

42nd Annual AAAE
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Session 6

Land Use Regulation for Airports



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Speakers



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Agenda

- Words Matter: Key Terms and Concepts
- Understanding Your Land: Categories of Airport Property and Parcel History
- From Then to Now: Navigating Updated Land Use Change Processes
- Preparing for the Future: Airport Planning Best Practices

Words Matter: The Role of Terminology



Approval

Consent

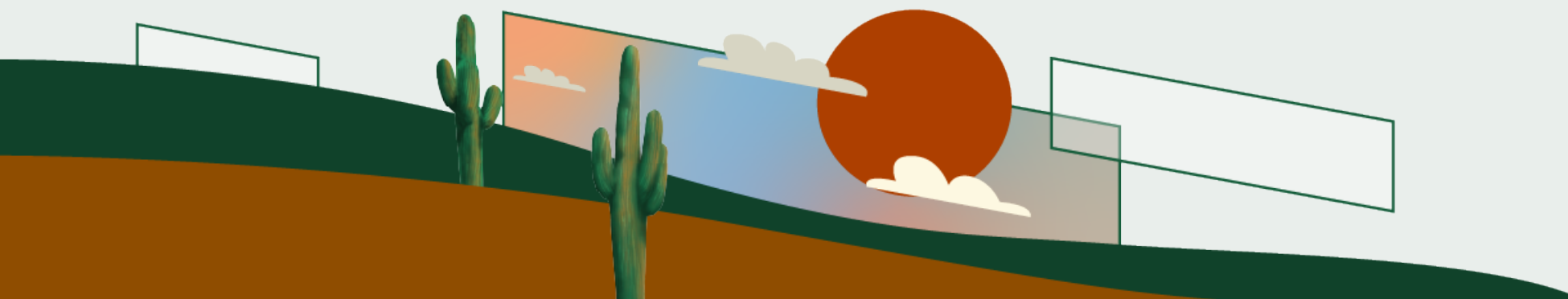
Release

- Terms trigger specific FAA review processes
- Key definitions have evolved over time
- Terms are often used informally and inconsistently (even by FAA)

Why it Matters

Land Regulation Depends on its History and Use

- Permission and use
- Financial obligations
- FAA regulatory oversight
- Applicability of (some) Grant Assurances



Regulatory Landscape before 2018



- ❑ Plenary FAA authority over airport land use
- ❑ Complex, uncertain, time-consuming process; highly variable amongst ADOs
- ❑ Stifled development
- ❑ Sponsors could not be competitive in the marketplace for development opportunities



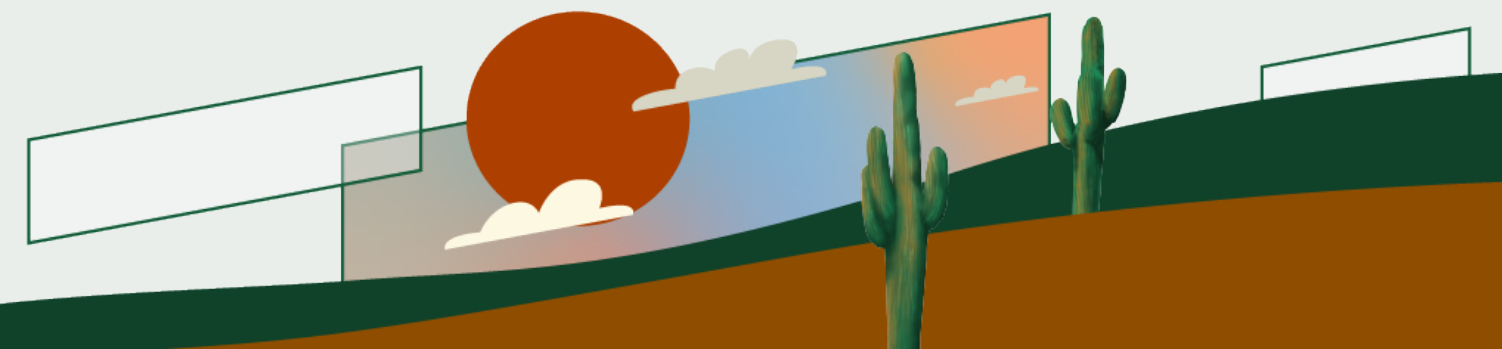
Key Federal Laws and Policies

- Section 743 of the FAA Reauthorization Act of 2024
- FAA Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land (2023)
- FAA Revenue Use Policy
- Grant Assurances and Surplus Property Act deeds



Aeronautical v. Everything Else

- Presumption (because of AIP grants) that airport property should be used for aeronautical use
- Grant Assurance 22
- Nonaeronautical property use is an *exception* which FAA must specifically allow



All Land Now Fits into One of Five Buckets



Aeronautical use: Any use that involves, makes possible, or is required for the operation of an aircraft, or that contributes to or is required for the safety of such operations



Airport use: Uses of land directly related to actual operation or foreseeable aeronautical development (includes terminal use)



Non-aeronautical use: All other uses of airport property

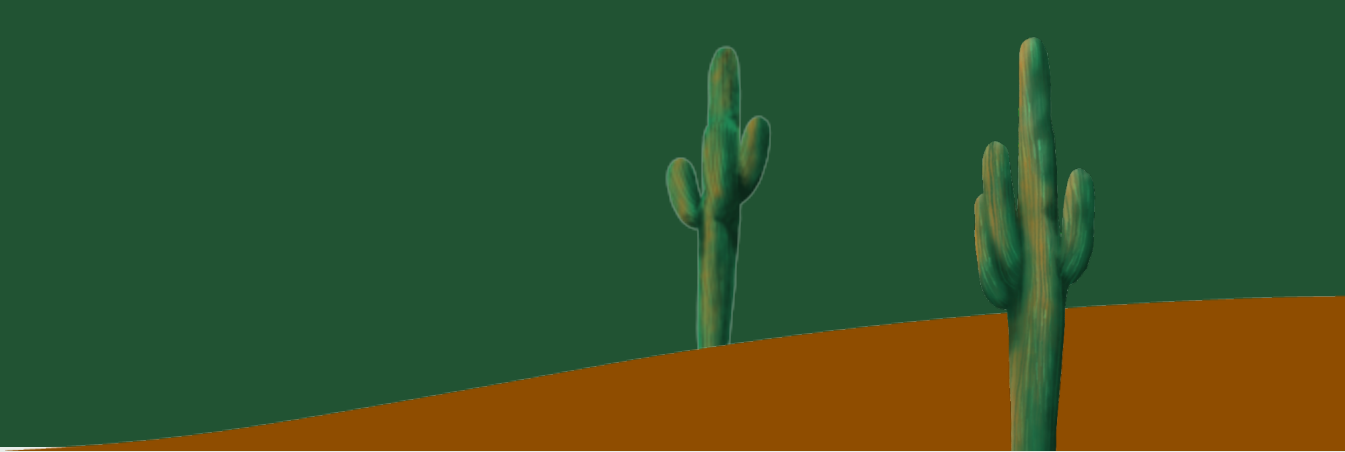


Mixed use: Combination of both aeronautical and non-aeronautical, but the non-aeronautical use is “significant”



Noise land: Land acquired for noise compatibility purposes

Airport Layout Plans



Includes:

- ✓ Airport boundaries
- ✓ Location of existing and proposed airport facilities and structures
- ✓ Location of existing and proposed non-aviation areas and improvements
- ✓ Proposed and existing access points used to taxi aircraft

Legal significance:

- ✓ Sponsor obligations are tied to what is depicted on the ALP
- ✓ Sponsor attests to accuracy
- ✓ Changes to ALP can trigger FAA review or approval



ALP Contents

- ✓ Cover sheet
- ✓ ALP drawing
- ✓ Data sheet
- ✓ Facilities layout plan (as needed)
- ✓ Terminal area plan (as needed)
- ✓ Airport airspace drawing
- ✓ Inner approach surface drawing
- ✓ On-airport land use drawing
- ✓ Off-airport land use drawing (as needed)
- ✓ Airport property map *[Exhibit A]*
- ✓ Runway departure surface drawing
- ✓ Utility drawing
- ✓ Airport access plans (as needed)

FAA Standard Operating Procedure ARP SOP 2.00 (2013)



Airport Layout Plan vs. Exhibit A

ALP Property Map

- Graphic representation of the development plan for an airport
- Requirements to keep up-to-date:
 - 49 U.S.C. § 47107(a)(16)
 - FAA Order No. 5190.6C, § 22.5
 - Grant Assurance 29
- Certain changes trigger FAA review and approval

Exhibit A

- Property inventory map
- Exhibit to each AIP application
- Shows all “federally obligated” property
- Can be used as the ALP property map
- Accuracy certified with each grant application!

