



Malena Marvin &lt;malena.marvin@gmail.com&gt;

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## Trails

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**David Berg** <david@vikingtrvl.net>

Fri, Oct 22, 2021 at 10:31 AM

To: ParksRecreationAdvisoryBoard@petersburgak.gov

Nancy and I are going to be out of town for this meeting but I thought I would offer some input in respect to visitors using trails in town.

Some of the cruise ships use the drive down facility or the Petro Marine dock so they are out in that end of town and having a trail head up behind Severtson's would allow visitors to get on city trails and walk over towards the sandy beach or hungry point

Sometimes the cruise ships divert from Petersburg because they do not have a permit to use the trail on Kupreanof island.

Having an alternative in town would be appealing to them I think Lindblad might be a partner in this type of trail activity

Dave and Nancy Berg

Sent from Dave's E device



Malena Marvin &lt;malena.marvin@gmail.com&gt;

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## Trail from Severson's to Haugen Drive

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Casey Knight &lt;caseyaknight@gmail.com&gt;

Mon, Oct 25, 2021 at 4:42 PM

To: parksrecreationadvisoryboard@petersburgak.gov

To Whom It May Concern:

In early 2020, I was interested in marshalling support for a trail from Severson Subdivision to Haugen drive. I wrote up a sort of petition letter, showed it to some people (around 50), and almost everyone signed -- mostly people from Severson's, but also people on the "other side" of the potential trail route. See the attached "Letter in favor of the trail" for a version of this letter. (I believe Sue Harai at PIA has the signatures that I collected. I gave it to her, she kept it -- maybe she has it filed away somewhere.)

PIA would build and maintain the trail. Indeed, in 2017 they were locked and loaded, ready to build it. The Borough Assembly had OKed it. But it died. I suppose it's a long story exactly why it died; I'll not summarize here. (For some of this history, see the attached "4.18.2017.Planning.Commission.Report", "10.25.2016.Planning.Commission", and "Borough.Draft Letter of Support for PIA trail".)

Later, a slightly different route from the first version of the trail was proposed (see the attached "Proposed.Trail.Route"), and this time the roadblock was the AKDOT. Briefly, the reason was that the trail route went across land that is currently used as a buffer between the airport fence and the top of Lumber Street/Hammer Slough.

Here's a recap of the events that occurred in February 2020 (or at least, the ones that I recall).

1. I talked with Sue Harai of PIA, and she was excited about getting that trail idea going again. She contacted DOT to see what they had to say.
2. Paul Khera of DOT wrote a formal letter to Sue turning down her request. See the attached "Khera.Letter.to.sue.harai".
3. After reading Khera's letter and doing a little research, I wrote up a reply to all the points Khera made. His points seemed to me to be poor excuses to turn down the request to build a trail. See the attached "Knight.Letter.about.paul.kheras.letter".
4. In my rebuttal of his points, I referenced the relevant documents to which he referred, viz., chapters 20 and 22 of the Airport Compliance Manual, and what is referred to as "the section 4(f) process" (see the attached "5190\_6b\_chap20", "5190\_6b\_chap22", and "Section 4(f)...").
5. And then COVID.

In any case, Sue Harai's thought was that if the Borough-plus-PIA came at them together we might have more success. I'm not sure where PIA is on this anymore; haven't really thought or talked much about it. When I talked to Assembly Member Stanton-Gregor about it in February 2020 his initial reaction was something like, "What?! I thought I already dealt with that. I thought that trail was going to be a thing."

Maybe a newer resolution/letter from the Borough Assembly, which partially addressed Khera's points, and also expressed the need for the project, would be the thing to do. If it were sent jointly -- or at the same time as -- a letter from PIA, that might have the most force.











So perhaps the Parks and Rec board could draft a letter and recommend to the Assembly to endorse it, while explaining why the initial action on the part of the Assembly wasn't enough to make the trail happen. That is, if you all are into the idea of the trail.

Best,

Casey Knight  
606 Queen Street  
907-650-7345

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**10 attachments**

-  **Letter in Favor of the trail.pdf**  
32K
-  **Knight.Letter.about.paul.kheras.letter.pdf**  
45K
-  **Khera.Letter.to.sue.harai.pdf**  
240K
-  **Proposed.Trail.Route.pdf**  
1052K
-  **5190\_6b\_chap20 copy.pdf**  
962K
-  **Section 4(f) | Federal Transit Administration copy.pdf**  
158K
-  **5190\_6b\_chap22 copy.pdf**  
2501K
-  **4.18.2017.Planning Commission Report - PIA Trail.pdf**  
1326K
-  **10.25.2016.Planning.commission.pdf**  
2167K
-  **Borough.Draft Letter of Support for PIA Trail.pdf**  
125K

***A Letter in Support of a Trail from Severson Subdivision to Haugen Drive  
7 February 2020  
Casey Knight, resident of 606 Queen Street***

To Whom It May Concern:

The purpose of this note is to comment in favor of a trail connecting Severson Subdivision to Haugen Drive. The path, to be built and funded by PIA, would begin at the intersection of Odin and Queen Street, cut a short way across the muskeg to Noseeum Street, continue to the top of Noseeum, and then cut across the wooded area that makes up the drainages in to Hammer Slough and Mill Slough, and finally connecting to Haugen Drive on the down hill side of the fire hall.

As I see it, the trail would help to solve two main problems for the residents of Petersburg.

First, there is the problem that walkers and bike riders from Severson Subdivision and Lumber Street are disconnected from local paths, other residential districts, both grocery stores, and the Post Office. I think of this as a **problem of access** for pedestrians.

While there are quite a few pedestrian paths on the North side of town (in the muskegs behind the baseball field, along Haugen drive near the airport, and behind the airport on the access roads), such paths are lacking on the South side of town (there is one paved path on the Libby Straight stretch between one-mile and two-mile). This new trail would connect pedestrians in the Severson Subdivision area to the network of pedestrian walkways on the North side of town.

It would also allow walkers and bike riders to travel easily between that area and the other residential districts. And the distance you would need to walk on the trail in order to visit Hammer and Wikan or the Post Office would be a fraction of that of the hike along North Nordic, across the Hammer Slough bridge, and up Haugen Drive.

Second, I believe that the trail would provide a much safer route for pedestrians traveling from Severson Subdivision or Lumber Street. The trail would solve a **problem of safety** for pedestrians.

The route along North Nordic and Haugen Drive to the Post Office and Hammer and Wikan does not feel safe when you walk or ride your bike. There are no bike lanes, and there is no room on the road for bike lanes. So if you want to ride your bike, you tend either to take to the sidewalk, or weave in and out between parked cars. Both of these alternatives are unsafe. In addition, during the winter, snow plows make berms that cover the sidewalks. This forces walkers to walk in the edges of the streets, which is especially unsafe in winter conditions. Any time of the year, families with young children whole live in the area would have access to a safe, traffic-free walking path. The trail would provide a safe alternative for pedestrians in and around Severson Subdivision and Lumber Street.

These are not the only reasons to support a trail from Severson Subdivision to Haugen Drive. Dog walkers would have another route. Tourists would have another trail to tramp. We would all have another path to walk on a nice day.

Sitka has a beautiful cross-town trail. Cities in the lower-48 have them. It's time for Petersburg to catch up.

Sincerely,

Casey Knight  
caseyaknight@gmail.com  
907-650-7345

***A Letter in Reaction to Paul Khera's February 14, 2020 Letter to the Petersburg Indian Association  
Casey Knight  
18 February 2020***

To Whom It May Concern:

The purpose of this note is to reply to some points made by Paul Khera, Aviation Planner for Alaska DOT&PF, Southcoast Region, in his recent letter to the PIA. Mr. Khera's letter was a response to a request by PIA to build a trail on currently unused airport land in the vicinity of the James A. Johnson Airport in Petersburg, Alaska. The purpose of his letter was to provide reasons why PIA cannot be granted access to the unused land for the purpose of building said trail.

As I understand it, Mr. Khera expressed two main points.

The following quotation from Mr. Khera's letter contains the first point:

"You [PIA] are correct regarding the fact that the current airport master plan does not indicate any development of the land where you propose to build a trail, but that **does not mean the property is excess to the needs of the airport** or that it should be put to other uses. Vacant land on airports serves a purpose in that it provides a **buffer between airport operations and incompatible uses**" [emphasis my own].

The thought here seems to be that the land in question must remain vacant in order to provide a buffer between airport operations and incompatible lands uses (such as residential housing). This, however, is clearly false. The land, which currently serves as a buffer between the airport and some main residential districts in Petersburg, would still serve its function as a buffer between the airport and those residences. Indeed, Chapter 20 ("Compatible Land Use and Airspace Protection") of the FAA Airport Compliance Manual (hereafter ACM) contains the following quote (page 20-1):

"Proximity of ... recreational areas has proven not only to be compatible, but to be mutually beneficial as well. Some communities have used the resources of an airport to contribute to the quality of life for the local community."

Indeed, it cannot legitimately be claimed that the trail itself is an incompatible use of the land. In Chapter 20 of ACM, the notion of compatibility is defined as follows (page 20-5):

"Compatibility of land use is attained when the use of the adjacent property neither **adversely affects flight operations** from the airport nor is itself adversely affected by such flight operations" [emphasis my own].

Clearly, a trail going through the forest and muskeg well outside of the runway boundary fence would not adversely affect flight operations.

The second point expressed by Mr. Khera begins as follows:

"[ACM] **cautions against allowing non-aeronautical uses like you [PIA] have proposed** because they result in protections under 49 U.S. Code 303, Section 4(f)" [emphasis my own].

Mr. Khera seems to be referring to a brief part of Chapter 22 ("Releases from Federal Obligation") of ACM. On page 22-4 of this chapter, there is a sentence that reads as follows:

“Airport sponsors considering requests to use airport land for recreational purposes **who are planning future airport development projects** should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C., rectified at section 303)” [emphasis my own].

While this sentence does seem to be expressing some level of caution, it is extremely important to note the emphasized portion. Mr. Khera agrees in his letter that there is currently no future development project in the Petersburg airport facilities that would be located anywhere near the proposed trail. It would seem, then, that ACM does not in fact caution against allowing non-aeronautical uses *like the proposed trail*, as this trail does not conflict with any planned future airport development.

Mr. Khera’s second point continues as follows:

“Once such a use [e.g., a recreational trail] is established, Section 4(f) protects that use and **diminishes our ability** to implement future airport development that is **necessary for aeronautical activities**” [emphasis my own].

While Section 4(f) clearly protects established recreational use of land, there is also a rigorous step-by-step procedure (“the Section 4(f) process”) that would allow future development of the airport — especially development that is necessary for aeronautical activities. Section 4(f) would essentially require that future development attempt to proceed without eliminating the trail. It would not prohibit any and all future development in the area of the trail (cf. the outline of Section 4(f) at <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/section-4f>). Indeed, if it were shown that elimination of the trail was *necessary* for aeronautical activities, then the Section 4(f) process would allow it. At worst, the Section 4(f) process would require more paperwork and planning in the future, if airport development conflicted with the trail location. Therefore, it seems that Section 4(f) would not in fact diminish the ability for the airport to be developed for aeronautical necessities at any point in the future.

Mr. Khera closes his letter as follows:

It is my sincere hope that this does not appear to be an **overly cautious** approach on our part. **Previous experiences** with airports across the United States have informed the FAA that we need to be vigilant in protecting our public airport lands...” [emphasis my own].

I respect Mr. Khera’s caution and vigilance. However, I would warn against haphazardly applying lessons learned from previous experiences with other airports. The situation in Petersburg is unique. The Petersburg airport is not a major hub, serving multiple cities or a greater metropolitan area. It serves a single small community, which barely even deserves the name “city”. There are only two Alaska Airlines flights in and out per day, and it is subject to some doubt whether we will even retain those two flights in the long-term, especially given the current fiscal climate.

Mr. Khera agrees that we cannot identify any future development that would conflict with the trail. The fact that we cannot identify such possible development should be reason enough to accept that the trail would not preclude any future necessary development of the airport.

Sincerely,

Casey Knight  
[caseyaknight@gmail.com](mailto:caseyaknight@gmail.com)  
907-650-7345



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Transportation and  
Public Facilities

DIVISION of PROGRAM DEVELOPMENT and STATEWIDE PLANNING  
Juneau Field Office

P.O. Box 112500  
Juneau, Alaska 99811-2500  
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Fax number: (907) 465-6984  
dot.alaska.gov

February 14, 2020

Petersburg Indian Association  
Attn: Susan E. Harai, PE/PLS,  
Tribal Transportation Director  
P.O. Box 1418  
Petersburg, Alaska 99833

RE: Petersburg Indian Association Access Request, James A. Johnson Airport Trail

Dear Ms. Harai:

I am reaching out to you and the Petersburg Indian Association to introduce myself as the Aviation Planner for the Department of Transportation and Public Facilities (DOT&PF), Southcoast Region. As regional planner for airports and facilities, I support operations and management of public airports to meet current and future aeronautical needs in accordance with state and federal regulations and requirements. Sharyn Augustine has shared with me that the Petersburg Indian Association is interested in obtaining access to airport lands to construct a trail.

Petersburg James A. Johnson Airport is certificated under 49 CFR Part 139 of the Federal Aviation Regulations and is federally obligated through funding we receive from the FAA's Airport Improvement Program (AIP). As recipients of AIP grants, we are responsible for compliance with the grant assurances. One of these requires our preservation of all rights and powers necessary for ensuring the aeronautical utility of the airport. We cannot grant a land use which may limit expansion, revenue generation or future aeronautical use of the airport. You are correct regarding the fact that the current airport master plan does not indicate any development of the land where you propose to build a trail, but that does not mean the property is excess to the needs of the airport or that it should be put to other uses. Vacant land on airports serves a purpose in that it provides a buffer between airport operations and incompatible land uses.

The FAA Airport Compliance Manual, Order 5190.6B, guides our management of airport lands. It cautions against allowing non-aeronautical uses like you have proposed because they result in protections under 49 U.S. Code 303, Section 4(f). Once such a use is established, Section 4(f) protects that use and diminishes our ability to implement future airport development that is necessary for aeronautical activities. We may not have identified that development in our current plans, but we the airport is expected to be operating long into the future and will undoubtedly need things we cannot identify now.

*"Keep Alaska Moving through service and infrastructure."*



It is my sincere hope that this does not appear to be an overly cautious approach on our part. Previous experiences with airports across the United States have informed the FAA that we need to be vigilant in protecting our public airport lands and keep airports operating properly and efficiently for the traveling public.

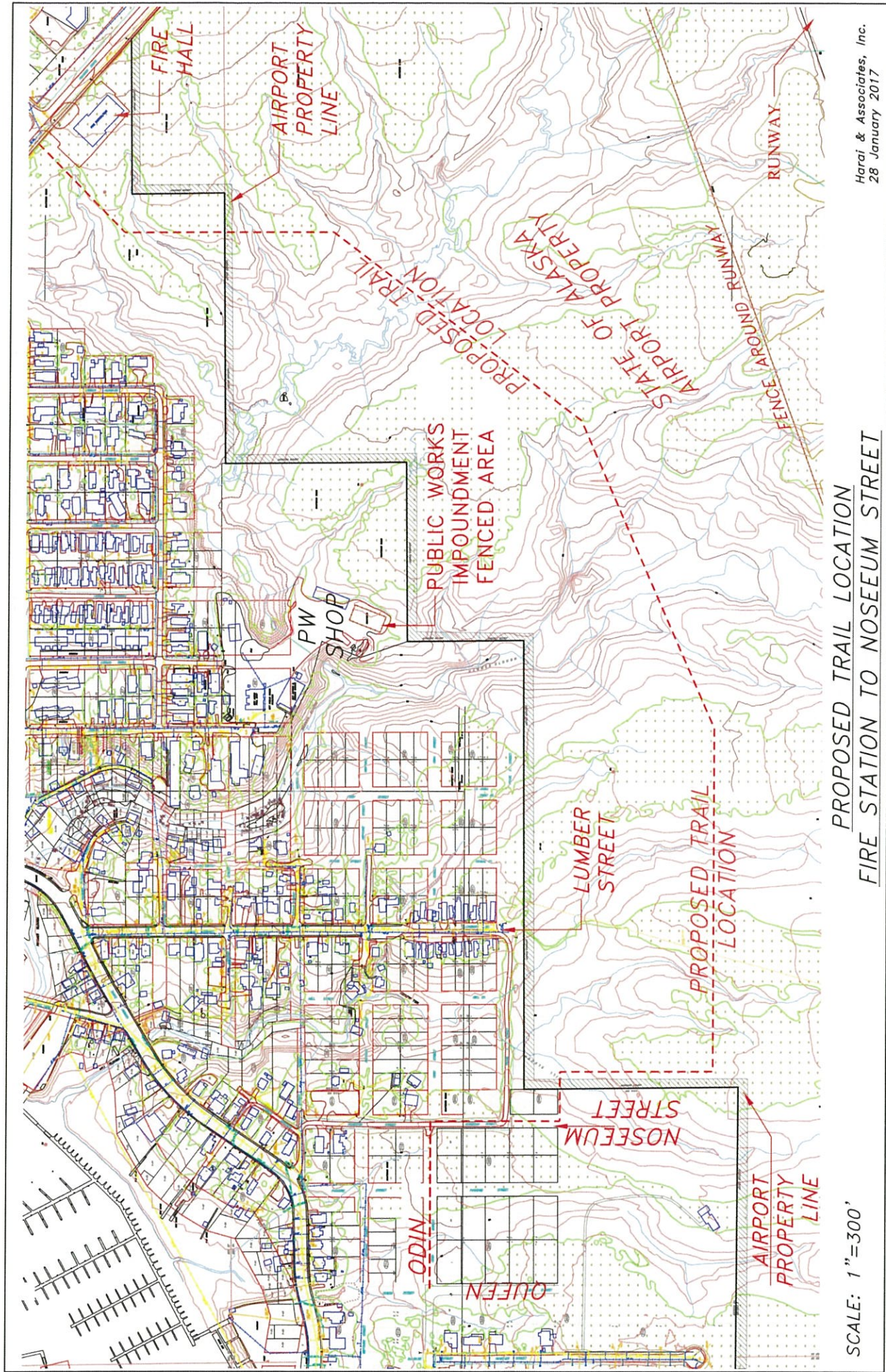
If you have any further questions on this matter, please feel free to email me at [paul.khera@alaska.gov](mailto:paul.khera@alaska.gov) or call me at (907) 465-4445. Thank you!

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul Khera", written in a cursive style.

Paul Khera  
Aviation Planner

cc: Lance Mearig, Division Director  
Sharyn Augustine, Airport Leasing Specialist  
Barry Youngberg, Petersburg Airport Manager



SCALE: 1"=300'

PROPOSED TRAIL LOCATION  
 FIRE STATION TO NOSEEUM STREET

## Chapter 20. Compatible Land Use and Airspace Protection

**20.1. Background.** Land use planning is an important tool in ensuring that land adjacent to, or in the immediate vicinity of, the airport is consistent with activities and purposes compatible with normal airport operations, including aircraft landing and takeoff. Ensuring compatible land use near federally obligated airports is an important responsibility and an issue of federal interest. In effect since 1964, Grant Assurance 21, *Compatible Land Use*, implementing Title 49 United States Code (U.S.C.) § 47107 (a) (10), requires, in part, that the sponsor:

*“...take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.”*

Incompatible land use at or near airports may result in the creation of hazards to air navigation and reductions in airport utility resulting from obstructions to flight paths or noise-related incompatible land use resulting from residential construction too close to the airport.

Airports present a variety of unique challenges to those involved in community planning. Height restrictions are necessary in the vicinity of airports and airways for the protection of aircraft in flight. Residential housing and other land uses near airports must remain compatible with airports and the airport approach/departure corridors. Additional concerns include the airport's proximity to landfills and wetlands that may result in hazards to air navigation created by flocks of birds attracted to the landfills or wetlands. Unusual lighting in the approach area to an airport can create a visual hazard for pilots. Also, land uses that obscure visibility by creating smoke or steam may be hazardous to flight. Each of these concerns must be addressed in community planning in order to maintain the safety of flight as well as the quality of life expected by community residents.

As communities continue to grow, areas that once were rural in nature can quickly become urbanized. A result of “urban sprawl” is the loss of open space and the resulting loss of airports and/or their utility. Many communities have relied upon their airports as an economic engine. Proximity of industrial parks and recreational areas has proven not only to be compatible, but to be mutually beneficial as well. Some communities have used the resources of an airport to contribute to the quality of life for the local community.

In addition to the basic economic value of the airport, the preservation of open space and the ability to accommodate emergency medical airlifts are specific examples of this contribution to the community. Increases in air travel are placing an increasing demand on the nation's airports. Environmental concerns and cost may prohibit the establishment of new airports. This means that to accommodate air traffic demand, maximum utility must be achieved from existing airports. For this to happen, the land use in the vicinity of airports must be reserved for compatible uses.



