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Federal Aviation Administration

Memorandum

Date: February 2, 2023

To: Regional Compliance Specialists

From: Kevin C. Willis, Director, Office of Airport Compliance and Management Analysis, ACO-1
Subject: KEVIN WILLIS Digitally signed by KEVIN WILLIS
Date: 2023.02.02 12:11:26 -05'00'
Compliance Guidance Letter 2022-1- The Process for the Release and Permanent Closure of Federally Obligated Airports

INTRODUCTION

This Compliance Guidance Letter (CGL) provides internal compliance guidance to personnel in the Federal Aviation Administration's (FAA's) Office of Airports about responding to an airport sponsor's request for a release to close a Federally obligated airport. This CGL discusses general principles, terms used throughout this document, relevant statutory and regulatory requirements, and the processes and procedures that airport sponsors and the FAA must follow before the FAA may grant a release of Federal obligations. This CGL also discusses agency policy on the closure of an airport where all Federal obligations have expired.

The FAA Associate Administrator for Airports' authority to grant a release of Federal obligations depends on the sponsor's obligating documents, such as a property conveyance or grant agreement.

DISTRIBUTION:

Compliance Guidance Letter 2022-1 replaces CGL 2018-02 and CGL 2021-02. This CGL has been prepared to assist Headquarters and Regional Compliance Specialist to prepare the necessary documentation to support the release and closure of Federally Obligated Airports in a consistent and standardized manner. It is not for public distribution.

I. GENERAL PRINCIPLES

The FAA will act on an airport sponsor's request for release and closure to the extent that such action will benefit the public interest in civil aviation within the specific authority conferred upon the Associate Administrator for Airports by law. Unless there is a proposal

2

for the construction of a replacement airport that will satisfactorily accommodate the loss of the aeronautical services of the airport to be closed, the FAA will not consider a release and closure for an airport:

- a. if the airport serves a unique role and there is no comparable alternative within its vicinity; or
- b. if the airport is part of a *system* of airports and the role it fulfills is important to the continued operation of the local airport system; or
- c. if the airport supports a level of activity that classifies it as either "National" or "Regional" in the current published National Plan of Integrated Airport Systems (NPIAS).

The FAA will take no public position either approving or denying a sponsor's request to close a federally obligated airport until the FAA has completed a thorough review and analysis of the sponsor's request. The FAA Regional Office and/or Airport District Office (ADO) should advise airport sponsors:

- a. of the types of airports generally not considered eligible for a release or closure as listed under these general principles; and
- b. the airport sponsor has an obligation to conduct its own analysis and provide a justification for its request for release and closure; and
- c. the FAA will not issue a decision on a sponsor's request for closure until a thorough review and analysis has been completed and approved by the Associate Administrator for Airports.

II. EXPLANATION OF TERMS USED

A. Duration of Obligations. An airport sponsor's Federal obligations endure for the useful life of the grant-funded improvements at the airport. For most airport facilities built to FAA standards, the useful life will not exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. For equipment acquired with grant funds, such as certain vehicles, the useful life shall be no less than ten (10) years from the date of acceptance of a grant offer of Federal funds for the project. Certain obligations may extend beyond the useful life of the grant-funded improvements at the airport. The exclusive rights, airport revenue, and civil rights assurances extend so long as the airport is used as an airport (see *Airport Sponsor Assurances*, 2/2020, paragraph B.1).

Note: If a sponsor proposes to close an airport after expiration of its last 20-year development grant term, and then reopen the airport with the intention of operating free of Federal airport obligations, consult FAA Office of the Chief Counsel (AGC-600) for the applicability of continuing Federal requirements. See Section XI below.

When Federal grant funds are used to purchase land, or when Federal surplus or nonsurplus property land is conveyed to the sponsor, the obligations tied to those

funds do not expire, as the useful life of the land is presumed not to expire.¹ Grants issued for land purchase under the Federal Airport Program or the Airport Development Aid Program as well as the current Airport Improvement Program (AIP) may also impose continuing obligations on airport property. Such property remains federally obligated until released by the FAA. This means that an airport sponsor that has used grant funds to purchase land or that has received a conveyance of property from the Federal government must use the airport as an airport until released by the FAA. In these cases, an airport sponsor must provide the FAA with a justification for its request to close an airport.

