

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**Resort Aviation Services, Inc.  
Complainant**

**v.**

**FAA Docket No. 16-20-01**

**Kootenai County, Idaho  
Respondent**

**ORDER OF THE DIRECTOR**

**I. INTRODUCTION**

Resort Aviation Service, Inc., (Resort) filed a Complaint on February 18, 2020, under 14 C.F.R. Part 16 against Kootenai County, Idaho, the sponsor of the Coeur d'Alene Airport (County/Airport). Resort states its Complaint is premised upon the failure and/or refusal of the County to adhere to its Federal obligations. Resort contends that the County is intent on irreparably damaging Resort's fixed based operator<sup>1</sup> business on the Airport and replace it with another FBO who has been allowed to operate in violation of the minimum standards. [FAA Exhibit 1, Item 1, page 1]

Specifically, Resort alleges that the County violated the Fifth and Fourteenth Amendments of the Constitution by damaging its business as the only FBO on the Airport and allowing a competitor, StanCraft Jet Center, to acquire another fueling operation and to lease an area known as the North Ramp and build/improve its facilities. [FAA Exhibit 1, Item 1, page 1]

Resort claims that allowing the County and StanCraft Jet Center to develop and/or operate an FBO or approve an FBO at the Airport while Resort's claims are pending before the Federal Aviation Administration (FAA) would irreparably harm Resort and other aviation users of the Airport. Resort also claims this would undermine the FAA's authority to enforce airport Grant Assurances, other Federal regulations, and Federal law. [FAA Exhibit 1, Item 1, page 8]

In response, on March 23, 2020, the County filed a Motion to Dismiss or, in the alternative, for Summary Judgment. The Motion raises two arguments. First, the County argues that Resort failed to demonstrate that good faith efforts were made to resolve the dispute. Second, the County argues that the Complaint fails to state a claim that warrants an investigation or further action by the FAA. The County also asserts in the alternative that to the extent the FAA relies on facts not presented in

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<sup>1</sup> A fixed-based operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. [FAA Order 5190.6B, Airport Compliance Manual, September 30, 2009, 8-11, FN 25]

the Complaint, the County moves the FAA for summary judgment pursuant to 14 C.F.R. § 16.26(a) and (c). [FAA Exhibit 1, Item 3, Exhibit 3, page 1]

Resort did not file an Answer to the County's Motion as permitted by 14 C.F.R. § 16.26(b)(3) and (c)(3). In the Notice of Docketing, dated March 2, 2020, FAA advised the parties of the procedural requirements, including the time to file an answer, if a motion to dismiss or for summary judgment is filed per 14 C.F.R. § 16.26. . The Answer to the Motion was due on April 2, 2020. As a result, the Director is proceeding with issuing this Order on the Motion for Summary Judgment within 30 days of the due date the Answer, in accordance with 14 C.F.R. § 16.26(b)(c).

## **II. THE PARTIES**

### **A. The Airport**

The Coeur d'Alene Airport - Pappy Boyington Field, is a public airport with approximately 228 based aircraft and averages 337 operations a day. [<https://www.airnav.com/airport/KCOE>]

The development of the airport was financed, in part, with FAA Airport Improvement Program (AIP) funding, authorized by the *Airport and Airway Improvement Act of 1982*, as amended., 49 U.S.C. § 47101, *et seq.* The AIP provides grants to public agencies for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems (NPIAS). As a condition of receiving Federal funding, the County must comply with the FAA Sponsor grant assurances and related Federal law. The Grant Assurances are mandated by statute and are part of the terms of the Grant Agreement. The Coeur d'Alene Airport has been the recipient of approximately \$3,348,789.00.

### **B. The Complainant**

Resort is a full-service, fixed base operator on the Coeur d'Alene Airport. Resort has been a tenant at the since 1986. Resort states in its Complaint and advertising that it is the only full service fixed base operator on the Airport. [FAA Exhibit 1, Item 1, page 2, see also <https://resortaviationjet.com>]

## **III. BACKGROUND AND PROCEDURAL PROCESS**

### **A. Resort's Position**

Resort alleges that the County violated Federal Airport Grant Assurances by failing to negotiate with Resort in good faith by withdrawing a "RPA" (sic).<sup>2</sup> Resort alleges that the County withdrew the RFP and awarded the North Ramp to StanCraft Jet Center, denying Resort "the equal protection of laws in violation of the equal protection clause and the protections afforded by the Fifth and

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<sup>2</sup> Director considers the reference to RPA as a typo, and is reading as RFP to mean a request for proposals (RFP) or a similar instrument to solicit interest in a business or lease.

