviewed in connection with Item VIII.

Item VII: Requires the inspector to compare the ALP to existing and planned development of the airport and determine whether they are consistent. An explanation is necessary if the ALP is out of date or fails to depict accurately existing and planned facilities.

Item VIII: Calls for the inspector to review the uses being made of real surplus property and to determine whether such uses are proper. The inspector must determine if income is being realized from land conveyed for revenue production and if it is being applied to or reserved for airport purposes.

Item IX: Concerns a review of the current financial report, if available, as an indicator of the airport's financial condition. By observing recent physical improvements (or lack thereof), the inspector can verify unusual capital expenditures. By noting the presence of activities which normally would generate revenues, the inspector should be able to judge whether all income is being reflected in the financial records (reference paragraph 4-20). Conclusions should be entered in IX.B. The status of any funds committed as a condition of a release will be checked and noted in IX.C.

Item X: Refers primarily to any other specific commitments undertaken by the airport owner as a condition of an FAA action. Special conditions of grant agreements, although normally controlled by project payments, are included because they become compliance factors if they continue in effect beyond the closeout of the project.

2. SCOPE OF DETERMINATIONS. To accurately determine the compliance status of an airport, the responsible FAA official must have available comprehensive information on all compliance matters. In evaluating this data, the official will want to pay particular attention to the following:

a. Maintenance and Operation. If the public is to realize the operational benefit contemplated by the various Federal programs to develop and improve airport facilities, there must be an effective application of effort to assure the proper operation and maintenance of the airport. It is not enough merely to observe and record the physical condition of facilities as

they appear at the time of the inspection. The FAA's responsibility requires consideration of the following:

(1) **Preservation.** Compare the actual conditions as noted with those of previous observations and records on the airport to determine whether the preventive maintenance measures being taken are effectively preserving the facility.

(2) **Maintenance Plan.** Look into plans and arrangements relied on by the airport owner to meet maintenance commitments. Do they fix responsibility? Do they adequately provide for cyclical preventive repairs on a realistic schedule? Does the airport owner actually have the capability to meet these obligations? Is there an annual budget or other evidence that adequate resources are being applied to maintenance?

(3) **Acceptable Level.** Develop with the owner mutually agreeable criteria for acceptable maintenance of the airport. Such an agreement may take into consideration the duration of the owner's obligation to the Government, any plans for extending the useful life of airport facilities, and the type of aeronautical usage to which the facility is subjected. For example, we might agree that to arrest the deterioration of a runway surface, a seal coat on only certain portions of the runway would be adequate for a stated period of time. This constitutes an acknowledgment by the FAA that during such a period accomplishment of the specified seal coating would be an acceptable level of maintenance. Any such understandings should be recorded in the compliance files.

(4) **Operating Procedures.** Check into procedures for operating the airport. Are they adequate and effective? What arrangements are in effect to turn on any field lighting equipment; mark and light temporary airfield hazards; issue NOTAMS when required, etc.? Is use of the airfield controlled by adequate ground safety regulations? Has the owner established operating rules including appropriate restrictions to protect airfield paving from excessive wheel loads? What plans are in effect to clear the landing area of disabled aircraft?

b. Approach Protection. Each of the airport's aerial approaches must be examined to determine whether any obstructions (as defined in current FAA criteria) exist and, if so, whether they violate a compliance obligation. Many obstructions do not violate a compliance obligation. Some have been there for many years and actually predate development of the airport. There is no obligation to remove these unless such removal was made a specific condition of a grant agreement. Some are located a considerable distance from the runway on land not controlled by the airport owner, or are otherwise not reasonably within the air-

port's power to correct. Still others may have been the subject of an FAA airspace review that determined they were not a hazard or they were not a hazard if marked and lighted in accordance with FAA standards.

(1) **Owner's Status.** Where an approach surface is affected by an obstruction and the owner is obligated to maintain clear approaches, that owner is in noncompliance unless FAA can determine that elimination of the obstruction is not reasonably within the owner's power and/or the obstruction is not a hazard to navigation. The airport owner's primary obligation is to prevent or remove hazards.

(2) **Future Outlook.** Recent trends in uses of adjacent properties should be reviewed to see whether probable developments might pose a threat to any runway approaches. Measures being taken by the owner to protect these approaches should be reviewed. Is the owner doing everything that can reasonably be done to protect them?