- B. Federally Obligated Airport Property.** Most federally obligated airports are listed in the NPIAS. However, airports can be excluded from the NPIAS and remain Federally obligated by surplus property conveyances and/or grant agreements. All property identified on an airport's Exhibit "A" property map, or on the airport's Airport Layout Plan (ALP) if no Exhibit "A" property map exists, is federally obligated airport property unless otherwise stated. If the FAA has determined it lacks certain authority over the property pursuant to Section 163 of the FAA Reauthorization Act of 2018 (P.L 115-254), the property is still federally obligated although not all obligations continue to apply. The property depicted on Exhibit A is federally obligated regardless of whether it is airside property, was purchased with grant funds or donated under the Surplus Property Act of 1944, as amended, or was acquired with airport revenue.
- C. Release.** A release is the formal, written authorization discharging the sponsor's Federal obligations and relinquishing the FAA's right to enforce an airport's contractual obligations. In some cases, the release is limited to releasing the sponsor from a particular assurance or Federal obligation. In other cases, a release may permit the disposal of certain airport property.

III. STATUTORY AND REGULATORY REQUIREMENTS

A. Statutes

1. Title 49 U.S.C. § 46319, *Permanent Closure of an Airport without Providing Sufficient Notice*
2. Title 49 U.S.C. § 47107(c)(2)(B), *Written Assurances on Acquiring Land*
3. Title 49 U.S.C. § 47107(h), *Modifying Assurances and Requiring Compliance with Additional Assurances*
4. Title 49 U.S.C. § 47107(h)(2), *Public Notice Before Waiver of Aeronautical Land-Use Assurance*
5. Title 49 U.S.C. § 47123, *Nondiscrimination*
6. Title 49 U.S.C. § 47125, *Conveyances of United States Government Land*
7. Title 49 U.S.C. § 47151, *Authority to Transfer an Interest in Surplus Property*

¹ Some exceptions to airport nonsurplus conveyances exist. A review of the grant conditions and deeds is required to determine the extent of applicable Federal obligations.

8. Title 49 U.S.C. § 47133, *Restriction on Use of Revenues*
9. Title 49 U.S.C. § 47153, *Waiving and Adding Terms*
10. Title 49 U.S.C. § 46319, *Permanent Closure of an Airport without Providing Sufficient Notice*

B. Code of Federal Regulations

1. 2 CFR Part 200.311, *Real Property*
2. 14 CFR Part 157, *Notice of Construction, Alteration, Activation, and Deactivation of Airports*
3. 14 CFR Part 155, *Release of Airport Property from Surplus Property Disposal Restrictions*

C. Grant Assurances

1. Grant Assurance 5, *Preserving Rights and Powers*
2. Grant Assurance 19, *Maintenance and Operations*
3. Grant Assurance 20, *Hazard Removal and Mitigation*
4. Grant Assurance 25, *Airport Revenues*
5. Grant Assurance 29, *Airport Layout Plan*
6. Grant Assurance 30, *Civil Rights*

D. Policy

1. FAA Order 5190.6B, *Airport Compliance Manual*
2. *Policy and Procedures Concerning the Use of Airport Revenue* (64 Fed. Reg. 7696), February 16, 1999

IV. FAA OFFICE RESPONSIBILITIES FOR CLOSING ENTIRE AIRPORT

A. Approval Authority. The FAA Associate Administrator for Airports (ARP-1) is the FAA approving official for a sponsor's request to be released from its Federal obligations for the purpose of closing, replacing, or disposing of an entire airport. That authority is not delegated. Each request to release the airport sponsor from its Federal obligations for an entire airport shall be considered by ARP-1 on a case-by-case basis under the specific circumstances of the proposed closure. A copy of the sponsor's request, including related exhibits and documents, and a copy of the FAA Regional Airports Division Director's recommendation regarding the proposed action shall be provided to the Director of the Office of Airport Compliance and Management Analysis (ACO-1), who will forward copies of the airport closure request package to the other offices in Airports.

