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

Chandler Air Service, Inc. **Complainant** **V.** **City of Chandler, Arizona** **Respondent**	**Docket No. 16-13-05**

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed in accordance with the FAA Rules of Practice for Federally Assisted Airport Proceedings (FAA Rules of Practice), 14 CFR part 16.

Chandler Air Services, Inc., (Complainant, or CAS) filed a formal complaint pursuant to part 16 against the City of Chandler, Arizona, (Respondent or City) owner, sponsor, and operator of the Chandler Municipal Airport (Airport or CHD).

The Complainant claims that the City mismanages the Airport specifically "*illustrated by its neglect of the Airport's day-to-day and long term capital needs, the diversion of aviation revenue from the Airport Enterprise Fund to the City's General Fund, the City's failure to compete fairly for fuel sales, and City Ordinance 8-10 which restricts, among other things, the extension of Runway 4R/22L (the "Runway").*" [FAA Exhibit 1 Item 1 page 1]

The Complainant alleges that the Respondent violated Grant Assurance 5, *Preserving Rights and Powers*, Grant Assurance 11, *Pavement Preventive Maintenance*, Grant Assurance 21, *Compatible Land Use*, Grant Assurance 22, *Economic Nondiscrimination,* Grant Assurance 24, *Fee and Rental Structure*, and Grant Assurance 25, *Airport Revenues*. The Complainant did not allege violations of Grant Assurances 11, 21, and 24 in the Complaint but raised these allegations in the Complainant's Reply and Response to Motion to Dismiss.

The Complainant seeks to have the City revise Chandler City Ordinance 8-10, which requires voter bond approval to finance a runway extension and to allow the City to make an appropriate decision regarding the necessity of a runway extension without voter bond approval. The Complainant also requests that the City return the fuel taxes paid to the City's General Fund to the Airport Enterprise Fund. Lastly, the Complainant requests that the City be prevented from using Federal, State, and local money to subsidize the City's self-service fuel operation.

With respect to the allegations presented in this Complaint, under the specific circumstances at the Airport as discussed below and based on the evidence of record in this proceeding, the FAA finds the Respondent is currently not in violation of its Federal obligations with respect to Grant Assurance 5, *Preserving Rights and Powers*, Grant Assurance 11, *Pavement Preventive Maintenance,* Grant Assurance 21, *Compatible Land Use*, Grant Assurance 22, *Economic Nondiscrimination,* Grant Assurance 24, *Fee and Rental Structure.* The Director finds the Respondent may be in violation of Grant Assurance 25, *Airport Revenues*.

The FAA's decision in this matter is based on applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties and reviewed by the FAA, all of which comprise the administrative record reflected in the attached FAA Index. The basis for the Director's conclusion is set forth herein.

II. THE PARTIES

Airport

The Chandler Municipal Airport is a public-use, towered airport owned and operated by the City of Chandler, Arizona. The Airport is located approximately 3 miles southeast of the City of Chandler and has approximately 437-based aircraft. In 2012, the Airport served over 197,000 general aviation and rotary and military operations and is classified as a regional reliever airport. The Airport has two parallel runways including 4L/22R (4,401 feet long) and 4R/22L (4,870 feet long). [FAA Exhibit 1 Item 5 page 3-5]

The development of the Airport has been financed, in part, with discretionary and entitlement funds provided to the City as the airport sponsor 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.* As a result, the City is obligated to comply with the FAA sponsor assurances and related Federal law. 49 U.S.C. § 47101. At the time of the Complaint, the last AIP grant was awarded in 2012 for $135,523. [FAA Exhibit 1 Item 15]

Complainant

The Complainant, Chandler Air Service is the sole fixed based operator (FBO) at Chandler Municipal Airport and provides maintenance services, fueling, ground handling services, flight training, and pilot supplies. [FAA Exhibit 1 Item 1 page 1] The Chandler Air Service, which is owned and operated by John and Diana Walkup, has been a tenant at the Airport since 1980 and currently leases approximately five acres at the Airport. [FAA Exhibit 1 Item 8 page 4]

III. BACKGROUND AND PROCEDURAL HISTORY

Factual Background

The Parties have a history of disagreement regarding the operation, management, and development of the Airport. [FAA Exhibit 1 Item 5 page 12] In 2010, the Complainant notified the City of its intent to file a Part 16 complaint against the City concerning the City's Ordinance restricting the runway length, and fuel tax utilization. [FAA Exhibit 1 Item 1 exhibit 1] The City responded to the Complainant stating that the City found the Complainant's assertions factually and legally baseless. [FAA Exhibit 1 Item 1 exhibit 3]

Runway Extension

In 1982, the Airport completed an Airport Master Plan (AMP). The 1982 AMP recommended the construction and subsequent extension of runway 4R/22L in phases, starting with the runway length of 3,100 feet, expanding to 5,200 feet, with the final phase expanding the runway length to 6,900 feet. [FAA Exhibit 1 Item 1 page 2; Item 9 exhibit 5 page 25] The City updated the AMP in 1998 and in 2007. The current Airport Master Plan proposes to extend runway 4R/22L to 5,700 feet. [FAA Exhibit 1 Item 5 page 6; Item 9 exhibit 2 pages 4-17–4-19]

In the late 1980s, the City of Chandler residents began expressing concern about the planned continued growth of the airport. The residents approved a ballot initiative, Ordinance No. 2122, providing for a total ban on jet aircraft at the airport. [FAA Exhibit 1 Item 5 page 4; Item 9 exhibit 6] To avoid FAA compliance issues with the ban on jets, in 1990, the City Council passed Ordinance 2122, repealing the ban on jets and providing a limit on runway construction to the length approved for the first stage of the runway construction. [FAA Exhibit 1 Item 5 page 4] The ordinance states, in relevant part:

> *To guarantee to the citizens of the city of Chandler the continued quiet enjoyment in and to their homes, schools, churches and work places, the Chandler Municipal Airport shall not be permitted to accommodate, in any fashion, aircraft which requires for landing a runway longer than 4850 feet.* [FAA Exhibit 1 Item 9 exhibit 6]

The 1998 AMP update contemplated extending the runway to 6,800 feet. The City Council enacted Ordinance No. 2912, allowing for the extension of the runway to 6,800 feet. The Ordinance also required that the City's portion of the cost of constructing the runway extension be funded through a bond issuance requiring voter approval to assure public input on the future of the airport. [FAA Exhibit 1 Item 5 page 5; Item 9 exhibit 9]

In 2000, pursuant to Ordinance 2912, the City submitted a bond measure to the voters requesting funding for the extension of the runway. [FAA Exhibit 1 Item 5 page 5; Item 9 exhibit 11] The City Council also passed Resolution 3268, clarifying that expansion of the runway would not allow the Airport to accommodate large commercial planes. [FAA Exhibit 1 Item 5 page 5; Item 9 exhibit 12] The voters did not approve the bond measure to fund the runway extension. [FAA Exhibit 1 Item 5 page 5; Item 9 exhibit 13]

In 2002, a developer, Vestar, requested the City rezone of 82 acres of non-Airport property located within the City northeast of the Airport from agricultural to a Planned Area Development, allowing for commercial development of the property. The total commercial development is located within the City and other neighboring municipalities. The City Council was aware that rezoning the property could affect the future expansion of runway 4R-22L to 6,800 feet as outlined in the 1998 AMP because portions of the development would be located in the runway protection zone (RPZ). After balancing the competing interests of the runway expansion and economic development benefits, the City ultimately approved the rezoning and determined that a runway extension still was possible to "*provide additional safety for all aircraft types currently using the airport.*" [FAA Exhibit 1 Item 5 page 5-6]

In January 2007, the City adopted an updated AMP to reflect the recommended maximum extension of the runway to 5,700 feet. [FAA Exhibit 1 Item 5 page 6; Item 9 exhibit 2] On January 25, 2007, the City Council authorized another bond issue to fund the proposed extension of the runway. [FAA Exhibit 1 Item 5 page 7; Item 9 exhibit 17] As before, the voters did not approve the bond measure. [FAA Exhibit 1 Item 5 page 7; Item 9 exhibit 19]

In March 2007, the City Council adopted Ordinance 3888 to reflect the reduction of the maximum length of the runway from 6,800 feet to 5,700 feet. [FAA Exhibit 1 Item 5 page 7; Item 9 exhibit 20] The Ordinance, in relevant part, states:

> Chapter *8-10. Extension of runway; Physical Limitations. To guarantee to the citizens of the City of Chandler the continued quiet enjoyment in and to the homes, school, churches and work places, the Chandler Municipal Airport shall not be permitted to accommodate, in any fashion, aircraft which require for takeoff a runway longer than 5,700 feet. Extension of the runway shall require voter approved bonds, which specify that the bond monies are for the purpose of extending the runway. In addition, the Chandler Municipal Airport shall not be designed to accommodate aircraft that weigh in excess of 75,000 pounds maximum gross weight, and/or have a wingspan of 79 feet or more.* [FAA Exhibit 1 Item 9 exhibit 20]

The City of Chandler states that the intent of Ordinance 3888 was to codify policy regarding anticipated improvements to the airfield reflected in the latest AMP and was not intended to nor had it been applied to restrict aircraft operations. [FAA Exhibit 1 Item 5 page 8]

Fuel Sales Pricing

Prior to 1994, the City was the only fuel supplier at the Airport through a self-service fueling facility. In 1994, the Complainant, the sole FBO on the Airport, began providing fuel service and remains the sole full-service fuel provider at the airport. It is the only provider of Jet A fuel and the leading provider of Avgas. [FAA Exhibit 1 Item 9 page 5] The City adopted a formal process to set the City's Avgas pricing that was incorporated into the Airport's Fee Schedule. [FAA Exhibit 1 Item 5 page 9; Item 9 exhibit 22] The City does not individually report the profits on fuel sales but reports all revenue and expenditures associated with the Airport. [FAA Exhibit 1 Item 9 page 5]

Fuel Revenue

The City's tax on the sale of aviation fuels was adopted on January 1, 1960, pursuant to Chandler City Ordinance No. 273. [FAA Exhibit 1 Item 5 page 10; Item 10 exhibit 1] The tax is "*a general transaction privilege (sales) tax on the sale of all tangible personal property*," which includes aviation fuels. [FAA Exhibit 1 Item 14 exhibit 3] The City provides annual payments to the Airport in amounts in excess of the amounts collected from fuel sales tax. [FAA Exhibit 1 Item 9 page 4] From 2006 to 2012, the City contributed to the Airport:

FY 2006-07	$176,103
FY 2007-08	$316,903
FY 2009	$187,019
FY 2008-10	$219,193
FY 2010-11	$305,126
FY2011-12	$151,602,
FY 2012-13	$208,103 (estimated) [FAA Exhibit 1 Item 9 pages 3-4]

The City amended and recodified the tax code over the years without suspending the applicability of the tax on aviation fuel. In 1991, in response to rapidly changing fuel prices, the State of Arizona amended its tax laws to require that any tax on jet fuel be based on the number of gallons sold instead of gross sales. Local governments agreed to make similar changes following the State-provided formula to ensure the change in methodology did not result in an increase in tax paid on the sale of jet fuel. [FAA Exhibit 1 Item 10 pages 1-2]

In January 1992, the City adopted Ordinance 2258 amending the City's tax code to extract jet fuel from the general retail classification, subject to a 1% tax rate on gross sales, to a new jet fuel classification subject to a $0.018/gallon tax rate. [FAA Exhibit 1 Item 10 page 2; Item 10 exhibit 4] In 1999, the City recodified the tax code but "*did not make any substantive changes regarding the applicability of the City's use tax to the use and sale of aviation fuels.*" The change modified the way tax on jet fuel sales was measured. [FAA Exhibit 1 Item 10 page 2; Item 10 exhibit 5]

Hiatus in Fuel Tax Collection

From 1989 to early 1994, the City directly collected taxes from the sale of Avgas at the Airport. The City also collected taxes on the sale of fuel from an FBO at a private airport located in the City. In 1994, Airport staff took over the function of assessing and collecting the tax from the sale of Avgas. From approximately March 1996 through October 2006, for unknown reasons, the Airport did not pay or collect taxes on the sale of Avgas. From early 2003, the Complainant reported fuel sales as taxable, but claimed an offsetting deduction based on the flowage fee assessed by the Airport. The Complainant paid tax on fuel sales from July 2005 to February 2006. After these payments, the City audited the Airport and the Complainant and determined that both owed back taxes on the sale of aviation fuels. [FAA Exhibit 1 Item 5 pages 11-12]

Based on the November 2009, audit report, the City assessed the Airport $52,757.42 in back taxes and $10,811.77 in interest for January 1, 2003 to December 31, 2007. The Airport paid the tax and interest on March 29, 2010. [FAA Exhibit 1 Item 10 page 3; Item 10 exhibit 6] Based on the

audit report dated July 2010, the City assessed the Complainant $44,230.93 in tax and $5,696.58 in interest, for June 1, 2004 to February 28, 2009. The report disallowed the deduction for the flowage fee. [FAA Exhibit 1 Item 10 page 3; Item 10 exhibit 7] The Complainant appealed the assessment, and the City waived the Complainant's back taxes and interest. The Complainant and the Respondent have paid the tax on the sale and use of aviation fuel since 2007. [FAA Exhibit 1 Item 10 page 3]

Pavement Maintenance

Since 2010, the City has conducted the following pavement repair projects, in addition to the San Tan Apron[1] repairs in 2012 and 2013:

- San Tan Apron: Slurry seal/aggregate patching of large cracks (Nov. 2010).
- RWY 4R- 22L: Rubber crack seal full length of runway and connector taxiways to hold lines (May 2011).
- RWY 4L-22R: and TWY A -- Extensive crack repair of runway and taxiway, including t-top patching and rubber crack seal (May 2012).
- RWY 4R-22L: PFC thin overlay full length of runway and connector taxiways to the hold lines (Apr 2013). [FAA Exhibit 1 Item 14 exhibit 4]

The City classified the San Tan Apron project as a priority on the Airport's capital improvement plan and in 2013; the Airport received an AIP grant to fund the project. [FAA Exhibit 1 Item 14 exhibit 4]

The Airport contends that it has a systematic pavement maintenance program to properly maintain Airport pavement. The City inspects the pavement on a daily basis and conducts more detailed pavement conditions inspections and tests on a periodic basis.

Procedural History

On July 2, 2013, the FAA received a Part 16 Complaint alleging the Respondent violated 49 U.S.C. § 47107(a) and airport Grant Assurances 5, 22, and 25. Complainant also alleged a violation of the Airport Noise and Capacity Act of 1990 (ANCA). [FAA Exhibit 1 Item 1]

On August 6, 2013, the FAA issued the Notice of Docketing. [FAA Exhibit 1 Item 2]

On August 27, 2013, the Respondent City of Chandler, Arizona, filed a Motion to Approve Stipulated Schedule for the Parties to File the Answer, Reply and Rebuttal [FAA Exhibit 1 Item 3]

On September 30, 2013, the Respondent filed a Motion to Dismiss [FAA Exhibit 1 FAA Item 4]

On September 30, 2013, the Respondent filed the Memorandum of Points and Authorities in Support of its Motion to Dismiss and Answer. [FAA Exhibit 1 Item 5]

On September 30, 2013, Respondent filed the Answer. [FAA Exhibit 1 Item 6]

[1] San Tan is the name identifying a specific apron referenced by both parties.

On October 15, 2013, Complainant filed a Motion for Extension of Time to File Reply and Respond to Motion to Dismiss [FAA Item 7]

On November 15, 2013, Complainant filed the Reply and Response to Motion to Dismiss, adding claims of violations of Grant Assurances 11, 21 and 24. [FAA Exhibit 1 Item 8]

On September 30, 2013, Respondent filed the Declaration of Lori Quan in Support of the Answer of the City of Chandler, Arizona to Complainant's 14 CFR Part 16 Complaint. [FAA Exhibit 1 Item 9]

On September 30, 2013, Respondent filed the Declaration of Lee Grafstrom in Support of the Answer of the City of Chandler, Arizona to Complaint 14 CFR Part 16 Complainant [FAA Exhibit Item 10]

On October 17, 2013, Respondent filed the Response to Chandler Air Service's Motion for Extension of Time to File Reply and Response to Motion to Dismiss [FAA Exhibit 1 Item 11]

On October 22, 2013, the FAA issued Order Granting Extension of Time [FAA Exhibit 1 Item 12]

On November 15, 2013, a Notice of Errata to Complainant's Reply and Response Motion to Dismiss was filed [FAA Exhibit 1 Item 13]

On December 13, 2013, Respondent filed a Rebuttal in Support of its Motion to Dismiss and Answer [FAA Exhibit 1 Item 14]

