

FAA Land Use Change Policy

Presented to: ARP National Compliance Workshop

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**Federal Aviation
Administration**

About the Presenters

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Agenda

- Purpose of Today
- Federal Register Notice on Land Use Changes on Federally Acquired or Federally Conveyed Airport Land
- Definitions
- The Land Use Change Process
- Release for Sale
- Questions

Purpose of Today

- This session is about federal obligations on land -- not ALP approval
- Protection of aeronautical use through federal obligations

Processing Land Use Changes

- **Reference:** Federally Acquired or Federally Conveyed Airport Land (88 Federal Register 85474, 12/08/2023)
- **Purpose**
 - Ensure land is available for aviation needs
 - Protect for new aviation entrants
 - Balance protection for future aviation need and providing non-aero revenue generation in the interim
- Will be updated for the reauthorization

Processing Land Use: Key Changes

- Pertains to: Federally Acquired or Federally Conveyed Airport Land
- Clarified definitions
- Releases are reserved for Sale/Transfer of Property w/ACO-100 concurrence
- Removed interim/concurrent use approval language
- Allows non-aero beyond 3 to 5 years without a release

Key Responses to Comments

- FAA does not approve leases.
- Duration of approval/consent may be for duration of use.
- Grandfathering.
 - *Not* retroactive.
 - Does *not* apply to already released land.
 - Existing interim/concurrent use approvals will be reviewed when the existing approval expires.
- Does *not* apply to Noise Land (Noise Reuse Plan).

Types of Airport Property

- Federally Acquired Land
- Federally Conveyed
- Sponsor Acquired

Types of Airport Property – Federally Acquired

- Land that was acquired with Federal funds including:
 - Airport Improvement Program (AIP),
 - Federal Aid to Airports Program (FAAP),
 - Airport Development Aid Program (ADAP), or
 - as part of an AP-4 agreement.
- It also includes airport sponsor-acquired land that:
 - was used for the airport sponsor match for an AIP project, or
 - was swapped for AIP purchased land.

Federally Conveyed – Surplus Property

Land that was conveyed to the airport sponsor by the Federal government including:

- **Surplus Property Transfers:** Under the Surplus Property Act, codified in 49 U.S.C. 47151–47153, including former military airports conveyed to local public entities under 10 U.S.C. 2687 of the Defense Base Closure and Realignment Act (BRAC) program or any other Federal laws; and,

Federally Conveyed – Non-Surplus Property

- **Non-Surplus Property Transfers:** Made under
 - **Section 16** of the Federal Airport Act of 1946, 119 Public Law 79–377,
 - **Section 23** of the Airport and Airway Development Act of 1970, Public Law 91–258, and
 - **Section 516** of the Airport and Airway Development Act of 1982, codified in 49 U.S.C. 47125.

Types of Airport Land – Sponsor Acquired

- Land that was not acquired with federal funds or conveyed by the federal government.
- This land is covered by this policy if FAA retains ALP approval authority under 49 U.S.C. § 47107(x)(1)
 - When land use change materially affects safe and efficient operation of aircraft at, to, or from the airport; or
 - When adversely affects the safety of people and property on the ground as a result of aircraft operations; or
 - Adversely affects the value of prior Federal investment to a significant extent

Airport Land Use Categories

Use of Airport land will fall into one of four categories:

- Aeronautical use
- Airport purpose
- Non-aeronautical use
- Mixed-use

Aeronautical Use

(land use consent/approval not needed)

- *FAA's Policy Regarding Rates and Charges*, 78 Fed. Reg. 55330, **September 10, 2013**:
 - Any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft.
 - Includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail, and cargo on the airport.
- Land on which an aeronautical activity takes place is by its nature aeronautical use (e.g., drop zone, apron, hangar).

Aeronautical Use Examples

- Operational uses such as aerial approaches, nav aids, RW/TW, aprons, hangars, or other aircraft movement areas.
- Future development uses to reserve property interest for foreseeable aeronautical development (e.g., a planned RW extension or a planned terminal building development).
- Essential services that directly support flight operations (e.g., aircraft maintenance, fueling, and servicing, mail, passenger and cargo processing facilities, communications and air traffic control, crash rescue, firefighting, and airport maintenance).

Airport Purpose

(land use consent/approval not needed)

- Uses directly related to the actual operation or the foreseeable aeronautical development, and
- The non-aeronautical components do not impact existing aeronautical uses or conflict with existing or foreseeable aeronautical needs/demands.