B. Headquarters Review. Any release having the effect of permitting the closure, sale, replacement, or disposal of a complete airport must also include recommendations from ACO-1, the Director of the Office of Airport Planning and Programming (APP-1), and the Director of the Office of Airport Safety and Standards (AAS-1) before being submitted for consideration and disposition by ARP-1.

C. Applicability. This CGL applies to all NPIAS or Non-NPIAS federally obligated airports as a result of a property conveyance or a grant agreement.

V. FAA CONSIDERATION OF CLOSING ENTIRE AIRPORT

A. General. Within the specific authority conferred upon the FAA Associate Administrator for Airports by law, the Associate Administrator will, when requested, consider a release of a sponsor from any airport agreement to the extent that such action has the potential to protect, advance, or benefit the public interest in civil aviation. Such action may involve a complete and total release to an airport sponsor that authorizes closure of an airport and subsequent disposal of federally obligated airport property.

In all cases, the FAA's prime concern is the benefit to civil aviation and is represented by various considerations. These include the future growth in operations; capacity of the airport; the interests of aeronautical users and service providers; the state aviation agency; the local, regional, and national interests of the airport; and the impact on the airport system (State and national). It is the responsibility of the FAA Airports District Offices (ADOs) and/or regional airports divisions to analyze and consider a course of action on the release request to ACO-1. Major considerations in the analysis of a release request include:

1. The reasonableness and practicality of the sponsor's request.
2. The disposition and effect of the request on all airport assets.
3. The net benefit to civil aviation.
4. The compatibility of the proposal with the needs of civil aviation.
5. The existing airport being in a safe and operable condition. A sponsor may not allow an airport to fall into disrepair while considering closure or awaiting a decision on a closure request.
6. The state aeronautical agency's recommendation on the sponsor's request.

B. Federal Obligations. Generally, a sponsor and airport property can be federally obligated by the following actions:

1. Accepting a Federal AIP grant for an aeronautical improvement, including a grant for the purchase of land for aeronautical use.
2. Having the property listed on the Exhibit "A" property map. Such property is obligated regardless of how it was acquired or the purpose for which it is used.
3. Accepting a conveyance of Federal land of any kind, including a conveyance under the Surplus Property Act, section 16 of the Federal Airport Act of 1946, section 23 of the Airport and Airway Development Act of 1970, or section 516 of the Airport and Airway Improvement Act of 1982.
4. Accepting a Federal grant under the Military Airport Program (MAP) or for noise compatibility or planning. However, planning grants contain a limited list of assurances and do not impose all of the obligations of a development grant. The sponsor of a planning grant may not be an airport sponsor.
5. Acquiring property with airport revenue, regardless of whether the property is on an airport's Exhibit "A" property map or ALP.
6. Designating property for aeronautical purposes on an ALP at a federally obligated airport. Once designated for aeronautical use, the property may not be used for nonaeronautical purposes without FAA approval.
7. However, the FAA's regulatory authority over a particular parcel may be limited under Section 163 of the FAA Reauthorization Act of 2018 (P.L 115-254).

VI. CATEGORIES OF PROPOSED ACTION

A. Release of Federal Obligations. Before any action is taken to close a federally obligated airport, the FAA must first decide whether or not to release a sponsor from its Federal obligations. A release of Federal obligations may result in a closure of the airport and disposal of the property. The FAA must determine the disposition of the sale proceeds on the property. The FAA may require the airport sponsor to either reimburse the Aviation Trust Fund for a newly constructed public airport or another existing public airport, or use the sale proceeds and the unamortized value of the Federal share of grant-funded improvements to fund an AIP eligible airport development project in the local airport system. The proceeds from the sale of real airport property and net airport revenues may be used for specific infrastructure improvements at another NPIAS airport, usually in the same local region, subject to the FAA approval. The unamortized value of the Federal share of grant-funded improvements will be reinvested as a grant that will be subject to the standard requirements for grants under the AIP. The sponsor must place those funds in escrow to be administered for use at other NPIAS airports. Airports obligated by the grant assurances must consider all their airport assets, such as airport revenue accounts and personal property, as subject to Federal obligations.

