

# 10. Airports

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- 10.1 Introduction
- 10.2 Appraisals
- 10.3 Acquisition & Relocation
- 10.4 Potential Types of Title Held on Airport Lands
- 10.5 Title Certification Process for FAA Grants
- 10.6 Project Closeout
- 10.7 Relinquishment and Disposal of Airport Lands

## 10.1 Introduction

DOT&PF holds title interest to the majority of airports that it maintains and operates under authority of Alaska Statute, Title 2 ([AS 02](#)), and Alaska Administrative Code, Title 17 ([17 AAC](#)). Most of these airports are in remote areas. Title to property outside airport boundaries is generally held in private ownership. Private ownership, with few exceptions, consists of Native corporations and allotments.

Situations arise wherein DOT&PF has rights to maintain and operate airports where no substantive title is held. Air Navigations Sites and Interim Agreements are examples of such situations and are discussed in detail later in this section. Because of Federal Aviation Administration (FAA) requirements and the type of ownership involved in acquisition, this chapter supplements the acquisition procedures contained in this manual.

Airport development and improvements are frequently funded by the FAA and, as such, are governed by the Airport Improvement Program, [Title 49 USC Sec. 47171](#) (Public Law 103-272) in addition to the Uniform Act. These public laws require that a Federally-assisted airport project cannot be approved until DOT&PF (the sponsor) holds acceptable title to the airport lands, or gives satisfactory assurance that acceptable title will be acquired prior to construction.

## 10.2 Appraisals

The Design Project Manager will notify ROW what amount and type of interest is needed for an airport project. Typically, they have already discussed their needs with FAA.

There is no "authority to appraise and acquire" with FAA projects as there is in the FHWA system. The

ROW Section is first notified of a project when the Design Project Manager requests a scope schedule and budget for the project. At this time, each regional ROW section provides its input, and the Design Project Manager uses it to complete the force account cost estimate.

The time frames for an airport project are different from those for highway projects. The schedule for airport projects is abbreviated.

Prior to environmental document approval, preliminary real estate market information can be gathered for the purpose of alternative analysis. ROW will receive approval from the Pre-Construction Engineer to appraise and acquire once the environmental document is approved.

The Statewide Appraisal and Review Section will produce appraisals or contract for appraisals needed. FAA has limited the waiver valuation to parcels with an estimated value of \$10,000 or less.

When completed, they will send the appraisal for review. When the Reviewer's Recommendation of Just Compensation is received, they provide an original to Regional ROW Chief for final approval.

Appraisals that include Functional Replacement See 5100.37B Sec. 3-42(d) require appraisal approval from FAA. If you are considering less than fee simple acquisition, you must work through the Project Manager to make sure other title interest is approved by FAA (i.e. Aviation Easements, etc. Before requesting an appraisal for any large-dollar acquisitions you should check with FAA for special instructions.

## 10.3 Acquisition & Relocation

Airport sponsors must comply with [49 CFR Part 24](#) (the Uniform Act) for AIP-assisted airport development. The ROW agent working on an airport project should become familiar with the [FAA Airport Improvement Program \(AIP\) Handbook 5100.38D](#); Land Acquisition and Relocation Assistance for Airport Projects 5100.37B; and Advisory Circular 150/5100-17. Acquisition and Relocation for airport projects follows the Uniform Act. See Ch. 7. FAA may require different (or additional) forms be used. See <http://www.faa.gov/airports/resources/forms/> - Land Acquisition/Relocation Assistance chart. Confirm with the FAA which forms must be used.

Acquisition and Relocation for FAA projects are completed under Phase 2. Prior to environmental document approval preliminary real estate market information can be gathered and initial contacts made with any service providers to discuss their process. Following approval of the environmental document appraisal and acquisition activity proceed in the same manner as for highway projects.

When the acquisition/relocation is completed the Project Manager will apply to FAA for a project grant. The grant includes reimbursement for actual costs for Design and ROW and estimates for the Construction costs.

The airport sponsor must maintain adequate records, including real estate appraisals, acquisition, relocation, and property management records, and other documentation necessary to show compliance to [49 CFR Part 24](#). Documentation must be in an easily retrievable form and must available during regular business hours for inspection by representatives of the FAA. The airport sponsor must retain title documents permanently. Other records must be kept for at least 3 years after FAA grant closeout.

#### **10.4 Potential Types of Title Held on Airport Lands**

DOT&PF must acquire real property rights that are adequate for the construction, operation, and maintenance of the grant-assisted project. Normally, fee title to all land within airport boundaries will be acquired.

