

— Oregon Municipal Handbook —

CHAPTER 21: AIRPORTS

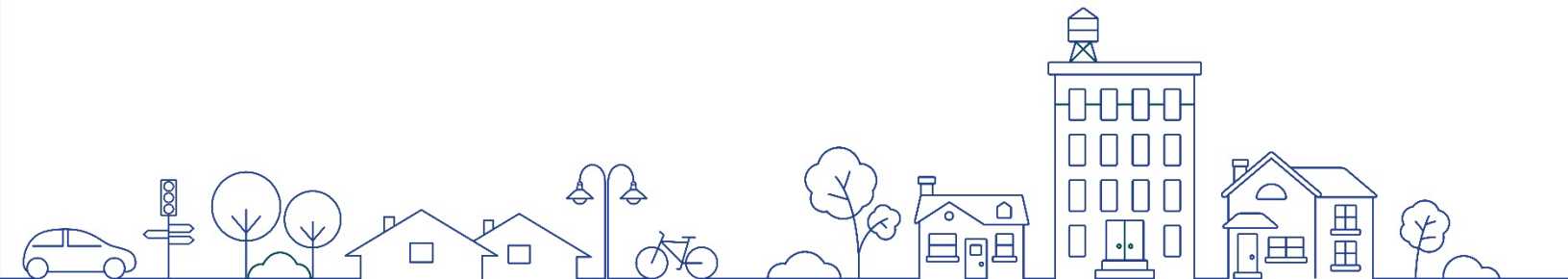


Table of Contents

I. History of Oregon Airports.....	3
II. Airport Operations.....	6
A. General Aviation Airports.....	7
B. Commercial Service Airports.....	7
III. State and Federal Laws.....	7
A. Oregon Law.....	7
B. Federal Statutes.....	8
i. Preemption.....	8
B. Federal Regulations and the Federal Aviation Administration.....	9
i. FAA Regulations Impacting Airports.....	10
C. Grant Assurances.....	11
IV. Airport Property Development.....	13
A. Surplus Property Act.....	13
i. City of Klamath Falls Case Study.....	14
B. Grant Assurance Restrictions.....	14
i. Airport Rules and Regulations.....	15
ii. Airport Minimum Standards.....	15
iii. Airport Leases.....	16
iv. Disposal of Land.....	17
v. Compatible land uses.....	17
vi. Airport Master Plan.....	17
vii. Through the Fence Agreements.....	18
V. Finance and Funding of Airports.....	18
A. Airport Improvement Program Grants.....	18
B. Passenger Facility Charges.....	19
C. Municipal Bonds.....	19
D. Airport Revenue.....	19
VI. Importance of Municipal Airports.....	20

Chapter 21: Airports

Throughout the United States, civilian airports are owned by local governments such as cities.¹ Municipal airports are part of the national aviation system administered by the Federal Aviation Administration (FAA).² Through the FAA, the federal government regulates aircraft, pilots and most local governments airport operations.³ This chapter will provide a brief history of the development of the national aviation system in Oregon.

Oregon municipal airports provide a large variety of services such as passenger service, general aviation and auxiliary services to support operations. Each area of service is regulated by federal laws and regulations. This chapter contains an overview of: (i) applicable federal aviation rules; (ii) the contractual obligations known as “mutual assurances”; (iii) the restrictions on airport property development; and (iv) the restrictions on the use of airport revenues.

This chapter is intended to give an overview, rather than an in-depth treatment, of the regulations that could apply to a municipal airport. More information is available online for specific issues about the FAA regulations.⁴ Please consult with your city attorney for specific questions about the applicable federal laws and regulations. Airport law is a highly specialized field of study, and most city attorneys utilize national law firms specializing in representing airports. Additional resources available to municipal attorneys are available from the International Municipal Lawyer’s Association at <http://www.imla.org>.

Lastly, this chapter will discuss the importance of municipal airports to Oregon’s economy and support of public safety.

I. HISTORY OF OREGON AIRPORTS

The laws impacting municipal airports developed as aviation grew from early exhibitions to the jet age. It is important to understand this history and how the federal regulations developed over time.

Starting in 1903, after the Wright brothers flew the first powered, sustained flight, local

¹ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR MANAGING SMALL AIRPORTS (2009), available at [ACRP Report 16 – Guidebook for Managing Small Airports \(trb.org\)](#) (last accessed on February 6, 2023).

² *Id.*

³ *Id.*

⁴ *Id.* See also AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR DEVELOPING AND LEASING AIRPORT PROPERTY, available at [ACRP Report 47 – Guidebook for Developing and Leasing Airport Property \(worldbank.org\)](#) (2011); See also FEDERAL AVIATION ADMINISTRATION, AIRPORT COMPLIANCE MANUAL ORDER 5190.6B CHANGE 2 (2022) available at [Change 2 to F A A Order 5190.6B, Airport Compliance Manual, December 2022](#).

communities developed airstrips to host the new technology.⁵ Many communities across the nation, including those in Oregon, created grass airstrips to host exhibition events.⁶

Just 18 years after the Wright brothers made history, the Oregon Legislature created the State Board of Aeronautics, the first aviation agency in the United States.⁷ The 1921 Oregon law made pilot registration and licensing mandatory.⁸ The newly created board also tested pilots for competency with both written and flight examinations.⁹ When the federal government took over these functions, the Oregon board's efforts turned to surveying and developing the state's aviation system and other aviation-related areas of concern.¹⁰

In 1925 and 1926, the United States Congress passed legislation that awarded government mail contracts to private carriers, helping create the commercial aviation industry.¹¹ The legislation also established federal regulations regarding aircraft, airmen, navigational facilities and the establishment of air traffic regulations.¹² The first federal government aviation regulations were the result of utilizing aviation for the United States Postal Service.

