

# Briefings

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## Concurrent use and land release: risks, rewards, and what you should know

Small airports across Minnesota are often looking for new ways to cover their costs. One alternative revenue source might be right on the airport's property—in the form of excess or underutilized land. Perhaps that land was passed down or purchased years ago for a project that never materialized. Development could benefit the airport and surrounding community as a whole.

But first, if an airport is federally obligated, it will need FAA approval for non-aeronautical use.

During a session at the 2019 Minnesota Airports Conference, Stephanie Ward, manager of aviation planning at Mead & Hunt, discussed the process and offered advice for airports considering their options.

Land adjacent to or in the immediate vicinity of an airport must be compatible with normal airport operations. How the FAA defines non-aeronautical use can often dictate what an airport can and cannot do, Ward explained. "Put simply, if you propose a use and it needs the runway to function, then it's an aeronautical use. If you can close the runway tomorrow and that business can still exist, then it's non-aeronautical," she said.

First, it's critical that the airport references and understands what is shown on its airport layout plan (ALP) and its Exhibit A property map. A sponsor must determine if the property under consideration is federally obligated. "This could mean you've used federal funds to purchase the property, but it can also mean that if you've shown the property on either one of those documents inside your property line, then technically it's obligated," Ward said. Federal obligation means certain conditions and assurances must be met as a condition of the airport



*Agricultural operations is one example of concurrent use.*

accepting federal money.

The FAA has traditionally denied non-aeronautical use requests, Ward said. If property is designated for the airport, then it generally wants to reserve it for the airport; however, there are more and more demands from airports to generate revenue and land releases are becoming more frequent.

The FAA Reauthorization Act of 2018 (Section 163) could give airports more flexibility to develop non-aeronautical uses. The Act limits the FAA's authority to directly or indirectly regulate non-aeronautical property transactions at an airport except to ensure the safe and efficient operation of aircraft or the safety of people and property on the ground and to ensure the receipt of fair market value, Ward explained. But she cautioned that more guidance on implementing this is expected within the next few years from the FAA.

Airports considering a non-aeronautical use should be prepared to answer three key questions: 1) Should we do this? 2) Where could we do this? 3) How do we do this?

"The type of development is going to greatly change what you can and can't do. So you have to put a lot of thought into this," she said.

When considering non-aeronautical use, airports have three options:

a Section 163 request, concurrent land use, and land release. The Section 163 option is still untested and a bit ambiguous since there is no guidance on what to submit or the process that the FAA will use to consider the request, Ward said. Consequently, a concurrent land use or land release request might provide a more defined approach to a non-aeronautical use. There is no guarantee that the Section 163 will be faster or slower than the more traditional request process, nor is there any assurance that the requests will be approved for any of these three options.

### Concurrent land use

Concurrent use is the use of dedicated airport property for a compatible non-aviation activity while simultaneously serving the primary purpose for which it was acquired. For example, portions of land needed for approach zone purposes could also be used for agriculture. Other concurrent uses include road right-of-way easements and utility easements.

"Concurrent use approval [for agricultural use] has historically been an area where few airports have asked for formal approval," Ward noted. "In Minnesota you may want to touch base with the FAA [Airport District Office] to confirm if it

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wants a formal request to document what is being done.”

Concurrent use requires FAA approval, but no formal release is necessary.

### Land release

Airports can also request from the FAA a release of land from obligations incurred under agreements with the federal government. Land may be released if it is no longer needed for aviation-related use, encroachment or approach protection, or noise compatibility. A release could then allow an

because surprises could surface upon closer examination, Ward continued. It will be important to know what the deed actually says, how the airport originally acquired the property, what state or federal requirements need to be carried forward in any agreements, what specific property or facilities are involved, and what the present condition of the property and its current use is. Federal surplus property and former military property are more complicated, she added.

Preparing financial information for a land release will require a fair market value

release? How long will FAA approval take—and will a developer wait for the process? Expect 12 months at a minimum, Ward said, and “Be prepared that the developer will be appalled at how long it will take.”

And there’s no guarantee the FAA will say “Yes.” The agency will consider if the request is reasonable and practical, how it will affect needed aeronautical facilities and future development, and whether it’s compatible with the needs of, and will benefit, the airport and civil aviation.

Finally, if an airport buys property without federal funding, it should think carefully about whether to show that property on its ALP, Ward cautioned. The airport could be tying federal obligations to something that wasn’t intended. “Whether it’s been federally funded or not, there’s going to be a criteria review on it... Do you want to obligate it? That could make a difference in how you go through this process.”

Airports should also consider that when they receive money for selling land, if applied toward a federally funded project, those funds usually cannot be used towards the local match of federal funds. The land release funds must be applied to the primary project costs, before federal funds are considered. A long-term lease might be a better option, Ward said, since funds generated by a lease can usually be used for operations and maintenance projects, as well as capital projects, which affords the airport more flexibility.