*Incompatible land use is one of the most serious problems affecting aviation today. (Above is an aerial view of residential development near the Lancaster Airport in Pennsylvania.) Zoning ordinances should be reviewed to determine what uses are currently permitted around the airport and to find out if there have been any recent changes in zoning. It is important that local land use planners become involved in the airport's master planning process by providing input on the potential impacts that future airport development plans may have on their communities. Coordination between the airport and the zoning entities is extremely important to achieve a successful cohabitation between airport and community. (Photo: FAA)*

Grant Assurance 21, *Compatible Land Use*, relates to the obligation of the airport sponsor to take appropriate actions to zone and control existing and planned land uses to make them compatible with aircraft operations at the airport. The FAA recognizes that not all airport sponsors have direct jurisdictional control over uses of property near the airport. However, for the purpose of evaluating airport sponsor compliance with the compatible land use assurance, the FAA does not consider a sponsor's lack of direct authority as a reason for the sponsor to decline to take any action at all to achieve land use compatibility outside the airport boundaries.

In all cases, the FAA expects a sponsor to take appropriate actions to the extent reasonably possible to minimize incompatible land. Quite often, airport sponsors have a voice in the affairs of the community where an incompatible development is located or proposed. The sponsor should make an effort to ensure proper zoning or other land use controls are in place.

## **20.2. Zoning and Land Use Planning.**

**a. Description.** Zoning is an effective method of meeting the federal obligation to ensure compatible land use and to protect airport approaches. Generally, zoning is a matter within the authority of state and local governments. Where the sponsor does have authority to zone or control land use, FAA expects the sponsor to zone and use other measures to restrict the use of

land in the vicinity of the airport to activities and purposes compatible with normal aircraft operations. Restricting residential development near the airport is essential in order to avoid noise-related problems.

Sponsors and local communities should consider adopting adequate guidelines and zoning laws that consider noise impacts in land use planning and development. Similarly, any airport sponsor that has the authority to adopt ordinances restricting incompatible land development and limiting the height of structures in airport approaches according to the standards prescribed in 14 Code of Federal Regulations (CFR) Part 77, *Objects Affecting Navigable Airspace*, is generally expected to use that authority.

**b. Guidance.** There are a number of sources that can assist an airport sponsor in dealing with noise, obstructions, and other incompatible land uses. Some of these are:

- (1). *A Model Zoning Ordinance to Limit Height of Objects Around Airports*, Advisory Circular (AC) 150/5190-4A.
- (2). *Citizen Participation in Airport Planning*, AC 150/5050-4.
- (3). *Guidelines for Considering Noise in Land Use Planning and Control*, Federal Interagency Committee on Urban Noise, June 1980.
- (4). *Hazardous Wildlife Attractants on or Near Airports*, AC 150/5200-33B, August 28, 2007.
- (5). *Noise Control Planning*, FAA Order 1050.11A, January 13, 1986.
- (6). *Noise Control and Compatibility Planning for Airports*, AC 150/5020-1.
- (7). *Federal and State Coordination of Environmental Reviews for Airport Improvement Projects*. (RTF format) – Joint Review by Federal Aviation Administration and National Association of State Aviation Officials (NASAO), issued March 2002.
- (8). *Land Use Compatibility and Airports, a Guide for Effective Land Use Planning* (PDF format), issued by the FAA Office of Environment and Energy.
- (9). *Compatible Land Use Planning Initiative* (PDF format), 63 Fed. Reg. 27876, May 21, 1998.
- (10). *Draft Aviation Noise Abatement Policy 2000* (PDF format) 65 Fed. Reg. 43802, July 14, 2000.
- (11). *Airport Noise Compatibility Planning Toolkit – FAA’s Initiative for Airport Noise and Compatibility Planning*, issued by the FAA Office of Environment and Energy.

**c. Master Planning and Zoning.** The airport master planning process provides a means to promote land use compatibility around an airport. Incompatible land uses around an airport can affect the safe and efficient operation of aircraft. Within an airport’s noise impact areas,

residential and public facilities – such as schools, churches, public health facilities, and concert halls – are sensitive to high noise levels and can affect the development of the airport. Most commercial and industrial uses, especially those associated with the airport, are compatible with airports. An airport master plan is a published document approved by the governmental agency or authority that owns/operates the airport. The airport master plan should be incorporated into local comprehensive land use plans and used by local land use planners and airport planners to evaluate new development within the airport environs. Integration of airport master plans and comprehensive land use plans begins during the development of the master plan. Local municipalities surrounding the airport boundaries must be contacted to collect information on existing land uses in and around airports. Local comprehensive land use plans are also reviewed to determine the types of land uses planned for the future.

Additionally, sponsors should monitor local zoning ordinances to determine what uses are currently permitted around the airport and whether there have been any recent changes in zoning. It is important for local land use planners to become involved in the review and development of the airport's master planning process. They can provide input on potential impacts that future airport development plans may have on communities surrounding the airport. Any conflicts or inconsistencies between airport development plans and the local comprehensive plans should be noted in the airport master plan. The information on future airport expansion and development contained in the airport's master plan should be incorporated in the development of comprehensive land use plans or their subsequent updates or amendments to ensure land use compatibility with the airport. During the development of such plans, planners should coordinate and consult with the airport staff so that the airport's future plans for expansion can be taken into consideration. Local land use planners should review the airport's master plan to determine how future airport projects could affect existing and projected land uses around the airport. Other opportunities for coordination and communication between the airport and local planning agencies include the FAA noise compatibility planning process. (See chapter 13 of this Order, *Airport Noise and Access Restrictions*, for information on aircraft noise compatibility planning.)

Noise compatibility studies provide opportunities for input from airport users, local municipalities, communities, private citizens, and the airport sponsor on recommended operational measures and land use control measures that could minimize or prohibit the development or continuation of incompatible land uses. The airport master plan is also a tool to ensure that planning among federal, state, regional, and local agencies is coordinated. The incorporation and review of these plans provides for the orderly development of air transportation while protecting the public health, safety, and welfare. The legal structure of airport ownership will determine its power to regulate or influence land uses around the airport. Municipalities or counties with this regulatory authority need to be aware of existing and long-term airport development plans and the importance of using that authority to minimize development of incompatible land uses.

**d. Reasonable Attempt.** In cases where the airport sponsor does not have the authority to enact zoning ordinances, it should demonstrate a reasonable attempt to inform surrounding municipalities on the need for land use compatibility zoning. The sponsor can accomplish this through the dissemination of information, education, or ongoing communication with

surrounding municipalities. Depending upon the sponsor's capabilities and authority, action could include exercising zoning authority as granted under state law or engaging in active representation and defense of the airport's interests before the pertinent zoning authorities. The sponsor may also take action with respect to implementing sound insulation, land acquisition, purchase of easements, and real estate disclosure programs or initiatives to mitigate areas to make them compatible with aircraft operations. Sponsors without zoning authority may also work to change zoning laws to protect airport interests.

**e. Definition of Compatible Land Use.** Compatibility of land use is attained when the use of adjacent property neither adversely affects flight operations from the airport nor is itself adversely affected by such flight operations. In most cases, the adverse effect of flight operations on adjacent land results from exposure of noise sensitive development, such as residential areas, to aircraft noise and vibration. Land use that adversely affects flight operations is that which creates or contributes to a flight hazard. For example, any land use that might allow tall structures, block the line of sight from the control tower to all parts of the airfield, inhibit pilot visibility (such as glaring lights, smoke, etc.), produce electronic aberrations in navigational guidance systems, or that would tend to attract birds would be considered an incompatible land use. For instance, under certain circumstances, an exposed landfill may attract birds. If open incineration is regularly permitted, it can also create a smoke hazard.

**f. Definition of Concurrent Land Use.** In some cases, concurrent land use can be an appropriate compatible land use. Concurrent land use means that the land can be used for more than one purpose at the same time. For example, portions of land needed for clear zone purposes could also be used for agriculture purposes at the same time, which would be consistent with Grant Assurance 21, *Compatible Land Use*.

**g. Pre-existing Obstructions.** (1) Historically, some airports were developed at locations where preexisting *structures* or natural terrain (for example, hilltops) would constitute an obstruction by currently applicable standards. If such obstructions were not required to be removed as a condition for a grant agreement, the execution of the agreement by the government constitutes a recognition that the removal was not reasonably within the power of the sponsor. (2) There are many former military airports that were acquired as public airports under the Surplus Property Act, where the existence of obstructions at the time of development was considered acceptable. At such airports where obstructions in the approach cannot feasibly be removed, relocated, or lowered, and where FAA has determined them to be a hazard, consideration may be given to the displacement or relocation of the threshold.

### **20.3. Residential Use of Land on or Near Airport Property.**

**a. General.** The general rule on residential use of land on or near airport property is that it is incompatible with airport operations because of the impact of aircraft noise and, in some cases, for reasons of safety, depending on the location of the property. Nonetheless, the FAA has received proposals to locate residences immediately adjacent to airport property or even on the airport itself, as part of "airpark" developments. "Airpark" developments allow aircraft owners to reside and park their aircraft on the same property, with immediate access to an airfield. Proponents of airparks argue that airparks are an exception to the general rule because aircraft

owners will accept the impacts of living near the airport and will actually support the security and financial viability of the airport.

**b. FAA position.** The FAA considers residential use by aircraft owners to be no different from any residential use, and finds it incompatible with the operation of a public use airport. It is common for private airparks to impose restrictions on the use of the airfield, such as night curfews, because aircraft owners have the same interest as other homeowners in minimizing noise and sleep disturbances at home. The FAA has no problem with such restrictions at private unobligated airparks operated by the resident owners for their own benefit. At federally obligated public-use airports, however, the existence of the incompatible land use is not acceptable. First, aircraft owners are entitled to the same protection from airport impacts as any other residents of the community. Second, the likelihood that residents of an airpark will seek restrictions on the use of the airport for the benefit of their residential use is very high, whether or not they own aircraft. A federally obligated airport must provide reasonable access to all users. Restrictions on the use of the airport for the benefit of airpark residents is not consistent with the obligation to provide reasonable access to the public.

**c. On-airport and off-airport residential use.** The general policy against approval of on-airport and off-airport residential proposals is the same. There are, however, different considerations in the review and analysis of on-airport and off-airport land use. The FAA has received proposals for airparks or co-located homes and hangars both on the airport itself or off of the airport, with “through-the-fence” access.

#### **20.4. Residential Airparks Adjacent to Federally Obligated Airports.**

**a. General.** In several instances, the FAA has received requests from airport sponsors and developers interested in developing residential airparks adjacent to federally obligated airports. These types of development include “through-the-fence” access to the airport and generally include aircraft hangars or parking co-located with individual residences.

The FAA has no problem with private residential airparks since there is no federal obligation for reasonable access. Residential owners can limit access to the airport as they wish. However, FAA approval of such developments on federally obligated airports cannot be justified. First, residential property owners tend to seek to limit airport use consistent with their residential use, which is contrary to the obligation for reasonable public access to the airport. Second, developers can tend to view Airport Improvement Program (AIP) grants for the airfield as a subsidy of the development, increasing the value of the airpark development at no cost to the developer or residents. The FAA’s AIP program is not a funding mechanism for improving or subsidizing private and residential development.

Any residential use existing on the airport or any residential use granting “through-the-fence” access is an incompatible land use.



***Any residential use on an airport or residential use granting “through-the-fence” access is an incompatible land use.***

**b. FAA Position.** Permitting development of a residential airpark near a federally obligated airport, through zoning approval or otherwise, would be inconsistent with Grant Assurance 21, *Compatible Land Use*. The FAA expects sponsors to oppose zoning laws that would permit residential development near airports.

For this purpose, the FAA considers residential use to include: permanent or long-term living quarters; part-time or secondary residences; and developments known as residential hangars, hangar homes, campgrounds, fly-in communities or airpark developments – even when co-located with an aviation hangar or aeronautical facility.

Allowing residential development on federally obligated airports is incompatible with aircraft operations and conflicts with several grant assurance and surplus property requirements, as mentioned above. Residential development inside federally obligated airports is inconsistent with federal obligations regarding the use of airport property.

Accordingly, the FAA will not support requests to enter into any agreement that grants access to the airfield for the establishment of a residential airpark since that access would involve a violation of Grant Assurance 21, *Compatible Land Use*.

**c. “Through-the-Fence.”** Off-airport residential airparks are privately owned and maintained residential facilities. They are not considered aeronautical facilities eligible for reasonable access to a federally obligated airport. The airport sponsor is under no federal obligation to allow “through-the-fence” access for these privately



*In several instances, the FAA has received requests from airport sponsors and developers interested in developing residential airparks adjacent to federally obligated airports. These types of development generally include residential hangar sites and a “through-the-fence” access to the airport. While these types of development have taken place at some private use airports, it does not provide the basis to justify FAA approval of such developments on federally obligated airports. Seen here is Spruce Creek in Florida. (Photo: CAP)*

owned residential airparks. Allowing such access in most cases could be an encumbrance on the airport in conflict with Grant Assurance 5, *Preserving Rights and Powers*. In addition, residential hangars with “through-the-fence” access are considered an incompatible land use at federally obligated public use airports. (For additional information on “through-the-fence” agreements, see paragraph 12.7, “Agreements Granting ‘Through-the-Fence’ Access” in chapter 12 of this Order, *Review of Aeronautical Lease Agreements*.)

**d. Releases.** The FAA will not release airport property from its federal obligations so that it can be used for residential development. Also, the FAA will not release airport land for off-airport use with “through-the-fence” access to the airfield. Obligated airport land may not be released unless the FAA finds that it is no longer needed for airport purposes. Since the requested off-airport use would involve basic airport functions such as aircraft parking and taxiing, the FAA could not find that the property was no longer needed for an airport use. A request to release airport land for a residential airpark will be denied as inconsistent with both policies.

## **20.5. Residential Development on Federally Obligated Airports.**

**a. General.** This guidance sets forth FAA policy regarding residential development on federally obligated airports, including developments known within the industry as residential hangars and airpark developments. FAA airports district offices (ADOs) and regional airports divisions are responsible for ensuring that residential developments are not approved when reviewing a proposed ALP or any other information related to the airports subject to FAA review. There is no justification for the introduction of residential development inside a federally obligated airport. It is the sponsor’s federal obligation not to make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the ALP, as approved by the FAA, and that might, in the opinion of the FAA, adversely affect the safety, utility, or efficiency of the airport.

**b. Background.** The FAA differentiates between a typical pilot resting facility or crew quarters and a hangar residence or hangar home. The FAA recognizes that certain aeronautical uses – such as commercial air taxi, charter, and medical evacuation services – may have a need for limited and short-term flight crew quarters for temporary use, including overnight and on-duty times. There may be a need for aircraft rescue and fire fighting (ARFF) quarters if there is a 24-hour coverage requirement. Moreover, an airport manager or a fixed-base operator (FBO)<sup>45</sup> duty manager may have living quarters assigned as part of his or her official duties. Living quarters in these cases would be airport-compatible if an airport management or FBO job requires an official presence at the airport at off-duty times, and if the specific circumstances at the airport reasonably justify that requirement.

However, other than the performance of official duties in running an airport or FBO, the FAA does not consider permanent or long-term living quarters to be an acceptable use of airport property at federally obligated airports. This includes developments known as airparks or fly-in

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<sup>45</sup> A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

communities, and any other full-time, part-time, or secondary residences on airport property – even when co-located with an aviation hangar or aeronautical facility. While flight crew or caretaker quarters may include some amenities, such as beds, showers, televisions, and refrigerators, these facilities are designed to be used for overnights and resting periods, not as permanent or even temporary residences for flight crews, aircraft owners or operators, guests, customers, or the families or relatives of same.

The definition of flight crew is limited to those individuals necessary for the operation of an aircraft, such as pilot-in-command (PIC), second in command, flight engineer, flight attendants, loadmasters, search and rescue (SAR) flight personnel, medical technicians, and flight mechanics. It does not include the families, relatives, or guests of flight crewmembers not meeting the preceding definition.

An effort to obtain residential status for the development under zoning laws may indicate intent to build for residential use. Airport standards, rules, and regulations should prevent the introduction of residential development on federally obligated airports. The FAA expects the airport sponsor to have rules and regulations to control or prevent such uses, as well as to oppose residential zoning that would permit such uses since these uses may create hazards or safety risks between airport operations and nonaeronautical tenant activities. If doubts exist regarding the nature of a proposed facility, the airport sponsor may ask FAA to evaluate the proposed development. Also, the FAA may conduct a land use inspection to determine the true nature of the development; the FAA would then make a determination on whether the facility is compatible with the guidance provided herein.

**c. Authority and Compliance Requirements.** Allowing residential development, including airport hangars that incorporate living quarters for permanent or long-term use, on federally obligated airports is incompatible with airport operations. It conflicts with several grant assurance requirements.

Under Grant Assurance 5, *Preserving Rights and Powers*, an airport sponsor should not take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. The private interests of residents establishing private living can conflict with the interests of the airport sponsor to preserve its rights and powers to operate the airport in compliance with its federal obligations. It should not be assumed that the interests of the sponsor and that of a homeowner located on the airport will be the same or that because the homeowner owns an aircraft, he or she will automatically support the airport on all aviation activities. In addition, local laws relating to residences could restrict the airport operator's ability to control use of airport land and to apply standard airport regulations.

Under Grant Assurance 19, *Operation and Maintenance*, airport sponsors will not cause or permit any activity or action that would interfere with the intended use of the airport for airport purposes. Permanent living facilities should not be permitted at public airports because the needs of airport operations may be incompatible with residential occupancy from a safety standpoint.

Under Grant Assurance 21, *Compatible Land Use*, airport sponsors, to the extent possible, must ensure compatible land use both on and off the airport. Residential development in the vicinity of airports may result in complaints from residents concerned about personal safety, aircraft noise, pollution, and other quality-of-life issues. Bringing residential development onto the airport, even in the form of residential hangars, increases the likelihood that quality-of-life issues may lead to conflicts with the airport sponsor and appeals for restrictions on aircraft operations. Moreover, an airport sponsor permitting on-airport residential living quarters will have greater difficulty convincing local zoning authorities to restrict residential development off-airport. Therefore, airport sponsors are encouraged to:

- (1). Explicitly prohibit the development of residential living quarters on the airport in all tenant leases and subleases.
- (2). Develop minimum standards that require the explicit advanced approval of all tenant subleases by the airport sponsor.
- (3). Include clauses in all tenant leases stating that unauthorized development of residential living quarters may be declared an event of default under the lease and that the airport sponsor may declare any noncomplying subleases null and void.
- (4). Convert any existing living quarters into nonresidential use at the earliest opportunity, especially if the airport sponsor holds title to the living quarters.

**d. Conclusion.** Permitting certain on-airport development, including residential development, conflicts with several federal grant assurances and federal surplus property obligations. Such residential development may have some or all of the following undesirable consequences:

- (1). Aircraft noise complaints.
- (2). Proposed restrictions or limitations on aircraft and/or airport operations brought by the residential tenants.
- (3). The execution of easements, leases, and subleases that encumber airport property for nonaeronautical uses at the expense of aeronautical uses.
- (4). Increased likelihood of vehicle/pedestrian deviations (V/PDs) due to residents, guests, and unsupervised children unfamiliar with an operating airfield environment; unleashed pets roaming the airfield; and the interaction between private vehicles and aircraft that compromise safe airfield operations.
- (5). Increased public safety and legal liability risks, including fire hazards, if codes have been compromised by the co-location of residential living quarters within hangars and other aeronautical facilities.
- (6). Line-of-sight obstructions and operational limitations due to the greater height of two-story hangars.

**e. Summary.** Residential development, either standing alone or collocated as part of a hangar or other aeronautical facility, is not an acceptable use of airport property under the federal grant assurances or surplus and nonsurplus property federal obligations. The ADOs and regional airports divisions have the responsibility for ensuring that residential development is not approved as part of a review of a proposed ALP and that airport property is not released for residential development.

**20.6. through 20.10. reserved.**

**Sample Easement and Right-of-Way Grant**

The easement and right of way hereby granted includes the continuing right in the Grantee to prevent the erection or growth upon Grantors' property of any building, structure, tree, or other object, extending into the air space above the aforesaid imaginary plane,

(OR USE THE FOLLOWING)

extending into the air space above the said Mean Sea level of (i.e., 150) feet,<sup>1</sup>

(OR USE THE FOLLOWING)

extending into the air space above the surface of Grantors' property;<sup>1</sup>

and to remove from said air space, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon Grantors' property, together with the right of ingress to, egress from, and passage over Grantors' property for the above purposes.

TO HAVE AND TO HOLD said easement and right of way, and all rights appertaining thereto unto the Grantee, its successors, and assigns, until said (full name of airport) shall be abandoned and shall cease to be used for public airport purposes.

