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# Compilation of Airport Law Resources (2008)

## DETAILS

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## CONTRIBUTORS

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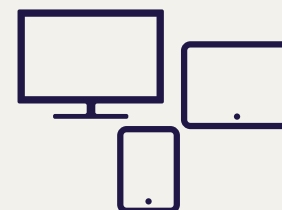
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## AIRPORT COOPERATIVE RESEARCH PROGRAM

Sponsored by the Federal Aviation Administration

Subject Areas: IA Planning and Administration; IB Energy and Environment; IC Transportation Law; V Aviation

Responsible Senior Program Officer: Gwen Chisholm Smith

# Legal Research Digest 1

## COMPILATION OF AIRPORT LAW RESOURCES

This report was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. The report was prepared by Daniel Reimer, Kaplan Kirsch & Rockwell LLP, Denver, Colorado. James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.

### The Problem and Its Solution

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International–North America concluded that city ownership accounts for 38%, followed by regional airports at 25%, single county at 17%, and multi-jurisdictional at 9%. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

### Applications

The review, analysis, and commentary of airport-related legal issues appear in any number of journals, newsletters, databases, loose-leaf services,

and books. Westlaw and Lexis, for example, provide some of this information in searchable databases for legal and news sources. The Lexis and Westlaw databases do not allow users to browse current publications in order to survey new developments in airport-related legal issues. Neither database provides a complete bibliography identifying the sources for research into airport-related legal issues. As a result, airport lawyers do not have at their disposal a definitive list of sources they may consult when researching airport-related legal issues or keeping informed of airport-related legal scholarship and developments.

The object of this project is to develop a list or an index of legally related topics, substantive areas, and/or issues that airport attorneys encounter and to develop an index and a bibliography of sources that airport lawyers may consult for purposes of research or for purposes of keeping informed of developments in airport-related legal issues. These sources may be Web-based or in print; they may be published as part of a series (such as a newsletter or law review) or in single issues.

The digest should be usable by and useful to city, county, state, and regional airport administrators, attorneys, program development officials, and financial and operational officers.

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**Notice to Readers**

The PDF version of *ACRP Legal Research Digest I* will include links to the Internet resources contained in this digest. The Web addresses provided were correct as of report submission in December 2007. The PDF version can be accessed at [http://trb.org/news/blurb\\_detail.asp?id=8518](http://trb.org/news/blurb_detail.asp?id=8518).

## I. INTRODUCTION

Airport law is a recognizable legal discipline. The statutes, regulations, and federal policies governing the operation of airports are distinct from rules governing other land uses and modes of transit. Partly as a result, the application of Constitutional principles and generally-applicable statutory requirements to airports has developed into its own body of law.

Although practitioners may recognize the unique nature of airport law, its sources are widely dispersed. There are no case-comprehensive reporters, digests, treatises, or similar documents dedicated to airport law. Nor are there any comprehensive databases or compilations available online. While airport law sometimes is considered a subspecies of aviation law, its treatment in aviation law resources is incomplete.

One consequence of this dispersion of knowledge is that a lawyer conducting research on airport law typically must consult multiple sources to gather information. Researchers may never be sure that the inquiry was comprehensive.

This digest is one attempt to remedy this problem. This digest includes over 500 federal sources, indicating where those sources can be found online or in case reporters. Section I identifies the relevant statutes, regulations, case law databases, secondary sources, periodicals, and state aviation departments. Airport law practitioners might consult these sources to familiarize themselves with a particular subject or to stay abreast of developments. Section II is a topical index containing the statutes, regulations, federal policies, reports, articles, and cases relevant to a particular subject. Airport law practitioners might consult these sources when initiating research on a particular topic and to ensure that their research conducted through other methods is comprehensive.

The limits of this digest are equally important. The digest does not include state materials, many U.S. Department of Transportation (DOT) and Federal Aviation Administration (FAA) administrative decisions (some of which are intended to be included in a separate legal research digest), or generally-applicable sources that may be consulted in the practice of airport law (e.g., government contracting, environmental management). This digest is current only through the date of publication. Moreover, although this report is intended to provide a list of resources, the report may not include every case or document relevant to a particular subtopic.

