

# Town of East Hampton – Airport Obligations



KAPLAN KIRSCH ROCKWELL  
Peter J. Kirsch, Partner

October 11, 2011

## Kaplan Kirsch & Rockwell, Peter Kirsch, Partner

- Legal practice dedicated to airport law issues
  - Nation's largest legal practice dedicated to airport law ([www.airportattorneys.com](http://www.airportattorneys.com))
- Practicing in this area for 25 years
- Firm's lawyers involved in most of the major airport operational disputes in the last two decades, including –
  - Naples, FL
  - Santa Monica, CA
  - Burbank, CA
- Been advising East Hampton since 2007

# Purpose of today's presentation

- How federal requirements impact operation of public airports like East Hampton Airport
- Practical effects of taking federal aviation grants (other than money)
- Practical effects of *not* taking federal money on Town's ability to restrict use of Airport
- Effect of taking federal money on the Town's ability to achieve its objectives for this airport

# Introduction

## I. Grant Assurances

- What are Grant Assurances?
- How long do they last?
- How do they affect operation of the Airport?

## II. Other federal laws that control airport operations

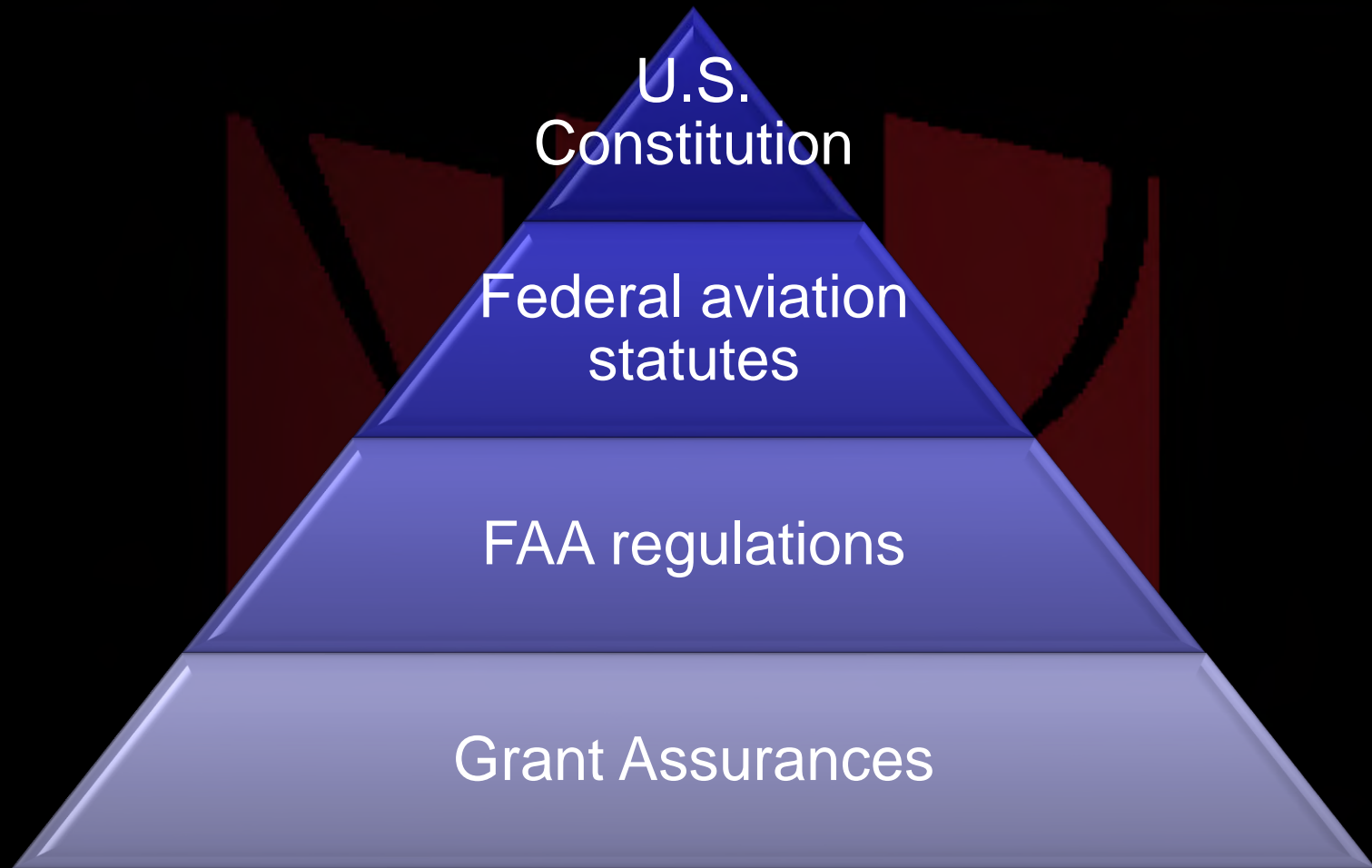
## III. Effect on the Town of not taking FAA grant money

