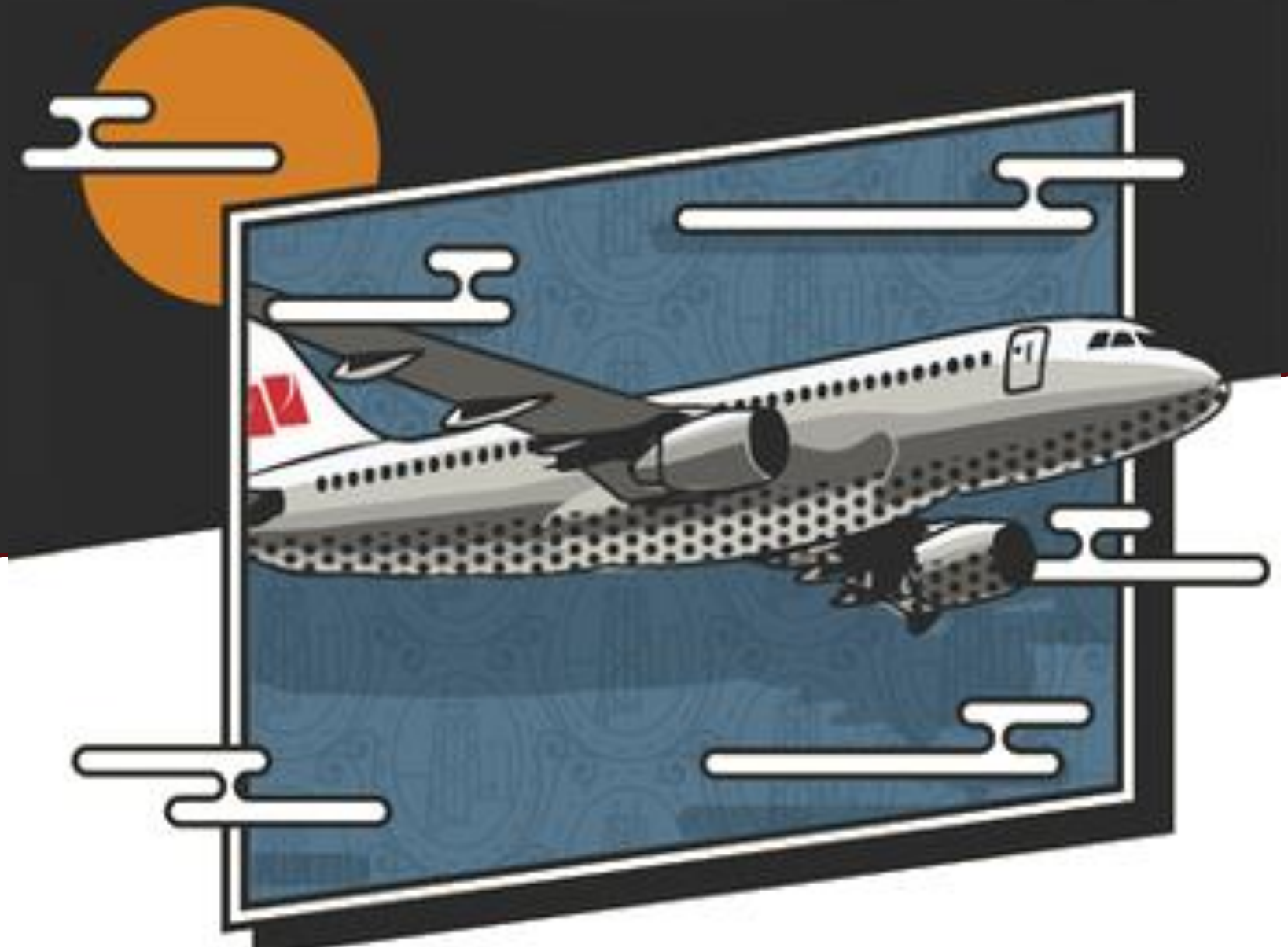


40th Annual  
Airport Law Workshop



Session 4: Fundamentals

# Airport *Aeronautical* Land Use, Planning and Related Compliance Obligations

# Speakers

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**Katie van Heuven**



Partner  
Kaplan Kirsch LLP

**Joelle Briggs**



Airport Compliance  
Specialist  
Federal Aviation  
Administration

# Today's Session

## Planning documents and why they matter

- Master Plans
- Forecasts
- Airport Layout Plans
- Environmental reviews

## Compliance considerations

- Airport Compliance Manual (Order 5190.6B) Update
- Background on source of compliance obligations
- Introduction to Land Use Policy
- Guiding principle is protection of aeronautical use

