

41<sup>st</sup> Annual AAEE  
Airport Law Workshop  
Washington, D.C.

Session #3

# Basics of Grant Assurances



# Speaker

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# What are the Grant Assurances?

- Federal obligations in exchange for federal funding under AIP
- Prescribed by statute (49 U.S.C. 47106 & 47107) but not laws!
- Annexed to grant *agreement*, which has “general” and “special” conditions
  - This session will not discuss new grant agreement template provisions related to DEI programs and cooperation with immigration enforcement

## ASSURANCES AIRPORT SPONSORS

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### A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

# What do the Grant Assurances cover?

## The Airport Improvement Program Sponsor Assurances

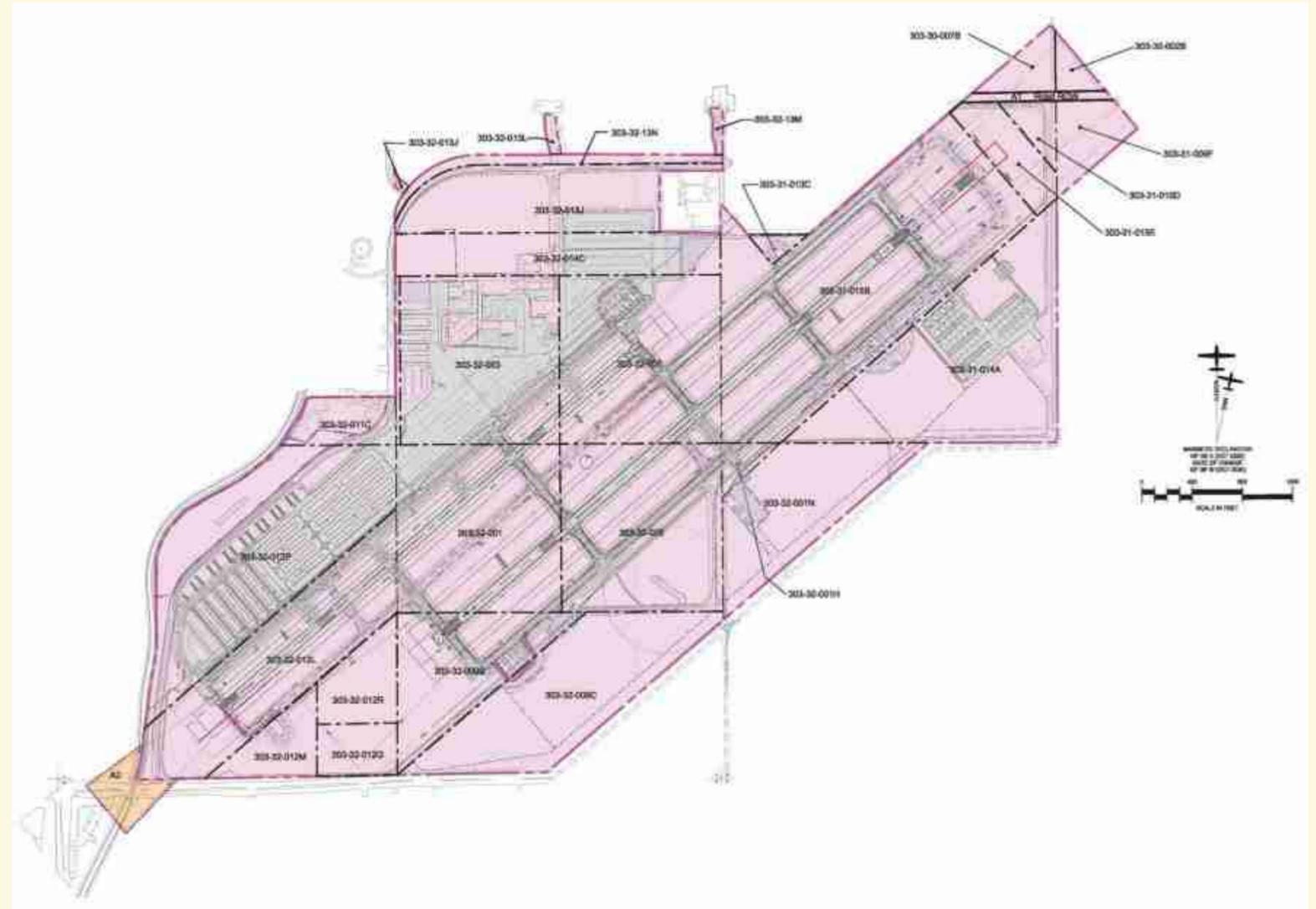
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|--|--|---------------------------------|--|
| 1. General federal requirements        | 11. Pavement preventative maintenance            | 21. Compatible land use         | 31. Disposal of land                       |
| 2. Responsibility/authority            | 12. Terminal development prerequisites           | 22. Economic nondiscrimination  | 32. Engineering and design services        |
| 3. Sponsor fund availability           | 13. Accounting system, audit, and record keeping | 23. Exclusive rights            | 33. Foreign market restrictions            |
| 4. Good title                          | 14. Minimum wage rates                           | 24. Fee and rental structure    | 34. Policies, standards & specifications   |
| 5. Preserving rights and powers        | 15. Veteran's preference                         | 25. Airport revenues            | 35. Relocation & real property acquisition |
| 6. Consistency with local plans        | 16. Conformity to plans & specifications         | 26. Reports and inspections     | 36. Access by intercity buses              |
| 7. Consideration of local interest     | 17. Construction inspection & approval           | 27. Use by government aircraft  | 37. Disadvantaged business enterprises     |
| 8. Consultation with users             | 18. Planning projects                            | 28. Land for federal facilities | 38. Hangar construction                    |
| 9. Public hearings                     | 19. Operation and maintenance                    | 29. Airport layout plan (ALP)   | 39. Competitive access                     |
| 10. Metropolitan planning organization | 20. Hazard removal and mitigation                | 30. Civil rights                | 40. Leaded aviation gasoline               |

