

AIRPORT COOPERATIVE RESEARCH PROGRAM

Sponsored by the Federal Aviation Administration

Responsible Senior Program Officer: Marci A. Greenberger

Research Results Digest 16

LEGAL ASPECTS OF AIRPORT PROGRAMS

This is a staff digest of the background and status of Airport Cooperative Research Program (ACRP) Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board is the agency coordinating the research. Individual studies for the project are managed by Marci A. Greenberger, Senior Program Officer.

BACKGROUND

Prior to the library of *Legal Research Digests* published by the Transportation Research Board, there wasn't a centralized collection of information that could be consulted by attorneys involved in airport-related work. The Airport Cooperative Research Program established a continuing project, ACRP Project 11-01, "Legal Aspects of Airport Programs," to provide a means to assemble, study, and evaluate the myriad of legal problems encountered by the nation's airports. Modeled after the continuing legal studies projects in the National Cooperative Highway Research Program and the Transit Cooperative Research Program, ACRP Project 11-01 provides similar legal research on topics of specific interest to the airport community. Reports and summaries produced under ACRP Project 11-01 are published in ACRP's *Legal Research Digest* series and available on the website: <http://www.TRB.org/ACRP>. This *Research Results Digest* summarizes the products of the initial 6 years of ACRP Project 11-01.

INTRODUCTION

There are more than 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 owner-

ship accounts for 38 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Reports and summaries produced by the ACRP continuing legal studies project and published as ACRP *Legal Research Digests* are developed to assist attorneys seeking to address the 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 for which research is needed. Airport legal research, when conducted through the TRB's legal studies process, is focused on either collecting primary data that usually are not available elsewhere or analyzing existing literature.

RESEARCH PROCESS

A panel of eight airport industry attorneys provides project oversight by selecting topics and providing technical guidance on each digest written by selected contractors. ACRP Project 11-01 panel members include attorneys who work at airports or provide counsel to airports, those who represent a municipality that

owns/operates an airport, or those who are in private practice. Panel members' areas of expertise include regulatory and legislative analysis, litigation, and airport safety and security, and they represent both commercial service and general aviation airports.

The panel meets approximately once a year to select topics that are (1) widespread enough to generate broad interest, (2) timely and critical to the airport community at large, (3) considered to have sufficient quantity and quality of information to produce a digest, and (4) not being researched by other entities and not the focus of other publications that would render the digest obsolete.

Once the topic has been selected, the panel collaborates to define the scope of work, which is then posted and distributed as a request for proposals (RFP). Any entity providing a detailed response to the RFP may submit its letter of interest. The panel then selects the proposer that it believes best fits the criteria set for achieving the research objective. In many cases, the selected contractor, the principal investigator, is an attorney, but depending on the subject area, the principal investigator may be a subject matter expert, with an attorney assisting the effort.

Once the contractor has been selected, the panel approves a submitted outline of the paper and provides feedback. The author or principal investigator then conducts further research and submits a draft for panel review. The panel provides feedback and suggests changes and—based on these—the author prepares a second draft, called the draft final deliverable (DFD). The panel provides comments on the DFD and completes a ballot as to its appropriateness for publication. On the basis of those comments, the author prepares and submits the final deliverable (FD).

Once the FD is submitted to ACRP, it goes through a quality review to ensure that the panel's comments have been adequately addressed and that sources are properly cited. After panel and ACRP review, the FD is submitted for publication.

LEGAL RESEARCH STUDIES PANELISTS

Individuals are appointed to ACRP project panels on the basis of professional experience, qualifications, and enthusiasm for the topic. For ongoing projects, such as ACRP Project 11-01, "Legal Aspects of Airport Programs," ACRP Project 11-03, "Synthesis Program," and ACRP Project 11-04, "Graduate Research Award Program," the appointment process also takes into account the need for continuity, subject matter ex-

pertise, and responsiveness to process requirements, as well as the interests of the individual panel member. From time to time, panel members are rotated to bring new perspectives to the project, improve project panel performance, or facilitate the work of the panel. Panel members generally serve on an ongoing project panel for approximately 2 to 3 years before rotating.

