

# 38TH ANNUAL

# AIRPORT LAW WORKSHOP



 KAPLAN KIRSCH ROCKWELL  
projects that keep life moving™



Introduction to Airport Law

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So now you're an airport lawyer...





# Today's agenda



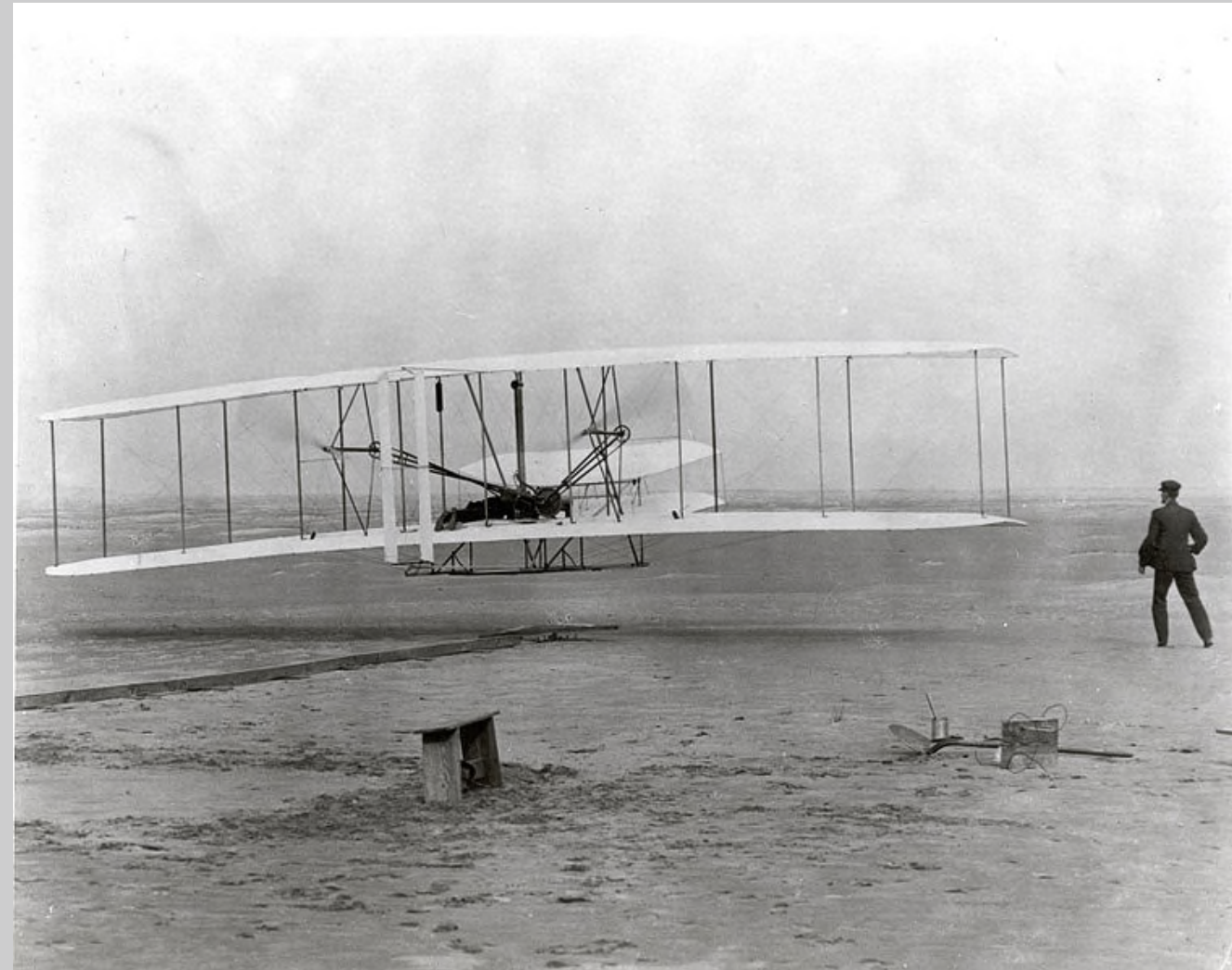
- Evolution of key airport law concepts
  - Preemption / federalism
  - Grant Assurances
  - Deed restrictions
  - Revenue diversion
- Review of key sources of law
- Review of your airport
- Who's who in the zoo?
  - Who are the stakeholders
  - Who is FAA?



# Part One: Evolution of airport law



Why does history  
even matter?



