

Chapter 3. Federal Obligations from Property Conveyances

3.1. Introduction. This chapter discusses the various types of agreements that the federal government has used to transfer personal and real property to airport sponsors. The types of transfers include surplus property and nonsurplus property agreements. This chapter also discusses the sponsor's federal obligations under the various types of transfers, the duration of the associated federal obligations, and the need for FAA airports district offices (ADOs) and regional airports divisions to review the specific transfer document when assessing sponsor federal obligations.

In general, property agreements require the sponsor to:

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

It is the responsibility of the ADOs and regional airports divisions to:

- Ensure that the sponsors operate and maintain their airports in accordance with the transfer agreements,
- Evaluate sponsor requests for release, and
- Release qualifying property from sponsor federal obligations only when appropriate.

In addition to any airport-specific federal obligations, surplus and nonsurplus property federal obligations will, for the most part, mirror language found today in most grant agreements with respect to the basic compliance requirements, i.e., exclusive rights, reasonable access, and unjustly discriminatory treatment.



After World War II, most of the property conveyance instruments issued by the War Assets Administration (WAA) and General Services Administration (GSA) that conveyed real property contained provisions obligating the sponsor to operate and maintain the entire airport where the property is located, regardless of the amount of property conveyed. Real property conveyances include buildings and hangars such as the ones shown above at the Van Nuys Airport in California. The massive expansion of civil aviation in the U.S. after the war was due not only to technological advances in aviation, illustrated below by a Lockheed Constellation, but also by the large number of former military bases transferred to civilian use. (Photos: FAA).



3.2. Background. Prior to the enactment of Public Law (P.L.) No. 80-289 in 1947, all surplus property conveyance instruments were issued under the Surplus Property Act of 1944 (Surplus Property Act). As later amended, the Surplus Property Act was codified at 49 United States Code (U.S.C.) §§ 47151-47153. The Surplus Property Act was the primary legislative effort by the U.S. Government to dispose of excess military equipment and infrastructure as World War II was coming to an end. The Surplus Property Act authorizes the conversion of surplus military airports to civilian public use airports. The FAA recommends to the General Services Administration (GSA) which property should be transferred for airport purposes to public agencies. Prior to 1958, the Civil Aeronautics Authority (CAA) made these recommendations. Neither the FAA nor the federal government owns the properties in question once they are transferred.

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

3.3. The War Assets Administration (WAA).

Upon enactment of the Surplus Property Act, the WAA, under general authority granted by the Surplus Property Act, conveyed significant amounts of federally owned surplus properties to public agencies. Before

Form SPB-5 (3-30-45)		UNITED STATES OF AMERICA SURPLUS PROPERTY BOARD		Budget Bureau No. 16-R005.2 Approval expires May 1, 1946	
DECLARATION OF SURPLUS REAL PROPERTY (In the continental United States, its Territories and possessions) to the Surplus Property Board, Washington 25, D. C.				7. DATE June 10, 1946	8. REPORTING AGENCY NO. 129
IMPORTANT.—Instructions for completing this form appear on reverse.				9. SURPLUS PROPERTY BOARD NO. <i>N. Sla 88</i>	10. DISPOSAL AGENCY NO.
1. FROM: Real Estate Division, Bureau of Yards and Docks, BuYards and Docks Annex, Navy Department, Washington, D. C.				11. APPROXIMATE AREA 1025 Acres	
2. LOCATION OF PROPERTY (ATTACH MAP) Near Roseland, Indian River County, Florida				12. COST OF PROPERTY	
3. REPRESENTATIVES TO CONTACT Commanding Officer, Naval Air Station, Vero Beach, Florida				ACQUISITION	\$ 3,571.50
4. USE OF PROPERTY WHEN ACQUIRED Agriculture Lands				BETTERMENTS	\$ 618,657.42
5. OPINION OF BEST FUTURE USE Airport				TOTAL	\$ 622,228.92
6. GENERAL DESCRIPTION OF PROPERTY					
1. The Navy Department hereby declares surplus its interests in, together with the improvements constructed by it, on the below described property.					
2. Fee simple title to 1025 acres of land comprising Roseland Field, an Outlying Field of the Naval Air Station, Vero Beach, Florida, was acquired by condemnation proceedings, entitled The United States of America v. 1025 acres of land, more or less, in Indian River County, Florida, et al., Civil No. 45 Ft.P. in the United States District Court for the Southern District of Florida. A plat of the lands is attached as Exhibit "A", and a photostatic copy of the Judgment on the Declaration of Taking giving a complete legal description as Exhibit "B". The Attorney General in his opinion of 12 April 1946 found valid title to 1025 acres, Parcels Nos. 1 to 27 inclusive, vested in the United States. A photostatic copy of the letter is attached as Exhibit "C". Total cost of acquisition was \$3,571.50.					
3. Roseland Field was utilized as an outlying field of the Naval Air Station, Vero Beach, Florida. During Naval occupancy the following improvements were constructed:					
Clearing, draining and construction					
4 runways 150' x 4000'					
2 taxiways 50' x 1000'					
2" bituminous paving on 7" stabilized marl \$612,526.52					
Utility Building 16' x 36' 1-story, built-up roof 5,173.28					
1½ miles telephone pole line 957.62					
TOTAL 618,657.52					
DO NOT FILL IN				14. AUTHORIZED BY	
FORWARDED BY SPB TO:				<i>Andrew J. Murphy, Jr.</i> ANDREW J. MURPHY, JR., Captain, USNR Head, Real Estate Division (This (please type))	
Date _____ Initials _____				BY _____ (Signature of authorized official)	