By the end of 1920s, there were 145 municipal airports across the United States and the nationwide airport system was beginning to form.¹³ In 1926, Oregon's first airport accommodating airmail, Portland's Swan Island Airport, was approved and opened shortly thereafter.¹⁴

In the 1930s and 1940s, municipal airports continued to develop to assist the military in World War II. In 1942, Klamath Falls Municipal Airport was converted to military use to support military air operations, and in 1945, the airport was transferred back to civilian use.¹⁵ During World War II, Pendleton's airport facilities were expanded to accommodate military training activities, and after the war, the airport was transferred from federal ownership to city of Pendleton ownership.¹⁶

⁵ See JANET ROSE DALY BEDNAREK, JANET R. DALY, AMERICA'S AIRPORTS: AIRFIELD DEVELOPMENT, 1918-1947, p. 15 (2001).

⁶ *Id.*

⁷ Oregon Laws, ch 45 (1921); See OREGON SECRETARY OF STATE, OREGON DEPARTMENT OF AVIATION ADMINISTRATIVE OVERVIEW (2001), available at [0K720UYF0KF.PDF \(state.or.us\)](https://www.oregon.gov/Secretary/Records/0K720UYF0KF.PDF) (last accessed on February 6, 2023).

⁸ *Id.*

⁹ Oregon Laws, ch 186 (1923).

¹⁰ See OREGON SECRETARY OF STATE, OREGON DEPARTMENT OF AVIATION ADMINISTRATIVE OVERVIEW (2001), available at <http://records.sos.state.or.us/ORSOSWebDrawer/RecordView/7589710> (last accessed on February 6, 2023).

¹¹ Air Mail Act of 1925.

¹² Air Commerce Act of 1926.

¹³ See U.S. CENTENNIAL OF FLIGHT COMMISSION, THE EARLIEST AIRPORTS, available at [The Earliest Airports \(centennialofflight.net\)](https://www.centennialofflight.net) last accessed on February 6, 2023).

¹⁴ See OREGON HISTORICAL SOCIETY, AIRPORTS (2022), available at [Portland International Airport \(oregonencyclopedia.org\)](https://www.oregonencyclopedia.org) (last accessed on February 6, 2023).

¹⁵ See CRATER LAKE KLAMATH REGIONAL AIRPORT, MASTER PLAN, p. 1-3 (2021), available at [LMT Covers and Dividers \(klamathfalls.city\)](https://www.klamathfalls.city) (last accessed on February 6, 2023).

¹⁶ See EASTERN OREGON REGIONAL AIRPORT, AIRPORT MASTER PLAN, available at [Eastern Oregon Regional Airport – Airport Master Plan - Century West](https://www.easternoregonairport.com) p. 13 (2018).

After the war, the Federal Airport Act of 1946 brought about a federal responsibility and participation in the further construction of airports through the newly established Federal Aid Airport Program.¹⁷ The program was intended to balance funding between the federal government, local jurisdictions, and private entities.

In Oregon, the 1947 airplane crash which claimed the lives of the governor, secretary of state, and Senate president provided the impetus for establishing Oregon's Search and Rescue coordination efforts under the direction of the State Aeronautics Board.¹⁸ The Air Marking program, intended to provide safety and information for pilots by providing recognizable navigational aids and interrupted by World War II, continued with 182 communities marked by the end of 1947.¹⁹

The Federal Aviation Act of 1958 created the Federal Aviation Agency (later the Federal Aviation Administration or the FAA).²⁰ The act empowered the FAA to oversee and regulate safety in the airline industry and the use of American airspace by both civilian aircraft and military aircraft.²¹

In 1978, the Airline Deregulation Act was passed.²² In the previous FAA Act and the Airline Deregulation Act, Congress preempted all local rules for air transportation, but allowed airports to retain some control over their facilities.²³ The preemption was upheld by the U.S. Supreme Court when it struck down a city ordinance regulating air traffic as a violation of the supremacy clause.²⁴

Since 1982, the U.S. Congress has passed legislation establishing the Airport Improvement Program (AIP), which provides federal grant funding; creating the authority for airport operators to levy Passenger Facility Charges (PFCs); and governing how airport revenue is generated and used.²⁵

The attacks carried out on September 11, 2001 changed the way the United States views aviation security.²⁶ President George W. Bush signed into law the Aviation and Transportation

¹⁷ 49 USC § 1101 *et seq.*; See FEDERAL AVIATION ADMINISTRATION, AIRPORT IMPROVEMENT PROGRAM: 75 YEARS OLD AND STILL GOING STRONG (2021), available at [AIP for FAA Focus and FAA history web](#) (last accessed on February 6, 2023).

¹⁸ See OREGON SECRETARY OF STATE, OREGON DEPARTMENT OF AVIATION ADMINISTRATIVE OVERVIEW (2001), available at [OK720UYF0KF.PDF \(state.or.us\)](#) (last accessed on February 6, 2023).

¹⁹ *Id.*

²⁰ 49 USC § 40103.

²¹ *Id.*

²² 49 USC § 41713.

²³ *Id.*

²⁴ See *City of Burbank v. Lockheed Air Terminal Inc.*, 411 US 624, 633 (1973).

²⁵ Airport and Airway Improvement Act of 1982, Pub L 97-248.

²⁶ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR MANAGING SMALL AIRPORTS (2009), available at [ACRP Report 16 – Guidebook for Managing Small Airports \(trb.org\)](#) (last accessed on February 6, 2023).

Security Act on November 19, 2001.²⁷ This law created the Transportation Security Administration (TSA) within the U.S. Department of Transportation (transferred to the Department of Homeland Security in November 2002).²⁸ The TSA became the federal agency responsible for security in all modes of transportation.²⁹

Over time in Oregon, many original airstrips and airports were converted to other uses, such as the city of Portland’s Swan Island Municipal Airport.³⁰ Currently in Oregon, cities own and operate 30 of the 97 airports.³¹ Of those 30 municipal airports, the cities of Eugene, Pendleton and Redmond currently offer commercial passenger service.³² The remaining 27 municipal airports are classified as general aviation airports by federal regulations.³³ Notably, the other airports offering passenger service in Oregon are not operated by cities.³⁴

II. AIRPORT OPERATIONS

In modern times, Oregon municipal airports provide a large variety of services such as passenger service, general aviation and auxiliary services to support operations. An airport is not only a group of aircraft taking off and landing on a runway, but also an airfield with expanded facilities. Most airports have parking, maintenance buildings and a control tower. This section will describe the current operations for general aviation and commercial service airports.

