

41st Annual AAAE
Airport Law Workshop
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Session #2

Federal Law Affecting Airports (and Some State Laws)



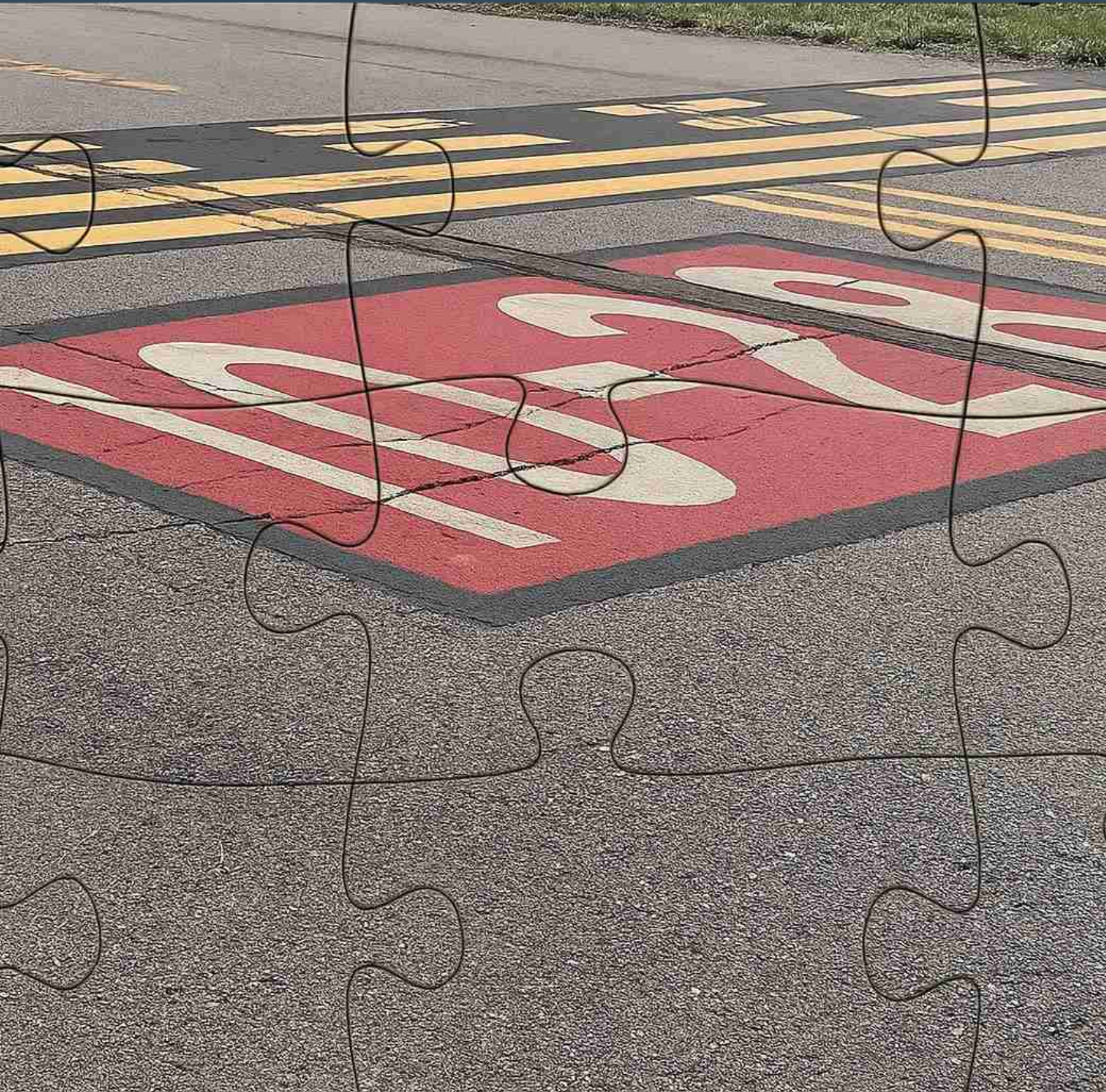
Speaker

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Sources of law governing airports



