

ACRP

Airport Cooperative Research Program



Current Trends at Airports: Rights and Responsibilities

November 14, 2011

2011 Fall ACRP Webinar Series

- October 24 - Wildlife vs. Aviation: Repelling and Detering Techniques
- **November 14 - Current Trends at Airports: Rights and Responsibilities**
- December 5 - Small Airports: Practical Guidance for Survival

ACRP Webinar Series Co-Hosts



Today's Agenda

- 1) Introductions
- 2) Presentations
- 3) Q & A
- 4) Close

Today's Speakers

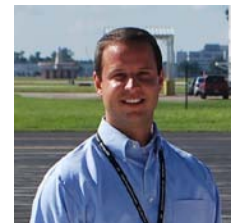
Moderated by Mike Salamone, Senior Program Officer and Manager, ACRP



Presentation 1: Overview of *Report 47: Guidebook for Developing and Leasing Airport Property*
- Rick Crider, Airport General Manager, Port San Antonio



Presentation 2: Overview of *Legal Research Digest 8: The Right to Self-Fuel*
- C. Daniel Prather, Founder and CEO, Prather Airport Solutions
- Brett W. Fay, Operations Coordinator, Lakeland Linder Regional Airport



What is the Airport Cooperative Research Program (ACRP)?

- Industry-driven, applied research program that develops near-term, practical solutions to problems airport operators face.
- Managed by the Transportation Research Board (TRB) of the National Academies.
- Sponsored by the Federal Aviation Administration.
- Research is conducted by *you*—individuals and firms selected on the basis of competitive proposals.



ACRP Research Areas

- Administration
- Construction
- Design
- Environment
- Human Resources
- Maintenance
- Operations
- Policy and Planning
- Safety
- Security
- Special Projects

Other Recent Research Products

- Legal Research Digest 9: *Case Studies on Community Challenges to Airport Development*
- Legal Research Digest 10: *Analysis of Federal Laws, Regulations and Case Law Regarding Airport Proprietary Rights*
- Legal Research Digest 11: *Survey of Minimum Standards: Commercial Aeronautical Activities at Airports*
- Report 49: *Collaborative Airport Capital Planning Handbook*
- Report 54: *Resource Manual for Airport In-Terminal Concessions*