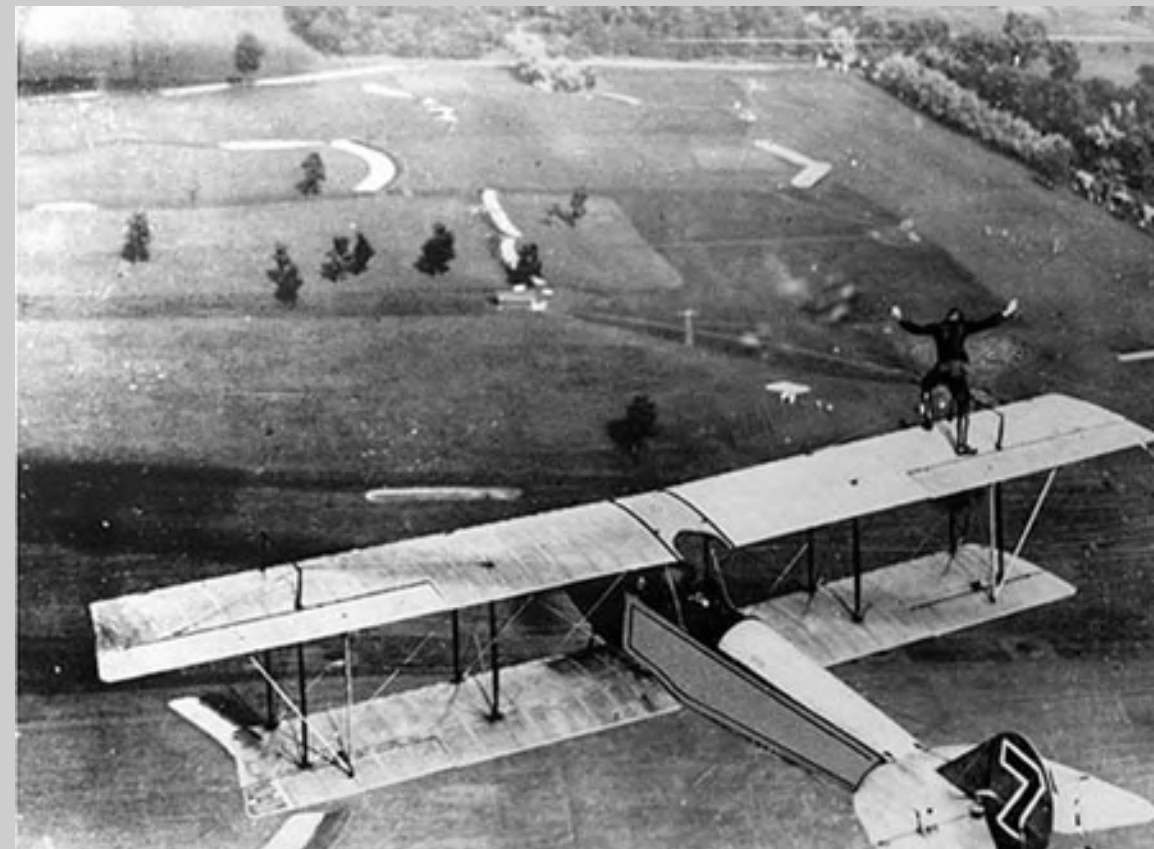


# Fundamental questions about the regulation and role of airports



- Sovereignty
- Federalism
- Proper subjects and scope of regulation
- Degree of federal funding and support
- Personal property rights

***Some of these questions are still being debated***



# Air Commerce Act of 1926



- Section 5
  - *“The Secretary ... shall grant no exclusive right for the use of any civil airway, airport ...”*
  - *“Air navigation facilities owned or operated by the United States may be made available for public use ...”*
- Section 6
  - *“... the United States has ...complete sovereignty of the airspace...”*





# Civil Aeronautics Act of 1938



- **First significant legislation consolidating power in independent body**
- Created Civil Aeronautics Authority (later Civil Aeronautics Board)
- Conferred regulatory authority over airspace, safety, air carrier certification
- Authorized grants for civil and military airfields
- *Many formative elements; some still in effect*

*“The Authority shall ... present ... recommendations as to whether the Federal Government should participate in the construction, improvement, development, operation, or maintenance of a national system of airports.”*

*Sec. 302(c).*



# Effect on federalism



*“Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.”*

*Northwest Airlines v. Minnesota, 322 U.S. 292 (1944)*

*J. Jackson, concurring*





# Surplus Property Act of 1944 (Deed restrictions)



- Transfer of excess / surplus federal property
  - 49 U.S.C. Sections 47151 – 47153
  - 14 CFR Part 155
- **Deed restrictions**
  - Public use
  - Reasonable conditions
  - No unjust discrimination
  - No exclusive rights
- Penalty for violation is reversion to U.S.
- FAA approval required to obtain “release” from restrictions

