

Non-Aeronautical Development in the Sec. 163 Environment

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Section 163(a): New Prohibition on Regulating Airport Property

- (a) ... except as provided in subsection (b), 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.



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Section 163(b): Exceptions

- (b) ... Subsection (a) does not apply to –
 - (1) any regulation 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 [**PFCs**]



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Section 163(c): Rules of Construction

(c) Rule of Construction –

Nothing in this section shall be construed to affect the applicability of [revenue use restrictions in] sections 47107(b) and 47133 ...



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Section 163(d): ALP Amendments

→ Changes to 49 U.S.C. 47107(a)(16)

(B) the Secretary will review and approve or disapprove only those portions of the plan and (or any subsequent revision or modification before to the plan, revision, or modification takes) that materially impact the safe and efficient operation of aircraft at, to, or from the airport or that would adversely affect the safety of people or property on the ground adjacent to the airport as a result of aircraft operations, or that adversely affect the value of prior Federal investments to a significant extent;



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What's New for (a)(16)(B)?

FAA may directly or indirectly regulate only if:

- Material impact to safe and efficient operation
- Adverse effect to safety
- Adverse effect to prior Federal investment

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or affect the
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Section 163(d): ALP Amendments

→ Changes to 49 U.S.C. 47107(a)(16)

- (C) ~~the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and~~ unless the alteration –
- (i) is **outside the scope of the Secretary's review and approval authority** as set forth in subparagraph (b); or
 - (ii) complies with the portions of the plan approved by the Secretary; and
- (D) when an alteration in the airport or its facility is made that is **within the scope of the Secretary's review and approval authority** as set forth in subparagraph (B), and does not conform to with the approved portions of the plan approved by the Secretary, and that the Secretary decides that the alteration adversely affects the safety, utility, or efficiency of aircraft operations, or of any property on or off the airport that is owned, leased, or financed by the Government, then the owner or operator will, if requested by the Secretary,
- (i) [eliminate the adverse effects]; or
 - (ii) [bear the costs of replacement/mitigation]



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Where is FAA's guidance?

Reauthorization Program Guidance Letter (R-PGL) 19-02, *Planning and Project Eligibility* (July 24, 2019).

- ➔ “[Section 163] will be addressed in a separate policy document, which is under development ...”
- ➔ “.. At this time, ARP is working with AGC to finalize programmatic guidance and updating existing guidance document to implement the entirety of this section [163].”
- ➔ “Until guidance is final, ROs and ADOs should forward actions/requests that may have Section 163 implications to APP-400 for review.”
- ➔ “[Until guidance is issued] upon receiving an updated ALP With revisions, ARP will consider whether it has authority to approve or disapprove the proposed changes and advise the airport sponsor accordingly”