conveyance, the responsible government entity issued a declaration of surplus real property. For surplus airport properties conveyed under this authority, the WAA established certain terms and conditions and prescribed them in Regulation 16.⁴ A copy of regulation 16 is provided as Appendix I of this Order, *Surplus Property Administration (SPA) Regulation 16*.

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

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



The FAA takes the position that each conveyance of revenue-production property obligates the public-agency recipient to use the revenues generated by the nonaeronautical use of the property for the operation, maintenance, or development of the airport. Consequently, if the property conveyed has been determined by the GSA with FAA concurrence) to be used for revenue-production purposes, the airport sponsor must use the revenue generated by the property for airport purposes by depositing the revenues into an airport fund designated for airport use. (Photo: FAA)

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

3.4. Nonairport Property. Prior to the amendment of the Surplus Property Act by P.L. No. 80-289, the WAA took the position that it had no authority to convey to public agencies any property other than that which had been, and was intended to be, used solely for the operation and maintenance of an airport. This precluded the transfer of some types of buildings, facilities,

⁴ Note: Regulation 16 from the Surplus Property Act is different from section 16 of the Federal Airport Act of 1946.

and other nonairport properties comprising parts of surplus military air bases formerly operated by the federal government.

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

3.5. The Use of Property for Revenue Production. P.L. No. 80-289 specifically authorized the GSA to transfer such surplus nonairport property as needed to develop sources of revenue from nonaeronautical commercial businesses at a public use airport. This essentially became the point at which the FAA began tracing the requirement to use airport property for aeronautical purposes. If the property is not used for aeronautical purposes directly, the property must be used to generate revenue for the benefit of the airport consistent with FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999 (*Revenue Use Policy*). The FAA must approve the use for nonaeronautical purposes before such use is allowed.

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

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

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

Highest and best use has been defined – when appraising the market value of real property – as the “reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value.” (See *Dictionary of Real Estate Appraisal*, 4th Edition, Appraisal Institute.) The Department of Justice’s Uniform Appraisal Standards for Federal Land Acquisition relies on *Olson v. United States*, 292 U.S. 246.255 (1934). See also *Bloom Company v. Patterson*, 98 U.S. 403.408 (1878) for its definition

of highest and best use. “The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.” The highest and best use must be based on:

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

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

3.7. Types of Conveyance Instruments for Surplus Property. The federal government has used three basic instruments to transfer ownership of federally owned surplus property for public use airport purposes:

- a. The WAA instrument prescribed in Regulation 16 conveyed surplus real property for public use airport purposes prior to the amendment of the Surplus Property Act of 1944 by P.L. No. 80-289.
- b. The GSA real property instrument issued under P.L. No. 80-289 conveyed surplus real property, or a combination of surplus real and airport-related personal property, for public use airport purposes.
- c. The GSA personal property instrument issued under P.L. No. 80-289 conveyed only surplus airport-related personal property for public use airport purposes.