UNITED STATES OF AMERICA SURPLUS PROPERTY BOARD		Form No. 10-10003 Approved April 29, 1944															
<b>DECLARATION OF SURPLUS REAL PROPERTY</b> (In the continental United States, its Territories and possessions) to the Surplus Property Board, Washington 25, D. C.		7. DATE <b>June 10, 1946</b>	8. REPORTING AGENCY NO. <b>129</b>														
IMPORTANT—Instructions for completing this form are available from the Real Estate Division, Bureau of Yards and Docks, Washington, D. C.		9. SURPLUS PROPERTY BOARD No. <b>N. 514 88</b>	10. DISPOSAL AGENCY NO.														
1. FROM <b>Real Estate Division, Bureau of Yards and Docks, Washington, D. C.</b>		11. APPROPRIATE AREA <b>1025 Acres</b>															
2. LOCATION OF PROPERTY (attach map) <b>Near Roseland, Indian River County, Florida</b>		12. COST OF PROPERTY															
3. REPRESENTATIVES TO CONTACT <b>Commanding Officer, Naval Air Station, Vero Beach, Florida</b>		ACQUISITION	\$ <b>3,571.50</b>														
4. USE OF PROPERTY WHEN ACQUIRED <b>Agriculture Lands</b>		SETTLEMENTS	\$ <b>612,657.42</b>														
5. DIVISION OF BEST FUTURE USE <b>Airport</b>		TOTAL	\$ <b>622,228.92</b>														
6. GENERAL DESCRIPTION OF PROPERTY		13. PROCEEDS, IF APPROPRIATE, OF SALE AND TITLE OF APPROPRIATION OR SETTLEMENT CONTRACTS															
<p>1. The Navy Department hereby declares surplus its interests in, together with the improvements constructed by it, on the below described property.</p> <p>2. Fee simple title to 1025 acres of land comprising Roseland Field, an Outlying Field of the Naval Air Station, Vero Beach, Florida, was acquired by condemnation proceedings, entitled The United States of America v. 1025 acres of land, more or less, in Indian River County, Florida, et al., Civ. No. 45 Ft.P. in the United States District Court for the Southern District of Florida. A plat of the lands is attached as Exhibit "A", and a photostatic copy of the Judgment on the Declaration of Taking giving a complete legal description as Exhibit "B". The Attorney General in his opinion of 12 April 1946 found valid title to 1025 acres, Parcels Nos. 1 to 27 inclusive, vested in the United States. A photostatic copy of the letter is attached as Exhibit "C". Total cost of acquisition was \$3,571.50.</p> <p>3. Roseland Field was utilized as an outlying field of the Naval Air Station, Vero Beach, Florida. During Naval occupancy the following improvements were constructed:</p> <table border="0"> <tr> <td>Clearing, draining and construction</td> <td></td> </tr> <tr> <td>4 runways 150' x 4000'</td> <td></td> </tr> <tr> <td>2 taxiways 50' x 1000'</td> <td></td> </tr> <tr> <td>2" bituminous paving on 7" stabilized marl</td> <td>\$612,626.82</td> </tr> <tr> <td>Utility Building 16' x 36' 1-story, built-up roof</td> <td>5,173.28</td> </tr> <tr> <td>1½ miles telephone pole line</td> <td>927.62</td> </tr> <tr> <td><b>TOTAL</b></td> <td><b>612,657.62</b></td> </tr> </table>				Clearing, draining and construction		4 runways 150' x 4000'		2 taxiways 50' x 1000'		2" bituminous paving on 7" stabilized marl	\$612,626.82	Utility Building 16' x 36' 1-story, built-up roof	5,173.28	1½ miles telephone pole line	927.62	<b>TOTAL</b>	<b>612,657.62</b>
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DO NOT FILL IN		14. AUTHORIZED BY															
FORWARDED BY SPA TO:		<p><i>Andrew J. Murphy, Jr.</i> June 19, 1946 Capt. U.S.N.</p> <p><b>ANDREW J. MURPHY, JR.</b> Captain, USNA, Head, Real Estate Division</p>															
Date		Signature of authorized official															



# Federal Airport Act of 1946



- New federal grant program administered by CAA
- **Established Grant Assurances**
- Established other key features of aid program that remain in place today
  - Federal assistance with local match
  - Apportionment and discretionary funds
  - Federal approval based on inclusion in National Airport Plan

*“the airport to which the project relates will be available for public use on fair and reasonable terms and without unjust discrimination”*

*“such airport and all facilities thereon or connected therewith will be suitably operated and maintained.”*

*“the aerial approaches to such airport will be adequately cleared and protected”*

*“all project accounts and records will be kept in accordance with a standard system of accounting prescribed by the Administrator”*





