

41<sup>st</sup> Annual AAAE  
Airport Law Workshop  
Washington, D.C.

Session #15

# Land Development and Planning



# Speakers

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# Session roadmap



- 1. What is aeronautical and non-aeronautical development – and why does it matter**
- 2. Master planning and airport layout plans**
- 3. Changing regulatory landscape**
- 4. Challenges in pursuing development**

# Aeronautical versus non-aeronautical

## Aeronautical use

- Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations

## Non-aeronautical use

- Everything else

# Why it matters

Land regulation depends upon its character

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





# Planning and recording land use

Planning matters

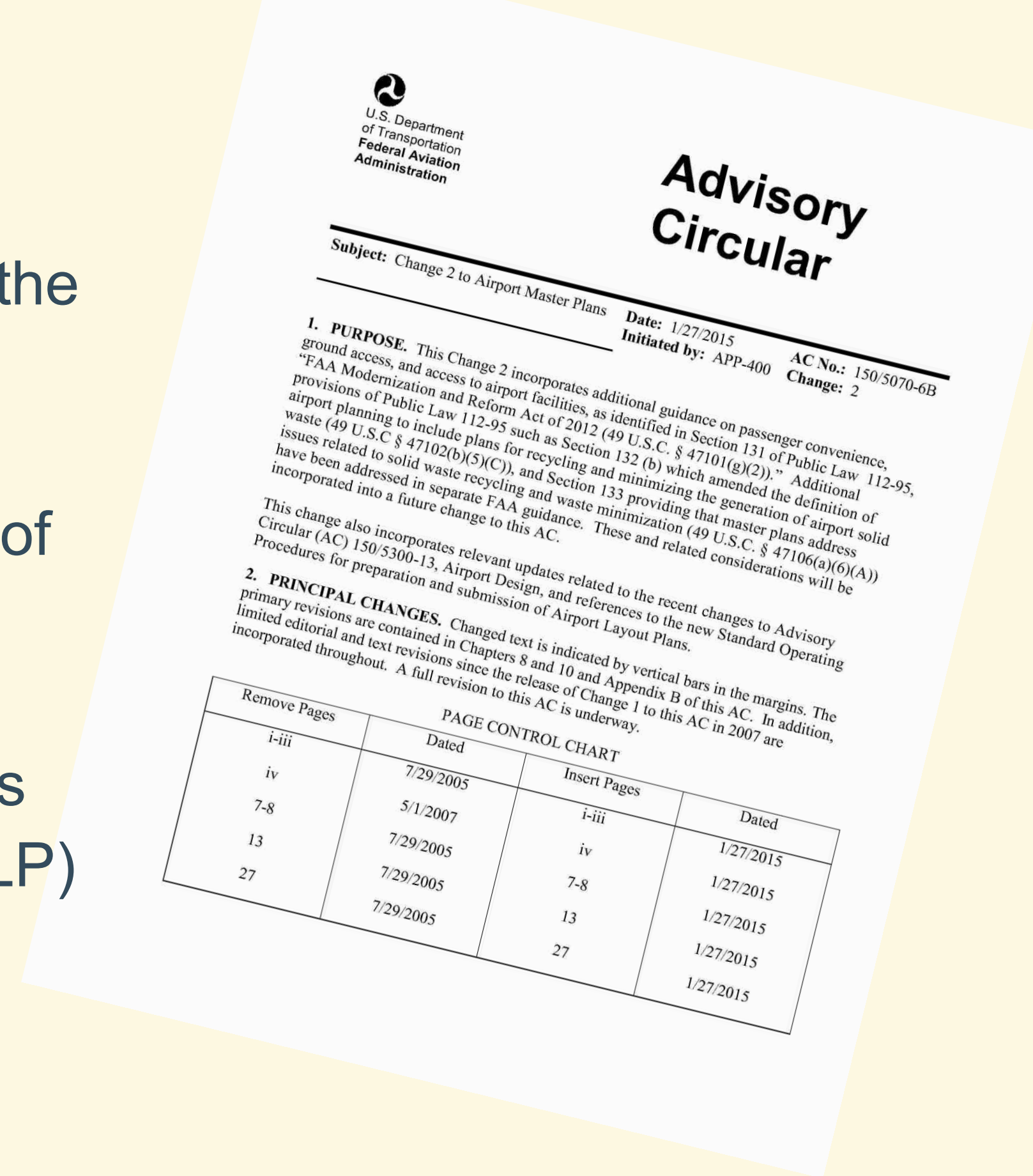


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# Master plans

- ❑ 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.*



| 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

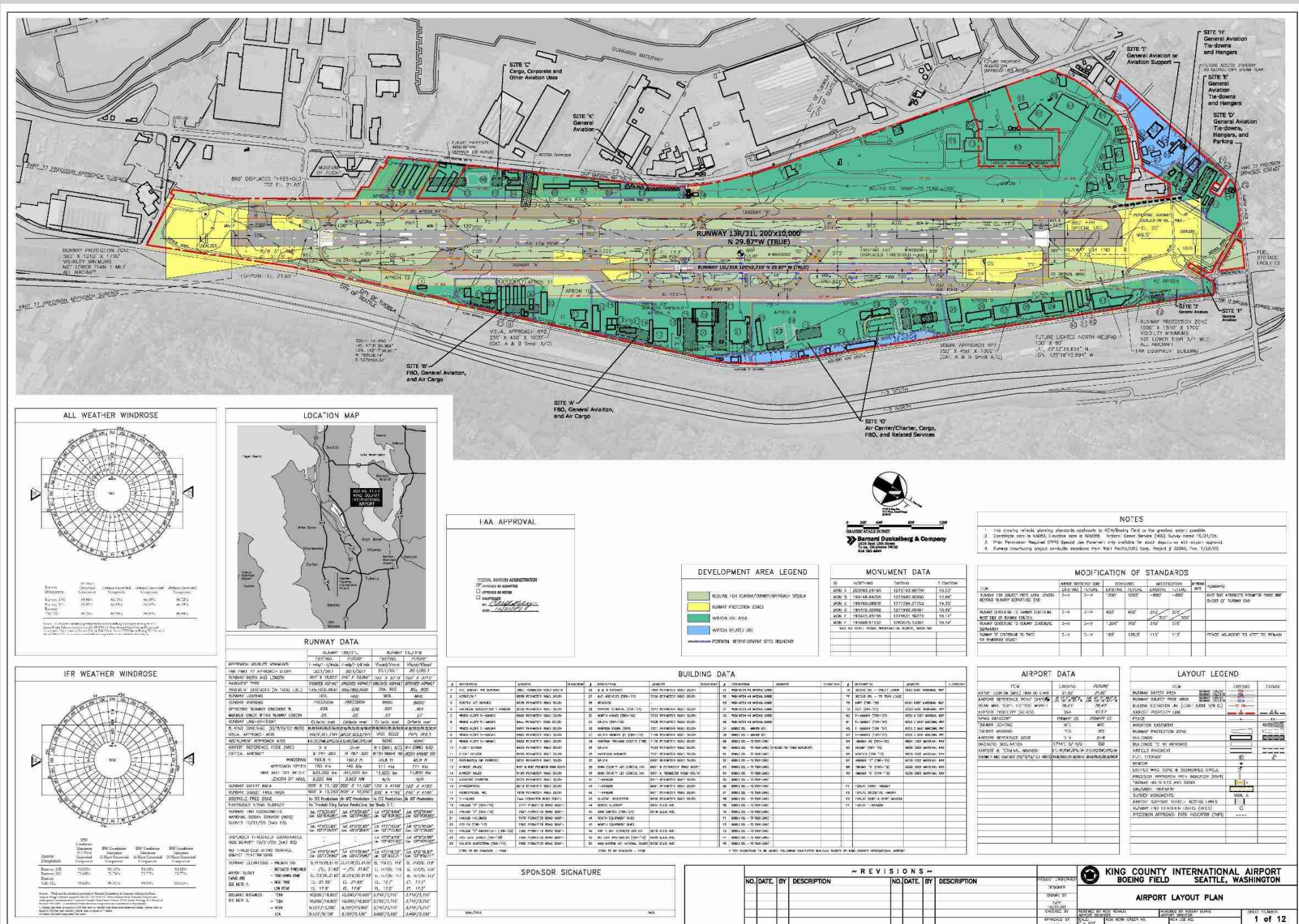
- ❑ Sponsor's Capital Improvement Program (CIP)
  - Outgrowth of Master Plan
  - Anticipated development for 5 years
  - Predicate to qualify for AIP grants
    - Sponsors submit CIP Data Sheet for items they desire in next three years
- ❑ FAA's Airports Capital Improvement Plan (ACIP)
  - Internal FAA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





