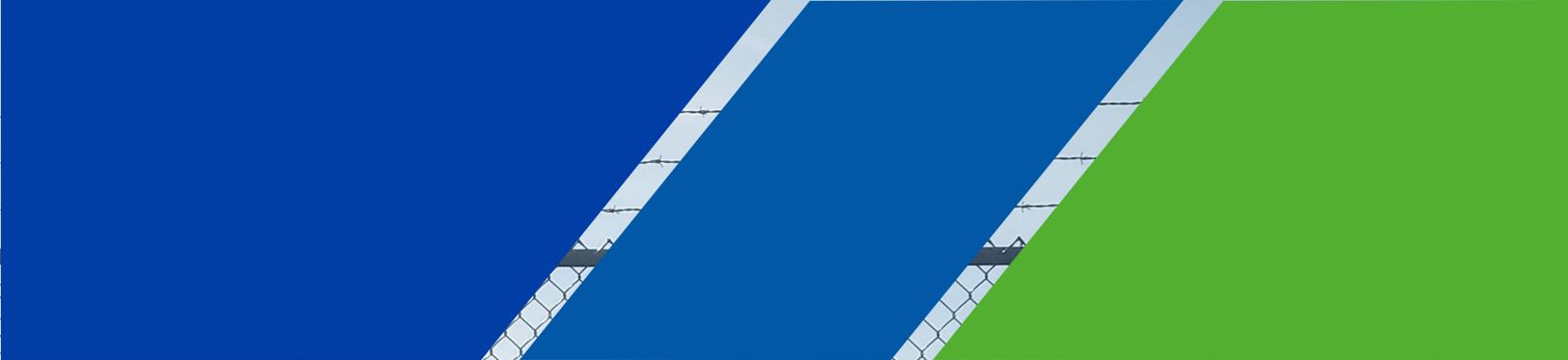




Appendix: B

FAA Section 163 Determination



TWEED
NEW HAVEN
AIRPORT

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U.S. Department
of Transportation
**Federal Aviation
Administration**

New England Region
1200 District Avenue
Burlington, MA 01803

August 09, 2021

Mr. Sean Scanlon
Executive Director
Tweed-New Haven Airport
155 Burr Street
New Haven, CT 06512

Dear Mr. Scanlon:

Re: FAA Approval Authority Review – Tweed-New Haven Regional Airport (HVN), New Haven, Connecticut, Runway 02/20 extension and terminal area development.

Proposed development identified on conceptual development plans, as well as on the draft Airport Layout Plan associated with the airport master plan update, major short term development plans are for the extension of Runway 02/20; safety area improvements; new terminal area development and temporary expansion of the existing terminal/administration building area.

Recent changes in federal law have required the FAA to revisit whether FAA approval is needed for certain types of airport projects throughout the nation. On October 5, 2018, HR 302, the “FAA Reauthorization Act of 2018” (the Act) was signed into law (P.L. 115-254). In general, Section 163(a) limits the FAA’s authority to directly or indirectly regulate an airport operator’s transfer or disposal of certain types of airport land. However, Section 163(b) identifies exceptions to this general rule. The FAA retains authority:

1. To ensure the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations;
2. To regulate land or a facility acquired or modified using federal funding;
3. To ensure an airport owner or operator receives not less than fair market value (FMV) in the context of a commercial transaction for the use, lease, encumbrance, transfer, or disposal of land, any facilities on such land, or any portion of such land or facilities;
4. To ensure that that airport owner or operator pays not more than fair market value in the context of a commercial transaction for the acquisition of land or facilities on such land;
5. To enforce any terms contained in a Surplus Property Act instrument of transfer; and
6. To exercise any authority contained in 49 U.S.C. § 40117, dealing with Passenger Facility Charges.

In addition, Section 163(c) preserves the statutory revenue use restrictions regarding the use of revenues generated by the use, lease, encumbrance, transfer, or disposal of the land, as set forth in 49 U.S.C. §§ 47107(b) and 47133.