The ACRP legal studies project has been fortunate to have many outstanding industry experts volunteer their time to oversee the research and thereby help build a library of resources for the industry that otherwise wouldn't exist in any one place. Table 1 lists ACRP Project 11-01 panel members past and present.

Table 1 ACRP Project 11-01 panel members 2006–2012.

Name	Affiliation
Tom Anderson	Metropolitan Airports Commission Minneapolis, MN
Eduardo Angeles	Los Angeles, CA
Arthur Berg*	New York, NY
Patricia A. Hahn, Esq.	Washington, DC
Charlotte "Carly" Hegle	Sacramento County Sacramento, CA
Tim Karaskiewicz*	General Mitchell International Airport Whitefish, WI
Marco Kunz	Salt Lake City International Airport Salt Lake City, UT
Robert Maerz	San Francisco City Attorney's Office San Francisco, CA
Carlene McIntyre	Port Authority of New York & New Jersey New York, NY
Barry Molar*	Unison Consulting Wheaton, MD
Donald Mueting	Minnesota DOT St. Paul, MN
Marjorie Perry	Tucson Airport Authority Tucson, AZ
E. Lee Thomson	Clark County District Attorney Las Vegas, NV
Kathleen A. Yodice, Esq.	Yodice Associates Aircraft Owners and Pilots Association Washington, DC

* Denotes Chair or past Chair.

LEGAL RESEARCH TOPICS

During the first 6 years of ACRP Project 11-01, there have been over 25 topics selected for legal

research in broad areas of interest to the airport legal community.

Table 2 shows the topics that have been selected in the years 2006 to 2012.

Table 2 ACRP Project 11-01 topics 2006–2012.

Topic	Title	Status
01-01	Compilation of Digest—Parts 13 and 16 Determinations and Related Documents	Published as <i>Legal Research Digest 4: Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters Through December 31, 2007</i> (CRP-CD-68) (October 2008)
01-02	Theory and Law of Airport Revenue Diversion	Published as <i>LRD 2: Theory and Law of Airport Revenue Diversion</i> (May 2008)
01-03	Compilation/List of Airport Law Resources	Published as <i>Legal Research Digest 1: Compilation of Airport Law Resources</i> (January 2008)
01-04	Survey of Airport Laws and Regulation of Commercial Ground Transportation	Published as <i>Legal Research Digest 3: Survey of Laws and Regulations of Airport Commercial Ground Transportation</i> (July 2008)
01-05	Responsibilities for Implementation and Enforcement of Airport Land-Use Zoning Restrictions	Published as <i>Legal Research Digest 5: Responsibility for Implementation and Enforcement of Airport Land-Use Zoning Restrictions</i> (March 2009)
01-06	Who is the Owner or Operator for Purposes of the Right to Self-Fuel?	Published as <i>Legal Research Digest 8: The Right to Self-Fuel</i> (December 2009)
01-07	The Impact of Airlines Bankruptcies on Airports	Published as <i>Legal Research Digest 6: The Impact of Airline Bankruptcies on Airports</i> (May 2009)
01-08	The Law and Regulations of Airport Ownership	Published as <i>Legal Research Digest 7: Airport Governance and Ownership</i> (August 2009)
01-09	Survey of the Elements of Disparity Studies for Airport Disadvantaged Business Enterprise Programs	Terminated
02-01	Obstructions Affecting Navigable Airspace	Merged with 2-02 for Topic 02-05
02-02	Use and Success of Avigation Easements and Other Tools for Airport-Compatible Land Use and Development of Model Language	Merged with 2-01 for Topic 02-05
02-03	Case Studies on Community Challenges to Airport Development	Published as <i>Legal Research Digest 9: Case Studies on Community Challenges to Airport Development</i> (June 2010)
02-04	Analysis of Federal Laws, Regulations and Case Law Regarding Airport Proprietary Rights	Published as <i>Legal Research Digest 10: Analysis of Federal Laws, Regulations, and Case Law Regarding Airport Proprietary Rights</i> (September 2010)
02-05	Practices to Achieve Airport-Compatible Land Uses and Minimize Obstructions in Navigable Airspace	Published as <i>Legal Research Digest 14: Achieving Airport-Compatible Land Uses and Minimizing Hazardous Obstructions in Navigable Airspace</i> (April 2012)
03-01	Fair Disclosure of Airport Impacts in Real Estate Transfers	Published as <i>Legal Research Digest 12: Fair Disclosure and Airport Impact Statements in Real Estate Transfers</i> (November 2011)

(continued on next page)

Table 2 (Continued).