## II. FEDERAL RESOURCES FOR CONDUCTING RESEARCH ON AIRPORT LAW TOPICS AND MONITORING DEVELOPMENTS

### Statutory Materials—United States Code, Title 49

Title 49, Chap. 401 (General Provisions)	All statutory materials available through the following Web sites: Government Printing Office ( <a href="http://www.gpo.gov">http://www.gpo.gov</a> ), U.S. House of Representatives ( <a href="http://uscode.house.gov/">http://uscode.house.gov/</a> ), Cornell University Law School Legal Information Institute ( <a href="http://www.law.cornell.edu/uscode/">http://www.law.cornell.edu/uscode/</a> ), Findlaw ( <a href="http://www.findlaw.com">http://www.findlaw.com</a> )
Title 49, Chap. 417 (Operations of Carriers)	
Title 49, Chap. 449 (Security)	
Title 49, Chap. 461 (Investigations and Proceedings)	
Title 49, Chap. 463 (Penalties)	
Title 49, Chap. 471 (Airport Development)	
Title 49, Chap. 475 (Noise)	
Title 49, Chap. 481 (Airport and Airway Trust Fund Authorizations)	

### Legislative Process

The Library of Congress (THOMAS)	<a href="http://thomas.loc.gov/">http://thomas.loc.gov/</a>
U.S. House of Representatives, Transportation and Infrastructure Committee; Subcommittee on Aviation	<a href="http://transportation.house.gov/">http://transportation.house.gov/</a>
U.S. Senate, Committee on Commerce, Science, and Transportation; Subcommittee on Aviation Operations, Safety, and Security	<a href="http://commerce.senate.gov/public/">http://commerce.senate.gov/public/</a>

### Regulations—Code of Federal Regulations (C.F.R.), Title 14 and Title 49

14 C.F.R. Part 1 (Definitions and abbreviations)	All regulatory materials available through the Government Printing Office: <a href="http://www.gpoaccess.gov/C.F.R./index.html">http://www.gpoaccess.gov/C.F.R./index.html</a> ; <a href="http://eC.F.R..gpoaccess.gov">http://eC.F.R..gpoaccess.gov</a>
14 C.F.R. Part 13 (Investigative and enforcement procedures)	
14 C.F.R. Part 16 (Rules of practice for federally-assisted airport enforcement proceedings)	
14 C.F.R. Part 18 (Uniform Rules of Grant Administration)	
14 C.F.R. Part 21 (Certification procedures for products and parts)	

## **Regulations—Code of Federal Regulations (C.F.R.), Title 14 and Title 49**

14 C.F.R. Part 36 (Noise standards: Aircraft type and airworthiness certification)

14 C.F.R. Part 71 (Designation of class A, B, C, D, and E airspace areas: air traffic service routes; and reporting points)

14 C.F.R. Part 77 (Objects affecting navigable airspace)

14 C.F.R. Part 91 (General operating and flight rules)

14 C.F.R. Part 139 (Certification of airports)

14 C.F.R. Part 150 (Airport noise compatibility planning)

14 C.F.R. Part 155 (Release of airport property from surplus property disposal restrictions)

14 C.F.R. Part 156 (State Block Grants)

14 C.F.R. Part 157 (Notice of construction, alteration, activation, and deactivation of airports)

14 C.F.R. Part 158 (Passenger facility charges (PFC's))

14 C.F.R. Part 161 (Notice and approval of airport noise and access restrictions)

14 C.F.R. Part 300 (Rules of conduct in DOT proceedings under this chapter)

14 C.F.R. Part 302 (Rules of practice in proceedings)

49 C.F.R. Part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments)

49 C.F.R. Part 23 (Participation of disadvantaged business enterprise in airport concessions)

49 C.F.R. Part 26 (Participation by disadvantaged business enterprises in DOT financial assistance programs)

**Regulations—Code of Federal Regulations (C.F.R.), Title 14 and Title 49**

49 C.F.R. Part 1520 (Protection of sensitive security information)

49 C.F.R. Part 1540 (Civil aviation security: general rules)

49 C.F.R. Part 1542 (Airport security)

**Rulemaking**

*Federal Register* <http://www.gpoaccess.gov/fr/index.html>

DOT Docket Management System <http://dms.dot.gov>

FAA [http://www.faa.gov/regulations\\_policies/rulemaking/recently\\_published/](http://www.faa.gov/regulations_policies/rulemaking/recently_published/)

