U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 12 2013

CERTIFIED MAIL – Return Receipt

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27987 Richmond Hill Road
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Miguel Marquez, County Counsel
Elizabeth G. Pianca, Deputy County Counsel
Office of County Counsel
County of Riverside
70 West Hedding Street,
East Wing, 9th Floor
San Jose, CA 95110

Dear Mr. Durden, Mr. Marquez and Ms. Pianca:

RE: JEFF BODIN and GARLIC CITY SKYDIVING v. COUNTY OF SANTA CLARA, CALIFORNIA FAA Docket No. 16-11-06

Enclosed is a copy of the final decision and order of the Federal Aviation Administration (FAA) with respect to the above-referenced matter.

The Associate Administrator concludes that the analysis and conclusions contained in the Director's Determination with regard to Grant Assurance 22 are supported by a preponderance of reliable, probative, and substantial evidence, and are consistent with applicable law, precedent, and FAA policy. The Associate Administrator also finds, however, that the analysis and conclusions contained in the Director's Determination with regard to Grant Assurance 5 are not supported by a preponderance of reliable, probative, and substantial evidence. The Associate Administrator thus overrules the Director's Determination with regard to the violation of Grant Assurance 5 and dismisses the allegations under that assurance.

The reasons for upholding the Director's Determination are set forth in the enclosed order.

Sincerely,

Christa Fornarotto
Associate Administrator
for Airports

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2013, I caused to be placed in the United States mail (first class mail, postage paid) a true copy of the foregoing document addressed to:

For Complainant

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

For Respondent

Miguel Marquez, County Counsel
Elizabeth G. Pianca, Deputy County Counsel
Office of County Counsel
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Hand Delivered to:
FAA Part 16 Airport Proceedings Docket
FAA Airport Compliance and Field Operations, ACO-100

Anne Torgerson
Office of Airport Compliance
and Management Analysis

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Jeff Bodin and Garlic City Skydiving **v.** **County of Santa Clara, California** **Respondent/Appellee**	**Docket No. 16-11-06**

FINAL AGENCY DECISION AND ORDER

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on appeal filed by the County of Santa Clara from the Director's Determination of December 19, 2011, issued by the Director of the FAA Office of Airport Compliance and Management Analysis, pursuant to the Rules of Practice for Federally Assisted Airport Enforcement Proceedings found in Title 14 Code of Federal Regulations (CFR), Part 16.

The County of Santa Clara (the Respondent/Appellee) argues on appeal to the Associate Administrator for Airports that the Director's Determination should be reversed because the findings and conclusions are not supported by the administrative record, regulations, law or policy and that the County is not in violation of Grant Assurances 5 and Grant Assurance 22.

The Respondent raises the following issues on appeal:

A. Whether the County violated Grant Assurance 22, Economic Nondiscrimination by refusing the Complainant's request to establish a drop zone at the South County Airport.

B. Whether the County violated Grant Assurance 5, Preserving Rights and Powers by the Board of Supervisors' August 24, 2010 decision to refuse the Complainant's request to establish a drop zone at South County Airport.

The Respondent states:

> *The Determination does not respond to the County's questions raised in the October 19, 2011 letter (Determination at p. 36.) The County, thus, continues to ask the question of how the FAA has reached the conclusion that an on-Airport landing zone is safe since the FAA has not provided any evidence to support this conclusion. Instead, the Determination*

expects the County to rely on the FAA's authority as the final arbiter of airport safety absent evidence to support the FAA's position. (Determination at pp 23-32) The County recognizes and respects the important duty vested in the FAA to ensure safe airport operations and airspace navigation. The County, however, is concerned that the FAA has not thoroughly analyzed the complex safety issues involved with the Complainant's skydiving proposal, which could jeopardize the public health, safety and welfare of persons in the County and the County's ability to sustain the operation of the Airport. Although the FAA may be the final arbiter, before making the decision the FAA 'will carefully analyze supporting data and documentation.' (FAA Order 5190.6B, ¶14, 3.) The FAA has not demonstrated that a careful analyze [sic] *supported by data and documentation has been conducted.*

[FAA Exhibit 1, Item 22, p. 9-10]

The Respondent also states that it seeks to supplement the Administrative Record by including supplemental documentary evidence that appear as County Appeal Exhibits 1 through Exhibit 3. The Appeal exhibits include communications from the FAA to the County, and visual representations of the conditions at the Airport, as well as a chart identifying "Obstruction Comparison – Public Use Airport. [FAA Exhibit 1, Item 22, exhibits 1-3]

Upon an appeal of a Part 16 Director's Determination, the Associate Administrator must determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [*See* e.g. Ricks v Millington Municipal Airport, FAA Docket No. 16-98-19, (December 30, 1999) (Final Decision and Order), p. 21, and 14 CFR, §16.227]

In arriving at a final decision on this Appeal, the FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, the Respondent's Appeal, and Complainant's Reply, in light of applicable law and policy. Based on this reexamination, the FAA affirms the Director's Determination with regard to the violation of Grant Assurance 22. The Associate Administrator concludes that, with regard to Grant Assurance 22, the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. The Respondent's Appeal does not contain persuasive arguments sufficient to reverse the Director's Determination on Grant Assurance 22.

For reasons different than those cited by the Respondent, on appeal FAA finds that there is insufficient evidence in the record to show that the County ceded its rights and powers as airport sponsor and that its procedures were so incoherent and confusing and the process was so protracted as to constitute a violation of Grant Assurance 5. The FAA declines to sustain the Director's Determination with regard to the violation of Grant Assurance 5 and dismisses the Complainant's allegations under that assurance.

This decision constitutes the final decision of the Associate Administrator for Airports pursuant to 14 CFR, § 16.33(a).

II. SUMMARY OF THE DIRECTOR'S DETERMINATION

In the December 19, 2011 Director's Determination, the Director concluded that the County of Santa Clara was in violation of its Federal obligations as set forth in its airport grant assurances and existing Federal statutes.

In the initial Complaint, the Complainants alleged that the Respondent engaged in economic discrimination by failing to make the Airport available for skydiving in violation of Title 49 United States Code (U.S.C.), § 47107(a) and FAA Grant Assurance 22, *Economic Nondiscrimination.* Complainant also alleged violation of Grant Assurance 5, *Preserving Rights and Powers* and Grant Assurance 23, *Exclusive Rights.* [FAA Exhibit 1, Item 1, p. 1]

The Director found the Respondent's reasons for prohibiting the establishment of an on-airport drop zone were not supported by the record.[1] The FAA found that the Airport could safely accommodate an on-airport drop zone. Additionally, the Director found that by refusing the Complainant's request to establish a drop zone at the South County Airport, the Respondent had unreasonably denied the Complainant access to the Airport for the purpose of conducting skydiving activity in violation of Grant Assurance 22, *Economic Nondiscrimination* and 49 U.S.C., § 47107(a). The Director also found that the County Board of Supervisors' August 24, 2010 vote to reject the Complainant's proposal to conduct a skydiving operation with a drop zone on the Airport was evidence that the airport sponsor did not meet the standard of compliance and was a violation of Grant Assurance 5, *Preserving Rights and Powers.* The Director also stated that if the Respondent fully understood its commitments, it would have further engaged FAA in evaluating the on-airport drop zone before voting to deny the Complainant's proposal.

The Respondent admitted it prohibited the Complainant from establishing a parachute drop zone on the Airport, and claimed that it was doing so for the safe operation of the Airport. The Director found the Respondent's action to be unreasonable because FAA's safety evaluations found the Complainant's proposal to conduct parachute activities, including the establishment of a drop zone on the Airport, to be safe. The Director stated that in the decision on these matters FAA holds greater weight than the opinion of the airport sponsor. The Director found the Respondent to be in violation of Grant Assurance 22, *Economic Nondiscrimination.*

Santa Clara County was directed to take immediate steps to (1) permit the establishment of an on-airport parachute drop zone; (2) negotiate in good faith with those entities desiring to provide parachute-related commercial aeronautical services; (3) adopt the stipulations required by the FAA to conduct parachute operations at the Airport safely; and (4) provide any required "pen and ink" changes to the Airport's ALP. The County was directed to notify the Director that it

[1] The FAA's Western Pacific Region coordinated an airspace study with both Flight Standards and Air Traffic Organization. On December 3, 2009, FAA employees from the San Jose Flight Standards District Office visited the Airport to conduct a safety review of the proposed drop zone. Based on this study, it was determined that the proposed drop zone on the South County Airport of Santa Clara County could be supported from a safety standpoint if nine conditions were met. [*See* DD at 24-25] On March 24, 2011 and March 29, 2011, the FAA's Flight Standards Division for the Western Pacific Region and the FAA's Western Service Center conducted a second safety review of the proposed drop zone, again determining that skydiving could safely be accommodated at E16. [FAA Exhibit 1, Item 1, exhibit 14]

had taken the actions described above within 30 days of receipt of the initial determination. [FAA Exhibit 1, Item 21, p. 39]

The FAA suspended approval of future applications for AIP discretionary grants under 49 U.S.C., § 47115 and general aviation airport grants under 49 U.S.C., § 47114(d) requested by the County of Santa Clara until further notice. In the Director's Determination, the Director suspended grants to the County of Santa Clara immediately. This statement that the Director himself was immediately suspending grants was not accurate for two reasons. First, because FAA typically allows a sponsor 30 days from a finding of noncompliance to respond with a corrective action plan before noncompliance may lead to suspension of future AIP grant funding. In this case the County has not submitted a corrective action plan to the Director as of publication of this document, and the County was not denied any grants within that initial 30-day period, so the Associate Administrator finds that this mischaracterization did not cause harm to the County. Second, this statement by the Director was not accurate because the Director himself does not have authority to suspend grant funding. The FAA as an Agency and through appropriate internal coordination makes a decision to suspend grant funding to a sponsor that has been found in noncompliance. Though the Director's Determination made this inaccurate statement, the Associate Administrator finds that the Director himself did not actually suspend any grant funding and the decision was properly coordinated internally. As a result, this statement did not cause actual harm to the County.

The Respondent chose to appeal the Director's Determination to FAA Associate Administrator for Airports rather than taking the immediate steps directed by the Director's determination to bring the County into compliance with its grant assurances.

III. PARTIES

A. Airport

Santa Clara County is the sponsor of Palo Alto Airport (PAO), Reid-Hillview Airport (RHV) and the South County Airport of Santa Clara County (E16 or Airport). E16 is a public-use, nontowered airport owned and operated by Santa Clara County, California. The 179-acre facility, located one nautical mile east of San Martin, is classified as a general aviation reliever airport.[2] [FAA Exhibit 1, Item 5, p. 23, ¶3 and FAA Exhibit 1, Item 14] The Airport has 69 based aircraft, and an estimated 42,861 annual operations occur on the single runway. [FAA Exhibit 1, Item 14] The planning and development of all three Airports has been financed, in part, with funds provided by FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C., § 47101, *et seq*. Since 1982, the County has accepted a total of $14,001,717 Airport Improvement Program (AIP) grants for investments at all three airports: $3,279,417 at PAO; $6,806,140 at RHV; and $3,916,160 at E16. [FAA Exhibit 1, Item 15]

[2] The term "reliever airport" is defined in 49 U.S.C., § 47102(23) as an airport designated to relieve congestion at a commercial service airport and to provide more general aviation access to the community. E16 serves as an important reliever airport to the Norman Y. Mineta San Jose International Airport (SJC).

Complainant

Jeff Bodin is the proprietor, owner, and sole shareholder of Garlic City Skydiving, a California corporation. [FAA Exhibit 1, Item 1, p. 1] Mr. Bodin proposes to establish a commercial aeronautical activity at E16.[3] He seeks the County's approval to land skydivers on a drop zone/landing area on E16 and to select an appropriate site on the Airport to conduct his skydiving business. [FAA Exhibit 1, Item 1, p. 2]

IV. BACKGROUND AND PROCEDURAL HISTORY

A. Factual Background

On February 18, 2009, the Complainant e-mailed Carl Honaker, Director of Airports for Santa Clara County to inquire about hangar space at the Airport. [FAA Exhibit 1, Item 5, exhibit 7] Mr. Honaker responds the next day, providing the Complainant with instructions for viewing and renting available hangar space. [FAA Exhibit 1, Item 5, exhibit 8]

On April 3, 2009, the Complainant met with Carl Honaker, Director of Airports for Santa Clara County, to discuss his proposal to establish a skydiving business at South County Airport. [FAA Exhibit 1, Item 1, p. 2; FAA Exhibit 1, Item 1, exhibit 1; and FAA Exhibit 1, Item 5, p. 5, ¶3 and p. 24, ¶5] On April 5, 2009, the Complainant sent Mr. Honaker a follow up e-mail proposing a lease arrangement. [FAA Exhibit 1, Item 5, exhibit 10]

On April 9, 2009, the Complainant met with Carl Honaker, Director of Airports for Santa Clara County. [FAA Exhibit 1, Item 5, exhibit 11, p. 1] On April 10, 2009, the Complainant sent Mr. Honaker an e-mail thanking him for the meeting and suggesting he contact the Site Manager/Operator of the Chester County Airport in South Carolina to discuss their skydiving operations. [FAA Exhibit 1, Item 1, exhibit 18]

On April 21, 2009, the Complainant e-mailed Carl Honaker, Director of Airports for Santa Clara County, summarizing his April 3, 2009 proposal. [FAA Exhibit 1, Item 5, exhibit 13]

On April 30, 2009, the Complainant discussed his proposal with Carl Honaker, Director of Airports for Santa Clara County, and followed up with an e-mail inquiring about the status of his proposal. [FAA Exhibit 1, Item 5, exhibit 15]

On May 7, 2009, the Complainant e-mailed Carl Honaker, Director of Airports for Santa Clara County, to follow up on a discussion from the previous day. [FAA Exhibit 1, Item 1, exhibit 19] The Complainant questioned several statements made by Mr. Honaker during the discussion and describes them as, "outside the County's commitments to the Federal Airport Improvement Grant's Compliance Agreement." [FAA Exhibit 1, Item 1, exhibit 19, p. 1] The Complainant also proposed to lease a building currently used for nonaeronautical purposes at fair market value. [FAA Exhibit 1, Item 1, exhibit 19, p. 1]

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[3] FAA Order 5190.6B, *Airport Compliance Handbook* (September 30, 2009), defines "parachute activities" as an aeronautical activity in Appendix Z at p. 314.

