



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

Great Lakes Region
Illinois, Indiana, Michigan,
Minnesota, North Dakota,
Ohio, South Dakota,
Wisconsin

2300 East Devon Avenue
Des Plaines, Illinois 60018

Policy and Procedures Memorandum - Airports Division

NUMBER : 5190.6
DATE: JUN 14 1994
SUBJECT: : Guidance for Leases, Use Agreements and Land
Releases
REFERENCES: Federal Aviation Regulation Part 77, Objects Affecting
Navigable Airspace
FAA Order 1050.1D, Appendix 6, Airport Environmental
Guidelines
FAA Order 5100.37A, Land Acquisition and Relocation
Assistance for Airport Development Projects
FAA Order 5190.6A, Airport Compliance Requirements
Advisory Circular 150/5070-3, Planning the Airport
Industrial Park
Advisory Circular 150/5100-15A, Civil Rights Requirements
For the Airport Improvement Program (AIP)
Advisory Circular 150/5100-16A, Airport Improvement
Program Grant Assurance Number One - General Federal
Requirements
APPENDICES: 1: Guide For Preparation Of Leases and Use Agreements At
Airports Affected By Federal Obligations
2: Requests For Release From Land Covenants - Format
3: Deed Restrictions For Sale Of Dedicated Airport Property
4: Guidelines For Development of Industrial Airparks
5: Guidelines For Agricultural Leases On Airports
6: Program Guidance Letter 90-5
7: Comment Resolution (Internal Use Only)

1. Background:

a. There is a need to formulate guidance for leases, use agreements, and land releases which can be provided to airport sponsors to assist them in preparing documents that are in accordance with their federal obligations.

b. There is a need for clarification of the policy concerning industrial airparks to ensure industrial airpark development is consistent with the airport's present and future needs in accordance with federal regulations and standards.

c. There is, also, a need to explain FAA's policy concerning agricultural leases on airports and to provide sponsors guidelines for preparing these unique leases.

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d. Specific guidance for the above items is provided in various FAA publications, policy letters and other written guidance, but has not been consolidated. This PPM consolidates all the documentation with the intent of reducing FAA and sponsor research efforts, to enhance lease arrangements, and to ensure that FAA interests are properly protected.

e. It is necessary to establish regional procedures on the use of reclaimed funds from land disposal, since the current Washington guidance is not clear on the use of the sponsor's share.

(1) For Sponsor's not receiving a grant after December 30, 1987, Order 5190.5A, paragraph 7-19. a. (3) requires the Federal and sponsor's shares of the net proceeds from the sale of airport land to be reinvested in airport improvements in the order of priority established for releases of surplus airport property or to reimburse the Federal share to the government.

(2) Section 511(a)(14), of the AAIA, as amended, permits airport owners who received a grant before, on, or after December 30, 1987 to reinvest the United States share of the net proceeds from the sale of airport property in another eligible airport improvement approved by the Secretary, or reimburse the Federal share to the government. This section of the Act and Assurance No. 31, as implemented by PGL 90-5, Item 90-5.1, do not impose any requirements for the sponsor's share of the net proceeds from the sale of land.

(3) Grant Assurance 25 requires all revenue generated by the airport to be expended for capital or operating costs of the airport.

2. Definitions:

a. AP-4 Agreement - is an instrument that subjects airports to terms and conditions as a result of development or improvement under the Development of Landing Area National Defense (DLAND) program and/or the Development Civil Landing Area (DCLA) program authorized by various acts during the period from 1939 to 1944 (see FAA Order 5190.6A, paragraphs 2-18. and 2-19).

b. Aviation activity - is an activity which is either a direct, supportive, or complementary aeronautical activity.

c. Complementary aeronautical activity (concession as defined in 49 CFR Part 23, Subpart F) - is a for-profit business enterprise, located at the airport, that is engaged in the sale of consumer products or services to the general airport public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the sponsor.

(1) The following are examples of complementary aeronautical activities: ground transportation (taxis, car rentals, limousines), restaurants, barber shops, auto parking lots, and recreational facilities.

(2) The following entities do not meet the definition of a complementary aeronautical activity: suppliers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial contracts, individual taxis with permits, telephone and electric utilities, sky cap services under contract with an air carrier, and management contracts to operate facilities such as a parking lot or a shuttle bus service. Whether the operation of a parking facility constitutes a management contract, depends on the terms of the agreement. If the parking lot operator is a separate business enterprise, which will pay a portion of its gross receipts or a stipulated rent to the sponsor for leasing the parking lot space, its operation is a complementary aeronautical activity. If the sponsor simply hires a firm to operate the parking facilities and pay the salaries and other stipulated amounts for such services, then the sponsor has executed a management contract.

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d. Concurrent use - is the use of dedicated airport property for a compatible non-aviation activity while at the same time the property serves the primary purpose for which it was acquired. A manufacturing facility within and under the 7:1 transitional, acquired for approach protection, would be a concurrent use of dedicated airport property. Agriculture areas, weather bureau facilities, Federal agency use, utility easements, and public road right-of-way may also be considered as concurrent uses.

e. Direct and supportive aeronautical activities - are activities which are directly or supportive to the operation of aircraft. The following examples are commonly conducted on airports: scheduled or nonscheduled air carrier service, air taxi and charter operations, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other included activities, repair and maintenance of aircraft, sale of aircraft parts, aircraft storage, parachute activities, and ultra light activities.

f. Long term lease - is a lease, with a term in excess of five (5) years.

g. Non-aviation activity - is an activity which is not considered a direct and/or supportive aeronautical activity or complementary aeronautical activity.

3. Policy/Procedures: The operation and development of airports generally involves the lease of dedicated airport property, the granting of access to the airport from off airport sites, and the sale of dedicated airport property for both aviation and non-aviation activities.

a. Leasing Dedicated Airport Property. The following should be considered when parcels are to be offered on a lease arrangement:

(1) Leasing airport property that is dedicated for aviation activities, for non-aviation activities, constitutes a change in airport land use requiring a release from federal agreement land covenants. The Sponsor's request for a release from these covenants must be prepared in accordance with Appendix 2. Prior to leasing the property, a formal release by the FAA shall be effected. The omission of an airport from the NPIAS or airport property from the Airport Layout Plan (ALP) or the Exhibit "A" Property Map is not to be construed as a determination by the FAA that such airport/airport property has ceased to be needed for present or future aviation activities.

(2) Leasing dedicated airport property acquired with Federal aid or conveyed under Public Law 289 for non-aviation activity use must be leased for fair market rental. Fair market rental should be determined by competent independent appraisal(s) and/or by direct comparison with prevailing rental of comparable property. Proceeds derived from these non-aviation activity use leases must be used for the operation, maintenance, or development of the airport. The fair market rental requirement does not apply when the land involved is subject to an AP-4 agreement only nor to the income producing potential from buildings and improvements constructed without Federal Assistance on any dedicated airport property. However, to ensure the airport is as self-sustaining as possible imposing fair market rental is strongly encouraged.

