OPPORTUNITIES AND RISKS IN PURSUING NON-AERONAUTICAL REVENUE PROJECTS AT AIRPORTS

Thursday, June 8, 2017 / 1:00-2:30 p.m. / 1.5 CM Credits
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Stephanie A.D. Ward, AICP, Mead & Hunt, Inc.
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To Receive 1.5 CM Credits for This Program

ACC is an approved Certification Maintenance (CM) provider, and must ensure that participants comply with APA/AICP requirements to award 1.5 CM credits for this training program:

- A paid and registered participant;
- Eligible to receive CM credits by holding the AICP credential;
- Log-in to the training program using their own customized log-in link;
- Attend for the entire 90-minute duration of the program;
- Complete all questions and submit the program evaluation form; and
- Claim their CM credits via the APA website.
Barton (Bart) Gover, CM has over 18 years of experience in airport planning and client service for both commercial service and general aviation airports. He is stays on top of aviation industry trends and practices, routinely reviewing industry publications and following Federal Aviation Administration (FAA) news feeds and regulations. Mr. Gover is an active member of top aviation industry organizations including the American Association of Airport Executives (AAAE), Airport Consultants Council (ACC), North Carolina Aviation Association and the Kentucky Aviation Association. He has served as an airport board member for the Danville-Boyle County Airport (KDVK) for 10 years and is an experienced project manager.
Peter J. Kirsch, Attorney
Partner
Kaplan Kirsch & Rockwell

Peter J. Kirsch is a partner with the law firm of Kaplan Kirsch & Rockwell, and splits his time between Denver, Colorado and Washington, D.C. His practice emphasizes regulatory, environmental, and land use law for transportation and infrastructure projects. For almost 30 years, Mr. Kirsch has concentrated his practice on airport development and regulatory issues. He regularly advises airports and local governments on land use law, federal legislation and regulations, and airport financial issues. Mr. Kirsch has represented clients in precedent-setting litigation relating to the powers of airport sponsors, control of airport noise, and preventing encroachment of incompatible land uses. He has been involved in the development of most of the new commercial airports in the United States in the last quarter century, as well as dozens of airport expansions, redevelopment projects, airport collateral land projects, and airport lease negotiations. Mr. Kirsch regularly advises airport governing bodies on governance issues, and legal obligations to the federal government. He is a frequent speaker at professional conferences on airport development and operational issues in the United States and elsewhere. Mr. Kirsch is admitted to practice in the District of Columbia, Colorado, Maryland, and Washington State, as well as many federal district and appellate courts and the U.S. Supreme Court. He is a graduate of Oberlin College and the University of Chicago Law School.
Stephanie A.D. Ward, AICP
Manager, Aviation Planning; Vice President
Mead & Hunt, Inc.

As an aviation planning manager, Stephanie A.D. Ward, AICP oversees the development of planning projects for airports, as well as state and federal agencies. Ms. Ward has more than 25 years of experience in traditional master planning, environmental assessments, land use compatibility plans, state system plans, aviation research and public involvement. She has also been heavily involved with several Transportation Research Board Airport Cooperative Research Program projects, serving as a principal investigator, author and project panel member, most recently for ACRP Report 176 related to revenue generation on or near airports. As a private pilot since the 1980’s, Ms. Ward is passionate about working with communities and airport sponsors to keep airports viable. She holds a bachelor’s degree in Urban Planning and a master’s degree in Parks and Recreation Resources from Michigan State University, and she is a certified member of the American Institute of Certified Planners. Ms. Ward has served as an adjunct professor of aviation planning at Oakland Community College and an instructor of the NEXTOR Airport Systems Planning & Design short course. As a licensed private pilot, she combines the aviation perspective with community and personal aspects of planning to solve aviation challenges at the local, state and national level.
Kevin C. Klein, A.A.E. is Airport Director of Cherry Capital Airport (TVC). As Assistant Airport Director for TVC, Mr. Klein received numerous professional awards, including the FAA Airport Partnership Award in 2009. He was instrumental in securing several prestigious awards for TVC, including the 2004 FAA Airport Safety Excellence Award; the Balchen Post Award for Winter Safety Excellence in 2004, 2005, and runner-up in 2003 and 2016; and the Airline Pilots Association’s 2005 “Airport of the Year.” In 2009, Mr. Klein was recognized for his work on the FAA’s Takeoff and Landing Performance Assessment Group, helping to rewrite the FAA AC on Winter Operations. He served as Airport Operations Supervisor for Kent County Department of Aeronautics, Gerald R. Ford International Airport and Johnson Controls World Services, Teterboro Airport before joining the TVC management team in 2002. Mr. Klein is an Accredited Airport Executive and has been a member of the American Association of Airport Executives (AAAE) since 1994. He is past president of the Michigan Association of Airport Executives. Mr. Klein has a Bachelor of Science degree in Aviation Technology and Operations Management, and a minor in General Business from Western Michigan University. He is a licensed airport manager with the State of Michigan and also holds a Private Pilot Certificate since 1991.
Training Program Objectives

This ACC Institute online training program will focus on how U.S. airports can help fund capital improvements by converting land over to non-aeronautical uses, such as commercial development.

