



Non-Aeronautical
Development and
the Section 163
Process

**67th Wisconsin Aviation
Conference**

September 21, 2023

Flight Plan

- What is non-aeronautical development?
- What is Section 163?
- Section 163 determination requests
 - When is a request needed?
 - What is needed in a request?
 - What you can expect from a determination decision
- Process to evaluate and implement non-aeronautical development opportunities
- Questions

Form Approved OMB No. 2120-0026

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION		(FAA USE ONLY) <input type="checkbox"/> PILOT BRIEFING <input type="checkbox"/> VNR		TIME STARTED	SPECIALIST INITIALS
FLIGHT PLAN					
1. TYPE	2. AIRCRAFT IDENTIFICATION	3. AIRCRAFT TYPE / SPECIAL EQUIPMENT	4. TRUE AIRSPEED	5. DEPARTURE POINT	7. CRUISING ALTITUDE
<input type="checkbox"/> VFR					
<input type="checkbox"/> IFR					
<input type="checkbox"/> DVFR			KTS		
6. ROUTE OF FLIGHT					
9. DESTINATION (Name of airport and city)		10. EST. TIME ENROUTE		11. REMARKS	
		HOURS MINUTES			
12. FUEL ON BOARD		13. ALTERNATE AIRPORT(S)		14. PILOT'S NAME, ADDRESS & TELEPHONE NUMBER & AIRCRAFT HOME BASE	
HOURS MINUTES					
				15. NUMBER ABOARD	
				17. DESTINATION CONTACT/TELEPHONE (OPTIONAL)	
16. COLOR OF AIRCRAFT		<small>CIVIL AIRCRAFT PILOTS: FAR Part 91 requires you file an IFR flight plan to operate under instrument flight rules in controlled airspace. Failure to file could result in a civil penalty not to exceed \$1,000 for each violation (Section 901 of the Federal Aviation Act of 1958, as amended). Filing of a VFR flight plan is recommended as a good operating practice. See also Part 99 for requirements concerning DVFR flight plans.</small>			
		<small>FAA Form 7233-1 (8-82) Electronic Version (Adobe)</small>			

CLOSE VFR FLIGHT PLAN WITH _____ FSS ON ARRIVAL

What is Non-Aeronautical Development?

- Any on-airport development that doesn't require access to the airfield
- Examples:
 - Business parks
 - Warehouses
 - Rental car facilities
 - Hotels / gas stations
 - Bicycle trails / walking paths / parks
 - Agriculture uses



What is Section 163?

- From FAA Reauthorization Act of 2018
 - Limit's FAA authority to “directly or indirectly regulate” non-aeronautical property transitions, except:
 - To ensure safe & efficient operation of aircraft or safety of people and property
 - To ensure fair market value for the use or disposal of property
 - Where property was purchased with AIP grants or is subject to Surplus Property Act
- Limits FAA's authority to review & approve ALP amendments to those that:
 - “Materially impact” safety and efficiency for aircraft operations
 - “Adversely affect value of prior Federal investments to a significant extent”

When is Section 163 Applicable?

- Prior to planning of **ALL** development at an airport
 - Includes airside **AND** landside development
 - FAA typically conducts Section 163 applicability determination for airside projects
- Sponsor typically asked to lead Section 163 applicability determination for landside projects
- Section 163 determination requested needed **even if** **Section 163 applicability is known**

How to Prepare a Section 163 Determination Request

- What you'll need:
 - Brief description of project and reason for its need
 - Sketch of site design / location of the proposed development
 - How the project will be funded
 - How the land selected for the development was originally acquired by the airport (provide support documentation i.e. ALP Exhibit 'A' or deed)
 - Indication if airport is a federally obligated airport
 - Any additional support documentation

Example

- Example Section 163 Determination Request letter
- Typically sent to FAA / Bureau of Aeronautics

September 21, 2023

Federal Aviation Administration
Airports District Office

Subject: Section 163 Determination Request

Dear FAA ADO:

The Airport requests the assistance of the Federal Aviation Administration (FAA) Airports District Office (ADO) in determining the applicability of Section 163 for planned improvements to the airport. As illustrated in **Attachment A**, the project will improve a feature on the landside.

This project will be funded by a private developer and will not use Federal funds. Additionally, the area where the project is to occur is identified on the Airport Layout Plan (ALP) within a designated non-aeronautical development area.

The location of this project is on land that was originally purchased by Airport Improvement Program (AIP) funds (Grant # X-XX-XXX-XXXX) which is designated on the Exhibit A property map presented as **Attachment B**. The Airport is also a federally obligated airport, having accepted federal funding for numerous past infrastructure improvement projects.

