



# Section 163 Implementation

*Presented by Kelly Moulton, Peter Kirsch, and Greg Heaton*

August 3 | 1:15 – 2:15 p.m. EST



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This workshop is registered with the American Planning Association (APA) for CM credits. Following your attendance for the entire duration of this program – and completion and submission of your evaluation survey – please self-report your participation on the APA website.

APA/AICP Course #9216693



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## Participant Criteria to Earn PDH or CM Credits

To earn 7.5 PDH or CM credits for the 2021 ATW, participants<sup>6</sup> must:

- Be a paid and registered participant;
- Attend and participate for the entirety of the two-day program (credits are not issued by ACC for partial attendance);
- Register in the ACC Training Hub on August 5<sup>th</sup> for either the PDH or CM accreditation product; and
- Complete BOTH the 2021 Virtual ATW Attendance Verification AND the Evaluation Survey by **8:00 p.m. EDT on Friday, August 27<sup>th</sup>**.

**NOTE:** ACC must adhere to strict standards as a registered and approved continuing education provider. As such, ACC requires a \$50 late processing fee to issue credits to 2021 ACC Virtual ATW participants who are claiming accreditation after Friday, August 27<sup>th</sup>.

**Without exception, ACC is unable to issue 2021 ATW credits after October 29<sup>th</sup>.**



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## Program Description

The 2021 ACC Virtual Airports Technical Workshop will provide aviation professionals with online general and technical sessions featuring industry subject matter experts and FAA decision makers, as well as opportunities for networking.

The workshop technical sessions will cover the latest in airport design, engineering, planning, and environmental related topics. One general session will feature the FAA Associate Administrator for Airports in an open discussion about the latest on FAA's response to the COVID-19 disruptions to aviation, the impact of the various stimulus funding packages in the last year, the potential for infrastructure funding for airport capital development, and the outlook for the aviation industry under the new Administration.



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## Learning Objectives

At the end of the 2021 ACC Airports Technical Workshop, participants will be able to:

- Describe FAA's efforts with 'Section 163' implementation; how the FAA has historically operated with respect to oversight of airports, how various regions review airport sponsor activity potentially affected by section 163 requirements, and the roles and hierarchy of FAA review.
- Discuss key changes in the way airports plan for operational, economic, and the human and environmental factors that come into play for resiliency.
- Describe the best forecasting methods to plan for extreme events impacting aviation, to include the potential effect on aircraft fleet mix and peaking characteristics.
- Explain FAA's efforts with various Advisory Circular updates, the changes that have taken place within the several drafts released in the past year, and FAA's response to industry's comments.



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## Moderator



**Kelly Moulton, C.M.,  
ENV SP**  
Director  
C&S Engineers, Inc.

## Speakers



**Peter Kirsch**  
Partner  
Kaplan Kirsch &  
Rockwell, LLP



**Greg Heaton**  
Aviation Group Manager  
Crawford, Murphy &  
Tilly, Inc.



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A  
paradigm  
shift

Historically FAA has had approval  
authority over virtually *all*  
airport development

**FAA approval means –**

- Time
- Process
- Environmental review



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# Today's Presentation



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**What does the statute say**



**Why does it matter**



**What guidance has FAA issued**



**How has the new law been applied in practice**



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## Section 163

FAA Reauthorization Act of 2018,  
Section 163  
Statute fundamentally changed FAA  
review of airport land use  
Considerable uncertainty since  
enactment in Oct. 2018  
FAA internal guidance was made  
available in Nov. 2020



## Section 163

- 163(a) – Limits FAA jurisdiction and authority over airport land use
- 163(b) - Exceptions where FAA retains jurisdiction
- 163(c) - Preserves FAA authority over airport revenue
- 163(d) – Limits FAA approval authority over ALPs



## Section 163 – Part A

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- (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.



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## Section 163 – Part B – FAA's remaining authority

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- (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.