Industry experts will discuss FAA approval requirements, common risks and pitfalls, and federal law on when land releases are needed.
Learning Objectives

At the end of this online training program, participants will be able to:

- Identify FAA approval and land release requirements.
- Cite applicable federal case law associated with the release or disposal of federal obligated airport property.
- Describe common risks and pitfalls associated with the land release process for approval to use airport land for non-aeronautical purposes.
- Summarize the lessons learned from an airport having recently completed the land release process.
The Process, Challenges and Resources

- **Federal Process**
  - What to release
  - The 16 key questions/data requirements

- **Common Challenges**
  - Documentation
  - Timing
  - Costs

- **Resources**
The Process

Determining “Why and What” to Release

- Why is the airport interested in releasing the property?
- What type of release are you considering
  - Aeronautical Use vs. Non-Aeronautical Use
    - If Aeronautical – likely only allow lease to avoid through-the-fence issues
    - If Non-Aeronautical – determine if sale or lease is desired
  - Options may have implications on how the proceeds may be used.
Legal Process

- Not Difficult, But Precision is Rewarded
- Understand Legal Status of –
  - Current property
  - Future use
  - Funding for original acquisition
- Errors, Misinterpretation, Inconsistency Abound
Authorization for Non-Aeronautical Development

- What is FAA’s Proper Role
- What is FAA’s Actual Role
- Process for FAA Approval
- Terminology is Important
  - FAA review
  - FAA approval
  - FAA release
  - FAA environmental review
  - ALP
  - Exhibit A Property Map
Legal Considerations Before Seeking Approvals

- **Know Legal Obligations in Advance**
  - Property history
  - FAA permission vs. forgiveness
  - Required contractual clauses
- **Educate Investors/Developers**
- **Keep ADO (Sometimes Region) Informed**
The Process

16 Primary Questions/Data Points in Five Main Categories

- Why/what is being requested?
- What is the history of the property?
- What property is being considered?
- What are the financial aspects?
- What are the environmental implications?
The Process – Why/What is Being Requested

16 Primary Questions/Data Points

- Why/what is being requested?
  - Why is the request being made? (Excess property, non-contiguous property, etc.)
  - What is being requested? (Lease, sale, non-aeronautical use, etc.)
  - What justifies the request for release?
  - What use or disposition will be made of the property/facilities?
  - Benefits of release compared to maintaining property in existing condition.
The Process – History of the Property

16 Primary Questions/Data Points

- What is the history of the property?
  - How did the airport originally acquire the property?
  - What state or federal requirements might need to be carried forward in any agreements?
  - What specific property or facilities are involved?
  - What is present condition of the property and current use?
The Process – Defining the Release

16 Primary Questions/Data Points

- What property is being considered?
  - Boundary descriptions
  - Sketch of location
  - Summary of facilities
The Process – Financial & Environmental

16 Primary Questions/Data Points

Financial Aspects
- Fair Market Value of property (sale or lease rate)
- What proceeds are expected and how will they be used?
- Summary of intangible benefits
  - (existing revenues, future revenues, CIP)

Environmental Aspects
- Method and degree of documentation (CATEX or EA)
- Environmental impacts of reuse options
Documentation of Request

- **Completeness is a Virtue (Can’t Be Too Much!)**
  - FAA rewards completeness
  - Demonstrate understanding of agency document needs

- **Refer to Compliance Manual (Order 5190.5B)**
  - Respond to each item identified as basis for decision

- **Environmental Review**
  - Highly variable

- **Valuation/Appraisal Not Relevant to Request**
The Process - Summary

- Land Release Package
  - Land Release Summary
    - Responses to the 16 questions
  - Boundary Description
  - Fair Market Value Appraisal
  - Environmental Clearance Document
Anticipate Problems/Questions

- **Understand Timetable**
  - There is none!
  - Educate FAA, parties to transaction of uncertainties

- **Future Use of Property**
  - Definite vs. uncertain plans – affects everything

- **FAA May Want Precise Flow-of-Funds**
  - Acquisition
  - Disposition
Common Challenges

- **Documentation**
  - Locating/reviewing historical documents
  - Extent of environmental documentation necessary
  - Agreement language and duration

- **Costs**
  - Benefits of release vs. cost to obtain release
  - Who pays for release and associated elements?

