Workshop Number:

Workshop Title: LEGAL ISSUES IN SUSTAINABLE ENERGY INITIATIVES

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Context

• Increasing pressure on airports to exploit sustainable energy development
  • Local policies on government buildings (LEED)
  • Local or state renewable energy mandates (RES)
  • Good citizen policies

• Local pressure vs. sponsors’ legal obligations and limitations

• Many of these efforts are unprecedented – meaning little or no FAA guidance

• Distinguish: energy for sponsor’s use and mere revenue generation
Examples

- ESCOs – energy service companies or contracts
- PPAs – power purchase agreements
- Building standard requirements for tenants (minimum standards, code, local ordinances, LEED requirements)
- Third party leases (revenue only)
- Carbon offset contracts
- Fuel supply
Issues in Alternative Energy Supply

• Often not standard language PPA (power purchase agreement)
• Renewable energy credits (who gets what)
• Clean air credits (what and for whom)
• Tax credits
• Lease (usually) or sale of real estate
• All output or only portion
• Ownership of facilities at end of lease term
• FMV lease (linkage to gross/net utility rates)
• VALE or other fed/state/local grant programs
• Usual contractual issues (liability, termination, etc.)
Energy Production Arrangements

• If energy is not for sponsor’s use:
  • Oil, gas production
  • Wind or solar farms

• Consider ALP issues
  • Aeronautical land requirements vs. need for long-term lease
  • FMV lease (non-aeronautical)
  • Environmental review

• Is project legally required by local ordinance, state law

• Allocation of environmental / financial benefits
  • May need to fit within a box for compliance purposes
‘Good Citizen’ Arrangements

• Spending to achieve non-utilitarian, non-aeronautical objectives
  • Self-sustainability
  • Revenue use

• Local green ordinances or renewable energy standards may provide legal justification
  • Review state and local utility law
• Revenue use, self sustaining requirements
• Assurance 4 – adequate title
• Assurance 5 – rights and powers
• Assurance 6 – consistency with local plans
• Assurance 20 – hazards removal
• Assurance 21 – compatible development
• Assurance 22 – unjust discrimination
• Assurance 23 – exclusive rights
Other Legal Impediments

- Part 77/TERPS/OEI/radar interference
  - Especially wind farms and oil derricks
  - 7480s and 7460s often not enough
- Local building code
  - Alternative energy often not UL approved
- State or local RES requirements
- ALP land use designation
- Is this a Taj Mahal subject to carrier, user complaint
Legal Checklist

- What is reason for sustainability initiative
- Is the initiative in best (financial) interest of airport
- Are there revenue use or land use complexities
- How are non-financial benefits to airport articulated
- What FAA approvals are needed or prudent
- Who might (or has incentive to) oppose or complain
- How do we document all of this
Questions?

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