Land Use Changes

Remember your terminology!

Approval

Consent

Release



Land Use Changes – 2 Steps

FAA review and jurisdiction depends on parcel history and intended land use

Two Key Steps:

- **Step 1:** Know your land's origin story (parcel-by-parcel)
- **Step 2:** Determine the intended use

Example: Building the same hotel on federally acquired land vs. on sponsor acquired land away from airport operations = different requirements and processes



(1) Know Your (Land's) Origin Story

- **Federally Acquired** (e.g., Airport Improvement Program (AIP) grants)
- **Federally Conveyed** (e.g., Surplus Property Act conveyance)
- **Sponsor Acquired** (airport revenue, local funds, donated property, and Passenger Facility Charge funds)

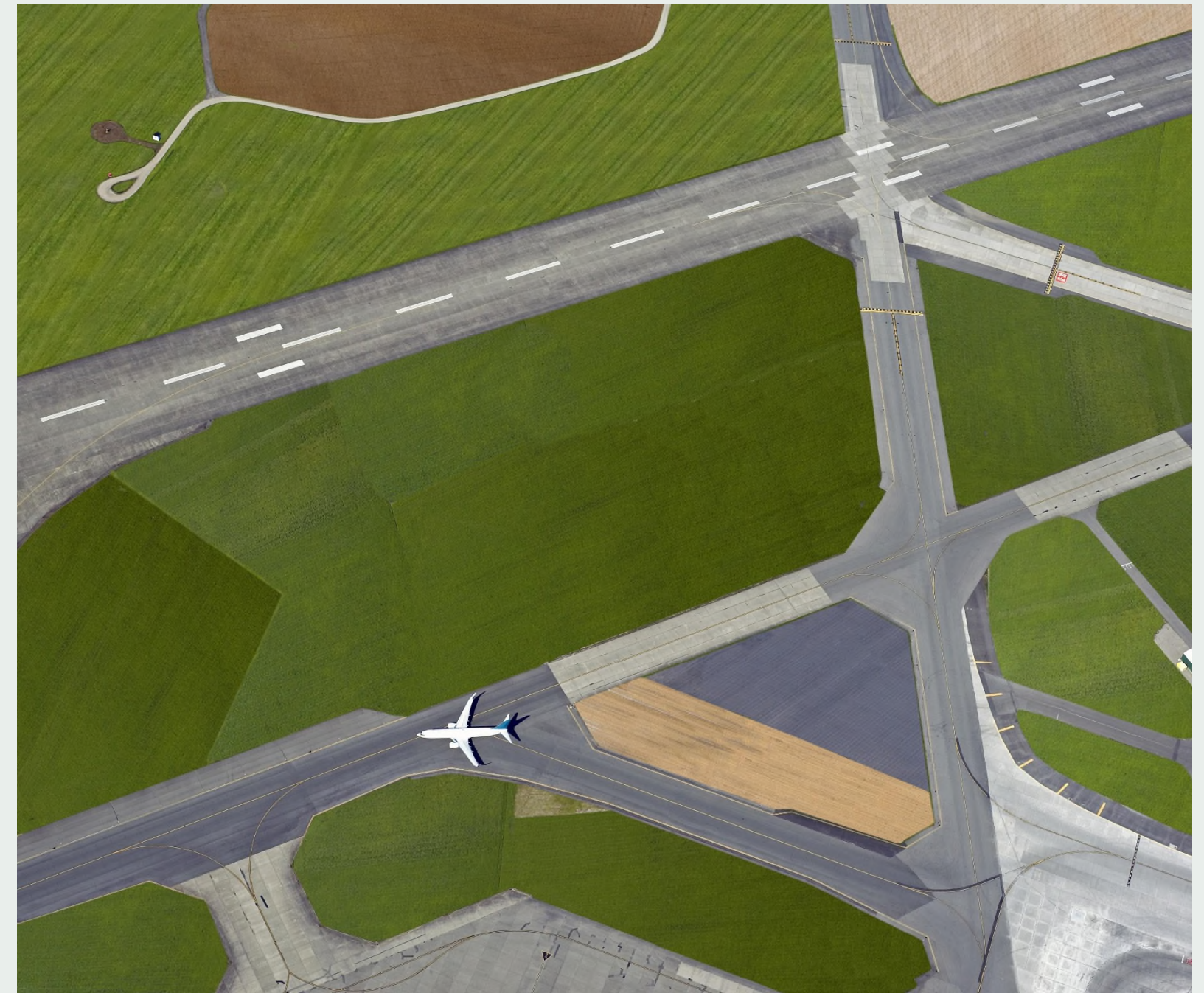


Practice Tip: You must **find and keep** accurate acquisition records for every parcel!



(2) Determine the Intended Use

- 5 categories of airport land
- Consider the planning documents (ALP, Master Plan) – how has the sponsor committed to using the land?
- Consider the current and future aeronautical and airport needs



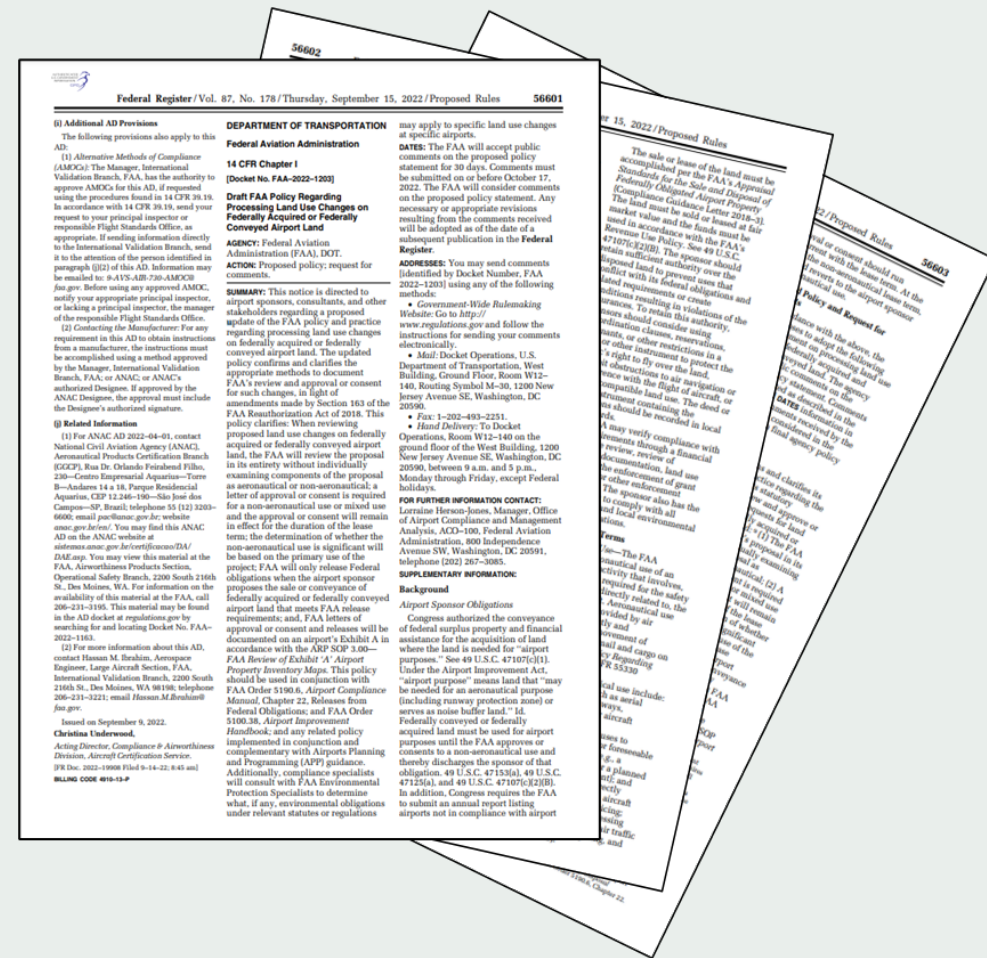
Does the FAA Have Jurisdiction?