(3) Land transferred to the Sponsor under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Development Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 CANNOT be leased for non-aviation activities unless such use is:

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- (a) Secondary to the aviation use for which the land was transferred to the airport, and;
- (b) Such secondary use does not interfere with the airport purpose for which the land is needed, and;
- (c) Fair market value (FMV) is received for the secondary use, and;
- (d) The proceeds received from the secondary use are used only for development, operation and maintenance of the airport.
- (4) Leasing dedicated airport property for concurrent use does not require a release from federal agreement land covenants as the primary land use does not change. The Airport Layout Plan should be updated to reflect the concurrent land use. Fair market value revenue must be derived from the concurrent land use and used for airport purposes. If the land involved was conveyed under Public Law 289 or Section 16, 23, or 516 the appropriate conditions of paragraphs 3.a.(2) and 3.a.(3) must be complied with.
- (5) Long term (in excess of five (5) years) exclusive complementary aeronautical activity agreements with either DBE or non-DBE firms are not permitted unless approval is given by the responsible FAA Regional Civil Rights Officer (AGL-9). Therefore, in the event a sponsor wishes to enter into such an agreement, it should refer to the procedures in 49 CFR Part 23, Subpart F, Section 23.107. All leases for a term of more than 5 years should contain provisions for periodic readjustment of rates.
- (6) All leases must include the appropriate provisions set forth in Appendix 1.

b. Granting Access To The Airport From Off Airport Sites - Use Agreements: Generally permitting access to the airport from non-airport adjacent land (so called "thru-the-fence" operations) is discouraged, because of the regulatory problems associated with permitting aviation activities on or from adjacent non-airport property.

Recognizing the advantages to be able to offer a variety of proposals to prospective tenants and the reluctance of some tenants to develop on lease held property, such as in an industrial airpark, we offer the following guidance for developing use agreements for these "thru-the-fence" operations:

(1) The basic obligation of the Sponsor is to make available the landing area and airport public facilities to licensees, tenants, and patrons for use in common with others so authorized. In granting access to these common use facilities by off-site tenants, the Sponsor should ensure its capability to control the airport and to carry out its commitments to the Federal Government.

To ensure that use agreements do not place an encumbrance upon the airport property, off-site property owners or occupants must be required to conform in all respects to the requirements of any existing or proposed grant agreement.

(2) To operate and maintain common airport use facilities, the Sponsor is obligated to impose fair and equitable fees for their use to make the airport as self-sustaining as possible.

(a) To ensure off-site owners or occupants pay their share of the cost of providing the public use airport and to preserve a fair and equal competitive arena, the Sponsor must obtain a fair return from off-site enterprises for their use of the airport.

(b) A use agreement establishing necessary controls, restrictions, and a fee structure, must be effected with all off-site owners or occupants prior to permitting them access to the airport.

(3) The fee to be implemented should be fair and equitable and determined by the Sponsor. Provisions should be made for the periodic review of the rates and charges for the purpose of adjustment to reflect the then current values based on an acceptable index. The fee should include an appropriate consideration for the following items:

(a) The off-site owners or occupants must share in the costs of providing landing and public use facilities. This charge is similar to a toll charge on a highway, bridge, tunnel, or an indirect charge. Quite frequently the Sponsor recovers this use charge indirectly as part of the consideration received from commercial operators who provide direct services to users of the public areas. It may take the form of a gallonage fee, a flat monthly charge, or a variable charge using the volume of business as the yardstick of benefit derived from the common use facilities. In all cases this charge should be comparable to that imposed on similar business on the airport.

(b) A business franchise fee for the right to do business from the off airport site. This fee is based on the theory that having invested substantial funds in the capital airport plant, the Sponsor has created a business opportunity which otherwise would not exist.

(c) A rent type charge which is comparable to that charged to a similar business operating on airport owned property. This charge should reflect the off-airport business expense of owning its own property and improvements versus a similar on-airport business expense of leasing property and/or improvements. The intent of this charge is to ensure that no benefits accrue to the off-airport businesses which would give them an unfair advantage over other similar businesses on the airport.

(4) The Sponsor must reserve in the use agreement the right to further develop or improve the airport without interference or hindrance from the off-site owner or occupant.

(5) The use agreement must require off-site owners or occupants to comply with appropriate Federal provisions concerning exclusive rights, non-discrimination and affirmative action.

(6) Long term (over five years) exclusive agreements, with non minorities, for the operation of major transportation related activities for the provision of goods and services to the airport facilities or to the public on the airport are not permitted without specific exemption granted by the Department of Transportation, FAA. The Regional Civil Rights Division (AGL-9) is responsible for matters pertaining to the enforcement of the civil rights assurances and provisions. Any local circumstances that may warrant a longer lease term must be approved by AGL-9. All agreements for a term of more than 5 years should contain provisions for periodic readjustment of rates.

(7) The Use Agreement must require off-site owners or occupants to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations prior to constructing any structure or building, or any modification or alteration of any present or future structure or building on the leased or owned premises.

(8) The Use Agreement must require off-site owners or occupants to conform in all respects to the airport security requirements, operational requirements, and applicable airport minimum standards.

(9) The Use Agreement must include the appropriate provisions as are set forth in Appendix 1, Parts III and IV.

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c. Sale Of Dedicated Airport Property. The sale of dedicated airport property is generally discouraged as future needs and aviation demands vary and are difficult to predict accurately. On the other hand, Section 4 of Public Law 101-236 as amended by Section 511(a)(14) of the AATA requires an airport sponsor to dispose of land which was originally acquired with Federal grant funds for airport development purposes but no longer is needed for aeronautical purposes (including runway protection zones) or serves as noise buffer land and any revenue from the interim uses of such land to contribute to the financial self-sufficiency of the airport. Program Guidance Letter 90-5 further defines "aeronautical purposes", "noise buffer land" and "revenue from interim use." The PGL 90-5 is attached as Appendix 6.

When the sponsor is either mandated by FAA to sell airport property or when the sale will benefit civil aviation and is compatible with the needs of civil aviation, the sale of the property must be approved by FAA.

Prior to FAA's approval and the sale of dedicated airport property FAA must release, modify, or amend the contractual arrangements (agreements, Grants, etc.) the Sponsor has with the federal government.

The following guidance is offered with respect to the sale of dedicated airport property:

(1) The release, abandonment, sale or disposal of a complete airport must be referred to AAS-1 for ARP-1 approval (See Order 1100.5, Chapter 2, Section 3, paragraph 222h[15]).

(2) The sale of dedicated airport property requires a release from Federal agreement obligated land covenants. The Sponsor's request for release must be prepared in accordance with Appendix 2. Prior to selling the property, a formal release by the FAA shall be effected.

(3) Sale of dedicated airport property acquired with Federal aid or conveyed under Public Law 289 must be sold for current fair market value determined by independent appraisal(s) (see FAA Order 5100.37A for appraisal contracts and appraisal reports).

(a) The FAA on a case by case basis may process a release of all the surplus property on the airport, even though all of the property may not immediately be needed for non-aviation use. Each case must be evaluated to determine that a release of all the surplus property is in the best interest of the FAA and the airport, per paragraph 7-8 of FAA Order 5190.6A. This approach is advantageous as it allows the FAA to process one release document versus several and benefits the airport owner in marketing the surplus property.

(b) The Deed of Transfer of Public Law 289 Land, when the surplus property is not immediately needed for non-aviation use, must include the additional restrictions set forth in Appendix 3.

(4) Total net proceeds of the sale of land, conveyed under Public Law 289, must be deposited in an interest-bearing account, and will be used only for airport purposes. Funds will be spent on the following, in priority order:

(a) Airport development eligible under the airport grant program and reflected in the airport's Capital Improvement Program.

(b) Any aeronautical airport development ineligible under the current airport grant program.

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(c) Retirement of airport bonds which are secured by pledges of airport revenue.

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

(5) We interpret the intent of the Act, as amended, to require both the Federal share and the sponsor's share of the net proceeds be reinvested in the airport, or the Federal share be reimbursed to the government, as set forth in FAA Order 5190.6A, paragraph 7-19. This applies to all airport owners who received a grant before, on, or after December 30, 1987.

