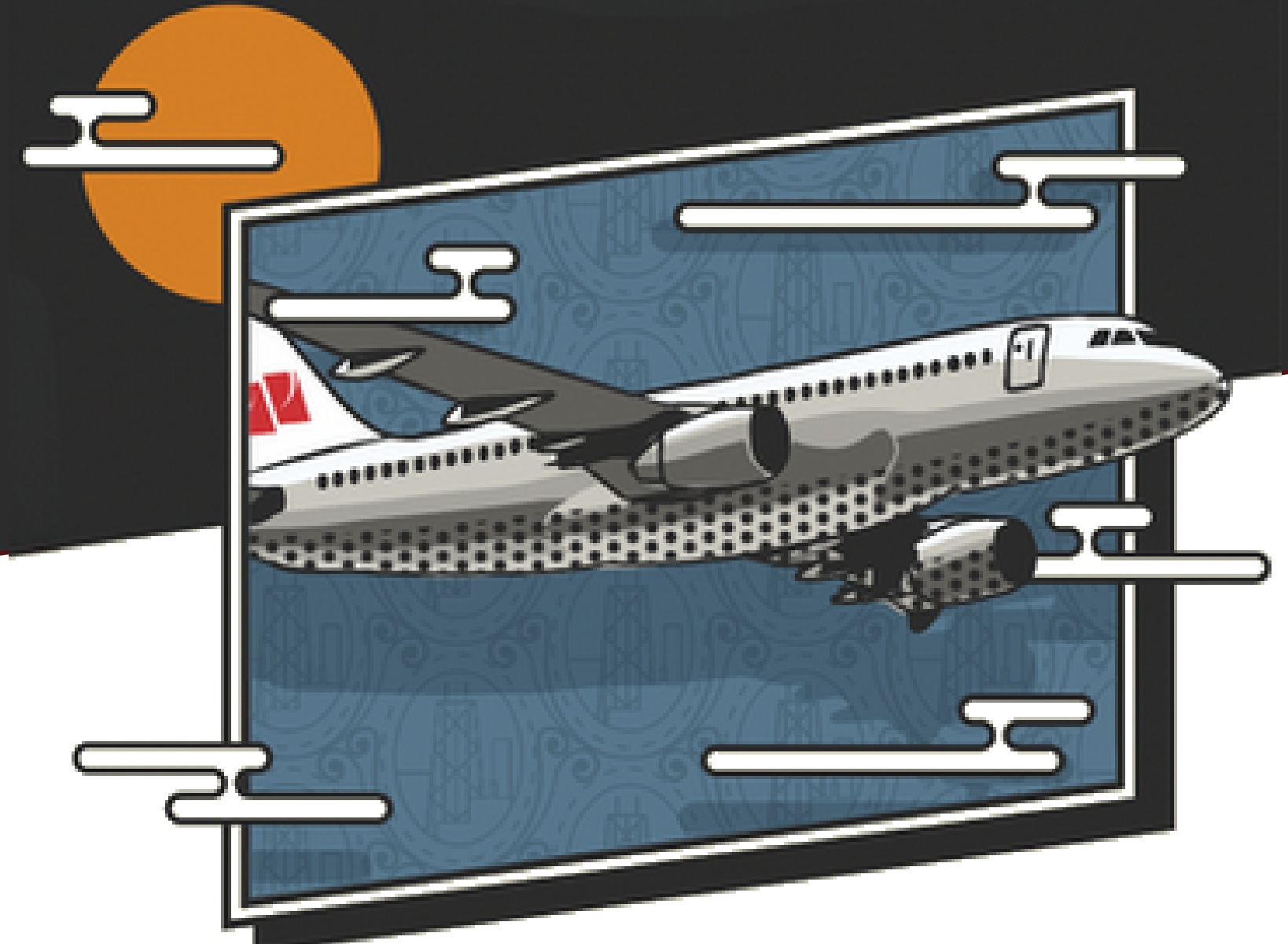


40th Annual
Airport Law Workshop



Session #16

Off-Airport Land Use Regulation

Strategies for Compatible Land Use Planning and Development

Speakers

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Roadmap



- ✦ Importance of compatible land use
- ✦ Regulations and guidance
- ✦ Who is responsible
- ✦ Tools and strategies

Airport compatible land use

Definition

“those uses that can coexist with a nearby airport without constraining the safe and efficient operation of the airport or exposing people living or working nearby to potential negative environmental or safety impacts.”