- 2023 Land Use Policy
- Section 743 of the *FAA Reauthorization Act of 2024*

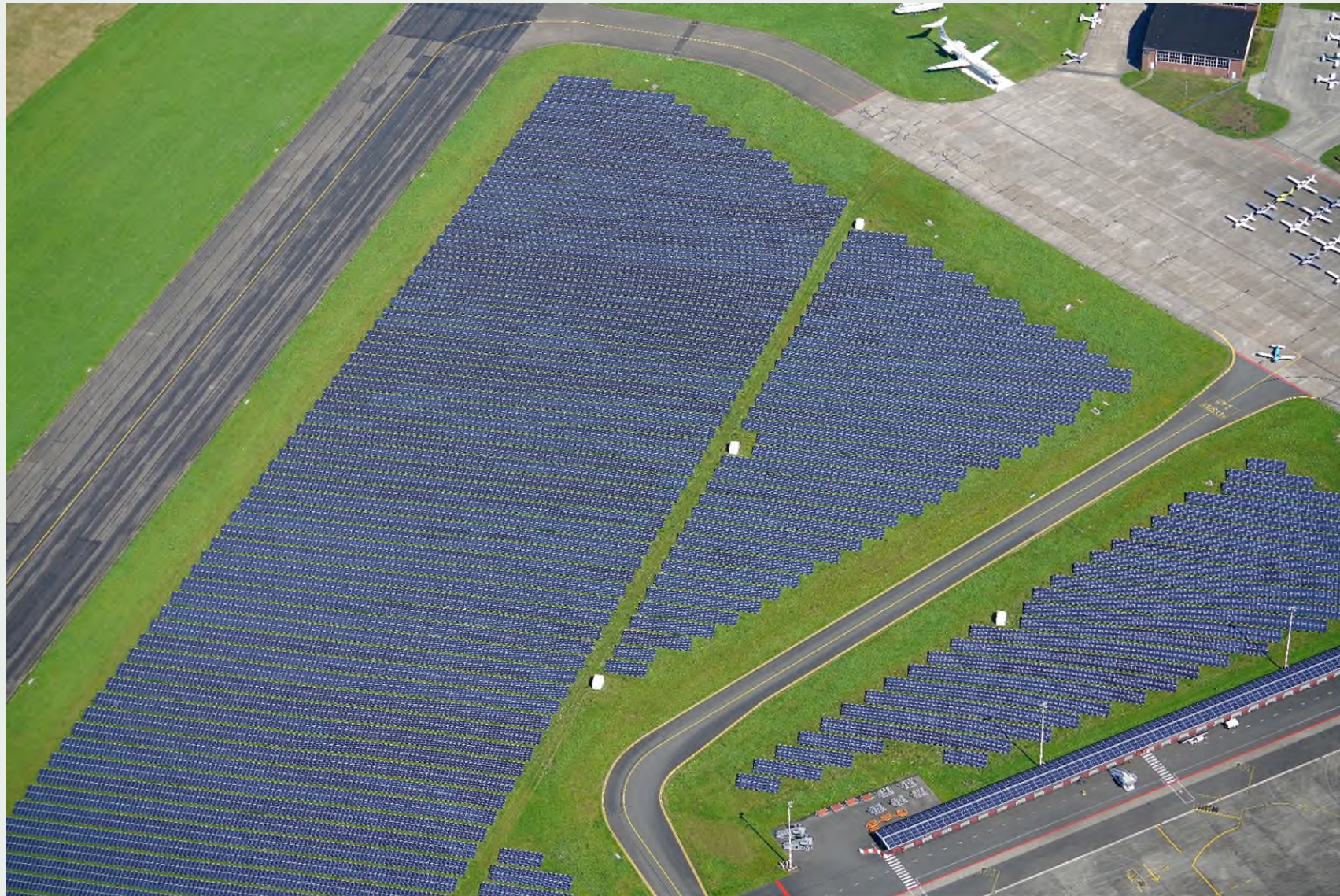


2023 Land Use Policy

- Defined land use categories and scope of “release”
- Property can no longer permanently be designated on the ALP or property map as “non-aeronautical”
- Created new procedures to obtain approval or consent for land use changes
- Eliminated “interim” and “concurrent” uses
- Applies not only to federally-acquired or federally-convey property (notwithstanding title of policy)
 - See Policy fn. 7



Section 743 of the *FAA* Reauthorization Act of 2024



Projects on sponsor acquired property + not implicate **zones of interest** = no FAA ALP approval authority

Notice of Intent; FAA has 45 days to object

Replaced Section 163 of the FAA Reauthorization Act of 2018

Section 743 of the FAA Reauthorization Act of 2024

Additional Zones of Interest Guidance:
[Internal FAA Policy](#)

Statutory Zones of Interest

01

materially impacts
the safe and
efficient operation of
aircraft at, to, or
from the airport

02

adversely affects
the safety of people
or property on the
ground as a result of
aircraft operations

03

adversely affects
the value of prior
federal investments
to a significant
extent



Land Disposal – Release

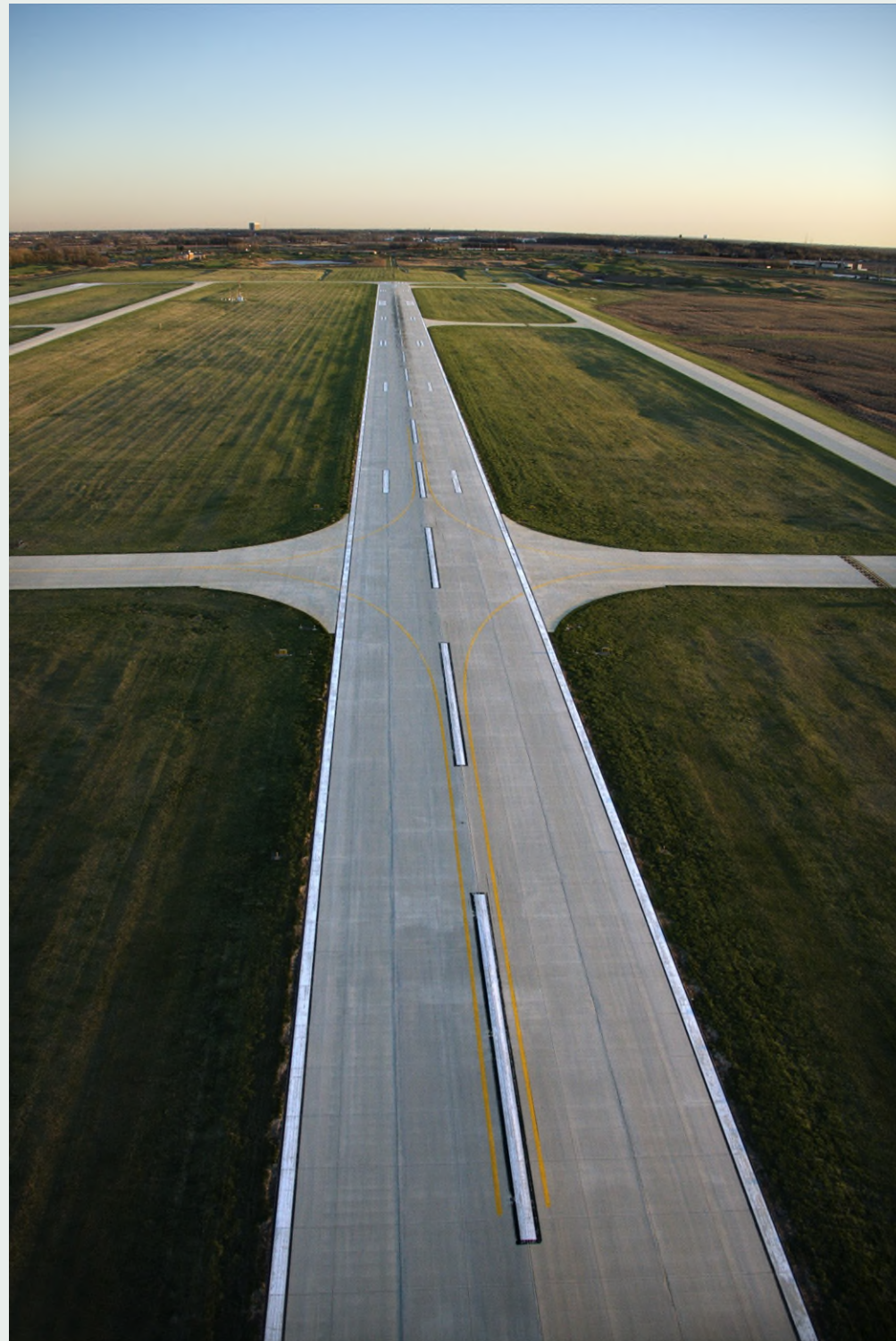
- FAA releases an airport sponsor from federal obligations tied to a parcel of property
- Limited to sale or disposal of airport property (2023 Land Use Policy)



