



35<sup>th</sup> Annual Airport Law Workshop

Session #4

# UNDERSTANDING THE FOUNDATION OF AIRPORT LAW: GRANT ASSURANCES

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# 39 SPONSOR ASSURANCES

1. General Federal Requirements
2. Responsibility and Authority of the Sponsor
3. Sponsor Fund Availability
4. **Good Title**
5. **Preserving Rights and Powers**
6. **Consistency with Local Plans**
7. Consideration of Local Interest
8. Consultation with Users
9. Public Hearings
10. Metropolitan Planning Organization
11. Pavement Preventive Maintenance
12. Terminal Development Prerequisites
13. Accounting System, Audit, and Record Keeping Requirements
14. Minimum Wage Rates
15. Veteran's Preference
16. Conformity to Plans and Specifications
17. Construction Inspection and Approval
18. Planning Projects
19. **Operation and Maintenance**
20. Hazard Removal and Mitigation
21. Compatible Land Use
22. **Economic Nondiscrimination**
23. **Exclusive Rights**
24. **Fee and Rental Structure**
25. **Airport Revenues**
26. Reports and Inspections
27. Use by Government Aircraft
28. Land for Federal Facilities
29. **Airport Layout Plan**
30. Civil Rights
31. Disposal of Land
32. Engineering and Design Services
33. Foreign Market Restrictions
34. Policies, Standards, and Specifications
35. Relocation and Real Property Acquisition
36. Access By Intercity Buses
37. Disadvantaged Business Enterprises
38. Hangar Construction
39. Competitive Access

# SOURCES OF FEDERAL OBLIGATIONS

- 39 sponsor obligations for all grant-obligated airports
  - Cover EVERY aspect of airport operations
- Property conveyance obligations
  - Surplus and non-surplus
- Statutory obligations for federally-assisted airports
  - Exclusive rights
  - Civil rights
  - Revenue use
- Part 139 – Commercial service airports

# NATURE OF GRANT OBLIGATIONS

- Contract – statute hybrid
  - Funds given in exchange for assurances regarding the airport and its operation and maintenance
- Many sponsor assurances must be applied to third-parties
  - Federal requirements
  - Reasonable access, price, and service
  - Pavement and facility maintenance

# DURATION OF GRANT OBLIGATIONS

- Most assurances apply for the shorter of 20 years or the useful life of the facilities developed or equipment purchased
- No time limit for —
  - Exclusive rights
  - Airport revenue
  - Civil rights
  - Real property acquired with federal funds

# COMPLIANCE WITH GRANT OBLIGATIONS

- Satisfying obligations under sponsor assurances and related federal laws
  - Grant Assurances
  - Federal property conveyances
  - Other federal laws and policies
- Developing procedures to assure compliance
- Preserving authority to meet federal obligations

# RESOLVING COMPLIANCE ISSUES

Resolution on  
Airport

Resolution with  
Informal FAA  
Advice

Resolution with  
Written FAA  
Determination  
(Parts 13 & 16)

# ACHIEVING COMPLIANCE

- Compliance program is not punitive
- Goal: develop path to compliance through corrective action
- Cooperative process based on acceptance of obligations
- BUT: Non-compliance can result in loss of grant eligibility, stricter scrutiny, and enforcement litigation



## ASSURANCE 4: GOOD TITLE

- “It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.”
- Property Map

## ASSURANCE 5: RIGHTS AND POWERS

- “Will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary...”
- “Will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.”

# ASSURANCE 5: RIGHTS AND POWERS

- Common problem areas
  - Leases and contracts
  - Internal procedures that give “veto” to others
  - Limited authority in organic laws or local laws limiting authority
- Key to compliance
  - Do not surrender authority
  - Include subordination clause in ALL airport contracts
  - “This lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.” (Order 5190.6B, App. O)

## ASSURANCE 6: LOCAL PLANS

- “The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.”

## ASSURANCE 19: OPERATIONS AND MAINTENANCE

- “The airport and all facilities which are necessary to serve the aeronautical users of the airport ... shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.”

# ASSURANCE 19: OPERATIONS AND MAINTENANCE

- Maintain, inspect, repair pavement and all facilities shown on Airport Layout Plan (ALP)
- Keep airport open for public use and operating safely and efficiently
- Ties to other assurances/obligations
  - Assurance 29 (ALP)
  - Assurance 11 (Pavement Preventative Maintenance)
  - Part 139
  - Advisory Circulars
- Non-interference clause implies broad authority

## ASSURANCE 22: ECONOMIC NONDISCRIMINATION

- “Make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.”

