UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

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| **Luther Kurtz and Skydive Costal California d/b/a Phoenix Area Skydiving**<br><br>**Complainants**<br><br>**v.**<br><br>**City of Casa Grande, Arizona**<br><br>**Respondent** | **Docket No. 16-16-01** |

# FINAL AGENCY DECISION

## I. INTRODUCTION

This matter is before the Federal Aviation Administration Associate Administrator for Airports on an appeal filed by the City of Casa Grande (City); the City challenges the findings of a Director's Determination issued on December 22, 2017. [FAA Exhibit 2, Item 1].

The issue on appeal is whether the Director of Airport Compliance and Management Analysis properly concluded that the Casa Grande Municipal Airport can accommodate an on-airport Parachute Drop Zone (PDZ)[1] with proposed mitigation measures. The Director determined that the City, by prohibiting use of an on-airport Parachute Drop Zone, has unjustly discriminated against Luther Kurtz and Skydive Costal California d/b/a Phoenix Area Skydiving (Complainants) and other aeronautical users intending to use the proposed on-airport Parachute Drop Zone. The Director determined that this violated Grant Assurance 22. The Director also concluded that the City, by denying Complainants the commercial use of the terminal for customer queuing and loading, created an exclusive right in violation of Grant Assurance 23. [FAA Exhibit 2, Item 1, Page 23]. The Director ordered the City to present a corrective action plan to the FAA Phoenix Airports District Office (ADO) within 30 days. [FAA Exhibit 2, Item 1, Page 24].

The City appeals the Director's Determination and requests that the findings that the City is in violation of Grant Assurances 22 and 23 be reversed. According to the City, because the findings are not supported by the evidence contained in the record, the conclusions are not in accordance with law, precedent, or policy. [FAA Exhibit 2, Item 7, Page 2]. Complainants counter in their Reply that the FAA found that skydiving can be safely conducted at the Airport, that the City "has failed to provide evidence to the contrary," and that "the evidence in the record clearly shows that [the City] unreasonably denied airport access as well as denying office space to Complainants in violation of Grant Assurances 22 and 23." [FAA Exhibit 2, Item 9, Page 18].

In arriving at a final decision on this Appeal, the Associate Administrator re-examined the record, including the Director's Determination, the administrative record, and the pleadings in light of applicable law and policy. Based on this reexamination, the FAA concludes that the Director's Determination is supported by a

[1] Associate Administrator is using parachute drop zone (PDZ) in this decisions; PDZ and parachute landing area (PLA) are the same thing.

preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. Therefore, the Director's Determination is affirmed.

## II. PARTIES

### A. Complainants

Mr. Luther Kurtz is the owner of Skydiving Coastal California, d/b/a Phoenix Area Skydiving (FAA Exhibit 1, Item 1, p. 1). Phoenix Area Skydiving has used the single runway at the Casa Grande Municipal Airport (Airport) and also leased office space for its commercial skydiving business since 2006. [FAA Exhibit 1, Item 1, Exhibit 1, Page 2].

### B. Respondent

The City of Casa Grande, Arizona is the airport sponsor and operator of the airport, which is a public use, general aviation airport. The airport's sole runway, Runway 5/23, is 5200 feet long and 100 feet wide. [FAA Exhibit 1, Item 13]. In the year ending April 29, 2014, the airport had a total of 119,680 aircraft operations, including 2,000 air taxi, 12,720 general aviation local aircraft, 104,560 general aviation itinerant aircraft, and 400 military operations. [FAA Exhibit 1, Item 13]. The planning and development of the airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by 49 U.S.C. § 47101, *et seq*. The FAA has given the airport $4,749,728 in Airport Improvement Program grant funds since 1982. [FAA Exhibit 1, Item 14].

## III. SUMMARY OF THE DIRECTOR'S DETERMINATION

On December 22, 2017, the Director of Airport Compliance and Management Analysis concluded that the "Casa Grande Municipal Airport can safely accommodate an on-airport Parachute Drop Zone with the proposed mitigation measures." The Director also determined that "by prohibiting use of an on-airport Parachute Drop Zone, [the City] has unjustly discriminated against Complainants and other aeronautical users intending to use the proposed on-airport Parachute Drop Zone and has violated Grant Assurance 22." The Director also concluded that "by denying Complainants the commercial use of the terminal for customer queuing and loading, [the City] has created an exclusive right for other similarly situated aeronautical users and has violated Grant Assurance 23." [FAA Exhibit 2, Item 1, Page 23]. Finally, the Director ordered the City to present a corrective action plan to the FAA Phoenix Airports District Office (ADO) within 30 days. [FAA Exhibit 2, Item 1, Page 24].