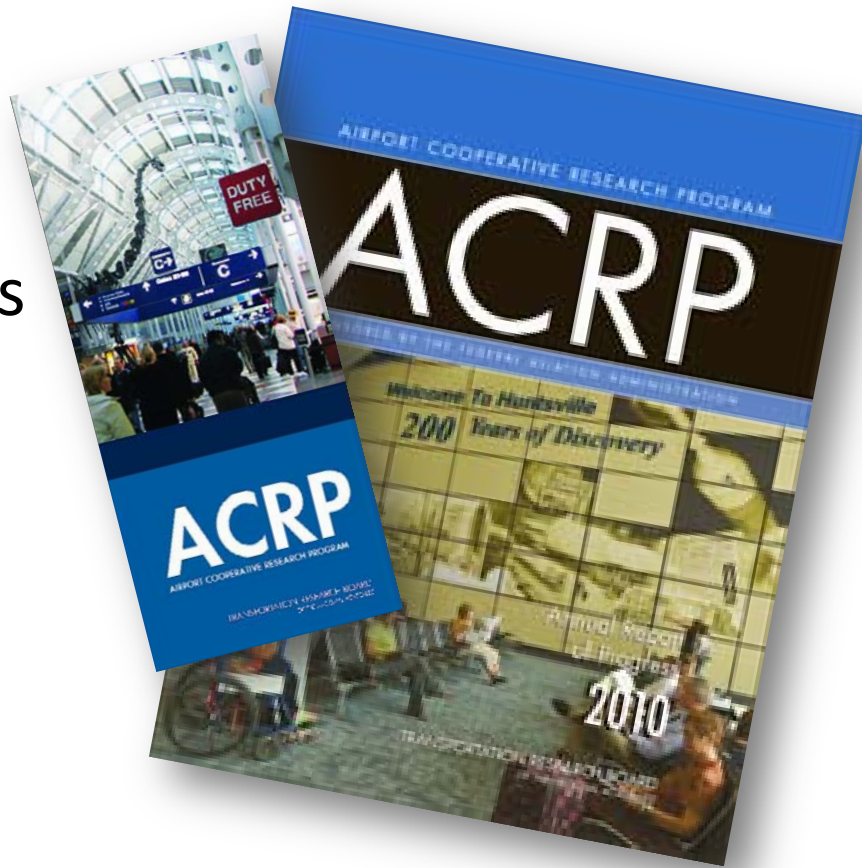
Five Ways to Get Involved in ACRP

- Submit a research idea, also called a Problem Statement.
- Prepare a proposal to conduct research.
- Volunteer to participate on a project panel. We reimburse for travel.
- Apply to be an ACRP Ambassador or member of the ACRP Speakers Bureau.
- Use our research results.

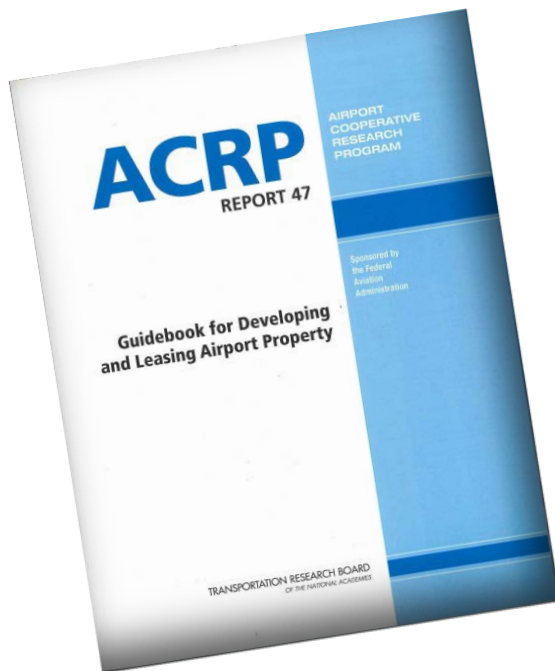
Visit www.TRB.org/ACRP

For information on
ACRP's:

- Research projects
- Anticipated projects
- Publication lists
- Success stories
- Email news alerts
- Announcements
- And more!



AIRPORT COOPERATIVE RESEARCH PROGRAM REPORT 47 *GUIDEBOOK FOR DEVELOPING AND LEASING AIRPORT PROPERTY*



Presented by:
Rick Crider, A.A.E.



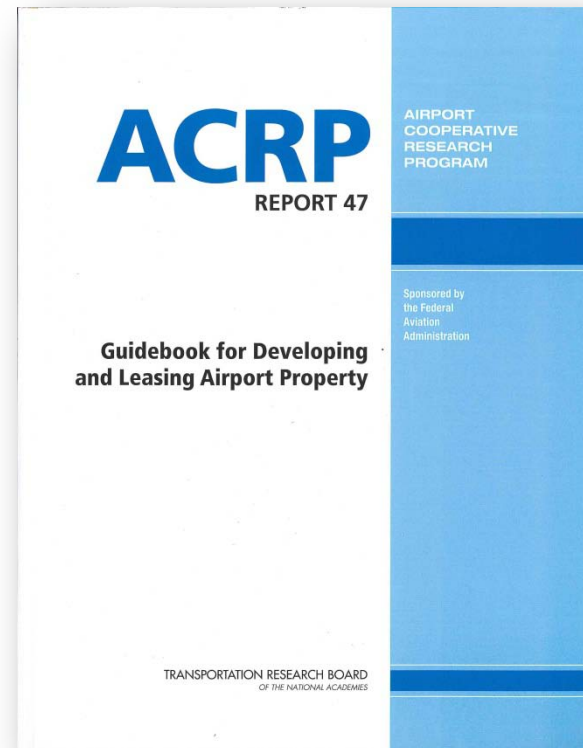
Rick Crider, A.A.E.– Report Author

- Airport General Manager
Port San Antonio
- Principal Investigator – ACRP Report
47
- Served as Airport Director at
Rickenbacker International Airport in
Columbus, OH and Abilene Regional
Airport in Abilene, TX
- Served as CEO of the Gainesville-
Alachua County Regional Airport
Authority in Gainesville, FL



