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U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Associate
Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

SEP 15 2003

Fermin Rubio, Esq.
City Attorney
City of Las Cruces
P.O. Box 2000
Las Cruces, New Mexico 88004-9002

Leonard J. Piazza, Esq.
Sandenaw, Carillo & Piazza, P.C.
2951 Roadrunner Parkway
Las Cruces, New Mexico 88011

Re: FAA Docket No. 16-01-14

Dear Mr. Rubio and Mr. Piazza:

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

Based on the record in this proceeding, the FAA upholds the Director's Determination, as set forth in the enclosed Final Decision and Order.

Sincerely,

Woodie Woodward
Associate Administrator
for Airports

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Adventure Aviation **COMPLAINANT** **v.** **City of Las Cruces, NM** **RESPONDENT**	**Docket No. 16-01-14**

FINAL DECISION AND ORDER

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on an appeal filed by Adventure Aviation (AA/Complainant) from the Director's Determination of August 7, 2002. The Director's Determination was issued by the Director of the FAA Office of Airport Safety and Standards, pursuant to the Rules of Practices for Federally-Assisted Airport Proceedings found in Title 14 Code of Federal Regulations (C.F.R.), Part 16, Rules of Practice for Federally-Assisted Airport enforcement Proceedings.

In its formal complaint, the Complainant, a fixed based operator (FBO)[1] alleged that the City of Las Cruces, New Mexico (City/Respondent), as sponsor of Las Cruces International Airport (Airport), engaged in activity contrary to its Federal obligations, specifically Assurances #19, #22, and #24. The complaint stated that the Respondent allowed disparate lease rates and related arrangements between the airport's two fixed-based operations, and failed to remedy multiple and ongoing safety infractions. [See FAA Exhibit 1, Item 1, pgs. 1-2]

In its appeal, the Complainant raises several issues for review and consideration by the Associate Administrator for Airports. The Complainant argues that the Director committed substantive errors in interpreting the evidence and making conclusions from the evidence. The Complainant also argues that the Director made other errors in

[1] A fixed based operation provides aeronautical services to general aviation users of an airport.

conducting the investigation and weighing the facts presented. The Complainant asserts these errors caused the FAA to erroneously dismiss the complaint.

II. SUMMARY OF FINAL DECISION

Upon an appeal of a Part 16 Director's Determination, the Associate Administrator must determine whether (1) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (2) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [See e.g. Ricks v. Millington Municipal Airport, FAA Docket No. 16-98-19, p.21 (12/30/99) and 14 C.F.R. § 16.227]

In arriving at a final decision on this appeal, the FAA has reexamined the record, including the Director's Determination, the Administrative Record supporting the Director's Determination, applicable law and policy, and the appeal and reply submitted by the parties.

Based on this reexamination, the Associate Administrator affirms the Director's Determination. The Director's Determination found the Respondent was not in violation of 49 U.S.C. § 47107 (a), and related Grant Assurance #19, Operation and Maintenance; Grant Assurance #22, Economic Nondiscrimination; and Grant Assurance #24, Fee and Rental Structure. The Director's Determination also found the Respondent was not in violation of 49 U.S.C. §§ 40103(e) and 47107(a)(4) and related Grant Assurance #23, Exclusive Rights by engaging in unjustly discriminatory behavior against the Complainant and unreasonably denying the Complainant access to the airport. [See FAA Appeal Exhibit 1, Item 15]

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. The appeal did not contain persuasive arguments sufficient to reverse any portion of the Director's Determination.

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

III. AIRPORT

Las Cruces International Airport is a public-use airport located approximately 8 miles west of Las Cruces, New Mexico. The airport is owned and operated by the City of Las Cruces.

The planning and development of the Las Cruces International 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. Specifically, the City has entered into numerous

AIP grant agreements with the FAA since 1982 and has received a total of $8,392,929 through fiscal year 2002 in Federal airport development assistance directly from the FAA. [See FAA Exhibit 1, Item 14]

IV. ISSUES

On appeal, the Complainant raises several issues for review and consideration by the Associate Administrator for Airports. Specifically, the Complainant asserts that Director made errors in conducting the investigation and finding the Respondent had not violated its grant assurances. The issues raised on appeal are as follows:

A. Whether the Director made errors in conducting the investigation and weighing the facts presented because the he did not (1) initiate an independent investigation; (2) provide the Complainant an opportunity for the Complainant to supplement the record regarding information contained in the Director's Determination; and (3) conduct an evidentiary hearing.

B. Whether the Director erred with respect to his finding that the Respondent did not violate Grant Assurance #19, Operation and Maintenance.

C. Whether the Director erred with respect to his finding that the Respondent did not violate Grant Assurance #22, Economic Nondiscrimination.

D. Whether the Director erred with respect to his finding that the Respondent did not violate Grant Assurance #24, Fee and Rental Structure.

V. BACKGROUND

A. Leases

The Complainant's allegations focus on the Respondent's relationship with the Complainant's only competitor, Southwest Aviation, Inc. (SWA). SWA has been operating an FBO at the Airport since 1967 —twenty-five years prior to the Complainant's initiation of tenancy at the Airport in 1998. SWA operates under a 1967 lease with the City that was most recently renewed in 1994 (1994 SWA Lease), and is described below. [See FAA Exhibit 1, Item 1, p. 3 and Item 3, p. 2]

In August 1987, SWA additionally entered into a lease for T-hangar structures and canopy structures (SWA T-hangar Lease). These facilities are surrounded by public taxiway, existing in a footprint lease, as stated by the Respondent. The SWA T-hangar lease includes a total rent of $1,761.88 per year, with annual escalation by the "Gross National Product Implicit Price Deflator." [See FAA Exhibit 1, Item 1, Exhibit E]

The 1994 SWA Lease allowed SWA to continue to conduct business at the Airport as a FBO, including the ability to provide aircraft fuel services; aircraft maintenance; ground and flight instruction; sales of aircraft and aircraft accessories; commercial flight operations; avionics repair; and automobile rental and food service. This lease includes legal descriptions of six parcels, separated into two areas designated as East Lease (parcel #6, 0.1650 acres and parcel #7, 2.7480 acres) and West Lease (parcel #1, 0.2262 acres; parcel #2, 5.2498 acres; parcel #3, 6.0276 acres; and parcel #4, 0.0321 acres), totaling 14.4487 acres. The lease term for those parcels expires in 2013. In regard to the East Lease, SWA is obligated to provide specific aeronautical services and facilities to standards described in the lease. [See FAA Exhibit 1, Item 1, Exhibit C]

Both the East and West Lease comprising the 1994 SWA Lease contained an 'Exhibit B' outlining the lease payments. From the documents submitted by the Complainant it appears that the lease rate for the two buildings, one in the East Lease and one in the West Lease, was $.02 per square foot per year, escalated by the terms of the lease to $.02271 per square foot per year. In addition to the square foot lease rate, SWA is required to pay the following:

1. Gross Receipts: payment equal to 2% of the adjusted gross receipts from all businesses conducted and carried on by Lessee at the Airport, excluding from the base, sales to government; sales taxes; aviation fuel sales; tuition payments; bad debts; and the rental car operation.
2. Parking Fees: payment of 20% of the parking fees collected for aircraft parking.
3. Aircraft Sales: payment of 0.5% "of the gross volume of business derived from the retail sale of new or used aircraft."
4. Fuel Flowage: payment of $0.10 per gallon on all fuel sold to FAR Part 121 charter flights and payment of 3% of the wholesale price of all aviation fuel sold. [See FAA Exhibit 1, Item 1, Exhibit C (Southwest Aviation, Inc. East Lease, exhibit "B," pgs 38-39)]

Furthermore, the 1994 SWA Lease speaks to maintenance and utilities for the leased premises as responsibilities of the SWA. Regarding maintenance, the 1994 SWA Lease states, "Lessee agrees at its expense, without cost or expense to the City, during the term hereof, to keep the leased premises and improvements thereto and thereon in good and usable repair and maintenance..." [See FAA Exhibit 1, Item 1, Exhibit C, pgs. 14-15]. Regarding utilities, the 1994 SWA Lease states, "Lessee shall obtain and install underground at its own expense any necessary electrical, gas, water, sewer and septic tank, and any other utility service..." [See FAA Exhibit 1, Item 1, Exhibit C, pgs. 34-35] The Respondent states, "SWA is responsible for paying all utilities associated with its leased premises."[2] [See FAA Exhibit 1, Item 3, pgs. 7-8]

In its answer, the Respondent notes that it has been in litigation with SWA since 1999 and is currently in arbitration with SWA to resolve some issues related to the East and West Leases (1994 SWA Lease). One of the primary issues is exactly what SWA must

[2] The Complainant does not dispute this assertion.

pay as rent. According to the Respondent's interpretation of the East and West Leases and the calculations based on those interpretations, SWA owes over $76,000 in past rent." [See FAA Exhibit 1, Item 3, p. 6] On appeal, the Complainant notes that the Respondent lost in arbitration and SWA is not required to pay amounts allegedly owed the Respondent in excess of $76,000. [See FAA Exhibit 1, Item 21, p. 8]

On June 1, 1998, the City adopted Ordinance 1677 and Resolution 98-371 regarding the management of the Airport. Ordinance 1677 is titled "An Ordinance Establishing Standardized Rules for the Management, Development, and Use of the Las Cruces International Airport, Repealing Existing Ordinances, and Setting Effective Dates." This ordinance established definitions and rules and regulations regarding commercial activity, airport safety aircraft operations, etc., but did not set exact rates and charges. [See FAA Exhibit 1, Item 3, Exhibit 2, pgs. 52-64] Such a document is commonly referred to as an airport's Minimum Standards.

