

33rd Annual Basics of Airport Law Workshop and 2017 Legal Update

Session #11

NON-AERONAUTICAL DEVELOPMENT OF AIRPORT LAND

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WHAT'S THE FUSS WITH NON-AERONAUTICAL?

Unique legal issues

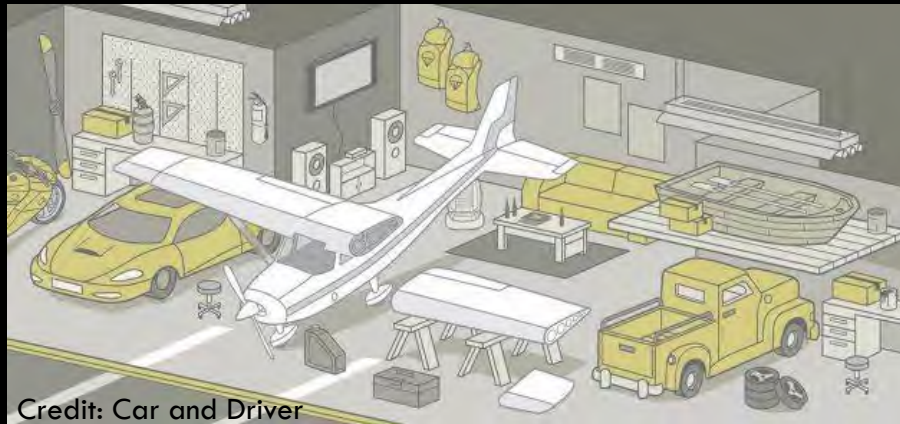
1. FAA approval
2. Environmental review
3. Use of airport revenue
4. Agreement terms
5. Land use compatibility

RELEVANT GRANT ASSURANCES

- 19 – *Operation and Maintenance*
- 20 – *Hazard Removal and Mitigation*
- 21 – *Compatible Land Use*
- 22 – *Economic Nondiscrimination*
- 24 – *Fee and Rental Structure*
- 25 – *Airport Revenues*
- 29 – *Airport Layout Plan*
- 31 – *Disposal of Land*

FAA'S INTEREST: FAA GRANTS

- ***“When an airport sponsor requests and is awarded AIP funds to acquire land for development, it is obligated to ensure such lands are used for aeronautical purposes.”***
- Director’s Determination, *Valley Aviation Services v. City of Glendale*, p. 35-36 (FAA Docket 16-09-06)



FAA'S INTEREST CONT.: ASSURANCE 19

“[Grant Assurance 19: Operation and Maintenance] prohibits a sponsor from causing or permitting any activity or action on the airport that would interfere with its use for airport purposes.”

Valley Aviation Services at 34.

FAA'S INTEREST CONT.: AIRPORT LAYOUT PLAN

“Allowing nonaeronautical use of land developed and designated as aeronautical on an approved airport layout plan is a violation of Grant Assurance 29, Airport Layout Plan.”

Valley Aviation Services at 36.

LEASE MAY REQUIRE RELEASE

- First step: determine whether intended land use is “aeronautical”
- Second step: Airport land can be used for “interim” and “concurrent” non-aeronautical uses consistent with Grant Assurances.
- Third step: Airport operator must seek and obtain a “release” from FAA for long-term leases.

RELEASES

- Technically, airport is requesting to be *released* from Grant Assurance obligations.
- Release can be “full” or “partial”.
- Once released, airport can enter into long-term lease.
- FAA may publish notice in the Federal Register and solicit comment.
- Airports should consult FAA Compliance Manual, Chapter 22.