Fourteenth Amendments to the United States Constitution resulting in damage and injury to Resort Aviation.” Resort seeks a Request for Expedited Consideration as well as a Motion for Cease and Desist (sic) Order. [FAA Exhibit 1, Item 1, page 7]

Resort also alleges, “Based upon the record (as supported by the attached exhibits) Resort Aviation believes that Kootenai County is intent on irreparably damaging the business of Resort Aviation (the only fixed base operator...”) at the Coeur d'Alene Airport and replace it with another FBO who has acquired an Aircraft Fuel Storage/Dispensing Facility that Kootenai County has allowed to operate in violation of the minimum standards required to operate as an FBO at the Coeur d'Alene Airport.” Resort also contends that the County’s actions are biased in favor of StanCraft Jet Center, and the StanCraft lease agreement should be voided, and the RFP re-issued in accordance with Federal law. [FAA Exhibit 1, Item 1, pages 1 and 7]

The Request for Expedited Consideration states that unless “the Director issues an order expediting the handling of this matter...Resort Aviation will suffer irreparable injury.” The Motion for Cease and Desist requests the Director “issue an emergency order...directing Kootenai County to cease and desist from allowing StanCraft Jet Center from developing and/or operating an FBO at the Coeur d’Alene Airport.” [FAA Exhibit 1, Item 1, page 7]

### **Airport’s Position**

The County filed an Opposition to the Cease and Desist Order, a Motion to Dismiss and a Motion to Dismiss or, in the Alternative, for Summary Judgment.

In its Motion, the County claims that Resort filed its complaint because it fears its business will be harmed by competition from a new FBO. The County argues that almost two years after the County began lease negotiations with StanCraft Jet Center, 10 months after the lease was executed, and over 4 months after construction began, Resort is challenging the award of the lease to StanCraft Jet Center and seeks to stop construction mid-stream. [FAA Exhibit 1, Item 3, Exhibit 3, page 1]

The Opposition to a Cease and Desist Order states in part that “the sole reason for Resort Aviation’s request is to prevent a competing FBO from building a new, improved FBO facility that might expose Resort Aviation to more competition...At bottom, Resort Aviation seeks to advance its private commercial interests by limiting future competition.” [FAA Exhibit 1, Item 3, Exhibit 1, page 1]

The County also argues, “More fundamentally, Resort Aviation has not, and cannot, show that the Federal Aviation Administration should exercise its discretion to take the unusual step of issuing a cease and desist order. This case simply does not rise to the level necessary to justify such extraordinary relief. None of the County’s actions limit aeronautical access to Coeur d’Alene Airport or limit in any way Resort Aviation’s ability to continue its business in the same manner it has operated for decades and for as long as the term of its lease.” [FAA Exhibit 1, Item 3, Exhibit 1, page 1]

## **Standard of Review of Motion to Discuss and Motion for Summary Judgment**

Under 14 C.F.R. § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The burden of proof is on Resort to show noncompliance with a statute, regulation, order, agreement, or document of conveyance. § 16.23(k)(1). The proponent of a motion (including a motion to dismiss, or for summary judgment), request, or order has the burden of proof. See § 16.23(k)(2). Under 14 C.F.R. §16.26 (a), a respondent may file, in lieu of an answer to a complaint, a motion to dismiss the complaint or a motion for summary judgment on the complaint.

*A motion to dismiss* a complaint must state the reasons for seeking dismissal of either the entire complaint or of specified claims in the complaint. To prevail, the County must show either (1) the complaint, appears on its face, is outside the FAA's jurisdiction; (2) the complaint, on its face, does not state a claim that warrants an investigation or further FAA action; or (3) the complainant lacks standing, under 14 C.F. R. §§ 16.3 and 16.23, to file a complaint. The respondent is expected to file a supporting memorandum of points and authorities. The complainant is permitted to file an answer to a motion to dismiss with a statement of reasons for opposing dismissal, per 14 C.F.R. §16.26 (b)(3).