Airport Purpose Examples

- A terminal complex (including the building, terminal concessions, airline ticket and car rental counters, parking, and roads).
- FBO facility including parking and classrooms.
- Parking associated with the airport purpose (passenger and employee parking).
- Airport service roads.
- Truck parking at air cargo processing facilities when it is directly related to moving inbound and outbound air cargo on and off the airport.

Interim Use of Airport Purpose Land

- 49 USC 47107(c)(1) allows “land is needed for an airport purpose when the land may be needed for an aeronautical purpose and revenue from an interim use of the land contributes to the financial self-sufficiency of the airport”
- Such interim non-aeronautical uses require FAA approval or consent.
- **Examples --**
 - crops in RPZ – approve the use
 - Storage until runway extension – approve the use until needed

Non-Aeronautical Use

(land use consent/approval needed)

- All other uses that are not considered aeronautical or airport purpose.
- There is no federal requirement that obligated airport sponsors accommodate non-aeronautical users.
- The differentiation between aeronautical and non-aeronautical is intended to protect the Federal investment in aviation and prevent the displacement of aeronautical users.

Non-Aeronautical Use Examples

- Car rental facility (stand-alone)
- Hotel
- Warehouse and distribution center
- Parking associated with the non-aeronautical uses (e.g., customer and employee parking for hotel, warehouse and distribution center, car rental)

Mixed Use

- Land use consent or approval needed
- Use has aeronautical and non-aeronautical uses, but the non-aeronautical use could be located off airport property.
- The non-aeronautical uses must pay fair market value in accordance with the FAA Revenue Use Policy (64 Fed. Reg. 7696).
- The FAA will take into account whether the non-aeronautical component, if consented or approved, will impact existing aeronautical users, or conflict with existing or foreseeable aeronautical needs/demand.

