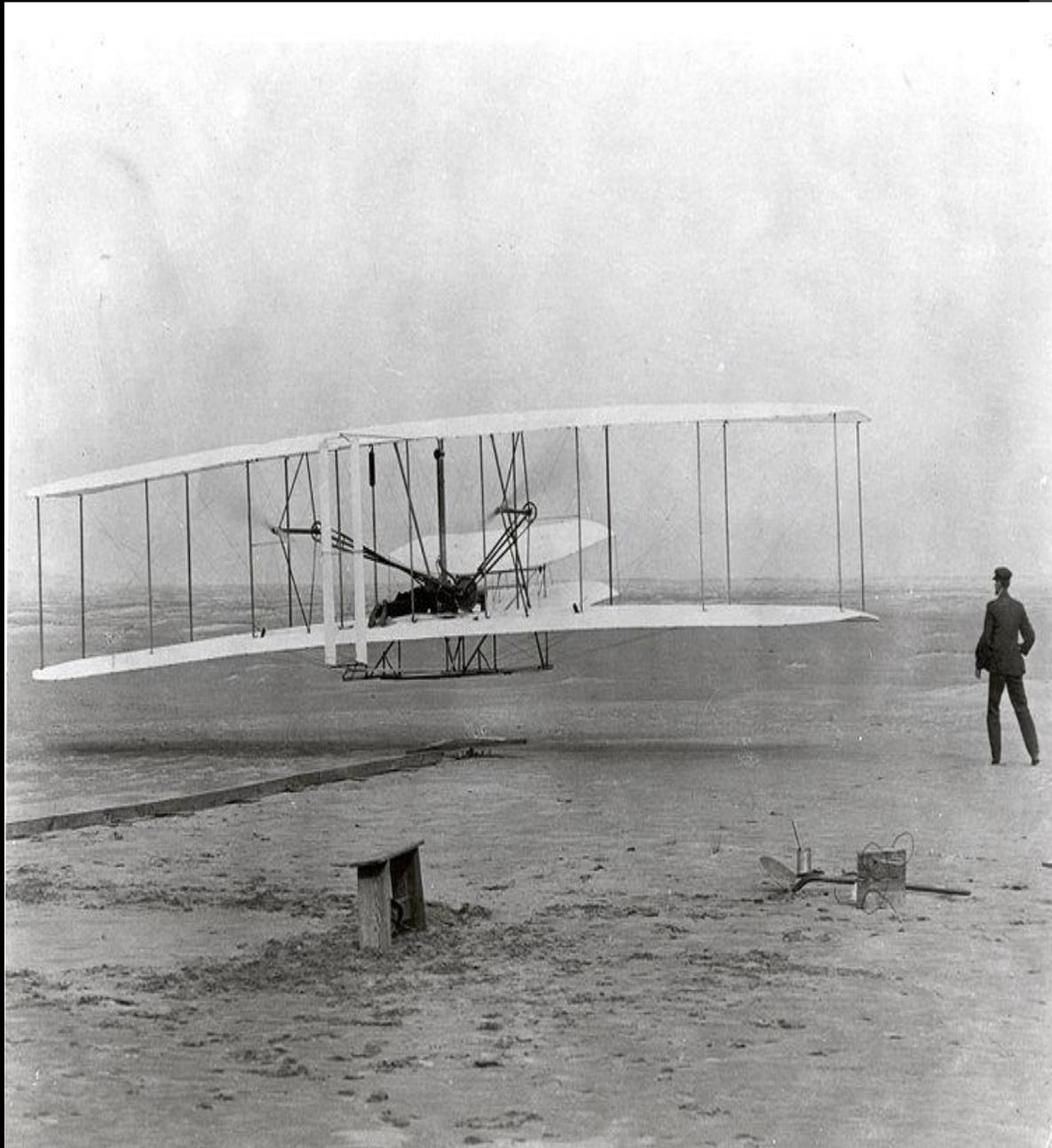




Surplus Land Grant Commitments and FAA Grant Assurances

June 6, 2023



Agenda

- Deed Commitments and Restrictions
- Grant Assurances
- Not Legal Advice

QUITCLAIM DEED

THIS INDENTURE, made this 10th day of February, 1949, between the UNITED STATES OF AMERICA and the RECONSTRUCTION FINANCE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the United States, which corporation has succeeded pursuant to the provisions of Public Law 109, 79th Congress, approved on June 30, 1945, to all the rights and assets of Defense Plant Corporation, acting by and through the War Assets Administration, under and pursuant to Reorganization Plan One of 1947 (12 F. R. 4534), and pursuant to the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, and applicable rules, regulations and orders, GRANTORS, and the CITY OF LOS ANGELES, a municipal corporation, whose principal place of business is the City Hall, Los Angeles, California, GRANTEE.

WITNESSETH: That the said GRANTOR, for and in consideration of the assumption by the GRANTEE of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenant to abide by and agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim unto the said GRANTEE, its successors and assigns, all that certain piece or parcel of land situate, lying, and being in the County of Los Angeles, State of California, to wit:

PARCEL I

That certain parcel of land, in the City of Los Angeles, County of Los Angeles, State of California, which is included within the following described boundaries:

Surplus Property Act of 1944

Transfer of Excess/Surplus Federal Property

49 U.S.C. Sections
47151 – 47153

14 CFR Part 155



Surplus Grant Deed Commitments

- **Deed Restrictions**

- Used for Public Airport Purposes for the Use and Benefit of the Public
- On Reasonable Terms
- Without Unjust Discrimination
- Without Grant or Exercise of Any Exclusive Right for Use of the Airport
- Maintained in Good and Serviceable Condition
- Adequately Clear and Protect the Aerial Approaches to the Airport

shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term "exclusive right" being defined to mean

- (1) any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;
- (2) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the Grantee by the provisions of this instrument.