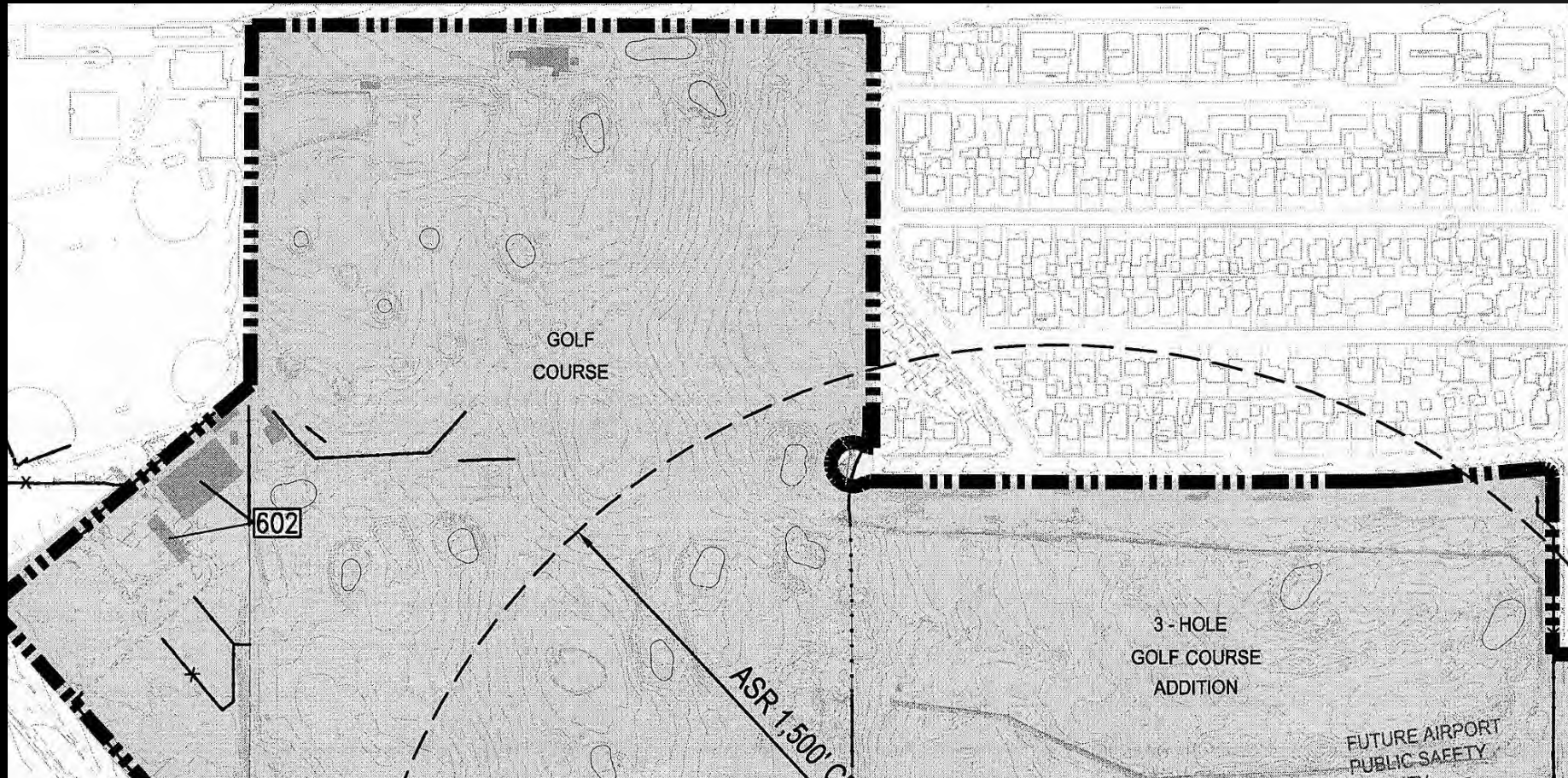
SALE WILL REQUIRE RELEASE

- Federal law and Assurance 31 require land purchased with AIP funds to be sold when no longer needed for airport or noise compatibility purposes.
- Airport must:
 1. return/reuse FAA's proportionate share of sale proceeds
 2. seek and obtain release from FAA to delete property from Exhibit "A" Property Map
 3. obtain fair market value
 4. treat sale proceeds as airport revenue

AIRPORT LAYOUT PLAN

- General assumption: all airport property not designated for non-aeronautical use is intended for aeronautical use
- As a result, airport must re-designate land identified for aeronautical use
 - New designation: specific use or “revenue-generating nonaeronautical use”
- FAA’s role in evaluating proposed ALP amendments is to evaluate impact on safety, efficiency and utility.
 - Here, FAA also will consider whether land may be needed for aeronautical use.
- FAA action on ALP amendment is subject to NEPA.