(3) **Effect of Obstructions.** If obstructions exist, the records should indicate whether the object has been reviewed by FAA under a coordinated airspace review to determine its effect on the safe and efficient use of airspace. If FAA has determined the object is not a hazard, the airport owner will not be required to move or lower the object.

(4) **Zoning.** Where the airport relies on local zoning ordinances, the review should cover the effectiveness of the ordinances and the status of any legal proceedings involving them. Are the zoned areas appropriate to protect all existing and planned approaches?

c. Surplus Property Income. Income from property acquired under P.L. 80-289 and used to produce nonaviation revenues or funds derived from the disposal of such property must be applied to airport purposes. Thus the compliance review of a surplus property airport must include an evaluation of the owner's stewardship of properties conveyed for specific purposes. Most surplus airports conveyed under P.L. 80-289 contain significant areas deeded to the grantee for the purpose of generating revenue to support and further develop the aeronautical facilities. Since no other land uses were intended by the Act, it must be assumed that any property not needed for aeronautical activity was conveyed to produce revenue. There should be an agreement between the FAA and the owner as to which areas are for aeronautical activity and which for revenue production. This agreement should be reflected in the land use plan or property map or other document acceptable to FAA. (See paragraph 4-17).

(1) **Revenue Production.**

(a) If a surplus airport includes revenue production property, a detailed review of available financial records shall be made. As a very minimum, these records should be carefully screened to ensure that the grantee has established an airport fund, or at least a separate airport account in which all transactions affecting the surplus property have been recorded. Where financial records are obscure or inconclusive, the grantee shall be required to produce whatever supplemental data are needed to clearly reveal the disposition of airport revenues.

(b) The grantee must make a reasonable effort to develop a net revenue (i.e., an amount over and above expenses in connection therewith) from such property. However, there is no violation if the property is not used. It may not be donated or leased for nominal consideration, but if used at all must produce a reasonable net revenue. The compliance report must clearly reveal whether the current usage of the property conforms to this criteria. Where excess revenues accumulate, the guidance contained in Chapter 4 shall be followed.

(c) **Proceeds of Disposal.** The law prohibits the sale or other disposal of surplus airport property without the written consent of the FAA. When given, such consent will obligate the owner to expend an amount equal to the FMV of the property for airport purposes (see Chapter 7). Where a transaction of this kind has been authorized by an FAA release, the compliance review shall include a thorough check into the status of the funds involved. Are they fully accounted for, and are the owner's actions to properly apply them satisfactory?

d. Availability of Airport Facilities. The reviewer should note whether the full benefits of the airport are being made available to users. This requires more than the opportunity to land an aircraft on a safe, well-constructed runway. To add utility and purpose of flight and to fully realize the intended benefits of airport development, there should be, depending on the type of airport, a reasonable variety of supporting services such as aircraft fuel, storage or tie down and minor repair capabilities. At some locations the availability of a telephone may be all that can be economically justified. There is no criteria for measuring the adequacy of essential supporting services, and the owner of a public airport has not specific obligation to provide any of them. However, there is a basic obligation to ensure that, whatever arrangements are in effect, such services as are provided are available on fair, reasonable, and nondiscriminatory terms.

e. Adherence to Airport Layout Plan.

(1) In considering the compliance status of a Federal obligated airport, the FAA approved ALP or land use plan should be consulted. At some airports subject only to surplus property compliance obligations, an FAA approved ALP may not have been required. At these airports, see whether there is any comparable plan or layout, such as a master development plan, which might reveal the ultimate development objectives of the airport owner. Where appropriate, the premises should be inspected to determine whether there have been any improvements, or whether any are being considered, which might be inconsistent with such plans. If an airport includes grant acquired land, specific consideration will be given to whether all of it still is needed for airport purposes (see paragraph 4-17c).

(2) Whenever an actual or proposed variation from an approved ALP is found, determine whether it is significant; violates design or safety criteria; precludes future expansion needed for the foreseeable aeronautical use potential of the airport; or impairs the ability of the airport owner to comply with any of the

airport's obligations under agreements with the Government.

(3) The results of these determinations shall be recorded and one of the following actions taken:

(a) Determine that the variation is not significant and requires no further action;

(b) Obtain a modified ALP incorporating required changes; or

(c) Notify the airport owner that unless adherence to the previously approved ALP is effected within a specified, reasonable time, it will be in violation of its agreement with the Government.

