

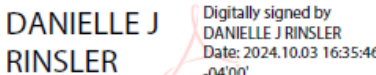
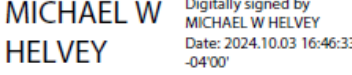


Federal Aviation Administration

MEMORANDUM

Date: October 3, 2024

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

From:  DANIELLE J RINSLER, Director, Office of Airport Planning and Programming (APP-1)
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Copy: Scott Mitchell, Assistant Chief Counsel, Office of the Chief Counsel, Airports and Environmental Law Division (AGC-600)
John Dermody, Director, Office of Airport Safety and Standards (AAS-1)

Subject: **Initial Instructions to Airports District Offices and Regional Office of Airports Employees Regarding Airport Layout Plan Reviews and Projects Potentially Affected by the FAA Reauthorization Act of 2024**

1. Background

Section 743 of the FAA Reauthorization Act of 2024 (P.L. 118-63, May 16, 2024), entitled "Review of Airport Layout Plans" (ALPs) modified limitations on FAA authority to review and approve airport layout plans (ALPs) first set forth in Section 163 of the FAA Reauthorization Act of 2018 (P.L. 115-254, Oct. 5, 2018). To understand how the 2024 FAA Reauthorization revised text that first appeared in the 2018 FAA Reauthorization, refer to Appendix A. This appendix sets forth the changes section 743 makes to the law codified at 49 U.S.C. § 47107(a)(16) and 47107(x).

These instructions provide initial guidance to assist the field in making decisions in accordance with this provision and to solicit additional information that will help inform FAA's interpretation and implementation of the law.

These instructions will be updated, or new instructions prepared as necessary to address additional topics implicated by this provision of law that are not addressed in this document.

2. Recommended Best Practice for Communicating with Airport Sponsors Regarding ALP Approval Authority.

When an airport sponsor comes to the Regional Office/Airport District Office (RO/ADO) ready to move forward with a proposed project, the ADO must review the project to determine if FAA has ALP approval authority on that project.

Typically, airport sponsors submit an ALP or ALP update depicting a proposed project (if not already on the ALP), provide a brief project description, and provide an Exhibit A or other documentation demonstrating how the land the project is proposed on was acquired.

The RO/ADO should communicate with airport sponsors in writing. Even if an airport sponsor communicates with an RO/ADO verbally, memorialize the conversation in writing and provide a summary of that conversation to the airport sponsor, with key points from the conversation explicitly identified and asking for acknowledgment that the summary is correct or that corrections be provided. Section 3b, below, provides text on grant obligations, including revenue use requirements for inclusion in communications with airport sponsors. Section 6, below, provides additional instructions for ROs/ADOs regarding Notices of Intent.

3. Determining Whether FAA has ALP Approval Authority

To determine whether the FAA has ALP approval authority, RO/ADO staff must confirm how the airport sponsor acquired the land affected by the proposed project.

a) Projects on federally acquired/conveyed land.

Any airport development project, or portion of a project, to be constructed on land acquired with federal assistance (e.g., purchased with federal funds or federally conveyed) is subject to ALP approval authority.

Federally acquired land is 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 land is land conveyed to the airport sponsor by the Federal government through a written deed of conveyance, including surplus property and non-surplus property transfers.

If a change in land use is required, coordinate with a compliance specialist.

b) Projects on sponsor-acquired land.

An airport development project located on sponsor-acquired land (e.g., acquired with airport revenue, local funds, donated, PFC revenue, etc.) **may be** subject to FAA's ALP review and approval authority. Staff must consider the proposed project and its individual components (e.g., cargo building, apron, auto parking, access road, etc.). To determine if FAA retains approval authority, staff must evaluate if the project in whole, or in part:

- i. materially impacts the safe and efficient operation of aircraft at, to, or from the airport;
- ii. adversely affects the safety of people or property on the ground as a result of aircraft operations; or
- iii. adversely affects the value of prior Federal investments to a significant extent.

