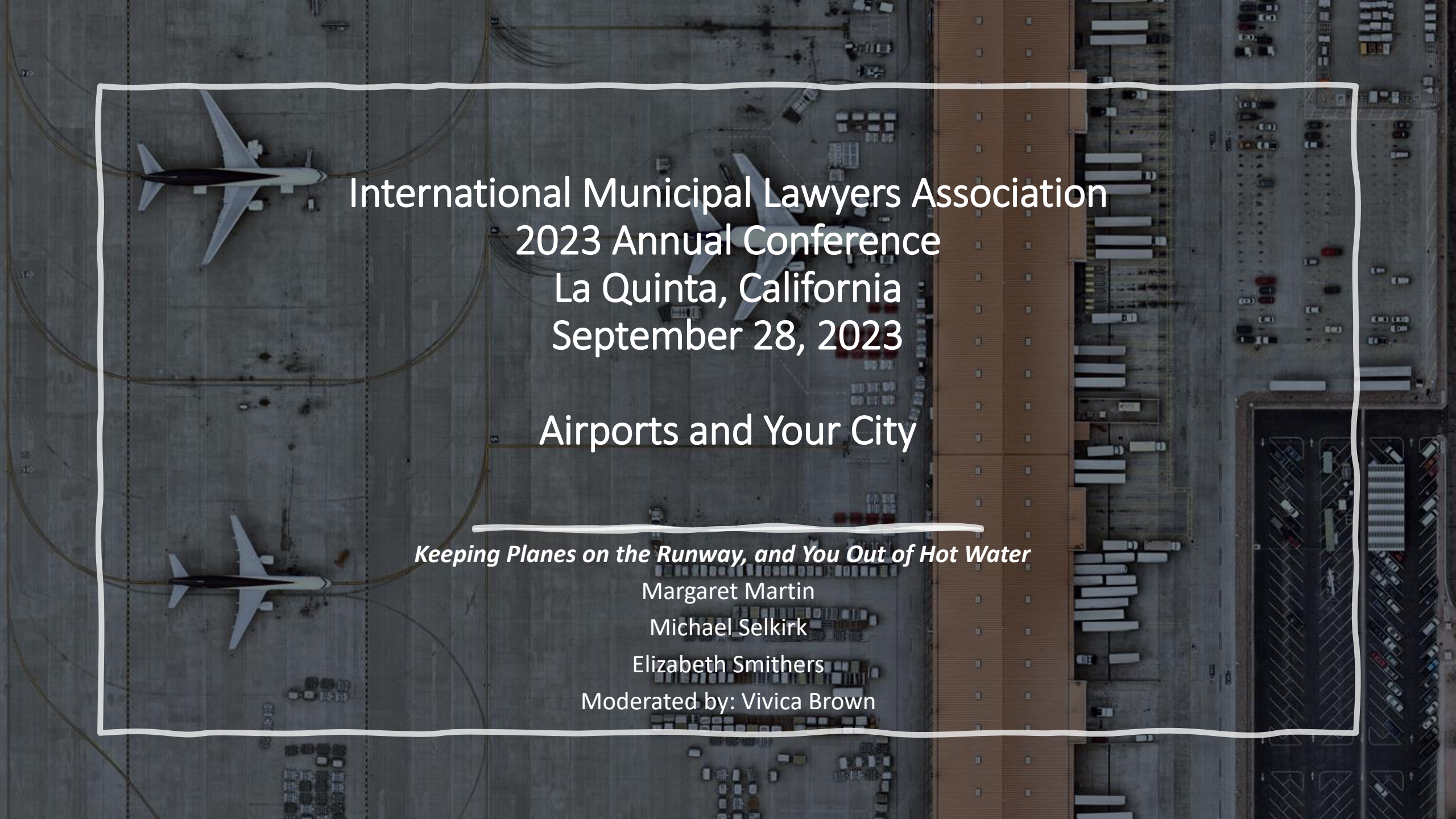


International Municipal Lawyers Association
2023 Annual Conference
La Quinta, California
September 28, 2023

Airports and Your City

Keeping Planes on the Runway, and You Out of Hot Water

Margaret Martin

Michael Selkirk

Elizabeth Smithers

Moderated by: Vivica Brown

Who are we?