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## Section 163 – Part D - ALP approvals

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(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



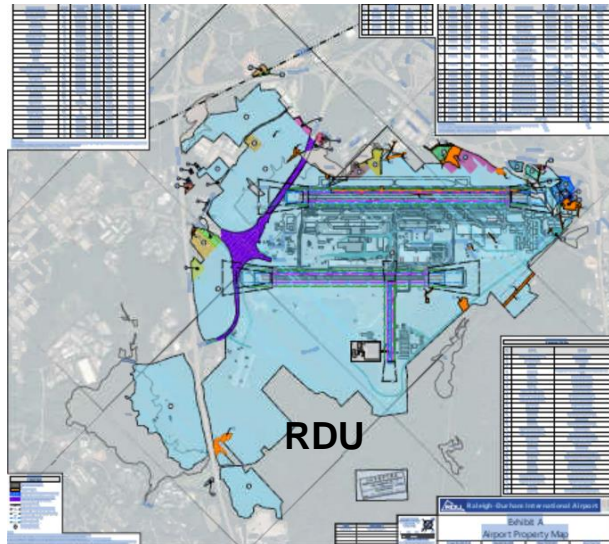
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## Congress' purpose

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- Eliminate FAA review over land use that is not core to its mission
- Streamline and expedite airport development projects
- Give airport sponsors increased (*but not unlimited*) autonomy to make land use decisions



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## Section 163 does not change

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- Obligation to maintain a current, up-to-date ALP
- Fair market value obligations
- Airspace review (part 77)
- Federal revenue use requirements and Grant Assurances



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## This is important: the economic imperatives

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Airport sponsors need to diversify revenue sources – particularly non-pax-influenced sources

Real estate development offers extraordinary diversification

Many airports sit in a sea of un- or under-developed real estate

Increased industry interest in airport proximate development ("airport cities")

Federal approval process makes it challenging (impossible?) for sponsors to compete with private sector



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## Why does 163 matter

- FAA approval is lengthy
- Approval is a federal action triggering NEPA and other environmental laws
- Approval process can impede market participation by airport proprietor
- New presumption of no approval can substantially expedite approvals for new development



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## FAA guidance-part I



- Made public in late November (dated 10/27/20)
- Structured as internal guidance only; FAA sought no comment or advice in advance

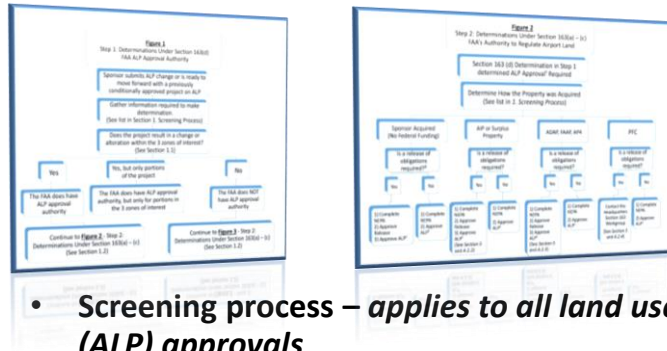


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## FAA guidance – part II



- **Screening process – *applies to all land use (ALP) approvals***
  - Is there ALP approval authority – 163(d)
  - How was the property acquired – 163 (a)
- **Distinguish between ALP acceptance and approval**
- **ALP approval limited to FAA's zones of interest**



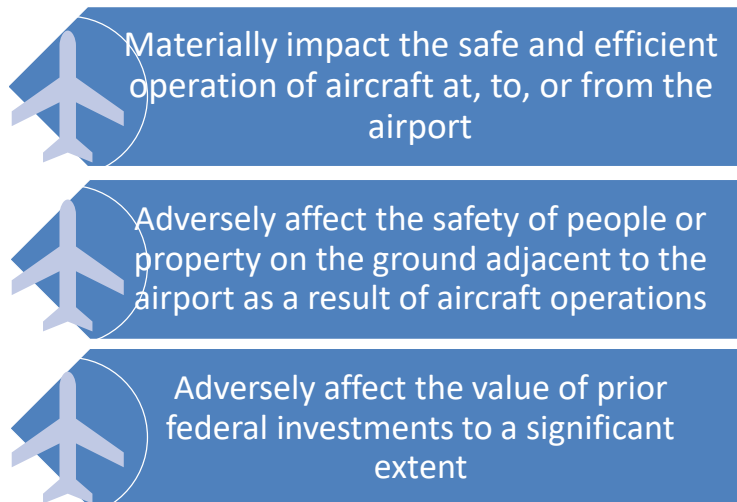
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## FAA's zones of interest

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## Zones of interest (a note)

*"Zones of interest is not an official term, rather, it is a phrase that these instructions use to refer to the three criteria established by Congress..."*



