



34th Annual Basics of Airport Law Workshop and 2018 Legal Update

Session #14

GROUND TRANSPORTATION REGULATION

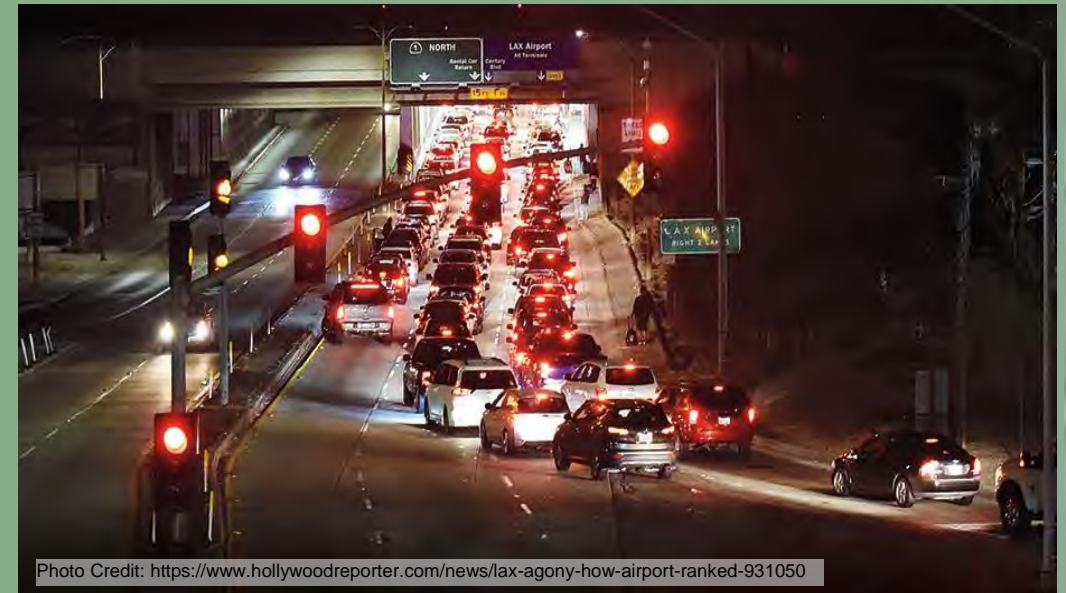
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OVERVIEW: PLANES, TRAINS & AUTOMOBILES

- Is ground access congestion the new chokepoint for U.S. airports?
- Impacts of shifts in mode of ground transportation
- Future trends in ground transportation
- Ground transportation as source of revenues
- A review of the law relating to ground transportation: fees, funding, and regulation

