October 17, 2022

Kevin C. Willis
Director
Office of Airport Compliance and Management Analysis
Federal Aviation Administration
800 Independence Ave. SW
Washington, D.C. 20591

RE: **Federal Aviation Administration; Request for Comments**
Draft FAA Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land
Docket No. FAA-2022-1203 (Sep. 15, 2022)

Dear Mr. Willis:

The American Association of Airport Executives (AAAE), the world's largest professional organization for airport executives, appreciates the opportunity to provide its feedback and perspectives in response to the Federal Aviation Administration's (FAA) request for comments on the notice, "Draft FAA Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land" ("Proposed Policy") (87 Fed. Reg. 56,601 (Sep. 15, 2022).)

As a representative of over 7,000 members from nearly 875 public-use commercial service and general aviation airports, AAAE has heard significant concerns from its members that FAA's Proposed Policy would inhibit non-aeronautical land development, add significant time for executing leases and land-related transactions, unnecessarily insert FAA into airport land use decision making, and result in the loss of airport revenue. We strongly urge FAA to reconsider this proposed framework and maintain existing policies that allow airports more flexibility in pursuing non-aeronautical development projects on federally acquired or federally conveyed airport land, especially because FAA has not articulated any problem or concern that justifies such a significant change.

The Proposed Policy Would Negatively Impact the Airport Industry and FAA

Non-aeronautical land development has become an increasingly important source of revenue for airports in recent years, especially as they have sought to diversify their revenue streams and remain as financially self-sustaining as possible in accordance with federal grant obligations. This was extremely evident during the coronavirus pandemic when passenger travel decreased by as much as 90 percent nationwide. In recognition of the importance of those opportunities, Congress in 2018 removed FAA's regulatory authority over airports' non-aeronautical development projects that had no impact on aviation safety and did not involve

land acquired with federal funds or received from the federal government.[1] The spirit and intent of this reform was to ensure that FAA's reviews of projects were limited and focused on potential impacts on safety, rather than meddling with specific airport real estate transactions, which is beyond the scope of the agency's mission and expertise.

Under the Proposed Policy, FAA would embark on a major expansion of its traditional oversight role of non-aeronautical land development by reviewing each individual project, lease, and sublease that an airport pursues, regardless of their potential impact on aviation safety. AAAE acknowledges and appreciates that FAA has the right to determine if federally acquired or federally conveyed land may be used for non-aeronautical purposes and include any reasonable conditions on that land to protect the safety of operations at the airport. However, we strongly believe the Proposed Policy is an unnecessary overreach into airport real estate transactions. We believe further that the existing framework has been more than sufficient to protect FAA's interest in this type of land and the agency has made no attempt to outline a problem that the Proposed Policy would fix.

Rather than provide benefits, AAAE believes the Proposed Policy, if finalized without modification, would negatively impact both airports and FAA. These impacts include:

- Inhibiting or delaying airports from pursuing non-aeronautical land development projects by increasing uncertainty for airports and third-party developers, subjecting each of these projects to the environmental review process, increasing costs and time for airports to carry out these projects, requiring airports to seek FAA approval for every project and lease extension, and putting the airport at a competitive disadvantage with non-airport land developers;

- Making it more difficult for airport sponsors to comply with Grant Assurance 24, which requires the airport to be as financially self-sustaining as possible, by inhibiting the airport from generating revenue through non-aeronautical development projects; and

- Making inefficient use of limited local FAA staff and resources—which has already been challenged due to the ongoing labor shortage and changing work environment—by requiring them to review every proposed non-aeronautical use or mixed use of airport property, including any lease and/or lease extension provided to third parties for such use.