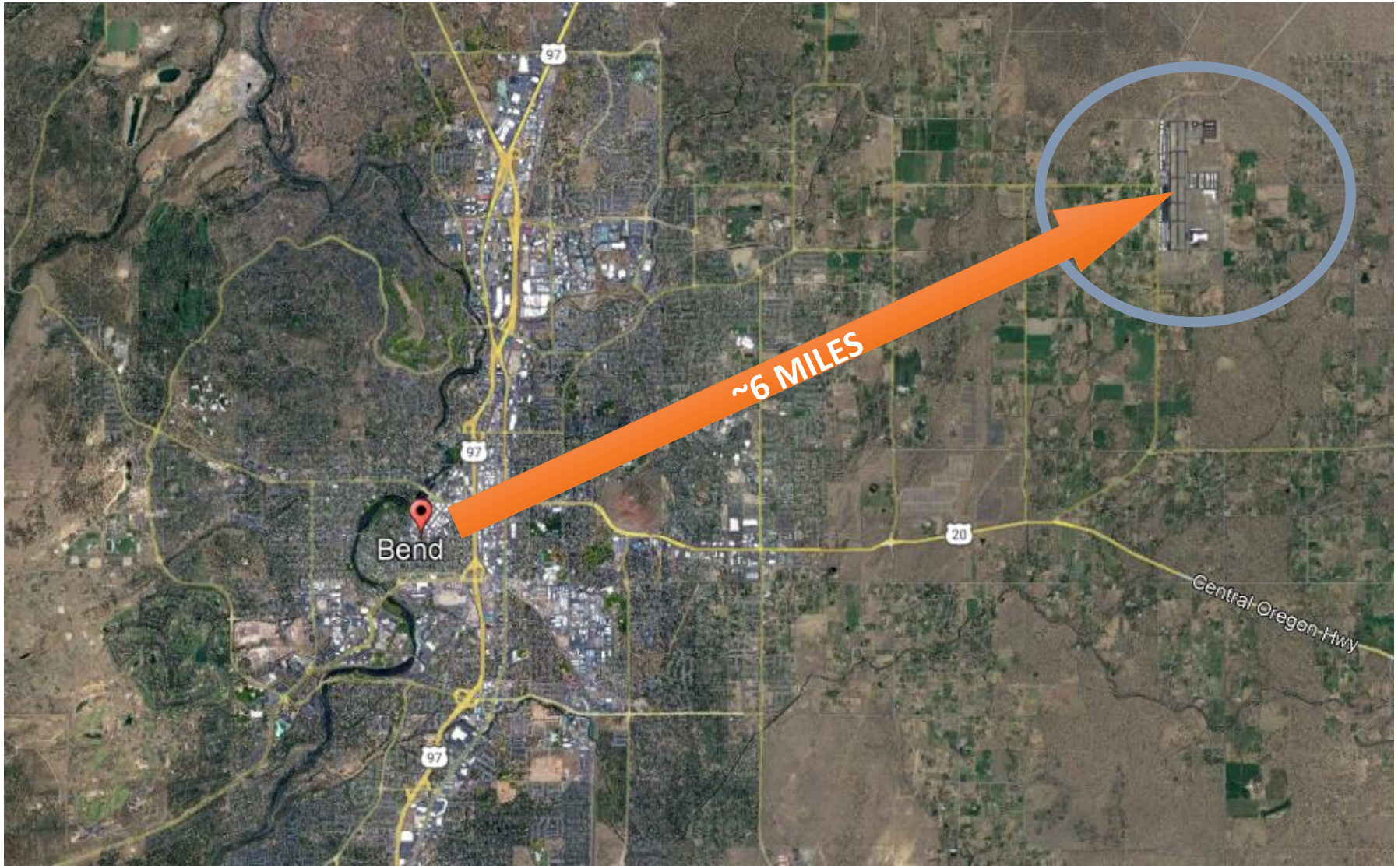




What IS Airport Law?

- Aviation Law v. Airport Law
- Impacts Various Areas of Airport Management
- Federal, State and Local Law
- Federal Grant Assurances

AIRPORT LOCATION (BDN)



AIRPORT STATISTICS

LOCAL SETTING

(City owned, County jurisdiction)

- 420 acres
- Single runway & helicopter operations area
- 3rd busiest of 97 airports in Oregon
- 141,000 annual takeoffs and landings*
- 293 based aircraft