Dated August 27, 2013, FAA Granted Respondent City of Chandler, Arizona's Motion to Approve Stipulated Schedule for the Parties to File the Answer Reply and Rebuttal [FAA Exhibit 1 Item 16]

Dated July 22, 2013, letter from Kay Bigelow, Acting Chandler City Attorney, providing contact information [FAA Exhibit 1 Item 17]

Dated June 12, 2014, Notice of change of law firm affiliation [FAA Exhibit 1 Item 18]

Dated June 12, 2014, Notice of Extension of Time [FAA Exhibit 1 Item 19]

Dated January 8, 2014, Notice of Extension of Time [FAA Exhibit 1 Item 20]

Dated February 10, 2015, Notice of change of law firm address [FAA Exhibit 1 Item 21]

Dated March 10, 2015, Notice of Extension of Time [FAA Exhibit 1 Item 22]

Dated May 18, 2015, Notice of Extension of Time [FAA Exhibit 1 Item 23]

Dated June 26, 2015, Notice of Extension of Time [FAA Exhibit 1 Item 24]

Dated August 5, 2015, Notice of Extension of Time [FAA Exhibit 1 Item 25]

Dated September 30, 2015, Notice of Extension of Time [FAA Exhibit 1 Item 26]

Dated November 12, 2015, Notice of Extension of Time [FAA Exhibit 1 Item 27]

IV. ISSUES

Upon review of the allegations and the relevant airport specific circumstances summarized above, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with the applicable Federal law and policy:

- **Whether the City violated Grant Assurance 5, *Preserving Rights and Powers*, by enacting a City Ordinance requiring voter-approved bonds to fund a runway extension.**

- **Whether the City violated Grant Assurance 11, *Pavement Preventive Maintenance,* by failing to institute a pavement management program.**

- **Whether the City violated Grant Assurance 21, *Compatible Land Use,* by rezoning land within the City for commercial development that would limit a runway extension.**

- **Whether the City violated Grant Assurance 22, *Economic Nondiscrimination,* by passing an Ordinance requiring voter bond approval for runway extension and by utilizing Federal grant money and airport enterprise funds to subsidize its self-fueling operation that competes with fuel service provided by Chandler Air Service.**

- **Whether the City violated Grant Assurance 24, *Fee and Rental Structure,* by failing to make the airport as self-sustaining as possible by imposing artificial barriers to the development of the airport.**

- **Whether the City violated Grant Assurance 25, *Airport Revenues*, by collecting levied fuel tax from the airport while waving the same levied fuel tax for Chandler Air Service, Inc., by placing the proceeds from aviation fuel taxes collected at the airport for the City's general fund, instead of the airport related purposes and by controlling its fuel prices to undercut the fuel prices of the Complainant.**

The Complaint also alleges an Airport Noise Capacity Act violation, but it appears that claim was abandoned. Additionally, the Complainant provided no supporting information for this allegation in any pleading. Accordingly, the FAA declines to analyze whether the City violated ANCA or whether such analysis is appropriate in a part 16 proceeding.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation has been augmented 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 facilities 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.

The following is a discussion pertaining to the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, and enforcement of Airport Sponsor Assurances.

The Airport Improvement Program

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, (AAIA) 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.

Airport Sponsor Assurances

As a condition precedent 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.[2] FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order), issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with Federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

---

[2] *See, e.g.*, the Federal Aviation Act of 1958, as amended and recodified at 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified at 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

The FAA grant assurances that apply to the circumstances set forth in this Complaint include: (1) Grant Assurance 5, *Preserving Rights and Powers*; (2) Grant Assurance 11, *Pavement Preventive Maintenance;* (3) Grant Assurance 21, *Compatible Land Use*; (4) Grant Assurance 22, *Economic Nondiscrimination;* (5) Grant Assurance 24, *Fee and Rental Structure*; and (6) Grant Assurance 25, *Airport Revenues*.

Grant Assurance 5, Preserving Rights and Powers

Grant Assurance 5 requires, in pertinent part, that the 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 11, Pavement Preventive Maintenance

Grant Assurance 11 requires the following of a sponsor of a federally obligated airport:

> *With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.*

The Airport Compliance Manual, FAA Order 5190.6B, provides guidance on compliance with grant assurances. A pavement preventative maintenance program includes, at a minimum, "(a) a pavement inventory, (b) annual and periodic inspections in accordance with AC 150/5380-6C, Guidelines and Procedures for Maintenance of Airport Pavements, (c) a record keeping and information retrieval system, and (d) identification of maintenance program funding." [FAA Order 5190.6B ¶ 7.6] FAA Advisory Circular (AC) 150/5380-7B, Airport Pavement Management Program (PMP), provides guidance on establishing a PMP:

> *A PMP is a set of defined procedures for collecting, analyzing, maintaining, and reporting pavement data. A PMP assists airports in finding optimum strategies for maintaining pavements in a safe serviceable condition over a given period for the least cost. A PMP should take into account not only inspection procedures and condition assessment, maintenance protocols and procedures, management and oversight of completed works, but also staff competence needs.*

Grant Assurance 21, Compatible Land Use

Noise compatible land use in the vicinity of airports is necessary to protect the public's health and welfare while preserving the airport's capability to efficiently meet aviation transportation needs. That is the reason why, since 1964, Grant Assurance 21, "Compatible Land Use," implementing 49 U.S.C. § 47107(a)(10), requires in part that the sponsor

> *take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.*

Land use that adversely affects flight operations at and near airports, is that which creates or contributes to the establishment of flight hazards, such as those resulting from obstructions to aerial navigation; noise impacts, such as those resulting from residential construction too close to the airport; or any otherwise negative impact of a particular land use upon the operation of an airport.

Grant Assurance 22, *Economic Nondiscrimination*

Grant Assurance 22 provides, in part, that the sponsor of a federally obligated airport:

> *(a) will make its 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.*
>
> *(h) may establish such fair, equal, 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) may . . . 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.*

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. Grant Assurance 22 deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions a potential for limiting access. 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 they appear to deny or limit access to, or use of, the airport. [*See* FAA Order 5190.6B, ¶14.3]

FAA Order 5190.6B describes the responsibilities under Grant Assurance 22 assumed by the owners or sponsors of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport

and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* FAA Order 5190.6B, Chapter 9]

Grant Assurance 24, *Fee and Rental Structure*

Grant Assurance 24, *Fee and Rental Structure,* implements 49 U.S.C. § 47107(a)(13) and requires, in pertinent part, that the sponsor of a federally-obligated airport:

> *will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.*

Grant Assurance 24 addresses fees the owner or sponsor levies on airport users in exchange for the services the airport provides and requires the airport operator to charge fees that are sufficient to cover as much of the airport's costs as is feasible while maintaining a fee and rental structure consistent with the sponsor's other Federal obligations.

In addition, FAA Order 5190.6B states:

> *To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport.* [FAA Order 5190.6B ¶ 9.6.e.]

Grant Assurance 25, *Airport Revenues*

Grant Assurance 25, *Airport Revenues,* implements 49 U.S.C. 47107(b) and § 47133, et seq., and requires, in pertinent part, that the sponsor of a federally-obligated airport assure

> *a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. . . .*
>
> *b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.*
>
> *c. Any civil penalties or other sanctions will be imposed for violation of this*

assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

FAA's Policy and Procedures Concerning the Use of Airport Revenues (64 Fed. Reg. 7696, February 16, 1999) (Revenue Use Policy) provides, among other things, the FAA's policy on the use of airport revenue. It provides, in relevant part, that:

1. *All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:*

   b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

      i. From any activity conducted by the sponsor on airport property acquired with Federal assistance;

      ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. § 47107(b) or 47133; or

      iii. From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

      [*Revenue Use Policy* at Section II.B.1.b., 64 Fed. Reg. 7696, 7716 (Feb. 16, 1999)]

The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal law.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' 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 pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that

the public interest is being served. FAA Order 5190.6B sets forth policies and procedures for the FAA Airport Compliance Program. The Order establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve 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 (Aug. 30, 2001); *aff'd by Wilson Air Center, LLC v. FAA*, 372 F.3d 807 (6th Cir. 2004)]

FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The Federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or 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 reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their F
Federal grant assurances.

