



**CITY OF BOULDER  
CITY COUNCIL ITEM ADDENDUM**

**MEETING DATE: July 25, 2024**

**AGENDA ITEM:** Item 5B - Boulder Municipal Airport Community Conversation –  
Financial Analysis

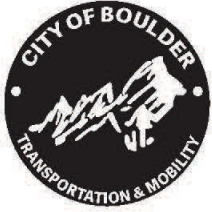
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**ATTACHMENTS:**

Attachment D: FAA Perspective Request and Response



# City of Boulder Transportation & Mobility

Mr. John Bauer  
Manager  
Denver Airports District Office  
Federal Aviation Administration  
26805 East 68th Avenue, Suite 224  
Denver, CO 80249-6339

Re: Boulder Municipal Airport Community Conversation

Dear Mr. Bauer:

As you know, the City of Boulder (the “City”) recently conducted a public engagement project entitled the Boulder Municipal Airport Community Conversation (the “BDUCC”) to better understand the concerns and desires of the community regarding the future of the Boulder Municipal Airport (the “Airport”). Earlier today, the City publicly released the attached report of the BDUCC, which report will be included in the City Council packet at its February 1, 2024, meeting.

The BDUCC was intended to provide a broader opportunity for public engagement than the upcoming Airport Master Plan process may afford, and to ensure that City leadership was fully informed as to community sentiment regarding the Airport. The BDUCC is only a summary of those engagement efforts and does not reflect any decisions made by the City regarding the future of the Airport. As you will note, one of the scenarios that the community expressed an interest in exploring is closure of the Airport and repurposing the Airport’s property for the development of a new neighborhood. For the purposes of the BDUCC, the City has not considered in detail the feasibility of such a scenario. However, City staff has been asked to obtain a better understanding of the FAA’s position with respect to such a scenario to inform future discussions.

Accordingly, it would be helpful if you could provide a response to the following questions:

1. Tracts 1, 4-I and 5-I (as labeled on the Airport’s most recent Exhibit “A” / Airport Property Map) were acquired with federal assistance provided under grant programs that preceded the Airport Improvement Program, in 1959, 1977, and 1963, respectively. Each of the grant agreements associated with these acquisitions provided that their duration would not exceed twenty years. Nevertheless, in recent discussions with City staff, the FAA asserted that these grant agreements never expire. Please explain.
2. Tract 12 is a narrow “construction easement” which was acquired with federal assistance provided under the Airport Improvement Program. The underlying grant agreement provides, “[T]here shall be no limit on the duration of the . . . assurances with respect to

real property acquired with Federal funds.” Please indicate whether the FAA considers a construction easement to constitute “real property” subject to the foregoing provision.

3. If the FAA asserts that the grant agreements underlying Tracts 1, 4-I, 5-I, and/or 12 do not expire, please explain the procedure the City would be required to satisfy to seek a release from the assurances in such grant agreements that would allow the Airport to close.
4. If the FAA asserts that the grant agreements underlying Tracts 1, 4-I, 5-I, and/or 12 do not expire, and assuming that the FAA were willing to grant the City a release from the assurances that allowed the Airport to close, please explain whether the City would be required to remit any proceeds from the disposition of these Tracts to the FAA.

Please be assured that the City intends to fully comply with its federal grant assurance obligations and values its partnership with the FAA. Your response to the foregoing questions will be very helpful in ensuring that the City Council has all the necessary information to inform future discussions about the Airport and respond to the community’s concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'NVR', followed by a horizontal line.

Nuria Rivera-Vandermyde  
City Manager

Cc: Natalie Stiffler, Director of Transportation & Mobility  
John Kinney, Airport Manager



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

Northwest Mountain Region  
Colorado · Idaho · Montana · Oregon · Utah  
Washington · Wyoming

Denver Airports District Office  
26805 E. 68th Ave., Suite 224  
Denver, CO 80249

March 20, 2024

Ms. Nuria Rivera-Vandermyde  
City Manager  
City of Boulder Transportation and Mobility  
1777 Broadway  
Boulder Colorado 80302

Dear Ms. Rivera-Vandermyde

This letter is in response to your letter regarding the federal obligations related to airport land and property interests acquired with federal assistance at the Boulder Municipal Airport (BDU). You have raised questions related to a scenario in which the City of Boulder is considering a proposal to close the airport and repurpose the site for residential development.

Since 1946, the FAA has administered several federal airport financial assistance programs including the Federal Aid to Airports Program (FAAP), the Airport Development Aid Program (ADAP), and the Airport Improvement Program (AIP). Accepting financial assistance under these programs requires airport sponsors to agree to certain assurances linked to the authorizing legislation of the grant programs. The City of Boulder has accepted financial assistance for land acquisition and an easement under FAAP, ADAP, and AIP grant programs. These FAA programs require that land interests must be used for the originally intended purpose for which they were acquired. In addition, the associated federal obligations remain in effect in perpetuity unless released by the Federal Government.

Our responses to your specific questions are as follows:

**City of Boulder Question 1.** - Tracts 1, 4-I and 5-I (as labeled on the Airport's most recent Exhibit "A" / Airport Property Map) were acquired with federal assistance provided under grant programs that preceded the Airport Improvement Program, in 1959, 1977, and 1963, respectively. Each of the grant agreements associated with these acquisitions provided that their duration would not exceed twenty years. Nevertheless, in recent discussions with City staff, the FAA asserted that these grant agreements never expire. Please explain.

