

# Airport Sponsor Land Lease Considerations

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# Background

- Attorney in private practice
  - Aviation Law
  - Energy & Environmental Law
  - Transactional Matters
  - Criminal Law
- Pilot since 2002
  - ATP-Helicopters (US Army)
  - Commercial Fixed Wing SEL/SES/MEL – CFI/CFII, MEI
  - A&P Mechanic
- SD Aeronautics Commission
- Sioux Falls Regional Airport Authority
- AOPA Panel Attorney



# Discussion Outline

Status

Sponsor obligations

Land use considerations

Anti-discrimination policies

“The 50-year Lease”

Reversionary clauses

Case studies

Recent Developments & State-by-State practices

Recommendations

# Current Status / Airport Sponsor Obligations

- Ground Leases (not airport-owned structures)
- South Dakota Lease Duration
  - 1-30 years seems common
- Hangar Use(s)
  - Commercial
  - Non-commercial
  - Non-aeronautical
- New hangar construction & lease duration
- Renewal of existing hangar ground leases

# FAA Grant Assurances & Foundation

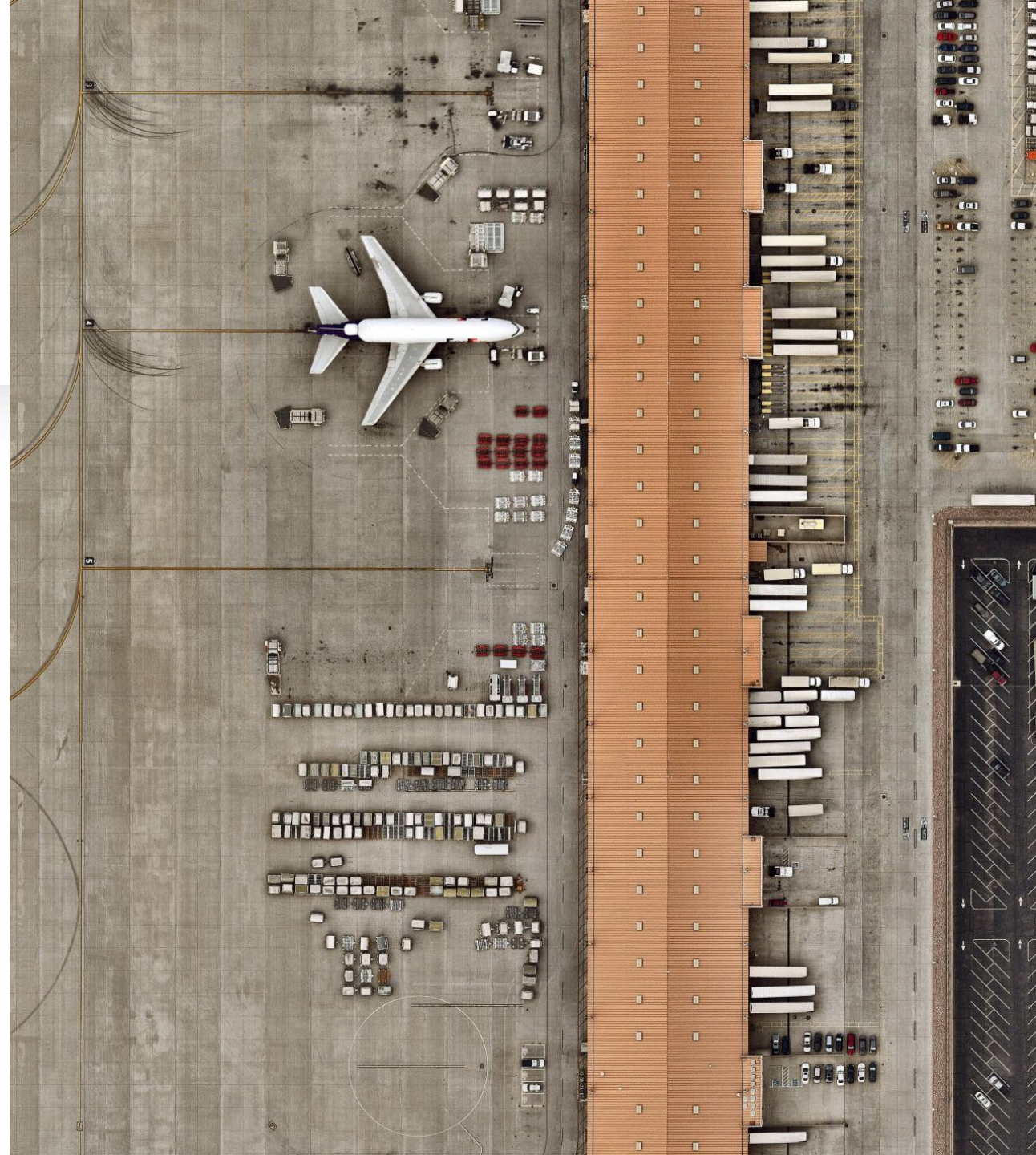
- Grant obligations – 39 total.
- Amalgamation of:
  - 28 separate legislative acts
  - 11 Executive Orders
  - 24 Federal Regulations
- [https://www.faa.gov/sites/faa.gov/files/airports/new\\_england/airport\\_compliance/assurances-airport-sponsors-2022-05.pdf](https://www.faa.gov/sites/faa.gov/files/airports/new_england/airport_compliance/assurances-airport-sponsors-2022-05.pdf)