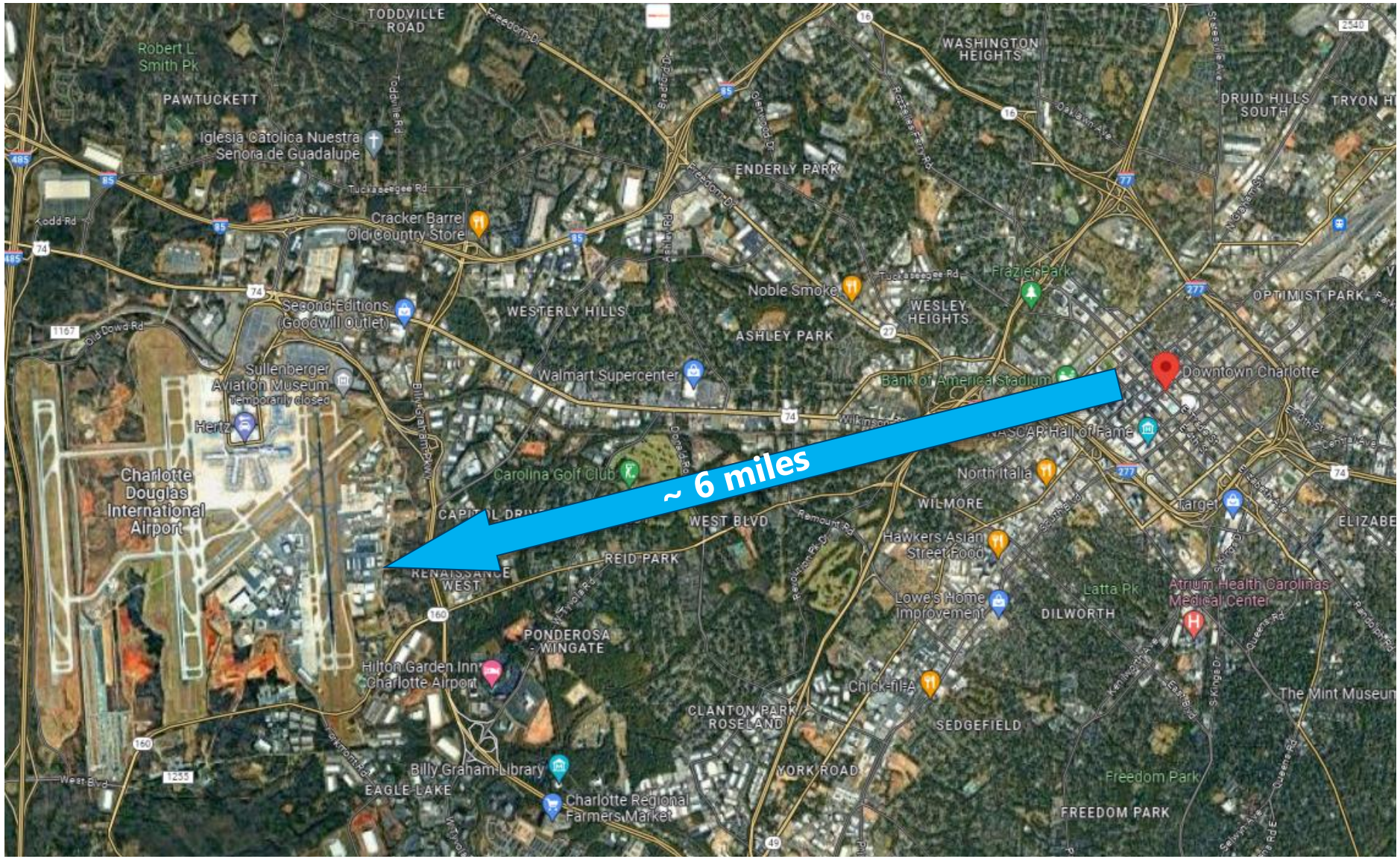
**Source: 2022 FAA.GOV*

REGIONAL ECONOMIC IMPACT**

(direct, indirect/induced)

- 860 jobs
- $166M sales/output
- $32M payroll
- $4M construction sales/output

***Source: 2018 Oregon Aviation Plan*


~ 6 miles
Charlotte Douglas International Airport
Downtown Charlotte
Bank of America Stadium
Walmart Supercenter
Carolina Golf Club
Noble Smoke
Cracker Barrel Old Country Store
Second Editions (Goodwill Outlet)
Sullenberger Aviation Museum
Temporarily closed
Hertz
Hilton Garden Inn Charlotte Airport
Billy Graham Library
Charlotte Regional Farmers Market
Lowe's Home Improvement
Hawkers Asian Street Food
North Italia
Target
Atrium Health Carolinas Medical Center
Chick-fil-A
The Mint Museum
Freedom Park
Latta Pk
TODDVILLE ROAD
PAWTUCKETT
ENDERLY PARK
WESTERLY HILLS
ASHLEY PARK
WESLEY HEIGHTS
WASHINGTON HEIGHTS
DRUID HILLS SOUTH
OPTIMIST PARK
WILMORE
WEST BLVD
REID PARK
RENAISSANCE WEST
PONDEROSA - WINGATE
CLANTON PARK ROSELAND
SEDGEFIELD
DILWORTH
YORK ROAD
EAGLE LAKE
FREEDOM PARK