B. Transfer of Federal Obligations. When an entire airport is disposed of and is to be replaced by a new or replacement airport, the FAA's policy is to treat the disposal as a trade-in of the land and facilities developed with Federal aid at the old airport for the acquisition and development of better facilities at the new or replacement airport. If the old airport is AIP obligated, then all airport assets (land, facilities, equipment, funds account, etc.) are considered part of the trade-in to the new or replacement airport.

Release under these circumstances is contingent upon the transfer of Federal grant obligations to the new or replacement airport. The release would become effective upon the transfer of the Federal grant obligations to the new airport after

the new airport becomes operational. In most cases where a replacement airport is itself the subject of a Federal AIP grant, the existing associated grant assurances have the same effect as a transfer of grant obligations. Portions of development costs for the new airport in excess of the value from the disposal of the old airport may be eligible for AIP funding. In these circumstances, the availability of a new and potentially better airport is the FAA's basis for determining that the old airport must be closed in exchange for the opening of the new airport. The original grant agreement is then terminated with the transfer of the grant obligations to the new or replacement airport.

157.7 FAA determinations.

(a) The FAA will conduct an aeronautical study of an airport proposal and, after consultations with interested persons, as appropriate, issue a determination to the proponent and advise those concerned of the FAA determination. The FAA will consider matters such as the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports; the effects the proposed action would have on the existing airspace structure and projected programs of the FAA; and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal. While determinations consider the effects of the proposed action on the safe and efficient use of airspace by aircraft and the safety of persons and property on the ground, the determinations are only

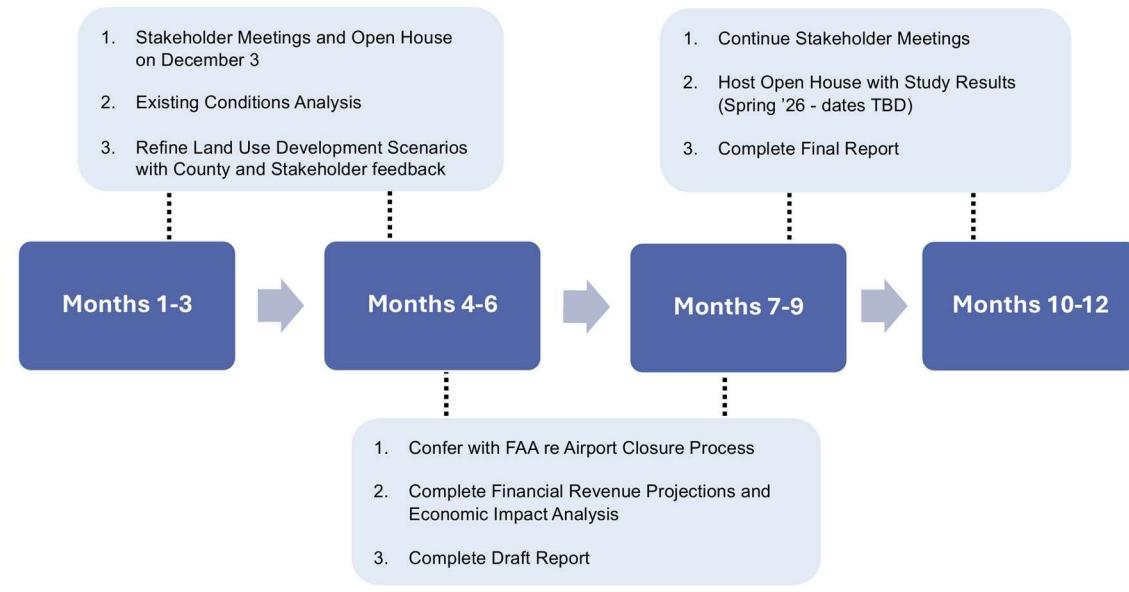
advisory. Except for an objectionable determination, each determination will contain a determination-void date to facilitate efficient planning of the use of the navigable airspace. A determination does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulation, or state or other Federal regulation. Aeronautical studies and determinations will not consider environmental or land use compatibility impacts.

Whiteman Air[port Land Use Study Group Plans for Next Steps:

STUDY TEAM



PROCESS & NEXT STEPS



For questions, additional information, or to join our (the Land Use Study Group) mailing list and receive updates about upcoming community meetings, please contact us by phone or email. Alternatively, you may complete this contact form, and a member of our team will be in touch.
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