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June 12, 2012

OVERNIGHT DELIVERY

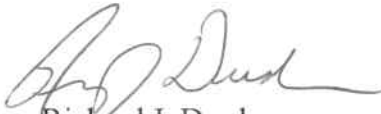
Office of the Chief Counsel
FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Re: *Jeff Bodin and Garlic City Skydiving v. The County of Santa Clara, California*
Docket No. 16-11-06

Dear Sir or Madam:

Enclosed for filing please find an original and three copies of COMPLAINANT'S OPPOSITION TO THE MOTION BY THE COUNTY OF SANTA CLARA TO RELIEVE PALO ALTO AIRPORT (PAO) AND REID-HILL VIEW (RHV) AIRPORT FROM THE GRANT FUNDING SUSPENSION IMPOSED BY THE DECEMBER 19, 2011 DIRECTOR'S DECISION REGARDING SAN MARTIN AIRPORT (E16) in the captioned matter. One copy is unbound, as requested by the FAA.

Very truly yours,



Richard J. Durden

enc.

cc: Miguel Marquez
Elizabeth G. Pianca
Jeff Bodin

BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

JEFF BODIN and)	
GARLIC CITY SKYDIVING)	
)	
Complainant,)	
)	
vs.)	Docket No. 16-11-06
)	
THE COUNTY OF SANTA CLARA, CALIFORNIA)	
)	
Respondent)	

COMPLAINANT’S OPPOSITION TO THE MOTION BY THE COUNTY OF SANTA CLARA TO RELIEVE PALO ALTO AIRPORT (PAO) AND REID-HILLVIEW (RHV) AIRPORT FROM THE GRANT FUNDING SUSPENSION IMPOSED BY THE DECEMBER 19, 2011 DIRECTOR’S DECISION REGARDING SAN MARTIN AIRPORT (E16)

Please serve:

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Counsel for Complainant

Counsel for Respondent

NOW COMES Complainant, by and through counsel, and files this Opposition to the Motion by the County of Santa Clara to Relieve Palo Alto Airport (PAO) and Reid-Hillview (RHV) Airport

From the Grant Funding Suspension Imposed by the December 19, 2011 Director's Decision Regarding San Martin Airport (E16) for the reasons set forth below.

The Motion was served on June 4, 2012. This Opposition is filed in a timely manner pursuant to 14 CFR 16.19(c) which provides for an answer to a motion to be filed within 10 days. 14 CFR 16.19 provides only for a Motion and an Answer, no reply or rebuttal.

I. Introduction

The County of Santa Clara, California, is a bully.

Back in April 2009, Complainant, a small business person, for himself and his company, applied to the County for approval for skydivers to land on South County Airport (E16 or the Airport) as a part of a commercial skydiving operation he desired to establish on the Airport. [Complaint at page 2] The application began a saga of the County foot-dragging on the application and then defying the FAA, which seems without precedent when one reads Part 16 airport compliance cases. At one point the County's tactics were so egregious that they prompted an FAA official to send his now well-known "delay amounts to denial of airport access" letter [Complaint, page 5, Exhibit 7].

The FAA conducted not just one, but two safety studies about skydiving through the airspace above the Airport and onto the Airport itself (although outside the Airport fence). Both studies concluded that a prohibition was unreasonable. The County, acting at its highest level, the Board of Supervisors, to this day without providing any objective standards regarding skydiving safety to support its position, has flatly defied the FAA and its findings.

The County's attitude continues in its Motion with its reference to the Director's Determination, which it pooh-poohs as nothing more than a speed bump, "an initial non-final

decision” (sic) [Motion at page 4], in its strategy of delaying compliance with its obligations under the Grant Assurances until Complainant simply runs out of money and goes away. Then the County can again feed at the federal trough without worrying about those pesky agreements it signed.

Now that the County has been found in non-compliance, called on its bullying by someone with authority, it is doing as any bully would do in similar circumstances, refusing to accept responsibility for its actions and trying to dodge the consequences.

The FAA went through months of speaking softly to this bully, of politely asking the County to comply. In the aftermath of the Part 16 Complaint, with the Director’s Determination, the FAA has pulled out its stick. It is not Theodore Roosevelt’s big stick; the FAA has only limited authority in carrying out its obligation to enforce the terms of Grant Assurances. The stick is the power to prohibit a non-complying sponsor from receiving further federal monies, for any of its airports, until it complies with the assurances it has signed. It is a stick of appropriate size here. As will be shown below, especially with the action of the Board of Supervisors on January 10, 2012 to completely disregard all action taken by the FAA and resolve this matter in the federal court system [attachment A], the FAA should not give up any degree of the limited authority it has to require compliance with Grant Assurances.

