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

**Captain Errol Forman**

**Complainant**
**v.**

**Palm Beach County, Florida, and Palm Beach County Board of County Commissioners**

**Respondents**

**Docket No. 16-17-13**

## FINAL AGENCY DECISION

## I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on an appeal filed by Palm Beach County, Florida, and Palm Beach County Board of County Commissioners (County). The County challenges the findings of the Director's Determination. [FAA Exhibit 2, Item 1].

On February 22, 2019, the Director of Airport Compliance and Management Analysis (Director) concluded that the County is in violation of 49 U.S.C. § 47107(a) and its federal obligations, Grant Assurance 22, *Economic Nondiscrimination* because the Palm Beach County Park Airport (LNA) restrictions prohibiting the operation of certain aircraft at the airport are unreasonable and unjustly discriminatory. The Director determined that the LNA restrictions are not justified and are applied in an unjustly discriminatory manner. [FAA Exhibit 2, Item 1, Page 17].

On Appeal, the County argues that the Director erred in finding that the County's restriction violates Grant Assurance 22, based, in part, on the grandfathered status of the jet restriction under the Airport Noise and Capacity Act of 1990 (ANCA). The County asks for the reversal of the Director's Determination in its entirety or that it be remanded. [FAA Exhibit 2, Item 2, Pages 21-22]. In response, Complainant states that "the Director did not exceed his jurisdiction," that the County is in violation of Grant Assurance 22, that the restriction is inconsistent with ANCA, and that the Director made detailed and sufficient evidentiary findings on the issues. [FAA Exhibit 2, Item 3, Pages 1-2].

The Associate Administrator re-examined the record, including the Director's Determination, the administrative record, and the pleadings and affirms the Director's Determination but modifies and expands the Corrective Action Plan (CAP).

## II. PARTIES

### A. Complainant

Captain Errol Forman (Complainant), a 20,000-hour former airline Boeing 727 captain, owns a Stage 3 Cessna Citation (CE-501), a small twin-engine, turbofan aircraft, which he operates for personal use. The Cessna 500 Citation is a small business jet certificated by the FAA in 1971. It is a Stage 3 airplane that complies with certain noise levels prescribed in 14 C.F.R. Part 36. Complainant does not engage in air cargo operations and his aircraft has a maximum gross takeoff weight (MGTOW) less than 12,500 pounds. [FAA Exhibit 1, Item 1, Page 2, and C-24]. Complainant operated at LNA in 2016 but, in two instances, was notified that jet

operations at LNA are prohibited. [FAA Exhibit 1, Item 12A, Item R-23]. Complainant was also threatened with 60 days in jail and a $500.00 fine. [FAA Exhibit 1, Item 1, Page 2].

**B. Respondent and the Restriction**

LNA is a federally-obligated general aviation airport located south of West Palm Beach, Florida. LNA is a reliever airport for Palm Beach International Airport (PBI)[1] with approximately 126,000 annual operations. LNA has three runways, runway 9/27 being the longest runway (3,489 feet), and runway 15-33, the widest.[2] [FAA Exhibit 2, Item 4]. The planning and development of LNA has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the *Airport and Airway Improvement Act of 1982*, (AAIA), 49 U.S.C. § 47101, et seq. Since 1982, LNA has received over $6 million in Federal airport development assistance. Since 2012, AIP funds have been provided to the County for runway, taxiway, and apron rehabilitation, and airport master planning at LNA. [FAA Exhibit 1, Item 26].

The current LNA FAA Form 5010 *Airport Master Record* states that "Airport Closed to Jet Aircraft & All Aircraft Over 12,500 lbs. Maximum Gross Takeoff Weight." [FAA Exhibit 2, Item 4]. On February 24, 1998, the County adopted Resolution R-98-220, captioned *Airport Rules and Regulations.* It states that [t]he following use restrictions for the Lantana Airport shall be enforced with the Lantana Interlocal Agreement: (a) Pure turbo-jet aircraft and aircraft in excess of 12,500 pounds engaging in air cargo operations are prohibited, (b) All regularly scheduled commercial air carrier passenger flights are prohibited. The restriction appears in a division of the ordinance entitled "Noise Abatement and Control – Lantana Airport." [FAA Exhibit 1, Item 1, Item C-1A]. According to the County, the restriction dates from 1973 and has been in continuous effect, providing that all jet aircraft, in addition to all aircraft weighing in excess of 12,500 pounds engaged in aircraft cargo operations, shall be prohibited from parking, landing or taking off from LNA. [FAA Exhibit 1, Item C-24].

**III. SUMMARY OF THE DIRECTOR'S DETERMINATION**

The Director found that the County is in violation of title 49 U.S.C. § 47107(a) and Grant Assurance 22, *Economic Nondiscrimination,* because the LNA restrictions are unreasonable and unjustly discriminatory. The Director determined that the restrictions are not justified and are applied in an unjustly discriminatory manner. The Director determined that the County did not present any evidence of the relationship between its restriction and noise and that it is unreasonable to impose a restriction in instances where there is no noise justification. The Director also determined that the restriction is unjustly discriminatory because it allows aircraft equally noisy or noisier than the aircraft being restricted. [FAA Exhibit 2, Item 1, Pages 16-17].

The Director also found that the restriction is not grandfathered under ANCA nor approved by the FAA in accordance with 49 U.S.C. § 47524 and 14 C.F.R. Part 161. [FAA Exhibit 2, Item 1, Page 17]. The Director noted the Second Circuit's 2016 ruling on ANCA, which found that noise restrictions that violate ANCA's "legal mandates are, by their nature, unreasonable and arbitrary." [FAA Exhibit 2, Item 1, Page 15, quoting *Friends of East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133, 153 (2d Cir. 2016).] Finally, the Director ordered the County to submit a CAP. [FAA Exhibit 2, Item 1, Page 18].

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[1] The County operates LNA, Palm Beach Int. (PBI), North Palm Beach (F45), and Palm Beach Co. (PHK). [FAA Exhibit 1, Item 12A, Page 3]. LNA was built by the U.S. government in 1940-1941, leased to the U.S. government in 1942, and it served as an Army Air Force (AAF) base for medium and heavy bombers during WWII. In 1946, the AAF cancelled the lease and quitclaim, and LNA was returned to civilian use. FAA Exhibit 2, Item 9.

[2] The ARC is a FAA coding system used to relate airport design criteria to the operational and physical characteristics of the aircraft types for which the airport was designed. FAA Advisory Circular No. 150/5300-13, *Airport Design*. LNA has two Airport Reference Codes: Runways 9/27 and 15/33 are designated as B-II runways, which indicates that they are sized for aircraft with wingspans up to 79 feet and approach speeds up to 121 knots. Runway 3/21 is classified as a B-I runway, designed for aircraft with wingspans up to 49 feet and approach speeds up to 121 knots. FAA Exhibit 1. Item 1, C-24, 2006 Master Plan Update. LNA's runways magnetic compass alignment have changed. For example runway 09-27 is now runway 10-28. See FAA Exhibit 2, Item 4.