Section 163(d) of the Act limits the FAA's review and approval authority for Airport Layout Plans (ALPs) to those portions of ALPs or ALP revisions that:

1. Materially impact the safe and efficient operation of aircraft at, to, or from the airport;
2. Adversely affect the safety of people or property on the ground adjacent to the airport as a result of aircraft operations; or
3. Adversely affect the value of prior Federal investments to a significant extent.

Proposed Project

The proposed project is to improve the airfield as identified on the most recent airport layout plan (airspace approval received by FAA; ALP pending final FAA signature), the recent airport master plan alternatives chapter but most directly in response to the startup of a new commercial service carrier that has chosen the airport as its East coast hub.

The proposed project elements include:

#	Project	Exhibit A Parcel #	Year Acquired	Funding Source
1	Runway 02 extension and runway safety area improvements	12	1943	Tax foreclosure
		13	1943	Tax foreclosure
		14	1943	Tax foreclosure
		31	1956	FAAP grant 09-06-007-5804
		35	1958	
		36	1958	
		37	1958	
		38	1958	
		40	1958	
		41	1958	
		43	1958	
		44	1958	
		45	1958	
		47	1958	
89	1978	ADAP grant 79-3-6-09-0013-13-80		
90	1977			
2	Runway 20 extension and safety area improvements	96	1963	Road closure
		100	1963	Road closure
2	Runway 20 extension and safety area improvements	25	1950	FAAP grant 09-06-0007-C707
		83	1986	FAAP grant 09-06-007-C606

#	Project	Exhibit A Parcel #	Year Acquired	Funding Source
2	Runway 20 extension and safety area improvements	91	2015	Local
		127	2015	Local
		129	2015	Local
3	New Terminal Building construction	1	1920	Local
4	Terminal apron construction	1	1920	Local
5	Taxiway construction	1	1920	Local
6	New terminal area access/perimeter road	1	1920	Local
		6	1933	Local
		8	1940	Local
7	Decommissioning of Runway 14/32 and removal of pavement	1	1920	Local
8	Removal of a portion of TWY C	1	1920	Local
9	Automobile parking lot construction	1	1920	Local
10	Employee automobile parking lot construction	1	1920	Local
11	Temporary terminal facilities during construction	1	1920	Local
12	Installation of perimeter fence	1	1920	Local

Federal grants for construction of Taxiway C were given in 1984 and 1989. A federal grant was issued in 2000 for the rehabilitation of a portion of Runway 14/32 (405' x 100'). Obligations associated with these grants have expired based on useful life of the project. Runway 14/32 has been NOTAM'ed closed indefinitely due to obstruction and failed pavement issues. This project will include the decommissioning and permanent closure of Runway 14/32. Runway 02/20 meets the 95% wind coverage and substantial use operation levels to be considered the airport's primary runway, capable of supporting all of the fleet mix and traffic. Runway 14/32 has been determined an additional runway at the airport. This, existing constraints for development, as well as the runway's obstruction and failed pavement issues has led to the master plan recommendation that the runway be closed and the area used for development opportunities.

The terminal building, apron and taxiway are planned to overlay the area where Runway 14/32 and portions of Taxiway C are currently located. The project includes removal of portions of existing pavement in this area.

In order to continue to accommodate passengers during the proposed construction of the new terminal area, temporary trailer-type terminal facilities will be established encompassing the landside area where the current terminal facility and administrative offices are located. In addition to reuse of these existing buildings, an additional temporary trailer like structure will be placed in between them to for holding room and administrative offices. A perimeter fence will be installed to separate these facilities from the automobile parking lot.

A grant for terminal building improvements to the existing terminal building was issued in 2005. The work associated with this grant was a passenger walkway shelter and arrival passenger queuing area improvements. This building will continue to be used for arrival passengers, therefore it is determined there is no adverse impact to the federal investment under this grant agreement.