## IV. Ways the Town can gain greater control over Airport access

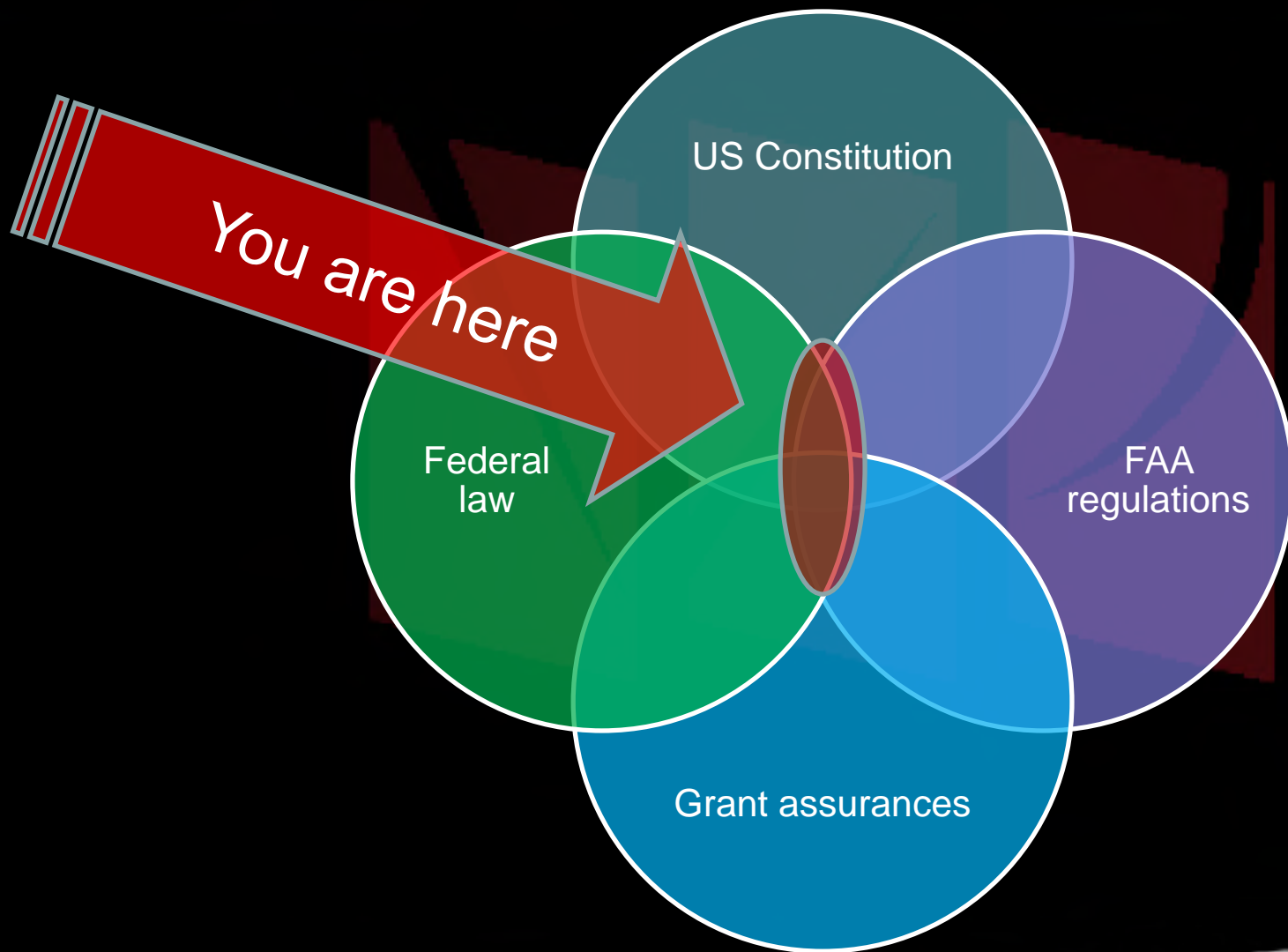
# Common misperceptions

- ✘ The Town's grant assurances will expire at end of 2014
- ✘ Once grant assurances expire, the Town will be free to restrict aviation access to the airport
- ✘ Many other airports have successfully imposed restrictions on their airports in recent years
- ✘ The Town can regulate helicopter routes