Nationwide, approximately 88% of airports are general aviation airports.³⁵ General aviation airports are public-use airports that do not have scheduled service or have less than 2,500 annual passenger boardings.³⁶ Similarly in Oregon, 90% of the municipal airports are general aviation airports.³⁷ This section describes the services provided by municipal airports.

²⁷ Pub L 107-701, 115 Stat. 597 (2001).

²⁸ *Id.*

²⁹ *Id.*

³⁰ See PAUL FREEMAN, ABANDONED AND LITTLE KNOWN AIRFIELDS NORTHWESTERN OREGON (2022), available at [Abandoned & Little-Known Airfields: Northwestern Oregon \(airfields-freeman.com\)](https://airfields-freeman.com) (last accessed February 6, 2023).

³¹ See OREGON DEPARTMENT OF AVIATION, AVIATION PLAN V6.0, EXECUTIVE SUMMARY, available at [ODA_REPORT_OAP_ExecutiveSummary.pdf \(oregon.gov\)](https://oda.oregon.gov/ODA_REPORT_OAP_ExecutiveSummary.pdf) (last accessed February 6, 2023).

³² *Id.*

³³ 49 USC § 47102 (8).

³⁴ Portland International Airport operated by the International Port of Portland, Southwest Oregon Regional operated by the North Bend Coos Bay Airport District and Rogue Valley International Medford Airport operated by Jackson County.

³⁵ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR MANAGING SMALL AIRPORTS (2009), available at [ACRP Report 16 – Guidebook for Managing Small Airports \(trb.org\)](https://trb.org/publications/ACRP_Report_16_Guidebook_for_Managing_Small_Airports) (last accessed on February 6, 2023).

³⁶ 49 USC § 47102 (8).

³⁷ See OREGON DEPARTMENT OF AVIATION, AVIATION PLAN V6.0, EXECUTIVE SUMMARY, available at [ODA_REPORT_OAP_ExecutiveSummary.pdf \(oregon.gov\)](https://oda.oregon.gov/ODA_REPORT_OAP_ExecutiveSummary.pdf) (last accessed February 6, 2023).

A. General Aviation Airports

General aviation includes both commercial and non-commercial activities.³⁸ General aviation can include agricultural flights, aerial firefighting, medical evacuation, search and rescue, flight training, corporate aviation, personal/private travel, air tourism, recreational flying and air sports.³⁹

Airport operations for general aviation airports offer less services than a commercial service airport.⁴⁰ Although general aviation airports are smaller airports, these airports often provide a large array of services such as an airfield, parking, aircraft hangar leases, maintenance buildings, aircraft fueling, and often a control tower.⁴¹ Even though general aviation airports provide less services and are substantially smaller operations than commercial service airports, general aviation airports are still responsible for meeting federal regulations such as maintaining security and infrastructure.⁴²

B. Commercial Service Airports

Commercial service airports are distinguished from general aviation airports because they have 2,500 or more annual passenger boardings.⁴³ Scheduled commercial aircraft with 10 or more seats cannot operate at an airport unless the airport has an operating certificate issued by the FAA, known as a Part 139.⁴⁴

Commercial service airports provide the same services as general aviation airports, but may provide additional services such as multiple terminals, aprons, taxiway bridges, airport security centers, and passenger facilities like restaurants and lounges.⁴⁵ In addition to the regulations for general aviation airports, Part 139 certification requires compliance with regulations such as airport security, airport condition reporting and inspections.⁴⁶

III. STATE AND FEDERAL LAWS

A. Oregon Law

According to Oregon law, cities have broad authority to operate an airport. Specifically,

³⁸ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR MANAGING SMALL AIRPORTS (2009), available at [ACRP Report 16 – Guidebook for Managing Small Airports \(trb.org\)](#) (last accessed on February 6, 2023).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 14 CFR Part 139.

⁴⁵ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR MANAGING SMALL AIRPORTS (2009), available at [ACRP Report 16 – Guidebook for Managing Small Airports \(trb.org\)](#) (last accessed on February 6, 2023).

⁴⁶ *Id.*

cities have the authority to “acquire, establish, construct, expand or lease, control, equip, improve, maintain, operate, police and regulate airports for the use of aircraft. . . .”⁴⁷ Cities may acquire property for airports through voluntary “gift, grant, purchase, lease or contract” or by condemnation.⁴⁸ Cities may issue bonds for the acquisition, development, and maintenance of airports.⁴⁹

State law provides that cities have the authority to regulate activity at the airport, prescribe penalties for violations, and charge fees or tolls.⁵⁰ However, as discussed below, many local regulations enacted by the virtue of police powers are preempted by federal laws and regulations.⁵¹ Rather, the U.S. Supreme Court has found that Congress intended cities to have a more limited proprietary interest in enacting regulations on airport property.⁵²

Oregon declares that publicly-owned airports are a matter of statewide concern.⁵³ As a result, state law has adopted criteria favorable for approval of expansion of existing airports and new airports.⁵⁴ Further, local governments “shall authorize” all aviation-related land use activities at the airport.⁵⁵

B. Federal Statutes

Municipal airports are part of the national aviation system administered by the FAA. Federal aviation policy is “to develop a national intermodal transportation system that transports passengers and property in an efficient manner.”⁵⁶ The U.S. Congress enacted laws to oversee and regulate safety in the airline industry and the use of American airspace by both civilian aircraft and military aircraft.⁵⁷

As discussed below, local governments operate the majority of airports across the U.S., but the local operation is largely subject to the federal laws and regulations.

i. Preemption

The Supremacy Clause of the U.S. Constitution invalidates state and local laws that interfere with or contradict federal laws. The United States has expressly preempted the field of

⁴⁷ ORS 836.200.

⁴⁸ ORS 836.205; 836.215; 836.250.

⁴⁹ ORS 836.200; 836.230.

