Poll Everywhere

- Two ways to participate
  - [https://www.polleverywhere.com/AirportLaw](https://www.polleverywhere.com/AirportLaw)
  - Text AIRPORTLAW to 22333 *(not case sensitive)*

- Enter your answer *(by letter or number)*
This afternoon’s presentation

1. Conference introduction
2. Learning the language of airport law
3. Getting to know the airport
4. Understanding and working with the FAA
5. Identifying and working with stakeholders
6. Key conference themes
<table>
<thead>
<tr>
<th>How did you learn about this conference?</th>
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</thead>
<tbody>
<tr>
<td>Prior attendance</td>
</tr>
<tr>
<td>E-mail from AAAE or Kaplan Kirsch &amp; Rockwell</td>
</tr>
<tr>
<td>Word of mouth or recommendation</td>
</tr>
<tr>
<td>Internet search or my own research</td>
</tr>
<tr>
<td>Other</td>
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Let's get a sense of who is participating in this conference.

A. I'm a newbie - this is my first time at this conference.
B. I've been here before, but still have more to learn.
C. I'm not a lawyer, but play one on TV.
D. I should be teaching this course.
What is your principal role - attorney, manager, consultant, federal official, etc.? 

When poll is active, respond at PollEv.com/airportlaw. Text AIRPORTLAW to 22333 once to join.
1. Conference Orientation

- Agenda
- Workshop Guide
- *Airport Law Desk Reference 2018*
- Presentations
  - [www.airportlawconference.com](http://www.airportlawconference.com)
- Attendance roster
- On site staff – AAAE and Kaplan Kirsch & Rockwell
- Airport Law Alerts / Digests
2. A New Language
AIRPORT vs. AVIATION LAW

Airport law
- FAA/TSA/CBP compliance
- Airport operations
- Finance, funding, taxation
- Real estate development and regulation
- Stakeholder relations

Aviation law
- Aircraft regulation and financing
- Airline regulation and operations
- Pilot regulation
- Aircraft accidents
3. Getting to Know the Airport

- Review Minimum Standards and Rules/Regs
- Review the leases
- Read the Grant Assurances
- Get the original documents
- Talk to the Airport Director
- Schedule a site visit
- Check the Master Plan
- Review the ALP (the whole thing)
- Understand the surrounding land uses
- Review the Airport Design Advisory Circular
A [VERY SHORT] HISTORY OF AIRPORT LAW….

OR

WHY ARE WE SPENDING SO MUCH TIME ON FEDERAL LAW?
DIVIDED LEGAL RESPONSIBILITY

- The early model:
  - Airspace
  - Air Service
  - Airports
TODAY’S REALITY – MUCH FUZZIER

Feds  Private  Local Gov’t
CRITICAL AIRPORT TERMINOLOGY
CRITICAL AIRPORT TERMINOLOGY

Airport Property

- “Aeronautical”
- “Non-Aeronautical”
CRITICAL AIRPORT TERMINOLOGY

“Airside”
- Airport Operations Area (AOA)
- Security Identification Display Area (SIDA)

“Landside”
I am on a flight into an airport with runways that point directly north and south. The pilot announces that he will land to the south. Which runway do I hope he will use?

That's not his problem - the air traffic guy will tell him

Runway 18

It is the pilot's choice

Runway 36
CRITICAL AIRPORT TERMINOLOGY

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CRITICAL AIRPORT TERMINOLOGY

Runway 22

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CRITICAL AIRPORT TERMINOLOGY

Runway 22

Runway 4

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CRITICAL AIRPORT TERMINOLOGY

Runway 4/22
Runway 22
Runway 4

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CRITICAL AIRPORT TERMINOLOGY

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CRITICAL AIRPORT TERMINOLOGY

9L/27R

10L/28R

10C/28C

10R/28L

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CRITICAL AIRPORT TERMINOLOGY

Source: By Orion 8 - Own work, CC BY-SA 3.0
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4. Working with the FAA

