

BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

JEFF BODIN and
GARLIC CITY SKYDIVING,

Complainant,

v.

THE COUNTY OF SANTA CLARA,
CALIFORNIA,

Respondent.

FAA Docket No. 16-11-06

**ANSWER, STATEMENT OF FACTS, AFFIRMATIVE DEFENSES OF COUNTY OF
SANTA CLARA, CALIFORNIA**

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**ANSWER, STATEMENT OF FACTS, AFFIRMATIVE DEFENSES OF COUNTY OF
SANTA CLARA, CALIFORNIA**

The County of Santa Clara (the “County” and “Respondent”), who through its undersigned counsel file this Answer, Statement of Facts, and Affirmative Defenses (the “Answer”) in response to the Complaint filed against Respondent in this proceeding by Jeff Bodin and Garlic City Skydiving (collectively, the “Complainant”).

DESIGNATION OF PERSON TO RECEIVE SERVICE

The Respondent may be served in this proceeding by service upon their attorney, Deputy County Counsel Elizabeth G. Pianca, as follows:

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TIMELINESS OF ANSWER

On July 5, 2011, the County was served by mail the Notice of Docketing in accordance with 14 CFR § 16.23(c) noticing the County that the Complaint had been docketed and that the County is required to file an answer within 20 days of the date of service of the notification.¹

INTRODUCTION

Complainant proposes to drop skydivers through the middle of a congested airway that is the main approach route to the Mineta San José International Airport (“SJC”). Skydivers are expected to land on a very small landing zone located approximately 800 feet from a major north-south interstate U.S. highway and the community of San Martin. The South County Airport (the “Airport” or “E16”) is a non-controlled airport. The proposal creates a hazard to air traffic and to persons and property on the surface that cannot be mitigated. The Federal Aviation Administration (the “FAA”) has concluded that the proposed skydiving operation would be operated in the safest manner if relocated elsewhere. Complainant has rejected the County’s offer to use the Airport for business operations and for the take-off and landing of jump aircraft, but to locate the landing zone at an off-site location where the hazards to air traffic and to persons and property on the surface would be substantially mitigated.

Complainant, instead, has filed a Part 16 complaint alleging that the County is not complying with its grant assurances and obligations to the FAA because the County is not permitting a landing zone at the Airport. The County is in full compliance with its grant assurances and obligations to the FAA. A careful review of the facts demonstrates that the

¹ The County was served by mail of the Notice of Docketing on July 5, 2011. The date of service was July 1, 2011. The County is required to file the Answer to the complaint within 20 days of the date of service of the Notice of Docketing. (14 CFR § 16.23(d).) Therefore, under 14 CFR § 16.17, the County’s Answer is due on or before July 25, 2011.

County has diligently worked to meet its federal obligations. There is no basis in fact or law to find the County in noncompliance. The County actions support the overall federal policy to provide for a system of airports that are safely operated and to protect individuals and property on the ground. (49 U.S.C. §§ 40103(b), 47101.)

SUMMARY OF THE ISSUES

The complaint concerns Complainant's desire to conduct a skydiving business at the Airport. The complaint is a confusing mix of factual allegations and legal arguments. Ultimately, however, the complaint asserts that the County has (i) failed to make the Airport available for skydiving operations on reasonable conditions and without unjust discrimination in violation of 49 U.S.C. § 47107(a)(1) and Airport Improvement Program ("AIP") Grant Assurance 22, and (ii) constructively granted exclusive rights to other aeronautical users because of unreasonable or unjustly discriminatory standards in violation of 49 U.S.C. §§ 40103(e) and 47107(a)(4) and AIP Grant Assurance 23.

The County denies that the facts constitute violations of the above-cited statutes and AIP Grant Assurances. The County's actions have been proper under applicable statutes and regulations, including without limitation: (i) AIP Grant Assurance 5(a), pursuant to which the County, as the Airport owner, must not take "...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..."; (ii) AIP Grant Assurance 19(a), which requires the County to operate the Airport "...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..."; (iii) AIP Grant Assurance 22(h), which allows the County to "...establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as

may be necessary for the safe and efficient operation of the airport...”; and (iv) AIP Grant Assurance 22(i), which allows the County to “...prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.”

RESPONDENT’S ANSWER

The Respondent, County of Santa Clara, California, submits this answer, under 14 CFR § 16.23(d), to the complaint by Jeff Bodin and Garlic City Skydiving. The complaint fails to provide a clear and concise statement of the facts that Complainant relies upon, as required by 14 CFR § 16.23(b)(3). Instead, the complaint is a medley of sensationalized factual allegations and legal arguments, presented in a story-like fashion, rather than consecutively numbered paragraphs. Admittedly, this has made it difficult for the County to fully understand and prepare a response to Complainant’s factual allegations.² To facilitate the FAA’s review of the pleadings, the County has numbered the individual paragraphs of Complainant’s complaint on the attached copy of the complaint. The County will refer to the paragraphs of Complainant’s complaint by number in this answer. The County will not address Complainant’s legal arguments herein; rather, the County has moved to dismiss the complaint and presents its legal arguments in the memorandum supporting its motion to dismiss.

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² A complaint filed under 14 CFR Part 16 shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. (See 14 CFR § 16.23(b)(3)). (See also *M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board*, FAA Docket No. 16-06-06, (January 19, 2007) (Director’s Determination), p. 55.)