- U.S. Constitution
- Federal law
 - Title 49
 - Generally applicable laws
- State constitutions and laws
 - States have laws specific to airports
 - Provide for creation of airports or airport governing bodies and regulate them
 - Generally applicable laws
- Local law



U.S. Constitution and Bill of Rights



► 14th Amendment

- Fourteenth - prohibits deprivation of life, liberty, pursuit of happiness without due process of law
 - Equal protection

Also formally incorporated:

- First - speech, free exercise, free press, free assembly, petition the government
- Second - keep and bear arms
- Fourth - search and seizure
- Fifth - self-incrimination

▷ Supremacy Clause

- Article 6, Clause 2
- Federal laws and treaties are the “supreme law of the land” and the “Judges in every State shall be bound thereby”
- Federal preemption
 - Express preemption
 - Federal law expressly provides that state law on the same topic is preempted
 - Airline Deregulation Act
 - FAA Reauthorization Act(s)
 - Implied preemption
 - Field preemption – Congress showed an intention to occupy a field of regulation
 - Conflict preemption – it is impossible to comply with the federal and lower law or a state law is an obstacle to the “full purposes and objectives of Congress.”

49 U.S.C. - Transportation



Subtitle VII - Aviation Programs

Part A: Air commerce and safety

- Aircraft, air carriers
- Aviation safety (TSA provisions)

Part B: Airport development and noise

- Grants
- Minority and disadvantaged business participation
- Environmental review & noise

Part C: Financing

- Airport and airway trust fund & funding

Part D: Public airports

Part E: Miscellaneous (Buy American)



TSA authority under Subtitle VII



- Aviation and Transportation Security Act
 - ❖ 49 U.S.C. § 114
- Airport Security
 - ❖ 49 U.S.C. § 44901
 - ❖ 49 CFR Subchapter C
- Sensitive Security Information
 - ❖ 49 U.S.C. § 40119
- Passengers, baggage, and employees
- Counter-Unmanned Aircraft Systems (drones)