- Relationship to airport sponsor
- Federal regulation generally
- FAA’s different roles
FAA’S RELATIONSHIP WITH AIRPORT SPONSORS
OTHER RELATIONSHIPS WITH FAA
AIRPORT LAW – FORMAL SOURCES

- Statutes
- Federal Aviation Regulations (14 CFR)
- Adjudications (Part 16)
REGULATION BY (ANOTHER) NAME

- FAA Orders
- Policy Statements
- Guidance Letters
- Advisory Circulars
AIRPORT REGULATION – CRITICAL PIECES

1. Grant Assurances
2. Deeds (Surplus Property Act)
3. Part 139 regulations (commercial airports)
4. Revenue use statute
GRANT ASSURANCES

- Contractual, not regulatory
  - But Congressionally mandated

- 20-year duration
  - Clock resets at each grant

- FAA gets to enforce
  - Prosecutor, judge, jury, executioner
  - Court review only after FAA decision
Grant Assurances
- 39 separate requirements
- Apply to most non-planning grants
- Legally binding by contract

Principal issues
- Assurance 5 – rights and powers
- Assurance 22 – economic nondiscrimination
- Assurance 23 – exclusive rights
- Assurance 24 – fee and rental structure
- Assurance 25 – airport revenue
DEEDS

- Surplus Property Act
  - Many of same restrictions as grant assurances
  - Perpetual (no 20-year limitation)
- Makes real estate sale difficult
PART 139 REGULATIONS
(COMMERCIAL AIRPORTS)

- Requires airport operating certificates for airports that:
  - Scheduled and unscheduled operations; aircraft with more than 30 seats
  - Scheduled operations; more than 9 seats but less than 31 seats

- Part 139 Inspection
  - Administrative inspection of airport files, paperwork, etc.
  - Facilities inspection Aircraft rescue and fire fighting inspection
  - Post inspection briefing with airport management

- Far less regulation of general aviation airports
Federal statute prohibits “diversion” of revenue at airport that has been grant obligated since 1996

FAA – detailed policy that greatly amplifies statute

FAA position – requirement is perpetual

Very complex definitions
Incentives, off-airport mitigation; collateral development; intermodal transit

General economic development

Capital and operating costs of airport

PRINCIPLES OF REVENUE USE
FAA REGULATION AND PREEMPTION
FEDERAL PREEMPTION - I

- Types
  - Field (everything)
  - Conflict (where in conflict with federal law)

- Sources
  - Express (federal statutes)
  - Implied (from Congressional intent or case law)

- Most – but not all – preemption issues fall within conflict and implied preemption
FEDERAL PREEMPTION - II

- Operation of national aviation system is a “cooperative scheme”
  - FAA (aircraft and airspace)
  - Airports (ground operations; airport operations)
  - Congress has preserved “proprietary powers and rights” of airport operators (not police powers)

- Jurisprudence has evolved in the last 100 years
  - Few bright lines
THE CONTINUUM OF PREEMPTION

Aircraft in flight
Aircraft certification
Pilot certification

Operational restrictions
Airfield regulations
Certain financial matters

Non operational matters
Off airport land use
Local health/safety

Express preemption
Implied / conflict preemption
No preemption
FAA’S DIFFERENT ROLES
WHICH ROLE?

- Funder
- Regulator
- Adjudicator
- Advocate
WHO IS REGULATED

PILOTS

AIRPORTS

AIRCRAFT OPERATORS

AIRCRAFT
WHAT IS REGULATED

- Operates Air Traffic
- Certifies Aircraft
- Licenses Pilots
- Funds/Regulates Airports
WHICH FAA?

Air Traffic (ATO)
Airports
Safety
Space
You have learned that the FAA has lots of silos. What percentage of FAA employees work for the Airports Division?