II. Factual Background

The County repeats, by rote, its mischaracterization of facts regarding skydiving on the Airport. As warrants a bully, it pronounces its opinions regarding the operation onto a Parachute Landing Area on the Airport without accepting that there just might be another side of the story, one the FAA has examined and accepted. The County conveniently ignores that the PLA is

outside the Airport fence, on the opposite side of the Airport from the highway referenced; does not bother to mention that the busiest PLA in the state is far closer to an equally busy highway; that other PLAs are under equally busy, if not busier, airspace; fails to set out that Complainant has entered into an agreement regarding skydiving procedures in the airspace above the Airport with the appropriate Air Traffic Control authorities; and not surprisingly, overlooks its own measurement of the size of the PLA, which shows it complies with the United States Parachute Association's guidelines. Without objective evidence, the County pronounces that the proposed operation is unsafe.

The FAA has long recognized skydiving as an aeronautical activity, on a par with any other aeronautical activity, and has regulated it under 14 CFR Parts 91 and 105. As a regulated aeronautical activity, the default position is that it is allowed on an airport. Only if the airport sponsor provides the FAA with objective evidence that an aeronautical activity cannot safely be accommodated on the airport as a part of operation of that airport, and the FAA agrees, may a legitimate aeronautical activity be banned.

As set forth in the pleadings, County, without objective standards regarding skydiving safety, reached a startling level of defiance of the FAA on September 22, 2010, in which it told the FAA that it knew more about skydiving safety than the FAA and it would not be allowing skydiving on the Airport under any circumstances [Complaint page 13, Exhibit 13]. Respondent has lived up to its promise to never comply with its Grant Assurances.

The FAA twice performed a safety evaluation of the proposed operation on the Airport. It twice stated the County's prohibition was unreasonable. The County refused to accept the FAA's studies, using the creative approach that skydiving was banned unless the FAA gave enough evidence to the County that it could be operated safely (or, at various times, in the safest

manner), rather than under the law and regulations that allow an aeronautical activity unless there is satisfactory evidence to ban it.

The County lost this issue in the Director's Determination. The County appealed that portion of the Director's Determination, but not the sanction. It failed to appeal the sanction in the time prescribed by the regulations. The County still shows no signs of any willingness to comply with its grant obligations.

In its Motion, the County outlined the work proposed to be done on two airports. Complainant has no knowledge or evidence regarding the details and leaves the Respondent to its proofs. It should be noted that the County has a population of over 1.7 million people and a multi-million-dollar annual budget. In its pleadings it provided no evidence of any sort that the proposed work on the airports is of the sort to ameliorate an immediate danger to the flying public or that the County does not have the money to perform the work itself.

III. Law and Argument

A. The Motion is Not Timely

The Director's Determination in this matter was issued and served on the parties by mail on December 19, 2011. 14 CFR 16.33(3)(b) requires that an appeal be filed within 30 days of the Director's Determination. 14 CFR 16.17(c) allows an additional three days for a party to complete an act if the document requiring the act is served by mail. On January 20, 2012, within the requirements of the CFRs, Respondent filed its appeal of portions, but not all, of the Director's Determination.

Respondent did not appeal the portion of the Director's Determination regarding sanction.

14 CFR 16.33 does not provide for a piecemeal appeal of a Director's Determination. There is no provision for filing some sort of placeholder appeal to protect the 30-day deadline and then, when the spirit moves Appellant, file motions to add other disliked portions of the Director's Determination to the appeal.

Respondent has not cited regulatory grounds allowing it to file what is actually an amendment to its appeal months after the final brief was filed. Referring to this filing as a Motion does not turn an attempted amendment to its appeal to add additional grounds into something else.

Respondent has not made any showing that it did not know about the sanction when it filed its appeal and is thus somehow surprised, warranting its long wait to act.

B. The County's Repeated Acts of Bad Faith Should Not Be Rewarded

Complainant respectfully asks that the evidence provided in the pleadings be reviewed with this Opposition, as the correspondence reflects the repeated communications from FAA offices to the County seeking to have the County allow skydiving access on to the Airport. The evidence also shows that the County was acting at the highest level, through its Board of Supervisors and County Attorney, not at the level of a minor official on the Airport.

The FAA bent over backwards to accommodate the repeated objections by the County and its "Silicon Valley Arrogance" [Complaint at page 15, Exhibit 13]. The FAA performed a safety study which found that skydiving could take place on the Airport. The County was not satisfied and reiterated a number of its previous arguments, many of which, as the FAA itself

pointed out, if valid, would prohibit all aeronautical activities from the Airport. Nevertheless, apparently to appease the bully, FAA personnel traveled to the Airport, looked at the site for the proposed PLA and met with Complainant and County representatives to hear all of the safety arguments the County had. The result of the second safety study, taking all of the County's arguments into account, was that skydiving could safely be conducted onto a PLA on the Airport.