Caution: the term
“release” is often
used
inconsistently



Release Criteria



Must obtain written FAA concurrence

Burden on sponsor to demonstrate land should be released

Bottom line: is the sale a net benefit to civil aviation?

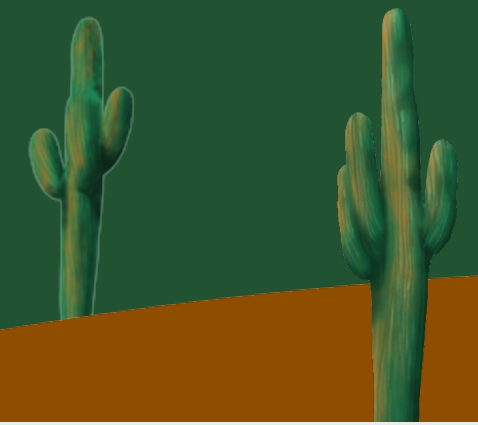
Community (non-aviation) interests not considered

Noise Land Criteria and Disposal

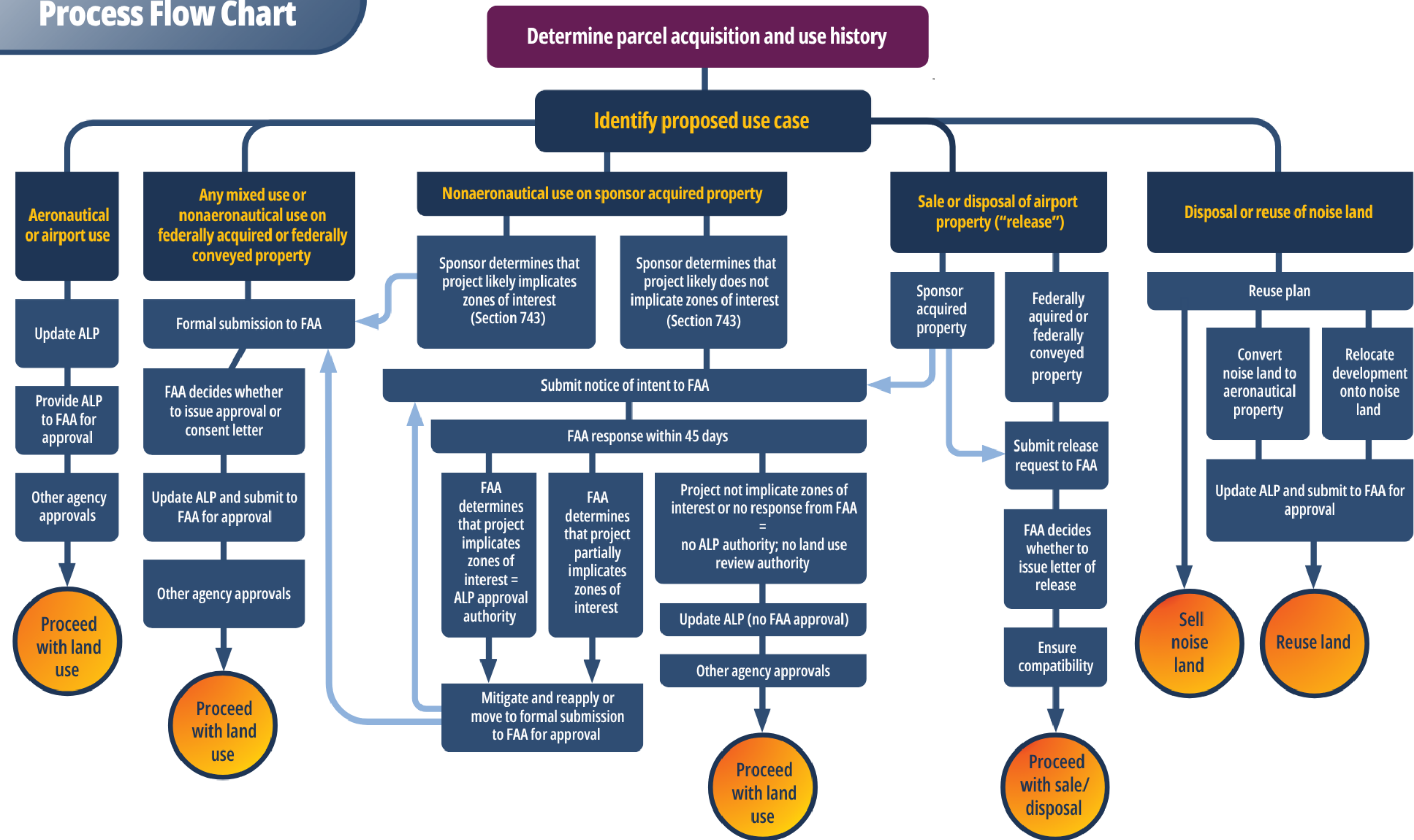
- Property that an airport sponsor acquires in a noise-impacted area around an airport
- FAA offers AIP grants to acquire noise land within the contour of noise impacts
- Sponsors must create a Noise Land Inventory and Reuse Plan
- Unlike other land, sponsor is *required* to plan for sale or disposal