## How has FAA actually applied Section 163

- 3 Case Studies
  - Zanesville Municipal Airport - OH
  - Fort Wayne International Airport - IN
  - Springfield Capital Airport -IL



# How has FAA actually applied Section 163

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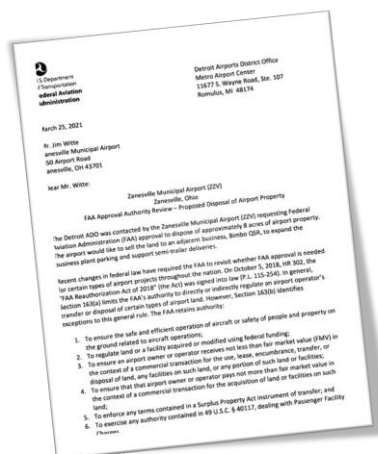
- Zanesville Municipal Airport – OH
- General Aviation Airport
- 530 +/- Acres
- Airport Developed in 1944
- DLAND project  
(Development of Land Area  
National Defense)




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## Zanesville Municipal Airport

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# How has FAA actually applied Section 163

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- Fort Wayne International Airport – IN
- Commercial Service Airport
- Airport transferred from AF
- Numerous additional
  - Acquisitions for airport Expansion
  - Also for Econ Development




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## Fort Wayne International Airport

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- 5 Parcel Groups
- Numerous Parcels
- Grouped for location and based on factors Including location, proposed disposition, continuing obligations




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# How has FAA actually applied Section 163

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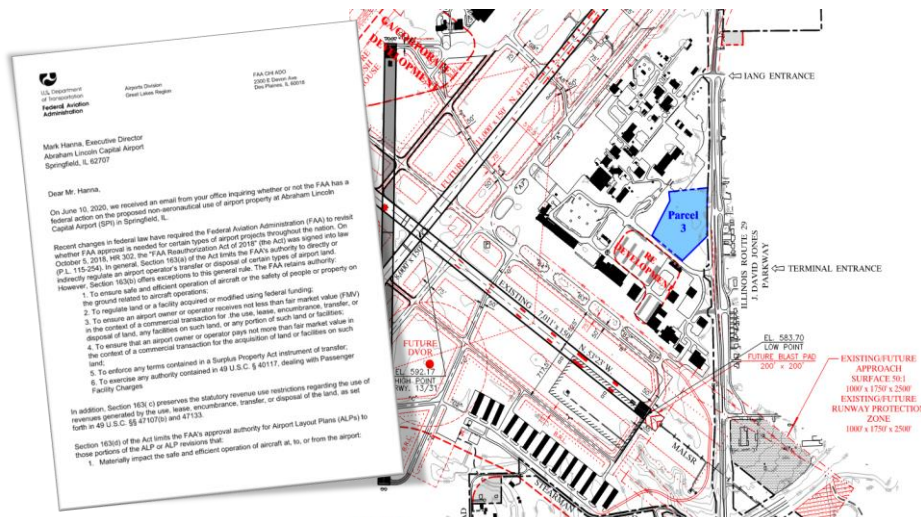
- Springfield Capital Airport  
– IL
- Commercial Service Airport
- 2300 +/- acres
- Initial airport developed commercially in 1946 without federal funds



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## Springfield Capital Airport

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## Required Submittal Information



- Describe situation and your request:
  - What parcel(S) seeking release
  - Location, size and current use
  - Ownership interest and history of ownership
  - Intended action – reuse, lease, sale
  - And to whom and for what, if known
  - Official request of action
  - Revised ALP drawing or proposed revisions
  - Your timeframe needs/deadline if you have one
  
- Essentially, tell the story



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## Citations available at

[https://www.faa.gov/airports/planning\\_capacity/media/Section-163-Final-Instructions-October-2020.pdf](https://www.faa.gov/airports/planning_capacity/media/Section-163-Final-Instructions-October-2020.pdf)

<https://www.kaplankirsch.com/News-Publications/Publications/137202/Semi-Annual-Airport-Law-Digest-2020-Year-in-Review>



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**QUESTIONS?**

[training@acconline.org](mailto:training@acconline.org)



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**Build Back Stronger: Rethinking Airport  
Resiliency in the Aftermath of COVID-19 will  
begin at 2:30p EDT.**

**Please close the current session to return to the  
2021 ATW homepage.**

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