Transportation Security Administration (TSA) <http://www.tsa.gov/research/index.shtm>

**Caselaw Reporters and Case Compilations**

West Digest Key Number 48Bk211-k252 (Airports and Services)

Westlaw Directory— DOT Decisions FTRAN-DOT

Westlaw Directory— FAA Decisions FTRAN-FAA

Westlaw Directory— FAA Chief Counsel Interpretations FTRAN-CCI

LexisNexis Directory— DOT Aviation Decisions DOTAV

LexisNexis Directory— FAA decisions FAA

FAA Decisions Pursuant to 14 C.F.R. Part 16<sup>1</sup> <http://part16.airports.faa.gov/>

CCH *Aviation Law Reporter* Available to order at <http://onlinestore.cch.com/default.asp?ProductID=107&gpalooknfeel=bfg>

Nicholas Sullivan, *Aviation Litigation Reporter* (Andrews Litigation Reporter), Andrews Publications, 2003 Available to order at [http://west.thomson.com/store/product.aspx?product\\_id=40211095](http://west.thomson.com/store/product.aspx?product_id=40211095)

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<sup>1</sup> Citations to individual FAA decisions pursuant to 14 C.F.R. Part 16 are not included herein.

## Caselaw Reporters and Case Compilations

Robert M. Jarvis, James T. Crouse, James R. Fox, & Gregory S. Walden, *Aviation Law: Cases and Materials*, Carolina Academic Press (2006)

Available to order at <http://www.cap-press.com/books/1546>

*Fundamentals of Aviation Law*

Available to order at  
<http://doi.contentdirections.com/mr/mgh.jsp?doi=10.1036/0071458670>

*Aviation Law: Cases, Laws and Related Sources*

Available to order at  
<http://www.transnationalpubs.com/showbook.cfm?bookid=10285>

## DOT/FAA Compilations

DOT Online Publications

<http://isddc.dot.gov/OLPWeb.ASP?WCI=Homepage>

FAA Orders and Notices

[http://www.faa.gov/regulations\\_policies/orders\\_notices/](http://www.faa.gov/regulations_policies/orders_notices/)

FAA Advisory Circulars

[http://www.airweb.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgAdvisoryCircular.nsf/MainFrame?OpenFrameSet&CFID=56957&CFTOKEN=71066012&CFID=1409204&CFTOKEN=89169026](http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/MainFrame?OpenFrameSet&CFID=56957&CFTOKEN=71066012&CFID=1409204&CFTOKEN=89169026)

FAA Policy and Guidance

[http://www.faa.gov/regulations\\_policies/policy\\_guidance/](http://www.faa.gov/regulations_policies/policy_guidance/)

FAA Environmental Records of Decision

[http://www.faa.gov/airports\\_airtraffic/airports/environmental/records\\_decision/](http://www.faa.gov/airports_airtraffic/airports/environmental/records_decision/)

FAA Airport Noise and Land Use Information

[http://www.faa.gov/airports\\_airtraffic/airports/environmental/airport\\_noise/noise\\_exposure\\_maps/](http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/noise_exposure_maps/)

## Secondary Sources

*American Jurisprudence*

8A Am. Jur. 2d Aviation §§ 83-107 (Airways, Airports, and Related Facilities)

*Corpus Juris Secundum*

2A C.J.S. Aeronautics & Aerospace V (Airports, Hangars, and Landing Fields)

*Federal Procedure* (Lawyer's Edition)

4 Fed. Proc., L. Ed. Ch. 7 (Aviation and Space)

*CCH Issues in Aviation Law and Policy*

Available to order at  
<http://onlinestore.cch.com/default.asp?ProductID=1221&gpalooknfeel=bf>