**IV. PROCEDURAL HISTORY**

On April 20, 2016, Complainant filed a 14 C.F.R. Part 13 (Part 13) Complaint with the FAA's Southern Regional Airport Division about the jet restriction at LNA. In response to a Part 13 Complaint, the FAA's Southern Regional Airport Division issued an advisory decision on March 17, 2017. In response to follow-up questions from complainant's counsel, the region issued an additional letter on April 18, 2017, that provided further analysis but arrived at the same conclusion. Both of these together constitute the FAA's Part 13.1 Report on the matter. [FAA Exhibit 1, Item 1, Exhibit 23 and FAA Exhibit 1, Item 12A, R-24, Attachment]. The Part 13.1 Report is advisory only and is intended to provide guidance that may form the basis for voluntary resolution. The Part 13.1 Report is not binding on the parties or the FAA and in not a final agency decision.

On August 10, 2017, Complaint filed a Part 16 *Complaint* against the County. [FAA Exhibit 2, Item 1, Pages 2 and 19]. On February 22, 2019, the Director issued the *Director's Determination*. [FAA, Exhibit 2, Item 1]. On March 25, 2019, the County appealed the Director's Determination. [FAA Exhibit 2, Item 2]. On April 9, 2019, Complainant filed a *Brief in Opposition to the Appeal*. [FAA Exhibit 2, Item 3].

**V. APPEALING THE DIRECTOR'S DETERMINATION**

A party adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination [14 C.F.R. § 16.33(c)]. Review is limited to an examination of the Director's Determination and the administrative record upon which such determination was based. The Associate Administrator does not consider new allegations or issues on appeal unless finding good cause to do so. On appeal, the Associate Administrator will consider (1) whether the findings of fact are supported by a preponderance of reliable, probative, and substantial evidence contained in the record; (2) whether the conclusions were made in accordance with law, precedent, and policy; and (3) whether there are questions on appeal that are substantial; and (4) whether any prejudicial errors occurred. [14 C.F.R. § 16.33(e) & (f)].

**VI. ISSUES ON APPEAL**

The Associate Administrator identified the following issues to be reviewed on Appeal:

**Issue 1 - Whether the Director erred in considering ANCA as part of the Grant Assurance 22 review.**
**Issue 2 - Whether Director erred in considering prior FAA actions regarding the restriction.**
**Issue 3 - Whether Director erred in finding the restriction in violation of Grant Assurance 22 and whether the Director's Order was appropriate.**

**VII. ANALYSIS AND DISCUSSION**

**Preliminary Issue - Notice of Investigative Action (March 2018)**

On appeal, the County states that "on March 27, 2018, the Director ordered a meeting between the parties and FAA to informally resolve the outstanding issues in a good faith manner," but "after the meeting was initially scheduled…FAA canceled the meeting (apparently because of objections to the County's representatives at the meeting) and it was never held." [FAA Exhibit 2, Item 2, Page 6]. The Director did seek a meeting as a way to informally resolve this case. [FAA Exhibit 1, Item 21]. However, well into the process, the Director was informed that while legal counsel would attend, County representatives would not. As a result, the Director cancelled the informal resolution attempt because not having an authorized representative of the County would undermine the effort's likelihood of success. [FAA Exhibit 2, Item 5]. In any event, while informal resolution of these matters is desirable, Part 16 does not require the Director to convene such a meeting. Part 16 does require that the Complainant certify that it made good faith efforts to resolve the matter prior to filing a complaint. 14 C.F.R. § 16.21(a). In this case, that requirement was met.

**Issue 1 - Whether the Director erred in considering ANCA as part of the Grant Assurance 22 review.**

**A. County's Position on Issue 1**

The County argues that the Director erred by exceeding "his jurisdiction [and] rendering a decision on the jet restriction's grandfathered status," and reaching "the wrong decision based on a clearly erroneous and unprecedented interpretation of ANCA." The County adds that the Director improperly "…intertwined his [ANCA] conclusion with what should have been a wholly separate analysis of whether the restriction is reasonable under the grant assurances." The County insists that "the Director should assume without deciding that the restriction is grandfathered under ANCA because the issue was beyond his Part 16 jurisdiction, and that the restriction [is] grandfathered in any event." [FAA Exhibit 2, Item 2, Pages 5-6]. The County takes the position that the Director lacks jurisdiction to consider ANCA matters because "Part 16 jurisdiction is limited to investigating an airport sponsor's compliance with grant assurances" and that "ANCA is not one of the enumerated bases for the FAA's Part 16 jurisdiction." The County adds that the "law neither permits nor requires the Director to evaluate whether the jet restriction is grandfathered under ANCA," that ANCA issues "unnecessarily [complicate] this proceeding," and that the Director should have "declined" the ANCA claims. [FAA Exhibit 2, Item 2, Pages 7-9].

The County also argues that the Director's conclusion that the restriction is not grandfathered is in error because "even if the Director's jurisdiction extended to ANCA…the Director erroneously found that the jet restriction is not grandfathered." The County asserts that it "provided undisputed, reliable…evidence that the jet restriction has been 'in effect' and enforced in precisely the same manner since 1973," and that the Director misinterpreted ANCA in terms of what constitutes a 'restriction' and what the words 'in effect' mean. The County also claims that the restriction has been in place, in one form or another, since 1973 and through the 1990 date triggering ANCA, and that the Director failed to grasp this. The County ends by stating that the only outcome "is that the restriction was and remains grandfathered under ANCA," that the Director reached "the wrong conclusion [on grandfathering], and relied on an impermissible shortcut to determining the propriety of the jet restriction under the grant assurances." [FAA Exhibit 2, Item 2, Pages 9-12].

**B. Complainant's Position on Issue 1**

Complainant maintains that the "Director correctly found that the jet restriction was not grandfathered [under ANCA] and violated Grant Assurance 22." [FAA Exhibit 2, Item 3, Page 15]. Complainant notes that the 1973 restriction was rescinded in 1988 before ANCA took effect in 1990, and thus the County enacted a new, and distinct post-ANCA restriction without meeting the ANCA requirements. [FAA Exhibit 2, Item 2, Page 11].

**C. Associate Administrator's Analysis of Issue 1**

In the first section of its brief, the County makes two arguments. First, the County argues that the Director had "no jurisdiction to consider ANCA issues" in a part 16 proceeding. Second, the County argues that even if "the Director's jurisdiction extended to ANCA in this case, the Director erroneously found that the jet restriction is not grandfathered." [FAA Exhibit 2, Item 2, Page 8].

***1. Jurisdiction***

Having examined the arguments of the County, the Associate Administrator finds no error for several reasons. First, the Director properly found jurisdiction in this case. The Director noted that the case involves "an alleged violation of the grant assurances" and therefore jurisdiction is proper under 14 C.F.R. § 16.1(a)(5). At issue in this case was compliance with Grant Assurance 22. [FAA Exhibit 1, Item 1, Page 6]. Grant Assurance 22 provides that an airport sponsor "will make the airport available as an airport for public use on reasonable terms." The Director did not assert jurisdiction in this case on the basis of ANCA. [FAA Exhibit 2, Item 1, Page 11]. Second, the Director properly considered whether the restriction was grandfathered under ANCA because relevant case law has held "actions taken in violation of [ANCA's] legal mandates are, by their

nature, *unreasonable* ….”[3] Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton, 841 F.3d 133, 153 (2d Cir. 2016) (emphasis added).

To comply with the procedural requirements of ANCA, a sponsor must obtain the consent of all airport operators or obtain the approval of the FAA. *East Hampton*, 841 F.3d at 146. However, if the restriction is grandfathered, then such consent or approval is not necessary. 49 U.S.C. § 47524(c). In this case it was undisputed that neither the approval of the operators nor that of the FAA had been obtained. Therefore, in order to show that the County was not in violation of ANCA’s procedural requirements, the Director was required to determine if the County’s restriction was grandfathered.