# Federal Aviation Act of 1958



- No substantive changes in basic structure from Civil Aeronautics Act of 1938
- Concern regarding aviation safety based on three mid-air collisions
- **Created Federal Aviation Agency**
  - Power over safety regulation (airspace, aircraft, pilots)
  - Later renamed Federal Aviation Administration when relocated to DOT (1967)
- CAB retained jurisdiction over accident investigation and economic regulation of air carriers



# Airport and Airway Development Act of 1970



- **Created the Airport and Airway Trust Fund**
  - Funded by ticket tax, fuel tax, cargo tax, and aircraft registration fee
- Two grant programs
  - Planning Grant Program
  - Airport Development Aid Program (ADAP)





# Anti-Head Tax Act of 1973



*“Except as provided ... a State... may not levy or collect a tax ... on – (1) an individual traveling in air commerce; (2) the transportation of an individual traveling in air commerce; (3) the sale of air transportation; or (4) the gross receipts from that air commerce or transportation.”*

49 U.S.C. Sec. 40116(b)

*“Except as provided ... a State ... may levy or collect – (1) taxes ...; and (2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.”*

49 U.S.C. Sec. 40116(e)



# Airline Deregulation Act of 1978



- Deregulated airline industry
  - Removed federal control over fares, routes and market entry of new airlines
  - Expressly preempted state regulation
- Did not change FAA regulatory powers over all aspects of aviation safety
- Introduced reliance on competition

*“... a State [or] political subdivision of a State, ...may not enact or enforce a law ...related to a price, route, or service of an air carrier ... .”*

*49 U.S.C. Section  
41713(b)*



# Airport and Airway Improvement Act of 1982



- **Established the Airport Improvement Program**
- Reauthorization on five-year cycle (usually)
- Added to Grant Assurances
- **First restrictions on the use of “airport revenue”**

*“All revenues generated by the airport, if it is a public airport, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property”*

*49 U.S.C. Section 41713(b)*





# Revenue diversion



- Provision in AAIA amended and strengthened in subsequent legislation
  - Specifically prohibited uses
  - Significant penalties
- *Policy and Procedures Concerning the Use of Airport Revenue (1999) (as amended)*