(6) That no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the Grantee for other than airport purposes without the written consent of the Civil Aeronautics Administrator, which shall be granted only if said administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located; Provided, that no structures disposed of hereunder shall be used as an industrial plant, factory, or similar facility within the meaning of Section 23 of the Surplus Property Act of 1944, as amended, unless the Grantee shall pay to the United States such sum as the War Assets Administration or its successor in function shall determine to be a fair consideration for the removal of the restriction imposed by this proviso.

(7) The Grantee does hereby release the Government, and will take whatever action may be required by the War Assets Administrator to assure the complete release of the Government from any and all liability the Government may be under for restoration or other

Surplus Grant Deed Restrictions

No Use, Lease, Sale, Salvage, or Disposal of the Property by the Grantee for other than Airport Purposes without the written consent of the CAA Administrator [FAA]

Consent which shall be granted only if the Administrator determines such action would be "without materially and adversely affecting the development, improvement, operation or maintenance of the airport . . ."

Penalty for violation is reversion to U.S.

Federal Airport Act of 1946

- New federal grant program administered by CAA
- **Established Grant Assurances**

“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”

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** (Section 511(a)(12) established the general requirement for 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)

Federal Grant Assurances: An Overview

39 Contractual Commitments

De Facto Airport Regulations

Enforced through 14 C.F.R. Parts 13 and 16

https://www.faa.gov/airports/aip/grant_assurances



FAA
Airports

ASSURANCES AIRPORT SPONSORS

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.

Grant Assurances

Contractual (Not Regulatory)

- But Statutorily Mandated
- Some Independently Set by Statute
- Modifications subject to notice and comment.

Duration

- 20 years*
- Clock Resets at Each Annual Grant.
- Exclusive Rights (23) and Airport Revenue (25) unlimited in time.