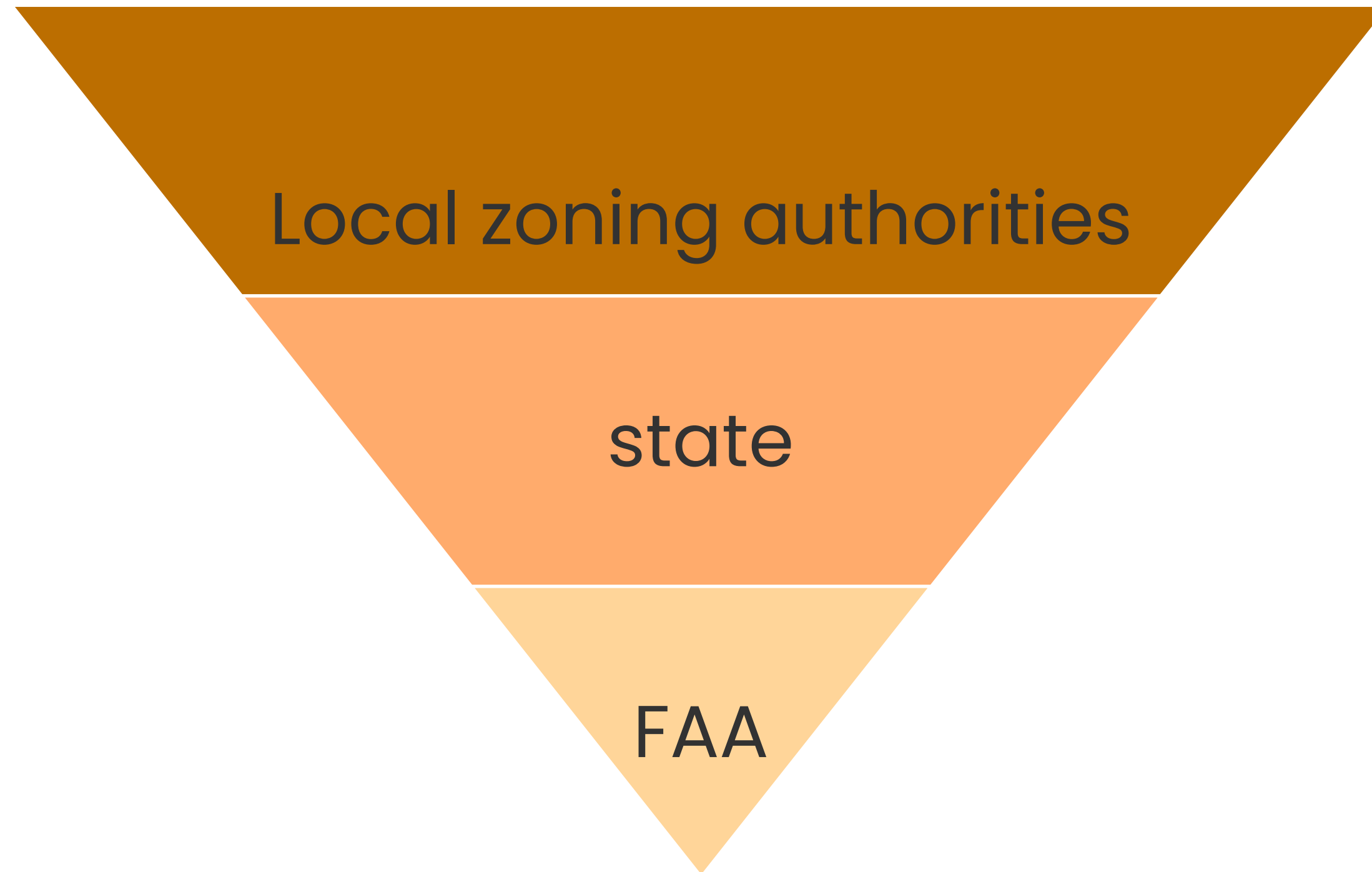
AC No. 150/5190-4b (2022)

The importance of compatible off-airport land use

- Preserve airport operations
- Protect approach and departure paths
- Protect communities
- Avoid hazardous wildlife attractants
- Reduce mitigation costs
- Minimize potential for litigation



Regulators of off-airport land use



Compatible land use

Grant Assurances

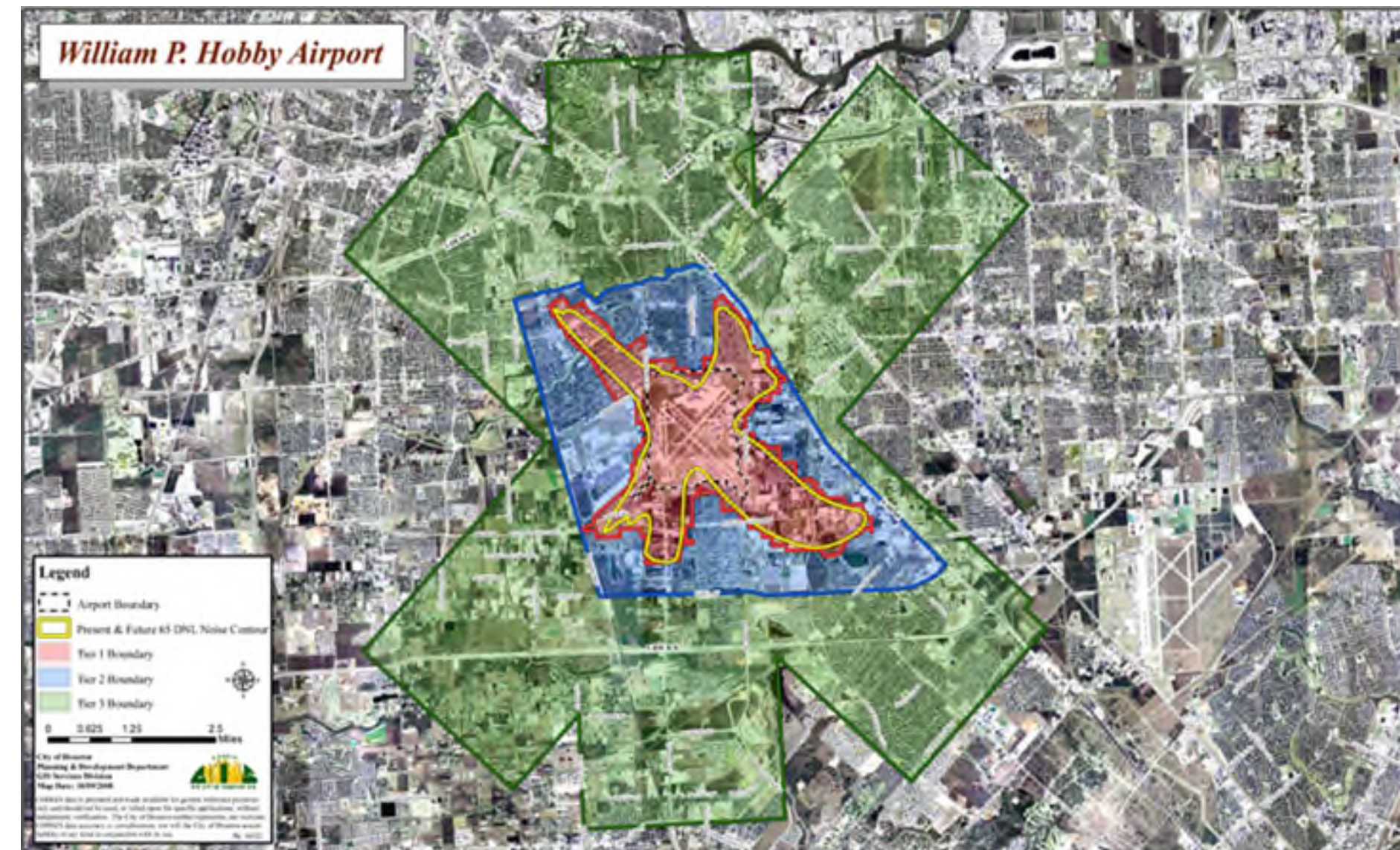
Assurance 6: Consistency with Local Plans

The project is reasonably consistent with plans . . . of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

Assurance 21: Compatible Land Use

Sponsor will take appropriate action, . . . including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations[.]

....