In commencing his inquiry, the Director noted that under Grant Assurance 1(a) the County was required to comply with “all applicable Federal laws….including but not limited to…Title 49 U.S.C. subtitle VII.” Title 49 U.S.C. subtitle VII includes ANCA. Despite this reference to the statutory subtitle that includes ANCA in Grant Assurance 1(a), the Director found jurisdiction solely on the basis of the alleged grant assurance claim “and did not address the extent to which ANCA can be addressed under Part 16.” [FAA Exhibit 2, Item 1, Page 11]. But, even if we assume (without deciding) that there was no independent basis for ANCA jurisdiction based on Grant Assurance 1(a), the County has failed to convince the Associate Administrator that the consideration of the ANCA grandfathering issue was improper. The Director limited his ruling to the grant assurance issue and the grandfathering inquiry was integral to reach that issue. The fact that the Director looked at what might be an ancillary issue, does not invalidate his finding or preclude jurisdiction.[4]

The Associate Administrator considered two additional arguments raised by the County. First, the County acknowledges that we can take “notice” of the grandfather rights, but warns us not to cross the line by “examining” them. [FAA Exhibit 2, Item 2, Page 8, n.3.] The County provides no legal support for this differentiation and provides no guidance on how to implement such an approach. In any event, there is nothing in Part 16 that bars the Director from considering whether a particular restriction is grandfathered under ANCA, particularly where the Second Circuit has expressly linked compliance with ANCA as an indicia of reasonableness, *East Hampton*, 841 F.3d at 153.

Second, the County cites to the Director’s Determination in *Aircraft Owners and Pilots Assoc. v. City of Pompano Beach*, FAA Docket No. 16-14-01, 2005 WL 3722717 (Dec. 15, 2005), in which the Director did decline to consider whether certain restrictions were implemented in violation of ANCA in the context of a case involving deed restrictions. The County argues that this precedent should apply here. However, *Pompano* can be differentiated from the situation here on several grounds.

First, *Pompano* involved deed covenants that pre-dated the enactment of ANCA. In our case, the assurances at issue expressly reference 49 U.S.C. Subtitle VII, which includes ANCA, and ANCA was promulgated well before the last grant agreement was executed in 2017. Second, in *Pompano* although the Director did not exclude the ANCA issue on the basis of procedural due process, he was concerned that ANCA was not raised until the reply. In this case, it was raised in the complaint and was addressed at length in the County’s *Memorandum of Points and Authorities in Support of Its Motion to Dismiss and Answer*. Third, notwithstanding the language in *Pompano Beach,* it appears that the Director in that case did make, albeit qualified, findings regarding grandfathering. *Pompano Beach,* at *30 n.51. Finally, we note that *Pompano Beach* predates the Second Circuit’s decision in *East Hampton*. In *East Hampton*, the court expressly linked compliance with ANCA to whether a sponsor’s action to restrict access was reasonable. Since reasonableness is a requirement under Grant Assurance 22, the Associate Administrator believes, in light of *East Hampton*, it is permitted, if not required, when examining the reasonability of a noise or access restriction, to consider whether the ANCA process has been followed, and if not, whether grandfather rights exist.

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[3] The Second Circuit was examining reasonability in the context of the “proprietor’s exception” and not Grant Assurance 22, but we find that the reasonableness prong of grant assurance 22 and the “proprietor’s exception” are close enough, if not identical, for the rule to apply to both.

[4] Cf. Osborne v. Bank of U.S., 22 U.S. 738, 823 (1824), (proper jurisdiction even where “other questions of fact or of law may be involved ….”).

***2. Grandfathering Finding***

Having considered the grandfather issue, the Director found that there were no grandfather rights at LNA. The County argues that the Director erred in determining that the restriction was not "in effect" because it was not "formally enacted or codified." According to the County, this "novel interpretation of ANCA is wrong as a matter of law and policy." [FAA Exhibit 2, Item 2, Pages 8-9]. The Director found that there were no grandfather rights based on Palm Beach County Ordinance 88-11. In particular, the Director noted that by its terms, Ordinance 88-11 superseded and repealed all airport regulations adopted on or before October 27, 1987. [FAA Exhibit 2, Item 1, Page 10; FAA Exhibit 1, Item 12A, Exhibit R-10, Page 1]. Ordinance 88-11 did not contain or otherwise re-promulgate the restriction.

The Associate Administrator upholds the Director's determination for several reasons. ANCA provides that certain procedural requirements must be met prior to enacting a noise or access restriction unless it was "in effect on October 1, 1990." 49 U.S.C. § 47524(c). With regards to ANCA grandfather rights, the County points out and we agree: "[t]he single, dispositive issue is whether a restriction is in effect on October 1, 1990." [FAA Exhibit 2, Item 2, Page 11 (internal quote marks and ellipses deleted)]. The County argues that the term "in effect" is not limited to "any particular legislative or administrative vehicle" but, essentially, focuses on the past practices of the parties. [*Id.* at 8.] The County provides no authority to support its approach. The term "effect" can be defined as "[t]he operation of a law, or an agreement or an act." Black's Law Dictionary, p.514 (6th ed. 1990). While that definition may not definitively answer the question, it certainly supports the Director's view that whether the restriction is "in effect" or not is governed by the existence "of a law," in this case a municipal ordinance.

Additionally, the County asks us to consider, among other items, a "Master Plan" dated November 1990. [FAA Exhibit 2, Item 2, Page 11]. But, the review of the Plan only adds support to the Director's approach since the Plan, in multiple references, ties the existence of the restriction to a "County Ordinance" -- from 1973. [FAA Exhibit 1, Item 12A, Exhibit R-16, Pages I-2, I-4 & III-7]. Thus, it appears to be the general practice, and that of the County's as well, to tie the existence of the restriction to a formal enactment. The County also asks us to consider the testimony of its former Airport Director and notations regarding the restriction that appear in Airport/Facility Directories. [FAA Exhibit 2, Item 2, Page 11]. We do not find the Directories to be a reliable or definitive indicia of the laws in effect on October 1, 1990 and we do not find the testimony of the former Director to be persuasive in light of the otherwise clear language of Ordinance 88-11.

We additionally note that when the restriction was referenced in a subsequent Interlocal Agreement dated March 12, 1991, between the County and the City of Atlantis, the Interlocal Agreement noted that the restrictions were not necessarily enforceable. The County promised to enforce the restrictions only "to the extent of County's authority" to do so. The Interlocal Agreement states that the "restrictions and guidelines … *are simply guidelines* …." Interlocal Agreement, ¶ 1 (emphasis provided). And, the Interlocal Agreement provided further that "if these guidelines, restriction and procedures cannot be enforced by the County due to FAA regulations, the County hereby agrees to take reasonable steps to attempt to make these guidelines, procedures and restrictions mandatory." The "reasonable steps" that the County needed to make, an application under ANCA filed under 14 C.F.R. Part 161, have not been taken.

The ANCA grandfathering consideration was clearly documented by the Director. The 1973 restriction was rescinded by County Ordinance 88-11, which, as noted in its heading, is "An Ordinance of the Board of County Commissioners…Promulgating Airport Regulations." The Ordinance specifically provides that it "supersedes and *repeals* [emphasis added] all airport regulations adopted…before October 27, 1987." [FAA Exhibit 1, Item 12A, Item R-10, p.1.]. The 1991 Interlocal Agreement is post-ANCA, and thus cannot establish grandfather rights; moreover, it refers to the restriction as "simply guidelines."[FAA Exhibit 2, Item 3, Page 9]. The restrictions do not appear to be repromulgated until the adoption of Resolution R-98-220 on February 24, 1998. In this 1998 Resolution they appear in a division entitled, in part, "Noise Abatement and Control."

