

38TH ANNUAL

AIRPORT LAW WORKSHOP



 KAPLAN KIRSCH ROCKWELL
projects that keep life moving*



ALPs, Master Planning and Environmental Review

Katie van Heuven (Moderator)
Kaplan Kirsch & Rockwell

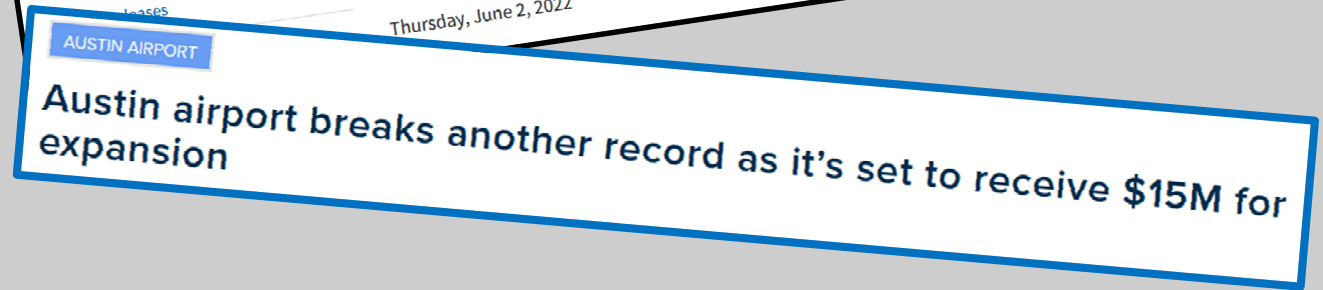
Dave Full
RS&H

Patricia Deem
FAA, Office of the Chief Counsel

Today's session



- **Airport planning basics –**
 - Master Plans
 - Capital Improvement Plans
 - Airport Layout Plans
 - Forecasts
- **Federal environmental reviews**
- **Integrating planning and environmental review**



Master plans



- The sponsor’s strategy for the development of the airport
- Prepared to support:
 - Modernization, improvements, or expansion of existing airports
 - Creation of a new airport
 - Routine, continued planning every 5-10 years
- Master Plan is basis for Airport Layout Plan (ALP)
- *Are not required by FAA policy, but are encouraged.*



Advisory Circular

Subject: Change 2 to Airport Master Plans **Date:** 1/27/2015 **AC No.:** 150/5070-6B
Initiated by: APP-400 **Change:** 2

1. PURPOSE. This Change 2 incorporates additional guidance on passenger convenience, ground access, and access to airport facilities, as identified in Section 131 of Public Law 112-95, “FAA Modernization and Reform Act of 2012 (49 U.S.C. § 47101(g)(2)).” Additional provisions of Public Law 112-95 such as Section 132 (b) which amended the definition of airport planning to include plans for recycling and minimizing the generation of airport solid waste (49 U.S.C § 47102(b)(5)(C)), and Section 133 providing that master plans address issues related to solid waste recycling and waste minimization (49 U.S.C. § 47106(a)(6)(A)) have been addressed in separate FAA guidance. These and related considerations will be incorporated into a future change to this AC.

This change also incorporates relevant updates related to the recent changes to Advisory Circular (AC) 150/5300-13, Airport Design, and references to the new Standard Operating Procedures for preparation and submission of Airport Layout Plans.

2. PRINCIPAL CHANGES. Changed text is indicated by vertical bars in the margins. The primary revisions are contained in Chapters 8 and 10 and Appendix B of this AC. In addition, limited editorial and text revisions since the release of Change 1 to this AC in 2007 are incorporated throughout. A full revision to this AC is underway.