# How long do Grant Assurances apply?

- Useful life of grant-funded project/equipment
- Not to exceed 20 years
- But acquisition of real property: assurances apply **in perpetuity**
- Three assurances never expire:
  - Assurance 23, Exclusive Rights
  - Assurance 25, Airport Revenues
  - Assurance 30, Civil Rights

# Where do the Grant Assurances apply?

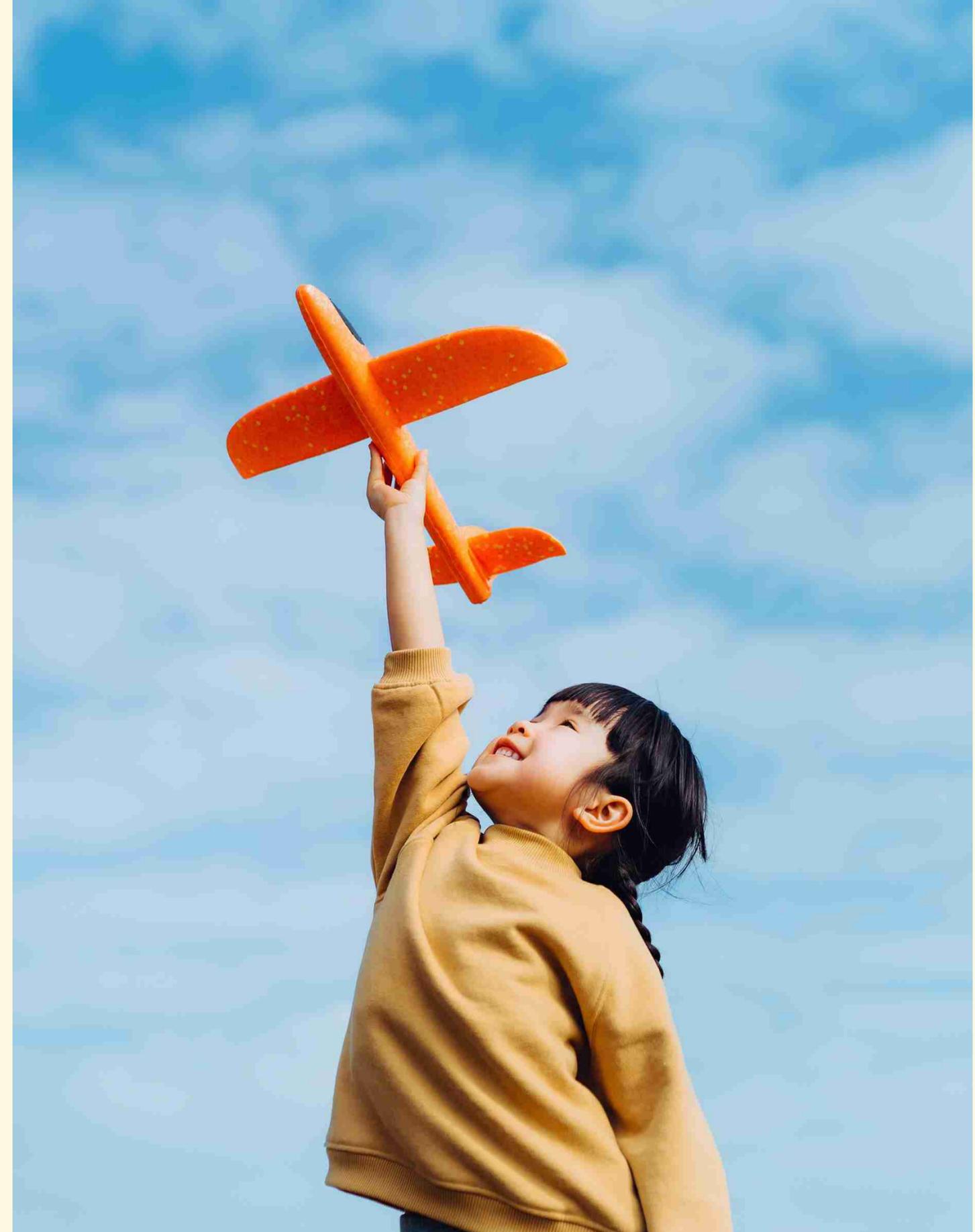
All land (and facilities) designated as airport property on Exhibit “A” to the grant application (often the ALP Property Map) is obligated with respect to the grant assurances, no matter how land or facilities were acquired.