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

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

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

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

b. GSA Public Law No. 80-289 Conveyance. Instruments of conveyance under P.L. No. 80-289 issued by the GSA are generally similar in form and content. In some cases, however, certain terms and conditions may be different. Therefore the actual obligating documents must be reviewed in the initial phase of an investigation.

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

d. National Emergency Use. Practically all WAA and GSA conveyance instruments transferring ownership of surplus real and airport-related personal property to airport sponsors for public use airport purposes contain the National Emergency Use Provision (NEUP) under which the United States has the right to make exclusive or joint use of the airport, or any portion thereof, during a war or national emergency. This has actually happened several times since World War II, particularly after the United States' involvement in the Korean War began in 1951. Two examples of airports that were reactivated are Sanford, Florida, and Brown Field, California. However, while the authorizing statutes require this provision to be included in all such conveyance instruments, it has been discovered that the NEUP was omitted from a few conveyance instruments issued by WAA and GSA. (For additional information, refer to chapter 22 of this Order, *Releases from Federal Obligations*.)

e. NEUP Case Study: Sanford Naval Air Station. The City of Sanford is located in the northwestern portion of Seminole County, approximately 16 nautical miles (or 18 statute miles) northeast of Orlando, Florida. The Orlando Sanford Airport is located in the southeastern portion of the City of Sanford. The Airport began its history prior to the 1940s as an 865-acre

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

3.9. Duration of Surplus Property Federal Obligations. The duration of the federal obligations assumed by airport sponsors for surplus federal property depends on the type of property conveyed.

a. Real Property. The federal obligations set forth in surplus airport property conveyance instruments (except those conveying only personal property) provide that the covenants assumed by the sponsor regarding the use, operation, and maintenance of the airport and the property transferred shall be deemed to run with the land. This means that subsequent owners or successors of the land would be subject to the covenants. Accordingly, such covenants continue in full force and effect until released under the Surplus Property Act, as amended. (See 49 U.S.C. § 47153.)

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

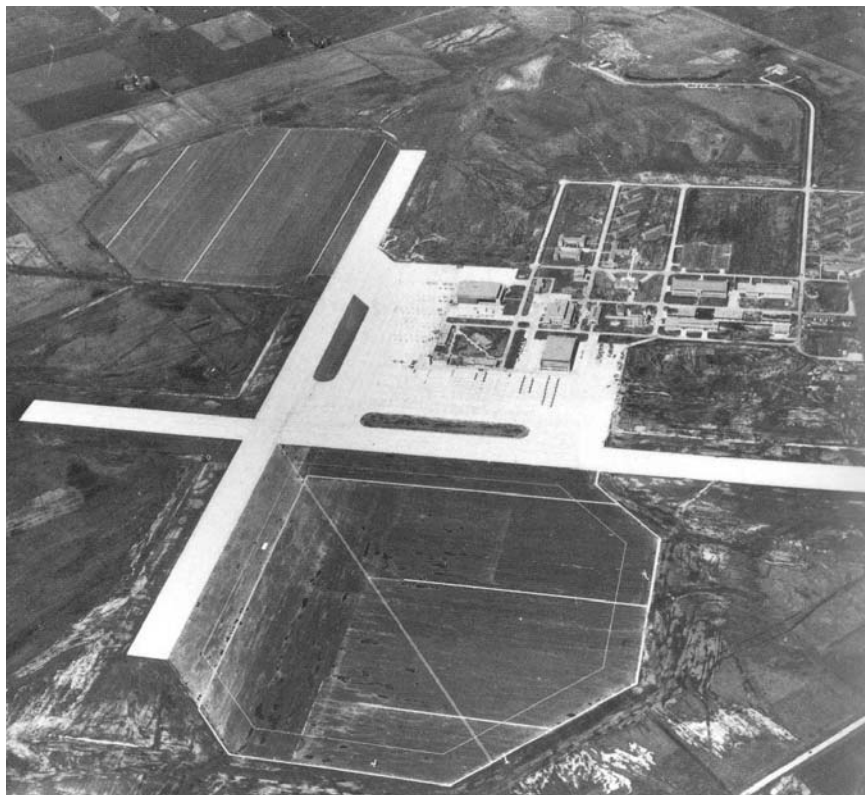
c. Trade-in of Personal Property. Airport sponsors may dispose of conveyed personal property that has outlived its useful life. If the sponsor uses such property for trade-in on new equipment, the FAA will not hold that sponsor accountable for that new equipment.

