

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

JIM MARTYN, Complainant

v.

**PORT OF ANACORTES,
WASHINGTON, Respondent**

Docket No. 16-02-03

SIGNED April 14, 2003

DIRECTOR'S DETERMINATION

I. INTRODUCTION

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

Jim Martyn (Complainant/Mr. Martyn) has filed a complaint pursuant to 14 CFR Part 16 against the Port of Anacortes (Port/Respondent), owner and operator of the Port of Anacortes Airport (Airport), alleging that the Port is in violation of 49 United States Code (U.S.C.) § 47101, *et seq.*, and Title VI of the Civil Rights Act of 1964.¹ The Complainant alleges that he has been denied access to the Airport for the purposes of constructing and operating a hangar facility to be made available to the public for aeronautical use.

¹ The Complainant's claims relative to various civil rights violations were determined by the Director to be incomplete in accordance with 14 CFR § 16.27. The Director dismissed these civil rights violations claims without prejudice for failing to provide a complete statement of facts relied upon to substantiate each of the allegations as required by 14 CFR § 16.23(b)(3). The Director found that the Complainant did not describe how he was directly and substantially affected by the things done or omitted to be done as required by 14 CFR § 16.23(b)(4). [*See* FAA Exhibit 1, Item 5, for Notice of Partial Dismissal and Notice of Docketing, April 29, 2002.]

Specifically, the Director finds the Complainant alleges that:

- A. The Port has engaged in economic discrimination in violation of 49 U.S.C. § 47107(a)(1) and related Federal Grant Assurance No. 22, *Economic Nondiscrimination*;
- B. The acts and omissions of the Port have resulted in the creation of an exclusive right in violation of the prohibition against exclusive rights, 49 U.S.C. § 47107(a)(4), and related Federal Grant Assurance No. 23, *Exclusive Rights*;
- C. The Port's actions have resulted in the violation of 49 U.S.C. § 47107(a) *et seq.*, and related Federal Grant Assurance No. 5, *Preserving Rights and Powers*; and
- D. The Port converted aeronautical-use real property at the Airport to non-aeronautical use without FAA approval in violation of Federal Grant Assurance No. 29, *Airport Layout Plan*.²

In its Answer to the Complaint, the Port denies all allegations. The Port requests that the complaint be dismissed on the grounds that:

- A. The Complainant has failed to meet his burden of proof,
- B. There is a lack of jurisdiction pursuant to 14 CFR § 16.1,
- C. The Complainant failed to initiate pre-complaint resolution as required pursuant to 14 CFR § 16.21(a), and
- D. The Complainant lacks standing pursuant to 14 CFR § 16.23(a).

With respect to the allegations presented in this complaint, under the specific circumstances at the Airport as discussed below, and based on the evidence of record in this proceeding, we find that the Port of Anacortes, sponsor of the Airport, is in violation of 49 U.S.C. § 47107(a) and related Federal Grant Assurance No. 22, *Economic Nondiscrimination*, and 49 U.S.C. §§ 40103(e) and 47107(a)(4) and related Federal Grant Assurance No. 23, *Exclusive Rights*, with respect to the Port's actions in denying access to the Complainant so the Complainant could offer aeronautical services to the public. We find that the Port of Anacortes has not violated provisions of Federal Grant Assurance

² The Complainant also claimed that the Port engaged in unfair and deceptive practices, breach of fiduciary duty and violation of municipal ethics. The Director found that these claims appeared on their face to be outside the jurisdiction of the Administrator under the Acts listed in 14 CFR § 16.1 and dismissed it. In addition, the Complainant claimed unlawful diversion of aviation revenue from operations at the Anacortes Airport to non-aviation use in violation of 49 U.S.C. § 47107. The Director dismissed this claim without prejudice as incomplete because the allegation of revenue diversion was not supported by a sufficient statement of facts to substantiate it as required by 14 CFR § 16.23(b)(3) to prompt an investigation. [See FAA Exhibit 1, Item 5 for Notice of Partial Dismissal and Notice of Docketing, April 29, 2002.]

No. 5, *Preserving Rights and Powers*, regarding its actions to obtain support and agreement from the City and community. We also find the Respondent is not currently in violation of Federal Grant Assurance No. 29, *Airport Layout Plan*, regarding the use of aeronautical property for non-aeronautical purposes without FAA approval.

Our determination in this matter is based on the applicable Federal law and FAA policy, and our review of the pleadings and supporting documentation submitted by the parties, which comprise the administrative record reflected in the attached FAA Exhibit 1.³

II. THE AIRPORT

The Airport, classified as a Primary Commercial Service airport, has approximately 10,724 enplanements per year and is located in Anacortes, Washington. The Airport is owned and operated by the Port of Anacortes. During the twelve-month period ending in December 31, 2001, there were 61-based aircraft and 75,959 operations at the Airport.⁴

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 the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*

The Port of Anacortes, as the airport sponsor, has entered into 11 AIP grant agreements with the FAA totaling \$4,507,681 in Federal airport development assistance since 1984. In 2002, the airport sponsor received its most recent AIP grant for \$650,000 to install airfield guidance signs, a runway vertical/visual guidance system, and taxiway lighting.⁵

III. BACKGROUND

The Anacortes Airport, opened in 1969, is considered a Primary Commercial Service airport, providing scheduled air carrier service with more than 10,000 passengers enplaned annually. The Airport is surrounded by residential development on three sides; at some points the residential properties actually abut the Airport perimeter. The Airport was built on a site of approximately 70 acres surrounded by an additional 85 acres of aviation easements. After initial construction, additional acreage was acquired bringing the total ownership to 101 acres.

³ FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.

⁴ FAA Exhibit 1, Item 19.

⁵ FAA Exhibit 1, Item 20.

On or about October 30, 2000, Complainant Jim Martyn, (a/k/a Knutsen Martyn LLC), submitted a proposal to the Port of Anacortes to lease certain areas of the Anacortes Airport for the purpose of constructing commercial aeronautical hangars.⁶ The proposal was for a multi-phased development and included fixed-based operator (FBO)⁷ office space, a maintenance hangar, and nested T-hangars.⁸ The Complainant states that the parcel he wished to lease was identified in the lease proposal as parcel #P32356.

According to the Port, the majority of the hangars envisioned in the Airport Master Plan were planned to be built on the six-acre parcel #P32356. This parcel was erroneously zoned for residential use (the “scrivener’s error”) in 1978.⁹

The Port admits that the 1994 Airport Master Plan forecasts future aviation needs for improving Airport facilities and that the Port had a corresponding capital budget that was divided into three phases. Planned capital improvements for 1992-2012 include two additional hangars (Nos. 9 and 10) for parcel #P32356. These two new hangars were intended to accommodate up to 28 people who were on the Airport’s waiting list for hangars. Planned capital improvements also include one hangar (No. 8) on parcel #P32372. The Port states that these are the only remaining hangars on the future facilities plan that the Port intends to construct due to the parking space needed to support the existing air taxi service.¹⁰

The Port argues that it has worked for more than two years to obtain the zoning necessary to correct the “scrivener’s error” and to construct hangars identified on the Anacortes Airport Future Facilities Plan. The Port states that it did so with the specific objective of serving a number of people who had been on a waiting list for hangars,¹¹ some for as long as 10 years.¹²

⁶ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, paragraph 3.1; and Item 4, exhibit #2, *Request for Consideration of Lease Proposal*.

⁷ A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. [FAA Order 5190.6A, Appendix 5]

⁸ FAA Exhibit 1, Item 4, exhibit #1, *Proposal for Development of Hangars and Related Facilities at Anacortes*, “Phased Development.”

⁹ FAA Exhibit 1, Item 10(e) volume I, exhibit G. The term, “scrivener’s error” is used to describe a six-acre parcel of land within the Airport boundaries that had been incorrectly zoned residential or R-2 on the City’s zoning map.

¹⁰ FAA Exhibit 1, Item 10(b), page 6.

¹¹ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, pages 1, 8.

¹² FAA Exhibit 1, Item 10(e) volume I, exhibit C.1, page 2.

The Port has denied the Complainant's request to lease land. The Port, instead, argues that after the process to correct zoning errors on the Airport, the Port wants to proceed to develop hangars for its tenants currently on a waiting list through a "request-for-proposals" (RFP) process. The Port states that during the litigation stemming from the rezoning efforts, the Port committed to developing appropriate design standards, in conjunction with neighboring communities, to mitigate the potential adverse impacts of hangars to nearby homes. The Port additionally states that it denied the Complainant's most recent lease proposal so the Port could complete a planning process that would establish appropriate design standards and mitigation for the hangars.¹³

The Port states that it has a plan in place for "reasonably meeting" its Federal commitments, and cites a previous Federal Aviation Regulation (FAR) Part 16 Director's Determination for support.¹⁴ The Port also asserts that it fully understands its obligation to construct hangars to satisfy the public need demonstrated by its long-standing waiting list of existing Airport users. The Port states that it has a plan in place for developing an RFP process that will articulate appropriate design standards for the hangars, and the Port is actively taking steps toward implementing that plan. The Port requests that it be allowed time to complete the RFP process.¹⁵

A. Complainant's Proposal to the Port

On or about October 30, 2000, the Complainant submitted a proposal to the Port to develop hangars, parking, and gated access. Specifically, the proposal identified three phases of development:

- **Phase 1 – Site Development and Hangars:** In the first phase of development ...three buildings containing FBO office space, a maintenance hangar, and 10 nested T-hangars in each building...and connected to water, sewer, electric, telephone, and gas utility service. This phase of development will begin as soon as approvals and permits are obtained, and will be completed during 2001.¹⁶

¹³ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 6.

¹⁴ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 6, line 20 citing Vortex Aviation Services, LLC v. Jackson Hole Airport Board, Docket No. 16-00-18, June 21, 2001.

¹⁵ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 7, line 1.

¹⁶ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, "Phased Development."