## IV. PROCEDURAL HISTORY

On January 12, 2016, the FAA received the 14 C.F.R. Part 16 Complaint filed by Complainants. [FAA Exhibit 1, Item 1]. On February 9, 2016, the FAA issued the Notice of Docketing. [FAA Exhibit 1, Item 2].

On March 16, 2016, Complainants filed motions (1) for Summary Judgment, (2) for a Director's Determination in favor of Complainants and (3) to strike any pleadings served by the City after March 7, 2016. [FAA Exhibit 1, Item 3].

On April 4, 2016, the City responded to Complainants' March 16, 2016 motions. [FAA Exhibit 1, Item 4]. On April 11, 2016, the City submitted its Answer to the Complaint. [FAA Exhibit 1, Item 5]. On April 13, 2016, Complainants filed a Reply in Support of Complaint. [FAA Exhibit 1, Item 6].

On May 2, 2016, the City filed its Rebuttal. [FAA Exhibit 1, Item 7]. Between August 30 and December 1, 2017, the FAA issued several notices extending the time for the issuance of the Director's Determination. [FAA Exhibit 1, Items 8-11, and 15-18].

On December 22, 2017, the Director's Determination concluded that the City of Casa Grande, Arizona is in violation of its Federal obligations, Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights*. [FAA Exhibit 2, Item 1, Page 2 and 23]. The Director ordered the City to present a corrective action plan to the FAA Phoenix Airports District Office (ADO) within 30 days. [FAA Exhibit 2, Item 1, Page 24].

On January 19, 2018, the parties filed a Joint Motion to extend the time for the parties to appeal the Director's Determination and for the City file a Corrective Action Plan (CAP). The FAA granted the motion extending the time for the filings to March 2, 2018. [FAA Exhibit 2, Item 5 and Item 8].

Also on January 19, 2018, Complainants filed a Motion for modification of Director's Determination. In that motion, Complainants asked the FAA to modify the Director's Determination to remove the reference to DOT/AA/AAR-11/30. The Director denied the Motion. [FAA Exhibit 2, Item 4].

On March 1, 2018, the City filed its Notice of Appeal and Brief in Support. [FAA Exhibit 2, Item 7]. On March 2, 2018, the City filed a Request to Suspend the City's Corrective Action Plan, and requested "that the Director suspend the implementation of [the] Corrective Action Plan until such time the Associate Administrator has decided on the appeal."[2] [FAA Exhibit 2, Item 3].

On March 19, 2018, Complainants filed a Reply to Respondent's Notice of Appeal and Objection to Request to Suspend Corrective Action Plan. [FAA Exhibit 2, Item 9.]

## 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)]. The Associate Administrator does not consider new allegations or issues on appeal unless finding good cause to do so [14 C.F.R. § 16.33(f)]. Review by the Associate Administrator is limited to an examination of the Director's Determination and the administrative record upon which such determination was based.

On appeal, the Associate Administrator will consider the issues addressed in any order on a motion for summary judgment using the following analysis: (1) are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record: (2) are conclusions made in accordance with law, precedent, and policy; (3) are questions on appeal substantial: and (4) have any prejudicial errors occurred. [14 C.F.R. § 16.33(e)].

## VI. ISSUES ON APPEAL

The Associate Administrator reviewed Complainants' specific arguments and identified the following issues to be reviewed on Appeal:

Issue – 1 Whether the Director erred in finding that the City violated Grant Assurance 22.

Issue - 2 Whether the Director erred in finding that the City violated Grant Assurance 23.

## VII. ANALYSIS AND DISCUSSION

On Appeal, the City claims it has not violated its Grant Assurances and requests the Determination be reversed. The City asserts the evidence demonstrates that the introduction of a PDZ onto the airport will

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[2] On February 28, 2018, the City filed its Corrective Action Plan. The City stated in its CAP that it asked as part of its appeal, that the implementation of the CAP be suspended until the appeal is resolved pursuant to 14 C.F.R. § 16.31 (c).

cause significant disruption to the operations of the airport and the City's determination not to approve a PDZ is both necessary for the safe operation of the airport and is necessary to serve the civil aviation needs of the public. [FAA Exhibit 1, Item 7, Pages 20-21].