GRIDLOCK ON THE GROUND

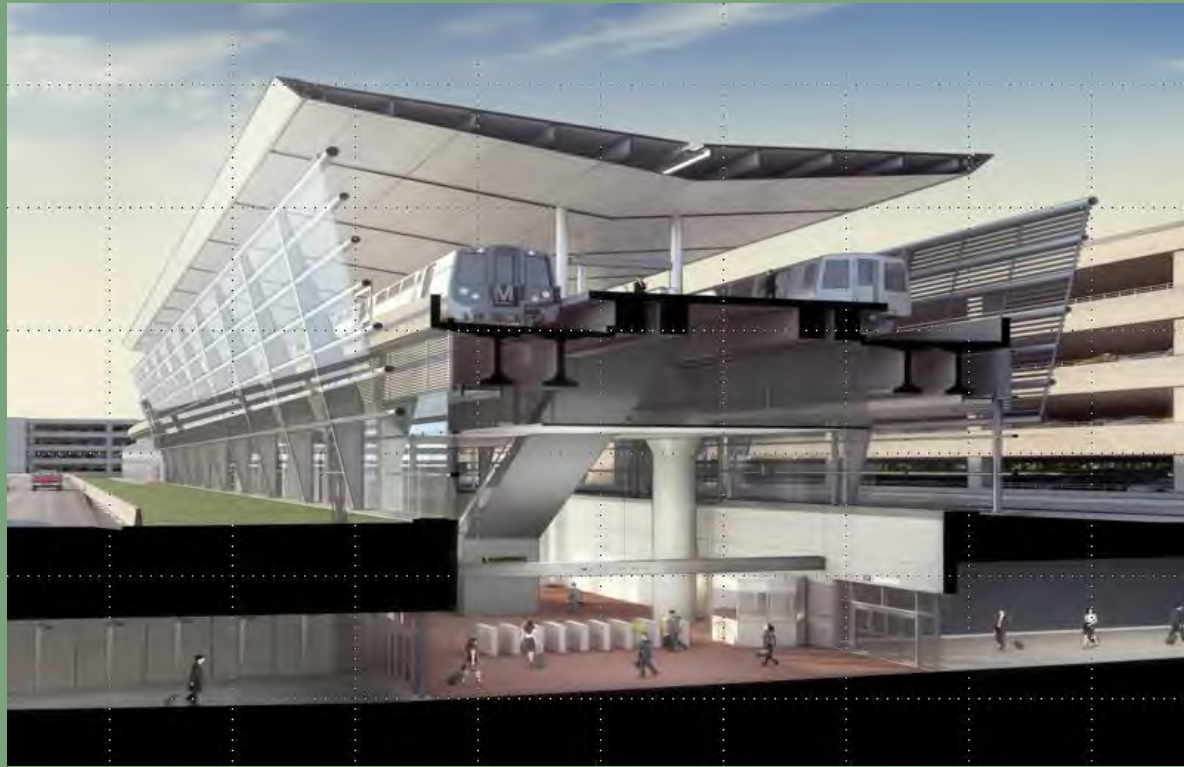


CONGESTION IS WORSE ON AIRPORT ROADWAYS THAN ON RUNWAYS

- Airports are seeking innovative ways to address roadway congestion
 - Rail at SFO, OAK, MSP, PDX
 - The “Big Dig”
 - LAX LAMP Project
 - ORD Express
 - Toronto Intermodal Center
 - WAMATA/MWAA Rail Extension to IAD
 - DAL North Access
 - TPA Remote Parking-ConRAC-APM Project



TPA



IAD Metro Rail Extension

CAUSES OF CONGESTION

- Current trends will only exacerbate congestion
 - Uber, Lyft, and TNCs
 - Peer-to-peer car sharing / car rentals (Turo)
 - AUVs
 - Uber Elevate is coming
- What can be done?



IMPORTANT SOURCE OF AIRPORT REVENUES

- Airport parking
- Rental car fees and CFCs
- Access and permit fees
 - TNCs
 - Taxis
 - Limos, vans, etc.
 - Off-airport parking
 - Hotel Shuttles
- Circuit fees for commercial vehicles
- Combination of permit and circuit fees



SHIFTING MODES INCREASE THE CHALLENGE

- Impact of TNCs on airports
 - Reduced use of parking, rental cars – Reduced revenues
 - Congestion at curbs
 - Technological solutions – Geofencing
- Yet, demand for parking remains strong in near term
- Coming down the road: AUVs
 - Multiplies impacts of TNCs
 - Reuse of parking facilities?
- Uber Elevate!

KEY ISSUES TO CONSIDER

- Scope of airport's regulatory authority
 - Are tolling or access fees an option?
 - Who regulates TNCs, taxis, etc.?
 - Need to interface with Legislature
- Need to plan & anticipate change
- Need for space – curbs, garages, CONRACs, roadways
- Importance of multi-modal coordination
- Limitations on use of airport funding sources
- Traditional landside business model

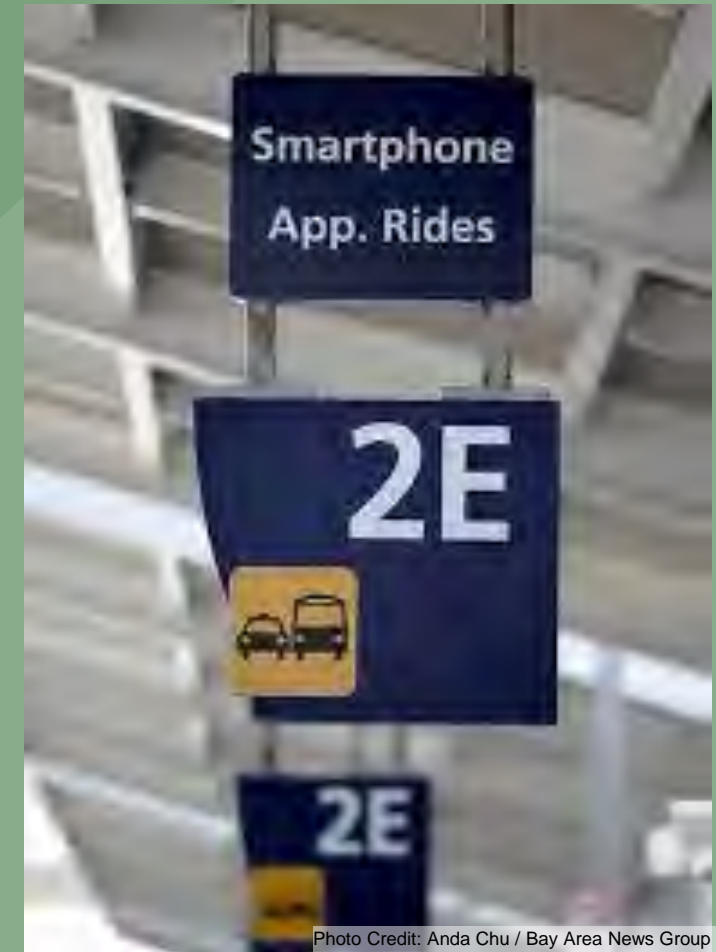


Photo Credit: Anda Chu / Bay Area News Group

Oakland International Airport

THE LAW: AIRPORT ACCESS

- Not regulated as an aeronautical activity
 - Most Grant Assurances not applicable
 - FAA has no jurisdiction
- Commerce Clause analysis for fees
- Overriding state or local laws
 - Ability to impose CFCs
 - Regulation of TNCs
 - Taxi regulations
- Use of airport funding sources highly regulated

WHAT ARE THE LEGAL CONSTRAINTS?

