

## EXHIBIT B



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

23 September 2020

Mr. Greg Phillips  
Director of Aviation  
Colorado Springs Airport  
7770 Milton E Proby Parkway  
Colorado Springs, CO 80916

Dear Mr. Phillips:

Thank you for your inquiry regarding whether or not the Federal Aviation Administration (FAA) has approval authority of the proposed land acquisition of District 11 Parcel at the Colorado Springs Airport (COS).

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 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

COS is proposing to acquire a 10-acre parcel of land currently owned by a local school district. The property is located on the north side of the airport, and is surrounded on three sides by the current airport property boundary. The property will be acquired with local funds, without federal assistance, and will be leased to Peterson Air Force Base who currently leases the property that surrounds this parcel.

#### Determination Regarding the Airport Layout Plan

For the purpose of determining whether the proposed project requires FAA ALP approval, we have determined that the acquisition would have no material impact on aircraft operations at, to, or from the airport and would not adversely affect the safety of people or property on the ground adjacent to the airport as a result of aircraft operations. We have also determined that the acquisition would not have an adverse effect on the value of prior Federal investments to a significant extent. Therefore, the FAA lacks the legal authority to approve or disapprove changes to the COS ALP to reflect the proposed land acquisition.

#### FAA Authority to Regulate Land Use

Because this property will be purchased without federal funding, and proposed purchase of land will not impact the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations, the FAA lacks the authority to regulate the acquisition of the land associated with this request.

#### Applicability of the National Environmental Policy Act (NEPA)

Because the FAA lacks the legal authority to approve or disapprove changes to the ALP for this project, and lacks the authority to regulate the acquisition of the parcel, the agency does not have an action subject to the National Environmental Policy Act (NEPA).

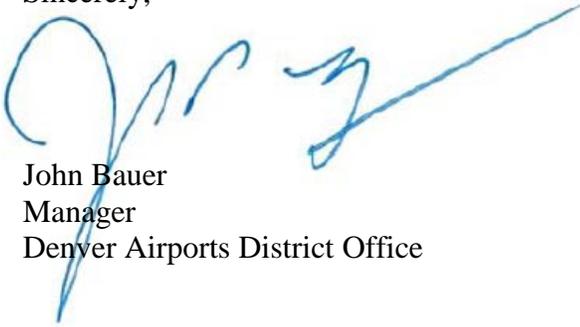
Sponsor Obligations Still In Effect

As a reminder, Section 163 still requires the airport to pay no more than fair market value in the context of a commercial transaction for the acquisition of land or facilities on such land. The airport must also ensure that all revenues generated as a result of this lease 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 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, Grant Assurance 29 still requires the airport to maintain a current ALP. An updated ALP and Exhibit A Property Map should be submitted to the Denver ADO that depicts the changes to the airport property if the project is completed.

If you have further questions or need for clarification, please feel free to contact me at 303-342-1254.

Sincerely,



John Bauer  
Manager  
Denver Airports District Office

CC: Kris Andrews, *Environmental Health & Project Specialist*