Finally, the Associate Administrator's decision is supported by ANCA itself. In addition to the general grandfather provisions found in 49 U.S.C. § 47524(c), subsection (d) has a number of specific conditions, similar in nature to grandfather rights, which if satisfied, provide that the subsection (c) requirements for either aircraft operator or FAA approval do not apply. These subsection (d) conditions are all tied to specific agreements, restrictions, intergovernmental agreements or certain amendments, none of which are presented here. Specifically, the Interlocal Agreement that the County relies upon, its other frailties notwithstanding, does not satisfy the statute specific requirement for "intergovernmental agreements" since it was not in effect on November 5, 1990. 49 U.S.C. § 47524(d)(3). There is no support for the County's approach of establishing grandfather rights that is based on an alleged practice untethered from law and in contradiction to record evidence.

**Issue 2 - Whether Director erred in considering prior FAA actions regarding the restriction.**

**A. County's Position on Issue 2**

The County takes the position that the Director "not only revisit[ed] but reverse[d] the FAA's prior determinations finding that the jet restriction is reasonable" and did so without support of a "preponderance of reliable, probative, and substantial evidence contained in the record." The County objects to the Director decision because the "restriction…had previously been expressly approved" by FAA, and that FAA "supported the…restriction… for over forty years." The County cites several such "approvals" in 1973, 2001, and 2015 and has "relied on the FAA's initial determination[s]" for compliance with its grant assurances. The County adds that the Director should not have ignored "the settled expectations of the County and the communities surrounding the airport" or called into question whether an airport sponsor can ever rely on any informal or formal decision of the FAA under the grant assurances." [FAA Exhibit 2, Item 2, Pages 14, and 17-18].

**B. Complainant's Position on Issue 2**

Complainant's position is that the Director's finding that the restriction violates Grant Assurance 22 is supported by "reliable and probative evidence and in accordance with FAA policy and precedent." [FAA Exhibit 2, Item 3, Pages 17-18].

**C. Associate Administrator's Analysis of Issue 2**

A review of the Director's Determination shows that previous FAA actions were discussed. The Director properly determined whether prior FAA actions were formal or informal and whether they were based on a complete record. The Director did not ignore previous FAA actions and explained the outcome based on a detailed review of the record. The Director recognized that FAA did informally opine on the restriction in the past but found that none of these opinions analyzed the issue in a comprehensive, binding, or final manner.

First, with regard to the letter of June 25, 1973, this letter predates ANCA. As the Complainant asserts: [t]he single, dispositive issue is whether a restriction is in effect on October 1, 1990." The 1973 letter provides no indication as to whether the restriction was in place on October 1990. If the restriction is not grandfathered then the restriction is inherently unreasonable unless the ANCA procedures were followed. Friends of the E. Hampton Airport, Inc., 841 F.3d at 153. There is no explanation or supporting analysis in the 1973 letter on how the restriction was reasonable and not unjustly discriminatory.

Second, with regard to the FAA letter of December 11, 2015, the Acting Manager appears to suggest the restriction is "permissible." But, while the letter references the County's circa 1973 restriction, it does not discuss the 1988 repeal. From this it is reasonable to conclude that the author was simply unaware of a key legal development which has now come to light in this proceeding. The letter was not the result of an adjudication based on a comprehensive administrative record and appears to be based on incomplete facts. For that reason the Director was correct in according it limited weight. As with the 1973 letter, there is no explanation or supporting analysis.

Third, the FAA 2001 consideration of an informal Complaint by the Aircraft Owners and Pilots Association (AOPA) did not result in an FAA determination, so this is not analogous to "FAA approval." [FAA Exhibit 1, Item 12A, Page 11]. There was no FAA determination concerning the AOPA complaint. Moreover, even if FAA did document its review of AOPA's complaint, such a review does not constitute a final order. Finally, the FAA's March 17, 2017 letter and related record (Part 13.1 Report) constitutes an informal review of a reported violation. The review was undertaken by FAA's regional office and does not constitute a final order. Although this letter/finding did not address the airport's status under ANCA, along with its record, it does provide a more detailed review of the issues including explanations and supporting analysis concerning the reasonableness and unjustly discriminatory aspects of the restriction. Although it found restriction on certain runways may be proper, overall it held there was no justification for the restriction as such operations could occur on runway 9-27.

**D. Conclusion on Issue 2**

The Associate Administrator finds that the Director did not err in considering prior FAA actions regarding the restriction. Rather, the Associate Administrator finds that (1) the Director correctly identified and analyzed past FAA actions and statements and found that none of them demonstrated that the airport was grandfathered based on a restriction in place on October 1, 1990 and (2) that the Director correctly considered relevant supporting analysis concerning the restriction's reasonableness and unjustly discriminatory effects.

**Issue 3 - Whether Director erred in finding the restriction in violation of Grant Assurance 22 and whether the Director's Order was appropriate.**

**A. County's Position on Issue 3**

The County objects to the Director's Decision and asserts that the Director did "not point to a single fact that demonstrates the Complainant has shown that the jet restriction is unreasonable, or provided any evidence." The County states that it "provided several documents demonstrating that the jet restriction is reasonable," but that the Director ignored that evidence and failed "to engage in any analysis whatsoever as to why the restriction has always passed muster under the grant assurances until Complainant initiated this proceeding." The County objects to the Director's stating the County did not produce evidence of the relationship between its restriction and noise or that it is unreasonable. [FAA Exhibit 2, Item 2, Pages 15-16]. The County also challenges the Director's implication that the County should also repeal its restriction of "cargo operations utilizing aircraft above a certain certificated takeoff weight." [FAA Exhibit 2, Item 2, Page 21].

Specifically, the County states that the Director made "no effort to assess whether the jet restriction is justified in light of airspace, safety, efficiency, noise, national security, or any other previously legitimate and accepted concern." The County claims that the "the record contains no rebuttal" and the Director did not even attempt to explain why the Southern Region and the ATCT Manager erred in concluding that there remains a safety justification for the restriction." The County also argues that the "Director's Order is unclear, inappropriate, and does not allow the county to address the alleged noncompliance with any approach other than a complete repeal of the jet restriction." The County argues that "it is entirely plausible that a measured approach to the situation will reveal that a modification, and not a full repeal, of the jet restriction is safe, protective of the County's interests, and satisfies…concerns with respect to the grant assurances." Finally, the County insists that the Director should not order the County to take action to rescind the restriction because it could "trigger [an] environmental review," and that "neither the FAA nor the County should circumvent NEPA's [*National Environmental Policy Act*] procedural requirements by modifying the restriction under the cloak of a Part 16 proceeding." [FAA Exhibit 2, Item 2, Pages 16, 19-21].

**B. Complainant's Position on Issue 3**

Complainant disagrees with the County's claim that this was not a "valid *prima facie* case for a Grant Assurance 22 violation based on his allegations," and adds that the Director did show that the restriction is unreasonable and unjustly discriminatory and that evidence was provided to show this. Complainant also maintains that the "Director's order is not unclear, is not inappropriate" and that the County was offered "no

less than three opportunities to correct [the issue] and has refused to do so." Finally, the Complainant argues that the Director gave the County the ability to submit a CAP allowing a "measured approach, process and time frame" to rescind the restriction." [FAA Exhibit 2, Item 3, Pages 18-19].