**Request for a Hearing**

As part of the Appeal, the City requested the Associate Administrator utilize her discretion to provide for the opportunity for hearing on this matter pursuant to 14 C.F.R. § 16.33. [FAA Exhibit 1, Item 7, Page 20]. Pursuant to 14 C.F.R. § 16.33(b), the Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where a hearing is not required by statute and is not otherwise made available by the FAA.

However the City, in citing to §16.33, relied upon the wrong section of the rule to make the request. This provision does not provide any grounds for FAA to provide a hearing. The proper provision that that City needed to cite was 14 C.F.R. §16.109. Under section 16.109, the FAA will provide the opportunity for a hearing if, in the Director's Determination, the agency issues or proposes to issue an order terminating eligibility for grants pursuant to 49 U.S.C. 47106(d), an order suspending the payment of grant funds pursuant to 49 U.S.C. 47111(d); an order withholding approval of any new application to impose a passenger facility charge pursuant to 49 U.S.C. 47111(e); a cease and desist order; an order directing the refund of fees unlawfully collected; or any other compliance order issued by the Administrator to carry out the provisions of the Acts, and *required to be issued after notice and opportunity for a hearing*. [emphasis added]. In cases in which a hearing is not required by statute, the FAA may provide opportunity for a hearing at its discretion. [See 14 C.F.R. §16.109].

In this case, no mandatory triggers requiring a hearing have occurred. As to instances where the FAA may provide the opportunity for a hearing at its discretion, a compelling reason should be shown. Here, the City claims it would like the opportunity to be heard by the Associate Administrator by way or oral argument and respond to questions. The City indicates that it believes all parties will benefit by a hearing that would allow interested parties, both in support and in opposition of the proposed PDZ, to intervene and be heard. The City's also claims that it "believes that the record demonstrates that the City is in compliance with its Grant Assurances." [FAA Exhibit 1, Item 7, page 20].

The City submitted an appeal brief with a complete record, and a structured argument identifying areas where it believes the Director erred. The City does not provide any justification to persuade the Associate Administrator to change the agency's view that an oral argument is unnecessary for a fair, just and complete process. [See 78 Federal Register 56135, 56138, September 12, 2013]. The City has not explained or provided evidence that arguments, issues or facts exist which are not capable of being raised and addressed through the normal process of written pleadings. Accordingly, the Associate Administrator denies the request for a hearing.

**Issue - 1 Whether the Director erred in finding that the City violated Grant Assurance 22.**

On Appeal, the City claims that it did not unreasonably deny access to the Airport and the conclusion that the City violated Grant Assurance 22 is not supported by the record. The City disputes the Director Determination's conclusion that skydiving can be safely and efficiently conducted at the Airport. The City asserts that the risks identified in the determination would be at a level above that considered acceptable even after the mitigation measures are implemented. [FAA Exhibit Item 7, Pages 16 and 21].

Additionally, the City claims that implementation of a PDZ will have a substantial negative effect on the normal traffic flows and ultimately harm the City's ability to run a self-sustaining viable airport for all civil aviation needs. It also challenges whether there is sufficient evidence in the record to show that by refusing to allow the proposed PDZ on the Airport, the City violated Grant Assurance 22 despite its claim of significant efficiency and safety concerns. [FAA Exhibit Item 7, Pages 16 and 21].

The City argues that Grant Assurance 22 permits sponsors to "prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public," and this allows sponsors to prevent both "unsafe" and "inefficient conditions" that would he detrimental to the civil aviation needs of the public. [FAA Exhibit Item 7, Page 12].

The City adds that the Director's Determination focuses solely on whether parachuting could be safely integrated at the Airport but did not address the City's evidence that on-site PDZ would disrupt "efficient operations." The City asserts that in this case, "there is no question that integrating a [PDZ] onto the Airport, even if it could be done at an acceptable risk level, would disrupt the operations of fixed-wing aircraft and helicopters using the airport." The City rejects the FAA skydiving evaluation process and mitigation measures that were proposed as part of the FAA safety evaluation, the findings of which were discussed in the Director's Determination. The City also challenges the internal FAA processes which resulted in a second skydiving evaluation and objects to the FAA's dismissal of certain previous evidence from some airport users. [FAA Exhibit Item 7, Pages 8, 12-13].