Resolution 98-371 is titled "A Resolution Approving Standardized Policies and Fees for the Management, Administration, Development, and Use of the Las Cruces International Airport." This resolution established specific rates and charges, including those charges applied to the Complainant's lease, as summarized below. The Resolution does not include a fuel flowage fee as described in the 1994 SWA Lease and listed above under #4. [See FAA Exhibit 1, Item 3, Exhibit 2, pgs. 148-160]

Ordinance 1677 and Resolution 98-371 were amended on July 3, 2000, when the City enacted Resolution 00-341B, titled "A Resolution Revising Resolution 98-371 to Amend the Fee Structure for Use of the Las Cruces International Airport by Aircraft Conducting Commercial Air Transportation of Passengers, Cargo, and Mail." [See FAA Exhibit 1, Item 3, Exhibit 2, pgs. 114-116]

In August 1998, the Complainant entered into lease agreements with the Respondent for the operation of an FBO at the Airport (1998 AA Lease). [See FAA Exhibit 1, Item 1, Exhibit D] Even though the Complainant's submission of its 1998 lease is incomplete, it appears to be significantly different from that of the 1994 SWA Lease (the Complainant's submission does not contain exhibits B and C, referred to in the lease documents as "Description of Area" and "Additional Lease Conditions). The 1998 AA Lease is comprised of two lease documents: a commercial lease and a facilities lease. The commercial lease appears to be a non-exclusive use lease, allowing non-exclusive use of airport aprons and parking areas, and requiring the payment of 0.5% of on-demand flying services and aircraft sales and 2% of all other activities.[3] This document permitted and required the following uses:

> Lessee shall have use of the Airport only for food services including catering and restaurants; aircraft manufacture, maintenance, repair and storage (as defined by the FARs); aircraft major and minor repair and maintenance; flammable liquid storage and/or sales; preventive maintenance for aircraft; sales,

[3] The 1998 AA Lease does not appear to contain the fuel flowage fees included in the 1994 SWA Lease, listed under #4 above. The Complainant does not dispute this assertion.

leasing, financing, insuring and/or brokerage of aircraft, airframes, engines, and/or other aeronautical items; storage of aircraft and parts; line services; on-demand flying services including aerial photograph or survey, aircraft rental to the public, dropping objects from aircraft, pilot instruction conducted independently of an FAR Part 141 certified flight school, pilot schools conducted in accordance with FAR Part 141; sightseeing flights; and pilot services. [See FAA Exhibit 1, Item 1, Exhibit D]

The facility lease[4] appears to be a lease for specific facilities, described in the lease as

> ...the FBO portion of the Airport Management building, Suite N and Suite E in the same building, and the underground fuel tank on the north side of the building, and 12,000 sf of apron immediately east of the building, and 12 tiedowns, and more particularly described in Exhibit "B"[5] [See FAA Exhibit 1, Item 1, Exhibit D]

The term of both the facility and commercial leases is 1 year, with 4 one-year extensions. The lease payments throughout the extended term remain constant and expire on September 2003. The payments consist of "$40,000.00 per year for the building area, $600.00 per year for the apron, $1,850.00 for the 12 tie-downs, and $1,500.00 per year for the underground fuel tank." According to the facility lease, the monthly payments equal $3,662.50 and rent "includes electrical utilities, HVAC, water and wastewater." [See FAA Exhibit 1, Item 1, Exhibit D, p. 3] The Complainant does not dispute this assertion.

In November 1999 and March 2000, the Complainant increased its leasehold and competitive posture with SWA. The Complainant's application for the AA T-hangar Lease proposed leasehold improvements, including a 6400 sq. ft. hangar, 14 T-hangars and 3 (three) 200-sq.ft. hangars. The Respondent refers to these land leases as exclusive-use T-hangar leases (AA T-hangar Lease). These leases consist of two agreements for two parcels of land, parcel #28 and parcel #8W (totaling 2.1349 acres), and both have a term of 30 years, expiring in 2029. The AA T-hangar Lease states that the rent for the parcels shall be $6,975 per year, with an escalation every five years. [See FAA Exhibit 1, Item 3, Exhibit 6] Accordingly, the Complainant built a 6,400 sq. ft. hangar at its own expense on land leased from the Respondent for $0.075 per sq. ft. [See FAA Exhibit 1, Item 1, p. 4]

The complaint notes several disparities in the SWA hangar lease and the Complainant's hangar lease, including different design standards for hangar floors. The Complainant states "The City of Las Cruces acquired [sic] Adventure Aviation to install four-inch concrete floors in the t-hangars, whereas the t-hangars owned by Southwest Aviation have asphalt floors and are in a state of extreme disrepair." [See FAA Exhibit 1, Item 1, pgs. 3-4] To supports its position, the Complainant presents photographs of SWA's alleged lack of upkeep in its leasehold. [See FAA Exhibit 1, Item 4, Exhibit G]

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[4] The Complainant provides an unexecuted copy of the facility lease.

[5] As stated above, the Complainant did not include exhibits B and C of its 1998 AA Lease.

The Respondent does not dispute the allegation that the Complainant is required to have more substantial floors in its hangars than SWA. In 1998, the Respondent adopted design standards to be included in all land leases other standards, including a provision requiring paved aircraft movement surfaces to be, "no less than (2) inches of asphalt over a six (6) inch base course of 95% compaction, or four (4) inches of reinforced concrete." [See FAA Exhibit 1, Item 3, Exhibit 8] These design standards were adopted eleven years after SWA entered into its hangar lease with the Respondent and two years before the Complainant entered into its hangar lease. [See FAA Exhibit 1, Item 3, pgs. 9-10]

B. Procedural History

On August 17, 2001, the FAA received AA's Formal Complaint alleging the Respondent is in violation of certain grant assurances by allowing disparate lease rates and related arrangements between the airport's two fixed-based operations, and fails to remedy multiple and ongoing safety infractions. [See FAA Exhibit 1, Item 1]

On September 27, 2001, the FAA received the Respondent's Answer. The Respondent denied that it violated its assurances and that the Complainant's competitor, SWA, is receiving favorable rates and benefits. The Respondent also agrees with the Complainant's claim that the City rents a 4,800 sq. ft. hangar to SWA for $150 per month and that it leases two T-hangars from SWA for approximately $260 per month. [See FAA Exhibit 1, Item 3, pgs. 1- 3]

On October 23, 2001, the FAA received the Complainant's Reply. The Complainant presented appraisals of FBO property at the Airport, including a 1998 appraisal of the fair market value of the operations and assets of SWA's business [See FAA Exhibit 1, Item 4, Exhibit H] and a 1994 Appraisal Report of a Leasehold Estate of a previous occupant of AA's leasehold. [See FAA Exhibit 1, Item 4, exhibits J-2][6]

On November 1, 2001, the FAA received the Respondent's rebuttal. In support of its varying lease rates, the Respondent presented a graphical analysis of its increasing percentage of operating revenue over expenditures. The graph shows that the percentage of airport expenditures covered by airport revenue has increased from less than 20% to 40% for the period of FY 95/96 to FY 99/00. [See FAA Exhibit 1, Item 5, Exhibit 11] Further, the Respondent provided an analysis of changing airport circumstances, including a graph of increasing airport revenues since the execution of the 1994 SWA Lease. The graph shows that airport revenues increased about six fold (from $5,000 to $30,000) for the period of 1995 through 1998. [See FAA Exhibit 1, Item 5, Exhibit 10]

[6] In the Respondent's Answer and the Complainant's Reply, the parties presented evidence regarding other leases at the Airport. However, the Director determined that these documents are not relevant, either because they represent leases for non-FBO entities or they are sufficiently old as to not be comparable, or both. [See Director's Determination, Exhibit 1, Item 4, exhibit K; Exhibit 1, Item 3, p. 8 and exhibits 4 & 5] The Complainant does not dispute this finding on appeal.