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 must "[p]rovide a concise but complete statement of the facts relied upon to substantiate each allegation." [14 CFR § 16.23(b)(3)] The complaint shall also "describe how the complainant was directly and substantially affected by the things done or omitted by the respondents." [14 CFR § 16.23(b)(4)]

"If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint." [14 CFR § 16.29(a)] In rendering its initial determination, "the FAA may rely entirely on the complaint and the responsive pleadings. 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 § 16.229(b)] A party who has asserted an affirmative defense has the burden of proving the affirmative defense. [14 CFR § 16.229(b)] This standard burden of proof is consistent with the Administrative Procedure Act (APA) and Federal case law. [*See* 5 U.S.C. § 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."); *see also Director, Off. of Worker's Compensation Programs, Dep't of Labor v. Greenwich Collieries*, 512 US 267, 272 (1994); *Air Canada et al. v. Dep't of Transp.*, 148 F3d 1142, 1155 (D.C. Cir. 1998).] § 16.229(b) is consistent with § 16.23, which requires that the complainant must submit all documents then available to support his or her complaint.

The Director's Determination will include "findings of fact and conclusions of law, accompanied by explanations and based upon all material issues of fact, credibility of the evidence, law, and discretion presented in the record." [14 CFR § 16.31(b)(1)] A party adversely affected by the Director's Determination may appeal to the Associate Administrator as provided in § 16.33. [14 CFR § 16.31(c)] A Notice of Appeal and Brief may be filed within 30 days after the date of service of the Director's Determination. [14 CFR § 16.33(c)] If no appeal is filed within this time period, "the Director's Determination becomes the final decision and order of the FAA without further action" and is not judicially reviewable. [14 CFR § 16.33(h)]

V. ANALYSIS AND DISCUSSION

Respondent's Motion to Dismiss

On September 30, 2013, the Respondent filed a motion to dismiss the Complaint. [FAA Exhibit 1 Item 4] The Respondent states the Complainant "*has failed to meet the standards of a complaint by (i) failing to submit any documentary evidence in support of its allegations, 14 CFR §§ 16.23(b)(2), and (ii) failing to provide a complete statement of facts relied on to substantiate each allegation in its Complaint, id. § 16.23(b)(3).*" [FAA Exhibit 1 Item 4 page 1]

The Complainant filed a Reply and Response to the Motion to Dismiss, supported by the Declaration of John Walkup and Separate Declaration of John Walkup in Response to the Declaration of Lori Quan. The Complainant contends that there is "*ample evidence of the City's numerous grant assurance violations and dismissal of the Complaint is not warranted.*" [FAA Exhibit 1 Item 8 page 19] The Complainant also argues, "*it is 'directly and substantially' affected by the City's noncompliance.*" [FAA Exhibit 1 Item 8 page 1] The Complainant's Reply and Response to the Motion to Dismiss also alleges violations of Grant Assurances 11, 21, and 22. [FAA Exhibit 1 Item 8 page 1]

Under § 16.23(a), "a person directly and substantially affected by any alleged noncompliance . . . may file a complaint under this part." The Complainant must also "describe how [it] was directly and substantially affected by the things done or omitted to be done by the respondents." Under § 16.29(a), the FAA investigates the subject matter of a complaint if "based on the pleadings, there appears to be a reasonable basis for further investigation."

The Director finds that the Complainant has demonstrated that it is directly and substantially affected by the alleged actions of the City because it has alleged negative economic impact from those actions. The Director also finds that the Complainant has submitted factual support and documentary evidence to substantiate its allegations. The Director finds that the pleadings establish a reasonable basis for further investigation of the alleged violations.

Therefore, the Motion to Dismiss is denied.

Issue I

- **Whether the City violated Grant Assurance 5, *Preserving Rights and Powers*, by enacting a City Ordinance requiring voter-approved bonds to fund a runway extension.**

Grant 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. Additionally, it requires 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.* [Assurance 5]

The Complainant argues that Ordinance 3888 violates the City's grant assurances:

> *Initially, it is clear from its face that the Ordinance limits the length of the runway purely for noise reasons. Secondly, the Ordinance impairs the City's preservation of its rights and powers over the development of the airport in contravention of Grant Assurance 5.* [FAA Exhibit 1 Item 1 page 6]

The Complainant also alleges, "*the implementation of the Ordinance deprives the City of its discretion to utilize airport funds generated on the Airport for the development of the Airport as provided in the various ALP's created with Federal funds.*" [FAA Exhibit 1 Item 1 page 6] The Complainant contends the City is required to extend runway 4R/22L to meets its obligation to responsibly develop the Airport. [FAA Exhibit 1 Item 8 page 2]

The Respondent states that it "*intended Ordinance 3888 to codify City policy regarding anticipated improvements to the airfield based on the latest Airport Master Plan*" and does not restrict aircraft operations at the Airport. [FAA Exhibit 1 Item 5 page 8] The Respondent states

the Complainant ". . . *expressed frustration with the failure of the bond measures to provide funding to extend the runway and urged the City to repeal Ordinance 3888 and construct the runway extension without voter approval.*" [FAA Exhibit 1 Item 5 page 13]

The Respondent also states that the Complainant's dissatisfaction with the failure to extend the runway is based on his belief that the runway expansion would lead to increased economic benefits for the Complainant. [FAA Exhibit 1 Item 9 page 24] The Respondent notes that the Complainant failed to demonstrate that the City would *". . . necessarily exercise its discretion to expand the runway . . . ."* [FAA Exhibit 1 Item 9 page 24]

The Respondent notes, "*It is clear that the Complainant has long held the future and growth of the airport and his business as a personal undertaking. The fact that the airport has taken a course other than the one envisioned by the Complaint has led to conflict with the City in its management of the airport.*" [FAA Exhibit 1 Item 8 exhibit 1]

The Director does not agree with the Complainant's contention that compliance with Grant Assurance 5 requires a sponsor to implement all proposals in an Airport Master Plan.

An airport master plan is a comprehensive study of the airport and typically describes short-, medium-, and long-term plans for airport development.[3] It yields recommendations with the goal of providing guidance for future airport development that considers the existing and anticipated aviation demand, is technically sound and financially feasible, and that resolves aviation, environmental and socioeconomic issues existing in the community.

Certain aspects of Complainant's understanding of the "rights and powers" requirement in Grant Assurance 5, and the scope of the master planning process, is inaccurate. The Complainant erroneously assumes that the City is obligated to adhere to plans to extend the runway made more than a decade prior. Moreover, decisions to implement or modify the AMP are an airport sponsor action, not one transferable to a local public jurisdiction, and certainly not to individual tenants on the airport. A sponsor is not required to develop any parcels of land in a manner consistent with the wishes of any one party, but rather exercises its proprietary rights and powers to develop and administer the airport's land in a manner consistent with the public's interest. [*See Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica air Center v. City of Santa Monica*, FAA Docket No. 16-99-21, Final Decision and Order (February 4, 2003)] The Director notes that the City can revise plans for expansion of the airport without violating its grant assurance obligations.

In fact, the Director notes that the sponsor maintaining control of decisions regarding any plans complies with Grant Assurance 5. That is, if the airport sponsor is compelled by another party to take any action, including a runway extension, a violation of Grant Assurance 5 could result. In *Pacific Coast Flyers, Inc., Donnya Daubney d/b/a Carlsbad Aircraft Pilot Supply, and Roger Baker v. County of San Diego, California*, FAA Docket No. 16-04-08, Director's Determination (July 25, 2005), the FAA found it must rely on the sponsor's judgment and its proprietary right as the airport sponsor to achieve planned development at the airport.

---

[3] *See* AC 150/5070-6B, page 5.

Generally, the FAA will not dictate to an airport sponsor the manner in which it should expand or improve its infrastructure. In *Pacific Coast Flyers*, the FAA found it must rely on the sponsor's judgment and its proprietary right as the airport sponsor to achieve planned development at the airport. Director's Determination, *Sun Valley Aviation, Inc. v. Valley Int'l Airport, City of Harlingen, Tex.*, FAA Docket No. 16-10-02, at 67 (Dec. 11, 2012)

Therefore, the Director does not find the Complainant's assertions persuasive. Ordinance 3888 does not deprive the City of its Rights and Powers. The decision to proceed with an airport project, such as a runway extension, and the related funding process is a business decision within the discretion of the City. Similarly, the method by which the City chooses to fund the project (e.g., through a bond process approved by the voters) is a local matter within the City's discretion. Under these facts, the City's business decision to fund airport expansion through a voter-approved bond initiative does not violate Grant Assurance 5.

In this instance, there is no assertion that the property was depicted on the Exhibit A map. In fact, all parties recognize that the property was not airport property.

