Will Ground Access Woes and Federal Revenue Restrictions Choke U.S. Airports?

By David Y. Bannard

Many large U.S. airports have a pressing need to build and extend runways to accommodate increasing passenger demand, but they also have an equally urgent need to improve ground access. While the lack of sufficient runway capacity has been a concern for some time, ground access limitations increasingly have constrained airports' ability to accommodate larger numbers of passengers. A recent Eno Center for Transportation study found that while the Los Angeles International Airport (LAX) has sufficient runway capacity to handle traffic growth over the medium term, "[t]raffic on the airport access road creates havoc for drivers attempting to access the airport, and . . . may serve as a substantial impediment to increased international travel."[1] Airports' efforts to address ground access constraints have been hampered by federal legislation that limits the right of airports to use funds derived from airport operations, federal Airport Improvement Program (AIP) grants, and passenger facility charges (PFCs) for ground access projects.

This article examines federal law and related guidance regarding the use of these three primary sources of funds for airport development. The Federal Aviation Administration (FAA) has gone to significant lengths to accommodate ground access projects within the restrictions imposed by federal law. Nevertheless, the restrictions on the use of airport revenues, AIP funds, and PFCs are a significant impediment to development of increased airport ground access. Accordingly, this article concludes with suggestions for amendments to federal law that could improve an airport operator's ability to address ground access congestion through partnering with other local transportation agencies to provide integrated, multimodal solutions to capacity constraints.

Background: The Problem Stated

The Eno study cites three principal types of aviation capacity constraints: airside capacity, landside capacity, and airspace capacity.[2] The first two factors are primarily controlled by airports and local governmental entities while the FAA controls the last factor. Although airport operators may apply most of the sources of funds available to them to address airside capacity and certain landside capacity issues, such as a lack of terminal gates and holdrooms, the ability to adequately address landside access congestion is significantly limited by federal law.

Airports are but one node in an integrated transportation system where passengers and cargo transition from a ground- to air-based mode, and back again. In order to access the national airspace system, passengers and cargo must travel from their point of origin to the airport. Although a few U.S. airports are well served by rail connections, most access to U.S. airports is still provided by roadway connections. As the number of passengers using the national airspace system continues to increase, accommodating such roadway access is increasingly difficult. Not only are airports finding that parking capacity is routinely overburdened, but roadway congestion also threatens to compromise the ability of passengers to make timely connections to their flights.

Some U.S. airports, such as Washington, D.C.'s Reagan National Airport (DCA) and San Francisco International Airport (SFO), are directly served by mass transit that includes a station within the airport, but other airports must provide a connection between mass transit stations located near, but not on, airport property. These solutions can be extremely expensive, such as the AirTrain connection between New York's John F. Kennedy International Airport (JFK) and the New York City subway system or the newly opened connection between Oakland International Airport (OAK) and the nearest Bay Area Rapid Transit (BART) station at the Oakland Coliseum. Other connections, such as at Boston Logan International Airport (BOS), rely on buses to shuttle passengers from the mass transit station to the airport terminals, requiring passengers to change modes of transport and placing the buses at the mercy of an increasingly congested airport roadway system.

Large U.S. airports are finding that only multiple modes of ground access will provide the necessary ability to accommodate growing passenger volumes. The latest example of this is the Landside Access Modernization Program (LAMP) recently announced by Los Angeles World Airports (LAWA) to serve LAX. LAMP envisions an automated "people mover" that will connect the LAX central terminal area with two new remote parking garages, a consolidated rental car facility, and a newly constructed regional transit system station, each of which (other than portions of the people mover) would be located outside the current airport boundary. LAMP is intended to enhance air

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passengers' access to LAX through mass transit, while removing a large number of vehicles from the overcrowded airport roadway system.

With governments increasingly unable to afford the cost of constructing new infrastructure to serve growing populations, let alone maintain existing systems, how can airports develop better ground access? The FAA has provided guidance, such as its "Bulletin 1: Best Practices—Surface Access to Airports,"[3] which stresses the need to coordinate on airport access with other state and local transportation agencies. Bulletin 1 also provides limited guidance regarding funding airport ground access projects. As discussed below, however, federal law significantly restricts the ability of an airport sponsor to solve its ground access problems.