**C. Associate Administrator's Analysis of Issue 3**

Although Complainant's operations at LNA are impacted by the restriction on jet aircraft and the County asks that the case be limited to that instance, the Associate Administrator, as the Director did, cannot ignore the other elements and impacts of the restriction. The restriction's impact on all other airport users using the National Airspace System (NAS) are of interest. In protecting the public access to a system of federally-obligated airports, the FAA has the responsibility to consider whether the County is complying with its federal obligations, applicable to all users. This is not a leasing dispute affecting one user. It is a total ban with system-wide implications. Airport noise and access restrictions that are not in compliance with ANCA, adequately supported by documentary evidence, or that are otherwise unreasonable and unjustly discriminatory, violate important Federal laws concerning airport access, noise, and airspace management. There are important federal interests at stake here such as upholding the FAA's national policies affecting flight, airport access, efficiency, and aircraft noise.

Under Grant Assurance 22(i), certain restrictions may be permissible if such action "is necessary for the safe operation of the airport necessary to serve the civil aviation needs of the public." Under this assurance, it is the sponsor, not the Director, that must demonstrate the necessity of a safety or civil aviation based restriction. Nevertheless, to address the County's argument that the Director did not provide evidence to substantiate his findings or truly analyze the facts of the case, the Associate Administrator re-considered all of the relevant elements in the LNA restrictions, to include consideration of those related arguments and facts presented by the parties and contained in the record or necessary for proper adjudication. Therefore, in addressing the county's arguments on Appeal on whether the restrictions are consistent with Grant Assurance 22, the Associate Administrator considered and clarifies the separate elements of the restrictions, to include its jet noise, aircraft weight, and cargo operations elements, its safety and efficiency justification, and its NEPA implications, all arguments presented by the County on Appeal. Finally, the Associate Administrator discusses the adequacy of the Director's Order, which the County challenges.

***1. Jet Noise Component***

The restriction at LNA was enacted to "to limit [airplanes] with excess noise from utilizing [the] airport." [FAA Exhibit 1, Item 12A, Page 6]. This explicit intent is clearly discussed in the Director's Determination and supported by the record. [FAA Exhibit 2, Item 1, Pages 10-12]. The minutes of the adoption of the 1973 restriction specifically refers to "Lantana Noise Regulation" as the "Subject Heading" under which the restriction was considered, voted upon, and ultimately adopted. [FAA Exhibit 1, Item 12A, Item R-7]. In citing the 1991 Interlocal Agreement, the County states the agreement "limit[s] the impact of aircraft noise." [FAA Exhibit 1, Item 12A, Page 4]. The County's rebuttal in the Part 13 investigation "explains that the County has several policy and practical justifications for its restriction at LNA, one of which is noise." [FAA Exhibit 1, Item 13, Page 6]. The restriction appears in County Resolution 88-220 under a division entitled, in part, "Noise Abatement and Control." As such, the Director correctly focused on the fact that the County's restriction appears to be essentially a "noise" restriction. To pass muster under Grant Assurance 22, a noise-based restriction must be "reasonable" and must be imposed "without unjust discrimination." A restriction that did not follow the procedural requirements of ANCA and is not otherwise grandfathered is "inherently unreasonable." And, even apart from the ANCA concern, we find no justification for the noise restriction that would satisfy the broad access requirements provided for under Grant Assurance 22.

The requirement that a federally funded airport be "available for public use on reasonable terms" requires that if there is a noise regulation restricting airport use, it must be based on noise. This means that is needs to be (1) justified by an existing non-compatible land use problem; (2) effective in addressing the identified problem without restricting operations more than necessary; and (3) reflect a balanced approach to addressing the identified problem that considers local and federal interests. [FAA Order 5190.6B, Pages 13-8 and 13-9]. There is no valid evidence on any of the above in this case. The record contains no noise-based

justification for the restriction other than the stating that there is public support and expectations for the restriction. The County does state, however, that the purpose for the restriction was in part "in the best interests of the public health, safety and welfare" [FAA Exhibit 1, Item 12A, Page 9]. But these statements are not demonstrated.

As the Director stated and as the record shows, the County has not produced valid noise justification to substantiate the reasonableness of the restriction. [FAA Exhibit 2, Item 1, Page 15]. What the record shows is a concern about noise going back to 1973, but no substantive data was considered or developed since. The County has responded to the "noise problem" by restricting access but has not provided adequate documentation of the noise problem or the restriction. For example, there are no noise studies, no 14 C.F.R. Part 150 noise maps or similar studies/materials, no data on the severity of the noise problem or if the noise situation has increased or decreased over time, no data validating whether certain aircraft types or operations impact noise contours, no alternative studies, no compatible land use assessments, or other relevant noise documentation to indicate that the noise problem has been, or is, substantiated. Not surprisingly, these are the same types of documents that would be required to support an access restriction under ANCA. *See* 14 C.F.R. part 161.

Just as with reasonableness, an airport sponsor is prohibited from unjustly discriminating among airport users when implementing a noise-based restriction. [FAA Order 5190.6B, Page 13-12]. For example, a noise restriction cannot restrict quieter aircraft while permitting noisier aircraft to operate at the airport or otherwise use unsubstantiated discriminatory classifications, such as jet versus propeller aircraft, large aircraft versus small aircraft, heavy aircraft versus light aircraft, aircraft engaged in carrying passengers or carrying cargo, and so on. The LNA restriction contains such unsubstantiated discriminatory classifications.

A review of the submissions by the County perpetuates the popular assumption, unfortunately common in 1973, that jet aircraft are necessarily noisier than propeller aircraft and that such a distinction or perception is enough to restrict with little, if any, justification. Such a view is unfounded. It was so then, it is today, but more so today because of the higher number of much quieter jet aircraft operating in the NAS. As the Director correctly states, banning jet aircraft on the basis of noise is not permissible because it cannot be argued that noise produced by modern type fan-jets is different from louder fixed-wing propeller aircraft which are allowed to use the airport. [FAA Exhibit 2, Item 1, Page 16].[5] Yet, the County asserts that "jets are generally noisier than propeller aircraft, and thus it was reasonable for the County to make the distinction…for noise…purposes" at LNA. [FAA Exhibit 1, Item 17].

There is unjust discrimination in this case. Noisier aircraft are permitted to use LNA. Simple facts show this. For example, at take-off, Complainant's 11,400 lbs., Stage 3 Citation (CE-501) jet has a noise level of 67.3 dBA, while a small single-engine 4,000 lbs. Cessna 210 propeller aircraft, has a noise level of 71.4 dBA. On approach, Complainant's Citation jet has a noise level of 77.7 dBA, while a Beech 60 has a noise level of 80.0 dBA.[6] This is as true today as it was in 1973 since all of these aircraft existed in 1973.[7] Although the effects of the restriction are exacerbated today because many more modern jet aircraft are quieter than propeller aircraft, the fact is that the restriction was flawed the day it was adopted.