**FAA Response 1.** – Grant assurances associated with land purchased with Federal aid do not expire and the land must be used in perpetuity for its originally intended purpose. See FAA Order 5190.6B, *Airport Compliance Manual*, para. 4.3.a., pp. 4-2 – 4-3; 14 CFR part 152, Appendix D, Grant Assurance 17. This regulatory and policy requirement, which was noticed in the Federal Register, 45 Fed. Reg. 34782 (May 22, 1980), stated:

Assurance 17 has been revised to provide that the 20 year limitation on the effectiveness of the assurances does not apply to those affecting the use of real property acquired with

Federal funds. This is consistent with attachment N, Property Management Standards of OMB Circular A-102 which requires that grantee use the property for the authorized purposes of the original grant as long as it is needed.

As such, an airport sponsor who accepted an FAAP, ADAP, or AIP grant agreed that the covenants on real property acquired with Federal funds are in perpetuity unless released by the Federal Government. See FAA Order 5190.6B, para. 4.3.a., pp. 4-2 - 4-3.

**City of Boulder Question 2.** - Tract 12 is a narrow “construction easement” which was acquired with federal assistance provided under the Airport Improvement Program. The underlying grant agreement provides, “[T]here shall be no limit on the duration of the . . . assurances with respect to real property acquired with Federal funds.” Please indicate whether the FAA considers a construction easement to constitute “real property” subject to the foregoing provision.

**FAA Response 2.** - The easement was acquired in 1991 to facilitate construction access and remains in effect today. The FAA is not aware of any time limits or expiration of the easement in question and the easement runs with the land. The grant assurances associated with the easement also run with the land.

**City of Boulder Question 3.** If the FAA asserts that the grant agreements underlying Tracts 1, 4-I, 5-I, and/or 12 do not expire, please explain the procedure the City would be required to satisfy to seek a release from the assurances in such grant agreements that would allow the Airport to close.

**FAA Response 3.** - There are nuances with individual airport closures, but our general guidance can be found in FAA Order 5190.6B, *Airport Compliance Manual*, Chapter 22. The general closure package requirements outlined in FAA Order 5190.6B paragraphs 22.23-22.26, pp. 22-15 – 22-17, are included in Enclosure A of this letter.

As you review this information, it is important to note that it is the FAA’s policy to strengthen the national airports system and not to support the closure of public airports. The FAA has rarely approved an application to close a federally obligated airport. Such approvals were granted only in highly unusual circumstances where closing the airport provided a benefit to civil aviation such as funding a replacement airport in the community.

When requesting the release of the entire airport FAA Order 5190.6B paragraph 22.20 applies. Paragraph 22.20(a) Approval Authority states:

The FAA Associate Administrator for Airports (ARP-1) [i.e., the Associate Administrator for Airports] is the FAA approving official for a sponsor’s request to be released from its federal obligations for the purposes 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.

The evaluation performed by the FAA Regional office and Airports District Office will consider, among other things, information about the airport including operations, based aircraft, and the

current and future overall benefit provided to civil aviation. We will also examine any potential benefits and justification provided by the sponsor to demonstrate how the closure of the airport will benefit civil aviation.

Today, Boulder Municipal Airport is a general aviation (GA) airport with over 150 based aircraft, according to the airport manager, and has approximately 56,000 annual operations. It also has a hangar waiting list with over 250 individuals seeking access to the airport. This is a healthy activity level for a GA airport in the National Plan of Integrated Airport Systems (NPIAS). Boulder Municipal Airport continues to greatly benefit civil aviation as a GA airport, with the FAA investing \$12,400,999.80 in AIP funds since 1982. Based on what we know today, it appears highly unlikely the regional office could provide the Associate Administrator for Airports with a statement supporting and justifying a proposed action to close the airport.

**City of Boulder Question 4.** - If the FAA asserts that the grant agreements underlying Tracts 1, 4-I, 5-I, and/or 12 do not expire, and assuming that the FAA were willing to grant the City a release from the assurances that allowed the Airport to close, please explain whether the City would be required to remit any proceeds from the disposition of these Tracts to the FAA.

**FAA Response 4.** - Yes, at a minimum, fair market value (FMV) compensation of the federal share is required for the disposal of all airport real property acquired with federal funds. If the City was allowed to close the airport, the current FMV, at highest and best use, of Tracts 1, 4-I, 5-I, and 12 would be required to be reinvested or repaid to the FAA. See FAA Order 5190.6B para. 22.19(b), pp. 22-13.

This letter serves to inform the City of Boulder, an obligated airport sponsor of the Boulder Municipal Airport, as to its responsibilities under the FAA's grant assurances, policy, and guidance. It also serves to clarify the length or terms of said grant assurances. This letter does not constitute a final agency decision judicially reviewable under 49 U.S.C. section 46110, as to whether or not the FAA would approve or disapprove an application for airport closure.

If you have any questions regarding your obligations or this letter, please feel free to contact me directly.

Regards,



John P. Bauer  
Manager, Denver Airports District Office

cc: Ms. Natalie Stiffler, Director of Transportation and Mobility – City of Boulder  
Mr. John Kinney, Airport Manager - City of Boulder  
Steven L Osit, Partner - Kaplan Kirsch & Rockwell

enclosure

9/30/2009

- 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:

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- 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 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.



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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