On August 7, 2002, the Director of the FAA Office of Airport Safety and Standards issued the Director's Determination. The Director found that the Respondent had not unjustly discriminated against the Complainant and was currently in compliance with its Federal grant assurances regarding unjust discrimination, operation and maintenance, self-sustainability and exclusive rights. [See FAA Exhibit 1, Item 15]

On September 20, 2002, the Complainant filed an appeal from the Director's Determination. As discussed in the Introduction Section, the Complainant argues that the Director committed substantive errors in interpreting the evidence and making conclusions from the evidence. The Complainant also argues the Director made other errors in conducting the investigation and weighing the facts presented. The Complainant argues these errors caused the FAA to erroneously dismiss the complaint. [See FAA Exhibit 1, Item 21]

On October 10, 2002, the Respondent filed a reply to the Complainant's appeal of the Director's Determination. The Respondent noted in this reply that the Complainant is in arrears for rent in the amount of approximately $180,000 plus late fess for all facilities it occupies at the Airport and the Complainant has filed a Chapter 11 Bankruptcy Petition. The Respondent states that it has filed a "Complaint for Debt and Money Due and Unlawful Detainer" in the State of New Mexico Third Judicial District Court.

In addition, the Respondent reiterates its position that it did not violate its grant assurances and that the Complainant's competitor, SWA, does not receive favorable rates or benefits. The Respondent states that it believes the Director conducted its investigation as required under 14 C.F.R. § 16.29 and the Director's Determination "shows clearly the Director gave full and fair consideration" to the Complainant's claims and the Respondent's responses to these claims. The Respondent also notes that the Complainant on appeal "has cited no authority whatsoever, which in any way indicates that the Director committed any error" and that the FAA is not, nor was required, to have a hearing on this case. [See FAA Exhibit 1, Item 22]

VI. APPLICABLE LAW AND POLICY

The following is a discussion pertaining to the FAA's enforcement responsibilities; the FAA compliance program; statutes, sponsor assurances, and relevant polices; and the appeal process.

A. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Various legislative actions augment the Federal role in encouraging and developing civil aviation. These actions authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor

assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

B. FAA Airport Compliance Program

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

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

FAA Order 5190.6A, Airport Compliance Requirements (October 24, 1989), sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. FAA Order 5190.6A analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance Program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of non-compliance, the FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable federal obligations. Consequently, the FAA will consider as grounds for dismissal of such allegations the successful action by the airport sponsor to cure any alleged or potential past violation of applicable federal obligations, subsequent

to FAA receipt of the allegations and prior to the issuance of a final decision and order. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, pg 17 (8/30/01) and Roberts v. Daviess County Board of Aviation Commissioners, FAA Docket No. 16-00-06, pgs. 15-16 (12/13/01)]

C. Statutes, Sponsor Assurances, and Relevant Policies

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 U.S.C. § 47107, et seq., sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. Pursuant to 49 U.S.C. §47107(g)(1), the Secretary is authorized to prescribe project sponsorship requirements to ensure compliance with 49 U.S.C. §47107. These sponsorship requirements are included in every AIP agreement as explained in FAA Order 5190.6A, Airport Compliance Requirements, Chapter 2, "Sponsor's Obligations." Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding contractual obligation between the airport sponsor and the Federal government.

1. Use of Airport and Not Unjustly Discriminatory Terms

Grant Assurance 22, "Economic Nondiscrimination," of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport —

- Will make its airport available for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities (Grant Assurance 22(a)).

- May establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport (Grant Assurance 22(h)).

- May prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or is necessary to serve the civil aviation needs of the public (Grant Assurance 22(i)).

Subsection (h) of Grant Assurance 22 qualifies subsection (a) and subsection (i) represents an exception to subsection (a). The intent is to permit the sponsor sufficient control over the airport to preclude unsafe and inefficient conditions, which would be detrimental to the civil aviation needs of the public.

FAA Order 5190.6A describes the responsibilities under Grant Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [See FAA Order 5190.6A, Secs. 3-1 and 4-14(a)(2)]

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. [See FAA Order 5190.6A, Sec. 3-8(a)]

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. [See FAA Order 5190.6A, Sec. 4-13(a)]

2. Fee and Rental Structure

The authorizing statute requires the airport sponsor to maintain a schedule of charges for use of facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection. [See 49 U.S.C. § 47107 (a)(13)]

Grant Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurance satisfies the requirements of 49 U.S.C. § 47107(a)(13). It provides, in pertinent part, that the sponsor of a federally obligated airport "agrees that it will maintain a fee and rental structure consistent with Assurances 22 and 23, for the facilities and services being provided the airport users, which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport."

FAA Order 5190.6A describes the responsibilities under Grant Assurances 22, Economic Nondiscrimination, and Grant Assurance 23, Exclusive Rights, assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on fair and reasonable terms without unjust discrimination and without granting an exclusive right of use. [See FAA Order 5190.6A, Secs. 3-1 and 4-14(a)(2)]

The obligation of airport management to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport. [See FAA Order 5190.6A, Sec. 4-14(a)]

Each commercial aeronautical activity at any airport shall be subject to the same rates, fees, rental and other charges as are uniformly applied to all other commercial aeronautical activities making the same or similar use of such airport using the same or

similar facilities. However, FAA Order 5190.6A specifies terms and conditions applied to tenants offering aeronautical services. Specifically, Section 4-14 states that at general aviation airports, there is justification for different rental and fee structures if one operator rents office and/or hangar space and another builds its own facilities. These two operators would not be considered essentially similar as to rates and charges even though they offer the same services to the public. [See FAA Order 5190.6A, Section 4-14(d)(2)]

Section 4-14(d)(2) specifies at general aviation that the following terms and conditions apply:

- If one FBO is in what is considered a prime location and another FBO is in a less advantageous area, there could logically be a differential in the fees and charges to reflect this advantage of location. This factor would also influence the rental value of the property. [Section 4-14 (d)(2)(a)]

- If the FAA determines that the FBOs at an airport are making the same or similar uses of such airport facilities, then such FBO leases or contracts entered into by the airport owner (subsequent to July 1, 1975) shall be subject to the same rates, fees, rentals and other charges. [Section 4-14 (d)(2)(d)]

- All leases with a term exceeding 5 years shall provide for periodic review of the rates and charges for the purpose of any adjustments to reflect the then current values, based on an acceptable index. This periodic lease review procedure will facilitate parity of rates and charges between new FBO services coming on the airport and long–standing operators. It will also assist in making the airport as self–sustaining as possible under the circumstances existing at that particular airport. [Section 4-14 (d)(2)(f)]

Thus, if the FAA determines that commercial aeronautical activities at an airport are making the same uses of identical airport facilities, then leases and contracts entered into by an airport owner subsequent to July 1, 1975, pursuant to the Airport and Airway Development Act of 1979, as amended, shall be subject to the same rates, fees, rentals and other charges. [See FAA Order 5190.6A, Sec. 4-14(d)(2)(d)]

FAA's Policy and Procedures Concerning the Use of Airport Revenue states that the FAA does not consider the self-sustaining requirement to require airport sponsors to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure. [See Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, pgs. 7720 and 7721, Sec. VI, Par. B-5 (Feb. 16, 1999)]

Further, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value only for the provision of nonaeronautical facilities and services,

to the extent practicable considering the circumstances at the airport. [See Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, pg. 7721, Sec. VI, Par. C]

3. Operation and Maintenance

Title 49 U.S.C. § 47107(a)(7), in relevant part, states that "the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions."

Assurance 19, "Operation and Maintenance," of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(7) and requires, in pertinent part, that the sponsor of a federally obligated airport "...shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation."

FAA Order 5190.6A describes the responsibilities under Grant Assurances 19, Operation and Maintenance, for an airport owner to preserve and maintain airport facilities in a safe and serviceable conditions. This is a continuing obligation but is restricted to only airport facilities shown on a current Airport Layout Plan (ALP) that were initially dedicated to aviation use. [See FAA Order 5190.6A, Sec. 4-5]

FAA Order 5190.6A also specifies that grant agreements require the airport owner to carry out a continuing program of preventive maintenance and minor repair activities that will ensure airport facilities are at all times in a good and serviceable condition for use in the way they were designed to be used. This may be expressed or implied in the grant agreement and can include requirements for (1) inspecting runways, taxiways and other common-use paved areas for compliance with operational and maintenance standards; and (2) making repairs to prevent progressive deterioration of pavements. [See FAA Order 5190.6A, Sec. 4-6(a)(2)]

4. Fuel Fire Safety Standards

The FAA has the statutory authority to issue airport operating certificates to airports serving certain air carriers and to establish minimum safety standards for the operation of those airports. [See 49 U.S.C. § 44706, Airport operating certificates] The FAA uses this authority to issue requirements for the certification and operation of certain land airports. These requirements are contained in Title14, Code of Federal Regulations (14 C.F.R.) Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers, as amended.