See Section 4 below for a description of the application of the above "zones of interest" that confer authority to the FAA to review and approve ALP changes.

The evaluation of a project/project component wholly located on sponsor-acquired land will result in one of three outcomes:

- If the entire project implicates an FAA zone of interest, then FAA retains ALP approval authority over the entire project.
- If a portion of the project implicates an FAA zone of interest, then FAA retains ALP approval authority over only those portions of the project that implicate a zone of interest. FAA does not retain ALP approval authority over the remaining portions of the project that do not implicate a "zone of interest".
- If the project or any of its components do not implicate an FAA zone of interest, then the FAA does not have ALP approval authority for the project.

Where the FAA lacks ALP approval authority for a project or portion of a project on sponsor-acquired land, it also does not have land use authority, so a change in land use or release is not required.

When preparing a written response to the sponsor for a project where the FAA lacks ALP and land use authority, the following text should be included:

"The airport sponsor remains contractually obligated to act in accordance with all its grant obligations in managing the entire airport. For projects on sponsor-acquired land, 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. This includes but is not limited to uses of airport revenue outlined in 49 U.S.C. § 47107(b), 49 U.S.C. § 47133, and FAA's Revenue Use Policy.

To retain this authority, the airport sponsor should consider using subordination clauses, reservations, covenants, and/or other restrictions in deeds or other instruments, to protect the public's right to fly over the land, prohibit obstructions to air navigation or interference with the flight of aircraft, and assure compatible land use. The deeds or other instruments containing the restrictions should be recorded in local land records. The airport sponsor must manage the entire airport and its property in accordance with its obligations, and comply with all federal, state, and local laws and regulations.

The FAA may verify compliance with these requirements through a financial or land use compliance review, documentation review, confirmation of fair market value and revenues collected, enforcement of grant assurances, or other enforcement mechanisms."

c) Projects on both federally acquired/conveyed and sponsor-acquired land.

An airport development project that spans both federally acquired/conveyed land and sponsor-acquired land may result in a case where FAA has ALP approval for only a portion of the project. Staff should clearly document over which portions of the project FAA retains approval authority, and which portions are exempt from FAA ALP approval authority.

Appendix B provides a flow chart depicting the ALP review process outlined above.

4. Zones of Interest

The concept of the FAA's "zones of interest" is not new. The term "zones of interest" was developed to more easily refer to the circumstances in which the FAA retained ALP approval authority under Sec 163 of the FAA Reauthorization Act of 2018. The FAA Reauthorization Act of 2024 has retained the FAA's ALP approval authority for these "zones of interest." The difference now is that **these zones apply only when projects, or portions of a project, are proposed for development on sponsor-acquired land.** Any development on land acquired with federal assistance is subject to ALP approval by the FAA (see section 3.(a) above).

A project implicates zones of interest (i) and (ii) set forth in Section 3(b) above if the project would result in a change or alteration within any of the following existing or future areas on the airport:

1. Any area on an airport where an aircraft moves or parks, including:

- Movement areas (e.g., runways, taxiways, and other areas of an airport that are used for taxiing or hover taxiing, air taxiing, takeoff, and landing of aircraft including helicopters and tilt-rotors);
 - Non-movement areas (e.g., aircraft parking areas, including ramps and hangars);
2. All safety and obstacle setbacks to movement and non-movement areas (e.g., Runway and Taxiway Safety Areas, Object Clearing Areas, Object Free Area, or Obstacle Free Zone);
 3. Runway Visibility Zones;
 4. Runway Protection Zones;
 5. Navigational aids and associated critical areas;
 6. Parachute drop zones;
 7. Commercial space development;
 8. Aircraft self-fueling stations;
 9. Electric aircraft charging stations;
 10. Hydrogen aircraft fueling facilities;
 11. Aircraft Rescue Fire Fighting Stations; or
 12. Impacts an approach or departure surface and/or procedure or impacts to Airport Traffic Control Tower (ATCT) line of sight. (**NOTE:** The legislation gives FAA authority to approve or disapprove a project. If there is an impact to one of these areas the FAA should disapprove. The sponsor then has the option to mitigate the impact and resubmit. Once the issue is fixed, FAA may not have ALP approval authority, assuming there are no other impacts to the zones of interest).