AND for the consideration hereinabove set forth, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said easement and right of way, they will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon Grantors' property any building, structure, tree, or other object extending into the aforesaid prohibited air space, and that they shall not hereafter use or permit or suffer the use of Grantors' property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers 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, it being understood and agreed that the aforesaid covenants and agreements shall run with the land.

In consideration of the premises and to assure Grantee of the continued benefits accorded it under this Easement, (name of mortgagee), owner and holder of a mortgage dated \_\_\_\_\_ and recorded \_\_\_\_\_ covering the premises above described, does hereby covenant and agree that said mortgage shall be subject to and subordinate to this Easement and the recording of this Easement shall have preference and precedence and shall be superior and prior in lien to said mortgage irrespective of the date of the making or recording of said mortgage instrument.<sup>2</sup>

<sup>2</sup> Local recordation and subordination practices must also be met. If subordination is necessary, in which case the mortgagee must join in the agreement, the above language is suggested.

### FAIR DISCLOSURE STATEMENT

A disclosure statement, adhering to the form of the statement below, shall be provided to and signed by each potential purchaser of property within the Airport Influence Area as shown on the approved Airport Land Use Drawing. The signed statement will then be affixed by the Seller to the agreement of the sale.

The tract of land situated at

in \_\_\_\_\_ (County and State), consisting of approximately \_\_\_\_\_ acres which is being conveyed from \_\_\_\_\_ to \_\_\_\_\_ lies within \_\_\_\_\_ miles of \_\_\_\_\_ (airport name) may be subjected to varying noise levels, as the same is shown and depicted on the official Zoning Maps.

### CERTIFICATION

The undersigned purchaser(s) of said tract of land certify(ies) that (he) (they) (has) (have) read the above disclosure statement and acknowledge(s) the pre-existence of the airport named above and the noise exposure due to the operation of said airport.

### SUGGESTED DISCLOSURE TO REAL ESTATE BUYERS

Customarily, someone will request a letter from the municipality about outstanding charges and assessments against a property. Something similar to this language, adapted for your airport, can be incorporated into a letter sent to buyers and title companies in preparation for closing.

"Please be advised that the subject property is located within the height restriction zone of the (blank) airport, or is located within a similar distance from the airport. It is conceivable that standard flight patterns would result in aircraft passing over (or nearly so) the property at altitudes of less than (blank) feet. Current airport use patterns suggest that the average number of takeoffs/touchdowns exceeds (blank) annually. A property buyer should be aware that use patterns vary greatly, with the possibility of increased traffic on (blank). The airport presently serves primarily recreational aircraft, and there are no current initiatives to extend any runway beyond the current (blank) length. Airport plans allow for runway extension in the future, which might impact the number and size of both pleasure and non-pleasure aircraft. Generally, it is not practical to redirect or severely limit airport usage and/or planned-for expansion, and residential development proximate to the airport ought to assume, at some indefinite date, an impact from air traffic."

**Sample FAA Position Letter on Residential Airparks - Page 1**

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

Office of Associate Administrator  
for Airports

800 Independence Ave., SW  
Washington, DC 20591

AUG 29 2009

Mr. Hal Shevers  
Chairman  
Clermont County-Sporty's Airport  
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than \$300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because



**Sample FAA Position Letter on Residential Airparks - Page 2**

2

they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Association (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally* obligated airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

**Original signed by:  
Woodie Woodward**

Woodie Woodward  
Associate Administrator  
for Airports

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## Section 4(f)

- [Overview of Section 4\(f\)](#)
- [Section 4\(f\) Compliance Process](#)
- [Federal Statutes and Guidance](#)

### Overview of Section 4(f)

The Section 4(f) process as described in [49 U.S.C 303](#) states that a special effort must be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. Section 4(f) has been part of Federal law in some form since 1966. In 1983, Section 4(f) of the DOT Act, (49 U.S.C, 1653f) was re-codified as 49 USC 303. Protection of parklands and historic sites, however, is still commonly referred to as the *Section 4(f) process*. The impacts of projects on historic and cultural resources are also regulated under the [Section 106 process](#).

Section 4(f) applies to all historic sites, but only to publicly owned parks, recreational areas, and wildlife and waterfowl refuges. Any project that affects Section 4(f) land must include a Section (4f) assessment. A transportation program or project requiring the use of such land will be approved only if there is no prudent and feasible alternative to using that land and if the program or project includes all possible planning to minimize harm to the land or resources.

49 U.S.C. 303 does not establish any procedures for preparing Section 4(f) documents, for circulating them, or for coordinating them with other agencies. The Federal Highway Administration (FHWA) has developed administrative procedures for the preparation, circulation and coordination of Section 4(f) documents. These are described in [FHWA's Section 4\(f\) Policy Paper](#). FTA recommends that the July 12, 2012 Section 4(f) Policy Paper be used as FTA guidance on Section 4(f) matters. The policies and procedures described in the paper are also recommended to be followed

by FTA Regional Offices and grant applicants to the extent they apply to projects proposed for FTA funding, per the [November 9, 2012 Memorandum](#) from FTA Headquarters office of Planning and Environment to all FTA Regional Administrators.

## Section 4(f) Compliance Process

For projects that may have an effect on Section 4(f) lands the compliance process typically has three steps:

1. **Determining Significance.** For a property to be deemed *significant*, it must play an important role in meeting the objectives of a community in terms of the availability and functions of recreation, park or wildlife and waterfowl refuge areas. Significance is determined through consultation with the federal, state, or local officials having jurisdiction over the property. Once a property's significance has been determined, Section 4(f) prohibits both the actual taking of land from the protected property and *constructive use* of the property – where a project's *proximity* to the Section 4(f) resource substantially impairs the normal use of the land.
2. **Developing Alternatives.** Parklands are to be protected unless unusual factors or unique problems are present, or the cost, environmental impacts, or community disruption resulting from proposed alternatives are particularly large. In evaluating an alternative, one must consider whether the alternative uses Section 4(f) property, whether it is prudent and feasible, and to what extent it harms the resource. If several alternatives include the use of land from a Section 4(f) resource, the alternative which is prudent and feasible and that has the least overall impact on the resource, including mitigation measures, must be selected.
3. **Section 4(f) Evaluation.** Whenever Section 4(f) property is used for a project, documentation must be prepared that demonstrates that there are unique problems or unusual factors involved in the use of non-Section 4(f) alternatives, or that the costs and social, economic, and environmental impacts, or community disruption resulting from the alternatives are particularly large. The evaluation must contain the following information, developed by the applicant in cooperation with FTA:
  - ○ A description of the proposed action.
  - ○ A description of the resource.
  - ○ The impacts of each alternative on the resource.
  - ○ Alternatives to avoid using the resource.

- Measures to minimize harm.
- Coordination with the agency having jurisdiction over the Section 4(f) property.

## Federal Statutes and Guidance

- [\*\*Part 774—Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites \(Section 4\(f\)\)\*\*](#) - Section 4(f) Regulation, 23 CFR Part 774
- [\*\*November 9, 2012 Memorandum\*\*](#) - FTA Memo recommending use of the FHWA Section 4(f) Policy Paper
- [\*\*FHWA Section 4\(f\) Legislation & Environmental Guidebook\*\*](#) - Establishes a national policy for the protection of public parks, historic sites, and public waterfowl and wildlife refuges.
- [\*\*Federal Highway Administration \(FHWA\) Section 4\(f\) Policy Paper, 1989\*\*](#) - Guidance on Section (4f) compliance process applicable to mass transportation projects.

Updated: Wednesday, March 16, 2016

### *Contact Us*

#### **Office of Planning & Environment**

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## Chapter 22. Releases from Federal Obligations

**22.1. Introduction.** This chapter discusses the laws, regulations, policies, and procedures pertaining to sponsor requests for a release from federal obligations and land use requirements. The FAA Administrator's authority to grant a release depends on the type of obligating document, such as a property conveyance or grant agreement.



*The FAA Administrator's authority to grant a release depends on the type of obligating document, such as a property conveyance or grant agreement. It also depends on the type of grant agreement, such as airport planning, noise mitigation, or airport improvement. Furthermore, the timing and circumstance of the particular document affects the Administrator's ability to grant a release. In all cases, the benefit to civil aviation is the FAA's prime concern. (Photo: CAP)*

Any property, when described as part of an airport in an agreement with the United States or defined by an airport layout plan (ALP) or listed in the Exhibit "A" property map, is considered to be "dedicated" or obligated

property for airport purposes by the terms of the agreement. If any of the property so dedicated is not needed for present or future airport purposes, an amendment to, or a release from, the agreement is required.

In all cases, the benefit to civil aviation is the FAA's prime concern 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; and the local, regional, and national interests of the airport. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to review the release request and to execute the release document, if appropriate.

**22.2. Definition.** A "release" is defined as the formal, written authorization discharging 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 disposal of certain airport property.

**22.3. Duration and Authority.** When the duration of the physical useful life of a specific grant improvement ends, the sponsor is automatically released from its federal obligations for that grant without any formal action from the FAA. The physical useful life of such a facility extends to the time it is serviceable and useable with ordinary day-to-day maintenance. However, airport land acquired with federal assistance under the Airport Improvement Program (AIP) and/or conveyed as surplus or nonsurplus property is federally obligated in perpetuity (forever).

The Administrator has delegated to ADOs and regional offices the authority to release, modify, or amend assurances of individual sponsor agreements under specific circumstances as prescribed in this chapter. ADOs and regional airports divisions do not have the authority to modify the list of assurances in a grant agreement. In addition, ADOs do not have the authority to effect a release permitting the abandonment, sale, or disposal of a complete airport. (See Order 1100.5, *FAA Organization - Field*, issued February 6, 1989.)

#### **22.4. FAA Consideration of Releases.**

**a. General.** Within the specific authority conferred upon the FAA Administrator by law, the Administrator will, when requested, consider a release, modification, reform, or amendment of 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 only relief from specific limitations or covenants of an agreement or it may involve a complete and total release that authorizes subsequent disposal of federally obligated airport property. Major considerations in granting approval of a release request include:

- (1). The reasonableness and practicality of the sponsor's request.
- (2). The effect of the request on needed aeronautical facilities.
- (3). The net benefit to civil aviation.
- (4). The compatibility of the proposal with the needs of civil aviation.

Any release having the effect of permitting the abandonment, sale, or disposal of a complete airport must be referred to the Director of Airport Compliance and Field Operations (ACO-1) for approval by the Associate Administrator for the Office of Airports (ARP-1). (See Order 1100.5, *FAA Organization – Field*, issued February 6, 1989.)

**b. Types of Federal Obligations.** Generally, a sponsor can be federally obligated by the following actions:

- (1). Acceptance of a federal grant for an aeronautical improvement, including land for aeronautical use. Property listed on the Exhibit “A” of a grant agreement is obligated, regardless of how it was acquired or its purpose.
- (2). Acceptance of a conveyance of federal land.

(3). Federal grants for a military airport program (MAP), for noise, and for planning. Planning grants contain a limited list of assurances and do not impose all of the obligations of a development grant.

(4). Acquisition of property with airport revenue, regardless of whether the property is on the Exhibit "A" or ALP.

(5). Designation of property for aeronautical purposes on an ALP. Once designated for aeronautical use, the property may not be used for nonaeronautical purposes without FAA approval.

**c. Types of Release Requests.** Various conditions and circumstances can affect the manner and degree of sponsor federal obligations and the procedures for release from these obligations. A sponsor can request different kinds and degrees of release, including the following general categories:

(1). Change in the use, operation, or designation of on-airport property.

(2). Release and removal of airport dedicated real or personal property or facilities for disposal and/or removal from airport dedicated use.

#### **22.5. Request for Concurrent Use of Aeronautical Property for Other Uses.**

If aeronautical land is to remain in use for its primary aeronautical purpose but also be used for a compatible revenue-producing nonaeronautical purpose, no formal release request is required. This is considered a concurrent use of aeronautical property and requires FAA approval. Aeronautical property may be used for a compatible nonaviation purpose while at the same time serving the primary purpose for which it was acquired. For example,



*The FAA will consider releases from federal obligations, changes in use, and changes in designation according to the types of release requests in connection with the various federal obligations. In some cases, FAA's approval of a change in use is not a release of a specific federal obligation. Rather, it may represent FAA's concurrence with a sponsor's proposed change in use to eliminate any potential impact on a general federal obligation to provide aeronautical access and to operate and maintain infrastructure. For example, the FAA should not release property on the approach end of a runway if this results in a structure or construction that would impact the airport. As shown here, the highway on the lower left corner of the photograph has resulted in an extensive displaced threshold, diminishing the utility of the airport. (Photo: CAP)*



there may be concurrent use of runway clear zone land and low growing crops to generate revenue.

Airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 United States Code (U.S.C.) § 303).<sup>49</sup> <sup>50</sup>

***Airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C., recodified at section § 303).***

**a. Surplus Property Land and Concurrent Use.** In some cases, surplus property land is designated as aeronautical use by its transfer documents. If so, a sponsor must request a release of its federal obligation to use such land for aeronautical purposes if it wishes to use it for nonaeronautical purposes exclusively. However, if the sponsor will continue to use the land for its primary aeronautical function, then a compatible nonaeronautical use could be considered a concurrent use. Such a concurrent use would not require a release from the surplus property requirement.

The FAA should review such concurrent use to ensure it is compatible with the primary aeronautical use of the surplus property land. FAA should also confirm that nonaeronautical use does not prevent the use of the land for needed aeronautical support purposes. Surplus property designated for aeronautical use should not be approved for concurrent nonaeronautical use if such use degrades – or potentially degrades – the aeronautical utility of the parcels in question.

**b. Grant Land and Concurrent Use.** Land purchased pursuant to an FAA grant is presumed to be in pursuit of an aeronautical purpose. However, some grant land may be suitable for concurrent use. Requests to use grant land for concurrent use should be approved by FAA. This consent can be in the form of an amendment to an ALP. Grant land may be used for a compatible nonaviation purpose while at the same time serving the primary purpose for which it was acquired.

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<sup>49</sup> Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303.)

<sup>50</sup> See 23 CFR § 774.11(g) and FHWA and FTA Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 73 F.R. 13368-01, March 12, 2008 (Interpreting DOT Section 4(f) not to apply to temporary use of airport property.)

As with surplus property, grant land designated for aeronautical use should not be approved for concurrent nonaeronautical use if such use degrades – or potentially degrades – the aeronautical utility of the parcels in question.

**22.6. Request for Interim Use of Aeronautical Property for Other Uses.** The ADOs and regional airports divisions may consent to the interim use (not more than five (5) years) for nonaviation purposes of dedicated aeronautical land. This is the case whether or not the land was acquired with grant funds, is surplus property, or is otherwise dedicated for aeronautical use. A request for a use that would exceed three (3) years should be subject to concurrent use guidelines. FAA approval shall not be granted if the FAA determines that an aeronautical demand is likely to exist within the period of the proposed interim use.

Aeronautical demand might be demonstrated by the existence of a qualified aeronautical service provider expressing interest in such property for aeronautical use, or by projected growth in airport operations. Interim use should not be incompatible with current or foreseen aeronautical use of the property in question or other airport property. If the land in question is grant land, FAA consent or approval must be based on a determination that the property as a whole has not ceased to be used or needed for airport purposes within the meaning of the applicable statute.

Interim use represents a temporary arrangement for the use of airport land for nonaeronautical purposes. Therefore, it must be anticipated that the interim use will end and the land will be returned to aeronautical use. If a proposed nonaeronautical use will involve granting a long-term lease or constructing capital improvements, it will be difficult – if not impossible – to recover the land on short notice if it is needed for aeronautical purposes. Such a use is not interim and should not be treated as such. Therefore, interim use should not be approved if the proposed use will prevent the land from being recovered on short notice for airport purposes. Interim use proposals should be carefully evaluated to ensure that what is being proposed as a temporary arrangement is not really a long-term or permanent change in land use.

***The ADOs and regional airports divisions may consent to the interim use of dedicated aeronautical property for nonaviation purposes. Regardless of how the property was acquired, these FAA offices have the authority to decide whether the airport may use such property for nonaeronautical purposes or not.***

**22.7. Release of Federal Maintenance Obligation.** A partial release may be granted to an airport sponsor to remove the obligation to maintain specific areas of the airport pursuant to Grant Assurance 19an, *Operation and Maintenance*. Such circumstance would occur when airport facilities are no longer needed for civil aviation requirements. It is unlikely that a total release would be granted under the circumstances. Note that a release from the maintenance obligation is not a release from all the terms of Grant Assurance 19 since many of the obligations in that assurance apply to the airport as a whole.

**a. Other Terms.** A release of the federal maintenance obligation does not constitute a release of the land from other applicable terms and conditions or covenants with the applicable compliance agreements. The most common example of such a release is when airport sponsors request the FAA to release a particular parcel of land or facility from the federal obligation dedicating it to aeronautical use. This, in turn, may permit revenue producing nonaeronautical use of the parcel. The same result can be obtained without a formal maintenance obligation release, simply by approving a change to the ALP showing the parcel in question as nonaeronautical.

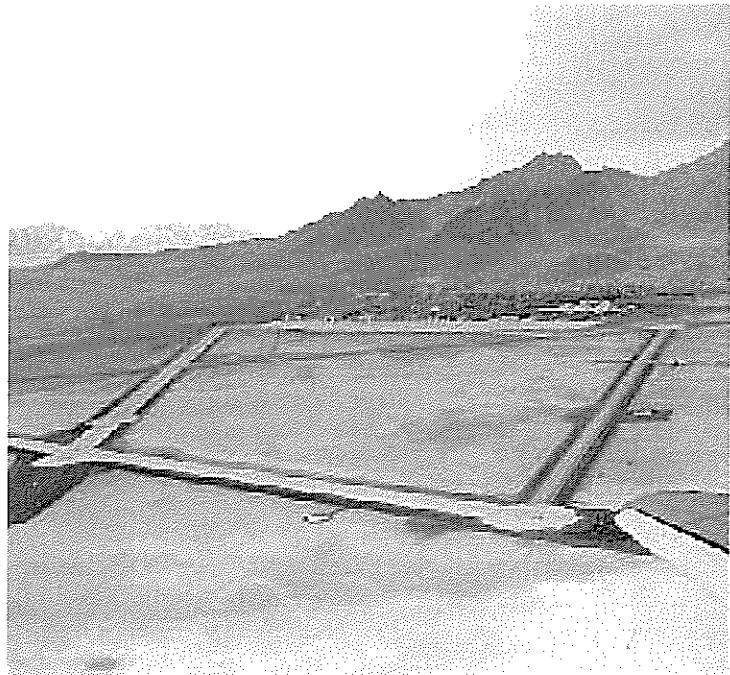
**b. Unsafe.** When it becomes unsafe for aeronautical purposes, the airport sponsor may have to discontinue an aviation use (i.e., a dilapidated taxiway). FAA's Flight Standards office should be involved in all matters related to decisions dealing with, or relying upon, a safety assessment. If the airport sponsor no longer requires the use of the runway, it must seek a release from Grant Assurance 19, *Operation and Maintenance*.

### 22.8. Industrial Use Changes.

Certain surplus property restrictions prohibiting the use of the property as an industrial plant, factory, or similar facility have been repealed by Public Law (P.L.) No. 81-311. The FAA will issue the releases or corrections to eliminate restrictions that may have been repealed or modified by laws, such as these industrial use restrictions.

### 22.9. Release of National Emergency Use Provision (NEUP).

**a. General.** Practically all War Assets Administration (WAA) Regulation 16 and P.L. No. 80-289 instruments of disposal of real and related personal property also contain the National Emergency Use Provision (NEUP). Under this provision, the United States has the right to make exclusive or nonexclusive use of the airport or any portion thereof during a war or national emergency. This provision is similar in all such instruments.



*A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes. The NEUP represents the U.S. Government's interest and ability to reactivate an airport as a military facility in case of war or national emergency. This provision has been used several times. One example is the former Naval Air Station (NAS) Miami, which in 1952 was reactivated as a Marine Corps Air Station during the Korean War. The Navy Department took over the facility from its civilian sponsor from 1952 through 1958, after which it was returned to civilian control. In other cases, old World War II installations decommissioned after the War were never reactivated. Since many had excessive parcels of land, such as the one depicted here, the FAA has granted several releases for disposal over the years and, if permitted by DoD, released the NEUP as well. (Photo: USAF)*

(See a sample NEUP legal description and release request at the end of this chapter.)

**b. Procedures.** The FAA may grant a release from this provision, which is often referred to as the recapture clause. When requesting a release of the NEUP clause, the airport sponsor must provide the FAA with adequate information, including property drawings and property description, in duplicate. However, the concurrence of the Chairman of the Department of Defense (DoD) Airports Subgroup Office [HQ USAF/XOO-CA, 1480 Air Force Pentagon, Room 4D1010, Washington DC 20330-1480] is also required. FAA must make the request to DoD.