The City concedes that the FAA can determine that parachuting could safely be implemented if proper mitigation measures are in place. But the City argues that many of the proposed mitigation measures are, as a practical matter, unable to be enforced. The City believes skydivers would cause significant delays in fixed-wing operations and the mitigation measures would unreasonably and negatively impact other traffic. The City claims that the impact to the efficiency of the airport has been at the forefront of its decision not to approve the proposed PDZ. It also claims "the evidence shows that the City did not unreasonably deny access to the Airport and the conclusion that the City violated Grant Assurance 22 is not supported by the record." [FAA Exhibit 2, Item 7, Pages 13, 17-18, and 19].

In their Reply, Complainants argue that the City did not introduce evidence that "supports its unreasonable and discriminatory behavior of prohibiting an on-airport parachute drop zone," or evidence regarding operations at the Airport that was not reviewed in depth by the FAA in its safety study and in reaching the conclusions in the Director's Determination." Complainants assert that "there is no evidence in the record that there is something unusual or somehow unique about the Airport that precludes skydiving," and that skydiving has long been safely accommodated on airports underlying more complex airspace and having similar levels of use-including airports busy enough to have control towers." [FAA Exhibit 2, Item 9, Pages 2, 9, 11-12].

Complainants add "FAA personnel knowledgeable about skydiving, using approved FAA guidance, determined that skydiving could be introduced into the Casa Grande Airport with an acceptable level of risk." Finally, Complainants take the position that "the FAA is the final authority in determining what constitutes a proper exception under Grant Assurance 22(i), and the Director correctly found that Respondent's prohibition of on-airport skydiving based on safety was not appropriate under Grant Assurance 22(i), and that Respondent violated Grant Assurance 22 in its denial of skydiving at its airport." [FAA Exhibit 2, Item 9, Pages 2, 9, 11-12].

In reviewing the issues on appeal, the Associate Administrator notes that the Director confirmed that the FAA is the final authority in determining what, in fact, constitutes an unacceptable safety risk. The Director explained the process that FAA uses when evaluating an access restriction, which includes the assistance of the FAA Office of Flight Standards (hereinafter "Flight Standards") and Air Traffic to assess the safety and efficiency of the proposed action. [FAA Exhibit 2, Item 1, Page 6].

In this case, FAA's Office of Airports obtained assistance from the Flight Standards' General Aviation Operations Branch. FAA's Air Traffic organization is typically involved when the subject airport has an Air Traffic Control Tower (ATCT). Because there is no ATCT at Casa Grande Municipal Airport, Flight Standards is responsible for addressing the use of and impact on the airport's airspace and current operations, and thus efficiency. This is accomplished within the context of 14 C.F.R. Part 91 *General Operating and Flight Rules*, 14 C.F.R. Part 105 *Parachute Operations* and related guidance and policies, which includes Advisory Circular 90-66A *Recommended Standard Traffic Patterns and Practices for Aeronautical*

*Operations at Airports Without Operating Control Towers* and Advisory Circular 105-2E *Sport Parachuting*. FAA Air Traffic (ATO) guidance is also considered, including FAA Order J07110.65V (Chapter 9, Section 7) *Parachute Operations* and FAA Order J07210.3 (Chapter 4, Section 3 *Letters of Agreement* and Chapter 18, Section 4 *Parachute Jump Operations*). The Director referenced these guidance documents in the Director's Determination.

Flight Standards uses a risk assessment process to evaluate proposed access restriction and to determine whether that activity can be safely integrated into airport traffic. These determinations are an important part of the decision-making process and appropriate for the Director to rely on in a Director's Determination. The Director noted that the second assessment team was comprised of an FAA Aviation Safety Inspector, and an FAA Airports Representative. Complainants and the City were invited to participate, but did not. [FAA Exhibit 2, Item 1, Page 15].

Without a clear showing that the FAA has made a material error, safety determinations made by the FAA take precedent over an airport sponsor's views on safety and local ordinances or local actions taken in regard to safety.[3] FAA has final authority to approve or disapprove restrictions on aeronautical activity based on established federal safety standards and/or potential efficiency impacts at federally obligated airports. [FAA Exhibit 2, Item 1, Page 20].