(a) All proceeds to be reinvested in the airport shall be spent on the item and in the priority order set forth in paragraph 3.c.(4)(a)-(d) above.

(b) The Federal prorata share of the net proceeds shall be returned to the FAA or invested in some other airport if reinvestment cannot be accomplished within 5 years or if the sponsor will not be owning an airport.

(6) Where land was not acquired with Federal financial assistance there is no required disposition of net revenues but Sponsors should be encouraged to reinvest revenues into the airport.

(a) To reduce duplicated efforts for the Sponsor and the FAA, all areas requiring a release should be requested at one time.

(b) A streamlined procedure may be followed for release of land acquired without Federal financial assistance as follows: Upon receipt of FAA concurrence in the request for release, the sponsor will submit a revised ALP Exhibit "A" Property Map for FAA approval. A copy of the FAA letter of "Concurrence to Release" and a copy of the revised Exhibit "A" should be attached to the last Grant Agreement.

(7) Deeds or other conveyances of the property interests to others should reserve the right of flight over the land sold, prohibit erection of structures that would constitute an obstruction to air navigation and prohibit any activity on the land that would interfere with or be a hazard to the flight of aircraft. Appendix 3 should be used as a guide in preparing acceptable deed restrictions.

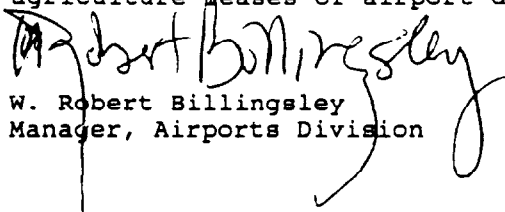
(8) Land transferred to the Sponsor under Section 16 of the Federal Airport Act of 1946, Section 23 of the Airport and Airways Development Act of 1970 and Section 516 of the Airport and Airway Improvement Act of 1982 may NOT be sold. This land may, with the approval of the controlling Federal agency and FAA, be amended or modified to provide for a greater or lesser property interest as dictated by the needs of the airport.

(9) The Airport Layout Plan (ALP) and the airport Exhibit A Property Map should be updated to reflect all changes in the Sponsor's property interests.

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d. Development of Industrial Airparks. Guidelines for the development of industrial airparks are set forth in Appendix 4.

e. Agricultural Leases On Airports. Guidelines for preparing agriculture leases of airport dedicated property are set forth in Appendix 5.


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APPENDIX 1GUIDE FOR PREPARATION OF LEASES AND USE AGREEMENTS
AT AIRPORTS AFFECTED BY GRANT AGREEMENTS
AND SURPLUS PROPERTY INSTRUMENTS OF DISPOSAL

The purpose of this guide, which is in six parts, is to assist Sponsors in the preparation of Leases or Use Agreements at airports subject to Grant Agreement obligations contained in the Project Application, and the terms and conditions applicable to airports transferred by Surplus Property Instruments.

The requirements of Grant Agreement assurances and Surplus Property Transfer Instruments are similar in most respects. Part V of this guide includes the basic provisions to be included in both aviation and non-aviation activity leases or use agreements at airports subject to either one or both Grant Agreement assurances and Surplus Property Transfer Instruments and also dependent upon whether or not the grant of the right or privilege to render accommodations and/or services to the public on the premises leased or owned. Part VI of this guide includes a list of additional rights and obligations which should be considered in preparing leases or use agreements.

PART I - LEASES FOR AVIATION ACTIVITIES

SCOPE: Lease, license, permit, contract, etc., for the right or privilege to provide services, accommodations, and/or commodities to the general airport public for direct, supportive and complementary aeronautical activities (see paragraph 2., "Definitions" of this PPM).

Lease Provisions. The following numbered provisions contained in Part V of this guide should be included in the lease agreements for direct and supportive aeronautical activities:

- | | | |
|----|---|---------------------|
| A. | Grant Agreement Airports | (1 thru 11, 16) |
| B. | Surplus Property Airports | (1 thru 11, 15) |
| C. | Both Grant Agreement and
Surplus Property Airports | (1 thru 11, 15, 16) |

The following numbered provisions contained in Part V of this guide should be included in the lease agreements for complementary aeronautical activities:

- | | | |
|----|---|----------------------------------|
| A. | Grant Agreement Airports | (1 thru 6, 8 thru 14, 16,
17) |
| B. | Surplus Property Airports | (1 thru 6, 8 thru 15) |
| C. | Both Grant Agreement and
Surplus Property Airports | (1 thru 6, 8 thru 17) |

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PART II - LEASES FOR NON-AVIATION ACTIVITIES

SCOPE: Lease, license, permit, contract, etc., for the right or privilege to engage in a business or venture other than those defined in Part I such as: manufacturing, agriculture, etc., which do not provide commodities, services, or accommodations to the general airport public.

Lease Provisions. The following number provisions contained in Part V of this guide should be included in the class of agreements referred to under "SCOPE" above:

- A. Grant Agreement Airports (8 thru 14, 16)
- B. Surplus Property Airports (8 thru 15)
- C. Both Grant Agreement and Surplus Property Airports (8 thru 16)

PART III - USE AGREEMENTS FOR AVIATION ACTIVITIES

SCOPE: Use Agreements for the right or privilege to provide services, accommodations, and/or commodities to the general airport public from off-airport property with access to the airport for direct, supportive and complementary aeronautical activities (see paragraph 2, "Definitions" of this PPM).

Use Agreement Provisions. The following numbered provisions contained in part V of this guide should be included in use agreements for direct and supportive aeronautical activities:

- A. Grant Agreement Airports (1 thru 11, 16)
- B. Surplus Property Airports (1 thru 11, 15)
- C. Both Grant Agreement and Surplus Property Airports (1 thru 11, 15, 16)

The following numbered provisions contained in Part V of this guide should be included in use agreements for complementary aeronautical activities:

- A. Grant Agreement Airports (1 thru 6, 8 thru 11, 16, 17)
- B. Surplus Property Airports (1 thru 6, 8 thru 11, 15)
- C. Both Grant Agreement and Surplus Property Airports (1 thru 6, 8 thru 11, 15, 16, 17)

PART IV - USE AGREEMENTS FOR NON-AVIATION ACTIVITIES

SCOPE: Use Agreements for the right or privilege to engage in a business or venture other than those defined in Part III such as manufacturing, agriculture, etc., which do not provide commodities, services, or accommodations to the general airport public on off-airport property with access to the airport.

Use Agreement Provisions. The following numbered provisions contained in Part V of this guide should be included in the use agreements referred to under "SCOPE" above:

- A. Grant Agreement Airports (8 thru 11, 16)
- B. Surplus Property Airports (8 thru 11, 15)
- C. Both Grant Agreement and Surplus Property Airports (8 thru 11, 15, 16)

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PART V

AIRPORT CONTRACT REQUIREMENTS

/a 1. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases, add "as a covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15A)

/a 2. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases, add "as a covenant running with the land") that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15A)

/b 3. The Lessee (licensee, permittee, contractor, etc.) agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and no unjustly discriminatory prices for each unit or service, PROVIDED, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

/b 4. The Lessee (licensee, permittee, contractor, etc.) assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract. (AAIA of 1982, Section 520 - AC 150/5100-15A)

/b 5. The Lessee (licensee, permittee, contractor, etc.) agrees that it practice nondiscrimination in their activities and will provide DBE participation in their leases as required by the sponsor, in order to meet the

sponsor's goals, or required by the FAA in order to obtain an exemption from the prohibition against Long-term exclusive leases. (49 CFR Part 23 - AC 150/5100-15A)