(4) There is no obligation to review an ALP to reflect development recommended by the FAA if the airport owner does not propose to carry it out. FAA's opinion of what development is desirable is not incumbent on the owner. However, the ALP must reflect existing conditions and those alterations currently planned by the owner which have received FAA approval and the ALP must be formally approved by the FAA.

COMPLIANCE WORKSHEET		Name of Airport and Location										Site No.	
Inspected By (Name)		Date Inspected											
Name of Officials Contacted													
I. PHYSICAL/OPERATION CONDITIONS													
A Substantially unchanged since last inspection <input type="checkbox"/> Yes <input type="checkbox"/> No (If "NO" explain)						B General appearance is satisfactory <input type="checkbox"/> Yes <input type="checkbox"/> No (If "NO" explain)							
II. MAINTENANCE (check applicable boxes)													
	PAVING (A)	MARKING (B)	LIGHTING (C)	TURF AREAS (D)	DRAINAGE (E)	FENCING (F)	BEACON (G)	WIND INDICATOR (H)	SEGMENTED CIRCLE (I)	BLOGS (J)	UTILITIES (K)	ACCESS ROAD (L)	
1	None												
2	Satisfactory												
3	Unsatisfactory (Explain on reverse)												
INSTRUCTIONS — Explain in spaces below any "NO" answer preceded by a "*". — Enter "NA" if applicable.													
				YES NO						YES NO			
III. APPROACHES		A Consistent with FAA Design Criteria, or/on Approved ALP				●		D. Compatible Use of Adjacent Land				●	
		B Adequate Clear Zone Interests Held						E Existing Obstructions Marked/Lighted				●	
		C Adequate Zoning Established											
IV. CONTROL AND OPERATION		Satisfactory (Based On)											
		1 Satisfactory Operation Plan				3 Airport Regulations Published							
		2 Satisfactory Land-Use Plan				4 Minimum Standards							
V. EXCLUSIVE AND CIVIL RIGHTS		A Complying with Exclusive Rights Policy				●		B Complying with Civil Rights Regulations				●	
VI. LEASES AND AGREEMENTS		A New Leases Are Acceptable (List leases on reverse side if reviewed with comments)				●		B Airport Mgmt. Agreement in Effect					
								C Owner Has Retained Adequate Control				●	
VII. CONFORMANCE TO ALP		A Plan Is Substantially Up-To-Date and Approved				●		B Reflects Existing/Planned Facilities				●	
VIII. SURPLUS PROPERTY		A. Proper Use of Real Personal Property				●		C. Personal Property Marked/Maintained				●	
		B Satisfactory Accounting for Revenues				●		D. Personal Property Inventory Accurate				●	
IX. AIRPORT FUNDS		A. Financial Report Reviewed						C. Proceeds of Releases Accounted For				●	
		B Report Reflects Observed Conditions				●							
X. CONTINUING SPECIAL CONDITIONS		A. Conditions Have Been Satisfied						B Progress is Satisfactory				●	

FAA Form 5190-7 - 10-89.

Figure A-1. Compliance Worksheet (FAA Form 5190-7)

APPENDIX 7—FEDERAL LAND INVENTORY

1. BACKGROUND. Airport Property Maps are identified in AC 150/5070-6, Airport Master Plans, as a component of the ALP. The "Exhibit A" is a component part of the application for grant funds.

The AAIA, as amended in 1987, imposes new obligations on airport sponsors who have received Federal grants for land acquisition. One of these obligations requires the disposal of land no longer needed for airport purposes and returning to the Trust Fund that portion of the proceeds which is proportionate to the U.S. share of the cost of acquisition of such land.

The ALP is the primary vehicle for determining if there are land areas within the airport boundary which are no longer needed for airport purposes. Heretofore, ALP's normally have made no distinction between land acquired with and without Federal funds. Adding graphics to make such distinction on the ALP drawing would tend to "clutter up" the drawing and adversely affect its utilization for other purposes. A separate property map, drawn to the same scale as the ALP drawing, and with appropriate graphics to indicate the type of acquisition of various land areas, will provide the information needed without impairing the legibility of the airport layout drawing. Making this drawing a component part of an ALP drawing set will also tend to make the airport planner more conscious of the need to carefully plan the total airport layout and ensure that land which might be needed in the future is not disposed of prematurely. This drawing will be compared to the "Exhibit A" attached to the latest grant agreement and all future "Exhibit A's."

2. DEFINITION. A drawing indicating how various tracts of land within the airport boundaries were acquired (i.e., Federal funds, surplus property, local funds only, etc.). Easement interests in areas outside the fee property line should also be included.

