SPONSOR OBLIGATIONS PART 2: GRANT ASSURANCES AFFECTING AIRPORT DEVELOPMENT

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Because Grant Assurances change EVERYTHING!

1. Assurance 25 - Revenue Use
2. Assurance 24 - Fee and Rental Structures / Self-Sustainability
3. Assurance 29 - Airport Layout Plan
4. Assurance 20 - Hazard Removal
5. Assurance 21 - Compatible Land Use
6. Assurance 31 - Disposal of Land
7. Assurance 1 - General Federal Requirements
8. Miscellany
THE IMPORTANCE OF “EXHIBIT A”

Where do these grant assurances apply on my airport?
All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.
What IS airport revenue??

- Fees, charges, rents, and payments from air carriers, tenants, lessees, purchasers of property, and permittees
- State or local taxes on aviation fuel
- All other revenue from sponsor activities on the airport
PERMITTED USES OF AIRPORT REVENUE

- Airport infrastructure
- Airport services
- Fees and utilities
- Ground access and dedicated facilities
- Environmental and noise mitigation
- Waivers and incentives for new carriers

How can I use airport revenue?
UNLAWFUL REVENUE DIVERSION

- Other governmental purposes
- Payments above fair market value
- General economic development
- Direct subsidy of air carrier operations
- Non-aeronautical uses at below fair market value
- Certain free or nominal fees for aeronautical uses
- Certain public recreational and community uses

What uses are prohibited?
ASSURANCE 24: RATES & CHARGES / SELF-SUSTAINABILITY

"It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection."
RATES AND CHARGES

- FAA Order 5190.6B (Airport Compliance Manual)
- Fees for aeronautical uses should be fair and reasonable
- Fees may not unjustly discriminate against aeronautical users
- Federal law and policy on reasonableness of fees and other terms of airport access do not apply to non-aeronautical uses
SELF-SUSTAINABILITY

- **FAA Order 5190.6B (Airport Compliance Manual)**
- The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.
- Individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport.
- A sponsor may accumulate “reasonable reserves” but cannot accumulate revenue surpluses.

What should I know?
ASSURANCE 29: AIRPORT LAYOUT PLANS

It will keep up to date at all times an airport layout plan of the airport showing

(1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

(2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;

(3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon . . .
What is an Airport Layout Plan?
AIRPORT LAYOUT PLANS

Because it’s the single most important regulatory document for airports!

- Source of FAA regulation
- Trigger for NEPA obligations
- AIP project planning

Why should I care about the ALP? It’s just a map…
IN THE WEEDS: CRITICAL AIRCRAFT

“The critical aircraft is the most demanding aircraft type, or grouping of aircraft with similar characteristics, that make regular use [500 annual operations] of the airport.”

FAA Advisory Circular 150/5000-17
Critical Aircraft and Regular Use Determination
APPROVAL OF AMENDMENTS/REVISIONS

What if I want to make a change?

Changes to the ALP require review/approval by FAA
H.R. 302, Section 163(d)

… only those portions that would materially impact:

- Safe and efficient operation of aircraft
- Safety of people or property on the ground
- Value of prior Federal investments “to a significant extent”

But what about FAA Reauthorization?
THEN:
The owner or operator will not make or allow any alteration in the airport or any of its facilities . . .
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The owner or operator will not make or allow any alteration in the airport or any of its facilities . . .

NOW:
. . . unless the alteration:
(i) is outside the scope of the FAA’s review and approval authority; or
(ii) complies with the portions of the plan approved by the FAA

FOLLOWING THE ALP

Did FAA Reauthorization change this, too??
ASSURANCE 20:
HAZARD REMOVAL AND MITIGATION

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
HAZARD REMOVAL AND MITIGATION

This sounds complicated and difficult. What do I have to do?
HAZARD REMOVAL AND MITIGATION

14 C.F.R. Part 77: Safe, Efficient Use, and Preservation of the Navigable Airspace

- Defines “imaginary surfaces” above the ground – at runway ends and in the vicinity of an airport to protect approach and departure paths.
- Identifies penetrations of these surfaces as “obstructions”
- Defines procedures for determining whether obstructions are hazards

What is “Part 77”?

14 C.F.R. Part 77: Safe, Efficient Use, and Preservation of the Navigable Airspace

- Defines “imaginary surfaces” above the ground – at runway ends and in the vicinity of an airport to protect approach and departure paths.
- Identifies penetrations of these surfaces as “obstructions”
- Defines procedures for determining whether obstructions are hazards
HAZARD REMOVAL AND MITIGATION

Huh?
HAZARD REMOVAL AND MITIGATION

Can I rely on the Part 77 regs to comply with Assurance 20?

NO! FAA’s Part 77 Regulations are not enforceable.

- Sponsors must rely on local land use and zoning regulations.
- Extremely difficult if multiple jurisdictions are involved.
ASSURANCE 21: LAND USE COMPATIBILITY

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.
LAND USE COMPATIBILITY

- Height obstructions
- Noise-related incompatible uses
- Wildlife attractants (landfills)
- Visual hazards (lighting, etc.)

What kinds of land uses are problems?
LAND USE COMPATIBILITY

“What tools are available?

“FAA expects a sponsor to take appropriate actions to the extent reasonably possible to minimize incompatible land.”

- Zoning
- Land Use Plans
- Master Planning
ASSURANCE 31:
DISPOSAL OF LAND

“For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time.

For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. …"
DISPOSAL OF LAND

- “When land is no longer needed” for airport purpose for which it was acquired
  - Land purchased for noise compatibility purposes
  - Land purchased with AIP funds for airport development
- Must be sold at fair market value
- If acquired with AIP, may have to return proportionate share to FAA
Any property on Exhibit “A” is obligated for airport purposes.

No disposal without a release.

A “release” is the formal, written authorization discharging and relinquishing the FAA’s right to enforce an airport’s contractual obligations.

Releases are discretionary.

FAA must find a net benefit to aviation.

When can I sell airport land?
# FEDERAL CONTRACT PROVISIONS

## Table 1 – Applicability of Provisions

<table>
<thead>
<tr>
<th>Provisions/Clauses</th>
<th>Order Threshold</th>
<th>Solicitation</th>
<th>Professional Services</th>
<th>Construction</th>
<th>Equipment</th>
<th>Property (Land)</th>
<th>Non-AIP Contracts</th>
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</thead>
<tbody>
<tr>
<td>Access to Records and Reports</td>
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<td>REQD</td>
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<td>(5) Clause – Construct/Use/Access to Real Property</td>
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[https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/](https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/)
BUT WAIT...THERE'S MORE!

- Consistency with Local Plans (#6)
- Consideration of Local Interest (#7)
- Consultation with Users (#8)
- Public Hearings (#9)
- Conformity to Plans and Specifications (#16)
- ......
QUESTIONS?

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