## Secondary Sources

<i>Annals of Air and Space Law</i>	Available to order at <a href="http://www.mcgill.ca/iasl/annals/">http://www.mcgill.ca/iasl/annals/</a>
<i>Journal of Air Law and Commerce</i>	<a href="http://www.smu.edu/lra/Journals/JALC/Current.asp">http://www.smu.edu/lra/Journals/JALC/Current.asp</a>
<i>Transportation Law Journal</i>	<a href="http://www.law.du.edu/tlj/">http://www.law.du.edu/tlj/</a>
ABA Air and Space Lawyer	<a href="http://www.abanet.org/forums/airspace/home.html">http://www.abanet.org/forums/airspace/home.html</a>

## Nonlegal Periodicals

<i>Airport Magazine</i>	<a href="http://www.aaae.org/news/100_Airport_Magazine/">http://www.aaae.org/news/100_Airport_Magazine/</a>
<i>Centerlines</i>	<a href="http://www.aci-na.org/">http://www.aci-na.org/</a>
<i>Journal of Airport Management</i>	<a href="http://www.henrystewart.com/airport_management/index.html">http://www.henrystewart.com/airport_management/index.html</a>
<i>Aviation Daily</i>	<a href="http://www.aviationweek.com/aw/generic/channel.jsp?channel=aviationdaily">http://www.aviationweek.com/aw/generic/channel.jsp?channel=aviationdaily</a>
<i>Airport Business Magazine</i>	<a href="http://www.airportbusiness.com/">http://www.airportbusiness.com/</a>
<i>Airport Noise Report</i>	<a href="http://www.airportnoisereport.com/">http://www.airportnoisereport.com/</a>
<i>Journal of Transport Economics and Policy</i>	<a href="http://www.bath.ac.uk/e-journals/jtep/">http://www.bath.ac.uk/e-journals/jtep/</a>

## Government and Public Entities with Relevant Publications

Government Accountability Office—Reports and Testimony	<a href="http://www.gao.gov/docsearch/repanctest.html">http://www.gao.gov/docsearch/repanctest.html</a>
DOT Office of Inspector General—Aviation and Special Programs Reading Room	<a href="http://www.oig.dot.gov/Room?subject=2">http://www.oig.dot.gov/Room?subject=2</a>
Joint Planning and Development Office—Library	<a href="http://www.jpdo.gov/library.asp">http://www.jpdo.gov/library.asp</a>
Federal Interagency Committee on Aviation Noise	<a href="http://www.fican.org/">http://www.fican.org/</a>
Transportation Research Board—Airport Cooperative Research Program	<a href="http://www.trb.org/CRP/ACRP/ACRP.asp">http://www.trb.org/CRP/ACRP/ACRP.asp</a>
McGill University Institute of Air and Space Law	<a href="http://www.mcgill.ca/iasl/">http://www.mcgill.ca/iasl/</a>

## Government and Public Entities with Relevant Publications

Airport Noise Regulations (maintained by Boeing)

<http://www.boeing.com/commercial/noise/index.html>

## State Transportation Agencies

Alabama

<http://www.dot.state.al.us/Docs/Bureaus/Aeronautics/Aeronautics+Index.htm>

Alaska

<http://www.dot.state.ak.us/stwdav/index.shtml>

Arizona

<http://www.azdot.gov/Aviation/index.asp>

Arkansas

<http://www.ahtd.state.ar.us/>

California

<http://www.dot.ca.gov/hq/planning/aeronaut/htmlfile/index.php>

Colorado

<http://www.colorado-aeronautics.org/>

Connecticut

<http://www.ct.gov/dot/cwp/view.asp?a=1390&Q=292426&dotPNavCtr=|40038|#40038>

Delaware

<http://www.drbaairports.com/>

Florida

<http://www.dot.state.fl.us/aviation/>

Georgia

<http://tomcat2.dot.state.ga.us/Aviation/Home/index.cfm>

Hawaii

<http://state.hi.us/dot/airports/index.htm>

Kansas

<http://www.ksdot.org/divaviation/default.asp>

Kentucky

<http://transportation.ky.gov/Aviation/>

Idaho

<http://www.itd.idaho.gov/aero/>

Illinois

<http://www.dot.state.il.us/aero/index.html>

Indiana

<http://www.in.gov/indot>

Iowa

<http://www.iawings.com/>

Louisiana

[http://www.dotd.louisiana.gov/section\\_home.asp?SEC=88](http://www.dotd.louisiana.gov/section_home.asp?SEC=88)