The County responds as follows to the individual paragraphs of the Complaint.³

1. In response to paragraph 1, the County denies because of insufficient knowledge or information the allegation that Garlic City Skydiving is a California corporation. The County also denies because of insufficient knowledge or information the allegation that Garlic City Skydiving's address is 240 Santa Clara Avenue, Gilroy, California 95020. The County denies that Complainant has applied to become a commercial aeronautical user of the South County Airport ("Airport"). The County admits it is the owner and sponsor of the Airport. With regard to the third sentence in this paragraph, to the extent that this sentence consists of legal arguments or conclusions and introductory remarks, no response is required. As to any allegations contained in this paragraph that have not been specifically admitted, each allegation is denied.

2. In response to paragraph 2, the County admits that Jeffrey V. Smith ("Smith") is the County Executive and can be reached at 70 West Hedding Street, 11th Floor, San Jose, California 95110. The County admits that Michael Murdter is the Director of Roads and Airports and can be reached at 101 Skyport Drive, San Jose, California, 95110-1302.

3. In response to paragraph 3, each allegation therein is denied. The County states that the meeting with Complainant and Carl Honaker ("Honaker") on April 3, 2009 was for the Complainant to present his proposal for a skydiving business operation at the Airport. The County states the Complainant did not apply for approval to land customers on a drop zone/landing area on the Airport. (County Ex. 9, Ex. 10.) The County states that it raised a number of concerns at that meeting regarding air traffic safety.

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³ The County submits with this Answer an accompanying volume of Supporting Evidentiary Materials. The County refers to its own exhibits as "County Ex. ____"; the County refers to exhibits submitted by Complainant as "Bodin Ex. ____."

4. In response to paragraph 4, the first portion of the first sentence regarding the “Kafkaesque labyrinth of bureaucratic roadblocks, strategic delaying actions and a nearly unprecedented level of arrogance toward the FAA by County officials,” each allegation therein is denied. Concerning the second portion of the first sentence, the County denies the allegations therein because of insufficient knowledge or information to conclude that Complainant has spent “thousands of dollars without gaining Airport access.”

Concerning the second sentence of paragraph 4, each allegation therein is denied. The County states that the FAA has not “repeatedly, officially found” that skydiving may be operated safely at the Airport. The Flight Standards District Office (FSDO) initially found that skydiving was unacceptable because of the air traffic within the San Jose approach corridor. (County Ex. 15.) The San Jose FSDO later concluded that a drop zone, not a landing zone, could be supported at the Airport if the FAA, Complainant, and the County agreed to nine conditions. (County Ex. 28.) More recently, the FAA Western-Pacific Region Airports Division has concluded that “skydiving would be operated in the safest manner if relocated to an area several miles away from airspace corridors similar to those existing over E16 [Airport].” (County Ex. 26.) The Western Service Center also concluded that “the preferable option would be for the proponent [Complainant] to offset their landing zone several miles away from the airspace corridor over the airport.” (County Ex. 30.) The FAA has never specifically opined on the safety of a landing zone at the Airport and its proximity to U.S. Highway 101 and the San Martin Community. With respect to the remaining portion of the second sentence, the County admits the Airport is running at a significant deficit and that skydiving operations would bring revenue to the Airport. The County states that it would incur additional expenses due to the skydiving operation but does not know if the skydiving operation would bring *net* revenue to the Airport.

The County also states that the Airport Enterprise Fund, which the Airport is a part of, is self-sustaining with all overhead fully distributed to the three airports operated by the County. The Airport runs at a deficit, which is typical for airports with low volume of aircraft operations. The County states that requests for skydiving are highly infrequent.

5. In response to the first sentence of paragraph 5, each allegation therein is denied. The County has openly acknowledged to the Manager of the FAA Western-Pacific Region Airports Division that the issues related to skydiving at the Airport “are inherently complex, and the conduct and duration of the County’s review process was a function of that complexity.” (County Ex. 31.) With respect to the first portion of the second sentence, each allegation therein is denied. Concerning the second portion of the second sentence, the sentence consists of legal arguments or conclusions and no response is required. As to the third sentence, the County admits the allegations therein.⁴

6. In response to paragraph 6, each allegation therein is denied. The County states that it engaged in informal conversations with the FAA.

7. In response to the first portion of paragraph 7, the County lacks information sufficient to admit or deny whether the FAA waited vainly for the County’s response. In response to the remaining allegations in paragraph 7, the FAA’s letter speaks for itself. (Bodin Ex. 4.) As to any remaining allegations contained in this paragraph, each allegation therein is denied.

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⁴ The County is perplexed by the sequence of dates set forth in Bodin Ex. 3 and Bodin Ex. 4. Bodin Ex. 3 is dated May 28, 2009 and it apparently intends to file an Informal Complaint pursuant to Part 13. However, Bodin Ex. 4 references a May 8, 2009 letter from Airports Compliance Specialist Racior R. Cavole to the County whereby the County was asked to respond to an Informal Complaint. It appears that the County was apparently asked to respond to an Informal Complaint by the FAA before the Informal Complaint was filed by Complainant.

