

MEMO

Date: June 9, 2022

To: Rudy Rudolph, Port of Olympia

From: Leah Whitfield, The Aviation Planning Group (APG)

Re: FAA Land Release Research

Background

The Port of Olympia is considering the potential release of land for a non-aeronautical land use project, of non-aeronautical property which was Federally deeded surplus land. The property has historically been used for a hotel. APG was retained by the Port to research other airport's land disposal and next steps.

FAA's Authority to Regulate Land Use

The parcel was conveyed to the Port of Olympia in October 1963 through the Federal Surplus Act. The proposed project will require a release of obligations associated with the parcel. Therefore, under Section 163(b) of the Act, the FAA has the legal authority to approve or disapprove the proposed disposal of AIP funded property. A release request in accordance with FAA Order 5190, Chapter 22 is required.

Research

To further the understanding of recent and past land release outcomes at airports in the FAA's Northwest Mountain Region and other regions across the nation, a request for information on land release process experiences was posted to the American Association of Airport Executives (AAAE) member hub forum and the Washington Aviation Management Association (WAMA) membership email list.

The AAAE request generated seven responses from airport management staff that had worked through the land release process and their individual experiences. The ultimate outcome varied for each airport, but was tied specifically to the airport's ability to demonstrate that the property to be released were not conducive for aircraft operations and aeronautical use. The properties released were found to be more appropriately used for other non-aeronautical uses, and posed no use or expectation of use for aeronautical activities now or in the future. Land swaps were commonly utilized among the airports that responded, where land that was to be released was traded for land that could be utilized for aeronautical activity by the airport. Ultimately, the airports proved the benefit from the release of the land equated to the fair market value of the land in order to outline a successful argument for release.

One airport reached out following the request via WAMA's membership list. Orcas Island recently disposed of a parcel of land to the local sewer district. It was a small parcel of land that was not needed for aeronautical purposes. The Port of Orcas required the sewer district to pay all costs associated with the sale of the land. It was suggested that APG speak with Spokane International Airport, however information to date has not been collected regarding their disposal of land. From APG's research the process typically took in excess of 12 months, with some land disposals taking greater than three years for the entire process.

APG is currently assisting the City of Cheyenne and Cheyenne Regional Airport with the Section 163 process to eventually release three parcels, two parcels will be transferred to the city and one will require release from aeronautical land for an easement to the city for a pathway. The two parcels to be transferred to the city are not needed for aeronautical purposes, but were deeded from the Surplus Property Act of 1946.

Section 163

When a sponsor submits an ALP change; requests a change in land use from aeronautical to non-aeronautical; or requests to dispose of airport-owned land, the Federal Aviation Administration (FAA) must determine whether the proposal is subject to the agency's approval authority, as defined/limited by Section 163. This determination involves a two-step process. In order to ensure the FAA exercises its regulatory authority consistent with the statutory constraints, the FAA must separately examine and reach a determination regarding its authority under both steps outlined in these instructions. The first step is to determine if FAA has ALP approval authority (under section 163(d)). The second step is to determine how the land was acquired (and therefore if a release of obligations may be required (under section 163(a)).

Recent changes in federal law have required the 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.

Applicability of the National Environmental Policy Act (NEPA)

As a result of the FAA's requirement to approve the disposal of property, OLM will be required to perform an appropriate environmental review consistent with National Environmental Policy Act (NEPA). FAA Order 1050.1F provides the FAA's policies and procedures to ensure agency compliance with the NEPA. The following excerpt pertains to this disposal request.

Section 5-6.1. Categorical Exclusions for Administrative/General Actions

(b.) Release of an airport sponsor from Federal obligations incurred when the sponsor accepted: (1) an Airport Improvement Grant; or (2) Federal surplus property for airport purposes. (NOTE: FAA consent to long-term leases (i.e., those exceeding 20 years) converting airport-dedicated property to non-aeronautical, revenue-producing purposes (e.g., convenience concessions such as food or personal services) has the same effect as a release and is part of this CATEX provided that the proposed and reasonably foreseeable uses of the property do not trigger extraordinary circumstances as described in Paragraph 5-2, Extraordinary Circumstances).

Since the parcel would be released from Federal obligations an Environmental Site Assessment (ESA) is not necessary.

A review of the regulations and extraordinary circumstances indicates a Categorical Exclusion (CATEX) would be required. The Port would need to work with the FAA Seattle Airport District Office (ADO) regarding appropriate compliance with NEPA.

Sponsor Obligations Still in Effect

As a reminder, Section 163 requires the airport 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 airport must also ensure that all revenues generated as a result of this release must comply with the revenue use policy and FAA Order 5190, Chapter 22.

All of the airport sponsor's federal statutory and grant assurance obligations remain in full force and effect. Accordingly, the airport will retain sufficient authority over the parcel to prevent uses that conflict with its federal obligations and related requirements or create conditions resulting in violations

of the assurances. Subordination clauses or other restrictions may be appropriate. The FAA may verify compliance with these requirements through a financial compliance review, the enforcement of grant assurances, or other enforcement mechanisms.

Stormwater Practices

The Port's property is covered by a Municipal General Stormwater Permit, issued by the Department of Ecology as part of the National Pollution Discharge Elimination System (NPDES) program. The City of Tumwater has a Drainage Design and Erosion Control Manual: Volume I –Minimum Technical Requirements and Site Planning dated January 2018 which establishes requirements and provides guidance for managing the quantity and quality of stormwater runoff produced by development and redevelopment in the City of Tumwater. The manual is intended to comply with the NPDES Phase II permit issued to the City of Tumwater.