*A motion for summary judgment* may seek dismissal of the entire complaint or of specified claims and issues. To prevail, the respondent must show there is no genuine issue of material fact for Part 16 adjudication and that the complaint, when viewed in the light most favorable to the complainant, should be summarily adjudicated in the respondent's favor as a matter of law. The respondent is expected to file a statement of the material facts as to which respondent contends there is no genuine issue of material fact, and may include affidavits and documentary evidence. 14 C.F.R. §16.26(c)(1)(2). The complainant is permitted to file an answer to a motion summary judgment with a statement of the material facts as to which the complainant contends there is a genuine issue per 14 C.F.R. §16.26(c)(3).

## **IV. ANALYSIS AND DISCUSSION**

Resort contends in its complaint that the County is intent on irreparably damaging Resort's FBO business on the Airport. Resort also alleges that Kootenai County has allowed another FBO to operate in violation of the minimum standards. Resort does not specify which Grant Assurance it believes that the County has violated. Resort's assertions in the Complaint is read by the Director to indicate an alleged violation of Grant Assurance 22, *Economic Nondiscrimination*, and to raise a question about Grant Assurance 23, *Exclusive Rights*.

### **Grant Assurance 22, *Economic Nondiscrimination***

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination.

Federal 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 implements the provisions of 49 U.S.C. § 47107(a)(1) through (3), and provides:

The airport owner or 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.

Grant Assurance 23, *Prohibition against Exclusive Rights*

An airport sponsor is prohibited from granting an exclusive right for the use of the airport, including granting an exclusive right to any person or entity providing or intending to provide aeronautical services to the public. A sponsor may not grant a special privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally obligated airports.

Grant Assurance 23 implements the provisions of 49 U.S.C. §§ 49 U.S.C. 40103(e), 47107(a)(4), and provides:

It (the airport sponsor) will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.

The Part 16 process is intended to determine current compliance with Federal obligations and not to provide restitution or financial damages. The FAA has no authority over the equal protection clause or protections provided by the 5th and 14th Amendments of the United States Constitution as cited by the Complainant. Title 14 C.F.R. Part 16, §16.1 identifies the applicable jurisdiction of the FAA and it does not confer jurisdiction over Constitutional issues.

The FAA is treating the County's Motion to Dismiss or, in the alternative, for Summary Judgment as a Motion for Summary Judgment. The Director, therefore, analyzes the Motion for Summary Judgment from the perspective of Grant Assurance compliance and as provided in 14 C.F.R. § 16.26.

**Respondent's Motion for Summary Judgment**

**Issue 1.** Whether the County is in violation of Grant Assurance 22, *Economic Nondiscrimination* by allowing past non-compliance with the Airport's Minimum Standards.

Resort alleges that the County permitted certain tenants, including South Field Fuel, “to operate and conduct business in violation of their respective Lease Agreements and the Minimum Standards adopted by Kootenai County.” [FAA Exhibit 1, Item 1, page 3]

Additionally, “Resort Aviation believes that Kootenai County is intent on irreparably damaging the business of Resort Aviation (the only fixed base operator...) at the Coeur d’Alene Airport and replace it with another FBO who has acquired an Aircraft Fuel Storage/Dispensing Facility that Kootenai County has allowed to operate in violation of the minimum standards to operate as an FBO at the ... Airport.” [FAA Exhibit 1, Item 1, page 1]

In its Opposition, the County states, “The only two substantial issues raised by Resort Aviation are (1) past non-compliance with the Airport’s Minimum Standards by Southfield Fuel and (2) the County’s decision to award a lease for the North Side Ramp by direct negotiation rather than pursuant to an RFP. However, the minimum standards issues have been addressed through a Part 13 complaint initiated by Resort Aviation, and the County is implementing an FAA-approved corrective action plan.” [FAA Exhibit 1, Item 3, Exhibit 1, pages 2-3]

Additionally, in its Opposition, the County argues, “Resort Aviation has not made any efforts to resolve its concerns. Indeed, almost two years have elapsed since the County decided to negotiate a lease with StanCraft Jet Center rather than issue an RFP, yet Resort has never once in that period approached the County to address its concerns or approached the FAA with its concerns about the lease award.” [FAA Exhibit 1, Item 3, Exhibit 1, page 4]

The County argues in its Motion that Resort failed to engage in required efforts to resolve the dispute. Resort merely argues that it will be harmed if StanCraft Jet Center is allowed to develop its fixed base operation. [FAA Exhibit 1, Item 3, Exhibit 3, pages 5-6]

The County claims that Resort failed to comply with 14 C.F.R. § 16.21 because it has made no effort to resolve its issues with the County prior to filing the Complaint, but recognizes that the complaint can be read to raise an issue involving the minimum standards.