FAST FACTS

ABOUT CLT AIRPORT

TERMINAL OPENED
MAY 2, 1982

114
GATES

1,400
DAILY AIRCRAFT MOVEMENTS

118,000
DAILY PASSENGERS

100+
CONCESSIONS

21,000
PARKING SPACES

3
TOTAL RUNWAYS

6,000
ACRES OF LAND

1.8M Sq. Ft.
TERMINAL WITH 5 CONCOURSES

NUMBERS & RANKINGS

47,758,605
PASSENGERS

505,589
ARRIVALS & DEPARTURES

207,608
TONS OF CARGO

2021 ACI RANKINGS*

5th IN AIRCRAFT MOVEMENTS

6th IN TOTAL PASSENGERS

34th IN TOTAL ** CARGO

* Worldwide ACI rankings

** Nationwide ACI rankings

ECONOMIC IMPACT

$32B
ANNUAL ECONOMIC IMPACT

5%
OF STATE GROSS PRODUCT

$1.83B
STATE & LOCAL TAXES

Source: NC Department of Transportation Division of Aviation

AIRLINES

179
NONSTOP DESTINATIONS

36
INTERNATIONAL DESTINATIONS

3
US TERRITORIES

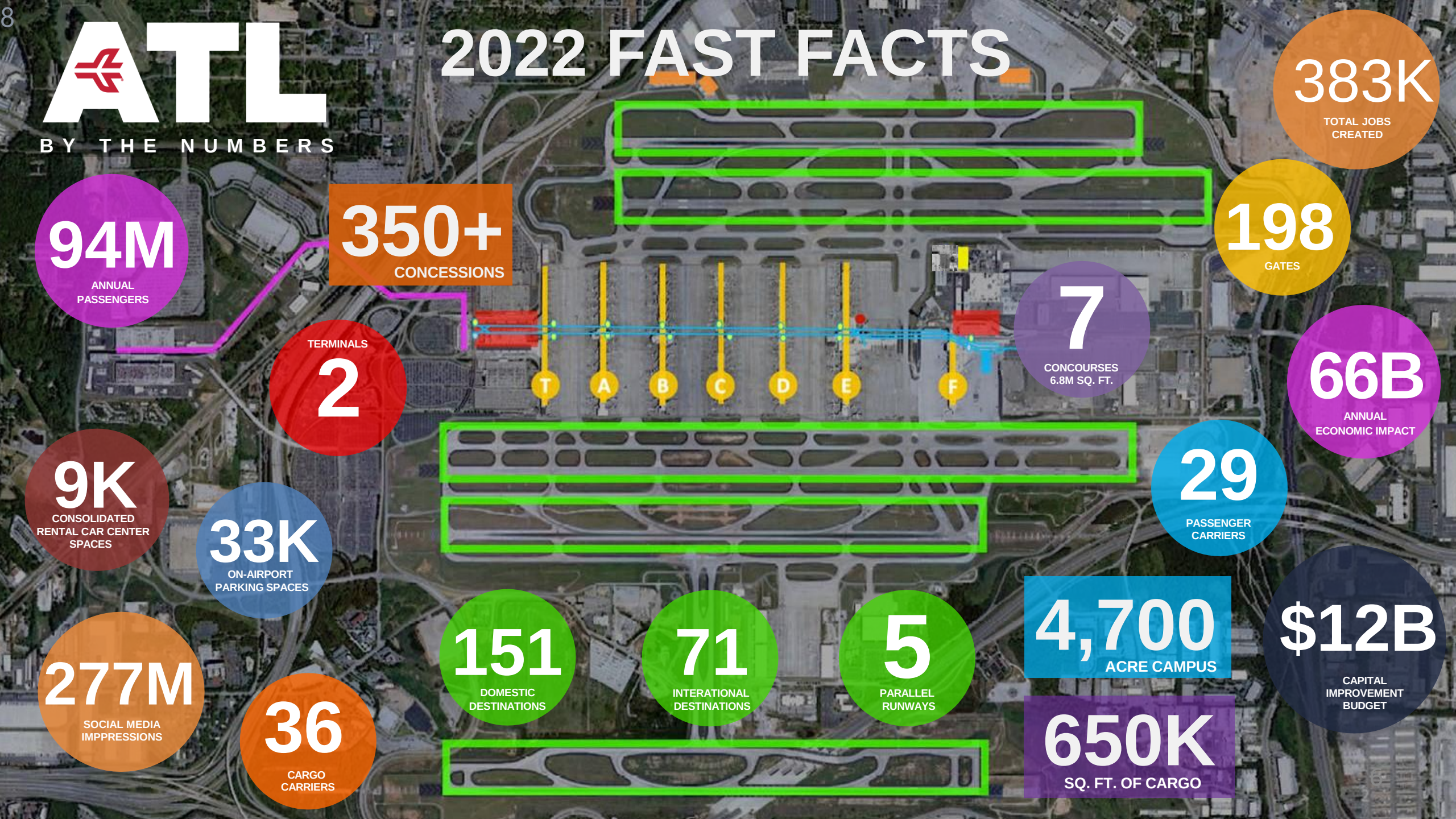
8
DOMESTIC AIRLINES

3
FOREIGN FLAG AIRLINES

ATL

BY THE NUMBERS

2022 FAST FACTS



94M ANNUAL PASSENGERS

350+ CONCESSIONS

TERMINALS **2**

9K CONSOLIDATED RENTAL CAR CENTER SPACES

33K ON-AIRPORT PARKING SPACES

277M SOCIAL MEDIA IMPPRESSIONS

36 CARGO CARRIERS

151 DOMESTIC DESTINATIONS

71 INTERATIONAL DESTINATIONS

5 PARALLEL RUNWAYS

7 CONCOURSES 6.8M SQ. FT.

198 GATES

383K TOTAL JOBS CREATED

66B ANNUAL ECONOMIC IMPACT

29 PASSENGER CARRIERS

4,700 ACRE CAMPUS

$12B CAPITAL IMPROVEMENT BUDGET

650K SQ. FT. OF CARGO

Has anyone ever said to you:

I don’t fly out of our airport because it is too expensive. You should lower ticket prices.

I have a plane, but I can’t find a hangar for it. You should get the airport to build more hangars.

I’m sick of the noise from the planes flying in at all hours. You need to stop planes coming in at night.

The airport has all that land, they should sell some to get some money for it.

Airport Responsibilities

- An airport sponsor ***is responsible*** for the operation, maintenance, safety and security of the airport. (Grant Assurances 1 and 19)
  - Compliance with local, state and federal laws governing the airport
  - Airports consist of both aeronautical and non-aeronautical land. There are slightly different obligations depending upon the type of land.

- The airport sponsor is **NOT** responsible for:
  - Ticket prices: express preemption to regulate the "price, route or service" of airlines, 49 U.S.C. §§ 41713(b)(1)
  - Most of the airspace: The airport sponsor has limited authority to regulate aircraft operation; the FAA has exclusive authority over air traffic control procedures, flight tracks, and arrival/departure procedures.

Hypo #1: Landfill vs. Runway

City is running out of space in its land fill, eyeing the property at end of runway.

Relevant Authority:

- FAA Grant Assurance #20 (Hazard Removal and Mitigation)
- FAA Grant Assurance #21 (Compatible Land Use)

Example: Deschutes County, OR

In February 2023, Deschutes County removed three potential landfill sites because they were within a five-mile radius of Bend and Redmond municipal airports.