FAA Enforcement

- FAA Enforcement and primary jurisdiction.
- Court Review Only After FAA Decision
- No private right of action or third-party beneficiaries

Grant Assurances: The Full List

The Airport Improvement Program Sponsor Assurances

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. Reasonable 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	

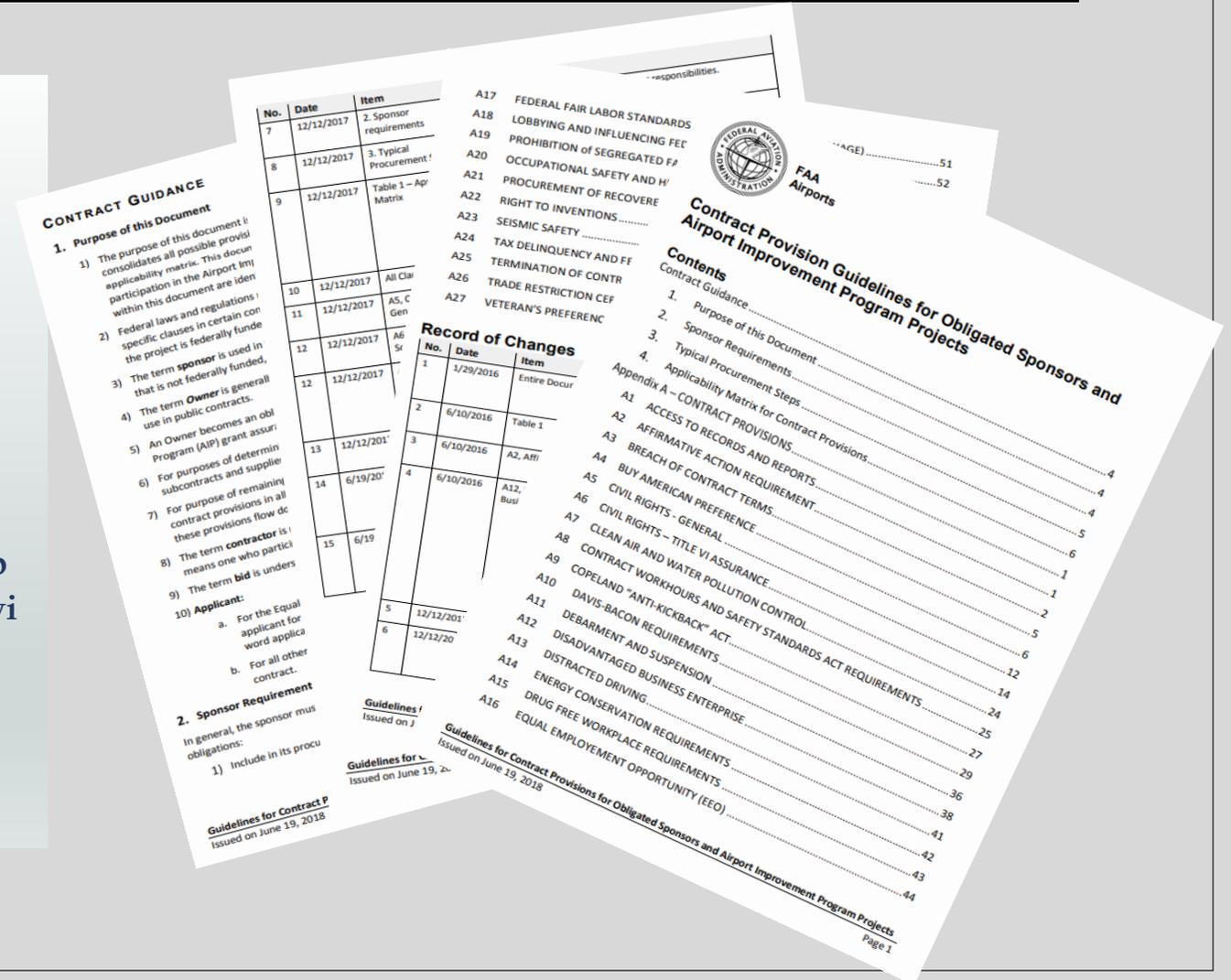
Assurance 1: General Federal Requirements

Requires compliance with wide range of federal:

- Statutes
- Regulations
 - Including OMB guidance
- Executive orders

Sponsors must include various “required contract provisions” in their own contracts

- Available at:
https://www.faa.gov/sites/faa.gov/files/airports/aip/procurement/federal_contract_provisions/combined-federal-contract-provisions.pdf



Assurance 5: Preserving Rights and Powers

Sponsor will not “take or permit” any action which would operate to deprive it any of the “rights and powers” necessary to perform any or all of the terms, conditions, and assurances of the Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims or right of others which would interfere with that performance by the Sponsor (in a manner acceptable to the Secretary).

Applies to Leases, Contracts, Agreements, etc.

Limits Property or Easement Sales

When issuing leases, sponsors
retain authority over airport

Assurance 19: Operation and Maintenance

Sponsor Must Operate Airport in “Safe and Serviceable Condition”

The airport and all facilities which are necessary to serve the aeronautical users of the airport . . . shall be operated at all times in a safe and serviceable condition and in accordance with minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation.

Cannot “Cause or Permit” Uses that Interfere with Airport Operations

It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.

Will Suitably Operate and Maintain the Airport

Will suitably operate and maintain the airport and all facilities thereon or connected therewith.

Cannot Close for Non-Aeronautical Purposes without FAA Approval

Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.

Assurance 22: Economic Nondiscrimination

Grant Assurance 22(a):

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

Aeronautical activity:

“any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations”

Advisory Circular 150/5190-6,
Exclusive Rights at 8

*Assurance 22:
Available as an Airport for Public Use
On Reasonable Terms and Without Unjust Discrimination . . .*

**Attainable
Rational
Uniformly Applied
Treat Similarly Situated Users Similarly**

Assurance 23: Exclusive Rights

Prohibits sponsor from permitting any “**exclusive right**”—

“for the use of the airport by any person providing, or intending to provide, **aeronautical services** to the public” or

“to conduct any **aeronautical activities**”

Exclusive right can be: by **Express** grant, or **Implied** by effectively excluding others

Assurance 24: Fee and Rental Structure

Requires sponsor to “maintain a **fee and rental structure** for the facilities and services at the airport which will make the airport as **self-sustaining** as possible under the **circumstances**,” at the airport

While sponsor can charge rent less than fair market value (FMV) to **aeronautical** tenants, must charge FMV rent to **nonaeronautical** tenants

Assurance 24: Self Sustaining

Obligation to charge Fair Market Value (FMV) for non-aeronautical use of airport property.

Merger with “revenue diversion” for enforcement purposes.

Section VII of the Policy / 64 Fed. Reg. 7720-21.

Assurance 25: Airport Revenues

All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it 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 which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or of the airport....

FAA Revenue Use Policy

Promulgated in 1996 / 64 Fed. Reg. 7696

- Defines “airport revenue”
- Details “permitted” uses
- Specifies “prohibited” uses
- Defines and merges “self-sustaining” obligation
- Outlines sanctions

Never revised (except with respect to aviation fuel taxes)

2009 FAA Compliance Manual / Order 5190.6B

Airport Revenues

Very broad definition / essentially all revenue produced at an airport

Includes all revenue from:

Leases

parking

rental cars

retail/food and beverage

airport hotels

sale or disposal of airport property

post-1987 aviation fuel taxes

Section II.B of the Policy / 64 Fed. Reg. 7716

Airport Revenues: Prohibited Uses

Payments for services that exceed the costs of those services

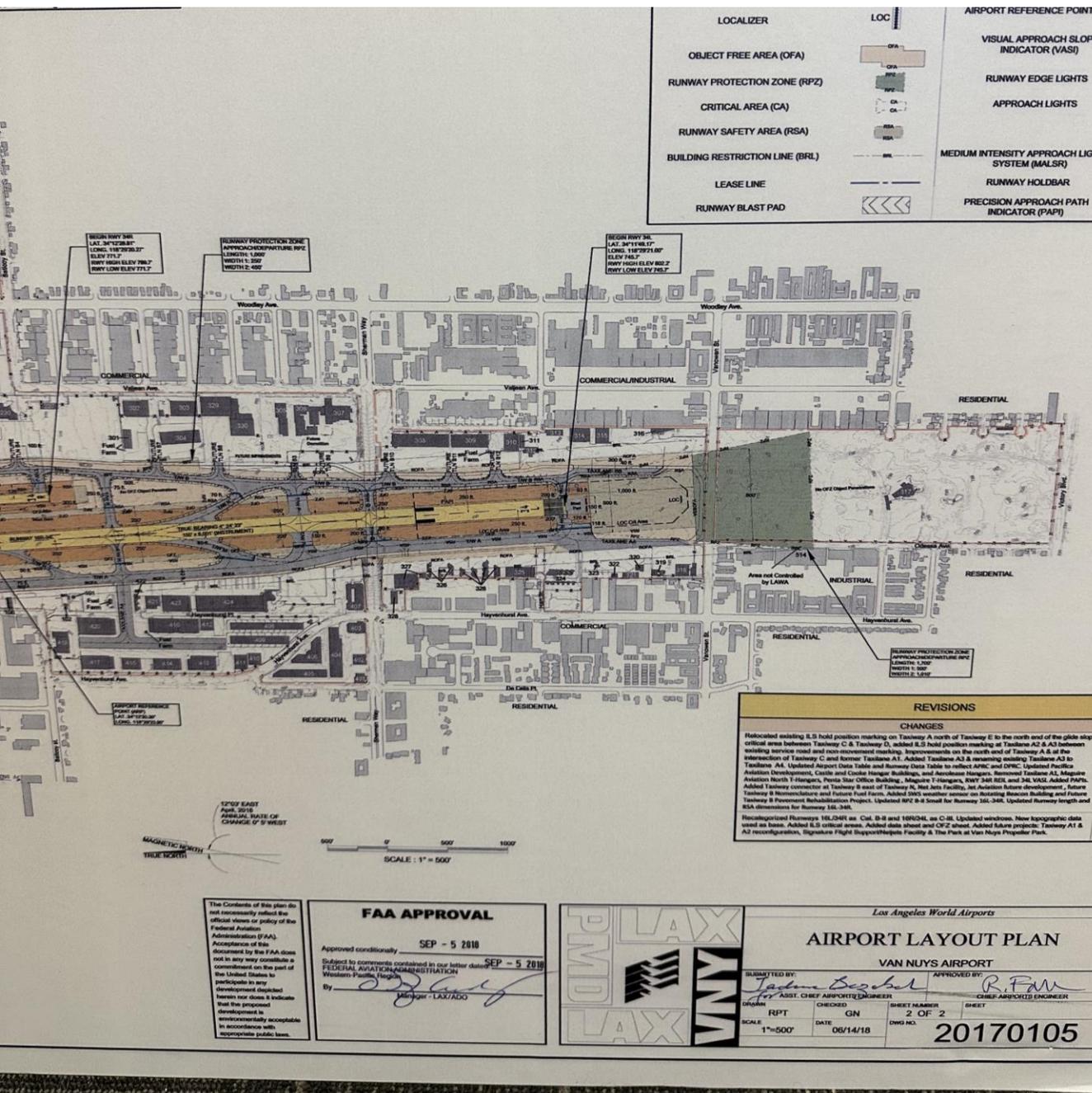
General economic development

“Destination marketing”

Non-aeronautical use of land by the Sponsor for less than Fair Market Value

Assurance 29 Airport Layout Plan

- Must maintain an up-to-date ALP depicting current and proposed airport:
 - Boundaries
 - Facilities and structures
 - “Non-aviation areas”
 - Access points
- Some changes require FAA approval
- Generally, cannot alter airport facilities except according to approved ALP
- **Section 163** of 2018 FAA Reauthorization Act limits FAA approval authority over certain nonaeronautical changes





Thank You