Given the range of concerns that airports and the industry have with the Proposed Policy and the expected impacts, we recommend that FAA maintain the existing policy and

[1] FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 163. AAAE appreciates that Section 163 was primarily focused on non-aeronautical use of land that was *not* acquired with federal funds or received from the federal government, whereas the Proposed Policy addresses land use changes on federally acquired or federally conveyed land. However, congressional intent is relevant to illustrate the appropriate role of FAA when evaluating non-aeronautical land development at airports in general.

instead meet with AAAE and the industry to discuss how we can collectively and thoughtfully improve the existing process to ensure that non-aeronautical development, a key revenue source for airports across the country, is not inhibited. This would also help AAAE, airports, and the industry better understand what problem FAA is trying to solve with this new framework. Alternatively, AAAE and the airport community are requesting that Congress reform the current Section 163 process, which complements the Proposed Policy, in the upcoming FAA reauthorization bill. It would be prudent for FAA to delay this proposal so that the agency can work with industry on wholistic solutions and improvements to both processes.

Specific Comments on the Proposed Policy

1. **AAAE sees no reason for FAA abandoning the current process where airports have an opportunity to designate land as available for non-aeronautical use before the airport begins lease negotiations with a prospective developer or tenant.**

At the outset, we do not dispute that FAA has the authority to approve non-aeronautical land use designations on federally acquired or federally conveyed land, such as land obtained by airports through the Surplus Property Act. This includes reviewing a request from an airport to change the use of certain land from aeronautical to non-aeronautical. However, FAA should not overreach and review every single project, lease, or sublease that the airport proposes for a certain piece of land. The agency's expertise is determining whether land development may have an impact on the safe and efficient operation of aircraft operating near the airport and potential safety impacts to people or property on the ground. Reviewing leases, subleases, and individual construction projects is unnecessary for FAA to ensure that any non-aeronautical land development does not impact aviation safety. Current practices and policies have long proven effective in advancing safety while not unduly burdening airport operators.

To illustrate, FAA should exercise authority akin to a local government exercising zoning authority. Local governments with zoning authority set parameters around the use of certain land, but they do not inject themselves into every developer's project, lease, or sublease because doing so would be unnecessary, overbearing, tremendously inefficient, and inhibit development. Similarly, FAA should be permitted to review and approve a land use change from aeronautical to non-aeronautical and include any reasonable conditions on the future development of that land that are necessary to ensure the safety of operations at and around the airport. However, FAA should not venture into review of specific projects, leases, and subleases because it is unnecessary for the agency to carry out its mission, which is to protect aviation safety, and would instead cause significant and unnecessary burdens for airports and FAA employees.

Indeed, the existing process of FAA approving the airport layout plan (ALP)—which shows which property has been designated for non-aeronautical use—should be the appropriate time and method for FAA to understand and weigh in on how the airport intends to use some land for non-aeronautical purposes. As further articulated below, allowing airports to work with FAA to designate areas as non-aeronautical before engaging with private developers

is critical to providing airports with certainty over how the land can be developed and used. This certainty is necessary for airports to effectively negotiate and execute leases and other land-related transactions with third parties and prospective tenants and generate revenue that is necessary for continued operations and meeting grant obligations. Without such certainty, airports may not be able to complete transactions and would be subject to increased bureaucracy, time, and resources to complete these transactions.

2. **AAAE believes FAA needs to clarify multiple new terms and definitions to prevent confusion for both FAA staff and airports when trying to determine how to categorize a proposed land use and apply the Proposed Policy.**

Under the Proposed Policy, FAA would categorize uses of airport land into four separate categories: (1) aeronautical use, (2) airport purpose, (3) non-aeronautical use, and (4) mixed use. (87 Fed. Reg. at 56,602–03.) The Proposed Policy includes a set of proposed definitions for each of these terms. If FAA determines that the proposed use is either an aeronautical use or airport purpose, the airport does not need to request approval or consent from FAA. However, for any land use that falls under non-aeronautical or mixed use, the airport would have to request approval or consent from FAA. (*Id.* at 56,604.) We believe that the new terms and definitions would lead to confusion about how to categorize a proposed land use and whether FAA approval or consent is needed.