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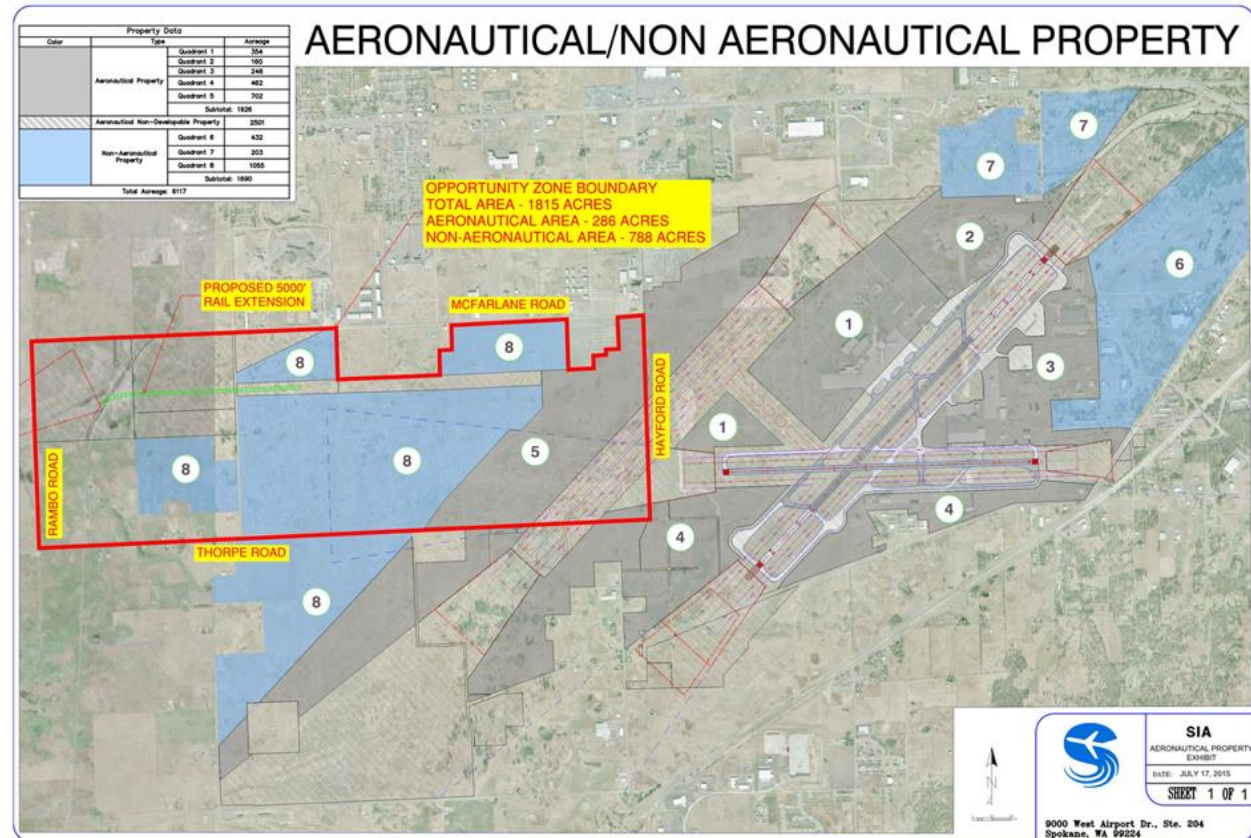
Expected Updates

- Grant Assurances
- AIP Handbook, FAA Order 5100.38D
- Airport Compliance Manual, FAA Order 5190.6B
- “separate policy document ... under development”