8. In response to paragraph 8, the County denies that “[s]ome time later the County finally spoke to the FAA.” The County was confused about the FAA’s process and submitted a letter to the FAA on August 21, 2009, responding to the August 17, 2009 letter. (County Ex. 6.) The County lacks information sufficient regarding whether the County’s communications with the FAA was enough to cause the FAA to “reopen” the Part 13 complaint, and on that basis denies the allegation. As to any remaining allegations contained in this paragraph, each is denied.

9. In response to paragraph 9, the County admits it contacted the FAA’s San Francisco Airports District Office regarding the safety issues raised by Complainant’s proposal. (County Ex. 6.) With regard to the second sentence, the County admits this allegation. The County lacks sufficient information to admit or deny whether Complainant has researched that skydiving operations can be conducted at busier airports, and on that basis denies the allegation.⁵

10. In response to paragraph 10, the County denies that the Safety and Airspace Study by the FAA concluded that skydiving could be safely conducted at the Airport. The County states that the FAA safety determination concluded that a drop zone could be supported at the Airport if the County, Complainant, and FSDO agreed to nine conditions. (County Ex. 28). As to the second sentence of paragraph 10, the County admits this allegation.

11. In response to paragraph 11, each allegation therein is denied.

12. In response to paragraph 12, the County states that the July 13, 2010 email from Anthony Garcia to Complainant speaks for itself. (Bodin Ex. 8.)

13. In response to paragraph 13, each allegation therein is denied.

⁵ County staff has prepared a chart comparing skydiving operations at other airports in northern California. The chart indicates that on airport landing zones are at least ten acres in size. (County Ex. 33.) Complainant wishes to operate a landing zone on approximately three acres. (County Ex. 18, Ex. 19.)

14. In response to paragraph 14, the County states that the letter from Mr. Murdter to Complainant speaks for itself. (Bodin Ex. 10). The County states that the August 13, 2010 letter does reference the FAA's December 9, 2009 letter and states that "[a]fter thoroughly evaluating the proposal, we have concluded that the size and location of the LZ presents a number of safety concerns that cannot be adequately mitigated by adhering to the conditions outlined in the Federal Aviation Administration's (FAA) December 9, 2009 memorandum." (Bodin Ex. 10.) The County also states that the FAA was notified of the upcoming Board of Supervisors action on August 24, 2010. (County Ex. 22.) The Office of the County Counsel also discussed the recommended actions to be presented to the Board with Complainant on August 13, 2010. (County Ex. 21.)

In response to the last sentence in paragraph 14, the August 24, 2010 Board material speaks for itself. (County Ex. 32.) The County states that the Board of Supervisors did not deny Complainant's application, but rather his proposal. The Board directed staff to coordinate with Complainant and the FAA to expeditiously review and revise the proposal identifying an off-airport landing zone to determine the impacts on Airport operations, if any.

15. In response to paragraph 15, the FAA's letter speaks for itself. (Bodin Ex. 11.) As to any additional allegations contained in this paragraph, each allegation therein is denied.

16. In response to paragraph 16, the August 25, 2010 letter speaks for itself. (Bodin Ex. 11.) The County states that on August 19, 2010 the County was notified by the FAA of consequences with its proposal to the Board. (County Ex. 24.)

17. In response to paragraph 17, the County admits this allegation.

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18. In response to paragraph 18, the email from Complainant to the County speaks for itself. (Bodin Ex. 12.) The County states that to the extent the paragraph consists of legal arguments or conclusions, no response is required.

19. In response to paragraph 19, the letter from the County to the FAA speaks for itself. (Bodin Ex. 13.) As to any additional allegations contained in this paragraph, each allegation therein is denied.

20. In response to paragraph 20, the County admits the FAA conducted a safety study. To the extent that this paragraph consists of legal arguments or conclusions, no response is required.

21. In response to paragraph 21, the April 4, 2011 speaks for itself. (Bodin Ex. 14.) As to any additional allegations contained in this paragraph, each is denied.

22. In response to paragraph 22, this paragraph consists entirely of legal arguments and conclusions and, as such, no response is required.

23. In response to paragraph 23, the County admits that the FAA has not responded to the County's May 2, 2011 letter. With regard to all remaining allegations contained in this paragraph, each is denied.

24. In response to paragraph 24, this paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

25. In response to paragraph 25, the County admits that the fourteen-acre landing area is outside the airport fence, but on airport property, being bounded by a County road on one side and the airport fence on the other. (County Ex. 1, Ex. 23.) The County states that Complainant has asked to use a designated three-acre area on the 14-acre property. (County Ex. 19.) The

County is otherwise without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 and, therefore, denies the allegations on that basis.

26. In response to paragraph 26, the County denies the Airport is one of three airports owned by Santa Clara County. The County states that the County owns the Airport and Reid-Hillview Airport. The County states that it operates, but does not own, Palo Alto Airport. Palo Alto Airport is owned by the City of Palo Alto. With regard to all remaining allegations contained in this paragraph, the County admits those allegations.

27. In response to paragraph 27, the County admits the Airport is operating at a significant deficit. The County states that it would incur additional expenses due to the skydiving operation and does not know if the skydiving operation would bring net revenue to the Airport. The County also states that the Airport Enterprise Fund, which the Airport is a part of, is self-sustaining with all overhead fully distributed to the three airports operated by the County. The Airport runs at a deficit that is typical for airports with low volume of aircraft operations. The County states that requests for skydiving are highly infrequent.

