



Non-Aeronautical Development:

Evolving Opportunities & Innovative Approaches

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August 25, 2021

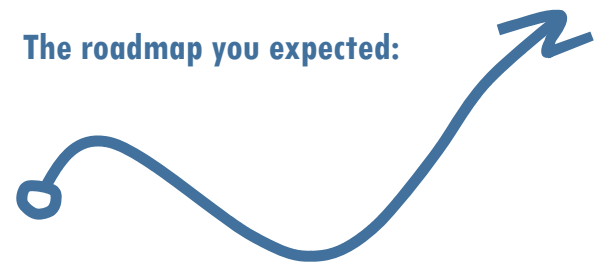
The Place We Find Ourselves...



Setting the Stage

- ◆ Non-aeronautical development:
Established approach,
known complexities,
multiple considerations...
but wait - there's more!
- ◆ Everything in light of Section 163

Development ~~Stages of Acceptance~~



adapted from @The Pennsylvania State University



Overview

- ◆ Historically FAA has had approval authority over virtually *all* airport development
- ◆ FAA approval means –
 - Time
 - Process
 - Environmental review

RECORD OF DECISION
FOR
PROPOSED REPLACEMENT RUNWAY, RUNWAY EXTENSION
AND ASSOCIATED DEVELOPMENT

AT
CLEVELAND HOPKINS INTERNATIONAL AIRPORT
CLEVELAND, OHIO

Date: November, 2000



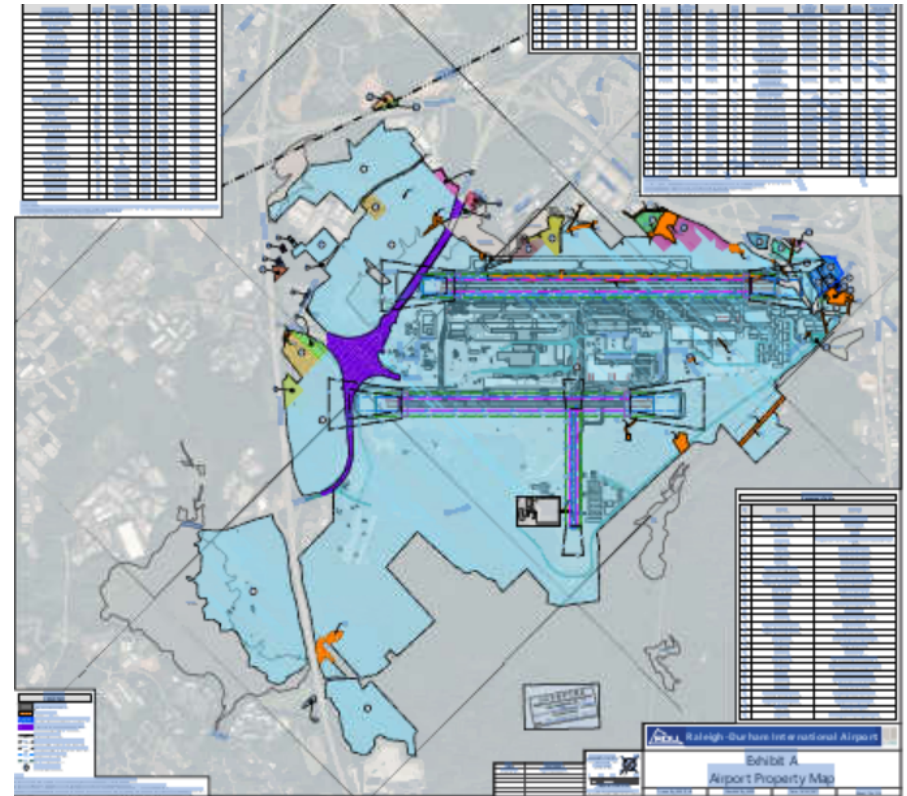
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
GREAT LAKES REGION
CHICAGO, ILLINOIS