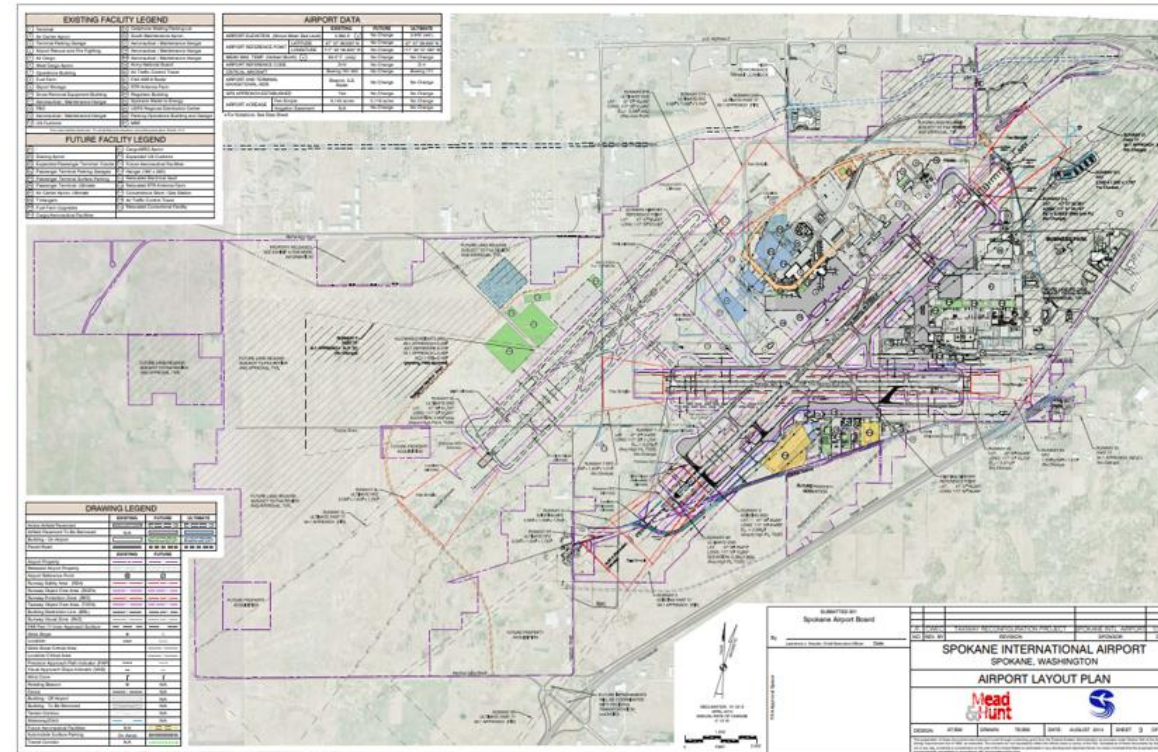


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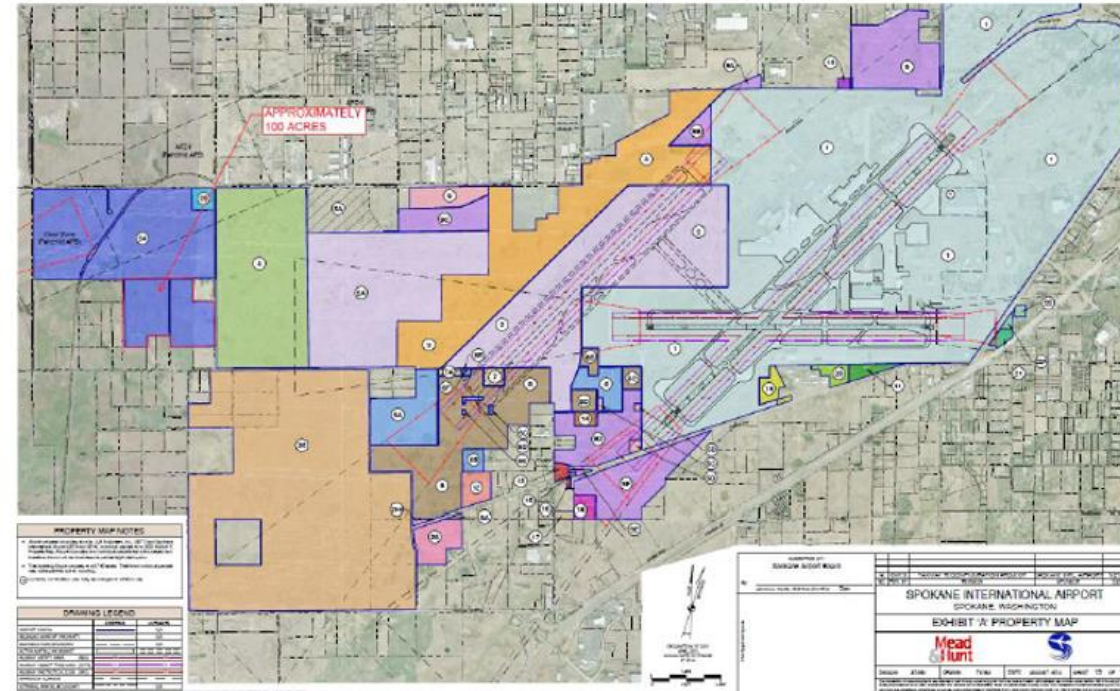
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Airport Layout Plan