Federal Law on Funding Airport Access Projects

For each of the three primary sources of funds available to an airport to finance capital projects—airport revenues, federal AIP grants, and PFCs—a slightly different set of requirements governs their use to finance airport access improvements. With limited exceptions, however, none of these requirements permits the use of these funds for projects that are not located within airport boundaries or that serve users other than airport passengers or workers. These restrictions are justified by concerns that an unlimited ability to use airport revenues to fund access projects could divert critical capital from airports to serve largely local transportation needs that have limited or no relation to airport operations. Below is a review of the law relating to the use of these revenue sources for ground access projects.

Airport Revenue Use Requirements

Federal law imposes restrictions on the permissible use of revenue generated from an airport that receives federal grants in aid. The applicable provisions of law require that airport revenues be used only for the capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.[4] To clarify this statutory provision, the FAA has issued regulatory guidance in the form of the Revenue Use Policy, which provides that airport revenues may be used for the capital or operating costs of those portions of an airport ground access project that can be considered either (1) an airport capital project, or (2) part of a local facility that is owned or operated by the airport owner or operator and is directly and substantially related to the air transportation of passengers.[5] Although the law generally restricts use of airport revenues to finance only on-airport improvements, the second test permits a prorated share of both the capital and operating costs of ground access to an airport to be funded with airport revenues.

The FAA has previously provided written guidance with respect to an airport sponsor's ability to apply airport revenues to the capital costs associated with extending mass transit services to at least three different airports. The initial project involved the extension of the BART system to SFO,[6] the second involved construction of a light rail system (LRS) extending from downtown Minneapolis through the Minneapolis–Saint Paul International Airport (MSP) to terminate at the Mall of America,[7] and the third involved a segment of a mass transit extension (MAX) that would serve both Portland International Airport (PDX) and a nonairport office area.[8] In each case, the airport sponsor received permission from the FAA to apply airport revenues to pay certain capital costs of the projects, and the airport owns the assets funded with such airport revenues while another public entity operates the mass transit system and owns elements of that system not located on airport property. In the BART and MAX extensions, the airports are served by dedicated spur lines that terminate at the airports. In the case of MSP, however, the LRS passes through MSP, and a percentage of the ridership using the portions of the system elements funded by MSP do not use the airport.

The extension of the BART to serve SFO was the first time that the FAA issued written guidance regarding the use of airport revenues to fund the capital and operating costs of a portion of a mass transit system that provides access to an airport.[9] BART presented a relatively straightforward case, in that SFO asked only to be permitted to apply airport funds to the construction and operation of the BART station that exclusively serves SFO, the "link building" connecting the airport BART station to the international terminal, and the structural supports from the airport terminal to the west side of Highway 101. No airport revenues were to be used to reimburse BART for any operating expenses.[10] All elements of the project were to be located on airport property and owned by SFO, with the exception of the BART freeway overpasses. Further, the airport subsequently agreed to acquire sufficient property rights in the areas over Highway 101 to protect airport access for the BART line. The FAA's BART guidance did, however, acknowledge that proration of costs that were only partly airport-related based on some reasonable method was permissible if airport revenues, not AIP funds or PFCs, were used.[11]

In its analysis, the FAA found that elements of the BART project at SFO, such as improvements to the existing international terminal, were eligible for funding with airport revenues because they constituted airport capital costs, while others, such as the BART station itself, were eligible because they were owned or operated by the airport sponsor and were directly and substantially related to the air transportation of passengers or property.[12] In this case, the airport BART station was located within airport property and primarily, if not exclusively, would serve airport passengers. Finally, certain systems that served both the BART extension and the BART main line but that

were located within and owned by the airport, such as automatic train control equipment and portions of the system-wide cable network, communications system, and traction power system, were eligible for pro-rata funding with airport revenues.[13]

The FAA found with respect to MSP that it was permissible for the airport to pay for the proportional share of the facilities located on airport property that was equal to the percentage of the airport passenger ridership projections for each of the identified segments of the on-airport LRS.[14] The MSP project consisted of several elements, including construction of a tunnel under a portion of the airfield, two stations at the two major terminals at MSP, and an at-grade section of the line leading from the airport terminals to the Mall of America.[15] Projected ridership forecasts indicated that a substantial number of nonairport passengers would use the LRS, but that 51 percent of the passengers using the airport segments of the system would use at least one of the airport stations.[16] However, the FAA's guidance further parsed the Revenue Use Policy in light of the ridership projections and found that the elements of the project were eligible for funding by MSP in varying degrees, based on each element's percentage of airport use. For example, the two stations on airport property were found to serve airport passengers exclusively, and thus the entire cost of the airport stations was deemed to be eligible for funding with airport revenues.[17] In contrast, only 14 percent of the cost of the portion of the tunnel from the airport boundary to the Lindbergh terminal station was found to be eligible for funding with airport revenues, while 46 percent of the cost of the tunnel and at-grade section between the two terminals was found to be eligible for funding with airport revenues, in each case based on ridership projections for each segment of the line developed by the project sponsor.[18]