# Source of obligations - one view



# A holistic view of the law



# Four key sources



Commerce Clause

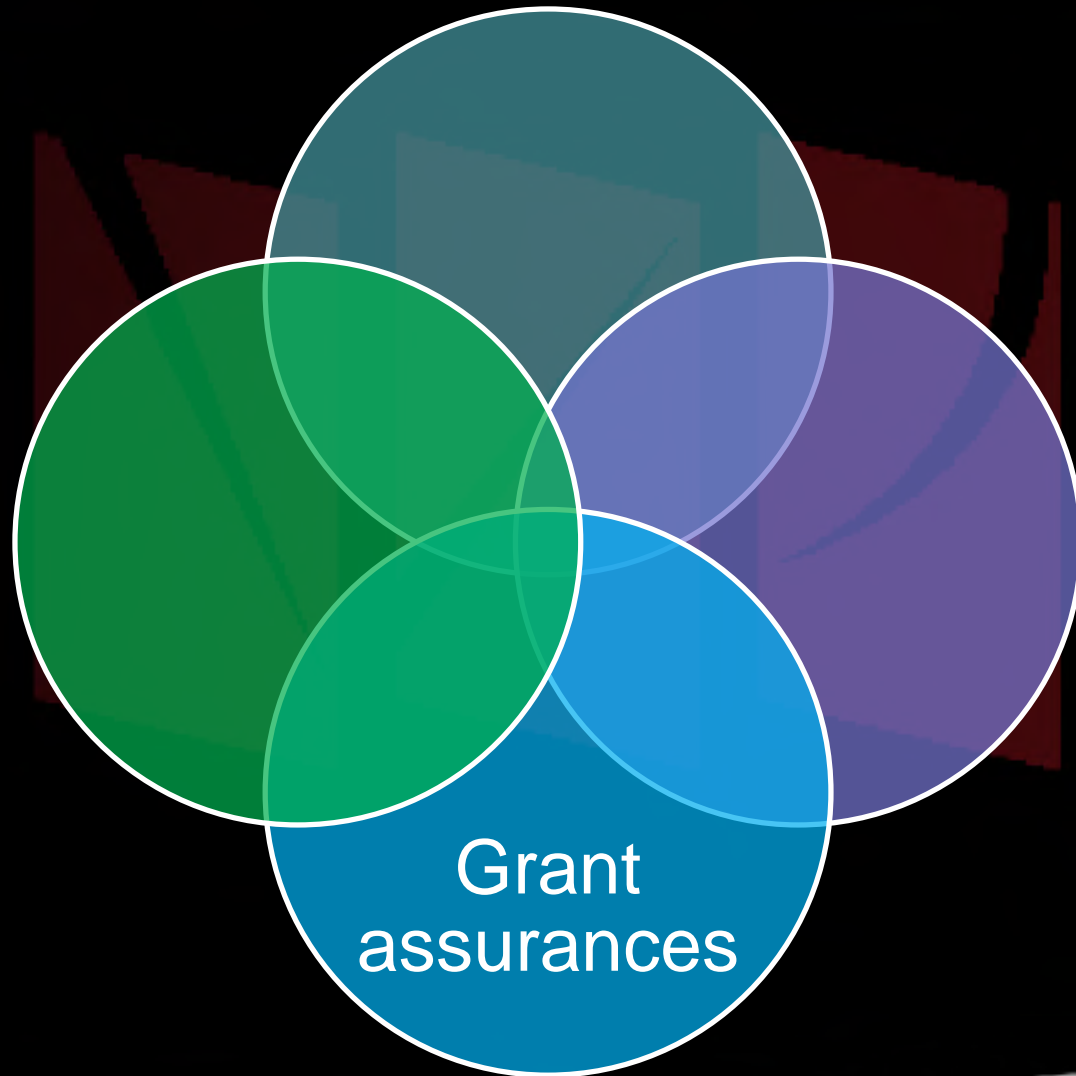
Airport Noise and  
Capacity Act

Part 161  
regulations

Grant Assurances  
5, 19, 22, 23



# Part I – Grant Assurances



# Who is grant obligated

Total US airports – 19,734

```
graph TD; A[Total US airports – 19,734] --> B[Public use airports – 5,179]; B --> C[Grant-eligible airports (NPIAS) – 3,380]; C --> D[Grant-eligible general aviation airports (like East Hampton) – 2,560];
```

Public use airports – 5,179

Grant-eligible airports (NPIAS) – 3,380

Grant-eligible general aviation airports (like East Hampton) – 2,560

# Federally funded airports



# NY- area grant obligated airports



# What are Grant Assurances?

- Contractual commitment by airport proprietor to the U.S. government in exchange for grant funds
- Basic structure in effect for decades
  - Since Federal Airport Act of 1946
- Required by, and implement, federal law (49 U.S.C. § § 40103, 47107)
- Grant assurances allow FAA to enforce *contractually* many of the obligations of federal law
  - Reduces expense of litigation for FAA
  - Simplifies enforcement for FAA

# General Conditions

- Apply to all property and facilities on the Airport Property Map
  - Not just the facilities improved with grants
- Apply for 20 years (except planning grants – 10 years)
- No expiration of assurances for property acquired with federal funds or #23 (exclusive rights)
- Mirror requirements of federal law
  - Also add contracting and financial matters

# Uniform Grant Assurances

- 39 contractual commitments, including
  - Preserving rights and powers (No. 5)
  - Operation and maintenance (No. 19)
  - Hazards (No. 20)
  - Preserving compatible land use (No. 21)
  - Economic nondiscrimination (No. 22)
  - Exclusive rights (No. 23)
  - Self-sustaining finances (No. 24)
  - Prohibition on revenue diversion (No. 25)
  - Airport Layout Plan (No. 29)
  - Disposal of land (No. 31)
  - DBE (No. 37)
- Key grant assurances mirror federal law