Forbes

FORBES > LIFESTYLE > TRAVEL

## Biden Pumps Nearly \$1 Billion Into Airport Modernization Projects

### Airports Invest Big in 2024

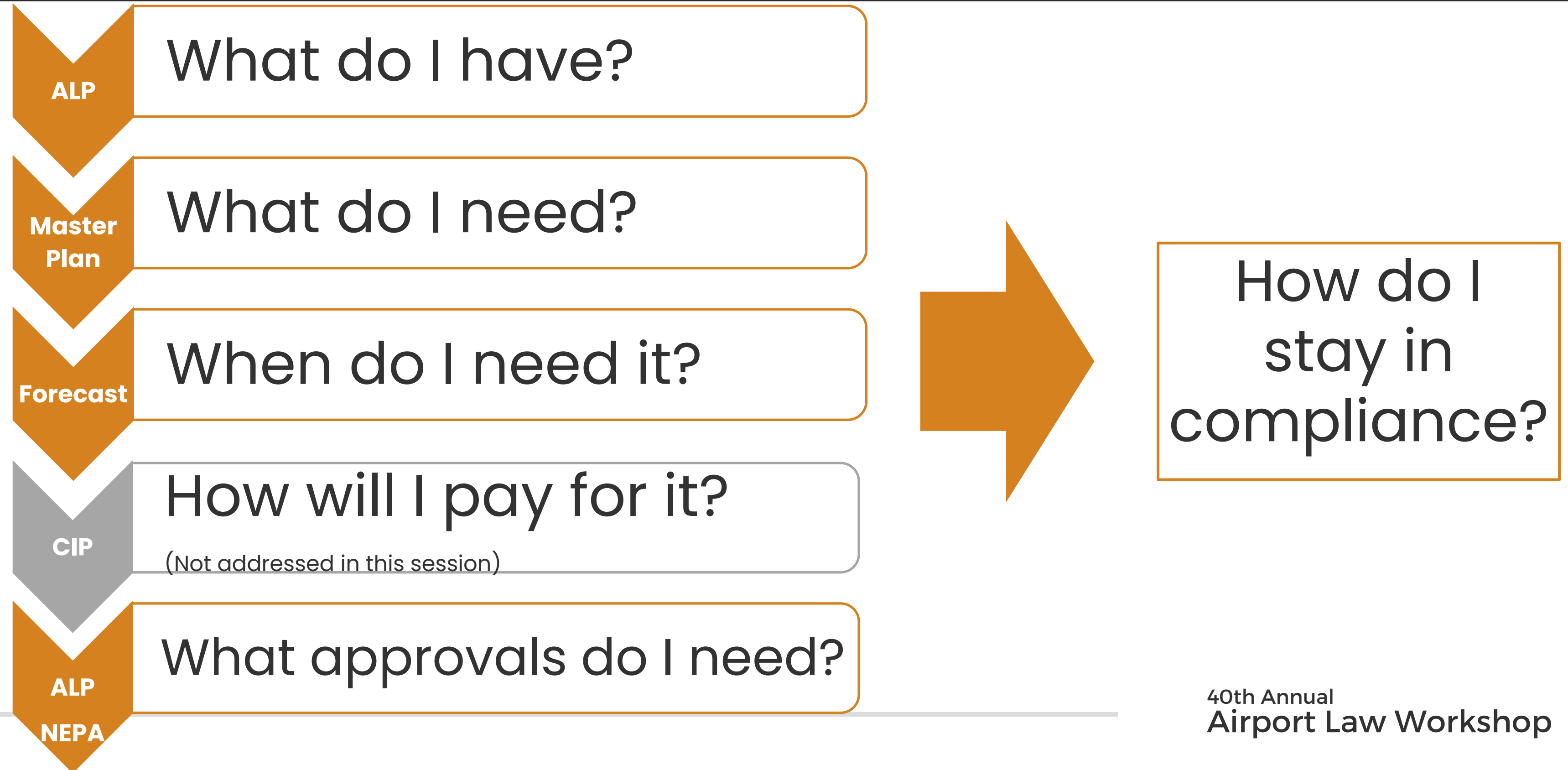
Joe Petrie

Feb. 13, 2024

**Related To:** [Airport Business Magazine](#)

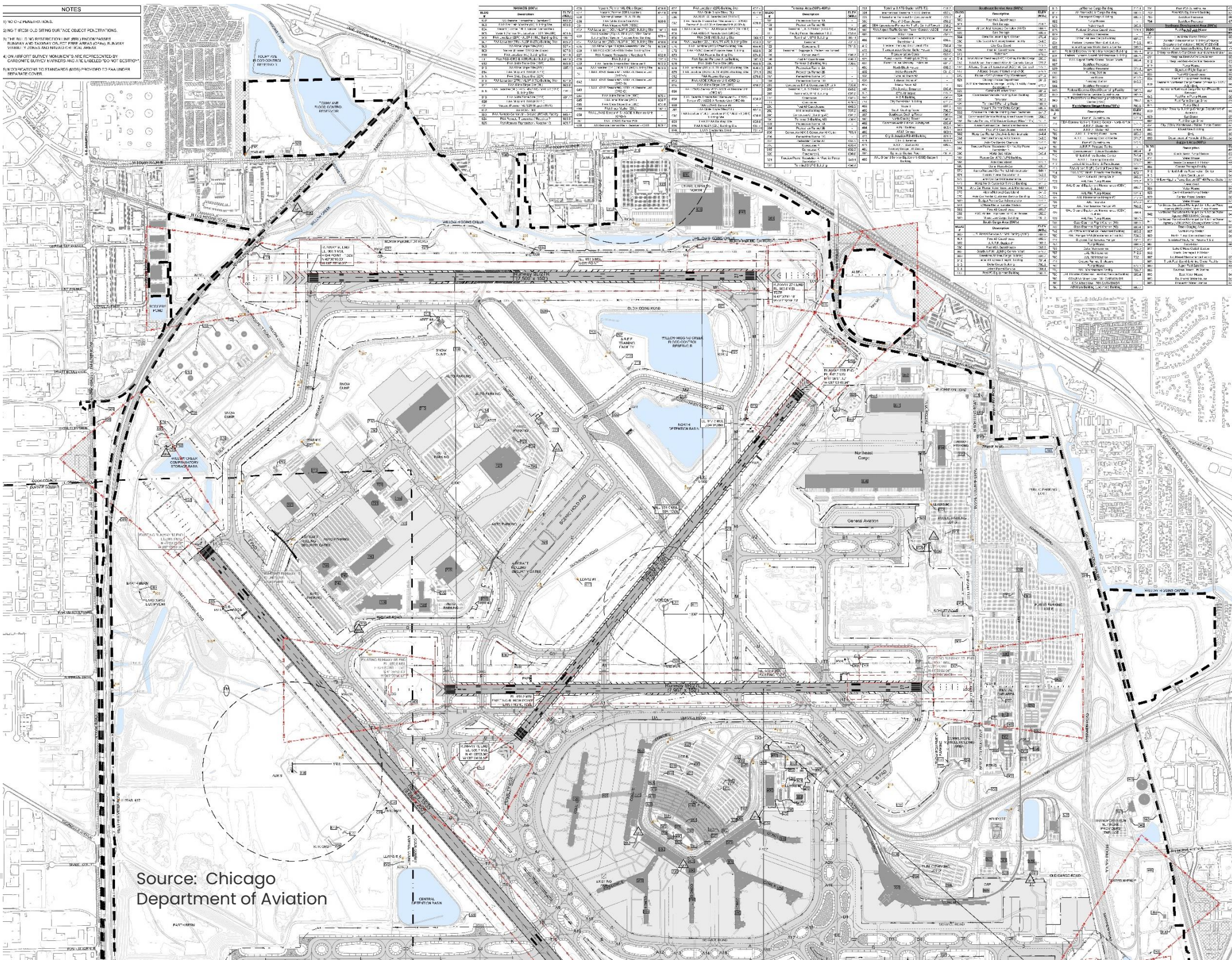


# Context for today's session



# What do I have?

## The Airport Layout Plan (ALP)



## DEFINITION:

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

# 40th Annual Airport Law Workshop

# Airport Layout Plans

## Top 6 things to know

1. ALP is legally very important
2. An ALP is a set of scaled drawings
3. Under Grant Assurance 29, sponsors must keep ALP up-to-date.
4. Sponsor obligations are tied to the ALP and the “Exhibit A” Property Map.
5. The “Exhibit A” and the ALP Property Map are not necessarily the identical.
6. The sponsor attests to the accuracy of the ALP.

### Key Resources:

- Grant Assurance 29, *Airport Layout Plans*
- SOP 2.00, *FAA Review and Approval of ALPs*
- Advisory Circular 5070-6B, *Airport Master Plans*



# What do I need?

## Airport master planning

- The sponsor's strategy for the development of the airport
- Used to support:
  - Modernization or expansion of existing airports
  - Creation of a new airport
  - Routine, continued planning every 5-10 years
- *Not required by FAA policy, only encouraged.*



### Key Resources:

- Advisory Circular 150/5030-13B, Airport Design
- *Advisory Circular 150/5070-6B, Airport Master Plans*

# Airport master planning

## Why is master planning important?

- The document is not required but planning is!
- The basis for
  - Airport Layout Plan updates
  - Federal and local approvals (including environmental reviews)
  - Federal funding decisions
- Do not confuse “Airport Master Plan” with local or state land use laws



# When do I need it?

## Forecasting

### Forecasts are critical to planning process

- Predict future demand
- Predict aeronautical (facility) needs
- Predict financial needs
- Predict carrier needs
- Define role of *this airport* in the national system

#### Key Resources:

- Advisory Circular 150/5070-6B, *Airport Master Plans*
- Order 5100.38D, *AIP Handbook*
- *Forecasting Aviation Activity by Airport* (available at [https://www.faa.gov/airports/planning\\_capacity](https://www.faa.gov/airports/planning_capacity))