We are requesting a Section 163 determination by the FAA to understand the actions necessary to move forward with this project. Specifically, we are looking for clarification on the need for National Environmental Policy Act (NEPA) review and the type of review, if deemed necessary, as well as the need for Airport Layout Plan (ALP) documentation. Please let us know if we can provide any additional supporting documentation to assist in your determination of the applicability of Section 163 for this project.

Sincerely,
Airport Manager
Enclosures

FAA Section 163 Applicability Determination

- What you can expect in response FAA letter:
 - FAA's understanding of proposed development
 - Summary that defines Section 163
 - Determination(s) regarding
 - ALP
 - Land release request
 - Applicability of NEPA
 - Airspace determination
 - Appraisal for Fair Market Value determination
 - Reminder of Sponsor obligations



Wisconsin Section 163 Applicability Determination

- Example of WI State Block Grant Section 163 BOA determination letter



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Investment Management
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Secretary Craig Thompson
wisconsindot.gov
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October 22, 2022

FEDERAL AVIATION ADMINISTRATION
ATTN: (Insert ADO PM name here - Chad, Elias, or Christina)
2300 EAST DEVON AVENUE
DES PLAINES, IL 60018

WI STATE BLOCK GRANT SECTION 163 RECOMMENDATION
(Airport Name and Project Description)
(Project ID, if known)

Dear (Insert ADO PM name):

Below is a Section 163 recommendation for the subject project, as depicted on the enclosed project map. BOA has recommended that the FAA (has or does not have) ALP approval over this project. This determination was made using the following information:

Zone 1 and 2 screening: the project (has or does not have) and effect on one or more of the following areas:

AREA OF INTEREST:	YES	NO
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)		
Any Runway and Taxiway Safety Areas, Object Clearing Areas, Object Free Area, or Obstacle Free Zone		
Runway Visibility Zones		
Runway Protection Zones		
Commercial Space Development		
Navigational Aid critical areas		
Approach and departure surfaces, instrument procedures, or ATCT line of sight		

(if the project is to request a non-aeronautical use of property or land release, please include the section below, otherwise delete Zone 3)

Zone 3 screening: the project (has or does not have) and effect on one or more of the following areas (land files are on record with the Wisconsin Bureau of Aeronautics to substantiate the below items):

AREA OF INTEREST:	YES	NO
Is the land sponsor-acquired without federal funding?		
Was the land acquired with AIP or was it Surplus Property?		
Was the land acquired with ADAP, FAAP, AP4?		
Was the land acquired with PFC funding?		

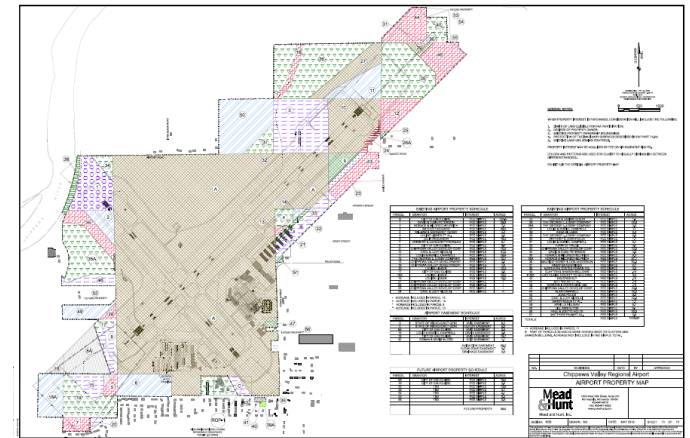
The Wisconsin Bureau of Aeronautics is requesting concurrence with the above recommendation for FAA ALP approval authority regarding Section 163.

Sincerely,

Bureau of Aeronautics, 4822 Madison Yards Way, 5th Floor South, Madison, WI 53705

Non-Aeronautical Development Planning Considerations

- Federally obligated airports
 - Grant assurances
 - Federal surplus property
- Location of proposed development
 - Is development shown on ALP?
 - Will it impact air operations?
 - Does it infringe on airport design surfaces?



Other Considerations

- Cost to airport
- Site prep
- Land ownership / lease structure
- Airport control of non-compatible land uses
- Zoning / local property laws
- Insurance
- Liability



Use Your Wingmen (Partners)!