On May 11, 2009, the Complainant sent an e-mail to Racior Cavole, Airport Compliance Specialist in the FAA's San Francisco Airports District Office (ADO), outlining his attempts to establish a skydiving business at the Airport. [FAA Exhibit 1, Item 1, exhibit 20]

On May 19, 2009, the Complainant sent an e-mail to Carl Honaker, Director of Airports for Santa Clara County, inquiring about two possible leasehold areas. [FAA Exhibit 1, Item 5, exhibit 17]

B. Informal Complaint

On May 28, 2009, the Complainant initiated an informal complaint under 14 CFR ,Part 13.1, Investigative Procedures, alleging violations of Grant Assurances 22 and 23. [FAA Exhibit 1, Item 1, exhibit 3] The Complainant's letter to the San Francisco ADO stated:

> *On 5/6/2009, I stopped by the County's administrative office without invite while Mr. Honaker was there and met with him, and was told that:*
>
> - *The County cannot and will not lease a small portion of land on the proposed landing area, or any other area of the airport property for a building (temporary, self-contained or otherwise) as the County believes it will require modification of their Master Plan, require the County to publish or open-bid RFQs* [requests for qualifications] *for any potential leases of any airport property for business purposes, and interrupt current ongoing Environmental Impact studies, and*
>
> - *The County will not lease one or more hangers* [sic] *for the purpose of Garlic City Skydiving to operate its aeronautical business out of, as this is not allowed and against County policy (the County has stated that allowing a business to be run out of a hanger* [sic] *might enable competition to the one FBO[4] on property), and*
>
> - *Although South County Airport has agreed to allow us to use the proposed/identified landing area in our proposal for skydivers, the County recommends 'leasing' of farm land adjacent to the airport for 'through-the-fence' access, and lastly*
>
> - *Any use of a landing area at the airport would be 'temporary' and only be available until the airport implements their 'Master Plan' and the County leases the proposed landing area to a second FBO, at which time our operations would need to cease.*

[FAA Exhibit 1, Item 1, exhibit 3, p. 1]

[4] A fixed-base operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. [Order 5190.6B, Appendix Z at 314]

On June 8, 2009, Racior Cavole, Airports Compliance Specialist in the San Francisco ADO notified the Respondent of the informal complaint.[5] [FAA Exhibit 1, Item 17] The letter advises the Respondent of its responsibilities with regard to Grant Assurance 22, *Economic Nondiscrimination*, and asks the Respondent to reply within ten working days of the receipt of the letter. [FAA Exhibit 1, Item 17]

On July 21, 2009, the Complainant sent a letter to Santa Clara County Supervisor Gage about his attempts to establish a skydiving business at the Airport. [FAA Exhibit 1, Item 1, exhibit 22]

On August 13, 2009, the Complainant sent an e-mail to Racior Cavole, Airports Compliance Specialist in the San Francisco ADO, inquiring about the status of his informal complaint. [FAA Exhibit 1, Item 1, exhibit 23]

On August 17, 2009, Racior Cavole, Airports Compliance Specialist in the San Francisco ADO, sent the Respondent a letter. [FAA Exhibit 1, Item 1, exhibit 4] This letter stated that the County had not responded to the allegations in the informal complaint, and the ADO concludes that it

> [...] *can find no reason for the County to refuse access to Mr. Bodine* [sic] *to conduct skydiving operations at South County Airport. This determination is conditioned upon an acceptable lease agreement, incorporating all applicable FAA requirements. Failure to adhere to this determination may put the County in noncompliance with its Federal Sponsor Grant Assurances, and jeopardize the receipt of future federal funding.*

[FAA Exhibit 1, Item 1, exhibit 4, p. 1]

On August 19, 2009, the Complainant sent an e-mail to Santa Clara County Supervisor Gage and a Board of Supervisors employee outlining the FAA's August 17, 2009 letter. [FAA Exhibit 1, Item 1, exhibit 24]

On August 21, 2009, Carl Honaker, Director of Airports for Santa Clara County, sent an e-mail to Racior Cavole, Airports Compliance Specialist in the San Francisco ADO, with the County's response to the informal complaint attached. [FAA Exhibit 1, Item 5, exhibit 6] The County's letter states that "[t]he County's refusal is based on [...] the potential safety issues that this type of operation could create in the airspace over and around the South County Airport." [FAA Exhibit 1, Item 5, exhibit 6, sub. exh. A, p. 1]

On September 2, 2009, the Complainant met with Santa Clara County Supervisor Gage. [FAA Exhibit 1, Item 1, exhibit 5]

On October 16, 2009, the Complainant sent an e-mail to the FAA's Northern California Terminal Radar Approach Command Facility (NorCal TRACON) Traffic Management Officer requesting a short letter in support of Garlic City Skydiving's proposed operations at the Airport. [FAA Exhibit 1, Item 1, exhibit 25]

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[5] Although this letter is dated May 8, 2009, the Director believes this letter was sent on June 8, 2009. The footer of the letter describes the file path as, "SFO-627/CAVOLE/X2778/06-08-09/FILE:ca, SANTACLARACOUNTY/SITE5". In addition, the San Francisco Airports District Office located the file copy in its June 2009 reading files.

On December 3, 2009, the FAA's San Jose Flight Standards District Office (FSDO) conducted a safety review of the proposed parachute drop zone at South County Airport. [FAA Exhibit 1, Item 1, exhibit 6, sub. exh. A] The December 9, 2009 memorandum from John R. Howard, Manager, San Jose FSDO to Anthony Garcia, Airports Compliance Program Manager in the FAA's Western Pacific Region, states:

> *Based upon the results of the December 3, 2009, safety review it has been determined that the proposed drop zone on the South County Airport of Santa Clara County could be supported from a safety standpoint if the nine (9) conditions stipulated (attached) were agreed to by Mr. Garcia, Mr. Bodine* [sic], *and Mr. Honaker.*

[FAA Exhibit 1, Item 1, exhibit 6, sub. exh. A]

These nine conditions are as follows:

1. *All jumps must be conducted in full compliance with 14 CFR ,Part 105.*
2. *A [notice to airmen] must be established and published through the appropriate aeronautical entity to advise all airport users of the parachute jump activities.*
3. *Radio contact between the jump aircraft and [Northern California] or Oakland [Air Route Traffic Control Center] must be established and maintained through the jump activity.*
4. *The jump aircraft pilot will communicate with [Northern California] or Oakland [Air Route Traffic Control Center] and visually scan the area to ensure aircraft are not entering or maneuvering within the traffic pattern prior to authorizing jumpers to depart the aircraft.*
5. *Radio transmissions will be conducted by the jump aircraft on the South County Airport of Santa Clara County advisory frequency 122.70 (CTAF/UNICOM)*[6] *to alert anyone in the area that jump activities are in progress.*
6. *Jumpers will be briefed to maintain directional control at all times and remain clear of the runway and stay within the designated drop zone area.*
7. *Airport management will ensure the Airport Facility Directory and San Francisco Sectional charts are updated to indicate (by parachute symbol depiction) that a designated Parachute Drop Zone has been established at the South County Airport of Santa Clara County.*
8. *Airport management will ensure the advisory information is updated to advise all who utilize South County Airport of Santa Clara County that a Parachute Drop Zone has been established and its location on the airport.*
9. *Airport management will advise all aircraft operators based at South County Airport of Santa Clara County of the establishment and location of a Parachute Drop Zone at the airport.*

[FAA Exhibit 1, Item 1, exhibit 6, sub. exh. A, p. 2]

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[6] The term "CTAF/UNICOM" refers to the common traffic advisory frequency/universal communications used at uncontrolled airports. UNICOM is a nongovernment air/ground radio communication station. It may provide airport information at public use airports where there is neither a tower nor a Flight Service Station. [Order 5190.6B, § 8.10.]

On February 10, 2010, Anthony Garcia, Airport Compliance Program Manager in the FAA's Western Pacific Region, sent an e-mail to Carl Honaker, Director of Airports for Santa Clara County, stating that FAA completed an evaluation of skydiving at South County Airport and determined that skydiving can be safely accommodated by adhering to the conditions contained in the FSDO's memo. [FAA Exhibit 1, Item 1, exhibit 6]

On February 16, 2010, the Complainant e-mailed Carl Honaker, Director of Airports for Santa Clara County, to inquire about the status of an agreement with the County. [FAA Exhibit 1, Item 5, exhibit 18] The e-mail stated the Complainant is working with the FBO to find space and notes the skydiving operation will only need to use a small portion of a 14-acre parcel. [FAA Exhibit 1, Item 5, exhibit 18]

On February 19, 2010, the Complainant sent a follow up e-mail to Carl Honaker, Director of Airports for Santa Clara County, identifying a three-acre square on the south-west corner of the airport as the proposed landing area. [FAA Exhibit 1, Item 5, exhibit 19]

On March 9, 2010, Lawrence Feldman, a Santa Clara County employee, sent an email to the Complainant outlining the bid process for a lease at the Airport. [FAA Exhibit 1, Item 1, exhibit 28]

On March 10, 2010, the Complainant wrote Anthony Garcia, Airport Compliance Program Manager in the FAA's Western Pacific Region, expressing concerns about the County's process for providing a lease. [FAA Exhibit 1, Item 1, exhibit 28, pp. 2-4]

The Complainant alleged that the County decided to develop a use permit for Garlic City Skydiving and charge a use fee on April 10, 2010. [FAA Exhibit 1, Item 1, exhibit 30, p. 1] The Complainant also claimed that Carl Honaker, Director of Airports for Santa Clara County, advised the Complainant that the Board of Supervisors will approve the use permit and fee at their early May 2010 meeting. [FAA Exhibit 1, Item 1, exhibit 30, p. 1] But later in the month, on April 30, 2010 Mr. Honaker advised the Complainant that the Board of Supervisors only needs to review the fee structure, and that review will be delayed until the late May 2010 meeting. [FAA Exhibit 1, Item 1, exhibit 30, p. 1]

According to the Complainant, on May 4, 2010, Carl Honaker, Director of Airports for Santa Clara County, advised the Complainant that the Board's review of the fee structure will be delayed until the June 8, 2010 meeting. [FAA Exhibit 1, Item 1, exhibit 30, p. 1]

On June 11, 2010, Carl Honaker, Director of Airports for Santa Clara County, tells the Complainant that the Board of Supervisors must review the use permit, in addition to the fee structure, and that will be delayed until the mid-August 2010 meeting due to a six-week summer hiatus. [FAA Exhibit 1, Item 1, exhibit 30, p. 2]

On June 14, 2010, the Complainant sent an e-mail to Santa Clara County Supervisor Gage expressing his frustration with the County's Airports Office. [FAA Exhibit 1, Item 1, exhibit 30]

On June 23, 2010, the Santa Clara County's Deputy Chief Counsel sent a letter to the Complainant stating:

> *I understand from staff that you are seeking to commence skydiving operations at a proposed drop zone located on County property at South County Airport. County Counsel has recently been advised of this proposed operation and we are currently reviewing and analyzing the legal issues associated with the proposed operation. The Board of Supervisors will consider the proposed operation in August.*

[FAA Exhibit 1, Item 1, exhibit 7]

On June 30, 2010, Anthony Garcia, Airport Compliance Program Manager in the FAA's Western Pacific Region, sent an e-mail to Carl Honaker, Director of Airports for Santa Clara County, inquiring about the status of the negotiations between the parties. [FAA Exhibit 1, Item 1, exhibit 31]

On August 3, 2010, Michael Murdter, Director of Roads and Airports Department of Santa Clara County, sent a memorandum to the County Board of Supervisors recommending the Board disapprove Garlic City Skydiving's proposal to conduct skydiving operations with a landing zone on the Airport's property. [FAA Exhibit 1, Item 5, exhibit 20] The memo states:

> *Staff does not believe the FAA's conditions are sufficient to mitigate the risk of potential conflict between a skydiver and an aircraft. Each of the FAA's nine conditions would have to be executed perfectly for every jump to avoid a mishap.*
>
> *The FAA's sole condition relating to the risk of landing somewhere other than the LZ is to require jumpers to be briefed to remain clear of the runway and stay within the designated drop zone. We highly doubt that a jumper would intentionally land on the runway, or anywhere else outside the drop zone for that matter. It is inevitable that, sooner or later, a skydiver will miss the LZ.*
>
> *Staff compared the proposed skydiving operation at the Airport to five other General Aviation airports in Northern California that currently have a LZ on airport property or propose to establish a LZ on airport property. In each case, the established LZ is much larger than three acres and therefore allows for a larger margin of error on the part of the skydiver.*

[FAA Exhibit 1, Item 5, exhibit 20, pp. 3-4][7]

On August 12, 2010, the Complainant discussed his proposal with legal counsel from Santa Clara County. [FAA Exhibit 1, Item 5, exhibit 21] County staff advised the Complainant that the Roads and Airports Department will recommend the Board of Supervisors deny Garlic City Skydiving's proposal to conduct skydiving at the Airport due to safety concerns. [FAA Exhibit 1, Item 5, exhibit 21, p. 2]

On August 13, 2010, Michael Murdter, Director of Roads and Airports Department of Santa Clara County, sent the Complainant a letter stating that his department objects to the establishment of a

[7] See analysis in Section VI.

landing zone on the airport, but does not object to allowing the Complainant's business to be based at the Airport. This letter also explains that the Board of Supervisors will consider the Complainant's proposal at its August 24, 2010 meeting. [FAA Exhibit 1, Item 1, exhibit 10]

On August 15, 2010, the Complainant sent an e-mail to Anthony Garcia, Airport Compliance Program Manager in the FAA's Western Pacific Region, stating he will receive a written rejection from the County this week. [FAA Exhibit 1, Item 5, exhibit 22, p. 2]

On August 17, 2010, Anthony Garcia, Airport Compliance Program Manager in the FAA's Western Pacific Region, sent an e-mail to Carl Honaker, Director of Airports for Santa Clara County, asking why skydiving cannot occur at the Airport given that FAA has concluded the Airport is suitable for skydiving. [FAA Exhibit 1, Item 5, exhibit 22, pp. 1-2] The next day, Mr. Honaker responds to Mr. Garcia, stating the issue is on the Board's August 24, 2010 agenda, and he attaches the memorandum prepared by the Director of Roads and Airports Department of Santa Clara County. [FAA Exhibit 1, Item 5, exhibit 22, p. 1] On August 19, 2010, Mr. Garcia responds, "you are using a strategy to make it appear that skydiving is not tenable at South County Airport. Strangely, the same strategy could be used to purport that other aeronautical activities are untenable at South County Airport." [FAA Exhibit 1, Item 5, exhibit 24]

On August 24, 2010, the County Board of Supervisors rejected the Complainant's proposal to conduct skydiving operations with a landing zone at the Airport. [FAA Exhibit 1, Item 1, exhibit 32 and FAA Exhibit 1, Item 5, exhibit 38, p. 14]

On August 25, 2010, Anthony Garcia, Airport Compliance Program Manager in the FAA's Western Pacific Region, sent a letter to Carl Honaker, Director of Airports for Santa Clara County. [FAA Exhibit 1, Item 1, exhibit 11] This letter stated that "the County is not complying with Grant Assurances 5 and 22" and notes FAA's expectation for the County to take appropriate corrective action. [FAA Exhibit 1, Item 1, exhibit 11, p. 2]

On August 31, 2010, the Complainant sent Michael Murdter, Director of Roads and Airports Department of Santa Clara County, an e-mail reiterating his desire to renew discussions regarding his skydiving business proposal. [FAA Exhibit 1, Item 1, exhibit 12]

On September 22, 2010, Michael Murdter, Director of Roads and Airports Department of Santa Clara County, wrote a letter to Mark McClardy, Manager of the FAA's Western Pacific Airports Division, objecting to the region's August 25, 2010 determination. This letter states:

> *The grant assurances authorize the County to prohibit or limit an aeronautical activity if necessary for the safe operation of the airport. Here, the County has determined that the proposal to drop skydivers through the middle of the congested V-485 airway (the main approach route to SJC) and expect them to land on a tiny three-acre landing zoning (LZ) at E16 presents significant risks to the safe operation of E16. The County has concluded that these risks cannot be adequately mitigated.*[8]

[8] As to VFR/IFR traffic and mitigation measures associated with proximity to the Victor Airway see analysis in Section VI.

[FAA Exhibit 1, Item 1, exhibit 13, p. 1]

The letter noted that the County will not initiate any corrective action to make the Airport available for skydiving. [FAA Exhibit 1, Item 1, exhibit 13, p. 2]

On December 23, 2010, Mark McClardy, Manager of the FAA's Western Pacific Airports Division, sent a letter to Michael Murdter, Director of Roads and Airports Department of Santa Clara County, stating the FAA is evaluating the County's reasons for prohibiting skydiving at the Airport. [FAA Exhibit 1, Item 5, exhibit 39] The letter states:

> [...] *I will ask both our Flight Standards Division and our Air Traffic Organization to assist my organization with conducting a more comprehensive review of the proposed skydiving operations at E16.*

[FAA Exhibit 1, Item 5, exhibit 39]

On March 24, 2011, Nicholas Reyes, Manager of FAA's Flight Standards Division for the Western Pacific Region, sent a memorandum to Mark McClardy, Manager of the FAA's Western Pacific Airports Division. [FAA Exhibit 1, Item 1, exhibit 14, sub. exh. A] This memo notes the safety review report provided by the San Jose FSDO on December 3, 2009 is correct, and also states:

> *The 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. Additional safety margins may be secured through a Letter of Agreement between NCT* [Northern California Terminal Radar Control Facility] *and Garlic City Skydiving, as outlined in FAA Order 7210.3W.*

[FAA Exhibit 1, Item 1, exhibit 14, sub. exh. A]

This memo concluded that proper coordination with Air Traffic Control facilities and compliance with Parts 91 and 105 would allow VFR/IFR operations to safely take place in the airspace above the airport and co-exist with skydiving activities. [FAA Exhibit 1, Item 1, exhibit 14, sub. exh. A]

On March 29, 2011, Ronald G. Beckerdite, Director of FAA's Western Service Center, sent a memorandum to Mark McClardy, Manager of the FAA's Western Pacific Airports Division. [FAA Exhibit 1, Item 1, exhibit 14, sub. exh. B] Although the memo notes that "[...] to 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 [...]," the memo concludes:

> *Based on the analysis of air traffic operations over E16, the conclusion of the WSC* [Western Service Center] *is the operation can be conducted as proposed with appropriate mitigations to ensure safety.*

[FAA Exhibit 1, Item 1, exhibit 14, sub. exh. B, p. 1]

These "appropriate mitigations" include the nine mitigation measures set forth in the December 3, 2009 safety study discussed on p. 8, above, as well as compliance with

Part 91 and Part 105, coordination with Air Traffic Control, and an LOA between the operator and the Northern California TRACON. This is explained in the March 24, 2011 memo discussed above.