⁵⁰ ORS 836.210. *But see* 49 USC § 40117 (requiring approval from FAA to assess a passenger facility charge).

⁵¹ *See City of Burbank v. Lockheed Air Terminal Inc.*, 411 US 624, 633 (1973) (holding that the pervasive nature of the scheme of federal regulation of aircraft noise, the federal government has full control over aircraft noise, preempting state and local control).

⁵² *Id.*

⁵³ ORS 836.608.

⁵⁴ *Id.*

⁵⁵ ORS 836.616.

⁵⁶ 49 USC § 47101(b)(1).

⁵⁷ *See generally*, 49 USC §§ 40101 - 50101.

aviation.⁵⁸ However, Congress allowed airports to retain some proprietary control over their facilities.⁵⁹

One type of implied preemption is field preemption. “Field preemption,” occurs when Congress, without expressly declaring that state laws are preempted, nevertheless legislates in a way that is so comprehensive as to occupy the entire field of an issue.⁶⁰ For example, the U.S. Supreme Court struck down the city of Burbank’s ordinance prohibiting any jet departures between the hours of 11 p.m. and 7 p.m. as a noise regulation.⁶¹

Conflict preemption occurs when simultaneous compliance with both federal and state regulations is impossible.⁶² Implied preemption is determined from Congressional intent or case law.⁶³ In the aviation area, implied preemption of federal law occurs in the areas of operational restrictions and airfield regulations.⁶⁴

In the 1978 Airline Deregulation Act, Congress preserved the limited “proprietary powers of airport operators.”⁶⁵ Very few courts have upheld an airport’s proprietary power, and such powers have been limited to the area of alleviating airport congestion.⁶⁶ Subsequently, Congress enacted the Airport Noise and Capacity Act of 1990, which allows airports may impose restrictions on aircraft to alleviate demonstrated noise and environmental impacts, subject to FAA approval.⁶⁷ Any airport exercising its proprietary powers and receiving federal subsidies must make its facilities available on “fair and reasonable terms and without unjust discrimination.”⁶⁸

B. Federal Regulations and the Federal Aviation Administration

Municipal airports are part of the national aviation system administered by the FAA. The Federal Aviation Act of 1958 created the Federal Aviation Agency (later the Federal Aviation

⁵⁸ “The United States Government has exclusive sovereignty of the air space of the United States.” 49 USC § 40103(a); The US preempts any local, “law, regulation, or other provision ... related to a price, route, or service ...” 49 USC § 41713(b) (1).

⁵⁹ 49 USC § 41713(b) (3) states that “this subsection . . . does not limit a State, political subdivision of a State, or other political authority of at least two States that owns or operates an airport . . . from carrying out its proprietary powers and rights.”

⁶⁰ *E.g.*, *City of Burbank v. Lockheed Air Terminal Inc.*, 411 US 624, 633 (1973) (holding that the pervasive nature of the scheme of federal regulation of aircraft noise, the Federal Aviation Administration, now in conjunction with the Environmental Protection Agency, has full control over aircraft noise, preempting state and local control).

⁶¹ *Id.*

⁶² See *Schneidewind v. ANR Pipeline Co.*, 485 US 293, 300 (1988).

⁶³ See *Cipollone v. Liggett Group*, 505 US 504, 516 (1992).

⁶⁴ *Abdullah v. American Airlines, Inc.*, 181 F3d 363 (3rd Cir 1999).

⁶⁵ See William Pennington, *Airport Restrictions: A Dilemma of Federal Preemption and Proprietary Control*, 56 J. AIR L. & COM. 805 (1991)

⁶⁶ *Western Air Lines v. Port Authority of N.Y. and N.J.*, 658 F Supp 952 (SDNY 1986), *aff’d*, 817 F 2d 222 (2nd Cir 1987), *cert. denied*, 485 U.S. 1006; *Midway Airlines, Inc. v. County of Westchester*, 584 F Supp 436 (SDNY 1984).

⁶⁷ 49 USC § 47521.

⁶⁸ 14 CFR Part 152.

Administration or the FAA).⁶⁹ The act empowered the FAA to oversee and regulate safety in the airline industry and the use of American airspace by both civilian aircraft and military aircraft.⁷⁰

With respect to municipal airports, the FAA holds many roles. First, the FAA is a regulatory body and promulgates regulations in the Federal Aviation Regulations (FARs), federal grant assurances, standards in the FAA Advisory Circular 150 series, adjudications, FAA Orders, policy statements and guidance letters. The current aviation regulations, as well as additional standards and guidance in the FAA Advisory Circular 150 series, are accessible online through the FAA website: http://www.faa.gov/regulations_policies.

Second, the FAA funds the improvement of airports through the Airport Improvement Program (AIP). Through those grants, the FAA oversees airport safety, inspections, standards, airport design, construction, and operation. AIP funding comes with conditions. Airports must comply with 39 “grant assurances” that are incorporated into the grants. More on the grant assurances is discussed below.

Third, the FAA enforces its regulations and AIP grant terms through an administrative process.⁷¹ The complaint resolution process is contained in federal regulation.⁷² Generally, the focus is on compliance and is not on punitive action. The FAA can assess penalties and corrective action, however, since compliance is the goal, most remedies are negotiated. When the parties cannot agree to a remedy, the U.S. Court of Appeals has exclusive jurisdiction.⁷³

i. FAA Regulations Impacting Airports

As discussed above, all commercial service airports serving 2,500 or more annual passenger boardings must be Part 139 certified.

Regardless of whether the airport is a commercial service airport or a general aviation, the primary Federal Aviation Regulations that apply include the following:⁷⁴

- Part 77, Objects Affecting Navigable Airspace.⁷⁵ Part 77 establishes standards for determining obstructions in navigable airspace; outlines the requirements for notifying the FAA of certain proposed construction or alteration; provides for aeronautical studies of obstructions to air navigation to determine their effect on the safe and efficient use of airspace; and provides for public hearings on the hazardous effect of proposed construction or alteration on air navigation.

⁶⁹ 49 USC § 40103.