The Associate Administrator disagrees with the City's contention that the Director did not consider efficiency and finds that it was adequately discussed in the Director's Determination. The Flight Standards safety assessment considered efficiency and air traffic impacts and identified the appropriate mitigations. The safety assessment took into account many operational/efficiency issues at the airport, including (1) no control tower, (2) instrument approaches and navigational facilities involved, (3) flight training , (4) communication limitations, and (5) transient users, traffic patterns and helicopter operations at the Airport. Location and use of nearby airports were also considered. [FAA Exhibit 2, Item 1, Pages 15-17]. The Director also noted that the safety assessment provided "that the flight training activity and parachute operations can safely exist together at the airport without creating congestion at the airport or detracting from the airport's economic prospects." [FAA Exhibit 1, Item 2, Page 17].

The Director specifically acknowledged that the FAA's safety assessment was thorough, examined numerous factors (as enumerated above) and resulted in no less than 23 recommended mitigation measures to allow for parachute landings within an overall acceptable risk level. [FAA Exhibit 2, Item 1, Page 15]. These included consideration of the need for written airport procedures that include parachute operations, establishing radio communication procedures for certain users, developing and emphasizing safety data dissemination, airmen briefings advisories, issuance of NOTAMs, changes in flight training procedures, charting changes, and adequate location for a Parachute Landing Area.

The Director also relied on the second safety assessment, which found that "the implementation of the mitigation measures will produce a final risk assessment level of 'medium' overall but that once the mitigation measures are implemented and functioning, these safety enhancements should cause the risk level to descend further to a level of 'low.' Therefore, with the application of the mitigation measures, we have concluded that it is feasible from a safety perspective to introduce parachuting operations into the airspace at the airport." [FAA Exhibit 2, Item 1, Page 17].

The Director in relying on the safety assessment acknowledged that itinerant aircraft flight training causes intermittent congestion near the Stanfield VOR (Very High Frequency Omni-Directional Range), but concluded that flight training and parachute operations can safely exist together at the airport. [FAA

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[3] See Florida Aerial Advertising v. St. Petersburg-Clearwater International Airport, FAA Docket No. 16-03-01, Director's Determination (December 18, 2003); Skydive Paris Inc. v. Henry County, Tennessee, FAA Docket No. 16-05-06, Director's Determination (January 20, 2006); Jeff Bodin and Garlic City Skydiving v. County of Santa Clara, California, FAA Docket No. 16-11-06 (December 19, 2011).

Exhibit 2, Item 1, Page 17]. In addition, the Director acknowledged that FAA recommends airport sponsors issue pilot advisories, including written airport procedures, radio communication, advisories, Notices to Airmen (NOTAM), changes in flight training procedures, and a charting change to add the parachuting symbol when considering an adequate location for a PDZ. These actions, as well as regulations, guidance, and policies, assist in safely and efficiently integrating different types of operations in the airspace and at the airport.

Consideration for existing operations was an integral element of the FAA evaluation and this integration is reflected in the mitigation measures as well. As Complainants correctly point out, accommodating skydiving does not mean that the runway has to close or that aircraft cannot taxi, take-off, land or fly in the pattern. Again, Complainants are correct that parachutes, airplanes, gliders, helicopters, hot air balloons, blimps, ultralights, and flight training have been operating together at other airports for decades. [FAA Exhibit 2, Item 9, Page 14]. As noted in AC 105-2E *Sport Parachuting*, "a large number of airports that accommodate parachute operations also have different kinds of aviation activities taking place simultaneously, including flight training, glider and helicopter operations, emergency medical services, sightseeing operations, and aerobatic practice over or in the immediate vicinity of the airport." and "many airports accommodate a large volume of transient traffic during skydiving operations."

The City's contention that the airport has to close to accommodate skydiving reflects a lack of understanding of appropriate actions it can undertake consistent with its federal obligations to enable safe, efficient reasonable access without unjust discrimination. The application of the mitigations, as proposed by the FAA, validate that skydiving operations can be safely and efficiently integrated at a fully functioning Casa Grande Airport. Moreover, the location of a charted PDZ at a certain location at the airport not only serves a safety function (separating skydivers landings from an aircraft landing on a runway for example), but it also allows other users to continue to use the airport or the airspace, and thus retain efficiency and utility.

One particular issue, which is noted several times on Appeal, is the determination of risk, or rather, risks that are too high for the City to accept. On the issue of "medium" versus "low" risk, which is the issue in the Director's Determination and on Appeal, the Director's Determination specifically noted that mitigations and actions by the City "would reduce this level to a low risk." [See FAA Exhibit 2, Item 1, Pages 16 and 17 for examples].