28. In response to paragraph 28, the County admits that the County has published Airport Rules and Regulations that are still in effect and that the Airport Rules set forth the procedure for approval of use of the Airport for skydiving onto the Airport. To the extent the remaining allegations in this paragraph consist of legal arguments or conclusions, no response is required.

29. In response to paragraph 29, the County denies that operation of a commercial hot air balloon operator at the Airport under the Airport Rules is identical to that of a commercial skydiving operator. To the extent the paragraph consists of legal arguments or conclusions, no response is required.

30. In response to paragraph 30, the County admits these allegations. The County states that the hot air balloon operators take off from the Airport and move south towards various landing sites near Gilroy. The County states that the hot air balloon operators do not land on the Airport. The County states that the hot air balloons rarely get over 200 feet off the ground and are in communication with air traffic control at all times. The County states that the hot air balloons are only in use early on weekend mornings before 8:00 a.m. when the wind is calm and the weather is good.

31. In response to paragraph 31, first sentence, the County denies that Complainant's initial contact with Mr. Honaker was in March 2009. The County states that Complainant first contacted the County in February 2009. (County Ex. 7, Ex. 8.) The County admits that Mr. Honaker met with Mr. Bodin on April 3, 2009 and began a long series of meetings, email and telephone communications. As to any remaining allegations in this paragraph not specifically admitted, each is denied.

32. In response to paragraph 32, the County admits those allegations.

33. In response to paragraph 33, the County admits that Mr. Bodin filed a Part 13 complaint with the FAA on May 28, 2009. As to the remaining allegations in the paragraph, the County lacks information sufficient to admit or deny and on that basis denies the allegations.

34. In response to paragraph 34, each allegation therein is denied. The County states that the County did not respond to Complainant's daily phone calls because the County was evaluating the situation, not because the County refused to respond.

35. In response to paragraph 35, the County admits that Complainant wrote to the FAA, but otherwise denies all remaining allegations in paragraph 35.

36. In response to paragraph 36, the County states that the FAA's August 17, 2009 letter speaks for itself. (Bodin Ex. 4.) As to any additional allegations contained in this paragraph, each is denied.

37. In response to paragraph 37, the County admits that Complainant continued in his attempts to secure approval. As to any additional factual allegations not otherwise admitted, each is denied.

38. In response to paragraph 38, the County submitted a response to the FAA concerning the Part 13 Complaint on August 21, 2009. (County Ex. 6.) The County lacks information sufficient to admit or deny whether the County's communications with the FAA was enough to cause the FAA to "reopen" the Part 13 complaint. With respect to the second sentence, to the extent the sentence makes legal arguments or conclusions, no response is required. As to any remaining allegations contained in this paragraph, each is denied.

39. In response to paragraph 39, the County admits that the County requested a safety study to be made by the FAA.

40. In response to paragraph 40, the County admits that Complainant worked with County officials to obtain space on the Airport and a permit for his operations including having a number of meetings and exchanging emails. To the extent the first sentence of paragraph 40 consists of legal arguments or conclusions, no response is required. The County admits that Mr. Bodin worked with the Air Traffic Control facility that controls the airspace over the Airport, but otherwise denies the remaining allegations in the second sentence. The County states that the County never received any correspondence from the FSDO or TRACON indicating that Complainant was working with them.

41. In response to paragraph 41, the County admits that the County was given full opportunity to present its safety concerns to the FAA in September, October, November and December 2009. The County states that its conversations with FSDO, SJC Air Traffic Control Tower (ATCT), and Terminal Radar Approach Control (TRACON) indicated that skydiving at the Airport was not feasible. The County admits the Safety and Airspace Study was conducted by the San Jose FSDO, and included an examination of the Airport and airspace over it. The County admits that FAA officials visited the Airport on December 3, 2009 and saw the landing area and that the Director, Assistant Director, and staff of Airports attended the meeting. The County is without knowledge or information sufficient to form a belief about the truth of the allegations in sentence five. The County denies that there were no objections raised by the County at the meeting, or afterward, with regard to any inability to express any of the safety concerns that it had or with the procedure to be followed by the FAA for its Safety Study. The County admits that it did not send any communications to the FAA or Complainant with any additional areas of concern it had with safety or the FAA's Safety Study procedures in the time after the meeting and before the FAA issued its findings.

42. In response to paragraph 42, the County admits that the FAA made its safety determination, dated December 9, 2009, and delivered on February 10, 2010. The FAA's safety review, dated December 9, 2009, speaks for itself. (Bodin Ex. 6.)

43. In response to paragraph 43, the email communication from Tony Garcia to Mr. Honaker, dated February 10, 2010, speaks for itself. (Bodin Ex. 26.) To the extent the paragraph consists of legal arguments or conclusions, no response is required.

44. In response to paragraph 44, the County denies that Complainant agreed to comply with all conditions. The email dated February 11, 2010 from Complainant to Anthony

Garcia speaks for itself. (Bodin Ex. 27.) The County is otherwise without knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 44 and, therefore, denies each of them on that basis.

45. In response to paragraph 45, each allegation therein is denied. To the extent the paragraph consists of legal arguments or conclusions, no response is required.