# Airport layout plan

An airport layout plan is a scaled drawing(s) of existing and proposed land and facilities necessary for the operation and development of the airport





# Airport layout plans - contents

- Airport land use drawing
- Off-airport land use drawing
- Airport property map / exhibit A
- Runway departure surface drawing
- Utility drawing
- Airport access plans

- Cover sheet
- ALP drawings
- Data sheet
- Facilities layout plan
- Terminal area plan (as needed)
- Airport airspace drawing
- Approach surface drawing



Read and understand!





# ALPs – legal significance



- ❑ ALPs must be maintained in accordance with FAA requirements
  - FAA Order 5190.6B, *FAA Airport Compliance Manual*, Appendix R
- ❑ Legal definition of airport property
  - Federally obligated and subject to regulation
  - Scope of federal preemption
- ❑ 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
  - FAA Reauth. Act of 2018 and 2024 eliminated FAA approval for some ALP changes
- ❑ Both a hammer and a shield

# In the beginning . . .



*FAA  
Approvals*

- ALP*
- Update*
- Land Use*
- Federal Funding*



# Regulatory landscape before 2018



- ❑ Plenary FAA authority
- ❑ Complex, uncertain, time-consuming process
- ❑ Stifled development
- ❑ Sponsors could not be competitive



# . . . FAA regulated all airport land uses

## ***And so, sponsors had to:***

- ☐ Secure approval for any change to Airport Layout Plan (GA 29)
- ☐ Secure approval for land uses (deed restrictions; GA 22; 49 USC 47107(a))
- ☐ Maintain a self-sufficient airport (GA 24)
  - Charge reasonable rates for aeronautical uses
  - Receive fair market value (FMV) for *nonaeronautical uses*