- **Phase 2 – Hangars, Parking, and Gated Access:** In the second phase of development, three nested T-hangar buildings containing 14 units each...will be constructed in the same manner as for the previous buildings. A parking area will be installed adjacent to these buildings, and secure gated access will be installed to provide entry to the hangar development area...This phase would be started upon completion and full occupancy of phase 1, and is likely to be completed in 2002-2003.¹⁷
- **Phase 3 – Hangars and Parking:** In the third phase of development, four additional buildings containing corporate hangars, nested T-hangars, and light manufacturing facilities will be constructed in the area marked as “Phase 3” on the Preliminary Plot Plan. This final phase would be started upon sufficient tenant demand. Based on current projections, demand would probably be sufficient by 2005.¹⁸

The Proposal goes on to specify, “The buildings will be utilized primarily for the storage of aircraft. It is anticipated that the tenants occupying the hangars, particularly from Phase 1, will be owners of aircraft currently tied-down at the Airport. Therefor[e], it is unlikely that any significant noise or traffic increase will result from this development.”¹⁹

The Proposal goes on to further describe specific measures that would be taken to minimize the impacts on surrounding neighbors. For example, the proposal states: (a) all buildings will have dark green, low-glare metal siding to minimize the visibility of the buildings for adjacent neighbors; (b) adequate parking to serve the hangars will be provided onsite and will be shielded from the view of adjacent neighbors to the east; and (c) all outdoor lighting on the buildings will be designed to eliminate glare or nuisance to surrounding neighbors.²⁰

The Complainant alleges that the Port does not intend to allow hangar development on the Airport; rather, the Port intends to build barriers to such development. The Complainant also alleges that his development proposals and negotiations with the Port pre-date the alleged RFP process by more than a year. The Complainant alleges that during the negotiation timeframe, the Port did not mention its desire to request proposals for hangar development. The Complainant contends he met with Port staff, including the Executive Director and Airport Manager, more than a dozen times and reshaped his development proposal numerous times to suit the particular recommendations and requests of the Executive Director.²¹

¹⁷ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, “Phased Development.”

¹⁸ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, “Phased Development.”

¹⁹ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, “Minimizing Impact on Adjacent Neighborhoods.”

²⁰ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, “Minimizing Impact on Adjacent Neighborhoods.”

²¹ FAA Exhibit 1, Item 11, pages 1-2.

B. The Port's Rezone Application

A brief history of the Port's efforts to rezone disputed areas from residential use to light manufacturing use is provided below.

According to the Port, the majority of the hangars envisioned in the Airport Master Plan will be built on the six-acre parcel #P32356, which was erroneously zoned for residential use (the "scrivener's error") in 1978. On March 31, 2000, the Port formally asked the City of Anacortes, which has zoning authority over the Airport, to rezone the parcel #P32356 and the adjacent 4-acre parcel #P106729, from residential to light manufacturing, which is the zoning designation for the majority of the Airport property.²²

An environmental review, conducted in accordance with the Washington State Environmental Policy Act (SEPA) supported the Port's Rezone Application. In the SEPA document, the Port included a commitment for the development of appropriate design standards for the hangars. Specifically, the Port committed to "prepare building design plans for future structures built within the scrivener's error area, incorporating building materials and orientations to mitigate potential impacts to neighboring properties at the project level."²³

On May 21, 2001, the City Council adopted Ordinance #2557. With this Ordinance, the City Council refused to rezone the 4-acre parcel #P106729, leaving the residential zoning in place. While the City approved the rezone of the 6 acre parcel #P32356 to light manufacturing, the City imposed conditions and processes that effectively prevented the Port from developing its property. Specifically, one of the City's conditions required a definition of "community-oriented aviation facility" to be developed. It further required all cognizant jurisdictions, including the FAA, to agree to adhere to all guidance, recommendations and limitations that may be contained in that definition.²⁴

Additionally, the City rejected the Port's request for clarification that "terminal facilities," depicted as acceptable light manufacturing, includes hangars and other aviation-related terminal facilities. The Port sought clarification of the City's authority to impose these conditions in the Superior Court for Skagit County, Washington.²⁵ The Port also appealed the City's action to the Western Washington Growth Management Hearings Board (Growth Management Board) in order to obtain the appropriate zoning for the 4-acre parcel #P106729.²⁶ The Port argued that the City's decision to retain residential zoning on the 4-acre parcel, and the City's failure to clarify that "terminal facilities" include hangars, did not comply with the state Growth Management Hearings Act.²⁷

²² FAA Exhibit 1, Item 10(b), page 6.

²³ FAA Exhibit 1, Item 10(b), pages 6-7.

²⁴ FAA Exhibit 1, Item 10(b), pages 7-8.

²⁵ FAA Exhibit 1, Item 10(b), page 8.

²⁶ FAA Exhibit 1, Item 10(b), page 10.

²⁷ FAA Exhibit 1, Item 10(b) page 10.

The Growth Management Board noted that the fundamental issue was “whether Ordinance #2557, adopted by the City...complies with the [Growth Management Board] requirements for essential public facilities as applied to the 10-acre parcel located on Airport property owned and operated by the Port of Anacortes.”²⁸ The Growth Management Board noted, “The current Hatfield/McCoy-like feud between the City and the Port had its genesis in the 1960’s when the Port approved a resolution establishing the Airport and the City approved a major residential subdivision near the Airport within hours of each other...The City continued to approve major residential subdivisions on the surrounding property.”²⁹

The Growth Management Board noted, “The R2 zoning on the 4-acre parcel prohibits any use of the Port property except as a buffer³⁰ for surrounding residential homes. It is hard to imagine a more restrictive preclusion to airport uses than residential zoning.”³¹

On December 12, 2001, the Growth Management Board issued a compliance order requiring the City to adopt an appropriate use designation for the 4-acre parcel #P106729 and an appropriate process that would not preclude airport uses, within 120 days.³²

On April 8, 2002, the City adopted Ordinance #2587, in response to the Growth Management Board Order.³³ This Ordinance changed the zoning for the 4-acre parcel #P106729 from residential to light manufacturing. The Port states that at this point, it finally had zoning authority in place that would allow for the construction of the two planned hangars, Nos. 9 and 10.³⁴

C. The Superior Court Litigation

The Port also challenged the City’s refusal to rezone the 4-acre parcel #P106729 and the City’s conditions on the 6-acre parcel #P32356 under state and Federal preemption guidelines in Superior Court for Skagit County (Port of Anacortes vs. the City of Anacortes [No. 01-2-00834-2]).³⁵

²⁸ FAA Exhibit 1, Item 10(e) volume II, exhibit P, page 1.

²⁹ FAA Exhibit 1, Item 10(e) volume II, exhibit P, pages 1-2.

³⁰ The term “buffer” throughout this determination refers to airport property approved for temporary compatible interim use as a vegetation zone bordering both the airport and a residential area.

³¹ FAA Exhibit 1, Item 10(e) volume II, exhibit P, pages 4-5.

³² FAA Exhibit 1, Item 10(e) volume II, exhibit P, pages 7-8.

³³ FAA Exhibit 1, Item 10(e) volume II, exhibit Q.

³⁴ FAA Exhibit 1, Item 10(b) page 11.

³⁵ FAA Exhibit 1, Item 10(b), page 8 and Item 10(d), page 7. [*See also* FAA Exhibit 1, Item 2.] Mr. Ian Munce, City of Anacortes Planning Director and City Attorney [FAA Exhibit 1, Item 3, attachment of March 27, 2002, Special Meeting Minutes of the Port of Anacortes, page 2] was the Attorney at Law representing the City of Anacortes (respondents) in this case. [FAA Exhibit 1, Item 2, page 2, line 10.]

After the Port filed the action, the City modified paragraph 6.1.2 of Ordinance #2557 to read, “A definition of ‘community-oriented aviation facility’ is developed...and all non-federal cognizant jurisdictions, but including, if possible, the FAA, have agreed to adhere to all guidance, recommendations and limitations that may be contained in the definition.”³⁶

On October 2, 2001, the Court issued a ruling following a summary judgment hearing in the case that clarified for the City and the Port the roles of the various jurisdictions with regulatory authority over the Airport. The Court stated in pertinent part:

- The City has authority to render land use decisions, including the authority to zone Airport property. The City may not regulate airplane or airport operations, safety, or noise emissions. However, the City may abate, mitigate, and otherwise respond to the effects of having an Airport within their jurisdiction by exercising some land use authority.³⁷
- The Port has authority over airplane and airport operations, safety, and noise emissions. This includes authority to locate, site, and design Airport facilities to the extent that such projects relate to the issues of operations, safety, and noise.³⁸

The Court also found the requirement for a redefinition of the Anacortes Airport as a “community-oriented aviation facility” [condition 6.1.2] to be “clearly illegal under the state and federal preemption doctrines”³⁹ and struck it down in its entirety, describing it as “municipal overreaching.”⁴⁰ The Court imposed restrictions on the City’s conditional use process in recognition of the preemptive effect of various state and Federal statutes.⁴¹

The Court also ruled that the type, location, and width of vegetative buffering adjacent to neighboring properties is within the City’s jurisdiction, provided it does not preclude airport operations. However, the Court found that security fencing is a safety issue to be decided by the Port, noting that the City’s requirement to locate the fence 75 feet inside the Airport perimeter is of questionable logic and legality.⁴²

³⁶ FAA Exhibit 1, Item 10(b), *Memorandum in Support of Port's Motion to Dismiss*, page 8, #2; Item 10(e) volume II, exhibit O, *Ordinance No. 2573*.

³⁷ FAA Exhibit 1, Item 10(b), *Memorandum in Support of Port's Motion to Dismiss*, page 9, #7.

³⁸ FAA Exhibit 1, Item 10(b), *Memorandum in Support of Port's Motion to Dismiss*, page 9, #10.

³⁹ FAA Exhibit 1, Item 10(e) volume II, exhibit N, *Transcript of Proceedings No. 01-2-00834-2*, page 30.

⁴⁰ FAA Exhibit 1, Item 10(e) volume II, exhibit N, *Transcript of Proceedings No. 01-2-00834-2*, page 31.

⁴¹ FAA Exhibit 1, Item 10(e) volume II, exhibit N, *Transcript of Proceedings No. 01-2-00834-2*, page 28.

⁴² FAA Exhibit 1, Item 10(e) volume II, exhibit N, *Transcript of Proceedings No. 01-2-00834-2*, page 29, restrictions No. 3 and No. 4.