Compatible land use

AC 150/5190-4b (2022)

Coordinating airport and local land use planning

Airspace and obstructions

Wildlife and bird attractants

Runway protection zones

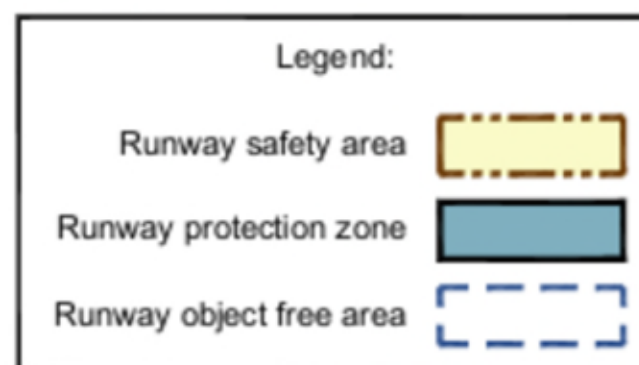
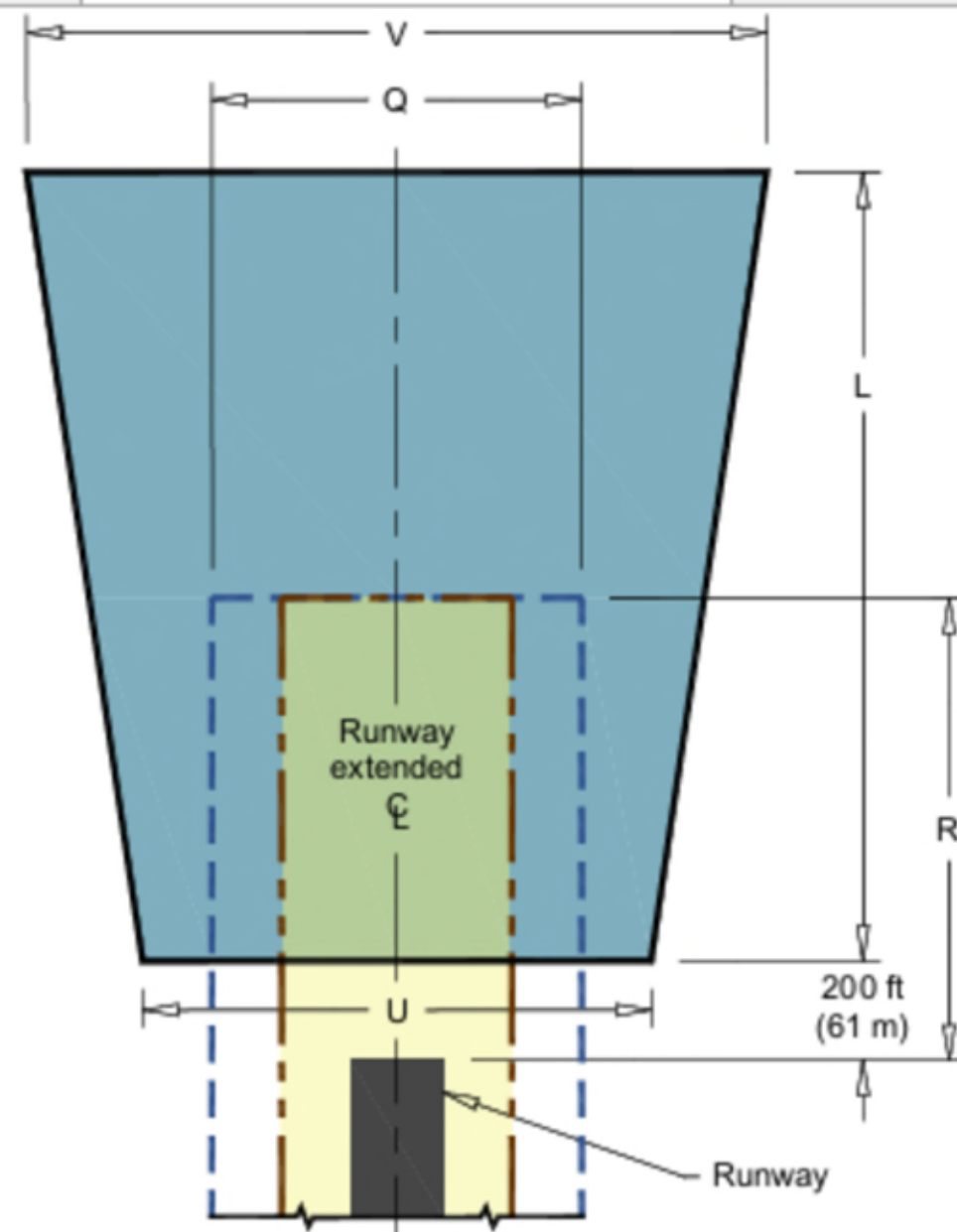
Development density

Noise / incompatible uses [*Session 10*]



Compatible Land Use

Runway Protection Zone (RPZ)



- Purpose: Enhance protection of people and property on the ground
- Goal: Clear RPZ of incompatible objects and activities
- Optimal method:
 - Airport owner control of RPZ
 - Compatible land use principles implementation
- Airport owner control vs. zoning ordinances

Compatible land use

Wildlife hazards

14 CFR 139.337

Airport sponsors “must take immediate action to alleviate wildlife hazards whenever they are detected.”

- Wildlife Hazard Assessment
- Wildlife Hazard Management Plan

Failure to provide notice a liability issue

Critical to secure federal/state depredation permits

AC No . 150/5200-33C (2021)