# Grant Assurances Generally Require

- Prohibition of exclusive rights
- Use of airport revenue
- Proper maintenance and operation of airport facilities
- Protection of approaches
- Keeping good title of airport property
- Compatible land use
- Availability of fair and reasonable terms without unjust discrimination
- Adhering to the approved airport layout plan
- Self-sustainability
- Sale or disposal of Federally acquired property
- Preserving rights and powers
- Using acceptable accounting and record-keeping systems
- Compliance with civil rights requirements

# The Airport Improvement Program “AIP”

- Airport and Airway Improvement Act of 1982 (AAIA).
  - 49 USC 47101
- Grant Assurance 5 – prohibited disposal of airport property
- Grant Assurance 22 – nondiscriminatory activity



# Airport Compliance Manual (FAA Order 5190.6B)

- helps the FAA determine if airports are compliant with grant assurances (not sponsors)
- Common misconceptions:
  - "FAA frowns on leases longer than 30 years."
  - "FAA prohibits 50 years leases."
  - "Only new construction is entitled to a 30 year lease."
  - "Expiration of a 30 year lease cannot be renewed for another 30 years."
  - "FAA requires reversionary clauses."





# Hangar Construction

## 38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a **long term lease** that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

SO WHAT IS A LONG TERM LEASE?

# Lease Terms (duration)



**FAA does not review all leases, and there is no requirement for a sponsor to obtain FAA approval before entering into a lease.**

Airport compliance manual pg. 12-1



**Key Questions:**



**Return on tenant's investment?**



**Increase in compensation to the Sponsor? (no level-rent leases)**



**30-35 year term**



**50 year lease? Possible**



**What about additions / remodeling / improvements mid-lease?**

Improvements provide basis for new lease / extension

# Mid-Lease Extensions?

- Hypothetical
  - Mechanic & pilot open a repair facility & 135 certificate
  - Charter expansion
  - Aircraft sales
  - Hangar space
  - Fuel sales
  - MRO / Supplier
    - Park Rapids Aviation
    - Elite Aviation – Sioux Falls, SD
    - Leading Edge Aircraft – Spencer, IA



# FAA Cases



Lawrence J. Minch and Janice Kay Thompson v. City of Cottonwood, Arizona, 2019 FAA Lexis 112, 127, FAA Docket No. 16-17-05 (January 18, 2019)

Lease terms and amortization requirements are highly dependent on the circumstances of each prospective tenant and each individual airport. The 30-35 year term outlined in Order 5190.6B is a best practice recommendation left to the discretion of the airport sponsor.



ALCA, et al. v. Miami Dade County, Florida, 2010 FAA LEXIS 234, 55-56, FAA Docket 16-08-05 (August 31, 2010)