Maine

<http://www.maine.gov/mdot/aviation/aviation-home.php>

Maryland

<http://www.marylandaviation.com/>

## State Transportation Agencies

Massachusetts	<a href="http://www.massport.com/airports/">http://www.massport.com/airports/</a>
Michigan	<a href="http://www.michigan.gov/aero/">http://www.michigan.gov/aero/</a>
Minnesota	<a href="http://www.dot.state.mn.us/aero/">http://www.dot.state.mn.us/aero/</a>
Mississippi	<a href="http://www.mississippi.gov/frameset.jsp?URL=http%3A%2F%2Fwww.gomdot.com">http://www.mississippi.gov/frameset.jsp?URL=http%3A%2F%2Fwww.gomdot.com</a>
Missouri	<a href="http://www.modot.org/othertransportation/">http://www.modot.org/othertransportation/</a>
Montana	<a href="http://www.mdt.mt.gov/aviation/">http://www.mdt.mt.gov/aviation/</a>
Nebraska	<a href="http://www.aero.state.ne.us/">http://www.aero.state.ne.us/</a>
Nevada	<a href="http://www.nevadadot.com/traveler/aviation/">http://www.nevadadot.com/traveler/aviation/</a>
New Hampshire	<a href="http://www.nh.gov/dot/bureaus/aeronautics/index.htm">http://www.nh.gov/dot/bureaus/aeronautics/index.htm</a>
New Jersey	<a href="http://www.state.nj.us/transportation/commuter/aviation/">http://www.state.nj.us/transportation/commuter/aviation/</a>
New Mexico	<a href="http://nmshtd.state.nm.us/main.asp?secid=10871">http://nmshtd.state.nm.us/main.asp?secid=10871</a>
New York	<a href="https://www.nysdot.gov/portal/page/portal/modal/aviation">https://www.nysdot.gov/portal/page/portal/modal/aviation</a>
North Carolina	<a href="http://www.ncdot.org/transit/aviation/">http://www.ncdot.org/transit/aviation/</a>
North Dakota	<a href="http://www.nd.gov/ndaero/">http://www.nd.gov/ndaero/</a>
Ohio	<a href="http://www.dot.state.oh.us/Aviation/">http://www.dot.state.oh.us/Aviation/</a>
Oklahoma	<a href="http://www.ok.gov/agencies.php-Transportation">http://www.ok.gov/agencies.php - Transportation</a> (key in if link will not open)
Oregon	<a href="http://www.oregon.gov/Aviation/index.shtml">http://www.oregon.gov/Aviation/index.shtml</a>
Pennsylvania	<a href="http://www.dot.state.pa.us/Internet/Bureaus/pdBOA.nsf/AviationHomepage?openframeset">http://www.dot.state.pa.us/Internet/Bureaus/pdBOA.nsf/AviationHomepage?openframeset</a>
Rhode Island	<a href="http://www.pvdairport.com/main.aspx?sec_id=72">http://www.pvdairport.com/main.aspx?sec_id=72</a>
South Carolina	<a href="http://www.scaeronautics.com/default.asp">http://www.scaeronautics.com/default.asp</a>
South Dakota	<a href="http://www.sddot.com/fpa/Aeronautics/index.htm">http://www.sddot.com/fpa/Aeronautics/index.htm</a>