AAAE believes the proposed definition for "mixed uses" needs further clarification. Under the Proposed Policy, FAA defines "mixed uses" as a "mixed-use facility [that] contains both aeronautical and non-aeronautical uses, but the non-aeronautical use is significant and could be located off airport property." (*Id.* at 56,603.) To illustrate, FAA notes that a mail distribution center that is connected to an air cargo operation, an aircraft manufacturing facility, and a cargo operation containing non-aeronautical elements would be considered mixed-use facilities. FAA further adds that when evaluating "whether the non-aeronautical use is significant" for purposes of "mixed use," FAA will make that determination "based on **the primary use of the project**." (*Id.* (emphasis in original))

We believe that the definition of "mixed use" is overly broad, subjective, and would lead to inconsistent determinations across the country. For example, some AAAE members suggested that the examples cited—such as a mail distribution center, air cargo operations with non-aeronautical elements, and an aircraft manufacturing facility—are all aeronautical in nature and should be included within the definition of "airport purpose." In addition, determining whether the non-aeronautical use is "significant" and what constitutes "the primary use of the project" will lead to significant confusion within the industry and FAA staff. FAA has not defined the term "primary use," and airports do not understand how this would be assessed or what metrics would be applied. Examples or more definitive guidance on how to make these determinations are necessary.

FAA does not address how to categorize "noise land" and how it fits within the proposed framework outlined in the Proposed Policy. Many airports have acquired land for

noise compatibility purposes through the Airport Improvement Program or other federal grant programs and are required to dispose of this noise land at fair market value when the land is no longer needed for noise compatibility purposes. (FAA Order 5190.6B, *Airport Compliance Manual*, at 22-15.) A portion of these proceeds must be reinvested in another project or returned to the federal government. However, FAA's Proposed Policy does not mention or refer to this type of noise land. Does FAA contemplate that noise land will fall within one of the four categories outlined, or does the agency have a separate process for such land? Would an airport's disposal of noise land, as required, be subject to the Proposed Policy? We believe FAA needs to address these critical questions, including how airports are supposed to reconcile the rules that apply to noise land with the Proposed Policy.

FAA should also address other unique situations that will arise, such as how utility or other easements are categorized under this framework. Many airports enter into easement agreements with utility providers and other third parties for a variety of different reasons. These easements and agreements may be non-aeronautical in nature and last in perpetuity. How does FAA intend to apply the Proposed Policy to these types of agreements? Some AAAE members expressed concern that FAA's new framework could potentially impact some of those agreements, which are important to these airports and their surrounding communities.

3. **AAAE strongly opposes the proposed requirement for airports to obtain a letter of approval or consent for <u>each</u> non-aeronautical or mixed use project.**

Currently, airports work with FAA to evaluate and designate areas on their ALP or Exhibit "A" Property Map where non-aeronautical development is not only appropriate but beneficial. Once designated and approved, airports could pursue development opportunities and lease negotiations with third parties—without any additional, formal FAA approval—that help the airport meet their obligations under Grant Assurance 24. Under the Proposed Policy, FAA would now require airports to obtain agency approval for all non-aeronautical and mixed uses of federally acquired or federally conveyed land. (87 Fed. Reg. at 56,604.) When making this determination, FAA would have to review the specific, proposed use for the land and the lease term. The agency would then either reject the request or issue a letter of approval or consent that would <u>only be valid for the duration of the lease term</u> and require that the land revert to the airport sponsor for aeronautical use at the end of the term. If the agency determines that the proposed use serves an aeronautical use or airport purpose, then FAA approval or consent is not required.

AAAE has a wide range of concerns with this proposed new framework, which is a significant departure from existing policy.