Topic	Title	Status
03-02	Compilation of State Aviation Authorizing Legislation	Published as <i>Legal Research Digest 15: Compilation of State Airport Authorizing Legislation</i> (July 2012)
03-03	Survey of Minimum Standards for Commercial Aeronautical Activities at Airports	Published as <i>Legal Research Digest 11: Survey of Minimum Standards: Commercial Aeronautical Activities at Airports</i> (February 2011)
03-04	Airport Rates and Charges: Law and Policy	Merged with 04-05
03-05	Analyses of State and Federal Regulations That May Impede State Initiatives to Reduce an Airport's Carbon Footprint	Published as <i>Legal Research Digest 17: State and Federal Regulations That May Affect Initiatives to Reduce Airports' GHG Emissions</i>
03-06	An Index and Digest of Decisions in LRD 1	Published as <i>Legal Research Digest 13: An Index and Digest of Decisions: Compilation of Airport Law Resources</i> (CRP-CD-108) (March 2012)
04-01	Airport Liability for Wildlife Management	Research is underway
04-02	Legal Issues Related to Developing SMS and SMRD Documents Which May Be Available to the Public	Research is complete. Publication pending as <i>Legal Research Digest 19: Legal Issues Related to Developing Safety Management Systems and Safety Risk Management at U.S. Airports</i>
04-03	Analysis of Federal Laws, Regulations, Case Law, and Survey of Existing Airport NPDES Permits Regarding Tenant-Operator Responsibilities Under NPDES and Storm Water Management BMPs Under Owner/Airport's Operating Permits	Research is underway
04-04	Buy America Requirements for Federally Funded Airports	Research is complete. Publication pending as <i>Legal Research Digest 18: Buy America Requirements for Federally Funded Airports</i>
04-05	Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters, through December 2011	Research is underway
04-06	The Role of the Airport Sponsor in Airport Planning and Environmental Reviews of Proposed Development Projects Under the National Environmental Policy Act (NEPA) and State Mini-NEPA Laws	Research is underway
04-07	Procurement of Airport Development and Planning Contracts	Published as <i>Legal Research Digest 16: Procurement of Airport Development and Planning Contracts</i> (September 2012)
05-01	The First Amendment and Airport Activities	Pending
05-02	Sovereign Immunity and Applicability to Airports	Pending
05-03	The Fourth Amendment and Airports	Pending
05-04	Airport Grant Assurances: General Requirements and Economic Nondiscrimination	Pending

LEGAL RESEARCH DIGESTS

Seventeen ACRP *Legal Research Digests* have been published through 2012 and are available at www.trb.org/acrp. These *Legal Research Digests* are listed and summarized in this section.

Legal Research Digest 1: Compilation of Airport Law Resources

Daniel S. Reimer, Kaplan Kirsch & Rockwell, LLP

Sources for practitioners of airport law 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. One consequence of this dispersion of knowledge is that a lawyer conducting research on airport law typically must consult multiple sources to gather information.

This digest, which includes over 500 federal sources and indicates where those sources can be found online or in case reporters, is one attempt to remedy this problem. Section I identifies the relevant statutes, regulations, case law databases, secondary sources, periodicals, and state aviation departments. Section II is a topical index containing the statutes, regulations, federal policies, reports, articles, and cases relevant to a particular subject.

Legal Research Digest 2: Theory and Law of Airport Revenue Diversion

Paul Stephen Dempsey, Tomlinson Professor of Law, McGill University

Airports in the United States are overwhelmingly owned and operated by municipal, county, regional, and, in some instances, state governments, although the federal government has provided much of the funding for these airports. The fiscal problems facing municipal governments more generally have forced many to search for new sources of revenue. The ability of federally funded airports to support local governments is limited by law. Use of airport revenue for purposes other than airport purposes is unlawful revenue diversion. Understanding revenue diversion requires a basic understanding of general principles of airport cost and revenue and their subcomponents, including capital and operating costs and the various sources of revenue.