## ASSURANCE 22: ECONOMIC NONDISCRIMINATION

- Require FBOs to provide services on a reasonable basis and price to all aeronautical users
- Charge all FBOs the same rates, rents, and charges for similar uses
- Guarantee rights to self-fuel and self-service
- Sponsor activities subject to same rules as others
- Impose rules and restrictions for safety reasons, subject to FAA review and approval



# AERONAUTICAL ACTIVITY

- Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations.
- Sport aircraft (e.g., paragliders) and ultralights
- Skydiving and banner towing
- Agricultural operators
- Aircraft storage, repair, maintenance, and parts sales
- Sale of aviation petroleum products

# ECONOMIC NONDISCRIMINATION

- Common issues
  - New minimum standards
  - New rental rates and fees
  - New rules and regulations
  - Limitations and conditions on leasing
  - Access restrictions



## ASSURANCE 23: EXCLUSIVE RIGHTS

- “Will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”
- Obligation continues as long as the airport is an airport
- Usually included in federal land transfers and other grants

# EXCLUSIVE RIGHTS: COMMON ISSUES

- Single FBO
  - One FBO is OK IF sponsor itself does not limit the ability of 2d FBO to open on same terms
  - Assurance 23 provides narrow conditions for when a sponsor can limit airport to only 1 FBO – proprietary exclusive
- Exclusionary rules and practices
  - Implied exclusive right through unreasonable minimum standards and/or other leasing practices that have the effect of unreasonably limiting access by new commercial operators

## ASSURANCE 24: 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.”

# ASSURANCE 24: SELF-SUSTAINABILITY

- Must charge FMV to non-aeronautical users
- *May* charge less than FMV to aeronautical users
- Rates and charges policy
  - *Substantive* requirements
  - *Procedural* requirements
  - Different procedures for commercial service airports v. general aviation airports

# ASSURANCE 25: AIRPORT REVENUES

- “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.”

# ASSURANCE 25: AIRPORT REVENUES

- Independent statutory basis – 49 U.S.C. § 47133
- Violations can lead to civil penalties and repayment
- Airport revenue used for operating and capital costs
  - Must receive value
  - No payments in lieu of taxes (PILOTS) or mitigation payments
- Transactions with sponsor
  - Use of sponsor services (e.g., fire, police, IT, accounting)
  - Use of airport property
- Aviation fuel tax



# ASSURANCE 29: AIRPORT LAYOUT PLAN

- Maintain plan showing all existing and proposed aeronautical and non-aeronautical structures, facilities, and uses
- Remove improvements that FAA “determines [will] “adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan...”

# ASSURANCE 29: AIRPORT LAYOUT PLAN

- Obtain FAA approval for new structures and uses FIRST
- Most changes can be made informally
- Significant changes may take time and require:
  - Airspace review
  - NEPA review

# PROACTIVE COMPLIANCE

- Minimum standards
- Airport rules and regulations
- Airport leasing policy
  - Standard lease and contract forms
  - Rental rates
  - Subordination clause
- Operational/management procedures
  - Pavement condition
  - ALP updates
  - Airport self-inspection program
- Compliance audit



# CURRENT COMPLIANCE ISSUES

- Regulatory reform
- Reauthorization implementation
- FBO fuel pricing and services – AOPA
- Privatization and P3
- Aviation fuel taxes
- Disputed changes of sponsorship at federally-obligated airports

# ORDERS AND GUIDANCE

- Permanent Airport Closure CGL
- Appraisal Standards CGL
- Draft Temp. Closures for Non-Aero Events CGL
- Draft Airport Transfer CGL
- Draft Skydiving CGL
- Air Carrier Incentive Guidance Update

# COMPLIANCE RESOURCES

- FAA Compliance Handbook, ORDER 5190.6B
- FAA Advisory Circulars, Orders, Policies
  - Exclusive Rights, AC 5190-6
  - Policies and Procedures Concerning the Use of Airport Revenue
  - Policy Regarding Airport Rates and Charges
  - Minimum Standards for Commercial Aeronautical Activity
- Part 16 decisions and DOT/FAA letters
- ACRP publications – Chapter 31 in *Desk Reference*

# QUESTIONS?

Text a “friend’s” question to  
240.893.3499



# MORE QUESTIONS?

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