As with the runway extension above, the Director finds that the City has not yielded any of its rights and powers. Because the Airport had no rights or powers over the property, there were none to yield. Accordingly, the Respondent is not in violation of Grant Assurance 5.

Issue 2

- **Whether the City violated Grant Assurance 11, *Pavement Preventive Maintenance,* by failing to institute a pavement management program.**

Grant Assurance 11 requires the following of a federally-obligated airport:

> *With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.*

Grant Assurance 11 requires that a sponsor implement an effective pavement maintenance-management program for all pavement replacement or reconstruction grants approved after January 1, 1995. Such programs last for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance.

The Complainant alleges that the Respondent failed to implement an effective pavement maintenance-management program in violation of Grant Assurance 11. [FAA Exhibit 1 Item 8 page 27-28] The Complainant states that the San Tan Apron, which borders the CAS ramp, has multiple cracks that "*started appearing within one to two years of the apron being installed, and have grown progressively worse.*" [FAA Exhibit 1 Item 8 page 28] The Complainant alleges that

it has complained to the Airport about the cracking, and that the cracking has resulted in aircraft damage. [FAA Exhibit 1 Item 8 page 17] The Complainant acknowledges that the Airport agreed to strip and reseal the Apron as a temporary fix while plans to rebuild the Apron are in the design phase. [FAA Exhibit 1 Item 8 page 17] Nevertheless, the Complainant contends that providing "*a temporary fix after years of neglect*" does not meet the requirement for an effective pavement maintenance program. [FAA Exhibit 1 Item 8 page 28]

The Respondent contends that Grant Assurance 11 "*does not require airport sponsors to assure that no pavement problems ever occur.*" [FAA Exhibit 1 Item 14 page 20] Instead, it argues sponsors are required to "*inspect and monitor pavement condition on a regular basis, document those inspections, and be able to make repairs in a timely manner.*" [FAA Exhibit 1 Item 14 page 20] The Respondent alleges it conducts daily pavement inspections, conducts more detailed examinations on a regular basis, and has implemented several pavement repair projects through its pavement maintenance program. [FAA Exhibit 1 Item 14 page 20]

The City also specifically addresses its actions with respect to the San Tan Apron:

> *[T]he City has been aware that soil conditions under the SanTan Apron made it susceptible to cracking and that it would need to be rebuilt. That project has been on the City's capital improvement plan since 2011, although then-current conditions did not require immediate action. In late 2012, problems with the Apron increased and reached a point where repairs were needed in the near future. The City promptly implemented a temporary repair using a hot mix, while also expediting the permanent rebuilding solution. To provide a permanent solution, the City secured a Federal grant in 2013, put the project out to bid in September 2013, awarded the bid in October 2013, and began construction in November 2013. As of December 13, 2013, construction is almost complete, and final completion is expected before the end of the year.* [FAA Exhibit 1 Item 14 page 20]

According to the Grant History, the Airport completed work on the San Tan Apron project under Grant 3-04-0008-023-2013, and the grant closeout was in November 2014. [FAA Exhibit 1 Item 15] Because this pavement maintenance project was completed, the Director finds no current violation with respect to the San Tan Apron. [*See Aero Ways, Inc. v. Del. River & Bay Auth.*, FAA Docket No. 16-09-12, Director's Determination at 13 (Aug. 30, 2010) ("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.")]

Nevertheless, the FAA must consider whether the Airport has implemented an effective pavement maintenance-management program. In judging the reasonableness of a sponsor's actions, the FAA considers whether: (1) Federal obligations are understood; (2) a pavement maintenance program is in place; (3) the sponsor satisfactorily demonstrates that the program is being carried out; and (4) past compliance issues have been addressed. [*See* Airport Compliance Manual, FAA Order 5190.6B ¶ 2.8.b] The record supports that the Airport has a program of daily and periodic detail inspections, and that the Airport's program reasonably identified, analyzed, and ultimately cured pavement issues on the San Tan Apron. The Director finds that the Airport's actions were reasonable in implementing its pavement maintenance-management program.

Accordingly, the Director finds that the Respondent has implemented an effective pavement maintenance-management program and is not in violation of Grant Assurance 11.

Issue 3

- **Whether the City violated Grant Assurance 21, *Compatible Land Use,* by rezoning land within the City for commercial development that would limit a runway extension.**

Grant Assurance 21 ensures that land use adjacent or in the vicinity of airports is compatible with normal airport operations.

The Complainant alleges that the City has "*rezoned land planned for runway for development of a retail center, even though the City had accepted Federal funds to purchase land for the runway expansion. The City's actions in approving the development of the retail center were directly incompatible with the development of the airport and normal and future operations of the airport.*" [FAA Exhibit 1 Item 8 page 3] The Complainant argues that the Vestar development, which is "*directly in the path*" of the planned runway and would "*forever limit[] the runway to 5700 feet or less*" despite longstanding City plans to extend the runway to 6,800 feet. [FAA Exhibit 1 Item 8 pages 22-23]

In the Complainant's letter to Chandler's City Attorney dated October 11, 2010 the Complainant admits, "*Use of land as a retail center does not, in general, constitute an incompatible use. However, just because a use, in general, may be compatible with airport operations, does not mean it is in all situations. Here, the use of land constructively prevents the Runway from being extended to 6,800 feet as planned for in the 1998 AMP.*" [FAA Exhibit 1 Item 1 page 24 of Complainant's letter to Chandler's City Attorney]

The Complainant states:

During the years of 1987-1989 the City received Federal funding through the Airport Improvement Program to purchase land required for the planned extension. In the vicinity of the northeast corner of the Chandler Municipal Airport the City purchased 2.416 acres of land from Exeter Real Estate Investors in 1987 (AIP Grant No. 3-04-008-04), 6.971 acres of land from Airpark Limited Partnership in 1987 (AIP Grant No. 3-04-008-04), 4.16 acres of land from D.W. Patterson in 1988 (AIP Grant No. 3-04-008-05), and 9.728 acres of land from D.W. Patterson in 1989 (AIP Grant No. 3-04-008-06). On the southwest corner of the Chandler Municipal Airport the City purchased 7.83 acres of land from Queen Creek Trust in 1986 (AIP Grant No. 3-04-008-03), 21.043 acres of land from John Demetria LTD in 1987 (AIP Grant No. 3-04-008-04), and 6.0 acres of land from D.W. Patterson in 1991 (AIP Grant No. 3-04-00807)." [FAA Exhibit 1 Item 1 pages 2-3]

The Complainant contends the City made these land purchases to facilitate the ultimate runway extension to 6,800 feet. [FAA Exhibit 1 Item 1 page 2]

The Complainant states, "*In 1998 the City approved an updated Airport Master Plan ("1998 AMP") which anticipated an ultimate runway length of 6,800 feet for Runway 4R/22L. The 1998 AMP suggested that, in order to accommodate 75% of business jets at 60% useful load, a runway length of 5,500 feet would be required, and in order to accommodate 100% of business jets at 60% useful load, a runway length of 6,800 feet would be required. The 1998 AMP adopted an intermediate term plan to extend Runway 4R/22L to 5,500 feet and a long-term plan to extend the Runway to 6,800 feet.*" [FAA Exhibit 1 Item 1 page 3]

The Respondent counters:

> *Implicitly recognizing that the grant assurances do not impose a general duty on the City to construct the runway extension, CAS asserts in its Reply that a series of grants the City accepted in the late 1980s and early 1990s imposed a specific obligation to construct the runway extension. But a review of those grants . . . shows that is not the case. Those grants were all for the acquisition of the property "for future airport development," primarily to construct the runway to its current length, including taxiways and safety zones. Indeed, several of the grants refer only to a runway length of 4,850 feet, and none refer to any further runway construction. Moreover, all of the land acquired with those grants is necessary for the current runway configuration and for the ultimate extension to 5,700 feet, including future runway safety areas and runway protection zones. Accordingly, the City has complied with the terms of those grants by acquiring land needed for future Airport development.* [FAA Exhibit 1 Item 14 pages 4-5]

The Respondent contends the development does not "*interfere with or limit current Airport operations*," and that the "*Airport continues to control all of the land it needs for current operations and almost all of the land it needs for projected future expansion.*" [FAA Exhibit 1 Item 14 page 17]