D. Airport Planning Process

The Port states that during the course of the prolonged litigation in Superior Court and rezone issues before the Growth Management Board, the existing Commissioners developed strong policy positions on Airport development. When the Court's decision was rendered, the Board of Commissioners was in the midst of an election cycle that brought two new Commissioners to the Port of Anacortes.⁴³ Airport development was one of the most controversial issues in the election. As a result, the Commissioners who were elected also developed strong policy positions on Airport development. The Port notes that in the aftermath of the election and litigation, the City engaged the Port and the public in additional planning processes for the Airport. The Port simultaneously sought to follow through on its commitments to implement appropriate design standards to mitigate potential impacts of the new hangars to Airport neighbors.⁴⁴

The Port explains that initially, this process was going to include a City Sub-Area Plan and an Airport Master Plan Update. The Airport Master Plan Update would have been the Port's mechanism to address Airport neighbors' concerns raised during the litigation, at public meetings, and during the election. It would have provided the mechanism to develop design standards for mitigating potential impacts of Airport development.⁴⁵

In an April 2, 2002, letter to Airport Executive Director Dan Stahl and the Port Commissioners, Ms. Carol Key, Supervisor, Washington Section of the FAA's Northwest Mountain Region Airports Division, pointed out that the Airport has an approved Airport Layout Plan,⁴⁶ which went through a public process. The FAA has not received any justification for updating the master plan and believes the current plan still serves the purpose for which it was developed. Ms. Key stated, "Unless the Port believes it is necessary to show more development on the Airport, or to fully develop Airport property, we do not support a master plan update."⁴⁷

Ms. Key further stated that it is unreasonable for the Port to agree to any interim development controls on the Airport until after the City amends its comprehensive plan and the Airport amends its Airport Master Plan. Ms. Key adds that the "Court specifically stated that the City couldn't withhold permits for Airport development until after the City amends its comprehensive plan and the Airport amends its Airport Master Plan."⁴⁸

⁴³ FAA Exhibit 1, Item 10(b), page 11.

⁴⁴ FAA Exhibit 1, Item 10(d), page 11.

⁴⁵ FAA Exhibit 1, Item 3.

⁴⁶ An Airport Layout Plan is a part of an Airport Master Plan; it depicts the actual and forecast layout of the airport. The current Airport Layout Plan is dated December 15, 1994. [*See* FAA Exhibit 1, Item 18A.]

⁴⁷ FAA Exhibit 1, Item 3, page 1.

⁴⁸ FAA Exhibit 1, Item 3, page 2.

Ms. Key advised that preventing the construction of hangars, fencing and other structures is contrary to the Port's Federal grant assurances. The Port also cannot deny a request to build a hangar on Airport property identified on the Airport Layout Plan as a future hangar area. The Port has an obligation with the Federal Government to make the Airport available to all types, kinds and classes of aeronautical activity, including a request to lease land to construct a hangar. Ms. Key questioned why the Port had recently denied such a land lease. She stated, "We understand that the City has requested the Port to not allow any hangars to be constructed until December 31, 2003; however, this appears to be municipal overreaching. It is our understanding that the Court found that hangars are fundamental to airport operations and that the City's permit review is preempted from considering the necessity of, or the number or the existence of those facilities. We therefore strongly encourage the Port to continue negotiations in good faith with [Complainant]."⁴⁹

E. The Request for Proposals (RFP) Process

Without funding for a master plan update from the FAA, the Port states that it decided to pursue other mechanisms for addressing the concerns of Airport neighbors. The Port Commission decided to develop an RFP process in which it would articulate design standards for the new hangars to mitigate adverse impacts to nearby residences.⁵⁰

As part of the RFP process, the Port stated that it would reserve the right to construct the hangars itself in order to ensure that they will be made available first for the 27 individuals⁵¹ who have been on the Port's hangar waiting list, some for as long as ten years.

The Port states that contrary to Mr. Martyn's allegations, the Port's RFP process meets several key goals: (1) it allows the Port to meet its Federal grant assurances to the FAA; (2) it allows the Port to articulate design standards to mitigate adverse impacts to nearby residents and generate goodwill in the local community, (3) it addresses the City's regulatory land-use authority at the Airport; and (4) most importantly, it serves the Port's waiting list for hangar users, which is an issue Mr. Martyn does not address in his Reply.⁵²

⁴⁹ FAA Exhibit 1, Item 3, page 2.

⁵⁰ FAA Exhibit 1, Item 10(e) volume II, exhibit T.

⁵¹ The number of tenants on the Airport wait-list has been described, variously, as 27, 28 or 51. [*See* FAA Exhibit 1, Items 12; 10(e) volume I, exhibit C, (c.1); 10(b), page 2; and 10(d), page 3.]

⁵² FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, pages 4-5.

The Port goes on to add, “The Port has labored diligently to ensure proper zoning and ordinances are in place to allow hangar construction to proceed for wait-listed Airport users. The Port is developing an RFP process that will serve its waiting list. Nowhere in Mr. Martyn’s reply does he refute the fact that his lease proposals would serve his private investors instead of the Port’s waiting list of existing Airport users...The Port’s desire to serve its waiting list of existing Airport users first is fully consistent with the FAA guidance.”⁵³

The Port alleges that during the lease negotiations, Mr. Martyn indicated his proposals only included hangars for himself and for a group of undisclosed private investors.⁵⁴ The Port further alleges that Mr. Martyn’s proposal made no clear provision for the Port’s longstanding waiting list of hangar customers.⁵⁵

The Port further states it would take the following steps to ensure a successful proposal.

- Planning and Architectural Consultant: The Port may hire a planning and architectural consultant to develop building layouts, specifications, schedules, and cost estimates to construct the structures.⁵⁶
- Financial Analyst: The Port may hire a financial consultant to prepare a leasing plan and evaluate the economic viability of the RFP.⁵⁷
- Request for Proposals: The Port would take the information from the consultants and prepare a Request for Proposals to build out the structures identified in the Airport Master Plan.⁵⁸
- Evaluation of Proposals: The Port would evaluate the proposals received and determine the best acceptable proposal, if any. The Port and Proponent will enter into an agreement to construct the buildings.⁵⁹

⁵³ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 8.

⁵⁴ An excerpt from the Complainant’s proposal to the Port Commission states, “It is anticipated that the tenants occupying the hangars, particularly from Phase 1, will be owners of aircraft currently tied-down at the Airport. Therefor[e], it is unlikely that any significant noise or traffic increase will result from this development...” [See FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, “Minimizing Impact on Adjacent Neighborhoods.”]

⁵⁵ FAA Exhibit 1, Item 10(b) and 10(d).

⁵⁶ FAA Exhibit 1, Item 10(e) volume II, exhibit T, page 1.

⁵⁷ FAA Exhibit 1, Item 10(e) volume II, exhibit T, page 1.

⁵⁸ FAA Exhibit 1, Item 10(e) volume II, exhibit T, page 2. Additionally, planned capital improvements for 1992-2012 include two additional hangars (Nos. 9 and 10) for parcel #P32356. These two new hangars were intended to accommodate up to 28 people who were on a waiting list for hangars. Planned capital improvements also include one hangar (No. 8) on parcel #P32372. The Port states, “*These are the only remaining hangars on the future facilities plan that the Port intends to construct due to the parking needed to support the existing air taxi service.*” [FAA Exhibit 1, Items 10(b), pages 5-6; and 10(d), page 3.]

⁵⁹ FAA Exhibit 1, Item 10(e) volume II, exhibit T, page 2.

The Port anticipates the following schedule for the RFP process, assuming FAA's acceptance of this approach by the end of June 2002.⁶⁰

By July 26, 2002	Public Discussion on Requirements for Professional Services.
By August 31, 2002	Publish RFQ (request for qualifications) for Planning and Architectural Consultant and Financial Analyst.
By October 11, 2002	Selection and Hiring of Planning and Architectural Consultant and Financial Analyst.
January – February 2003	Public Participation Process – Hangar Design Elements.
By March 31, 2003	Completion of Consultant Studies.
By May 30, 2003	Prepare and Publish RFP.
By July 31, 2003	Complete Evaluation of Proposals.
On August 29, 2003	Enter into Agreement with Proponent.
Fall 2003	Construction.

The Port also notes that the RFP will include a contingency that would allow the Port to construct the hangars itself if no acceptable proposals are received. The Port states that it will develop a budget and construct the hangars itself based on the Airport Layout Plan, and that construction of the buildings will be included in the Port's 2003 budget process.

F. Denial of Complainant's Commercial Lease Proposal

On March 27, 2002, the five-member Port Commission voted 3-2 to deny Mr. Martyn's lease proposal until the additional Airport planning processes could be completed. The Port states that the decision on Mr. Martyn's lease was expressly influenced by policy concerns for the timing of hangar construction relative to the Airport planning processes, which have subsequently evolved to include the RFP process. The Port argues that it did not deny Mr. Martyn's lease as such; it postponed consideration of his proposals until the Port completes the process of articulating appropriate design standards to mitigate the concerns of Airport users.

⁶⁰ FAA Exhibit 1, Item 10(e) volume II, exhibit T, page 2; Items 10(b) and 10(d). The Port's proposed timeline did not account for the time period provided in the Part 16 process for issuance of the Director's Determination.

Further, the Port argues, “only by addressing the concerns of the Airport neighbors up-front can it rebuild the community support for the Airport that is so vital to its continued viability.”⁶¹

The Complainant disputes that the Port intends to build hangars on the Airport, arguing, “The Port’s hastily-conjured, cleverly-named RFP process does not aim to build hangars, it aims to build barriers to any development.”⁶²

The Complainant contends that his development proposals and negotiations with the Port pre-date the alleged RFP process by more than a year. “During that entire time, there was never a mention of a plan for RFPs, or for any similar planning process at the Airport.”⁶³

G. Denial of Complainant’s Individual Lease for Hangar Space

On February 14, 2002, the Complainant submitted a “Clarification of Proposals for Leases at Anacortes Airport.” This modified lease request stated that the Complainant desired to build a private hangar on Lease Pad #1.⁶⁴ The Port identified this parcel as No. 8 in the Future Facilities Plan.

The Port admits that on March 27, 2002, the five-member Commission voted 3-2 to deny Mr. Martyn’s lease proposal until the additional Airport planning could be completed. The Port further admits that its decision on the Complainant’s lease was expressly influenced by policy concerns for the timing of hangar construction relative to the Airport planning process, which subsequently evolved to include the RFP process.⁶⁵

The Complainant challenged the Port’s decision in the Washington State Superior Court for Skagit County. The Port states that this Court action has been stayed pending the outcome of this proceeding.⁶⁶ The Complainant, however, alleges that on May 3, 2002, the deadline for the Port’s answer in Martyn’s Writ of Mandamus action in Superior Court,⁶⁷ the Airport Director offered to return Mr. Martyn’s proposal to the Commission’s agenda for reconsideration at some non-specific future date in exchange for the following concessions:⁶⁸

1. Mr. Martyn’s immediate withdrawal and dismissal of all claims, in this and any other courts, with prejudice;

⁶¹ FAA Exhibit 1, Item 10(d) and Item 12, *Port’s Rebuttal to Complainant’s Reply and Port’s Reply on Motion to Dismiss*, page 6.

⁶² FAA Exhibit 1, Item 11, page 1.

⁶³ FAA Exhibit 1, Item 11, page 2.