ACRP Report 47: *Guidebook for Developing and Leasing Airport Property*

- Specialized expertise needed to negotiate and conclude airport business agreements in an industry with a diverse group of businesses
- Implementation guidelines and processes are essential to an airport's long-term health and sustainability
- Tools for airport management and other relevant stakeholders are needed to implement leasing, property management, and development policies and agreements, within the context of airport improvement and expansion
- Published May 2011



Case Studies

- Diversity in Size of Airports
 - 2 General Aviation Airports
 - 2 Non-Hub Airports
 - 2 Small-Hub Airports
 - 2 Medium-Hub Airports
 - 2 Large-Hub Airports
- Arms-length approach – all projects were nominated by either the FAA or a State DOT aviation official
- Projects were further vetted for sponsor interest and geographic diversity

Anchorage, AK



Alaska CargoPort™ was assisted through the employment of creative marketing tactics to attract Northwest Airlines, and tax-exempt funding through the State of Alaska

Baton Rouge, LA

Land purchased to meet RSA requirements was divided by a 4-lane highway, so the portion with no airside access became a prime development site



Bloomington, IN

Innovative lease terms include tenant retention of equity, stimulating development and encouraging maintenance of the improved facilities



Houston, TX

George Bush
Intercontinental Airport
created a Consolidated
Rental Car Facility for eight
rental car operators under
an LLC established to
govern all operations



McKinney, TX

Incentives tied to minimum levels of local tax impact were employed to attract a significant corporate tenant



New Bern, NC

Airport sponsor and existing Fixed Base Operator (FBO) shared development costs and responsibilities of constructing a new terminal



Pittsburg, PA

Little land was developable due to lack of infrastructure and prepared sites, so the airport developed an office/distribution park for large tenants



Tampa, FL

Financial incentives were used to attract a new tenant to occupy a large maintenance facility vacated by an airline



Airport Business Plan

Realistic consideration of the market that exists for airport development

- Airport facilities and services
- Population and economic growth
- Surrounding airports
- Airport leasing policy
- Rates and charges
- Potential funding sources
- Land use planning

Target Industry Analysis

- Identifies businesses and industries best suited to conduct operations on available airport land
- Considers:
 - Regional demographic trends
 - Employment concentrations
 - Industry clusters
 - Regional industry profiles

Checklist for Success

Planning:

- Does the project fit stated goals of the Airport Master Plan, the Land Use Plan and the Airport Business Plan?
- Does it comply with community land use plans, zoning ordinances and other applicable planning documents?
- Does it comply with or is it in conflict with the FAA approved ALP?
- Does the proposed use of the property violate any grant assurances?
- Does the project represent the highest-and-best use of the property?

Checklist for Success

Stakeholder/Community Involvement:

- Have all of the potential stakeholders been identified?
- Have perspectives, concerns and resources (e.g. potential funding sources, marketing resources, and development expertise) of community stakeholders been identified?
- Are plans in place to reach out to the community (e.g. public meetings, round-table discussions and focus groups) planned to facilitate communication and dialogue?

Checklist for Success

Finance and Funding:

- What will the project cost in terms of immediate outlay of resources, and what ongoing operational, maintenance and financing costs are anticipated?
- Where will the project funding come from, and who is responsible for securing it?
- Will the airport sponsor's debt capacity and/or credit worthiness be impacted by financing this project?
- Does the airport have the ability to issue debt, either on its own or through another public-sector entity ?

Checklist for Success

Finance and Funding (continued):

- Does the project qualify for any Economic Development grants, incentive or assistance with project funding?
- Will the anticipated airport revenue be sufficient to cover debt obligations and recurring operational costs assigned to the sponsor?
- Will the airport sponsor realize revenues in line with the valuation estimates or the appraised market value of the property?
- Has a pro-forma financial analysis been done for the useful-life of the project that forecasts the financial impacts to the airport sponsor?