- Non-Aeronautical activities
 - Airport and all facilities which are necessary to serve the aeronautical users of the airport must be operated in a safe and serviceable condition, and the airport may not cause or permit any activity or action thereon which would interfere with its use for airport purposes (Grant Assurance 19).
 - Equal protection
 - Substantive due process
 - State or local law
- Airport policies
 - Minimum standards
 - Rules and regulations

ACCESS FEES

- Not regulated under FAA Rates & Charges Policy
- Federal standard is *Evansville* reasonableness standard
 - Courts have rejected equal protection claims
 - Courts have held access fees not subject to Anti-Head Tax Act
 - Not a violation of anti-trust law
- What standards used to calculate fees?
- Typically charged for commercial access
 - A “privilege fee”
 - But see DFW access fee – business model of the future?

ACCESS FEES, CONTINUED

- Differentiate among types of users?
 - Off airport parking (competitor?)
 - Off airport hotel (competitor? provides parking?)
 - TNCs – both pick up and drop off?
 - Taxis – same as or different from TNCs
- Use variable fees to influence behaviors?
 - Reduced parking fees in slow seasons?
 - Increase TNC, taxi fees during peak hours?
 - Encourage “up-gauging”?

REVENUE CONCERNS

- Airports must maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible (Grant Assurance 24).
- Revenues generated by the airport must 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 (Grant Assurance 25).

WHY AIRPORTS MANAGE ROADWAYS

Public Safety
Curb Efficiency

Customer Service
Grant Assurances



Source: City of Phoenix Aviation Department



Source: City of Phoenix Aviation Department

REGULATION OF SERVICE PROVIDERS

- Address issues in addition to fees
 - Require driver permits, background checks?
 - Standards for vehicles, inspections?
 - Set aside queuing, pick-up and drop-off areas; limit circulation?
- Scope of airport's regulatory authority
 - Draft regulations that are flexible, anticipate future developments
- Conflict with state or local laws?
 - What is regulated by others?
 - Uber regulatory strategy – state-level; now national?
 - Carve-out for airports? If so, what areas?

USE OF AIRPORT FUNDS FOR ACCESS PROJECTS

- Airport revenue
- PFCs
- AIP grants
- TIFIA loans
- Multi-modal and multi-source projects
- VALE grants
- Sources of guidance

AIRPORT REVENUE USE FOR ACCESS PROJECTS

- Airport revenue most flexible, but still limited
 - Airport
 - Airport system
 - Projects “directly and substantially related to the movement of passengers or property by air”
- FAA has allowed proportional use of airport revenue
 - By percentage used by projected airport passengers
 - By percentage of route exclusively for airport use

SOURCES OF GUIDANCE

- Federal law: 49 USC §§ 47107 & 47133
- Revenue Use Policy, 64 Fed. Reg. 7696, 7718-7719 (Feb. 16, 1999)
- Airport Compliance Manual, ORDER 5190.6B; §15.9(i)
- Guidance letters
 - 1999 BART letter
 - 2000 MSP letters
- FAA “Bulletin 1”
(www.faa.gov/airports/resources/publications/reports/media/bulletin_1_surface_access_best_practices.pdf)

AIP GRANTS AND ACCESS PROJECTS

- Must exclusively serve airport traffic
- Must be located within airport or ROW owned by airport sponsor – “an access road cannot be prorated”
- Roadway standards apply to rail, APM projects
- See AIP Handbook, ORDER 5100.38D, table P-3

PFCS FOR AIRPORT ACCESS PROJECTS

- Generally follows AIP eligibility
- Project “enhances capacity”?
- PFC Handbook, ORDER 5500.1, § 4-6(e)
- Guidance from Records of Decision
 - EWR Monorail (1997)
 - JFK Airtrain (1998)
 - PDX MAX light rail (1999)
 - Dulles FAD (2014)
- *But see* FAA Reauthorization Act, Sec. 123 – Reconsider exclusivity and ownership/operational requirements for rail

TIFIA LOANS

- Not available for airport-only projects
- But – available for multi-modal projects
 - CONRACs
 - Transit connections (rail & bus)
 - Parking
 - Ground transportation center uses (TNCs, taxis, courtesy shuttles, etc.)
 - Other?
- Complex application process
- Allows deep subordination to other debt
- Must receive investment grade rating (BBB)

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OTHER CONSIDERATIONS

- Coordination with local & state transportation agencies
 - Municipal
 - Regional (MPO)
 - State DOT
- Coordination with other federal DOT agencies
 - Federal Highway Administration
 - Federal Transit Administration
- Other federal funding sources
 - Congressional appropriations

WRAP UP AND QUESTIONS

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