On April 4, 2011, Mark McClardy, Manager of the FAA's Western Pacific Airports Division, wrote a letter to Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to discuss the findings of the Region's second safety analysis of skydiving at E16. [FAA Exhibit 1, Item 1, exhibit 14] This letter states "FAA has concluded that 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 E16." [FAA Exhibit 1, Item 1, exhibit 14, p. 1] However, the letter concludes that skydiving can be safely accommodated at E16 if specific conditions[9] are met, and asks the County "to end its skydiving prohibition at E16." [FAA Exhibit 1, Item 1, exhibit 14, p. 2]

On April 5, 2011, the Complainant wrote a letter to Mark McClardy, Manager of the FAA's Western Pacific Airports Division, outlining actions Garlic City Skydiving will take to comply with FAA's conditions for skydiving at the Airport. [FAA Exhibit 1, Item 5, exhibit 3, sub. exh. A]

On April 25, 2011, the Complainant contacted a Board of Supervisors employee to inquire about Garlic City Skydiving's use permit. [FAA Exhibit 1, Item 5, exhibits 4 and 5] The employee advises the Complainant to work directly with Carl Honaker, Director of Airports for Santa Clara County. [FAA Exhibit 1, Item 5, exhibit 4] On April 26, 2011, the Complainant contacted Mr. Honaker regarding the use permit. [FAA Exhibit 1, Item 5, exhibit 4]

On May 2, 2011, Michael Murdter, Director of Roads and Airports Department of Santa Clara County, wrote a letter to Mark McClardy, Manager of the FAA's Western Pacific Airports Division, requesting clarification on statements made in the April 4 determination and opposing FAA's decision to allow skydiving operations that are not conducted in the safest manner.[10] [FAA Exhibit 1, Item 1, exhibit 15]

On October 19, 2011, Mr. Michael Murdter, Director of the County of Santa Clara, Road and Airports Department, sent a letter to Mr. Mark McClardy, Manager, FAA's Western Pacific Region Airports Division. The stated purpose of the letter was "to respond to points raised in the August 12, 2011 letter and to again request clarification regarding issues raised in the April 4, 2011 letter." [FAA Exhibit 1, Item 19] This October 19, 2011 letter raised no new issues related to the safety of skydiving on the airport, and instead reiterated the County's continuing objections to an on-airport drop zone. Up until this time, the FAA's Western Pacific Region had conducted its investigation of Garlic City's allegations as a 'report of violation' under the Agency's 14 CFR, Part 13.1 informal investigative procedures. On June 14, 2011, Complainant filed a formal complaint under 14 CFR, Part 16, [*Rules of Practice for Federally-Assisted Airport Enforcement Proceedings*] As a result, Mr. McClardy's August 12, 2011 letter closed out the Complainant's 14 CFR, Part 13.1 informal complaint. [FAA Exhibit 1, Item 16] Because of the filing of this formal Part 16 complaint, Mr. McClardy declined to comment specifically in this August 12, 2011

[9] These specific conditions referred to are the nine mitigation measures identified above.
[10] See fn. 19 and Section VI, p. 33.

letter on the issues raised in the April 4, 2011 letter, and did not respond to the County's October 19, 2011 letter.

C. Formal Complaint, Director's Determination and Appeal

On June 14, 2011, FAA received the Complaint. [FAA Exhibit 1, Item 1]

On July 1, 2011, FAA docketed Jeff Bodin and Garlic City Skydiving v. County of Santa Clara, California. [FAA Exhibit 1, Item 2]

On July 1, 2011, the Complainant filed a motion to expedite the handling of the Complaint and requested an order to deny the Respondent any extensions of time to file its pleadings. [FAA Exhibit 1, Item 3]

On July 6, 2011, the Respondent opposed the Complainant's motion to expedite the handling of the Complaint. [FAA Exhibit 1, Item 4]

On July 20, 2011, the Respondent filed an Answer, Statement of Facts, and Affirmative Defenses; a Motion to Dismiss; and a Memorandum in Support of Respondent's Motion to Dismiss. [FAA Exhibit 1, Items 5, 7, and 8]

On July 30, 2011, the Complainant filed its Reply. [FAA Exhibit1, Item 10]

On August 9, 2011, the Respondent filed a Rebuttal. [FAA Exhibit 1, Item 11]

On August 25, 2011, the FAA denies the Complainant's motion filed on July 1. [FAA Exhibit 1, Item 13]

On December 1, 2011, the FAA extended the due date of the Director's Determination to on or before December 22, 2011. [FAA Exhibit 1, Item 20]

On December 19, 2011 the FAA issued the Director's Determination. [FAA Exhibit 1, Item 21]

On January 20, 2012, the Respondent County of Santa Clara filed an Appeal of the Director's Determination of December 19, 2011. [FAA Exhibit 1, Item 22]

On February 7, 2012, the Complainant filed Complainant's Opposition to Appeal by the County of Santa Clara of the Director's Determination. [FAA Exhibit 1, Item 23]

On January 23, 2012, Complainant filed Motion to Dismiss Appeal of Director's Determination as Untimely. [FAA Exhibit 1, Item 24A]

On January 24, 2012, Complainant filed Notice and Withdrawal of Its Motion to Dismiss Appeal of Director's Determination as Untimely. [FAA Exhibit 1, Item 24A]

On June 4, 2012, Respondent filed a "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 Determination Regarding San Martin Airport (E16)." [FAA Exhibit 1, Item 25]

On June 12, 2012 Complainant filed "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 Determination Regarding San Martin Airport (E16)." [FAA Exhibit 1, Item 26]

On April 5, 2012, FAA extended the due date of the Final Agency Decision to on or before June 30, 2012. [FAA Exhibit 1, Item 27]

On June 20, 2012, FAA extended the due date of the Final Agency Decision to on or before September 28, 2012. [FAA Exhibit 1, Item 28]

On September 27, 2012, FAA extended the due date of the Final Agency Decision to on or before November 30, 2012. [FAA Exhibit 1, Item 29]

On November 30, 2012, FAA extended the due date of the Final Agency Decision to on or before December 21, 2012. [FAA Exhibit 1, Item 30] On December 14, 2012, FAA sent a letter to the parties clarifying this due date. [FAA Exhibit 1, Item 31]

On December 20, 2012, FAA extended the due date of the Final Agency Decision to on or before January 31, 2013. [FAA Exhibit 1, Item 32] On January 3, 2013, FAA sent a letter to the parties clarifying this due date. [FAA Exhibit 1, Item 33]

On February 4, 2013, FAA extended the due date of the Final Agency Decision to on or before February 28, 2013. [FAA Exhibit 1, Item 34] On February 6, 2013, FAA sent a letter to the parties clarifying this due date. [FAA Exhibit 1, Item 35]

On February 28, 2013, FAA extended the due date of the Final Agency Decision to on or before April 30, 2013. [FAA Exhibit 1, Item 36]

On May 8, 2013, FAA extended the due date of the Final Agency Decision to on or before June 17, 2013. [FAA Exhibit 1, Item 37]

On June 20, 2013, FAA extended the due date of the Final Agency Decision to on or before July 19, 2013. [FAA Exhibit 1, Item 38]

On July 15, 2013, Complainant submitted a Motion for Sanctions Against Respondent, the County of Santa Clara, California and Certain Employees of Respondent, received by FAA July 18, 2013. [FAA Exhibit 1, Item 41]

On July 22, 2013, FAA extended the due date of the Final Agency Decision to on or before August 19, 2013. [FAA Exhibit 1, Item 42]

On July 25, 2013, Respondent submitted an Answer to Complainant's Motion for Sanctions Against Respondent, the County of Santa Clara, California, and Certain Employees of Respondent. [FAA Exhibit 1, Item 43]

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation is provided by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public fair and reasonable access to the airport. In addition to managing the airport in accordance with the grant assurances, ensuring the airport operates for the use and benefit of the public is the prime obligation set forth in the Federal Grant Assurances. [*See* FAA Order 5190.6B, *Airport Compliance Manual* (September 30, 2009), § 14.2 (Order 5190.6B)]

Title 49 U.S.C., § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. Title 49 U.S.C., § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal Government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system. The AIP provides grants to eligible airport sponsors (recipients of grants are referred to as "sponsors") for the planning and development of public-use airports. Airport sponsors who accept a grant offer also accept conditions and obligations associated with the grant assurances. These include 39 specifically delineated obligations such as operating and maintaining the Airport in a safe and serviceable condition, not granting exclusive rights, mitigating hazards to airspace, and using airport revenue properly.

Airport Sponsor Assurances

As a condition to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.[11] FAA Order 5190.6B, *FAA Airport Compliance Manual*, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances. The FAA considers it inappropriate to provide Federal assistance for improvement to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

The grant assurances relevant to the issues raised in the Appeal are Grant Assurance 5, *Preserving Rights and Powers*, and Grant Assurance 22, *Economic Nondiscrimination.*

Grant Assurance 5, Rights and Powers

Grant Assurance 5, *Preserving Rights and Powers*, (Assurance 5) requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its Federal obligations. This assurance implements the provisions of the AAIA, 49 U.S.C., § 47107(a), et seq., and requires, in pertinent part, that the owner or sponsor of a federally obligated airport

> [...] *will not take or permit 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 without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.*

[Grant Assurance 5(a)]

Grant Assurance 22, *Economic Nondiscrimination*

The owner of an airport developed with Federal assistance is required to operate the airport for the use and benefit of the public. Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C., § 47107(a) (1) through (6), and states, in pertinent parts:

a. [The airport owner/sponsor] *will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.*

b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or engage in any

[11] *See*, e.g. the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C., §§ 40101, 40113, 40114, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C., §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to –

i. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

ii. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchases.

[...]

h. [The airport owner/sponsor] *may 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.*

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport as such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

[Grant Assurance 22 (a)-(b), (h)-(i)]

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport. [*See* Order 5190.6B, § 8.8a]

The FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring that airport sponsors comply with their Federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for FAA's airport compliance effort. The airport owner accepts these obligations when receiving Federal grant funds or when accepting the transfer of Federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights that airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that airport sponsors serve the public interest.

Order 5190.6B sets forth policies and procedures for the FAA Airport Compliance Program. The Order does not regulate or control an airport sponsor conduct. Rather, it establishes the policies

and procedures to be followed by FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for receiving Federal funds or Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates the interpretation of grant assurances by FAA personnel.

The FAA Compliance Program is designed to achieve voluntary compliance with Federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. When addressing allegations of noncompliance, the FAA will make a determination of whether an airport sponsor is *currently* in compliance with the applicable Federal obligations. Consequently, FAA will consider a successful action by the airport to cure any alleged or potential past violation of an applicable Federal obligation to be grounds for dismissal of such allegation. [*See,* Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket 16-99-10 (August 30, 2001) (Final Decision and Order) at 5; upheld in Wilson Air Center, LLC v. FAA, 372 F.3d 807 (6th Cir., 2004)]

Enforcement of Airport Sponsor Assurances

Enforcement procedures regarding airport compliance matters may be found at *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings*, (14 CFR, Part 16). These procedures were published in the Federal Register at 61 Fed. Reg. 53998 (October 16, 1996) and became effective December 16, 1996.

The Complaint Process

Pursuant to 14 CFR, § 16.23, "a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA." The complainant(s) shall "[p]rovide a concise but complete statement of the facts relied upon to substantiate each allegation." [14 CFR, § 16.23(b)(3)] The complaint(s) shall also "[d]escribe how the complainant(s) directly and substantially has/have been affected by the things done or omitted to be done by the respondent(s)." [14 CFR, § 16.23(b)(4)]

"If, based on the pleadings, there appears to be a reasonable basis for further investigation, FAA investigates the subject matter of the Complaint." [14 CFR, § 16.29(a)] In rendering the initial determination, "the FAA may rely entirely on the Complaint and the responsive pleadings provided [...]. Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance." [14 CFR, § 16.29(b)(1)]

The proponent of a motion, request, or order has the burden of proof. [14 CFR, § 229(b)] A party who has asserted an affirmative defense has the burden of proving the affirmative defense. [16 CFR, § 229(c)] This standard burden of proof is consistent with the Administrative Procedures Act (APA) and Federal case law. The APA provision at 5 U.S.C., § 556(d) states, "(e)xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." [*See also* Director, Office Worker's Compensation Programs, Department of Labor v. Greenwich Colleries,

512 US 267, 272 (1994) and Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155 (DC Cir, 1998)] Title 14 CFR, § 16.229(b) is consistent with 14 CFR, § 16.23, which requires the Complainant to submit all documents then available to support his or her complaint. Similarly, 14 CFR, § 16.29(b)(1) states that, "[e]ach party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance."

Title 14 CFR, § 16.31(b) and (c), provide that "[t]he Director's determination will set forth a concise explanation of the factual and legal basis for the Director's determination on each claim made by the complainant. A party adversely affected by the Director's determination may appeal the initial determination to the Associate Administrator as provided in § 16.33."

The Appeal Process

In accordance with 14 CFR, § 16.33(b) and (e), upon issuance of a Director's Determination, "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination;" however, "[i]f no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable."

Part 16 requires all relevant facts to be presented in the complaint documents. [14 CFR, § 16.23(b)(3)] New allegations or issues should not be presented on appeal. Review by the Associate Administrator is limited to an examination of the Director's Determination and the administrative record upon which such determination was based. Under Part 16, Complainants are required to provide with the complaint and reply all supporting documentation upon which it relied to substantiate its claims. Failure to raise all issues and allegations in the original complaint documents may be cause for such issues and allegations to be deemed waived and not reviewable upon appeal. This is consistent with the Supreme Court's recognition that courts may require administrative issue exhaustion as a general rule because it is usually appropriate under an administrative agency's practice to require contestants in an adversarial proceeding before an agency to develop fully all issues there. The Court concluded that where parties are expected to develop the issues in an adversarial administrative proceeding, the rationale for requiring issue exhaustion is at its greatest. [*See* Sims v. Apfel, 530 US 103, 108-110 (2000) citing Hormel v. Helvering, 312 US 552 (1941) and US v. LA Tucker Truck Lines, 344 US 33 (1952).]

Title 14 CFR, § 16.247(a) defines procedural recourse for judicial review of the Associate Administrator's final decision and order, as provided in 49 U.S.C., § 46110 or § 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended, (AAIA), 49 U.S.C., § 47106(d) and 47111(d).

On appeal from a Director's Determination, the Complainants must demonstrate that the Director erred by (1) making findings of fact that were not supported by a preponderance of reliable, probative, and substantial evidence, or (2) by making conclusions of law that were not in accordance with applicable law, precedent, and public policy.

Pursuant to 14 CFR, § 16.33, the Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where the complaint is dismissed after investigation. In such cases, it is the Associate Administrator's responsibility to determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [*See* e.g. Ricks v Millington Municipal Airport, FAA Docket No. 16-98-19, (December 30, 1999) (Final Decision and Order) pp. 9 and 21 and 14 CFR, § 16.227.]