Under 14 C.F.R. Part 139, the FAA requires airport operators to comply with certain safety requirements prior to serving operations air carrier aircraft with more than 30 seats. When an airport operator satisfactorily complies with such requirements, the FAA issues to that facility an airport operating certificate that permits an airport operator to serve

such air carrier operations. These safety requirements cover a broad range of airport operations, including the maintenance of runway pavement, markings and lighting; notification of air carriers of unsafe or changed conditions; preparedness for aircraft accidents; and fuel fire safety.

Under the FAA's Airport Certification Program, airports certificated under Part 139 are periodically inspected to ensure continued compliance with Part 139 safety requirements. The FAA can impose administrative and civil penalties on operators of these airports for failure to comply with the requirements of Part 139, including any violations of fuel fire safety standards.

D. The Complaint and Appeal Process

1. Right to File the Formal Complaint

Pursuant to 14 C.F.R. § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The Complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complainant shall also describe how the complainant was directly and substantially affected by the things done or omitted by the Respondent. [See 14 C.F.R. § 16.23(b)(3) and (4)]

If, based on the pleadings there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the airport sponsor is in compliance. [See 14 C.F.R. § 16.29]

The proponent of a motion, request, or order has the burden of proof. [See e.g., 14 C.F.R. § 16.229(b)] Additionally, a party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act (APA) and Federal case law. The APA provision states, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." [See 5 U.S.C. § 556(d); Director, Office of Worker's Compensation Programs, Department of Labor v. Greenwich Collieries, 512 US 267, 272 (1994); and Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155 (DC Cir, 1998)]

2. Right to Appeal 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. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. There is no judicial review of a Director's Determination that becomes final because there is no administrative appeal. [See 14 C.F.R. § 16.33]

14 C.F.R. § 16.23 (b)(3) requires all relevant facts to be presented in the complaint documents. New allegations or issues should not be presented on appeal. Review by the Associate Administrator is limited to an examination of the Director's Determination and the Administrative Record upon which such determination was based. Under Part 16, a complainant is required to provide with its complaint and reply all supporting documentation upon which it relied to substantiate its claim. Failure to raise all issues and allegations in the original complaint documents may be cause for the FAA to waive additional issues and allegations raised in the appeal.

This process is consistent with the Supreme Court's recognition that courts may require administrative issue exhaustion as a general rule. It is usually appropriate under an [administrative] agency's practice for contestants in an adversary proceeding to develop fully all issues before that agency. The Court concluded that where parties are expected to develop the issues in an adversarial administrative proceeding, the rationale for requiring issue exhaustion is at its greatest. [See Sims v. Apfel, 530 US 103, 108-110 (2000) citing Hormel v. Helvering, 312 US 552 (1941) and US v. LA Tucker Truck Lines, 344 US 33, (1952)]

3. FAA's Responsibility with Regard to an Appeal

Pursuant to 14 C.F.R. §16.33, the Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where the complaint is dismissed after investigation.

In each such case, it is the Associate Administrator's responsibility to determine whether (1) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (2) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [See e.g. Ricks v. Millington Municipal Airport, FAA Docket No. 16-98-19, p. 21 (12/30/99) and 14 C.F.R. § 16.227]

VII. ANALYSIS AND DISCUSSION

Upon consideration of the complaint from the Complainant, filed with the FAA August 17, 2001, the Director of the Office of Airport Safety and Standards determined that the City of Las Cruces is not currently in violation of its obligations regarding economic nondiscrimination under 49 U.S.C. § 47107(a) and related Grant Assurance #19, Operation and Maintenance; Grant Assurance #22, Economic Nondiscrimination; and Grant Assurance #24, Fee and Rental Structure. Additionally, the Director found the City of Las Cruces is not currently in violation of its obligations under 49 U.S.C. § 40103(e) and related Grant Assurance #23 regarding exclusive rights. [See FAA Exhibit 1, Item 15, pgs. 24-25]

On appeal, the Complainant reiterates its contention that the Respondent violated Grant Assurances #19, #22 and #24. The Complainant argues that the Director committed substantive errors in interpreting the evidence and making conclusions from the evidence. The Complainant also argues the Director made other errors in conducting the investigation and weighing the facts presented. The Complainant asserts these errors caused the FAA to erroneously dismiss the complaint. [See FAA Exhibit 1, Item 21] The Complainant did not object to the Director's finding that the Respondent is in compliance with its Federal grant assurances regarding exclusive rights, and that finding will not be further discussed herein.

A. Alleged Errors in Process

On appeal, the Complainant argues the Director made errors in conducting the investigation of its complaint. Specifically, the Complainant argues that the Director's Determination was pre-determined in favor of the Respondent because the FAA did not (1) initiate its own independent investigation; (2) provide an opportunity for the Complainant to supplement the record regarding information contained in the Director's Determination; or (3) conduct an evidentiary hearing. The Complainant asserts these errors caused the FAA to erroneously dismiss the complaint. [See FAA Exhibit 1, Item 15, pgs. 2- 3]

1. Lack of Independent Investigation

The Complainant argues that the Director's Determination was made without any investigation on the part of the FAA and without any request for further information from the Complainant. The Complainant believes this "evinces a lack of due process and a pre-determined outcome in favor of the City." [See FAA Exhibit 1, Item 21, pgs. 2-3]

The Complainant is incorrect. The FAA Office of Safety and Standards did conduct an independent Part 16 investigation. The Director's investigation of the complaint involved review and analysis of information provided by the Complainant and the Respondent in the pleadings [See Index of Administrative Record, FAA Exhibit 1] and supporting evidence provided by the FAA's Southwest Region Office regarding Part 139 airport certification inspection records. As discussed in the above Applicable Law and Policy Section, in rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided, as supplemented by any informal investigation the FAA considers necessary and by additional information furnished by the parties at FAA request.

The FAA is under no obligation to investigate the complaint beyond what is provided in the complaint, answer, reply and rebuttal. [See 14 C.F.R. § 16.29] Under Part 16, the proponent of a motion, request, or order has the burden of proof. [See 14 C.F.R. § 16.29 (b)] Accordingly, the Associate Administrator finds no error in this investigation process. Further, the Associate Administrator is persuaded the investigation of this complaint was objective and impartial and that the outcome was not predetermined in favor of the Respondent.

2. Opportunity to Supplement the Record

The appeal faults the Director for not allowing the Complainant the opportunity to supplement findings and information cited in the Director's Determination. Specifically, the Complainant believes the Director should have allowed the record to be supplemented with more "recent and congruous appraisals" if the Director found fault with the economic analysis and appraisals provided by the Complainant. The Complainant also is critical of the Director for not providing it the opportunity to supplement the record regarding information it provided on T-hangar leases. The Director's Determination found that the complaint did not contain information to clarify why the T-hangar lease rates are allegedly unreasonable, or constitute unjust economic discrimination. [See FAA Exhibit 1, Item 15, p. 3]

Upon review, the Associate Administrator finds that the Director has followed procedures required under Part 16 regarding the submittal and investigation of information relevant to the complaint. The Director may rely entirely on the complaint and the responsive pleadings provided because the parties have the burden of proving their respective cases. If the parties could supplement the Director's Determination after it is issued, the administrative process would be endless and contrary to the expedited procedures provided under Part 16. [See Preamble, Rules of Practice for Federally Assisted Airport Proceedings, Summary, 61 Fed. Reg. 53998 (Oct. 16, 1996)] If the Complainant had new evidence not previously available that could not have been discussed or presented before the Director's Determination was issued, it may have been considered on appeal. [See e.g., Ricks v. Millington, FAA Docket No. 16-98-19, Final Agency Decision, p. 9 (12/30/99)]

The Associate Administrator also finds from reviewing the Director's Determination that the Director examined all information in the record, including that submitted in the complaint, answer, response and rebuttal to determine the relevant facts in this case. On appeal, the Complainant provides no argument that persuades the Associate Administrator that the Director incorrectly determined the relevant facts from the record. Accordingly, the Associate Administrator is not persuaded that the Complainant was denied due process under Part 16 when it was not provided an opportunity to supplement its complaint after the Director's Determination was issued. [See 14 C.F.R. § 16.29]