⁶⁴ FAA Exhibit 1, Item 4, exhibit 3, *Proposed Lease Agreement*, “Clarification of Proposals for Leases at Anacortes Airport.” (Lease Pad #1 is also identified as Hangar No. 8. *See* FAA Exhibit 1, Item 10(b), page 15.)

⁶⁵ FAA Exhibit 1, Item 10(b), page 15.

⁶⁶ FAA Exhibit 1, Item 10(b), page 15.

⁶⁷ FAA Exhibit 1, Item 10(e) volume II, exhibit X, *Notice of Application for Writ of Mandamus*.

⁶⁸ FAA Exhibit 1, Item 11, page 5.

2. An agreement whereby Mr. Martyn would release and hold harmless Commissioners Mallary and Niver from any and all future claims in any court;
3. The withdrawal of all of Mr. Martyn's additional proposals for leasing any other land at the Anacortes Airport; and
4. Mr. Martyn's release and waiver of any rights to bring claims before the FAA for any future violations by the Port.⁶⁹

Mr. Martyn states that "for additional persuasion, the Port's attorney...threatened Mr. Martyn that if he did not immediately accept the offer as it stood, then the Port would thereafter work to permanently ban Mr. Martyn from any access to hangar development at the Airport, regardless of the consequences of such action, or of the outcome of this Part 16 action."⁷⁰ Mr. Martyn states that he asked for, and was promised, a memo from the Airport Director to confirm the terms of the offer within two hours. No such confirmation arrived, and Mr. Martyn rejected the offer as insincere and incomplete.⁷¹

In its Rebuttal, the Port argues that it made Mr. Martyn a good faith settlement offer that he rejected in favor of maintaining this action and the action he filed in the Skagit County Superior Court. In return for settling the FAA action and dismissing the Superior Court action, the Port offered the following settlement terms to Mr. Martyn:

1. The Port would negotiate and execute a lease with Mr. Martyn for lease pad #1 (his personal hangar) in the location of Hangar No. 8 on the Airport Future Facilities Plan; and
2. The Port would establish an RFP process to construct hangars in the location of Hangars Nos. 9 and 10 on the Airport Future Facilities Plan, in which Mr. Martyn would be eligible to participate.⁷²

The Port also admits, "The Port, its counsel, and Mr. Martyn, also discussed the necessary interim steps each party would need to take during the settlement process. These steps included developing a settlement agreement by May 9, 2002; advising the FAA by May 20, 2002, of the pending settlement agreement; approving the settlement agreement at the Port Commission meeting on May 23, 2002; and executing a lease and filing a voluntary motion to dismiss with prejudice before May 30, 2002."⁷³

⁶⁹ FAA Exhibit 1, Item 11, page 5.

⁷⁰ FAA Exhibit 1, Item 11, pages 5-6.

⁷¹ FAA Exhibit 1, Item 11, pages 5-6.

⁷² FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 10.

⁷³ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 10.

The Port states that it placed no additional conditions on Mr. Martyn, either future or present, and that it never threatened Mr. Martyn. The Port also avers that it made it clear to Mr. Martyn that he would be eligible to participate in the RFP process like everyone else.⁷⁴

The Port states that after the Complainant filed this proceeding with the FAA, and to avoid litigation, the Port offered to grant the Complainant his final proposal for lease pad #1⁷⁵ on the condition that the Complainant dismiss his parallel Superior Court action. The Port also proposed that the Complainant adhere to its design standards for Lease Pad #1 and agreed that the Complainant could participate in the RFP process for the other lease pads.⁷⁶

H. Northwest Marine Technology Lease and Interim Use of Compatible Vegetation Zone Bordering both Airport and Residential Property

The Complainant alleges that the Port has operated to convert real property that is reasonably required for immediate aeronautical use to non-aviation use without the consent of the FAA. The Complainant contends this occurred via the Port's leasing of certain Airport lands to Northwest Marine Technology and by establishing residential buffer and fence setback uses.⁷⁷

The Respondent denies the allegation that it has converted aeronautical-use land for non-aeronautical use by leasing property to Northwest Marine Technology or by proposing to establish a 75-foot vegetation zone to act as a buffer between the Airport and the residential area. The Respondent argues that the Complainant did not substantiate that the Port had or intended to dedicate Airport lands for such uses without first obtaining necessary approvals from the FAA. The Port contends the "FAA has approved these uses."⁷⁸

The Complainant in its reply argues that the Port had agreed to a lease with Northwest Marine Technology because it does not contribute to any potential increase in aviation activity at the Airport. The Complainant contends that the Northwest facility quietly displaces aviation businesses that could have used the land for aeronautical purposes.⁷⁹ The Respondent in its rebuttal again contends that the FAA was notified of the proposed Northwest Marine Technology lease and that the FAA "indicated to the Port that Northwest Marine Technology is ...the kind of tenant that strengthens the Airport because of its involvement in the local community."⁸⁰

⁷⁴ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, pages 10-11.

⁷⁵ Lease Pad #1 is also identified as Hangar No. 8. [*See* FAA Exhibit 1, Item 10(b), page 15.]

⁷⁶ FAA Exhibit 1, Item 10(b), *Memorandum in Support of Port's Motion to Dismiss*, page 16.

⁷⁷ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, page 10.

⁷⁸ FAA Exhibit 1, Item 10(b), *Memorandum in Support of Port's Motion to Dismiss*, page 23.

⁷⁹ FAA Exhibit 1, Item 11, page 4.

⁸⁰ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 9.

The Port contends that the FAA Seattle Airports District Office communicated its position to the Port on the Northwest Marine Technology lease, the vegetation zone and the proposed placement of a security fence at the Airport.⁸¹ The Port submitted depictions of different vegetation zone overlays for the rezone of the Airport to the Administrative Record. Included in these depictions are: the current City code 10' setback, the Port's 75' landscaped buffer proposal, the City's 140' landscaped buffer proposal and a private community group, *Concerned Citizens Against Runway Expansion's* (CCARE) 300' foot landscaped buffer proposal.⁸² In addition the record contains various proposals regarding placement of the security fence. The various proposals included placing the fence directly on the Airport perimeter property line,⁸³ placing it no more than 20 feet inside the Airport property line,⁸⁴ placing it "within the proposed 75 foot landscaped buffer,"⁸⁵ and placing it 75 feet inside the Airport property line.⁸⁶

IV. ISSUES

Upon review of the allegations and relevant airport-specific circumstances summarized above in the Background Section, the FAA has determined that four issues⁸⁷ require analysis in order to provide a complete review of the Port's compliance with applicable Federal law and policy.

Issue 1: Whether the Port, by denying the Complainant the right to lease land and develop hangar facilities in order to offer aeronautical services to the public at the Anacortes Airport, is in violation of Federal Grant Assurance No. 22, *Economic Nondiscrimination*, regarding the Respondent's obligation to make the Airport available for public use on reasonable terms and without unjust economic discrimination to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport.

Issue 2: Whether any of the Respondent's alleged actions, individually or cumulatively, have resulted in the Respondent having granted an exclusive right to conduct an aeronautical activity at the Airport in violation of 49 U.S.C. §§ 47107(a)(4) and 40103(e) and related Federal Grant Assurance No. 23, *Exclusive Rights*.

⁸¹ FAA Exhibit 1, Items 12(a), *Declaration of Kathy Pittis*; 18, and 10(e) volume I, exhibit C.1, *Attachments B and C*.

⁸² FAA Exhibit 1, Item 10(e) volume I, exhibit C.1, *Attachment C*.

⁸³ FAA Exhibit 1, Item 8

⁸⁴ FAA Exhibit 1, Item 10(e) volume II, exhibit S.

⁸⁵ FAA Exhibit 1, Item 10(e) volume I, exhibit C.1, *Attachment B*.

⁸⁶ FAA Exhibit 1, Item 10(e) volume II, exhibit N, page 29; [*See Port of Anacortes v City of Anacortes*, No. 01-2-00834-2, October 2, 2001.]

⁸⁷ One additional sub-issue raised by the Port regarding procedural matters has been considered and will be addressed in this determination following the discussion of issues raised by the Complainant.

Issue 3: Whether any of the Respondent's alleged actions, individually or cumulatively, have resulted in a dilution of the Respondent's rights and powers in violation of 49 U.S.C. § 47107(a) *et seq.*, and related Federal Grant Assurance No. 5, *Preserving Rights and Powers*.

Issue 4: Whether the Respondent operated to convert aeronautical-use real property at the Airport to non-aeronautical use without FAA approval in violation of Federal Grant Assurance No. 29, *Airport Layout Plan*.

These issues are discussed at length under Section VI, *Analysis and Discussion*, following a review of the applicable law and policy relevant to this complaint in Section V below. In addition to the four issues identified in the complaint, the Director addresses four procedural matters brought up by the Respondent in its Motion to Dismiss.

V. 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 policies; and the complaint process.

A. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAAAct), 49 U.S.C. § 40101, *et seq.*, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The Federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of Airport facilities. In each such program, the airport 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 Federal grant 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 which 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, which airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of Federal property, to ensure that airport sponsors serve the public interest.

FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, (hereinafter Order) 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. The Order, *inter alia*, 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.

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(a), 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. These sponsorship requirements are included in every airport improvement program (AIP) grant agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal government.

Five Federal grant assurances apply to the specific circumstances of this complaint.

1. Preserving Rights and Powers

Federal Grant Assurance No. 5, *Preserving Rights and Powers*, requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its Federal obligations. This assurance implements the

provisions of the AAIA, 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the sponsor of a Federally obligated airport “...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.”

FAA Order 5190.6A describes the responsibilities under Federal Grant Assurance No. 5 assumed by the owners of public-use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. [*See* Order, Secs. 4-7 and 4-8.]

2. Consideration of Local Interest

Federal Grant Assurance No. 7, *Consideration of Local Interest*, requires the airport owner or sponsor to give “fair consideration to the interest of communities in or near where the project may be located.” This grant assurance is relevant when considering the Respondent’s concern for obtaining community agreement for various activities.

3. Use of the Airport on Reasonable and Not Unjustly Discriminatory Terms

Federal Grant Assurance No. 22, *Economic Nondiscrimination*, 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 as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” [Federal Grant Assurance No. 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.” [Federal Grant Assurance No. 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 necessary to serve the civil aviation needs of the public.” [Federal Grant Assurance No. 22(i)]

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

FAA Order 5190.6A describes the responsibilities under Federal Grant Assurance No. 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* Order, Secs. 4-14(a)(2) and 3-1.]

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 reasonable terms, and without unjust discrimination. [*See* Order, Sec. 4-13(a).]