The FAA regional airports division will forward the documentation required to the FAA headquarters Airport Compliance Division (ACO-100). If approved, ACO-100 will then request DoD's concurrence. Upon receipt of DoD concurrence, ACO-100 will forward the determination to the FAA regional airports division for release of the NEUP.

The FAA regional airports division must provide a copy of the release instrument to the appropriate Army Corps of Engineers District Engineer's office. The FAA will not approve a request for release of the NEUP involving the whole airport. In addition, DoD generally does not concur with a request for release of the NEUP if the release involves actual runways, taxiways, or aprons. A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes.

The NEUP represents the U.S. Government's interest in and ability to reactivate an airport as a military facility in case of war or national emergency. This provision has been used several times. One example is the former Naval Air Station (NAS) Miami, which in 1952 was reactivated as a Marine Corps Air Station during the Korean War. The Navy Department took over the facility from its civilian sponsor from 1952 and 1958, after which it was returned to civilian control.

In other cases, old World War II installations decommissioned after the war were never reactivated. Since many had excessive parcels of land, the FAA granted several releases for disposal over the years and, when permitted by DoD, released the NEUP as well.

**22.10. Release from Federal Obligation to Furnish Space or Land without Charge.** FAA may release a sponsor from Grant Assurance 28, *Land for Federal Facilities*. Before granting this release, the ADO or regional airports division should evaluate all pertinent facts and circumstances and obtain concurrence from other offices within the FAA such as Air Traffic and Airways Facilities, the National Oceanic and Atmospheric Administration (NOAA), or other interested and qualified federal entities. The office may accomplish the release either by discharging the sponsor from the assurance or through an amendment to the grant agreement.

**22.11. Release of Reverter Clause.** In order to promote appropriate private investment in airport facilities, the sponsors of surplus property may seek to remove a provision giving the United States the option to revert title to itself in the event of default of the sponsor to the conditions of its surplus property federal obligations. This reverter clause is an important remedy intended to be reserved to the United States Government; it will not normally be released

and the ADOs cannot grant such a release. Any such proposal to release the sponsor from the reverter clause shall be referred to ACO-1 for consideration.

**22.12. Exclusive Rights Federal Obligations cannot be Released without Release and Disposal of the Parcel or Closure of Airport.** Any airport that has received federal assistance is subject to the exclusive rights provision discussed in chapter 8 of this Order, *Exclusive Rights*. This federal obligation exists for as long as the airport is used as an airport. Therefore, there is no provision for a release from this federal obligation without disposal of the parcel involved or disposal of the entire airport.

**22.13. Federal Obligations Imposed with the Airport Layout Plan and Exhibit "A."** A sponsor has a federal obligation to maintain an up-to-date ALP and is required to present an accurate Exhibit "A" upon the execution of a federal grant. The sponsor is required to continue developing the airport according to the approved land uses associated with those documents and in accordance with proposed changes submitted to the ADO or regional airports division for consideration, documentation, and approval.

**22.14. Procedures for Operational Releases or Requests for Change in Use.** For releases other than land, the sponsor must begin with a formal request signed by an authorized official. Although a specific format is not required, the request should include the following:

- a. Affected agreement(s)/ federal agreements.
- b. Modification requested.
- c. Need for the modification.
- d. Facts and circumstances that justify the request.
- e. State and local law pertinent to the document.
- f. Description of facilities involved.
- g. Source of funds for the facility's original acquisition.
- h. Present condition of facilities.
- i. Present use of facilities.

**22.15. Release of Federal Obligations in Regard to Personal Property, Structures, and Facilities.** Personal property, structures, and facilities may have been acquired through a federal surplus property conveyance, a federal grant, or through purchase with airport revenue. Personal property, structures, or facilities acquired with federal assistance require a release or federal procedure. Personal property, structures, or facilities acquired through nonfederal sources and not using airport revenue do not require a release or federal procedure. Nonetheless, these items of personal property, structures, or facilities should be considered assets of the airport account.

**a. Surplus Property Releases of Personal Property, Structures, and Facilities.** Surplus airport property falling into the categories of personal property, structures, and facilities may be released from all inventory accountability (whether or not the airport at which they are located is included in chapter 13, *Civil Airports Required by Department of Defense for National*

*Emergency Use*, of FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*) when it has been determined that such property acquired with federal funds:

- (1). Is beyond its useful life;
- (2). Has deteriorated beyond economical repair or rehabilitation;
- (3). Is no longer needed;
- (4). Has been replaced;
- (5). Is to be traded to obtain similar or other property needed for the airport;
- (6). Has been destroyed or lost by fire or other uncontrollable cause and the ensured value, if any, has been credited to the airport fund; or
- (7). Has been, or should be, removed or relocated to permit needed airport improvement or expansion, including salvage or other use, elsewhere on an airport.

**b. Abandonment, Demolition, or Conversion of Grant Funded Improvements.** The FAA may grant a release that permits the sponsor to abandon, demolish, or convert property (other than land) before the designated useful life expires. The ADO or regional airports division may grant the release when any of the following apply:

- The facility is no longer needed for the purpose for which it was developed.
- Normal maintenance will no longer sustain the facility's serviceability.
- The facility requires major reconstruction, rehabilitation, or repair.

**c. Disposal of Grant Funded Personal Property.** Grant funded personal property should be maintained on the sponsor's inventory for the useful life of the specific equipment. The federal obligation regarding personal property expires with the useful life of the specific piece of property. Should the sponsor desire to dispose of personal property prior to the expiration of its useful life, it should consult with the ADO or regional airports division prior to seeking release from its obligations.

**d. Reinvestment of Federal Share.** After the FAA has determined that a release of grant funded improvements is appropriate and that the release serves the interest of the public in civil aviation, the FAA may require the sponsor, as a condition of the release, to reimburse the federal government or reinvest in an approved AIP eligible project. The amount to be reimbursed or reinvested is an amount representing the unamortized portion of the useful life of the federal grant remaining at the time the facility will be removed from aeronautical use. Special circumstances involving the involuntary destruction of the improvement or equipment would be an exception. Depreciation of personal property may follow a different formula related to its

useful life or actual value. The FAA will require a specific project or projects and a timeline for completion for reinvestment in a new AIP eligible project.

***All land described in a project application and shown on an Exhibit "A" constitutes the airport property federally obligated for compliance under the terms and covenants of a grant agreement. A sponsor is federally obligated to obtain FAA consent to delete any land described and shown on the Exhibit "A."***

**22.16. All Disposals of Airport Real Property.** All land described in a project application and shown on an Exhibit "A" constitutes the airport's federally obligated property. A sponsor is federally obligated to obtain FAA consent to delete any land described and shown on the Exhibit "A."

FAA consent shall be granted only if it is determined that the property is not needed for present or foreseeable public airport purposes. When federally obligated land is deleted, the Exhibit "A" and the approved ALP should be revised as appropriate. Where the action involves the deletion of land not acquired with federal financial assistance, there is no required reimbursement of grant revenues. However all proceeds are treated as airport revenue. Also, the airport account must receive fair market value (FMV) compensation for all deletions of airport real property from the airport (i.e., from Exhibit "A") even if the sponsor does not sell the property or sells the property below fair market value.



*After airport property is released, there are continuing restrictions on the released property. The ADO or regional airports office must include in any deed, lease, or other conveyance of a property interest to others a restriction that (a) prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation, and (b) prohibits any activity on the land that would interfere with, or be a hazard to, the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. The photo above, taken from one of Cincinnati Lunken Airport's runways, illustrates the clear runway safety areas (RSAs) resulting from not permitting the erection of obstacles near runways. (Photo: FAA)*

**a. Continuing Right of Flight over all Airport Land Disposals.** A total release permitting sale or disposal of federally obligated land must specify that the sponsor is obligated to include in any deed, lease, or other conveyance of a property interest to another a reservation assuring the public rights to fly aircraft over the land released and to cause inherent aircraft noise over the land released. The following language must be used:

This is hereby reserved to the (full name of the grantor or lessor), its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein (state whether conveyed or 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 airport name).

**b. Continuing Restrictions on Released Property.** The ADO or regional airports division must include in any deed, lease, or other conveyance of a property interest to others a restriction that:

(1). Prohibits the erection of structures or growth of natural objects that would constitute an obstruction to air navigation.

(2). Prohibits any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communication facilities serving the airport. These restrictions are set forth in the instrument of release and identify the applicable height limits above which no structure or growth is permitted. The airport sponsor will compute these limits according to the currently effective FAA criteria as applied to the airport. The ADO, regional airports division, and airport sponsor will not incorporate advisory circulars, design manuals, Federal Aviation Regulations (found in Title 14 Code of Federal Regulations (CFR)), or other such documents by reference in the instruments or releases issued by the FAA in lieu of actual computed limits.

#### **22.17. Release of Federal Obligations in Regard to Real Property Acquired as Federal Surplus Property.**

Airport sponsors receive surplus real property in many various sizes and shapes. Often the property is not ideally sized or arranged to serve the evolving needs of the airport. Adjustments can be made that benefit the airport. The airport sponsor must convince the FAA that its plans for the use, and possible disposal, of surplus property benefit the airport.

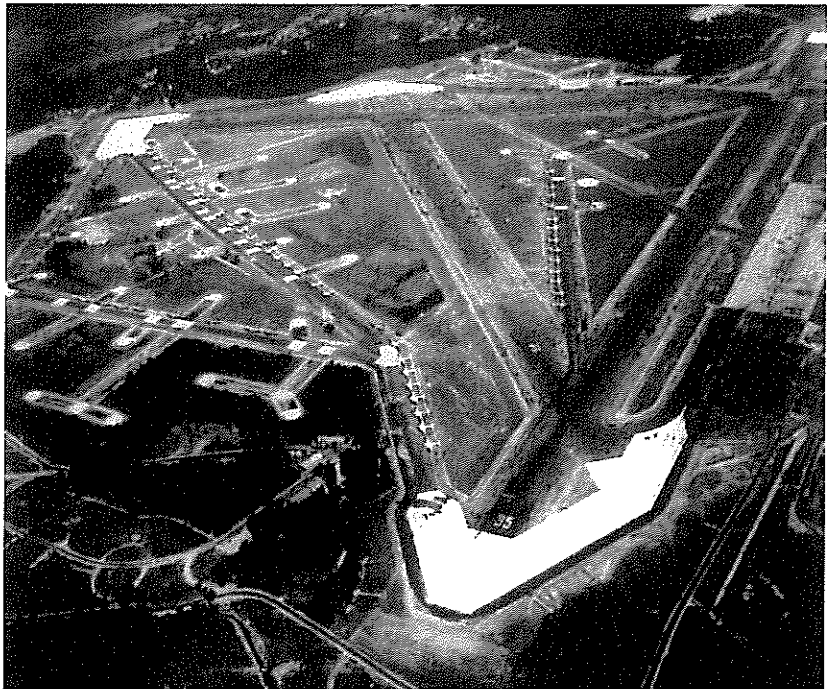
**a. General Policy.** A total release permitting the sale and disposal of real property acquired for airport purposes under the Surplus Property Act shall not be granted unless it can be clearly shown that the disposal of such property will benefit civil aviation. If any such property is no longer needed to support an airport purpose or activity directly (including the generation of revenue for the airport), the property may be released for sale or disposal upon a demonstration that such disposal will produce an equal or greater benefit (to the airport or another public airport) than the continued retention of the land.



In no case shall a release be granted unless the FAA determines that the land involved can be disposed of without adversely affecting the development, improvement, operation, or maintenance of the airport where the land is located. Any approved disposal must not be in excess of the present and foreseeable needs of the airport. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) that better serves the purpose for which the real property was initially conveyed. This objective is not met unless an amount equal to the current fair market value (FMV) of the property is realized as a consequence of the release and such amount is committed to airport purposes.

**b. Purpose of Release.** The airport owner requesting a release of surplus airport land must identify and support the reason for which the release is requested. One justification of a release could be a showing that the expected net proceeds from the sale of the property at its current market value will be required to finance items of airport development and improvement where that need has been confirmed with FAA concurrence.

The FAA may consider requests for release from sponsors demonstrating that more value may be obtained from a disposal of specific parcels than the retention of those parcels for revenue production under leasing. Such a proposal would need to overcome the preference for holding surplus property land and leasing it for aeronautically compatible purposes that also generate airport revenue. Special care should be applied to ensure that no property that could be used for aeronautical purposes,



*In no case shall a release be granted unless the FAA determines that the land involved can be disposed of without adversely affecting the development, improvement, operation, or maintenance of the airport where the land is located. Any approved disposal must be in excess of the present and foreseeable future needs of the airport. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) that better serves the purpose for which the real property was initially conveyed. Special care should be applied to ensure that no property that could be used for aeronautical purposes, including aeronautical protection, is released. This 1944 photograph of Grenier Field in New Hampshire, which is Manchester Airport today, clearly shows how important it is to apply the release process with caution. Unused land belonging to the base might be released and, over time, incompatible land uses could take hold. Today, Manchester airport is significantly encroached upon. (Photo: USAF)*

including aeronautical protection, is released.

**c. Determining Fair Market Value.** A sale and disposal of airport property for less than its fair market value is inconsistent with the intent of the statute and shall not be authorized. The value to be placed on land for which a release has been requested shall be based on the present appraised value (for its highest and best use) of the land itself and any federal improvements initially conveyed with the property.

In many cases, the original buildings and improvements may have outlived their useful life and a determination may have been made by FAA that no further federal obligation to preserve or maintain them exists. If they have been replaced under such circumstances, or if additional improvements have been added without federal financing, the value of such improvements does not need to be included in the appraisal for purposes of determining the fair market value of the surplus property. However, the value realized from the disposal of any improvement owned by the airport sponsor must be treated as airport revenue.

**d. Appraisals.** A release authorizing the sale and disposal of airport land shall not be granted unless the fair market value has been supported by at least one independent appraisal report acceptable to the FAA. Appraisals shall be made by an independent and qualified real estate appraiser. The requirement for an appraisal may be waived if the FAA determines that:

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

or

(2). The property released is a utility system to be sold to a utility company and will accommodate the continued airport use and operational requirements;

or

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

**e. Application of Proceeds from the Sale of Surplus Real Property.** Title 14 CFR Part 155.7(d) requires that any release of airport land for sale or disposal shall be subject to a written commitment of the airport sponsor to receive a fair market value for the property. FAA shall not issue a release without this commitment. Part 155 can be found in Appendix K of this Order.

(1). The net proceeds realized from the sale of surplus property – or the equivalent amount if the property is not sold – must be placed in an identifiable interest bearing account to be used for the purposes listed in (2) below.

(2). The proceeds of sale must be used for one or more of the following purposes as agreed to by FAA and reflected in the supporting documentation for the deed of release:

(a). Eligible items of airport development set forth in the current airport grant program and reflected in the airport's capital improvement program (CIP).

(b). Any aeronautical items of airport development not eligible under the grant program.

(c). Retirement of airport bonds that are secured by pledges of airport revenue, including repayment of loans from other federal agencies.

(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.

(3). All aeronautical improvements funded by the proceeds of sale will be accomplished in accordance with current applicable FAA design criteria or such state standards as have been approved by the FAA.

(4). Any interest earned by the account holding the proceeds of sale may be used for the operating and maintenance of the aeronautical portion of the airport or to enhance the revenue producing capability of the aeronautical activities at the airport.

#### **22.18. Release of Federal Obligations in Regard to Real Property Acquired with Federal Grant Assistance.**

The FAA grants funds for the purchase of real property for aeronautical use. Over time, however, such acquisitions may result in parcels that are no longer needed for aeronautical use. A sponsor may then (a) be released by FAA from the responsibility to maintain a grant-acquired parcel for its originally intended aeronautical use (making it available for nonaeronautical use to generate airport revenue), (b) be released by FAA to use the parcel for a concurrent or interim nonaeronautical use to generate airport revenue, or (c) be released by FAA to dispose of the parcel at fair market value.

Also, grant-acquired real property can be exchanged for other property not held by the sponsor but that serves an airport purpose more effectively than the originally acquired parcel. However, a grant land swap cannot result in a net loss in the value of the federal interest in the grant land.

## **Federal Aviation Regulations**

### **PART 155**

#### **Release of Airport Property from Surplus Property Disposal Restrictions**

*Published December 1974*

DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION



*Title 14 CFR Part 155.7(d) requires that any release of airport land for sale or disposal shall be subject to a written commitment of the airport owner to receive a fair market value for the property.*

Federal obligations of the grant land should be formally released and transferred to the new parcel.

## **22.19. Effect of not Receiving or Receiving a Grant after December 30, 1987.**

### **a. Not Receiving a Grant after December 30, 1987.**

**(1). Applicability.** This paragraph is applicable to any request for release for sale or disposal of any airport land acquired with funds from the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), or the Airport Improvement Program (AIP) and where the sponsor has not received additional grants after December 30, 1987. A sponsor's request must assure that the federal government shall be reimbursed or the federal share of the net proceeds will be reinvested (a) in the airport, (b) in a replacement airport, or (c) in another operating public airport.

**(2). Reimbursement.** The requirement for reimbursement shall apply only where there is no alternative to invest in a replacement or operating public airport owned or to be owned by the sponsor. However, the sponsor may elect to reinvest the federal share of the net proceeds in any other grant-obligated public airport by contract between the respective airport owners with FAA concurrence. FAA concurrence in such a contract is contingent upon such funds being used for grant-eligible airport development. Except where the grant agreement specifically provides otherwise (by special condition), the amount to be reimbursed shall be the amount of the federal share of the grant times the net proceeds from sale of the property at its current fair market value.

**(3). Reinvestment.** Reinvestment of the total net proceeds (both federal and sponsor share) is required if the sponsor continues to own or control – or will own or control – a public airport or a replacement public airport. Reinvestment shall be accomplished within five (5) years (or a timeframe satisfactory to the FAA Administrator) for specified items of airport improvement in the order of priority established for releases of surplus airport property in paragraph 22.17.e above.

Unlike surplus property, the purposes for which land was acquired under FAAP/ADAP/AIP did not include nonaeronautical income production. If reinvestment cannot be accomplished within five (5) years or if the net proceeds derived exceed the cost of grant-eligible airport development, reimbursement of the remaining share will be required.

### **b. Receiving a Grant after December 30, 1987.**

**(1). Land for Airport Purposes (Other than Noise Compatibility Purposes).** A sponsor entering into a grant after December 30, 1987, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987 (1987 Airport Act), is to dispose of land at fair market value when the land is no longer needed for airport purposes. This also applies to land purchased under FAAP/ADAP/AIP after December 30, 1987. The federal share of the sale proceeds of the land is to be deposited into the Trust Fund. The sponsor will retain or reserve an interest in the land to ensure it will be used only for purposes compatible with the airport.

**(2). Land for Noise Compatibility Purposes.**

A sponsor entering into a grant after December 30, 1987, under the AAIA, as amended by the 1987 Airport Act, will dispose of noise land at fair market value when the land is no longer needed for noise compatibility purposes. This also applies to land purchased under FAAP/ADAP/AIP. An interest or right shall be reserved in the land to ensure it will be used only for purposes that are compatible with the noise levels generated by aircraft. The portion of the disposal proceeds that represent the federal government's share is to be reinvested in another approved noise compatibility project, reinvested in an approved airport development project or deposited into the Trust Fund. Disposal of noise land



*For a request to release an entire airport that is to be replaced by another new or existing airport, the general policy is to treat the proposal as a trade-in of the land and facilities developed with federal aid at the old airport toward the acquisition and development of better facilities at the new airport. (Photo: FAA)*

may be by sale, long-term lease, or exchange. (See Program Guidance Letter (PGL) 08-2, Management of Acquired Noise Land: Inventory – Reuse – Disposal, dated February 8, 2008, updated March 26, 2009 (available on the FAA web site).

**22.20. Release of 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 abandoning or disposing of an entire airport before disposal can occur. That authority is not delegated. A copy of the sponsor's request, including related exhibits and documents, and a copy of the FAA Airports regional statement supporting and justifying the proposed action shall be provided to ARP-1.

**b. Replacement Airport.** In the instance of a disposal of an entire airport that is to be replaced by a new or replacement airport, the general policy is to treat the proposal as a trade-in of the land and facilities developed with federal aid at the old airport for the acquisition and development of better facilities at a new or replacement airport.

Release under these circumstances is contingent upon transferring 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, when the new airport becomes operational. Development costs for the new airport in excess of the value from the disposal of the old airport would be eligible for AIP assistance. In these circumstances, the availability of a new and better airport is the basis for determining that the old one is no longer needed and that its useful life has expired. The original grant agreement is then terminated with the transfer of the grant obligations. (See Appendix T of this Order, *Sample FAA Letter on Replacement Airport*, regarding replacement airport.)