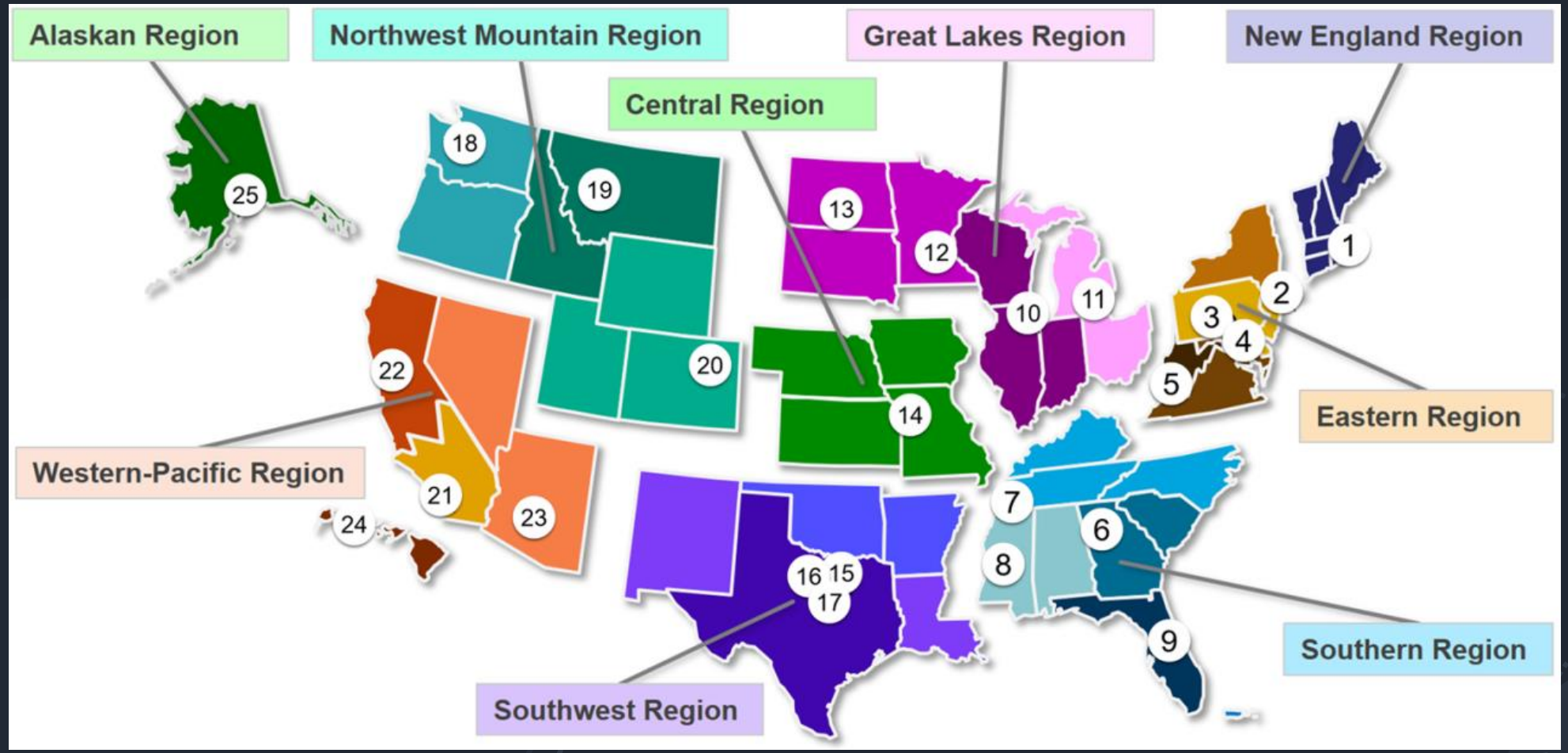
- Primary concern: bird strikes
- Advisory Circular 150/5200-34A (not binding)
- County (not city) as solid waste authority

HYPO #2: Let's Just Close It Down

Is "just closing down" the airport and selling it off in pieces an option?

Considerations/Relevant Authority:

- If airport accepted FAA-administered financial assistance, compliance with some grant assurances required for 20 years and others in perpetuity
- **Grant Assurance #5(b)** prohibits the sale, lease, disposal, encumbrance, transfer, etc. without approval by the Secretary of Transportation
- **Grant Assurance #19(a)** requires that the airport be operated as an airport at all times, and even a temporary closure requires approval by the Secretary of Transportation
- **Grant Assurance #31(b)** requires that the approved disposal of the land must be at fair market value, with repayment made to the federal government



Airport Closing Tip

Call the Airport District Office (ADO) **FIRST!!**

The ADO is your Go-To for any airport compliance questions!!

Hypo #3: We Need More $$$

Considerations:

- What will the money be used for? (hangars vs. snowplows)
- Where are we getting our money now?
- Are we diverting any revenue off-airport?
- Are we self-sustainable or not?
  - And if not, why not and is there a plan to get there?

Relevant Authority:

- FAA Grant Assurance #24 (Fee and Rental Structure)
- FAA Grant Assurance #25 (Airport Revenue)
- TIP – Don't forget to check state law - Some TN airports prohibited from charging landing/take off fees for planes smaller than 12,500 lbs.

Closer Look at Grant Assurance #25 – Airport Revenue

- Airport is a closed-loop fiscal system
- Common revenue use issues:
  - Payments to local government in lieu of taxes or for services w/out documentation
  - Makes property available for use at less than fair market value
  - Applies airport funds for non-airport development projects
  - Use of aviation fuel tax for non-aviation purposes