The FAA cited two additional benefits of the light rail project. First, the line would allow passengers to travel between the two terminals at MSP, permitting MSP to replace some or all of the shuttle bus service between the two terminals. Second, projections showed that the increased access to the airport provided by the LRS would reduce congestion on airport roadways, and once the on-airport parking reached capacity, the "additional access via light rail will be increasingly important."[19]

In the record of decision relating to funding a portion of the Metropolitan Area Express (MAX) LRS to serve the terminal at PDX, the FAA acknowledged that the use of airport revenues to fund an extension of the MAX located on airport property that would not exclusively serve airport passengers was permissible.[20] The segment was found to be directly and substantially related to the air transportation of passengers based on the projection that 65 percent of the ridership of this segment of the MAX would be traveling to or from PDX.[21] Further, the FAA found that the airport sponsor's support for this segment of the project was not projected to exceed the benefit to the airport based on the share of traffic traveling to or from the airport.

In another case, the FAA recommended that a different form of prorating the costs from that used at MSP be applied. Rather than applying the expected percentage of passengers using the service to access or return from the airport, the ratio of miles serving only the airport (e.g., from the last off-airport stop to the airport) to the full length of the service was applied to determine the permissible percentage of the cost of operating and maintaining the service that could be paid with airport revenues. Although this determination by the FAA was not memorialized in writing, it provides another example of the FAA working with an airport sponsor to develop methods, consistent with federal law, to finance improved airport access with airport revenues. It also demonstrates the difficulties inherent in this case-by-case development of the law.

Use of AIP Grant Funds for Access Projects

The Aviation Code provides that AIP grant funds may only be used for "airport development" and "airport planning" projects,[22] which are in turn defined to include "constructing, repairing, or improving a public-use airport," acquiring or installing certain equipment or facilities at a public-use airport, and acquiring land for certain uses related to the airport.[23] The FAA's AIP Handbook includes 15 general requirements for projects funded with AIP grants.[24] Appendix P to the AIP Handbook specifically addresses the elements necessary for an access project to be justified and eligible. There are four types of access projects: (1) access roads, (2) service roads (airside), (3) terminal people movers, and (4) access rails.[25] Both service roads and people movers are located entirely within the airport and serve only airport functions. Thus, such projects constitute "airport development" under federal law and are eligible for funding with AIP grants. Access roads must be located on airport property or within a right-of-way acquired by an airport sponsor and must serve exclusively airport traffic.[26] Access rails, like access roads, are treated as "terminal development" projects.[27]

Use of PFCs for Access Projects

Under federal law, PFCs may only be applied to projects that (1) preserve or enhance safety, security, or capacity of the national air transportation system; (2) reduce noise or mitigate noise impacts from an airport; or (3) furnish opportunities for enhanced competition between or among air carriers.[28] Generally, to be eligible for financing with PFCs, a project must also meet the eligibility requirements for AIP funding.[29] Surface transportation projects funded at a level above a $3.00 PFC must also make a "significant contribution" to one of the three stated criteria, and the airport sponsor must have made adequate

provision for financing the airside needs of the airport.[30]

The FAA's PFC Handbook clarifies the requirements applicable to funding airport ground access and intermodal projects with PFCs, stating that the eligibility and justification for such projects will be determined on a case-by-case basis.[31] Airport ground access projects funded with PFCs must be for the exclusive use of airport patrons and airport employees, be constructed on airport-owned land or rights-of-way acquired or controlled by the airport sponsor, and be connected to the nearest public access facility or point of sufficient capacity, although more than one access facility or connection point may be eligible if airport traffic is of sufficient volume.[32] Unlike AIP grants, PFCs may also be used to fund financing costs of debt issued to fund eligible project costs.[33]

The FAA has issued several records of decision approving the use of PFCs for airport access projects. Two such early FAA decisions related to the use of PFCs by the Port Authority of New York and New Jersey (Port Authority): one for a monorail at Newark Liberty International Airport (EWR) and the other for three related light rail projects at JFK. The three JFK projects consisted of an approximately 3.3-mile-long LRS connecting JFK with the Howard Beach subway station on the New York City Transit (NYCT) system, a central terminal area (CTA) LRS connecting the nine terminal buildings at JFK, and an approximately 3.1-mile-long light rail connection between the CTA and the Long Island Rail Road's (LIRR's) Jamaica Station and a NYCT subway station. In the record of decision, the FAA found that these three LRS projects, taken together, would preserve or enhance capacity at JFK.