**22.21. Procedures for the Application, Consideration, and Resolution of Release Requests.** The ADO or regional airports division will base its decision to release, modify, reform, or amend an airport agreement on the procedures and guidelines outlined in this chapter and on the specific factors pertinent to the type of agreement and the release requested.

**22.22 General Documentation Procedures.** The sponsor's proposed release, modification, reformation, or amendment is a material alteration of its contractual relationship with the FAA. If approved, the results may have a substantial impact on the service that the sponsor provides to the aeronautical public. Accordingly, the ADOs and regional airports divisions must fully document all such actions to include the following:

- a. A complete description of the airport sponsor's federal obligations, including grant history, surplus property received, reference to appropriate planning documents (Exhibit "A" or ALP) with notations on additional land holdings and land use.
- b. A complete description of all terms, conditions, and federal obligations that may need to be modified in order to achieve the result requested by the sponsor.
- c. The sponsor's justification for release, modification, reformation, or amendment.
- d. The ADO or regional office's determination for public notice and comment or documentation of the notice and a summary of comments received.
- e. The ADO or regional office's preliminary determination on the request.
- f. The endorsement of the FAA official authorized to grant the request.

**22.23. Airport Sponsor Request for Release.** The sponsor must submit its request for release, modification, reformation, or amendment in writing signed by a duly authorized official of the sponsor. Normally, the sponsor submits an original request and supporting material to the ADO or regional airports division. If the FAA or other federal agencies require it, the sponsor may need to submit additional copies of the request and supporting material to headquarters offices or to the offices of other federal agencies.

**22.24. Content of Written Requests for Release.** Although no special format is required, the sponsor must make its request specific and indicate, as applicable, the following:

- a. All obligating agreement(s) with the United States.
- b. The type of release or modification requested.
- c. Reasons for requesting the release, modification, reformation or amendment.
- d. The expected use or disposition of the property or facilities.
- e. The facts and circumstances that justify the request.
- f. The requirements of state or local law, which the ADO or regional office will include in the language of the approval document if it consents to, or grants, the request.
- g. The involved property or facilities.
- h. A description of how the sponsor acquired or obtained the property.
- i. The present condition and present use of any property or facilities involved.

**22.25. Content of Request for Written Release for Disposal.** In addition to the above, the sponsor must include the following in its request for release involving disposal of capital items:

- a. The fair market value of the property.
- b. Proceeds expected from the disposal of the property and the expected use of the revenues derived.
- c. A comparison of the relative advantage or benefit to the airport from the sale of the property as opposed to retention for rental income.
- d. Provision for reimbursing the airport account for the fair market value of the property if the property is not going to be sold upon release, for example, if the municipality intends to use it for a new city office building or sports complex.
- e. A description of any intangible benefits the airport will realize from the release. The sponsor may submit a plan substantiating a claim of intangible benefits to the airport accruing from the release, the amount attributed to the intangible benefits, and the merit of applying the intangible benefits as an offset against the fair market value of the property to be released.

NOTE: Only benefits to the airport may be cited as justification for the release, whether tangible or intangible. The nonaviation interest of the sponsor or the local community – such as making land available for economic development – does not constitute an airport benefit that can be considered in justifying a release and disposal.

***The nonaviation interest of the sponsor or the local community does not constitute an airport benefit that can be considered in justifying a release and disposal.***

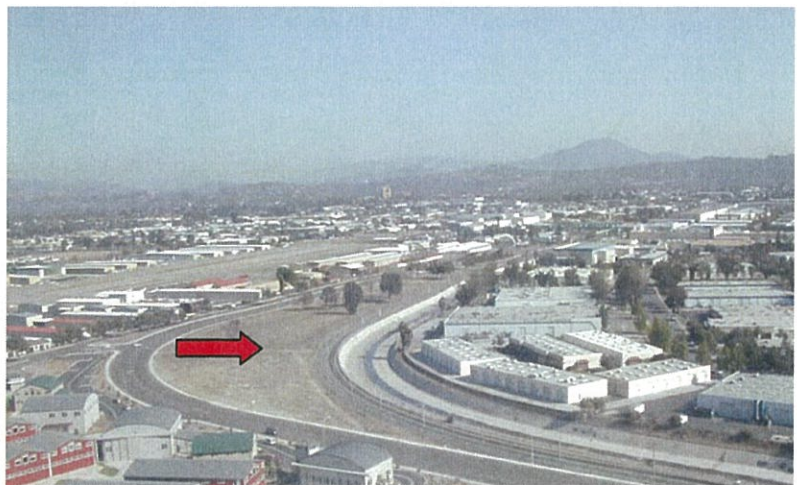
**22.26. Exhibits to the Written Request for Release.**

**a. Drawings.** The sponsor must attach to each copy of the request scaled drawings showing all airport property and airport facilities that are currently federally obligated by agreements with the United States. The sponsor should attach other exhibits supporting or justifying the request, such as maps, photographs, plans, and appraisal reports, as appropriate.

Although desirable, the FAA does not require scaled ALP drawings to support a request for release. If the FAA grants the release, the drawing serves to explain or depict the effect on the airport graphically. The drawings do not serve as the document by which the release is granted, and unless a release has been executed in accordance with the



*The reasonableness and practicality of the sponsor's request for release of airport property is related to the necessary aeronautical facilities and the priority of the need. In addition, the evaluation should consider the net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to all users as well as to the public at large. For example, as shown in the photograph above, a request for release of the property where aircraft are parked or where a hangar is located would be denied because the property is serving an aeronautical function. On the other hand, in a case such as the one depicted below, where airport property is separated by a road, the FAA may concur in releasing the property in question for revenue-producing nonaeronautical use provided it generates fair market value for the airport, is not needed for any aeronautical function, and its use is compatible with airport operations. (Photos: FAA)*





guidance contained in this chapter, the FAA will not approve any drawing inconsistent with the sponsor's current federal obligations.

**b. Height and Data Computations.** If the release contemplates change of use or disposal, the sponsor must provide height limit computations to limit the height of fixed objects to ensure navigation and compatible land use. It is essential to prevent an incompatible obstruction to air navigation from being located near the airport on property the airport once owned.

**c. Application of Sale Proceeds.** If the release action requested would permit a sale or disposal of airport property, the sponsor should provide documentation about the intended use of proceeds and evidence that the proceeds from disposal represent fair market value.

**22.27. FAA Evaluation of Sponsor Requests.** When the ADOs or regional airports divisions receive a request supported by the appropriate documentation and exhibits, they need to evaluate the total impact of the sponsor's proposal on the airport and the sponsor's federal obligations. This evaluation includes consideration of pertinent factors such as:

**a.** All of the ways in which the sponsor is federally obligated, both in its operations and its property. This includes specific federal agreements and use obligations.

**b.** The sponsor's past and present compliance record under all its airport agreements and its actions to make available a safe and usable airport for aeronautical use by the public. If there has been noncompliance, evidence that the sponsor has taken or agreed to take appropriate corrective action.

**c.** The reasonableness and practicality of the sponsor's request in light of maintaining necessary aeronautical facilities and the priority of the airport in the National Plan of Integrated Airport Systems (NPIAS).

**d.** The net benefit to be derived by civil aviation and the compatibility of the proposal with the needs of civil aviation, including the balance of benefits to aeronautical users relative to the public at large.

**e.** Consistency with the guidelines for specific types of releases, as discussed in this chapter.

**22.28. FAA Determination on Sponsor Requests.** The FAA will not release more property than the sponsor has requested. The statutes, regulations, and policy applicable to the specific types of agreements involved must guide the decision to grant or deny the request based on the evaluation factors. In addition, the FAA must determine if FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, requires an environmental review procedure. Further, it must be determined if one of the following conditions exists:

**a.** The public purpose for which an agreement or a term, condition, or covenant of an agreement was intended to serve is no longer applicable. The FAA should not construe the omission of an

airport from the NPIAS as a determination that such an airport has ceased to be needed for present or future airport purposes.

b. The release, modification, reformation, or amendment of an applicable agreement will not prevent accomplishment of the public purposes for which the airport or its facilities were federally obligated, and such action is necessary to protect or advance the interest of the United States in civil aviation.

c. The release, modification, reformation, or amendment will federally obligate the sponsor under new terms, conditions, covenants, reservations, or restrictions determined necessary in the public interest and to advance the interests of the United States in civil aviation (such as compatible land use for land that is disposed of).

d. The release, modification, reformation, or amendment will conform the rights and federal obligations of the sponsor to the statutes of the United States and the intent of the Congress, consistent with applicable law.

**22.29. FAA Completion of Action on Sponsor Requests.** The ADO or regional airports division will advise the sponsor that its request is granted or denied. It will also indicate if special conditions, qualifications, or restrictions apply to the approval. The approving FAA office may issue a letter of intent to approve the request in advance of the actual release, at the request of the sponsor.<sup>51</sup> (See also section 22.32 of this chapter, *FAA Consent by Letter of Intent to Release – Basis for Use.*)

**a. FAA Approval Action.** If FAA approves the request or an acceptable modification of the request, the ADO or regional airports division will prepare the necessary instruments or documents. The ADO or regional airports division will initiate parallel action to amend all related FAA documents (i.e., NPIAS, ALP, Exhibit “A,” and FAA Form 5010, *Airport Master Record*) as required to achieve consistency with the release. The sponsor must thereafter provide the ADO or regional airports division with any acknowledgment or copies of executed instruments or documents as required for FAA record purposes.

**b. Content of Release Document.** The formal release will cite the agreements affected and identify specific areas or facilities involved. The ADO or regional airports division will notify the sponsor of the binding effect of the revised federal obligations.

**22.30. FAA Denial of Release or Modification.** When the ADO or regional airports division determines that the request is contrary to the public interest and therefore cannot grant the request, it will advise the airport sponsor in writing of the denial.

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<sup>51</sup> All such letters of intent should cite any specific understandings reached by the ADO and airport sponsor.

**22.31. Procedures for Public Notice for a Change in Use of Aeronautical Property.**

**a. Summary.** This section sets forth FAA guidance for public notice of the agency's intent to release aeronautical property or facilities from federal obligations under the grant assurances and surplus property agreements.

Section 125 of *The Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century* (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's federal obligation to use certain airport land for nonaeronautical purposes.

**b. Responsibilities.** The ADOs or regional airports divisions are responsible for complying with the requirements of the statute and policy guidance governing the notice and release of aeronautical property.

**c. Authority.** Section 125 of AIR-21 has been codified as amendments to 49 U.S.C. §§ 47107(h), 47125, 47151, and 47153.

See a sample *Notification Memo for Federal Register Notice Governing the Notification and Release of Aeronautical Property* and a *Sample Federal Register Notice Governing the Notification and Release of Aeronautical Property* at the end of this chapter.

**d. Scope and Applicability.** As a matter of policy, the FAA will provide public notice of a proposed release of a sponsor from its federal obligations regarding any land, facilities, and improvements used or depicted on an ALP for aeronautical use where the release would affect the aeronautical use of the property, including certain releases for which notice is not expressly required by section 125 of AIR-21. Public notice requirements apply to release of the following types of property:

(1). Land acquired for an aeronautical purpose (except noise compatibility) with federal assistance in accordance with 49 U.S.C. § 47107(c)(2)(B).

(2). Land (surplus property) provided for aeronautical purpose in accordance with 49 U.S.C. § 47151.

(3). Land conveyances of the United States Government for aeronautical purposes in accordance with 49 U.S.C. § 47125.

(4). Land used as an aircraft movement area with federally financed airport improvements.

**e. Purpose.** Airport property becomes federally obligated for airport purposes when an airport sponsor receives federal financial assistance. The FAA land release procedures evaluate the sponsor's request for release of land to the extent that such action will protect, advance, or benefit the public interest in civil aviation or, specifically, the public's investment in the national airport system. Section 125 of AIR-21 requires the FAA to solicit and consider public comment as a part of the agency's decision making on a sponsor's request for release.

**f. Procedures.** At least 30 days prior to the agency's determination of an airport sponsor's request to release aeronautical property or facilities, notice must be published in the *Federal Register* to afford the public an opportunity to comment. Public notice is also an opportunity for the FAA to obtain additional information as a part of its evaluation of the airport sponsor's request. It allows the FAA to take public comment into account in the agency's decision making. Public notice is not required for:

- (1). Approval of the interim use of airport property on a short-term period, generally not exceeding five (5) years;
- (2). Grant of utility or other types of easements that will have no adverse effect on the aeronautical use of the airport;
- (3). Release of aeronautical property as a part of a major environmental action in which public notice and comment is an integral part of the environment review; or
- (4). Release of noise compatibility land.

#### **22.32. FAA Consent by Letter of Intent to Release – Basis for Use.**

**a. Use of Letter of Intent.** Release and disposal of facilities developed through federal assistance is often necessary to finance replacement facilities. The sponsor may, therefore, request a letter of intent to release even if it is merely to permit the sponsor to determine the market demand for portions of the available airport property proposed for release and disposal.

**b. Letter of Intent Contingencies.** The ADO or regional airports division may issue such a letter of intent to release if the letter contains appropriate conditions and makes clear that actual release is specifically contingent upon adequate replacement facilities being developed and becoming operable and available for use.

**c. Binding Commitment.** The letter represents a binding commitment (subject to future appropriations) and an advance decision to release the property once specific conditions have been met. It should be used only when all of the required conditions pertinent to the type of release sought have been met or are specifically made a condition of the pledge contained in the letter of intent. In addition, such a letter should cite any specific understandings reached regarding anticipated problems in achieving the substitution of airport properties (i.e., who pays for relocation of various facilities and equipment and the cost of extinguishing existing leases). The letter should specify a reasonable time limit on the commitment to release. The sample *Letter of Intent to Release Airport Property* at the end of this chapter will assist in drafting such a letter.

#### **22.33. The Environmental Implications of Releases.**

**a.** When a sponsor accepts a federal airport development grant or a conveyance of federal surplus property for airport purposes, the sponsor incurs specific federal obligations with respect to the uses of the property. FAA action is required to release a sponsor from federal obligations in the

event the sponsor desires to sell the airport land. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of chapter 3, "Environmental Action Choices," of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*.

In this case, the assessment shall address the known and immediately foreseeable environmental consequences of the release action. As with other federal actions regarding land, appropriate coordination with federal, state, or local agencies shall be completed for applicable areas of environmental consideration (i.e., historic and archeological site considerations, section 4(f) lands, wetlands, coastal zones, and endangered species).<sup>52</sup> In such cases, coordination with the State Historic Preservation Officer is required.

**b.** In making the final determination, the responsible federal official shall consider the effects of covenants that will encumber the title and the extent of federal ability to enforce these covenants subsequent to the release action. The standard conditions of release relative to the right of flight, including the right to make noise from such activity and the prohibition against erection of obstructions or other actions that would interfere with the flight of aircraft over the land released, may be considered as mitigating factors and may be included in environmental assessments when required. When the intended use of released land is consistent with uses described and covered in a prior environmental assessment, the prior data and analysis may be used as input to the present assessment. When the conditions set forth in the applicable sections of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, apply, a written reevaluation may be used to support the property release.

**c.** In some cases, another federal agency may be the lead agency responsible for preparing an environmental assessment and environmental impact statement, if required. In these circumstances, the FAA may be a cooperating agency. To support the release action, the FAA may then adopt the environmental document prepared by the other agency in accordance with the provisions of Council of Environmental Quality (CEQ) 1506.3.

**d.** Long term leases that are not related to aeronautical activities or airport support services have the effect of a release for all practical purposes, and shall be treated the same as a release. Such leases include convenience concessions serving the public such as hotel, ground transportation, food and personal services, and leases that require the FAA's consent for the conversion of aeronautical airport property to revenue-producing nonaeronautical property. Long-term leases are normally those exceeding 25 years.

**22.34. through 22.37. reserved.**

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<sup>52</sup> See FAA Order 5050.4A, *Airport Environmental Handbook*, for additional information.

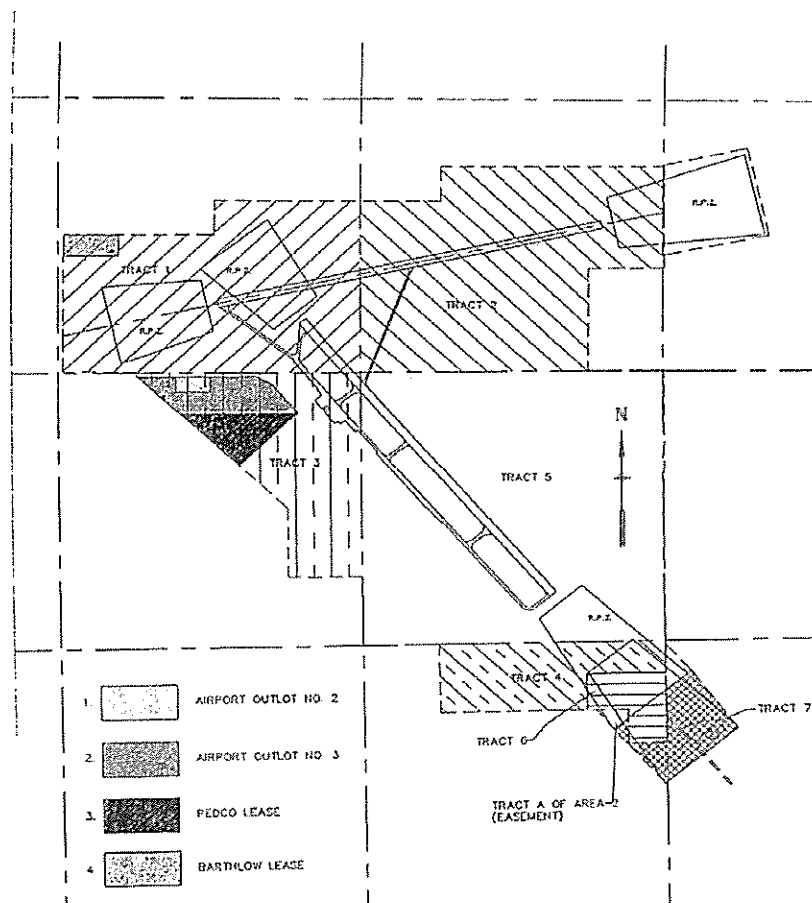
### Sample NEUP Legal Description

#### Legal Description

1. That portion of Tract 3 of the Pierre Municipal Airport, consisting of the parcels designated as Airport Outlot 2 and Airport Outlot 3, located in the North half (1/2), Section thirty five (35), Township one hundred eleven (111) North, Range seventy nine (79) West, Hughes County, South Dakota.

2. That portion of Tract 3 of the Pierre Municipal Airport, consisting of the parcels designated as the Pedco Lease, described as starting at the southwest corner of "B" Street right of way, the point of beginning; thence south easterly along the south westerly property line of lot 6, Airport outlot 3, extended, a distance of 1441.45 feet; thence north easterly a distance of 1416.11 to the south east corner of "B" street right of way, thence west a distance of 2015.64 feet to the point of beginning.

3. That portion of Tract 1 of the Pierre Municipal Airport, consisting of the parcel designated as the Barthlow lease, located in the north 400 feet of the east 1050 feet of the west 1083 feet of the southwest quarter (1/4) of section twenty six (26), Township one hundred eleven (111) North, Range seventy nine (79) West.



*The FAA will not approve a request for release of the National Emergency Use Provision (NEUP) involving the whole airport. In addition, the Department of Defense (DoD) generally does not concur with a request for release of the NEUP that involves actual runways, taxiways, or aprons. A request for release of the NEUP should be limited to parcels that are no longer needed for aviation purposes. Above is a sample visual and legal description of the specific parcels of land to which the release from the NEUP would apply. (Diagram: FAA).*

**Sample NEUP Release Request**

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

Office of the Associate  
Administrator for Airports

800 Independence Ave., SW.  
Washington, DC 20591

JUN 23 2006

Mr. Timothy W. Bennett  
Chairman, DOD Airports Subgroup  
HQ USAF/XOO-CA  
1480 Air Force Pentagon, Room 4D1010  
Washington, DC 20330-1480

Dear Mr. Bennett:

The Federal Aviation Administration (FAA) has received a request from the Fort Wayne-Allen County Airport Authority (FWACAA) for the release of the National Emergency Use Provision (NEUP) on land at the Fort Wayne International Airport in Fort Wayne, Indiana.

The property containing the Fort Wayne International Airport, formerly known as Baer Army Airfield, was transferred to the city of Fort Wayne (the airport sponsor that later became the FWACAA) under the provisions of Section 13, Public Law 80-289 of the Surplus Property Act of 1944. The transfer document includes the NEUP provision.

As a matter of Policy, the FAA does not request a release from the NEUP for all airport property conveyed. However, we do concur with the release of the NEUP on certain designated parcels of airport property that are not currently required for aeronautical purposes. The subject land for this NEUP release request, approximately 2.44 acres, is not currently required for aeronautical purposes and is needed for the relocation of Indianapolis Road. The FAA concurs with the use of the parcel for non-aeronautical use. The attached property map and legal description depicts the subject parcel.