3. Evidentiary Hearing

In its appeal, the Complainant also criticized the FAA for issuing the Director's Determination without an evidentiary hearing and requested such a hearing in the event the Associate Administrator did not reverse the Director's Determination. In particular, the Complainant requests in its appeal that the Associate Administrator "rule that the City needs to take corrective action to require that all FBOs at the airport are charged the same or similar rates for all subject leases to conduct their several activities at the airport." In

lieu of this action, the Complainant requests "the FAA set this matter for an evidentiary hearing on the subject matter of the administrative complaint." [See FAA Exhibit 1, Item 21, pgs. 14-15]

The FAA Rule of Practice, 14 C.F.R. Part 16, do not provide for an evidentiary hearing during an investigation or prior to the Director's Determination. A hearing is only provided if the Director's Determination finds the respondent in noncompliance and proposes the issuance of a compliance order, neither of which occurred in this case. [See 14 C.F.R. §16.31(d)]

The FAA Rules of Practice, 14 C.F.R. Part 16, apply the procedural structure of 49 U.S.C. § 46101(a) to complaints filed with the FAA against federally assisted airports. The Courts of Appeals that have examined the issue have held that the Part 16 hearing rules are consistent with 49 U.S.C. §46101(a). [See e.g., Penobscot Air Services LTD v. FAA, 164 F.3d, 713, 720 (1st Cir. 1999) and Lange v. FAA, 208 F.3d 389, 391 (2nd Cir. 2000)]

B. Grant Assurance #19, Operation and Maintenance

The complainant does not agree with the Director's finding that the Respondent maintains its facilities in a safe and serviceable conditions. In its appeal, the Complainant states,

> *AA prides itself of compliance with FAA, state and local safety rules and regulations. Again, AA is directly and substantially affected by having to compete against an FBO that is not required to abide by the same safety regulations that AA willingly undertakes.*

The safety regulations that the Complainant refers to in its appeal are those it raised in the complaint regarding the conditions of paved ramp surfaces and hangar floors, aircraft fueling and fuel storage procedures, nonaeronautical use of hangars and the installation of emergency showers in certain hangars. In the Director's Determination, the Director found that the evidence submitted by the Complainant was insufficient to conclude that the Respondent has so neglected the Airport's facilities as to violate Grant Assurance #19 by having an airport in an unsafe and nonserviceable condition. The Director also found the incidental violations of airport rules by tenants cited by the Complainant are not sufficient to establish unjust discrimination or failure to maintain its facilities.

In contrast, the Director determined that the Respondent had submitted evidence of its minimum standards, design standards and lease terms that it uses to ensure safety. In addition, the Director found that the Respondent has taken legal action and other steps, including ongoing pavement repairs, to enforce these terms and standards. [See FAA Exhibit 1, Item 15, pgs. 22-23]

The Complainant has not demonstrated how the Director erred in determining that evidence submitted by the Respondent shows compliance with Federal obligations to

have a program in place to ensure safety and to protect the public. This evidence includes a copy of letter from FAA confirming the Las Cruces International Airport is compliance with part 139 requirements (see FAA Exhibit 1, Item 3, Exhibit 9) and agreement by both parties that the Respondent issues criminal citations for fueling and fire code violations. [See FAA Exhibit 1, Item 3, pgs. 11-12] Nor did the Complainant explain why the Director erred in finding that citations issued by the Respondent to enforce its safety standards and terms complies with Federal obligations to adopt and enforce adequate rules and regulations to ensure safety.

Further, the Associate Administrator is not persuaded that the Director erred in its finding that some alleged building safety issues raised in the complaint are beyond the scope of Grant Assurance #19. [See FAA Exhibit 1, Item 15, Issue Three, p. 22] These issues involved the alleged use SWA hangars for nonaeronautical activity and noncompliance with new design standards for emergency showers. While building design standards, such as the installation of an emergency shower, may be an issue of economic nondiscrimination under Grant Assurance #22, enforcement of such standards for safety purposes is a local building code issue.

Accordingly, the Associate Administrator finds that the record supports the Director's decision that the Complainant did not provide sufficient evidence to demonstrate that the Respondent has neglected the airport facilities and violated Grant Assurance #19.

With regards to fuel fire safety concerns raised by the Complainant, the Associate Administrator notes that the Director's Determination only addressed the Respondent's effort to enforce local fire codes. As discussed in Section V, Applicable Federal Law and FAA Policy, airport operators that serve certain air carrier operations are required under 14 C.F.R. Part 139 to adopt fuel fire safety procedures. [See 14 C.F.R. § 139.205(b)(15) and § 139.213(b)(12)] Although the Complainant did not allege violation of Part 139 fuel fire safety requirements, the Associate Administrator is aware that the Airport is certificated under Part 139 and has an FAA-approved Airport Certification Specification (ACS)[7]. According to its ACS, the airport operator has adopted local fire codes, and National Fire Protection Association and 1994 Universal Fire Code standards to comply with Part 139 fuel fire safety requirements. [See FAA Exhibit 1, Item 3, Exhibit 9]

While any violation of 14 C.F.R. Part 139 requirements or the Airport's ACS would be addressed by the FAA under its Airport Certification Program, the Associate Administrator has reviewed this issue to ensure that the airport is being operated safely. FAA inspection records state that the last Part 139 inspection of the Airport was conducted on August 26-27, 2002. During the inspection, the FAA Airport Certification Safety Inspector (ACSI) found that both the Complainant and its competitor, SWA, were

[7] The FAA requires all operators of certificated civilian airports to develop, and comply with, a written document that details how the airport operator will comply with the requirements of part 139. As every airport is unique and local circumstances vary, this written document sets forth the site-specific procedures, equipment, and personnel that each airport operator uses to comply with part 139 requirements. This document at an airport with a Limited Airport Operating Certificate is known as Airport Certification Specifications (ACS).

not fully compliant with the Airport's fuel fire safety procedures for mobile fueling trucks. The ACSI made several safety recommendations to correct these errors and will follow up with the Respondent to ensure these recommendations are implemented. [See FAA Exhibit 1, Item 20] Accordingly, the Associate Administrator is persuaded that fuel fire safety issues raised by the Complainant are being adequately addressed through the FAA's Airport Certification Program.

C. Grant Assurance #22, Economic Nondiscrimination

On appeal, the Complainant argues that its claim was wrongly dismissed because the Director's interpretation of Grant Assurance #22 is faulty. The Complainant disagrees that Grant Assurance #22 allows for just economic discrimination and disparate treatment of FBOs. The Complainant also asserts that the Director erred in finding that Respondent is not violating the "same rate" requirement of Grant Assurance #22 with respect to the relative rates it charges SWA and AA in their T-hangar leases.

In support of these claims, the Complaint reiterates its contention the Respondent has repeatedly violated Grant Assurance #22 regarding economic nondiscrimination and that the Respondent charges the Complainant a higher lease rates than its competitor, SWA. However, before addressing each of the Complainant's claims, it is first important to address AA's characterization of the Director's review.

On page 8 of its Appeal, AA stated that "[t]he FAA initial determination attempts to reconcile the City's FBO rates with ¶ C(22)(c)'s "same rate" requirement through asserting that the respective lease for the FBO facilities are not simply the price per foot rates in the respective leases." However, nowhere in his determination does the Director attempt to reconcile, through any mathematical calculations, the rates charged to AA and SWA.

Rather, the Director indicated that Grant Assurance 22 does not require the Respondent to offer lease rates and terms that are identical to other leases negotiated, so long as there is no *unjust* discrimination. The Director further explained that long-standing FAA policy discussed in FAA Order 5190.6A, *Airport Compliance Requirements*, permits differences in lease terms when there is a difference in space, location, or facilities, for example. Therefore, the Director reasoned that the Complainant does not establish a *per se* violation of Grant Assurance 22 simply by showing differences between two leases; and that the Complainant has the burden to present evidence that the difference in treatment is unreasonable considering the circumstances. The Director concluded that the Complainant failed to present convincing evidence, focusing almost entirely on the differences in square footage lease rates for FBO facilities on the Airport. The Director explained that the evidence was not convincing because (1) the lease terms negotiated and agreed to by the Complainant differ significantly from SWA's lease terms, (2) the leases concern different times and different market circumstances, and (3) the leasehold facilities differ in character.

The Director is correct in stating that the burden is with the Complainant. As discussed above, the Part 16 is an expedited process in which the FAA may rely entirely on the complaint and responsive pleadings provided. Accordingly, pursuant to 14 CFR Part 16.23, complainants are instructed to provide a concise but complete statement of all of the facts relied upon to substantiate each allegation, along with all documents offered in support of the complaint.