In an agency's appeal process, new evidence need not be admitted unless it "was not available and could not have been discovered or presented at the prior hearing. The evidence will not be considered new if the party could reasonably have known of its availability." [2 Admin. L. & Prac. § 5:71 (3rd ed.)] In addition, "a party may not correct a mistake in its original selection of evidence by compelling the agency to reopen so it might introduce evidence that could have been introduced initially." [2 Admin. L. & Prac. § 5:71 (3rd ed.)]

FAA's Response to County's Motion on Grant Funding Suspension

The FAA hereby denies Respondent's request that grant funding suspension be lifted for Palo Alto Airport (PAO) and Reid-Hillview Airport (RHV).

The Director's Determination (DD), issued December 19, 2011, found the County of Santa Clara in violation of Grant Assurances 5 and 22 and directed the County to submit a corrective action plan to FAA for approval within 30 days to correct those grant assurance violations. The DD also stated that "[f]urther grant applications for AIP discretionary grants under 49 U.S.C., § 47115 and general aviation airport grants under 49 U.S.C., § 47114(d) requested by the County of Santa Clara are hereby suspended until further notice," [FAA Exhibit 1, Item 21, p. 39] As noted on p. 4 of this decision, the Director's statement that grant funding to the County was immediately suspended was inaccurate, as FAA typically allows a sponsor 30 days from a finding of noncompliance to respond with a corrective action plan before that noncompliance may lead to suspension of future AIP grant funding. As noted, the County was not denied any grants during this 30-day period and suffered no harm from the mischaracterization of FAA's internal processes.

In its motion, the County states that PAO and RHV are "not the subject of the Part 16 Complaint at issue and these two airports are being unnecessarily penalized." [FAA Exhibit 1, Item 25, p. 1] The County also states that "unless the grant funding suspension is lifted with respect to these two airports, the County will be unable to undertake necessary pavement rehabilitation projects there." [FAA Exhibit 1, Item 25, p. 1] The County states that these projects were scheduled to be funded with accrued entitlement funds for the airports, and that these funds will no longer be available if the projects are not undertaken this year. [FAA Exhibit 1, Item 25, pp. 1-2]

The Complainant opposes the County's motion, stating that FAA should not reward the County's acts of bad faith, and that "[t]he 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." [FAA Exhibit

1, Item 26, p. 8] The Complainant further states that "[t]he 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." [FAA Exhibit 1, Item 26, p. 9]

In its opposition to the County's motion, Complainant states that the County's motion is not timely because it was not filed within 30 days of the DD, and "14 CFR, §16.33 does not provide for a piecemeal appeal of a Director's Determination." [FAA Exhibit 1, Item 26, p. 6] The FAA treats this motion as a motion on the appeal, and therefore does not find it untimely. There is no restriction in 14 CFR, § 16.19 as to when motions may be made in the complaint process.

In its motion, the County calls the December 19, 2011 DD "an initial non-final decision." [FAA Exhibit 1, Item 25, p. 4] While a DD is not a final agency action subject to judicial review, the FAA has authority at this stage to withhold discretionary funding to encourage and ensure sponsor compliance with corrective action plans.

In accepting Federal financial assistance, the airport sponsor ,regardless of the number of airports owned, assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport safely and efficiently for the use and benefit of the public is the prime obligation set forth in the Federal Grant Assurances. [*See,* Order 5190.6B § 14.2]

Airport sponsors who accept a grant offer also accept conditions and obligations associated with the grant assurances. In this specific case, Santa Clara County made a commitment to comply with the grant assurances, which include Grant Assurance 5, *Preserving Rights and Powers* and Grant Assurance 22. *Economic Nondiscrimination.* The Director found that the County's actions are not consistent with the commitments that the County made when it accepted the grant offer. Subsequently, FAA suspended the approval of future grant applications until further notice. The County disagrees with the Director's findings and filed an appeal with the Associate Administrator for Airports.

The County has requested that FAA's decision to suspend approval of future grant applications be reversed before FAA renders its Final Agency Decision. Since the issue of FAA approval of future grant applications is contingent upon whether the County violated its grant assurances by denying the Complainant access to one of its airports, FAA cannot agree to the release of grant funds without addressing with finality the broader issue – the airport sponsor's compliance with its grant assurances – the primary issue of this Final Agency Decision.

The FAA was within its right to suspend approval of future grant applications based upon his finding the County was in noncompliance with its grant assurances. The Director found that the County had not taken action to bring the airport into compliance with FAA requirements. In fact, the County continues to object to the siting of a Parachute Landing Area (PLA) on South County airport. The FAA reviews current compliance, and the County is currently not in compliance with its Federal obligations. Additionally, AIP grant agreements with FAA are signed by sponsors, not individual airports. The FAA may suspend the award of grant funds to an airport sponsor as a result of an airport sponsor's noncompliance with its grant assurances.

If the sponsor wishes to restore grant eligibility for the airports that fall under its sponsorship, it may do so by initiating the corrective actions necessary to bring itself into compliance with its contractual grant assurances. The Associate Administrator wishes to reiterate that it is a sponsor's responsibility and obligation under the Federal grant assurances to resolve a finding of noncompliance in order to lift suspension of approval of future grant applications.

The sponsor has not yet initiated any corrective action to resolve FAA's finding of noncompliance. Accordingly, the Respondent's request is denied.

FAA's Response to Complainant's Motion for Sanctions against Respondent

On July 18, 2013, FAA received a motion from Complainant's counsel requesting sanctions against the Respondent, titled Complainant's Motion for Sanctions Against Respondent, the County of Santa Clara, California, and Certain Employees of Respondent. In Complainant's motion, Complainant states that they have learned through a "newsletter published by a pilot's organization" that the County of Santa Clara "took action to subvert the 14 CFR, Part 16 process, Federal law and grant assurances" by seeking to receive Airport Improvement Program grants despite the Director's finding of noncompliance in the December 21, 2011 Director's Determination and FAA's subsequent suspension of grant funding to airports operated by the County of Santa Clara. [FAA Exhibit 1, Item 41, p. 2] The Complainant states that as a result of this request by the County, FAA's San Francisco Airports District Office (ADO) "approved Federal airport money for Respondent." [FAA Exhibit 1, Item 41, p. 4] The Complainant attaches as an exhibit to its motion a County of Santa Clara Board of Supervisor's construction document, which states that FAA's San Francisco ADO has indicated "that it would allocate grant funding for construction of the Project in Federal FY 2013 due to safety concerns," though it notes that "formal grant offers have not yet been received." [FAA Exhibit 1, Item 42, exhibit 1, p. 2]

As a result of the actions taken by the County, the Complainant's motion requests that FAA's Airport Compliance Division "immediately issue an Order prohibiting the San Francisco ADO, or any other ADO or FAA office, from issuing Federal airport grant monies of any sort to the County of Santa Clara" until the County comes into compliance with the Director's Determination. [FAA Exhibit 1, Item 42, p. 5] Complainant also requests that the County "be required to repay monies it has previously received over a period of some years, to be determined by the Airport Compliance Division," and that "the County employees who were involved with applying for Federal monies from the San Francisco ADO be identified and an Order be issued that any governmental entity that is an airport sponsor and employs any of them in any capacity to do with an airport be ineligible for Federal airport monies." [FAA Exhibit 1, Item 42, pp. 5-6] Complainant further urges that FAA refer the information regarding the attempted receipt of grants "to the California Bar for appropriate sanctions against County counsel," as the County's counsel did not contact Complainants before contacting the FAA, and Complainant asks "whether sanctions are appropriate for the [FAA] personnel who approved the County's request for funds." [FAA Exhibit 1, Item 42, p. 6]

On July 26, 2013, FAA received an Answer to Complainant's Motion for Sanctions Against Respondent, the County of Santa Clara, California, and Certain Employees of Respondent from the Respondent County of Santa Clara. In its Answer to Complainant's Motion for Sanctions, the

County of Santa Clara states that it has not violated the December 19, 2011 Order because that order "does not prohibit the County from approaching the FAA to request grant funding or making any application to the FAA for grant funding." [FAA Exhibit 1, Item 43, p. 2] The County further states that the Complainant's request that the County and County employees be sanctioned by FAA is "unwarranted under [...] Part 16" and "without justification in fact or law." [FAA Exhibit 1, Item 43, p. 2]

The Complainant does not provide a citation or further contextual information for the quotation from a "newsletter published by a pilot's organization" included in the text of Complainant's motion, which states that "the FAA has relented and released money for maintenance." [See FAA Exhibit 1, Item 42, p. 3] Contrary to the assertion of this newsletter, FAA has not released any money to the County of Santa Clara for use at any of its three airports. Any potential formal grant offer will not be made by FAA to the County until the County comes into compliance with its Federal grant obligations.

As the County notes in its Answer to Complainant's Motion, an airport sponsor that has been found in noncompliance is not prohibited from applying for grants. Instead, if a sponsor has been found in noncompliance, that sponsor's grant applications simply will not be approved until the sponsor comes into compliance. In addition, FAA is entirely within its rights to let an airport sponsor know that, despite its current noncompliant status, should the sponsor choose to come into compliance, there are funds that may be available for its use.

An airport sponsor is not required to notify a party to a Part 16 complaint of conversations the sponsor has with the FAA on topics outside the scope of the Part 16 complaint. This is true even while a Part 16 complaint may be ongoing, as many airport sponsors are in close contact with FAA on a variety of issues related to operating a federally-obligated airport. Though the Director's Determination that is on appeal here is the root cause of the sponsor's current lack of Federal funds, initial conversations about a potential safety or other issue that may exist at an airport that are not the subject of the ongoing Part 16 complaint are not sufficiently related to the complaint itself to require the sponsor to notify the Complainant of such conversations.

The Complainant's motion is hereby denied.

ISSUES ON APPEAL

The issues on appeal are:

A. Whether the County violated Grant Assurance 22, *Economic Nondiscrimination*, by refusing the Complainant's request to establish a drop zone at the South County Airport.

B. Whether the County violated Grant Assurance 5, *Preserving Rights and Powers*, by the Board of Supervisors' August 24, 2010 decision to refuse the Complainant's request to establish a drop zone at South County Airport.

[*See* FAA Exhibit 1, Item 22, p. 10]

The County argues:

> *Although the Director recognizes the County's authority to prohibit or limit any given type, kind or class of aeronautical use at the airport if such action is necessary on the grounds of safety or efficiency under Grant Assurance 22(i) the Director explains that the FAA 'is the final arbiter regarding aviation safety and will make the determination regarding reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport.' The problem is the FAA's safety determination that 'neither safety nor efficiency would be compromised by the skydiving operations as proposed at E16' and that 'the airport can safely accommodate skydiving operations, including an on-airport LZ' is not supported by evidence to justify an on-Airport landing zone.*

[FAA Exhibit 1, Item 22, p. 12] (Internal citations omitted)

The County goes on to state:

> *The Determination relies on the FAA's safety evaluations that are included in the FAA's April 4, 2011 letter to the County to support the safety conclusion. The County continues to express concerns that reliance on these prior evaluations is a serious error because the evaluation does not demonstrate that skydiving can be conducted safely at E16. The FAA has not shown that the County has unreasonably denied access to the Airport because the record does not support a conclusion that skydiving with an on-Airport landing zone can be safely accommodated.*

[FAA Exhibit 1, Item 22, pp. 12-13] (Internal citations omitted)

The County argues that it "accepts its responsibility under the Airport Improvement Act to operate and maintain the Airport with the highest degree of safety and efficiency in exchange for receiving financial assistance from the FAA for airport development."[12] [FAA Exhibit 1, Item 22, p. 13]

The County also states that its decision not to allow skydiving and an on-airport landing zone is consistent with its Federal obligations, saying that "[t]he Determination that skydiving must be permitted at the Airport is incompatible with the FAA's important objective of creating a system of self-sufficient airports to serve the aviation needs of the public." [FAA Exhibit 1, Item 22, p. 13]

In addition, the County renews its objections to skydiving on the airport based on the County's potential liability in the event of an accident, stating that "if the County were to approve skydiving at the Airport, it would be exposed to potential liability arising out of injuries and [sic] persons or damage to property." [FAA Exhibit 1, Item 22, p. 14] The County states that section 831.7 of the California Government Code, which applies to skydivers and some related peoples

> *[D]oes not apply to an individual who may be injured as a result of the skydiving activity, such as an airline passenger who is injured if a collision occurred, an adjacent property owner who experiences property damage caused by a skydiver landing on his or her property, or a driver or vehicle passenger on Highway 101. If the County fails to warn of a*

[12] "Highest degree of safety" and "safest manner possible" (see p. 13 and FAA Exhibit 1, Item 1, exhibit 15, p. 1) are not the appropriate standards here. This is discussed further in Section VI, p. 33.

known dangerous condition that was not assumed by the participants an inherently part of the activity (for example, failing to disclose the drop zone conditions), the immunity may similarly not apply.

[FAA Exhibit 1, Item 22, p. 14] [13]

The County concludes by stating that "[i]n sum, the evidence does not show that the County has unreasonably denied access to the Airport because the conclusion that the County violated Grant Assurance 22 is not supported by the record." [FAA Exhibit 1, Item 22, p. 17]

The Complainant filed an Opposition to Appeal on February 7, 2012 and stated:

Respondent, the County of Santa Clara, California, has appealed the Director's Determination in this matter by asserting that previously unavailable evidence supports its oft-repeated claim that skydiving cannot be conducted safely on the South County Airport ("the Airport"); the FAA's two Safety Studies regarding skydiving on the Airport were not to Respondent's satisfaction and thus Respondent believes its opinion regarding safety trumps that of the FAA; and the Respondent believes its fears of potential liability in the event of an accident justify it in determining which aeronautical activities it may allow on its federally-funded airport. None of Respondent's positions are supported by the record. Of special significance, a portion of what Respondent provides and characterizes as new evidence demonstrates definitively that the landing area on the Airport meets industry standards for a parachute landing area, thus further supporting the FAA's Safety Studies.

[FAA Exhibit 1, Item 23, pp. 1-2]

The Complainant also states that

[i]t should be noted that, despite its avowed lack of expertise, the County claimed it did an in-depth analysis of the safety of skydiving onto the Airport. [14] *The process was not disclosed, but it did not actually consult with the FAA, liaise with industry experts in the field, the United States Parachute Association, nor did it meet with the users of the Airport, who strongly support skydiving on the Airport.*

[FAA Exhibit 1, Item 23, p. 3] (Internal citations omitted)

The Complainant goes on to state that *"Respondent claims the FAA was not sufficiently transparent in its two Safety Studies; however, Respondent never provided any details of what it did, if anything, beyond hypothesizing a parade of horribles that could happen if skydiving were allowed on the Airport."* [FAA Exhibit 1, Item 23, p. 4]

VI. ANALYSIS AND DISCUSSION

Grant Assurance 22. *Economic Nondiscrimination*

[13] The FAA discusses the Respondent's liability arguments in Section VI, pp. 36-38.

[14] Respondent's Appeal contains an "Obstruction Comparison – Public Use Airports' [FAA Exhibit 1, Item 22, exhibit 3] The Associate Administrator believes this document may be the 'in depth' analysis to which the Complainant refers. The County also provided several exhibits in its Answer to the initial complaint that show safety analyses done by the County. [See FAA Exhibit 1, Item 5, exhibits 32, 33, and 37]

A. Whether the County violated Grant Assurance 22, Economic Nondiscrimination, by refusing the Complainant's request to establish a drop zone at the South County Airport.

The Director's Determination found the County in violation of Grant Assurance 22 and stated:

> *The Respondent admits it is prohibiting the Complainant from establishing a parachute drop zone on the Airport, claiming that doing so is necessary for the safe operation of the Airport. Again, under these circumstances, this restriction is unreasonable because the FAA's safety evaluations found the Complainant's proposal to conduct parachute activities, including the establishment of a drop zone on the Airport, to be safe. The expertise of the FAA holds greater weight than the opinion of the airport sponsor. The Respondent's other reasons for objecting to the Complainant's proposal are not sufficient to overcome the Director's concerns regarding the denial of access. The Director finds the Respondent to be in violation of Grant Assurance 22,* Economic Nondiscrimination.