- Partners in Non-Aeronautical development
 - Local / regional / State economic development entities
 - Private developers
 - State / Federal agencies
 - USDA Rural Development
 - Elected officials



Process to Implement Non-Aeronautical Development

- Airport self-assessment
- Site evaluation
- Implementation



Airport Self Assessment

<ul style="list-style-type: none">• Airport Ownership	<ul style="list-style-type: none">• Business Trends and Projections
<ul style="list-style-type: none">• Management Structure/Reporting	<ul style="list-style-type: none">• Airport Strategic Business Plan/Budgeting Process
<ul style="list-style-type: none">• FAA Grant Obligations	<ul style="list-style-type: none">• Risk Tolerance for Development Projects
<ul style="list-style-type: none">• Airport Layout Plan and Master Plan	<ul style="list-style-type: none">• Development Goals
<ul style="list-style-type: none">• Funds for Development	<ul style="list-style-type: none">• Community Context
<ul style="list-style-type: none">• Airport Business Segments	<ul style="list-style-type: none">• Important Conclusions
<ul style="list-style-type: none">• Dominant Industry or Company	

Site Evaluation

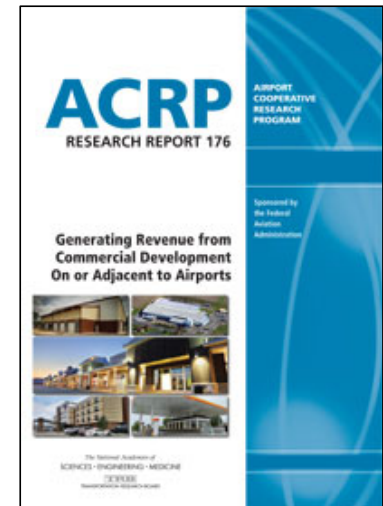
<ul style="list-style-type: none">• Airport Layout Plan (ALP) Status (With or Without Airport Master Plan)	<ul style="list-style-type: none">• Surrounding Land Use
<ul style="list-style-type: none">• Land Availability	<ul style="list-style-type: none">• Regulatory Constraints/Permitting
<ul style="list-style-type: none">• Location and Access	<ul style="list-style-type: none">• Market Conditions
<ul style="list-style-type: none">• Infrastructure – Sanitary Sewer Systems	<ul style="list-style-type: none">• Workforce Attraction
<ul style="list-style-type: none">• Infrastructure – Stormwater Systems	<ul style="list-style-type: none">• Local/Regional Context
<ul style="list-style-type: none">• Infrastructure – Power/Telecom	<ul style="list-style-type: none">• Development Incentive Programs

Implementation

<ul style="list-style-type: none">• Preliminary Development Plan	<ul style="list-style-type: none">• Outreach Portfolio
<ul style="list-style-type: none">• Project Hard Costs	<ul style="list-style-type: none">• Revealing Project Plans to the Public
<ul style="list-style-type: none">• Project Soft Costs	<ul style="list-style-type: none">• Permits and Approvals (in two parts)
<ul style="list-style-type: none">• Funding Sources and Typical Revenue Opportunities	<ul style="list-style-type: none">• Project Team Components
<ul style="list-style-type: none">• Miscellaneous Revenue	<ul style="list-style-type: none">• Incentives
<ul style="list-style-type: none">• Development Program Refinement	<ul style="list-style-type: none">• Funding and Financing
<ul style="list-style-type: none">• Internal Project Management Structure	<ul style="list-style-type: none">• Development and Partnership Strategies
<ul style="list-style-type: none">• Community Outreach Strategy	<ul style="list-style-type: none">• Marketing
<ul style="list-style-type: none">• Identifying Stakeholders	<ul style="list-style-type: none">• Construction/Property Management
<ul style="list-style-type: none">• Creating a Message	

Key Resources

- ACRP Report 176
 - Generating Revenue from Commercial Development On or Adjacent to Airports
 - <http://www.trb.org/Publications/Blurbs/176413.aspx>
- FAA Grant Assurances
 - #4 – Good Title
 - #5 – Preserving Rights and Powers
 - #21 – Compatible Land Use
 - #25 – Airport Revenues
 - #29 – Airport Layout Plan / Exhibit 'A'
 - #31 – Disposal of Land
- FAA Order 5190.6B
 - Airport Compliance Manual, Chapter 22
- FAA Policy and Procedures Memo 5190.6
 - Guidance for Leases, Use Agreements, and Land Releases



Conclusion – Section 163 Determination Requests

- Needed prior to planning
- Could take months for determination response
 - Indicate timing needed in request determination, if necessary
- Compile information needed with supporting documents for request
- Have site idea finalized prior to making request
- Even if Section 163 is found to apply, will still need to follow local, state, and federal regulatory processes
 - Example: Environmental laws
 - Wetland permits
 - Migratory bird laws
 - Endangered species

Conclusion – Non-Aeronautical Development

- Thoroughly assess considerations prior to planning
 - Location
 - Inclusion on ALP
 - Site prep
 - Ownership / lease mechanisms
 - Cost
 - Airport control of non-compatible land uses
 - Local laws, zoning, etc.
- Entire process often timely and unable to move at the speed of private development

Questions?



Thank you!