Checklist for Success

Lease Agreements:

- Are premises and leasehold boundaries clearly described and well defined?
- Does the lease agreement outline the approved uses of the premises?
- Is the process for approval of all construction of improvements and modifications to premises clearly spelled out?
- Does the length of the lease violate any local or state statutes regulating maximum amount of time that a lease may be entered into by a public agency?
- Is the division of responsibility for leasehold maintenance clearly distributed between Lessee and Lessor?

Checklist for Success

Lease Agreements (continued):

- Is there an escalation clause that will allow airport sponsor to adjust lease rent?
- Have you shared your lease with the FAA?

Checklist for Success

Facility Management:

- Does airport sponsor have appropriate access for inspection of premises?
- Are insurance requirements of Lessee clearly spelled out, and is there a mechanism for updates?
- Can the Lessee sublease all or a portion of the property - what approval process is required?
- Does the lease agreement pose any threat of grant assurance violations:
 - Lease term length
 - Economic discrimination
 - Airport sustainability
 - Exclusive rights?

Pearls of Wisdom

- Templates don't necessarily work
- Grant assurance compliance – not just a good idea, it's the law
- Get credit for the incentives provided
- Property valuation doesn't play fair in the game of "Catch Up"
- Minimum Standards and Rules & Regulations are benchmarked by the oldest, not the newest, tenant

Pearls of Wisdom (continued)

- Depth of Stakeholder bench can strengthen a project

For additional information:

ACRP Report 47: *Guidebook for
Developing and Leasing Airport
Property*

www.trb.org/Publications/Blurbs/164688.aspx

- Rick Crider
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LEGAL RESEARCH DIGEST 8 *THE RIGHT TO SELF-FUEL*



Presented by:

C. Daniel Prather



and
Brett W. Fay



Dr. Daniel Prather, A.A.E. – Report Author

- President and CEO of Prather Airport Solutions, Inc. and Associate Professor of Aerospace at Middle Tennessee State University
- Former Assistant Director of Operations at Tampa International Airport
- Accredited Airport Executive and Instrument-rated Private Pilot
- Authored textbook - General Aviation Marketing and Management: Operating, Marketing, and Managing an FBO
- Authored ACRP 26, “Current Airport Inspection Practices Regarding FOD” and ACRP 27, “Airport Self-Inspection Practices”
- Currently working on ACRP S10-07, “Expediting Recovery of Disabled Aircraft”



Mr. Brett Fay – Lead Researcher

- Former Senior Associate for Prather Airport Solutions, Inc.
- Operations Coordinator at the Lakeland Linder Regional Airport
- Oversees Part 139 compliance, and safety and security activities at Lakeland Linder Regional Airport
- Researched self-fueling, exclusive rights, and Safety Management Systems
- B.S. in Aerospace Administration with a minor in Business from Middle Tennessee State University.



LRD 8: *The Right to Self-Fuel*

- ACRP Project 11-01, Legal Aspects of Airport Programs
- Research report prepared by:
 - C. Daniel Prather, Prather Airport Solutions, Inc.
- Principal Investigator:
 - James B. McDaniel, TRB Counsel for Legal Research Projects
- Published December 2009



Dr. Daniel Prather



Disclaimer

- Final interpretation rests with FAA
- Addressed on an airport-specific basis
- 'Airport' refers to the 'airport sponsor'



Overview

- Self-Fueling vs. Commercial Self-Service
- AC 150/5190-6
- Exclusive Rights Violations
- Grant Assurances



What is NOT Self-Fueling?

Commercial self-service

- A fueling concept that enables a pilot to fuel an aircraft from a commercial fuel pump installed for that purpose by an FBO or the airport sponsor.



What is Self-Fueling?

Self-Fueling

- The fueling or servicing of an aircraft...by the owner (or operator) with his or her own employees and using his or her own equipment.

This right is protected at all federally-obligated airports.



Advisory Circular 150/5190-6, Exclusive Rights at Federally Obligated Airports

- An aircraft owner or operator may ...refuel... his/her own aircraft, provided the service is performed by the aircraft owner/operator or his/her employees with resources supplied by the aircraft owner/operator.
- In accordance with reasonable rules, regulations or standards.
- Unreasonable restrictions may be construed as an exclusive rights violation.