[FAA Exhibit 1, Item 21, pp. 36-37]

In its Appeal, the County argues:

> *The Determination concludes that the County's decision to not allow Respondent to conduct a skydiving operation with an on-airport landing zone due to the safety hazards identified by the County is a violation of Grant Assurance 22, Economic Nondiscrimination, because 'this restriction is unreasonable because the FAA's safety evaluations found Complainant's proposal to conduct parachute activities, including the establishment of a drop zone on the airport, to be safe.' This conclusion is made notwithstanding the County's open request to the FAA to provide evidence to support its conclusion that 'neither safety nor efficiency would be compromised by the skydiving operations as proposed at E16' and that 'the airport can safely accommodate skydiving operations, including an on-airport LZ.'*

[FAA Exhibit 1, Item 22, p. 11] (Internal citations omitted)

The County goes on to state that their position is consistent with Grant Assurance 22(i), and that "skydiving with a landing zone on Airport property unacceptably interferes with the safe use and operation of the Airport, the civil aviation needs of the public, and the safety of persons and property on the surface." [FAA Exhibit 1, Item 22, p. 12] The County therefore believes that the "denial of Complainant's request to operate a landing zone on Airport property is grounded in its obligation to ensure the safe operation of the Airport and to serve the civil aviation needs of the public." [FAA Exhibit 1, Item 22, p. 12]

The County also states that the Director's Determination "relies on the FAA's safety evaluations that are included in the FAA's April 4, 2011 letter to the County to support the safety conclusion." The County continues to express concerns that reliance on these prior evaluations is a serious error because the evaluations do not demonstrate that skydiving can be conducted safely at E16. [FAA Exhibit 1, Item 22, p. 12] (Internal citations omitted)

The County has also alleged that the Director's Determination that the County was in violation of Grant Assurance 22 was not made in accordance with national policy, and cited continuing

concerns with the safety of siting a parachute landing area on the airport and liability issues associated with an on-airport landing zone. [FAA Exhibit 1, Item 22, p. 13-14]

The County specifically states that "[t]he Determination that skydiving must be permitted at the Airport is incompatible with the FAA's important objective of creating a system of self-sufficient airports to serve the aviation needs of the public." [FAA Exhibit 1, Item 22, p. 13] The County also states that "[t]he County's safety concerns can be summarized as (1) the potential conflict between a skydiver and an aircraft and (2) the potential for a skydiver to miss the landing zone. [FAA Exhibit 1, Item 22, p. 13]

In its Opposition to the Appeal, the Complainant states:

> *Throughout its brief, Respondent sets itself up as the judge to be convinced that the FAA has conducted its Safety Studies in a fashion that meets the requirements of Respondent. Yet, tellingly, Respondent stated to the FAA in its Answer to the Complaint at p. 26, that it has 'no professional expertise to review training and safety practices for skydiving.' However, throughout the Appeal, it continues to set itself out as being the arbiter of whether the FAA's process of doing a standard Safety Study for skydiving on an airport was satisfactory. Without citing authority, the County repeatedly demands evidence from the FAA regarding its Safety Studies, and then, upon receipt of the Studies themselves, is always critical of them.*

[FAA Exhibit 1, Item 23, p. 3]

Analysis

As discussed previously, on appeal from a Director's Determination, the appealing party (in this case, the Respondent airport sponsor) must demonstrate that the Director erred by (1) making findings of fact that were not supported by a preponderance of reliable, probative, and substantial evidence, or (2) by making conclusions of law that were not in accordance with applicable law, precedent, and public policy. The County argues that the Director made the finding that the County was in violation of Grant Assurance 22 in discordance with national policy. The County appears to support this argument by alleging that allowing skydiving would somehow erode the "objective of creating a system of self-sufficient airports." [FAA Exhibit 1, Item 22, p. 13]

The County argues that "a substantial burden could be placed on the County's revenues if a skydiver, airline passenger, freeway user, or adjacent property owner is injured," and that such a burden of liability would "impose an impediment on the County's ability to safely operate the Airport." [FAA Exhibit 1, Item 22, p. 14] The County also states that the Director's Determination "concludes that the County 'may not use the potential of increased liability exposure under state law as a means to justify excluding an aeronautical user from a federally-obligated airport," and that this is unreasonable. [FAA Exhibit 1, Item 22, pp. 14-15]

The County had also argued throughout the pleadings that the safety risks of establishing a skydiving landing zone on the Airport cannot be mitigated. [FAA Exhibit 1, Item 21, p. 23] In its Appeal, the County also argues that the FAA Safety Studies are not adequately supported, and that the conclusion of the April 4, 2011 letter was that skydiving would be safest if conducted away

from the airport. Referring to an August 12, 2011 letter to Michael Murdter from Mark A. McClardy, the County argues,

> *"The FAA responded to the May 2, 2011 letter on August 12, 2011 describing the County's safety concerns as a preference 'that skydiving operators conduct their activities further away from E16 or below 15,000 feet MSL.' The August 12, 2011 letter provides a safety determination that differs from its earlier determination stated in the April 4, 2011 letter, 'that 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 E16 by concluding that 'neither safety nor efficiency would be compromised by the skydiving operations as proposed at E16."*

[FAA Exhibit 1, Item 22] (Internal citations omitted)

The Director Properly Determined That the Safety Studies Demonstrated Skydiving Operations May Safely Co-exist With VFR/IFR Traffic in the Airspace Above the Airport

As stated above, the Director's Determination held that the Respondent County's prohibition on a parachute drop zone was unreasonable because FAA safety evaluations found the proposed drop zone to be safe, and that the County's other objections to the proposed drop zone were not sufficient to warrant a ban. [See FAA Exhibit 1, Item 21, pp. 36-37]

While Grant Assurance No. 22(i) states that "[t]he sponsor may 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," this provision does not provide the sponsor with unilateral authority to ban certain aeronautical uses at its airport. In accordance with FAA Order 5190.6B, ¶ 14.3, "Restricting Aeronautical Activities,"

- Any restriction proposed by an airport sponsor based upon safety and efficiency, including those proposed under Grant Assurance 22(i), must be adequately justified and supported;
- Prohibitions and limits are within the sponsor's proprietary power only to the extent that they are consistent with the sponsor's obligations to provide access to the airport on reasonable and not unjustly discriminatory terms and other applicable Federal law;
- The Associate Administrator for Airports, working in conjunction with Flight Standards and/or the Air Traffic Organization, will carefully analyze supporting data and documentation and make the final judgment on whether a particular activity can be conducted safely and efficiently at an airport; and
- In all cases, the FAA is the final arbiter regarding aviation safety and will make the determination regarding the reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport.

The arguments presented by the County do not support its objections to allowing skydiving onto an on-airport landing area. As noted above, any restriction proposed by a sponsor must be adequately justified and supported. The County has provided vague rationale why this activity should be denied, stating, "*if the County is compelled to permit skydiving at the Airport it will contravene the FAA's policy to create a system of self-sufficient airports to serve the aviation needs of the public because it will jeopardize the County's ability to make the Airport available for the civil aviation*

needs of the public." [FAA Exhibit 1, Item 2, p. 17] Additionally, the County argues, "[i]*n the unfortunate event that a skydiving accident does occur the potential will become reality, the damage will be done, and the County will be endangering its ability to make the Airport available for civil aviation needs.*" [FAA Exhibit 1, Item 2, p. 16] What the County fails to recognize with its arguments is that skydiving is an aeronautical activity, no less than any other aeronautical activity that the County may find more acceptable.[15]

The FAA has performed two safety studies at the Airport. On December 3, 2009, FAA employees from the San Jose Flight Standards District Office (FSDO) visited the Airport to conduct a safety review of the proposed parachute drop zone. Based upon the result of the safety review, it was determined that a parachute drop zone could be located on the airport and supported from a safety standpoint if nine (9) conditions were agreed to by the Complainant and Respondent. [FAA Exhibit 1, Item 1, Exhibit 6, p. 2]

The nine required conditions were:

1. *All jumps must be conducted in full compliance with 14 CFR, Part 105.*
2. *A [notice to airmen] must be established and published through the appropriate aeronautical entity to advise all airport users of the parachute jump activities.*
3. *Radio contact between the jump aircraft and [Northern California] or Oakland [Air Route Traffic Control Center] must be established and maintained through the jump activity.*
4. *The jump aircraft pilot will communicate with [Northern California] or Oakland [Air Route Traffic Control Center] and visually scan the area to ensure aircraft are not entering or maneuvering within the traffic pattern prior to authorizing jumpers to depart the aircraft.*
5. *Radio transmissions will be conducted by the jump aircraft on the South County Airport of Santa Clara County advisory frequency 122.70 (CTAF/UNICOM)*[16] *to alert anyone in the area that jump activities are in progress.*
6. *Jumpers will be briefed to maintain directional control at all times and remain clear of the runway and stay within the designated drop zone area.*
7. *Airport management will ensure the Airport Facility Directory and San Francisco Sectional charts are updated to indicate (by parachute symbol depiction) that a designated Parachute Drop Zone has been established at the South County Airport of Santa Clara County.*
8. *Airport management will ensure the advisory information is updated to advise all who utilize South County Airport of Santa Clara County that a Parachute Drop Zone has been established and its location on the airport.*

[15] FAA Order 5190.6B, Appendix C (FAA AC No. 5190.6), p. 25, Appendix 1, section 1.1(a).
[16] The term "CTAF/UNICOM" refers to the common traffic advisory frequency/universal communications used at uncontrolled airports. UNICOM is a nongovernment air/ground radio communication station. It may provide airport information at public use airports where there is neither a tower nor a Flight Service Station. [Order 5190.6B, § 8.10.]

9. *Airport management will advise all aircraft operators based at South County Airport of Santa Clara County of the establishment and location of a Parachute Drop Zone at the airport.*

[FAA Exhibit 1, Item 21, p. 25]

FAA's San Jose FSDO also recommended that the Complainant "notify all flight schools, flying clubs, and FBOs within a 30-nautical mile radius of the Airport at least 14 days prior to commencing skydiving activities." [FAA Exhibit 1, Item 21, p. 25] The Complainant has communicated to the FAA and the County his willingness to adhere to these conditions.

After the County denied the Complainant's proposal to conduct skydiving operations with a landing zone at the airport, the Manager of the Airport's Division for the Western Pacific Region agreed to conduct an additional review of the skydiving operations proposed by the Complainant, and confirmed that the safety review report was correct. [FAA Exhibit 1, Item 21, p. 26] The Air Traffic Organization's Western Service Center (WSC) then conducted a review and analysis of the Complainant's proposal and issued a memorandum on March 29, 2011 which states in part that "[b]ased on the analysis of air traffic operations over E16, the conclusion of the [Western Service Center] is [that] the operation can be conducted as proposed with appropriate mitigation to ensure safety." [FAA Exhibit 1, Item 1, exhibit 14, sub-exhibit B] The WSC recommended that "Garlic City Skydiving be permitted to conduct parachuting operations within a one mile radius of E16 at or below 15,000 feet [mean sea level]." [FAA Exhibit 1, Item 1, exhibit 14, sub-exhibit B] The FAA's second safety study thus concurred with the first study. The FAA Western Pacific Region's March 24, 2011 memo concluded that proper coordination with Air Traffic Control facilities and compliance with Parts 91 and 105 would allow skydiving activities to safely co-exist with VFR/IFR traffic operations in the airspace above the airport. [FAA Exhibit 1, Item 1, exhibit 14, sub-exhibit A]

In addition, the March 24, 2011 and March 29, 2011 memoranda both stated that a Letter of Agreement (LOA) should be negotiated between the Complainant and the Northern California TRACON, pursuant to FAA Order 7210.3W, Chapter 18, Section 4. [See FAA Exhibit 1, Item 14, exhibit A, p. 1 and exhibit B, p. 1] The Complainant is therefore reminded that an LOA must be successfully negotiated with ATO and presented to the County before skydiving can actually take place on the airport. The Complainant is encouraged to begin these negotiations as soon as possible. If a current LOA exists between the Complainant and NorCal TRACON, the Complainant is reminded that he must ensure this LOA is and remains up-to-date.

The Manager of the FAA's Airports Division for the Western Pacific Region communicated the Western Service Center's findings to the Respondent. [FAA Exhibit 1, Item 21, p. 27] The memorandum transmitting the Western Service Center's findings stated in part that "FAA has concluded that 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 E16." [FAA Exhibit 1, Item 1, exhibit 14, p. 1] Contrary to the County's assertion that this statement is the "conclusion" of the safety study, the memorandum goes on to explain that the Complainant's

proposal to conduct skydiving operations at E16 can be accommodated in a manner that is safe, stating that:

> *FAA has determined that Garlic City Skydiving can operate safely within Class E Airspace provided the conditions stated in this letter [conducting jump operations within one nautical mile radius of the airport at or below 15,000 feet; compliance with the recommendations in the December 9, 2009 San Jose FSDO Safety Determination; compliance with 14 CFR 91.123 and 14 CFR 105; and negotiating a Letter of Agreement between Garlic City and NCT] are met. Furthermore, the FAA does not agree with the County's decision to deny Garlic City from operating at E16 on the basis that a skydiver could miss the proposed landing zone (LZ).* [...] *Based on the FAA's safety assessment, we ask the County to end its skydiving prohibition at E16.*

[FAA Exhibit 1, Item 1, Exhibit 14, p. 2]

In the Director's Determination the Director noted, "this [memorandum] is unclear about the FAA's findings," [FAA Exhibit 1, Item 21, p. 27] because of the statement that the skydiving operation would be safest "several miles" from E16. The Associate Administrator disagrees with the Director on this point. While this statement appears to have caused confusion, the findings and conclusions of this study are clear. Though the memorandum may have appeared at first glance to be unclear as to the results of the safety study, when the statement about relocation being "safest" is read in the context of the entire letter, the letter, as well as the safety study itself, clearly indicate that FAA again concluded that skydiving could safely be conducted at South County Airport. The statement in this letter is one that applies to any aeronautical use proposed in a blended-use environment..[17]

The Director found, and the Associate Administrator affirms, that both safety studies consistently state that the proposed on-airport parachute drop zone could be located on the airport and supported from a safety standpoint with certain mitigation measures.

In addition, despite claims by the County to the contrary, neither "safest manner possible"[18] nor "highest degree of safety"[19] is the appropriate standard of safety as applied to sponsor obligations to afford access on fair and reasonable terms to aeronautical activity. Under Grant Assurance 22, the sponsor must avoid unjustly discriminating between types of aeronautical activities, and may only prohibit a given aeronautical use "if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." [Grant Assurance 22(i)] This proprietary authority to prohibit activities under Grant Assurance 22(i) is "limited so as to ensure consistency with FAA safety determinations,"[20] and the final decision as to what prohibitions may

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[17] Notably, the March 29, 2011 letter also stated "[...] to 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." However, this is not dispositive for the same reasons discussed above.

[18] See FAA Exhibit 1, Item 1, exhibit 15.

[19] See FAA Exhibit 1, Item 22, p. 13; see also p. 25 of this determination.

[20] See also Aircraft Owners and Pilots Association (AOPA) Members v City of Pompano Beach, Florida, FAA Docket No. 16-04-01 (December 15, 2005) (Director's Determination), pp. 21-22, stating that "The airport may propose an access restriction based on safety and efficiency, but when such a restriction triggers a complaint [...] the FAA Airports Office will review the supporting justification and make the final determination regarding the reasonableness

be necessary at an airport to ensure the safe operations of that airport lies with the FAA. [In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California, FAA Docket No. 16-02-08, (May 27, 2008) (Director's Determination) (Santa Monica DD), p. 70] The FAA finds an airport may not discriminate between types of aeronautical activities if those activities may take place with an "acceptable level of safety." [Santa Monica DD, p. 55] In the 2008 Santa Monica case, which related to an attempt by the City of Santa Monica to ban Category C and D aircraft at the airport, the Director found that "[b]ecause aircraft can use the SMO [Santa Monica Municipal Airport] runway safely and in accordance with all applicable FAA safety regulations and practices, the Director finds that it is unreasonable to ban such aircraft from use of the airport for reasons of safety." [Santa Monica DD, p. 55]

Similarly, the FAA's safety reviews at South County Airport have found that skydiving can occur on the airport safely and in accordance with applicable FAA safety regulations and practices, as long as specific safety conditions and practices are adhered to. The Associate Administrator therefore concludes that a prohibition on skydiving at South County Airport is not necessary to ensure the operations of the airport meet an acceptable level of safety, as measured by the ability of the airport to comply with applicable FAA safety regulations and practices.