FAA policy regarding the airport owner's responsibility for ensuring the availability of services on reasonable terms and without unjust discrimination provides that third-party leases contain language incorporating these principles. Federal Grant Assurance No. 22(b) states,

In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to –

- (a) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- (b) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

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 of aeronautical activities. [*See* Order, sec. 3-8(a).]

4. Prohibition on the Establishment of an Exclusive Right

Federal Grant Assurance No. 23, *Exclusive Rights*, implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the sponsor of a Federally obligated airport:

“...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public.”

“...will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities...”

“...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code.”

In FAA Order 5190.6A, the FAA discusses its exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [*See* e.g. *Pompano Beach v FAA*, 774 F2d 1529 (11th Cir, 1985).] A sponsor is under no obligation, however, to permit aircraft owners to introduce onto the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities. [*See* Order, Sec.3-9 (e)]

Leasing all available airport land and improvements planned for aeronautical activities to one enterprise will be construed as evidence of an intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease. [*See* Order, Sec. 3-9(c)]

FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [*See* Order, Ch. 3]

5. Airport Layout Plan

Federal Grant Assurance No. 29, *Airport Layout Plan*, requires the airport owner or sponsor to keep its Airport Layout Plan, which is a planning tool for depicting current and future airport use, up to date. Federal Grant Assurance No. 29 prohibits the airport owner or sponsor from making or permitting any changes or alterations in the airport or any of its facilities that are not in conformity with its FAA-approved Airport Layout Plan. Federal Grant Assurance No. 29 states:

- (a) [The airport owner or sponsor] will keep up to date at all times an Airport Layout Plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas

owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon. Such Airport Layout Plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the Airport Layout Plan. The sponsor will not make or permit any changes or alternations in the airport or any of its facilities that are not in conformity with the Airport Layout Plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

- (b) If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the Airport Layout Plan as approved by the Secretary, the owner or operator will, if requested by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

D. The Complaint Process

Pursuant to 14 CFR, Part 16, § 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 complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. [14 CFR, Part 16, § 16.23(b)(3,4)]

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 it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [14 CFR, Part 16, § 16.29]

The proponent of a motion, request, or order has the burden of proof. 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.” [5 U.S.C. § 556(d).] [*See also, Director, Office of Worker’s Compensation Programs, Department of Labor v. Greenwich Collieries*, 512 US 267, 272 (1994); *Air Canada et al. v. Department of Transportation*, 148 F3d 1142, 1155 (DC Cir, 1998).] Title 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires that the complainant must submit all documents then available to support his or her complaint. Similarly, 14 CFR § 16.29 states that “[e]ach party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.”

VI. ANALYSIS AND DISCUSSION

In this complaint, the role of the FAA is to determine whether the Port is in compliance with its Federal obligations, specifically those required under Federal Grant Assurance No. 22, *Economic Nondiscrimination*; Federal Grant Assurance No. 23, *Exclusive Rights*; Federal Grant Assurance No. 5, *Preserving Rights and Powers*; and Federal Grant Assurance No. 29, *Airport Layout Plan*.

In reviewing the Authority’s compliance herein, the FAA will take into consideration that the prime obligation of the owner of a federally assisted airport is to operate it for the use and benefit of the public. The public benefit is not assured merely by keeping the runways open to all classes of users. While the owner is not required to construct hangars and terminal facilities, it has the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public, i.e., hangar storage. This means that unless it undertakes to provide these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities.⁸⁸

Each of the issues identified in Section IV above is discussed here under the heading for the grant assurance associated with that issue: (a) Economic Nondiscrimination, (b) Exclusive Rights, (c) Preserving Rights and Powers, and (d) Airport Layout Plan. In addition, the Director has addressed four procedural matters proffered by the Respondent in its Motion to Dismiss.

A. Economic Nondiscrimination

Issue 1: Whether the Port, by denying the Complainant the right to lease land and develop hangar facilities in order to offer aeronautical services to the public at the Anacortes Airport, is in violation of Federal Grant Assurance No. 22, *Economic Nondiscrimination*, regarding the Respondent’s obligation to make the Airport

⁸⁸ FAA Airport Compliance Requirements, Order 5190.6A, [4-15]

available for public use on reasonable terms and without unjust economic discrimination to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport.

In general, the Complainant alleges that the Port's denial of his lease proposal since October 2000 constitutes unjust discrimination against the Complainant. Specifically, the Complainant contends that the Port is actively taking steps to deny any type of aeronautical development on the Airport, in spite of a proven need for aircraft hangar storage. The Complainant alleges that the Port Commission is engaging in actions to prevent the construction of hangars in order to appease Airport neighbors who oppose Airport development.

The Port has denied the Complainant's October 2000 request for a commercial hangar lease; the Port has also denied the Complainant's February 2002 revised proposal for an individual hangar lease.

The Port denies that it is acting in an unjustly discriminatory manner. The Port argues that: (1) it has delayed action on hangar construction only until a plan is in place to delineate hangar design and mitigation standards, (2) the Complainant will have an equal opportunity to participate in the Request for Proposals (RFP) process that will follow the hangar design and mitigation standards planning, (3) the Complainant's current proposal does not address the needs of the Airport's current tenants who are on a waiting list for hangar space, and (4) the Port may decide to invoke its proprietary exclusive right to develop the hangars itself if the RFP process is unsuccessful.

1. Design Standards for Hangars

The Port contends that working with its neighbors to determine design and mitigation standards is essential to maintaining the vitality of the Airport. It is committed to achieving hangar construction design standards and mitigation standards that will be acceptable to Airport neighbors.⁸⁹ The Port's stated goal of the planning process is to develop stringent hangar design standards that will shield the neighboring residential properties from the sights and sounds of tenant aircraft. The Port argues that only by developing these mitigation and design standards in concert with Airport neighbors, can it go forward with allowing development to occur on the Airport.

Federal Grant Assurance No. 7, *Consideration of Local Interest*, does require airport owners or operators to give fair consideration to the interests of communities in or near where the project may be located. It does not require community acceptance of all planned aeronautical development.

⁸⁹ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*.

As discussed in the background section above, the Port, as the airport sponsor, has developed, and the FAA has approved the Airport Layout Plan. The development of the approved Airport Layout Plan went through a public process⁹⁰ and provides for the construction of hangars in the area identified in Mr. Martyn's proposal. Therefore, the consideration of local interests was taken into account at the time the Airport Layout Plan was developed and submitted to the FAA for approval.

In any event, it appears from the record that Mr. Martyn's proposal does consider the potential concerns of Airport neighbors. The terms of the hangar construction in his proposal stated⁹¹ the hangar development would:

- Maintain a 75-foot wide buffer zone in one area, and a wider buffer zone in another.
- Use dark green, low-glare metal siding to minimize the visibility of the building from adjacent neighborhoods.
- Provide adequate parking onsite that will be shielded from view by the neighborhood.
- Use outdoor lighting that is designed to eliminate glare or nuisance to surrounding neighbors.
- Ensure rainwater drained into approved storm water systems to eliminate any storm water erosion impact on surrounding properties.

The mitigation proposed by the Complainant appears to address what might later be identified as legitimate concerns of the local community. The Port has not specifically argued that the Complainant's plan for hangar mitigation is not adequate; rather, the Port continues to contend that additional planning must be done in concert with the City and Airport neighbors to ensure the local community is satisfied with the design and mitigation standards. The Port argues that until design and mitigation standards have been developed that are acceptable to the Port, the City, and a private community group, *Concerned Citizens Against Runway Expansion* (CCARE), it cannot ensure that the mitigation efforts suggested by the Complainant will be sufficient to meet the needs of the local community.

⁹⁰ Prior to approving an Airport Layout Plan, typically the public is given the opportunity to make comments (both written and oral) and ask questions at public hearings and briefings which are advertised in the local newspaper. [*See* FAA Exhibit 1, Item 18A.]

⁹¹ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, "Minimizing Impact on Adjacent Neighborhoods."

2. Request for Proposals (RFP) Process

The Port argues that the Complainant's proposal has not been denied, just postponed pending design and mitigation standards to be articulated in a future Request for Proposals (RFP).⁹² The Port affirms that Mr. Martyn will be eligible to participate in the RFP process once the plan is finalized.⁹³ The Port reiterates that the RFP process will not go forward until a plan approved by the Port, in partnership with the City and CCARE, is completed.⁹⁴

The Port argues the benefits of the RFP process, stating this process will meet several goals, including: (a) it will allow the Port to meet its Federal grant assurance obligations, (b) it will allow the Port to articulate design standards that will mitigate adverse impacts to nearby residences and generate good-will in the local community, and (c) it will ensure the hangars built will serve the Airport's tenants who are currently on the waiting list for hangars.⁹⁵

The Complainant has alleged that his development and negotiations with the Port pre-date the alleged RFP process by more than a year. He also contends that during that time, no mention was made by the Port of a plan for an RFP process, or for any similar planning process. The Complainant avers that he met with Port staff, including the Executive Director and the Airport Manager, more than a dozen times. He states that he reshaped his development proposals numerous times specifically to suit the particular recommendations and requests of the Executive Director. The Complainant also contends that this direct input by the Port in the design layout of the proposals resulted in the eventual location and number of lease areas proposed.⁹⁶

The Port admits that it had only recently started developing its RFP process. The Port argues, however, that it could not consider developing an RFP process earlier. It was not until June 6, 2002, that the Port had its final order finding the City's zoning and conditional use process in compliance with the State Growth Management Hearings Act. Until that time, no one could have constructed Hangars 9 or 10. The only hangar space on the Airport Future Facilities Plan that was free from appeal, properly zoned, and viable for construction was the single-hangar site identified as Hangar No. 8.⁹⁷

⁹² FAA Exhibit 1, Item 10(d), page 15.

⁹³ FAA Exhibit 1, Item 10(d), page 3; and Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 10.

⁹⁴ CCARE (Concerned Citizens Against Runway Expansion) is a private group opposed to airport development; it is not a government agency.

⁹⁵ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, pages 4-5.

⁹⁶ FAA Exhibit 1, Item 11, page 2.

⁹⁷ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 4. (Hangar No. 8 and Lease Pad #1 represent the same space. [*See* FAA Exhibit 1, Item 10(b), page 15.])

On February 14, 2002, the Complainant submitted a “Clarification of Proposals for Leases at Anacortes Airport.” This modified lease request stated that the Complainant desired to build a hangar on Lease Pad #1,⁹⁸ which is the same site identified by the Port as parcel No. 8 in the Future Facilities Plan.⁹⁹ The Port denied the Complainant’s request to lease the single space identified as the Hangar No. 8 site, which the Port admits was available for construction, pending the Port’s planning and RFP process.