*“ Revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs.”*

*Airport Compliance Manual (Order 5190.6B) at ¶ 15.13*



# Part Two: Airport law today



# Preemption today



**Aircraft in flight**  
**Aircraft certification**  
**Pilot certification**

**Express  
preemption**

**Operational restrictions**  
**Airfield regulations**  
**Certain financial matters**

**Implied / conflict preemption**

**Non operational matters**  
**Off airport land use**  
**Local health/safety**

**No preemption**





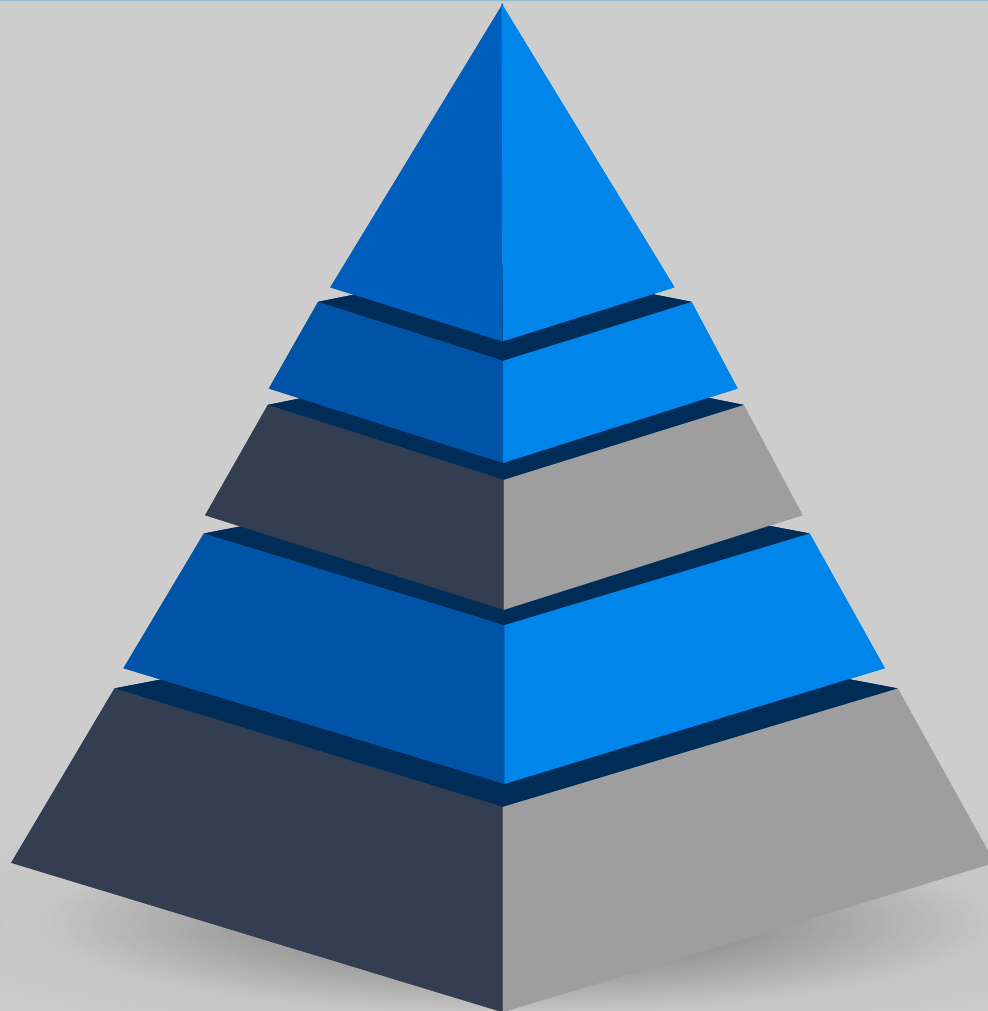
# Terminology matters



- **Airport sponsor** – recipient of grant
- **Airport operator** – entity responsible for airport operations (may or may not be the sponsor)
- **Airport proprietor** – legal entity responsible for the entire airport
- **Airport owner** – owner of the real estate
- **Host jurisdiction** – political jurisdiction(s) in which airport is located



# Hierarchy of legal sources



- **Formal federal sources**
  - Statutes (Title 49 of the U.S. Code)
  - Regulations (Title 14 of the Code of Federal Regulations)
  - Administrative Adjudications (14 C.F.R. Part 16)
- **Formal state/local sources**
  - State/local laws
  - Minimum Standards
  - Rules and Regulations
  - Health and Safety rules



- Additional Federal Obligations
  - Grant Assurances
  - Deed restrictions
  - Revenue use restrictions

# Sources of law, cont.



- Federal guidance and policy
  - FAA Orders
  - FAA Advisory Circulars
  - FAA Policy Statements
  - FAA Guidance Letters
  - FAA Standard Operating Procedures (SOPs)







