Section 163 & Land Use

Section 163 Determination & Land Use Changes

Presented to: NWAAAE Airports Conference
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Date: April 3, 2024
Objectives

• Section 163
• Determination Process & Information Processing
• Land Use Determination
Section 163 Legislation

• FAA Reauthorization Act of 2018

• Legislation was broken out into four pieces
  – Section 163 (a) Limitation of Regulation of Airport Property
  – Section 163 (b) Exception
  – Section 163 (c) Construction Rules
  – Section 163 (d) ALP Approval Authority

• Section 163 Process with FAA
  – FAA’s interpretation of the legislation
  – Application of Section 163
  – Updated Instructions (June 2023) – SCAN QR CODE FOR LINK
Section 163(a) Limitation of Regulation of Airport Property

FAA 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.

...except there are exceptions to every rule
Section 163(b) Exceptions, (c) Construction Rules

- FAA may regulate to ensure:
  - (b)(1)(A): the safe and efficient operation of aircraft; or safety of people or property on the ground; and
  - (b)(1)(B) and (C): that airport owner receives or pays fair market value

- Section 163(a) does not apply to:
  - (b)(2): land or a facility acquired or modified using federal funding or
  - (b)(3): Surplus Property Act land or PFC land or facilities; and
  - **Please note - this does not mean that FAA approval is necessary for all projects on land acquired under (b)(2) and (b)(3). It means the land is subject to FAA regulatory authority. Depending on the specific facts associated with any particular development project, the FAA may need to take an action within its regulatory authority prior to project implementation, such as approval of a release of obligations, under this paragraph**
  - (c): Nothing affects existing rules for Airport revenues - 47107(b); 47133
Section 163(d) ALP Approval Authority

• 47107(16) amended: The FAA “will review and approve or disapprove only those portions of the plan…”

• Requires examination of the ALP change’s impact on 3 zones of interest:
  1. That materially impact the safe and efficient operation of aircraft at, to, or from the airport;
  2. That would adversely affect the safety of people or property on the ground adjacent to the airport as a result of aircraft operations; and
  3. That adversely affect the value of prior Federal investments to a significant extent.

• FAA is the expert on these zones of interest – impact FAA’s statutory mission and authorities
What you need to know about Section 163

• No longer business as usual!
• Section 163 has created a significant paradigm shift in the way FAA approves projects.
• “Does section 163 apply?” or “Is this project section 163 eligible?” are not the questions we are trying to answer.
• The question that needs to be asked for every project is “Does the FAA have approval authority for this project?”
• Once that question is answered, then determine whether or not NEPA applies.
• FAA approval authority has nothing to do with whether a project is aeronautical or non-aeronautical in use.
Determination Process

• The determination process starts when the sponsor is ready to move forward with a project.

• Examples of determination timing:
  o At the conclusion of annual CIP meeting,
  o Submission of ALP pen-and-ink change,
  o Requests change in land use, request for disposal
  o Review of project through iOEAAA

• FAA must determine for every project:
  ✓ Does FAA have ALP approval authority?
  ✓ Does FAA have approval authority over proposed airport land use?

• Identify how the project will be funded.

• The determination process and source of funding informs whether there is a federal action (NEPA)
Information Gathering

• Prior to beginning the analysis, the following information is required:
  o ALP depicting project,
  o Project description,
  o For non-aeronautical development, analysis demonstrating land not needed for existing/future aeronautical use,
  o Exhibit A and land conveyances (deeds),
  o Source of funding.
  o CHECK WITH YOUR ADO FOR SPECIFIC SUBMITTAL FORMAT
Determining FAA Authority to Regulate Land Use

FAA’s authority to directly or indirectly regulate land or facilities is limited to:

• Land acquired or modified using Federal funding (e.g. AIP, ADAP, FAAP);
• Land conveyed from the Federal government (Surplus Property Act; and other federal conveyances)
• Under the Passenger Facility Charge (PFC) statute (Title 49 U.S. Code, §40117).
Determining FAA Authority to Regulate Land Use

- First must verify how the land was acquired to determine if it was acquired with Federal funds or conveyed from the United States.
- Airports should have up-to-date Exhibit A.
- The sponsor may conduct a title search or other methods to verify how the property was acquired.
- Must review conveyance deeds
- FAA document research
Determining FAA Authority to Regulate Land Use

If the use is for “aeronautical” there will be ALP approval authority

Is there an FAA action needed to allow non-aeronautical use of the land?

- Land Acquired by the Sponsor
  - Projects on, or the disposal of, land acquired by the sponsor without federal financial assistance (e.g., by local funding or donation) are not subject to FAA approval.
  - **No, there isn’t a federal action.**

- Federally Acquired or conveyed land
  - **Yes, there is a federal action**
    - Consent/approval for land use change
    - release of obligations for a property disposal.
Easy Section 163 Determination

Was the property federally conveyed or purchased with federal funds?

- **YES** – The FAA has land use authority and must follow the appropriate procedures to accommodate the Sponsor request.

- **NO** – Is there a safety issue?
  
    - **YES** – The FAA has ALP approval authority.
    
    - **NO** – The FAA does not have land use authority. Sponsor still must comply with federal obligations (compatible land use, revenue use, etc.)
Thursday: Session 12 A
Processing Land Use Changes on Federally Acquired or Conveyed Airport Land

- **88 Fed. Reg. 85474**
- What is done after a 163 determination
- What constitutes aeronautical or non-aeronautical land use?
  - Aeronautical use
  - Airport purpose
  - Non-aeronautical use
  - Mixed-use
- Allowance for non-aero beyond 3-5 years without a release
Questions?

Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land