This digest describes the issue of airport revenue diversion, what prompted Congress to address it, how it has manifested itself, and how the prohibition against revenue diversion has been enforced.

Legal Research Digest 3: Survey of Laws and Regulations of Airport Commercial Ground Transportation

Lew R. C. Bricker and Gerald P. Cleary, Attorneys, SmithAmundsen, LLC

Commercial ground transportation at U.S. airports includes public transit, door-to-door shuttle van service, charter buses, limousines, rental cars, taxicabs, hotel courtesy shuttles, wheelchair services, and courier operators. These ground transportation carriers must enter into contracts and register with the airport authority they serve as well as comply with a myriad of federal, state, and local rules and regulations. While the U.S. Federal Motor Carrier and Safety Administration has primary responsibility for issuing federal regulatory guidance for commercial ground transportation operating in interstate commerce regarding safety, size, and weight restrictions on passenger-carrying vehicles, state and local ground transportation rules and regulations are typically specific to individual airports. The state and local rules and regulations contain provisions detailing access to commercial loading and unloading areas; meeting, loading, and unloading passengers; procedures for obtaining operating permits, licenses, and agreements; automated vehicle identification tag requirements; operator conduct; solicitation; fees; 1-day or infrequent-user permits; and airport security. This digest compiles and synthesizes available guidance, including regulations, statutes, policies, and decisions pertaining to commercial ground transportation.

Legal Research Digest 4: Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters Through December 31, 2007

Spiegel & McDiarmid, LLP

Virtually all U.S. airports with commercial airline service have accepted federal grants under the Airport Improvement Program (AIP). In exchange for these grants, airports agree to comply with numerous federal assurances, ranging from requirements

that their rates be reasonable to implementation of disadvantaged business enterprise programs. The Federal Aviation Administration (FAA) adjudicates complaints, brought by FAA or raised by third parties, relating to alleged failures by airports to comply with the AIP grant assurances.

Prior to 1966, the FAA's procedures for processing and making determinations regarding complaints against federally funded airports were set forth in 14 C.F.R. Part 13, a set of regulations applicable to a variety of adversarial proceedings within FAA's jurisdiction. In 1997, the FAA promulgated Part 16, regulations relating to processing complaints against airports specifically. Part 16 includes several stages of FAA review; and therefore, multiple decisions may be issued by the FAA in a particular Part 16 proceeding.

It is difficult for attorneys representing airports to find relevant cases either in the older Part 13 decisions relating to airports or in the more recent Part 16 decisions. In addition, airport attorneys are rarely aware of U.S. DOT General Counsel opinions or FAA Chief Counsel opinions on airport legal issues. This CD-ROM compilation makes these materials available along with indexes designed to facilitate the search for specific questions and issues.

Legal Research Digest 5: Responsibility for Implementation and Enforcement of Airport Land-Use Zoning Restrictions

William V. Cheek, Esq., William V. Cheek & Associates

Commercial aviation has increased significantly over the past 20 years. Likewise, communities adjacent to airport property have grown during the same time span. Recent airport expansion plans have been vigorously opposed, often resulting in court action. Such litigation is caught at the intersection of two traditional practices: local communities are charged with control of land use and do so through zoning and land-use restrictions, while the federal government is responsible for controlling aircraft operations. States vary as to which administrative body has aviation zoning authority and the extent of that authority. Generally, when a project is deemed as an enhancement to flight safety or a modification to property or facilities on existing airport grounds, courts tend to find these modifications in the nature of "aircraft operations" under the exclusive respon-

sibility of the federal government. However, when an enhancement project requires additional land, courts are reluctant to preempt local zoning law.

This digest discusses federal, state, regional, and local laws and regulations pertaining to aviation land use and zoning and identifies the primary responsibilities of each relevant legal body and how this responsibility is communicated and enforced.

Legal Research Digest 6: The Impact of Airline Bankruptcies on Airports

Jocelyn K. Waite, Waite & Associates

The basic theory of a succession of the United States Bankruptcy Acts has been to provide debtors protection from creditors while providing an orderly system for paying all creditors. Bankruptcy was considered so essential that it was entrusted to Congress under Article One of the Constitution of the United States.