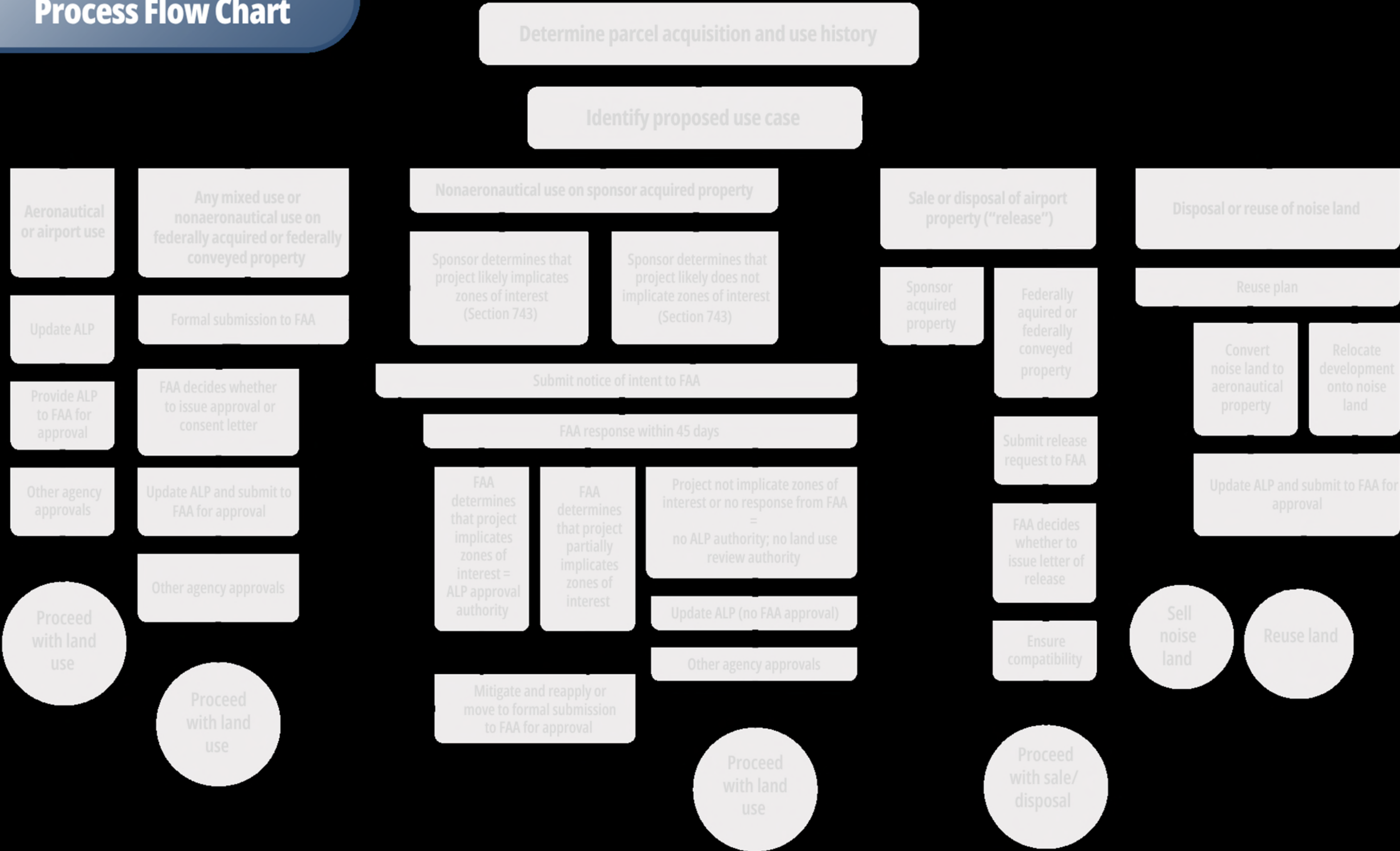
Walk Through the Land Use Process



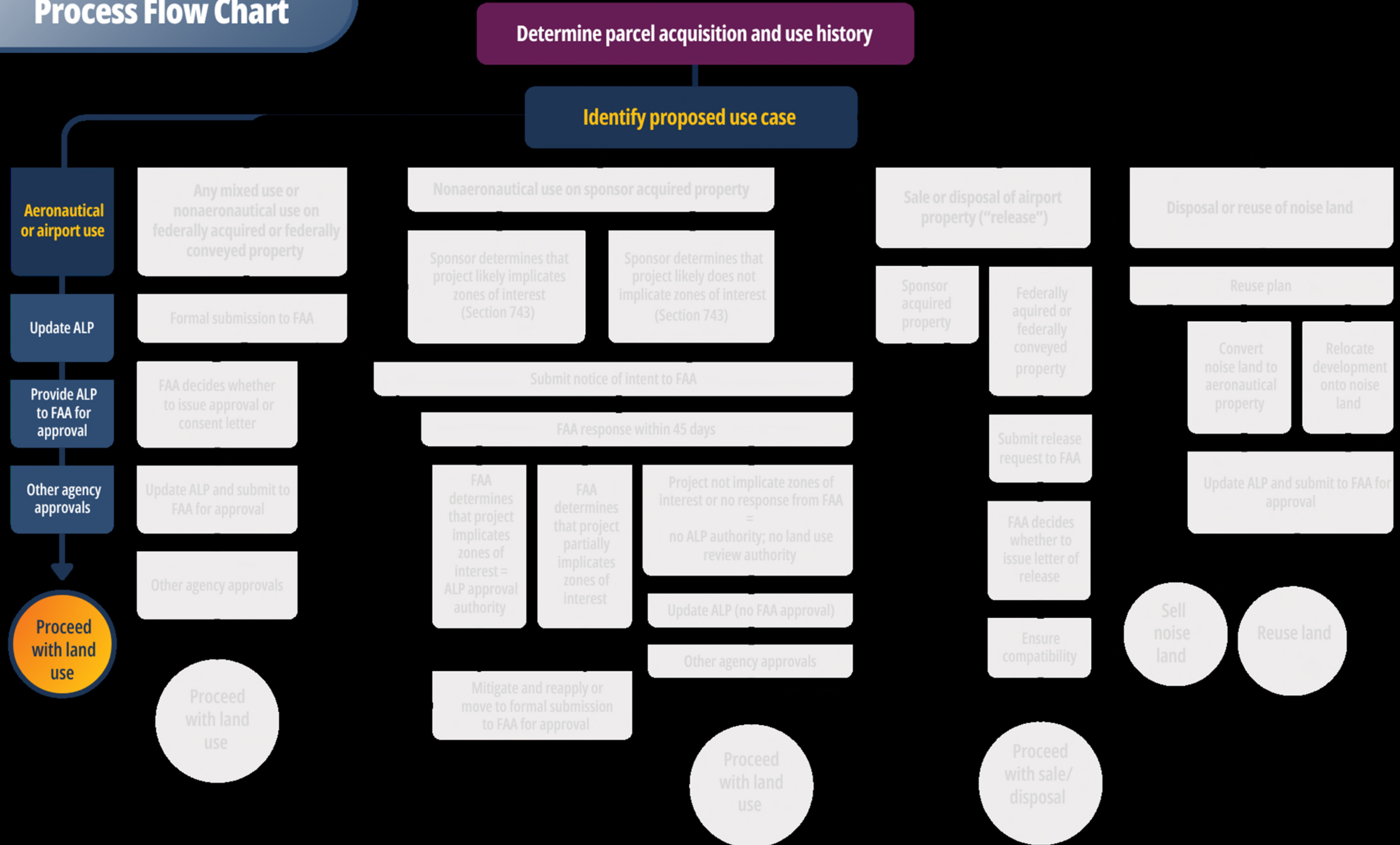
FAA Land Use Review Process Flow Chart



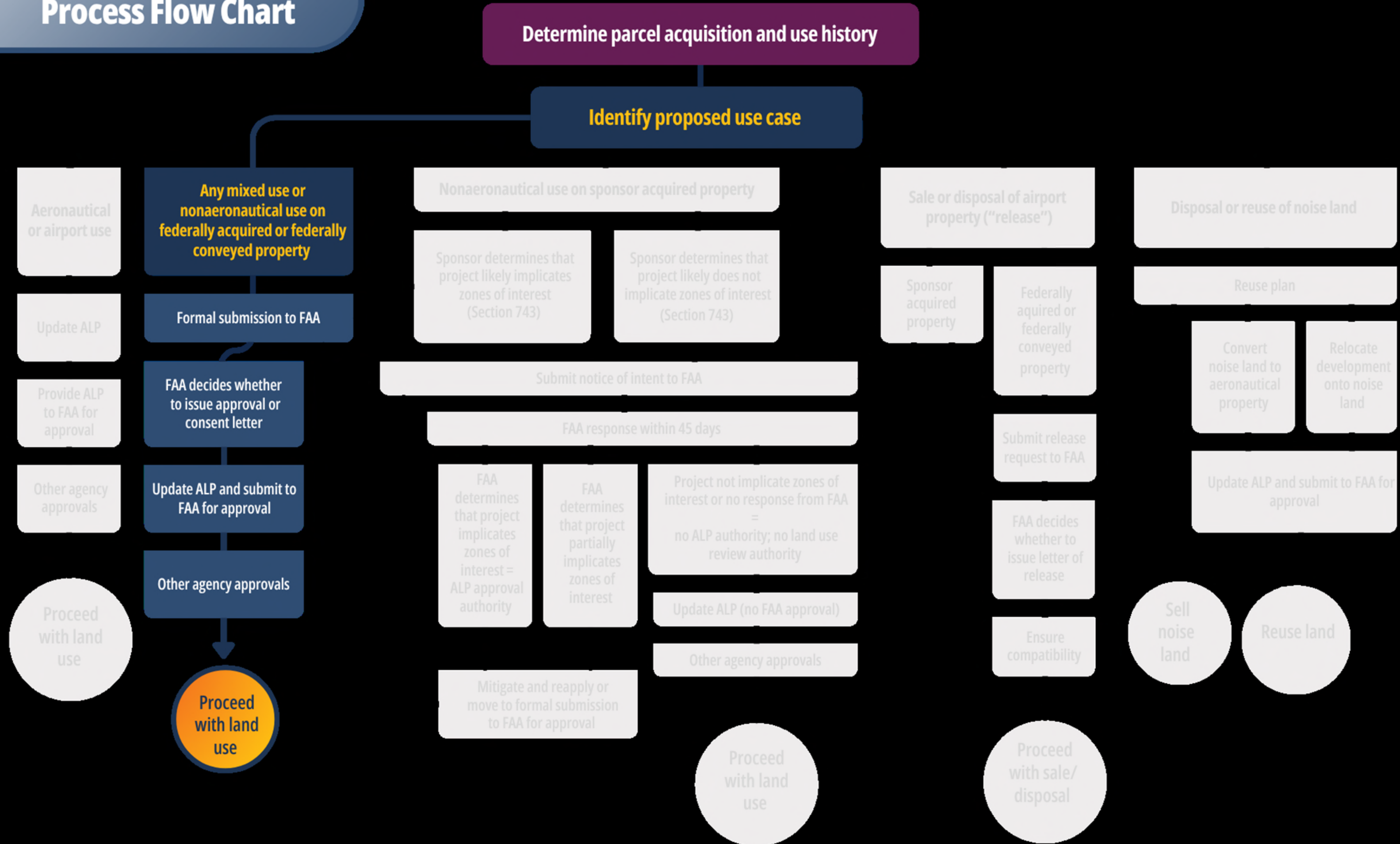