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

a. FAA Order 5150.2A, *Federal Surplus Property for Public Airport Purposes*, September 19, 1972, provides detailed guidance on FAA participation in the conveyance of surplus federal property by the GSA for public airport purposes.

b. FAA Order 5250.2, *Applicability of Exclusive Rights Provisions of Public Law 80-289 to Previously Obligated Public Airports*, issued March 29, 1965, provides detailed guidance on exclusive rights prohibitions. It discusses when an exclusive rights prohibition would apply to an airport sponsor formerly obligated under a Federal Aid to Airports Program (FAAP) grant agreement (1946-1970) and subsequently obligated by accepting surplus property conveyed under P.L. No. 80-289.

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



3.12. Land Conveyance Federal Obligations. Instruments of conveyance transferring ownership of nonsurplus federal land issued under sections 16, 23, 516 or under 49 U.S.C. § 47125 impose upon the airport sponsor certain federal obligations regarding the use of the lands conveyed. There are terms, conditions, and covenants included in the property conveyance

FAA works with the Department of Defense (Army, Air Force, and Navy), as well as local civil airport sponsors to convert military airfields to civil use. The agency also works with the General Services Administration (GSA) on airport property disposals. Currently, the FAA is working with local communities to convert several military airfields to civil airports. (See Appendix J of this Order, DoD Base Realignment and Closure (BRAC) for listing of airports.) The FAA manages surplus property transfers for airports, military base conversions, and the promotion of joint use of existing military air bases. The FAA also administers the Military Airport Program (MAP). (Photo: National Archives)

instruments, deeds, or quitclaim instruments. These terms include requirements that:

- a. The airport sponsor will use the conveyed property for airport purposes and will develop that property for airport purposes within one year or as set forth in the conveyance instrument, deed, or quitclaim instrument.
- b. The airport sponsor will operate the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as a public use airport on fair and reasonable terms and without unjust discrimination.
- c. The airport sponsor will not grant or permit any exclusive right in the operation and use of the airport, together with its appurtenant areas, buildings, and facilities regardless of whether they are on the land being conveyed, as required by section 303 of the Federal Aviation Act of 1938, as amended, and section 308(a) of the Federal Aviation Act of 1958 (FAA Act), as amended.
- d. Any subsequent transfer of the conveyed property interest to another nonfederal public entity will be subject to the terms, conditions, and covenants set forth in the original instrument of conveyance.
- e. In the event of a breach of any term, condition, or covenant contained in the conveyance instrument, the airport sponsor will, on demand, take such action as required to transfer ownership of the conveyed premises to the U.S. Government.
- f. All or any part of the property interest conveyed under section 16 shall automatically revert to the U.S. Government (through the GSA for assignment) in the event that the land in question is not developed for airport purposes or used in a manner consistent with the terms of the conveyance.

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

Under the AAIA, the BLM may continue to convey, subject to reversion, lands to a public agency for an airport. As of 2000, the BLM had 84 active airport leases and had made 33 airport grants. These leases are located near small towns, mining operations, and ranches. Local governments hold many of these leases. The FAA is involved in the approval of these leases and conveyances.

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

3.15. Duration of Nonsurplus Federal Obligations. Terms, conditions, covenants, and other federally obligating provisions in conveyance instruments issued under sections 16, 23, and 516 remain in force and effect as long as the land is held by a nonfederal public agency, its

successors, or assignees. Sections 16, 23, 516, and 49 U.S.C. § 47125 do not expressly provide for authority to release property transferred under those sections. Congress, through special legislation, can authorize the FAA to grant a release from the federal obligations associated with these sections. In addition, they may – 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.

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

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

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

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

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

a. FAA Order 5170.1, *Transfer of Federal Lands, section 23 of the Airport and Airway Development Act of 1970*, issued March 18, 1977, provides detailed guidance for FAA in reviewing and processing applications by nonfederal public agencies to receive federally owned land conveyed for the development, improvement, or future use of a public airport. Although the title reflects section 23, the document contains guidance for section 16 and 516 conveyances as well.