# Inherent tension



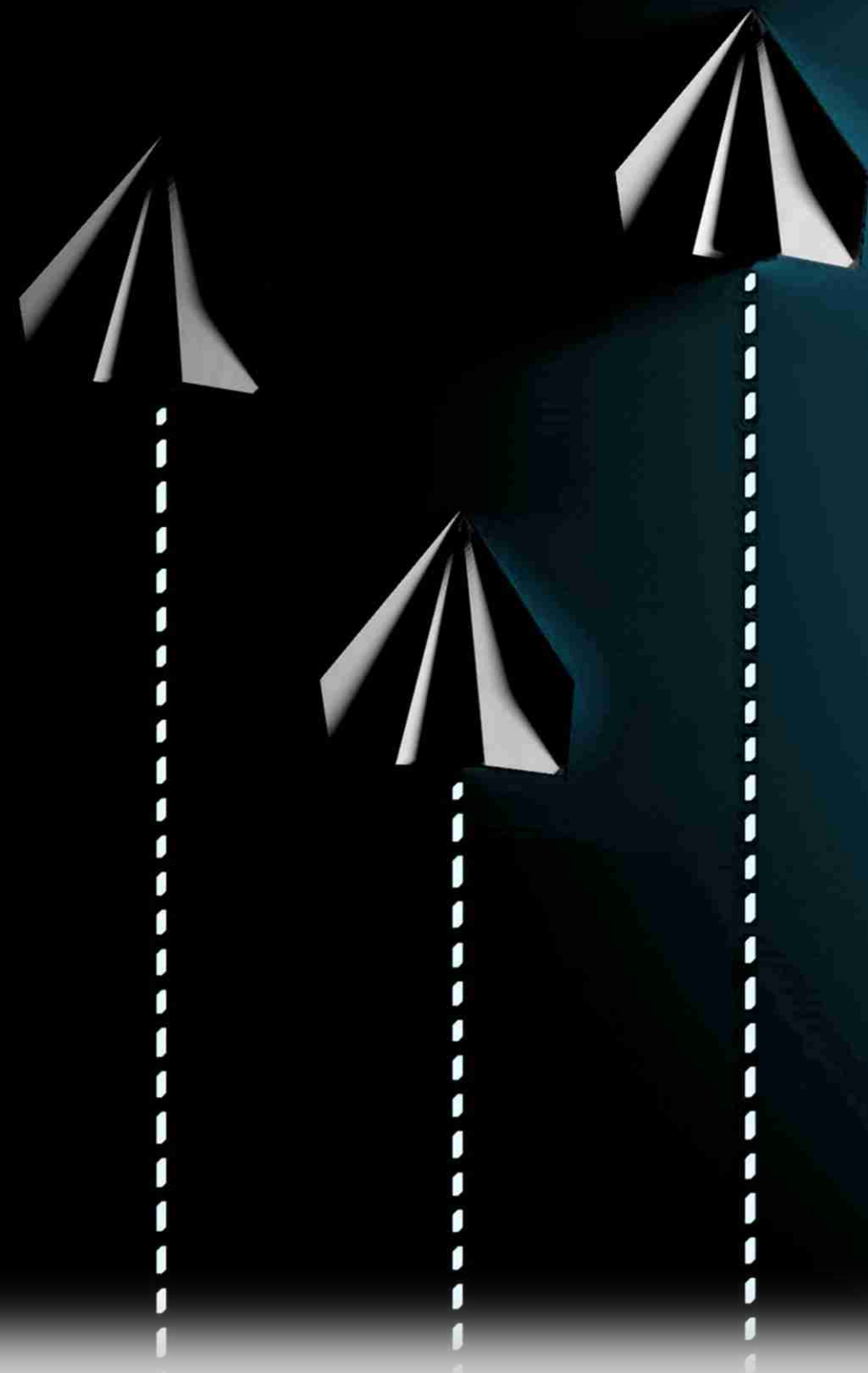


# Paradigm shift

SECTION 163  
(REVISED as  
SECTION 743)

