

ALP/Land Use Determinations

Environmental Considerations During Planning

Presented to: National Consultant Workshop

By: Mike Lawrance and Edvige Mbakoup

Date: January 23, 2024



**Federal Aviation
Administration**

Agenda

- **FAA Determination Process – Section 163**
 - Overview of H.R. 302 Section 163
 - Sponsor and FAA Responsibilities
- **Environmental Considerations During Planning**
 - What are the issues we face when entering the NEPA phase of a project?
 - Best practices for implementing environmental into planning.
- **Open for questions**

FAA Determination Process



Why are we Re-training?

- **Requests from the field for us to provide training.**
- **Our experience seeing how the process has been implemented.**
- **Clarify and simplify the process!**
- **Need to reset the thinking on how we go about making determinations.**

H.R. 302, FAA Reauthorization Act of 2018

- Section 163 – Limited Regulation of Non-Federally Sponsored Property
 - 163(a): General limitation
 - (Took away land use authority)
 - 163(b): Exceptions
 - (Brings back limited land use authority)
 - 163(c): Rules of construction
 - (Can't divert revenue and must get FMV)
 - 163(d): Limitation on Airport Layout Plan approval authority

Does FAA Have Approval Authority?

- **The question that needs to be asked for every project* is “Does the FAA have approval authority for this project?”**
- **Stop** using these phrases:
 - “Does section 163 apply? ”
 - “Is this project section 163 eligible? ”
- Section 163 is a change in the law – it always applies!
- FAA approval authority has nothing to do with whether a project is aeronautical or non-aeronautical in use.
- *** Note: “every project” means projects normally shown on an ALP**

Determination Process

- **What was the process prior to 2018?**
 - Sponsor submitted an ALP update (e.g., pen-and-ink change, 7460).
 - It was reviewed to ensure it met separation/safety standards and was sited in an appropriate area.
 - Project use was considered to determine whether a change in land use was necessary.
 - ALP was circulated in OE/AAA and eventually appropriate sheets replaced in the set once approved.

Determination Process

- **Other than not approving projects shown on ALPs for planning studies, the process is basically the same as it was before, with a few differences:**
 - May or may not have ALP approval authority.
 - Need parcel information.
 - Need to document the determination
- **This shouldn't be a separate process!**

Determination Process (cont.)

- The determination process starts when the sponsor is ready to move forward with a project.
- Determinations are not done during planning projects (e.g., Master plans or ALP updates).
- Examples of determination timing:
 - At the conclusion of annual CIP meeting,
 - Submission of ALP pen-and-ink change,
 - Requests change in land use,
 - Request to dispose of airport-owned property,
 - Review of a project
- FAA must determine *for every project normally shown on an ALP*:
 - Does FAA have ALP approval?
 - Does FAA have approval authority over proposed airport land use?

What about NEPA? Funding?

- Section 163 has nothing to do with NEPA or funding....
- But we do need to consider both after a determination is made.
- Why? Because there are many federal actions that could trigger a NEPA review, including:
 - ALP approval
 - Land use change approval
 - AIP or other federal funding
 - PFC funding
- Again, this is not a new process!

What is the Sponsor's Responsibility?

- Process for the sponsor has not really changed.
- The sponsor should understand it is FAA's responsibility to determine whether we have approval authority, and that a determination needs to be made on whether we retain authority for the project.
- Identify how the project will be funded.
- Ensure land owned by the airport is documented (Exhibit A up to date).
- Determination on FAA approval authority is the first step for airport development projects. Consult with FAA environmental protection specialists once a determination has been completed to ensure proper scope of NEPA reviews.
- Do not begin NEPA for a project until you have had initial discussion with FAA.

Environmental Considerations During Planning



Planning To NEPA – The Issue

Incomplete planning and/or the need to prepare additional planning during the environmental process have been primary obstacles to making quick and cost-effective environmental determinations.

Some Reasons For The NEPA Struggle

- NEPA Relying on Incomplete / Stale Planning
- Poorly Justified Projects
- Sponsor Expectations **that exceed AIP Goals**
- Time Passage
- Changing Project Variables (Economics/Industry dynamics)
- Amended CEQ regulations (Sec. 1501.5 and 1502.7 which became effective on 9/14/20)
 - Page limits
 - Time limits
- Timelines for special purpose law requirements

Planning Expectations

- Does a Master Plan provide all the information for a supported purpose and need?
- Usefulness of Master Plan to environmental documents depends on its level of analysis and completeness, rather than just having a finalized Master Plan.

Master Plan	NEPA Document
Planning goals and needs, including sponsor goals that may exceed FAA goals	Demonstrated Aeronautical Actual Need, typically within 5 years
Eligible	Justified per AIP Policy in Orders 5100.38 and 5090.5, and referenced ACs

What Should a Planning Effort Include?

- Environmental Inventory depicting environmentally sensitive areas
- **Realistic, substantiated actual aeronautical demand:**
 - Current data to support identification of the critical aircraft by runway
 - Current TAF vs. Sponsor's forecast...how do they compare?
- **Clear links to FAA justification criteria for the Federal P&N**
 - Identify sponsor P&N and near-term (5-year) goals. If applicable, clear differentiation of sponsor goals that exceed FAA criteria.

What Should a Planning Effort Include? (cont.)

- Facility Requirements and Facilities Implementation Plan
 - What deficiencies currently exist?
 - What are FAA's standards and minimum requirements for the proposed project components?
- Comprehensive alternatives analysis that considers environmental issues.
 - Include strong alternatives screening criteria.
 - Sponsor should identify its preferred alternative.
- Financial Feasibility Plan and Analysis
- Community and airport user involvement

Lessons Learned

- NEPA is not a good place to be doing fundamental planning, **such as:**
 - Credible demand forecast, with **operator** input;
 - **Continue to use outdated runway length methodology with change in the critical aircraft;**
 - Sponsor effectively seeking requirements that exceed FAA project justification **criteria;**
 - EIS is not the place to build stakeholder consensus on project scope.
- Alternatives need to be defined (and eliminated) in the planning process.

Strategies

- Not starting the NEPA process with substantial unanswered planning questions.
- Overlapping the NEPA and Planning Process
 - Developing a supportable purpose and need during the planning process, **using current data**;
 - Complete alternatives analysis during the planning process;
 - Integrating environmental issues in the planning process.

Is a Project Ready for NEPA?

- Has this **project been justified by the ADO/Region** in a recent Master Plan, ALP Update Report, through another effort? If so, which method and when?
- Is the project **shown on the latest FAA conditionally-approved ALP**?
- Is the project **in the FAA's current 5-year CIP database (SOAR)**?
- **Have all requested FAA federal actions been identified? Are there other federal actions under the jurisdiction of other agencies being requested?**
- Has the sponsor **developed a preliminary P&N and identified alternatives**?
- Has this project been formally **evaluated environmentally** by FAA in a prior effort? If so, what finding was rendered?