PAGE CONTROL CHART

| Remove Pages | Dated | Insert Pages | Dated |
|--------------|-----------|--------------|-----------|
| i-iii | 7/29/2005 | i-iii | 1/27/2015 |
| iv | 5/1/2007 | iv | 1/27/2015 |
| 7-8 | 7/29/2005 | 7-8 | 1/27/2015 |
| 13 | 7/29/2005 | 13 | 1/27/2015 |
| 27 | 7/29/2005 | 27 | 1/27/2015 |



Master plans, continued



- The document is not required but the effort is!
- Do not confuse “Airport Master Plan” with master plans or comprehensive plans prepared under local or state land use laws

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



Capital improvement plans



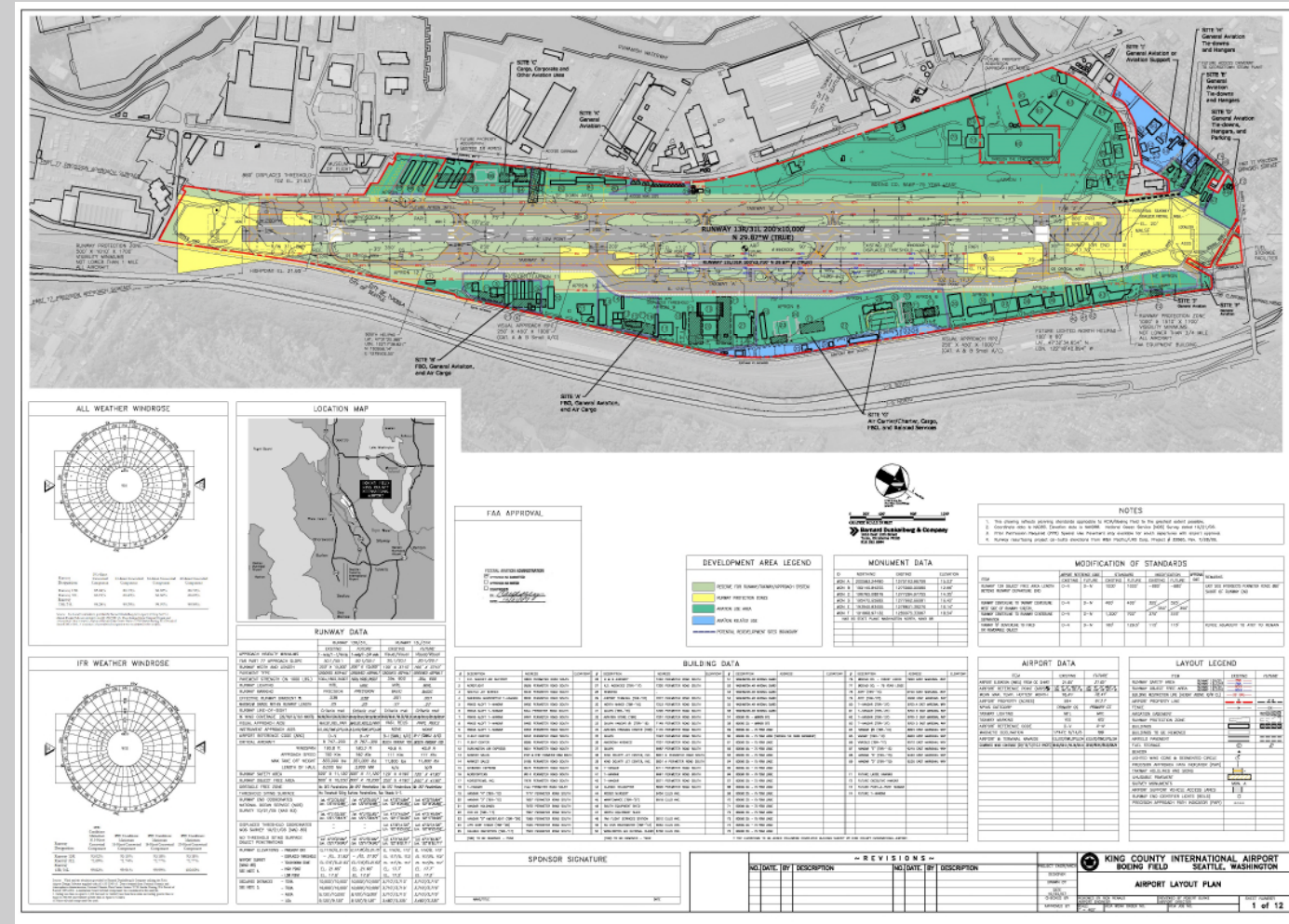
- Sponsor's Capital Improvement Program (CIP)
 - Outgrowth of Master Plan
 - Anticipated development for 5 years
 - Predicate to qualify for AIP grants
 - Sponsors submit CIP Data Sheet for items they desire in next three years.
- FAA's Airports Capital Improvement Plan (ACIP)
 - Internal FAA program serves as planning tool for prioritizing funds for critical airport development and capital needs.
 - ACIP serves as basis for the distribution of AIP grant funds.