&

FAA LAND USE  
POLICY



# Evolution of FAA jurisdiction





# That was then...

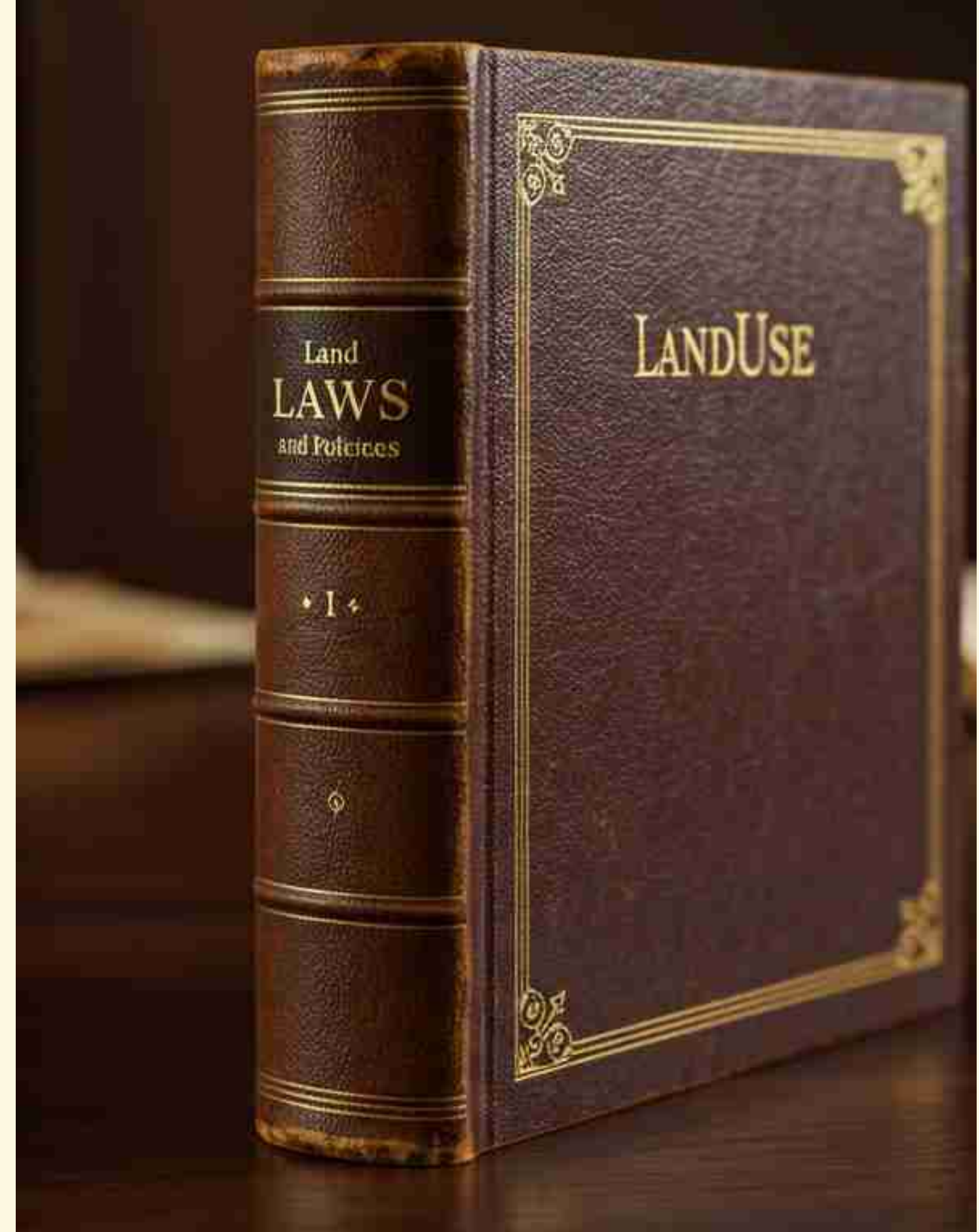
# This is now...

|                                                         |                                                  |
|---------------------------------------------------------|--------------------------------------------------|
| <b>Mother may I – screening for <i>all</i> projects</b> | <b>Notice only for sponsor-selected projects</b> |
| <b>No time limit on FAA review</b>                      | <b>Statutory limit of 45-day review</b>          |
| <b>Zones of interest informal</b>                       | <b>Statutory zones of interest (+1)</b>          |
| <b>Land use approval and ALP approval separate</b>      | <b>All reviews part of ALP approval</b>          |

# Current law and policy on land use

## Sources

- ☐ Section 743 FAA Reauthorization Act of 2024
- ☐ FAA Policy Regarding Processing Land Use Changes (2023)
- ☐ Grant Assurances 29, 31
- ☐ FAA Revenue Use Policy



# FAA land use policy (2023)



- Applies whenever FAA retains approval authority
- Four defined types of land use
- “Letter of consent or approval” required for *any* uses that are not aeronautical or airport purpose
  - *Supersedes prior interim use or concurrent use approvals*
  - *No set timeframe for approvals*
- Property can no longer permanently be designated as ‘non-aeronautical’
  - *Supersedes prior ability to permanently redesignate land as non-aeronautical*
  - *Releases now only available for sale of airport property*
- ADOs are given considerable discretion in reviewing and approving land uses