/b 6. The Lessee (licensee, permittee, contractor, etc.) agrees that it shall insert the above five provisions in any lease (agreement, contract, etc.) by which said Lessee (licensee, contractor, etc.) grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased or owned. (See the documents referenced for the above clauses)

/b 7. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the Lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Federal Aviation Act of 1958 Section 308(a) - AC 150/5100-16A)

/c 8. The (Owner) reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance. (FAA Order 5190.6A - AGL-600)

/c 9. The (Owner) reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard. (FAA Order 5190.5A - AGL-600)

/c 10. This (lease) shall be subordinate to the provisions of and requirements of any existing or future agreement between the (Owner) and the United States, relative to the development, operation, or maintenance of the airport. (FAA Order 5190.6A - AGL-600)

11. The Lessee (licensee, permittee, contractor, etc.) agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the (leased) premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the (leased) premises. (FAA Order 5190.6A - AGL-600)

12. There is hereby reserved to the (Owner), 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 (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. (FAA Order 5190.6A - AGL-600)

13. The Lessee (licensee, permittee, contractor, etc.) by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder above a mean sea level elevation of _____ * feet. In the event the aforesaid covenants are breached, the Owner reserves the right to enter upon the land (leased) hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee. (FAA Order 5190.6A - AGL-600)

14. The Lessee (licensee, permittee, contractor, etc.) by accepting this (lease) agrees for itself, its successors, and assigns that it will not make use of the (leased) premises in any manner which might interfere with the landing and taking off of aircraft from (official name) Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the

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Owner reserves the right to enter upon the premises hereby (leased) and cause the abatement of such interference at the expense of the Lessee. (FAA Order 5190.6A - AGL-600)

/d** 15. This (lease) and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency. (Surplus Property Act of 1944 - FAA Order 5190-6A - AGL-600)

/b 16. It is clearly understood by the Lessee or Permittee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform. (Assurance 22 - FAA Order 5190.6A - AGL-600)

/e 17. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23, Subpart F. The Lessee (licensee, permittee, contractor, etc.) agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F. The lessee also agrees to include the above statements in any subsequent complementary aeronautical activity agreements that it enters into and cause those businesses to similarly include the statements in further agreements. (49 CFR Part 23, Subpart F)

Notes:

/a Mandatory in all leases/agreements if airport is obligated by a Federal Agreement since January 30, 1965.

/b Mandatory in all leases/agreements for aeronautical services at airports subject to continuing obligations under FAAP/ADAP Agreements.

/c Mandatory in all Use Agreements permitting aeronautical operations from adjoining non-airport property.

/d Mandatory in all leases/agreements at airports acquired in whole or in part under Federal Surplus Property Transfer (unless the National Emergency Use Provision of the Surplus Transfer Document has been specifically released by the FAA).

/e Mandatory in all complementary aeronautical activity leases/agreements executed after June 1, 1992.

* Insert the number of feet mean sea level applicable to the most critical area of the parcel contained in the lease in accordance with Part 77 of the Federal Aviation Regulations. If required, the area of a lease may be subdivided as shown on a property map to provide more than one height limitation, or more restrictive height limitations may be imposed at the discretion of the Sponsor.

** If the airport is not subject to the National Emergency Use Provision generally contained in Surplus Property Instruments of Disposal, Paragraph 15 above may be modified to exclude that portion of the provision, "or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency".

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PART VI

ADDITIONAL RIGHTS AND OBLIGATIONS TO BE CONSIDERED
IN PREPARING LEASES AND USE AGREEMENTS

1. The non-exclusive right to conduct certain specified aeronautical activities at the airport.
2. The non-exclusive right to use, in common with others, all public airport facilities and improvements of a public nature which are now, or may hereafter be connected with, or appurtenant to the airport, including but not limited to, landing, taxiing, parking areas, and other common use facilities.
3. The right to construct facilities such as hangars, ramps, offices, shops, buildings, improvements, etc., required in connection with the services to be provided.
4. The right to ingress and egress to and from the leased area or owned property.
5. To provide and maintain sufficient fixtures and equipment to meet public demand for services offered.
6. To provide and maintain an adequate staff of employees with skills, licenses, and certificates appropriate to the activities conducted.
7. To maintain accurate and acceptable records which are to be made available for examination by the Lessor.
8. To operate during specified minimum hours and to conform to all rules, regulations, fixed base operator's standards, and ordinances adopted by the Lessor or other applicable Governmental bodies, including but not limited to, safety, health, and sanitary codes.
9. To demonstrate evidence of financial stability and good credit rating.
10. To meet indemnity and insurance minimums.
11. The right to temporarily close the airport or any of the facilities thereon for maintenance, improvement, or for the safety of the public.
12. The right to approve or deny any lease or sublease of the premises, on the airport or owned in the airpark.
13. The period of the lease and whether options for renewal are to be granted.
14. Provisions for termination and surrender of lease, including:
 - a. Grounds on which the lease may be terminated.
 - b. Rights and obligations of parties upon termination.
15. Provisions for breach of covenants, including:
 - a. Procedure by which either party is to give other party notice of breach.
 - b. Length of time allowed to rectify breach.

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c. Method for settling disputes as to whether breach has occurred. Guidance for preparing mediation clauses is contained in the National Air Transportation Association guidelines titled "Negotiating Aviation Agreements".

16. Provisions covering fire damages to premises, including:

- a. Responsibility for restoration and/or repair of damaged premises.
- b. Time allowed for restoration and repair.
- c. Abatement of rent if premises rendered untenable.
- d. Termination of lease due to total destruction of premises caused by fire; liability for rental.

APPENDIX 2REQUESTS FOR RELEASE FROM LAND COVENANTS

When a Sponsor accepts a Federal airport development grant or a conveyance of Federal surplus property for airport property for airport purposes, the Sponsor incurs specific obligations with respect to the uses of the property. A change in airport land use which is not related to direct and supportive aeronautical activities or a complementary aeronautical activity (i.e., convenience concessions serving the public such as shelter, ground transportation, food, and personal services) and result in converting airport property dedicated for aviation activity, to revenue producing requires the FAA's consent for the land use conversion. FAA approval is also required to release a Sponsor from obligations in the event the Sponsor desires to sell dedicated airport land.

Any release, modification, reformation, or amendment of an airport agreement between the owner and the United States must be based on a request made in writing signed by a duly authorized official of the public agency that owns the airport with full concurrence of the airport owner. Evidence of such authorization must accompany the request.

There is no specific form required for requests of this nature, but comments should be made on the following items for land acquired with Federal financial assistance:

1. What agreement(s) with the United States are involved?
2. What type of a release, modification, reformation, or amendment to the foregoing agreement(s) is being requested?
3. What is the reason for the request?
4. What facts and circumstances justify the request? (Must show how action will benefit airport.)
5. List any requirements of State or local law or ordinances which should be provided for in the language of an FAA prepared release document if the request is consented to or granted.
6. What property or facilities are involved? (If land, provide drawing accurately depicting tract with legal description.)
7. How was the property acquired or obtained by the airport owner?
8. What is the present condition of property or facilities involved and what present use is being made of this property or these facilities?
9. What use or disposition will be made of the property or facilities?
10. What is the appraised fair market value of property or facilities? (Land and facility values must be supported by an appraisal(s) conducted in accordance with FAA Order 5100.37A. If land is to be exchanged, evidence must be provided to show that equivalents are being exchanged. Appraisals are not required if land is purchased without Federal aid, or land not acquired as surplus property.)
11. What proceeds are expected from the use or disposition of the property and what will be done with any net revenues derived?
12. 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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13. 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 Fair Market Value (FMV) of the property to be released. The plan should also include as a minimum:

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

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

(c) a statement of the financial capability and intent to accomplish the airport development included in the current Capital Improvement Program (CIP) or NPIAS (for airports without a CIP), and

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

14. If the release pertains to donated real property, conveyed by the Federal government under Public Law 289, 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 fair market value is required.