### For more information:

- FAA grant assurances No. 4 (Good title), No. 5 (Preserving rights and powers), No. 21 (Compatible land use), No. 25 (Airport revenues), No. 29 (Airport layout plan/Exhibit “A”), and No. 31 (Disposal of Land)
- FAA Order 5190.6B: *Airport Compliance Manual*
- FAA Policy and Procedures Memo 5190.6, “Guidance for Leases, Use Agreements and Land Releases”
- ACRP Report 176: *Generating Revenue from Commercial Development on or Adjacent to Airports*

**“The speed at which the land release process happens does not work at the speed of development. The days of a blanket release are well behind us.”**

—Stephanie Ward, Mead & Hunt

airport to sell or lease property it owns for non-aeronautical use.

A land release can take significant time, effort, and money, Ward said. “It has to be shown on your ALP as unnecessary for aeronautical purposes first. It’s really focused on that long-term transition,” she said.

Twenty years ago it was a much different environment; now the FAA is looking for a specific use. “That really has become a challenge because the speed at which the land release process happens does not work at the speed of development,” Ward said. “The days of a blanket release are well behind us.”

There are two types of land release. In the “release from aeronautical use,” the airport retains ownership of the land, but the land is no longer required to be used for aeronautical purposes. With a “release and removal of dedicated property,” the airport usually sells land and is no longer responsible for maintaining it as dedicated airport property.

When requesting a release, an airport will need to address the proposed purpose, history of the property, environmental factors, and financial aspects. Based on her experience, Ward said the “why” and the “what” are most critical—*why* is the request being made (e.g., excess property), and *what* are the benefits of releasing it compared to the airport maintaining the property in its existing condition.

The history of the property is critical,

appraisal of the property, which can be expensive and time consuming. “We have lost more than one proposed developer because of the time it took,” Ward said. The airport will also need to evaluate the return on investment, what proceeds are expected, and how they will be used (e.g., for capital improvements or operations) and include a summary of intangible benefits (e.g., existing revenues, future revenues).

For the environmental aspects of land release, a categorical exclusion (CATEX) is usually sufficient, Ward said. However, FAA Standard Operating Procedure 5.0 has greatly increased the cost and time for a CATEX. Knowing as much as possible about the proposed land use will help address potential environmental impacts that can complicate the process.

Ward urged airports to determine what they’re trying to do before they get too far down a path. Key aspects to consider up front are:

- Documentation (location and review of historical documents; extent of environmental documentation necessary; agreement language and duration).
- Costs (benefits of the release vs. cost to obtain release). Determine who will pay for the release and the associated elements—for example, the airport or the developer.
- Timing. How early can you ask for the

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# An airport's story: Rochester International

The city of Rochester, in southeastern Minnesota, is best known as the home of the world-renowned Mayo Clinic. So it's no surprise that many operations at Rochester International Airport (RST) involve medical services.

"While all airports provide access, RST is unique in the critical users we serve daily," says deputy airport director Kurt Claussen. "RST is one of the busiest air ambulance airports in the country, with operations occurring around the clock," he says. FedEx operates a Boeing 757 aircraft with the vast majority of cargo related to medical care. Commercial service allows patient travelers access into Rochester and the local business community the ability to travel efficiently. "And the corporate, political, and religious leaders from around the world seeking care at Mayo Clinic rely on access through RST," he says.

The airport provides an annual economic impact for the region of \$161 million dollars in annual output, 2,911 jobs, and \$73 million in annual payroll. Claussen says 2018 was a record year for total passengers in the history of RST, making it the second-busiest airport in the state. This record was achieved through strategic initiatives to increase community engagement and use of the local airport and to develop air service. "The whole RST team is incredibly proud of the new vibrancy surrounding the airport with such major growth in recent years," he says.

RST is owned by the City of Rochester and operated by the Rochester Airport Company, a subsidiary of Mayo Clinic. The airport was founded in southeast Rochester in 1928 by brothers William and Charles Mayo. At that time, it occupied 285 acres and was owned and operated by the Mayo Foundation. In 1960, the decision was made



to relocate the airport to accommodate the expansion needed to serve larger aircraft. The airport was moved to its present location on about 2,400 acres of land and called Rochester Municipal Airport. With the addition of the US customs facility in 1995, the airport was renamed Rochester International Airport.

The airport is also an important facility for general aviation (GA); businesses

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## Top 20 tips for better snow removal

Winter's here and snow is falling on airports throughout the state. It's not too late to brush up on methods for safe and efficient snow removal with the following checklist—and it's not too early to take notes for next year!