# Grant Assurances at East Hampton Airport

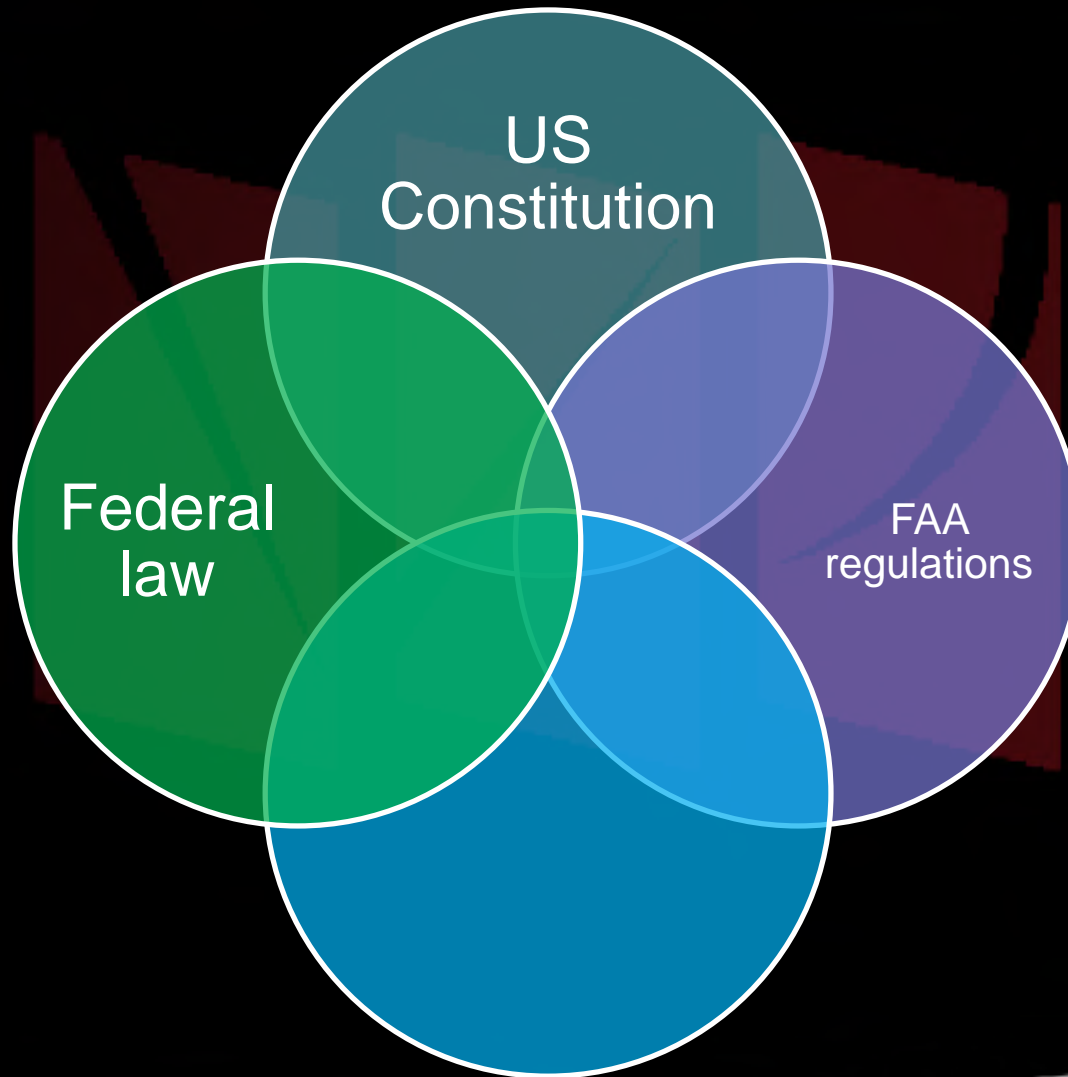
- Last federal grant: 2001
  - Normally, grant assurances would expire in 2021
- In settlement of private litigation, FAA agreed that *four* grant assurances would expire at end of 2014:
  - Grant Assurances 22a and 22h
  - Grant Assurance 29a and 29b



# Enforcement of obligations

- Violation of grant assurances is enforced *only* by FAA
  - Though administrative adjudication
  - In federal court if necessary
- FAA is aggressive and consistent in enforcing both grant assurances and federal law
  - Santa Monica and Naples litigation