# Key Grant Assurances

Just the basics!

- Grant assurance 1
- Grant assurance 5
- Grant assurance 19
- Grant assurance 20 & 21 (session #13)
- Grant assurance 22
- Grant assurance 23
- Grant assurance 24 & 25 (session #8)
- Grant assurance 29 (session #15)
- Grant assurance 40



# Grant Assurance 1

## General federal requirements

“Sponsor will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant.”

- Federal law enforced through grant agreements
- Obligates sponsors to include “required contract provisions”
  - List of provisions designated “historical” – new version forthcoming

# Grant Assurance 5

## Preserving rights and powers

*[The sponsor] will not **take or permit** any action which would . . . **deprive it of any of the rights and powers** necessary to perform . . . this grant agreement.*

*[The sponsor] will **act promptly** to acquire, extinguish or modify any outstanding rights or claims . . . which would interfere with such performance.*

# Grant Assurance 5

## Preserving rights and powers

- Governance issues – who make decisions?
- Sale, disposal, and encumbrance of airport property
- Lease duration – generally, no more than 50 years
- **Use subordination clauses!**
- Restrict/review requests for security interests
- Consider end-of-lease / reversion provisions

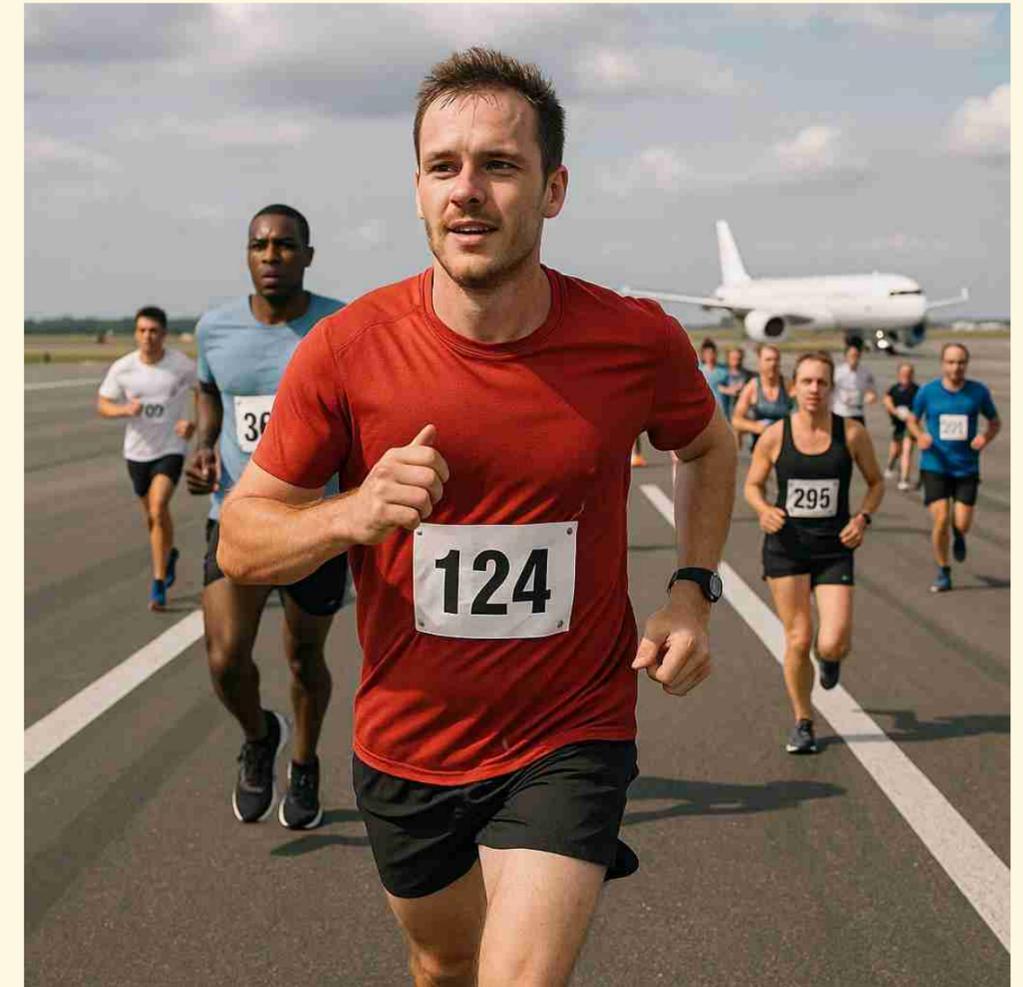
# Grant Assurance 19

## Operation and maintenance

- Operate in a “safe and serviceable” condition
- Do not cause or permit any activity that interferes with airport purposes
- Temporary closures for non-aeronautical purposes require approval