# Forecasts

## The FAA Terminal Area Forecast (TAF)

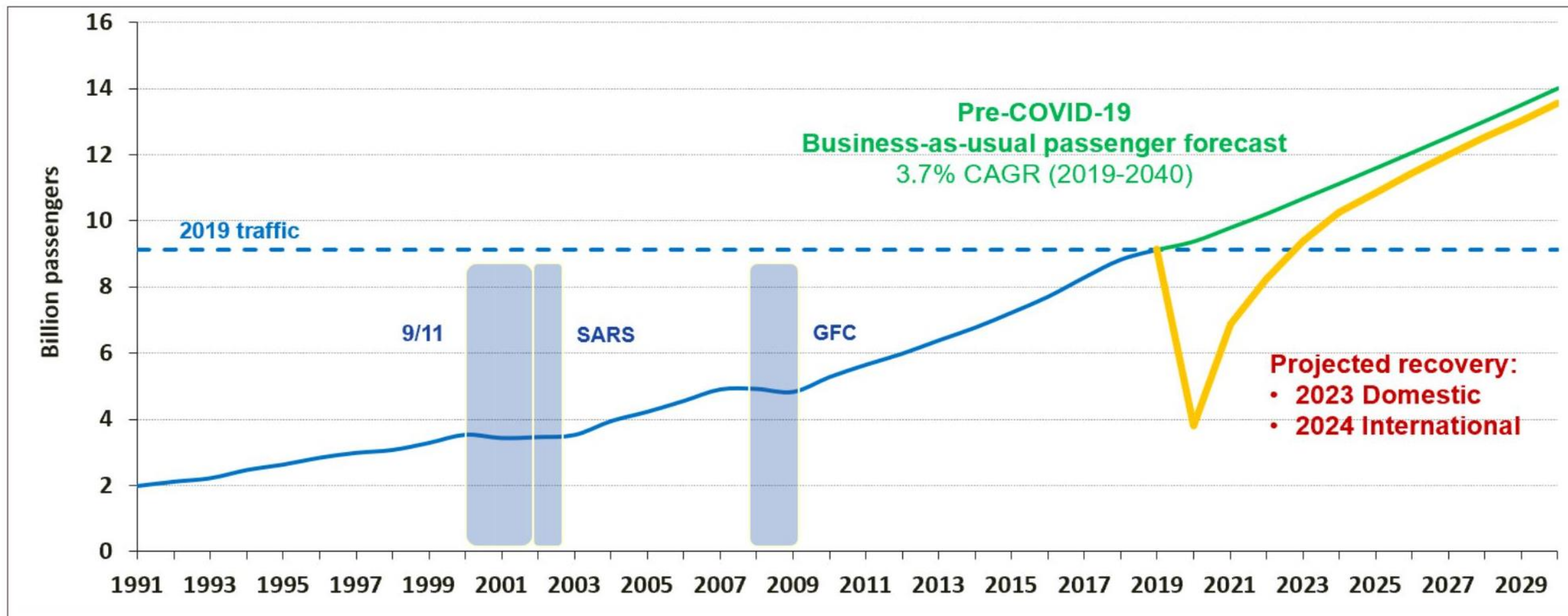
- Benchmark for the National Plan for Integrated Airport System (NPIAS)
- Developed annually for FAA budget and planning
  - But it is used for myriad purposes beyond original intent
- Local forecasts need FAA approval if not consistent with the TAF
  - Within 10% (5-year forecast)
  - Within 15% (10-year forecast)

Fiscal Year	Enplanements		Total	AIRCRAFT OPERATIONS			
	Air Carrier	Commuter		Air Carrier	Air Taxi & Commuter	GA	Military
2023*	8,458,399	4,021,391	12,479,790	287,593	1,605	3,259	1,532
2024*	8,542,983	4,139,053	12,682,036	290,975	1,725	3,292	1,532
2025*	8,628,413	4,180,444	12,808,857	290,975	1,725	3,325	1,532
2026*	8,714,697	4,222,248	12,936,945	290,975	1,725	3,359	1,532
2027*	8,801,792	4,264,454	13,066,246	290,975	1,725	3,393	1,532
2028*	8,889,467	4,307,013	13,196,480	290,975	1,725	3,427	1,532
2029*	8,977,803	4,349,928	13,327,731	290,975	1,725	3,462	1,532
2030*	9,066,757	4,393,010	13,459,767	290,975	1,725	3,497	1,532
2031*	9,156,166	4,436,343	13,592,509	290,975	1,725	3,532	1,532
2032*	9,245,359	4,480,019	13,725,378	290,975	1,725	3,568	1,532
2033*	9,333,978	4,523,901	13,857,879	290,975	1,725	3,604	1,532
2034*	9,421,580	4,568,018	13,989,598	290,975	1,725	3,677	1,532
2035*	9,508,280	4,612,109	14,120,389	290,975	1,725	3,714	1,532
2036*	9,593,216	4,656,118	14,249,334	290,975	1,725	3,751	1,532
2037*	9,673,204	4,700,025	14,373,229	290,975	1,725	3,789	1,532
2038*	9,749,293	4,743,834	14,493,127	290,975	1,725	3,827	1,532
2039*	9,820,847	4,787,634	14,608,481	290,975	1,725	3,866	1,532
2040*	9,886,316	4,830,244	14,716,560	290,975	1,725	3,905	1,532
2041*	9,946,113	4,872,127	14,818,240	290,975	1,725	3,944	1,532
2042*	10,001,933	4,913,823	14,915,756	290,975	1,725	3,984	1,532
2043*	10,053,014	4,955,053	15,008,067	290,975	1,725	4,024	1,532

# Forecasts

## Considerations for attorneys

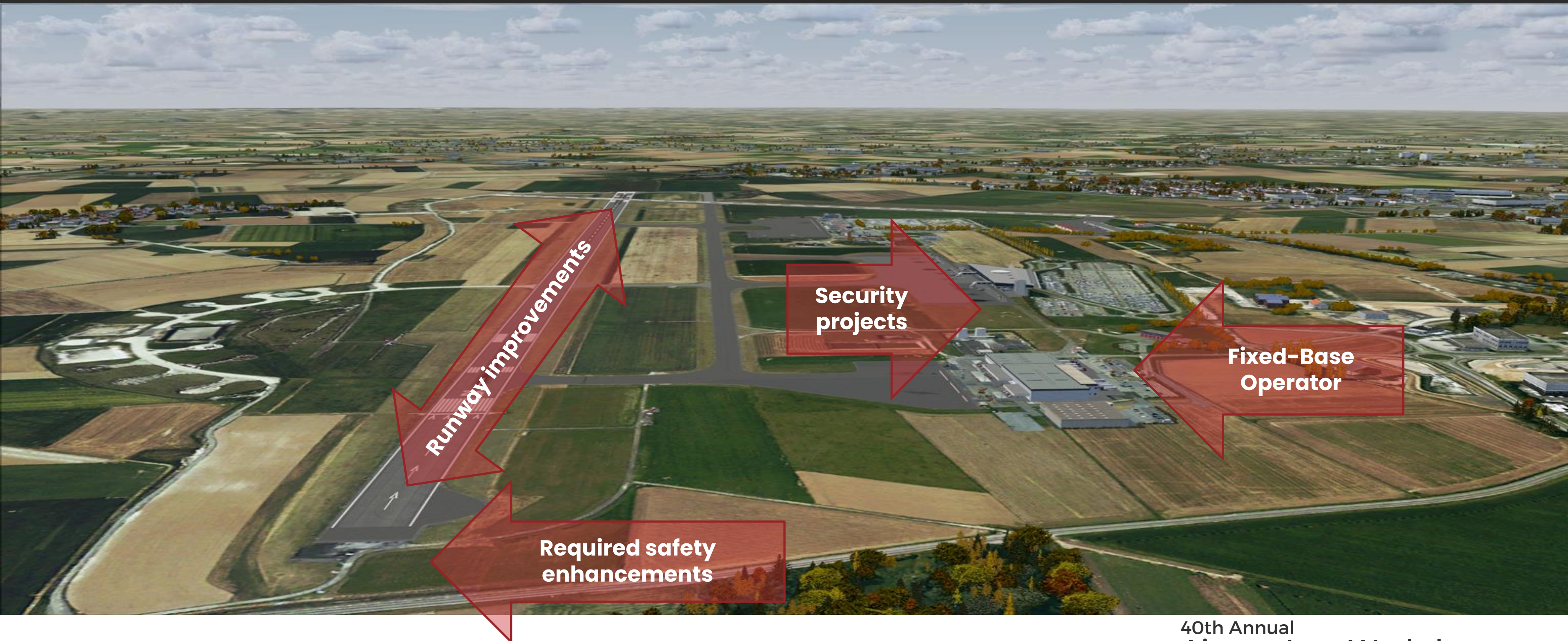
- Forecasting is a difficult art; not a science
  - *Can be controversial*
  - *Forecasts can change mid-project*