NATIONAL AERONAUTIC AND SPACE ADMINISTRATION
JOHN H. GLENN RESEARCH CENTER AT LEWIS FIELD

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
OHIO FEDERAL AID DIVISION

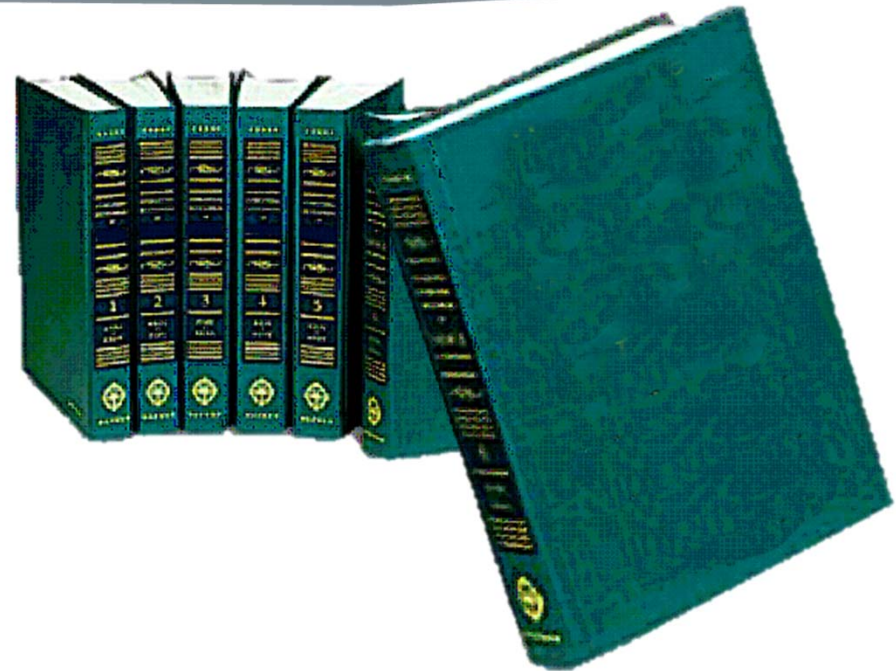
FAA Reauthorization Act of 2018

- ◆ Congressional Purpose in Enacting Section 163:
 - Eliminate FAA review over land use that is not core to its mission
 - Streamline and expedite airport development projects
 - Give airport sponsors increased (*but not unlimited*) autonomy to make land use decisions



What has changed?

- ◆ 163(a) – Limits FAA jurisdiction and authority over airport land use
- ◆ 163(b) - Exceptions where FAA retains jurisdiction
- ◆ 163(c) - Preserves FAA authority over airport revenue
- ◆ 163(d) – Limits FAA approval authority over ALPs



Land Use and Releases

(a) The Secretary of Transportation **may not** directly or indirectly regulate—

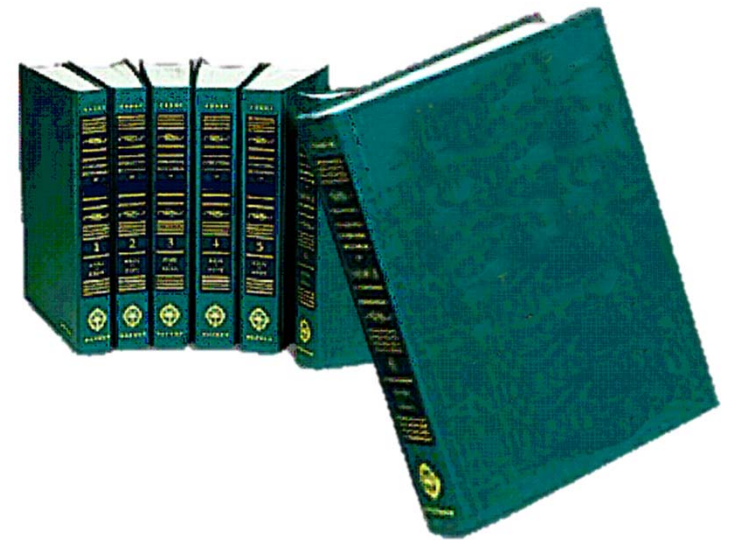
- the acquisition, use, lease, encumbrance, transfer, or disposal of land by an airport owner or operator;
- any facility upon such land; or
- any portion of such land or facility

EXCEPT:

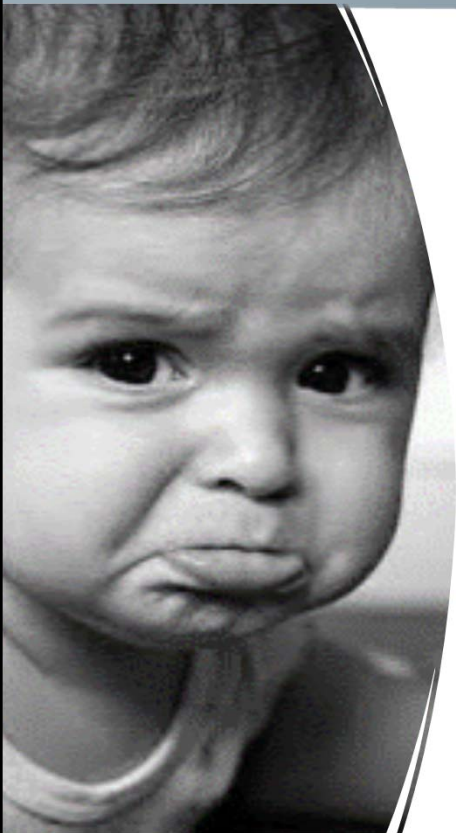
- (b) [FAA **may** regulate for the purpose of] ensuring—
- (A) the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations;
 - (B) that an airport owner or operator receives not less than fair market value or
 - (C) that the airport pays not more than fair market value
- (2) any regulation imposed with respect to land or a facility acquired or modified using Federal funding; or
- (3) any authority contained in—
- (A) a Surplus Property Act instrument of transfer, or
 - (B) section 40117 of title 49, United States Code

ALP Approval

(d) The Secretary will review and approve or disapprove only those portions of the [ALP] that materially impact the safe and efficient operation of aircraft . . . or that would adversely affect the safety of people or property on the ground adjacent to the airport . . . or that adversely affect the value of prior Federal investments to a significant extent




What **hasn't** changed



- ◆ Obligation to maintain a current, up-to-date ALP
- ◆ Fair market value obligations
- ◆ Airspace review (Part 77)
- ◆ Federal revenue use requirements
- ◆ Grant assurances

Is there guidance?

 **Federal Aviation Administration**

MEMORANDUM

Date: October 27, 2020

To: Regional Airports Division Directors
Airports District Office Managers
610 Branch Managers
620 Branch Managers
Regional Counsel and AGC-600

From: Director, Office of Airport Planning and Programming (APP-1) Robert John
Copy: Director, Office of Airport Compliance (ACO-1) John
Office of the Chief Counsel (AGC-600) Craven
Director, Office of Airport Safety and Standards (AAS-1)

Subject: **Instructions to Airports District Offices and Regional Office of Airports Employees Regarding Airport Layout Plan Reviews and Projects Potentially Affected by Section 163 of the FAA Reauthorization Act of 2018**

Summary

This document provides instructions to the FAA's Airports District Offices (ADO) and Regional Offices of Airports as well as states participating in FAA's State Block Grant program regarding changes in legal authority under the FAA Reauthorization Act of 2018. This document explains the internal process for reviewing airport layout plan (ALP) changes when new development is proposed by an airport sponsor and provides instructions on release of federal grant obligations and the circumstances under which these actions are necessary. Additionally, this document provides information on the way in which environmental review under the National Environmental Policy Act (NEPA) should address the new limitations on FAA's regulatory authorities. These are internal instructions for implementation of FAA's statutorily revised authorities over use of airport property and do not require new actions from airport sponsors.

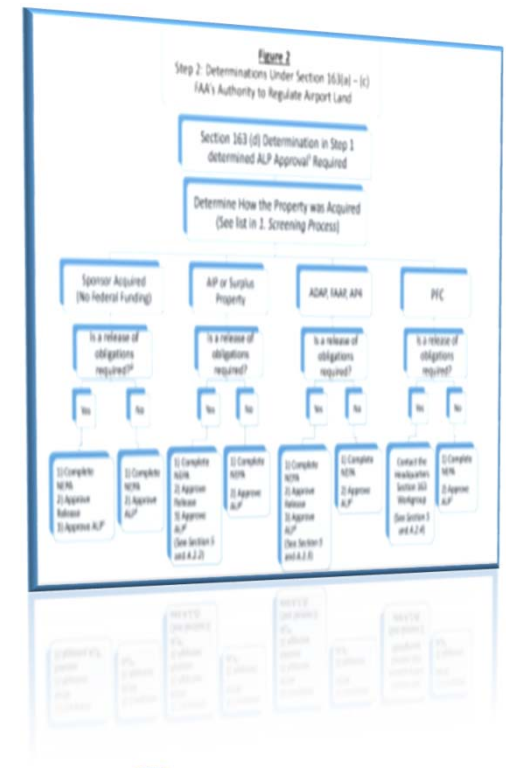
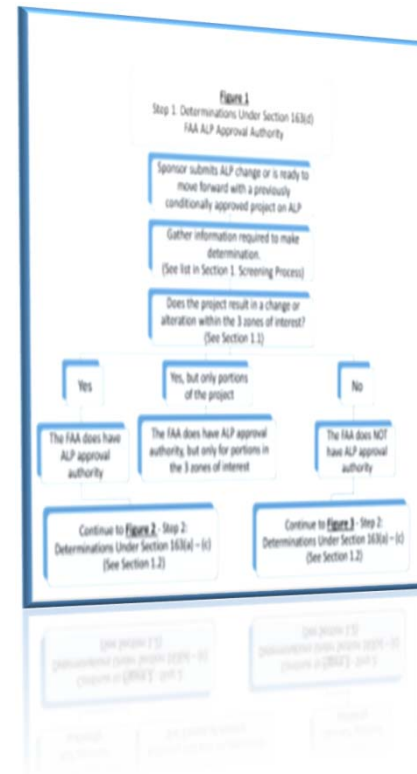
Applicability