# All land now fits into one of six buckets:



**Section 743 land:** Land not subject to FAA land use regulation



**Non-aeronautical use:** All other uses of airport property



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



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



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

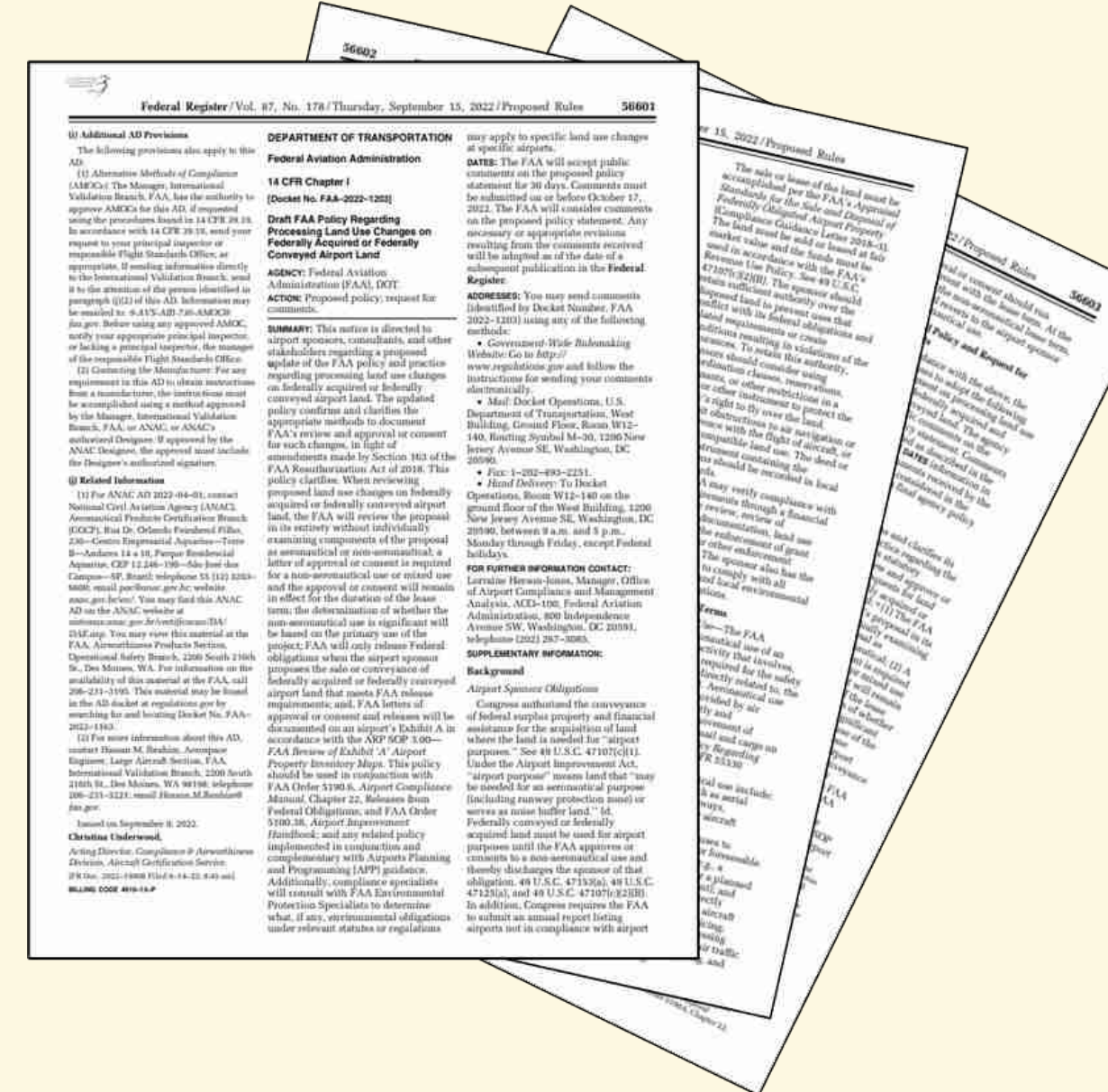


**Noise land:** Land acquired for noise compatibility purposes

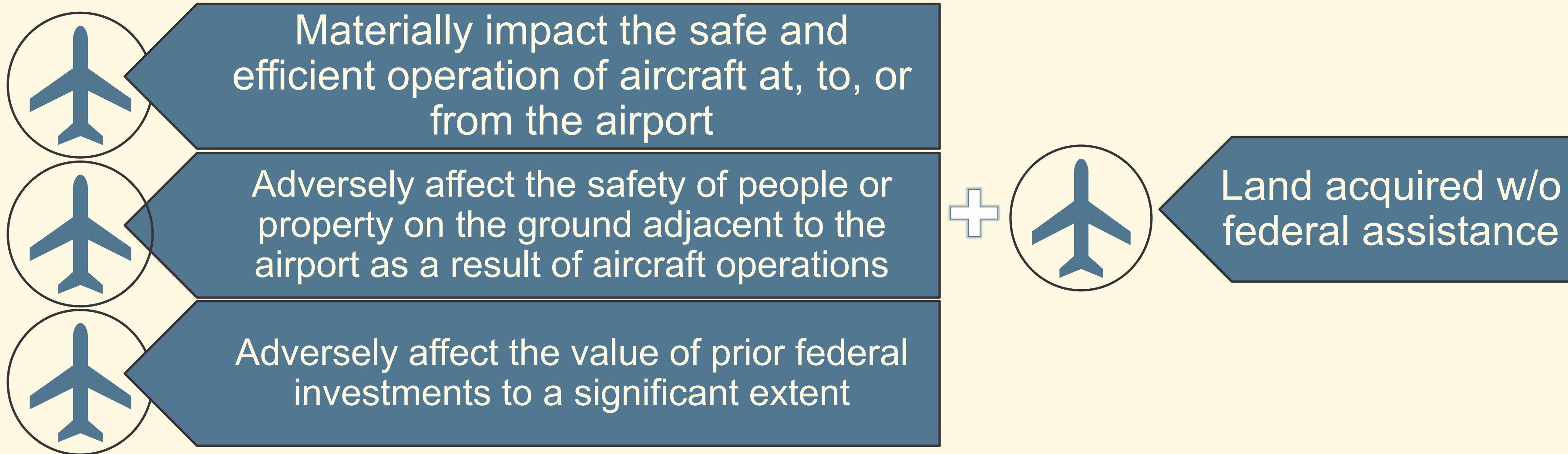
# Underlying policy principles

## Significant changes for airport property

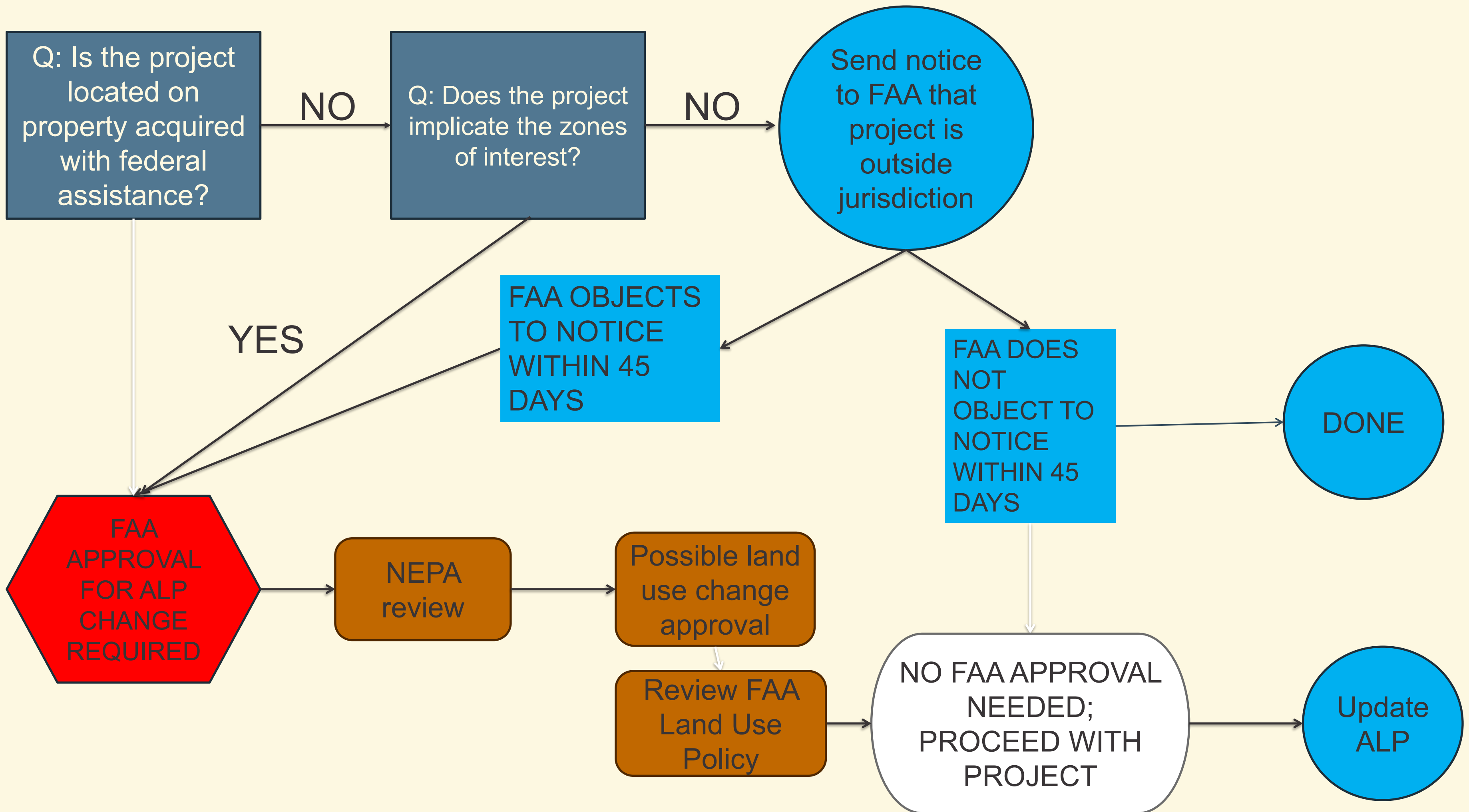
- Policy applies when FAA retains approval authority
- FAA approval required for *all* property uses that are not *aeronautical* or *airport purpose*
- Property can no longer permanently be designated on the ALP or property map as ‘non-aeronautical’