## State Transportation Agencies

Tennessee	<a href="http://www.tdot.state.tn.us/aeronautics/">http://www.tdot.state.tn.us/aeronautics/</a>
Texas	<a href="http://www.dot.state.tx.us/services/aviation/default.htm">http://www.dot.state.tx.us/services/aviation/default.htm</a>
Utah	<a href="http://www.udot.utah.gov/main/f?p=100:pg:11056221475850990000:::V,T,190">http://www.udot.utah.gov/main/f?p=100:pg:11056221475850990000:::V,T,190</a>
Vermont	<a href="http://www.vermontairports.com/">http://www.vermontairports.com/</a>
Virginia	<a href="http://www.doav.virginia.gov/">http://www.doav.virginia.gov/</a>
Washington	<a href="http://www.wsdot.wa.gov/Aviation/">http://www.wsdot.wa.gov/Aviation/</a>
West Virginia	<a href="http://www.wvdot.com/1_airports/1_airports.htm">http://www.wvdot.com/1_airports/1_airports.htm</a>
Wisconsin	<a href="http://www.dot.wisconsin.gov/modes/air.htm">http://www.dot.wisconsin.gov/modes/air.htm</a>
Wyoming	<a href="http://www.dot.state.wy.us/Default.jsp?sCode=air">http://www.dot.state.wy.us/Default.jsp?sCode=air</a>

### III. INDEX OF AIRPORT LAW TOPICS AND FEDERAL SOURCES

#### Access Restrictions (See also Noise, Preemption)

49 U.S.C. §§ 47521–47533

14 C.F.R. Part 161 (Notice and approval of airport noise and access restrictions)

FAA Order 5190.6A, Airport Compliance Requirements (1989)

[http://www.faa.gov/airports\\_airtraffic/airports/resources/publications/orders/media/Obligations\\_5190\\_6a.pdf](http://www.faa.gov/airports_airtraffic/airports/resources/publications/orders/media/Obligations_5190_6a.pdf)

FAA Draft Aviation Noise Policy 2000

65 Fed. Reg. 43802 (July 14, 2000)

Tom Devine, *The Naples Decision: Sound Public Policy?*

20 Air and Space Lawyer 4 (Summer 2005)

Aimee Kratovil, *The Airport Noise and Capacity Act of 1990: Superfluous Hurdle for Airport Proprietors Who Have Assured Federal Grants*

12 Penn St. Envtl. L. Rev. 499 (2004)

Paul Stephen Dempsey, *Local Airport Regulation: The Constitutional Tension Between Police Power, Preemption & Takings*

11 Penn St. Envtl. L. Rev. 1 (2002)

Peter J. Kirsch & Daniel S. Reimer, *The Airport Noise Act: Safe Harbor or Procedural Hurdle*

16 Air and Space Lawyer 14 (Spring 2002)

Peter D. Irvine, *The Future of Stage 2 Noise Restrictions: A Matter of Substantive Versus Procedural Review by the Federal Aviation Administration*

11 Geo. Mason L. Rev. 179 (2002)

John J. Jenkins, *The Airport Noise and Capacity Act of 1990: Has Congress Finally Solved the Aircraft Noise Problem*

59 J. Air L. & Com. 1023 (1994)

Kaplan Kirsch & Rockwell and Harris Miller Miller & Hanson, Inc., *Guide to Airport Noise Rules and Use Restrictions*

Available to order at  
<http://www.airportattorneys.com>

*Air Transport Ass'n v. Crotti*

389 F. Supp. 58 (N.D. Cal. 1975)

*American Airlines v. DOT*

202 F.3d 788 (5th Cir. 2000)

*American Airlines v. Town of Hempstead*

398 F.2d 369 (2d Cir. 1968)

*Arapahoe County Pub. Airport Auth. v. FAA* (on review of FAA decision in *Arapahoe County Pub. Airport Auth. v. Centennial Express Airlines, Inc.* 956, P.2d 587 (Colo. 1998))

242 F.3d 1213 (10th Cir. 2001)

**Access Restrictions** (See also Noise, Preemption)

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**Grant Assurances**

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Sponsor Assurances

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**Height Restrictions (See Obstructions)**



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**Zoning** (See Local Land Use Regulation)

### ACKNOWLEDGMENTS

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