15. A height restriction setting forth the applicable height limits, above which no structure or growth will be permitted, will be included in the instrument of release. The height restriction data computation, computed according to the current effective FAA criteria, as applied to the airport, is required.

16. Include an Environmental Action Choice document in which the environmental, economic, and social impacts of the proposed change in airport land use or release of airport land for the intended purpose are analyzed.

(a) Two copies of the report and all exhibits required should be submitted with the request. This includes Exhibit "A" Property Maps, justification to support the change, photographs, plans, and appraisal reports as appropriate. Five copies of the revised ALP must be furnished for coordination and approval.

(b) FAA action is required when the land use status is changed from aeronautical to non aeronautical use or for release from land covenants. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of Paragraph 31 of Chapter 3 of FAA Order 1050.1D. If an assessment is necessary, it shall address the known and immediately foreseeable environmental consequences of the release action and, as with other Federal actions regarding land, appropriate coordination with Federal, State, or local agencies shall be completed for applicable areas of environmental consideration (e.g., historic and archaeological site considerations, Section 4(f) lands, wetlands and coastal zones, endangered species). In such cases, coordination with the State Historic Preservation Officer is required.

(c) If an assessment is not required in accordance with Paragraph 31, an Environmental Action Choice document which verifies that the proposed action does not fall within the categories identified in Paragraphs 32, 34, 35, or 37 of Chapter 3 of Order 1050.1D must be submitted.

(d) As with all Federal actions regarding land, appropriate coordination with Federal, State, or local agencies should be completed as described under Paragraph 45 for any applicable areas of environmental considerations (e.g., historical and archaeological site considerations, DOT 4(f) lands, wetlands and coastal zones, endangered species, etc.).

Where the action involves the deletion of land not acquired with Federal financial assistance (i.e., no grant agreement, P.L. 289, Section 16, 23 or 516, involvement, etc.), there is no required disposition of net revenues derived from the sale or disposal. Comments should be made on the following items for land acquired without Federal financial assistance:

1. What agreement(s) with the United States are involved?
2. What type of a release, modification, reformation, or amendment to the foregoing agreement(s) is being requested?
3. What is the reason for the request?
4. What facts and circumstances justify the request? (Must show how action will benefit airport.)
5. List any requirements of State or local law or ordinances which should be provided for in the language of an FAA prepared release document if the request is consented to or granted.
6. What property or facilities are involved? (If land, provide drawing accurately depicting tract with legal description.)
7. How was the property acquired or obtained by the airport owner?
8. What is the present condition of property or facilities involved and what present use is being made of this property or these facilities?
9. What use or disposition will be made of the property or facilities?
10. What proceeds are expected from the use or disposition of the property and what will be done with any net revenues derived?
11. A comparison of the relative advantage or benefit to the airport from sale or other disposition as opposed to retention for rental income.
12. A height restriction setting forth the applicable height limits, above which no structure or growth will be permitted, will be included in the instrument of release. The height restriction data computation, computed according to the current effective FAA criteria, as applied to the airport, is required.
13. Include an Environmental Action Choice document in which the environmental, economic, and social impacts of the proposed change in airport land use or release of airport land for the intended purpose are analyzed.

(a) Two copies of the report and all exhibits required should be submitted with the request. This includes Exhibit "A" Property Maps, justification to support the change, photographs, and plans as appropriate. Five copies of the revised ALP must be furnished for coordination and approval.

(b) FAA action is required when the land use status is changed from aeronautical to non aeronautical use or for release from land covenants. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of Paragraph 31 of Chapter 3 of FAA Order 1050.1D. If an assessment is necessary, it shall address the known and immediately foreseeable environmental consequences of the release action and, as with other Federal actions regarding land, appropriate coordination with Federal, State, or local agencies shall be completed for applicable areas of environmental consideration (e.g., historic and archaeological site considerations, Section 4(f) lands, wetlands and coastal zones, endangered species). In such cases, coordination with the State Historic Preservation Officer is required.

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(c) If an assessment is not required in accordance with Paragraph 31, an Environmental Action Choice document which verifies that the proposed action does not fall within the categories identified in Paragraphs 32, 34, 35, or 37 of Chapter 3 of Order 1050.1D must be submitted.

(d) As with all Federal actions regarding land, appropriate coordination with Federal, State, or local agencies should be completed as described under Paragraph 45 for any applicable areas of environmental considerations (e.g., historical and archaeological site considerations, DOT 4(f) lands, wetlands and coastal zones, endangered species, etc.).

APPENDIX 3DEED RESTRICTIONS FOR
SALE OF DEDICATED AIRPORT PROPERTY

1. Include in any deed, or other conveyance of property interest to others, the following restrictions:

a. Grantor shall not construct nor permit to stand on said premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height to excess of (state elevation above mean sea level or refer to an attached exhibit depicting property with existing or planned (whichever is more restrictive) FAR Part 77 surfaces).

b. Grantor shall file a notice consistent with requirements of FAR Part 77 (FAA Form 7460-1) prior to constructing any facility, structure, or other item on said premises.

c. Grantor shall not hereafter use nor permit nor suffer use of the land first above described in such a manner as to create electrical interference with radio communication between the installation upon the airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

d. There is hereby reserved to the Grantor, 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. This public right 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.

e. The aforesaid covenants and agreements shall run with the land, as herein above described, for the benefit of the Grantor and its successors and assigns in the ownership and operation of the airport.

f. Grantor shall not hereafter use, nor permit, nor suffer use of the land first above described in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.

2. Include these additional restrictions in any Deed of Transfer of Public Law 289 Land, when the surplus property is not immediately needed for non-aviation use:

a. The airport owner agrees to obtain fair market value for any parcel sold. The sponsor must retain documentation that fair market value was received for the property, and the FAA must be provided this documentation upon request.

b. The airport owner agrees that funds from the sale of this property will be deposited in an interest-bearing account, and will be used only for airport purposes. Funds will be spent on the following, in priority order:

(1) Airport development eligible under the airport grant program and reflected in the airport's Capital Improvement Program.

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

(3) Retirement of airport bonds which are secured by pledges of airport revenue.

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

c. The airport owner agrees to maintain records of funds received from the sale of land and records of the funds spent for airport purposes. The FAA must be provided these records upon request.

d. The airport owner agrees to incorporate in any Deed of Transfer all reservations or restrictions that are reserved or retained in the Deed of Release. Also, any Deed of Transfer must protect the public's rights and interests in the airport and preserve the airport as a safe and usable airfield.