3. PURPOSE. The primary purpose of this drawing is to provide an inventory and information for analyzing the current and future aeronautical use of land acquired with Federal funds.

4. PREPARATION GUIDELINES.

a. **Sheet Size.** Same as Airport Layout Drawing.

b. **Scale.** Same as Airport Layout Drawing.

c. **Title and Revision Block.** Same as Airport Layout Drawing.

d. **Legend.** Use drafting symbols (i.e., shading, cross hatching or other tonal effects) and legend table to indicate the type of acquisition involved with each tract or area.

e. **Data Table.** A data table with a numbering or lettering system should be used to show pertinent data applicable to property acquisitions. As a minimum, the following data should be included:

(1) Date the property was acquired.

(2) Federal grant project number under which the property was acquired. Like property interests acquired with Federal funds under the same project may be grouped together and shown as one tract or area.

(3) Identify the date of deed and federally-assisted program surplus and nonsurplus land was acquired.

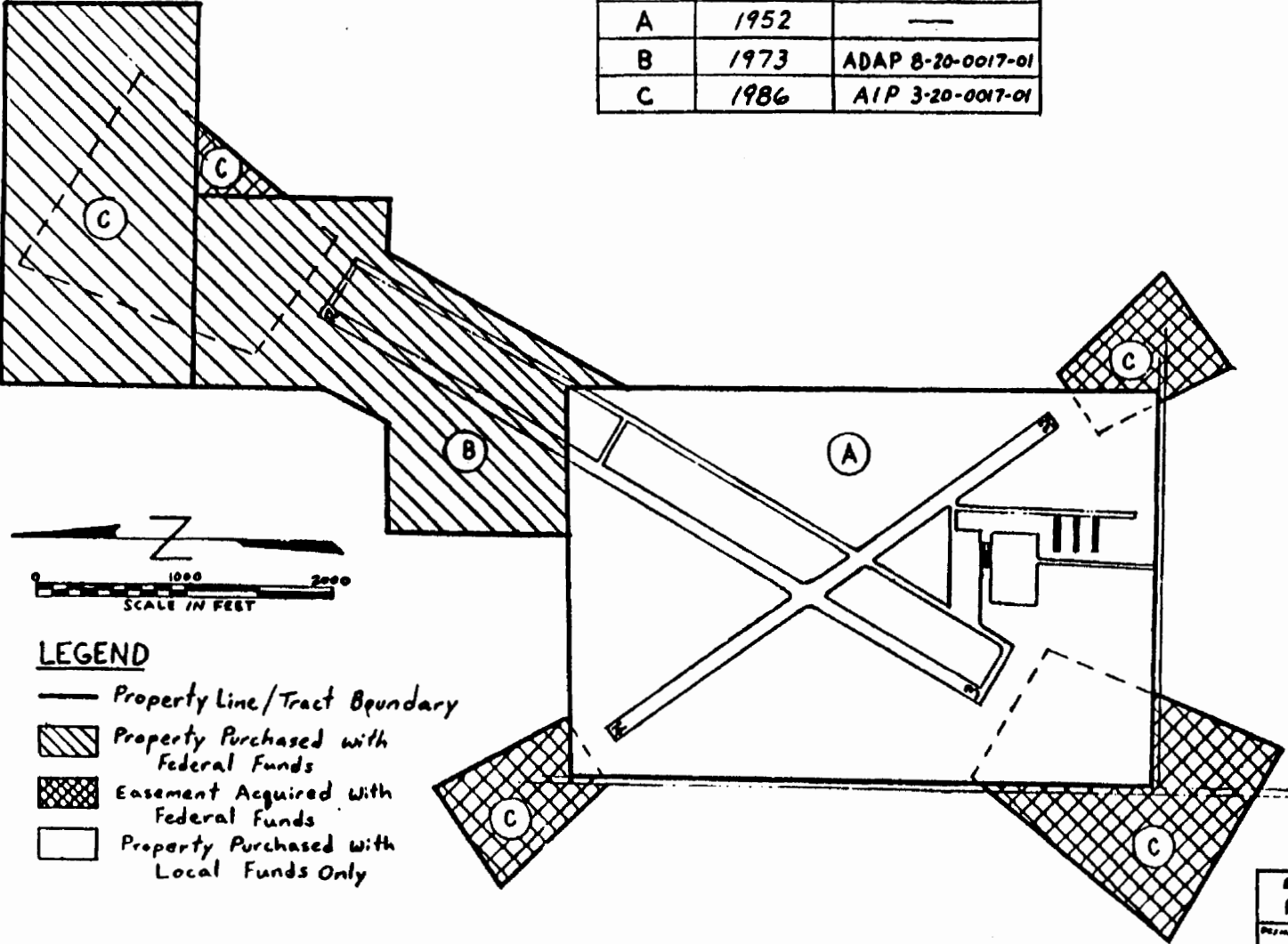
f. **Drawing Details.** Normally limited to existing and future airport features (i.e., runways, taxiways, aprons, clear zones, terminal buildings and NAVAIDS) which would indicate aeronautical need for airport property.




