

## **Appendix A: Section 163 Determination**



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

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Feb 10, 2022

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

Re: FAA Approval Authority Review – Ted Stevens Anchorage International Airport,  
Anchorage, Alaska – South Airpark Cargo Terminal

Dear Teri:

Thank you for your inquiry regarding whether or not the FAA has a federal action on the proposed NorthLink Aviation South Campus Cargo Development project to be located on airport property at Ted Stevens Anchorage International Airport (ANC).

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 has submitted proposed development by NorthLink Aviation to construct, operate and maintain a South Campus Cargo 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 listed below:

- New Aircraft Parking Apron
- Aircraft Hangar(s)
- Connector Taxilane(s) to Taxiway Romeo and future Taxiway Zulu extension
- Blast Fence(s)
- Cargo Terminal
- Fueling and Glycol Distribution/Recovery Facilities
- GSE/ULD Facility
- GSE and Vehicular Parking Areas
- Road Connection to South Airpark Place
- Retention Basin and/or Snow Storage Area
- New Security and Perimeter Fencing
- Earth Berm

The proposed project is located on the south side of the airport; south of Runway 7R/25L and Taxiway Z, west of Taxiway R, and north of Raspberry Road. The area consists of 120 acres of the Postmark Bog.

### Determination Regarding the Airport Layout Plan

For the purpose of determining whether the ALP change for the proposed projects at ANC requires FAA approval, we have made the following determinations:

1. Because portions of the proposed development may have 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
  - b) Aircraft Hangar(s)
  - c) Connector Taxilane(s) to Taxiway Romeo and future Taxiway Zulu extension
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 components:
- a) Blast Fence(s)
  - b) Cargo Terminal
  - c) Fueling and Glycol Distribution/Recovery Facilities
  - d) GES/ULD Facility
  - e) GSE and Vehicular Parking Areas
  - f) Road Connection to South Airpark Place
  - g) Retention Basin and/or Snow Storage Area
  - h) New Security and Perimeter Fencing
  - i) Earth Berm

#### FAA's Authority to Regulate Land Use

The land for the proposed project is located on four tracts, Tract I, Tract VII, Tract XV, and Tract XXVI. Tract I was acquired through the Alaska Omnibus Act via a quitclaim deed instrument of transfer on June 27, 1959 for public airport purposes. Tract VII was acquired pursuant to Section 16 of the Federal Airport Act and conveyed by patent deed on February 9<sup>th</sup>, 1981. Tract XV was acquired pursuant to Section 516 of the Airport and Airway Act of 1982 and was conveyed by patent deed on September 10<sup>th</sup>, 1984. Tract XXVI was acquired pursuant to 49 U.S.C. 47152-47153 as Surplus Property through a quitclaim deed on April 22, 2014 for use as a public airport.

The land associated with this project within Tract I 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. The project components located within Tract I include:

- a) Portion of the New Aircraft Parking Apron
- b) Connector Taxilane to Taxiway Romeo
- c) Eastern Blast Fences
- d) The Eastern (alternate) Aircraft Hangar
- e) Portion of Fueling and Glycol Distribution/Recovery Facilities
- f) GSE/ULD Facility
- g) Cargo Terminal
- h) GSE and Vehicular Parking Areas
- i) Connection to South Airpark Place
- j) Portion of New Security and Perimeter Fencing
- k) Portion of Earth Berm

Because the land associated with this project within Tracts VII, XV, and XXVI 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 project components located within Tracts VII, XV, and XXVI include:

- a) Portion of the New Aircraft Parking Apron
- b) Aircraft Hangar
- c) Connector Taxilane(s) to future Taxiway Zulu extension
- d) Fueling Distribution Facility
- e) Retention Basin and/or Snow Storage Area
- f) Portion of the New Security and Perimeter Fencing
- g) Portion of Earth Berm

#### 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 level of environmental review for the proposed project. Contact our office for guidance on preparing the environmental document for this project.

#### 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 lease 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, this project 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 this office if the project is completed.

If you have further questions or need for clarification, please feel free to contact me at 907-271-5040, or via email at [jonathan.linquist@faa.gov](mailto:jonathan.linquist@faa.gov)

Sincerely,

**JONATHAN  
LINQUIST**

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Jonathan Linquist  
Lead Community Planner  
Alaskan Region Airports Division