46. In response to paragraph 46, each allegation therein is denied.

47. In response to paragraph 47, each allegation therein is denied.⁶

48. In response to paragraph 48, the County admits these allegations.

49. In response to paragraph 49, the first sentence consists entirely of legal arguments or conclusions and, as such, no response is required. With respect to the second sentence, the email from Complainant to Supervisor Don Gage, dated June 14, 2010, speaks for itself. (Bodin Ex. 30.) The County lacks sufficient information to admit or deny whether Complainant asked for help from the FAA, and on that basis denies the allegation.

50. In response to paragraph 50, the email from Anthony Garcia to Carl Honaker, dated June 30, 2010, speaks for itself. (Bodin Ex. 31.)

51. In response to paragraph 51, the email from Anthony Garcia to Complainant, dated July 13, 2010, speaks for itself. (Bodin Ex. 8.) As to any additional allegations made in the paragraph, each is denied.

52. In response to paragraph 52, the letter from the South County Airport Pilots Association speaks for itself. (Bodin Ex. 9.) As to any additional allegations made in the paragraph, each is denied.

53. In response to paragraph 53, each allegation therein is denied.

⁶ Article X of the Fixed Base Operation Agreement requires prior written Airport consent to enter into a sublease. The Airport did not issue written consent to Complainant to occupy FBO space. (County Ex. 34.)

54. In response to paragraph 54, the County admits the FAA transmitted a letter to the County on August 25, 2010. The letter from the FAA to the County, dated August 25, 2010, speaks for itself. (Bodin Ex. 11.) As to any additional allegations made in the paragraph, each is denied.

55. In response to paragraph 55, the August 25, 2010 letter from the FAA to the County speaks for itself. (Bodin Ex. 11.)

56. In response to paragraph 56, the County admits these allegations.

57. In response to paragraph 57, the paragraph consists of legal arguments or conclusions and, as such, no response is required.

58. In response to paragraph 58, the County agrees that Complainant contacted the County on August 31, 2010, but otherwise denies all remaining allegations contained in the paragraph.

59. In response to paragraph 59, to the extent the paragraph consist of legal arguments or conclusions, no response is required. As to the remaining allegations in this paragraph, each is denied.

60. In response to paragraph 60, to the extent the paragraph consist of legal arguments or conclusions, no response is required. As to any remaining allegations in this paragraph, each is denied.

61. In response to paragraph 61, the County is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 61 and, therefore, denies them on that basis. To the extent the paragraph consists of legal arguments or conclusions, no response is required.

62. In response to paragraph 62, the County denies telling the FAA that the FAA was not competent to perform a Safety study. The County admits that the FAA completed a second safety study in early 2011, but is without knowledge or information sufficient to form a belief about the truth of the allegations that it was the “second full-blown Safety study”, and on that basis denies the allegation. The County denies the FAA told the County that skydiving could be performed safely on the Airport. The FAA informed that County that “skydiving operation would be operated in the safest manner if relocated to an area several miles away from airspace corridors.” (County Ex. 26.) The County admits the FAA required the County to submit an implementation plan within 30 days.

63. In response to paragraph 63, the County admits that Mr. Bodin offered to negotiate with the County. With respect to the remaining allegations in the paragraph, each is denied. (County Ex. 3, Ex. 4, Ex. 5.)

64. In response to paragraph 64, each allegation therein is denied.

65. In response to paragraph 65, the County admits writing to the FAA on May 2, 2011, but otherwise denies all remaining allegations in paragraph 65. To the extent this paragraph contains legal arguments or conclusions, no response is required.

66. In response to paragraph 66, the County denies that Complainant made a routine request for approval for a commercial aeronautical activity. The County states that requests for skydiving are highly infrequent. The County is without knowledge or information sufficient to form a belief about the truth of the remaining allegations, and on that basis denies each allegation.

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67. In response to paragraph 67, the County states that to the extent this paragraph contains legal arguments or conclusions, no response is required. The County denies all remaining allegations in paragraph 67.

68. In response to paragraph 68, each allegation therein is denied.

69. In response to paragraph 69, this paragraph consists of legal arguments or conclusions and, as such, no response is required. As to any remaining allegations, each allegation therein is denied.

70. In response to paragraph 70, this paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

71. In response to paragraph 71, this paragraph consists entirely of legal arguments or conclusions, and as such, no response is required.

72. In response to paragraph 72, this paragraph consists entirely of legal arguments or conclusions, and as such, no response is required.

73. In response to paragraph 73, the statutory language cited speaks for itself.

74. In response to paragraph 74, the County admits that as a recipient of federal grants the County agreed to comply with the grant obligations. The remaining statements consist entirely of legal arguments or conclusions and, as such, no response is required.

75. In response to paragraph 75, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

76. In response to paragraph 76, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

77. In response to paragraph 77, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

78. In response to paragraph 78, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

79. In response to paragraph 79, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

80. In response to paragraph 80, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

81. In response to paragraph 81, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required. To the extent Complainant cites material from FAA manuals, the quoted material speaks for itself.⁷

82. In response to paragraph 82, the quoted material speaks for itself.

83. In response to paragraph 83, this paragraph consists entirely of legal arguments or conclusions and, as such, no response is required. The quoted material cited in paragraph 83 speaks for itself.

84. In response to paragraph 84, the paragraph consists entirely of legal arguments or conclusions of law and, as such, no response is required.

