

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

- 24. Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use

discretion, may either make an after-the-fact determination on the present utility of the affected apron as in paragraph (2) above, or may seek a remedy including:

- (a) Requiring the sponsor to have portable hangars and/or sun shades removed from the apron;
- (b) Seeking reimbursement for the Federal share of apron construction costs; (i.e., cost of apron replacement); or
- (c) Recovering the Federal share of apron construction costs in a future project.

4-18. USE OF SURPLUS PROPERTY.

a. **General.** Surplus airport properties conveyed under the authority of the Surplus Property Act, as amended by P.L. 80-289, impose upon the grantee certain continuing obligations that are generally more comprehensive than the covenants and conditions discussed in previous parts of this section. Most of the surplus properties were developed as military installations and comprise a physical plant that frequently exceeds, or at least differs from, the type of development that would be undertaken to meet the demonstrable civil aviation needs of a typical community. P.L. 80-289 authorizes the conveyance of property over and above the required aeronautical facilities in order to permit the grantees to have a source of continuing airport revenue. To assure that this is accomplished, the FAA insists that surplus properties associated with a public airport including revenue generated therefrom be used to support the development, maintenance and operation of the aeronautical facilities. (See paragraph f. below.)

b. **Obligations Run with the Land.** There is a further distinction between the obligations assumed under a grant project and those assumed by the recipient of a surplus airport. Grant agreements are contracts with the Government relating to airport facilities. These run for a maximum specified term of years, or for the time the land is used for an airport, whereas the covenants of a surplus airport conveyance are in fact restrictions and encumbrances which condition the title to the land. Thus, every acre of a surplus airport is held in trust for a specific purpose and usage. The Surplus Property Act provides that property shall not be used, leased, sold, salvaged or disposed of for other than airport purposes without the consent of the Administrator. This reflects a degree of administrative flexibility to adjust the usage in a surplus property deed for specific areas of a surplus airport within the spirit, intent and objectives of the law.

c. **Authorized Land Use.** The FAA is required to assure itself that surplus land conveyed for aeronautical purposes is so used and that land con-

veyed for revenue purposes is actually used or available to produce revenue for the continued development, maintenance and operation of the aeronautical facilities. With the passage of time the aeronautical needs of any community will change. Therefore, the FAA is authorized to approve changes in the use of surplus airport property, including the conversion of aeronautical to revenue production and vice versa. It may relieve the recipient of its obligation to maintain parts of the airport that are no longer required for aeronautical usage within the foreseeable future. Under certain circumstances, it may grant a complete release for sale or disposal if the resulting proceeds are applied to further develop, maintain and operate the airport or other NPIAS airports which it owns as approved by the FAA. Conditions and procedures governing the release of surplus property from any of the terms and conditions of the deed are contained in Chapter 7.

d. **Reduction or Change in Aviation Use Property.** Changes in aviation needs may make it desirable to convert dedicated aviation use property to revenue-production property. The conversion may receive FAA approval provided the present/future civil aviation needs are met or assured and the public benefit in civil aviation is enhanced. In all such conversions, FAA shall require assurance that all such converted property will be used to produce FMV for civil airport purposes consistent with the original conveyance and in support of the owner's endeavor to make the airport as self-sustaining as possible.

e. **Land Use Plans.** In order to determine that all property on a surplus airport is being used as intended by the applicable law, it is necessary for the recipient to have inventory accountability. The most effective means for maintaining such a current inventory is the "land-use plan." This is a scaled layout of the entire property indicating the current use approved for each identifiable segment or area including that land which FAA has approved for revenue production. If this plan is to serve as the land inventory plan it should indicate the acquisition source of all airport land (i.e., surplus, grant purchase, etc.). For ease, it may be incorporated on an Exhibit A or on an ALP or developed as a separate document.

f. **Leasing of Surplus Airport Properties.** Section 1, Chapter 6 contains guidance on evaluating leases or use agreement covering aeronautical facilities at a public airport. It assists FAA personnel in advising airport owners about contracts or agreements which could affect the owner's prime responsibility to control public facilities and to make them available on fair and reasonable terms without discrimination.