Source: ACI World (2020)

# What approvals do I need?

Aeronautical development



# What approvals do I need?

## ALP updates

1. Grant Assurance 29: sponsors must keep an up-to-date ALP
2. Aeronautical development generally triggers FAA review or approval
  - projects impacting safe and efficient operation
  - safety of people and property on the ground
3. FAA issues *conditional* and *unconditional* approvals
  - Unconditional approval is needed to secure funding

### Key Resources:

- Grant Assurance 29, *Airport Layout Plans*
- SOP 2.00, *FAA Review and Approval of ALPs*

# What approvals do I need?

## Land use changes

FAA **does not** issue land use approvals for projects that are aeronautical or for airport purposes.

- New term “airport purpose” in the Land Use Policy
- Uses that are directly related to the actual operation or foreseeable aeronautical development of a public airport

### Grant Assurance 22(a)

- Sponsor will make the airport **available as an airport for public use** on reasonable terms and without unjust discrimination to **all types, kinds and classes of aeronautical activities**, including commercial aeronautical activities offering services to the public at the airport

# What approvals do I need?

National Environmental Policy Act (NEPA)



If FAA approval  
is needed,  
environmental  
review is required

- NEPA establishes environmental policies and goals for the country
- When the federal government takes an action that may have significant environmental impacts, it must:
  - Take a hard look at the impacts
  - Provide information about environmental effects to decision-makers and the public
- Intent is to improve decision making

# NEPA environmental review

## Airport context

- Based on projects and actions
  - Runways, terminal development, access projects
  - Airspace redesign
  - **Not day to day operations or growth from market forces**
- Triggered by federal action:
  - ALP approval
  - Federal funding approvals
  - Airspace decisions
- Sponsor's goals
  - Secure approval
  - Keep cost and schedule reasonable
- **FAA goals ≠ sponsor's goals**

### Key Resources:

- 42 U.S.C. §§ 4321 *et seq.*
- 40 C.F.R. §§ 1500 *et seq.*
- FAA Order 1050.1F & Desk Reference
- FAA Order 5050.4B

# NEPA

## Levels of review

## Categorical Exclusion (CATEX)

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

## NORTHWEST MOUNTAIN REGION - AIRPORTS DIVISION

### Categorical Exclusion Form

Version 08/08/07a

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**CONTACT THE ADO ENVIRONMENTAL SPECIALIST BEFORE USING THIS FORM**

*Directions:* The person (analyst) preparing this form should have knowledge of the environmental features of the airport and general impacts of the project. Although some responses may be obtained from the preparer's own observations, previous environmental documents or research should be cited. Some of the best sources for information are the jurisdictional federal, state and local resource agencies responsible for the impact categories. This form is to be used with the current versions of FAA guidance, specifically FAA Orders 1050.1E, and 5050.4B.

FAA urges the analyst to contact the ADO as quickly as possible for any extraordinary circumstance that requires FAA to complete the process any applicable special purpose laws require. For example, FAA is solely responsible for completing the Section 106 process. Other special purpose laws may require FAA to complete certain procedures. Early coordination with FAA will do much to reduce delays that would have occurred if it did not begin compliance procedures with the applicable special purpose law early in the project review cycle.

Some of the categories below require a reference or information to support a finding. Attach that information to the form or scan it as an attachment if you are filing this form on the web site noted below.

An electronic version of this form is available at:  
[http://www.faa.gov/airports/airtraffic/airports/regions/guidance/northwest\\_mountain/airports\\_resources/forms/meda/environmental/environmental\\_checklist.doc](http://www.faa.gov/airports/airtraffic/airports/regions/guidance/northwest_mountain/airports_resources/forms/meda/environmental/environmental_checklist.doc)

**APPLICABILITY:**

This Environmental Evaluation Form may be used only if the sponsor's proposed project meets the following two (2) criteria:

- The proposed project is a federal action subject to NEPA. List applicable paragraph number from FAA Order 5050.4B, Chapter 1 para. 9g
- The proposed project is identified as one that can be categorically excluded. List applicable category from FAA Order 1050.1E paragraphs 307 through 312.


*And*

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Airport:	Airport Identifier:
Project Title:	
Project Description: <i>List and clearly describe ALL components of project proposal including all connected actions. (Attach site map identifying project area).</i>	
Proposed Start Date of Project:	
Purpose & Need:	

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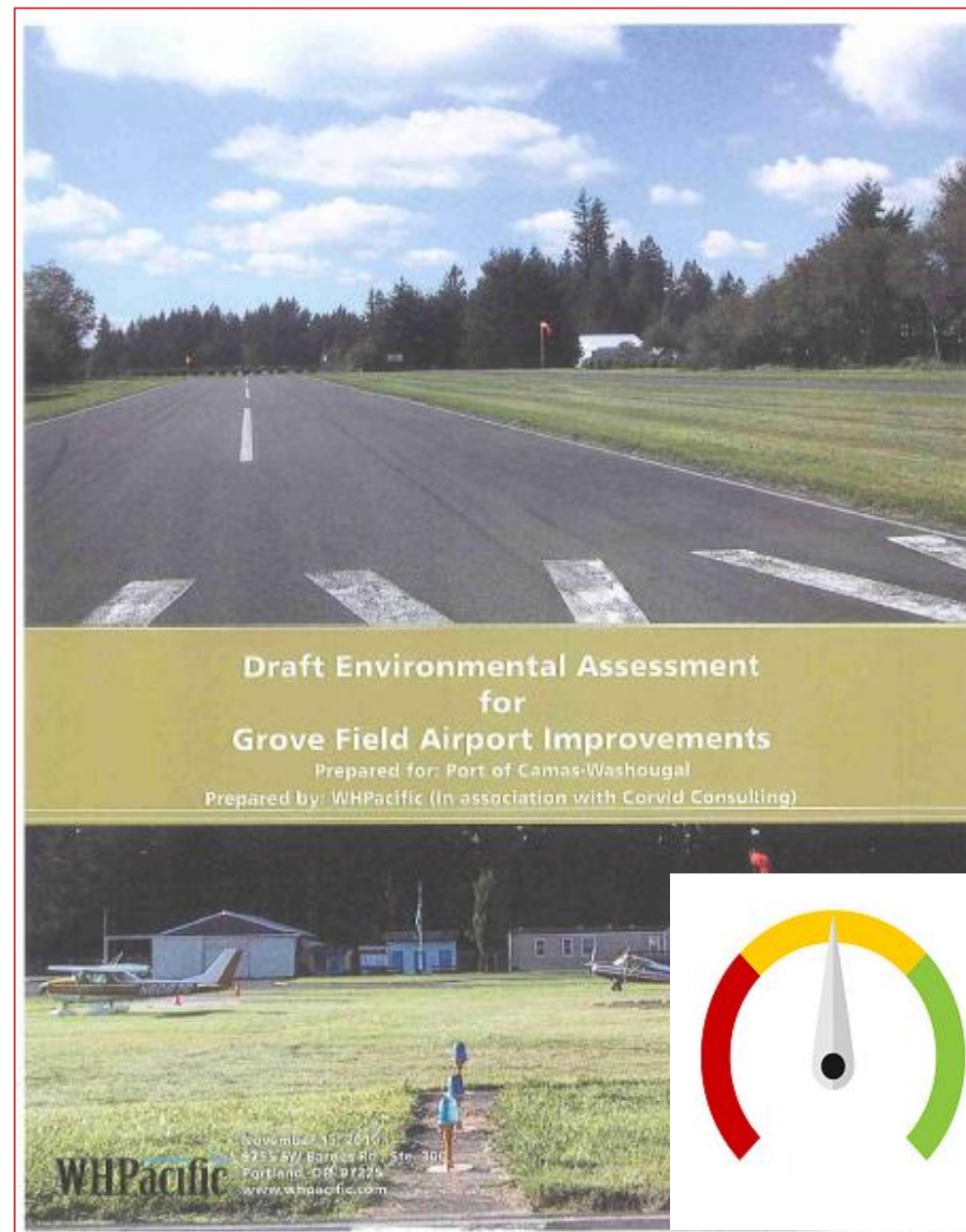
Per FAA Order 1050.1E, paragraph 304 and 5050.4B paragraph 606, it be utilized, a review of extraordinary circumstances must be conducted is valid. Extraordinary circumstances exist when the proposed action (circumstances and (2) may have an adverse effect requiring further action that effect. Please complete this form so that the FAA can make a det