While the Director compared the rates charged AA and SWA based on information contained in the record, the record was not sufficient for the Director to "attempt to reconcile" the rates between AA and SWA. Moreover, the Associate Administrator agrees with the Director that the evidence provided by the Complainant is not convincing and did not meet complaint's burden of proof on this issue, as discussed more fully below.

The Director was correct in further noting, in the context of his analysis of the AA and SWA's leases, that in addition to the other factors examined for finding no violation exists, the Complainant's knowledge of SWA's lease terms at the time the Complainant negotiated its lease was also a factor. As explained by the Director, FAA policy encourages direct negotiations between airport users. The Complainant's explanation that there was no reasonable basis for AA to dispute the SWA's rate structure because it intended to buy SWA's leasehold does not change the accuracy of the Director's conclusion. The reason for the FAA Airport Compliance Program is not to protect aeronautical entrepreneurs from the risk associated with their business decisions, but rather to protect the public's investment in the national air transportation system.

1. Interpretation of Federal Grant Assurance #22 Regarding Treatment of FBOs

In its appeal, the Complainant challenges FAA's interpretation of the economic nondiscrimination provision of the grant assurances, stating that,

> *The FAA wrongly contends that this provision allows discrimination and does not require identical treatment of FBOs. The FAA determination requires evidence of unjust discrimination – a fiction which has never been scrutinized through judicial review. The FAA further errs in stating that this action incorporates subsection (A's) "unjust discrimination verbiage." This position conveniently avoids the plain wording of § C(22)(c) that similar FBOs making similar uses of an airport are to be charged the same rates. [See FAA Exhibit 1, Item 21, p. 4]*

In support of its position, the Complainant cites St. Charles Inv. Co. v. C.I.R., 232 F.3d 773 (10th Cir. 2000), a tax case, for the general principle of statutory construction that absent ambiguity or irrational result, the literal language of a statute controls. The assurance in question, Grant Assurance #22(c), requires the airport to subject FBOs to the same rates, fees, rentals and other charges as are uniformly applicable to other FBOs making the same or similar uses of the airport and utilizing the same or similar facilities.

The parties agreed that both Adventure Aviation and Southwest Aviation, Inc. make the same or similar use of the airport. [See FAA Exhibit 1, Item 15, p. 12] However, the Director concluded, and the record supports, that the facilities are different in quality and character. [See FAA Exhibit 1, Item 15, p. 19] The rule of construction cited by the Complainant supports the Director's finding that Grant Assurance #22(c) was not violated because although both FBOs may make similar uses of the airport, they do not utilize the same or similar facilities.

Further, the Associate Administrator has determined that the Director's interpretation of the economic nondiscrimination provisions of Grant Assurance #22 is consistent with previous FAA Final Decisions on Federally-assisted airport enforcement proceedings that have been upheld in the United Sates Court of Appeals [See e.g., Penobscot Air Services v. FAA 164 F.3d713 (1st Cir. 1999) and J. Andrew Lange v. FAA, 208 F3d 389 (2nd Cir. 2000)] The term and concept "unjust discrimination" objected to be the Complainant comes directly from the statute, 49 U.S.C. 47107(a)(1).

In addition, the Associate Administrator finds the Director's decision that the two FBOs do not use the same or similar facilities is consistent with FAA policy regarding unjust discrimination. [See FAA Order 5190.6A, Section 4-14(d)(1)(c) and (d)(2)]

Accordingly, the Complainant has not persuaded the Associate Administrator that the Director's interpretation of unjust discrimination, either as specified in the authorizing statute or Grant Assurance #22, is incorrect and not supported by the record.

2. Similar Airport Use

On appeal, the Complainant reiterates its position that it and its competitor, SWA, are making the same or similar use of the airport and that the facilities that the two FBOs utilize are similar. Accordingly, the Complainant believes the Director is mistaken in its decision that the Complainant and SWA do not utilize the same orsimilar airport facilities and the Respondent may charge disparate lease rates.

Upon review, the Associate Administrator finds that the Director correctly interpreted and applied FAA policy regarding disparate treatment of FBOs that offer the same or similar services to the public. As discussed earlier, the FAA permits differences in lease terms when there is a difference in space, location or facilities leased. [See FAA Order 5190.6A, Chapter 4, Sec. 4-14d(2)(a) and (b)] This policy has been upheld in the United Sates Court of Appeals. [See e.g., Penobscot Air Services v. FAA 164 F.3d713 (1st Cir. 1999)]

Further, the Associate Administrator is not persuaded by the Complainant's argument in its appeal that since both it and SWA's lease facilities both include "appropriate space for conducting FBO related activities" that the leased facilities are the same or similar. The Director relied on information and photographs provided by the Complainant and Respondent to determine the relative condition and age of the leased facilities. Based on this documentation, the Director decided that while both FBO facilities have similar

amenities, such as office space, restrooms and customer loungers, these facilities are sufficiently different in quality, condition and character. [See FAA Exhibit 1, Item 15, p. 19]

The Associate Administrator also reviewed the information and photographs documenting the condition of these facilities and agrees with the Director that the Complainant's leased facility differs significantly from that of the SWA facility. In addition, the Associate Administrator does not find fault in the Director's use of information and photographs provided by the Complainant and Respondent. As discussed above, in rendering its initial determination, the Director may rely entirely on the complaint and the responsive pleadings provided. [See 14 C.F.R. § 16.29]

3. Value of FBO Facilities

The Complainant takes exception to the Director rejecting economic data concerning the value of the facilities leased by the Complainant and SWA, and faults the Director for failing to request additional economic data on the two FBO facilities that would establish the two structures are similar in value. In its appeal, the Complainant reiterates economic data it provided in its Reply Brief establishes a fair market value of $27.88 per square foot for the SWA FBO facilities. The Complainant contends that this market value, when compared to the market value of the FBO facility leased by the Complainant, indicates that the two FBO building values are similar.

The Associate Administrator has reviewed the appraisal the Complainant provided as part of its Reply Brief to determine if the Director erred in rejecting the economic data in this appraisal or if the argument provided by the Complainant on appeal lends any additional support to the Complainant's position on structures values. [See FAA Exhibit 1, Item 21, pgs. 6-7]

As the result of this review, the Associate Administrator confirmed the Director's finding that the $270,510 value of the building leased by Southwest Aviation cited by the Complainant in its Reply Brief is not an acceptable or a reliable estimate of the market value of the leased real estate because the Complainant had relied on a valuation of the business assets, rather than a real estate appraisal. As noted in the Director's Determination, the only real estate value that is cited in the appraisal is an estimate of the SWA leasehold value at $48,841, but no support or discussion was provided to indicate that even this value might be considered an appraised value of the real estate. The Associate Administrator also confirmed the Director's finding that the Complainant had erroneously compared the valuation of SWA's business assets against a real estate appraisal of the Complainant's leased facilities that, unlike the SWA valuation, reflects the condition and quality of specific property improvements. [See FAA Exhibit 1, Item 15, p. 18]

4. Agreement to Lease Rates

In its appeal, the Complainant states that the FAA "dwells on its position that AA did not object to the SWA rates when it was negotiating its own leases with the City." The reason the Complainant gives for not objecting to varying lease rates at the time of negotiation is that it believed it would be buying SWA and entering into a new lease agreement for SWA's facilities. Accordingly, the Complainant did not dispute SWA lease rates when it negotiated its leases with the Respondent and believes the Director erred when using this fact as a basis to deny its complaint.

The Associate Administrator is not persuaded by the Complainant's reasoning that because its business plans changed it can now protest the terms of its lease that it had previously found acceptable. Accordingly, the Associate Administrator agrees with the Director's decision that absent any evidence to demonstrate that the Complainant objected to the terms of the lease or was denied access to pertinent information during negotiations, there can be no unjust discrimination. [See FAA Exhibit 1, Item 15, p. 13]

The Director correctly notes that, as a general policy, the FAA need not consider a complaint about the reasonableness of a fee set by agreement when filed by a party to the agreement. [See e.g., Policy Regarding Rates and Charges, 61 Fed. Reg. 31994, p. 32018 (June 21, 1996)[8] and Aerodynamics of Reading, Inc. v. Reading Regional Airport Authority, FAA Docket No. 16-00-03 (July 23, 2001)] Nevertheless, in this case the Director examined the record and determined that the lease rates in question were not unjustly discriminatory.