Contractual, not  
regulatory

- But statutorily mandated
- Some independently set by statute

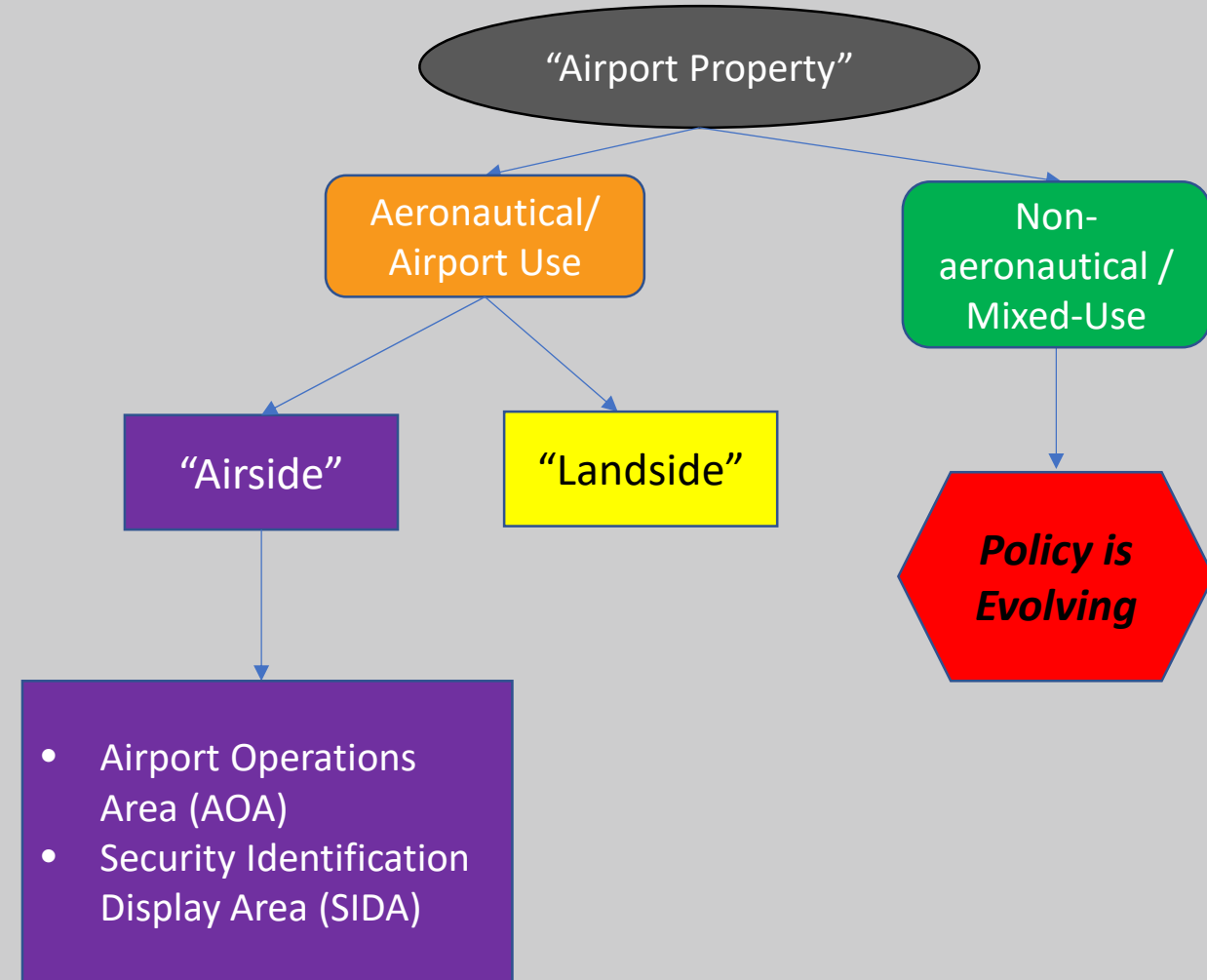
20-year  
duration

- Clock resets at each annual grant

FAA gets to  
enforce

- Prosecutor, judge, jury, executioner
- Court review only after FAA decision

# Part Three: Know your airport



# Part Four: Stakeholders and the stakes



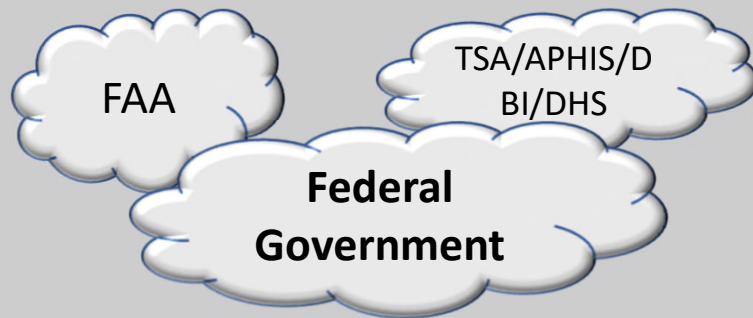


# Part Four: Stakeholders and the stakes





# Federal regulators



## ➤ FAA

- Compliance/oversight
- Part 139 regulations (commercial airports)
- Grant Assurances
- Part 13/Part 16 process
- Safety
- Land use/ALPs
- Revenue Use Policy

