



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

October 27, 2020

CESAM-OC

MEMORANDUM FOR CESAM-RE

SUBJECT: ACE/FAA Real Estate Land Transfer at SOUTHCOM
Review of FAA's Cited Legal Authority For Transfer

1. On September 28, 2020 Mobile District Real Estate Division requested Mobile District Office of Counsel to review statutory authority FAA provided to support a transfer of land at no-cost for use by SOUTHCOM.
2. Specific authority cited by FAA were 49 USC 40110(a)(3) and 49 USC 40110(c)(4).
3. FAA relies on the above-reference authorities in support of their conclusion that they have authority to make the no-cost transfer. FAA's conclusion, as provided by Mr. Keith Moore with FAA, was stated as follows:

49 USC 40110(a)(3) [Enacted in 2012] gives FAA direct authority to dispose of real property interests for "adequate compensation." If money is received, it shall be credited to an account existing at the time of the sale and become no-year money ("remain available until expended"). Nowhere in the statute is "adequate compensation" defined, so it is up to FAA, applying a rational basis/reasonableness standard, to determine what level of compensation would be adequate in any given disposal action.

In addition, subsection (c)(4) of section 40110 authorizes the Administrator to dispose of "airport and airway property" and "technical equipment used for the special purposes of" FAA directly. All other types of disposals must go through the GSA disposal process. AMS does not establish a disposal process, so, like the determination of what constitutes "adequate compensation," it is up to FAA to dispose of airport and airway property and special purpose equipment in a manner that it determines is rational, reasonable, and in the best interests of the United States. The subject property would be considered "airport and airway property."

4. After reviewing the above-reference authorities and FAA conclusion, I provided the following comments to Mobile District Real Estate Division on October 7, 2020:

- I concur that 49 USC 40110(a)(3) provides a statutory basis for FAA to dispose of real property directly for "adequate compensation". I also agree that the statute does not define "adequate compensation". That being the case, I believe we must yield to FAA's interpretation of the statute and their policies in determining whether or not the transfer in question may be at no-cost and still meet the "adequate compensation" requirement of the statute.

- Regarding subsection (c)(4) of section 40110, the section reads as follows:

(C) When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration may -

(4) dispose of property under subsection (a)(2) of this section, EXCEPT (emphasis added) for airport and airway property and technical equipment used for the special purposes of the Administration, only under sections 121, 123, and 126 and Chapter 5 of title 40.

- It appears to me that (c)(4) of section 40110 actually excepts airport and airway property from being transferred under this authority rather than authorizing such a transfer. There may be additional supporting authority that was not included in the message or a reference that I am missing that would clarify this point.

- I would suggest that clarification should be obtained from FAA on how the section cited above provides authority to dispose of such property.

- It is noted, and I agree, that a waiver is required, if GSA is used to transfer the property. I yield to FAA legal counsel whether or not they are required to obtain a waiver if FAA transfers the property directly.

5. My opinion and comments of FAA's cited authority remain the same.

James A. Wagoner, III
Assistant District Counsel
Office of Counsel