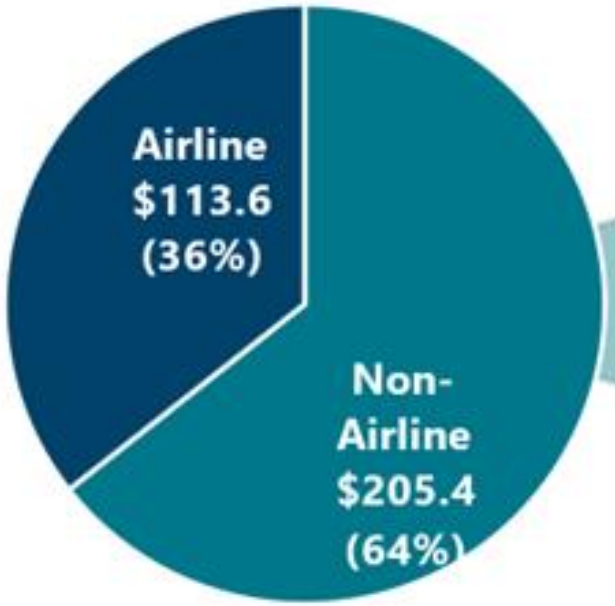
AIP Funding & Procurement

- Airport Improvement Program (AIP)
  - Provides grants for planning and development of public-use airports.
  - Airfield capital improvements; not operations.
- AIP Procurements
  - Procurements that *may* use AIP funds must comply with applicable federal contract provisions
  - When in funding source in doubt, follow AIP (early)
  - https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/may_2023
  - FAA Guidance for BIL funds: Follow AIP
- Non-AIP Procurements must include Civil Rights provision

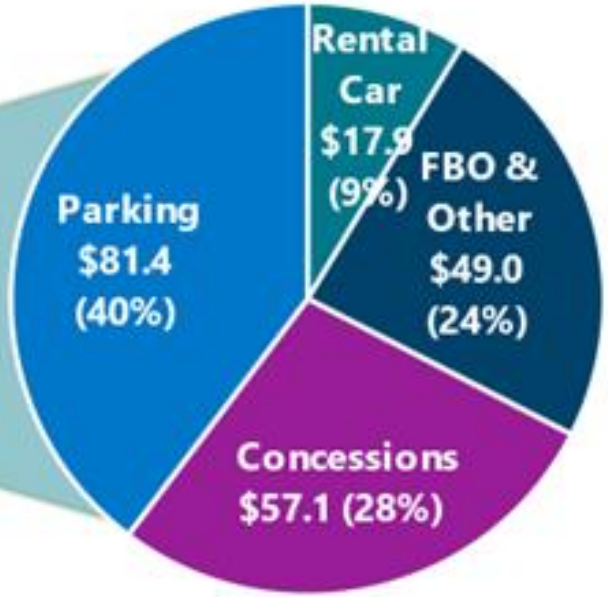
Diverse Revenue Mix Supports Low Costs

- Nearly two-thirds of FY 2022 operating revenues were derived from non-airline sources