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. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable Federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable Federal obligation to be grounds for dismissal of such allegations. [See e.g. *Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No.16-99-10, (August 30, 2001) (Final Decision and Order)]

In the fall of 2018, Resort filed a complaint with the FAA under 14 C.F.R. Part 13, § 13.1. This complaint alleged that Kootenai County was in violation of its Grant Assurances by not uniformly applying the rules and regulations and minimum standards. On August 1, 2019, FAA’s Northwest Mountain Region’s Airport’s Division Office responded to Resort and stated, “Before the...Office completed the investigation and issued an informal compliance determination, the Sponsor initiated

corrective action. This corrective action resulted in termination of the leases involved in the complaint with the on-airport Fixed Based Operator. The FAA was informed that the FBO was then sold to another entity who was then provided a period of two-years to meet all the requirements of the airport minimum standards.”

The letter goes on to state that the FAA accepted Kootenai County actions as reasonable to address the allegation in the complaint by Resort. The FAA considered the matter closed. [FAA Exhibit 1, Item 3, Exhibit 3, Sub-exhibit A, and Attachment 1]

As to Resort’s efforts at informal resolution, the Director notes that the Part 13 complaint process with an FAA Airports District Office is recognized as a good faith effort under 14 C.F.R. § 16.21(a) as a means to assist the parties with informal resolution.

Of import here, is that the County corrected a past situation where some operators may not have been held to minimum standards that may have been applied to Resort. Specifically as to Resort’s complaint that the County failed to hold South Field Fuel to the terms of the then existing minimum standards, the matter has been resolved in two ways, (1) by the purchase of South Field Fuel by StanCraft Jet Center and (2) the County’s agreement in the previous Part 13 complaint to adhere to an FAA accepted Corrective Action Plan.

Once an airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical service providers. The County confirms that the Minimum Standards were completed and became effective as of February 26, 2019. As to StanCraft Jet Center who had acquired Southfield Fuel, the County confirms that StanCraft agreed to move its FBO operations to the new facility when construction was complete and to comply with the 2019 Minimum Standards. [FAA Exhibit 1, Item 3, Exhibit 3, Sub-exhibit A]

Upon review of the Motion for Summary Judgment, the Director finds under Issue 1 that there is no issue of material fact, and that the complaint, when viewed in a light most favorable to Resort, should be summarily adjudicated in the County's favor as a matter of law. This is because the issue was resolved since aeronautical tenants will be required to comply with airport minimum standards.

**Issue 2.** Whether the County is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by granting a lease to StanCraft Jet Center by direct negotiation rather than pursuant to a request for proposals.

As evidence of its unfair treatment, Resort argues that the County entered into a lease agreement with StanCraft Jet Center to operate its fixed base operation on property owned by Kootenai County (referred to as the North Side Ramp). Resort alleges that this property was originally scheduled to go out to bid under an RFP, but instead was reserved for StanCraft Jet Center without notice or an opportunity “to be heard.” [FAA Exhibit 1, Item 1, page 7]

In its Motion, the County states that it built a new ramp in 2008, called the North Side Ramp, to attract new aeronautical users to the Airport. The County claims this site remained undeveloped, but the County began receiving expressions of interest in 2017. The County explains that Airport staff intended to publish an RFP for the lease, but the RFP was postponed while the County updated its Minimum Standards. The County further explains that StanCraft Jet Center submitted a proposal that was presented to the Board of County Commissioners in public session on June 18, 2018. The County asserts that the Board approved Airport staff to negotiate a lease with StanCraft Jet Center for the North Side Ramp area, but the County reserved the right not to execute a lease and to issue an RFP if necessary. [FAA Exhibit 1, Item 3, Exhibit 3, pages 4 and 5]