- 1% A
- About 25% B
- Between 25% and 50% C
- More than 50% D

- More than 50%: 1%
- Between 25% and 50%: 1%
- About 25%
THE FAA-AIRPORTS OFFICE IN CONTEXT

FAA Employees

46,000 total

600

Airports

Other
FAA AIRPORTS DIVISION

- Airport safety, inspections, standards, airport design, construction, and operation.
- Airport Improvement Program (AIP) grants
- Passenger facility charges (PFCs) approvals
- National airport planning and environmental requirements
- Policies on rates and charges, compliance with grant assurances, and privatization
WHO IS THE AIRPORTS DIVISION?

Associate Administrator
Winsome Lenfert, Acting

Deputy Assoc Admin.
Winsome Lenfert

- Airport Planning/ Programming
  Elliott Black

- Compliance/ Management Analysis
  Kevin Willis

- Safety/ Standards
  John Dermody
FAA REGIONS

- Regional office
- Airport district office (ADO)
OTHER KEY FAA OFFICES

- Air Traffic Organization (ATO)
  - Next Gen
  - Flight tracks
- Flight Standards District Office (FSDO)
  - Aircraft operational and safety issues
  - Accidents
DEALING WITH THE FAA

- Agency is huge; airports function is not!
- Airports District Office is first point of contact
- Major policy issues to HQ
- Enforcement (routine) at ADO
- Adjudications of grant violations at HQ
- Don’t be afraid to call!
FAA AS ADJUDICATOR

- Enforcement
  - Focus is on current compliance, not generally punitive action
  - Generally ADO or Region
- Adjudication of grievances
  - Part 16 for grant assurances
  - Part 13 for informal grievances
  - Occasionally, rarely, court
- Penalties; corrective action
  - Negotiated
- Exclusive jurisdiction in US Ct. Appeals (49 USC § 46110)
5. Stakeholders
QUESTIONS

- What is my legal relationship?
- What is the stakeholder’s role?
- Is the relationship governed or influenced by…
  - Federal law?
  - State or local law?
NEIGHBORS

- Encroachment and land uses affecting airports
  - Grant Assurances 20 & 21
  - State land use / aeronautics laws
  - Local zoning
  - IGAs
  - Part 77
ACCESS PROVIDERS

- State and local DOTs
- Metropolitan Planning Organizations
- FHWA / FTA
- Uber/Lyft
- Ground access providers
- Local transit

MANY EMERGING ISSUES!
CONCESSIONAIRES

- Concessionaires
  - A special kind of tenant
  - Subject to federal DBE provisions
  - Contentious because of the stakes
- Vendors/Suppliers
TENANTS

- Aeronautical
  - Grant Assurance 22
  - Minimum Standards

- Non-Aeronautical
  - Grant Assurance 24
  - Releases from Grant Assurances
ECONOMIC INTERESTS

- Local governments
- Chambers of Commerce
- Specific local businesses
- Special purpose entity to promote airport
INVESTORS

- Private equity investors
- Private debt investors
- Rating agencies
6. Key Conference Themes
1. IT MATTERS WHO OWNS, OPERATES THE AIRPORT
2. KNOW THE SOURCE OF YOUR AUTHORITY

- Federal
- Proprietary
- Local
3. FEDERAL PREEMPTION IS PERVASIVE
4. KEEP TRACK OF SOURCES AND USES OF FUNDS
5. WHICH FAA IS IT?
6. KNOW THE GRANT ASSURANCES
7. RECOGNIZE COMMON MISTAKES

- Airports have an unlimited supply of money.
- Airports are just like other local government functions.
- The federal government only regulates money and aircraft.
- We can do whatever we want with our airport.
- Airports only exist to serve ________.
Homework:

- Review Minimum Standards and Rules/Regs
- Review the leases
- Read the Grant Assurances
- Get the original documents
- Talk to the Airport Director
- Schedule a site visit
- Check the Master Plan
- Review the Airport Design Advisory Circular
- Review the ALP (the whole thing)
- Understand the surrounding land uses
Network with airport lawyers
QUESTIONS?

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Kaplan Kirsch & Rockwell