Hazardous Wildlife Attractants On or Near Airports

One way to comply with Part 139

Guidance for land uses having potential to attract wildlife on or near airports

For airport sponsors, LU planners, and developers



Hazards

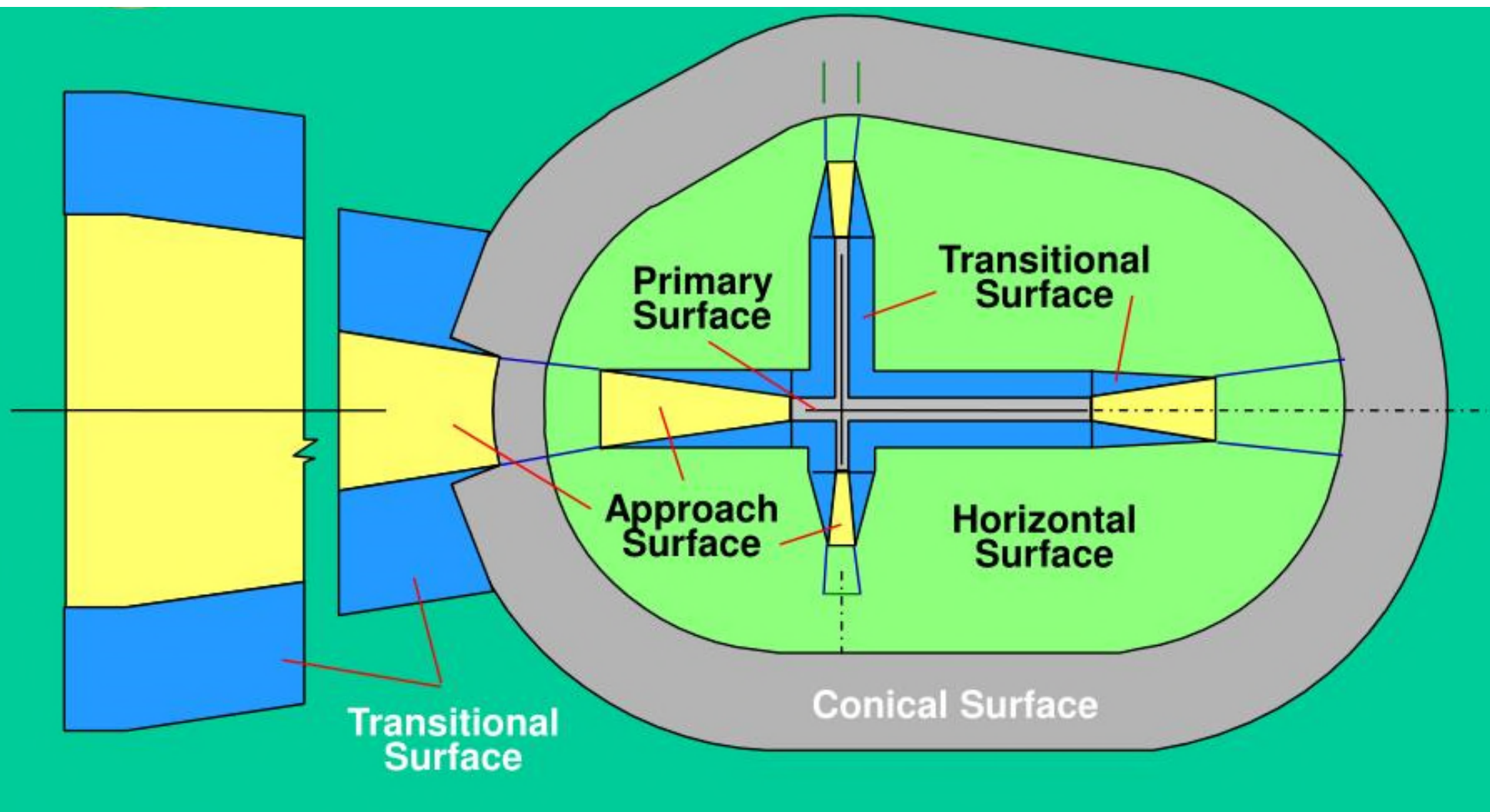
Assurance 20: Hazard Removal and Mitigation

Sponsor will take appropriate action to assure that such terminal airspace . . . will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