If fee acquisition for the Runway Protection Zone (RPZ) is not practical, then an aviation easement is required. This easement must secure the right of flight, with inherent noise and vibration, above the approach surface, the right to remove existing obstruction, and a restriction against the establishment of future obstructions. The goal is to preclude public congregation within the RPZ.

Generally, where less than fee title is acquired, the property rights acquired must be sufficient to encumber the remainder real estate with provisions that will ensure full use of the property as needed for airport construction and safe airport operations. The minimum interest FAA will accept is a 20-year lease. DOT&PF may not enter into a lease with corporations or individuals for airport lands.

Other types of title held on airports are described below.

#### **U.S. Patent**

The following portions of Federal law allow airport patents to be granted to the State of Alaska: Sec. 16 of the Federal Airport Act of 1946, Sec. 23 of the Airport and Airway Development Act of 1970, and Sec. 516 of the Airport and Airway Improvement Act of 1982.

Airport patents represent fee title from the United States. Patents contain a reversionary clause (a stipulation that the land reverts to the Federal government when it ceases to be used for airport purposes).

#### **General Services Administration (GSA) Deeds**

Fee title with a reversionary clause as described in (1) above. Relinquishments must be approved by FAA and are subject to disposal through the Federal Surplus Property Act.

#### **Omnibus Act Deeds**

Fee title issued under Sec. 45 of the Omnibus Act to the State of Alaska at Statehood. Since airports covered by these types of conveyances were originally Federal installations, there is often Federal reservation areas designated inside facility boundaries. Until a release of the Federal interest is issued and recorded, the State does not have use of those areas.

#### **Bureau of Land Management (BLM) 20-Year Public Airport Leases**

These leases are renewable and are granted under authority of [43 CFR 2911](#). Rental payments can be made lump sum with the use of grant money. The BLM appraises the land and usually charges 50% of market value.

#### **Trustee Dees**

Fee title was granted by the BLM Townsite Trustee for Airports within surveyed Federal town sites. It may contain exclusions for oil and gas in the patent.

#### **Air Navigation Site (ANS) Withdrawals**

A realty action taken in the past by BLM to segregate land from other appropriations and to protect them for airport purposes. However, they are withdrawals and do not provide a title interest. Interim Conveyances (ICs) to Native corporations are not subject to these withdrawals. Airports covered by these withdrawals are normally reconveyed under the Alaska Native

Claims Settlement Act (ANCSA), P.L. 92-203, Sec. 14(c)(4).

#### **U.S. Forest Service (USFS) Permits**

The terms will vary according to the activity.

#### **Interagency Land Management Assignments (ILMA)**

These are agreements issued by the Alaska Department of Natural Resources (DNR), transferring management of State-owned lands not already owned or held by DOT&PF. ILMAs replaced Interagency Land Management Transfers (ILMT) (see [AS 38.05.020](#)) and are for nonexclusive use. They are often acquired over submerged lands. ILMA lands must be returned to DNR when no longer needed for airport purposes. These assignments are not transferrable to any other agency or municipality.

#### **Avigation and Hazard Easements**

Obtained for areas around an airport to maintain safe and efficient use of navigable airspace and compatible land use. The language of the document must be acceptable to FAA (see [Advisory Circular 150/5100.17](#), [FAA Order 5190.6B](#), and Federal Aviation Regulations-(FAR) [14 CFR 77](#)). These easements are not advisable--they should only be acquired when no other title interest is feasible (such as for graves or an old landfill in the approach). FAA prefers DOT&PF to acquire a greater quality interest in the runway protection zones.

#### **BIA Deeds**

Obtained by BIA or BIA's contractor for the benefit of the Allottee. [25 CFR 169](#) outlines the procedures and rules. BIA deeds are acquired for highway projects as well. It is preferable to acquire a deed, not a Right of Way for Restricted Lands on Airports. See Ch. 6.

#### **Department of Commerce, Community and Economic Development (DCCED)/Municipal Land Trustee (MLT) Leases and Grants of Right of Way (airport access roads)**

Under ANCSA, P.L. 203, Sec. 14 (c)(3) ([43 USC 1601 et seq.](#)), as amended, each village corporation must convey surface estate in lands in and around the village to its municipality or, if no municipality exists, the State has provided an option to unincorporated communities to allow for expansion. DCCED may receive lands in trust for any future municipality "as is necessary for community expansion, and appropriate rights of way for public use and other foreseeable community needs."

#### **Leases from other government agencies**

Leases for airport facilities vary in term from a minimum of 20 years to perpetual. "Public agencies" such as the Alaska Railroad Corporation, State-chartered municipalities, DCCED, and Tribal Governments are allowed to enter into leases for airport facilities. See [14 CFR 152](#). A lease from a private corporation does not comply with Federal rules for sufficiency of title.