Notice of final policy and procedures on the temporary closure of airports for nonaeronautical purposes

Series 150  
advisory circulars



# Grant Assurance 19

## Operation and Maintenance – specific obligations

- Signage, marking, and lighting
- NOTAMs
- Snow and ice
- Foreign object debris (FOD)
- Pavement maintenance
- Wildlife hazard management

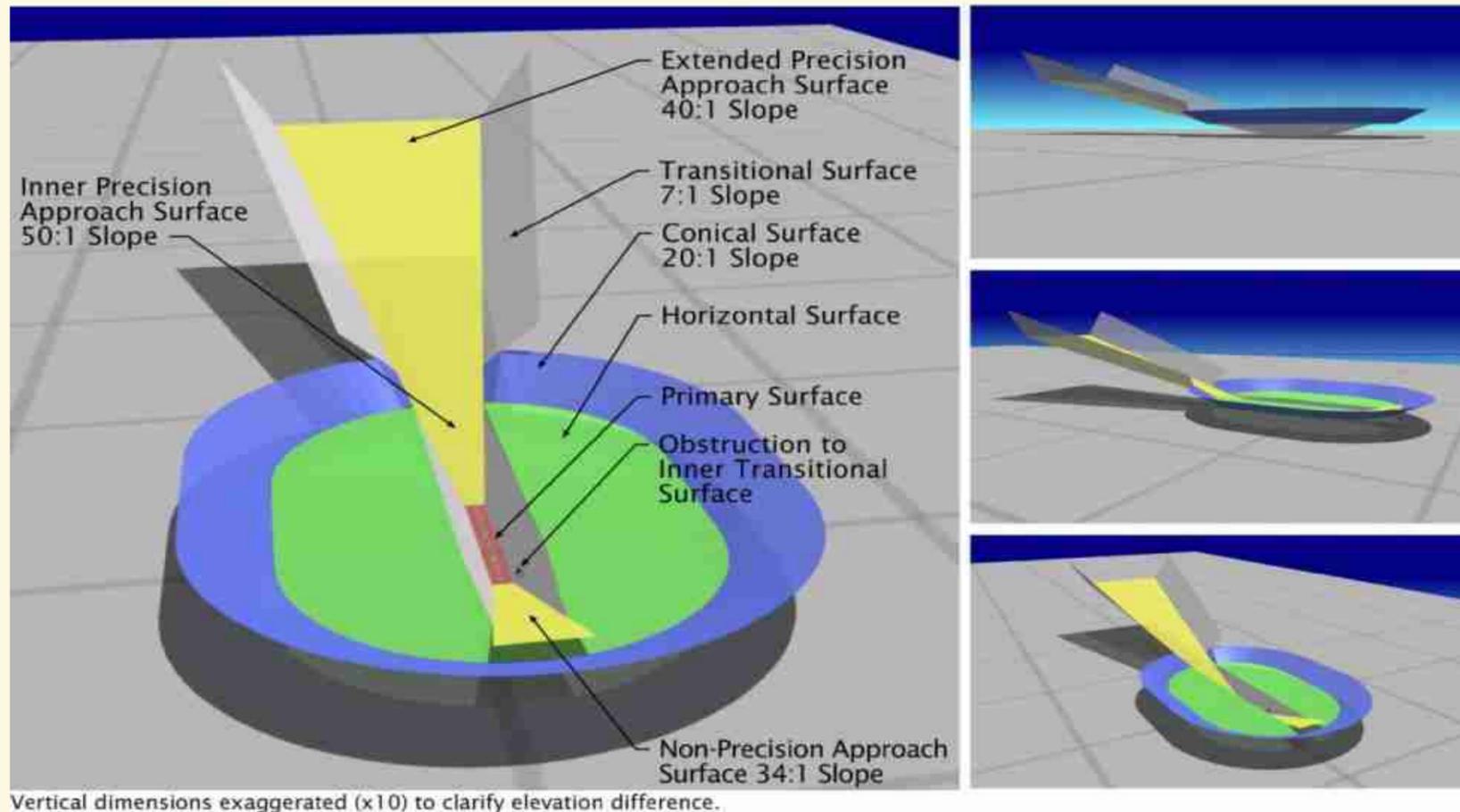
Commercial  
service airports  
also comply with  
14 CFR part 139



# Grant Assurance 20 & 21

Hazard removal and mitigation & compatible land use

Session #13  
dealings with  
local  
governments



# Grant Assurance 22

## Economic nondiscrimination

*[The sponsor] will make the airport **available** for public use on **reasonable terms** and **without unjust discrimination** to all types, kinds and classes of aeronautical activities . . .*

# Grant Assurance 22

## Aeronautical activity

**Aeronautical**: Activities that involve, make possible, or are required for the operation of aircraft or that contributes to or is required for the safety of such operations.

