



AIRPORT
PLANNING DESIGN & CONSTRUCTION
SYMPOSIUM

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SHERATON DOWNTOWN DENVER HOTEL
DENVER, COLORADO



PLANNING DESIGN & CONSTRUCTION

WORKSHOP NUMBER:

**LEGAL ISSUES IN
SUSTAINABLE ENERGY
INITIATIVES**

WORKSHOP TITLE:

PRESENTER:

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Context

- Increasing pressure on airports to exploit sustainable energy development
 - Local policies on government buildings (LEED)
 - Local or state renewable energy mandates (RES)
 - Good citizen policies
- Local pressure vs. sponsors' legal obligations and limitations
- Many of these efforts are unprecedented – meaning *little or no FAA guidance*
- Distinguish: energy for sponsor's use and mere revenue generation

Examples

- ESCOs – energy service companies or contracts
- PPAs – power purchase agreements
- Building standard requirements for tenants (minimum standards, code, local ordinances, LEED requirements)
- Third party leases (revenue only)
- Carbon offset contracts
- Fuel supply

Issues in Alternative Energy Supply

- Often not standard language PPA (power purchase agreement)
- Renewable energy credits (who gets what)
- Clean air credits (what and for whom)
- Tax credits
- Lease (usually) or sale of real estate
- All output or only portion
- Ownership of facilities at end of lease term
- FMV lease (linkage to gross/net utility rates)
- VALE or other fed/state/local grant programs
- Usual contractual issues (liability, termination, etc.)



Energy Production Arrangements

- If energy is not for sponsor's use:
 - Oil, gas production
 - Wind or solar farms
- Consider ALP issues
 - Aeronautical land requirements vs. need for long-term lease
 - FMV lease (non-aeronautical)
 - Environmental review
- Is project legally required by local ordinance, state law
- Allocation of environmental / financial benefits
 - May need to fit within a box for compliance purposes



'Good Citizen' Arrangements

- Spending to achieve non-utilitarian, non-aeronautical objectives
 - Self-sustainability
 - Revenue use
- Local green ordinances or renewable energy standards may provide legal justification
 - Review state and local utility law



Grant Assurance Compliance

- Revenue use, self sustaining requirements
- Assurance 4 – adequate title
- Assurance 5 – rights and powers
- Assurance 6 – consistency with local plans
- Assurance 20 – hazards removal
- Assurance 21 – compatible development
- Assurance 22 – unjust discrimination
- Assurance 23 – exclusive rights

Other Legal Impediments

- Part 77/TERPS/OEI/radar interference
 - Especially wind farms and oil derricks
 - 7480s and 7460s often not enough
- Local building code
 - Alternative energy often not UL approved
- State or local RES requirements
- ALP land use designation
- Is this a Taj Mahal subject to carrier, user complaint



Legal Checklist

What is reason for sustainability initiative

Is the initiative in best (financial) interest of airport

Are there revenue use or land use complexities

How are non-financial benefits to airport articulated

What FAA approvals are needed or prudent

Who might (or has incentive to) oppose or complain

How do we document all of this

Questions?



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