The County asserts that skydiving activity will involve dropping skydivers "through the middle of the congested V-485 airway (the main approach route to SJC)." [FAA Exhibit 1, Item 1, exhibit 13, p. 1] The Western Pacific Region's review of the skydiving proposal and the airport notes that E16 is "below the lateral boundary of a low-altitude airway (V-485)." [FAA Exhibit 1, Item 1, exhibit 14, sub-exhibit A] While skydiving through Victor airways[21] may require heightened safety awareness on the part of skydiving operators and coordination with local Air Traffic Control Facilities, it is not considered per se unsafe by the FAA. In fact, though this circumstance is not typical nationwide, it is not unique. The Associate Administrator takes administrative notice of the fact that there are a number of other airports with parachute jump operations underway beneath or near Victor airways. See FAA Exhibit 1, Item 39, a list of airports with such parachute jump operations, provided by a Supervisory Aviation Safety Inspector in the FAA's Cincinnati Flight Standards District Office.[22] Public airports with jump operations underway that penetrate Victor airways include: Vance Brand Airport, Longmont Colorado (KLMO); Middletown Regional Hook Field, Middletown Ohio (KMWO); Fairfield County Airport, Lancaster, Ohio (KLHQ); Deland Municipal / Sidney H. Taylor Airport, Deland, Florida (KDED); Zephyrhills Municipal Airport, Zephyrhills, Florida (KZPH); and Perris Valley Airport, Perris Valley, California (L65). [FAA Exhibit 1, Item 39][23]

The FAA has proposed design standards for Parachute Drop Zones as Change 1 to Advisory Circular (AC) 150/5300-13A, Airport Design. These draft standards were published in the Federal

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of an access restriction. Restrictions based on safety and/or efficiency require supporting justification from the appropriate Flight Standards and/or Air Traffic Offices."

[21] Victor airways are low-altitude airways. See FAA Order JO 7400.9W, (September 15, 2012).

[22] Administrative or official notice is the administrative law counterpart to judicial notice (see Fed. R. Evid. 210), and is the process by which an agency may take notice of both "commonly acknowledged facts" and "technical or scientific facts that are within the agency's area of expertise" that are not otherwise in evidence. Sykes v Apfel, 228 F.3d 259, 272 (3d Cir. 2000).

[23] See FAA Exhibit 1, Item 39, for more information and other examples of public and private airports with jump operations underway under or near Victor airways.

Register (then as Change 19 to AC 150/5300-13) for public notice and comment at 77 Fed. Reg. 39446 (July 3, 2012). Though the County is not currently subject to these draft standards, the Associate Administrator takes administrative notice[24] of the fact that the Complainant's drop zone on South County Airport as proposed to the County in 2009[25] would meet this standard should it become applicable in the future. [FAA Exhibit 1, Item 40] The information contained in FAA Exhibit 1, Item 40 was also provided by a Supervisory Aviation Safety Inspector in the FAA's Cincinnati Flight Standards District Office.

On appeal, the County fails to specifically state which findings of fact or conclusions of law are in error in the initial determination. Rather, the County relies on speculation and 'what ifs' to sustain their argument. The County also fails to recognize that prohibitions and restrictions on aeronautical activity are allowable within a sponsor's proprietary powers only to the extent that they do not unjustly discriminate against an aeronautical user or class of user and are otherwise consistent with Federal law, including the law on Federal preemption. By failing to recognize skydiving as an aeronautical activity that must be accommodated unless specific safety reasons dictate otherwise, the County has unjustly discriminated against this class of user. One of FAA's statutory mandates is to consider "assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce," [49 U.S.C. 40101(d), see also 49 U.S.C. 40104(a)] and to that end FAA has conducted two separate safety studies and devoted significant resources to thoroughly review the safety of the Complainant's proposed drop zone and to address the County's safety concerns. The County has not supported its objections to skydiving on the airport with specific facts, but has generally objected based on what could happen, offering only hypothetical examples. The County has simply not shown how its proposed restriction is consistent with Federal law.

The Office of the Associate Administrator for Airports worked closely with FAA's Flight Standards Division and Air Traffic Organization and provided an analysis with supporting data and documentation, ultimately concluding that skydiving could be accommodate on this Airport with certain mitigations. It is clear from the comprehensive reviews completed that the Respondent identified safety concerns about the proposed operations, and that these concerns were considered by FAA. Additionally, as stated above, further review by FAA based on a proposed new standard affirmed the results of these two previous reviews.

Respondent appears to argue that a sponsor has the legal ability to decide whether certain aeronautical operations may be conducted safely. The Associate Administrator upholds the Director's determination that Congress has assigned the responsibility of aviation safety to the FAA.

In short, FAA has preemption authority over aviation safety. The Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C., § 40101, et seq., was enacted to create a "uniform and exclusive system of Federal regulation" in the field of air safety. City of Burbank v. Lockheed Air Terminal, 411 U.S. 624, 639 (1973). The Federal Aviation Act was "passed by Congress for the purpose of centralizing in a single authority – indeed, in one administrator – the power to frame rules for the safe and efficient use of the nation's airspace." Air Transport Association of America,

[24] See fn 22.
[25] See FAA Exhibit 1, Item 1, exhibit 1.

Inc. v. Cuomo, 520 F.3d 218, 224 -225 (2d Cir. 2008), citing Air Line Pilots Assn., Int'l v. Quesada, 276 F.2d 892, 894 (2d Cir. 1960); see also, British Airways Bd. v. Port Auth. of N.Y. & N.J., 558 F.2d 75, 83 (2d Cir. 1977) ("[The FAA] requires that exclusive control of airspace management be concentrated at the national level."). Congress and FAA have used this authority to enact rules addressing virtually all areas of air safety. These regulations include a general standard of care for operating requirements, see, e.g., 14 CFR, § 91.13(a) ("No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.") and extend to grounded planes and airport runways. See *id.*, § 91.123 (requiring pilots to comply with all orders and instructions of air traffic control); *id.*, § 139.329 (requiring airports to restrict movement of pedestrians and ground vehicles on runways). The intent to centralize air safety authority and the comprehensiveness of these regulations pursuant to that authority have led Federal courts to conclude that Congress intended to occupy the entire field and thereby preempt state regulation of air safety. See, e.g., Montalvo v. Spirit Airlines, 508 F.3d 464, 468 (9th Cir. 2007) ("[T]he FAA preempts the entire field of aviation safety through implied field preemption. The FAA and regulations promulgated pursuant to its establish complete and thorough safety standards for air travel, which are not subject to supplementation by [...] state laws."); Greene v. B.F. Goodrich Avionics Sys., Inc., 409 F.3d 784, 795 (6th Cir. 2005), cert. denied, 547 U.S. 1003 (2006); Abdullah v. American Airlines, Inc., 181 F.3d 363, 367-68 (3d Cir. 1999).

In addition to the extensive authority noted above, Orange County Soaring Association Inc. v. Riverside County, California and a number of additional Part 16 decisions speak to the FAA's preemption of aviation safety. In Orange County Soaring, the Director stated:

> *[F]or the purpose of making a final determination on reasonableness when aviation safety is at issue, FAA safety determinations pursuant to the Federal Aviation Regulations take precedence over any airport sponsor views or local ordinances pertaining to safety.*[26] *This is especially true when the Director is asked to make a determination regarding a sponsor's compliance with its federal obligations in cases where restrictions or limitations are instituted in the interest of safety. Under 49 U.S.C. § 40103, the FAA develops plans and policy for the use of the navigable airspace and assigns by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.*

[Orange County Soaring Association Inc. v. Riverside County, California, FAA Docket 16-09-13, Director's Determination (February 11, 2011), p. 21, *see also* FAA Exhibit 1, Item 21, p. 29] (Internal citations omitted)

It appears that the County gave no deference or weight to FAA's considered safety judgment. The Grant Assurances, taken together, form the basis of expected conduct and procedure for an airport sponsor to maintain compliance with the terms and conditions of accepting Federal assistance. An

[26] See also Drake Aerial Enterprise, LLC v. City of Cleveland, Ohio, FAA Docket No. 16-09-02, (February 22, 2010) (Director's Determination) at 14; In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California, FAA Docket No. 16-02-08, (July 8, 2009) (Final Agency Decision) at 9 *aff'd* City of Santa Monica v FAA, 631 F. 3d 550 (DC Cir, 2011); Skydive Paris Inc. v Henry County, Tennessee, FAA Docket No. 16-05-06, (January 20, 2006) (Director's Determination) at 15; and Florida Aerial Advertising v St. Petersburg-Clearwater International Airport, FAA Docket No. 16-03-01, (December 18, 2003) (Director's Determination) at 11.

airport sponsor who interprets a grant assurance differently than FAA bears the burden of coming forward with evidence to refute FAA's safety judgment. Here the County has failed to do so.

The Director Properly Determined That The County's Liability Concerns Do Not Justify Banning Skydiving Operations Here

In its Appeal, the County argues that liability issues with an on-airport landing area remain. The County states that California Government Code Section 831.7 provides governmental immunity that applies only to liability with regard to "skydivers, those who assist skydivers and spectators of skydivers." [FAA Exhibit 1, Item 22, p. 14] The County states that this statute does not apply to liability with regard to "an individual who may be injured as a result of the skydiving, such as an airline passenger who is injured if a collision occurred, an adjacent property owners who experiences property damage caused by the skydiver landing on his or her property, or a driver or vehicle passenger on Highway 101." [FAA Exhibit 1, Item 22, p. 14]

The Director reviewed the County's arguments that having an on-airport drop was not safe because of the increased liability to the County, and stated that he "did not agree that the County could use the potential for increased liability exposure under state law as a means to justify excluding an aeronautical user from a federally-obligated airport." [FAA Exhibit 1, Item 21, p. 32] The Director explained that, under that thinking, "any aeronautical activity that involved greater risk or liability than another could be legitimately banned." [FAA Exhibit 1, Item 21, p. 32]

The County's liability concerns are both with its liability to bystanders who may be injured as a result of skydiving and to skydivers who may claim the presence of dangerous conditions that were not reasonably assumed to be part of the skydiving activity. [See FAA Exhibit 1, Item 22, p. 14] The FAA has previously addressed immunity and liability issues under California state law In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California, FAA Docket No. 16-02-08, previously discussed on p. 33. In that case, FAA found the City of Santa Monica in violation of Grant Assurance 22[27], and found that the City's liability concerns under California law were not justified and were preempted by Federal law. [Santa Monica DD, pp. 72-73] The Director's findings in that case were upheld by a hearing officer on appeal. [See generally In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California, FAA Docket No. 16-02-08, (May 14, 2009) (Initial Decision of the Hearing Officer) (Santa Monica Hearing Decision)][28]

In the 16-02-08 Santa Monica case, the Director concluded that, "[a]s opposed to an outright ban, the City has available a number of options to address its claimed potential liability, but has failed to act upon any of them." [Santa Monica DD, p. 72] For the City of Santa Monica, these options included engineered materials arresting system (EMAS) installations and property acquisition to ensure safe operations. [See Santa Monica DD, p. 38] In the instant case of Santa Clara County and South County Airport, these options include the nine conditions listed in the December 9, 2009 FAA San Jose FSDO safety review memorandum [see FAA Exhibit 1, Item 1, exhibit 6, sub. exh. A, p. 2; see also pp. 8 and 30-31 of this determination]; strict compliance on the part of the Complainant with Parts 91 and 105; the procurement of an LOA between the Complainant and the

[27] See Santa Monica DD pp. 54-55; see also p. 33 of this determination.
[28] Upheld by City of Santa Monica v FAA, 631 F. 3d 550 (DC Cir, 2011).

Northern California TRACON facility [See FAA Exhibit 1, Item 1, exhibit 14]; and any additional measures the County could take to notify the public or skydivers of what the County believes may be specific unsafe conditions. As with the City of Santa Monica, the County in this case has been unwilling to act – or, where appropriate, allow the Complainant to act – on these measures that would enhance the safety of skydiving operations at the airport and therefore decrease the County's potential liability.

Furthermore, though the County of Santa Clara may not necessarily have blanket immunity under California Government Code § 831.7 for injuries that may occur as a result of skydiving activities, neither is the County necessarily strictly liable for such injuries. For the County to imply strict liability for such injuries is to overstate the risk of such liability. In fact, even if the County does not have immunity under § 831.7, the California Government Code still "requires potential plaintiffs to prove several elements of a claim, and related statutes establish several applicable defenses. [Santa Monica Hearing Decision, p. 62] Specifically relevant here is § 830.6 of the Code, which "provides immunity for [...] compliance with design standards issued by a legislative body or other body." [Santa Monica Hearing Decision, p. 63; see also Cal. Gov't Code § 830.6 (West 2013)] Thus, where the on-airport parachute drop zone proposed by the Complainant complies with FAA standards and regulations, the County may have potential immunity on this basis.

The Respondent argues on Appeal that, in the event the Respondent is forced to pay damages as a result of a skydiver's error, "a situation could be created where the airport sponsor is unable to make the airport available for civil aviation because its financial resources will be used to pay for damages arising from a skydiving accident instead of for the maintenance and operation of the airport." [FAA Exhibit 1, Item 22, p. 16]

While the FAA acknowledges and is sensitive to the County's concerns of liability, no airport operations are without some potential risks, and the County may not use general liability concerns to prohibit a legitimate aeronautical activity on the airport, especially where specific safety measures have been identified which would allow the activity to take place with an acceptable level of safety on the airport.

Conclusion on Grant Assurance 22

The County owns and operates an airport; the airport serves the aeronautical demands and needs of the using public. The Federal investment in this airport guarantees that aeronautical uses will be accommodated unless FAA, not the airport sponsor, determines that an activity would be unsafe. In this case, FAA has taken the County's safety concerns seriously and has made two separate determinations that skydiving can be safely accommodated at this airport if certain conditions are met. The Associate Administrator is not persuaded by the County's arguments that the Director erred in his finding that the County was in violation of Grant Assurance 22. Indeed, the County has not met the burden of proving the Director erred in his analysis. Operating an airport is not, nor will it ever be, a risk-free endeavor. An airport sponsor accepts the responsibilities and obligations of running an airport for all aeronautical users when it accepts Federal grants.

While the Associate Administrator agrees with the County that skydiving is not without its safety concerns, this is true of any aeronautical activity. The FAA's two separate safety studies show that on-airport skydiving can be safely conducted at E16, and that the County and skydivers wishing to operate on the airport can take specific concrete steps to mitigate potential safety issues. In operating an airport and accepting Federal funds, the County has accepted the responsibility for compliance with Federal obligations tied to those funds, as well as the authority of FAA as the final arbiter of aviation safety. As in the 16-02-08 Santa Monica case, here the County has not shown that its ban on on-airport skydiving operations is necessary under Grant Assurance 22(i) "given the degree of risk, the availability of other safety measures, the impact on the public, and the uncertainties of potential liability." [Santa Monica Hearing Decision, p. 55]

The argument presented by the County is not sufficient to persuade the Associate Administrator that the Director erred in his finding in agreement with the safety studies. The Director's Determination finding that the County is in violation of Grant Assurance 22, *Economic Nondiscrimination*, is affirmed.

Grant Assurance 5, *Preserving Rights and Powers*

B. Was the August 24, 2010 action by the County' Board of Supervisors to refuse to allow an on-airport drop zone at South County Airport a violation of Grant Assurance 5, Preserving Rights and Powers?