FAA authority under Subtitle VII

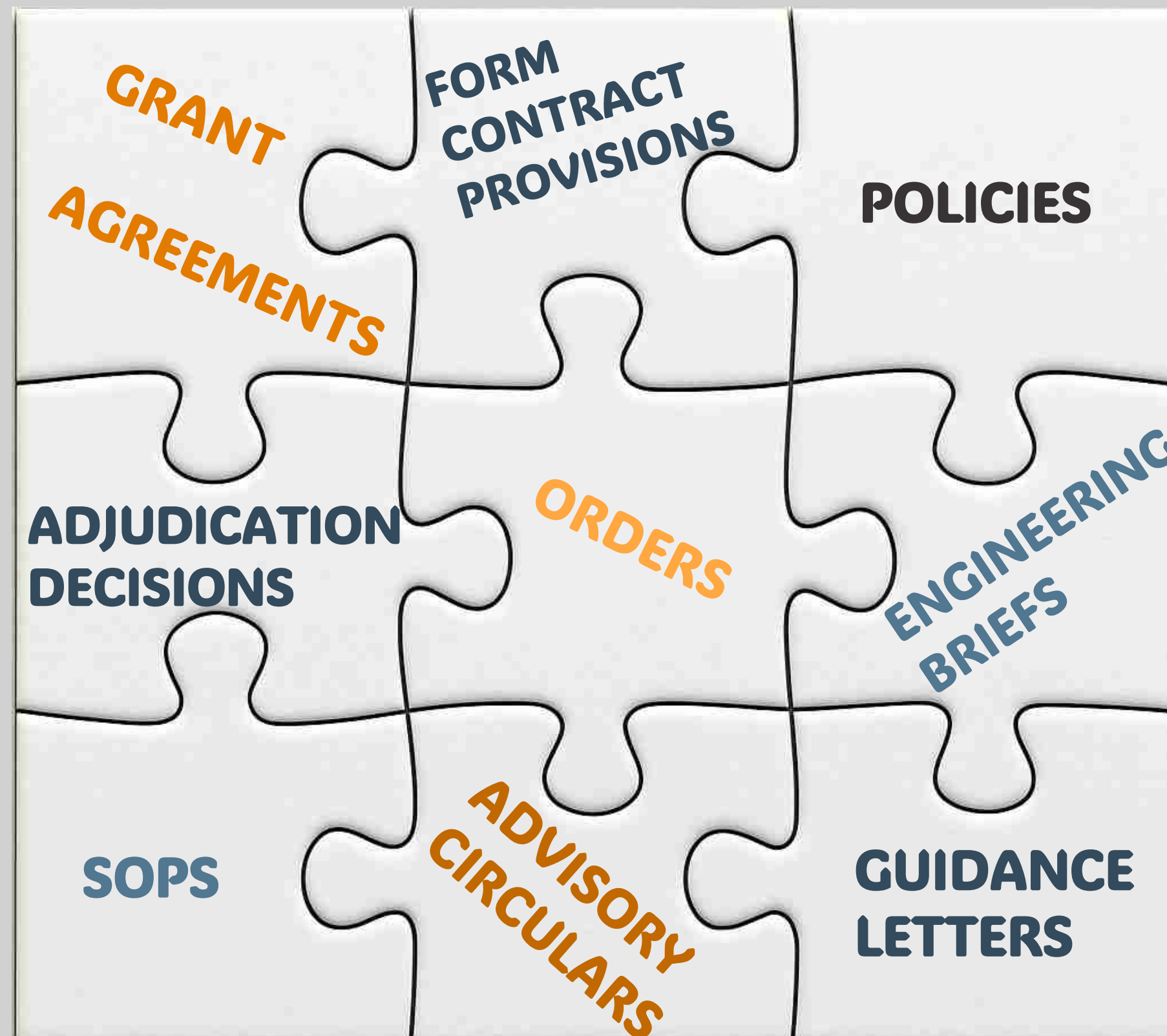


Many requirements start with Subtitle VII:

- Grants (Session 13)
- Grant Assurances (Session 3)
- Environmental reviews (Session 12)
- Land acquisition, use, and disposition (Session 15)
- Revenue and revenue use (Session 8)
- Planning, design, and construction
- Aircraft and other vehicles in flight, noise
- Anti-Head Tax Act
- Title VI, DBE, and ACDBE



Other FAA requirements



Air traffic and noise



Air traffic control (airplane routes)



Land use/airport layout plan



Airport Noise and Capacity Act (49 USC § 47521)



Airline Deregulation Act (49 USC § 1371)



Aviation Safety and Noise Abatement Act
(49 USC § 47501)



Airport Noise Compatibility Planning (14 CFR Part 150)



Airport Noise and Access Restrictions (14 CFR Part 161)

Financial



Non-revenue financial

- Anti-Head Tax Act, 49 U.S.C. § 10116
 - Prohibits local taxes, fees, head charges or other charges on individuals traveling in air commerce
- Passenger Facility Charges,
 - 49 U.S.C. § 40117
 - 14 CFR Part 158
 - PFC assurances

Revenue-related financial

- *Policy Regarding Airport Rates and Charges*, 78 Fed. Reg. 55330 (2010)
- Revenue use compliance guidance letters
- *Policy and procedures concerning the use of airport revenue*
 - Includes customer facility charges
 - Some states have CFC laws

Planning, design, and construction



Airport and Airways Improvement Act

- Airport Improvement Program (AIP)
- Infrastructure Investment and Jobs Act (IIJA)

2 C.F.R. Part 200

- Uniform administrative requirements, cost principles, and audit requirements for federal awards (a/k/a OMB Uniform Guidance)

Generally applicable laws

- Davis-Bacon Act – prevailing wage – 40 U.S.C. §§ 3141-44, 3146, 3147
- Brooks Act – procurement of planning, design and engineering – 40 U.S.C. § 1101
- Fair Labor Standards Act – 29 U.S.C. § 201

Civil rights—anti-discrimination



Title VI of the Civil Rights Act of 1964

- ❖ 42 U.S.C. § 2000d and 49 C.F.R. Part 21 (DOT implementation)
- ❖ No discrimination on the basis of race, creed, color in federally assisted programs

Age Discrimination Act of 1975

- ❖ 42 U.S.C. § 6101
- ❖ No discrimination on the basis of age in federally assisted programs

Age Discrimination in Employment Act of 1967 (ADEA)