3.18. The AP-4 Land Agreements. Federal legislation enacted between 1939 and 1944 authorized the *Development of Landing Areas for National Defense* (DLAND) and the *Development of Civil Landing Areas* (DCLA) programs. The Work Project Administration and the CAA jointly administered the DLAND programs. In general, under these two federal programs (DLAND and DCLA), existing publicly owned airports were transferred to the federal government for development and use at its discretion, subject to the terms and conditions of an instrument known as an AP-4 Agreement. The AP-4 Agreement contained the applicable federal obligations. After considering the types of improvements, design standards, construction methods, and normal deterioration, the FAA has administratively determined that the useful life of all improvements on airports subject to AP-4 Agreements has expired. Termination of an AP-4 Agreement relieved the airport sponsor only of the contractual federal obligations imposed in the agreement. The sponsor remains subject to the exclusive rights prohibition for as long as the airport is operated as an airport.

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



FAA also works with the various Department of Defense (DoD) military departments on the joint use of existing military airports when a civil sponsor wants to use the military airfield. (Photo: USAF)

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

3.20. Joint Civilian/Military Use (Joint Use) Airports. FAA also works with the various Department of Defense (DoD) military departments on the joint use of existing military airports when a civil sponsor wants to use the military airfield. It is noted however, that the term joint use is also used in situations addressing military use of civilian airports. (See Appendix J-1 of this Order for *Air National Guard Pamphlet 32-1001*, 8 April 2003 entitled *Airport Joint Use Agreements for Military Use of Civilian Airfields*.)

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

a. Grant Agreements. The sponsor's assurances, which accompany the project application, provide that all facilities of the airport developed with federal aid and all those usable for the landing and taking off of aircraft will be available to the United States at all times without charge for use by government aircraft in common with others. However, the assurances provide that if such use is deemed substantial, a reasonable share of the cost of operating and maintaining the facilities used, in proportion to the use, may be charged. Substantial use is defined in the assurances as: (1) five or more government aircraft are regularly based at the airport or on land adjacent thereto; or (2) the total number of calendar month operations (counting each landing and each takeoff as a separate operation) of government aircraft is 300 or more; or (3) the gross accumulative weight of government aircraft using the airport in a calendar month (the total operations of government aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

b. P.L. No. 80-289. Surplus Airport Property Instruments of Transfer issued under P.L. No. 80-289 provide that "The United States shall at all times have the right to make nonexclusive use of the landing area (runways, taxiways and aprons) of the airport without charge, except that such use may be limited as may be determined at any time by the Administrator of FAA to be necessary to prevent undue interference with use by other authorized aircraft and provide further that the United States shall be obligated to pay for any damage caused by its use, and if the use is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, in proportion to such use." For guidance on substantial use, see (a) above.

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

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



FAA Order 5170.1, Transfer of Federal Lands, Section 23 of the Airport and Airway Development Act of 1970, provides guidance for when other U.S. Government land adjoins the airport and that land is requested for incorporation into the airport. For instance, an easement interest should be requested as necessary to protect the airport. A typical example would be to protect the aerial approaches to the airport by preventing obstructions from being erected. (Photo: USGS)

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

3.21. Environmental Issues Related to Land Conveyances.

a. The airport sponsor should normally prepare an environmental assessment (EA) in accordance with the applicable sections of the most current version of FAA Order 5050.4 *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions*. The FAA must then independently evaluate the EA and take responsibility for its scope and content. Generally, an EA is not required if the use of the land falls within the scope of the section in FAA Order 5050.4 covering categorical exclusions, also known as “CATEXs.” The FAA responsible official⁶ shall consult with the federal agency controlling the land to assure that environmental documentation meets the needs of the controlling agency as well as of the FAA. If an environmental impact statement (EIS) is required, the airport sponsor shall not prepare it. Instead, the FAA may act as either joint lead agency with the controlling agency or as a

⁶ Responsible Official. This is an FAA employee designated with overall responsibility to furnish guidance and participate in the preparation of environmental impact statements, to evaluate the statements, and to take responsibility for the scope and content of the statements.

cooperating agency with jurisdiction by law. The FAA may request further information from the sponsor in order to complete the EIS.

b. The FAA may include environmental mitigation measures as covenants in the deed that transfers the land.

c. Public agencies may receive surplus property for public airport purposes. FAA's involvement in such process is set forth in FAA Order 5150.2A, *Federal Surplus Property for Public Airport Purposes*. The GSA has primary responsibility for disposition of surplus federally owned or controlled property and, therefore, is the lead agency in meeting the requirements of NEPA. However, FAA has a key role in making recommendations to GSA⁷ regarding the suitability and amount of property considered necessary for airport purposes.