## ➤ TSA/APHIS/FBI/DHS

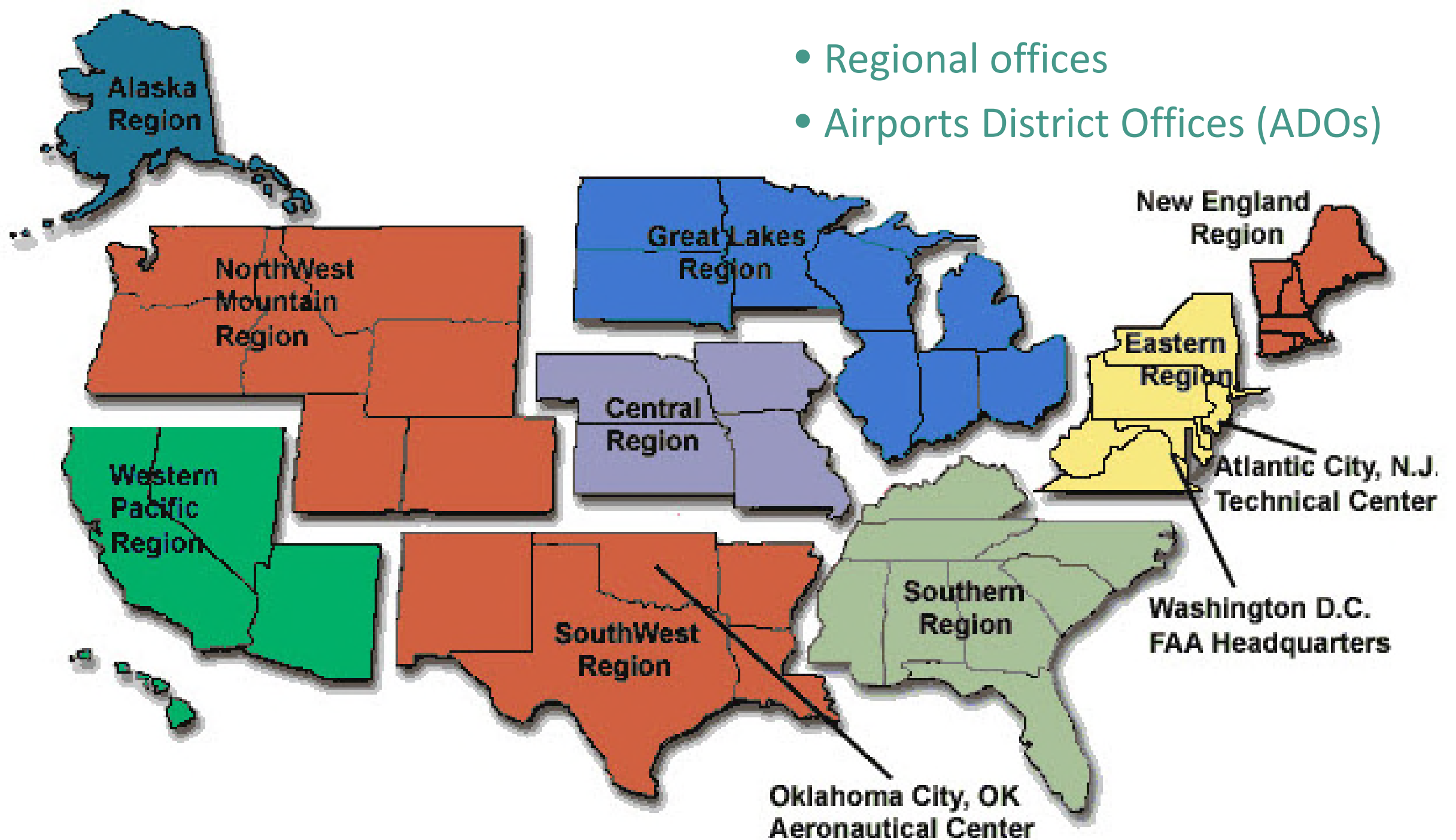
# Know your FAA



- **FAA Airports Division (ARP)**
  - Airport safety, inspections, standards, airport design, construction, and operation
  - Airport Improvement Program (AIP) grants
  - Passenger facility charges (PFCs) approvals
  - National airport planning and environmental requirements
  - Policies on rates and charges, compliance with grant assurances, and privatization



- Regional offices
- Airports District Offices (ADOs)