In its Motion, the County correctly references FAA guidance regarding methods for leasing airport property for aeronautical purposes. The airport sponsor assurances allow an airport operator to award a lease by any of several methods, including direct negotiation. The Grant Assurances do not prohibit an airport sponsor from entering into long-term leases with commercial entities by negotiation, solicitation, or other means. An airport sponsor may choose to select fixed-base operators (FBOs) or other aeronautical service providers through a request for proposals (RFP) process. [FAA Order 5190.6B, 8.9(b), FN 24]

The Director notes that an airport sponsor is not required to develop any and all parcels of land in a manner consistent with the wishes of any one party, but rather may exercise its proprietary rights and powers to develop and administer the Airport's land in a manner consistent with the public's interest. [*Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica Air Center v. City of Santa Monica*, FAA Docket No. 16-99-21 (February 4, 2003) (Final Decision and Order, page 19)]

A sponsor may exclude an incumbent on-airport service provider from responding to a Request for Proposal (RFP) by eliminating the provider from eligibility for the RFP based on the sponsor's desire to increase competition in airport services. The FAA will not consider that action a violation of Grant Assurance 22, Economic Nondiscrimination, since the sponsor is taking a necessary step to preclude granting of an exclusive right. [FAA Order 5190.6B, 8-7(b) (2)]

The Director finds that the County is within its proprietary powers to make leasing decisions on airport property by direct negotiation. Resort has not shown in its pleading that it attempted to compete for the North Ramp, nor has it indicated that it even desired the parcel. Rather, the gravamen of Resort's complaint seems to be that it objected to competition from a similar business. Resort identifies itself, in the complaint and its advertising, as the only full service fixed base operator on the Airport, and claims that unfair competition has resulted in damage. Resort has noted in its Complaint that it is the only FBO on the Airport and has been since about 1986. [FAA Exhibit 1, Item 1, page 1] The commitment by the County to require aeronautical tenants to comply with the Airport's Minimum Standards will protect fair competition at the Airport.

The Director notes that Resort identifies itself as the only full service fixed base operator on the Airport. In terms of Grant Assurance 23, *Exclusive Rights*, a sponsor may not grant a special



privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally obligated airports.

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements or by another means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or right, would be an exclusive right. [FAA Order 5190.6B, 8.2]

The existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits that flow from a competitive enterprise. The purpose of the exclusive rights provision as applied to civil aeronautics is to prevent monopolies and combinations in restraint of trade and to promote competition at federally obligated airports. In effect, the FAA considers it inappropriate to grant Federal funds to airports where the benefits will not be fully realized due to the inherent restrictions of a local monopoly on aeronautical activities at the airport. [FAA Order 5190.6B, 1.2]

Even though Resort claims it is the only FBO on the airport, the County counters that the Airport has been served for many years by two FBOs: Resort and Southfield. If Resort's assertions were true, arguably Resort might have been granted an impermissible exclusive right for use of the Airport as its only fixed base operator. While Resort does not identify what harm it will suffer by StanCraft Jet Center operating a competing fixed base operation on the Airport, the public should benefit from the flow of competitive enterprises. Moreover, by the County leasing land for the development of StanCraft Jet Center's operation, it avoids any potential claim of a violation of Grant Assurance 23, *Exclusive Rights*.

Upon review of the Motion for Summary Judgment, the Director finds under Issue 2 that there is no issue of material fact, and that the complaint, when viewed in a light most favorable to Resort, should be summarily adjudicated in the County's favor as a matter of law.

## **V. FINDINGS AND CONCLUSION**

After consideration of the pleadings and record, and viewing the complaint in the light most favorable to the Complainant, the Director finds no indication that the County has violated Grant Assurance 22, *Economic Nondiscrimination*.

The Director finds that there are no claims that warrant further action, and that the Complaint can be dismissed in its entirety as a matter of law.

## ORDER

**ACCORDINGLY**, it is ordered that:

1. Respondent's Motion for Summary Judgment is GRANTED;
2. The Complaint is DISMISSED; and
3. All other Motions not specifically granted herein are DENIED.

## RIGHT OF APPEAL

This Order of the Director is an initial agency determination and does not constitute a final agency action and order subject to judicial review. 14 C.F.R. § 16.247(b)(2). A party to this proceeding adversely affected by the Director's Order may appeal the initial determination to the FAA Associate Administrator for Airports under 14 C.F.R. § 16.33(c)(e) within 30 days after service of the Director's Order.



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Kevin C. Willis  
Director, Office of Airport Compliance  
and Management Analysis

4/30/20

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Date