Consequently, in accordance with Section 7-7(d), Chapter 7, FAA Order 5190.6A *Airport Compliance Requirements*, we request the concurrence of the Department of Defense in the release of the NEUP provision on the tract of property described above and as shown in the attached documents.

Thank you in advance for your consideration. If you have any questions or need further assistance, please contact Mr. Miguel Vasconcelos at (202) 267-8730.

Sincerely,

Charles Erhard, Manager  
Airport Compliance Division, AAS-400

Enclosures

**Sample DoD Response to FAA NEUP Release Request**

DOD  
POLICY BOARD  
ON FEDERAL AVIATION

THE SECRETARY OF DEFENSE  
WASHINGTON DC 20030-1480

HQ USAF/A3O-AA  
1480 Air Force Pentagon, Rm 4D1010  
Washington DC 20330-1480

14 Jul 06

Mr. Charles C. Erhard  
Manager, Airport Compliance Division, AAS-400  
Federal Aviation Administration  
800 Independence Avenue SW  
Washington DC 20591

Mr. Erhard

This is in response to your letter of June 23, 2006, requesting the release of approximately 2.44 acres of property at the Fort Wayne International Airport, Indiana from the National Emergency Use Provision (NEUP).

The Airports Subgroup, on behalf of the Department of Defense, concurs with the FAA to release of the NEUP on the designated parcels of airport property that are not currently required for aeronautical purposes (as shown in the attached property map and legal description). A copy of the release instrument must be provided to the appropriate District Corps of Engineers' office.

Sincerely

TIMOTHY W. BENNETT  
Chairman  
DOD Airports Subgroup

Attachments:  
1. Property Map  
2. Legal Description





US Department  
of Transportation  
**Federal Aviation  
Administration**

# Memorandum

Airports District Office  
11677 South Wayne Road  
Suite 107  
Romulus, MI 48174

**Subject** ACTION: Federal Register Notice, Public Notice For Waiver of Aeronautical Land-Use Assurance Wood County Regional Airport, Bowling Green, Ohio **Date** July 7, 2004

**From** Irene Porter, Manager  
Detroit Airports District Office, DET ADO-600 **Reply to**  
Attn of Jagiello  
734-229-2956

**To** Regulations Division, Office of the Chief Counsel, AGC-200  
PHRU: Manager, Safety/Standards Branch, AGL 620  
Regional Counsel, AGL-7

Attached are the original and two (2) copies of the Federal Register notice for Public Notice For Waiver of Aeronautical Land-Use Assurance at Wood County Regional Airport, Bowling Green, Ohio.

This notice is submitted to be docketed by the Regulations Division Staff for publication in the Federal Register.

Please insert the date, which is 30 days after the date of publication in the Federal Register, under "DATES: Comments must be received on or before \_\_\_\_\_."

Irene Porter

Attachment (3)

cc: AGL-620 w/attachments (for information)  
AAS-400 w/attachments (for information) ✓

## Notification Memo for Federal Register Notice Governing the Notification and Release of Aeronautical Property

**Federal Aviation Administration Public Notice For Waiver Of Aeronautical Land-Use Assurance**

Hallock Municipal Airport, Hallock, MN

**AGENCY:** Federal Aviation Administration, DOT

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to nonaeronautical use and to authorize the sale and/or conversion of the airport property. The proposal consists of two parcels of land containing a total of 4.18 acres located on the north side of the airport along County Road 13.

These parcels were originally acquired under Grant No. FAAP-01 in 1964. The parcels were acquired for a runway that has since been abandoned and replaced by a new primary runway in a different location. The land comprising these parcels is, therefore, no longer needed for aeronautical purposes and the airport owner wishes to sell a 4.0 acre parcel for an agricultural implement dealership and convert 0.18 acres of another parcel for use as a city wastewater lift station site. The income from the sale/conversion of these parcels will be reinvested in the airport for extending the useful life of the runway pavement.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the *Federal Register* 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATE:** Comments must be received on or before [Insert date which is 30-days after date of publication in the *Federal Register*.]

**ADDRESSES:** Send comments on this document to Mr. Gordon L. Nelson, Program Manager, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28<sup>th</sup> Avenue South, Room 102, Minneapolis, MN 55450-2706.

**FOR FURTHER INFORMATION CONTACT:** Mr. Henry Noel, City Administrator, 163 South 3<sup>rd</sup> Street, Hallock, MN 56728, telephone (218)843-2737; or Mr. Gordon L. Nelson, Program Manager, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28<sup>th</sup> Avenue South, Room 102, Minneapolis, MN 55450-2706, telephone (612)713-4358/FAX (612)713-4364. Documents reflecting this FAA action may be reviewed at the above locations.

**SUPPLEMENTARY INFORMATION:** Following are legal descriptions of the property located in Kittson County, MN: That part of Section 24, T161N, R49W described as follows: Commencing at an iron monument at the NW corner of said Section 24; thence South 89 degrees 40 minutes 33 seconds East, assumed bearing, along the north line of said Section 24 a distance of 2523.77 feet; thence South 27 degrees 29 minutes 58 seconds East, a distance of 33.72 feet to an iron pipe monument; being the point of beginning of the tract to be described; thence North 89 degrees 40 minutes 34 seconds East, parallel with north line of said Section 24 a distance of 400 feet to an iron pipe monument; thence South 22 degrees 18 minutes 25 seconds East, parallel with and 40 feet perpendicular to the westerly right-of-way line of Burlington Northern, Inc. railroad, a distance of 437.34 feet to an iron pipe monument; thence South 67 degrees 41 minutes 37 seconds West 317.57 feet to an iron pipe monument; thence North 27 degrees 29 minutes 58 seconds West 589.49 feet to the point of beginning, containing 4.00 acres, more or less.

That part of the NE1/4 of the NW1/4 of Section 24, T161N, R49W bounded as follows: Beginning on the north line of said Section 24 at a point which lies 557.00 feet west of the northeast corner of the NW1/4 being the point of beginning of the tract to be described; thence South 0 degrees 19 minutes 27 seconds West, assumed bearing, along a line perpendicular to said section line a distance of 172.82 feet; thence North 27 degrees 22 minutes 40 seconds West, a distance of 195.19 feet to the north line of said Section 24, thence South 89 degrees 40 minutes 33 seconds East, a distance of 90.74 feet along the north line of said section back to the point of beginning, containing 0.18 acres, more or less.

Issued in Minneapolis, MN on December 11, 2006

Robert A. Huber  
Manager, Minneapolis Airports District Office  
FAA, Great Lakes Region

**Sample Federal Register Notice Governing the Notification and Release of Aeronautical Property**

**Sample Letter of Intent to Release Airport Property - Page 1**

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

Detroit Airports District Office  
11677 South Wayne Road  
Suite 107  
Romulus, MI 48174

April 17, 2006

Mr. Kent L. Maurer, Manager  
Jackson County- Reynolds Field  
3606 Wildwood Avenue  
Jackson, Michigan 49202

Dear Mr. Maurer:

Jackson County Airport-Reynolds Field, Jackson, Michigan  
Letter of Intent to Release Airport Property (Approximately 68 Acres)  
Parcels 15A and 62

This "Letter of Intent to Release Airport Property" is being issued in response to Mr. Chip Kraus' letter, dated May 11, 2005, and supporting documentation requesting the Federal Aviation Administration (FAA) to release the County of Jackson, Michigan (hereinafter referred to as "sponsor") of its obligations to maintain as airport property 2 parcels of land (Parcels 15A and 62). This property is located in the northeast quadrant of the airport as currently depicted in the Airport Layout Plan (ALP) and Exhibit A. This land is to be sold and/or leased for proposed use as commercial development.

The FAA is authorized to grant a release of airport property from disposal restrictions if it is determined that (1) the property to which the release relates no longer serves the purpose for which it was made subject to the terms, conditions, reservations, or restrictions concerned, and (2) the release will not prevent accomplishing the purpose for which the property was made subject to the terms, conditions, reservations, or restrictions, and is necessary to protect or advance the interests of the United States in civil aviation.

The FAA finds that Parcels 15A and 62 are no longer required for current or future public airport purposes, nor would the release thereof prevent the accomplishment of the public airport purpose for which the airport facilities were obligated.

Accordingly, this Letter of Intent represents a decision by the FAA to release Parcels 15A and 62 upon submission and/or consideration of the following conditions:

- a. The County should keep the FAA informed of its timetable for redevelopment of the two parcels. The County shall submit for review detailed information relating to the marketing and proposed use of the property.

- b. If a sale is contemplated, present to FAA a draft sales or lease agreement or agreements the County intends to execute with a prospective buyer/lessee for the property in question and disclose the sale price or rental value to be determined based upon fair-market valuation. You should submit documented evidence (such as a rezoning application and approval) indicating that Parcels 15A and 62 are rezoned in a manner that is compatible with airport operations (for example "non-residential" i.e. C-2) and consistent with Condition a. above.
- c. Federal Aviation Regulation (FAR) Part 77 (recodified as 14 Code of Federal Regulations (CFR) Part 77) surfaces must be adhered to relating to any building, structure, poles, trees, or other object on the property relating to Jackson County Airport-Reynolds Field. The County will retain a right of entry onto the property conveyed to cut, remove, or lower any object, natural or otherwise, of a height in excess of 14 CFR Part 77 surfaces relating to the airport. This public right shall include the right to mark or light as obstructions to air navigation, any and all objects that may at any time project or extend above said surfaces.
- d. A notice consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1) must be filed prior to constructing any facility, structure, or other item on the property.
- e. The property shall not be used to create electrical interference with communication between the installation upon the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others, impair visibility in the vicinity of the airport, or endanger the landing, taking off, or maneuvering of aircraft.
- f. A right of flight for the passage of aircraft in the airspace above the surface of the property shall be maintained (easement) specifying that any noise inherent in the operation of any aircraft used for navigation shall be allowed.
- g. The property shall not be used to create a potential for attracting birds and other wildlife that may pose a hazard to aircraft in accordance with current FAA guidance.
- h. The Hurd-Marvin Drain has been identified on the southern portion of the subject site on both parcels. Additionally, approximately 5.48 acres of the subject property has been categorized as wetlands. These areas are specifically precluded from any development on, or disturbance of, or impacts to the Hurd-Marvin Drain, or the designated wetlands, unless they comply with the requirements of Executive Order 11990, the Fish and Wildlife Coordination Act, and the National Environmental Policy Act.
- i. The MALS approach light plane complex and line-of-sight must not be penetrated. In order to protect these surfaces, no objects shall penetrate 14 CFR

Part 77 50:1 approach slope for Runway End 24 on Parcels 15A and 62, as depicted on the attached Figure 2-0. This drawing shall be part of the release documents between you and the prospective buyer(s).

- j. The Middle Marker for Runway End 24 is located approximately 3,275' from Runway End 24, on the extended runway centerline. FAA ingress/egress to this site shall be maintained.
- k. The lease between the County of Jackson, Michigan, and the United States of America dated May 14, 1986 shall be maintained. The lease allows FAA personnel access to Runway 24 MALSR and Middle Marker sites to maintain these NAVAIDs. The ground easements described in the lease relating to Parcels 15A and 62 are shown on the attached Figure 1-0 and shall be maintained. A narrative description of the leased areas for the MALSR and Middle Marker is described in Attachment "A". These documents shall be part of the release documents between you and the prospective buyer(s).
- l. The County will, by agreement with FAA, commit all proceeds from the sale or lease of the property to the development, maintenance and operations of the County airport system, in conformance with the FAA's revenue use policy. The revenue use policy may be accessed at the following web address:

[http://www.faa.gov/airports\\_airtraffic/airports/resources/publications/federal\\_register\\_notices/media/obligation\\_final99.pdf](http://www.faa.gov/airports_airtraffic/airports/resources/publications/federal_register_notices/media/obligation_final99.pdf).

Therefore, upon submission of and adherence to the above-mentioned conditions, FAA will approve the release of the property from the applicable terms, conditions, reservations, and restrictions recorded in the grant assurances.

If you need further assistance or have any questions, please contact me at (734) 229-2900.

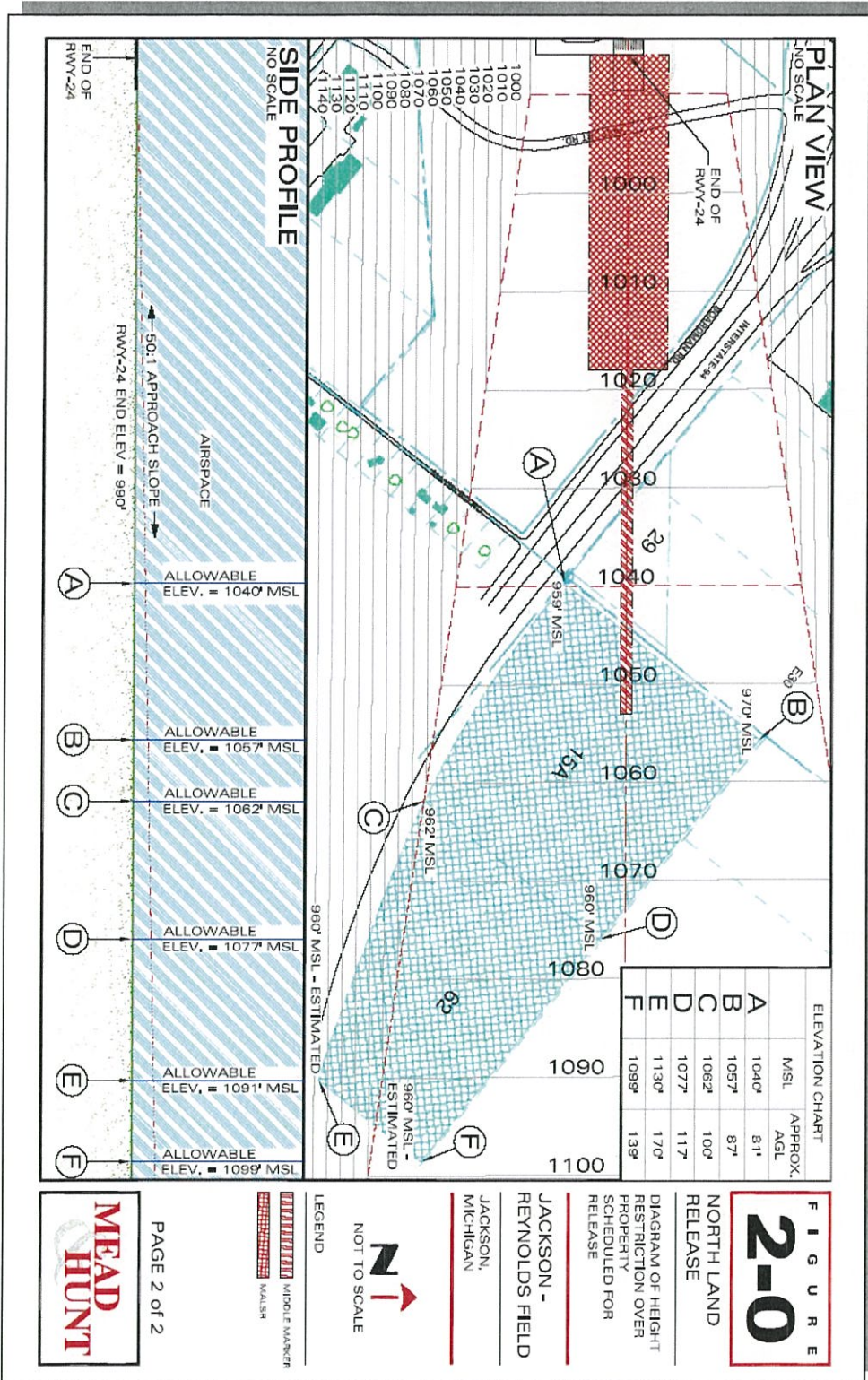
Sincerely,



Irene R. Porter  
Manager, Detroit Airports District Office

Attachments

cc: AGL-620, AAS-400, F. Kraus, MMTSB



Sample Letter of Intent to Release Airport Property - Page 4

Attachment "A" to  
Lease No. DTFAL4-86-L-R955

*Site Descriptions*

*MALSR, Runway 24:*

*An area 400 feet wide symmetrical about the runway centerline and beginning at the end of the runway extending 1,600 feet northeast followed by an area 60 feet wide, symmetrical about the runway centerline extending an additional 1,600 feet northeast. The Unit includes light stations at 200 feet intervals, access roads, underground cables, power and control stations, transformers, access off of Airport Road, conduit under I-94 and Airport Road. Area described includes R.O.W. along I-94. The underground cables are within the area described and extend beyond.*

*Middle Marker, Runway 24:*

*An area 60 feet wide and symmetrical about the runway centerline and extending 150 feet NE of the MALSR/RAIL area. The unit includes a pole mounted marker, transformer, access road, and underground cables.*

**Table 22.1: Guide to Releases**

Land Acquisition Circumstance	Title 49 U.S.C. Requirement to Notify Public  Release of Aero Land Use Obligation	Fed Register Notice Required	Surplus Property Deed of Release Required	Grant Assurance Letter of Release Required	Required to use proceeds for AIP Elig Dev Only (Highest Priority) or Opr & Maint.	Required to use proceeds for Noise mitigation
Surplus property transferred for aeronautical purposes	47151(d), 47153(c)	Yes	Yes	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Surplus property transferred for nonaeronautical revenue production <u>and</u> shown on the ALP & Exhibit "A"	N/A	No	Yes	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Surplus property transferred for nonaeronautical revenue production and <u>not</u> shown on the ALP & Exhibit "A"	N/A	No	Yes	No	Opr & Maint of airport	No
Land acquired with AIP assistance	47107(h)	Yes	No	Yes	AIP Elig Only	No
Land acquired with FAAP or ADAP assistance <u>and</u> land assurances have expired	N/A	No	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Unobligated land acquired without federal assistance <u>and</u> on the ALP and Exhibit "A" as airport land <u>and</u> without federally financed airport improvements.	N/A	No	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Land acquired without federal assistance and <u>not</u> on the ALP or Exhibit "A" as airport land	N/A	No	No	No	No	No
Land acquired without federal assistance and airport facilities exist on the land that was developed or improved less than 20 years ago with federal assistance	N/A	Yes	No	Yes, if airport has current federal grant assurances	(1) Replace federally financed development (2) AIP Elig Dev	No
Land acquired without federal assistance and airport facilities exist on the land that was developed or improved more than 20 years ago with federal assistance	N/A	Yes	No	Yes, if airport has current federal grant assurances	Opr & Maint of airport	No
Land acquired with noise funds	N/A	No	No	No	See ----->	Yes
Federal government land conveyed to sponsor under U.S.C. § 47125 by a federal agency and the sponsor asks the FAA to waive the requirement that the land be used for airport purposes.	47125(a)	Yes	No	Yes, if airport has current federal grant assurances	A purpose approved by the Secretary.	No
AIP acquired development land (U.S.C. § 47107(c)(2)(B)), surplus property (U.S.C. § 47151), conveyed government land (U.S.C. § 47125), or land with federally financed improvements. Land use changed (not released) to nonaeronautical.	N/A	Yes	No	No	N/A	N/A



## Sample Actual Deed of Release – Page 1

DEED OF RELEASE

WHEREAS, the United States of America, acting by and through the General Services Administrator, under and pursuant to the powers and authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), and the Surplus Property Act of 1944 (58 Stat. 765), as amended, by instrument entitled "Quitclaim Deed" dated January 29, 1959, did remise, release, and forever quitclaim to the City of Sebastian of the State of Florida, its successors and assigns, all rights, title and interest of the United States of America in and to certain property known as Sebastian Municipal Airport subject to certain conditions, reservations, exceptions and restrictions; and,

WHEREAS, the City of Sebastian has requested the United States of America to release the hereinafter described property from all of the conditions, reservations, exceptions and restrictions of said instrument; and,

WHEREAS, the Administrator of the Federal Aviation Agency, under and pursuant to the powers and authority contained in Public Law 311 (62 Stat. 700) is authorized to grant a release from any of the terms, conditions, reservations and restrictions contained in, and to convey, quitclaim or release any right or interest reserved to the United States of America by any instrument of disposal under which surplus airport property was conveyed to a non-Federal public agency pursuant to Section 13 of the Surplus Property Act of 1944 (58 Stat. 765); and,

WHEREAS, the said Administrator has determined that the land described hereinafter is no longer needed for the purpose for which it was made subject to the terms, conditions, reservations and restrictions of the said surplus airport property instrument of transfer and that said land can be released without adversely affecting the aeronautical use of the said airport; and,

NOW, THEREFORE, for the considerations above expressed, the United States of America, except as hereinafter provided, does hereby quitclaim, convey and release unto the City of Sebastian, Florida, its successors and assigns, all rights, title and interest reserved or granted to the United States of America by the said Quitclaim Deed dated January 29, 1959, insofar as same pertains to the following described land, to wit:

A strip of land 53 feet wide, over, through and across Lots 52, 53, 51, the Allen Tract, Lots 44, 43, 42, 41 and 40 in Section 28; Lots 17, 16, 15 and 14 in Section 29; Lots 82, 83, 76, 75, 74, 53, 54 and 55 in Section 22, of the Fleming Grant in Township 31 South, Range 38 East, Township 30 South, Range 38 East which lies within 53 feet Easterly of the Baseline of Survey and/or centerline of construction according to the Right of Way Map of Section 88602-2601, State Road S-505, Roseland Road, as filed in Map Book 1, Pages 83 and 84 in the office of the Clerk of the Circuit Court, Indian River County, Florida, a part of said Baseline and/or Centerline being more particularly described as follows:

BEGINNING at a point on the Southwesterly line of and 100.22 feet S 44°32'44" E of the Northwest corner of Lot 62, Section 28 of the Fleming Grant in Township 31 South, Range 38 East, run N 11°39'14" W a distance of 800.62 feet to the beginning of a curve to the right; thence Northerly on said curve having a central angle of 07°10'15" and a radius of 5729.65 feet a distance of 717.08 feet to the end of said curve; thence N 04°48'59" W a distance of 5528.83 feet to the beginning of a curve to the right; thence Northeasterly on said curve having a central angle of 50°03'30" and a radius of 1562.88 feet, a distance of 1367.50 feet to the end of said curve; thence N 45°19'31" E a distance of 1704.86 feet to a point on the Northeast line of and 2636.77 feet N 44°37'29" W of the Easterly corner of Section 22 of the Fleming Grant in Township 30 South, Range 38 East;

excepting therefrom the existing 33 foot Right of Way for Roseland Road and containing 3.22 acres, more or less, Indian River County, Florida.