The Respondent argues that changing land use "in ways that might require reconsideration of proposed potential future airport operations" is permissible. [FAA Exhibit 1 Item 14 page 17] In this instance, the City "*balanced these competing interest and determined that, even if it allowed the proposed development to proceed, it could still expand Runway 4R-22L to 'provide additional safety for all aircraft types currently using the airport.'*" [FAA Exhibit 1 Item 5 page 6] The City then updated its Airport Master Plan to recommend "*a maximum extension of Runway 4R-22L to 5,700 feet, reflecting the amount of land available for the runway and associated runway safety areas and runway protection zones.*" [FAA Exhibit 1 Item 5 page 6]

Based on the grant list noted by the Complainant, the most recent grant to the Respondent to purchase land was in 1991. The grant was to extend the runway to its current length. There is no support for the Complainant's assertion that the Respondent used FAA AIP grant funds to purchase property to extend the runway beyond its current length. [FAA Exhibit 1 Item 15]

The Complainant does not argue that the Respondent failed to restrict the use of land adjacent to the airport for purposes compatible with normal airport operations; it admits that a shopping center is not an incompatible use, stating, "*Use of land as a retail center does not, in general, constitute an incompatible use.*" [FAA Exhibit 1 Item 1 page 24]

The intent of Grant Assurance 21 is to protect against hazards resulting from obstructions to aerial navigation and noise impacts, such as those resulting from residential construction too close to the airport. The Complainant attempts to redefine Grant Assurance 21 to include possible future development of the Airport. The rezoning of land to allow a retail center did not adversely affect the current operations at the Airport. The facts do not support the Complainant's claim of incompatible land use.

As stated earlier, a sponsor is not required to develop its airport to the maximum extent possible, but rather it has discretion to make business decisions provided those decisions do not violate grant assurances. A sponsor's decision to change the planned extension of the airport to accommodate the needs of the airport and the community is a business decision. *See McDonough Properties, L.L.C. M&R Holding, L.L.C., Tri-D, L.L.C., and Col. Frank Barnett v City of Wetumpka, AL*, FAA Docket No. 16-12-11(Final Agency Decision and Order).

The FAA does not second-guess a sponsor's business decisions unless they directly violate a grant assurance. In this instance, the City rezoned non-airport land after weighing the competing interests of community economic development and planned airport development. The City acknowledged the need to comply with grant assurances to protect the runway protection zone and properly amended its AMP to reflect the maximum 5,700-foot runway that would continue to comply with Grant Assurance 21.

The record does not support the allegation that the Respondent accepted Federal funds to acquire property to build a planned 6,800-foot runway. The Director finds the Respondent took the appropriate action to restrict incompatible land uses around the airport. Accordingly, the Director finds that the City is not in violation of Grant Assurance 21.

Issue 4

- **Whether the City violated Grant Assurance 22, *Economic Nondiscrimination* by passing an Ordinance requiring voter bond approval for a runway extension and by utilizing Federal grant money and airport enterprise funds to subsidize its self-fueling operation that competes with fuel service provided by Chandler Air Service.**

Grant Assurance 22 states in part:

> *It 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.* [...] *Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities.*

Runway Extension

The Complainant alleges the City unjustly discriminates against jet aircraft through "*an ordinance which implicitly sought to limit runway length through funding chicanery and*

explicitly bans aircraft of a certain weight (75,000 lbs or more) or dimension (more than 79 feet wingspan)." [FAA Exhibit 1 Item 8 page 3] The Complainant also contends that an ordinance requiring voter approval for bonds to fund a runway extension effectuates the ban on jet aircraft because *"[m]ost jets require runway lengths in excess of 4,850 feet for safe take-off and landings."* [FAA Exhibit 1 Item 8 pages 21-22]

The Complainant also states, *"Decades ago, the supporters of the "Ban Jets" initiative assumed that jets at the airport would equate to more noise. They petitioned the City Council for the adoption of a noise ordinance banning all jets at the Airport. The City Council agreed and sought a way to ban jets."* [FAA Exhibit 1 Item 8 page 20] The Complainant contends that Ordinance 3888 is the obstacle to extending the runway

The Respondent contends, "*the plain language of Ordinance 3888 makes clear [that] the Ordinance addresses only the size, characteristics, and funding of potential future runway construction; it does not purport to, and is not applied to, restrict in any way aircraft from operating at CHD today or on the airfield in its ultimate condition.*"[4] [FAA Exhibit 1 Item 14 page 15]

The Respondent alleges that the ordinance is a statement of current City policy regarding airport development rather than a ban or restriction of current airport operations. [FAA Exhibit 1 Item 14 page 16] The Respondent also argues that, even without the restrictions in Ordinance 3888, it is speculative whether "*the City Council would approve an extended runway*" or whether "*CAS would secure additional business and profits if the runway were extended.*" [FAA Exhibit 1 Item 14 page 14]

As mentioned in the discussion of Grant Assurance 5, the grant assurances do not require a sponsor to develop any parcels of land in a manner consistent with the wishes of any one party. Rather, the sponsor exercises its proprietary rights and powers to develop and administer the airport's land in a manner consistent with the public's interest. *See 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).*

Ordinance 3888 does not limit or restrict the type or class of aircraft that can access the existing airport. Instead, it requires voter bond approval to fund the extension of the runway up to the 5,700-foot length consistent with the Airport Master Plan. While such extension would allow different classes of aircraft, the FAA found it must rely on the sponsor's judgment and its proprietary right as the airport sponsor to achieve planned development at the airport. [*Pacific Coast Flyers, Inc., Donnya Daubney d/b/a Carlsbad Aircraft Pilot Supply, and Roger Baker v. County of San Diego, California*, FAA Docket No. 16-04-08, Director's Determination (July 25, 2005)]

---

[4] The City also asserts that a challenge to Ordinance 3888 is *"barred by the statute of limitations because it is asserted more than six years after the alleged access restriction was adopted"*. The City asserts that predecessor to ordinance 3888 was adopted in 1990, modified in 1998, and amended in 2007. [FAA Exhibit 1 Item 9 page 13] The Director chooses to address the merits of the argument.

A decision by the airport sponsor not to extend a runway because it chooses not to expand the types of aircraft that may operate from the airport is not analogous to a restriction on aircraft operations. Accordingly, the Director finds that the facts do not support the allegations and that the Ordinance does not limit or restrict0 the type or class of aircraft that can access the existing airport.

Fueling Operations

The Complainant alleges that the Respondent intentionally operates its self-fueling services at a break-even or a small loss, and then uses AIP grant and airport enterprise funds to subsidize that operation. [FAA Exhibit 1 Item 1 page 9] The Complainant contends that this practice economically discriminates against the Complainant because it "*is forced to compete with the City's subsidized fuel salesprices.*" [FAA Exhibit 1 Item 1 page 9]

The Respondent contends that it sets a fair and competitive fuel price "*using a sophisticated, multi-factor analysis that requires the City to set a price above its costs, specifically including capital costs, fuel flowage fees, taxes, cost of fuel, and other overhead.*" [FAA Exhibit 1 Item 5 page 33; *see also* FAA Exhibit 1 Item 9 page 5; FAA Exhibit 1 Item 9 exhibits 22, 23]

The Respondent states that it does not compete with the Complainant in the Jet A fuel market, and that the Complainant sells nearly seven times the Avgas as the Respondent. [FAA Exhibit 1 Item 5 page 33] The Respondent also states that the City's price for Avgas is often similar to or higher than that of the Complainant. [FAA Exhibit 1 Item 5 page 33; *see also* FAA Exhibit 1 Item 9 exhibit 23]

The Complainant states, *"Chandler Air Service does not believe that the rate structure is accurate, and that the City operation continues to be subsidized."* [FAA Exhibit 1 Item 8 page 15] The Complainant further contends that the Respondent "*monitors the fuel prices changed by Chandler Air Service and adjusts its fuel prices lower, not to compete, but as a form of price control.*" [FAA Exhibit 1 Item 8 page 16]

The Director reviewed the fuel pricing methodology included in the Airport's Fee Schedule. This process appears to be independent of the Complainant's pricing of fuel, except that prices by other fuel vendors, including the Complainant, are considered when the Respondent sets a maximum fuel price. The record does not support the allegation that the Respondent purposely charges below-cost or other non-competitive fuel rates. Accordingly, the Director finds the Respondent has not discriminated against Complainant and is not in violation of Grant Assurance 22 with respect to fuel pricing.