We believe that FAA's proposal for the agency to review and approve every proposed non-aeronautical or mixed land use project would significantly inhibit airport development and consume limited airport and FAA resources. Airports already struggle attracting private developers under FAA's traditional regulatory framework because of their lack of understanding of FAA's involvement in the lease process, the availability of off-airport land

development opportunities, and the uncertainty that comes along with federal oversight. The proposal would make this difficult process even more challenging by requiring the airport to explain to the prospective tenant that the airport cannot execute a lease until (a) the proposed use, along with the lease and lease term, have been submitted to the agency for review and approval, and (b) the airport and FAA complete an anticipated environmental review under the National Environmental Policy Act (NEPA). There is also no guaranteed timeline on when airports could expect a response from FAA, and prospective developers would be unlikely to wait an unknown period for the agency to respond. In short, FAA's proposal would make non-aeronautical and mixed use land development much less attractive by adding significant uncertainty and increased costs and time for airports to negotiate and execute leases and satisfy these new FAA requirements.

The Proposed Policy's effect of inhibiting non-aeronautical land development cannot be understated. As state or local governmental bodies, airports often pursue non-aeronautical development projects that bring financial and societal benefits to their communities, such as fostering workforce development in historically disadvantaged communities, lowering barriers to promote small business formation, or reducing their environmental footprint. Many of these projects, which are aligned with goals of the Biden Administration, would be negatively impacted if this Proposed Policy moves forward. For example, the Port of Portland's general approach toward several of its non-aeronautical development projects has been to eliminate or lower barriers for small and disadvantaged businesses. The indirect consequence of this Proposed Policy is likely a longer, more complex, and ultimately more expensive process that makes it more difficult for small and disadvantaged businesses to compete for development opportunities on airport land.

The Proposed Policy could subject every non-aeronautical or mixed use project to a NEPA environmental review, which would significantly increase time and resources for airports to execute leases. Under the Proposed Policy, FAA does not address whether or how the NEPA environmental review process would apply to the agency's review of a proposed non-aeronautical or mixed use project. Instead, FAA simply notes that its compliance specialists will consult with FAA environmental protection specialists to determine "what, if any, environmental obligations under relevant statutes or regulations may apply to specific land use changes at specific airports." (87 Fed. Reg. at 56,601.) FAA needs to further clarify whether an environmental review will be triggered when an airport seeks to obtain FAA approval for a specific non-aeronautical or mixed use project *and* when an airport seeks to extend a lease term with an existing tenant. Notwithstanding, the proposed requirement for FAA to issue a letter of approval or consent for all non-aeronautical and mixed uses could very likely constitute a "federal action" that is subject to NEPA review. If so, while it is unclear what standard of review would apply, this would undoubtedly consume significant FAA and airport resources.

We are concerned that the framework outlined in the Proposed Policy would lead to FAA reviewing every proposed land use at the airport, regardless of the type of use (e.g., aeronautical or non-aeronautical) or whether the proposed use involves federally acquired or

conveyed land. Under the Proposed Policy, FAA would have to "approve or consent to all non-aeronautical and mixed uses of federally acquired and federally conveyed land." (*Id.* at 56,604.) FAA notes that if the agency "determines" the proposed use serves an aeronautical use or airport purpose, then approval or consent is not required. The process that FAA outlines would require the airport's request to include documentation on how the land was acquired, the current and future aeronautical demand at the airport, and the proposed non-aeronautical or mixed use.

The Proposed Policy and process outlined suggests that FAA would have to review every proposed land use to determine (a) the category in which the proposed land use falls (e.g., airport purpose, aeronautical, non-aeronautical, or mixed use), and (b) whether the proposed use involves federally acquired or federally conveyed land. This would require airports to provide land acquisition documentation and information about every proposed land use, even for aeronautical projects, so that FAA can determine whether this new policy applies and whether a letter of approval or consent is necessary. We fear that FAA would require reviews of land acquisition documentation each time an airport seeks a land use change, which, again, would lead to increased costs and time and significantly more work for limited airport and FAA staff. Unfortunately, airports have been subject to similar requirements with the Section 163 process for non-aeronautical use of land not procured with federal resources.