3. Tenant Hangar Waiting List

The Port argues that the Complainant’s proposal was not acceptable, in part, because it did not address the needs of the Airport’s current tenants who were on a waiting list for hangar space.

Throughout its pleadings in this case, the Port Commission has referred to its list of tenants waiting for hangars as the “wait list.” The Port reports there are approximately 51 people who pay a fee each month to be included on this wait list.¹⁰⁰

The Port argues that during the lease negotiations, the Complainant indicated his proposals included hangars for himself and for a group of undisclosed private investors only.¹⁰¹ The Port stated, “His proposal made no clear provision for the Port’s longstanding waiting list of hangar customers.”¹⁰²

The Port noted that the Complainant’s name was not on the Airport’s hangar waiting list.¹⁰³

⁹⁸ FAA Exhibit 1, Item 4, exhibit 3, *Proposed Lease Agreement*, “Clarification of Proposals for Leases at Anacortes Airport,” (Sequencing of Building Permits and Construction).

⁹⁹ Hanger No. 8 and Lease Pad #1 represent the same space. [*See* FAA Exhibit 1, Item 10(b), page 15.

¹⁰⁰ The number of tenants on the Airport wait-list has been described as 51 [*See* FAA Exhibit 1, Item 7, page 7] and 52 [*See* Item 10(e) volume I, exhibit C, (c.1), page 2]. The wait-list has also been described as having 27 individuals [*See* Item 10(d) page 12]. A page identified as “Hangar Waitlist 2002” shows 28 names on the list. [*See* Item 10(e) volume II, exhibit U.]

¹⁰¹ FAA Exhibit 1, Items 10(b), page 12; and 10(d), page 12.

¹⁰² FAA Exhibit 1, Item 10(b), page 12.

¹⁰³ FAA Exhibit 1, Item 10(b), page 12.

The Complainant did not specifically address the Airport's wait list in its proposal. The language in the Complainant's October 30, 2000, preliminary development proposal states, "It is anticipated that the tenants occupying the hangars, particularly from Phase 1, will be owners of aircraft currently tied-down at the Airport."¹⁰⁴ The proposed lease agreement¹⁰⁵ states, "It is anticipated that many of the tenants occupying the hangars will be owners of aircraft currently tied-down at the Airport."¹⁰⁶ Neither of these statements makes reference explicitly to any individuals who may be on the Airport's wait list that could expect to be accommodated by the Complainant's hangar development.

The record evidence does not suggest the Port questioned specific provisions of the lease proposal to determine whether and how Airport wait listed tenants would be accommodated. The Port did not identify the number of wait-listed tenants it believed should be accommodated by hangar(s) constructed by the Complainant.

In its pleadings, the Port specifies that its own plan, should it later invoke its propriety exclusive right to construct the hangars itself, will result in the construction of new hangars for approximately 27 Airport tenants, many of whom have been on the waiting list for over ten years.¹⁰⁷

The Complainant's proposal indicates that Phase 1 of his proposed development would include three buildings and 10 nested T-hangars in each building, presumably accommodating up to 30 individuals or aircraft. In Phase 2, he proposed to construct an additional three buildings with 14 units each. In Phase 3, the Complainant proposed to add four additional buildings, with construction dependent upon the level of demand.¹⁰⁸ It would appear from the proposal that the Complainant's October 30, 2000, preliminary development plan would provide for the greatest number of hangar facilities.

The Director must determine whether the Complainant's proposal to construct more hangars than the Port and whether the Complainant agrees to provide hangars to Airport patrons on the Airport's hangar wait list has relevance to this complaint. The Director will determine if absent a specific agreement between the parties, the Complainant has an obligation to provide hangars first (or at all) to those individuals who are on the Airport's hangar wait list. Notwithstanding these questions, providers of aeronautical services to the public cannot unjustly discriminate against those aeronautical users having a demonstrable need for the services being provided, including those aeronautical users on the Airport's hangar wait list, as well as those who are not on the wait list.

¹⁰⁴ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, "Minimizing Impact on Adjacent Neighborhoods."

¹⁰⁵ The January 14, 2002, *Proposed Lease Agreement* includes a February 14, 2002, *Clarification of Proposals for Leases at Anacortes Airport*. [See FAA Exhibit 1, Item 4, exhibit 3, *Proposed Lease Agreement*, "Clarification of proposals for Leases at Anacortes Airport."]

¹⁰⁶ FAA Exhibit 1, Item 4, exhibit 3, *Proposed Lease Agreement*, "Minimizing the Impact of Development."

¹⁰⁷ FAA Exhibit 1, Item 10(b), page 2.

¹⁰⁸ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*, "Phased Development."

4. Proprietary Exclusive

In its pleadings, the Port states that it will reserve the right to construct hangars itself if responses to the RFP are not satisfactory. In this way, the Port will be able to ensure the hangars will be made available first to the individuals who have been on the Port's hangar waiting list.¹⁰⁹

The owner of a public-use airport may elect to provide any or all of the aeronautical services needed by the public at the airport. In fact, the statutory prohibition against exclusive rights does not apply to these owners; they may exercise, but not grant, the exclusive right to conduct any aeronautical activity.¹¹⁰

In invoking its proprietary exclusive, the airport owner reserves unto itself the exclusive right to offer a particular aeronautical service to the public. The Port has contemplated invoking its propriety exclusive right to become the only provider of airport hangars.

In this case, however, the Port may not be in a position to invoke a proprietary exclusive right to become the only provider of airport hangars. The administrative record reflects that the Port has already permitted two other aeronautical users to build private hangars and lease ground space from the Port.¹¹¹ The record is not clear on whether either one of these tenants rents out space to any other aeronautical user.

Even if the Port could invoke a proprietary exclusive right to reserve unto itself the right to construct and lease hangars, it could not limit or prevent construction of hangars by other aeronautical users if a need exists that is not being filled by the Port. Specifically, if adequate space is available on the Airport, and if the airport owner is not providing the service, the airport owner is obligated to negotiate on reasonable terms to lease space to those entities offering flight services to the public, or support services to other flight operators, to the extent that there may be a public need for such services.

The Port has demonstrated the public need for hangars through its hangar wait list of 51 people,¹¹² with some of them on the list for more than 10 years.¹¹³ In addition, the Port Commission confirms in the minutes of its March 27, 2002, special meeting that additional hangar space is needed,¹¹⁴ and that the hangar construction proposed by the Complainant could be accommodated by the space available on the Airport.¹¹⁵

¹⁰⁹ FAA Exhibit 1, Item 10(b), page 1.

¹¹⁰ *See* FAA Order 5190.6A, 3-9d.

¹¹¹ FAA Exhibit 1, Item 7, page 7.

¹¹² FAA Exhibit 1, Item 7, page 7.

¹¹³ FAA Exhibit 1, Item 10(b), page 2.

¹¹⁴ FAA Exhibit 1, Item 7, page 7.

¹¹⁵ FAA Exhibit 1, Item 7, pages 7-8.

5. Director's Conclusions on Issue 1

The Port presents a series of arguments and explanations intended to show the actions taken by the Port in denying Mr. Martyn's proposal were just and reasonable. The Director disagrees. The Director is not persuaded by the arguments presented that the Port denied the Complainant's lease proposal(s) for just reasons.

The Port states it intends to delay hangar construction until design and mitigation standards acceptable to the Port, the City, and a citizens group publicly opposed to airport development are approved. The concept of total acceptance from such a group is unreasonable and goes beyond the intent of Federal Grant Assurance No. 7, *Consideration of Local Interest*.

The Port also states it denied the Complainant's request in favor of pursuing an RFP process. Yet, the record reflects that the Complainant's commercial lease proposal was submitted in October 2000 and his revised individual lease proposal was submitted in February 2002. The Port admits it did not entertain an RFP process until after a zoning finding by the City, which did not occur until June 6, 2002.¹¹⁶ Therefore, the timing of these events contradicts the Port's suggestion that Mr. Martyn's proposal was denied *because* of the planned RFP process.

The Port also argues that its primary goal is to provide hangars for its tenants on the Airport's wait list. The evidence shows that the Port has not provided hangars that it had reason to believe were needed for over 10 years.¹¹⁷ The owner of an airport, in this case, the Port, is not required to construct hangars. However, it does have the obligation to make suitable areas or space available on reasonable terms to those who are willing and otherwise qualified to offer the needed services.¹¹⁸ The Port, itself, has documented the need through its lengthy and long-term hangar wait list. The Port has not provided evidence, nor even indicated that the Complainant lacks the qualifications to offer the needed services. Therefore, it is unreasonable for the Port to deny the Complainant's proposal to build and offer for lease aircraft hangars.

The Director appreciates the Port's preference in offering hangar leases to those individuals who have been paying the Port a monthly fee to remain on the wait list. However, this has only limited relevance to the Complainant's proposal. The Complainant is not an agent of the Port and is not obligated to meet the Port's legal or ethical commitments to those on the wait list. Absent a specific agreement between the parties, the Complainant has no obligation to provide hangars first (or at all) to those

¹¹⁶ Mr. Martyn's hangar proposal was in the uncontested area, indicating that the land requested by Mr. Martyn was not contingent upon the zoning finding by the City. In addition, the 1994 Airport Master Plan projected the building of hangars in the areas proposed by Mr. Martyn. [See FAA Exhibit 1, Item 7, page 4]

¹¹⁷ FAA Exhibit 1, Item 10(b), *Memorandum in Support of Port's Motion to Dismiss*, page 2.

¹¹⁸ See FAA Order 5190.6A, 4-15.

individuals who are on the Airport's hangar wait list. The fact that the Complainant himself is not on the wait list would suggest that the Port recognizes it cannot deny access to those other users who are not wait listed, but who choose to lease space and construct a hangar for themselves.

At the same time, if Mr. Martyn plans to provide aeronautical services to the public, he cannot unjustly discriminate against those aeronautical users having a demonstrable need for the services he provides, including those aeronautical users on the wait list and those who are not on the wait list. FAA policy provides that certain assurances be incorporated into third-party leases, including Federal Grant Assurance No. 22b, which states,

In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to –

- (a) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- (b) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

How Mr. Martyn will plan to accommodate aeronautical users who are on the wait list, as well as those who are not on the wait list, in leasing hangar space is a matter for the Port and the Complainant to negotiate in arriving at a suitable arrangement that satisfies both parties and is consistent with the Port's Federal obligations.

The Director finds the Port's arguments are not sufficiently convincing to justify denying the Complainant's proposal(s). In addition, the Director finds the arguments presented by the Port in response to this complaint to be disingenuous.