The threshold for triggering zone of interest (iii) is that the project adversely affects a prior federal investment to a significant extent. Because the zones of interest are applied only where land is locally acquired, the presence of a significant adverse effect to a prior federal investment examines the impact of the proposed development on other structures, facilities, or areas that were federally assisted. Whether a project implicates zone of interest (iii) can be more difficult to determine, and it is not common. Factors to consider include:

- Will the proposed project negatively impact existing or projected future airport capacity?

- How old is the pavement/facility? Is it beyond its useful life?
- How is the area currently being used and is the proposed project consistent with the current use?

Please reach out to FAA HQ if there are any questions on determining whether a project implicates zone of interest (iii).

5. ALP Approval Letters

For all ALP approval letters, the following disclaimer language should be used:

The FAA Reauthorization Act of 2024 has limited the FAA's review and approval authority for Airport Layout Plans (ALP). The FAA's approval of this ALP is limited to existing facilities only for which the FAA retains approval authority. The FAA has not determined whether it retains review and approval authority for any proposed facilities depicted on the ALP associated with this letter (unless otherwise noted). FAA will determine whether it retains approval authority for ALP changes reflecting future facilities when such facilities are ripe for consideration (when such facilities are intended to be built), and such approval, if required, must be granted before construction occurs.

Although the FAA's review and approval authority of proposed projects depicted on an ALP is limited, airport sponsors must continue to maintain an up-to-date ALP in accordance with Federal law, 49 U.S.C. § 47107(a)(16).

This disclaimer language should be used until FAA HQ develops final policy on FAA approval of ALPs.

6. Notice of Intent

49 USC §47107(x)(3)(a) provides the ability for an airport sponsor to:

"...submit to the Secretary a notice of intent to proceed with a proposed project (or a portion thereof) that is outside of the review and approval authority of the Secretary, as described in this subsection, if the project was not on the most recently submitted airport layout plan of the airport."

Per 49 USC §47107(x)(3)(b):

"If not later than 45 days after receiving the notice of intent described in subparagraph (A), the Secretary fails to object to such notice, the proposed project (or portion thereof) shall be deemed as being outside the scope of the review and approval authority of the Secretary under subsection (a)(16)(B)."

The notice of intent only applies to projects that are not currently on an approved ALP, are proposed on sponsor-acquired land, and do not trigger one of the three zones of interest.

Since Notice of Intent (NOI) introduces a significant shift in our ALP process we are requesting that all NOI's be forwarded to HQ as soon as they are received. HQ will assist in review and communications with the sponsor. **Because the statute provides only a 45-day timeframe for the FAA's reply, it is imperative that these requests be submitted to HQ in a timely manner.**

7. NEPA

FAA is required to conduct environmental review for major Federal actions pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 **et seq.**, the CEQ implementing regulations, 40 CFR parts 1500-1508, and FAA Order 1050.1F, **Environmental Impacts: Policies and Procedures**. ALP approval of a project (or portion thereof) is a major federal action triggering NEPA review. Although the FAA's ALP approval authority may be limited to a portion of an airport sponsor's proposed project, that limited approval authority does not exempt the FAA from complying with NEPA. It is important, therefore, to identify in the NEPA document the particular projects (or portions thereof) that are subject to the FAA's ALP approval, and to disclose the direct, indirect, and cumulative impacts of that approval as defined at 40 CFR 1508.1(i).

Consideration of the environmental effects of an ALP approval frequently will encompass the effects of the entire proposal even where the FAA's statutory authority to approve the ALP is limited. Environmental Protection Specialists should determine the appropriate level of NEPA review applicable to the proposal in accordance with 40 CFR § 1501.3(a) and determine the scope of the action and analysis under 40 CFR 1501.3(b).