The Proposed Policy does not explain how the new framework would co-exist with the FAA's process for determining whether the agency has authority under Section 163 to regulate land use and the subsequent actions needed to approve a land use change. In the recently updated FAA internal guidance regarding implementation of Section 163,[2] FAA outlined the agency's approach to determining whether it has authority to (a) approve an ALP when new development is proposed by an airport sponsor and (b) regulate land use and any additional actions that are needed to approve a land use change. The policy specifically applies to situations where an airport requests a land use change from aeronautical to non-aeronautical. It is unclear to AAAE, however, how the Section 163 determination process affects, or does not affect, the process outlined in the Proposed Policy. Would review of non-aeronautical and mixed use projects be conducted in conjunction with or separately from a Section 163 review and determination? AAAE members have already expressed frustration with the Section 163 process and the absence of additional information on these implications adds further confusion.

We have concerns about the length of time that would be required for FAA to review and approve or consent to every proposed non-aeronautical or mixed use project at the airport. Under the Proposed Policy, FAA does not provide a timeline for how quickly the agency is expected to approve, consent, or reject requests from airports to carry out these projects. Does FAA have any internal timeline that the agency expects to conduct the appropriate

[2] *See* Federal Aviation Administration Memorandum, "Updated Instructions to Airport District Offices and Regional Office of Airports Employees Regarding Airport Layout Plan Reviews and Projects Potentially Affected by Section 163 of the FAA Reauthorization Act of 2018," Aug. 3, 2022.

review, comply with any potential NEPA obligations, and issue a letter of approval or consent? If FAA moves forward with the proposal, the agency should provide guidelines on the timeframe for airports to receive a response. This should include imposing a reasonable deadline on local staff, such as 30 days, and deeming an airport's request approved if FAA does not act on the request before the deadline. Otherwise, airports could be waiting an indefinite amount of time for an FAA response, jeopardizing their ability to attract or retain prospective developers and tenants.

The Proposed Policy does not address many other unanswered questions about how FAA will apply the proposed requirement for airports to secure a letter of approval or consent for each proposed project. First, what is the difference, if any, between "approval" and "consent?" Second, FAA states in a footnote that the proposed requirement to obtain a letter of approval or consent "will supersede the existing interim and concurrent use process that was limited to 3-5 years . . . ." (87 Fed. Reg. at 56,603 fn.10.) Will FAA continue to use the terms "interim" and "concurrent" use? Does this mean that longer lease terms may be appropriate for these types of land uses? Finally, what if a tenant that engages in aeronautical use or an airport purpose subleases a portion of its land or space to a third party for a non-aeronautical or mixed use? These are just some of the other questions that members have raised that need to be addressed under the proposed framework.

4. **AAAE strongly opposes the proposal for FAA's approval or consent of a non-aeronautical or mixed use project to <u>only remain in effect for the lease term</u>.**

The Proposed Policy indicates that federally acquired or federally conveyed land that FAA approves or consents for non-aeronautical or mixed use must revert to aeronautical use at the end of the lease term, clearly suggesting that airports would have to return to FAA and request approval or consent to extend the lease. (*See id.* at 56,604.) The need to continuously return to FAA would have major impacts on airports—especially those with short-term leases—including increased costs and time for airports and FAA staff to facilitate the review and approval. The indefinite amount of time that FAA will take to complete the review will also increase the risk that the tenant looks elsewhere for development opportunities. Moreover, there are significant implications if FAA does not approve a renewal of the lease for a similar use of the land at the end of the lease term. Restoring the land to its prior condition before the original lease could be costly and inhibit the airport's ability to remain as self-sustaining as possible.

To illustrate, there are many airports, such as Eastern Iowa Airport and Lawrence Regional Airport, that have short-term leases for the temporary use of airport land for the development of agricultural products. The terms of these leases are typically five years or less. The new proposed framework would require the airport to constantly return to FAA for permission to grant extensions to these leases, driving up costs and time for the airport and resulting in airport revenue loss. Other airports often work closely with FAA on the preparation of or an update to a master plan. Despite the federal oversight that exists during this comprehensive review, those airports would have to return to FAA and request permission to

extend leases, even after the master plan is completed. This would, again, add unnecessary costs and time for both FAA and airports without any corresponding benefits.