It appears that the primary objection to Mr. Martyn's proposal has nothing to do with the proposal itself. The Commissioners insist the denial is more an issue of timing;¹¹⁹ the Port wants to complete its planning process prior to issuing any hangar leases. However, the record evidence shows that the Commissioners' decision was more likely driven by a strong desire to limit growth of the Airport.¹²⁰

The Commissioners were aware that Mr. Martyn's proposal fit within the planning process that had already occurred in preparing the 1994 Airport Master Plan. They were also fully aware of their responsibility to comply with their Federal obligations. In the

¹¹⁹ FAA Exhibit 1, Item 7, page 8; and Item 10(d), page 15.

¹²⁰ FAA Exhibit 1, Item 7, pages 7, 9.

March 27, 2002 minutes of a special meeting held to discuss the Complainant's proposal, the following remarks were reported:

- Executive Director Stahl noted that the 1994 Airport Master Plan projected hangars to be built in both of the areas proposed by Mr. Martyn.¹²¹ He also noted that FAA Order 5190.6A addresses the issue of making space available under the circumstances existing at the Port, and that failure to do so could place the Port at risk for not being in compliance with its grant assurances.¹²²
- Commissioner Thibert noted that under the Port's existing Airport Master Plan and the FAA rules and conditions, the Port's denial of Mr. Martyn's proposal could jeopardize the Port's legal standing with the FAA.¹²³
- Commissioner Mooney noted that the proposed hangar was in an uncontested area where it belongs.¹²⁴
- Commissioner Short noted that Mr. Martyn had scaled down his initial proposal and agreed to build his hangar in an uncontested area.¹²⁵
- Commissioner Mallary noted that there was room for Mr. Martyn's hangar on the Airport, but the Commissioner has "heartburn with the FAA coming in and telling us that we have to lease him space regardless of what our local needs are." Commissioner Mallary is quoted as saying, "...for that reason, and that reason only, I don't support this proposed lease."¹²⁶

Although several Commissioners did recommend approving Mr. Martyn's proposal during that special meeting, the final vote was three opposed and two in favor.¹²⁷

It appears from the minutes that at least some members of the Port may have voted to deny Mr. Martyn's proposal in order to force the FAA to make a formal decision in this matter. For example, one Commissioner who opposed the Complainant's lease stated that he wanted to see the FAA's decision in writing. He confirmed that if the FAA came back with a written decision that says the Port must rent space to the Complainant for his hangar, he would be willing to give Mr. Martyn his hangar.¹²⁸

¹²¹ FAA Exhibit 1, Item 7, page 4.

¹²² FAA Exhibit 1, Item 7, page 5.

¹²³ FAA Exhibit 1, Item 7, page 5.

¹²⁴ FAA Exhibit 1, Item 7, page 6.

¹²⁵ FAA Exhibit 1, Item 7, page 6.

¹²⁶ FAA Exhibit 1, Item 7, pages 7-8.

¹²⁷ FAA Exhibit 1, Item 7, page 14.

¹²⁸ FAA Exhibit 1, Item 7, page 8. "The FAA has confirmed that their interpretation of this order is that the Port is obligated to make space available under reasonable terms. That's a verbal commitment, I want to see it in writing, and the way I see it, to get in writing is to deny the lease and force the FAA to put in writing, what they want us to do with that airport....I want the FAA to come to us and tell us, 'Get off the stick, boys, and rent the man his hangar.'"

Therefore, lacking any persuasive evidence from the Port that the Complainant's lease proposal was rejected on legitimate reasons, the Director finds the Port is acting in an unjustly discriminatory manner in violation of Federal Grant Assurance No. 22, *Economic Nondiscrimination*.

B. Exclusive Rights

Issue 2: Whether any of the Respondent's alleged actions, individually or cumulatively, have resulted in the Respondent having granted an exclusive right to conduct an aeronautical activity at the Airport in violation of 49 U.S.C. §§ 47107(a)(4) and 40103(e) and related Federal Grant Assurance No. 23, *Exclusive Rights*.

The Complainant has alleged, as discussed previously, that the Port is unjustly denying him access to the Airport for the purpose of conducting an aeronautical activity. The Port has explained that it denied the Complainant's request because the timing was not right in bringing Mr. Martyn's proposal forward.¹²⁹

As stated earlier in Section V, *Applicable Law and Policy*, in order to sustain an exclusive rights violation, the FAA would have to find that the Respondent granted special rights or privileges to others making the same or similar use of the Airport while denying the same to the Complainant. Specifically, the FAA would have to find that the Port permitted others on the Airport to engage in activities that have been denied to the Complainant.

The Administrative Record in this complaint provides evidence that the Port did, in fact, permit another aeronautical user to lease space for the same purpose and under similar conditions to those requested by, and denied to, the Complainant. The Port Commission of the Port of Anacortes held a special meeting March 27, 2002, to discuss the issue of Mr. Martyn's request to lease land for the purpose of building hangar(s). The official minutes from that meeting indicate that the Port recognized it had already set a precedent with two other private hangars on the Airport¹³⁰ leased under similar terms as those requested by Mr. Martyn.¹³¹

The Port argues that the timing of the Complainant's request makes his situation sufficiently different from that of the other aeronautical tenant holding a lease with the Port. The Port is currently engaged in a planning process with the City and a local community interest group to determine the needs and wants of the local community prior to going forward with any additional Airport development. The Port was not engaged in such a process at the time the previous lease was issued.

¹²⁹ FAA Exhibit 1, Item 7, pages 6, 8.

¹³⁰ FAA Exhibit 1, Item 7, page 7.

¹³¹ FAA Exhibit 1, Item 7, page 12.

The FAA does not agree that this is reasonable. The FAA has already determined that the Port, by denying access to the Complainant, is in violation of its Federal obligations to establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport, as stipulated under 49 U.S.C. § 47107(a) and related Federal Grant Assurance No. 22, *Economic Nondiscrimination*. In other words, the Port is not justified in denying access to the Complainant solely on the basis of the timing of his request.

Minutes from the March 27, 2002, special meeting clearly demonstrate that the Port, as a whole, recognized that the aeronautical development proposed by the Complainant (a) was needed,¹³² (b) was included on the 1994 Airport Master Plan,¹³³ (c) was consistent with the Port's Federal obligations,¹³⁴ (d) could be accommodated by the space available on the Airport,¹³⁵ and (e) was consistent with, and similar to, other private hangars on the Airport.¹³⁶

Based on the evidence presented, the Director is persuaded that the Port granted an exclusive right to the tenant(s) enjoying lease privileges denied to the Complainant in violation of 49 U.S.C. §§ 40103(e) and 47107(a)(4) and related Federal Grant Assurance No. 23, *Exclusive Rights*.

C. Rights and Powers

Issue 3: Whether any of the Respondent's alleged actions, individually or cumulatively, have resulted in a dilution of the Respondent's rights and powers in violation of 49 U.S.C. § 47107(a) *et seq.*, and related Federal Grant Assurance No. 5, *Preserving Rights and Powers*.

In denying Mr. Martyn's lease proposal, the Port argues that it has merely postponed any hangar construction until the Port completes a planning process to establish appropriate hangar design standards and mitigation techniques that would appease the local community. The Port contends that working with its neighbors is essential to maintaining the vitality of the Airport.

In the minutes of a March 27, 2002, meeting of the Port of Anacortes,¹³⁷ the issue of leasing commercial hangar space to the Complainant was discussed at length. Comments by the Port Commissioners at that meeting confirm the Port's intent to delay any type of hangar development until a planning process that includes the Port, the City, and a private community group, *Concerned Citizens Against Runway Expansion (CCARE)*, can be completed.¹³⁸

¹³² FAA Exhibit 1, Item 7, page 7.

¹³³ FAA Exhibit 1, Item 7, pages 4, 5, 9.

¹³⁴ FAA Exhibit 1, Item 7, pages 5, 7, 8.

¹³⁵ FAA Exhibit 1, Item 7, pages 7-8.

¹³⁶ FAA Exhibit 1, Item 7, pages 7 and 12.

¹³⁷ FAA Exhibit 1, Item 7.

¹³⁸ CCARE is a private group opposed to airport development; it is not a government agency. As represented by a Port Commissioner, the planning process did not include a similar group that supported the Airport. [*See* FAA Exhibit 1, Item 7, pages 2, 3.]

There are references throughout the administrative record substantiating the Port's intention and desire to obtain community support for the Airport's development project. For example:

"The Port is committed to achieving design standards and mitigation for airport hangars that will be acceptable to Airport neighbors."¹³⁹

"The Port recognizes that only by addressing the concerns of the Airport neighbors up-front can it rebuild the community support for the Airport that is so vital to its continued viability."¹⁴⁰

"Community involvement throughout this process will generate goodwill in the local community."¹⁴¹

"... allows the Port to articulate design standards and mitigate adverse impacts to nearby residences, and generate goodwill in the local community."¹⁴²

Under Federal Grant Assurance No. 7, *Consideration of Local Interest*, the airport sponsor is required only to give "fair consideration" to the interest of communities in or near where the project may be located. This assurance was never intended to transfer the powers or responsibilities for airport management or development to the local community or to a private local interest group, such as CCARE.

Federal Grant Assurance No. 5, *Preserving Rights and Powers*, requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its Federal obligations. Under this assurance, the Port may not take or permit any action that would dilute its power to operate and manage the airport, including development of the airport, consistent with its Federal obligations.

While the Port's comments and actions clearly demonstrate a desire to have the support of the City and the local community, there is insufficient evidence in the administrative record to suggest the Port actually relinquished any decision-making powers to the City, local community, or special interest group. Therefore, the Director finds the Respondent is not in violation of Federal Grant Assurance No. 5, *Preserving Rights and Powers*. However, the Director would advise the Port to exercise care in placing contingencies for

¹³⁹ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 1, lines 25-26.

¹⁴⁰ FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 6, lines 14-16.

¹⁴¹ FAA Exhibit 1, Item 10(e) volume II, exhibit T.

¹⁴² FAA Exhibit 1, Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, pages 4-5.

Airport development on approval from outside sources, such as community special interest groups.

D. Airport Layout Plan

Issue 4: Whether the Respondent operated to convert aeronautical-use real property at the Airport to non-aeronautical use without FAA approval in violation of Federal Grant Assurance No. 29, *Airport Layout Plan*.

The 1994 Airport Master Plan is a document prepared by the Port to forecast *future* aviation needs for improving Airport facilities. The Airport Layout Plan is a product of the Master Plan. It is an FAA-approved document depicting the *current* and *planned future* use of Airport property, including designations for aeronautical versus non-aeronautical uses of the property.