- FBOs/SASOs
- Flight testing/training
- Aircraft storage



**Nonaeronautical**: Anything else! Think: does this activity have to occur at an airport?

- Hotels
- Ground transportation
- Municipal services
- Aircraft manufacturing
- Airline bus services

# Grant Assurance 22

What does it mean to provide “access?”

## Assurance 22 requires

- Good-faith consideration of applications
- Access to airfield
- Reasonable and not unjustly discriminatory terms

## It does not require

- Operator’s preferred site
- Operator’s preferred terms
- Through-the-fence access
- Unsafe or unsightly operations
- Sponsor’s development of facilities

# Grant Assurance 22

Reasonable and not unjustly discriminatory?

- Terms must be:
  - Attainable
  - Rational
  - Uniformly applied
- Treat **similarly situated** aeronautical operators similarly:
  - Facilities
  - Investment/risk
  - Signatory status
  - Time

Uniform application of **minimum standards** is a key means of avoiding unjust discrimination claims!



# Grant Assurance 22

## Other important components

- Grant Assurance 22(b) – Sponsors must “insert and enforce” requirement to provide services on reasonable and not unjustly discriminatory terms in all operators’ agreements
- Grant Assurance 22(f) – Aircraft owners must have the right to “self-service”
- Grant Assurance 22(g) – Sponsor cannot grant themselves special treatment (except for the proprietary exclusive right – stay tuned)
- Grant Assurance 22(i) – Sponsors have limited rights to restrict aeronautical operations for purposes of safety and efficiency

# Grant Assurance 23

## Exclusive rights

“[The sponsor] will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

- Express or de facto exclusive rights
- Can be derivative of a denial of access
- Having a single service provider is not necessarily improper
- Exception: the proprietary exclusive right



# Grant Assurance 24 & 25

## Fee and rental structure & airport revenues

- Must maintain a fee and rental structure to make the airport as self-sustaining as possible
- May expend airport revenue only on the capital or operating costs of the:
  - The airport
  - The airport system
  - Other facilities owned or operated by the owner or operator of the airport and directly and substantially related to the transportation of passengers or property



**Session #8**  
Airport  
finance for  
lawyers

# Grant Assurance 29

## Airport layout plan

- Must maintain an ALP showing current and future:
  - Boundaries
  - Facilities and structures
  - Non-aviation areas
  - Access points
- Some portions of the ALP require FAA approval
  - See Section 743 / 47107(x)

**Session #15**  
Land development and  
planning

# Grand Airport

- Must

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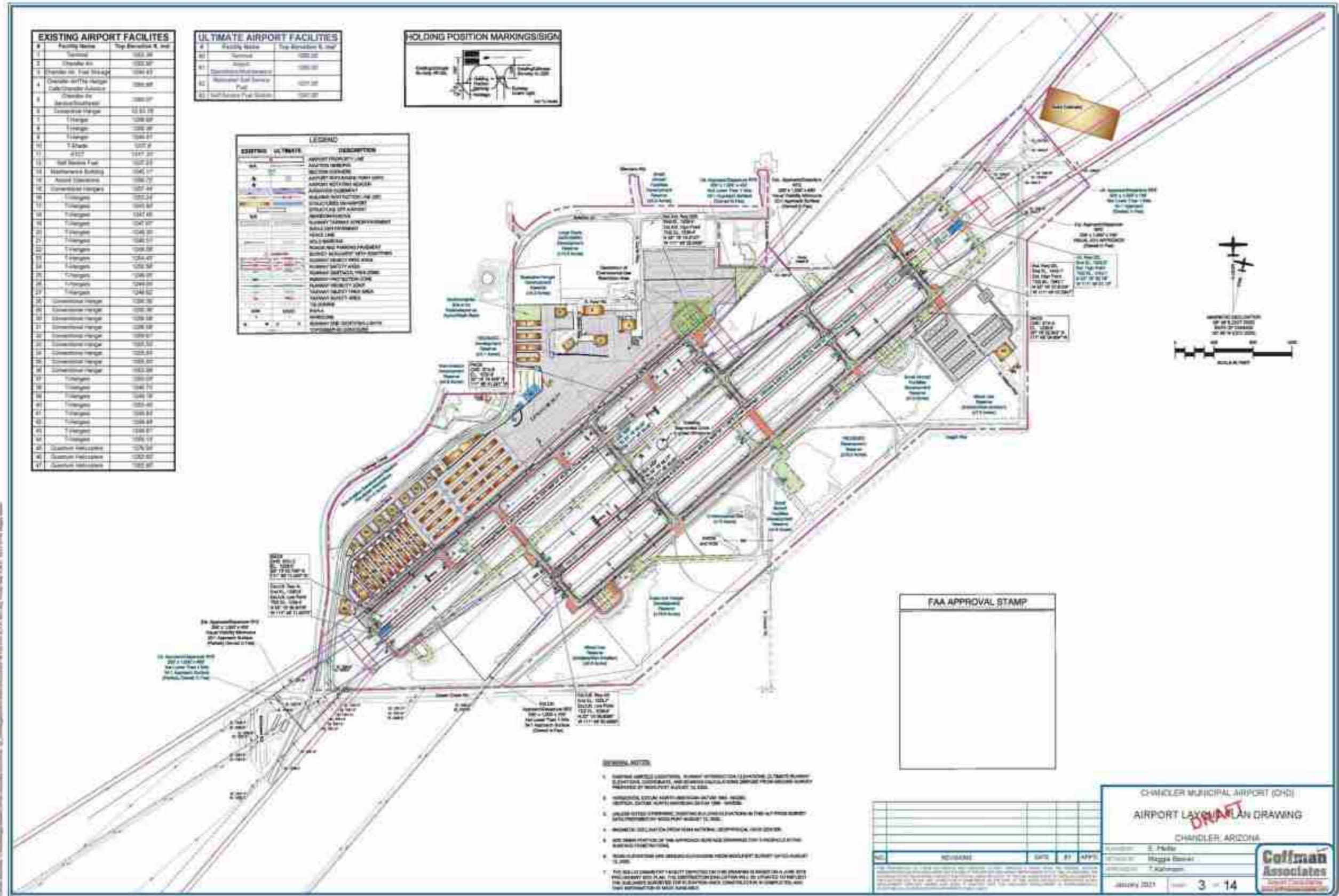
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- Some