5. **AAAE strongly opposes the proposal to limit the release of federal obligations only to circumstances where the airport sponsor proposes the sale or conveyance of federally acquired or federally conveyed airport land.**

Under the Proposed Policy, FAA would only release federal obligations when the airport sponsor proposes the sale or conveyance of federally acquired or federally conveyed airport land that meets FAA release requirements. While it is unclear which "FAA release requirements" would apply, FAA emphasized in a footnote that airports should follow the existing release process in 14 C.F.R. Part 155 and FAA Order 5190.6, *Airport Compliance Manual*, Chapter 22. (87 Fed. Reg. at 56,603 fn.11.) While it is helpful that FAA provided a proposed definition of "release of federal obligations," the agency provides no other information about this specific proposal and no explanation for the change. Indeed, the remaining portion of the draft policy focuses almost exclusively on the newly proposed letter of approval or consent for non-aeronautical or mixed uses.

We see no reason for limiting releases to only the sale or conveyance of federally acquired or federally conveyed land. FAA releases of federal obligations should continue to be available to airports for parcels of land that are clearly not needed for, or cannot be used for, aeronautical use or an airport purpose. If it can demonstrate that the land will not be used for aeronautical use or an airport purpose, the airport should be permitted to seek a release of its federal obligations. FAA has other safeguards and processes in place to ensure that appropriate decisions are made about what land is best suited for non-aeronautical land development, such as the master plan development process and when airports revise and update their ALPs.

The proposed limitation on releases would make it more challenging for airports to dispose of or sell federally acquired or federally conveyed land. Under the Proposed Policy, FAA suggests that an airport would have to secure a proposed disposal or conveyance before an airport could request a release of federal obligations. If this is the case, prospective buyers would be hesitant to engage with the airport knowing that FAA must approve the sale and may have to complete a NEPA environmental review. The timing of this approval would also be unknown, making the proposed change a significant impediment for airports to execute a sale or conveyance. In short, the airport should continue to be permitted to seek a release of its federal obligations before it pursues a potential sale or conveyance of such land. That flexibility is necessary to ensure the airport can be competitive in the marketplace and has certainty that it can execute the transaction with a prospective purchaser.

The impacts of the proposed limitation on both airports and FAA cannot be understated. As an example, in 1996, the Indianapolis Airport Authority (IAA) embarked on a land acquisition program through 14 C.F.R. Part 150, creating a large portfolio of surplus property that would never be suitable for aeronautical use. While IAA has sold many of the properties, some land remains in its inventory. The Proposed Policy, if implemented without modification, could

significantly delay disposal of the remaining properties, which would, in turn, delay the return of properties to local tax rolls and the return of the federal government's share of funds that were used to acquire the properties. Again, the result is unnecessary costs and time for both FAA and airports to process these transactions without any corresponding benefits.

6. **The Proposed Policy makes significant changes to existing policy—contrary to FAA's assertion—that justifies the need for a supplemental proposed statement if the agency is inclined to move forward.**

We respectfully disagree with FAA's characterization of the Proposed Policy as "confirm[ing] and clarif[ying]" the appropriate methods for documenting FAA's review and approval or consent of land use changes on federally acquired or federally conveyed land. (*See* 87 Fed. Reg. at 56,601.) As explained throughout our comments, there are many aspects of this proposal that represent a major shift in policy from existing practice, including the need for an FAA letter of approval or consent for every proposed non-aeronautical and mixed use project; the limitation on FAA's approval or consent of non-aeronautical or mixed uses to the duration of the lease term; and the limitation of FAA releases of federal obligations to only those circumstances where the airport proposes the sale or conveyance of the land.

If the agency is inclined to move forward with the Proposed Policy, we believe FAA should release a supplemental proposed statement that provides more detailed information about the need for a change in existing policy, addresses the questions raised in this letter and others submitted to the docket, and explains the economic or cost impacts that airports are expected to incur because of the changes. We also encourage and request that FAA engage with AAAE, the airport community, and other industry partners to better understand concerns and potential impacts from the Proposed Policy and consider industry solutions to issues that FAA is trying to address.