The Director found the County in violation of Grant Assurance 5, Preserving Rights and Powers, and stated that "[i]f the Respondent fully understood its commitments, it would have further engaged the FAA's expertise in evaluating the on-airport drop zone before voting to deny the Complainant's proposal." [FAA Exhibit 1, Item 21, p. 38]

In the Director's Determination, the Director noted:

> *On August 24, 2010, the Santa Clara County Board of Supervisors voted to reject the Respondent's proposal to conduct a skydiving operation with a drop zone on the Airport. This vote was taken after the FAA had made the County aware of its first safety assessment, which stated that the Complainant's proposal could be supported from a safety standpoint. In the weeks prior to this vote, the FAA had requested the County provide an update on the negotiations between the two parties and inquired about the delay in reaching an agreement. The Respondent advised the FAA of the agenda item only six days prior to the meeting, and the FAA cautioned the County from using this approach. At no time, based on the evidence of record, did the County attempt to consider the FAA's safety expertise and authority in this arena. Given these facts, the Director finds that the Respondent fails to meet the standard of compliance.*

[FAA Exhibit 1, Item 21, p. 37]

In its Appeal, the County argues that "[t]he Director's Determination misreads the facts and the law as it applies to this matter and reaches a finding that is not substantiated by the administrative record and the applicable law and policy." [FAA Exhibit 1, Item 22, p. 17]

The County goes on to argue that "Grant Assurance 5 can be summarized as requiring the County to refrain from taking or permitting actions which would operate to deprive the County of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without written approval of the Secretary." [FAA Exhibit 1, Item 22, p. 17] The County argues that it is an "incorrect conclusion" for the Director to state that "the August 24, 2010 Board of Supervisors action to reject Complainant's proposal to conduct a skydiving operation with a drop zone on the Airport as grounds for violating Grant Assurance 5, as well as a violation of Grant Assurance 22." [FAA Exhibit 1, Item 22, pp. 17-18] The County states that FAA has not shown that the County's denial of access to the Complainant was unreasonable, and FAA is thus "not able to demonstrate that the County has taken action to deprive the County of any rights or powers necessary to perform the terms and conditions of the grant assurances." [FAA Exhibit 1, Item 2, p. 18]

The County also argues that the administrative record does not support the conclusion reached in the Director's Determination that the Santa Clara County Board of Supervisors violated Grant Assurance 5 when they voted to reject the Complainant's skydiving and landing zone proposal. [FAA Exhibit 1, Item 2, pp. 18-19] The County further states that "the record demonstrates the County's willingness to engage in a dialogue with the FAA regarding the safety of an on-Airport landing zone," and that, for these reasons, the August 24, 2010 vote by the Board of Supervisors is therefore not a violation of Grant Assurance 5. [FAA Exhibit 1, Item 2, pp. 18-19] The County concludes by stating that, though they respect "the FAA's authority to regulate the nation's airspace, [...] the proposal to operate a landing zone on the Airport represents serious safety concerns that threaten public health, safety and welfare and will ultimately threaten the County's ability to make the Airport available for civil aviation needs." [FAA Exhibit 1, Item 22, p. 19]

The Complainant states in its Opposition to the Appeal:

> *As pointed out in the Director's Determination (at page 38), Respondent was advised of the results of the FAA's first Safety Study. Respondent then actively disregarded it by taking a vote to deny skydiving access without consulting with the FAA regarding safety. In its Appeal, the County denies this fact; however, the record clearly reflects that the County, instead of consulting with the FAA and making use of its expertise, simply sent missives to the FAA pronouncing that the County's findings on safety were definitive and it was not willing to take the FAA's expertise into consideration.*

[FAA Exhibit 1, Item 23, p. 11]

Analysis

Grant Assurance 5, *Preserving Rights and Powers,* states, in part, that an airport sponsor:

> *will not take or permit 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 this grant agreement without the written approval of the Secretary, and will act promptly to*

> *acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.*

[Grant Assurance 5(a); see also Order 5190.6B §§ 6.3(b) and 20.5(c)]

A violation of Assurance 5 may occur when an airport sponsor enters into an agreement that has terms that may subsequently result in actions that may place the sponsor in noncompliance with its Federal obligations. [*See* Order 5190.6B §6.3(b)]

Overall, the County argues that the "*Director's Determination erred in concluding that that August 24, 2010 Board action violated Grant Assurance 5 because the record does not support this determination.*" [FAA Exhibit 1, Item 22, p. 17] Additionally, the County states that

> *Since the administrative record does not support the Director's Determination that the Board of Supervisors violated Grant Assurance 5 on August 24, 2010 when it voted to reject Complainant's proposal to operate skydiving with an on-Airport landing zone, the Director's Determination has incorrectly characterized this action as the basis for the County's violation of Grant Assurance 5.*

[FAA Exhibit 1, Item 22, p. 18]

In the Director's Determination, the Director provided an analysis of whether the County's refusal to allow an on-airport drop zone at the Airport constituted a violation of Grant Assurance 5, *Preserving Rights and Powers.* The Director relied on the entirety of the record and made the decision that the allegation was of merit. [FAA Exhibit 1, Item 21, p. 37]

The Director noted that Grant Assurance 5 requires an airport to refrain from taking or permitting actions which would 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 without the written approval of the Secretary. The Director determined that the County's vote on August 24, 2010 to deny the Respondent's skydiving proposal, after the Respondent had been advised of the findings of the FAA's December 2009 safety assessment, amounted to a violation because "[a]t no time, based on the evidence of record, did the County attempt to consider the FAA's safety expertise and authority in this arena." [FAA Exhibit 1, Item 21, p. 38] The Director concluded that, "[i]f the Respondent fully understood its commitments, it would have further engaged the FAA's expertise in evaluating the on-airport drop zone before voting to deny the Complainant's proposal." [FAA Exhibit 1, Item 21, p. 38]

The County argued on Appeal that it,

> *acknowledges that prior to August 24, 2010, the County and the FAA were not able to effectively communicate on the County's concerns regarding safety or permitting an on-Airport landing zone and the FAA's interest in making the Airport available to all...However, following the August 24, 1010 Board action both the FAA and the County were able to more effectively communicate their respective interests, as highlighted in the correspondence dated September 22, 2010, December 23, 2010, April 4, 2011, May 2,*

2011, August 12, 2011, and October 12, 2011.[29] *Unfortunately, this dialogue was abruptly ended pending the outcome of the Part 16 proceedings.*

[FAA Exhibit 1, Item 22, p. 18] (Internal citations omitted)

The Associate Administrator agrees with the County, although for somewhat different reasons than those cited by the County, that the record does not support a finding of a violation of Grant Assurance 5 in this instance. The County Board of Supervisors voted to deny the Complainant's drop zone proposal. Though this vote was contrary to FAA's 2009 safety determination, the Associate Administrator does not believe this vote ceded the rights and powers of the County as airport sponsor. The evidence before FAA indicates that Board of Supervisors, as representative government of the County, was a proper body to vote on this proposal. Though the vote by the Board of Supervisors on the Complainant's proposal appears to have been in contradiction to the written Airport Rules and Regulations,[30] the County is the sponsor of the airport. Elevation of the decision-making process to a level above that of the Airport Director does not alone make the County's decision-making process incoherent or improperly cede rights and powers.

Although FAA has previously determined that an airport sponsor can be in violation of Grant Assurance 5 where the sponsor's procedures lack transparency, there is no indication in this case that the County's procedures in considering, adjudicating, and ultimately denying the Complainant's drop zone proposal lacked such transparency or were so misleading or confusing to the Complainant as to constitute a violation of Grant Assurance 5.

In Gina Michelle Moore, individually and d/b/a Warbird Skyventures, Inc. v Sumner County Regional Airport Authority, FAA Docket No. 16-07-16, the FAA found a sponsor in violation of Grant Assurance 5 where Respondent's processes and procedures for reviewing the Complainant's request to provide an aeronautical service were entirely lacking in transparency or documentation, making them confusing in nature to the Complainant and generally incoherent. [Gina Michelle Moore, individually and d/b/a Warbird Skyventures, Inc. v Sumner County Regional Airport Authority (Warbird Skyventures), FAA Docket No. 16-07-16, Director's Determination (February 27, 2009)]. The FAA further found that the "laxity and incoherence associated with th[e] decision making process" made it unclear to the Director whether or not the Respondent sponsor actually understood its Federal obligations. [Warbird Skyventures, p. 43] In that case the record showed the Respondent arbitrarily changing business practices, but the record did not contain any information as to why or upon what information the Respondent denied the Complainant's business request. [See Warbird Skyventures, pp. 43-44] The Director found that, in that case, the "incoherent, ad hoc practices cede[d] the Respondent's ability to adhere to the Grant Assurances which constitutes a violation of 49 U.S.C., § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*." [Warbird Skyventures, pp. 2 and 46]

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[29] See FAA Exhibit 1, Item 1, exhibit 13; Item 5, exhibit 39; Item 1, exhibit 14; Item 1, exhibit 15; Item 16. The FAA does not have in its record an October 12, 2011 letter to or from the County. The County's appeal cites "County Appeal Exhibit 1," which is in the FAA's Record as FAA Exhibit 1, Item 22, exhibit 1. This exhibit is a November 28, 2011 letter from the FAA to the County, which references an October 19, 2011 letter from the County to the FAA. The Associate Administrator believes this October 19, 2011 letter, in the Record as FAA Exhibit 1, Item 19, may be the letter to which the County intends to refer.

[30] See FAA Exhibit 1, Item 1, exhibit 17, p. 4, stating that "the Airport Director has the authority and responsibility to approve/disapprove requests for use of the airport facilities for [...] parachute drops when the parachute landing zone is on airport property."

The events here are distinguishable. Though the Complainant describes the process by which his proposal was denied by the airport as a "Kafkaesque labyrinth of bureaucratic roadblocks," [FAA Exhibit 1, Item 1, p. 2] and alleges that the County raised "unprecedented road blocks" [FAA Exhibit 1, Item 1, p. 9, fn. 5],[31] the Director concluded that the evidence and these arguments were not persuasive. He found that "the Complainant fails to effectively argue its allegation of Grant Assurance 5." [FAA Exhibit 1, Item 21, p. 37] The Associate Administrator agrees with the Director on this point, and finds that the Complainant did not present evidence sufficient to conclude that the County's decision-making process was so opaque as to be incoherent to the Complainant. Undue delay in a decision-making process such as this one may result in an effective denial of operations and thus a violation of Grant Assurance 22, but delay alone, without other pertinent factors, is not enough to amount to a violation of Grant Assurance 5.

The County appears to have made a decision based on a relatively transparent and coherent process, which included several meetings allowing the Complainant to present and discuss his proposal with various County employees involved in the decision-making process.[32] In addition, the County's submissions indicate that it followed a clear if somewhat protracted process, and provided reasons for its decision to deny the Complainant's proposal, namely that it believed the proposal raised serious safety concerns. [See, for example, FAA Exhibit 1, Item 1, exhibits 13 and 15] There is no evidence in the record here to indicate that the County's denial of the Complainant's proposal was action taken by the County because it did not understand its Federal obligations: rather, the County differed, and continues to differ with FAA's evaluation and determination. This difference of opinion, even combined with the failure of the County to provide its own safety studies, does not, on its own, prove that the County does not understand its obligations.

The County's decision to deny the Complainant's proposal disregarded FAA's 2009 safety study, and FAA has concluded that decision was in violation of Grant Assurance 22. However, based on the process the County followed the fact that the County made that decision is not itself a violation of Grant Assurance 5. The County's procedures do not rise to the level of ad-hoc, incoherent practices such that the County should be found in violation of Grant Assurance 5.

In the Director's Determination, the Director concluded that, had the County understood its Federal obligations, it would not have voted to deny the Complainant's proposal after FAA had made an initial determination that the proposal was safe. To interpret Grant Assurance 5 as it was interpreted in the Director's Determination would result in the failure of any sponsor to promptly comply with an FAA safety evaluation and determination to be an automatic violation of Grant Assurance 5. The Associate Administrator finds that this interpretation of Grant Assurance 5 is too broad, and that it is not appropriate for FAA to interpret Grant Assurance 5 in this manner. The Associate Administrator declines to do so.

[31] See also FAA Exhibit 1, Item 1, p. 5, stating that "the County continually moved the approval goal posts as the months of 2010 went by."
[32] See, e.g., FAA Exhibit 1, Item 1, exhibits 1; 5; 10.

The Associate Administrator finds the Director erred in finding a violation of Grant Assurance 5, and thus overrules the Director's Determination on that issue and dismisses the allegations under that assurance.

VII. CONCLUSION

The FAA's role in this Appeal is to determine whether the Director erred in findings of fact or conclusions of law in issuing the Director's Determination. As stated above, the Appeal does not clearly allege error with regard to Grant Assurance 22, but rather states disagreement with the discretion of the Director and the FAA. Despite this lack of specificity and support, the FAA conducted two separate safety studies and devoted significant resources to considering and addressing the County's safety concerns. As discussed throughout this decision document, the FAA is the final arbiter of aviation safety, and the studies conducted show that the Complainant's proposed skydiving operations can be conducted safely and in accordance with applicable FAA safety regulations and practices.

The Associate Administrator addressed the issues raised by the Respondent County and finds that the Director has not erred in his finding on Grant Assurance 22, but has erred in his finding on Grant Assurance 5.

Upon an appeal of a Part 16 Director's Determination, the Associate Administrator must determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [*See* e.g. Ricks v Millington Municipal Airport, FAA Docket No. 16-98-19 (December 30, 1999) (Final Decision and Order), p. 21, and 14 CFR § 16.227]

In arriving at a Final Agency Decision on this Appeal, FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, the Appeal and Reply submitted by the parties, and applicable law and policy. Based on this reexamination, the Associate Administrator concludes that the analysis contained in the Director's Determination with regard to Grant Assurance 22 is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. The Associate Administrator also finds, however, that the analysis contained in the Director's Determination with regard to Grant Assurance 5 is not supported by a preponderance of reliable, probative, and substantial evidence, and thus the Associate Administrator overrules the Director's Determination with regard to Grant Assurance 5 and dismisses the allegations under that assurance. The Appeal contains persuasive arguments sufficient to reverse the Director's Determination on that violation, but does not contain persuasive arguments sufficient to reverse the Director's Determination with regard to a violation of Grant Assurance 22.

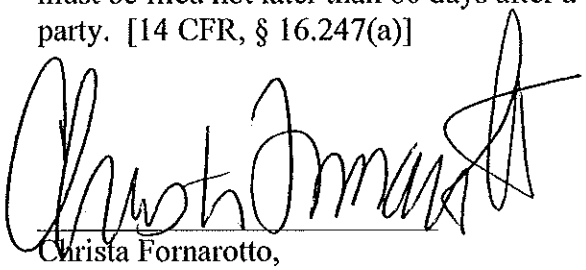
This decision constitutes the final decision of the Associate Administrator for Airports pursuant to 14 CFR, § 16.33(a).

ORDER

ACCORDINGLY, it is hereby ORDERED that (1) the Director's Determination is affirmed with regard to the sponsor's violation of Grant Assurance 22; (2) the Director's Determination is overruled with regard to Grant Assurance 5 and this allegation against the sponsor is dismissed; and (3) the Appeal is dismissed, pursuant to 14 CFR, § 16.33.