APPENDIX 4GUIDELINES FOR DEVELOPMENT OF INDUSTRIAL AIRPARKS

There is a need for clarification of the policy concerning industrial airparks to ensure industrial airpark development is consistent with the airport's present and future needs in accordance with federal regulations and standards. The following brief outline is intended to assist Sponsors in planning and developing industrial airparks:

1. Site Approval: If the airport is considered a suitable location for an industrial airpark, the industrial airpark's location and land requirements should be taken into account in the early stages of planning. Land for industrial airpark development should be consistent with retaining full expansion capabilities for essential airport uses such as aircraft movement areas, passenger and freight terminals, aircraft parking, aprons, navigational aids, automobile parking areas, and aircraft maintenance areas. Advisory Circular 150/5070-3 offers further guidance concerning this subject.

a. Feasibility Study: The selected site for the industrial airpark depicted on a preliminary Airport Layout Plan (ALP) or preliminary updated ALP (six copies) should be submitted to the Airports District Office for review and an airspace feasibility study. A brief report which discusses the advantages of the industrial airpark location, the impacts on the operation and maintenance of the airport, and the justification and rationale for the design should be submitted with the preliminary ALP. The preliminary ALP should present the following information:

- (1) Proposed industrial airpark boundaries and the airport's present and proposed property lines.
- (2) Proposed ground transportation systems, roadways, taxiways, auto parking lots, and aircraft parking aprons.
- (3) Proposed building restriction and/or set back lines.
- (4) Appropriate distances to existing air operational areas from the industrial airpark boundaries and building restriction lines.
- (5) Controlling FAR Part 77 imaginary surfaces over the industrial airpark.

b. ALP Approval: Upon a favorable airspace study and a favorable FAA review, a final ALP or updated ALP (six copies) approved by the Sponsor and the State (if State approval is applicable) should be submitted to FAA, Airports District Office for approval.

2. Development of the Industrial Airpark: Generally, development of industrial airparks involves the lease and/or sale of dedicated airport property for both aviation and non-aviation activity.

Non-aviation activity is defined as an activity which is not considered a direct and/or supportive aeronautical activity or complementary aeronautical activity as defined in paragraph 2 of this PPM.

a. Leasing Dedicated Airport Property for development of industrial airparks should follow the guidelines set forth in paragraph 3.a. of this PPM. All leases must include the appropriate provisions set forth in Appendix I.

In the case of leased property in the industrial airpark, the provisions of the Use Agreement to permit access are generally incorporated into the basic lease and a separate Use Agreement is not necessary.

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b. Sale of Dedicated Airport Property. The sale of dedicated airport property for industrial airpark development is discouraged because of the regulatory problems associated with permitting aeronautical operations from adjoining non-airport property (so called "thru-the-fence" operations). Recognizing the advantages to be able to offer a variety of proposals to prospective tenants and the reluctance of some tenants to develop on lease held property, we offer the following comments with respect to the sale of dedicated airport property:

(1) Guidelines for the sale of dedicated Airport Property are set forth in paragraph 3.c. of this PPM.

(2) The sale of airport property in an airpark will create a potential access situation to common use airport facilities by off-airport tenants. To ensure the Sponsor can control airport use and carry out its commitments to the Federal Governments a use agreement with the off-airport tenants is required. The use agreement should be prepared in accordance with the guidance set forth in paragraph 3.b. of this PPM.

(3) All areas within the industrial airpark, which will require a release prior to developing, should be determined and the appropriate request for release submitted as soon as possible, as substantial lead time is needed to process a release document. To reduce duplicated efforts for the Sponsor and the FAA, all areas requiring a release should be requested at one time.

c. Industrial Airpark Covenants and Restrictions. In order to accomplish the goals of the industrial airpark and to ensure that the development is compatible with the airport and adjacent property, it is desirable to adopt restrictions and covenants for the use of the property within the industrial airpark. These covenants and restrictions should be recorded with the appropriate government agencies and controlling zoning board or office responsible for issuing building permits. The following items should be included in the covenants and restrictions to ensure that development is consistent with FAA's safety and design standards:

(1) Lessees and property owners in the industrial airpark should be required to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations prior to constructing any structure or building, or any modification or alteration of any present or future structure or building on the leased or owned premises.

(2) Development standards consistent with FAA Airport Design Standards for air operational areas to ensure safe aircraft operations in and adjacent to the industrial airpark should be developed and included by reference.

(3) Lessees and property owners in the industrial airpark shall be required to conform in all respects to the airport security requirements, operational requirements, and applicable airport minimum standards.

(4) The industrial airpark uses should be restricted to ensure that the development is compatible with the present and future airport operation and development.

APPENDIX 5
GUIDELINES
FOR
AGRICULTURAL LEASES ON AIRPORTS

The first and foremost purpose of an airport is the safe and efficient movement and storage of aircraft. Crop production on airport property is a common practice, especially on airports in the Midwest. Agricultural crops may be grown on airport property, including that which was acquired with Federal (grant) funds for aeronautical purposes if it is determined that "the growing of crops is a concurrent use of airport property." "Concurrent use" means that the land can be used for more than one purpose at the same time. For example, portions of land needed for a Runway Protection Zone (formerly called Clear Zone), could also be used for agricultural purposes at the same time. "Concurrent use" should generate "fair market value" revenue to be used for airport purposes. Since relatively few airports are financially self supporting, it may be desirable that airport land that can be "concurrently used" generate revenue for the airport.

GUIDELINES

A. Adjacent to Runways - FAR Part 77 and AC 150/5300-13 contain object clearing criteria which must be met in order to ensure safe and efficient operations on an airport. Areas which must be kept free of objects are:

1. FAR Part 77 Primary and 7:1 Transitional Surface
2. Runway Safety Area (RSA)
3. Object Free Area (OFA)
4. Obstacle Free Zone (OFZ)

Crop restriction lines conforming to the dimensions set forth in the attached chart will normally provide the minimum object clearance required by FAA Airport design standards. However, to clear the FAR Part 77 7:1 transitional surface an additional offset distance may be required to permit a low (4') crop to be grown. The presence of Approach Aids and/or Approach Light Systems (ALS), whose locations are fixed by function, introduces additional considerations. Determinations of minimum areas which must be kept free of farming operations will have to be made on a case-by-case basis because of the large number of variables involved. Therefore, if and when ALS's, or Approach or Navigational Aids are involved, it may be necessary to consult with the Airway Facilities Division for guidance.

B. Approach Areas - The RSA, the OFA, and the OFZ all extend beyond the end of the runway into the approach area by varying amounts. Of the three, the OFA extends the farthest and therefore is the controlling surface. However, for non-precision operations with 3/4 mile visibility and for precision operations, the width of the OFA is less than the width of the Threshold Siting Surface, (Appendix 2 of AC 150/5300-13) which cannot be penetrated. Therefore, for any runway with visibility minimums less than 1.0 nautical mile, crop restriction lines will need to be adjusted so that crops and farm equipment will not penetrate the slope associated with the Threshold Siting Surface. Thresholds siting standards should not be confused with the Approach Surfaces described in FAR Part 77.

Crop restriction lines conforming to the dimensions set forth in the attached chart will normally provide the minimum object clearance required by FAA airport design standards. However, the presence of approach aids may require expansion of the restricted area.

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C. Between Intersecting Runways - In no case should farming operations be permitted within the Runway Visibility Zone (RVZ) if the resulting crops or farm machinery used (to grow and harvest them) would block the line-of-sight. Furthermore, it is highly desirable that clear line-of-sight be maintained between the ends of all intersecting runways. Specific determinations of what would actually be permissible in these areas requires topographical data. For example, if the terrain within the RVZ is level with the runway ends, farm machinery, trucks, large hay bales, etc., will interfere with line-of-sight while these objects are (parked or moving) in the area. On the other hand, if the terrain is below the runway elevations, some types of crops may be acceptable.

D. Adjacent to Taxiways & Aprons - Farming operations should not be permitted within the Object Free Areas (OFA) for taxiways. For aprons, assume that the outer portion of the apron is used as a taxilane and restrict farming operations within the Object Free Areas (OFA) for taxilanes.