Facility Improvements

The Complainant also alleges, "*the City is not required to factor the cost of the improvements [to fueling facilities] into its fuel price, while Chandler Air Service has no option but to do so.*" [Exhibit 1 Item 1 page 9] The Complainant states that the Respondent has imposed numerous fuel sales related requirements on CAS, including building a fuel-spill-containment area and installing a special coating on the surface around its self-service pumps. [FAA Exhibit 1 Item 8 page 16] The Complainant alleges:

> *When Chandler Air Service asked the City why it was not required to make these same improvements it was informed that the City did not need to make any improvements to their facility because they were "grandfathered." All of these requirements put Chandler Air Service at a competitive disadvantage because it is forced to invest in infrastructure and incur costs that the City does not.* [FAA Exhibit 1 Item 8 page 16]

Additionally, the Complainant alleges that the City utilizes public monies to improve and maintain its self-fueling operation, including replacing pavement around the self-service fuel facility. [FAA Exhibit 1 Item 8 page 15; *see also* FAA Exhibit 1 Item 1 page 9]

Finally, the Complainant alleges the Airport and the Respondent require it to meet specific standards for filtering and sump mechanisms, which the City does not meet, and that it is required to carry branded fuel. [FAA Exhibit 1 Item 1 page 9]

The Respondent counters that it is, *"not aware of an instance when the City has required CAS to make any changes or alterations to its self-service fueling facility, beyond expecting it to meet current City Code and environmental requirements in their initial design and installation. The City holds itself and CAS to generally applicable standards of state law; it does not impose additional requirements on itself or CAS."* [FAA Exhibit 1 Item 9 page 6]

The Respondent contends the project replacing pavement around the self-service fuel facility was part of a larger project to improve storm water drainage. [FAA Exhibit 1 Item 5 page 30; FAA Exhibit 1 Item 9 page] The Respondent contends that, "*[a]s part of that project, the pavement around the City's self-service fueling island was contoured to direct any accidental fuel releases into a lined retention basin to keep it isolated from storm water discharge.*" [FAA Exhibit 1 Item 5 page 30; FAA Exhibit 1 Item 9 page 4]

The Respondent alleges it "*does not operate as an FBO and so its commercial self-fueling service is subject to different standards than CAS's FBO operation.*" [FAA Exhibit 1 Item 5 page 34]

The Respondent contends that its lease with the Complainant contains no requirement to carry branded fuel, and the minimum insurance requirement "*does not contain a branded fuel requirement.*" [FAA Exhibit 1 Item 5 page 34] With respect to the standards for filtering and sump mechanisms, the Respondent contends it "*holds itself and CAS to generally applicable standards of state law; the City does not impose additional requirements on CAS.*" [FAA Exhibit 1 Item 5 page 35]

The Director notes that while the Complainant's allegations and arguments are extensive, the record does not support the Complainant's interpretation of the facts. There is no evidence in the record supporting the allegation that the City imposes fuel requirements on CAS that it does not impose on itself or that it used Federal or other grant money to subsidize its fuel operation. To find a sponsor in noncompliance, "*not only must the Complainant include sufficient factual evidence to support its allegations, but also establish by a preponderance of substantial and credible evidence that the sponsor has violated its Federal obligations.*" [*BMI Salvage Corporation & Blueside Services, Inc. v. Miami-Dade County, Florida*, FAA Docket

No. 16-05-16, Director's Determination at 12 (July 25, 2006)] The Complainant has failed to make this evidentiary showing in this case.

Accordingly, the Director finds that the facts do not support the allegations of economic discrimination, and the Respondent is not in violation of Grant Assurance 22.

Issue 5

Whether the City violated Grant Assurance 24, *Fee and Rental Structure,* by failing to make the airport as self-sustaining as possible by imposing artificial barriers to the development of the airport.

Grant Assurance 24, *Fee and Rental Structure*, requires that fees the owner or sponsor levies on airport users in exchange for the services it provides make it as self-sustaining as possible.

The Complainant contends that Respondent must make the airport as self-sustaining as possible under the circumstances stating, "*instead the City erected numerous artificial barriers (indeed, self-inflicted wounds) to the appropriate development of the airport ensuring the worst possible circumstances of low traffic and economies of scale and then it complains that it has to subsidize the airport.*" [FAA Exhibit 1 Item 9 pages 3 and 24] or 8 pages 3

The Respondent argues that the Complainant's assertion that Grant Assurance 24 requires the City to extend the runway in order to increase operating income is "*a fundamental misunderstanding of Assurance 24.*" [FAA Exhibit 1 Item 14 page 18]

The Respondent contends, "*Grant Assurance 24 does not require the sponsor to establish a fee and rental structure designed to maximize the Airport's profit potential.*" [FAA Exhibit 1 Item 14 page 18 *quoting Northern Air Inc., et al v. Cnty of Kent, Mich.*, FAA Docket No. 16-11-10 Director's Determination at 53 (March 28, 2013)] The Respondent then asserts that it "*simply requires airport sponsors to seek to establish a schedule of rents and charges at a level that allows the airport to be self-sustaining and that does not generate unnecessary surpluses.*" [FAA Exhibit 1 Item 14 page 18]

The intent of Grant Assurance 24 is that a sponsor will manage its existing facility in a manner that allows the airport to be self-sustaining. As it does not require a fee schedule to maximize an airport's profit potential, neither does it require an airport to develop to the maximum extent possible. The Complainant's characterizations of the Respondent's airport business decisions, related to development, as undermining the self-sustainability of the Airport are misplaced. The Complainant's allegations concerning business decisions related to the length of the Airport's runway are not appropriately addressed under Grant Assurance 24. Further, the Complainant has made no allegation and provided no factual evidence to indicate that the current fee and rental structure could violate Grant Assurance 24.

Accordingly, the Director finds that the Respondent is not in violation of Grant Assurance 24.

Issue 6

Whether the City violated Grant Assurance 25, *Airport Revenues*, by collecting levied fuel tax from the airport while waving the same levied fuel tax for Chandler Air Service, Inc., by placing the proceeds from aviation fuel taxes collected at the airport for the City's general fund, instead of the airport related purposes and by controlling its fuel prices to undercut the fuel prices of the Complainant.

Grant Assurance 25, *Airport Revenues,* requires that the sponsor of a federally obligated airport expend all revenues generated by the airport and any local taxes on aviation fuel, which are established after December 30, 1987, for airport purposes.

Taxing Authority of State of Arizona and City of Chandler

The City of Chandler, Arizona (City) imposes a privilege and use tax on the sale of aviation fuels in the City pursuant to Chandler City Ordinance No. 273, which was approved on December 7, 1959. The tax is a general transaction privilege (sales) tax on the retail sale of all tangible personal property except for some listed items excluded from the levying of a sales tax. Aviation fuels are considered tangible personal property and are not exempt from the sales tax. The seller is responsible for the collection and submittal of the tax.

The authority of the City and the State of Arizona to assess a privilege and use tax on the retail sale of aviation fuel is not an issue. Under 49 U.S.C. § 40116(e), a state or political subdivision of a state may levy or collect taxes including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services.

The City and the State of Arizona may charge sales and use taxes on the sale of aviation fuel. However, the statutes do not clarify whether the proceeds from the levying and collecting of taxes on aviation fuel are considered airport revenue. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered airport revenue that is subject to the revenue use requirements. FAA's *Policy and Procedures Concerning the Use of Airport Revenue* (64 Fed. Reg. 7696, February 16, 1999) (Revenue Use Policy).

In 2014, the FAA confirmed its long-standing policy that the proceeds from state or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are subject to the revenue-use requirement. 79 Fed. Reg. 66282 (Nov. 7, 2014) (hereinafter 2014 Revenue Use Policy Amendment). The FAA also clarified that state and local taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a state aviation program or for airport-related purposes. The Amendment applies prospectively to the use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering from revenue use requirements.