Land Sale (@100 acres) to Central Sprague Realty, LLC
Land Sale (@30 acres) to AT Acquisitions, LLC





Proposed Land Sale to AT Acquisitions, LLC

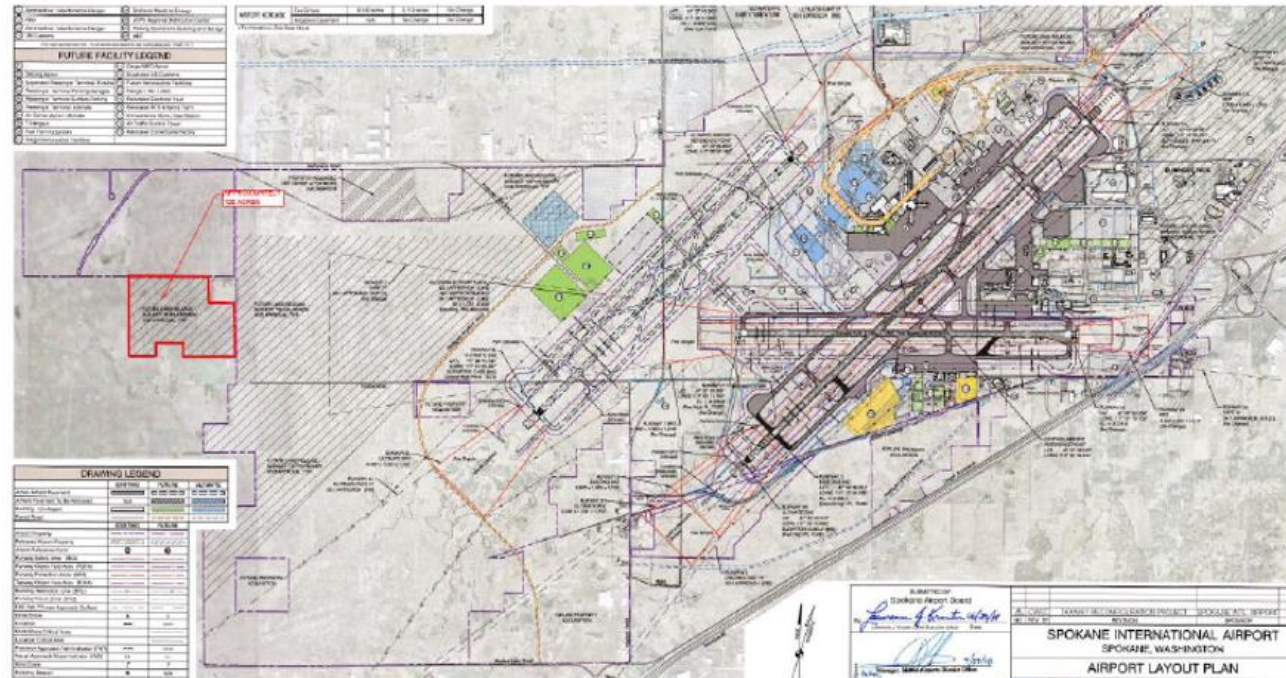
- AT Acquisitions interested in acquiring land located in an Opportunity Zone
- Proposed use is spec. warehouse/build to suit warehouse
- Expedited Schedule Requested due to OZ Regulations
- Airport Board approved Sale on 7/31/19
- Sale price is \$1.6M
- Land Disposal (under Section 163) Submittal made to FAA ADO on 8/12/19



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Land Sale (@100 acres) to Central Sprague Realty, LLC





Proposed Sale of Land (@100A) to Central Sprague Realty, LLC

- Sale Organized Into Two Transactions
 - 38.23A @ \$1,082,444.22
 - 63.50A @ \$1,797,939.00
- First transaction must close by 10/31/19
- Second transaction anticipated close by 12/31/19
- Airport Board approved Sale on 8/22/19
- Sale subject to City, County, FAA approvals
- Land Disposal submittal (under Section 163) made on 9/4/19



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