The goal of the permits is to implement and maintain best management practices (BMP's) that identify, reduce, eliminate and/or prevent the discharge of specific stormwater pollutants into surface water. The Port accomplishes these goals by complying with its Stormwater Management Program (SWMP, for the municipal general permit) and Stormwater Pollution Prevention Plan (SWPPP, for the industrial general permit).

If the parcel is disposed of and redeveloped the new owner will be responsible to comply with the manual's redevelopment requirements.

Zoning and Land Use Designation

The parcel is located within the City of Tumwater and is designated as Airport Related Industrial (ARI). ARI is defined as follows in the Tumwater City Plan 2036 Land Use Element (2016 Update/Adopted December 20, 2016, Amended November 2, 2020, O2020-002):

The Airport Related Industrial designation is meant to support aviation and industrial related uses at the Olympia Regional Airport and to reflect the unique land use activities of the Airport and associated areas. The Airport Related Industrial designation will support the land use activities permitted in the existing Airport Related Industry zone and discourage incompatible uses and heights. The current zoning does not support residential use and it is important to consider if City of Tumwater and the Port are willing to revise the zoning to a residential designation identified in Table 6 from the Tumwater City Plan 2036 as shown.

Table 6. Range of Dwelling Units per Acre by Land Use Designation and Zone District

Land Use Designation	Implementing Zone District	Dwelling Units Per Acre
Residential/Sensitive Resource	• Residential/Sensitive Resource	2-4 Dwelling Units/Acre
Single Family Low Density	• Single Family Low Density	4-7 Dwelling Units/Acre
Single Family Medium Density	• Single Family Medium Density	6-9 Dwelling Units/Acre
Multi-Family Medium Density	• Multi-Family Medium Density	9-15 Dwelling Units/Acre*
Multi-Family High Density	• Multi-Family High Density	14-29 Dwelling Units/Acre**
Manufactured Home Park	• Manufactured Home Park	6-9 Dwelling Units/Acre
Mixed Use	• Mixed Use	Minimum 14 Dwelling Units/Acre

Source: Tumwater City Plan 2036

Conclusion and Next Steps

The Section 163 and NEPA process will be easily accomplished. The challenges will be within the next steps of the land release or disposal process. Next steps are included as Attachment 1 to this memo. In summary the process follows FAA Order 5190.6B in preparing the request for land disposal and includes basic information for why the release is being requested, justification of why it is not needed for current or future aviation needs, a fair market value assessment, a financial analysis, and a description of any intangible benefits the airport will realize from the release.

Based on our research and assessment the most significant challenge is the financial justification of selling the property versus the Port retaining the property and receiving long-term lease revenue. For example, while we have not done an appraisal to determine the fair market value of the property it is possible that the long-term lease revenues that the Port will receive if the property is retained is of higher value than selling the property outright.

Another challenge is the existing land use designation of airport related industrial (ARI) is not compatible with residential use. It will be important to work with City staff to resolve the land use designation prior to release of the property.

The entire process could take 12 months or longer to complete. The Seattle Airport District Office staff are very busy with recent infrastructure grant funding responsibilities and may not have the capacity to review the land release right away. Typically, FAA requests 90 days to review documents.

Attachment 1 – Next Steps Summary

The Port is required to follow FAA Order 5190.6B in preparing the request for land disposal. The basic steps of that Order are as follows:

1. **Submit the following information:**
 - a. All obligating agreement(s) with the United States.
 - b. The type of release or modification requested.
 - c. Reasons for requesting the release, modification, reformation or amendment.
 - d. The expected use or disposition of the property or facilities.
 - e. The facts and circumstances that justify the request.
 - f. The requirements of state or local law, which the Airport District Office (ADO) or regional office will include in the language of the approval document if it consents to, or grants, the request.
 - g. The involved property or facilities.
 - h. A description of how the sponsor acquired or obtained the property.
 - i. The present condition and present use of any property or facilities involved.
2. **A description of why the parcel is not needed for the present and foreseeable needs of the airport and why the property release will not adversely affect the development, improvement, operation, or maintenance of the airport.**
3. **A fair market value (FMV) assessment.** The Consultant shall use a licensed appraiser to conduct an appraisal for the land for its highest and best use. The appraisal will be conducted following Chapter 2, page 22-13, of FAA Order 5190.6B and Compliance Guidance Letter 2018-3, Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property, which further defines the process for establishing FMV for airport property proposed for disposal.
4. **A financial analysis.** The Consultant shall calculate the anticipated proceeds expected from the disposal of the property and document the expected use of the Revenues derived. The Consultant shall prepare a comparison of the relative advantage or benefit to the airport from the sale of the Property as opposed to retention for rental income.
5. **A description of any intangible benefits the airport will realize from the release.** The Consultant will identify any intangible benefits to the airport accruing from the release, the amount attributed to the intangible benefits, and the merit of applying the intangible benefits as an offset against the fair market value of the property to be released. NOTE: Only benefits to the Airport may be cited as justification for the release, whether tangible or intangible. The non-aviation interest of the Port or the local community – such as making land available for economic development – does not constitute an airport benefit that can be considered in justifying a release and disposal.

Once this request is submitted to the FAA it could take six to twelve months for the FAA to approve or deny a release of the property. Then the NEPA process must be followed, including a Categorical Exclusion. Other concerns include:

- An agreement for access and road maintenance will be needed to access the property.
- Execution of a purchase and sale agreement.
- A close out report and update to the Airport Layout Plan's Exhibit A.