E. Adjacent to ILS Facilities - In no case should farming operations be permitted within the localizer or glide slope critical areas, as such are defined in FAA Order 6750.16B or within the ALS Approach Light Plane as defined in FAA Order 6850.2A. However, depending on actual site conditions, the restricted areas may need to be expanded beyond the critical areas identified above. Therefore, all farm leases on airports with ILS and ALS must be coordinated with the Airway Facilities Division.

F. Adjacent to NAVAIDS - Generally Farming operations will not be permitted within 60' of the Approach Lights, 150' of T-VOR, 50' of an RVR and line of site between the RVR units, 50' of Beacon markers and 50' of LLWAS facility. The storage of farm equipment and crops should not be permitted within 1500' of Airport Surveillance Radar facilities, 500' of a T-VOR and 500' of an ILS Glide Slope Antenna. In all cases the above limits must be coordinated with the Airway Facilities Division prior to implementation.

G. Air Traffic Control Tower Line of Site - In no case should farming operations be permitted within the ATCT line of site if the resulting crops or farm machinery (used to grow and harvest them) would block the line of site.

H. TERPS Departure Obstacle Identification Surface - In no case should farming operations be permitted that would penetrate the departure Obstacle Identification Surface of Order 8260.3B paragraph 1202 for runways having an instrument departure procedure. This surface has a beginning width at the runway end of a 1000' (\pm 500 feet from centerline) with 15 degree splays on each side of the extended runway centerline for a distance of 2 nautical miles. It has 40:1 slope and begins no higher than 35' above the departure runway end elevation.

I. Other Considerations - Agricultural crops have a potential for attracting birds and other wildlife which may pose a hazard to aircraft. If birds or other wildlife become a problem because of agricultural operations on the airport, we will expect that the airport operator/owner immediately initiate remedial action.

A non-certificated airport will be considered as having a wildlife problem if wildlife activity is significant enough to cause or result in a multiple bird strike, engine ingestion, or a damaging collision with wildlife other than birds.

If a wildlife problem develops, airport operators should arrange for a site visit by a wildlife biologist from either the USDA Animal Damage Control or the State wildlife agency. The site visit will determine if the wildlife problem is a result of agricultural crops and will recommend remedial measures to help alleviate the hazard.

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This remedial action may include the temporary or complete termination of the agricultural operation. This should be clearly written into the lease and understood by the Lessee. Whenever the agricultural operation is terminated, the farmer/tenant should be required to plow under all crop residue and harrow the area smooth.

Certificated airports are required by FAR Part 139 to take appropriate actions for wildlife problems as addressed in Section 139.337.

CROP CLEARANCE CHART

Aircraft Approach Category and Design Group	Distance from Runway Centerline to Crop			Distance from Runway End to Crop			Distance from Centerline of Taxiway to Crop	Distance from Centerline Taxilane and Edge of Apron to Crop
	Visual	Non Precision <u>/4</u>	Precision <u>/4</u>	Visual and Non-Prec 1 mile Visibility	Non-Prec 3/4 Mile Visibility	Prec		
CAT A & B Aircraft								
Group 1 <u>/2</u> <u>/3</u>	125'	250'	500'	300'	500'	1000'	45'	40'
Group I	200'	250'	500'	500'	600'	1000'	45'	40'
Group II	250'	250'	500'	600'	600'	1000'	66'	58'
Group III	400'	400'	500'	1000'	1000'	1000'	93'	81'
Group IV	400'	400'	500'	1000'	1000'	1000'	130'	113'
CAT C & D Aircraft								
Group I	400'	400'	500'	1000'	1000'	1000'	45'	40'
Group II	400'	400'	500'	1000'	1000'	1000'	66'	58'
Group III	400'	400'	500'	1000'	1000'	1000'	93'	81'
Group IV	400'	400'	500'	1000'	1000'	1000'	130'	113'
Group V	400'	400'	500'	1000'	1000'	1000'	160'	138'

/1 Design Groups are based on wing span and Category depends on approach speed of the aircraft.

- | | |
|-------------------------------------|---|
| Group I: Wing Span up to 49' | Category A: Speed less than 91 knots |
| Group II: Wing Span 49' up to 78' | Category B: Speed 91 knots up to 120 knots |
| Group III: Wing Span 79' up to 117' | Category C: Speed 121 knots up to 140 knots |
| Group IV: Wing Span 118' up to 170' | Category D: Speed 141 knots up to 165 knots |
| Group V: Wing Span 171' up to 213' | |

/2 These dimensions pertain to facilities that will only serve small airplanes (12,500# and under) in Design Group I. All other dimensions pertain to facilities that will serve small and/or large airplanes of the stated Design Group.

/3 This dimension may be inadequate when visual NAVAIDS are installed. For example, farming operations should not be allowed within 25' of a PAPI Light box.

/4 For runways with visibility minimums less than 1.0 mile, the recommended distance from runway centerline to crop does not prevent crops and farm machinery from penetrating the threshold siting surface beyond the runway end. Therefore, the crop restriction lines should be adjusted to keep crops and farm machinery out of the area under the threshold siting surface that is within the distance from the runway end shown in the chart. Threshold siting surfaces are contained in Appendix 2 of AC 150/5300-13.

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FARM LEASE (SAMPLE)

THIS LEASE, entered into this ____ day of _____, 19____, by and between the _____, hereinafter referred to as the "Lessor" and _____, hereinafter referred to as the "Lessee".

WITNESSETH:

Lessor hereby leases unto the Lessee certain farm land located on the _____ Airport, as depicted on the plat attached hereto and made a part hereof, from the ____ day of _____, 19____, to the ____ day of _____, 19____. Lessee, in consideration of the leasing of said premises, hereby covenants and agrees to pay an annual rental of \$_____ for each year during the term of this lease (in lieu of actual cash rental, consideration may consist of a percentage to Lessor of crops raised on the leased premises).

Lessee will at all times farm and care for said land in a good husband like manner, and in accordance with good farming and soil conservation practices; will not commit or permit waste thereon, will carefully protect all improvements of every kind that are now on said premises or may be erected thereon during the continuance of this lease; will promptly at the expiration of the term herein granted yield up possession of said premises, without notice, unto the Lessor in as good condition and repair as they now are or may be at any time during the continuance of this lease, ordinary wear and tear excepted; will keep cultivated lands of said premises free from weeds and destroy all weeds along the fences and improvements before they ripen their seeds.

It is understood and agreed that the Lessee will obtain approval from the Lessor for all crops to be raised on the leased area. In no case will crops of wheat, oats, alfalfa, corn or sunflowers be permitted to be grown on the leased area.

It is understood and agreed that if the agricultural crops attract birds and other wildlife which may pose a hazard to aircraft the Lessee will remove all designated crops as directed by the Lessor. In addition, the Lessor reserves the right to demand possession of all or any portion of the leased premises at any time for any purpose. Whenever the agricultural operation is terminated, whether due to wildlife hazards or harvest, the Lessee shall plow under all crop residue and harrow the surface area, within safety areas, smooth. In such events, Lessor shall pay reasonable damage for growing crops taken, an agreed value for work done on unplanted land and future rentals hereunder shall be proportionately reduced.

It is further agreed that no crops will be grown within the primary surface of any runway; Object Free Area (OFA) of any runway, taxiway, taxilane or apron; critical areas of localizers and Glide Slopes; nor in such a way as to obstruct or interfere with the Runway Visibility Zone, FAR Part 77 surfaces, Departure Obstacle Identification Surface, Air Traffic Control Facilities and NAVAIDS. Crops grown in approach areas, near the runway thresholds, shall be restricted to low growing varieties that will not penetrate FAR Part 77 approach surfaces or the Threshold Siting Surfaces of Appendix 2 of Advisory Circular 150/5300-13. Crops and cultivating may be limited in other specific areas to avoid dust, debris, weeds and etc., from being blown across operating areas.