FAA Land Use Review Process Flow Chart



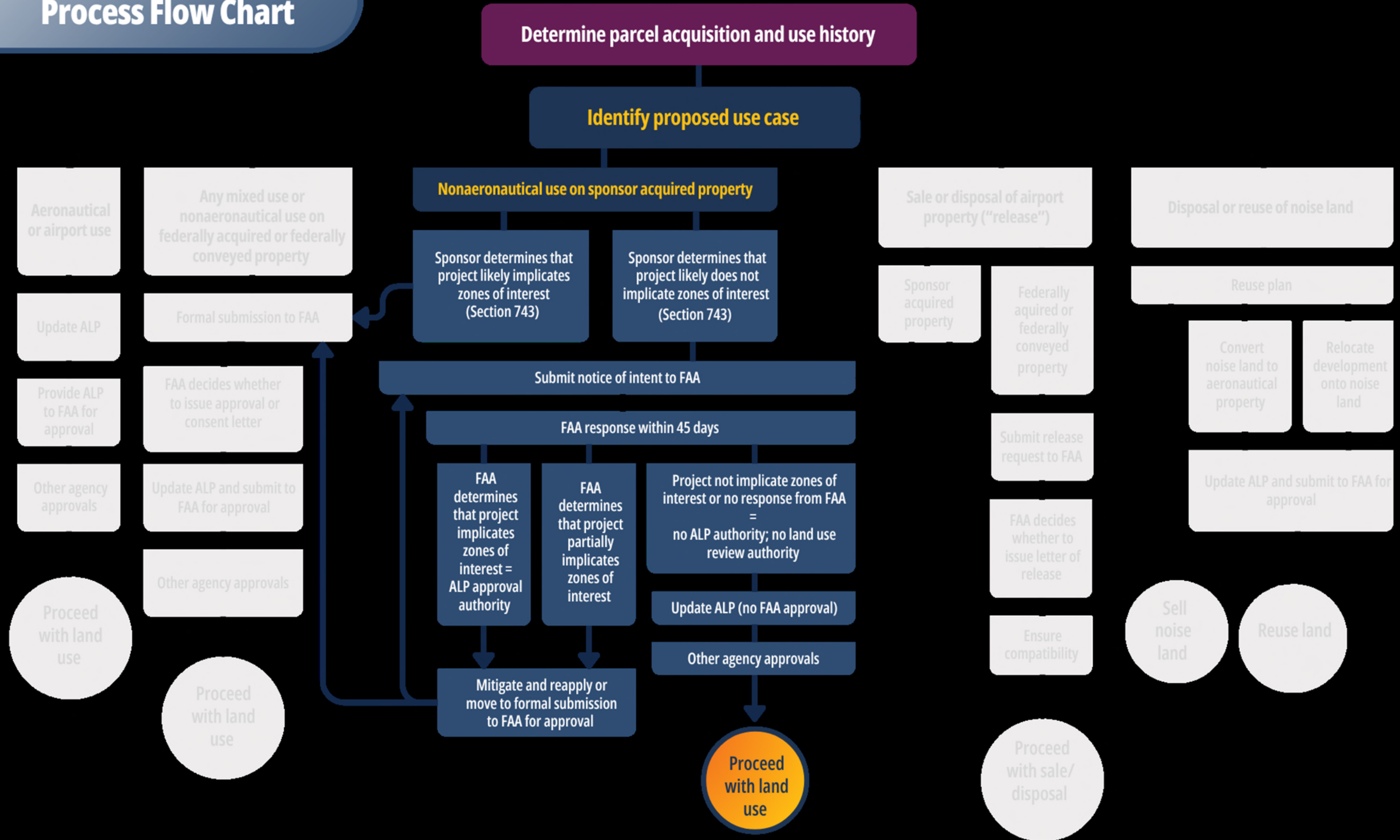
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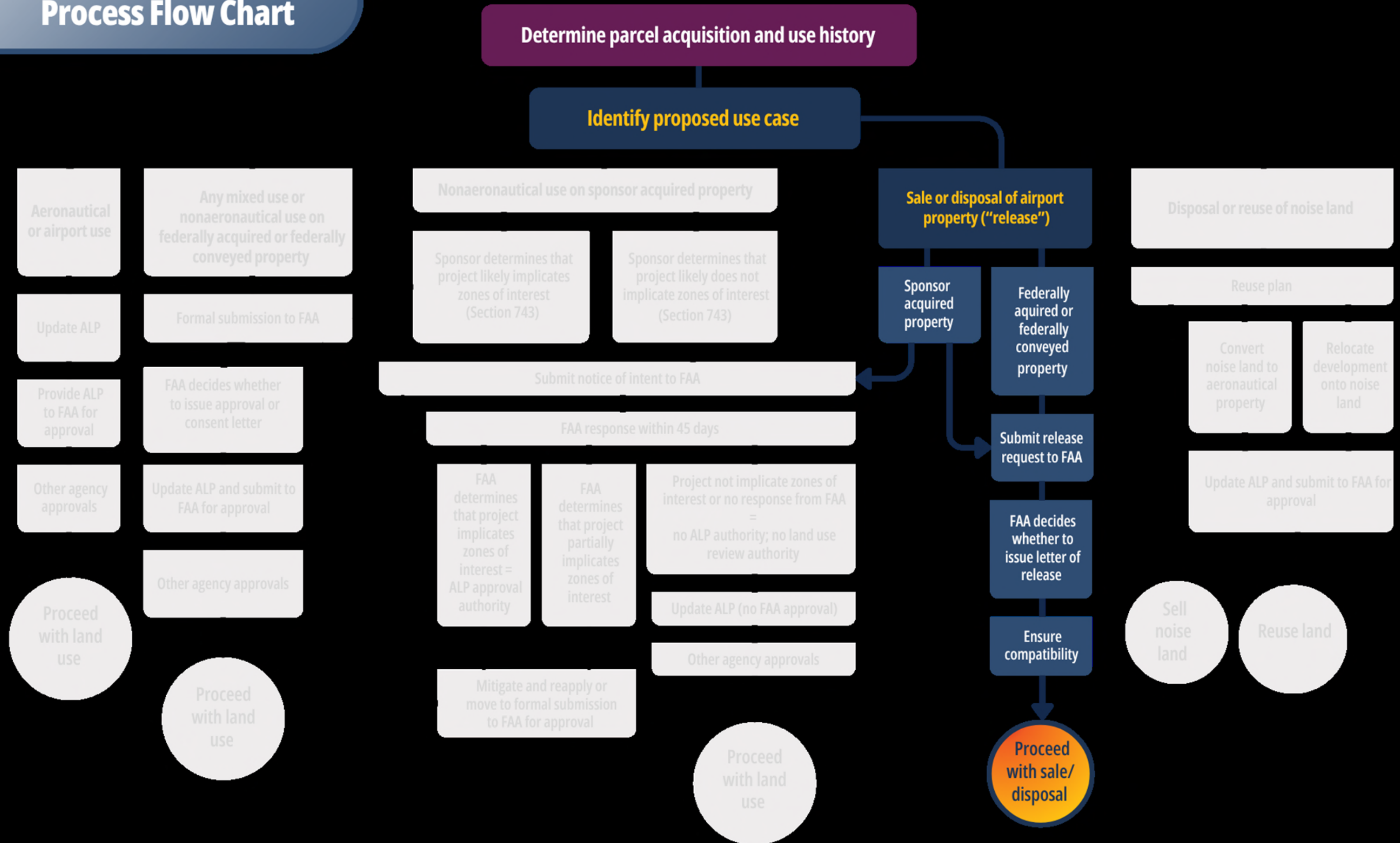