Following the September 11, 2001 (9/11) attacks on the World Trade Center, U.S. airlines have filed bankruptcies at an alarming rate. In 2005 alone, there were at least seven airlines bankruptcies. Airline bankruptcies not only pose significant financial hardship on airports dependent on airlines for revenue, but also raise significant legal issues concerning treatment of airlines' obligations to airports under the bankruptcy process.

This digest examines those legal issues presented by the filing of airline bankruptcies that are relevant to airports and explores how airport lawyers and courts have responded to those issues. The digest presents the basics of bankruptcy theory and law relevant to airport operating agreements with airlines and identifies issues such as lease recharacterization and payment of stub period rent that particularly affect airports dealing with airlines in bankruptcy. The digest primarily addresses federal business bankruptcy cases, although it does identify issues on which state law will govern.

Legal Research Digest 7: Airport Governance and Ownership

Daniel S. Reimer, Esq., and John E. Putnam, Esq., Kaplan Kirsch & Rockwell, LLP

Airports are often characterized by their ownership, but it is the governance structure that determines how an airport is managed, operated, and de-

veloped. For example, an airport can be owned by a municipality and operated by either a regional- or city-controlled airport authority. General-purpose governments at the federal, state, county, and municipal levels all have governed or currently govern airports, as well as special-purpose entities such as airport authorities and port authorities. In spite of the multiplicity of governance models, there has been relatively little analysis of the advantages and disadvantages of different governance structures and how well different types of public entities perform the function of governing airports.

This digest is intended to serve two principal purposes: (1) to detail the laws and legal principles affecting airport governance and (2) to correlate airport governance and the governing body's ability to perform particular functions.

Legal Research Digest 8: The Right to Self-Fuel

C. Daniel Prather, Prather Airport Solutions, Inc.

The fueling of aircraft at airports is a major business activity that can generate considerable income for airports and simultaneously constitute considerable expense for an aircraft owner/operator. The Airport and Airway Improvement Act of 1982 (The Act), 49 U.S.C. § 47101 et seq., and the Airport Improvement Program Sponsor Assurances require that the owner or operator of any airport that has been developed or improved with federal grant assistance operate the airport for the use and benefit of the public and make it available for all types, kinds, and classes of aeronautical activity, including the self-fueling of aircraft. The FAA issues Advisory Circulars that not only identify standards and procedures for compliance with this requirement but also define and clarify the meaning of aviation terms, such as "self-fueling," which generally means using fuel obtained by the aircraft owner from his/her preferred source. The definition and meaning of self-fueling must be distinguished from that of commercial self-service fueling, which the FAA defines as "fueling of an aircraft by the pilot using commercial fuel pumps installed for that purpose."

Notwithstanding the FAA Circular pertaining to self-fueling, airport attorneys and others continue to face questions concerning the denial of requests to self-fuel, limitations sponsors can impose on air-

craft owners/operators, and prohibitions concerning the granting of exclusive rights leases and permits.

There is a need for aviation attorneys and aviation personnel alike to possess a broad-based understanding of the legal issues involved with the development and implementation of rules or regulations that restrict an aircraft owner's right to "self-service." In addition, the airport sponsor is obliged to balance the aircraft owner's right to self-serve against the requirement to effectively control activities that may affect the safe and efficient operation of the airport and the civil aviation needs of the public.

The primary objective of this digest is to inform aviation attorneys and other aviation personnel precisely how federal and local guidelines pertaining to self-fueling have been applied under different circumstances. This digest contains an expansive compilation and interpretation of related source documents including FAA administrative decisions, Advisory Circulars, and grant assurances necessary to inform concerned parties of the need to develop rules and regulations, as well as enforcement proceedings relating to self-fueling.

Legal Research Digest 9: Case Studies on Community Challenges to Airport Development

Jaye Pershing Johnson, J.D.

Development activities at airports around the United States have resulted in a number of challenges against the FAA and airport proprietors from municipalities and community groups seeking to modify or prevent airport expansion and development. Challenges may use various legal theories to modify or, in some cases, to challenge airport development. This collection is intended to convey the strategies that the FAA and airport operators have relied upon in addressing community challenges to airport expansion and development and identify which strategies have succeeded, which have failed, and the reasons for both.