3.22. through 3.25. reserved.

⁷ For additional information, see the current version of FAA Order 5010.4, *Airport Environmental Handbook*.

Sample Surplus Property Conveyance - Page 1

QUITCLAIM DEED

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

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

I

All of Sections 32 and 33; the South Half of the South Half ($S\frac{1}{2} S\frac{1}{2}$) of Section 28; the South Half of the South Half ($S\frac{1}{2} S\frac{1}{2}$) of Section 29; the North Half ($N\frac{1}{2}$) of Section 34; the North Half of the South Half ($N\frac{1}{2} S\frac{1}{2}$) of Section 34, in Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, containing 2080 acres more or less.

TOGETHER WITH all buildings, structures, and improvements located thereon, and that certain personal property set forth in Schedule "A" annexed hereto and made a part hereof as though fully set forth hereat.

The above described premises are transferred subject to all existing easements for roads, highways, public utilities, railways, and pipelines.

II

That certain air-space safety zoning restriction (avigation easement) established by agreement dated 23 July 1942, signed by Fok Yut, Demetrio F. Lopez, H. B. Aguirre, and Anita Aguirre in consideration of one dollar (\$1.00) paid to them by the United States of America, affecting the following described properties to wit:

The Southeast Quarter of the Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}$) and the South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$), of Section Thirty Township Ten (10) South, Range Ten (10) East, of the Gila and Salt River Base and Meridian; and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$) of Section Thirty-five (35), Township Ten (10) South, Range Ten(10) East, and the Northeast Quarter of the Southwest Quarter ($NE\frac{1}{4}SW\frac{1}{4}$), and

the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-six (36), Township Ten (10) South, Range Nine (9) East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

III

That certain air-space safety zoning restriction (avigation easement) established by agreement dated 23, July, 1942, signed by Clarence W. George, Daisy George, T. J. Smith, and Jennie Smith in consideration of one dollar (\$1.00) paid to them by the United States of America affecting the following described properties, to wit:

Those certain portions of Sections Nine (9) and Sixteen (16), in Township Eleven (11) South, Range Ten (10) East, of the Gila and Salt River Base and Meridian, Pima County, Arizona.

IV

That certain air-space safety zoning restriction (avigation easement) established by agreement dated 24, July, 1942, signed by the State Land Department of the State of Arizona in consideration of one dollar (\$1.00) paid to the State of Arizona by the United States of America, affecting the following described properties to wit:

Those certain portions of Sections 16, 17, 19, 20, 21, 26, 27, 28, 29, 30, 31, 34 and 35, Township Ten (10) South, Range Ten (10) East, and of Sections 24 and 36, Township Ten (10) South, Range Nine (9) East, and of Section One (1), Township Eleven (11) South, Range Nine (9) East, and of Sections 4, 5, 6 and 17, Township Eleven (11) South, Range Ten (10) East, of the Gila and Salt River Base and Meridian.

V

That certain air-space safety zoning restriction (avigation easement) established for the period of the present War plus six (6) months by agreement dated 19, October, 1942, signed by the Cortaro Farms Company, an Arizona corporation, in consideration of one dollar (\$1.00) paid to it by the United States of America, affecting the following described property, to wit:

Those certain portions of Sections 1, 2, 3, 10, 11 and 14, Township 11 South, Range 10 East, Pima County, Arizona, of the Gila and Salt River Base and Meridian.

EXCEPTING, HOWEVER, from this conveyance all right, title, and interest in and to all property in the nature of equipment, furnishings, and other personal property which can be removed from the land without material injury to the land or structures located thereon other than that property described in Schedule "A" hereof; and reserving to the GRANTOR for itself and its lessees, licensees, permittees, agents, and assigns the right to use the property excepted hereby in such a manner as will not materially and adversely affect the development, improvement, operation or maintenance of the airport and the right of removal from said premises of such property, all within a reasonable period of time after the date hereof, which shall not be construed to mean any period more than one (1) year after the date of this instrument, together with a right of ingress to and egress from said premises for such purposes.