1. Participate in pre-season planning and develop a detailed snow removal plan that specifies the priority areas to be cleared first, a timeline for snow removal, plowing methods, and equipment to be used.
2. Identify in the snow and ice control plan where cleared snow will be piled—areas where the ground will support the weight of the plow and snow can be pushed far back from the aircraft operating areas. Consider sightlines as well, and don't create snow banks in locations where visibility is important.
3. Share the snow removal plan with airport tenants so they know what to expect around their hangars.
4. Take the MnDOT eLearning course to get training on proper radio communication procedures with pilots and/or the air traffic control tower.
5. If the runway is unusable, file a NOTAM to close the runway.
6. If the runway is usable but needs clearing, file a NOTAM to notify pilots that snow removal equipment will be on the runway.
7. Listen to the radio carefully for traffic in the area and communicate your movements clearly.
8. Maintain situational awareness.
9. Use truck lights and rotating beacons to improve visibility.
10. Give aircraft the right-of-way at all times.
11. If an aircraft is circling to land and the runway is usable, leave the runway while it lands and then resume plowing.
12. Plow the main runway first, then plow other areas in this order: taxiways, aircraft loading area/ramp, public roadways, secondary runways and taxiways, hangar taxi lanes, and vehicle parking areas.
13. Never pile snow directly off the ends of the runway; always clear sufficient areas extending past the sides and ends of the runway to provide plenty of wingtip clearance and visibility of runway lights and other aircraft.
14. Do not put snow banks, mounds, or ridges exceeding two feet along the edges of the prescribed snow clearance areas designated in your airport's snow and ice control plan.
15. Clear around NAVAID equipment and other sensors to provide access for maintenance.
16. Note required clearances indicated on the snow removal maps in your airport's snow and ice control plan.
17. Use caution when plowing around aircraft tieddown rings, lights, signs, and NAVAID equipment. After plowing, check light/sign couplings and all other equipment to ensure they are intact and operating correctly.
18. Report any damage that might have occurred while plowing.
19. If you must stop before the plowing is complete, or are unable to plow certain areas, be sure to issue a NOTAM for the surfaces that have not been plowed.
20. Remove NOTAMs once plowing is complete.

### For more information:

- FAA AC 150/5200-30D, Airport Field Condition Assessments and Winter Operations Safety
- Airport Snow and Ice Control Plan: [airtap.umn.edu/publications/factsheets](http://airtap.umn.edu/publications/factsheets)
- Snow and Ice Control Plan eLearning: [dot.state.mn.us/onlinelearning/aeronautics/winterops/story\\_html5.html](http://dot.state.mn.us/onlinelearning/aeronautics/winterops/story_html5.html)
- Airport Driving and Self Inspection eLearning: [dot.state.mn.us/onlinelearning/aeronautics/selfinspection/story\\_html5.html](http://dot.state.mn.us/onlinelearning/aeronautics/selfinspection/story_html5.html)

# Resources and training opportunities

## Airport Economic Impact Study: Methodology and Calculator Training

- Feb. 4, 2020: Brainerd
- Feb. 5, 2020: University of MN–Twin Cities
- Feb. 11, 2020: Mankato
- Feb. 12, 2020: Willmar
- Feb. 19, 2020: Thief River Falls
- Feb. 20, 2020: Virginia

Have you ever wondered how much annual economic activity is generated by your local airport? Would you like to know how this translates into jobs, earned income, and spending in the local economy? If so, please join us to learn more about how airports benefit communities throughout Minnesota.

In 2019, MnDOT conducted a statewide airport economic impact study, which culminated in a public economic impact calculator. In this training, you'll learn about the study methodology, the calculator, and media tools to help share the economic benefits of airports throughout the state.

Get more information about this free training at [airtap.umn.edu/events/](http://airtap.umn.edu/events/).

## 2020 Minnesota Airports Conference

- April 29–May 1, 2020: Rochester

The annual Minnesota Airports Conference delivers the most up-to-date and advanced information for aviation professionals and provides an opportunity for industry and government officials to exchange ideas on funding, trends, airport management, operations, maintenance, and best practices. Don't miss this year's learning and networking event in Rochester!

Keynote speaker Tim Eggebraaten will share his experiences from 30 years in law enforcement and talk (and sing!) about achieving success through balance and harmony. Another conference highlight will be Wednesday's drone workshop and demo.

To register, visit [airtap.umn.edu/events/airportsconference/2020/](http://airtap.umn.edu/events/airportsconference/2020/).

## 2020 Wildlife Hazard Control Workshop

- May 5, 2020: Minneapolis–St. Paul International Airport

Check the AirTAP website for details coming soon.

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include Great Planes Aviation, Aviation Pathways, the Southeastern Minnesota Flying Club, and Private Jet Solutions. GA aircraft and pilot services are provided by fixed-base operator Signature Flight Support.

Claussen says the aviation industry is facing a significant pilot shortage, and small non-hub commercial airports are in jeopardy of losing air service or the ability to grow. In 2018, RST partnered with Rochester Community & Technical College and Great Planes Aviation to launch the first-ever Aviation Pilot Program at RST. "RST's active role in this partnership will help address an issue within the aviation industry that is only predicted to become more prevalent," he says.

Claussen has been with the RST for nearly 30 years. "I'm energized by the variety of challenges we experience," Claussen says. "Working as a small team at an airport of our size allows us to collaborate, problem solve, and see the positive results of our hard work every day."

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