If questions regarding the scope of environmental review arise, contact APP-420 and AGC-600 for assistance. Where the FAA has no Federal Action associated with a Sponsor's proposed project (e.g., no ALP approval, federal funding, or other NEPA-triggering approval), NEPA review is not required.

8. Questions Regarding These Instructions

If there is any uncertainty regarding the applicability of this new provision, or any general questions regarding these instructions, please contact Michael Lawrance at michael.lawrance@faa.gov or 202-267-7648.

Appendix A – Changes to Statute

On May 16, 2024, H. R. 3935, “**FAA Reauthorization Act of 2024**” was signed into law (P.L. 118-63). Section 743 of the Act limits the FAA’s review and approval authority for Airport Layout Plans (ALPs) and changes to such plans.

Changes to Statute

The foundation of FAA policy on ALPs is derived from Title 49 U.S.C. § 47107(a)(16), which requires airport sponsors to maintain a current ALP that meets certain requirements. Section 743 of the Act amends § 47107(a)(16), and adds § 47107(x), as follows (changes are highlighted and bold):

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) **subject to subsection (x), the Secretary will review and approve or disapprove the plan and any revision or modification of the plan before the plan, revision, or modification takes effect;**

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities unless the alteration—

(i) is outside the scope of the Secretary’s review and approval authority as set forth in **subsection (x)**; or

(ii) complies with the portions of the plan approved by the Secretary; and

(D) when an alteration in the airport or its facility is made that is within the scope of the Secretary’s review and approval authority as set forth in subparagraph (B), and does not conform with the portions of the plan approved by the Secretary, and the Secretary decides that the alteration adversely affects the safety, utility, or efficiency of aircraft operations, or of any property on or off the airport that is owned, leased, or financed by the Government, then the owner or operator will, if requested by the Secretary—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility,

efficiency, and cost of operation that existed before the alteration was made, except in the case of a relocation or replacement of an existing airport facility that meets the conditions of section 47110(d).

(x) Scope of Airport Layout Plan Review and Approval Authority of Secretary

(1) AUTHORITY OVER PROJECTS ON LAND ACQUIRED WITHOUT FEDERAL ASSISTANCE.—For purposes of subsection (a)(16)(B), with respect to any project proposed on land acquired by an airport owner or operator without Federal assistance, the Secretary may review and approve or disapprove only the portions of the plan (or any subsequent revision to the plan) that—

(A) materially impact the safe and efficient operation of aircraft at, to, or from the airport;

(B) adversely affect the safety of people or property on the ground as a result of aircraft operations; or

(C) adversely affect the value of prior Federal investments to a significant extent.

(2) LIMITATION ON NON-AERONAUTICAL REVIEW.—

(A) IN GENERAL.—The Secretary may not require an airport to seek approval for (including in the submission of an airport layout plan), or directly or indirectly regulate or place conditions on (including through any grant assurance), any project that is not subject to paragraph (1).

(B) REVIEW AND APPROVAL AUTHORITY.—If only a portion of a project proposed by an airport owner or operator is subject to the review and approval of the Secretary under subsection (a)(16)(B), the Secretary shall not extend review and approval authority to other non-aeronautical portions of the project.

(3) NOTICE.—

(A) IN GENERAL.—An airport owner or operator shall submit to the Secretary a notice of intent to proceed with a proposed project (or a portion thereof) that is outside of the review and approval authority of the Secretary, as described in this subsection, if the project was not on the most recently submitted airport layout plan of the airport.

(B) FAILURE TO OBJECT.—If not later than 45 days after receiving the notice of intent described in subparagraph (A), the Secretary fails to object to such notice, the proposed project (or portion thereof) shall be deemed as being outside the scope of the review and approval authority of the Secretary under subsection (a)(16)(B).

Appendix B – ALP Review Flow Chart