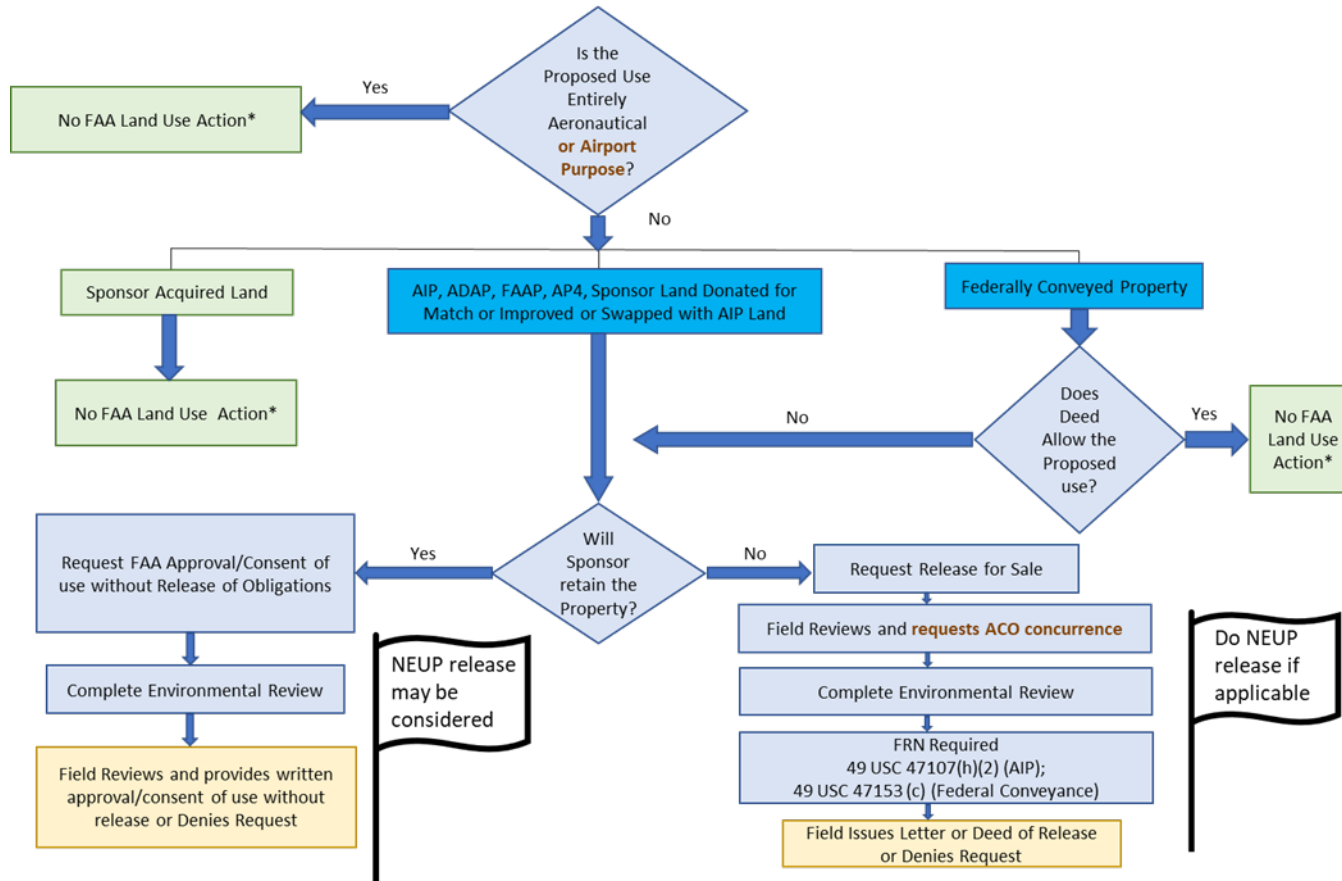
Mixed Use Examples - 1

- Mail distribution centers connected to an air cargo operation.
 - Cargo operations where the primary purpose of the operation goes beyond air cargo processing facilities and expands into non-aeronautical elements such as office building complexes, sorting facilities, long-term storage (warehousing), freight forwarders and third-party logistics providers, certain access infrastructure, or certain truck parking/trailer facilities (stalls).
 - Most of these are related to other transportation modes or aspects of the cargo business, not directly and substantially to its aeronautical activity.

Mixed Use Examples - 2

- Aircraft manufacturing facility that includes final assembly, but also significant non-aeronautical uses such as, engineering facilities, research and development facilities, parts manufacturing and storage, or office buildings.
- Parking associated with the mixed use (e.g., customer and employee parking for mail distribution, cargo operations, aircraft manufacturing).

Land Use Change Process



No land use action:

- Interim use while waiting to serve an airport purpose **still** needs approval (consent)
- FAA retains authority to regulate functions on the airport to ensure the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations.

Process for evaluating land use (Federal Register)

FAA Land Use Approval Authority on Sponsor-Acquired Land (No FAA Approval Authority)

- Airport sponsor remains contractually obligated to act in accordance with all its grant obligations in managing the entire airport.
- The sponsor should retain sufficient authority over the land to prevent uses that conflict with its federal obligations and related requirements or that create conditions resulting in violations of the grant assurances.
- Any land that is sold or leased must be at fair market value and the funds must be used in accordance with the FAA's Revenue Use Policy.

Requesting a Land Use Change

(ACO-100 Concurrence Not Required)

- Sponsor's request needs to include (See FRN):
 - Identification of the property
 - Documentation on how the land was acquired (i.e., federal conveyance documents, federal grant agreements, Exhibit A)
 - Current use of the property
 - Current and future aeronautical demand of the airport and the land (e.g., master plan, waitlist, forecasts, etc.)
 - Proposed use, including the length of the use

FAA's Evaluation of Land Use Change Request

- Review the primary purpose of the requested land use (not individual components)
- Major considerations in granting consent or approval include:
 - Reasonableness and practicality of request
 - Affect of request on needed aeronautical facilities
 - Net benefit to civil aviation
 - Compatibility of request with the needs of civil aviation
- Region/ADO will issue a letter of approval (fed acquired) or letter of consent (fed conveyed) for the use or deny the request.

Requesting a Release to Sell or Convey Property (complete release)

- Business as usual (except need ACO-100 concurrence)
 - Sponsor submits release package (See FAA Order 5190.6, Chapter 22, Releases, and 14 CFR part 155, Release of Airport Property from Surplus Property Disposal Restrictions)
 - ADO/Region reviews the package
 - Region obtains ACO-100 concurrence
 - Request National Emergency Use Provision (NEUP) release (if applicable)
 - FAA issues Federal Register Notice
 - Sponsor completes Environmental/Airspace for FAA review
 - FAA issues Letter or Instrument of Release