

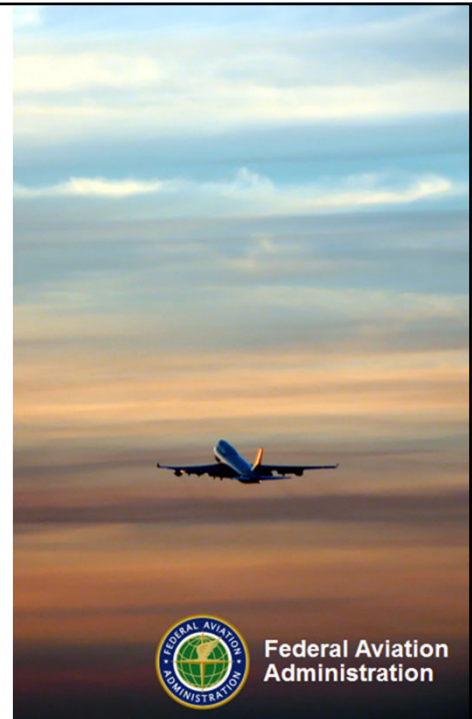
# Keeping your Airport Compliant

## Land Use

**Presented to:** Minnesota Airports Conference

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## Overview

- Land Use Change Policy
- Land Use Definitions
- Lease Agreements



## Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land

- Draft Policy issued September 2022 for comment.
- Final Policy issued December 2023 (88 Fed. Reg. 85474, 12/08/2023), effective January 2024.
- Purpose:
  - Ensure land is available for aviation needs,
  - Protect for new aviation entrants,
  - Balance protection for future aviation need and providing non-aeronautical revenue generation in the interim.



## Land Use Change Policy– Key Changes

- Clarified definitions
- Release of Federal obligations is reserved for when land is to be sold or conveyed.
- Removes Concurrent/Interim Use Approval language.
- Allows non-aeronautical use beyond 3-5 years without a release of Federal obligations.



## Land Use Definitions

- *Aeronautical Use:* 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 to the movement of passengers, baggage, mail, and cargo at the airport.
  - Land on which an aeronautical activity takes place is by its nature aeronautical use (drop zone, apron, hangar, etc.).



## Land Use Definitions

- *Airport Purpose:* Uses of land that are (1) directly related to the operation or foreseeable aeronautical development of a public airport and (2) whose nonaeronautical components do not conflict with existing or foreseeable aeronautical needs/demands.
  - Primary aeronautical facility has some nonaeronautical components that support the core aeronautical function of the facility.
  - Examples include: Terminal complex; FBO facility with parking and classrooms; Passenger and Employee Parking; Service Roads; Truck parking for air cargo processing facilities when directly related to moving inbound and outbound air cargo on and off the airport.



## Land Use Definitions

- *Non-Aeronautical Use:* All other uses that are not considered aeronautical or airport purpose.
  - Car Rental Facilities (stand-alone);
  - Hotel;
  - Warehouse and Distribution Centers;
  - Parking associated with nonaeronautical uses (hotel parking, warehouse and distribution center, car rental)
- These uses do not have the priority or protection of the grant assurances.



## Land Use Definitions

- *Mixed Use:* A mixed-use facility contains both aeronautical and non-aeronautical uses, but the non-aeronautical use could be located off airport property.
  - Mail distribution centers connected to an air cargo operation;
  - Cargo operations where the primary purpose goes beyond air cargo processing facilities and expands into non-aeronautical elements such as office building complexes, sorting facilities, long-term storage/warehousing, etc.;
  - Aircraft manufacturing that includes final assembly, but also significant non-aeronautical uses such as engineering, research and development, parts manufacturing, storage, and office buildings.



## Land Use Change Policy

- Federally conveyed or federally acquired land must be used for airport purposes unless the FAA approves or consents to a change in land use.
- The Policy applies to all requests for land use changes on federally acquired or federally conveyed land, as well as when a land use change impacts the safety and efficient operation of aircraft or the safety of people and property on the ground related to aircraft operations.



## Land Use Change Policy

- If the proposal serves an Aeronautical Use or Airport Purpose FAA approval/consent is **not** required.
- FAA must approve/consent to **all** Non-Aeronautical or Mixed Use of airport property.
- Update to Exhibit A.