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**FOR EACH YES OR NO ANSWER: PROVIDE DOCUMENTATION USED AS THE B.**

## Environmental Assessment (EA)



## Environmental Impact Statement (EIS)

<p><b>U.S. Department of Transportation</b></p> <p><b>Federal Aviation Administration</b></p> 	<p><b>O'Hare Modernization Final Environmental Impact Statement &amp; Section 4(f) and Section 6(f) Evaluation &amp; General Conformity Determination</b></p> <p><b>DATE:</b> July 2005</p> <p><b>VOLUMES 1 - 4</b> <b>Chapters 1- 8, Appendices A-L</b></p>
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**Cooperating Agencies:**

- U.S. Environmental Protection Agency
- U.S. Army Corps of Engineers
- Federal Highway Administration
- U.S. Fish and Wildlife Service
- Illinois Environmental Protection Agency

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This Final Environmental Impact Statement (FEIS) identifies the potential environmental impacts associated with proposed major development at Chicago O'Hare International Airport and reasonable alternatives pursuant to the National Environmental Policy Act. Also included with the FEIS are FAA's Final Section 4(f) and Section 6(f) Evaluation and Final General Conformity Determination.


This statement is submitted for review pursuant to the following public law requirements: Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190); 42 U.S.C. 4321; E.O. 11990, Protection of Wetlands; E.O. 11998, Floodplain Management Title V of Public Law 97-248; the Federal Aviation Act of 1958 recodified at 49 U.S.C. Section 40101 et seq; the Airport and Airway Improvement Act of 1982, as amended recodified at 49 U.S.C. Section 47101 et seq; Section 4(f) of the Department of Transportation Act of 1966 recodified at Section 303c, as amended; Section 6(f) of the Land and Water Conservation Act; Sections 401 and 404 of the Clean Water Act of 1972, (P.L. 107-303); Section 7(c) of the Endangered Species Act of 1973, as amended; Fish and Wildlife Coordination Act of 1934, as amended; Migratory Bird Treaty Act of 1918, as amended; Clean Air Act of 1970, as amended; Noise Control Act of 1972, as amended; and other laws as applicable.

**The Federal Aviation Administration is the lead agency for preparation of this statement.**

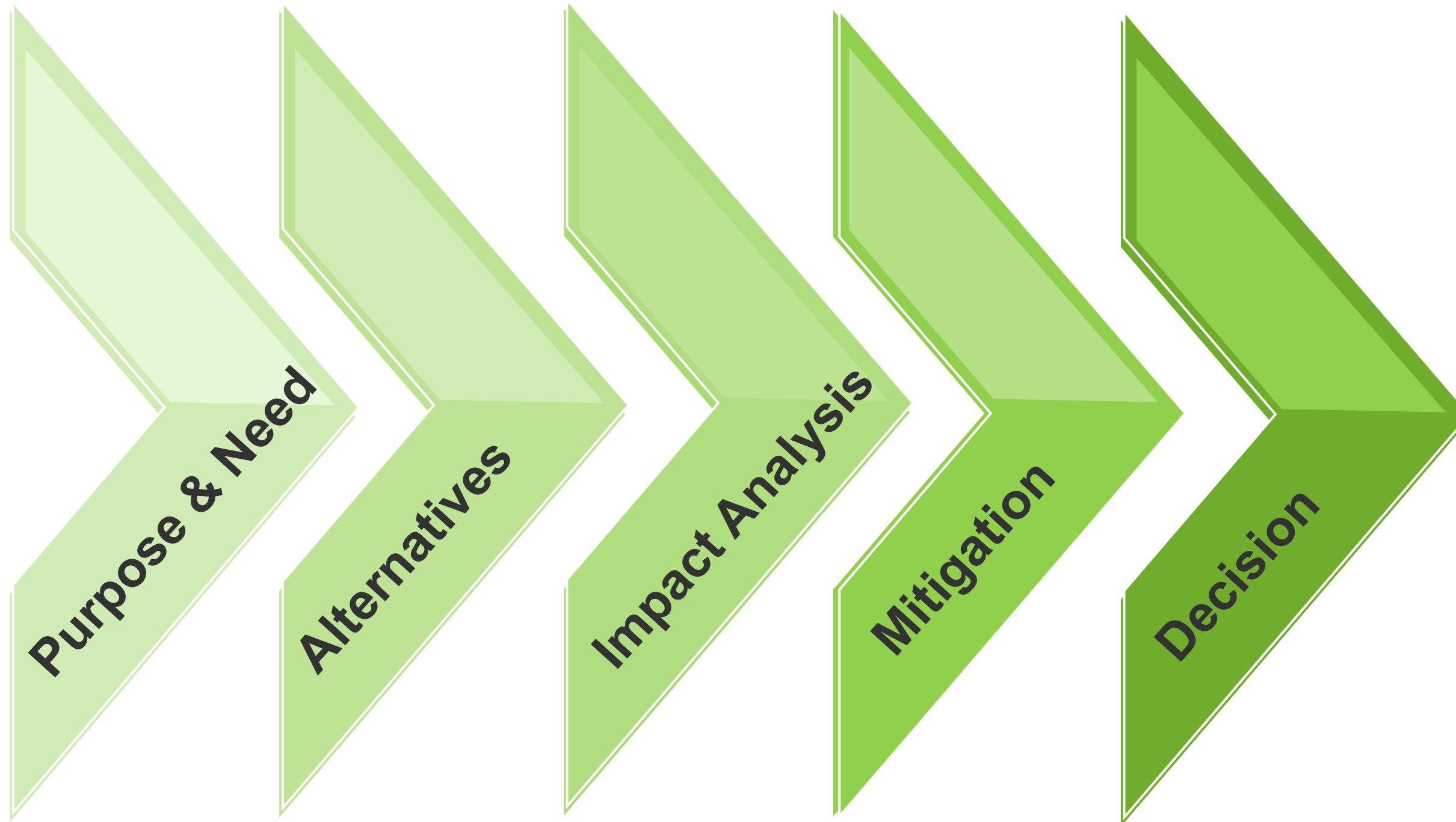
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For additional information, contact:

Mr. Michael W. MacMullen  
Federal Aviation Administration  
Chicago Airports District Office  
2300 E. Devon Avenue  
Des Plaines, IL 60018  
Phone: (847) 294-8339  
Fax: (847) 294-7046  
Email: ompeis@faa.gov



# NEPA Process



## FAA Decision Documents:

1. Categorical Exclusion
2. Documented Categorical Exclusion
3. Finding of No Significant Impact (FONSI)
4. Record of Decision

# Sponsor Obligations

**Presented to:** AAAE Airport Law Workshop

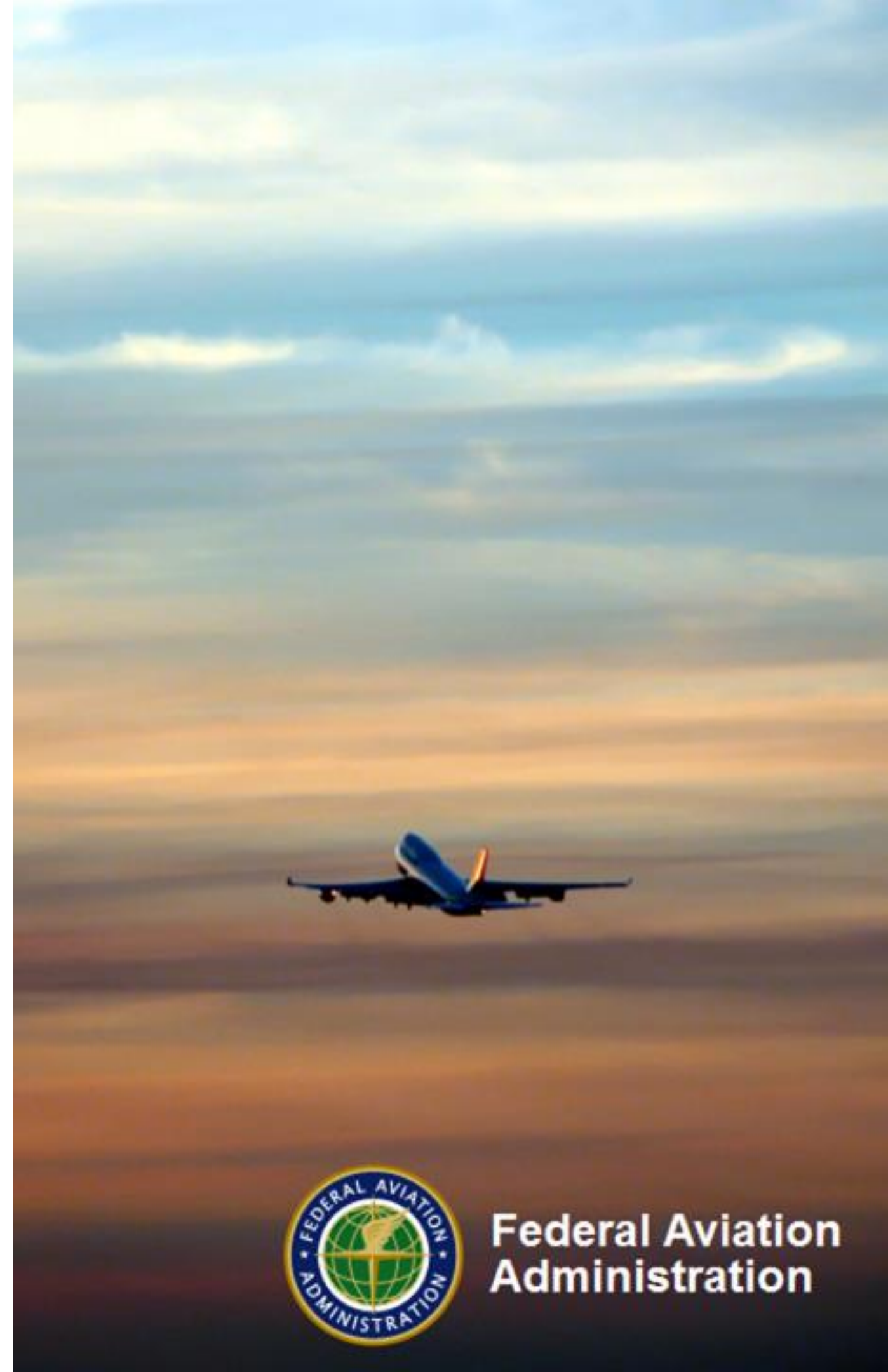
**By:** Joelle Briggs, Airport Compliance Specialist

FAA Office of Airport Compliance &  
Management Analysis (ACO-100)

**Date:** October 8, 2024



**Federal Aviation  
Administration**



# Sources of Airport Sponsor Obligations

- Federal Conveyances of Land (FAA Order 5190.6, Chapter 3)
  - Surplus
  - Non-Surplus
- Federal Grant Obligations (FAA Order 5190.6, Chapter 4)
  - Exhibit A
  - Land Acquisition with AIP
- Both obligate the sponsor to manage the airport in accordance with its grant obligations

# Airport Compliance Manual Update

[www.faa.gov/regulations\\_policies/orders\\_notices/index.cfm/go/document.current/  
documentNumber/5190.6](https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.current/documentNumber/5190.6)

- Group 1 – 12/3/21

- Chapter 1, *Authority and scope*;
- Chapter 9, *Unjust Discrimination between Aeronautical Users*;
- Chapter 10 *Reasonable Commercial Minimum Standards*;
- Chapter 11, *Self-Service*;
- Chapter 23 *Reversions of Airport Property*.

- Group 2 – 12/21/22

- Chapter 2, *Compliance Program*
- Chapter 3, *Federal Obligations from Property Conveyances*
- Chapter 4, *Federal Grant Obligations and Responsibilities*
- Chapter 5, *Complaint Resolution*

- Group 3 – 10/21/23

- Chapter 16, *Resolution of Unlawful Revenue Diversion*
- Chapter 17, *Self Sustainability*
- Chapter 18, *Airport Rates and Charges*
- Chapter 19, *Airport Financial Records*

- Group 4 – **Coming Soon**

- Chapter 6, *Rights and Powers and Good Title*
- Chapter 7, *Airport Operations*
- Chapter 8, *Exclusive Rights*
- Chapter 14, *Restrictions Based on Safety and Efficiency Procedures and Organization*
- Chapter 15, *Airport Revenues*
- Chapter 20, *Compatible Land Use*
- Chapter 22, *Releases from Federal Obligations*

# Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land (88 Fed. Reg. 85474, 12/08/2023)

- **Purpose**

- Ensure land is available for aviation needs
  - Protect for new aviation entrants
  - Balance protection for future aviation need and providing non-aero revenue generation in the interim
- Will be updated for the Reauthorization

# Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land – Key Changes

- Clarified definitions
- Releases reserved for Sale/Transfer of Property with concurrence from FAA Airports Compliance Division
- Removes interim/concurrent use approval language
- Allows non-aero beyond 3-5 years without a release

# Key Responses to Comments

- FAA does not approve leases
- Duration of approval/consent may be for duration of use
- Grandfathering – Not retroactive. Does not apply to already released land. Existing interim/concurrent use approvals will be reviewed when the existing approval expires.
- Does not apply to Noise Land (Noise Reuse Plan)

# Airport Land Use Categories

Use of Airport land will fall into one of four categories:

- Aeronautical use
- Airport purpose
- Non-aeronautical use
- Mixed-use

# Aeronautical Use (land use consent/approval not needed)

- *FAA's Policy Regarding Rates and Charges*, 78 Fed. Reg. 55330, **September 10, 2013**:
  - Any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft.
  - Includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail, and cargo on the airport.
- Land on which an aeronautical activity takes place is by its nature aeronautical use (e.g., drop zone, apron, hangar).

