

New legal framework

FAA Reauthorization Act of 2018

Pub. L. 115-254, 131 Stat. 1129

One Hundred Fifteenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,
the third day of January, two thousand and eighteen*

An Act

To provide protections for certain sports medicine professionals, to reauthorize Federal aviation programs, to improve aircraft safety certification processes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “FAA Reauthorization Act of 2018”.



FAA Reauthorization Act 2018 – Section 163

- (a) The Secretary of Transportation may not directly or indirectly regulate—
- (1) the acquisition, use, lease, encumbrance, transfer, or disposal of land by an airport owner or operator;
 - (2) any facility upon such land; or
 - (3) any portion of such land or facility.



Section 163 - exceptions

- (b)[FAA may regulate for the purpose of] ensuring—
- (A) the **safe and efficient operation of aircraft or safety** of people and property on the ground related to aircraft operations;
 - (B) that an airport owner or operator receives not less than **fair market value** or
 - (C) that the airport pays not more than **fair market value**
- (2) any regulation imposed with respect to land or a facility **acquired or modified using Federal funding**; or
- (3) any authority contained in—
- (A) a Surplus Property Act instrument of transfer, or
 - (B) section 40117 of title 49, United States Code.



Section 163 – ALP approvals

(d) The Secretary will review and approve or disapprove **only those portions of the [ALP]** that materially impact the safe and efficient operation of aircraft . . . or that would adversely affect the safety of people or property on the ground adjacent to the airport . . . or that adversely affect the value of prior Federal investments to a significant extent



RDU Section 163 letter

Based upon: (1) information RDUAA has submitted to the FAA, and (2) a review of our records, including the current Exhibit “A” map and relevant property deeds, we have made the following determination:



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

Airports Division
Southern Region
Alabama, Florida, Georgia,
Kentucky, Mississippi, North Carolina,
South Carolina, Tennessee, U.S. Virgin Islands

1701 Columbia Ave.
College Park, GA 30337

April 29, 2019

Mr. Michael Landguth
President & CEO
Raleigh-Durham Airport Authority
1000 Trade Drive
P.O. Box 80001
RDU Airport, NC 27623

Re: Lease Agreement between RDUAA and Wake Stone Corp.

Dear Mr. Landguth:

This is a follow-up to the letter dated March 21, 2019, from James Lofton, FAA Assistant Chief Counsel, regarding the RDUAA mining lease (Lease) with the Wake Stone Corporation at the Raleigh Durham International Airport (RDU). The RDUAA lease agreement involves approximately 100 acres of airport property located 2.7 miles south of the RDU airport operations area to the Wake Stone Corporation. This parcel of land borders an existing, off-airport rock quarry operated by the lessee. The existing quarry is approximately 8,967 feet from the nearest aeronautical feature, and the quarry's expansion onto airport property, would be 8,822 feet from the nearest aeronautical feature. The existing, approved ALP currently designates this parcel for "Industrial/Quarry" use. The leasehold is comprised of land acquired by the RDUAA, with airport revenue, between 1972 and 1984.

The FAA's Determination Regarding the Lease

In our March 21 letter, we explained the limitations Section 163(a) of the 2018 FAA Reauthorization Act places on FAA's regulatory authority over: (1) the acquisition, use, lease, encumbrance, transfer, or disposal of land by an airport owner or operator; (2) any facility upon such land; or (3) any portion of such land or facility. We also explained the exceptions to those limitations.

Based on: (1) information RDUAA has submitted to the FAA, and (2) a review of our records, including the current Exhibit “A” map and relevant property deeds, we have made the following determination:



RDU Section 163 letter

The lease does not appear to adversely affect the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations;

No federal funding was used in the purchase of this parcel.

Therefore, the FAA will not require a release or other determination with respect to the lease.

Nevertheless, the FAA continues to have authority to ensure RDUAA receives not less than fair market value under the lease terms and the revenue received from the lease is used for the capital or operating costs of the airport....

- The lease does not appear to adversely affect the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations;
- No federal funding was used in the purchase of this parcel.

Therefore, the FAA will not require a release or other determination with respect to the lease.

Nevertheless, the FAA continues to have authority to ensure that RDUAA receives not less than fair market value under the lease terms and that the revenue received from the lease is used for the capital or operating costs of the airport, in accordance with 49 U.S.C. Sections 47107(b) and 47133. The FAA may verify compliance with these requirements through a financial compliance review, the enforcement of grant assurances, or other enforcement mechanisms at a later date.

Moreover, all of RDUAA's federal statutory and grant assurance obligations remain in effect concerning the parcel. This includes the obligation under Grant Assurance 29 to maintain a current ALP at all times. The FAA's review of the ALP indicates that the quarry as described in the lease is already reflected on the ALP. However, should the leaseholder seek future expansion of the quarry or other material revisions to the terms of the lease, then RDUAA should contact the FAA to assure any proposed revisions to the lease do not change any of the conclusions reached in this letter. RDUAA should retain sufficient authority over the parcel to prevent uses which 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.

Applicability of the National Environmental Policy Act (NEPA)

Because the FAA will not require a release or otherwise determine whether RDUAA properly entered into the lease, and the ALP already reflects the quarry as described in the lease, there is no FAA action subject to NEPA.

If you have further questions or need for clarification, please feel free to contact me at 404-305-6700.

Sincerely,



Steven Hicks
Director,
Office of Airports Southern Region