- ❖ 29 U.S.C. § 621
- ❖ No discrimination against people age 40 or over

Disadvantaged Business Enterprises

- ❖ 49 U.S.C. § 47123
- ❖ 49 C.F.R. Part 26

Airport Concessions Disadvantaged Business Enterprises

- ❖ 49 C.F.R. Part 23

Civil rights - accessibility



Section 504 of the Rehabilitation Act of 1973

- ❖ 29 U.S.C. § 794
- ❖ No discrimination or exclusion from participation in programs or activity receiving federal financial assistance solely because of disability

Americans with Disabilities Act of 1990

- ❖ 42 U.S.C. § 12101
- ❖ No discrimination against a qualified individual with a disability in employment
- ❖ No qualified individual shall be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of disability by a public entity.

Airlines:

Air Carrier Access Act

- ❖ 49 U.S.C. § 41705
- ❖ No discrimination against passengers by airlines because of their disability



Good government requirements



False Claims Act – 31 U.S.C. § 3729

- Making a false or fraudulent statement in certifying request for funds from the United States
- Private person can bring a claim as a “realtor” and receive a percentage of any recovered funds

Contract requirements

- False Statements – 18 U.S.C. § 1001
- Copeland Anti-Kickback Act – 18 U.S.C. § 874
- Byrd Anti-Lobbying Amendment – 31 U.S.C. § 1352



Environment and preservation



FAA environmental review

- National Environmental Policy Act (NEPA)
- Section 4(f) - 49 U.S.C. § 303 and 23 U.S.C. § 138
 - Requires consultation when a USDOT project will occupy or impact park and recreation lands, wildlife and waterfowl refuges, and historic sites

Environmental laws

- Clean Air Act (42 U.S.C. §7401)
- Clean Water Act (33 U.S.C. §1251)
- Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901)
- CERCLA (Superfund) (42 U.S.C. §9601)
- Endangered Species Act (16 U.S.C. §1531)

Cultural preservation

- Native American Graves Protection & Repatriation Act (25 U.S.C. § 3001)
- American Indian Religious Freedom Act (42 U.S.C. § 1996)

Historic preservation

- Architectural & Historic Preservation Act (54 U.S.C. § 312501)
- National Historic Preservation Act (54 U.S.C. § 306108)

Intellectual property

- Applies to the sponsor's or airport's IP *and* to use of others' IP
- Copyright Act - 17 U.S.C. § 101
 - Visual Artists Rights Act - 17 U.S.C. § 106A
 - Certain exclusive rights granted to artists regarding control of visual art works
 - May limit removal or destruction of art
- Lanham Act (trademarks) - 15 U.S.C. § 1051
- Patent Act - 35 U.S.C. § 1



State and local laws



Airport ownership and sponsorship

- Creation of airport authorities and sponsors
 - State-created authorities - e.g., Maryland Aviation Administration (BWI and MTN)
 - Multi-jurisdiction authorities - e.g., Metropolitan Washington Airports Authority (DCA and IAD)
 - Permission for local governments and others to create airport authorities
- Specification of powers and land use
 - Mississippi Code, Title 61, Chapter 3 (Airport Authorities) and Chapter 7 (Airport Zoning)
 - Cal. Pub. Utilities Code § 21001 (State Aeronautics Act)

Airport activity regulation – may be state or local

- Zoning and land use (except when preempted)
- Local or state tax (but see Anti-Head Tax Act)
- Tort, trespass, and takings laws (except when preempted)
- Section 403.4115, Florida Statutes - publicly owned airports must report monthly re: aircraft using the airport for climate modification activities

State construction laws



Delivery method authorization

- Traditionally default to design-bid-build
 - Some states have broad authority to use other delivery methods, including public-private partnerships
 - Colorado - public entities can use any combination of design, build, finance, operate, and maintain scopes of work for public projects
- Some states limit (by not granting) authority of public entities
 - Massachusetts - most public entities can use only design-build for infrastructure and CMAR for buildings

State construction-related laws

- “Little Miller Acts”
- N.Y.S. Education Law § 7306 (design duties must run to the owner; no design-build without special legislation)
- Separations Act, 71 P.S. § 1618 (state) and 53 P.S. §1003 (municipal) (requires multiple-prime contracting, similar to New York’s Wicks Law)

Questions?



Thank You!