These instructions are for the internal use of the FAA and those administering the Airport Improvement Program (AIP) under the State Block Grant program. These instructions are not legally binding in their own right and will not be relied upon by the FAA as a separate basis for affirmative enforcement action or other administrative penalty.

- ◆ Made public in late November (dated 10/27/20)
- ◆ Structured as internal guidance only
- ◆ Screening process for all approvals

Screening process

- ◆ Is there ALP approval authority – 163(d)?
 - Is project within FAA’s “zone of interests”
- ◆ How was the property acquired – 163(a)?
 - Land and facilities acquired or modified using Federal funding;
 - Surplus Property Act instruments of transfer; and
 - Passenger Facility Charge (PFC) statute



Why does Section 163 matter?

- ◆ FAA approval process can be lengthy
- ◆ Approval is a federal action triggering NEPA and other environmental laws
- ◆ Approval process can impede market participation by airport proprietor
- ◆ New presumption of no approval can substantially expedite approvals for new development
- ◆ The better you understand Section 163, the better prepared you can be!

A Tale of Two Land Developments



CDL Training Facility

- ◆ Classroom and on-site training facility with lighting (9.4 acres)
- ◆ ALP shows proposed landside development
- ◆ Total timeline – April 2018 – May 2019
- ◆ FAA involvement – Aug 2018 – May 2019 granted full aeronautical release
- ◆ Development pulled out early in 2019 to another location
- ◆ Takeaways
 - Get FAA involved early
 - The process is the process
 - Politics can muddy the waters