- 



Credit: City of Chandler, AZ

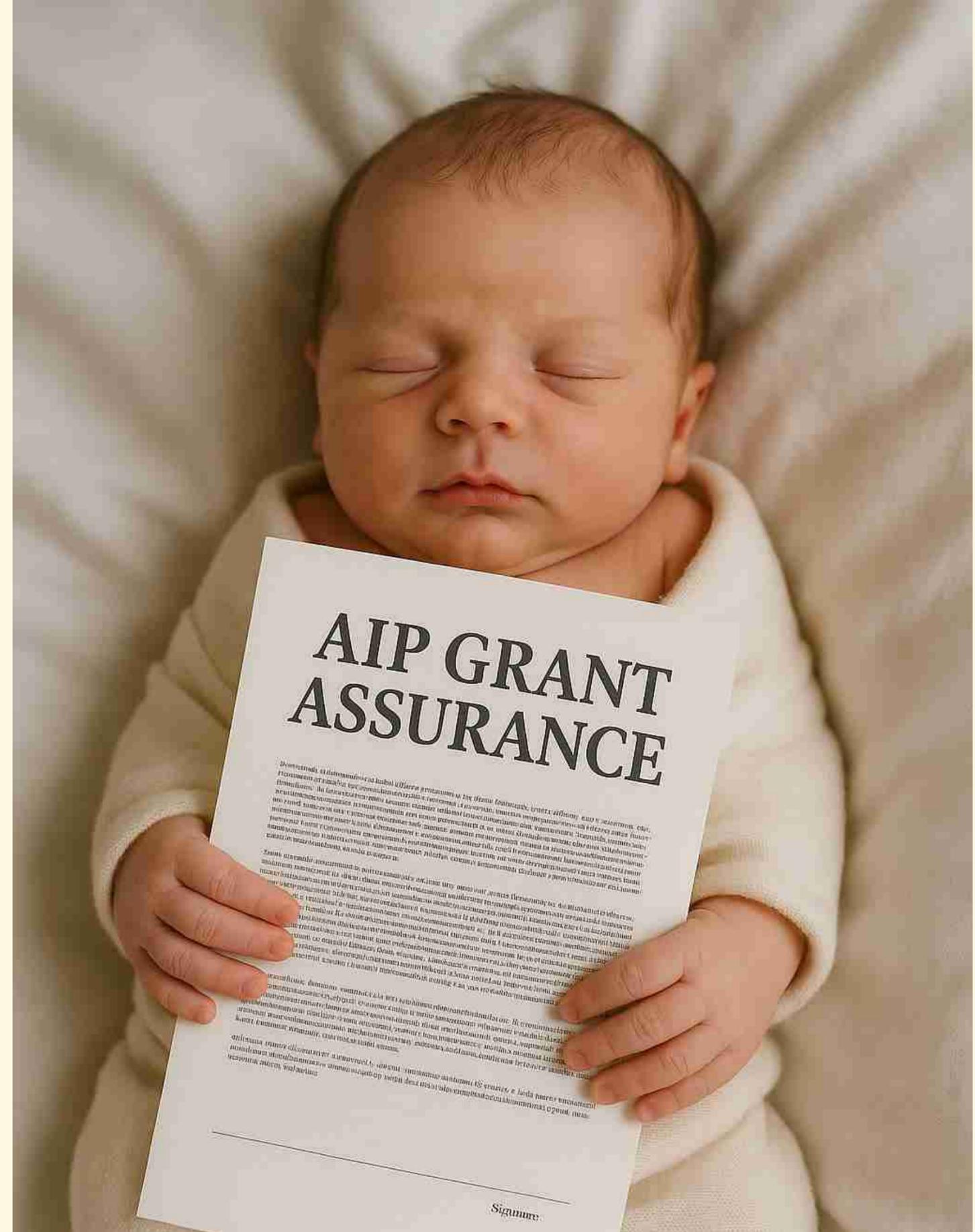
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Workshop