# Part II – Other federal laws/regulations



# Application of other federal laws

- Federal law applies to all public use airports
- Independent of grant assurances
- Can be enforced in federal court litigation by
  - FAA
  - User
  - Affected landowner
  - Interest group
- Enforced in court through litigation

# Constitutional requirements

- Federal law and constitutional requirements apply to every public use airport
  - Public use airports must be available to the public
- Proprietor cannot restrict access unless –
  - Reasonable in the circumstances of the particular airport
  - Carefully tailored to the local needs and community expectations
  - Based upon data which support the need and rationale for the restriction
  - Not unduly restrictive of interstate commerce

# Other federal laws

- Laws implement federal control over airports
- Since 1990 – Airport Noise and Capacity Act (ANCA)
  - For restrictions on stage 2 aircraft, airport must complete study and public review procedures (Part 161 regulations)
    - Includes helicopters
  - For restrictions on stage 3 aircraft, airport must complete study *and* secure FAA approval
  - Not clear whether ANCA applies *only* to federally obligated airports

# History of airport use restrictions

- **Many** airports have use restrictions (e.g.: curfews, noise limits)
  - *With only one exception, every one of these restrictions was enacted before ANCA became law in 1990*
  - The one exception is Naples Municipal Airport (FL) which prohibits stage 2 (noisier) fixed wing aircraft.
- Since 1990, very, very few airports have *even tried* to adopt use restrictions
  - Only one airport has completed the process needed for FAA approval to restrict current generation of aircraft (Burbank, CA). They were unsuccessful

# Uncertainties

- Efforts to impose use restrictions since 1990 often result in litigation
  - By FAA (Naples, Santa Monica)
  - By user groups (Naples, New York City)
- Lessons from Naples, Burbank, Santa Monica and New York City: Hurdles are –
  - Practical (Part 161 study)
  - Legal (litigation exposure)
  - Financial (cost of compliance; litigation costs)

# Part III – Effect of not taking grants





# Obligated vs. non-obligated airports

<b>Federally obligated airports</b>	<b>Non-obligated airports</b>
Financial obligations to FAA	No financial obligations to FAA
Eligible to receive grants	No federal money
Use restrictions must comply with grant assurances, Constitution, ANCA	Use restrictions must comply with Constitution and maybe ANCA
Grant assurances for 20 years	No grant assurances
Airport Layout Plan	No ALP required
Most disputes start with FAA administrative process	Litigation starts in trial courts (state or federal)

# Restricting airport access

Item	Obligated airport	Non-obligated airport
Technical Study	Required	Required
Must prove need	Required	Required
Public review process	Required	Desirable
Prove benefits outweigh costs	Required	Required
FAA approval	Only for stage 3 (not stage 2 or helicopters)	No
Safe harbor	Yes for stage 3 No for stage 2	No Litigation necessary
Litigation risk	Medium	High
Likely litigants	FAA, users	FAA, users

# Helicopter restrictions at E.H.

## Before 2021

Comply with  
grant  
assurances

Complete Part  
161 study

Follow  
procedural  
requirements  
of ANCA

Safe harbor

## After 2021

Complete  
analytical  
study

Follow  
procedural  
requirements  
of ANCA (?)

? Litigation ?

## Part IV – Increasing control over *this* Airport

- Focus on strategic objectives
  - Town Board intent (statements) can be critical
- Close coordination with FAA
- Voluntary measures
  - Better monitoring to improve compliance
- Improved enforcement of existing rules, regulations and procedures
- Improved flight track compliance
- Collaboration with federal elected officials (Sen. Schumer, Cong. Bishop) on helicopter routes

# Questions



Peter J. Kirsch

KAPLAN KIRSCH ROCKWELL

[pkirsch@kaplankirsch.com](mailto:pkirsch@kaplankirsch.com)

[www.airportattorneys.com](http://www.airportattorneys.com)