Airport layout plans



An Airport Layout Plan is a scaled drawing of existing and proposed land and facilities necessary for the operation and development of the airport



Airport layout plans - contents



- Cover Sheet
- ALP Drawings
- Data Sheet
- Facilities Layout Plan
- Terminal Area Plan (as needed)
- Airport Airspace Drawing
- Approach Surface Drawing
- Airport Land Use Drawing
- Off-Airport Land Use Drawing
- Airport Property Map / Exhibit A
- Runway Departure Surface Drawing
- Utility Drawing
- Airport Access Plans

**Read and
Understand!**



Airport layout plans – legal significance



- ALPs must be maintained in accordance with FAA requirements
 - FAA Order 5190.6B, *FAA Airport Compliance Manual*, Appendix R
- Definition of airport property
 - Federally obligated
 - Subject to regulation
- Changes trigger FAA review or approval (in some instances)
 - ALPs may be conditionally or unconditionally approved by the FAA
 - The distinction between these approvals is important for project implementation
 - Section 163 of FAA Reauth. Act eliminated approval for some ALP changes
- Both a hammer and a shield



Forecasts of aviation activity



- Purpose: to accurately predict future aviation demand
- Many different methodologies
- Top-down versus bottom-up forecasting

| APO TERMINAL AREA FORECAST DETAIL REPORT | | | | | | | | | | | | |
|-------------------------------------------|--------------|-----------|------------|----------------------|---------------------|-------|----------|------------------|-------|----------|-----------|---------|
| Forecast Issued March 2022 | | | | | | | | | | | | |
| SEA | | | | | | | | | | | | |
| Fiscal Year | Enplanements | | | AIRCRAFT OPERATIONS | | | | | | | Total Ops | |
| | Air Carrier | Commuter | Total | Itinerant Operations | | | | Local Operations | | | | |
| | | | | Air Carrier | Air Taxi & Commuter | GA | Military | Total | Civil | Military | Total | |
| REGION:ANM STATE:WA LOCID:SEA | | | | | | | | | | | | |
| CITY:SEATTLE AIRPORT:Seattle Tacoma Int'l | | | | | | | | | | | | |
| 2021* | 11,758,249 | 2,560,375 | 14,318,624 | 352,785 | 4,226 | 1,260 | 65 | 358,336 | 0 | 0 | 0 | 358,336 |
| 2022* | 14,916,926 | 2,786,067 | 17,702,993 | 372,431 | 4,471 | 1,958 | 65 | 378,925 | 0 | 0 | 0 | 378,925 |
| 2023* | 18,660,787 | 3,514,742 | 22,175,529 | 428,500 | 4,743 | 2,357 | 65 | 435,665 | 0 | 0 | 0 | 435,665 |
| 2024* | 20,288,823 | 3,858,459 | 24,147,282 | 449,253 | 5,054 | 2,369 | 65 | 456,741 | 0 | 0 | 0 | 456,741 |
| 2025* | 21,112,180 | 4,034,022 | 25,146,202 | 471,190 | 5,133 | 2,381 | 65 | 478,769 | 0 | 0 | 0 | 478,769 |