The JFK projects, particularly the connections to the NYCT and LIRR, were controversial, largely due to the projects' projected $1.548 billion cost (in 1997) and the need to acquire the right-of-way necessary to connect the CTA with the mass transit facilities. In particular, the Air Transport Association of America (ATA) (now known as Airlines for America) argued that these connections were not located "on airport" and that the projects would not preserve or enhance capacity or competition at JFK. In the record of decision, the FAA stated that "[w]here ground access is shown to be a limiting factor to an airport's growth, a project to enhance ground access that meets other eligibility requirements may qualify as preserving or enhancing capacity of the national air transportation system."[34] However, due to its significant cost, the FAA found that there needed to be sufficient justification to approve the project. The Port Authority's studies showed that an estimated 3.35 million passengers per year would use the LRS by 2013. The FAA consulted with both the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). The FTA concluded that the Port Authority's estimate was "credible," and based in part on that conclusion, the FAA found that the LRS must be construed to have a substantial capacity enhancement effect at JFK and, accordingly, determined that the LRS was adequately justified.[35] Further, in response to the ATA's allegations that the cost of the LRS exceeded its benefit, the FAA stated that "there is no requirement for the FAA to review or conduct a formal cost/benefit analysis" as part of its approval of a PFC application.[36] As part of the environmental review process for the LRS, the airport layout plan for JFK was amended to add the right-of-way for the LRS as being included within the airport boundary, and in the record of decision (JFK ROD), the FAA noted that the Port Authority was required to acquire the right-of-way subsequent to the date of the JFK ROD.[37]

The FAA's earlier record of decision on the PFC application for funding construction of a monorail that would connect the EWR terminal with a new station on the Amtrak's Northeast Corridor was less controversial than the later JFK ROD, but included useful guidance nevertheless. Structures, materials, and equipment permanently installed on the monorail line or at the station for the control and operation of the monorail system were found to be PFC eligible.[38] However, moveable equipment that could be used in other Amtrak stations, such as fare collection facilities, and operation and maintenance costs were not PFC eligible.[39] The FAA noted that both the Port Authority's proposed roadway and monorail access projects were required in order to accommodate projected passenger demand, and that neither project, standing alone, could do so.[40] In approving the project for PFC use, the FAA found that the EWR monorail project would preserve and enhance capacity at EWR and help alleviate access congestion.[41]

The PDX record of decision (PDX ROD) relating to funding an extension of the MAX LRS approximately 1.2 miles from the Portland International Center (PIC) to the terminal at PDX found that a segment of an LRS serving the Portland metropolitan area that was located completely within the airport and that would exclusively serve airport passengers and workers could be eligible for funding with PFCs.[42] In the PDX ROD, the FAA also found that the mass transit connection would preserve and enhance capacity at PDX.[43] No rail cars or operations, maintenance, and storage equipment and facilities were eligible for funding with PFCs, however.

Limitations of Current Law

Current law imposes unnecessary limitations on the ability to use airport revenues, AIP grant funds, and PFCs to finance improved airport access. The provisions regarding the use of airport revenues attempt to strike an appropriate balance between granting airport operators the flexibility to use their own revenues for projects and operations that best serve the airport and a perceived need to prevent diversion of airport revenues for completely unrelated purposes. The anti-diversion provisions of 49 U.S.C. section 47107(b)

were adopted in 1982 in response to several well-publicized instances of municipalities using or threatening to use airport revenues for costs that did not provide benefits to the airport. However, the two-part restriction on the ability to use airport revenues discussed above is excessively restrictive, at least in the context of providing enhanced airport access.