The release of the above described land is subject to the following terms and conditions:

1. That, in any instrument conveying title to the land, or granting any easement therein, Indian River County, Florida, will reserve for itself,

its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the land conveyed, together with the right to cause in said airspace such noise, as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from, or operating on the Sebastian Municipal Airport.

- 2. That any instrument conveying title or granting an easement in the land shall contain a provision restricting and establishing the height of structures or objects of natural growth on the said land in accordance with the currently effective Federal Aviation Agency Technical Standard Order N18 as applied to Sebastian Municipal Airport.
- 3. That any instrument conveying title or granting an easement in the land shall contain a provision which will prohibit any use of the land that would interfere with the operation of aircraft or adversely affect the operation or maintenance of the Sebastian Municipal Airport.

IN WITNESS WHEREOF, the United States of America has caused these presents to be executed in its name and on its behalf by the Chief, Airports Division, Southern Region, Federal Aviation Agency, all as of the 10 day of January, 1963.

UNITED STATES OF AMERICA  
The Administrator of the Federal Aviation Agency

BY [Signature]  
acting Chief, Airports Division, Southern Region

STATE OF GEORGIA }  
                          } ss  
COUNTY OF FULTON }

On this 10 day of January, 1963, before me, [Signature], a Notary Public in and for the County of Fulton, State of Georgia, personally appeared [Signature], known to me to be the Chief, Airports Division, Southern Region, Federal Aviation Agency, and known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same on behalf of the Administrator of the Federal Aviation Agency and the United States of America.

WITNESS my hand and official seal.

[Signature]  
Notary Public in and for said County & State

(SEAL)

My commission expires 7-11-66.

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# Planning Commission Report

April 18, 2017

**TO:** Borough Assembly  
**FROM:** Planning Commission  
**Subject:** Construction of a Pedestrian Trail

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**Recommendation:** Recommends the Borough Assembly support construction and maintenance of a pedestrian trail from Haugen Drive to Severson's Subdivision as proposed by PIA and further recommends that parking areas be constructed at either end of the trail.

**The Petersburg Planning & Zoning Commission makes this recommendation based on the following:**

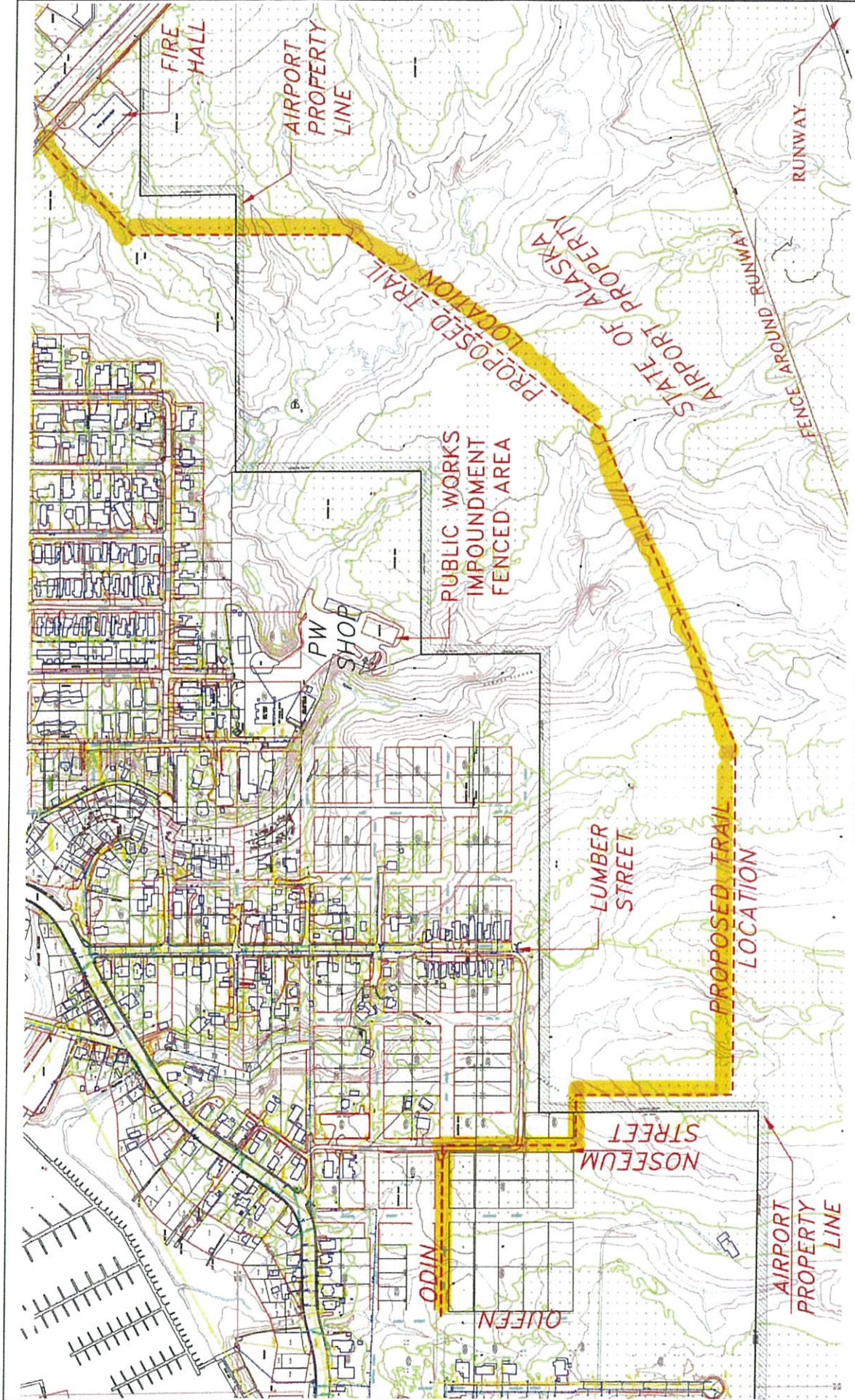
1. A proposed trail route between Haugen Drive and Severson's Subdivision was proposed by the Petersburg Indian Association in August, 2016.
2. Hearing notices were mailed to property owners within 600 feet of the route on August 30, 2016.
3. On September 27, 2016, a duly noticed public hearing was held by the Petersburg Borough Planning Commission. At the September 27, 2016 hearing, the PIA withdrew their proposed trail because the proposed route was not suitable.
4. PIA submitted a new proposed route. Hearing notices were mailed to property owners within 600 feet of the original trail route on March 6, 2017.
5. On April 18, 2017, a duly noticed public hearing was held by the Petersburg Borough Planning Commission.
6. At the public hearing, the Planning Commission considered and reviewed applicant materials, public comments and testimony, including:
  - a. Written comments from Donna Marsh, Ronn and Tina Buschmann, Sam Bunge, Sharon Smith, Alice and Thomas Crumps, and Molly Taiber.
  - b. Oral testimony from Rick Braun Joe Bertagnoli, and Sandy Dixson.
  - c. Petition signed by Tango St. residents.
7. The revised trail route begins on Haugen Drive (adjacent to the Fire Hall) and terminates at the corner of Odin Street and Queen Street in Severson's Subdivision. The majority of the proposed trail is located on airport property. (See attached map)
8. The proposed trail and parking areas would be constructed and maintained by the Petersburg Indian Association.
9. The proposed route would be located within:
  - a. borough-owned right-of-ways – trails are an allowable use of right-of ways;
  - b. airport property – PIA is working to obtain the necessary easements from DOT;
  - c. private property – property owner is willing to grant PIA an easement for the trail as well as providing sufficient area for a small parking area.

## Planning Commission Report

April 18, 2017

10. Fire Department expressed concerns about location of trailhead adjacent to the Fire Hall particularly that it may encourage residents to park in the Fire Hall lot can be addressed by constructing a small parking area near the Haugen St. trailhead.
11. Neighbor concerns about lack of parking on the Severn's side of the trail can be addressed by constructing a small parking area on private property at the end of Noseum St. The property owner expressed support.
12. Neighbor concerns about increased pedestrian traffic were discussed. The majority of the commission felt the trail route was located on existing borough right-of-ways, which could someday be developed for roads and sidewalks. The trail would not result in more traffic than a road/sidewalk.
13. Neighbor concerns about trail being used for illegal drug trade were discussed. The majority of the commission felt illegal activities occurs on existing trails, roads, and sidewalks. These are law enforcement concerns and are not caused by the existing infrastructure.
14. Concerns about trail design and construction materials are to be addressed during the design phase by PIA engineer, Susan Harai. Ms. Harai indicated PIA would provide public notice and a public meeting would be held about the proposed design.

**Based on the preceding, the Petersburg Planning & Zoning Commission makes the following Recommendation:** Recommends the Borough Assembly support construction and maintenance of a pedestrian trail from Haugen Drive to Severson's Subdivision as proposed by PIA and further recommends that parking areas be constructed at either end of the trail.



**PROPOSED TRAIL LOCATION  
FIRE STATION TO NOSEEUM STREET**

SCALE: 1"=300'

9 March 2017

Rec'd  
3/24/17  


Dear Planning and Zoning Commission,

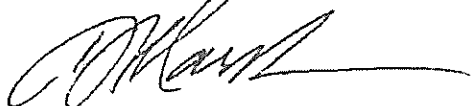
As a frequent user of the trails in and around Petersburg, I would like to share my thoughts on the proposed trail from Queen/Rambler Streets to Haugen Drive. While I am pleased at yet another option to enjoy this beautiful area we call home, I would urge the Commission to consider carefully the ramifications of the choice of trail built.

Accessibility to these trails makes them popular with walkers, runners, skiers and bicyclists, but the *type* of trail will either expand or limit their use. A crushed rock trail is much more functional than a board walk construction for several reasons listed here:

1. **Cost.** While I myself do not have numbers to verify this, it would be easy to conclude that a crushed rock surface by far is less expensive to both construct and maintain than a board walk trail in man hours, materials, and maintenance – even if a non-Borough entity bears the cost. It's costing the taxpayer regardless of who builds it.
2. **More cost.** The lower Raven's Roost Trail (crushed rock) was built using machines rather than people hauling the material in wheelbarrows. Its wider span helped to facilitate this as well as speed construction along, thus saving in labor costs. I have helped build a Petersburg trail using wheelbarrows, and it takes many many loads!
3. **Safety.** If you have not, please take the time to walk the nature trail between the elementary school and 8th Street. It doesn't have to be in snowy conditions, rainy weather or sub-freezing temperatures for the sections of that trail that are board-constructed to be extremely slippery.
4. **Versatility.** A crushed rock pathway can be easily and safely traversed by all users. Even those who wish to travel it on cross country skis have that option much more easily than on a board walk. It is also much easier to step off a rock path than an elevated board pathway.
5. **Surrounding terrain.** When winter conditions warrant, the muskeg around town is a great place for activities not on a trail. A board trail is an entire barrier in and of itself as it is not easily crossed without either damage to a machine or the trail, or cumbersome for a skier to work his way across the elevated board walk-way.

Thank you for the opportunity to submit my opinion and thank you for your consideration of the points presented here.

Sincerely,  
Donna Marsh



Ronn and Tina Buschmann  
P. O. Box 1367  
Petersburg, Alaska 99833  
(907) 723-1642

Rec'd  
3/24/17  
②

Planning and Zoning Commission  
Box 329  
Petersburg, Alaska

March 10, 2017

Dear Commissioners,

I am writing to support the proposed trail/walkway from the Severson and RB subdivisions to the area of the Post Office. I believe this is a great opportunity to expand the walking trail system in town and promote good health and wellness for our citizens. I feel this strongly enough that I have offered to create a trail easement across my private land if that's what it takes to work out the routing.

Tina and I regularly drive to and walk on the trails from the school to Hungry Point, Sandy Beach to City Creek, Ravensroost, and Blind River Rapids. The potential for a trail from our neighborhood is very exciting. Rambler Street as well as the rest of these subdivisions have no sidewalks and parking is allowed on both sides of the streets so walking can become a matter of weaving around parked cars and traffic.

There is considerable neighborhood demand for places to walk for exercise as well as dog walking. My driveway is a long clear stretch with very little traffic and many in our neighborhood walk their dogs here. There is also an old trail from town to Scow Bay that crosses our property. Several people walk this trail; one fellow used to walk it every morning on his way to work at the Forest Service Building in Scow Bay. It has considerable use as a cross country skiing trail during the winter although we installed bollards to keep the four wheelers and snow machines from driving through our yard.

The reasoning I have heard behind about all the objections to this trail is the original trail's proximity to the end of Lumber Street. By rerouting the trail through my property, that objection should be eliminated. The balance of the trail is either on Odin and Noseum Street dedicated Right of Way which is "a strip of land occupied or intended to be occupied by a street, walkway, road ..., or for any other public purpose." (Petersburg Municipal Code.) or State of Alaska airport land.

We sincerely hope you will approve this project and that PIA can hurry and get it built.

Respectfully,



Ronn and Tina Buschmann



**Liz Cabrera**

---

**From:** Sharon <sharonpatzke@msn.com>  
**Sent:** Monday, March 27, 2017 10:28 PM  
**To:** Liz Cabrera  
**Subject:** Regarding the Queen Street and Odin trail

Community & Economic Development and Planning and Zoning,

This is my second letter of objection to the proposed trail along side my private property on Queen street. I do not want this trail along side my property for several reasons..

Safety issues including: inability to patrol or monitor, lack of lighting (or too much light), increase foot traffic of unknown people.  
Seasonal workers. Possible vagrancy. An increase of drug exchanges in wooded area, possible party sites in secluded woods on private properties along said trail.  
Negative effect of resale of properties.  
Garbage, dog walkers, loose dogs and dog poop.  
Increase exposure to common routines of daily living.  
Traffic at all hours of the day and night creating increased noise and disturbances.  
Invasion of privacy due to increase of foot traffic.

I'm not opposed to trails in Petersburg as I am an avid walker myself and love the trails. However, I find this section of the trail inconsiderate to us home owners on Queen and Odin Streets. An alternative to this section of your trail could start on an existing roadway already established . A roadway is easily monitored by police car and well lit. As a homeowner and property tax payer I would very much appreciate your consideration to these concerns. Thank you  
Sharon Smith

907-518-0217

11 March 2017

Planning and Zoning Commission  
Petersburg Borough

Hi,

I am very pleased by the plan to build a new trail between Severson / RB Subdivision and the Fire Hall. This trail will be a fine addition to the network of trails that walkers already enjoy in Petersburg.

I note that the length of the trail, as shown on the map provided by the Borough, is about 4,200 feet – a nice distance through some very scenic and quiet terrain.

If I am in town when construction is underway, I will volunteer to help with the work. If there is a need to locate some of the state airport boundary along the trail route, I can do that.

I walk a lot. I intend to use this new trail every week.

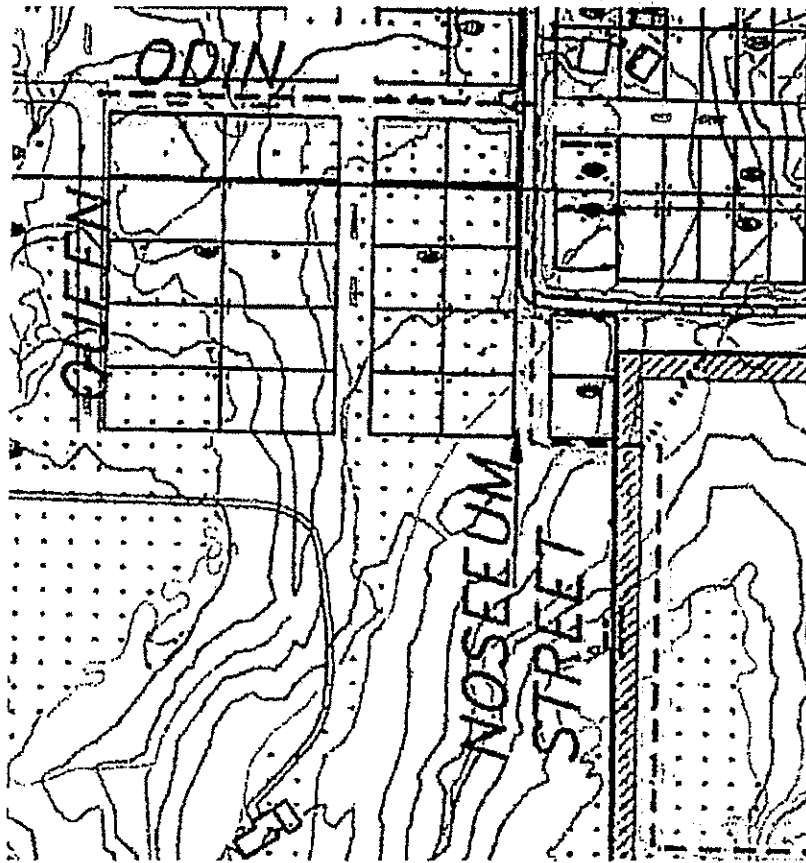
Let's do this!

Sam Bunge  
P.O. Box 288

18 April 2017

Once again we are voicing our concerns about the proposal by PIA to construct a pedestrian trail between Haugen Drive and Odin Street. At a meeting in October 2016, we also expressed concern over the trail passing from our street, Noseeum, to Lumber Street. While we appreciate the fact that PIA took our initial concerns into consideration and have moved a portion of the trail, the newly proposed route brings up other concerns.

Namely, we are concerned with the portion of the trail from Severson subdivision (Odin Street) to Noseeum Street and along Noseeum Street into the muskeg up to the airport property line. This portion of the trail would border several private, residentially-zoned lots. (see picture below)



We are concerned that having a pedestrian trail border our properties, especially Lot 286B (1 & 2) will encroach upon the privacy of a (future) residential home as well as infringe upon our ability to access our lots once the trail is in place. How would we be able to put in a driveway to a home if there is an existing trail bordering our property? Likewise, we also wonder what would happen to the trail once the Borough decides to develop Odin Street through to Noseeum Street and extend Noseeum Street. If so, the trailhead would be right at the corner of our property and the trail would start or end, running right along the south-facing aspect of our lot.

Additionally, we worry that increased foot traffic will impact our current residence. We already have to deal with litter strewn alongside the street and at the end of Noseeum. Not only do we pick up paper waste, beer cans and bottles, but we've also had to pick up dog poop which has just been left near our driveway or on our property nearby. So we are concerned that an increase in foot traffic may bring more unwanted garbage into our area. How does the PIA plan to monitor and maintain this trail?

We also worry that there will be an increase in car traffic. We imagine that folks who don't live in the Severson subdivision may drive to the end of Noseeum, park their cars and walk along the trail. Where will the cars park? Where will they turn around?

We would like to find out how the trail would be constructed. Would it be a gravel path or a raised boardwalk or a combination of the two? Some of the sections through the muskeg seem pretty steep when you look at the topography so how will those portion of the trail remain safe throughout the winter? Would the trail be accessible throughout the Fall, Winter and into early Spring?