⁷⁰ *Id.*

⁷¹ See FEDERAL AVIATION ADMINISTRATION, AIRPORT COMPLIANCE MANUAL ORDER 5190.6B CHANGE 2 (2022) available at [Change 2 to F A A Order 5190.6B, Airport Compliance Manual, December 2022](#).

⁷² 14 CFR Part 13.

⁷³ 49 USC § 46110

⁷⁴ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR MANAGING SMALL AIRPORTS (2009), available at https://onlinepubs.trb.org/onlinepubs/acrp/acrp_rpt_016.pdf (last accessed on February 6, 2023).

⁷⁵ 14 CFR Part 77.

- Part 150, Airport Noise Compatibility Planning.⁷⁶ Part 150 applies to the airport noise compatibility planning activities of public-use airports, including heliports. It outlines the procedures for developing and submitting airport noise compatibility programs.
- Part 151, Federal Aid to Airports.⁷⁷ Part 151 provides detailed information regarding FAA airport construction and development grants. It also specifies that all airport development under the federal-aid airport program must be done in accordance with an approved airport layout plan. Each airport layout plan and any changes to the layout are subject to FAA approval. This part also lists the advisory circulars that are incorporated in the airport development standards.
- Part 152, Airport Aid Program.⁷⁸ Part 152 applies to airport planning and development under the Airport and Airway Development Act of 1970, as amended. It outlines eligibility requirements and application procedures; funding, accounting, and reporting requirements; nondiscrimination in airport aid programs; suspension and termination of grants; and energy conservation programs.
- Part 157, Notice of Construction, Alteration, Activation, and Deactivation of Airports.⁷⁹ Part 157 defines the requirements for notifying the FAA when proposing to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport or to alter the status of such an airport.
- Part 170, Establishment and Discontinuance Criteria for Air Traffic Control Services and Navigational Facilities.⁸⁰ Part 170 sets the federal criteria for the establishment of air traffic control services.
- Part 171, Non-Federal Navigation Facilities.⁸¹ Part 171 establishes procedures for requests for instrument flight rules (IFR) procedures, minimum requirements for approval, performance requirements, installation requirements, and maintenance and operations requirements for non-federal aids to navigation. This could include VHF omnidirectional range (VOR) facilities, nondirectional radio beacons, instrument landing system (ILS) facilities, microwave landing system (MLS) facilities, and others.

C. Grant Assurances

As discussed above, AIP funding comes with conditions. Airports must comply with 39 “grant assurances” that are incorporated into the grants. The assurances typically apply not just to the improvements specifically funded by the grant, but to all of an airport’s operations. Likewise, although most of the assurances have a limited term (typically 20 years), others are perpetual.

⁷⁶ 14 CFR Part 150.

⁷⁷ 14 CFR Part 151.

⁷⁸ 14 CFR Part 152.

⁷⁹ 14 CFR Part 157.

⁸⁰ 14 CFR Part 170.

⁸¹ 14 CFR Part 171.

Since airports typically accept new grants on a recurring basis, their obligations are effectively perpetual. As a result, the obligations imposed in exchange for AIP grants are significant not only to airports but to tenants and other users – who typically are the intended beneficiaries of the assurances.

Grant assurances are congressionally mandated but are contractually imposed upon the municipal airport rather than a regulation promulgated by the FAA.⁸² The current grant assurances are located online at: https://www.faa.gov/airports/aip/grant_assurances. Cities may be the most interested in the following assurances:

- Assurance 5 – Preserving rights and powers. Prohibits the municipal sponsors of airports from depriving themselves of the rights and powers necessary to oversee the airport.
- Assurance 21– Compatible land use. Requires airports to endeavor to ensure compatible uses of neighboring property.
- Assurance 22 – Economic nondiscrimination. Prohibits “unjust discrimination.” Requires all types of aeronautical activities to be allowed access to an airport on reasonable and comparable terms. For example, an airport must provide the same opportunities to similarly situated tenants and cannot exclude any aeronautical activities that it is capable of safely accommodating. This assurance does not require uniformity and an airport may be able to justify different lease conditions for tenants because they are engaged in different lines of business or located in different locations.
- Assurance 23 – Exclusive rights. Except where the airport provides certain services, prohibits exclusive rights. An airport cannot explicitly or constructively shield an incumbent fixed base operator (FBO) from competition by not allowing other FBOs to operate at the airport.
- Assurance 24 – Fee and rental structure. Requires fee and rental structure to make the airport as self-sustaining as possible.
- Assurance 25 – Airport revenue. Prohibits revenue diversion. Requires revenues raised by an airport – even from non-aeronautical activities – to be exclusively devoted to aeronautical purposes. This requirement has been the source of considerable controversy and has generated supplemental guidance from FAA. This chapter discusses this issue in more detail below.
- Assurance 29 – Airport Layout Plan. Requires airports to maintain accurate plans of the airport’s layout and uses.

⁸² 49 USC § 47105 to 47107.

IV. AIRPORT PROPERTY DEVELOPMENT

Many cities have airport property which they would like to use to enhance the local economy. The use of land conveyed by the federal government or improved with an AIP grant may only be used for aviation purposes.

Airport property development is regulated in two ways. First, many municipal airports were acquired from the United States after World War II pursuant to the Surplus Property Act of 1944 and Federal Property and Administrative Services Act of 1949. These properties were transferred to local governments with specific terms, conditions, reservations and restrictions.

Second, if the airport obtained an AIP grant, the FAA regulates the development of airport property through its grant assurances. A more detailed discussion of each assurance is below.

An outstanding resource about developing and leasing airport property by the Airport Cooperative Research Program is available at: [ACRP Report 47 – Guidebook for Developing and Leasing Airport Property \(worldbank.org\)](#).

A. Surplus Property Act

The United States acquired lands used for the war efforts for World War II, including airports. Some of the properties were voluntarily transferred for the war efforts and other properties were acquired by eminent domain.⁸³

After World War II, the United States passed the Surplus Property Act of 1944 and Federal Property and Administrative Services Act of 1949.⁸⁴ The acts authorize the surplus real property to states and local governments.⁸⁵ However, the lands were provided on condition that they be used as public airports.⁸⁶

As a result, properties that the United States acquired for military efforts were transferred to local governments with specific terms, conditions, reservations, and restrictions upon which such conveyances or disposals may be made. Local governments are responsible for the continuous compliance with the statutes and deed restrictions from properties acquired through the Surplus Property Act of 1944.