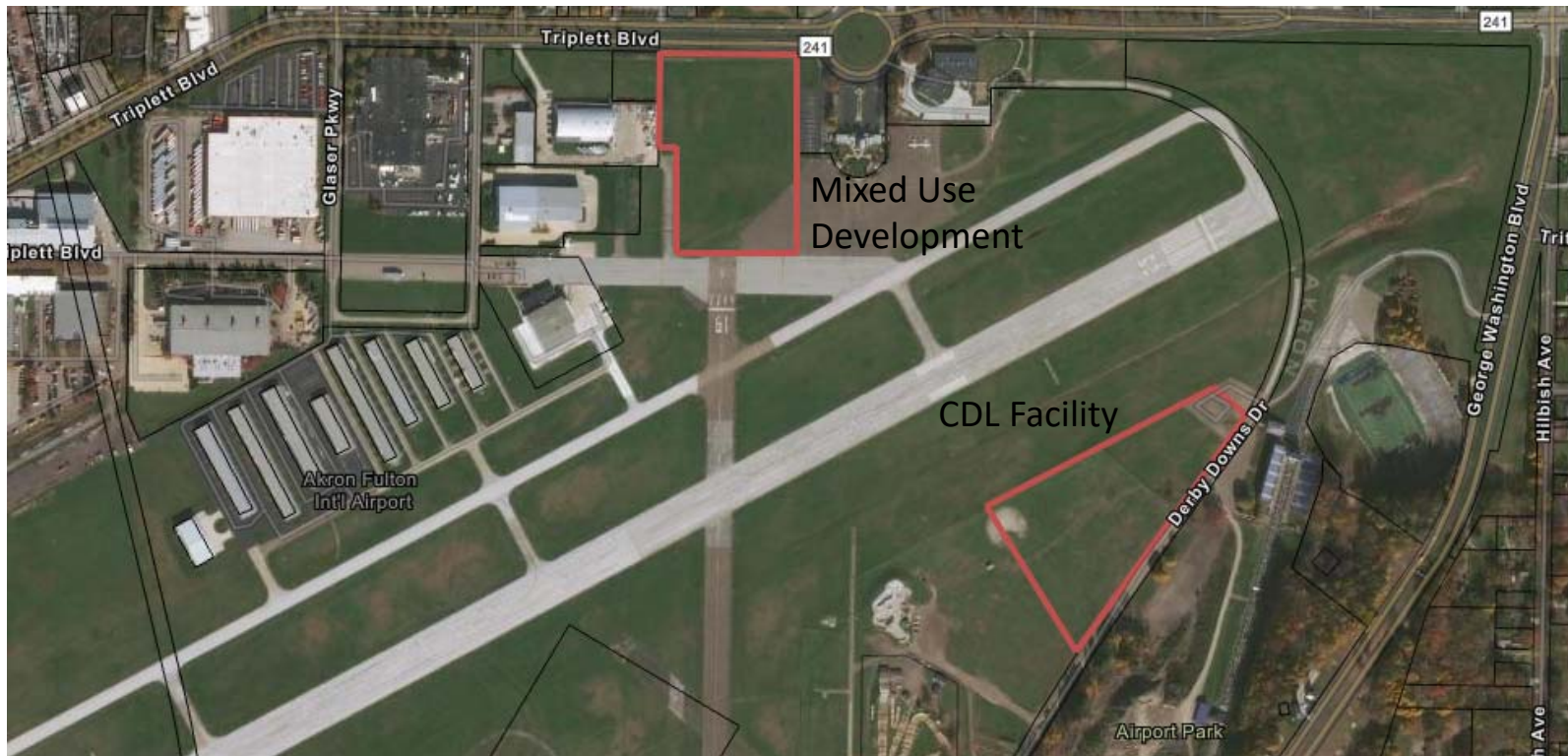


Mixed Use Development

- ◆ Commercial with attached corporate hangar (8 acres)
- ◆ ALP shows proposed landside development after closure of Runway 1-19
- ◆ Total timeline – Jan 2021 - ????
- ◆ FAA involvement – Jan 2021 – ????
- ◆ Looking at Section 163 determination for aeronautical release
- ◆ Takeaways
 - Got FAA involved early
 - Deed research at the onset

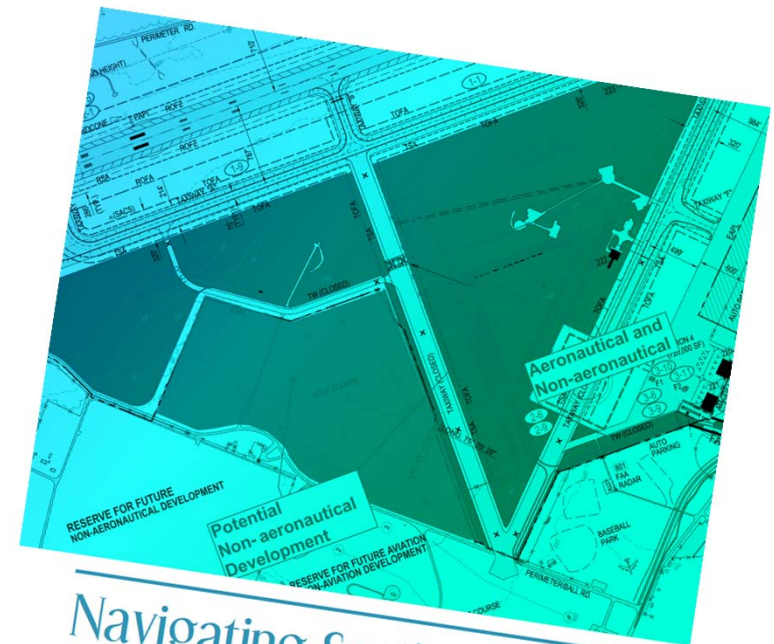


An Alternate Ending?



Citations & Resources

- ◆ https://www.faa.gov/airports/planning_capacity/media/Section-163-Final-Instructions-October-2020.pdf
- ◆ Section163.com – coming soon!



Navigating Section 163 A Guide to Facilitating Non-aeronautical Development at Your Airport



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August 2021



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Q&A

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