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[5] See Santa Monica Airport Association v. City of Santa Monica, 481 F. Supp. 927 (C.D. Cal 1979). In City and County of San Francisco v. FAA, the Ninth Circuit Court of Appeals affirmed the FAA's determination that the airport regulation was unjustly discriminatory because it allowed aircraft that were equally noisy or noisier than the aircraft being restricted to operate at the airport and to increase in number without limit while excluding the 707 based on a characteristic other than noise. FAA Order 5190.6B, Chapter 13 *Airport Noise and Access Restrictions.*

[6] See AC 36-3H *Estimated Airplane Noise Levels in A-Weighted Decibels,* 2012. As noted in FAA Order 5190.6B, Page 13-17, the noise levels in AC 36-3H expressed in A-weighted noise levels are estimated as they would be expected to occur during type certification. AC 36-3H should be used as the basis for comparing the noise levels of aircraft that are not subject to noise certification rules to aircraft that are certificated as Stage 1, Stage 2, or Stage 3 under 14 C.F.R. Part 36. Advisory Circular (AC) 36-3H allows an "apple-to-apple" comparison among aircraft certificated under a variety of standards. This AC provides the means by which to compare prop planes to jets.

[7] In 1973, before the County adopted the restriction, AOPA's legal counsel sent a letter to the County questioning the legality of the restriction from the grant assurances perspective and warning that the restriction was likely unreasonable and unjustly discriminatory under the grant assurances. FAA Exhibit 1, Item 13, as an e-mail attachment submitted to FAA in April 2016 as part of the 14 C.F.R. Part 13 Complaint.

Against this background, the Associate Administrator finds that the Director correctly found that the County has not conducted any analysis to determine if the jet aircraft ban was justified, or continues to be justified, or whether it denies access to aircraft with an unjustly discriminatory effect. [FAA Exhibit 2, Item 1, Page 16].

***2. Aircraft Weight Restriction Component***

The Director's Order specifically asked the County to rescind the restriction, which includes the weight limitation. The weight limitation is unreasonable because it is part of the County's "noise" regulations and there is no justification in the record linking noise and weight. Many aircraft weighting less than 12,500 lbs. generate higher noise levels than aircraft above that weight. For example, at take-off, a dual-wheel 14,500 lbs. SA226-AC Metro III turboprop has a noise level of 69.25 dBA, while a much smaller 5,100 lbs. Beech B55 propeller aircraft has a noise level of 73.0 dBA.[8] This disparity shows the unjustly discriminatory effect of the weight limitation. A review of the record reveals no plausible justification for the weight restriction.

As part of the record submitted by the County, in 2001, the County attempted to justify the 12,500 lbs. limitation. The County justified the weight limit because LNA is a "General Utility Airport with the design aircraft" based on the "Beechcraft King Air, an aircraft…limited to 12,500 pounds or less," citing FAA airport design advisory materials as justification. The County adds that "while the airport runways are constructed to a 30,000-pound capability, a number of the other operational pavements at [LNA] have lesser weight bearing design capabilities," and that some "of the movement areas and aprons at the airport are limited to 12,500 pounds." The County also states that if it failed to restrict in that manner, it would incur "increased maintenance costs" and thus, "a limit based in part on 12,500-pound pavement strength" is "reasonable and non-discriminatory." [FAA Exhibit 1, Item 12A, Item R-19].

The weight bearing capacity of the LNA's pavement is 30,000 lbs. single wheel. In fact, the technical data on LNA's three runways shows that the pavement strength may exceed this. The data indicates that some of the runways at LNA can accommodate aircraft weighing more than 30,000 lbs., including aircraft with different landing gear configuration, i.e., dual-wheel. [FAA Exhibit 2, Item 8]. The fact that LNA is designated as a General Utility Airport and may have been upgraded using the 12,500 lbs. standard does not justify restricting all aircraft above that weight. The use of or mere reference to FAA design standards and criteria does not suffice to restrict aircraft operations. FAA design standards are not intended to be used to limit operations of an airport and may not be used for that purpose. In the Matter of the city of Santa Monica, FAA Docket No. 16-02-08, 2009 WL 3176873, Final Agency Decision and Order, p.37-38 (July 8, 2009) ("design standards are not operational requirements and are not mandatory for existing facilities").[9]

The fact is that aircraft heavier than the standard aircraft may have a lower relative damage factor than some lighter aircraft. A significant number of aircraft weighing less than 12,500 lb. that use LNA can cause wear and damage to the pavement in a similar manner as aircraft weighing more than 12,500 lbs. As a more technical explanation, the County's arguments and statements do not specify locations and related conditions, specific wheel configurations, Pavement Condition Index (PCI), base course, sub-base or overlay type, needed or expected maintenance requirements, levels of use, or methodology used to determine the relative damage by each aircraft, Cumulative Damage Factor (CDF). Aircraft heavier than the standard aircraft may have a lower relative damage factor than some lighter aircraft. Small aircraft may have a much larger impact on the thinner sections designed specifically for light aircraft than they will on thicker pavements designed for all aircraft.[10]

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[8] See AC 36-3H *Estimated Airplane Noise Levels in A-Weighted Decibels*, 2012.

[9] This final agency decision was modified to clarify certain procedural issues, not relevant here, by In the Matter of the City of Santa Monica, FAA Docket 16-02-08, Decision and Order (Sept. 3, 2009) aff'd, City of Santa Monica v. FAA, 631 F.3d 550 (D.C. Cir. 2011).

[10] See Bombardier Aerospace Corporation, and Dassault Falcon Jet v SMO, FAA Docket 16-03-11, Pages 28-33. In this decision, the FAA noted, with respect to pavement restrictions, that specific data is necessary, such as pavement test data, existing pavement strength, load carrying capacity of other pavements, such as aprons, thickness verification cores or other standard geo-technical investigation efforts, pavement life curve, etc. Other factors would include the fact that many of LNA's pavements where originally built for use by much heavier aircraft, under Grant Assurance 11 *Pavement Preventive Maintenance,* the County must maintain, replacement or reconstruction of pavement at the airport, and that FAA has recently rehabilitated some of LNA's runway, taxiway and apron pavements.

The effects of reconstruction and other critical data play a role in how taxiways and other pavements at LNA can accommodate, at least some aircraft weighing more than 12,500 lbs., especially depending of dual-wheel configurations. Certainly, restricting a dual-wheel 14,500 lbs. Fairchild SA226-AC Metro III turboprop from using LNA while permitting a smaller single wheel 12,500 lbs. designs, may be unreasonable and unjustly discriminatory.

Thus, contrary to the County's position, the use of a 12,500 lb. benchmark as the basis for restricting is a fundamental flaw in any such justification to restrict because aircraft just above and below that weight would have similar effects on the pavement.[11] With no valid noise or technical justification to restrict to 12,500 lbs., the weight element in the restriction is both unreasonable and unjustly discriminatory.

### *3. Cargo Operations Component*

The County restricts jet aircraft and aircraft in excess of 12,500 pounds engaging in "air cargo operations." [FAA Exhibit 1, Item 1, Item C-1A]. The "cargo" element in the noise restriction cannot be ignored or dissected from the rest of the restriction. The cargo restriction remains a potentially "unreasonable and unjustly discriminatory" variable. As part of the County "noise restriction," whether an aircraft is engaged in cargo operations or not, is irrelevant. Because there is no valid "cargo" justification in the record, it is unreasonable and unjustly discriminatory. What an aircraft carries, people or cargo, or what operation it performs, is unrelated to noise, weight, safety or any other justification put forth by the County. If an aircraft carrying passengers is permitted at LNA, the County cannot restrict that same aircraft if it carries cargo instead. Certainly, it would not be nosier, less safe, or impact the airspace differently.