| 2026* | 21,784,754 | 4,156,504 | 25,941,258 | 493,181 | 5,206 | 2,393 | 65 | 500,845 | 0 | 0 | 0 | 500,845 |
| 2027* | 22,462,268 | 4,279,997 | 26,742,265 | 514,151 | 5,280 | 2,405 | 65 | 521,901 | 0 | 0 | 0 | 521,901 |
| 2028* | 23,133,561 | 4,402,496 | 27,536,057 | 526,900 | 5,356 | 2,417 | 65 | 534,738 | 0 | 0 | 0 | 534,738 |
| 2029* | 23,778,656 | 4,520,158 | 28,298,814 | 538,808 | 5,432 | 2,429 | 65 | 546,734 | 0 | 0 | 0 | 546,734 |
| 2030* | 24,425,529 | 4,637,963 | 29,063,492 | 550,546 | 5,510 | 2,442 | 65 | 558,563 | 0 | 0 | 0 | 558,563 |
| 2031* | 25,067,826 | 4,755,057 | 29,822,883 | 559,940 | 5,589 | 2,454 | 65 | 568,048 | 0 | 0 | 0 | 568,048 |
| 2032* | 25,717,409 | 4,873,742 | 30,591,151 | 569,438 | 5,669 | 2,466 | 65 | 577,638 | 0 | 0 | 0 | 577,638 |
| 2033* | 26,366,149 | 4,992,058 | 31,358,207 | 578,987 | 5,750 | 2,479 | 65 | 587,281 | 0 | 0 | 0 | 587,281 |
| 2034* | 27,041,576 | 5,114,900 | 32,156,476 | 589,248 | 5,832 | 2,491 | 65 | 597,636 | 0 | 0 | 0 | 597,636 |
| 2035* | 27,731,509 | 5,240,859 | 32,972,368 | 600,033 | 5,915 | 2,504 | 65 | 608,517 | 0 | 0 | 0 | 608,517 |
| 2036* | 28,425,433 | 5,367,228 | 33,792,661 | 611,060 | 5,999 | 2,516 | 65 | 619,640 | 0 | 0 | 0 | 619,640 |
| 2037* | 29,096,899 | 5,489,777 | 34,586,676 | 621,710 | 6,084 | 2,529 | 65 | 630,388 | 0 | 0 | 0 | 630,388 |
| 2038* | 29,763,415 | 5,611,140 | 35,374,555 | 632,412 | 6,170 | 2,542 | 65 | 641,189 | 0 | 0 | 0 | 641,189 |
| 2039* | 30,445,666 | 5,735,397 | 36,181,063 | 643,603 | 6,257 | 2,555 | 65 | 652,480 | 0 | 0 | 0 | 652,480 |
| 2040* | 31,156,322 | 5,864,435 | 37,020,757 | 655,594 | 6,345 | 2,568 | 65 | 664,572 | 0 | 0 | 0 | 664,572 |
| 2041* | 31,878,843 | 5,996,285 | 37,875,128 | 668,027 | 6,435 | 2,580 | 65 | 677,107 | 0 | 0 | 0 | 677,107 |
| 2042* | 32,618,773 | 6,131,394 | 38,750,167 | 680,994 | 6,526 | 2,593 | 65 | 690,178 | 0 | 0 | 0 | 690,178 |
| 2043* | 33,368,687 | 6,268,012 | 39,636,699 | 694,324 | 6,618 | 2,607 | 65 | 703,614 | 0 | 0 | 0 | 703,614 |
| 2044* | 34,138,580 | 6,408,256 | 40,546,836 | 708,283 | 6,712 | 2,620 | 65 | 717,680 | 0 | 0 | 0 | 717,680 |
| 2045* | 34,935,121 | 6,552,831 | 41,487,952 | 722,932 | 6,804 | 2,633 | 65 | 732,434 | 0 | 0 | 0 | 732,434 |

Forecasts, continued



- Local versus FAA forecasts
 - Local forecasts that differ more than 10% (5-year) or 15% (10-year) from the FAA Terminal Area Forecast (TAF) must be approved by FAA
 - If using the TAF, airport must provide statement of support
- Forecast will dictate:
 - Development
 - Financial needs
 - Carrier demands
- What if forecasts change during project development process?