- **Timing**
  - How early can you ask for release?
  - How long will FAA approval take – will a developer wait for the process?
The Resources

- **FAA Grant Assurances**
  - #4 – Good title
  - #5 – Preserving rights and powers
  - #21 – Compatible land use
  - #25 – Airport revenues
  - #29 – Airport layout plan/Exhibit “A”
  - #31 – Disposal of Land

- **FAA Order 5190.6B**
  - Airport Compliance Manual – Chapter 22

- **FAA Policy and Procedures Memo 5190.6**
  - Guidance for Leases, Use Agreements and Land Releases
The Resources (Continued)

- **ACRP Report 176 (Project 03-39)** – Generating Revenue from Commercial Development On – or Adjacent – to Airports

  - Anticipated publication in late summer 2017
  - Focuses on “toolkits”
    - Self Assessment
    - Site Evaluation
    - Implementation
TVC – Cherry Capital Airport and Costco Wholesale Corporation
Land Release

- Costco approached airport in 2013 with a proposal to buy about 16 to 20 acres of land
- Costco did their selection process from 2013 to 2015 with a Letter Of Intent in fall of 2015
- Required – Change of airport land use from aviation to a non-aviation activity – Approximately 60-acre parcel – was part of a RPZ under former Naval facility
  - Change of use first appeared on a 1966 ALP as an industrial park
Land Release (Continued)

- Reviewed Leasing vs. Sale
  - Reversion Clause – issue of city prior ownership if property is no longer an aviation purpose
  - Valuation of a sale (low price) vs. long-term revenue stream
Submittal To FAA For Land Release

Followed:

- FAA Order 5190.6B Airport Compliance Manual Chapter 22 and 23
- FAA Policy and Procedures Memo (PPM) 5190.6
- State of Michigan (MDOT) Guidelines for Airport Land Release Concurrent Uses Non-Aeronautical Agreement
Review of Concurrent Use

- Use of dedicated airport property for a compatible non-aviation activity, while at the same time the property serves the primary purpose for which it was required. Examples – road right-of-way easements, utility easements, and agriculture uses.

Land Release

- Release from aeronautical use, airport retained the ownership of the land but land is no longer required to be used for aeronautical purposes.
  - TVC made clear even no longer for aeronautical purpose, this project is an airport purpose and supports the development and operation of the airport.
Submittal To FAA For Land Release (Continued)

- Letter of request for a Land Release was submitted on February 4, 2016.
- Cover Letter – Background information on the project and property
- Boundary description and a Copy of Exhibit A, ALP
- Appraisal – Fair Market Value
- Financial analysis of proposed lease
- Copy of Costco’s Letter of Intent
Submittal To FAA For Land Release
(Continued)

- Copy of all property information
  - Transfer from Navy to the city – Quit Claim Deed, lease, and release of national emergency use provision (War Powers Act)
  - Transfer from city to Airport Commission

- MDOT required a check list to be submitted
  - ALP review
    - Will proposed use impact future airport development
    - Is proposed use identified on ALP?
Submittal To FAA For Land Release (Continued)

- Land Acquisition
  - What type of process conveyed the property?
  - Federal project number and date property was acquired
  - Was land purchase with or without federal funds?

- Land Reuse
  - Non-Aeronautical – Costco and similar opportunities
  - Will property be sold or leased (terms)?
Submittal To FAA For Land Release (Continued)

- **Land Reuse (Continued)**
  - Current proposal
  - Existing airport fence line and will it be relocated?
  - Is re-use compatible with airport environs?

- **Environmental**
  - Identify environmental impacts
    - Cat X
FAA – Several Requests For More Information

Use of Revenue

- Meeting Grant Assurance to be Self-Sustaining
- Support the Operations and Maintenance Budget
  - Debt repayment
  - Local share of AIP
  - FAR 139 – operational expenditures
    - Winter operations
    - ARFF
    - Airport utilities
FAA – Several Requests For More Information (Continued)

- Boundary Surveys
- Lease Information
  - CPI was a big issue
- Grant Assurances – Understand Specifically 4, 5, 14, 25, 29 and 31
- Revenue Use Review
FAA – Several Requests For More Information (Continued)

- Land Use Review – Compatibility
  - Wildlife
  - Electrical interference
  - Lighting
  - No through the fence
  - Mineral Rights
FAA – Several Requests For More Information (Continued)

- **Review of Part 77 issues**
  - Complete 7460-1 process

- **Separate the request for release into two requests**
  - Land development area (Costco)
  - Road right away
FAA Provided Communication