# Grant Assurance 40

## Access to leaded aviation fuel

- Newest grant assurance!
- Required by Section 770 of FAA Reauthorization Act of 2024
- Implemented through Notice in Federal Register (90 FR 17501)
- Maintain access to leaded aviation fuel until earlier of December 31, 2030, or unleaded fuel generally available as determined by FAA



# How are Grant Assurances enforced?

## Part 13 and Part 16 Investigations

- **Part 13 (informal) investigations**
  - May be brought by “any person”
  - Results in non-final agency decision
  - Limited formal consequences
- **Part 16 (Formal) Investigations**
  - Must be brought by person “directly and substantially affected” by alleged noncompliance
  - Multiple levels of administrative review
  - Results in judicially reviewable decision
  - Significant consequences
- Grant Assurances are not *generally* enforceable by any other/private means

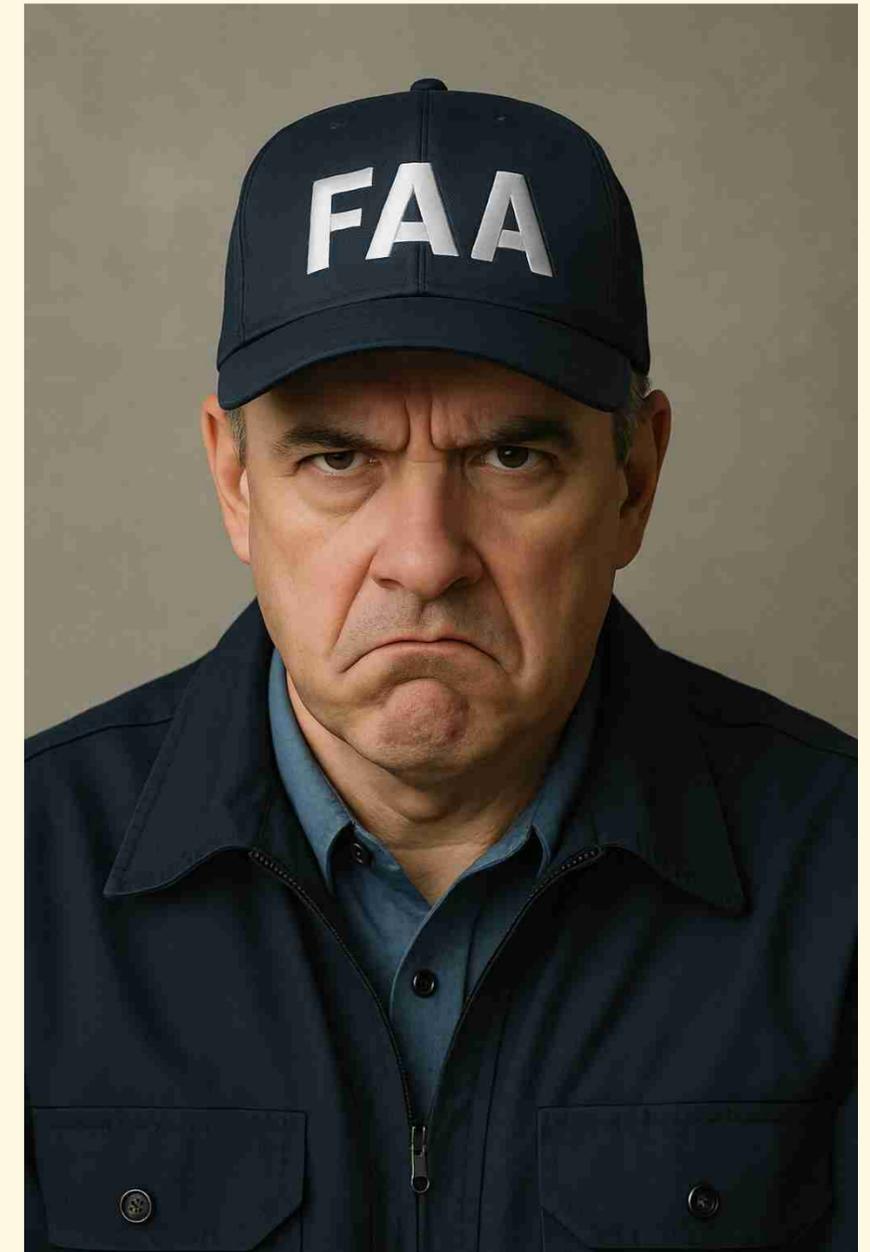


**Session #16**  
Enforcement  
of Federal  
obligations

# What are the consequences for noncompliance?

Corrective action plans and revenue diversion

- Discretionary AIP funding
- AIP entitlement funds
- Cease and desist and other orders
- Special penalties for Revenue Use violations:
  - PFC authorization
  - Non-AIP grants
  - Civil penalties
- False Claims Act and criminal penalties

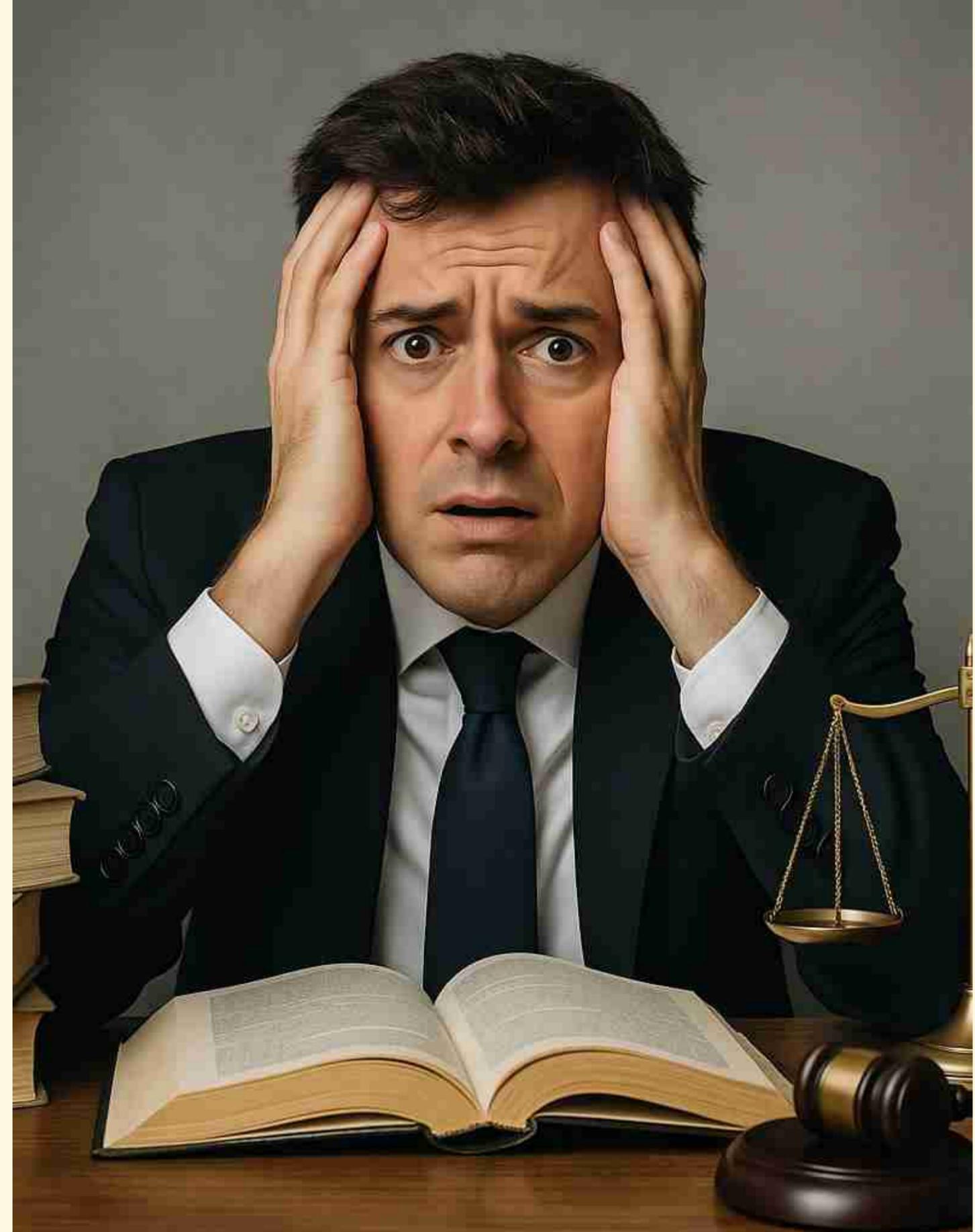


# How can I learn more?

Helpful resources and further reading

- FAA Order 5190.6B, Airport Compliance Manual
- Airport cooperative research program
  - Understanding FAA grant assurance obligations
- FAA Part 16 database
  - <https://part16.airports.faa.gov/>

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# Questions?