## Land Use Change Policy - Request

- Land Use Change requests must include:
  - Identification of the property and documentation on how the land was acquired;
  - Current use of the property;
  - Current and future aeronautical demand of the airport and the property;
  - Proposed use of the property, including the anticipated length of the use.



## Land Use Change Policy - Decision

- FAA will issue a letter of approval or letter of consent for the proposed use or deny the request.
- The letter of approval/consent will:
  - Outline any conditions;
  - Identify the duration of the approval/consent;
  - Require that the land be available for aeronautical use at the end of the approval/consent period;
  - Explain that it does not affect or negate a Sponsor's federal obligations;
  - Require an update to the Exhibit A.



## Land Use Change Policy – Comments/Responses

- Will FAA review all leases?
  - FAA does not approve leases.
- How long will an FAA approval be good for?
  - May be for the duration of use.
- Will past decisions be grandfathered?
  - Not retroactive.
- How does the policy relate to Section 163?
  - The policy only applies after a determination has been made that the FAA retains land use authority.
- Does the policy apply to Noise Land?
  - No



## Protecting your Airport Through Lease Agreements

- Including the appropriate terms and conditions in airport leases or agreements help an Airport Sponsor remain in compliance with their Federal Grant Obligations.
- Airport lease agreements usually grant one or more of the three following basic rights or privileges:
  - Right to use to the airfield and public airport facilities;
  - Right to occupy as a tenant and use certain designated premises exclusively;
  - Commercial privilege to offer goods and services to airport users.



## Protecting your Airport Through Lease Agreements

Most important articles of a lease:

- **Premises**

- Clearly define the leasehold by legal description or attaching a drawing to the agreement.
- Consider whether the size reflects the tenant's needs (including parking, ingress/egress, facilities, fixtures, local ordinance requirements, etc.)
- Ensure the leasehold depicted is consistent with the current/proposed development on the ALP.

- **Rights and Obligations**

- Ensure the lease clearly states the purpose of the lease.
- Ensure the lease does not grant an explicit or implied exclusive right to conduct a business or activity on the airport.
- Detail if any uses in the lease require airport sponsor approval.



## Protecting your Airport Through Lease Agreements

Most important articles of a lease:

- **Term**

- Include a term that is reasonably necessary to amortize a tenant's investment.
- Clearly define which party controls the option to exercise any options/extensions.
- Do not include multiple options/renewals to the term with no increased compensation to the sponsor.

- **Payment of Fees to the Sponsor**

- Asses the tenant rent for leasing airport property and/or facilities and a concession fee if the tenant provides products or services to aeronautical users.
- Ensure the rates are reasonable and not unjustly discriminatory.
- Include periodic adjustment of rent.
- Must include FMV for any non-aeronautical use.





## Protecting your Airport Through Lease Agreements

Most important articles of a lease:

- **Title**
  - Clearly define what happens to the tenant facilities and improvements at the end of the lease.
  - Lease extensions/options should include added facility rent once the title of the facilities vests in the Sponsor.
- **Subordination**
  - The lease should be subordinate to the Sponsor's federal obligations.
- **Assignment and Subletting**
  - The Sponsor should include the right to approve, in advance, any assignment or sublease by the tenant.



## Protecting your Airport Through Lease Agreements

Most important articles of a lease:

- **Services to the Public:**
  - Include Nondiscrimination Provisions
- **Maintenance**
  - Clearly define the maintenance obligations of each party.
- **Local Requirements**
  - Include requirements to follow local rules and regulations at the airport as well as any municipal ordinances or building and fire codes.



## Protecting your Airport Through Lease Agreements

Most important articles of a lease:

- **Compatibility**
  - Require any development/improvement to be compatible with airport operations.
- **Other**
  - Ensure the right to mortgage the lease is limited to the leasehold rights and prohibits the mortgaging of airport property.
  - Define what constitutes a breach of the agreement, provide an opportunity to cure, and include the explicit ability to terminate the lease for uncured breaches.
  - If development will occur, include a development schedule and include penalties or ability to take back land if the tenant fails to construct improvements under the terms.



## Questions?