# Aeronautical Use Examples

- Operational uses such as aerial approaches, navaids, RW/TW, aprons, hangars, or other aircraft movement areas.
- Future development uses to reserve property interest for foreseeable aeronautical development (e.g., a planned RW extension or a planned terminal building development).
- Essential services that directly support flight operations (e.g., aircraft maintenance, fueling, and servicing, mail, passenger and cargo processing facilities, communications and air traffic control, crash rescue, firefighting, and airport maintenance).

# Airport Purpose (land use consent/approval not needed)

- Uses directly related to the actual operation or the foreseeable aeronautical development, and
- The non-aeronautical components do not impact existing aeronautical uses or conflict with existing or foreseeable aeronautical needs/demands.



# Airport Purpose Examples

- A terminal complex (including the building, terminal concessions, airline ticket and car rental counters, parking, and roads).
- FBO facility including parking and classrooms.
- Parking associated with the airport purpose (passenger and employee parking).
- Airport service roads.
- Truck parking at air cargo processing facilities when it is directly related to moving inbound and outbound air cargo on and off the airport.

# Non-Aeronautical Use (land use consent/approval needed)

- All other uses that are not considered aeronautical or airport purpose.
- There is no federal requirement that obligated airport sponsors accommodate non-aeronautical users.
- The differentiation between aeronautical and non-aeronautical is intended to protect the Federal investment in aviation and prevent the displacement of aeronautical users.



# Non-Aeronautical Use Examples

- Car rental facility (stand-alone)
- Hotel
- Warehouse and distribution center
- Parking associated with the non-aeronautical uses (e.g., customer and employee parking for hotel, warehouse and distribution center, car rental)

# Mixed Use (land use consent/approval needed)

- Use has aeronautical and non-aeronautical uses, but the non-aeronautical use could be located off airport property.
- The non-aeronautical uses must pay fair market value in accordance with the FAA Revenue Use Policy (64 Fed. Reg. 7696).
- The FAA will take into account whether the non-aeronautical component, if consented or approved, will impact existing aeronautical users, or conflict with existing or foreseeable aeronautical needs/demand.

# Mixed Use Examples - 1

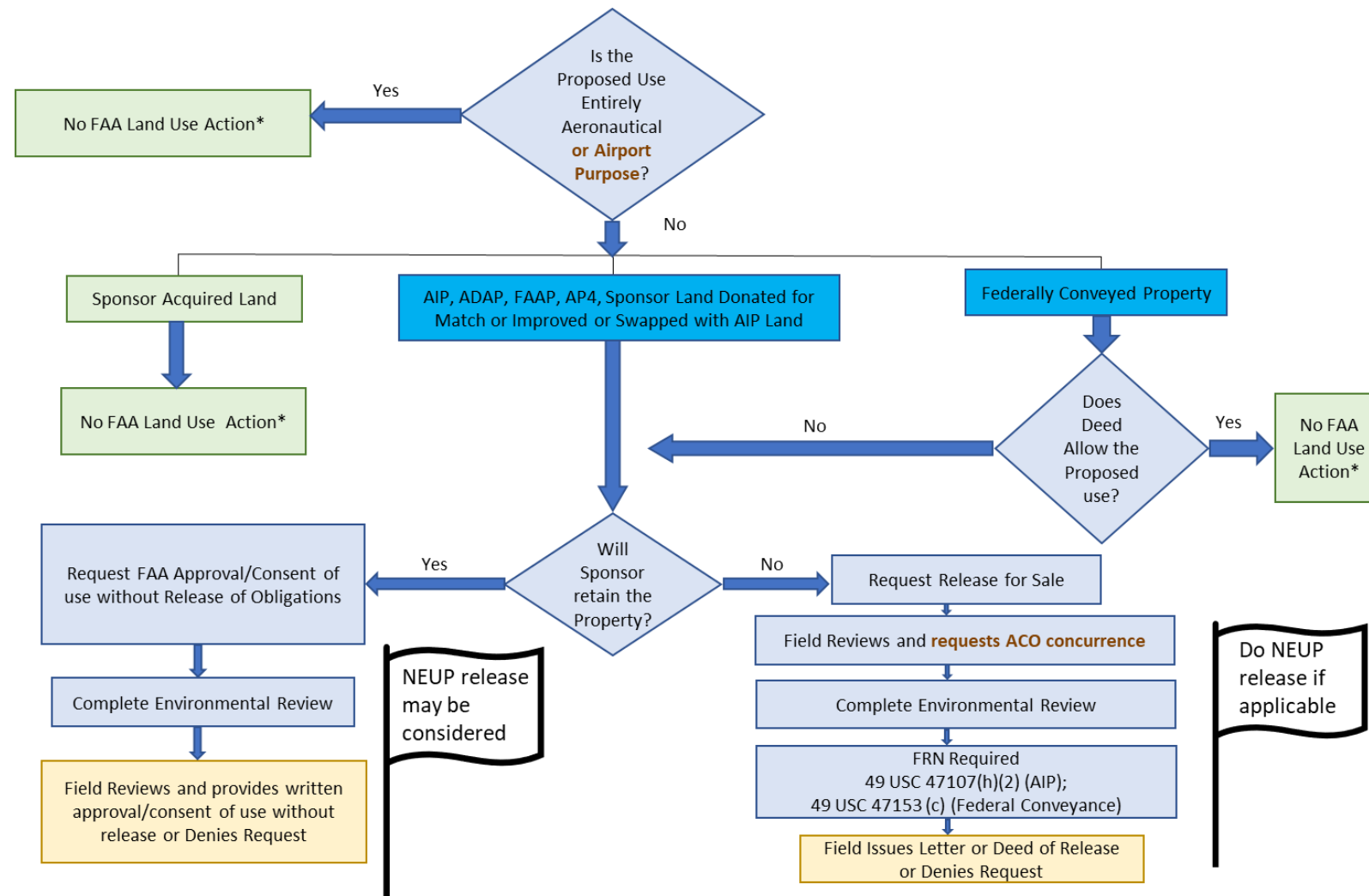
- Mail distribution centers connected to an air cargo operation.
- Cargo operations where the primary purpose of the operation goes beyond air cargo processing facilities and expands into non-aeronautical elements such as office building complexes, sorting facilities, long-term storage (warehousing), freight forwarders and third-party logistics providers, certain access infrastructure, or certain truck parking/trailer facilities (stalls). Most of these are related to other transportation modes or aspects of the cargo business, not directly and substantially to its aeronautical activity.