ALPS, MASTER PLANNING AND ENVIRONMENTAL REVIEW

Presented to: **38TH Annual Basics of
Airport Law Workshop**

By: **Patricia Deem, Senior Attorney
Office of General Counsel**

Date: **October 3, 2022**



**Federal Aviation
Administration**

National Environmental Policy Act (NEPA) Overview

- **Federal agencies must prepare a “detailed statement” when they propose to take a “major federal action significantly affecting the quality of the human environment”**
 - Take a hard look at the impacts
 - Provide information about environmental effects to decision-makers and the public
 - Improve decision-making through disclosure and coordination/consultation



NEPA Overview, continued

- **The NEPA process is often how the public learns about airport improvement projects, though during planning is preferred**
- **NEPA imposes *procedural*, not substantive requirements**
 - NEPA is an information and planning statute
 - Unlike substantive environmental standards (Clean Air Act, Clean Water Act) that impose pollution control requirements



NEPA in the Airport Context

- **NEPA is triggered when there is a federal action -**
not simply day-to-day operations
 - ALP approval
 - AIP/PFC funding decisions
 - Airspace decisions



NEPA: Three Levels of Review

- **Categorical Exclusion (CATEX)**
- **Environmental Assessment (EA)**
- **Environmental Impact Statement (EIS)**



Categorical Exclusions (CATEXs)

- **Actions that do not individually or cumulatively have a significant effect on the human environment, and for which, neither an EA nor an EIS is required**



CATEXs, continued

- **Practice Tips:**

- A CATEX is not an exemption or waiver of NEPA review; it is a level of NEPA review
- FAA Order 1050.1F provides a list of catexes covering types of actions typically categorically excluded from additional NEPA review
- If responsible FAA official determines that extraordinary circumstances exist, an EA or EIS must be prepared



Environmental Assessments (EAs)

- **Concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS**
- **Prepared when initial review of the proposed action indicates that:**
 - Action is not categorically excluded;
 - Action is normally categorically excluded but there are extraordinary circumstances that may have significant impacts; or
 - Action is not one known to normally require an EIS and is not categorically excluded



EAs, continued

- **Practice Tips:**
 - An EA may facilitate the preparation of an EIS, when one is necessary
 - FAA Order 1050.1F provides a list of actions normally requiring an EA



Finding of No Significant Impact (FONSI)

- If no expected significant impacts, FAA prepares a FONSI to document that finding
- The FONSI is an FAA document and cannot be prepared by the airport sponsor
- FONSI/Record of Decision (FONSI/ROD)
- Legal Significance:
 - FAA has completed the NEPA process



Environmental Impact Statement (EIS)

- **An EIS is a detailed written statement required when one or more environmental impacts would be significant and mitigation measures cannot reduce the impact(s) below significant levels**



EISs, continued

- **Practice Tips:**
 - FAA, not the sponsor, must prepare an EIS
 - FAA Advisory Circular No. 150/5100-14E provides guidance for selection of an environmental consultant
 - FAA Order 1050.1F provides a list of actions normally requiring an EIS



Content of an EA/EIS

- **Major elements:**

- Purpose and need of the proposed action
- Explanation of alternatives
- Description of the affected environment
- Analysis of the environmental consequences the alternatives (including the no action alternative)
- Mitigation
- Public Involvement



Content of an EA/EIS, continued

- **Information must be scientifically-based**
 - No guesses, assumptions, or conclusions without an articulated, rational basis
- **Effects/Impacts Analysis:**
 - **Direct impacts** are caused by the action and occur at the same time and place
 - **Indirect impacts** are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable
 - **Cumulative impacts** result from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions



Sources of NEPA Law for Airports

- **NEPA**
- **Council on Environmental Quality (CEQ) Regulations**
- **FAA Orders 1050.1F and 5050.4B**
- **1050.1F Desk Reference**
- **Caselaw**



Integrating planning and NEPA review



- Have all substantive planning questions answered when NEPA process begins
- Incorporate NEPA considerations into the planning process
 - Develop a supportable purpose and need during the planning process
 - Complete alternatives analysis during the planning process



Lessons learned



- An EA or EIS is not a good place to be doing fundamental planning
- Carefully consider project elements
 - Avoid segmentation, but do not be over-inclusive
- Alternatives need to be defined (and eliminated) during the planning process





Questions?

Katie van Heuven cvanheuven@kaplankirsch.com
Dave Full david.full@rsandh.com
Patricia Deem patricia.deem@faa.gov

www.kaplankirsch.com | www.aaae.org | www.imla.org