Rather than restricting the use of airport revenues only to projects that are both (1) owned or operated by the airport sponsor, and (2) directly and substantially related to the transportation of passengers and cargo by air, a less stringent test for use of airport revenues to provide enhanced airport access would be more appropriate. Airports are a node in the national and international transportation system but are tied to a local network of roadways, railways, and other modes that provide the access to the airport. Similar to the federal government, most states and municipalities have delegated oversight and operation of transportation to separate agencies by mode. Thus, for example, a highway department will be responsible for the highways that connect to an airport roadway system, while a public transit agency will likewise operate the railways that may serve travelers seeking to access the local airport. In each case, the related assets are typically owned and operated by the applicable agency, not the airport operator. Nevertheless, the ability of the local agency to provide enhanced access to the airport may be limited for a variety of reasons, including a lack of funding. If the requirements relating to use of airport revenues were modified to require that an expenditure of airport revenues to provide enhanced airport access is permissible to the extent that such expenditures are directly and substantially related to the transportation of passengers and cargo by air, the airport operator could cooperate with local highway and transit agencies to find ways to enhance ground access to the airport without running afoul of applicable federal law.

Similarly, the requirement that PFCs and AIP grants be expended only for facilities that *exclusively* serve airport passengers and that are located within the airport boundary needlessly restricts the use of such funds in the context of airport access projects. PFCs are intended to be local funds, subject to limited FAA oversight. Artificially requiring that PFC-funded projects be located within the airport boundary has led to some odd results, such as the Port Authority's acquisition of rights-of-way within the Van Wyck Expressway to locate the AirTrain system. A better and more cooperative approach would be to permit the use of PFCs to finance access improvements to the extent that such improvements meet one of the three primary requirements of 49 U.S.C. section 40117 (PFC Act) and, perhaps, if the airport sponsor has provided or can provide for necessary airside projects.

AIP grant funds are not "local" funds, and they are subject to significant FAA oversight. Proposed airport access projects with limited ability to enhance such access are unlikely to receive (or deserve) FAA approval. Instead, like PFCs, AIP grant funds should be eligible for funding airport access to the extent that they directly and substantially contribute to improvement in the movement of passengers and cargo in air transportation. Rather than requiring that the airport sponsor own assets financed with PFCs or AIP grants, the airport should simply be required to enter into a legally binding agreement with the operator that protects the use of such funds for the airport access projects so designated.

Proposal

In order to permit airports greater flexibility to finance needed improvements to airport access, this article proposes three general approaches to enhance airport access through the use of airport revenues, AIP funds, and PFCs, as well as to develop innovative approaches that can be adopted nationally.

Establish a Federal Multimodal Team; Encourage Similar State and Local Teams

In order to successfully implement effective airport access, airports need to rely on multiple modes of ground access and work with a variety of state and local agencies. The FAA emphasizes the benefits of such local coordination in its bulletin on Best Practices—Surface Access to Airports. Nevertheless, a federal office that oversees and encourages such multiagency projects and programs and that would develop innovative and best practices would be extremely helpful. Many surface transportation projects suffer from the "silo" effect, where each mode is represented by a separate agency and, despite coordinating efforts, such as those of the applicable metropolitan planning organization, is developed and implemented in a vacuum.

In order to enable the proposed federal multimodal airport access office to influence and encourage multiagency projects that enhance airport access, a special category of Transportation Infrastructure Finance and Innovation Act (TIFIA)[44] loan could be established that does not require repayment from a dedicated source of funds related to the financed project but, instead, would allow the affected agencies to each repay the portion of the TIFIA loan from its general revenues based on the benefits realized by each agency. In addition, a portion of federal transportation grant funding could be made available for such multimodal projects, weighted in favor of projects that incorporate multiple modes and provide multiple demonstrable benefits. Thus, effective and efficient means to leverage such funds could be developed that would help to integrate transportation planning and operation so that more projects that serve multiple beneficiaries would be planned and completed.

Allow Use of Airport Revenues to Provide Enhanced Ground Access

Sections 47107(b) and 47133 should be amended to provide that airport revenues may be applied for capital or operating costs of an airport access project to the extent that such project is directly and substantially related to the movement of passengers and cargo by air transportation. Thus, there would have to be a direct and substantial nexus between the use of funds and improvements to airport access, but the airport operator would not be required to own or operate such facilities.

Allow Use of PFCs for Ground Access

Finally, as noted above, PFCs are intended to be local funds, used for the projects deemed by the local airport operator to be appropriate for development of that airport. Arbitrarily limiting the use of such PFCs to projects only located within the airport boundary and used solely by airport passengers and workers unnecessarily limits the benefit of such funds. As has been acknowledged by the FAA in a number of records of decision relating to airport access projects funded with PFCs, these projects can enhance the capacity of the national air transportation system by increasing access to airports and, in many cases, will provide opportunities for increased competition among carriers. Thus, the PFC Act should be amended to add another category of eligible airport-related projects to section 40117(a)(3) for airport access projects. Such projects would consist of the capital costs of designing and constructing ground access projects (including railways, roadways, and water shuttle/ferry facilities) that meet one of the three tests of the PFC Act and enhance airport access. Further, the airport operator would not be required to own or operate the access project but only to enter into a legally binding agreement with one or more entities that would own or operate the facilities to ensure that the airport would continue to receive the benefits of such improved access.