Restricting a cargo carrying aircraft at LNA and permitting the same aircraft carrying passengers or engaging in other activity, cannot be justified. Besides the unreasonableness and unjustly discriminatory aspects of the County's restriction, restricting an aircraft operating under 14 C.F.R. Part 135 holding an Air Carrier Certificate or Operating Certificate under 14 C.F.R. Part 119, as a cargo operator at LNA has no justification in the record. The record contains no valid justification for this arbitrary distinction on the type of operation that an aircraft might conduct. As a restriction to any airport user intending to carry cargo, this unreasonable, unjustly discriminatory element of the restriction must be corrected.[12]

### *4. Safety and Efficiency Justification*

The County argues that the "noise" restriction should be upheld because of safety or efficiency considerations. However, the County has failed to demonstrate sufficient safety and efficiency concerns. It did not generate any safety or efficiency justification for the restriction. Rather, it selectively relies on earlier FAA statements, which the County portrays as its own safety and efficiency justification, while dismissing precedent unfavorable to its position such as the findings in the informal Part 13 proceeding (which found the airport did have a runway that was appropriate for jet traffic).[13] And, we are examining this issue notwithstanding that the evidence strongly suggests that the real reason for these restrictions is noise mitigation and not safety and efficiency.

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[11] See Bombardier Aerospace Corporation, and Dassault Falcon Jet v City of Santa Monica, FAA Docket 16-03-11, Pages 49-50.

[12] The Associate Administrator notes that the 1991 County's Noise Abatement and Noise Control regulations for LNA also prohibits regularly scheduled commercial and air carrier flights. FAA Exhibit 1, Item 1, Item C-4. However, no noise justification (or any other justification) is provided.

[13] The County did make other safety arguments to justify the restriction. In 2001, the County stated that LNA "is designed to meet FAA criteria associated with Aircraft Approach Category B, Design Group II [B-II]," and that some "of existing business jets do not meet the approach category criteria for this design group." The County added that it "has an affirmative obligation to take reasonable steps to preclude operations by aircraft that are not within the prescribed design criteria." [FAA Exhibit 1, Item 12A, Item R-19]. Such arguments are rejected. FAA design standards are not intended to be used to limit operations at an airport. Airport design standards do not determine whether a given airplane can safely land or take off at a given airport. Operational safety does. The FAA does provide safety standards to determine if a particular operation is safe: reference to 14 C.F.R. Part 23 and Part 25 FAA-approved aircraft certification manuals for each aircraft, which define minimum requirements for safe operation under various conditions, e.g. wind conditions and available runway length. Other operating regulations, i.e., C.F.R Part 91 and Part 135, supplement this. It is incorrect to assume that aircraft that are larger or faster than B-I or B-II aircraft cannot operate at LNA. [See FAA v. City of Santa Monica, FAA Docket No. 16-02-08, Pages 2, 4, 20-25, and 31-43.] The B-II classification, referred to as ARC (Airport Reference Code) indicates that the runways can handle, but is not limited to, aircraft with wingspans up to 79 feet and approach speeds up to 121 knots. This does not preclude use of the runway by aircraft other than meeting a B-II category, such as a higher classification C-I or a C-II. See FAA v. City of Santa Monica, FAA Docket No. 16-02-08. In any event, both of these criteria are compatible with the Cessna 501 dimensions and performance. But this is only one element which can, but does not needed to be reviewed in light of the regulatory oversight the FAA.

The FAA, not the County, is the final authority in making safety and efficiency determinations and to balance these within the context of an airport owner's restrictions on airport use. As the Director noted, the FAA's authority preempts the County from regulating aviation safety and airspace use. [FAA Exhibit 2, Item 1, Page 15]. In making a final determination on safety, FAA must determine whether or not the aeronautical activity being restricted can be safely accommodated on the airport and, therefore, whether the proposed restriction is justified. Efficiency impacts are also relevant, and the FAA's authority over the use of airspace includes that consideration.

In the FAA's Part 13.1 Report and the follow-up letter dated April 18, 2017, which included coordination with other relevant FAA entities (e.g., Air Traffic and Flight Standards), the Southern Region Airports Division found that permitting jet aircraft operations at LNA would "not affect safety or efficiency at LNA or surrounding airports." [FAA Exhibit 2, Item 1, Page 2]. The Director agreed with this finding and so does the Associate Administrator. The Director correctly applied the underlying statutory authority and policy standard and found that by restricting access to LNA on the basis of safety and efficiency without adequate FAA approval or justification, the County has imposed unreasonable terms and conditions on aeronautical users at LNA. [FAA Exhibit 2, Item 1, Page 16].

On Appeal, the Associate Administrator studied the County's arguments that the Director did not "consider whether the restriction is even partially justified by safety and efficiency or other concerns," and that FAA's determination on safety was "undocumented." [FAA Exhibit 2, Item 2, Page 21]. The County asserts this argument, in part, because FAA's Part 13.1 Report letter found no safety or efficiency concerns with runway 9-27, but did identify such concerns for runways 3-21 and 15-33.

The record of the Part 13.1 Report expressly indicates that FAA "Flight Standards does not object to turbojet operations at LNA" assuming they are conducted safely within the operating authority of the pilot in command. As part of the record of the Part 13.1 Report, the FAA noted that FAA Flight Standards considered "the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground," and that the FAA has considered matters such as the effect the proposal would have on the existing airspace structure and the impact on existing or planned traffic patterns of neighboring airports. [FAA Exhibit 1, Item 12A, R-24, Attachment]. Simply put, the FAA has determined that jet aircraft can be safely accommodated at LNA while meeting the applicable FAA regulations and safety and airspace use requirements.

The County inappropriately dismisses Flight Standards position that jets can safely operate at LNA. [FAA Exhibit 1, Item 12A, Pages 6-7]. FAA Flight Standards provides the definitive position on aviation safety, and the Director was appropriate in relying upon such findings. Flight Standards evaluates a specific case and determines the level of evaluation that might be needed. There is no evidence in this case that Flight Standards needed to expand its assessment since jet operations at airports like LNA are standard occurrences all over the country, often in complex airspace such as in, near, or under Class C and B airspace, from airports with varying runway lengths and other operational constraints. There is no indication in the record that additional or "special safety assessments" were necessary, as the County argues. FAA Flight Standards is the ultimate expert arbitrator of whether or not an aircraft, jet or not, can be safely accommodated at an airport. In this case, Flight Standards' position is that jets can safely operate at LNA and Complainant's Citation 501 jet, and others like it, can safely operate at LNA.

While we agree with the overall conclusion of the Part 13.1 Report that the airport can safely and efficiently accommodate jets, this Associate Administrator for Airports, however, does not agree with all the findings in the Part 13.1 Report. Specifically, our analysis does not support the finding that safety and efficiency concerns justify restrictions on runways 3-21 and 15-33. The Part 13 did not consider a number of relevant issues. While the record associated with the Part 13.1 Report identified some airspace impacts of some potential new operations at LNA would occur, e.g., possibly south/north operations impacting PBI's flows, this only suggests that modifications to the airspace use/procedures may be necessary. The fact that such modification may be required does not render the subject operations unsafe or inefficient and it does not justify restricting any of LNA's runways. FAA frequently modifies air traffic procedures and airspace uses to accommodate changes in air traffic, airport activity, and airspace use. Such actions are not indicative of a

safety issue that justifies airport restrictions. This critical FAA function may not have been clearly explained in the Part 13.1 Report, but the record for the Part 13.1 Report does indicate that FAA Air Traffic (Local Air Traffic and Technical Operations) was consulted and their input considered. [FAA Exhibit 1, Item 12A, Exhibit R-24]. Thus, to the extent the Part 13.1 Report suggests that the potential need for future airspace modification suggests that a safety issue exists which justifies an airport restriction, the Associate Administrator rejects that finding.