The digest summarizes judicial decisions; explains the bases of the challenges to airport expansion and development, the defense to the challenges, and the outcome of the cases; and provides a summary of responses from airport proprietors to a survey regarding litigation strategies.

Legal Research Digest 10: Analysis of Federal Laws, Regulations, and Case Law Regarding Airport Proprietary Rights

Jodi L. Howick, Esq., Durham, Jones & Pinegar

Airport owners and operators have certain proprietary rights to manage and control access to their facilities. These proprietary rights are the proprietor's state-granted powers to act to the extent they have not been superseded or preempted by federal law or modified by contract. The scope of these rights has developed over time in response to challenges that airport proprietors have faced, and the history of these rights illustrates why proprietors may exercise rights that nonproprietors cannot.

This digest reviews some of the factors that have historically shaped airport proprietary rights and analyzes the relevant federal statutes, regulations, and case law with regard to airport proprietary rights, including regulation of noise, other environmental matters, safety restrictions, leasing practices, congestion management, and other airport access limitations.

Legal Research Digest 11: Survey of Minimum Standards: Commercial Aeronautical Activities at Airports

Daniel S. Reimer, Esq., and Paul A. Meyers, Kaplan Kirsch & Rockwell, LLP; Aviation Management Consulting Group

Numerous commercial aeronautical activities occur at airports. Examples of these activities include aircraft fueling, aircraft line (ground handling) services, aircraft maintenance and repair, aircraft storage, aircraft rental and flight training/instruction, aircraft sales, and aircraft charter and management. Airport owners and operators commonly impose requirements that must be met by the businesses that perform these commercial aeronautical activities. These requirements are known as "minimum standards." Airport minimum standards vary from airport to airport, based on factors such as the nature of aeronautical activities, the type and level of aircraft operations, the type and number of based aircraft, the types of commercial aeronautical services provided, and available land and improvements.

This digest contains source material for adopting and enforcing minimum standards, presents survey results showing current practices, and includes a compendium of comparative minimum standards.

Legal Research Digest 12: Fair Disclosure and Airport Impact Statements in Real Estate Transfers

Larry W. Thomas, Attorney at Law

The purpose of fair disclosure laws is to provide prospective home buyers with sufficient information to make informed decisions about the purchase of property. In too many cases, property is purchased near airports without full disclosure of the nature of airport operations such as noise and flight paths. This creates the potential for purchaser remorse based on the lack of disclosure of airport noise and operations. This digest examines the effect of a state or locality having no real property disclosure laws, existing general state real property disclosure laws, and existing state real property disclosure laws specifically requiring the disclosure of airports in close proximity to the property being offered for sale. After identifying and analyzing state real property disclosure laws specifically requiring the disclosure of airports, the digest includes annotated typical fair real property disclosure law provisions. The latter includes provisions essential for effective fair disclosure of airport-related impacts.

Legal Research Digest 13: An Index and Digest of Decisions: Compilation of Airport Law Resources

Kaplan Kirsch & Rockwell, LLP

This compilation is the third ACRP publication that attempts to provide airport lawyers the tools to be able to quickly identify relevant legal concepts and case precedents. *ACRP Legal Research Digest 1: Compilation of Airport Law Resources* provided a comprehensive listing of airport-related legal resources, including judicial decisions, government publications, scholarly journals, and other periodicals. *ACRP Legal Research Digest 4: Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters Through December 31, 2007* provides an index similar to *Legal Research Digest 1*, as well as summaries and links to source documents for DOT and FAA administrative decisions, determinations, and legal opinions.

This CD-ROM compilation provides access to a single source document that not only lists judicial decisions relating to a particular legal issue, but also provides a summary of relevant holdings and a link to the source document itself.

Legal Research Digest 14: Achieving Airport-Compatible Land Uses and Minimizing Hazardous Obstructions in Navigable Airspace

Jocelyn K. Waite, Waite & Associates

Federal law currently requires airport owners to provide for the safe overflight of property of surrounding airports, as well as to restrict surrounding land uses to those that are airport-compatible. Potential tools for ensuring compatible land use include comprehensive (or master) land-use planning, zoning, building and site design, and aviation and clearance easements. An airport sponsor's deployment of these tools is based on state and local, not federal, law. Airport attorneys must not only be cognizant of land-use compatibility requirements, but must be familiar with the range of options for complying with them and aware of the legal implications of implementing the various options.