Advisory Circular 150/5190-6, Exclusive Rights at Federally Obligated Airports (cont.)

- Using an owner/operator's own equipment and employees.
- No obligation to lease airport facilities and land for such activity.
- No obligation to permit aircraft owners/operators to introduce equipment, personnel, or practices that would be unsafe, unsightly, or detrimental or would affect efficient use of airport.

Exclusive Rights Violations?

May exist through:

- Unreasonable minimum standards
- Unreasonable rules and regulations
- Unreasonable lease agreements
- Written or oral contracts (express agreements)



Grant Assurance 5

Preserving Rights and Powers

“It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights claims or claims of right of others which would interfere with such performance by the sponsor.”

Grant Assurance 19 Operation and Maintenance

“The airport and all facilities that are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal state and local agencies for maintenance and operation.”

Grant Assurance 22 Economic Nondiscrimination

“The airport will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including ... fueling] that it may choose to perform.”

Mr. Brett Fay



Overview

- FAA Policy and Exceptions to Policy
- Minimum Standards and Rules & Regulations
- Reasonable Restrictions
- Part 16 Process

Appendix D of Report
(28 abstracts of Part 16
cases)



FAA's Policy Concerning Economic Nondiscrimination

- Reasonable, and not unjustly discriminatory, conditions to be met by all users.
- Prohibition of any type, kind, or class of aeronautical use of the airport if necessary for the safe operation of the airport or to serve the civil aviation needs of the public.



FAA's Policy Concerning Economic Nondiscrimination (cont.)

- Any one preferred method for self-fueling.
- Provide an opportunity for self-fueling in a manner that is in the best interest of the public users, not unjustly discriminatory, and without creating an exclusive right.
- No obligation to allow practices that are unsafe, unsightly, detrimental to the public welfare or that would affect the efficient use of airport facilities.

Exceptions to FAA Policy

- Exclusive right for the benefit of the airport, but not to another user (i.e., FBO).
- Aeronautical users may still choose to exercise their right to self-service, which includes self-fueling.



Exceptions to FAA Policy (cont.)

- Cannot allow certain FBOs the opportunity to provide a service, while excluding others from offering competitive services.
- Uniform application of any limitation or prohibition of service.



Purpose of Minimum Standards, Rules, Regulations, and Lease Agreements

- Minimum standards
 - Commercial activity
- Self-fueling is not considered commercial activity.
- Rules and regulations or lease agreements
 - Non-commercial activities



Restrictions Determined to be Reasonable

- Proof of aircraft ownership
- Proof of fuel truck ownership
- Fuel truck equipped with a certified meter used to measure gallons pumped
- Fuel truck licensed with the Department of Transportation
- Fuel spill containment plan
- All licenses and permits required by federal, state, or local
- Insurance coverage to protect airport from any and all environmental damages

Restrictions Determined to be Reasonable

- Insurance coverage for any vehicle involved in self-fueling
- A deposit or bond in the amount necessary to cover the deductible of the environmental and vehicle insurance
- A daily log illustrating the quantity of fuel pumped by individual aircraft
- Notification to the airport sponsor prior to the self-fueling operation

Part 16 Enforcement Proceedings

- Pursuant to 14 C.F.R., Part 16, § 16.23, any person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA.
- Dismissal or investigation
- Appeals
- Final decision



Noteworthy Part 16 Decision

Cedarhurst Air Charter v. County of Waukesha, Wisconsin

Importance of establishing programs (rules, regulations, minimum standards) necessary to allow safe and efficient self-fueling at the airport.

SELF FUELING
SELF FUELING

Concluding Thoughts

- Be Proactive. Adopt rules, regulations, and policies.
- The airport must provide for an opportunity to self-fuel.
- The airport has an obligation to control self-fueling activity to ensure safe and efficient operation of the airport.
- All restrictions placed on self-fueling must be applied in a uniform manner.
- Always consult with the FAA. Do not rely solely on an AC as a means of denying aeronautical activity.

For additional information:

LRD 8: *The Right to Self-Fuel*

www.trb.org/Publications/Blurbs/162665.aspx

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