As you can see we have concerns about this portion of the trail as well as several important questions. We would urge the Planning and Zoning Committee to consider removing this portion of the trail (through residential areas) before approving it for construction.

Thank you for allowing us to have this opportunity to voice our concerns.

Alice and Thomas Cumps

We the undersigned support the Petersburg Indian Association's Plan to build a trail from the Odin St./Queen St. intersection, along Odin Street and Noseeum Street and through the Airport Reserve to the Post Office.

Name	Date	Address
<u>B.D. Brown</u>	<u>4-15-17</u>	<u>705 PEARL F ST.</u>
<u>STZ</u>	<u>4-15-17</u>	<u>705 Pearl F. St.</u>
<u>[Signature]</u>	<u>4-15-17</u>	<u>606 Tango St.</u>
<u>[Signature]</u>	<u>4.15.17</u>	<u>606 Tango</u>
<u>Kam Chye</u>	<u>4.15.17</u>	<u>20 Birch Street</u>
<u>Brenda Norheim</u>	<u>4-15-17</u>	<u>718 Sandy Beach</u>
<u>Robin D. Jones</u>	<u>4-15-17</u>	<u>603 TANGO ST.</u>
<u>Justin Haley</u>	<u>4-15-17</u>	<u>605 Tango St.</u>
<u>Athena Haley</u>	<u>4/15/17</u>	<u>605 Tango St</u>
<u>R. Al</u>	<u>4-15-17</u>	<u>702 Hangen Dr</u>
<u>Joe S</u>	<u>4-15-17</u>	<u>603 Tango St</u>



## ***L) PROPOSED PEDESTRIAN TRAILS***

Future trails projects proposed by PIA include three additions to the Petersburg Borough system. See **Map 5 – Proposed Pedestrian Trails**, page 25.

### ➤ **USPO to Severson’s Subdivision**

**\$500,000**

The first addition will be a trail running from the Severson Subdivision on the south part of town to the existing walking/bike trail by the new fire station. This would link the south part of town to the airport area without going through down town Petersburg. The propose trail constructed by PIA will be about 6’ wide and constructed of crushed rock and have several foot bridges constructed along the way. The trail would start at the end of Odin Street, skirt by Lumber Street with intersecting trail, continue across various muskeg and forested areas of the airport lands to terminate at the existing trail system along Haugen Drive. Approximate length is about one mile. This new trail would open up numerous opportunities for the area residences of Severson Subdivision.

### ➤ **Hungry Point Loop Trail Extension**

**\$300,000**

The second trail addition will be added to the existing Hungry Point Loop Trail. The extension will start midway on the trail and head northeast to intersect 14<sup>th</sup> Street. With the new addition to the existing trail the route could be utilized as a cross country run (5 kilometer or 3.1 miles).

### ➤ **City Creek Loop Trail**

**\$300,000**

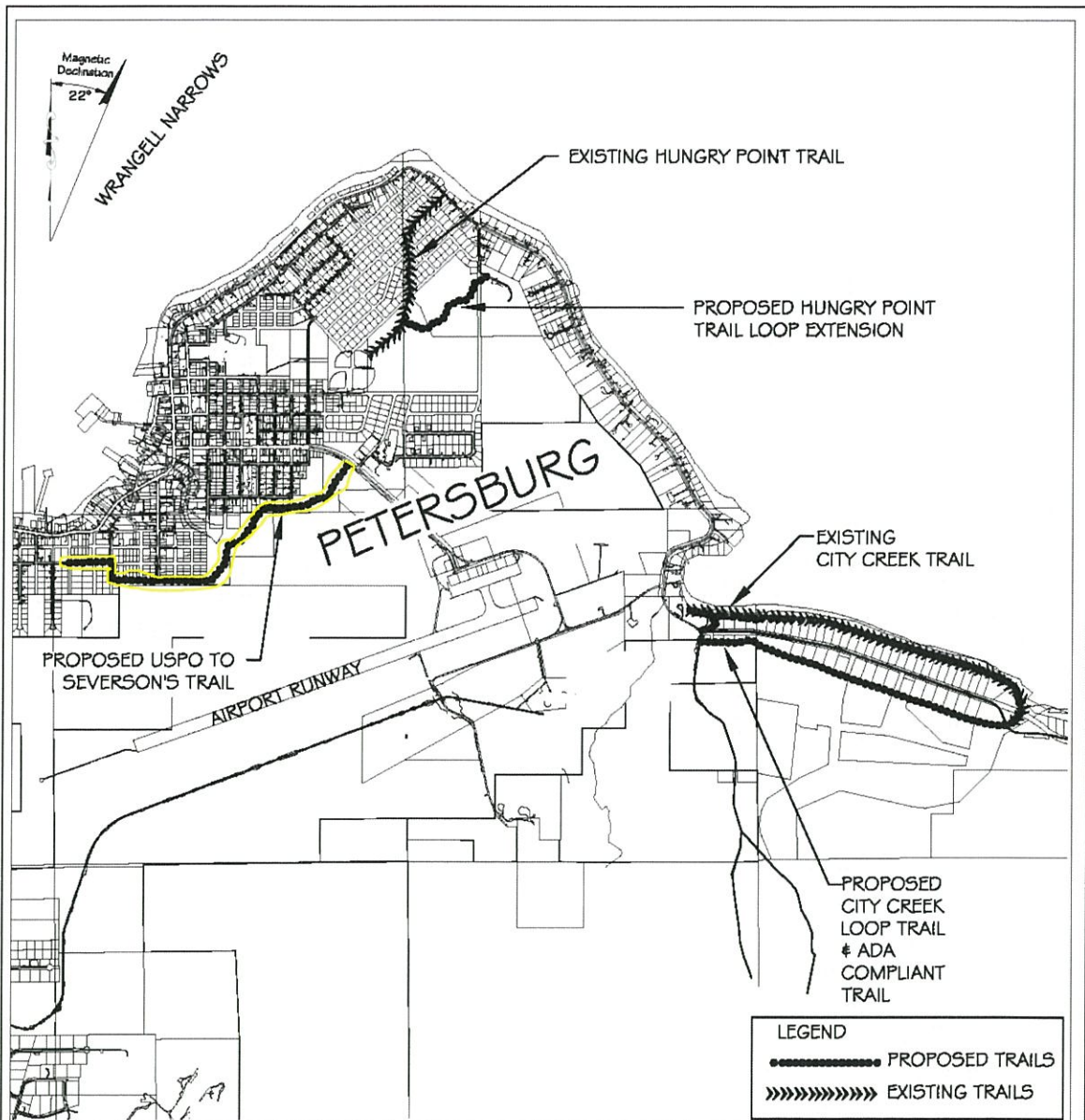
Plans for City Creek Trail are to make the entire trail ADA compliant. The existing trail starts are Sandy Beach Park and is approximately 1 mile and terminates at City Creek.

Rerouting of a trail connection from the Cabin Creek/Dump Hill intersection to the old chimney site is a proposed route.

An extension of the trail would access the area known as the old ski hill area. This new trail would begin at the start of the trailhead of Sandy Beach Park & City Creek Trail. From the start it would meander up the hill toward the bailer facility until it gained the top of the hill and then turn east and run along the back of the Sandy Beach Subdivision lots. This would continue until it reached City Creek and then it would lower in elevation through muskeg and timber until it reconnects with the Sandy Beach Park & City Creek Trail. Length of this trail would be about a mile. This trail would be constructed of crushed rock and be about 4’ to 6’ wide. Its main attraction would be vistas of Frederick Sound and the coastal mountain range. It would also provide back country skiing in the winter time.



Map 5 – Proposed Pedestrian Trails



**Map 5**  
**Petesburg Indian Association**  
**PROPOSED PEDESTRIAN TRAILS**  
**Petersburg, Alaska**  
**2015**

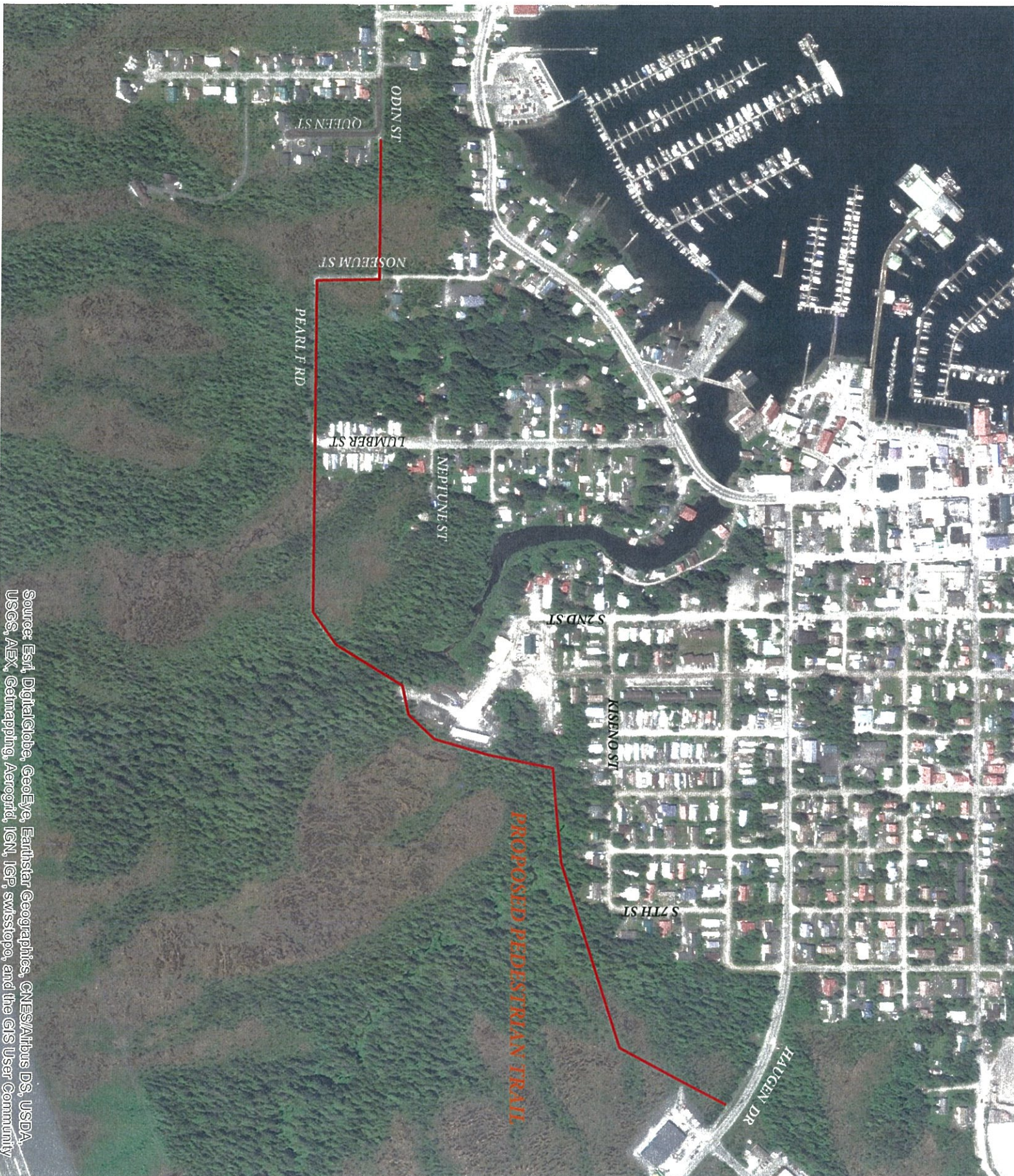
0 1000 2000 3000 feet  
 Scale

SEH 3/2015

Table 4 - Transportation Priority List

	Project	Cost	Year
1	Tribal Transportation Program Planning	\$55,000	2016
2	Develop a Tribal Transportation Safety Plan	\$12,500	FLH Safety Grant 2015
3	Design – Howkan and 12 <sup>th</sup> Street Sidewalk	\$40,000	2016
4	Annual Maintenance: Petersburg Borough & US Forest Service Transportation Facilities	\$90,000	2016
5	Develop a Tribal Transportation Safety Plan, phase 2	\$12,500	FLH Safety Grant 2016
6	Construction – Hungry Point Trail Loop	\$300,000	2016, 2017
7	Construction – City Creek Trail section 1, ADA compliant	\$300,000	2016, 2017
8	Design – Cabin Creek Reservoir Road Upgrade	\$10,000	AFLAP dependent
9	Construction – Cabin Creek Reservoir Road Upgrade	\$95,000	AFLAP dependent
10	Design – Cabin Creek Reservoir Road Scenic Upgrade	\$40,000	AFLAP dependent
11	Construction – Cabin Creek Reservoir Road Scenic Upgrade	\$346,000	AFLAP dependent
12	Tribal Transportation Program Planning	\$55,000	2017
13	Construction – Howkan and 12 <sup>th</sup> Street Sidewalk	\$410,000	2017, 2018
14	Design – Balder Street Sidewalk	\$20,000	2017
15	Annual Maintenance: Petersburg Borough & US Forest Service Transportation Facilities	\$90,000	2017
16	Design – USPO/Severson's Subdivision Trail	\$40,000	2017, 2018
17	Tribal Transportation Program Planning	\$55,000	2018
18	Annual Maintenance: Petersburg Borough & US Forest Service Transportation Facilities	\$90,000	2018
19	Design – Petersburg Sidewalk Reconstruction – High School ADA compliant sidewalks	\$30,000	2018, 2019
20	Construction – Balder Street Sidewalk	\$200,000	2018, 2019
21	Tribal Transportation Program Planning	\$55,000	2019
22	Construction – High School ADA compliant sidewalks	\$200,000	2019
23	Construction – USPO/Severson's Subdivision Trail	\$450,000	2019, 2020
24	Annual Maintenance: Petersburg Borough & US Forest Service Transportation Facilities	\$90,000	2019
25	Design – North Harbor Sidewalks ADA compliant	\$45,000	2019, 2020
26	Tribal Transportation Program Planning	\$55,000	2020
27	Annual Maintenance: Petersburg Borough & US Forest Service Transportation Facilities	\$90,000	2020
<b>Total Funding Prioritized</b>		<b>\$3,276,000</b>	





Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

**From:** [Karl Hagerman](#)  
**To:** [Liz Cabrera](#)  
**Subject:** RE: Proposed USPO - Severson's Trail Route  
**Date:** Wednesday, September 14, 2016 8:53:51 AM

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Liz,

I have been supportive of PIA's efforts to establish new trails in our community and feel they are doing a good job of this while employing their tribal members. This proposed trail has pros and cons from my perspective and I'd like to provide my input to aid the discussion.

On the positive side, the trail will surely provide a convenient pathway and connection between the Post Office area and other populated areas. I believe many citizens would use the trail as a healthy alternative to driving when accessing the Post Office, PIA and the Hammer and Wikan grocery store area. Besides the access to a commercial area, the trail will provide walkers, runners and bicyclists another opportunity to recreate away from traffic and in our local habitat.

On the negative side, with high use can come the creation of the unintended consequence in which some individuals may use the trail for less than honorable purposes. The path is situated near several residential areas and the back yard of the Borough public works department and could easily be used by criminals to trespass, steal and vandalize property. This can be a large concern depending on how the path is used and by whom.

I have little concern of using right of way for this purpose as if the Borough ever decides to build roads in a right of way that would be in use for the trail, the trail will be obliterated in favor of the road and should not add much effort to a road building project.

If the project moves forward, I would suggest that separation, privacy or security fencing be installed in areas where residents or businesses are uncomfortable with the proximity of the path to their property. This is contradictory to the install of a public use pathway, but I've been hearing some concern from residents that are not pleased about the prospect of a path behind their homes and this may alleviate their fear of trespassers or a loss of privacy. I myself have concerns that I'll have many more people trying to access the path through the public works yard and this causes some concern about safety and security at my facility.

I support PIA, but some thought needs to go into this project so that it meets PIA's intended purpose without causing hardships to others along the proposed trail route.

Thank you,

Karl Hagerman  
Public Works Director  
Petersburg Borough  
PO Box 329  
Petersburg, Alaska 99833  
Phone 907-772-4430

**Karen Malcom**

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**From:** Casey Knight <caseyaknight@gmail.com>  
**Sent:** Friday, September 16, 2016 8:47 AM  
**To:** Karen Malcom  
**Subject:** Pedestrian Trail from Severson's to Haugen

RECEIVED  
9/16/16  
KM 9:00AM

To Whom It May Concern,

I support the idea that there ought to be a trail to allow for pedestrians to travel across town. In avoiding traffic, it would be safer for pedestrians who want to walk from one end of town to the other. It would also be more pleasant to avoid traffic. A cross-town trail already exists in Sitka, and it sees heavy use by both residents and tourists.

I support the current proposed route, with one minor revision: it might be useful to include a short connection from the proposed route to the corner of S 7th Street and Kisenno Street.

The reason you might want to include this connection is to allow for use of the trail by a maximum number of Petersburg residents. If more people benefit from it, the easier it will be to justify spending the resources necessary to create it.

A possible reason not to include such a connection might be that there is no public right of way. But if such a right of way could be procured, I think it would be good to connect the trail to the corner of S 7th and Kisenno.

Sincerely,

Casey Knight

## Karen Malcom

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**From:** Sharon <sharonpatzke@msn.com>  
**Sent:** Monday, September 19, 2016 8:41 PM  
**To:** Karen Malcom  
**Subject:** Trail on Odin

RECEIVED  
9/20/16

Planning and Zoning Commission,

I am writing to you in response to the proposed trail on the right of way on Odin and runs along my property on Queen Street. As someone who uses the trails in our area and enjoys them, I do have a problem with this particular trail. I am not comfortable with a trail running along side my property that connects along the way up to the Post Office. It will open up to me and the neighborhood a lot more foot traffic that will not be from the neighborhood.

I have woods and so do others which could draw people to come into our wooded areas, dogs running along the trail and using the area for a restroom, litter, seasonal workers, strangers. A dark path that may invite people to hang out. All of this right beside my house. As a widow I feel safe where I am. Add a trail and I will not feel so safe. We also have many children who live and play in the neighborhood. Safety is an issue.

We have brand new sidewalks to use. There is really no reason for the trail.

I am always thankful for the new ideas and trails. They are so good for us. But I do ask you to reconsider this particular trail.

Thank you,  
Sharon Smith  
601 Queen Street

September 27, 2016  
Planning and Zoning Commission

RECEIVED  
9/27/16  
1:42PM

To whom this may concern;

Questions.....

-How close to my back yard is the trail?

-What is the need for a trail?

-Who will be using the trail?

-Is it a trail for people that don't want to be seen?

-Who will be patrolling the trail to ensure the safety of personal property that the path skirts?

My opinion.....

This will be an area that has no "watchful eye" providing the opportunity to access properties without being seen by neighbors or passers by. The path provides opportunity. Opportunity is all a person needs when deciding if they should or should not pick up that bicycle or power tool and head on down the path.....unseen.

A trail would also open up areas for unauthorized camping. The city doesn't have the funds to patrol the vast space made accessible by the trail.

Does this allow for access to the City's shop on 2<sup>nd</sup> Street? There's a law suit waiting to happen.

And what about the drugs? The trail will connect a problem area, Lumber Street, in Petersburg to a path of anonymity.

Snow machines.....they will use it.

I strongly object to the construction of the US Post Office to Severson's Subdivision Trail.

Thank you for your consideration.

  
Denise Loucks

604 Kiseno

518-0837

Community & Economic Development  
PO Box 329  
Petersburg AK 99833

RECEIVED  
10/4/2016  
2:13 PM

RE: Proposed route of a pedestrian trail connecting Post Office to Severson's

Dear Members of Planning & Zoning,

Thank you for asking for public input, after all this is several home owners back yard. I am opposed to the proposed route on several reason. They are as follows:

1. Route has several areas that are consider back yards.
2. Route covers several heavily wooded areas that the wolves/bears travel on (easy access for our town deer). Who in their right mind would consider taking this trail?
3. Who would maintain such a long trail (where is the bathroom and where is the garbage pick up?).
4. What about the streams? Trail would have to cross several streams that are any where from a trickle to a flowing brook. Land management!
5. If a grant has to used, why not think of these area:
  - Greens camp is in dire need of management/clean up
  - Build trail on other side of guard rail on North Nordic
  - Build trail looping airport runway

Quality vs. quantity will hopefully be considered when topic of this trail is discussed.

Sincerely,

  
Janet Kvernnyk  
105 South 7th Street



**DRAFT**

May 2, 2017

Petersburg Indian Association  
Attn: Susan Harai, Engineer  
PO Box  
Petersburg, AK 99833

Dear PIA,

The Petersburg Borough Assembly supports PIA's plans of construction and maintenance of a pedestrian trail from Haugen Drive to Severson's Subdivision with parking areas at either end of the trail.

Thank you for your interest in the betterment of our community.

Sincerely,

Mark Jensen  
Mayor