Determination Regarding the Airport Layout Plan

For the purpose of determining whether the proposed project requires FAA ALP approval, we have made the following determinations:

1. Because portions of the proposed development may have a material impact on aircraft operations, at, to, or from the airport and may affect the safety of people and property on the ground, the FAA retains the legal authority to approve or disapprove the following changes to the HVN ALP:
 - a. Runway 02/20 extension
 - b. Runway 02/20 Safety area improvements
 - c. New Terminal Apron construction
 - d. New Taxiway construction
 - e. Decommission of Runway 14/32 and removal of pavement
 - f. Removal of portions of existing Taxiway C

2. Because the remaining portions of the proposed development would have no material impact on aircraft operations at, to, or from the airport, would not affect the safety of people and property on the ground, and would not have an adverse effect on the value of prior Federal investments to a significant extent, the FAA lacks the legal authority to approve or disapprove changes to the HVN ALP for the following project components:
 - a. Terminal building construction
 - b. Access/perimeter road
 - c. Employee parking lot
 - d. Vehicle parking lot
 - e. Temporary facilities during construction of new terminal area
 - f. Installation of perimeter fence

FAA's Authority to Regulate Land Use

Under section 163(b) of the Act, the FAA has the legal authority to regulate land acquired with federal funding. However, portions of the proposed project (Runway 02/20 extension and safety area improvements) are considered an aeronautical use, consistent with the intended land use when acquired. Therefore the FAA will not require a release of obligations of the subject parcels 25, 31, 35-38, 40, 41, 44-45, 47, 83, 89 and 90 as depicted on the Exhibit A Property Map.

Because portions of the proposed project may affect the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations, the FAA retains the authority to regulate the use of the land associated with aspects of the proposed terminal area development. But because these portions of the proposed project are for aeronautical purposes, no change in land use is required. Therefore, FAA approval is not needed for the proposed uses of land associated with these projects:

- a) Terminal aircraft parking apron
- b) Taxiway construction

The parcel subject to portions of the proposed project was acquired with local funding, without federal assistance, and the proposed project will not impact the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations. Therefore, the FAA lacks the authority to regulate the use of the land associated with this project. FAA approval is not needed for the proposed uses of land associated with these projects:

- a) Terminal building construction
- b) Automobile parking
- c) Employee parking
- d) Access/perimeter roadway
- e) Temporary terminal and administration facilities
- f) Perimeter fence installation

Applicability of the National Environmental Policy Act (NEPA)

The FAA's ALP approval authority for portions of the proposed project, and any other Federal approvals associated with the project, such as funding under the AIP or PFC programs, is a federal action subject to the National Environmental Policy Act (NEPA). Therefore, the sponsor will be required to perform an appropriate environmental review consistent with NEPA.

Contact the New England Region's environmental protection specialist for guidance on the preparation of the NEPA document.

Sponsor Obligations Still In Effect

This determination only addresses FAA's approval authority for this project. It is not a determination that the project complies with the sponsor's federal grant assurances. The sponsor must continue to comply with all of its Federal grant obligations, including but not limited to Grant Assurance #5, Preserving Rights and Powers; Grant Assurance #19, Operation and Maintenance; Grant Assurance #20, Hazard Removal and Mitigation; Grant Assurance #21, Compatible Land Use; and Grant Assurance #25 Airport Revenue.

Section 163 and Grant Assurance 25 require the airport sponsor to receive not less than fair market value for the use, lease, encumbrance, transfer, or disposal of land, any facilities on such land, or any portion of such land or facilities. The sponsor must ensure that all revenues generated as a result of this project may only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.

The sponsor also has the responsibility to comply with all federal, state, and local environmental laws and regulations.

Additionally, any proposed development is still subject to airspace review under the requirements of 14 CFR part 77, and, Grant Assurance 29 still requires the airport to update and maintain a current ALP. An updated ALP should be submitted to the New England Region Airports Division if the project is completed

This is a preliminary determination, and does not constitute a final agency action or an "order issued by the Secretary of Transportation" under 49 U.S.C. § 46110.

If you have further questions or need for clarification, please feel free to contact me at 781-238-7616.

Sincerely,

 Recoverable Signature

X Lisa J. Lesperance

Lisa J. Lesperance

Lead Community Planner

Signed by: LISA J LESPERANCE

Cc: Jeremy Nielson, Airport Manager