Total Operating Revenues

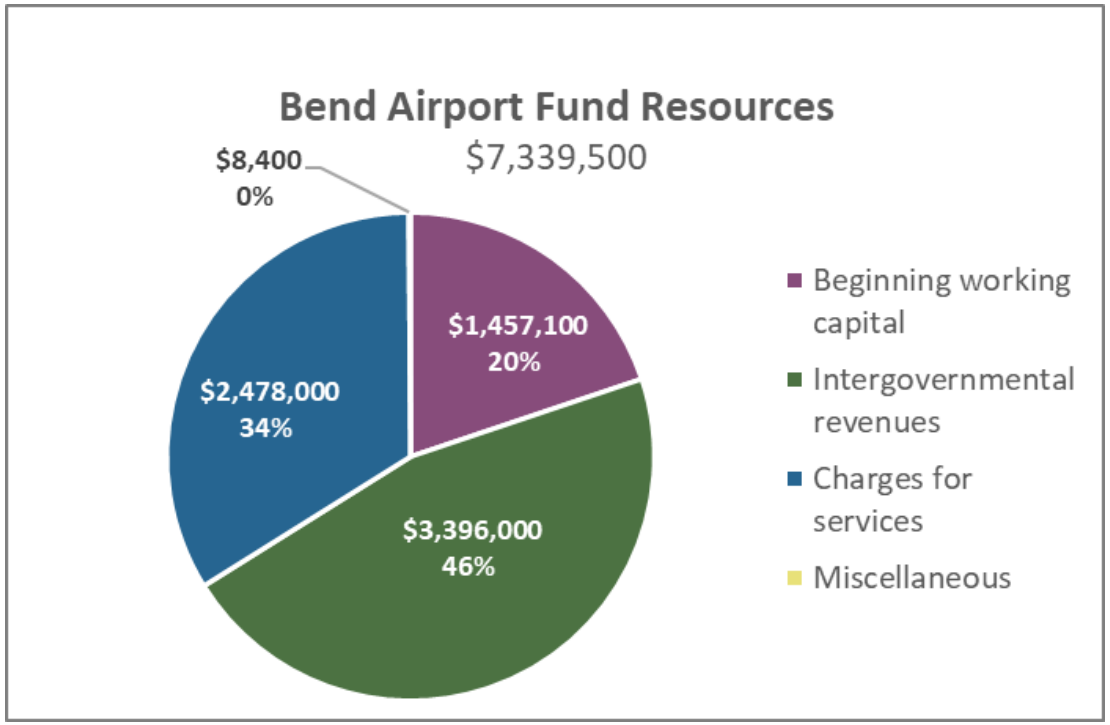


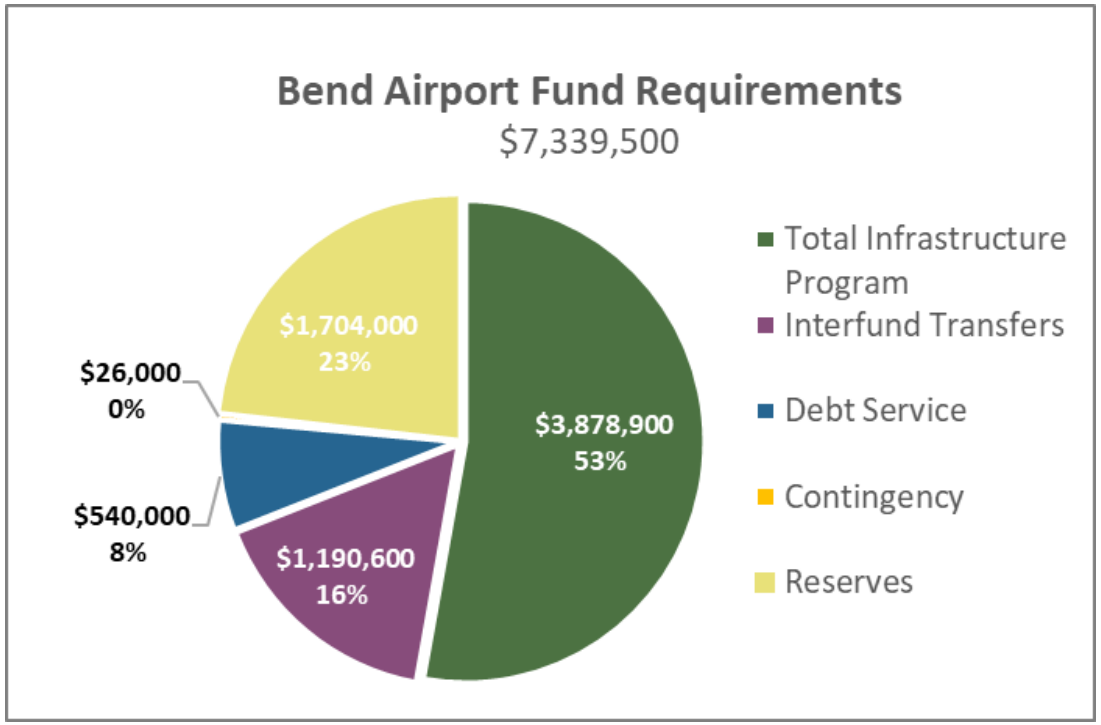
Non-Airline Revenues



Note: Revenues in millions.

City of Bend Municipal Airport Budget and Expenditures





Closer Look at Grant Assurance #24 – Fees and Rental

- Goal is for airport to be self-sustainable
- Fees/rents must be reasonable and not unjustly discriminatory
- Requirements differ depending upon whether land/use is aeronautical or non-aeronautical
- So not too high, and not too low – you're aiming for just right:
  - User fees
  - Facility rental rates
  - Land rental rate
  - Revenue-sharing opportunities

Airport Leasing

- Primary Grant Assurances
  - #5 (Preserving Rights and Powers)
  - #22 (Economic Discrimination)
  - #23 (Exclusive Rights)
  - #24 (Fee and Rental Structure)
  - #25 (Airport Revenues)
  - #38 (Hangar Construction)
- Private sector as primary driver of non-terminal development on small and medium airports
- Common issues w/ ground leasing
  - Competition for developable airport property
    - What do you do if two prospective tenants want the same piece of land?
  - Term length; 50+ years = sale/exclusive use
    - Rights of first refusal are often an exclusive right
  - Ground lease financing – bank as an airport tenant?
  - Reversionary clauses
  - Subordination clauses
  - Non-aeronautical hangar uses

Deep Dive: Use of Hangars

- FAA Policy on the Non-aeronautical Use of Hangars
  - Hangars **must** be used for aeronautical purposes
    - Storage of aircraft
    - Maintenance or repair of aircraft
    - Construction of aircraft
    - Storage of aircraft-related equipment
  - Hangars may not be used for non-aeronautical purposes
    - Residence
    - Non-aeronautical business
    - Storage of household items
    - Storage of items that impede aeronautical use or displace aeronautical contents
- Common issue, challenging to address
  - Sponsors are obligated to enforce hangar use via lease agreements
  - Inspect and monitor

Hangar Car Auction?









Airport Land Use and Development

- Grant Assurances: 19, 20, 21, 22, 24, 25, 29, 31 (a lot!)

- Airport land is **not** like other city-owned land
  - Federal, state, local requirements for planning and development
  - Distinction between aeronautical and non-aeronautical uses

- Restrictions on airport land uses
  - Deeds, grant assurances
  - Presumption favors airport land being used for aeronautical purposes
  - Section 163 for non-aeronautical uses and ALP approval

