

APPENDIX A:

SECTION 163 DETERMINATION



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

Alaskan Region Airports Division
222 W. 7th Avenue, Box #14
Anchorage, AK 99513-7587
Telephone: 907-271-5438
Fax: 907-271-2851

May 3, 2022

Teri Lindseth
Deputy Director, Planning and Development
Ted Stevens Anchorage International Airport
P.O. Box 196960
Anchorage AK, 99519

Dear Teri:

Thank you for your inquiry regarding whether or not the FAA has a federal action on the proposed Alaska Cargo and Cold Storage Development project to be located on airport property at Ted Stevens Anchorage International Airport (ANC). On April 27, 2022, your office submitted a revised scope of development. As such, this letter supersedes FAA's original determination letter dated May 6, 2021, to account for the new scope.

Recent changes in federal law have required the Federal Aviation Administration (FAA) to revisit whether FAA approval is needed for certain types of airport projects throughout the nation. On October 5, 2018, HR 302, the "FAA Reauthorization Act of 2018" (the Act) was signed into law (P.L. 115-254). In general, Section 163(a) limits the FAA's authority to directly or indirectly regulate an airport operator's transfer or disposal of certain types of airport land. However, Section 163(b) identifies exceptions to this general rule. The FAA retains authority:

1. To ensure the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations;
2. To regulate land or a facility acquired or modified using federal funding;
3. To ensure an airport owner or operator receives not less than fair market value (FMV) in the context of a commercial transaction for the use, lease, encumbrance, transfer, or disposal of land, any facilities on such land, or any portion of such land or facilities;
4. To ensure that that airport owner or operator pays not more than fair market value in the context of a commercial transaction for the acquisition of land or facilities on such land;
5. To enforce any terms contained in a Surplus Property Act instrument of transfer; and,
6. To exercise any authority contained in 49 U.S.C. § 40117, dealing with Passenger Facility Charges.

In addition, Section 163(c) preserves the statutory revenue use restrictions regarding the use of revenues generated by the use, lease, encumbrance, transfer, or disposal of the land, as set forth in 49 U.S.C. §§ 47107(b) and 47133.

Section 163(d) of the Act limits the FAA's review and approval authority for Airport Layout Plans (ALPs) to those portions of ALPs or ALP revisions that:

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

In light of this statutory change, the FAA's Alaskan Region Airports Office has performed a review in order to determine if the FAA has the authority to approve or disapprove all or parts of the project.

Proposed Project

The Ted Stevens Anchorage International Airport (ANC) has submitted a proposed ALP Update, which includes the construction of the Alaska Cargo and Cold Storage development in order to accommodate existing and future demand for cargo operations, increase operational efficiencies through new and improved cargo and airline support facilities, and meet FAA and airport safety requirements.

Major components of the proposed project action are:

- a. Cargo Warehouse
- b. Cold Storage
- c. New Aircraft Parking Apron
- d. Hardstand Fuel Distribution
- e. Ground Support Equipment Shop and Parking
- f. Ancillary/Control Space
- g. Road Connection to Postmark Dr.

The proposed project is located on the east side of the airport; east of Runway 15/33, south of Taxiway P, west of Postmark Drive, and north of the Aircraft Rescue and Fire Fighting Station. The area consists of 29 acres.

Determination Regarding the Airport Layout Plan

1. Because portions of the proposed development may have a material impact on aircraft operations, at, to, or from the airport, the FAA retains the legal authority to approve or disapprove the following changes to the ANC ALP:
 - a. New Aircraft Parking Apron
2. Because the remaining portions of the proposed development would have no material impact on aircraft operations at, to, or from the airport, would not affect the safety of people and property on the ground, and would not have an adverse effect on the value of prior Federal investments to a significant extent, the FAA lacks the legal authority to approve or disapprove changes to the ANC ALP for the following project components:

- a. Cargo Warehouse
- b. Cold Storage
- c. Hardstand Fuel Distribution
- d. Ground Support Equipment Shop and Parking
- e. Ancillary/Control Space
- f. Road Connection to Postmark Dr.

FAA's Authority to Regulate Land Use

The land subject to the proposed project was acquired through two deeds, Tract II a patent deed transferred on January 9, 1967 through the Federal Airport Act instrument of transfer and Tract IV a patent deed transferred on August 30, 1961 through the Alaska Statehood Act.

Because the land associated with this project within Tract II was acquired with federal funds, under Section 163(b) of the Act, the FAA has the legal authority to approve or disapprove the use of the land associated with this project. The proposed development is consistent with the intended use of the land. Therefore, the FAA will not require a release of obligations in order to maintain the use of the subject parcel as depicted on the currently approved ALP.

The land associated with this project located within Tract IV was not acquired with federal funds, therefore, under Section 163(b) of the Act, FAA does not have the legal authority to approve or disapprove the use of the land associated with this project.

Applicability of the National Environmental Policy Act (NEPA)

The FAA's ALP approval authority for portions of the proposed project, and any other Federal approvals associated with the project, such as funding under the AIP or PFC programs, is a federal action subject to the National Environmental Policy Act (NEPA). Therefore, the sponsor will be required to perform an appropriate environmental review consistent with NEPA.

Sponsor Obligations Still In Effect

This determination only addresses FAA's approval authority for this project. It is not a determination that the project complies with the sponsor's federal grant assurances. The sponsor must continue to comply with all of its Federal grant obligations, including but not limited to Grant Assurance #5, Preserving Rights and Powers; Grant Assurance #19, Operation and Maintenance; Grant Assurance #20, Hazard Removal and Mitigation; Grant Assurance #21, Compatible Land Use; and Grant Assurance #25 Airport Revenue.

Section 163 and Grant Assurance 25 require the airport sponsor to receive not less than fair market value for the use, lease, encumbrance, transfer, or disposal of land, any facilities on such land, or any portion of such land or facilities. The sponsor must ensure that all revenues generated as a result of this project may only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the

owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.

The sponsor also has the responsibility to comply with all federal, state, and local environmental laws and regulations.

Additionally, any development on this parcel is still subject to airspace review under the requirements of 14 CFR part 77, and Grant Assurance 29 still requires the airport to update and maintain a current ALP. An updated ALP should be submitted to the FAA Alaskan Region if the project is completed.

This is a preliminary determination, and does not constitute a final agency action or an "order issued by the Secretary of Transportation" under 49 U.S.C. § 46110.

If you have further questions or need for clarification, please feel free to contact me at 907-271- 5040, or via email at jonathan.linguist@faa.gov.

Sincerely,

**JONATHAN
LINGUIST**

Jonathan Linguist
Lead Planner
Alaskan Region Airports Division

Digitally signed by JONATHAN
LINGUIST Date: 2022.05.03
06:34:53
-08'00'