(1) At airports which include Federal surplus property acquired for airport purposes, there is a further obligation to ensure that such property, if not needed to directly support an aviation use, is available for use to produce income for the airport. There is no violation of the covenants in the conveyance document (or deed) if the airport owner is unable to arrange for productive use of such property. However, when used, it must produce income for the airport. This means that any lease or other rental arrangement covering the use of surplus property at an airport must assure that the fair rental value of the property will accrue to the airport and be available to meet airport expenses. Such property may not be rented at a discount to support community nonprofit organizations or to subsidize nonairport objectives.

(2) Where revenue production land has remained undeveloped while comparable off airport land is being developed, reasonable market incentives should be considered to promote interest in developing the property. This would include a reduction in fair rental value for a limited time period or the use of a property development firm to share in the development costs or similar development incentives. In these cases, it is acceptable for the development firm to realize a reasonable share of the revenue. This method should only be used so long as it is necessary to establish the viability of the development.

(3) In determining what is the FMV, consideration should be given to the current market value of the property and to the going rate for rental of equivalent premises. The obligation to obtain fair rental income from the nonaviation use of surplus airport property relates to the property as acquired from the Government. It does not apply to the income producing potential from buildings and improvements constructed thereon without Federal assistance. Fair rental value may need to be reevaluated if airport land remains vacant while other comparable off airport property is being leased. In small communities, a faulty comparable may have been used. Fair rental/market value is clearly tied to demand and in these cases, consideration should be given to doing a market survey.

(4) Provisions should be made for periodic adjustments of the rental terms based on economic conditions.

g. Leases Contemplating Substantial Investment. Where prospective nonaviation tenants plan extensive improvements to leased surplus airport property they will normally seek long-term lease agreements, frequently in excess of 20 years. A fixed rental rate for Federal surplus property may over a period of years become unreasonably less than a fair rental value. FAA should require that leases with a term in

excess of 5 years contain a reasonable escalation clause or periodic renegotiation provision to assure that the land is still producing for the airport the income for which it has a potential. The effect of such long-term commitments on defense mobilization requirements for the airport should be considered and, if appropriate, a total release from the NEUP should be obtained. (See Chapter 13, Order 5190.2). In certain circumstances where the land will never be aviation developed a complete release to permit sale of the land may be appropriate.

h. Subordination of Reversionary Interest of the United States. The existence of the contingent right of the United States to revert title for default by the airport owner has in some instances discouraged the leasing of revenue-producing surplus property to an income-producing tenant planning to invest substantial sums in construction on the property. If thoroughly justified on the record, the FAA may approve a lease which would protect the lessee's interests in the event of default and reversion of the airport to the Government.

(1) The FAA may, by letter or other written means, assure the grantee/owner and the prospective lessee that the lease will be honored in accordance with its terms for a period long enough to amortize or retire the invested amount but not for the useful life of the improvements. This assurance may not be given in connection with a lease of any property which may, in the foreseeable future, be required for aeronautical purposes or which is still subject to the NEUP provision.

(2) Whenever such action is contemplated it should be coordinated with the regional Assistant Chief Counsel.

i. Personal Property. All surplus personal property must be used, or continuously available for use, for airport purposes, during its useful life (not to exceed 1 year). To facilitate accountability the equipment should be clearly marked for identification. FAA provides decals for this purpose. When the personal property is not actually needed at the airport, FAA may consent to its use for another public purpose. It must always be available when needed for the airport. For donable property and related personal property, accountability will terminate 1 year after the transfer or earlier upon determination by FAA that items have outlived their useful life.

4-19. USE OF LANDS TRANSFERRED FROM THE UNITED STATES.

a. As compared to surplus property, much more stringent use restrictions apply to properties acquired for airport purposes under Section 16/23/516. The appli-