85. In response to paragraph 85, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

86. In response to paragraph 86, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

⁷ The Complainant apparently intends to treat FAA Order 5190.6B, *Airport Compliance Manual* as law; however, the Order is not regulatory and not controlling with regard to airport sponsor conduct. See FAA Order 5190.6B, pg. 1-1 (providing that “[t]he Order is not regulatory and is not controlling with regard to airport sponsor conduct...”). See e.g., *National Airlift Support Corporation Colorado Springs, CO v. Fremont County Board of Commissioners Canon City, CO*, FAA Docket No. 16-98-18, Final Decision and Order (September 20, 1999); *Glyn Johnson v. Yazoo County & the Yazoo County Port Commission*, FAA Docket No. 16-04-06, Director’s Determination (February 9, 2006). Although these FAA decisions relate to the prior Order 5190.6A, which was superseded by Order 5190.6B, the conclusion applies.

87. In response to paragraph 87, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

88. In response to paragraph 88, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

89. In response to paragraph 89, the paragraph consists entirely of legal arguments or conclusions and, as such, no response is required.

90. In response to paragraph 90, denied. To the extent the paragraph consists of legal arguments or conclusions and no response is required.

91. In response to paragraph 91, the County denies that Complainant leased hangar space and entered into a sublease for space in the FBO facility.⁸ The County lacks information sufficient to admit or deny the remaining allegations in this paragraph, and on that basis denies each of the allegations.

92. In response to paragraph 92, the County denies that Complainant has been denied the benefits of using the Airport. The County lacks information sufficient to admit or deny the remaining allegations, and on that basis denies each of the allegations.

93. In response to paragraph 93, each allegation therein is denied.

94. In response to paragraph 94, this paragraph consists entirely of a prayer for relief and, as such, no response is required.

95. In response to paragraph 95, this paragraph consists entirely of a prayer for relief and, as such, no response is required.

96. In response to paragraph 96, this paragraph consists entirely of a prayer for relief and, as such, no response is required.

⁸ Article X of the Fixed Base Operation Agreement requires prior written Airport consent to enter into a sublease. The Airport did not issue written consent for Complainant to occupy FBO space. (County Ex. 34.)

97. In response to paragraph 97, this paragraph consists entirely of a prayer for relief and, as such, no response is required.

98. In response to paragraph 98, this paragraph consists entirely of a prayer for relief and, as such, no response is required.

The County also responds to the individual footnotes of Complainant's complaint.

F1. In response to Footnote 1, each allegation therein is denied. (County Ex. 10, Ex. 11, Ex. 12, Ex. 13.)

F2. In response to Footnote 2, the email from Complainant to a Policy Aide for a County Supervisor speaks for itself. (Bodin Ex. 5.) As to the remaining allegations in the footnote, each is denied.

F3. In response to Footnote 3, each of the allegations in sentences one, two, and three, is denied. In response to sentence four of Footnote 3, the County admits these allegations.

F4. In response to Footnote 4, each allegation therein denied. The County states that Complainant wishes to use "a small fraction" of the 14 acres, approximately 3 acres. (County Ex. 18, Ex. 19.)

F5. In response to Footnote 5, the County denies each of the allegations in the first sentence. The County denies that Mr. Honaker was "unwilling to rent hangar or building space" on the airport. The County admits the Airport Master Plan does not contemplate skydiving. The County admits the last sentence of Footnote 5 on page 9 of the complaint. The County denies the allegations in the first sentence of Footnote 5 on page 10. The email from Complainant to Racior Cavole dated May 11, 2009 speaks for itself. (Bodin Ex. 20.)

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F6. In response to Footnote 6, the County denies the County erected hurdles. With respect to the letter from Complainant to former County Supervisor Don Gage, the letter speaks for itself. (Bodin Ex. 22.)

F7. In response to Footnote 7, each allegation therein is denied. To the extent the paragraph includes legal arguments or conclusions, no response is required.

F8. In response to Footnote 8, the letter from the pilots association speaks for itself. (Bodin Ex. 9.) With respect to any remaining allegations in Footnote 8, each is denied.

F9. In response to Footnote 9, each allegation therein denied. To the extent the paragraph includes legal arguments or conclusions and, as such, no response is necessary.

RESPONDENT'S STATEMENT OF FACTS

1. The County provides this Statement of Facts to substantiate its Answer in accordance with 14 CFR § 16.23(i) and to demonstrate the thoughtful and diligent steps the County has taken to accommodate Complainant's demands to operate a skydiving business with a landing zone on Airport property, while balancing its duties to operate the Airport in a manner that does not create hazards to air traffic or to persons or property on the surface.

2. Complainant portrays the County as unwilling to permit his skydiving business to operate at the Airport. This is not accurate. The County Board of Supervisors (the "Board") has publicly supported Complainant's, or any other skydiving operation's, use of the Airport for take-off and landing of jump aircraft. (County Ex. 32, Ex.38 (p. 14).) The County, however, objects to a landing zone located on Airport property because the safety risks cannot be mitigated. (County Ex. 20, Ex. 31, Ex. 32.) The County is unwilling to accede to Complainant's relentless demands to operate a landing zone on Airport property. The County has reasonably exercised its authority under 14 CFR § 105.23(b), in accordance with 14 CFR § 105.5, and the

Airport Rules and Regulations (the “Airport Rules”) to not grant permission to Complainant to operate a landing zone on Airport property because of the hazards it will create to air traffic or persons or property on the surface. (County Ex. 41.) The County has a duty to ensure safety to persons and property in the air and on the ground.