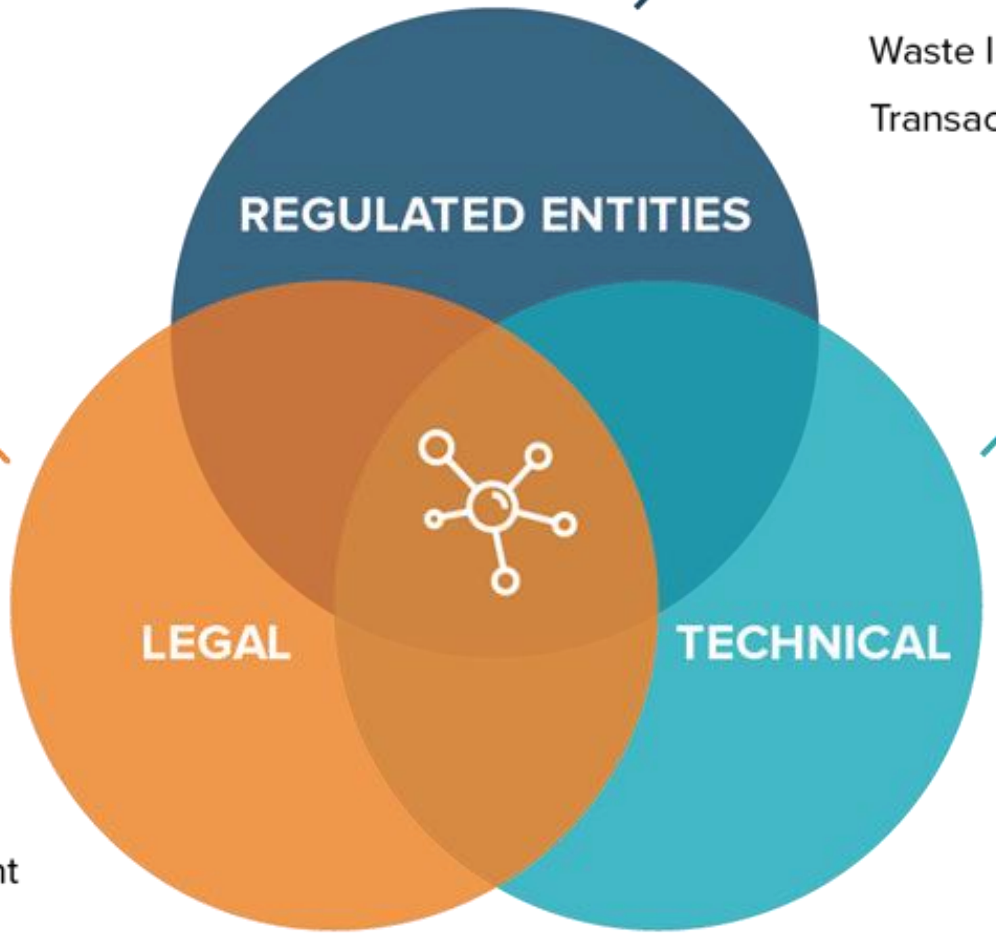
- Planning
  - Airport Master Plan (local w/ federal guidance)
  - Capital Improvement Plan (local)
  - Airport Layout Plan (federal)

- Don’t forget NEPA: federal action or federal $

Airport Layout Plans

- Grant Assurance 29
- ALP is drawing of existing and proposed land and facilities on the airport
- Facilities
  - Terminal
  - Property Map
  - Runways
  - Utilities
- ALP is required by FAA and FAA approval may be required
- ALP is binding on airport sponsors
  - Must be accurate
  - Inclusion of Property on the ALP can trigger other requirements, including NEPA.

Airports & PFAS



Property Impacts
Product Impacts
Waste Impacts
Transactions Impacts
Worker Exposure
Insurance
Compliance
Risk Communication

Risk Communication
Tort
Insurance
Occupational Exposure
Federal Statutory/Regulatory Development
State Statutory/Regulatory Development
Internal Auditing/Risk Management
Response Liability

Potential Exposure Pathways
Fate/Transport/Forensics
Toxicology/Risk
Sampling, Analysis, Lab Capacity
Remediation and Treatment Technologies
Replacement Products
Disposal
Risk Communication

Airports & PFAS

- Airport PFAS History
  - DoD “Military Specification” or “MilSpec
  - Training, Emergency Response, Hangars
  - FAA Reauthorization 2018

  - No PFAS
  - BUT –MilSpec, Hangar System Testing & Emergencies

- Rules, Regulations, Guidance and Research:
  - EPA – Guidance and Rulemaking (CERCLA liability)
  - Airport Cooperative Research Group (ACRP)
  - FAA – Transition Plan, Draft AC 150/5210-6E: Aircraft Fire Extinguishing Agents (Comments submitted August 23rd)
  - Airports Council International (ACI) – Guidance and MLD Coalition



Emerging Issues

- Drones/UAS
- Advanced Air Mobility (AAM)
- Peer-to-Peer Car Sharing (Turo)
- On Airport Revenue Management Systems (Parking)
- Title VI Compliance

Helpful References

- FAA websites: www.faa.gov/airports and https://www.faa.gov/uas/
- FAA Airport Compliance Webpage: https://www.faa.gov/airports/airport_compliance/
- FAA Grant Assurances: www.faa.gov/sites/faa.gov/files/airports/new_england/airport_compliance/assurances-airport-sponsors-2022-05.pdf
- FAA Airport Compliance Manual: www.faa.gov/documentLibrary/media/Order/Order-5190-6B-Change2-rev.pdf
- FAA Title VI Compliance: https://www.faa.gov/about/office_org/headquarters_offices/acr/airport-nondiscrimination-compliance-title-vi-lep-ej
- FAA Drone Zone: https://www.faa.gov/uas/public_safety_gov
- Airport Cooperative Research Program (ACRP): https://www.faa.gov/airports/acrp/
- ACRP Guidebook for Managing Small Airports: https://onlinepubs.trb.org/onlinepubs/acrp/acrp_rpt_016.pdf
- Individual State Aeronautics Publications
- EPA PFAS Action Plan
  - https://www.epa.gov/pfas/epas-pfas-action-plan

Thank you!

Vivica Brown

Vivica.brown@atl.com

Margaret Martin

margaret@thompsonburton.com

www.thompsonburtonpllc.com

margaret.martin@martinairportlaw.com

www.martinairportlaw.com

Michael Selkirk

mselkirk@bendoregon.gov

Elizabeth Smithers

Elizabeth.smithers@cltairport.com