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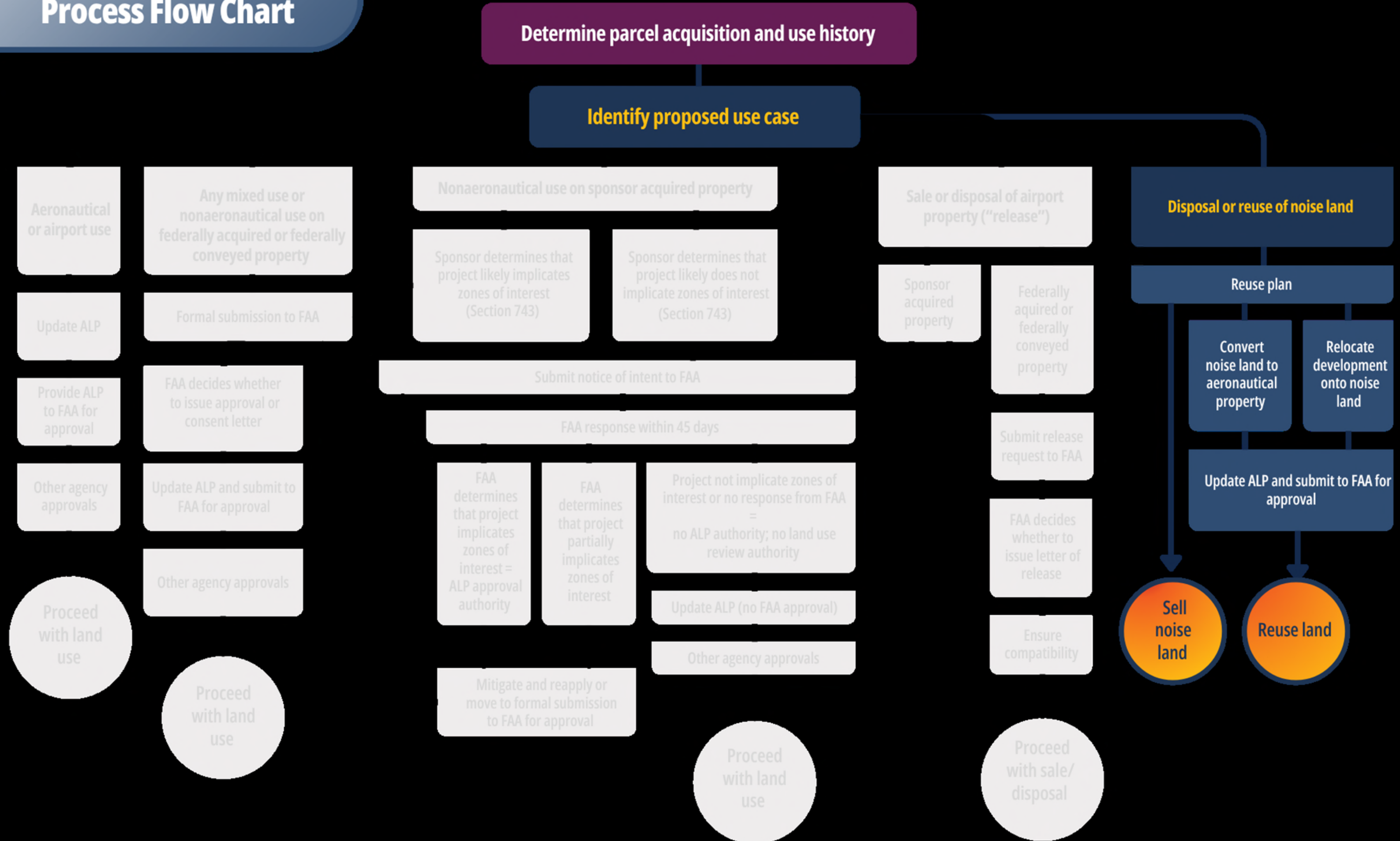
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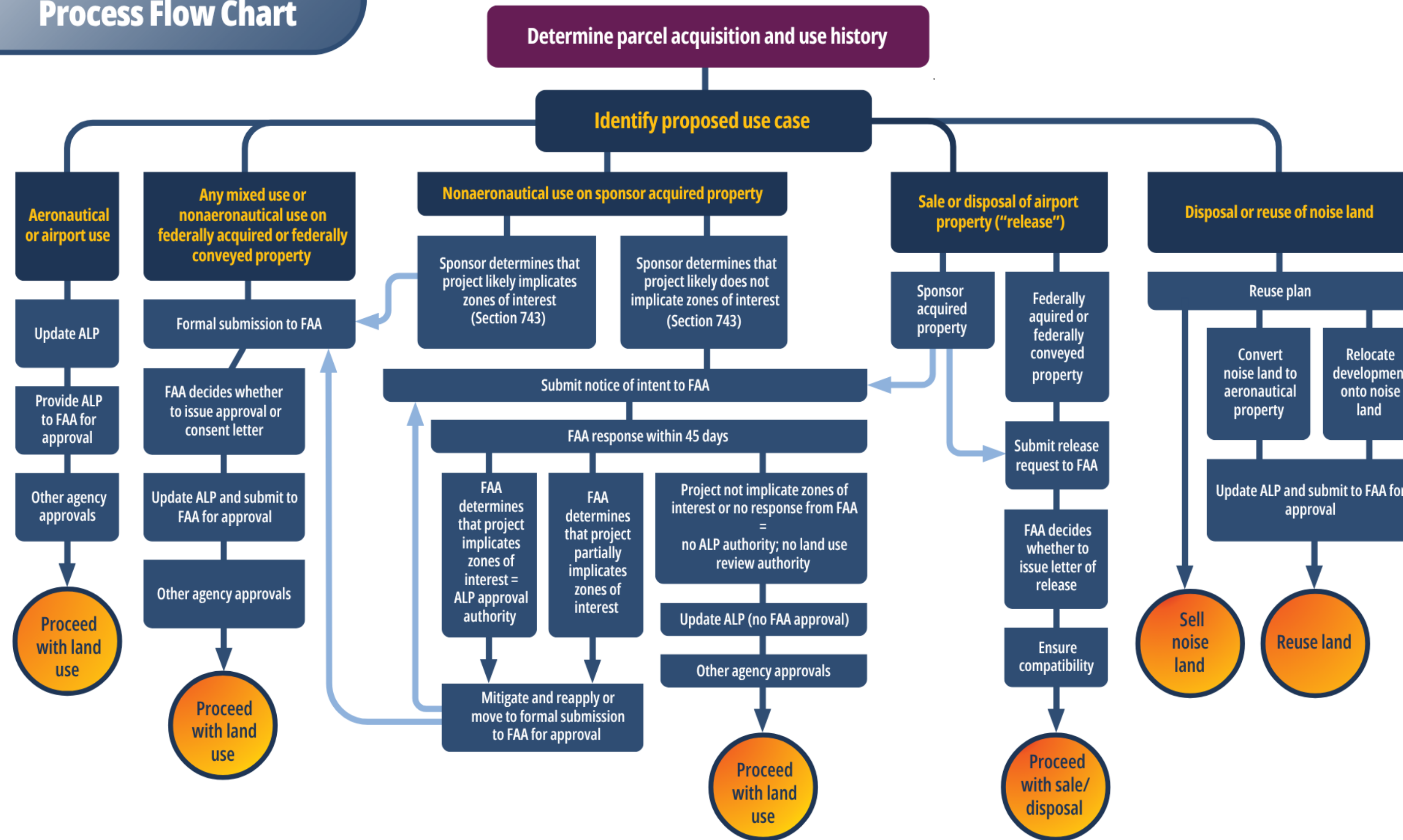
FAA Land Use Review Process Flow Chart