The County, claiming far greater expertise, refused to accept the results, taking the position that it was the arbiter of safety and the FAA had to present evidence to the County's satisfaction that skydiving could be performed safely. It refused to accept that when an airport sponsor signs Grant Assurances, it must abide by the underlying law which holds that a regulated aeronautical activity may be conducted on an airport unless the FAA finds that it is unsafe to do so.

Even once the Part 16 was filed, the County kept up its defiance and bullying tactics, going so far as to attempt to define the format for the Complaint [Answer to Complaint at page 4].

The County's actions throughout the course of this matter were so egregious that it should not be rewarded with any relaxing of the sanctions it now faces.

C. The Sanction is Minimal, Barely Appropriate, and Thus Far, Ineffective

As pointed out by the FAA in the Director's Determination and letters from FAA offices during the "Part 13" portion of this matter, the FAA has limited authority to enforce the Grant Assurances airport sponsors sign. Initially, the FAA can only seek compliance through cooperative effort with the sponsor. Here, the FAA did precisely that.

Only after the FAA had made a determination that the County was in violation of the Grant Assurances it had signed, over two-and-a-half-years after Complainant made his application, did the FAA have any power to compel the County to comply. It did not impose any punitive sanction; the County is not obligated to pay back federal money, something the FAA could have required. The FAA imposed what is essentially a contempt of court sanction, a sanction directly designed to obtain compliance by the County. The County has been given the keys to the jailhouse, so to speak. All it need do is comply with its obligations and the flow of federal money it seeks resumes.

The County Board of Supervisors is the bad actor, not a minor official at the Airport. The evidence provided with the pleadings show it made the repeated decisions to defy the FAA prior to the Part 16 Complaint. The Board as a whole continues to be defiant: On January 10 of this year [Attachment A], knowing of the terms and sanction in the Director's Determination, the Board voted to ignore any findings the FAA made against the County and take this matter into the federal court system. This was referred to in an oblique manner on page 5 of the County's Motion in which it said that it will be some time before this matter is resolved by the federal courts.¹

The County, as an airport sponsor, is not prohibited by the current sanction from acting on any of its airports. It is not prohibited from making repairs or improvements. It just is not allowed to get any more federal money until it shows it is willing to comply with the agreements it signed for the federal money it received in the past. That is a minimally appropriate sanction for a County with a budget that approaches a billion dollars.

¹ Given the County Board of Supervisor's decision to disregard the FAA's findings of noncompliance at its January 10, 2012 meeting and unwillingness to take steps to come into compliance with full awareness of the current level of sanctions, Complainant suggests that the current sanctions are not harsh enough. Respondent further suggests that as the FAA considers the current Appeal, should it rule in Complainant's favor, the appropriate sanction might be requiring that the County repay current grant monies.

The reality of County's Motion is, "Ouch, it hurts. Make it go away." A sanction is supposed to hurt. The tools the FAA has to meet its statutory obligations and compel compliance with Grant Assurances are limited. All it can do is stop the flow of federal money to the sponsor or require repayment of previous grants. The County has been sanctioned for its Board's actions at the lowest level. While Complainant feels the sanctions should be far tougher, no matter what, they should be severe enough to meet the basic requirement set for the FAA – compel compliance with the regulations and laws concerning Grant Assurances.

As an FAA attorney once told counsel for Complainant during the heat of a disagreement over the appropriate sanction in an airman enforcement action, "A sanction has to sting or it doesn't work." The sanction faced by the County stings or it wouldn't have filed its Motion, but obviously not enough; its Board's January action makes that obvious. The Board has not even directed the County Attorney to explore finding a way for the County to come into compliance. Its unreasonable defiance of the FAA has not been pricked by the current sanction.

The sanction is minimal. None of the County's airports is to be put in any sort of receivership. No one has been brought in to run the County's airports or second-guess its management decisions.

The sanction faced by the Respondent does not shut down its airports; it just means that it has to spend more money than otherwise to do work it desires to do on the airports. The County hasn't claimed it can't afford to keep its airports safe; it's just going to have to spend its own money to fix and upgrade them until it comes into compliance with its Grant Assurances. The County Board has voted to not comply with the FAA. The consequences are that the County Board is going to have to spend County, rather than federal, money to upgrade its airports. That stings. And that hurts a bully. It's the only way to get a bully's attention.

