

Appendix A

Section 163 Determination



U.S. Department
of Transportation
**Federal Aviation
Administration**

Eastern Region Airports Division

1 Aviation Plaza
Jamaica, NY 11434-4809
(718) 553-3330 (office)

August 9, 2022

Mr. Ryan Meyer
Director of Planning and Programming
Lehigh-Northampton Airport Authority
3311 Airport Road
Allentown, PA 18109

Subject: Determination of Federal Aviation Administration (FAA) Approval Authority – North Cargo Facility, Lehigh Valley International Airport (ABE), Allentown, PA

Dear Mr. Meyer:

This determination outlines FAA approval authority for the North Cargo Facility at ABE, as depicted on the enclosed project sketch, Airport Layout Plan (ALP), and Exhibit "A" Airport Property Map.

Background

Federal law requires the FAA to determine if the agency has approval authority for certain airport projects. The FAA Reauthorization Act of 2018 (P.L. 115-254) was signed into law on October 5, 2018. In general, Section 163(a) of the Act focuses the FAA's approval authority on the following areas:

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 FMV 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 on Passenger Facility Charges (PFC).

In addition, Section 163(c) preserves the statutory revenue use restrictions on 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.

The law limits FAA authority to directly or indirectly regulate an airport operator's transfer or disposal of certain types of airport land. Section 163(d) of the Act also limits FAA's review and approval authority for ALPs to those portions of ALPs, or ALP updates or 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.

Proposed Project

The proposed project is to develop ABE's North Cargo Facility. The development is located on the north side of the airfield and south of Race Street. The project area is considered aeronautical on the enclosed ALP and will remain aeronautical. You indicated the project would be funded with Federal, State and local funding.

Following are the major components of the proposed project:

- Cargo building (40' high)
- Aircraft parking apron
- Parallel Taxiway D and connectors
- Access road
- Truck docks
- Employee parking
- Truck staging area

FAA Determination on the Airport Layout Plan

For the purpose of determining whether the proposed project requires FAA ALP approval, we have made the following determinations:

1. Because portions of the proposed development may have a material impact on aircraft operations, at, to, or from the airport and may affect the safety of people and property on the ground adjacent to the airport as a result of aircraft operations, FAA retains authority to approve or disapprove the following changes to the ALP:
 - Aircraft parking apron
 - Parallel Taxiway D and connectors
2. Because the remaining portions of proposed development would have no material impact on aircraft operations at, to, or from the airport, would not affect the safety of people and property on the ground adjacent to the airport as a result of aircraft operations, and would not have an adverse effect on the value of prior Federal investments to a significant extent, the FAA does not have authority to approve or disapprove changes to the ALP for the following project components:
 - Cargo building
 - Access road
 - Truck docks
 - Employee parking
 - Truck staging area

FAA Authority to Regulate Land Use

The area for the project covers multiple airport parcels acquired with local funds. The parcels are B-1, B1a, B1b, B-1c, B-1d, B-1e, B-1f and I-49. The parcels are shown on the enclosed Exhibit "A."

The parcels for the following project components were acquired with local funding, without federal assistance, and these components of the proposed project will not impact the safe and efficient operation of aircraft, or safety of people and property on the ground related to aircraft operations. Therefore, FAA does not have authority to regulate the use of the land associated with these components of the proposed project:

- Cargo building
- Access road
- Truck docks
- Employee parking
- Truck staging area

Because portions of the proposed project may affect the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations, the FAA has authority to regulate the use of the land associated with Aircraft Parking Apron and Parallel Taxiway D and Connectors. But because these portions of the proposed project are for aeronautical purposes, no change in land use is required. Therefore, FAA approval is not needed for the proposed uses of land associated with these projects:

- Aircraft parking apron
- Parallel Taxiway D and connectors

Project Funding Source(s)

The FAA has approval authority for any projects funded through the Airport Improvement Program (AIP), any other FAA-administered grant in aid program, and PFCs. In this case, FAA funding and/or PFCs are anticipated for portions of the project.

Applicability of the National Environmental Policy Act (NEPA)

The FAA's ALP approval authority for portions of the proposed project, and any other federal approvals associated with the project (such as funding under the AIP or PFCs), are federal actions subject to NEPA. Please contact Heather Davis-Jenkins, Environmental Specialist, Harrisburg Airports District Office (HAR-ADO) to coordinate the appropriate level of environmental review.

Sponsor Obligations Still In Effect

This determination only addresses FAA's approval authority for this project. It is not a determination that the project complies with the sponsor's federal grant assurances. This determination is based solely on the description of the project as currently conceived. If the location, height, or physical dimensions of the project as currently conceived materially change,

you must seek a new Section 163 determination for the revised project. To the extent that the exact height of the facilities proposed in the project remain unknown at this time, this determination is predicated on the understanding that the project will not impact any approach or departure surface and/or procedure, or otherwise interfere with the functionality of navigational aids or Air Traffic Control facilities. Similarly, if the nature of the proposed use of the subject property were to change (e.g., aeronautical use to non-aeronautical use or vice versa, aircraft hangar to cargo facility or vice versa) the sponsor is also required to seek a new Section 163 determination. The sponsor must comply with all of its Federal grant obligations, including but not limited to Grant Assurance #5, *Preserving Rights and Powers*; Grant Assurance #19, *Operation and Maintenance*; Grant Assurance #20, *Hazard Removal and Mitigation*; Grant Assurance #21, *Compatible Land Use*; and Grant Assurance #25 *Airport Revenue*.

Section 163 and Grant Assurance 25 require the airport sponsor 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 sponsor must ensure all revenue generated as a result of this project are only expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the airport, and which are directly and substantially related to the air transportation of passengers or property, or for noise mitigation purposes on or off the airport.

The sponsor is also responsible for complying with all federal, state, and local environmental laws and regulations.

Additionally, any development on this parcel is subject to airspace review under the requirements of 14 Code of Federal Regulations (CFR) Part 77, and Grant Assurance 29 requires the airport to update and maintain a current ALP. Please submit an updated ALP to Harrisburg ADO if the project is completed.

This is a preliminary determination. It does not constitute a final agency action or an "order issued by the Secretary of Transportation" under 49 U.S.C. § 46110.

For any questions, please contact Lori Langer, Community Planner, HAR-ADO at (717) 730-2839 or via email at lori.langer@faa.gov.

Sincerely,

David A. Fish
Director, Eastern Region Airports Division

Enclosures

Enclosure 2 – Airport Layout Plan (ALP)