This digest discusses airport-compatible land-use requirements, the legal issues related to achieving airport-compatible land use, and legal issues particular to eliminating hazardous obstructions to airspace. The digest concludes by reviewing the major legal issues of concern in achieving airport-compatible land use.

Legal Research Digest 15: Compilation of State Airport Authorizing Legislation

Jodi L. Howick, Esq., Durham, Jones & Pinegar

Most U.S. airports are government entities, and as such, state laws provide the means to create an airport entity and authorize its operating powers. An airport entity's local powers are essential to its operation and meeting its federal obligations. Each state has enacted legislation creating and empowering governmental entities such as state agencies, municipalities, airport authorities, joint power organizations, and so on, to plan, design, construct, operate, and protect public airports. The purpose of this digest is to present information that has been compiled, reviewed, and summarized pertaining to each state's airport-specific legislation, including laws establishing, developing, operating, expanding, and funding airports. The compilation focuses on legislation expressly applicable to public airports rather than legislation applicable to local governments generally. The compilation compares and contrasts zoning and land use; purchasing authority; commercial operations; ground transporta-

tion, funding, and taxing authority; law enforcement; and sovereign immunity.

This digest seeks to provide policy makers, airport operators, and other practitioners a convenient and synthesized resource of all states' airport-specific legislation.

Legal Research Digest 16: Procurement of Airport Development and Planning Contracts

Robert Alfert, Jr., P. A., and Karen M. Ryan, Esq., Broad and Cassel; and Roy Block, RW Block Consulting, Inc.

Most airport operators, as public agencies, are subject to some type of procurement law or regulation for carrying out procurements and awarding contracts. Airports receive funding from a variety of sources, including federal, state, and local governments and internal revenue sources, such as tenant revenue, concessions, and parking revenue. Each of these funding sources has its own procurement requirement and, in some instances, the requirements may conflict. Similarly, while exceptions to the general requirements of competition may be available, the circumstances and conditions that must be met to qualify for the exceptions may vary. Airports that receive federal funds are subject to statutes, regulations, operating guidance, and case law that will impact procurements. If an airport is funded by a number of different federal agencies, each may have its own requirement. Successfully navigating such a complex regulatory environment requires careful analysis, especially when the requirements are ambiguous or conflicting.

This digest provides guidance to airport operators, their counsel, and bidders on how to determine which requirements apply to any given procurement as well as providing an overview of the consequences for noncompliance so that airports can better understand the inherent risks associated with each funding source.

Legal Research Digest 17: State and Federal Regulations That May Affect Initiatives to Reduce Airports' GHG Emissions

John E. Putnam and Lala T. Wu, Kaplan Kirsch & Rockwell, LLP; Stephanie J. Tatham

There is a growing movement among state and federal agencies to focus on transportation

systems, including airports, in the ongoing efforts to reduce carbon emissions. Efforts to reduce carbon emissions at airports involve a range of federal, state, and local legal issues. In California, for example, the San Diego Airport's Master Plan became the subject of focus by the California Attorney General pursuant to state law. Subsequently, the Attorney General and the San Diego Airport entered into a Memorandum of Understanding that specifies the measures that the Airport will take to reduce greenhouse gas (GHG) emissions. However, under federal law, it is primarily the U.S. Environmental Protection Agency and the FAA that have the authority to regulate aircraft emissions.

This digest introduces airport management and staff to legal issues that are relevant to implementing GHG mitigation measures at airports. It also provides a compilation of carbon reduction initiatives at airports that distinguishes between green building requirements and other building code directives (e.g., energy efficiency initiatives; lighting, heating, ventilating, and air-conditioning efficiency improvements; and use of solar energy) and efforts directed at reducing aircraft GHG emissions (e.g., through use of preconditioned air units and aircraft tugs or limits on engine idling). This digest also identifies and discusses the range of federal, state, and local legal issues that may be associated with the implementation of these types of measures.



Transportation Research Board

500 Fifth Street, NW
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