(1) Details should be subordinated to property lines and tract outlines by half-toning, screening, or other similar techniques.

(2) A screened reproducible of the Airport Layout Drawing may be used as the base for the ALP property map.

(3) Airport boundary lines and lines depicting property interest areas should be bold so as to stand out from background details. (See attached sketch.)

PROPERTY DATA		
TRACT	DATE ACQUIRED	FEDERAL PROJ. NO.
A	1952	—
B	1973	ADAP 8-20-0017-01
C	1986	AIP 3-20-0017-01



- LEGEND**
- Property Line/Tract Boundary
 -  Property Purchased with Federal Funds
 -  Easement Acquired with Federal Funds
 -  Property Purchased with Local Funds Only

Example Airport PROPERTY MAP	
TRACT	DATE ACQUIRED

APPENDIX 8—FLYING CLUB

The following definition of flying clubs is suggested for inclusion in Minimum Standards applying to federally-obligated airports.

CATEGORY — FLYING CLUB

In an effort to foster and promote flying for pleasure, develop skills in aeronautics, including pilotage, navigation, and an awareness and appreciation of aviation requirements and techniques, the category of Flying Clubs is added to the Rules, Regulations and Minimum Standards of the airport.

All flying clubs desiring to base their aircraft and operate on the airport must comply with the applicable provisions of these Standards and Requirements. However, they shall be exempt from regular FBO requirements upon satisfactory fulfillment of the conditions contained herein.

a. The club shall be a nonprofit entity (corporation, association or partnership) organized for the express purpose of providing its members with an aircraft, or aircraft, for their personal use and enjoyment only. The ownership of the aircraft, or aircraft, must be vested in the name of the flying club (or owned ratably by all of its members). The property rights of the members of the club shall be equal and no part of the net earnings of the club will inure to the benefit of any member in any form (salaries, bonuses, etc.). The club may not derive greater revenue from the use of its aircraft than the amount necessary for the operations, maintenance and replacement of its aircraft.

b. Flying clubs may not offer or conduct charter, air taxi, or rental of aircraft operations. They may not conduct aircraft flight instruction except for regular members, and only members of the flying club may operate the aircraft. No flying club shall permit its aircraft to be utilized for the giving of flight instruction to any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instructions, except when instruction is given by a lessee based on the airport and who provides flight training. Any qualified mechanic who is a registered member and part owner of the aircraft owned and operated by a flying club shall not be restricted from doing maintenance work on aircraft owned by the club and the club does not become obligated to pay for such maintenance work except that such mechanics and instructors may be compensated by credit against payment of dues or flight time.

c. 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.

d. The flying club, with its permit request, shall furnish the airport management a copy of its charter and by-laws, articles of association, partnership agreement or other documentation supporting its existence; a roster, or list of members, including names of officers and directors, to be revised on a semi-annual basis; evidence of insurance in the form of a certificate of insurance in the following minimum amounts: Public Liability (\$100,000/\$50,000) per person; public liability (\$300,000/\$100,000) per accident; property damage (\$100,000/\$20,000), with hold harmless clause in favor of the airport, its officers and employees (10 days prior notice of cancellation shall be filed with airport management); number and type of aircraft; evidence that aircraft are property certificated; evidence that ownership is vested in the club; and operating rules of the club. The books and other records of the club shall be available for review at any reasonable time by airport management or his authorized agent.

e. A flying club, at any airport controlled by this same airport management shall abide by and comply with all Federal, State and local laws, ordinances, regulations and the rules and regulations of this airport management.

f. A flying club which violates any of the foregoing, or permits one or more members to do so, will be required to terminate all operations at all airports controlled by this airport management. A public hearing should be held for the purpose of considering such termination.

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