Conclusion

Current federal law regarding the use of airport revenues, AIP grant funds, and PFCs unnecessarily limits the use of such funds to provide enhanced airport access. Given the increases in the number of airport passengers, the limited means of access to many U.S. airports, and the expense of providing enhanced airport access, federal law should be modified to permit the use of airport revenues, AIP grant funds, and PFCs to finance projects that provide airport access that are directly and substantially related to the movement of passengers and cargo in air transportation, whether or not such projects are: (1) owned or operated by the airport sponsor, and (2) located within the boundary of the airport. Such proposed statutory amendments need not abrogate the long-time restriction prohibiting the diversion of airport revenues for nonaviation purposes, and can be structured in a manner to permit and encourage interagency cooperation and planning.

Endnotes

1. Eno Ctr. for Transp., Addressing Future Capacity Needs in the U.S. Aviation System 26 (2013).
2. *Id.* at 7.
3. *See* http://www.faa.gov/airports/resources/publications/reports/media/bulletin_1_surface_access_best_practices.pdf.
4. 49 U.S.C. §§ 47107(b), 47133.
5. Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7718–19 (Feb. 16, 1999) [hereinafter Revenue Use Policy]; *see also id.* at 7705.
6. *See* Letter from Susan L. Kurland, Assoc. Adm'r for Airports, FAA, to John L. Martin, Dir. of Airports, SFO (Oct. 18, 1996) [hereinafter BART Letter].
7. *See* Letter from Nancy Nistler, Manager, Minneapolis Airports Dist. Office, FAA, to Nigel D. Finney, Deputy Exec. Dir., Metropolitan Airports Comm'n (Apr. 25, 2000) [hereinafter April MSP Letter], *amended by* Letter from David L. Bennett, Dir., Office of Airport Safety & Standards, FAA, to Thomas Tinkham, Dorsey & Whitney, LLP (Nov. 21, 2000) [hereinafter November MSP Letter].
8. *See* Record of Decision, PFC Application No. 99-07-C-00-PDX, at 12 (FAA May 27, 1999) [hereinafter PDX ROD].
9. BART Letter, *supra* note 6.
10. *Id.* at 2.
11. *Id.* at 5.
12. *Id.* at 5–6.
13. *Id.* at 6–7.
14. April MSP Letter, *supra* note 7, at 5–6; November MSP Letter, *supra* note 7, at 4.
15. April MSP Letter, *supra* note 7, at 1.
16. *Id.* at 5.
17. *Id.*
18. *Id.* at 5–6; November MSP Letter, *supra* note 7, at 4.
19. April MSP Letter, *supra* note 7, at 3.
20. PDX ROD, *supra* note 8, at 12.
21. *Id.*
22. 49 U.S.C. § 47110(b)(2)(A).
23. *Id.* § 47102(3).
24. Airport Improvement Program Handbook, FAA Order No. 5100.38D, tbl.3-1 (Sept. 30, 2014).
25. *Id.* at app. P-3.
26. *Id.* ("an access road cannot be prorated").
27. *Id.*
28. *See* 49 U.S.C. § 40117(d)(2); 14 C.F.R. § 158.15(a).
29. 14 C.F.R. § 158.15(b).
30. 49 U.S.C. § 40117(b)(4)(A); 14 C.F.R. § 158.17.
31. Passenger Facility Charge Handbook, FAA Order No. 5500.1, § 4-6(e) (Aug. 9, 2001).
32. *Id.*
33. *Id.* § 4-6(f).

34. Record of Decision, PFC Application No. 97-04-C-00-JFK, at 21 (FAA Feb. 9, 1998) [hereinafter JFK ROD].
35. *Id*. at 24.
36. *Id*. at 30; *see also* PDX ROD, *supra* note 8, at 9.
37. JFK ROD, *supra* note 34, at 25 n.2.
38. Record of Decision, PFC Application No. 96-03-U-00-EWR, at 8 (FAA Nov. 6, 1997).
39. *Id*.
40. *Id*. at 9.
41. *Id*. at 14.
42. *See* PDX ROD, *supra* note 8.
43. *Id*. at 5.
44. 23 U.S.C. §§ 601–609.