- Every approval has a sunset date
- Releases can be used only for sale of airport property
- ADOs are given considerable discretion in reviewing and approving land uses



# FAA zones of interest define degree of regulation







# What hasn't changed



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

**Putting this all together**





# Today's challenges for airport sponsors



By necessity, airports today are becoming more development-oriented

Airports are seeking ways to:

- ☑ Meet forecasted demand
- ☑ Attract and maintain air service
- ☑ Improve customer service
- ☑ Maintain and, as necessary, improve infrastructure
- ☑ Cut costs
- ☑ Generate revenue

# Site specific challenges and opportunities

- Not “highest and best use” – highest and best *aligned* use
- Symbiotic relationship with airport needs, aeronautical uses
- Long term needs and opportunities
- Practical ability to use property for aeronautical functions (geographic constraints)
- Horizontal infrastructure



# How to proceed



01

What is property use on ALP, Master Plan, and results of land inventory

02

What are optimal uses for the property

03

How can airport sponsor enhance attractiveness of the property for desired development

04

What are the private sector competitive forces

05

What process is required to making the property available



# Concluding thoughts



- **Planning**, *planning*, planning
- Understand *your* marketplace
- Land use audit - parcel by parcel
  - what is where...
  - what can be where...
  - why it is (or is not) there...
  - legal constraints...

# Questions?