Any agreement, lease, contract, or title interest obtained from a tribal government requires the acceptance of an approved Waiver of Sovereign Immunity by the tribe. These are written in conjunction with the Department of Law and are specifically crafted for the individual tribe based on its constitution, if it has one.

#### **Split Estate Lands and Subsurface Easements**

Split estate lands acquired adjacent to most communities are generally owned by the ANCSA village corporation (surface) and the ANCSA regional corporation (subsurface). DOT&PF makes offers based on the fee value of the combined surface and subsurface estates. DOT&PF does not divide estate values. Property owners are responsible for dividing the compensation amongst themselves without DOT&PF's involvement.

Note that if there is significant value estimated in sand, gravel, minerals, or other such resources, the appraisal should consider this in the analysis of highest and best use and other valuation principles. It may be helpful to include this in the appraisal scope. See Ch. 4.

If the sale involves an Administrative Settlement, the same unit value must be presented in a written counteroffer from both corporations. Settlements are processed as outlined in Ch. 6.

DOT&PF often ends up with a different quality of interest in the two different estates. While DOT&PF occasionally obtains deeds for subsurface interests, subsurface easements are a more commonly obtained.

Subsurface easements come in two forms. First, those that are part of split estate acquisition (compensable) are adequate title if they convey material rights and sub-lateral, subjacent support to the DOT&PF facility. Secondly, there are also subsurface easements, generally titled Non-Development Covenants, that protect DOT&PF facilities where only an ANSCA surface estate is held.

## Road Dedications

Part of the entire title clearance process for an FAA Grant is securing public access from the community to the airport facility. This is generally accomplished through a road dedication by the city or corporation, and not necessarily by acquisition of the lands encompassing the road. Should a purchase of those lands be needed, FAA considers it a participating expense when the road is exclusively used for airport use.

## Other Types of Title for Airport Access Roads

Title V-FLPMA grants, issues or renews rights of way for transportation purposes. With airports, these interests are usually 20 years for airport access roads.

Title 23 Grant through a Highway Easement Deed. FHW A is authorized to transfer certain public lands under the Federal-Aid Highway Act of 1958, Title 23.

RS 2477 enacted in 1866 for construction of highways across public lands.

## ANCSA, Sec. 14(c)(4), Village Airport Reconveyances

A project may require acquisition of land upon which an airport existed as of December 18, 1971. Under ANCSA, Sec. 14(c)(4), each village corporation "shall convey to the ... State ... title to the surface estate for existing airport sites, airway beacons, and other navigational aids, together with such acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways." The physical airport boundaries are based upon the boundary that existed on December 18, 1971, the date of the ANCSA enactment.

The ROW agent assigned to an airport project must obtain a copy of the current airport property plan as the baseline exhibit for negotiations, and the plan must show the boundaries as they existed on December 18, 1971 as the area to be conveyed. Title will be conveyed to DOT&PF from the village corporate entity, as it was conveyed from the Federal government. There are very few airports where this entitlement has not been previously exercised.

## Interim Maintenance Agreements

Occasionally situations arise where a title interest to a facility will lapse entirely. If the facility is to be retained as a public airport but the funding for any land acquisition may be years off, DOT&PF crafts an Interim Maintenance Agreement, sometimes called a Limited Lease, with the owners of the airport land.

The most common use for such an agreement is at the expiration of a BLM Lease that has been administratively waived to the village corporation.

Until DOT&PF can acquire a more long-term title interest, these agreements allow the State to continue the operations and maintenance of the facility. Leases for long terms are not possible nor do they constitute sufficient title for grant funding. These interim agreements or limited leases are not to be used within the 20-year grant obligation period. DOT&PF should advise the village municipality that it may undertake no new improvement projects at an airport operated under a limited lease.

## 10.5 Title Certification Process for FAA Grants

The Aviation Design Group (and M&O) will ask ROW to "Certify" a project before submitting the grant request to FAA. ROW's portion is to certify that real property was acquired in conformance to the Uniform Act and we have sufficient title for the proposed project. This certification is required to be provided concurrently with a sponsor's request for reimbursement and shall cover the specific parcels for which the sponsor is requesting reimbursement of costs. See Fig. 8-1 and 8-2 in [Advisory Circular 150/5100-17](#) for sample certification documents.

FAA requires DOT&PF to have sufficient title for the project. "Sufficient" depends on what type of grant DOT&PF is requesting. For example to purchase a piece of equipment may only require a 5-year grant life while runway improvements may require 20 years. 14 years left on an airport lease would be sufficient for a snow removal equipment grant but it would not be sufficient for a runway improvement project).