And further excepting from this conveyance and reserving to the GRANTOR, in accordance with Executive Order 9808, approved on December 5, 1947, (12 F.R. 8223), all uranium, thorium, and all other materials determined pursuant to Section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761), to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by the instrument for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated as such from the ore in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.

Said property transferred hereby was duly declared surplus and was assigned to the War Assets Administration for disposal, acting pursuant to the provisions of the above-mentioned Act, as amended, Reorganization Plan One of 1947 and applicable rules, regulations, and orders.

By the acceptance of this deed or any rights hereunder, the said GRANTEE, for itself, its successors, and assigns agrees that transfer of the property transferred by this instrument, is accepted subject to the following restrictions set forth in subparagraphs (1) and (2) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, Reorganization Plan One of 1947 and applicable rules, regulations, and orders:

(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 terms "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 condition, 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.

By the acceptance of this deed or any rights hereunder, the said GRANTEE for itself, its successors and assigns, also assumes the obligations of, covenants to abide by, and agrees to, and this transfer is made subject to, the following reservations and restrictions set forth in subparagraphs (1) to (7) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, Reorganization Plan One of 1947 and applicable rules, regulations, and orders:

(1) That insofar as it is within its powers, the GRANTEE shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(2) That the United States of America (hereinafter sometimes referred to as the "Government") through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any of the property transferred by this instrument is located or used, without charge; Provided, however, that such use may be limited as may be determined at any time by the Civil Aeronautics Administrator or his successor to be necessary to prevent undue interference with use by other authorized aircraft; Provided, further, that the Government shall be obligated to pay for damages caused by such use, or if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, commensurate with the use made by it.

(3) That during any national emergency declared by the President of the United States of America or the Congress thereof, the Government shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which any of the property transferred by this instrument is located or used, or of such portion thereof as it may desire, provided, however, that the Government shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; Provided, further, that the Government shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively of any improvements to the airport made without United States aid.

(4) That no exclusive right for the use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term "exclusive right" being defined to mean

(1) any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;

(2) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the GRANTEE by the provisions of this instrument.

(6) That no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the GRANTEE for other than airport purposes without the written consent of the Civil Aeronautics Administrator, which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located; Provided, that no structures disposed of hereunder shall be used as an industrial plant, factory, or similar facility within the meaning of Section 23 of the Surplus Property Act of 1944, as amended, unless the GRANTEE shall pay to the United States such sum as the War Assets Administrator or his successor in function shall determine to be a fair consideration for the removal of the restriction imposed by this proviso.

(7) The GRANTEE does hereby release the Government, and will take whatever action may be required by the War Assets Administrator to assure the complete release of the Government from any and all liability the Government may be under for restoration or other damages under any lease or other agreement covering the use by the Government of the airport, or part thereof, owned, controlled or operated by the GRANTEE, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used; Provided, that no such release shall be construed as depriving the GRANTEE of any right it may otherwise have to receive reimbursement under Section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal agency.

By acceptance of this instrument or any rights hereunder, the GRANTEE further agrees with the GRANTOR as follows:

(1) That in the event that any of the aforesaid terms, conditions, reservations or restrictions is not met, observed, or complied with by the GRANTEE or any subsequent transferee, whether caused by the legal inability of said GRANTEE or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the GRANTEE, or any portion thereof, shall at the option of the GRANTOR revert to the UNITED STATES OF AMERICA sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administrator or his 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

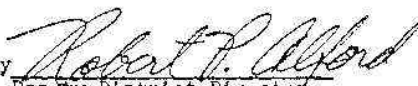
met, observed or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the GRANTEE, its transferees, successors and assigns.

(2) That if the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the Government may exercise its option to cause the title, right of possession and all other rights transferred to the GRANTEE, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

TO HAVE AND TO HOLD said premises, with appurtenances, except the fissionable materials and other property excepted above and the rights reserved above, and under and subject to the reservations, restrictions and conditions set forth in this instrument unto the said GRANTEE, its successors and assigns forever.

IN WITNESS WHEREOF, the GRANTOR has caused these presents to be executed as of the day and year first above written.

UNITED STATES OF AMERICA
Acting by and through
WAR ASSETS ADMINISTRATOR

By 
Deputy District Director
For Real Property Disposal
Los Angeles District Office
WAR ASSETS ADMINISTRATION

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