October 17, 2022

Filed electronically through www.regulations.gov
Docket number FAA-2022-1203

Ms. Lorraine Herson-Jones
Office of Airport Compliance and
Management Analysis
Federal Aviation Administration
United States Department of Transportation

RE: Comments on the Draft FAA Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land

Dear Ms. Herson-Jones:

I am writing on behalf of the Huntsville-Madison County Airport Authority ("HMCAA"), which owns and operates Huntsville International Airport – Carl T. Jones Field, a small hub airport located in Huntsville, Alabama, to submit comments regarding the above-referenced draft policy (the "Policy") proposed by the Federal Aviation Administration ("FAA"). Thank you for the opportunity to submit comments on this Policy.

INTRODUCTION

Nonaeronautical developments on airport property that are compatible with airport operations can be greatly beneficial to airports without displacing aeronautical uses or diminishing the safety, efficiency and utility of the airport. Many airport sponsors own federally acquired land that is reserved for long-term future development of the airport. There may be no anticipated aeronautical demand for the land for many years. Under these circumstances, it makes perfect sense for the airport sponsor to lease that land for a non-aeronautical, compatible use until such time as there is an aeronautical demand for the land. The interim revenue from these non-aeronautical leases helps the airport sponsor be financially self-sustaining. The Policy creates regulatory and administrative burdens that will significantly hamper airport sponsors' ability to compete for and win non-aeronautical developments.

FAA's primary concern with non-aeronautical development on airport property is to ensure that non-aeronautical uses will not displace aeronautical uses. While this is a legitimate concern, the Policy's time-consuming and burdensome approval process is not the best way to address it. For example, FAA's concerns can easily be addressed by a mandatory lease provision stating that the airport

sponsor can terminate the lease at any time if the property is needed for an airport purpose. In addition, rather than requiring approvals or consents every time there is a change in land use, the FAA could outline the circumstances under which non-aeronautical development is appropriate, and periodically audit airports to ensure compliance with those standards. Another option would be for the FAA to review and approve non-aeronautical uses as part of the Airport Layout Plan review and approval process.

1. Existing land uses should be grandfathered.

The Policy applies to land use changes on federally acquired or federally conveyed property. FAA's use of the word "changes" implies that the Policy will not require an airport sponsor to submit a request for approval or consent for an existing land use. This point could be clarified by an explicit statement in the Policy that such existing land uses will be grandfathered.

2. Airport sponsors should make the initial determination of which category applies to a particular land use.

The Policy states that federally acquired or conveyed land falls into one of four categories: (1) aeronautical, (2) airport purpose, (3) non-aeronautical, and (4) mixed use. The Policy further states that "[i]f the FAA determines that the proposed use serves an aeronautical use or airport purpose as defined above, then FAA approval or consent is not required." This statement implies that the FAA must make an initial category determination on all land uses – even ones that are obviously airport purpose or aeronautical (e.g., general aviation hangar leases). Under this interpretation of the Policy, airport sponsors would have to submit every single lease on airport property to the FAA for an initial determination of what category the land use falls into. This would be very time-consuming and burdensome for both airports and the FAA.

A better approach is for the airport sponsor, not the FAA, to make the initial determination of which category applies to a particular land use. This would include the determination of whether non-aeronautical elements of a facility are significant enough that the facility would be considered "mixed use." The FAA could perform periodic audits of airports to ensure that airport sponsors are accurately categorizing land uses.

3. The definitions of the four categories of land use are arbitrary, unclear, and confusing.

Because the definitions of the four categories of land use are arbitrary, unclear, and confusing, there will be uncertainty for both airports and the FAA. This could also result in inconsistent application of the Policy by Airport District Offices.

As one example, the Policy states that "mail, passenger and cargo processing facilities" are aeronautical, "warehouse and distribution centers" are non-aeronautical, and "cargo operations containing non-aeronautical elements" are "mixed use." Examples of "non-aeronautical elements" of cargo operations include "office building complexes, sorting facilities, long-term storage (warehousing), freight forwarders and third-party logistics providers, certain access infrastructure, or certain truck parking/trailer facilities (stalls)." These examples raise more questions than answers. How much time can cargo sit in a facility before it is considered long-term storage? If the air cargo facility has a small office area, does that constitute an office building complex? What is the distinction between processing cargo, which is considered aeronautical, and sorting cargo, which is considered a non-aeronautical element? Moreover, many of these examples of non-aeronautical elements are essential to a successful air cargo operation. A good example is truck parking – how is an air cargo operator supposed to process cargo through a facility if the cargo cannot be offloaded on to a truck? It does not make sense for the presence of essential elements like truck stalls to make an air cargo facility "mixed use" and therefore subject to FAA approval or consent.

In contrast to the analysis of whether cargo operations are mixed use, the Policy allows that terminal buildings will have some non-aeronautical components but are considered to be in the airport purpose category and therefore do not require FAA approval. Under the Policy, an in-terminal rental car facility is airport purpose, but a "stand-alone" rental car facility is non-aeronautical. A hotel is considered non-aeronautical, but it appears that a hotel located inside the terminal building would be considered airport purpose. There is no apparent reasoning for these arbitrary distinctions between categories that require FAA approval or consent and categories that do not.

4. Instead of four categories of land uses with different definitions, FAA should adopt a single definition for the term "airport purpose" and interpret it broadly.

The relevant statutes and grant assurances simply require that an airport sponsor use federally acquired land for an airport purpose. Accordingly, the FAA should only consider whether land is used for an airport purpose. The definition of "airport purpose" should be broadly interpreted to mean any use that aids, supports, accommodates, or benefits, whether directly or indirectly, aeronautical activities, civil aviation, or the transportation of passengers, mail, or cargo.

When determining whether federally acquired land is used for an airport purpose, common sense should prevail. For example, passengers often need to rent cars upon their arrival at an airport, and they demand that airports provide rental car facilities that are convenient and close to the airport's terminal building. If an airport decides to lease federally acquired land to a rental car company in an effort to accommodate the needs of the traveling public, it is common sense that the land is being used for an airport purpose.

5. If the Policy is implemented, approvals or consents should last as long as the approved use remains the same.

Non-aeronautical leases often have short terms of 5 years or less. As long as the use of the land remains the same, there is no reason for the FAA to reevaluate its approval of non-aeronautical use every time the lease term expires. This would be overly burdensome and unnecessary for both the FAA and airport sponsors.

6. If the Policy is implemented, the FAA should be required to respond to requests for approval or consent within 30 days.

Non-aeronautical development projects are often time-sensitive. The FAA should be required to respond to requests for approval or consent within 30 days.

CONCLUSION

The Policy as written would negatively impact airport sponsors' ability to be financially self-sustaining by creating an overly burdensome and time-consuming approval process for non-aeronautical leases. Additionally, the Policy's definitions are so arbitrary, unclear, and confusing, that airports and the FAA will be totally overwhelmed processing various requests for determinations, approvals, and consents. Airport sponsors would likely have to hire additional staff, and in this way, the Policy is essentially an unfunded mandate.

HMCAA would prefer a policy that allows airports to use land for any airport purpose, meaning any use that aids, supports, accommodates, or benefits, whether directly or indirectly, aeronautical activities, civil aviation, or the transportation of passengers, mail, or cargo. The FAA could ensure that airport sponsors are complying with the requirement to use land for an airport purpose through mandatory lease provisions, periodic audits, and the normal ALP approval process, rather than a piecemeal lease-by-lease approach.

Very truly yours,

Amy H. Murphree
Chief Legal Officer