⁸³ See U.S. DEPARTMENT OF JUSTICE, HISTORY OF THE FEDERAL USE OF EMINENT DOMAIN (2022), available at <https://www.justice.gov/enrd/history-federal-use-eminent-domain> (last accessed February 11, 2023); STUART RANDOLPH HAYES, UNITED STATES V. CAUSBY: AN EXTENSION THEREOF, 3 Wm. & Mary L. Rev. 36 (1961)

⁸⁴ 49 USC § 47151; see also 14 CFR Part 155 (providing a process to release airport property from surplus property disposal restrictions).

⁸⁵ *Id.*

⁸⁶ *Id.*

If your city acquired an airport from the United States, you must examine the instrument transferring the property to the city and review the statutory authority upon which the transfer was made to determine the scope of deed restrictions and conditions.

i. City of Klamath Falls Case Study⁸⁷

In Oregon, an example of how the United States acquired and developed property is in the city of Klamath Falls. In 1928, the city established the Klamath Falls Municipal Airport with the sale of \$50,000 airport construction bonds. In 1942, the U.S. Navy selected the Klamath Falls airport as a site for a naval air station and in December 1944, the city sold the entire property to the U.S. for \$1.00 without restrictions.

In 1945, the naval air station was completed, consisting of 3,200-ft-wide runways of varying lengths, several buildings, and a variety of hangar facilities. After World War II, the air station was closed following less than one year of operation.

Pursuant to the Surplus Act of 1944, the United States conveyed a portion of the facility to the city of Klamath Falls as long as the property was used for airport purposes. The deed restrictions stated, in part, “itinerant aircraft owned by the United States of America * * * shall at all times have the right to use the airport” and that use “shall be without charge of any nature other than payment for damage caused by such itinerant aircraft.”

The remainder of the property was turned over to the U.S. Department of the Interior (DOI) and then later to the U.S. Air Force. The U.S. Air Force operated the federally owned property known as Kingsley Field from 1956 to 1970. Starting in 1971, the Oregon Air National Guard was stationed at Kingsley Field. In 1995, the Air National Guard assumed the airport tower control from the Federal Aviation Agency.

As a result, a rural municipal airport in Klamath Falls transformed into a multi-use airport with a complex mix of ownerships and restrictions. The city of Klamath Falls was granted the improved airport and buildings but is not allowed to charge itinerant aircraft for the use of the airport.

B. Grant Assurance Restrictions

As discussed above, AIP funding comes with conditions via grant assurances.⁸⁸ Several of the grant assurances directly relate to property development such as numbers 21 (compatible land use), 22 (economic nondiscrimination), 23 (exclusive rights), 29 (airport layout plan), and 31 (disposal of land).

⁸⁷ See CITY OF KLAMATH FALLS, MASTER PLAN REPORT (2004), available at [Master-Plan-Chapters-1-to-7-PDF \(klamathfalls.city\)](#) (last accessed February 11, 2023); 173RD FIGHTER WING, KINGSLEY FIELD HISTORY available at [History \(af.mil\)](#) (last accessed February 11, 2023).

⁸⁸ The current grant assurances are located online at: https://www.faa.gov/airports/aip/grant_assurances.

i. Airport Rules and Regulations

The FAA highly recommends that an airport establish rules and regulations for the safe, orderly, and efficient operation of the airport.⁸⁹ Rules and regulations are often referenced in airport lease agreements but are developed to apply to all persons using the airport for any reason.⁹⁰

Airport owners of federally obligated airports are required by grant assurances to establish and enforce fair, equal, and not unjustly discriminatory airport rules and regulations.⁹¹

Rules and regulations typically cover the general use of the airport for such issues as aircraft rules, personal conduct, animals, smoking, waste containers and disposal, storage, pedestrians, vehicle operations, fueling safety, on-airport traffic rules, environmental restrictions, airport residences, hangar construction, and fire safety.⁹²

ii. Airport Minimum Standards

The FAA encourages public airports to develop minimum standards.⁹³ Airport minimum standards set forth the minimum requirements an individual or entity wishing to provide aeronautical services to the public must meet in order to provide those services, such as minimum leasehold size, required equipment, hours of operation, and fees.⁹⁴ Minimum standards provide the advantage of maintaining compliance with grant assurances, maintain a higher quality of service for airport users and promote the orderly development of airport land.⁹⁵ Minimum standards also insure that no one operator is given an advantage over others by the airport.⁹⁶

Every airport is unique and in developing minimum standards the airport manager must attempt to draft a set of standards tailored to that particular airport.⁹⁷ Careful consideration must be given to the specific conditions at an airport such as the size of the airport, the type of aeronautical activities and the space required, insurance and indemnity requirements etc.⁹⁸

Minimum standards should be developed to establish an actual set of requirements to accommodate a range of commercial activities. Commercial aeronautical activities may include such aeronautical activities as aircraft maintenance, fueling, charter, flight training, sales, rental, and parts.⁹⁹

⁸⁹ See FEDERAL AVIATION ADMINISTRATION, AIRPORT COMPLIANCE MANUAL ORDER 5190.6B CHANGE 2 (2022) available at [Change 2 to F A A Order 5190.6B, Airport Compliance Manual, December 2022](#).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR DEVELOPING AND LEASING AIRPORT PROPERTY, available at [ACRP Report 47 – Guidebook for Developing and Leasing Airport Property \(worldbank.org\)](#).