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C., § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Agency Decision and Order has been served on the party. [14 CFR, § 16.247(a)]



Christa Fornarotto,
Associate Administrator
for Airports

AUG 12 2013

Date

JEFF BODIN and GARLIC CITY SKYDIVING
v.
COUNTY OF SANTA CLARA, CALIFORNIA

FINAL AGENCY DECISION
DOCKET NO. 16-11-06

Exhibit 1
INDEX OF ADMINISTRATIVE RECORD

Item 1 - June 10, 2011 cover letter and Complaint filed by Richard J. Durden, Attorney for the Complainant.

exhibit 1 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated March 27, 2009.

sub. exh. A Garlic City Skydiving presentation slide depicting proposed landing area.

exhibit 2 South County Airport Financial Summary for fiscal year 2010.

exhibit 3 Letter from Complainant to Racior Cavole, FAA, dated May 28, 2009.

exhibit 4 Letter from Racior Cavole, FAA, to Carl Honaker, Director of Airports for Santa Clara County, dated August 17, 2009.

exhibit 5 E-mail from Complainant to Colleen Valles, Santa Clara County, dated August 25, 2009.

exhibit 6 E-mail from Anthony Garcia, FAA, to Carl Honaker, Director of Airports for Santa Clara County, Don Gage, Supervisor, Santa Clara County, and Colleen Valles, Santa Clara County, dated February 10, 2010.

sub. exh. A Memorandum from John R. Howard, FAA, to Tony Garcia, FAA, dated December 9, 2009.

exhibit 7 Letter from Miguel Marquez, County Counsel for Santa Clara County, and Elizabeth G. Pianca, Deputy County Counsel for Santa Clara County, to Complainant dated June 23, 2010.

exhibit 8 E-mail from Anthony Garcia, FAA, to Complainant, dated July 13, 2010.

exhibit 9 Letter from Paul Marshall, Director of South County Airport Pilots Association, to Santa Clara County Supervisors, dated August 3, 2010.

exhibit 10 Letter from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Complainant dated August 13, 2010.

exhibit 11 Letter from Tony Garcia, FAA, to Carl Honaker, Director of Airports for Santa Clara County, dated August 25, 2010.

exhibit 12 E-mail from Complainant to Michael Murdter, Director of Roads and Airports Department of Santa Clara County, dated August 31, 2010.

exhibit 13 Letter from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Mark McClardy, FAA, dated September 22, 2010.

exhibit 14 Letter from Mark McClardy, FAA, to Michael Murdter, Director of Roads and Airports Department of Santa Clara County, dated April 4, 2011.

sub. exh. A Memorandum from Nicholas Reyes, FAA, to Mark McClardy, FAA, dated March 24, 2011.

sub. exh. B Memorandum from Ronald G. Beckerdite, FAA, to Mark McClardy, FAA, dated March 29, 2011.

exhibit 15 Letter from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Mark McClardy, FAA, dated May 2, 2011.

exhibit 16 Pages printed from the Santa Clara County Airports' website on November 18, 2010. Pages are identified as http://www.countyairports.org/new_website/san-visitor.html; http://www.countyairports.org/new_website/san-info.html; http://www.countyairports.org/new_website/san-serv.html; and http://www.countyairports.org/new_website/san.html.

exhibit 17 Select pages from the County of Santa Clara Airport Rules and Regulations adopted on March 27, 2001. Pages included are 8 of 26; 13 of 26; and 24 of 26.

exhibit 18 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated April 10, 2009.

exhibit 19 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated May 7, 2009.

exhibit 20 E-mail from Complainant to Racior Cavole, FAA, dated May 11, 2009.

exhibit 21 E-mail from Complainant to Racior Cavole, FAA, dated June 9, 2009.

exhibit 22 Letter from Complainant to Donald F. Gage, Supervisor, Santa Clara County, dated July 21, 2009.

exhibit 23 E-mail from Complainant to Racior Cavole, FAA, dated August 13, 2009.

exhibit 24 E-mail from Complainant to Colleen Valles, Santa Clara County, and Don Gage, Supervisor, Santa Clara County, dated August 19, 2009.

exhibit 25 E-mail from Complainant to Patty Daniel, FAA, dated October 16, 2009.

exhibit 26 Same as FAA Exhibit 1, Item 1, exhibit 6.

exhibit 27 E-mail from Complainant to Anthony Garcia, FAA, dated February 11, 2010.

exhibit 28 E-mail from Lawrence Feldman, Santa Clara County, to Complainant dated March 9, 2010.

sub. exh. A Letter from Complainant to Tony Garcia, FAA, dated March 10, 2010.

exhibit 29 California Government Code Section 831.7.

exhibit 30 E-mail from Complainant to Don Gage, Supervisor, Santa Clara County, dated June 14, 2010.

exhibit 31 E-mail from Anthony Garcia, FAA, to Complainant, dated June 30, 2010, forwarding an e-mail from Anthony Garcia, FAA, to Carl Honaker, Director of Airports for Santa Clara County, dated June 30, 2010.

exhibit 32 Pages from the Santa Clara County Board of Supervisor's Summary of Proceedings for August 24, 2010. Pages included are 1 and 9.

exhibit 33 Memorandum from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to the Santa Clara County Board of Supervisors dated April 26, 2011.

Item 2 - July 1, 2010 FAA Notice of Docketed Complaint 16-11-06.

Item 3 - July 1, 2011 cover letter and Complainant's Motion to Expedite Handling and For An Order Denying Extensions of Time for Respondent to File Pleadings.

exhibit 1 Same as FAA Exhibit 1, Item 1, exhibit 1.
exhibit 2 Same as FAA Exhibit 1, Item 1, exhibit 11.
exhibit 3 Same as FAA Exhibit 1, Item 1, exhibit 13.

Item 4 - July 6, 2011 Respondent's Motion in Opposition to Complainant's Motion to Expedite Handling and For An Order Denying Extensions of Time for Respondent to File Pleadings.

exhibit 1 E-mail from Lupe Rosales, Santa Clara County, to Elizabeth Pianca, Deputy County Counsel for Santa Clara County, and Michael Murdter, Director of Roads and Airports Department of Santa Clara County, dated July 5, 2011.

sub. exh. A Same as FAA Exhibit 1, Item 3.
sub. exh. B Same as FAA Exhibit 1, Item 1, exhibit 1.
sub. exh. C Same as FAA Exhibit 1, Item 1, exhibit 11.
sub. exh. D Same as FAA Exhibit 1, Item 1, exhibit 13.

exhibit 2 E-mail from Lupe Rosales, Santa Clara County, to Elizabeth Pianca, Deputy County Counsel for Santa Clara County, and Michael Murdter, Director of Roads and Airports Department of Santa Clara County, dated July 5, 2011.

sub. exh. A Same as FAA Exhibit 1, Item 2.

exhibit 3 Same as FAA Exhibit 1, Item 1.

Item 5 - July 20, 2011, Answer, Statement of Facts, and Affirmative Defenses filed by Respondent.

exhibit 1 Aerial photograph of South County Airport.
exhibit 2 Same as FAA Exhibit 1, Item 1, exhibit 15.
exhibit 3 E-mail from Complainant to Mark McClardy, FAA, dated April 5, 2011.

sub. exh. A Letter from Complainant to Mark McClardy, FAA, dated April 5, 2011.

exhibit 4 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated April 26, 2011.
exhibit 5 E-mail from Complainant to Colleen Valles, Santa Clara County, dated April 25, 2011.
exhibit 6 E-mail from Carl Honaker, Director of Airports for Santa Clara County, to Ray Cavole, FAA, dated August 21, 2009.

sub. exh. A Letter from Carl Honaker, Director of Airports for Santa Clara County, to Racior Cavole, FAA, dated August 19, 2009.

exhibit 7 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated February 18, 2009.
exhibit 8 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated February 25, 2009.
exhibit 9 Same as FAA Exhibit 1, Item 1, exhibit 1.
exhibit 10 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, and Eric Peterson dated April 5, 2009.

exhibit 11 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, and Eric Peterson dated April 9, 2009.
exhibit 12 Same as FAA Exhibit 1, Item 1, exhibit 18.
exhibit 13 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated April 21, 2009.
exhibit 14 Garlic City Skydiving's business proposal.
exhibit 15 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated April 30, 2009.
exhibit 16 Same as FAA Exhibit 1, Item 1, exhibit 19.
exhibit 17 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated May 19, 2009.
exhibit 18 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated February 16, 2010.
exhibit 19 E-mail from Complainant to Carl Honaker, Director of Airports for Santa Clara County, dated February 19, 2010.
exhibit 20 Memorandum from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Santa Clara County Board of Supervisors dated August 3, 2010.
exhibit 21 E-mail from Elizabeth Pianca, Deputy County Counsel for Santa Clara County, to Complainant dated August 16, 2010.
exhibit 22 E-mail from Carl Honaker, Director of Airports for Santa Clara County, to Anthony Garcia, FAA, dated August 18, 2010.
sub. exh. A Memorandum from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Santa Clara County Board of Supervisors dated August 24, 2010.
exhibit 23 Proposed South County Airport Interim Parachute Drop Zone.
exhibit 24 E-mail from Anthony Garcia, FAA, to Carl Honaker, Director of Airports for Santa Clara County, dated August 19, 2010.
exhibit 25 Same as FAA Exhibit 1, Item 1, exhibit 11.
exhibit 26 Same as FAA Exhibit 1, Item 1, exhibit 14.
exhibit 27 Garlic City Skydiving Proposal Airspace Analysis prepared by FAA dated March 22, 2011.
exhibit 28 Same as FAA Exhibit 1, Item 1, exhibit 6, sub. exh. A.
exhibit 29 Same as FAA Exhibit 1, Item 1, exhibit 14, sub. exh. A.
exhibit 30 Same as FAA Exhibit 1, Item 1, exhibit 14, sub. exh. B.
exhibit 31 Same as FAA Exhibit 1, Item 1, exhibit 13.
sub. exh. A Same as FAA Exhibit 1, Item 1, exhibit 11.
sub. exh. B Memorandum from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Santa Clara County Board of Supervisors dated August 24, 2010.[1]
exhibit 32 Memorandum from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Santa Clara County Board of Supervisors dated August 24, 2010.[2]

[1] FAA Exhibit 1, Item 5, exhibit 31, sub. exh. B is nearly identical to FAA Exhibit 1, Item 5, exhibit 22, sub. exh. A. However, FAA Exhibit 1, Item 5, exhibit 31, sub. exh. B is stamped "approved".
[2] FAA Exhibit 1, Item 5, exhibit 32 is nearly identical to FAA Exhibit 1, Item 5, exhibit 22, sub. exh. A and FAA Exhibit 1, Item 5, exhibit 31, sub. exh. B. However, FAA Exhibit 1, Item 5, exhibit 22, sub. exh. A is labeled "BOS

exhibit 33 Comparative Airport Skydiving Operations.
exhibit 34 Fixed Base Operation Agreement executed between Santa Clara County and 2 Genes Aviation on December 11, 1995.
exhibit 35 Map depicting the population density around South County Airport.
exhibit 36 Santa Clara County Ordinance 300.648.
exhibit 37 E-mail from Masoud Akbarzadeh dated June 29, 2011.
exhibit 38 Minutes from the August 24, 2010 Board of Supervisors' Meeting.
exhibit 39 Letter from Mark McClardy, FAA, to Michael Murdter, Director of Roads and Airports Department of Santa Clara County, dated December 23, 2010.
exhibit 40 Letter from Studebaker Brown Electrical Contracting to Nancy J. Puterbaugh, Santa Clara County, dated October 20, 2010.
exhibit 41 Airport Rules and Regulations adopted by the Santa Clara County Board of Supervisors on March 27, 2001.

Item 6 - Same as FAA Exhibit 1, Item 1. The Respondent resubmitted the Complaint with numbered paragraphs and exhibit labels. The Complaint and its accompanying exhibits are indexed above as FAA Exhibit 1, Item 1.

Item 7 - July 20, 2011 Motion to Dismiss filed by Respondent.

Item 8 - July 20, 2011 Memorandum in Support of Respondent's Motion to Dismiss filed by Respondent.

Item 9 - Same as exhibits listed under FAA Exhibit 1, Item 1. The Respondent resubmitted the Complainant's exhibits with exhibit labels. The Complaint's exhibits are indexed under FAA Exhibit 1, Item 1.

Item 10 - July 30, 2011 Reply filed by Richard J. Durden, Attorney for the Complainant.
exhibit 34 Letter from Gregory L. Michael, FAA, to Dave Daly, Lincoln Regional Airport, dated November 21, 2008.
exhibit 35 Photo of hot air balloon.

Item 11 - August 9, 2011 Rebuttal filed by Respondent.

Item 12 - Same as FAA Exhibit 1, Item 10. The Respondent resubmitted the Complaint's Reply with numbered paragraphs. The Complaint's Reply and its accompanying exhibits are indexed above as FAA Exhibit 1, Item 10.

Item 13 - Order Denying Motion to Expedite Handling and For An Order Denying Extensions of Time For Respondent to File Pleadings dated August 25, 2011.

Item 14 - FAA Form 5010 "Airport Master Record" for the Airport, Date: June 30, 2011.

Agenda Date: August 24, 2010, Agenda Item 21" and FAA Exhibit 1, Item 5, exhibit 31, sub. exh. B is stamped "approved".

Item 15 - Airport Improvement Program Grant History for the South County Airport of Santa Clara County printed on August 12, 2011.

Item 16 - Letter from Mark McClardy, FAA, to Michael Murdter, Director of Roads and Airports Department of Santa Clara County, dated August 12, 2011

Item 17 - Letter from Racior Cavole, FAA, to Carl Honaker, Director of Airports for Santa Clara County, dated May 8, 2009.[3]

Item 18 - Airspace Analysis presentation by the FAA's Washington Service Center Operations Support Group dated March 22, 2011

Item 19 - Letter from Michael Murdter, Director of Roads and Airports Department of Santa Clara County, to Mark McClardy, FAA, dated October 19, 2011.

Item 20 - Notice of Extension of Time, dated December 1, 2011.

Item 21 - Director's Determination for Docket No. 16-11-06, Dated December 19, 2011.

Item 22 - Appeal of the County of Santa Clara, dated January 20, 2012.

Item 23 - Complainant's opposition to Appeal by the County of Santa Clara of the Director's Determination Dated December 19, 2011, dated February 9, 2012.

Item 24A - Complainant's Motion to Dismiss Appeal of Director's Determination as Untimely, dated January 23, 2012.

Item 24B - Complainant's Withdrawal of Motion to Dismiss Appeal of Director's Determination as Untimely, dated January 24, 2012.

Item 25 - 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 Determination Regarding San Martin Airport (E16), filed June 4, 2012.

Item 26 - 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 Determination Regarding San Martin Airport (E16), filed June 12, 2012.

Item 27 - Notice of Extension of Time to June 30, 2012, dated April 5, 2012.

Item 28 - Notice of Extension of Time to September 28, 2012, dated June 20, 2012.

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[3] The Director believes this letter was incorrectly dated and was sent on June 8, 2009. The footer of the letter describes the file path as, "SFO-627/CAVOLE/X2778/06-08-09/FILE:ca, SANTACLARACOUNTY/SITE5". In addition, the San Francisco Airports District Office located the file copy in its June 2009 reading files.

Item 29 - Notice of Extension of Time to November 30, 2012, dated September 27, 2012.

Item 30 - Notice of Extension of Time to December 21, 2012, dated November 30, 2012.

Item 31 - Letter to parties clarifying extended due date on November 30, 2012 Notice of Extension of Time as December 21, 2012, dated December 14, 2012.

Item 32 - Notice of Extension of Time to January 31, 2013, dated December 20, 2012.

Item 33 - Letter to parties clarifying extended due date on December 20, 2012 Notice of Extension of Time as January 31, 2013, dated January 3, 2013.

Item 34 - Notice of Extension of Time to February 28, 2013, dated February 4, 2013.

Item 35 - Letter to parties clarifying extended due date on February 4, 2013 Notice of Extension of Time as February 28, 2013, dated February 6, 2013.

Item 36 - Notice of Extension of Time to April 30, 2013, dated February 28, 2013.

Item 37 - Notice of Extension of Time to June 17, 2013, dated May 8, 2013.

Item 38 - Notice of Extension of Time to July 19, 2013, dated June 19, 2013.

Item 39 - E-mail from Mike Millard, FAA Flight Standards Division, to Kathy Brockman, FAA Airport Compliance Specialist, regarding skydiving operations through Victor airways.

Item 40 - Email from Mike Millard, FAA Flight Standards Division, to Kathy Brockman, FAA Airport Compliance Specialist, regarding draft parachute drop zone standard.

Item 41 - Complainants' Motion for Sanctions Against Respondent, the County of Santa Clara, California and Certain Employees of Respondent, dated July 15, 2013, received July 18, 2013.

Item 42 - Notice of Extension of Time to August 19, 2013, dated July 22, 2013.

Item 43 - Respondent's Answer to Complainants' Motion for Sanctions Against Respondent, the County of Santa Clara, California and Certain Employees of Respondent, dated July 25, 2013, received July 26, 2013.