Airport Revenue and Fuel Sales

The Complainant alleges the Respondent violated Grant Assurance 25 "*by directing local taxes on aviation fuel to the City's general revenue fund,*" which can be used for any government

purpose. [FAA Exhibit 1 Item 8 pages 4, 24-25] The Complainant alleges that the City cannot show that it collected local taxes on aviation fuels prior to 1987. [FAA Exhibit 1 Item 8 page 4]

The Complainant "*requests that all fuel taxes that have been paid into the Chandler City General Fund be returned to the Airport Enterprise Fund*" and used for airport improvements. [FAA Exhibit 1 Item 1 page 2]

The Complainant argues that, *"Under the City's reading, any sponsor having a general sales tax would evade the Grant Assurance 25 obligation if it made a subsequent decision to collect fuel sales taxes upon aviation fuels or passed a specific provision. Such a reading is in contravention of the plain meaning of 49 § U.S.C 47133 and Grant Assurance 25 which provides clearly that only those taxes* ***in effect*** *at the end of 1987 would be grandfathered from this prohibition."* [FAA Exhibit 1 Item 1 page 8]

The Respondent contends the City's tax has been in effect since 1960, and that any recodifications and changes over the years did not materially change the tax, stating, *"The City first imposed privilege and use taxes on the sale of aviation fuels on January 1, 1960 pursuant to Chandler City Ordinance No. 273, approved December 7, 1959. . ."* [FAA Exhibit 1 Item 5 page 26; FAA Exhibit 1 Item 10 ¶ 3; FAA Exhibit 1 Item 10 exhibit 1; *see also* FAA Exhibit 1 Item 10 exhibit 2 (City's tax code as it existed prior to December 30, 1987)] The Respondent also contends that the tax revenue therefore is not airport revenue. [FAA Exhibit 1 Item 5 page 26]

For clarification, although the Complainant and the Respondent refer to the tax on aviation fuel by several terms, based on the definition of aviation fuel tax in the Revenue Use Policy any tax levied on aviation fuel is considered revenue to be used for airport purposes, and a State tax on aviation fuel may also be used to support a State aviation program.

The Director acknowledges that the City may charge sales and use taxes on the sale of fuel. Arizona Revenue Statute § 42-5352 as well as Chandler City Ordinances No. 273 and 3046 identify that the responsibility for the assessment and collection of the sales tax on the retail sales of tangible personal property (including aviation fuel) belongs to the vendors, which in this case are CAS and the Airport. However, in this case, the City appears to be using the tax revenues for non-airport-related purposes under a claim of grandfathered status.

To receive grandfathered status for an aviation fuel tax under the revenue use policy, a State or local authority must submit the enabling legislation and any other substantiation to the FAA for review and status determination. A sponsor cannot assert grandfathered status absent an FAA determination. To come into compliance with Grant Assurance 25, the Respondent must submit either an action plan describing its intended process to comply with Federal law on aviation fuel tax revenues or submit justification for grandfathering status. In the 2014 Revenue Use Policy Amendment, the FAA explained that it:

> *believes that State and local officials should prepare an action plan to initiate the process to amend any non-compliant State laws and local ordinances as necessary to conform to Federal law on use of aviation fuel tax revenues. The action plan should detail the process necessary to develop reporting requirements and tracking systems for discrete*

information on aviation fuel tax revenues. The plan may include a reasonable transition period, not to exceed three years, during which the FAA would agree, in an exercise of its prosecutorial discretion, not to enforce the revenue use requirement against a non-sponsor State or local government. State and local governments should submit an action plan to the FAA within a year of the effective date of this notice. [79 Fed. Reg. at 66286]

Those action plans were due in December 2015. In FAA guidance supporting the 2014 Revenue Use Policy Amendment, the FAA explained that state and local taxing authorities must submit justification for the FAA to determine the grandfathered status of existing state and local taxes in effect on December 30, 1987. [*See* Aviation Fuel Tax Grandfathering Action Plans, FAA Docket No. FAA-2013-0988-0041, *available at* www.regulations.gov] The FAA also would have to review any changes in the tax rate after December 30, 1987 to determine whether the tax remains in compliance with the Revenue Use Policy.

In this case, the Respondent, the airport sponsor, also is the local authority levying the aviation fuel tax. According to FAA records, the Respondent has not submitted this substantiation or received FAA approval of grandfathering status. At this point, the Respondent must submit the enabling legislation and any other substantiating documents (including amendments of legislation) for the FAA to review grandfathering status of the City's tax. Such a determination would be a step towards compliance with Grant Assurance 25.

Hiatus in Fuel Tax Collection and Assessment of Back Taxes

During the approximate period of March 1996 through October 2006, for unknown reasons the City did not assess taxes and the Airport did not pay taxes on the sale of Avgas. From early 2003, the Complainant reported its fuel sales as taxable, but claimed an offsetting deduction based on the flowage fee assessed by the Airport. The Complainant voluntarily paid tax on fuel sales from July 2005 to February 2006. The City disallowed the deduction for the flowage fee claimed by the Complainant. [FAA Exhibit 1 Item 10 page 2]

The City assessed the tax with interest to the Airport and the Complainant. The Airport paid the tax as well as the penalty. [FAA Exhibit 1 item 10 page 2] The Complainant appealed the assessment and ultimately the City waived the tax and interest for the Complainant. The City and the Complainant have paid aviation fuel sale and use taxes since 2007.

The Complainant alleges that, prior to the Complainant succeeding in its appeal of the assessment of back tax, "*the Airport had already paid the assessment which was transferred from the Airport Fund to the General Fund*," and those monies have not been refunded. [FAA Exhibit 1 Item 8 pages 25-26]

Although the Complainant did not specifically assert a grant assurance violation resulting from only one of the two parties paying the back tax assessment, and the Respondent did not specifically respond to such allegation of violation, the Director nevertheless will analyze it.

The Director notes that the City's decision to waive delinquent tax and interest for the Complainant may be a violation of Grant Assurance 25. The proceeds of the sales and use taxes

on aviation fuel must be used for airport-related purposes. The City should articulate the reasons for the waiver, explaining whether the Airport was made whole in relation to the taxes, and why the Airport did not receive the same waiver consideration as the Complainant. The 2004 audit finding conducted by the Respondent and waiver are within the FAA six-year period for the statute of limitations as provided in 49 U.S.C. § 47107(n)(7). This statute uses six years as a benchmark for recovery of capital contributions made by the sponsor and for funds illegally diverted.

Accordingly, the Director finds that the record provides sufficient evidence of revenue diversion to find the Respondent may be in violation of Grant Assurance 25. As stated in the 2014 Revenue Use Policy Amendment, the FAA is exercising its discretion to permit reasonable time to comply with the policy amendment, and the Director accords such discretion to the Respondents. To assist the Respondent coming into compliance with Grant Assurance 25, the Director concludes it must provide the information requested in the Order.

Findings and Conclusions

Upon consideration of the submissions of the parties, the entire record herein, the applicable law and policy and for the reasons stated above, the Director, Airport Compliance and Management Analysis, finds and concludes:

- **The City did not violate Grant Assurance 5, Preserving Rights and Powers, by enacting a City Ordinance requiring voter-approved bonds to fund a runway extension.**

- **The City did not violate Grant Assurance 11, Pavement Preventive Maintenance because the pavement and management program meets the requirements of the grant assurance.**

- **The City did not violate Grant Assurance 21, Compatible Land Use by rezoning land for commercial development compatible with the airport that limited a future runway extension.**

- **The City did not violate Grant Assurance 22, Economic Nondiscrimination, by passing an Ordinance requiring voter bond approval for a runway extension, and the facts do not support that the City utilized Federal grant money and airport enterprise funds to subsidize its self-fueling operation.**

- **The City is not in violation of Grant Assurance 22, Airport Revenue, related to its fuel pricing.**

- **The City did not violate Grant Assurance 24, Fee and Rental Structure because it did not impose artificial barriers to the development of the airport thereby failing to make the airport as self-sustaining as possible.**

- **The City may be in violation of Grant Assurance 25, Airport Revenue, based on the collection of levied fuel tax from the airport while waiving the same levied fuel tax for Chandler Air Service, Inc.**

- **The City may be in violation of Grant Assurance 25, Airport Revenue, by using the proceeds from aviation fuel taxes collected at the airport for the City's general fund purposes instead of airport related uses.**

ORDER

Based on the foregoing discussion and analysis, which takes into account the procedural history and background information, as well as the record, applicable laws and policy, the Director finds that the City of Chandler, Chandler Arizona may be in violation of its Federal obligations related to Grant Assurance 25, *Airport Revenue.*

The City is directed to submit either an action plan as discussed above or the enabling legislation and any other substantiating documents (including amendments of legislation) for the FAA to review grandfathering status of the City's tax. Additionally, the City is directed, within 30 days, to submit a report detailing the reason for the offset of the sales tax obligation on fuel flowage fees in the form of a waiver for Chandler Air Service.

All Motions not expressly granted in this Director's Determination are denied.

RIGHT TO APPEAL

This Director's Determination, FAA Docket No. 16-13-05, is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. [14 CFR § 16.247(b)(2)]. A party to this proceeding adversely affected by the Director's Determination may appeal the initial determination pursuant to 14 CFR § 16.33(c) within thirty, (30) days after service of the Director's Determination.

Byron K. Huffman, Acting Director
Office of Airport Compliance
and Management Analysis

2/9/16
Date