3. The County is the owner, operator, and sponsor of the Airport. The Airport is a non-controlled towered airport. The Airport is located on approximately 179 acres, owned in fee by the County. The Airport is located adjacent to U.S. Highway 101 and the unincorporated community of San Martin. U.S. Highway 101 is a major north-south interstate thoroughfare. The Annual Average Daily Traffic volume on Highway 101 in the vicinity of the Airport is 115,000 to 120,000 vehicles per day. (County Ex. 37.) The population density of the area surrounding the Airport is approximately 575 persons per square mile. (County Ex. 35.) The County most recently was awarded a \$554,000 grant from the FAA for installation of an Automated Weather Observing System (AWOS IIP) (FAA AIP No. 3-06-0229-07). The AWOS IIP was completed in 2010. (County Ex. 40.)

4. The Board adopted updated Airport Rules in 2001. (County Ex. 36.) Section 3.14 of the Airport Rules provide that “[n]o person shall engage in parachute operations at a County airport except as required in an emergency or as approved by the Airport Director, and in compliance with requirements specified in Appendix II of these Airport Rules and Regulations.” (County Ex. 41, Airport Rules, Section 3.14, p. 13.) Appendix II, Section 4 provides that “[t]he Airport Director has the authority and responsibility to approve/disapprove requests for use of the airport facilities for...parachute drops when parachute landing zone is on airport property.” (County Ex. 41, Airport Rules, Appendix II, Section 4, pg. 24.) The Board has delegated this

approval authority to the Airports Director; however, the Board reserves the right to exercise its approval or disapproval of the skydiving operation.

5. Complainant first contacted the Airports Director Carl Honaker (“Honaker”) in February 2009, making an inquiry not about skydiving but about hangar space available for rent. (County Ex. 7, Ex. 8.) Honaker expeditiously responded to this request for information. (County Ex. 8.) Shortly thereafter, sometime in late March 2009, Complainant contacted Honaker requesting a meeting “regarding a skydiving business opportunity at South County Airport” and Honaker responded by scheduling a meeting with Complainant on April 3, 2009. (County Ex. 9, Ex. 10.) The April 3, 2009 meeting included a business proposal presentation by Complainant, which called for a landing zone on Airport property. (County Ex. 14, pp. 23-24.) The proposal did not provide any analysis or consideration of how safety measures would be implemented to mitigate the hazard to air traffic or persons or property on the surface resulting from the proposed operation. The proposal states that “[s]ignificant “outs” in surrounding farmland,” but failed to identify the location of those “outs” and safety concerns relating to the “outs.” (County Ex. 14, p. 23.)

6. The County was concerned with the proposed skydiving operation, with a landing zone on Airport property and in the middle of a congested airway that is the approach route to SJC. Discussions continued with Complainant through 2009, despite Complainant’s approach of overlooking the troubling safety realities and emphasizing, instead, the economic benefits of the skydiving business and getting the business up and running. (County Ex. 11, Ex. 12, Ex. 13, Ex. 16, Ex. 17.) On August 19, 2010, Honaker raised the County’s safety concerns with Racior R. Cavole of the San Francisco Airports District Office in response to an informal Part 13 complaint filed by Complainant. (County Ex. 6.)

7. On December 3, 2009, the San Jose FSDO conducted a safety review of the proposed parachute drop zone, which consisted of visual observations at the Airport. The San Jose FSDO issued its safety review in February 2010. (County Ex. 28.) The San Jose FSDO determined that the proposed parachute drop zone could be supported from a safety standpoint if nine (9) conditions were agreed to by the County, Complainant, and the FAA.⁹ The review was not supported by any written study or available analysis justifying the conditions in light of the Airport's location, the commercial and general aviation activity in and around the Airport, and how skydiving can be safely accommodated at the Airport. The County's analysis is summarized in a memorandum from Michael Murdter ("Murdter"), the County's Director of Roads and Airports to the Board, dated August 3, 2010. (County Ex. 20.)

7. In light of the clear safety concerns identified by the County that were not mitigated by the nine conditions, the County had a duty to review the process further. On August 24, 2010, the Board, consistent with its authority granted under 14 CFR § 105.23(b) and the Airport Rules, unanimously voted to "disapprove the proposal by Garlic City Skydiving to conduct skydiving operations with a Landing Zone (LZ) on South County Airport property." (County Ex. 32, Ex. 38, p. 14.) The Board also directed "staff to coordinate with Garlic City Skydiving and the Federal Aviation Administration to expeditiously review any revision to the skydiving proposal identifying an off-airport Landing Zone to determine the impact to Airport operations, if any." (County Ex. 32, Ex. 38, p. 14.)

⁹ The nine conditions require: (1) jumps are conducted in compliance with FAA regulations; (2) a notice to airmen is established and published; (3) radio contact be established and maintained between jump aircraft and regional traffic control; (4) jump aircraft will communicate with regional traffic control and visually scan the area prior to authorizing a jump; (5) radio transmissions will be conducted by jump aircraft to Airport's advisory frequency to alert anyone in the area that jump activities are in progress; (6) jumpers will be briefed to remain clear of the runway and stay within the designated drop zone area; (7) County will ensure that flying charts are updated to indicate designated drop zone; (8) County will ensure advisory information is updated to advise aircraft using Airport of the designated drop zone; and (9) County will advise aircraft operators based at the Airport of the designated drop zone. (County Ex. 28.)

