



# PLANNING DESIGN & CONSTRUCTION

**WORKSHOP NUMBER:**

**LEGAL ISSUES IN  
SUSTAINABLE ENERGY  
INITIATIVES**

**WORKSHOP TITLE:**

**PRESENTER:**

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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



# Grant Assurance Compliance

- 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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