It is understood and agreed that the Lessee will obtain permission from the Lessor prior to entering the leased area and that all farming operations will be conducted in accordance with the operational rules and regulations of the airport. In addition it is agreed that the storage of farm equipment and

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crops will not be permitted within 1500' of an Airport Surveillance Radar facility, 500' of a T-VOR or 500' of an ILS Glide Slope antenna or within the runway safety area, or within the primary surface of an instrument runway.

It is understood and agreed that the rights granted hereunder will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

This lease shall extend to and be binding upon the heirs, executors, administrators, trustees, successors, receivers and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this lease as of the day and year first above written.

(LESSOR)

ATTEST:

BY _____

(LESSEE)

ATTEST:

BY _____

JUN 14 1994



US Department
of Transportation

Federal Aviation
Administration

Memorandum

APPENDIX 6

Subject: Program Guidance Letter 90-5 Date:

From: Manager, Grants-in-Aid Division, APP-500 Reply to
Attn of

To: PGL Distribution List

90-5.1 Implementation of Public Law 101-236 - Ellis Ohnstad (724-0390).

Background

Section 4 of PL 101-236 amended Section 511(a)(14) of the AAIA, in part, to relax the requirement that an airport sponsor must dispose of land which was originally acquired with Federal grant funds for airport development purposes but is no longer needed for such purposes.

Under the new amendment, sponsors may now retain such land if it may be needed for aeronautical purposes (including runway protection zone) or serves as noise buffer land, and any revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Land purchased with a grant received before December 31, 1987, which does not serve as noise buffer land, will be considered to be needed for airport purposes if the FAA was notified of the use of the land, the FAA did not object to this use, and the land continues to be used for that purpose.

The criteria described under A, below, shall be used to formulate determinations as to whether land is needed for airport purposes pursuant to Section 511(a)(14), as amended. (These guidelines do not replace or alter existing criteria for evaluating the eligibility of proposed land acquisition for airport development.) Note that an affirmative determination is needed under both A and B below.

A. NEEDED FOR AIRPORT PURPOSES

1. Needed for Aeronautical Purposes.

Land may be considered to be needed for airport purposes if the land is shown on the most recent FAA-approved airport layout plan (ALP) as needed for aeronautical use, including runway protection zone, within a 20-year planning horizon.

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2. Serves as Noise Buffer Land.

Land may be considered to be needed for airport purposes if it serves as noise buffer land. Land which meets the criteria under (a) or (b) below may be determined to serve as noise buffer.

(a) Land which is located within the 65 Ldn noise exposure contour resulting from the existing or forecast (up to 20 years) level of aircraft activity at the airport.

(b) Land outside the 65 Ldn noise exposure contour may be determined to serve as noise buffer if it meets one or more of the following criteria:

- it serves to provide a transitional buffer between on-airport uses and sensitive off-airport development,
- it lies between the airport and a major transportation arterial, a natural boundary, or a locally established planning boundary,
- it would prevent the introduction of noncompatible land uses adjacent to the airport,
- it is an uneconomic remnant of property acquired for airport purposes, the preponderant portion of which was developed for such purposes,
- it was a portion of a private airport depicted as such on local property records and acquired by a public sponsor for use as a public use airport before December 31, 1987, or
- the appropriate local planning agency documents the beneficial use of such land to mitigate the aesthetic, noise, or other impacts of aeronautical activity on existing or imminent development off the airport.

In all cases under (a) and (b), the sponsor should be urged to consult with the appropriate local planning agency to obtain its views on whether the use of such land as noise buffer is consistent with local planning policies and objectives. Views of local planning officials expressed in any documents resulting from such consultation should be considered prior to reaching a determination, and such documents shall be retained in the files of the cognizant FAA office.

Note that, by law, the provision for the use of land as noise buffer is associated only with land originally purchased with Federal grant funds for airport development. This guidance, therefore, is not applicable to determinations on the eligibility of land to be acquired for noise compatibility purposes, or to determinations on whether such land is no longer needed for such purposes.

3. Purchased with a Grant Received Before December 31, 1987.

Land purchased with a grant, or the purchase cost of which was reimbursed with a grant, issued before December 31, 1987, will be considered to be needed for airport purposes if -

- the FAA was notified by the owner or operator (sponsor) of the use of such land (acceptable forms of such notification may include submission by the sponsor of an airport layout plan (ALP) depicting such uses, an exchange of correspondence

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between the sponsor and the FAA discussing such use, a recorded observation by an FAA inspector during a certification or other formal inspection, a depiction of such use by an FAA inspector on an airport master record (FAA Form 5010-1), or other written evidence that the FAA official having the authority to approve the ALP was aware of such use);

- the FAA person having the authority to approve the ALP did not object to such use (such objection having been expressed in writing to the sponsor or documented as a record of a meeting or telephone discussion between the sponsor and the FAA) and there is evidence that sponsor was so notified; and
- the land continues to be used for that purpose, such use having commenced not later than December 15, 1989.

B. REVENUE FROM INTERIM USES OF THE LAND IS USED ON THE AIRPORT

In all cases identified in A above, the sponsor must demonstrate -

- that any revenue from any use (whether interim or long term) of such land contributes to the financial self-sufficiency of the airport; and
- that the sponsor has made a good faith effort to derive optimum revenue from such use.

The guidance on allowable costs related to demolition and removal of structures and extinguishing leases provided in paragraph 595 of Order 5100.38A is also applicable to land covered by this provision, should the land again be needed for airport development.

Assurance number 31, Disposal of Land, has been rewritten to incorporate the provisions of Public Law 101-236. You should reproduce the attached assurance locally as needed for new grants issued after October 1, 1990. We will reprint the Assurances package incorporating this change as soon as possible.

FAA Order 5190.6A, Airport Compliance Requirements, will be revised accordingly.

90-5.2 Update on Letter of Credit (LOC) - Dick Angle (724-0839). As mentioned in PGL 90-4.12 the TFCS-LOC is being discontinued by the Treasury Department in December of 1990. We have been unofficially assured by Treasury that the system will not be discontinued while we are implementing a replacement system.

The Office of Accounting (AAA-400) has the lead on implementing a replacement system and expects to have it in place by the end of December. AAA-400 has tentatively selected the system operated by the Department of Health and Human Services (HHS) and shortly expects to send a letter to FAA Accounting field offices requesting that certain actions be taken, including coordination with Airports Division. (These actions would be required even if a different replacement system were to be selected.) The HHS system is designed to accommodate the transactions of other agencies.

The replacement system will use a computer with a modem as the front end contact to request funds through HHS and Treasury's Automated Clearing House (ACH) as the payment method. (The ACH is currently used by the FAA Direct Deposit system to credit an employee's paycheck into a specified bank account.) The time frame in which a sponsor receives a check under the new system should be similar to that experienced under the TFCS-LOC.

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Sponsors may be advised of the above information to the extent you believe beneficial, including reassurance that, even though the changeover occurs while a grant is open, we expect no adverse effect on timely Federal payments.

Lowell H. Johnson

Attachment

ASSURANCE

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, it will, when the land is no longer needed for such purposes, dispose of such land at fair market value at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.
- b. (1) For land purchased under a grant for airport development (other than noise compatibility) purposes, it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will, (a) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no such eligible project exists.

(2) Land shall be considered to be needed for airport purposes under this assurance if (a) it may be needed for aeronautical purposes (including runway protection zone) or serves as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or the Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the use of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced not later than December 15, 1989.
- c. Disposition of such land under (a) or (b) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.