⁹⁸ *Id.*

⁹⁹ *Id.*

Airports must agree to make the opportunity to engage in commercial aeronautical activities available to any person, firm, or corporation that meets reasonable minimum standards established by the airport.¹⁰⁰

iii. Airport Leases¹⁰¹

As a municipal airport, you will likely partner with private entities to lease portions of the airport. Airport leases can usually be broken into the following categories:

- Ground leases. The most common type of airport lease, a land lease is where the airport leases a parcel of land for a period of time and the tenant is responsible for making improvements on that land. At the end of the term, the land and all of the structures will revert to the airport.
- Fixed-base operator (FBO) leases. The majority of general aviation airports require an FBO to provide a variety of services that are identified in advance by the airport, typically through a Minimum Standards document. In return for providing this full complement of identified services, the FBO is granted the ability to sell fuel. Fuel sales are typically a significant component of an FBO's business model and income. Additional services an FBO might provide include, but are not limited to, aircraft storage, ground handling, maintenance and repair, flight instruction, aircraft rental, and aircraft sales.
- Specialized aeronautical service operator (SASO) leases. A SASO provides specialized products and services in one or more of the aviation-related service areas such as flight training or maintenance, excluding the retail sale of fuel. A SASO may operate under a direct lease agreement with the airport or as subtenant of an FBO.
- Hangar leases. This type of lease is for storage of aircraft only. Leases generally prevent a tenant from using the property for conducting a business or for storing other items.
- Airline leases. This type of lease is for operating the airline such as ticket counters, boarding gates, operations. Spaces such as baggage claim may be leased as a common use area.

Regardless of the type of lease, airport leases follow the basic format of facility leases, include Airport Rules and Regulations, and add the Airport Minimum Standards.¹⁰²

¹⁰⁰ See grant assurance number 22 – Economic nondiscrimination.

¹⁰¹ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR DEVELOPING AND LEASING AIRPORT PROPERTY, available at [ACRP Report 47 – Guidebook for Developing and Leasing Airport Property \(worldbank.org\)](#).

¹⁰² *Id.*

If a municipal airport wishes to lease to a tenant for a nonaeronautical use such as construction offices not related to aviation, the FAA requires that the airport receive the fair market value for the land and that the non-aeronautical use does not preclude or slow the aeronautical development of the airport.¹⁰³

iv. Disposal of land

Occasionally, airports wish to dispose of land. If the land was acquired with federal funds, grant assurance number 31 limits the transfer or disposal of land. In such cases, the airport may dispose of land only if the land is not necessary for aeronautical purposes and FAA may stipulate how land sale proceeds are to be spent by the airport.¹⁰⁴

v. Compatible land uses¹⁰⁵

Grant assurance number 21 requires airports to endeavor to ensure compatible uses of neighboring property. Incompatible land uses and their impact on airport operations and development have escalated over the past 50 years. As decisions to allow incompatible land uses near airports threaten the nation's aviation system, implementation of compatible land use controls has become an industry priority. The primary tools available to local governments to prevent incompatible development include zoning and land use controls such as comprehensive plans, and airport overlay zoning ordinances. Municipal airports should work with their city planning staff to ensure that neighboring lands are subject to compatible land use controls.

vi. Airport Master Plan¹⁰⁶

An Airport Master Plan is a comprehensive study of an airport. An Airport Master Plan is the predominant vehicle for a vision or strategy, analyzing demand, forecast activity, tenant base, business clusters, utility infrastructure, environmental considerations, and airfield attributes to describe how land might be leased and developed for special-use aeronautical and nonaeronautical tenants/users. An Airport Layout Plan, part of the Airport Master Plan, is a scale drawing of existing and proposed airport facilities, their location on an airport, and the pertinent clearance and dimensional information required to demonstrate conformance with applicable standards. While the Airport Master Plan may be updated every seven to eight years, or longer, the Airport Layout Plan is mandated by FAA grant assurance number 29 to be up to date at all times.

¹⁰³ See FEDERAL AVIATION ADMINISTRATION, AIRPORT COMPLIANCE MANUAL ORDER 5190.6B CHANGE 2 (2022) available at [Change 2 to F A A Order 5190.6B, Airport Compliance Manual, December 2022](#).

¹⁰⁴ *Id.*

¹⁰⁵ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR DEVELOPING AND LEASING AIRPORT PROPERTY, available at [ACRP Report 47 – Guidebook for Developing and Leasing Airport Property \(worldbank.org\)](#).

¹⁰⁶ FAA Advisory Circular (AC) 150/5070-6B Change 2 (2015).

vii. Through the Fence Agreements¹⁰⁷

Often, users of the airport located adjacent to, but not a part of the airport, wish to access the airport facilities. A “through the fence” agreement is an arrangement where the airport permits access to the public landing area to such independent operators. The decision of whether or not to allow “through the fence” access to property owners is for the airport to decide, as the airport is not required to grant direct access to adjacent property owners. The FAA advises against such agreements but does not forbid them.¹⁰⁸

V. FINANCE AND FUNDING OF AIRPORTS

Funding for airport development comes from five primary sources: federal AIP grants, passenger facility charges, state and local funding, tax-exempt bonds, and airport revenue.

For general aviation airports, cities often have to subsidize airport operations. The goal of the airport is to be self-sustaining. Most economic impact studies demonstrate that an airport has a regional economic impact.

A. Airport Improvement Program Grants¹⁰⁹

Since its establishment in 1982, the AIP has become an essential source of funding for safety, capacity, security, and other improvements at airports.

AIP entitlement funds are available for commercial service airports that have at least 10,000 enplaned passengers per year. The amount is determined by a formula based on AIP authorization law and the number of enplaned passengers. Regardless of the number of passengers boarded, the minimum entitlement of a primary, commercial service airport is \$650,000 per year and \$1 million per year if total AIP is at least \$3.2 billion.

Non-primary entitlement funds are available to general aviation airports. The amount given to an airport is based on the amount of development that airport has identified within the National Plan of Integrated Airport Systems (NPIAS) up to \$150,000 per year.

Discretionary funds are available to any airport identified within the NPIAS. After the entitlements and set asides are funded, the remaining money can be invested at the FAA’s discretion.

¹⁰⁷ FAA Recommendations for Airport Sponsors Considering Residential Through-the-Fence Access Agreements available at [FAA Recommendations for Airport Sponsors Considering Residential Through-the-Fence Access Agreements, July 2013](#) (last accessed February 13, 2023).