14 C.F.R. Part 77: Safe, Efficient Use, and Preservation of the Navigable Airspace



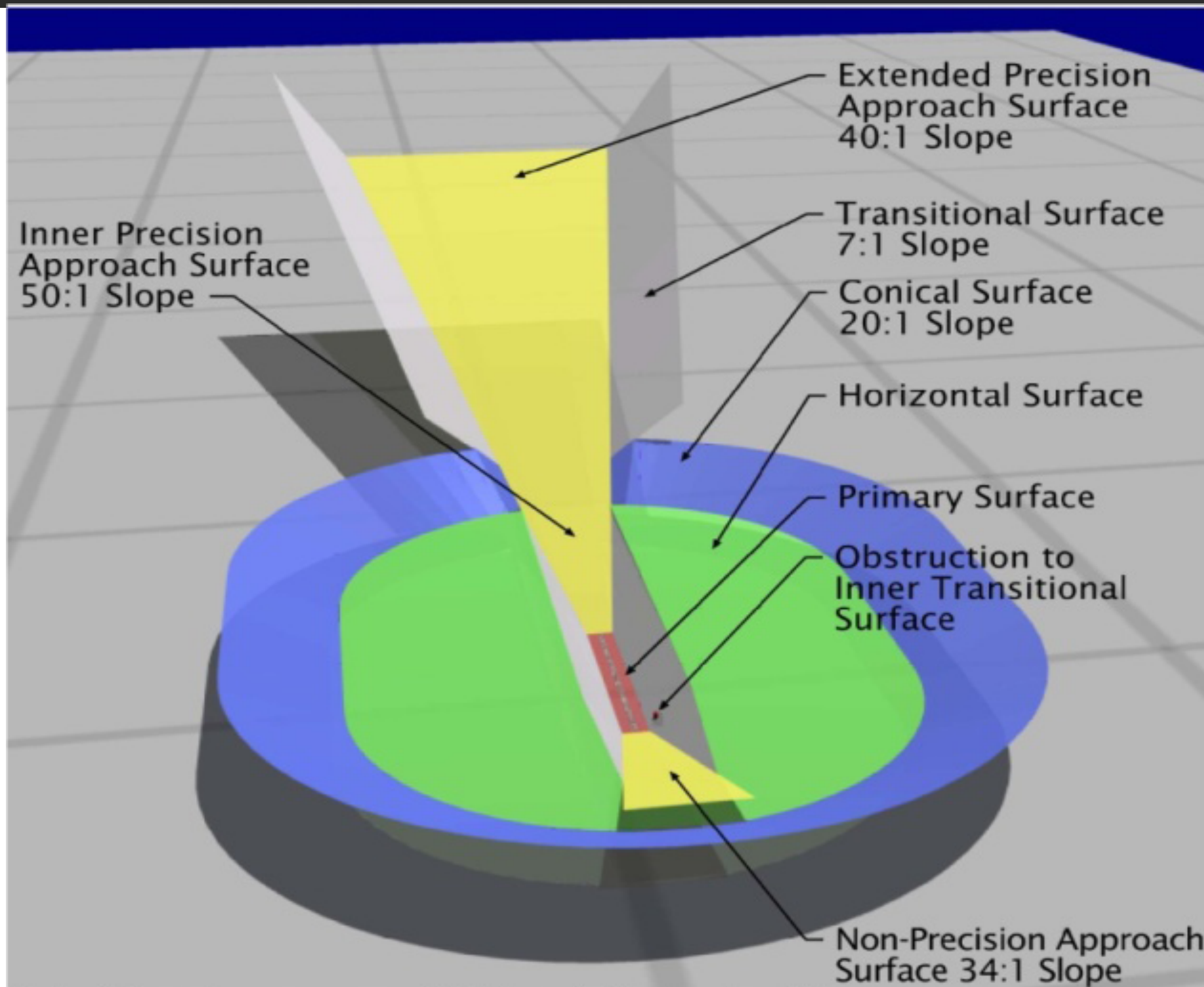
Part 77 regulations



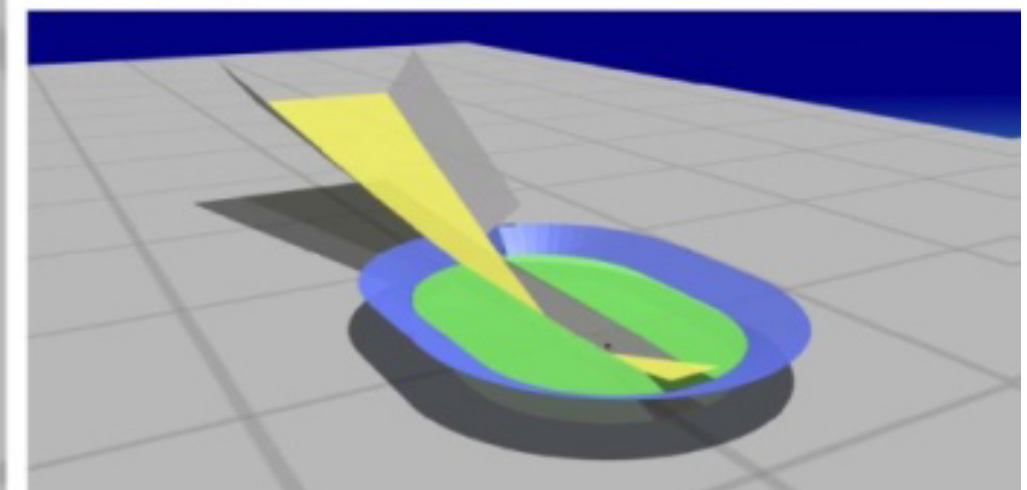
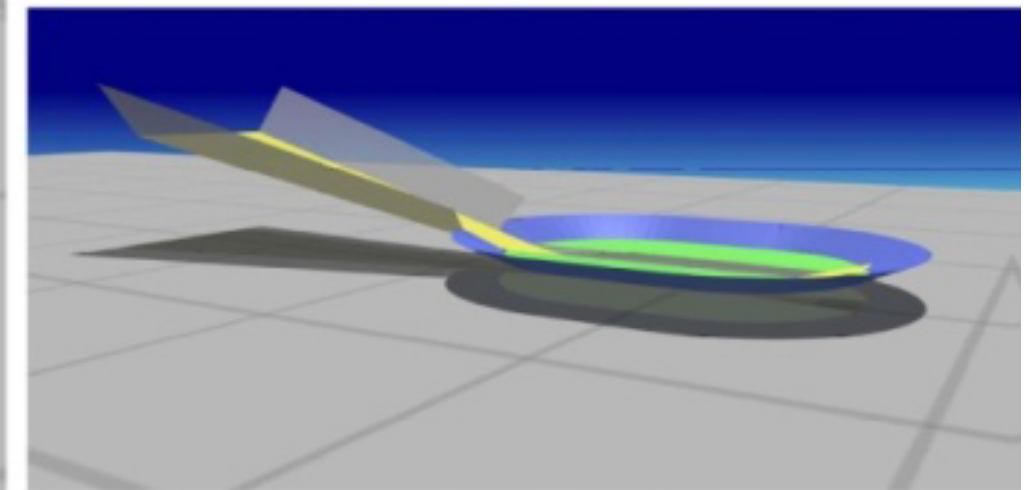
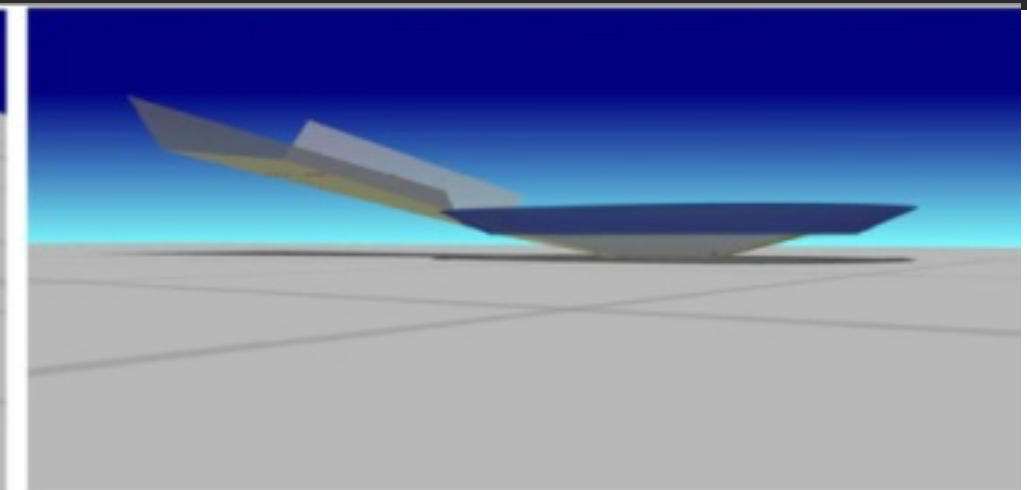
- Purpose
 - Identify penetrations of airspace surfaces (**obstructions**)
 - Determine which obstructions are **hazards**
 - Resolve hazards
- Focus is on “imaginary surfaces”
- Notice required for construction or alteration if:
 - >200 feet above ground level; or
 - Within 20,000 feet of airport and heights exceed Part 77 surfaces
- Applies to both on- or off-airport construction and alterations

Part 77

Surfaces



Vertical dimensions exaggerated (x10) to clarify elevation difference.