FAA Land Use Review Process Flow Chart



FAA Land Use Review Process Flow Chart



Additional Considerations and Approvals for Land Transactions

- National Environmental Policy Act (NEPA) review
- Airspace review (Part 77)
- Revenue use requirements
- Compatible land use
- Reservation of property interests



Airport Planning





Master Plan

- Sponsor's strategy for development of the airport and surrounding area
- Document not required (but process is)
- Planning process is the basis for the ALP
- Will be considered by FAA, alongside ALP, when evaluating land use change requests
- *Accepted* not approved by FAA



Master Planning Process

- Opportunity to address relevant issues
- Realistic schedule for implementation
- Financial plan
- Framework for continuous planning
- Opportunity to engage the public and stakeholders

Capital Improvement Plans



Sponsor's Capital Improvement Program (CIP)

- Outgrowth of Master Plan
- Anticipated capital needs for 5 years
- Prerequisite for AIP grant eligibility
- Sponsors submit CIP Data Sheet for items they desire in next 3 years

FAA's Airports Capital Improvement Plan (ACIP)

- Internal FAA planning tool for prioritizing funding
- ACIP serves as basis for the distribution of AIP grant funds

Compatibility

- Sponsors must ensure airport property *and* surrounding property is compatible with airport operations
- Case-by-case evaluation
- Certain uses are always incompatible: residential use, churches, schools
- Sponsors must take “reasonable action” to minimize incompatible use (e.g., enact zoning ordinances)



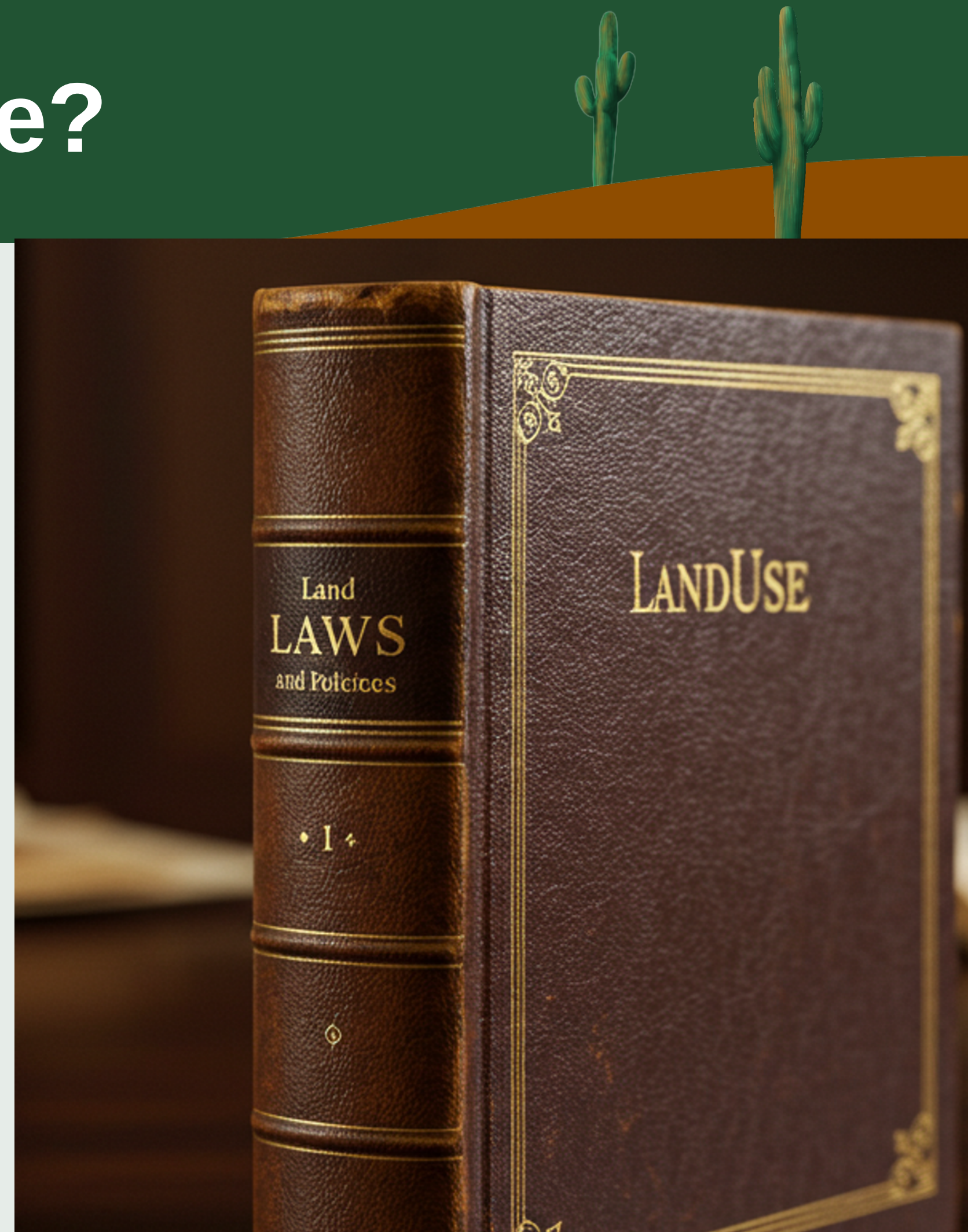
New Compatibility Challenges

Wind Farms
Data Centers
Drone Ports



Why should lawyers care?

- Grant Assurance compliance
 - o Accurate ALP
 - o Accurate Exhibit A
- Complete property records
- Proper documentation of:
 - o Releases
 - o Approvals/Consents
 - o Transactions
- Compliance with local land use laws
 - o Complex preemption issues



Closing Thought: Land Use Audits

- Keep records related to acquisition and conveyance on file
- Ensure ALP remains up-to-date and accurate
- Retain underlying documents (e.g., FAA release documents)



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Questions?




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