¹⁰⁸ See FEDERAL AVIATION ADMINISTRATION, AIRPORT COMPLIANCE MANUAL ORDER 5190.6B CHANGE 2 (2022) available at [Change 2 to F A A Order 5190.6B, Airport Compliance Manual, December 2022](#) (last accessed February 13, 2023).

¹⁰⁹ See FEDERAL AVIATION ADMINISTRATION, AIRPORT IMPROVEMENT PROGRAM HANDBOOK ORDER 5100.6B CHANGE 1 (2019) available at [Change 1 to FAA Order 5100.38D, Airport Improvement Program Handbook, 26 February 2019](#) (last accessed February 13, 2023).

B. Passenger Facility Charges¹¹⁰

Airports are currently permitted to assess a fee on passengers known as a passenger facility charge (PFC). PFCs are collected by the airlines and paid directly to the airport. They are intended to supplement AIP funding by providing more funding for runways, taxiways, terminals, gates, and other airport improvements. Currently no airport may charge a PFC of more than \$4.50 per passenger, and no passenger has to pay more than \$18 in PFCs per round-trip regardless of the number of airports through which a passenger connects. No airport can charge a PFC until the FAA approves it.

C. Municipal Bonds¹¹¹

The single largest category of airport funding is bonds. However, the vast majority of airport bonds are issued by large-hub and medium-hub airports in the form of airport revenue bonds. Revenue bonds are secured by an airport's future revenue such as passenger facility charges.

Smaller airports have issued revenue bonds, but this is rare. Far more common are general obligation bonds for airport development, which are backed by the taxing power of a governmental unit and thus rate a stronger credit standing and carry lower financing costs.¹¹² Many times, airport improvement projects at small airports are included with other municipal projects in a single general obligation bond.

D. Airport Revenue¹¹³

Airport-generated revenue includes commercial leases, t-hangar leases, private hangar land leases, airport parking revenues agricultural land leases, terminal concession rents, fuel flowage fees, passenger facility charges and landing fees. For those airports receiving AIP funds, federal law prohibits “diversion” of airport-generated revenue at airport.¹¹⁴

In general, revenue diversion, as defined by the FAA, is the use of airport revenue for purposes other than airport capital, operating costs, or the costs of other facilities owned or operated by the airport and directly related to air transportation.¹¹⁵ The prohibition against diversion means that revenue generated by an airport cannot be used for general economic development purposes.

¹¹⁰ See AIRPORT COOPERATIVE RESEARCH PROGRAM, GUIDEBOOK FOR MANAGING SMALL AIRPORTS (2009), available at https://onlinepubs.trb.org/onlinepubs/acrp/acrp_rpt_016.pdf (last accessed on February 6, 2023).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ 49 USC § 47107(b).

¹¹⁵ See FEDERAL AVIATION ADMINISTRATION, AIRPORT IMPROVEMENT PROGRAM HANDBOOK ORDER 5100.6B CHANGE 1 (2019) available at [Change 1 to FAA Order 5100.38D, Airport Improvement Program Handbook, 26 February 2019](#) (last accessed February 13, 2023).

VI. IMPORTANCE OF MUNICIPAL AIRPORTS

Municipal airports are an important economic development engine in Oregon. Not only do municipal airports contribute about \$1.2 billion to local Oregon economies and employ 6,000 local public and private employees, but municipal airports also support critical public safety and disaster relief missions.¹¹⁶

In the 1990s, many Oregon municipal airports offered passenger service. In 2012, four municipal airports provided passenger service, and in late 2017, that number dropped to three municipal airports.¹¹⁷ Increasing FAA regulations and the cost of fuel have caused commercial passenger flights to smaller communities to not be economically self-sustaining. Airlines are requiring subsidies such as the federal essential air service grant to serve smaller areas.

Essential air service (EAS) started as a result of the Airline Deregulation Act of 1978.¹¹⁸ EAS was a program established to continue airline service to small communities because the lower profits these routes were likely to achieve.¹¹⁹ In cases where there were actual losses, EAS could be used to help cover costs.¹²⁰ Before EAS in the pre-1978 world, providing flights to these communities was a cost of business for the airlines in exchange for access to the federal airways and the great investment by United States taxpayers.¹²¹

When the EAS program began in 1978, the program identified 746 eligible communities.¹²² Due to increasing EAS eligibility requirements, only 159 communities were eligible in 2015. In 2012, the federal government further reduced the EAS program by eliminating subsidies to *new* essential air service airports.¹²³ At the same time, airlines have eliminated services from Oregon cities due to increasing costs of operations and increasingly difficult FAA regulations.¹²⁴ Currently in Oregon, only the city of Pendleton is a designated essential air service airport.¹²⁵ As the number of air service airports decrease, access to air service to many Oregonians has been reduced.

¹¹⁶ See OREGON DEPARTMENT OF AVIATION, AVIATION PLAN V6.0, EXECUTIVE SUMMARY, available at [ODA_REPORT_OAP_ExecutiveSummary.pdf \(oregon.gov\)](#) (last accessed February 6, 2023). See also JOHN LONGLEY, ESSENTIAL AIR SERVICE IS CRITICAL FOR RURAL AIR SERVICE (2016), available at [EAS critical for rural populations \(amendoon.net\)](#) (last accessed on February 12, 2023).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

Although general aviation airports do not get as much federal funding as commercial service airports, they play an important role in Oregon’s economy. General aviation airports host a variety of economic development opportunities such as aircraft production, firefighting air attack bases, pilot training programs, supporting military missions, medical evacuation, search and rescue, agricultural needs, air freight, corporate aviation, air sports and enhanced tourism opportunities. Lastly, airports are key facilities to address disasters because they designated as the primary, secondary and tertiary gateways for emergency disaster relief missions.

To enhance access through the state, Oregon cities could partner with the Oregon Department of Aviation to actively support an economic development program of encouraging the development of general aviation airports and to encourage the FAA in resuming the program to establish new essential air service airports.¹²⁶

¹²⁶ *Id*