It is true, as the County points out, that the 2001 FAA Palm Beach International Air Traffic Control Tower (PBI ATCT/Tower) Memorandum concluded that the "Palm Beach Tower [did] not support the proposal to operate Jet Aircraft into LNA." But, this position was not supported by the Part 13.1 report years later, which included FAA Air Traffic as part of that detailed review process. Moreover, it is unclear what the PBI ATCT Memorandum was based on and the analysis that was conducted, if any. While this Memorandum may express an opinion of its author at the time, it is not tantamount to an agency finding or order and is more in the nature of a non-final internal deliberation. Finally, while the Tower's input should be considered, it is not the Tower that has authority on the issue of airport restrictions or noise, rather it is FAA's Office of Airports.

The Part 13.1 Report does not validate the restriction of jet aircraft at LNA. Based on our investigation and analysis we find no safety or efficiency justification to restrict jet aircraft at LNA. No justification exists that would restrict landings, take-offs, arrivals, or climb-outs from LNA of jet aircraft and access to the NAS when compared to other aircraft, similar in performance, which can use LNA, such as fast single-engine types or large turboprop types. The operation of Complainant's Cessna 501 Citation jet or an even smaller, slower or lower performance jet aircraft at LNA presents no safety or efficiency concerns. The same is true in some cases for larger, heavier types. In such scenarios, no particular issue in terms of safety or airspace use, certainly not one that FAA's procedures cannot accommodate, justifies restricting them. The airspace and procedural impacts that were identified are not of the magnitude that would preclude safe operations or otherwise justify a restriction or ban.

### *5. NEPA Implications*

The County cannot argue that the National Environmental Policy Act (NEPA) requires an environmental evaluation of this Final Agency Decision or any prior decision in this administrative enforcement proceeding. As the County correctly identified, FAA's Order 1050.1F, *Environmental Impacts: Policies and Procedures* (July, 2015) identifies certain FAA authorities that, when exercised, do not qualify as a federal action subject to NEPA. Administrative enforcement proceedings under 14 C.F.R. Part 16 are not subject to environmental review. The inapplicability of NEPA does not depend on the idea that the FAA's decision merely "order[s] the County to take administrative action," as the County indicates. [FAA Exhibit 2, Item 2, Page 20]. Rather, NEPA does not apply because administrative enforcement proceedings are not a Federal action subject to NEPA. Simply put, NEPA simply does not apply to these proceedings. As the FAA told the County in 2017, "this matter did not result in any action requiring analysis under the *National Environmental Policy Act* (NEPA)." [FAA Exhibit 12A, Item R-24]. Thus, by relying on such NEPA references in the record, the Director did not ignore NEPA implications. This Final Agency Decision does not reflect a conclusion about the FAA's future NEPA obligations associated with approval and implementation of a corrective action plan consistent with this FAD.

### *6. Adequacy of the Director's Order*

A review of the Director's Order by the Associate Administrator does not validate the County's allegations that the Order or CAP "were unclear, inappropriate," or otherwise did "not allow the County to address the alleged noncompliance with any approach other than a complete repeal of the jet restriction." As noted above, the restriction violates the County's grant assurance obligations, and its preservation or a *status quo* is not permissible. The record does reflect that the County was given numerous opportunities and time to address the restriction and initiate corrective action in some form. Yet, it has not done so. Even before the Director's Order, the County was asked three times by FAA to develop a corrective action plan (CAP) to repeal the restriction, but it did not.

The Director gave the County the ability to submit a CAP that would allow a "measured approach, process and time frame to revoke/rescind the restriction," and modify related guidance. [FAA Exhibit 2, Item 3, Pages 18-19]. The Director's Order is reasonable in scope and detail. It was appropriate for the Director to ask the County to cure the violation by seeking that the County rescind the restriction since the restrictions are not in conformance with either ANCA and/or the grant assurances. This case differs from others in the past where the FAA worked with the airport sponsor to modify an unreasonable and non-unjustly discriminatory restrictions. In the case of San Jose, which the County cites, the facts of that case were very different; the sponsor recognized the shortcomings of their restrictions, was willing to reasonably accommodate access, was responsive to informal resolution, and most importantly, had acceptable noise data and processes for such a transition to be successful. [FAA Exhibit 1, Item 12A, Item R-30]. That is not the case here. The County has over the years, delayed any changes and as part of Part 13 complaints, the County had opportunities to address and correct the issue, but chose not to do so.

### D. Conclusion on Issue 3

Although the County speculates extensively over the "potential" impacts of rescinding the restriction, the Associate Administrator finds no valid justification, either noise, weight, type of operations, safety or efficiency, environmental justification or otherwise for continuing to restrict operations at LNA. The fact that the County asks that the impacts of rescinding the restriction be studied by the FAA before requiring the County to take action illustrates the lack of justification for the restriction in the first place. Therefore, based on the foregoing discussions and analysis and the evidence provided in the administrative record, the Associated Administrator finds the Director did not err in finding the restriction in violation of Grant Assurance 22 and that, except for the time requirement for the submission of the CAP, the Order for the CAP was appropriate.

## IX. FINDINGS AND CONCLUSIONS

As discussed above, the Associate Administrator finds that the restrictions at LNA are 1) not grandfathered under ANCA, 2) unreasonable, and 3) unjustly discriminatory. The Associate Administrator re-examined the record, including the Director's Determination, the administrative record, the pleadings, and the County's arguments on Appeal. Based on this re-examination, the Associate Administrator concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. Accordingly, the Associate Administrator affirms the Director's Determination findings but modifies the CAP as ordered below. As the Director noted, while a CAP may include a phased-in approach and that educating the community of any changes to access the airport will be an important component of that CAP, it must provide some form of instant relief in the form of reasonable airport access.

## ORDER

ACCORDINGLY**,** it is hereby ORDERED that:

(1) The County is afforded 60 days to submit a detailed Correction Action Plan (CAP) consistent with this Final Agency Decision and acceptable to the FAA, which would:

   a) subject to FAA approval, permit immediate access by Complainant and other aircraft capable of utilizing LNA's existing runways, infrastructure, and facilities, and

   b) within 180 days, subject to FAA approval provide a long-term, formal and legal commitment by the County to rescind or not enforce the restriction, and

(2) Pending the FAA's approval of the CAP's two elements, any approval of any applications submitted by the County for amounts apportioned under 49 U.S.C. § 47114 (d) and authorized under 49 U.S.C. § 47115 will be withheld in accordance with 49 U.S.C. § 47106 (d), and

(3) The FAA will consider appropriate action regarding the County's noncompliance with ANCA and 49 U.S.C. § 47524, and

(4) The Appeal is dismissed, pursuant to 14 C.F.R. § 16.33.

**RIGHT OF APPEAL**

A party to this decision disclosing a substantial interest in the final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Agency Decision has been served on the party. [14 C.F.R. Part 16, § 16.247(a)].

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D. Kirk Shaffer Date
Associate Administrator for Airports