## Development Lease vs. Facility Lease

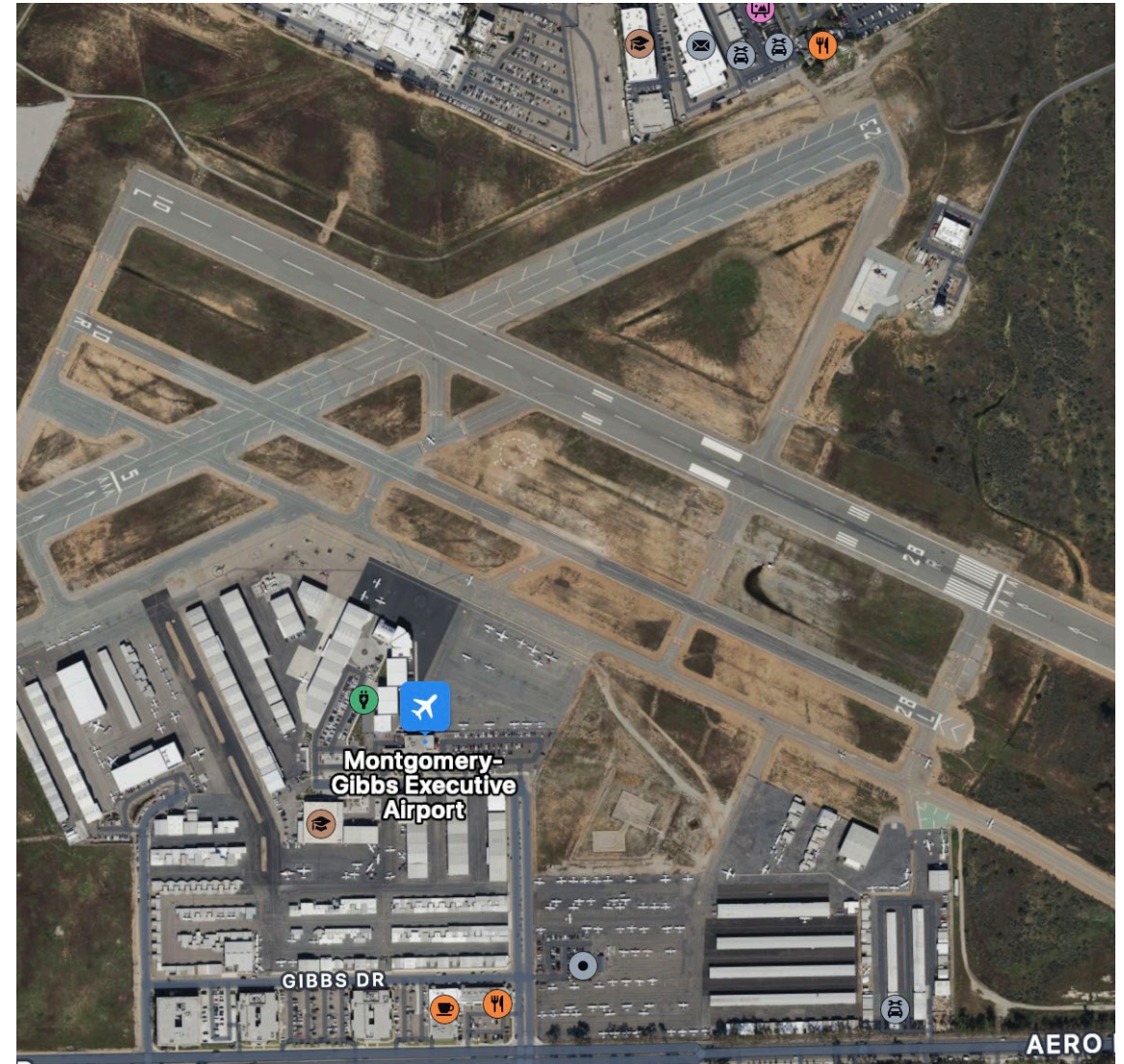
FAA has shown a willingness to provide much longer lease terms for a development lease as opposed to a facility lease because “[a] facility lease ... is generally the leasing of an existing facility or space to a subtenant. It does not generally involve the development of infrastructure and multiple facilities over an extended period of years.”

