Promoting Non-Aeronautical Development After Section 163

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The place we find ourselves...

Appears to be broken
The economic problem

- Pressure to reduce aeronautical charges
- Need for new, creative revenue sources
- Unused (potentially valuable) real estate
- Complex and uncertain process to develop land
Setting the stage

- Non-aeronautical development:
  Established approach, known complexities, multiple considerations...
  but wait - there’s more!

- Everything in light of Section 163

Historically FAA has had approval authority over virtually all airport development.

FAA approval has meant –

- Environmental review
- Federal scrutiny outside agency expertise
- Complex process
Effect of FAA review on private development

- Confusion
- Uncertainty
- Competitive disadvantage
- Time
- Cost
Congressional purpose in enacting Section 163:

- Eliminate FAA review over land use that is not core to its mission
- Streamline and expedite airport development projects
- Give airport sponsors increased *(but not unlimited)* autonomy to make land use decisions
Section 163: a paradigm shift

No longer a presumption that FAA must approve all airport development
What has changed?

♦ 163(a) – Limits FAA jurisdiction and authority over airport land use

♦ 163(b)  - Exceptions where FAA retains jurisdiction

♦ 163(c)  - Preserves FAA authority over airport revenue

♦ 163(d) – Limits FAA approval authority over ALPs
(a) The Secretary of Transportation may not directly or indirectly regulate—

- the acquisition, use, lease, encumbrance, transfer, or disposal of land by an airport owner or operator; any facility upon such land; or any portion of such land or facility

(b) [FAA may regulate for the purpose of] ensuring—

(A) the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations;
(B) that an airport owner or operator receives not less than fair market value or
(C) that the airport pays not more than fair market value

(2) any regulation imposed with respect to land or a facility acquired or modified using Federal funding; or
(3) any authority contained in—

(A) a Surplus Property Act instrument of transfer; or
(B) section 40117 of title 49, United States Code

EXCEPT:
(d) The Secretary will review and approve or disapprove only those portions of the [ALP] that materially impact the safe and efficient operation of aircraft . . . or that would adversely affect the safety of people or property on the ground adjacent to the airport . . . or that adversely affect the value of prior Federal investments to a significant extent.
What hasn’t changed

- Obligation to maintain a current, up-to-date ALP
- Fair market value obligations
- Airspace review (Part 77)
- Federal revenue use requirements
- Grant assurances
Guidance

- Made public in late November (dated 10/27/20)
- Structured as *internal* guidance only
- Screening process for **all** FAA approvals
FAA’s zones of interest

- Materially impact the safe and efficient operation of aircraft at, to, or from the airport
- Adversely affect the safety of people or property on the ground adjacent to the airport as a result of aircraft operations
- Adversely affect the value of prior federal investments to a significant extent

NEW
Zones of interest

“Zones of interest is not an official term, rather, it is a phrase that these instructions use to refer to the three criteria established by Congress…”
Screening process

- Is there ALP approval authority – 163(d)?
  - Is project within FAA’s “zone of interests”

- How was the property acquired – 163(a)?
  - Land and facilities acquired or modified using Federal funding;
  - Surplus Property Act instruments of transfer; and
  - Passenger Facility Charge (PFC) statute
Is 163 good for us? Risks and benefits

**BENEFITS**

- Considerably shorten approval process
- Avoid NEPA and other environmental laws
- Make commercial development more competitive
- Minimal FAA engagement

**RISKS**

- No public process
- No FAA funding available (AIP, PFC, etc.)
- Minimal FAA engagement (protection against political pressure)
A few examples... & Lessons Learned
Akron-Fulton International Airport
Akron-Fulton International Airport

- Classroom and training course
- ALP: proposed landside development
- Timeline: April 2018 – May 2019
- FAA involvement & release
- Development left for different location
- Lessons Learned
  - Get FAA involved early
  - The process is the process
  - Educate partners on process
  - Section 163 was made to help here!
Raleigh Durham International Airport

- Quarry far from airfield
- Highly contentious
- Much litigation
Akron-Fulton International Airport

- Commercial with attached corporate hangar
- ALP: proposed landside development after runway closure
- Timeline: Jan 2021...
- Section 163 shapes actions & process

Takeaways
- Got FAA involved early
- Deed research at the onset
- Educated partners
So where do we go from here?
Resources


Section163.com
Q&A

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