ALP EXAMPLE: NON-AERONAUTICAL LAND USE



REVENUE USE

1. Two assurances at issue: Assurance 24 (Fee and Rental Structure) and Assurance 25 (Revenue Use).
2. Sale and lease proceeds are almost always airport revenue.
3. Below FMV sale or lease may not be revenue diversion, but may violate self-sufficiency assurance. There are limited exceptions for certain public uses.
4. Airport typically can invest in on-airport infrastructure in support of commercial development.

LAND USE COMPATIBILITY

- FAA generally prohibits on-airport residential use.
- Structures must be evaluated under FAR Part 77 for potential hazards to air navigation.
- Certain uses have additional requirements.
 - Solar arrays
 - Oil and gas wells
 - Cell towers
 - Agriculture and livestock

QUESTIONS TO ASK

1. Is land on Exhibit “A” Property Map?
2. Is planned use aeronautical or non-aeronautical?
3. Was land acquired with AIP grant funds or donated by the federal government?
4. How is land depicted on ALP?
5. Is airport planning sale or lease?
6. If lease, what is intended term?
7. How is rent to be established?
8. Is land intended for public purpose?

HYPOTHETICAL #1: OLYMPUS AIRPORT

- Olympus Airport is a small hub airport with a single runway owned and operated by Olympus County.
- The ALP and Master Plan show the addition of a new parallel runway.
- The County Commissioners have asked that a large parcel overlapping the proposed runway be made available for Amazon HQ.
- The County Commissioners also directed that the Olympus Airport provide the land at no cost, in light of the large economic impact and spinoff development from Amazon.

#2: IVORY TOWER AIRPORT

- The Ivory Tower Airport has been approached by a local technical college to develop a campus on airport property.
- The technical college would like to build the following facilities at the campus:
 - Pilot training center
 - Department of airport management
 - Student dormitory
 - Shooting range (for the criminal justice majors)
 - Satellite array for the astronomy department (to listen for extraterrestrial life)
 - Football stadium
 - Agricultural laboratory for testing various seeds and crops

#3: MARÍN INTERNATIONAL AIRPORT

- Marín currently has no uses in its Runway Protection Zones
- A local farmer has approached Marín International to grow cannabis in the RPZs and surrounding areas
- The farmer seeks a 10 year lease and proposes to pay rent
- One RPZ includes land purchased with AIP grants; one was acquired as Surplus Property



Image: Huntsville Times

#4: APOLLO AIRPORT SOLAR FARM

- Apollo Airport has unused property along its primary runway, which generates no revenue
- The ALP has no designated use for this property
- The Airport would like to make the property available for Sparky Cooperative Electric Utility to erect a solar farm
- The solar array would feed into the Sparky grid and Sparky would use renewable credits to meet state renewable mandates
- The Airport would charge no rent, but place the panels in a prominent location to show how sustainable it is



#5: ATLANTIS AIRPORT DRAINAGE

- County department proposes an above and below-ground stormwater drainage system on Atlantis Airport property
- Not currently on ALP; property was either acquired with AIP funds or Surplus Property
- The system will provide stormwater management and water quality benefits to airport, but also to a wider area off-airport
- County stormwater department proposes a 100 year lease and flat rent term split between airport and department
- The property overlaps with designated threatened jackalope habitat

#6: CARBON REGIONAL AIRPORT

- Airport Authority leases land from County
- County is leasing subsurface mineral rights to OilCo
- Pumps and other infrastructure will be on surface
- County intends to keep all revenue from leases and royalties

FURTHER RESEARCH

- FAA Order 5190.6B, *Airport Compliance Manual*
- DOT/FAA, *Policy and Procedures on the Use of Airport Revenue*
- FAA, *Policy on the Non-aeronautical Use of Airport Hangars* (June 2016)
- TRB ACRP Research Report 176, *Generating Revenue from Commercial Development On or Adjacent to Airports* (Aug. 2017)
- GAO 13-261, *Airport-Centric Development* (March 2013)