## Mixed Use Examples - 2

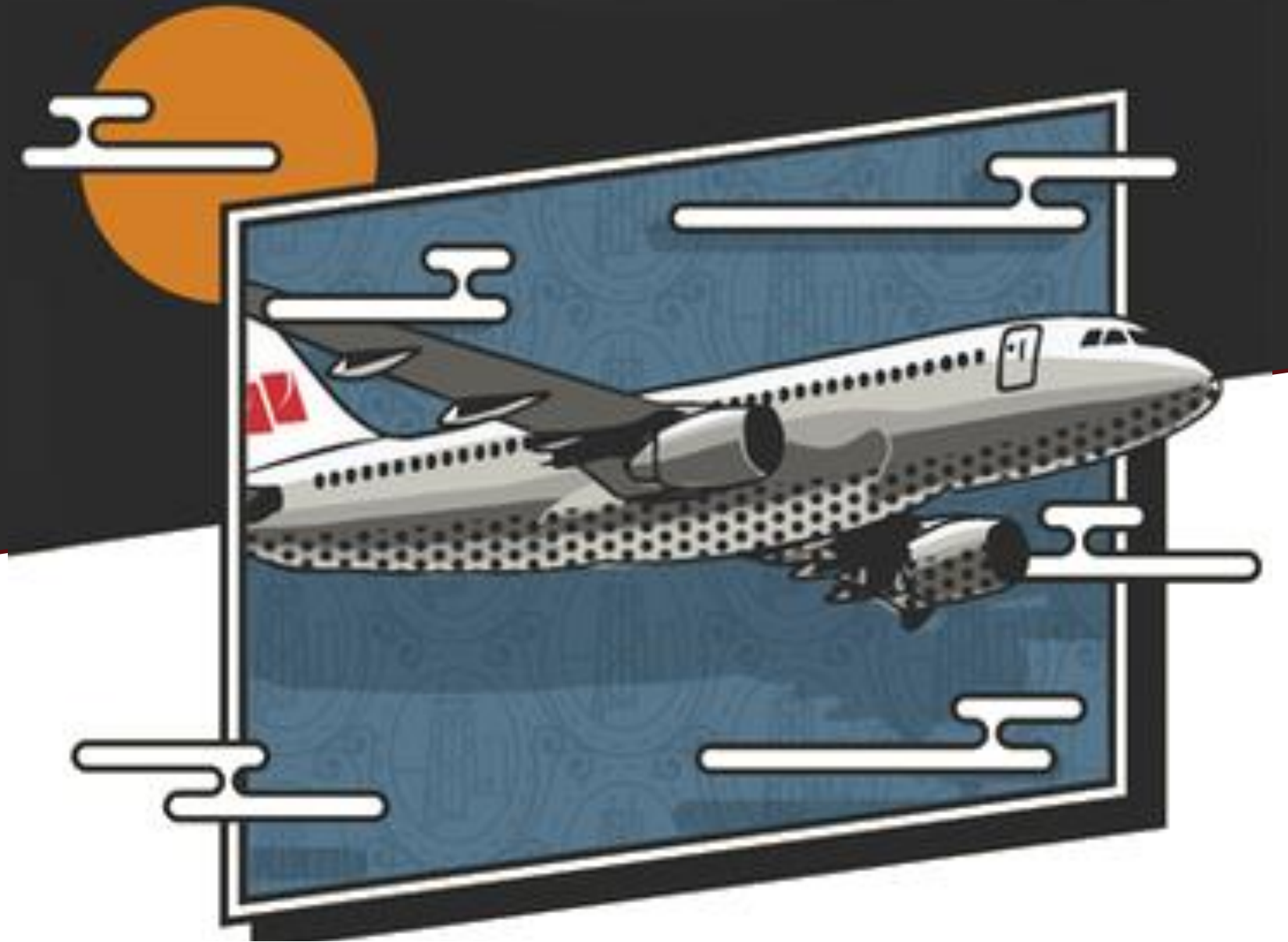
- Aircraft manufacturing facility that includes final assembly, but also significant non-aeronautical uses such as, engineering facilities, research and development facilities, parts manufacturing and storage, or office buildings.
- Parking associated with the mixed use (e.g., customer and employee parking for mail distribution, cargo operations, aircraft manufacturing).

# Process for Change in Land Use/Release

- Interim use while waiting to serve an airport purpose still needs approval (consent)
- FAA retains authority to regulate functions on the airport to ensure the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations.



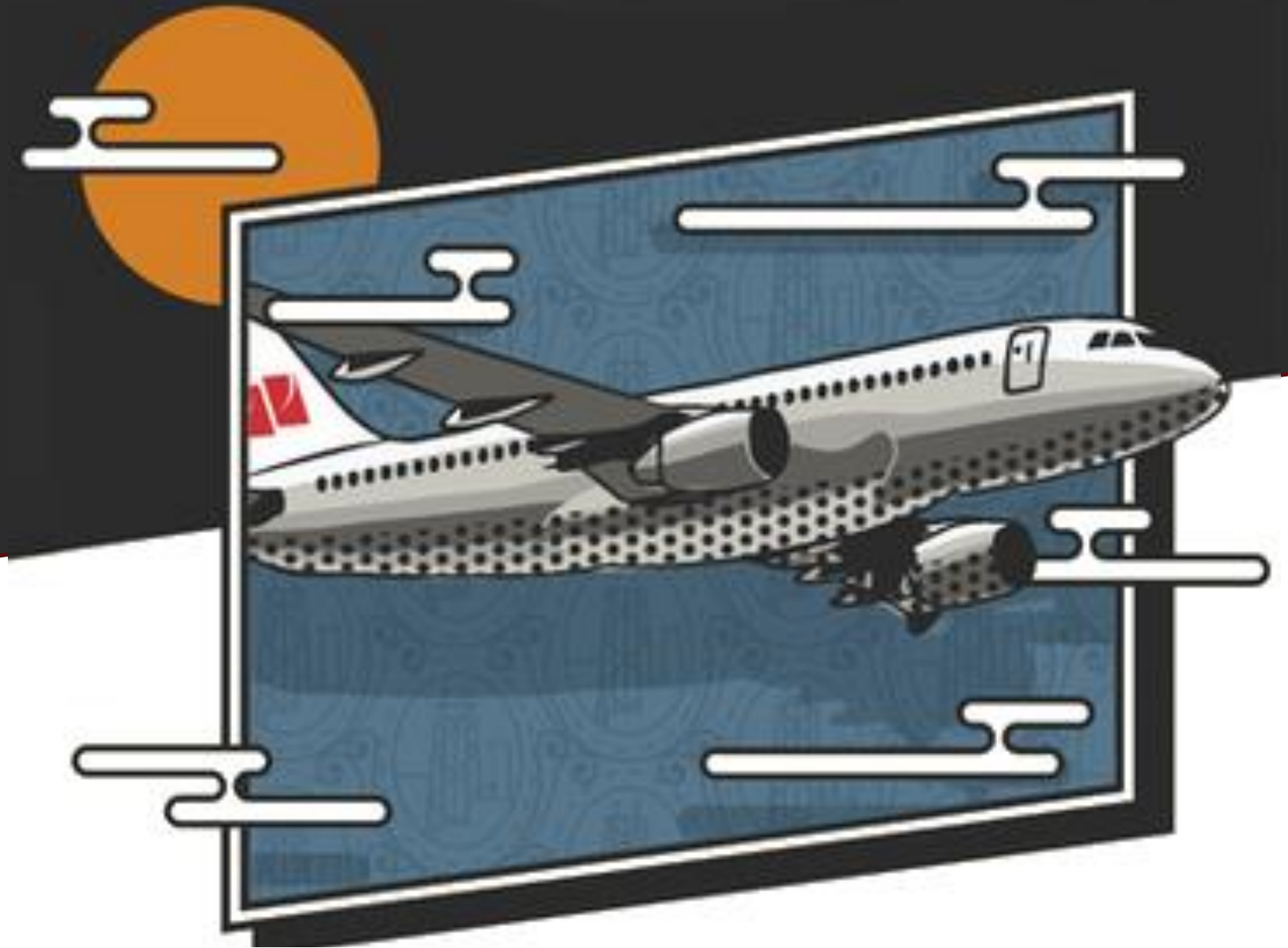
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# QUESTIONS?



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# THANK YOU!