The purpose of Grant Assurance #22 is not to provide alternative or supplemental rights to those normally available to commercial tenants in disputes with their landlords. [See FAA Docket No. 16-00-03, Aerodynamics of Reading, Inc. v. Reading Regional Airport Authority, Final Agency Decision, p. 12 (7/20/01)] As stated in the Director's Determination, the FAA does not believe that grant assurances and the FAA compliance process should be used by a commercial aeronautical tenant to circumvent negotiation or commercial litigation available under applicable state and local laws to resolve a dispute with its landlord. [See FAA Exhibit 1, Item 15, p. 13; FAA Docket No. 16-00-03, Aerodynamics of Reading, Inc. v. Reading Regional Airport Authority, Final Agency Decision, p. 12 (7/20/01); and Sky East Services, Inc. and Hampton Air Transport System, Inc. v. Suffolk County, New York, Formal Complaint Nos. 13-88-6 and 13-89-1]

5. Allegedly Inequitable Lease Rates

The Complainant argues that the Director's Determination is in error because it attempts to reconcile the discrepancy between the Complainant's lease rate and its competitor's lease rate by asserting that the respective lease amounts are not simply the price per foot rates. Specifically, the Complainant takes issue with the Director's finding that the two

[8] Sections of the policy not applicable herein were vacated and remanded by the United States Court of Appeals for the District of Columbia in Air Transport Association of America v. Department of Transportation, 119 F.3d 38 (D.C. 1997), as modified on Rehearing, Order of October 15, 1997.

lease rates for FBO facilities are not as disparate because SWA pays additional expenses, such as utilities, that the Complainant is not required to pay.

The Complainant attempts to rebut this finding by factoring such additional expenses into SWA lease rate of two cents per square foot (equating to 5¢ per square foot) and subtracting costs the Respondent assumes for the Complainant from its $10.00 a square foot lease rate (equating to $7.10 per square foot). The Complainant argues that even recalculating these rates to account for differences in the lease terms, the Respondent is still subsidizing SWA and FAA should recognize that the lease rates are unfair and "acknowledge that this disparity is not consistent with the same rate requirement of § C(22)(c)." [See FAA Exhibit 1, Item 21, p. 12]

The Director's Determination notes that the record reflects that the Complainant agreed, apparently without objection, to terms that differ significantly from those that SWA accepted four and one-half years earlier (e.g., no fuel flowage fees, no utilities, exclusive use of certain ramp areas, and short lease term) and that these differing terms might confer a competitive advantage upon the Complainant. The Director also found no evidence that the Complainant was prevented from understanding the terms of SWA's 1994 Lease when it entered into the 1998 AA Lease and agreed to its terms. Consequently, the Director was not persuaded that the Complainant requested similar treatment to SWA and was denied this treatment or that the Complainant accepted these lease terms unwillingly. Overall, the director found that the Complainant has not established a record of objection to terms to which it agreed until well after the benefit of such terms could be tested by the success of the Complainant's business plan. [See FAA Exhibit 1, Item 15, p. 15]

The Director also found that the differing time frames of the two leases is an acceptable justification for differing leased rates and lease terms, stating that the "FAA has clearly articulated the principle that Federal obligations do not require a sponsor to equalize the risk environment between the FBOs entering into business at different times, by perpetuating lease rates based on different market circumstances." [See FAA Exhibit 1, Item 15, p. 17]

In addition, the Director found that the lease payments made by SWA are not limited to the 2 cents per square foot challenged by the Complainant. Consequently, the Complainant did not persuade the Director that the lease term differential is unreasonable given the circumstances.

The Associate Administrator has reviewed the Director's Determination concerning the issue of disparate lease rates. While the record does show that lease rates are not identical, the Associate Administrator concurs with the Director's finding that Federal obligations do not require identical treatment under certain circumstances. Accordingly, the Associate Administrator finds the Director's decision that the differing market circumstances and time frame justifies differing lease rates is consistent with FAA policy regarding unjust discrimination and previous FAA Final Decisions on Federally assisted airport enforcement proceedings. [See FAA Order 5190.6A, Section 4-14(d)(2),

Penobscot Air Services v. FAA 164 F.3d713 (1st Cir. 1999) and J. Andrew Lange v. FAA, 208 F3d 389 (2nd Cir. 2000)]

In addition to concerns regarding lease rates, the Complainant raised on appeal the following lease issues:

a. T-hangar Leases: Similar to its concerns with disparities between lease rates for FBO facilities, the Complainant also reiterates on appeal its claim that differences in T-hangar leases are in violation of Grant Assurance #22. The Complainant also restates its objection to the Respondents requirement that it install a higher grade of hanger floor than SWA is required to have in its leased T-hangars. In addition, the Complainant argues against the Respondent's assertion that varying T-hangar lease rates are equitable because the Complainant has exclusive use of its leasehold and SWA does not. Generally, the Complainant charges that all these differences equates to the Respondent subsidizing SWA business.

Specifically, the Director found that the circumstances differ greatly in regards to the Complainant's T-hanger lease and SWA's T-hanger lease. Primarily, the Director found that the time frame of these leases is approximately 12 years different, and as such, airport circumstances had changed during this time and the Complainant's comparison of the two leases to be of little evidentiary value. Further, the Director found that the Complainant's claim does not overcome the fact that the Complainant agreed to the terms of its lease, without apparent objection, 14 months after having signed its first lease with the Respondent. [See FAA Exhibit 1, Item 15, p. 21]

The Associate Administrator has reviewed the record regarding T-hangar lease rates and concurs with Director's finding that the Complainant's pleading did not contain substantiating evidence regarding the allegedly unjustly discriminatory treatment and in particular, fails to establish that the rates are not justified by the differences in circumstances.

Further, the Director was correct in finding that while the record does show treatment that is not identical, identical treatment is not required by law and is consistent with FAA policy regarding unjust discrimination and previous FAA Final Decisions on Federally assisted airport enforcement proceedings. [See FAA Order 5190.6A, Section 4-14(d)(2) and Penobscot Air Services v. FAA 164 F.3d713 (1st Cir. 1999) and J. Andrew Lange v. FAA, 208 F3d 389 (2nd Cir. 2000)]

b. Sunshade Lease: The Complainant disagrees with the Director's Determination that there is insufficient data to determine unjust discrimination on lease rates for sunshades. The Complainant believes that the "obvious disparity" between the lease rates is more than sufficient.

In regards to sunshade lease differences, the Director found that the record regarding this issue was not sufficiently developed as neither party submitted dates or circumstances sufficient for the Director to make a finding. Specifically, the Director found that the

record was unclear as to which facilities were being compared and did not contain sufficient information to clarify why the rates are allegedly unreasonable or constitute unjust economic discrimination.

The Associate Administrator agrees with the Director's finding on this issue. While the record does show that the Respondent is charging different lease rates for sunshades, the Complainant failed to substantiate its allegation that disparate sunshade lease rates are not justified by the differences in circumstances.

c. Other Alleged Disparities: On appeal, the Complainant notes that the Respondent was not successful in its arbitration with SWA to recover overdue rent and fees. According to the Complainant, SWA is not required to pay amounts allegedly owed the Respondent in excess of $76,000. [See FAA Exhibit 1, Item 21, p. 8] The Complainant has concluded that since the Respondent lost in arbitration, SWA is not required to pay additional fees beyond the base lease rate of 2 cents per square foot. The Complainant believes this further supports its claim that the difference of lease rates paid by SWA and the Complainant cannot be reconciled.

Other than the above information, the FAA has not received any additional information regarding the Respondent and SWA's arbitration. Assuming the veracity of the complainant's statement on appeal, the facts as provided are insufficient to reverse the Director's findings on the different lease rates.

D. Assurance #24

The Complainant reiterates its contention that the Respondent violated grant assurance #24, Fee and Rental Structure, by not managing the Airport in a self-sustaining manner and that the Director erred by not finding the Respondent in violation of this grant assurance. In its appeal, the Complainant states,

> *It cannot be controverted that the two cents per square foot charge that the City is gifting to SWA is below any reasonable calculation of market value. Specifically, the rate charged to AA and other lessees at the Airport are more akin to market rate. The SWA rate is 500 times lower than the AA rate, and clearly constitutes an unwarranted subsidy of one FBO over another. The below market rate charged to SWA is in violation of the City's obligation to make a good faith effort to become self-sustaining. [See FAA Exhibit 1, Item 21, p. 14]*

The Director found that there is no Federal obligation for the Respondent to charge market rates to aeronautical service providers and the Associate Administrator finds no error in this decision. As noted earlier, FAA's Policy and Procedures Concerning the Use of Airport Revenue states that the FAA does not consider the self-sustaining requirement to require airport sponsors to charge fair market rates to aeronautical users. The airport operator is required to receive fair market value only for the provision of nonaeronautical

facilities and services. [See Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, pgs. 7720 and 7721, Sec. VI, Par. B-5 (Feb. 16, 1999)]

Further, the Director determined that there was insufficient evidence to establish that lease rates the Respondent charged by SWA are so low as to be a violation of Grant Assurance #24. The Associate Administrator agrees with this finding. The Complainant failed to demonstrate that the lease rates that the Respondent charged Southwest Aviation does not reflect the cost of providing aeronautical services and facilities to users. [See Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, pgs. 7720 and 7721, Sec. VI, Par. B-5 (Feb. 16, 1999)]

VIII. CONCLUSION

Based on the foregoing discussion and analysis, 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 as described above. The appeal does not provide a sufficient basis for reversing the Director's Determination with regard to alleged violations of Federal Grant Assurance #19, Operation and Maintenance; Federal Grant Assurance # 22, Economic Nondiscrimination; and Federal Grant Assurance #24, Fee and Rental Structure.