Part 77

Obstruction evaluation / airport
airspace analysis (OE/AAA)



- Applicants file notice with FAA
 - Form 7460-1 (Notice of Proposed Construction or Alteration)
 - <https://oeaaa.faa.gov>
- Initial obstruction analysis
 - Based on Part 77 imaginary surfaces
- If the structure is an obstruction, FAA conducts an aeronautical study
 - Examine all impacts to airports and aeronautical facilities
- Determination of Hazard/No Hazard

Part 77

Determinations

- FAA issues a Determination of Hazard or Determination of No Hazard
- **FAA Determinations have no legal effect**
 - Airport sponsors must rely on local zoning rules to prevent potential hazards
 - If sponsor is not the zoning authority, it must take “appropriate action, to the extent reasonable”

Airspace Hazards

Relevant orders and guidance

Order JO 7400.2 – Procedures for Handling Airspace Matters

AC 70/7460-1M – Obstruction Marking and Lighting

AC 150/5190-4A – A Model Zoning Ordinance to Limit Height of Objects Around Airports



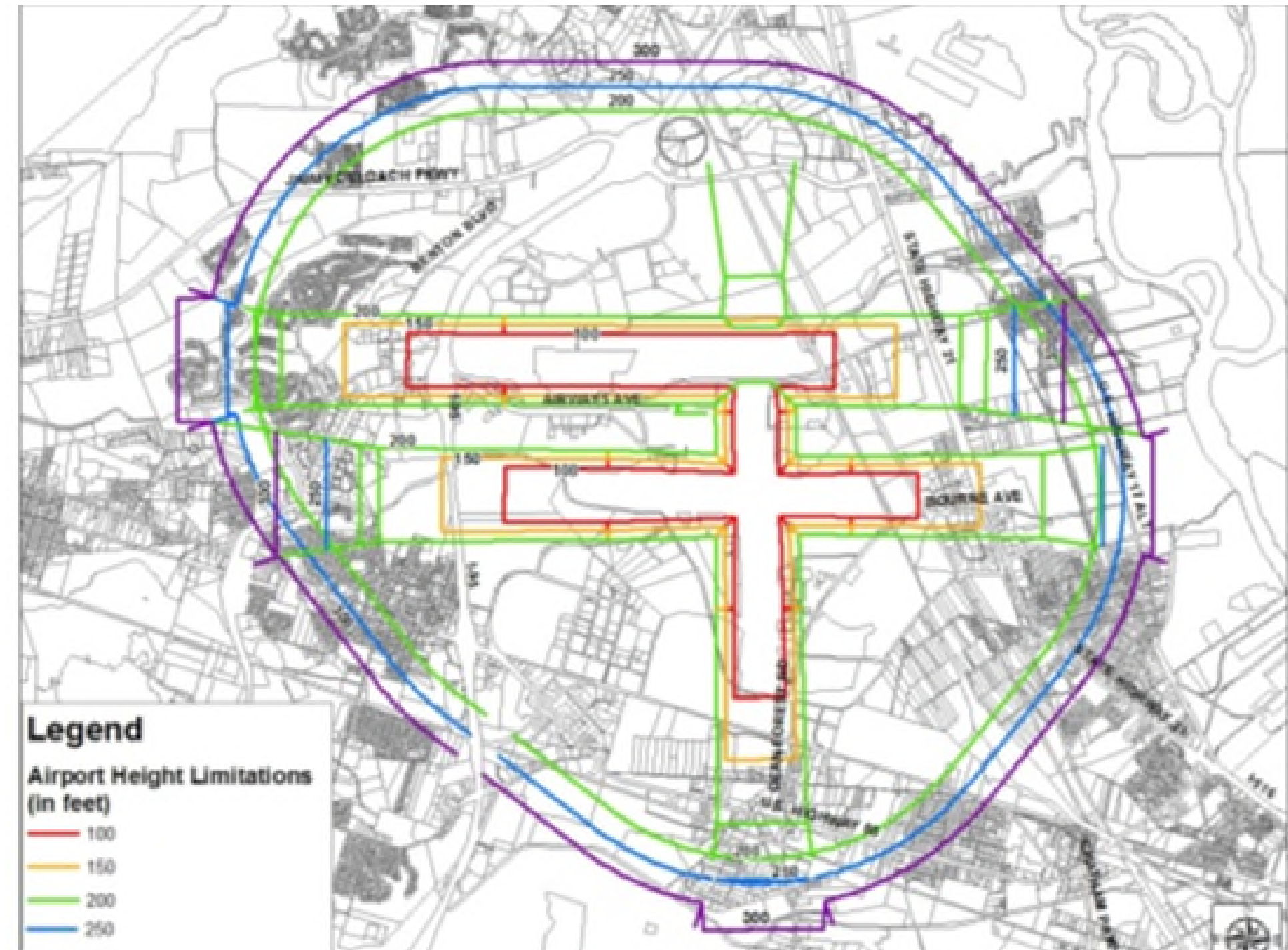
State law and policy

- State-wide airport land use planning and coordination with localities
- Aviation departments and zoning commissions
- Empower or require local airport zoning measures
- State zoning measures if local zoning is inadequate
- “Tall Towers Acts”
- Most states have state-level airport zoning laws



Local government zoning measures

- Regulate the height of structures and trees near an airport
- Establish compatible land uses surrounding an airport
- Restrict incompatible land uses near an airport
- Achieve consistency with Airport Master Plans



Airport Height Limiting Zone (up to 300ft shown), Figure 7.2-1
Savannah Code of Ordinances, Ch. 3, Art. 7.0, Sec. 7.2 Airport Overlay District

Off-airport compatibility planning obligations

Who has them?