Upon review of the Appeal, the Associate Administrator notes that there is nothing new in the City's position that would invalidate or cast doubt upon the processes and considerations that were applied as part of the Director's investigation and subsequent determination. The City's objections and arguments about efficiency and operational impact seem to reflect a reluctance to implement mitigation measures, and a view that any impact is negative, triggering an "efficiency" impact.

The City's position is not justified because it is premised on maintaining the status quo at the airport, rather than permitting reasonable access for all aeronautical activities (which include parachute landings). To permit the status quo would essentially preclude the City adding or accommodating any aeronautical activity simply because of the effect on existing aeronautical uses. This is a slippery slope that could lead to restrictions on jets, gliders, gyrocopters, balloons and others aeronautical activities at federally funded airport because operations "disrupt" flight school activities or some other established activity. In AC 150/5190-6*Exclusive Rights at Federally-Obligated Airports*, the FAA specifically notes that "efficiency refers to the efficient use of navigable airspace" and "it is not meant to be an interpretation that could be construed as protecting the 'efficient' operation of an existing aeronautical service provider." [AC 150/5190-6, page 3, footnote 3].

The Director did not order or direct that parachute operations be permitted at the airport regardless of impacts, nor did he ignore evidence. Rather, the Director determined that with the appropriate mitigations, which were developed using a detailed and thorough FAA Flight Standards safety and risk management evaluation process discussed above and used as part of the Director's Determination, skydiving can safely take place at the airport. As part of this process, the impact on operational procedures and efficiency were considered and addressed.

The United States Supreme Court has described FAA's role as requiring a "delicate balance between safety and efficiency...and the protection of persons on the ground...The interdependence of these factors requires a uniform and exclusive system of federal regulation [FAA determines safety] if the congressional objectives underlying the Federal Aviation Act are to be fulfilled." Jeff Bodin and Garlic City Skydiving v. County of Santa Clara, California, FAA Docket No. 16-11-06, (December 19, 2011) (Director's Determination) at 30 (quoting City of Burbank v. Lockheed Air Terminal, 411 U.S. 624, 638-639 (1973)). The Director met this balance in finding that skydivers and parachute operations can be safely integrated without an unreasonable operational impact on existing users while still maintaining efficiency and safety for all operations.

Thus, upon review of the record, the Associate Administrator finds that the Director analyzed supporting data and documentation and determined that parachute operations can be conducted safely and efficiently at the airport. The Associate Administrator finds that in making its decision, the Director adhered to the prescribed and necessary processes to ensure the safe and reasonable accommodation of an aeronautical activity at this federally-obligated airport. The Associate Administrator finds that the Director's Determination was supported by a preponderance of reliable, probative, and substantial evidence contained in the record, that the Director's conclusions were made in accordance with law, precedent, and policy, and that no prejudicial errors occurred.

The Associate Administrator finds that the Director did not err in making the finding of a violation of Grant Assurance 22.

**Issue - 2 Whether the Director erred in finding that the City violated Grant Assurance 23.**

The City claims on appeal that the finding that City is in violation of Grant Assurance 23 is "not appropriate due to the lack of any evidence...that the City ever prevented them from using the Airport terminal and ramp, resulted in a finding that is contrary to the evidence and law." [FAA Exhibit 1, Item 7, Page 21]. The City further claims there is no evidence that the City ever prohibited Complainants from using the airport for its skydiving and business operations. [FAA Exhibit 2, Item 7, Pages 9 and 21]. The City asserts there was no evidence that Complainants were ever denied the same access to the terminal as other aeronautical users. [FAA Exhibit 2, Item 7, Pages 18-19]. The City adds that the Director was misled by Complainants' assertions, that there was no eviction, and that Complainants were not forced out of business. [FAA Exhibit 2, Item 7, Page 9].

On Appeal, the City notes that Complainants will continue to enjoy the same ability as every other aircraft to depart and land, receive fuel, and load passengers, as well as utilize the terminal for "non-commercial" related activities. It further notes that office space would not be available to Complainants after the terminal renovation, and that no other user was given office space in the terminal. The City also notes that Complainants were offered alternative locations for rent or purchase in the City's adjacent Airport Industrial Park, and given the opportunity to build a hangar to conduct business operations onsite. The City claims that it was unfairly judged by facts that simply do not exist, and affirms that it "has not, and will not, create an exclusive use for any user." [FAA Exhibit 2, Item 7, Pages 10, 18-20]. Finally, the City objects to the Director's finding of a violation of Grant Assurance 23 "solely because he determined that the City 'did not make it clear' whether Complainants could queue up its passengers in the Airport terminal and use the ramp for loading." [FAA Exhibit 2, Item 7, Pages 18-19].