The reality is that the County has now been, at most, inconvenienced by its Board's unreasonable stance. It has been told it can't just trample on a small business person it doesn't like and continue on with impunity.

Were this sanction to be lightened, the County would just let the Airport deteriorate as it continues its strategy of delaying as long as possible in hopes of driving Complainant out of business. With the current sanction in place, there remains some pressure on the County to behave reasonably and come into compliance with the contracts it signed and the promises it made.

The FAA should not give up any of the authority it has to enforce the Grant Assurances willingly agreed to by an airport sponsor.

IV. Conclusion

For the reasons stated above, Complainant respectfully requests that Respondent's Motion be denied.

Dated: June 12, 2012

Respectfully submitted,



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avlawyer@yahoo.com

Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify in accordance with 14 CFR Part 16.15(a) that today I served the foregoing **COMPLAINANT'S OPPOSITION TO THE MOTION BY THE COUNTY OF SANTA CLARA TO RELIEVE PALO ALTO AIRPORT (PAO) AND REID-HILLVIEW (RHV) AIRPORT FROM THE GRANT FUNDING SUSPENSIONS IMPOSED BY THE DECEMBER 19, 2011 DIRECTOR'S DECISION REGARDING SAN MARTIN AIRPORT (E16)** on the following persons at the following addresses by overnight delivery:

Miguel Marquez
Elizabeth G. Pianca
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70 West Hedding Street
East Wing, 9th Floor
San Jose, CA 95110

Office of the Chief Counsel
FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Dated this 12th day of June, 2012


Richard J. Durden
For Complainant

January 10, 2012

BOARD OF SUPERVISORS

Mike Wasserman, District 1
 George Shirakawa, District 2
 Dave Cortese, District 3
 Ken Yeager, District 4
 Liz Kniss, District 5



Jeffrey V. Smith
 County Executive

Miguel Márquez
 County Counsel

Maria Marinos
 Clerk of the Board

SUMMARY OF PROCEEDINGS OF JANUARY 10, 2012

BOARD OF SUPERVISORS' CHAMBERS
 70 West Hedding Street, San Jose, California

Tel. (408) 299-5001

Fax (408) 298-8460

TDD (408) 993-8272

SANTA CLARA COUNTY BOARD OF SUPERVISORS
 SPECIAL DISTRICTS
 THE FIRE DISTRICTS
 FINANCING AUTHORITY
 PUBLIC AUTHORITY OF SANTA CLARA COUNTY
 VECTOR CONTROL DISTRICT
 SANITATION DISTRICT NO. 2-3

Opening

1. Roll Call - The meeting convened at 9:08 a.m. President Dave Cortese, Vice President George Shirakawa, Supervisors Mike Wasserman and Ken Yeager, and Maria Marinos, Clerk of the Board of Supervisors, were present. Supervisor Liz Kniss took her seat at 9:10 a.m.
2. Recited Pledge of Allegiance.

Public Issues

3. Received comments from outgoing Board President Dave Cortese.
4. Considered recommendations relating to the offices of the President and Vice President of the Board of Supervisors for 2012.

ATTACHMENT¹
 A

January 10, 2012

- a. Approved recommended assignments for Supervisor Wasserman (District One).
- b. Approved recommended assignments for President Shirakawa (District Two).
- c. Approved recommended assignments for Supervisor Cortese (District Three).
- d. Approved recommended assignments for Vice President Yeager (District Four).
- e. Approved recommended assignments for Supervisor Kniss (District Five).

(Each Board Member abstains from voting on their own appointments.)

Held to January 24, 2012 at the request of President Shirakawa: Approve recommended assignment relating to the Bay Conservation and Development Commission (BCDC).

11. There was no report from County Executive.
12. Accepted report from, Miguel Márquez, County Counsel, Office of the County Counsel, relating to the recent California Supreme Court's decision relative to redevelopment agencies. He stated that at the January 9, 2012 closed session, with a vote of 4-1 with Supervisor Yeager voting no, the Board voted to approve seeking appellate review both administratively and in Federal court regarding the Director's Determination of the Federal Aviation Administration (FAA) with respect to the matter Jeff Bodin and Garlic City Skydiving v. County of Santa Clara, FAA Case No. 16-11-06. The appellate review concerns whether the County must permit skydivers to land at the South County Airport.

Regular Agenda - Items for Discussion

13. Accepted report from Jeffrey Smith, County Executive, Office of the County Executive, relating to likely actions required to address emergent resource needs and re-balance the County budget at the annual Mid-Year Budget Review scheduled for February 7, 2012.
14. Considered recommendations relating to the Santa Clara Valley Health and Hospital System Enterprise Core Healthcare Information System (Core HIS).