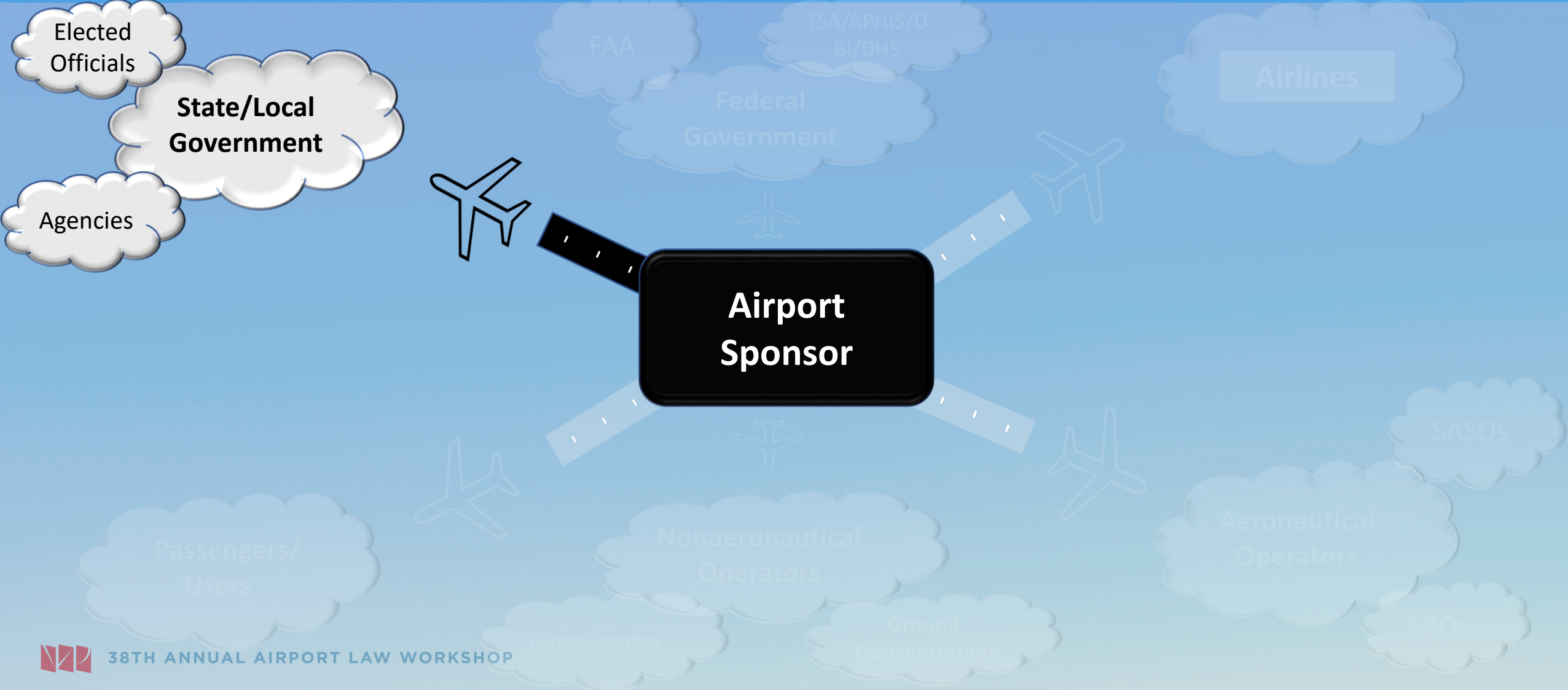


# Part Four: Stakeholders and the stakes

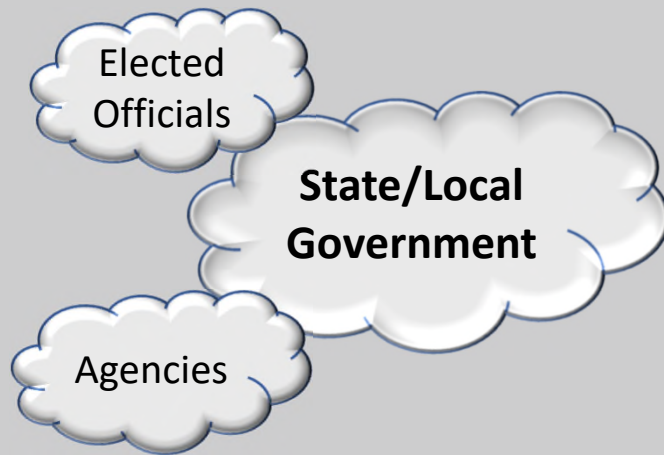




# Part Four: Stakeholders and the stakes



# State and local government



- State and local laws that regulates airports
  - Environmental regulation at state/local level
  - Preemption
  - State constitutional issues
  - Eminent domain
  - Zoning
- Political ramifications
  - Who controls the airport?

# Part Four: Stakeholders and the stakes





# Part Four: Stakeholders and the stakes







- Compliance with key Grant Assurances
  - Grant Assurance #5 – rights and powers
  - Grant Assurance #22 – economic nondiscrimination
  - Grant Assurance #23 – exclusive rights
  - Grant Assurance #24 – fee and rental structure
- Airline use and lease agreements
- Rates by ordinance
- Capital projects/capital control
- PFCs

# Part Four: Stakeholders and the stakes



# Part Four: Stakeholders and the stakes



# Aeronautical operators



- Compliance with Grant Assurances
  - Grant Assurance #5 – rights and powers
  - Grant Assurance #22 – economic nondiscrimination
  - Grant Assurance #23 – exclusive rights
  - Grant Assurance #24 – fee and rental structure
- Fixed-Base Operators (FBOs) and Specialized Aeronautical Service Operators (SASOs)
  - Fueling
- Minimum Standards
- Hangar reversionary rights
- Aeronautical vs. nonaeronautical use



# Part Four: Stakeholders and the stakes



# Part Four: Stakeholders and the stakes



# Non-aeronautical tenants



- Concessionaires
  - RFPs, master concessionaires, MAGs
  - ACDBE compliance
- Ground transportation providers
  - Rental car companies (RACs)
  - Ridesharing
  - Nontraditional models (e.g., Turo)
  - CFCs and privilege/access fees
- Other nonaeronautical development



# Part Four: Stakeholders and the stakes





# Part Four: Stakeholders and the stakes






- First Amendment issues
  - picketing, advertising
- Rules and Regulations
  - audience = everyone
- Employees

# Never a dull moment...



- Return of air travel and continued operations
- Renegotiation of agreements with airlines, concessionaires, other tenants
- Non-aeronautical development
- Bankruptcy and restructurings
- Development projects
- Angry neighbors



U.S. Department of Transportation  
**Federal Aviation Administration**

Office of Civil Rights

**Airport Nondiscrimination Compliance**  
**Developing a Title VI Plan**

**FAA wants answers on 'concerns' about 'diversion' of airport money**

By **Peter Dujardin** • Contact Reporter  
Daily Press





# Questions?

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