8. The County notified Complainant on August 13, 2010 of the August 24, 2010 Board meeting and explained the County's issues with Complainant's proposal. (County Ex. 21; Bodin Ex. 10.) The County also notified Anthony Garcia of the FAA on August 18, 2010. (County Ex. 22.) Mr. Garcia responded to the County on August 19, 2010. (County Ex. 24.)

9. On August 25, 2010, the day after the Board took action, the FAA, through its representative Anthony Garcia, responded to the County's action. (County Ex. 25.) The County responded to Mr. Garcia's letter in a letter to Mark McClardy on September 22, 2010, reiterating the County's position that the County may prohibit or limit an aeronautical activity if necessary for the safe operation of the airport. (County Ex. 31.) The County welcomed the FAA's critique of the County's technical analysis and affirmed the County's position that Complainant may operate a skydiving business provided the landing zone is established at an off-airport location. On December 23, 2010, the FAA responded to the County September 22, 2010 letter and notified the County of its plan to further review the situation. (County Ex. 39.)

10. The FAA's Western-Pacific Region Airports Division Manager issued a letter to the County on April 4, 2011 indicating that while the proposed skydiving operation "would be operated in the safest manner if relocated to an area several miles away from airspace corridors similar to those existing over" the Airport, it could be operated at the Airport provided Complainant followed certain conditions to ensure safe operations. (County Ex. 26.) The letter also recommends that "the County review the training and safety practices required for skydiving and ensure Garlic City Skydiving abides by them." (County Ex. 26.) The County has no professional expertise to review training and safety practices for skydiving and has no authority to enforce such practices.

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11. The April 4, 2011 letter also includes a memo from the Flight Standards Division indicating that “[t]he proposed drop zone’s location relative to a significant amount of VFR [Visual Flight Rules] and IFR [Instrument Flight Rules] traffic will require strict compliance by Garlic City Skydiving with 14 CFR § 91.123 and §105, and close coordination with Air Traffic Control.” (County Ex. 29.) A memo prepared by the Director of the Western Service Center explains that “[t]o ensure and enhance the safety of air traffic flying above E16 the preferable option would be for the proponent to offset their landing zone several miles away from the airspace corridor over the airport. The airspace is an active air traffic corridor with a mix of IFR and VFR aircraft transiting to and from both San Jose International Airport and Reid-Hillview Airport.” (County Ex. 30.) Additionally, the April 4, 2011 letter includes an *Airspace Analysis* conducted by the WSC Operations Support Group. (County Ex. 27.) The *Airspace Analysis* shows many of the concern previously illustrated by the County. (County Ex. 27, pp. 5-6, 10-11, 19-20; Ex. 32, Attachment “D”.)

12. The April 4, 2011 letter from the FAA left many unanswered questions and concerns for the County including: the FAA’s conclusion that a skydiving operation at the Airport would be operated in the safest manner if relocated to an area several miles away; the lack of any FAA analyses regarding the safety aspects of locating the landing zone on Airport property; the expectation that the County provide oversight and enforcement of safety procedures for the skydiving operation at the Airport; and, the potential weakening of the County’s immunity under California law if it is required to permit skydiving on the Airport. The County addressed these concerns in a letter to Mark McClardy of the FAA on May 2, 2011. (County Ex. 2.) The County has not received a response to this letter.

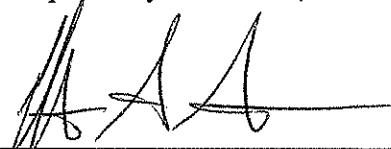
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AFFIRMATIVE DEFENSES

1. The complaint does not establish a reasonable basis for further investigation by the FAA.
2. The complaint does not contain sufficient evidence to meet Complainant's burden of proof to establish that the County has violated Grant Assurance 22.
3. The complaint does not contain sufficient evidence to meet Complainant's burden of proof to establish the County has violated Grant Assurance 23 or 49 U.S.C. § 40103(e) by granting any prohibited exclusive rights.
4. The County has acted in good faith in response to Complainant's request to establish a skydiving business at the Airport.
5. The County is, and has been, in compliance with its grant agreements and FAA obligations.

Dated: July 20, 2011

Respectfully submitted,



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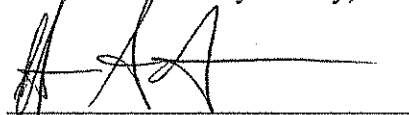
CERTIFICATE OF SERVICE

I hereby certify in accordance with 14 CFR § 16.15(a) that today I served the foregoing Respondent's Answer, Statement of Facts, and Affirmative Defenses on the following persons at the following address by Federal Express:

Richard J. Durden
Attorney at Law
27987 Richmond Hill Road
Conifer, CO 80433

Office of the Chief Counsel, Attention:
FAA Part 16 Airport Proceedings Docket
AGC-610
FEDERAL AVIATION ADMINISTRATION
800 Independence Avenue, SW
Washington, DC 20591

Dated this 20th day of July, 2011



Elizabeth G. Pianca
for the Respondent