June of 2016

- Status Update
  - Similar to a letter of intent outline the course of action
- Procedure for Public Notice
  - Timeline several months for all FAA to review and approve wording
  - 30-day requirement
- Final Releases Were Received
  - December 13, 2016
Final Releases

- Two Releases
- First (1st) Was a Release of Aeronautical Use Obligations on Airport Property
  - Non-aeronautical purpose and leased for compatible commercial development
  - Review of CAT X
  - Federal Register Review
  - Review of airport public purpose
  - Revised ALP and Exhibit A
  - Review of Grant Assurance 19 Operation and Maintenance – Wildlife, Part 77, airspace protection, etc.
  - Lease requirements per grant assurances
  - Lease review in regards to term and revenue use
Final Releases (Continued)

- Second (2\textsuperscript{nd}) Was a Release of Airport Property
  - Release for sale and used for a road right away
    - Fair market value
    - Environmental Review
    - Grant Assurance 19 Operation and Maintenance – Wildlife, Part 77, airspace protection, etc.
Summary of Lease

- 20-year lease
- Eight (8) five-year options
- Total value over the 60 years is $12.7 million
Thank You For Participating Today!

QUESTIONS?

This concludes the educational content of this activity.
THANK YOU TO OUR PRESENTERS!

Barton F. Gover, CM (Moderator), Mead & Hunt, Inc.
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Stephanie A.D. Ward, AICP, Mead & Hunt, Inc.
Kevin C. Klein, A.A.E., Airport Director, Northwestern Regional Airport Commission, Cherry Capital Airport (TVC)
Completion of Evaluation Form to Earn CM Credits

- Your evaluation form will appear on your computer screen **approximately 1-2 minutes** upon conclusion of this training program.

- As an approved Certification Maintenance (CM) provider, ACC must collect an evaluation form to award CM credits to any participant to ensure compliance with APA/AICP requirements.

- Please answer **ALL** questions on the form and submit your responses upon completion of the online evaluation form.
Upcoming 2017 ACC Institute Online Training Programs

- **Planning for Innovation: Overview of the TSA Innovation Task Force (ITF) and Checkpoint Design Guidelines (CDG) Innovation Supplement**
  - June 12, 2017, 1:00-2:30 p.m. EDT, 1.5 PDH and LU/HSW credits

- **Airspace 101**
  - July 13, 2017, 1:00-2:00 p.m. EDT, 1.0 PDH and CM credits
To Receive 1.5 CM Credits for This Program

PLEASE NOTE: As an approved Certification Maintenance (CM) provider, ACC must ensure compliance with APA/AICP requirements to award CM credits.

Participants must meet **ALL** of the following criteria to receive 1.5 CM credits for today's training program:

- A paid and registered participant, having provided their work (vs. personal and/or another individual's) address and email during registration for ACC required recordkeeping;
To Receive 1.5 CM Credits (Continued)

- Eligible to receive CM credits by holding the AICP certified planner credential;
- Logged-in to the program using their **own** unique and customized link assigned to them via their automated registration confirmation and reminder emails vs. viewing the training program with another participant and/or as a group – for ACC required recordkeeping;
- Attend/participate for the **entire** duration (90 minutes) of the program, as CM credit is not issued for partial attendance/participation;
To Receive 1.5 CM Credits (Continued)

- Complete ALL questions on the online ACC evaluation form using the customized form assigned to them that appears on their computer screen 1-2 minutes upon conclusion of the training program; and

- Claim their 1.5 CM credits by logging in to the Certification Maintenance page on the APA website and adding this event (9125383) to their CM log.
AICP members are responsible for logging their CM credits and managing their own CM logs.

Claim your 1.5 CM credits for this training program by following the instructions below:

- Go to www.planning.org
- In the upper right hand corner, log-in using your ID # and password.
- Click on the AICP tab at the top of the page.
- Next, click on Certification Maintenance.
- Click on CM Log.
Claim Your 1.5 CM Credits (Continued)

- Select “Add CM Registered Credits.”
- Using the CM Search option, type in the event number 9125383 and click “Go.”
- Find your event and select "Add to My Log."
- Please rate the event, add a comment (optional), click on the Ethics statement, and check the box to confirm. Note: you should see a message indicating the CM reporting period year that you are logging.
Claim Your 1.5 CM Credits (Continued)

- Click “Submit” and the CM credits should appear in your CM log.

- If you have any further questions or experience an issue reporting your CM credits, please contact a CM customer service associate at AICPCM@planning.org.
As a participant in today's training program, be sure to take advantage of the training materials (including the PowerPoint presentation and valuable resources) made available to you via the link included in the automated registration confirmation and reminder emails you have received.
Need Additional Information?

Please contact:

- Matt Griffin – mattg@acconline.org
- Lisa Deyo – education@acconline.org