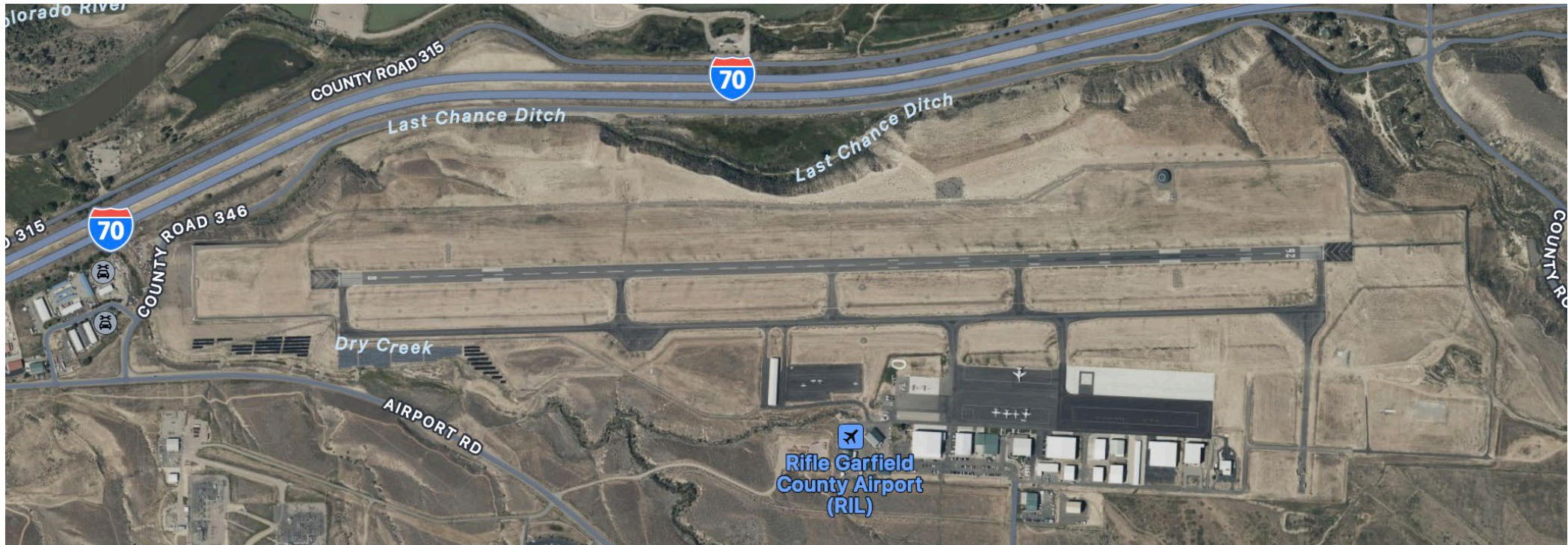
# End of Lease Considerations

- Reversion Required?
  - Clark v. City of Alamogordo, FAA Docket No. 16-05-19 (September 20, 2006)
    - FAA determined that neither the existence nor the exercise of reversionary clauses is required by sponsors.
    - neither the absence of such language nor failure to exercise reversionary clauses will in and of itself constitute a violation of FAA airport compliance policy
- AOPA Position:
  - reversion is one acceptable way to terminate a lease
- MAC Policy:
  - Successive 10 year lease terms
  - Compensation for early termination – FMV of comparable hangars
  - Tenant can remove structures and surrender a bare site
  - Advantages / Disadvantages

# Recent Developments

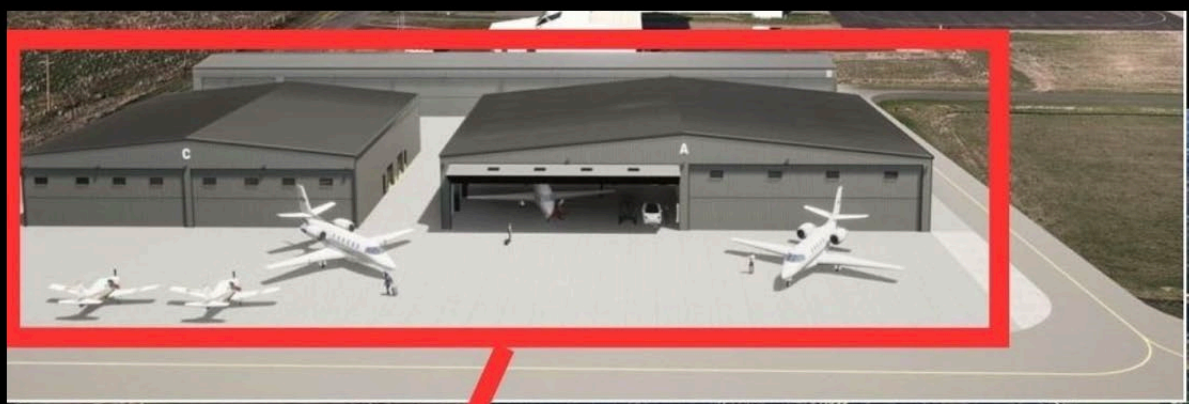
- San Diego County
  - Interpreted FAA 50 year limit to mean that each structure was limited to 50 years, regardless of Airport Layout Plan, condition, remodeling, capex, etc.
  - S.B. 654 – codified FAA policy that 50 years is maximum duration for a lease term, and each term negotiation should be treated as a new lease.





# Rifle Airport, Garfield County, Colorado

- 3 phase development of GA hangar complex
- Each phase has a separate HOA
- 20, 10, 10, 5, 5 lease = 50 years





# State by State Standardization

- Standardized (model) Lease Agreements:
  - Wisconsin
  - Tennessee
  - Texas
  - Alaska
  - Maryland

# Recommendations to Airport Sponsors

- Update the Airport Layout Plan – every 5 years
  - Or be prepared to be sued for inverse condemnation
- Use your power of condemnation!
- 30 year base term, 20 year extension
  - Capital improvements or transfer may justify terminating base lease and granting a “fresh” 30 year lease.
- CPI-based increases to land rent
  - Rent increases 2% annually or the rate of CPI increase (always up, never down)
- Discourage “through the fence” access agreements (operations off-airport).
- Codify your “standard” lease provisions in the sponsor’s policies and procedures.