Airport Sponsors

GA 6, 20, 21 Part 77 State Law Zoning Code



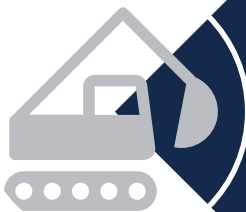
Zoning Authorities

State Law (if any)



Municipalities

State Law (if any) Zoning Code



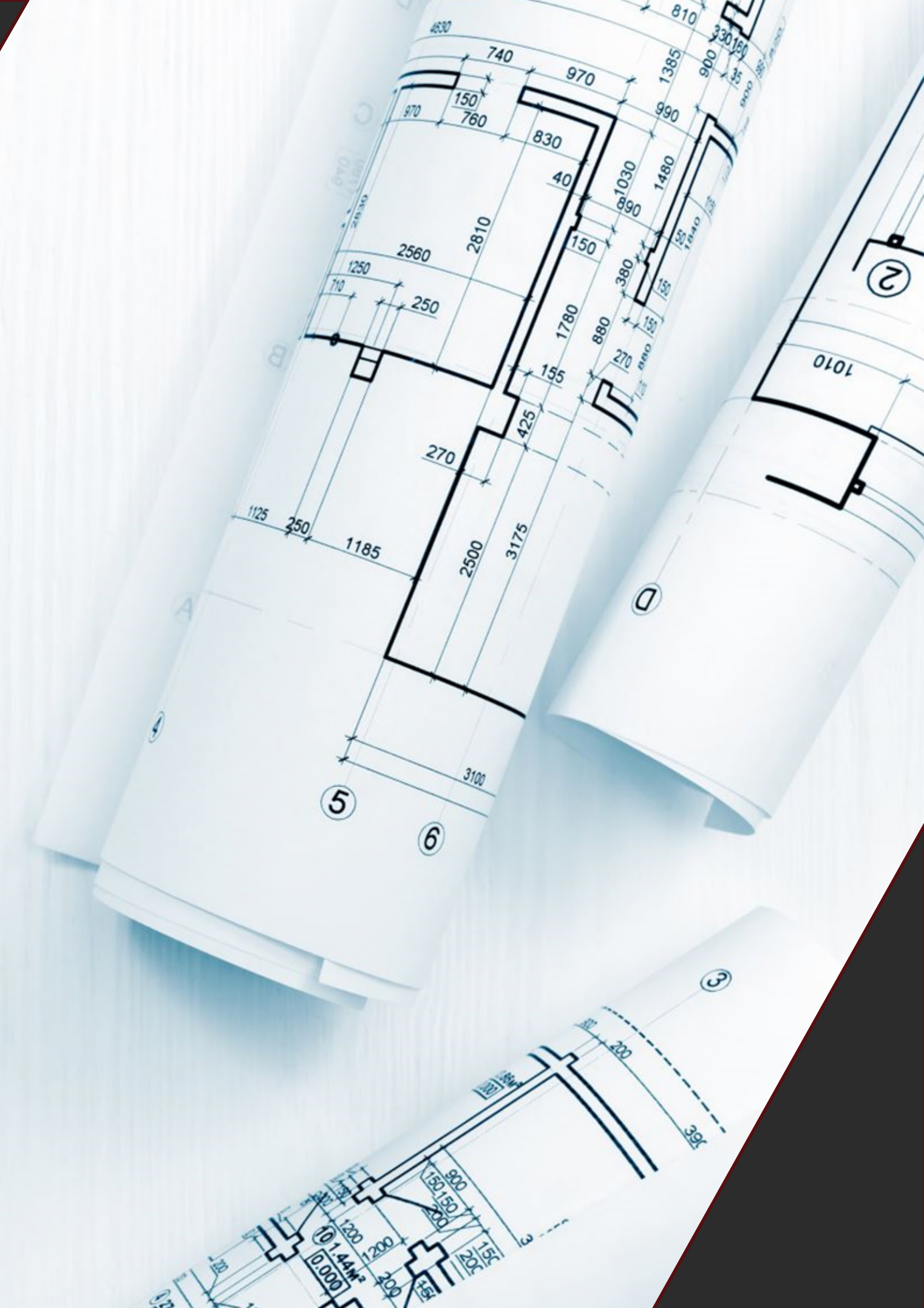
Builders/Individuals/Utilities

Part 77 Notice State Law Zoning Code

Tools and strategies

For compatible land use

- Coordination among interested parties
- Comprehensive plans
- Zoning regulations
- Subdivision regulations
- Building and housing codes
- Capital improvement programming
- Map regulations
- Infrastructure planning and siting
- Growth policies planning
- Geographic Information Systems (GIS)



Questions to consider

For off-airport planning projects

- ✓ Are there any obstructions?
- ✓ Who owns the land?
- ✓ Location and the applicable jurisdictions?
- ✓ What is the zoning?
- ✓ Any other relevant land use laws or policies?
- ✓ Are there gaps in the regulations?