IX. ORDER

The FAA dismisses this Appeal and affirms the Director's Determination pursuant to 14 C.F.R. § 16.33.

APPEAL RIGHTS

A person disclosing a substantial interest in this final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 USC Section 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 Decision and Order has been served on the party.

Woodie Woodward
Associate Administrator
for Airports

Date: SEP 9 2003

Exhibit 1

DOCKET NO. 16-01-14

FINAL AGENCY DECISION
INDEX OF ADMINISTRATIVE RECORD

Item 1	08/17/2001	Formal Complaint, with attachments, from Adventure Aviation (AA) against the City of Las Cruces, New Mexico (Respondent).
	Item 1, Exhibit A	1999, Airport Sponsor Federal Grant Assurances.
	Item 1, Exhibit B	Undated, Highlighted Plat of Airport and parcels.
	Item 1, Exhibit C	01/03/1994, Southwest Aviation Lease with the City of Las Cruces.
	Item 1, Exhibit D	08/20/1998, Adventure Aviation Lease with the City of Las Cruces.
	Item 1, Exhibit E	08/18/1997, Southwest Aviation T-Hangar Lease with the City of Las Cruces.
	Item 1, Exhibit F	Various undated, excerpts from various aeronautical publications listing the services available at the Airport as provided by Complainant and its competitor (mislabeled as "Adventure Aviation T-Hangar Lease").
Item 2	08/29/2001	Notice of Docketed Complaint Number 16-01-14 filed by AA, and Certificate of Service served on the Respondent and the Complainant.
Item 3	09/27/2001	Answer, with attachments, filed by the Respondent.
	Item 3, Exhibit 1	1994-2001, Spreadsheets, representing financial data related to payments to the Airport.
	Item 3, Exhibit 2	Various. Rules and Regulations of the Airport as approved by the City Council by Ordinance and Resolution, including Council Ordinance 1677, "An Ordinance Establishing Standardized Rules for the Management, Development, and Use of the Las Cruces International Airport, Repealing Existing Ordinances, and Setting Effective Dates," dated June 1, 1998; Council Resolution 98-371, "A Resolution Approving Standardized Policies and Fees for the Management, Administration, Development, and Use of the Las Cruces International Airport," dated June 1, 1998; and Council Resolution 00-341B, "A Resolution Revising Resolution 98-371 to Amend the Fee Structure for Use of the Las Cruces International Airport by Aircraft Conducting Commercial Air Transportation of Passengers, Cargo and Mail," dated July 3, 2000.

	Item 3, Exhibit 3	Undated, color reproductions of (a) Adventure Aviation's facilities and (b) Southwest Aviation's facilities at the Airport.
	Item 3, Exhibit 4	04/01/1996, Aviation Office Building Commercial Lease between the City of Las Cruces and Cox and Associates; and application form for AeroDynamics dated 9/17/2001.
	Item 3, Exhibit 5	(a) 08/15/2000, Facility Lease between the City of Las Cruces and NMSU Physical Science Laboratory; and (b) 05/20/1996, Aviation Office Building Commercial Lease between the City of Las Cruces and the High Intensity Drug Trafficking Area Executive Committee (unexecuted).
	Item 3, Exhibit 6	(a) 11/29/1999, Parcel #28 Airport Land Lease between the City of Las Cruces and Adventure Aviation; and (b) 3/29/2000, Parcel #8W Airport Land Lease between the City of Las Cruces and Adventure Aviation.
	Item 3, Exhibit 7	06/03/98, Parcel #22 Airport Land Lease between the City of Las Cruces and Frank Borman.
	Item 3, Exhibit 8	Undated, Exhibit D, "Design Standards included in all Land Leases."
	Item 3, Exhibit 9	06/26/2000, Letter enclosing FAA Comments and Recommendations, Annual Certification Inspection of Las Cruces International Airport, dated May 2000, including the Airport's Certification Manual.
Item 4	10/23/2001	Complainant's Reply Brief in Support of Administrative Complaint, with attachments
	Item 4, Exhibit G	Undated, Photographs concerning SWA's alleged lack of upkeep and photographs of alleged safety violations.
	Item 4, Exhibit H	05/08/1998, Appraisal and Evaluation of a Fixed-base Operations and Associated Hangers and T-Shades, prepared for SWA regarding the value of its assets at the Airport.
	Item 4, Exhibit I	Undated, Floor plan of AA building, including area in square feet.
	Item 4, Exhibit J-1	01/03/1995, City Resolution No. 95-190
	Item 4, Exhibit J-2	10/14/1994, Appraisal Report for the Leasehold of North American Institute of Aviation at the Airport, prepared for the City of Las Cruces.
	Item 4, Exhibit K	(a) 04/03/1989. Lease between the City and West Mesa Aviation; and (b) 08/12/1998, Lease between the City and Mesilla Valley Aviation.
	Item 4, Exhibit L	Undated, Photographs of Roadway to Airport
	Item 4, Exhibit M	09/28/2001, Public Records Request

	Item 4, Exhibit N	Last 12 months (9/2000 to 8/2001) of SWA's Lease Payments
	Item 4, Exhibit O	FY 99/2000, Airport Utilities Invoicing Log.
	Item 4, Exhibit P	Undated, Photographs of SWA and AA Ramp Space.
	Item 4, Exhibit Q	04/06/2000, Airport Advisory Board Meeting Minutes.
	Item 4, Exhibit R	Undated, Photographs of Ramp
	Item 4, Exhibit S	Identified as Appendix A, FY 00/01, list illustrating SWA payments.
Item 5	11/01/2001	Respondent's Rebuttal Brief
	Item 5, Exhibit 10	Undated, Graph depicting Airport Revenues by Quarter, 1995-2000.
	Item 5, Exhibit 11	Undated, Graph depicting Airport Revenue as a Percentage of Expenditures, 1995-2000.
Item 6	09/17/2001	FAA counsel letter extending time for Respondent's answer to September 26, 2001.
Item 7	10/04/2001	FAA counsel letter extending time for Complainant's reply to October 15, 2001.
Item 8	10/23/2001	FAA counsel letter extending time for Respondent's rebuttal to October 31, 2001.
Item 9	03/26/2002	Notice of Extension of Time extending time through April 30, 2002.
Item 10	05/20/2002	Notice of Extension of Time extending time through June 30, 2002.
Item 11	06/25/2002	Letter from Complainant's counsel relative to communications of the FAA counsel and the parties.
Item 12	06/26/2002	Letter from Respondent's counsel in response to June 25, 2002 correspondence.
Item 13		FAA Form 5010 for Las Cruces International Airport
Item 14		FAA Grant History Report for Las Cruces International Airport
Item 15	08/07/2002	Director's Determination (DD), Docket No. 16-01-14
Item 16	08/28/2002	Complainant's Motion to Extend Appeal Deadline

Item 17	08/28/2002	Respondent's Objection to Complainant's Motion to Extend Appeal
Item 18	08/30/2002	Complainant's Reply to Objection to Complainant's Motion to Extend Appeal Deadline
Item 19	09/03/2002	FAA Order to Deny Complainant's Motion to Extend Appeal Deadline until October 25, 2002.
Item 20	09/12/2002	FAA Letter of Correction, Annual Airport Certification Inspection of the Las Cruces International Airport
Item 21	09/20/2002	Complainant's Appeal of Director Determination to the FAA Associate Administrator pursuant to 14 C.F.R. § 16.33
Item 22	10/10/2002	Respondent's Reply to Appeal
Item 23	01/06/03	Notice of Extension of Time extending time through January 31, 2003
Item 24	04/16/03	Notice of Extension of Time extending time through May 30, 2003