In its Reply to the Appeal, Complainants argue that the City "violated and continues to violate Grant Assurance 23 by (1) refusing to lease office space to Complainants, and (2) denying Complainants the privilege of using the terminal building for its commercial aeronautical business as other aeronautical service providers do." [FAA Exhibit 2, Item 9, Page 14]. Complainants add that the City "eliminated Complainants' office space in favor of adding a café, a non-aeronautical activity." and that the evidence in the record clearly shows that Respondent unreasonably denied airport access as well as denying office space to Complainants." [FAA Exhibit 2, Item 9, Pages 17 and 18].

The Associate Administrator is not persuaded by the City's argument on Appeal. A review of the above allegations and the record indicates the denial of access, which is the issue of the Director Determination's Grant Assurance 23 review, can be tied into the actions of the City in not renewing the terminal/office lease for Complainants' commercial aeronautical use. That is the issue here. A terminal restriction by itself is a valid claim under the applicable federal obligations, including Grant Assurance 23, irrespectively of access to other airport facilities.

First, the City admits that Complainants cannot use the terminal for commercial related activities, and thus the Director was not misled, as the City argues. Second, a commercial non-aeronautical user occupies space in the terminal for a Cafe and other commercial aeronautical uses, like flight instruction, take place at the terminal, and are not restricted. [See FAA Exhibit 2, Item 2, Page 11 and FAA Exhibit 2, Item 9, Pages 13, 15-17]. Third, asserting that the City offered an off-site location to Complainants or that the City gave Complainants information about building their own hangar is irrelevant. It is not a mitigating factor because the issue here is access to the airport itself, including access to the terminal. Fourth, restricting aeronautical service providers' access to a public use terminal is an unsupportable position in principle. It is even more so in this case because there is no valid reason to justify not permitting Complainants access to the terminal to conduct business while permitting other commercial non-aeronautical activities, commercial aeronautical and non-commercial activities to access to the terminal, prior to or after its renovation. An airport terminal's public access premise implies access for aeronautical activities and service providers, first, and other non-aeronautical or ancillary support roles, second.

The City's objection to the Director's finding of a violation "because he determined that the City did not make it clear" what Complainants could or could not do at terminal is a valid point. Although the Associate Administrator finds that arguably there could be some level of ambiguity between the City's position and the Director's finding, this ambiguity is nullified by clear evidence in the record. Complainants were unambiguously denied access when the City readily admits that Complainants can only "utilize the terminal for *non-commercial* related activities," and when other users, commercial and non-commercial, aeronautical and non-aeronautical, are granted access. The City's actions in denying a commercial aeronautical activity is excluding Complainants from commercial operations involving the terminal and the City has taken no action to mitigate or nullify what is a factual terminal access restriction.

Against this background, the Associate Administrator finds that the Director did not err in making the finding of a violation of Grant Assurance 23.

## IX. FINDINGS AND CONCLUSIONS

On appeal, the Associate Administrator re-examined the record, including the Director's Determination, the administrative record, the pleadings, and the City's arguments. Based on this reexamination, the FAA 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. The Associate Administrator finds that Complainants' Appeal does not contain persuasive arguments sufficient to reverse any portion of the Director's Determination finding that the City is in violation of Grant Assurance 22 and Grant Assurance 23. Accordingly, the Associate Administrator affirms the Director's Determination.

## ORDER

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

(1) the Director's Determination is affirmed, and

(a) the requirement for a Corrective Action Plan as outlined in the Director's Determination is hereby reinstated,

(b) the City is therefore afforded 30 days to revise its Correction Action Plan to comply with this decision, or in the alternative advise the FAA to initiate its review of the City's February 28. 2018 Corrective Action Plan. and

(c) pending the FAA's approval of the City's Corrective Action Plan and commencement of parachute activity at the airport as required under this decision, approval of any applications submitted by the City of Casa Grande 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

(2) 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).]

Winsome A. Lenfert
Acting Associate Administrator for Airports

11/19/18
Date