Tips for attorneys

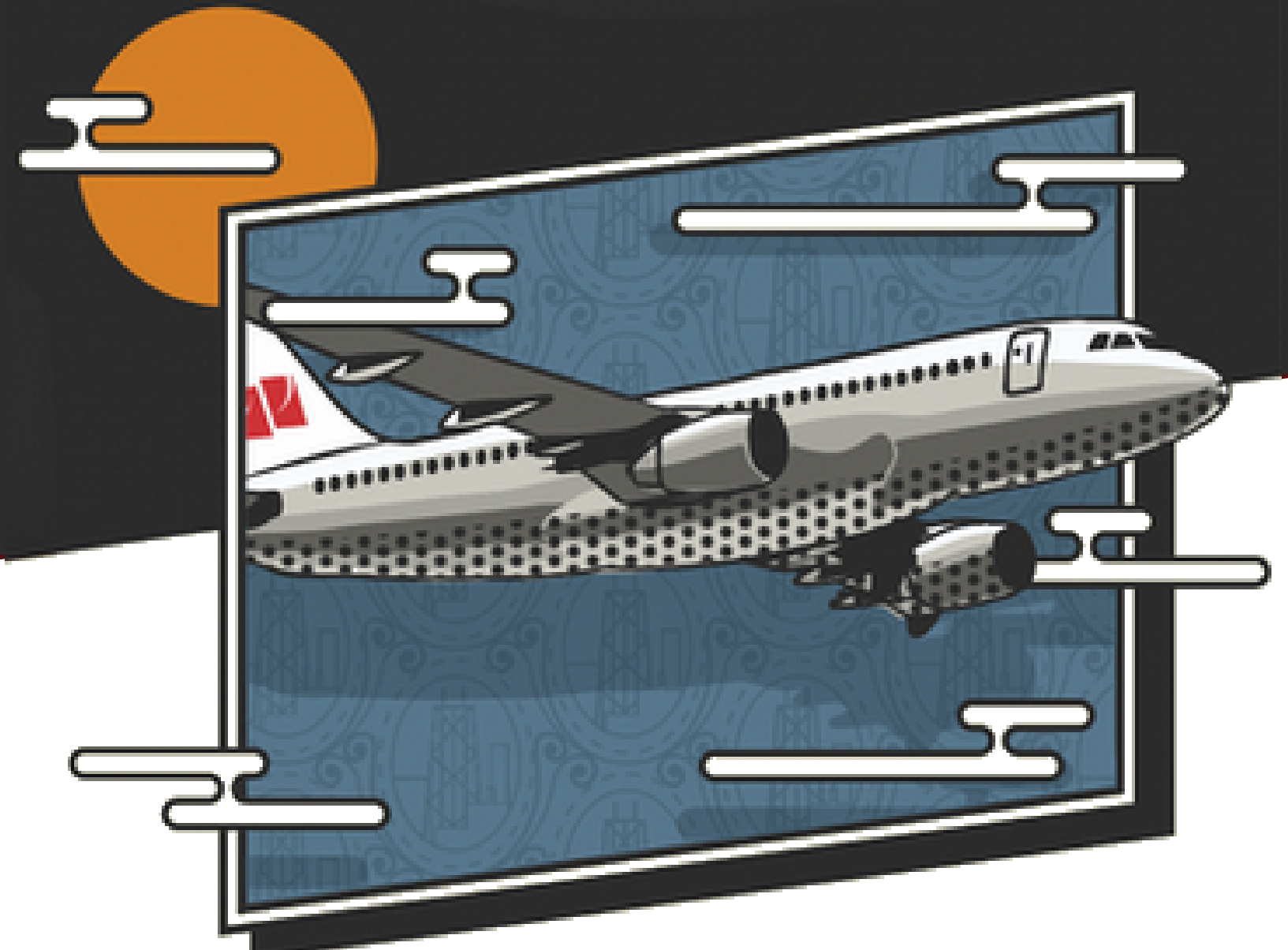
Counseling on off-airport planning

- Airport versus municipal law: You are the Expert!
- Pay attention to zoning
- Understand unique Part 77 issues:
 - FAA review process will not always protect airport
 - FAA determinations have *no legal effect*
 - Airports must rely on local zoning rules to prevent potential hazards
 - Airport sponsor must resolve hazardss
- Gaps left by Part 77:
 - RPZs
 - Non-Part 77 Surfaces

OFF-AIRPORT REMINDERS

- ✓ Compatible Use
- ✓ Zoning
- ✓ Part 77

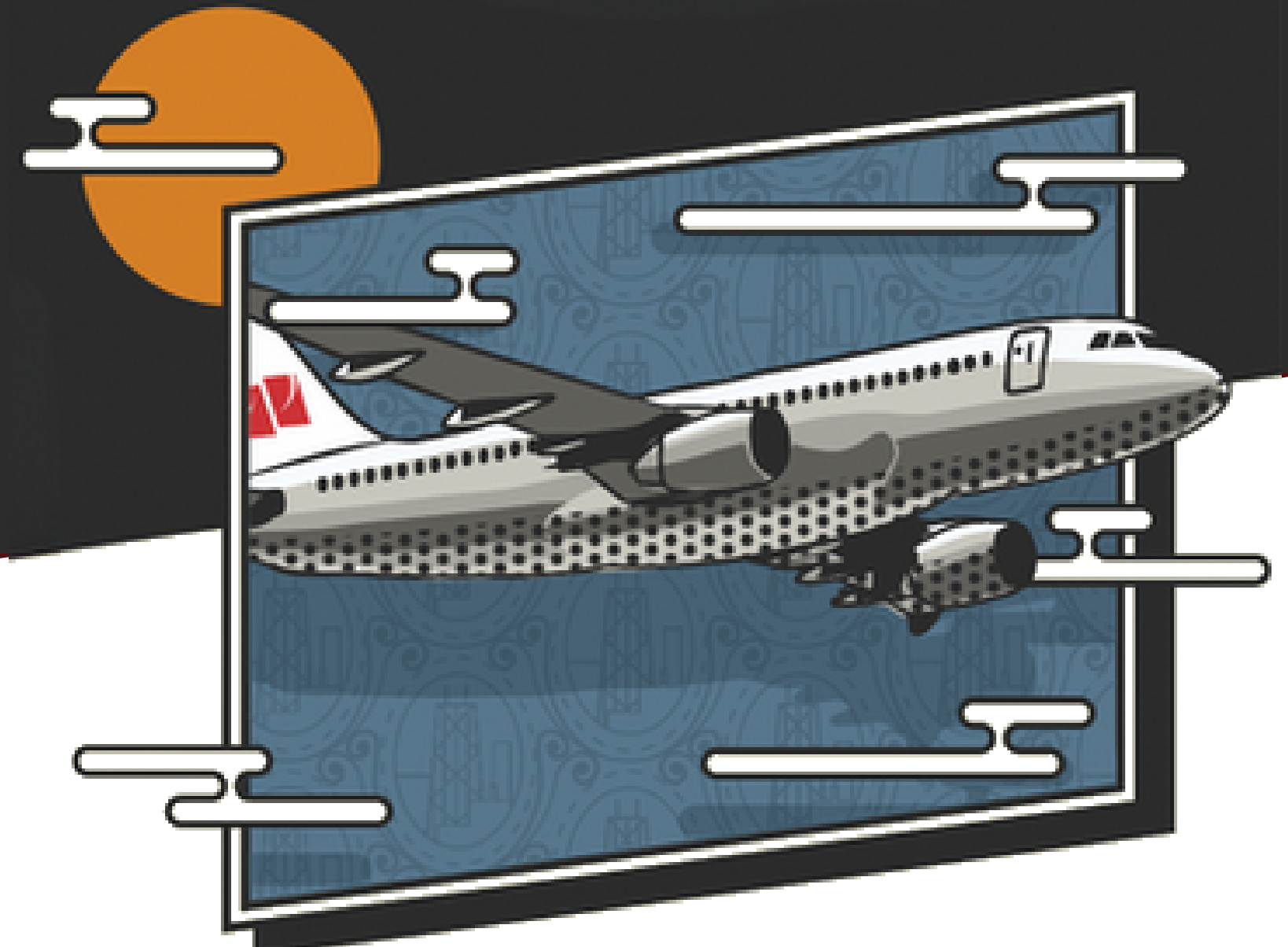
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QUESTIONS?



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THANK YOU!