Summary of Recommendations

Our primary recommendation is that FAA continue to review and approve non-aeronautical land use designations on federally acquired or federally conveyed land and include any reasonable conditions on the future development of that land that are necessary to ensure the safety of operations at and around the airport. However, FAA should restrain from overreaching and reviewing every single project, lease, or sublease that the airport proposes for a certain piece of land. In the meantime, FAA, AAAE, and the airport community could work collectively and thoughtfully to propose meaningful updates and improvements to the existing process, thereby minimizing the impacts to non-aeronautical land development projects and allowing industry to better understand what problem the agency is trying to fix.

If the agency intends to move forward with finalizing the Proposed Policy, we urge FAA to carry out the following recommendations:

- Eliminate the proposed requirement that the FAA's letter of approval or consent is only valid for the duration of the lease term.

- Provide an analysis on how the NEPA environmental review process will apply or not apply when an airport seeks to obtain FAA approval for a specific non-aeronautical or mixed use project *and* when an airport seeks to extend a lease term with an existing tenant. Lease renewal or continued similar use of the land without alteration should not trigger a NEPA review. At the very least, these should be included as a categorical exclusion (CATEX).

- Explain how the new framework outlined in the Proposed Policy would co-exist with the FAA's separate process for determining whether the agency has authority under Section 163 to regulate land use and any additional actions that are needed to approve a land use change.

- Provide guidelines on the timeframe for airports to receive a response to a request for a letter of approval or consent. This should include imposing a reasonable deadline on local FAA staff, such as 30 days, and deeming an airport's request approved if FAA does not act on the request before the deadline.

- Clarify that federally acquired or federally conveyed land previously designated and approved by FAA as "non-aeronautical" on an ALP is grandfathered in and does not require additional FAA review and approval for *each project* that an airport pursues.

- Provide additional clarification and guidance on how FAA would expect letters of approval or consent and releases to be documented on an airport's Exhibit "A," as would be required under the Proposed Policy.

- Clarify additional questions that airports raised regarding the proposal for airports to secure a letter of approval or consent for each proposed non-aeronautical or mixed use project, including (a) the difference between "approval" and "consent"; (b) whether FAA will continue to use the terms "interim" and "concurrent" use; and (c) how FAA will treat subleases to a third party for a non-aeronautical or mixed use.

- When evaluating whether a proposed use falls within the "mixed use" category, provide more definitive guidance and clarity on how FAA will determine whether the non-aeronautical use is "significant" and what constitutes "the primary use of the project." A more comprehensive description of "mixed uses" is necessary to minimize confusion within FAA and airport staff. FAA should also reconsider the examples used to explain the "mixed use" category, such as cargo facilities, which some would argue are aeronautical in nature.

- Explain how the Proposed Policy applies to "noise land" and utility or other easements. This explanation should address whether "noise land" falls within one of

the four land use categories identified and how airports are supposed to reconcile the rules that apply to noise land with the Proposed Policy.

- Continue to allow airports to pursue a release of federal obligations on federally acquired or federally conveyed land if the airport can demonstrate that the parcel of land is not needed for, or cannot be used for, aeronautical use or an airport purpose.

- Release a supplemental proposed statement that provides more detailed information about the need for a change in existing policy, addresses the questions raised in this letter and others submitted to the docket, and explains the economic or cost impacts that airports are expected to incur because of the changes.

- Engage with AAAE, the airport community, and other industry partners to better understand concerns and potential impacts from the Proposed Policy and consider industry solutions to issues that FAA is trying to address.

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AAAE appreciates the opportunity to provide comments in response to FAA's request for comments on the Proposed Policy. Please do not hesitate to reach out if you have any questions or require any additional information. I can be reached at justin.barkowski@aaae.org or at (703) 824-0504.

Sincerely,

Justin T. Barkowski
Vice President, Regulatory Affairs