### 10.5.1. Projects That Do Not Require Land Acquisition

Complete an abbreviated title check as follows:

1. Complete the FAA Form 5100-100, Part II, Sec. C, (see the FAA [AIP Handbook](#)) and submit it to the Project Manager. Item 4 on the form requires a listing of the property interest in areas of land shown on the property plan (Ex. A). The data should include all title interests held on the airport, the date of acquisition, the date of the last title opinion or certification, and the latest property plan.

2. If any title interest is not permanent, detail the expiration and remaining years of interest. Maintain this data on an ongoing database, and update it each time a new acquisition is made.
3. Complete the [5100-133 Real Property Acquisition AIP Sponsor Certification](#). The Project Manager will obtain the Regional Director's signature and submit to FAA.
4. Complete a cursory review of the title by reviewing the BLM Master Title Plats for possible new Native Allotment Applications and by reviewing the public records at the recorder's office database for recent sales.
5. Check the Airport Property Plan to ensure it is updated and produce a copy for FAA.
6. Retain copies for the appropriate grant file in the regional ROW project files and submit the original to the Design Project Manager. They will complete their portions of the Grant Application and submit to the FAA as one package.

To see a listing of AIP Grants, check the AIP Grant History listing produced by FAA (begins 1982).

#### **10.5.2. Projects That Require Land Acquisition**

Complete the abbreviated title check noted in Ch. 10.

If there has been unusual activity, or if the acquisition involves a large number of parcels, the FAA may ask for an actual Title Opinion to be completed by the Attorney General's office. The title opinion should include a narrative explaining the grant and title history of the airport, and an explanation of the chain of title documents. If there is a previous title opinion, report only on those documents received since the date of the previous opinion. Detail any exceptions to the title that may affect the quality of the title assurance.

Consult with your Regional ROW Chief about the necessity of a Title Opinion to avoid unnecessary delays to the project.

When acquisition is completed, update the Property Status Block on the Property Plan (Ex. A) to include new acquisition information.

Retain copies for the appropriate grant file in the regional ROW project files and submit the original to the Design Project Manager. They will complete their

portions of the Grant Application and submit to the FAA as one package.

#### **10.6 Project Closeout**

The regional pre-audit agent will participate in the project closeout and coordinate with the Project Manager. Sec. 8 of the AIP Handbook outlines the Grant Closeout procedures.

#### **10.7 Relinquishment and Disposal of Airport Lands**

Airport land acquired with Federal assistance under the Airport Improvement Program is Federally obligated in perpetuity. The FAA Administrator has authority to grant a release, a formal, written authorization, to consent to the disposal of airport property. The FAA Administrator has delegated to FAA airports district offices (ADOs) and regional airport divisions to review the release request and to execute the release document.

ADOs and regional airport divisions do not have the authority to modify the list of assurances in a grant agreement or bring about a release permitting the abandonment, sale, or disposal of a complete airport.

Any release having the effect of allowing the abandonment, sale, or disposal of a complete airport must be referred to the Director of Airport Compliance and Field Operations for approval by the Associate Administrator for the Office of Airports.

FAA guidance for disposal of land subject to FAA grants can be found in the [FAA Airport Compliance Manual – Order 5190.6B](#) “Chapter 22, Releases from Federal Obligations.” See FAA Modernization and Reform Act of 2012, Sec. 817, for additional information - aka PL 112-95 and [AS 02.15.070](#) Acquisition and Disposal of Property.

Review the chain of title, in addition to all grant agreements, for any limitations on disposals or relinquishments. Obtain the necessary permissions and authorizations from inter-Department and the FAA. DOT&PF does not entertain the relinquishment or sale of airport lands until these approvals are obtained.

Depending on the chain of title, the lands may have to be returned to FAA or DNR. Convey relinquishment of patented property using the Federal relinquishments form. Prepare other disposals using a Commissioner's Quitclaim Deed. Provide public notice, as required by the Alaska Constitution. ([AS 02.15.070](#) Acquisition

and Disposal of Property and [17 AAC 45.700](#) Airport Abandonment or Closure). Reminder that ILMAs can only be held by a State Agency.

The State of Alaska, as sponsor, may relinquish an entire airport to a city or municipality only if the city or municipality will operate the airport in accordance with grant assurances. If no airport grant is received, then the airport may be relinquished in accordance with State law.

Permanent closure of a rural State airport is addressed in [17 AAC 45.700](#) Airport Abandonment or Closure.