Federal Grant Assurance No. 29, *Airport Layout Plan*, states in pertinent part, “The sponsor will not (without the approval of the FAA) make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the Airport Layout Plan...” The conversion of any area of airport land to a substantially different use than that shown in an approved Airport Layout Plan could adversely affect the safety, utility, or efficiency of the airport and constitute a violation of the obligation assumed. [FAA Order 5190.6A, Section 5, 4-17f(2)]

The Complainant alleges that the Port has operated to convert real property that is reasonably required for immediate aeronautical use to non-aviation use without the consent of the FAA, as evidenced by the leasing of certain Airport lands to Northwest Marine Technology and by establishing a “residential buffer”¹⁴³ and fence setback.¹⁴⁴

1. Northwest Marine Technology Lease

The Respondent denies the allegation that it has converted aeronautical use land to non-aeronautical use by leasing property to Northwest Marine Technology without FAA permission. It affirmatively states that its Airport Master Plan was approved by the FAA and envisions both aviation-dependent and aviation-related businesses at the Airport. The Respondent describes Northwest Marine Technology as an aviation-dependent business¹⁴⁵ that presently leases space at the Airport for its business office.¹⁴⁶

¹⁴³ The “residential buffer” or “buffer zone” referred to throughout this proceeding is a portion of Airport property approved for temporary interim use as a compatible vegetation zone bordering both Airport and residential property until such time as the property is needed for aeronautical development. [See FAA Exhibit 1, Item 10(e) volume I, exhibit F.1; and Item 8.]

¹⁴⁴ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, page 10.

¹⁴⁵ Northwest Marine Technology is described as an innovative company that tags fish for scientific research. It uses the airstrip at Anacortes Airport to shuttle employees and products between Shaw Island and the mainland. [FAA Exhibit 1, Item 12(a), page 2, #3 and #4.] [See also Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, exhibit Y.]

¹⁴⁶ FAA Exhibit 1, Item 10(d) page 2.

The Complainant, in its reply, suggests that the Respondent finds Northwest Marine Technology a desirable tenant because it does not contribute any potential increase to aviation activity at the Airport.¹⁴⁷ The Respondent, however, states that Northwest Marine Technology contemplates constructing a hangar on adjacent leased property.¹⁴⁸

The Respondent asserts that it notified the FAA of its proposed lease with Northwest Marine Technology. The Respondent has attached the declaration of Katherine Pittis, Director of Real Estate and Community Development for the Port of Anacortes, as evidence of this notification. Katherine Pittis states that she had a telephone conversation in January 1998 with Paul Johnson, a civil engineer with FAA's Seattle Airports District Office, concerning the proposed Northwest Marine Technology lease. While her declaration does not report what Mr. Johnson said during that conversation, she states she concluded from Mr. Johnson's remarks that the FAA would consider Northwest Marine Technology an appropriate Airport tenant. The Port subsequently entered into the lease with Northwest Marine Technology.¹⁴⁹

We contacted the FAA's Seattle Airports District Office (ADO) to determine if the Port's understanding accurately reflected the ADO's position on the Northwest Marine Technology lease. The ADO represented that Northwest Marine Technology is not an aviation-related business and it does not have an airplane. The ADO agreed to let the Port lease space at the Airport to Northwest Marine Technology on an interim basis only. The ADO advised that it never concurred with the Port's position that Northwest Marine Technology was an aviation-related business. The ADO confirmed that aviation use is to be given priority and that a non-aeronautical user at an airport should not displace other aviation users.¹⁵⁰

FAA Order 5190.6A, Section 5, 4-17g(1) states in pertinent part that "the FAA may approve the interim use of aeronautical property for non-aviation purposes until such time as it is needed for its primary purpose. Such approval shall not have the effect of releasing the property from any term, condition, reservation, restriction or covenant of the applicable compliance agreement."

The Complainant asserts that this aeronautical property is "reasonably required for immediate aeronautical use,"¹⁵¹ but provides no further details. Neither the Complainant nor Respondent provided evidence to suggest that the Complainant's lease was denied or delayed as a direct result of the lease to Northwest Marine Technology.

¹⁴⁷ FAA Exhibit 1, Item 11, page 4.

¹⁴⁸ FAA Exhibit 1, Items 10(b) and 10(d), page 2.

¹⁴⁹ FAA Exhibit 1, Item 12(a). *See also* Item 12, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*, page 9.

¹⁵⁰ FAA Exhibit 1, Item 18.

¹⁵¹ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, page 10.

Since the Port's reluctance to enter into an agreement with the Complainant is not related to its lease with Northwest Marine Technology, and since the Port requested, and the ADO agreed to, Northwest Marine Technology's interim use of aeronautical property for non-aeronautical purposes until the need for the aeronautical property arises, the Director is not persuaded that the Port is in noncompliance regarding Federal Grant Assurance No. 29, *Airport Layout Plan*, as it pertains to this issue.¹⁵²

The Director reminds the Port, however, of its obligation to give aeronautical users priority for Airport premises. Interim use is intended to be for short-term periods. Any option to renew an interim-use agreement should be conditioned on obtaining a new FAA determination that the property will not be needed for any aviation use during the proposed renewal period. Investment by the interim user is at the investor's risk and shall not be a factor in considering any renewal of a lease or use agreement. In addition, the income from such interim use must be used for the development, operation, and maintenance of Airport facilities.¹⁵³

The Director further reminds the Port that the FAA does not deem aviation-dependent businesses as suitable Airport tenants when used to displace potential aeronautical users at the Airport.

2. Interim Use of Compatible Vegetation Zone Bordering both Airport and Residential Property

The Complainant alleges the Port improperly converted aeronautical-use property to non-aeronautical use to create a vegetation zone bordering airport and residential property to use as a buffer zone.¹⁵⁴ The Complainant does not describe the over-reaching he alleges the Port engaged in by using some airport property to establish vegetation zones between the airport and residential property.

The record reflects that the Port proposed a vegetation zone of 75 feet to act as a buffer area between the Airport and bordering residential property.¹⁵⁵ This vegetation zone would be carved out of Airport property.

¹⁵² It is not necessary for interim use facilities to be fully documented on the Airport Layout Plan, but supporting documents to identify interim uses, and their approval, should be maintained with the Airport Layout Plan. Supporting documents need not be formal; they may be in the form of e-mails, records of telephone conversations, maps, overlays, pencil notations, etc.

¹⁵³ FAA Order 5190.6A, Section 5, 4-17 g(2) and (3).

¹⁵⁴ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, page 10.

¹⁵⁵ FAA Exhibit 1, Item 10(e) volume I, exhibit C.1 *Attachment B*.

The Administrative Record contains a June 22, 2000, letter from the FAA Seattle Airports District Office acknowledging the use of Airport property for a vegetation zone to border both airport and residential property, and advising the Port on the maximum width the FAA would allow, even on a temporary basis, since the property was purchased with Airport Improvement Program funds *solely for aviation development* [emphasis added].¹⁵⁶ On October 20, 2000, the FAA Seattle Airports District Office clarified this approval stating that the vegetation zone was approved as compatible temporary interim use and not a commitment or promise that the land would permanently remain as a vegetation zone. Rather, the land could be used as a vegetation zone between the Airport and the residential area only until such time as the land was needed for Airport development.¹⁵⁷

The Complainant provides no evidence to demonstrate that the land temporarily being used as a compatible vegetation zone is needed for aeronautical development at this time. The Director is not persuaded by the record evidence in this proceeding that the Port permanently converted aeronautical property for use as a non-aeronautical vegetation zone. Neither is the Director persuaded by the record evidence that the Port acted without FAA approval regarding this compatible interim use of Airport property.

3. Security Fence Placement

The Complainant alleges that a proposed security fence to be placed on or within the interim-use vegetation zone (as opposed to placing the fence on the perimeter property line) creates a conversion of aeronautical-use land to non-aeronautical use.¹⁵⁸

Placement of a permanent security fence with respect to land approved for interim, compatible use as a temporary vegetation zone bordering both airport and residential property is likely to have an impact on the usability of land for aeronautical versus non-aeronautical purposes. Once the fence is installed, it would be costly to move the fence in order to make more of the interim-use vegetation zone available for aeronautical purposes as the need arises.

Various proposals have included placing a security fence directly on the Airport perimeter property line,¹⁵⁹ placing it no more than 20 feet inside the Airport property line,¹⁶⁰ placing it “within the proposed 75 foot landscaped buffer,”¹⁶¹ and placing it 75 feet inside the Airport property line.¹⁶² At the time of this writing, however, the Port has not constructed security fencing on the property in question.

¹⁵⁶ FAA Exhibit 1, Item 10(e) volume I, exhibits C.1 *Attachment D* and exhibit F.1

¹⁵⁷ FAA Exhibit 1, Item 1A

¹⁵⁸ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, page 10.

¹⁵⁹ FAA Exhibit 1, Item 8

¹⁶⁰ FAA Exhibit 1, Item 10(e) volume II, exhibit S.

¹⁶¹ FAA Exhibit 1, Item 10(e) volume I, exhibit C.1, *Attachment B*.

¹⁶² FAA Exhibit 1, Item 10(e) volume II, exhibit N, page 29; [*See Port of Anacortes v City of Anacortes*, No. 01-2-00834-2, October 2, 2001.]

The Director cannot conclude that land has been converted to a non-aeronautical use based on the placement of a permanent security fence that has yet to be constructed. In addition, the record evidence indicates the FAA Seattle Airports District Office is working with the Port to establish the appropriate placement for security fencing.¹⁶³

The Director is not persuaded by the record evidence in this proceeding that the Port has improperly engaged in converting Airport property through the proposed construction of security fencing without FAA approval.¹⁶⁴

E. Procedural Matters

In its Answer, the Port filed a Motion to Dismiss stating that the Complainant has failed to engage in pre-complaint resolution as required by 14 CFR, Part 16, § 16.21(a).¹⁶⁵ The Port also argues that the Complainant failed to meet his burden of proof, raised issues over which the FAA does not have jurisdiction, and lacked standing to file the complaint.¹⁶⁶

1. Pre-complaint Resolution

The Respondent argues that the Complainant failed to engage in pre-complaint resolution.¹⁶⁷

The Complainant declares and certifies in his complaint that pursuant to 14 CFR § 16.21, he made substantial and reasonable good faith efforts to resolve this dispute informally and that there appeared to be no reasonable prospect for timely resolution. Complainant states that he informed the Respondent of the alleged noncompliance in December 2001. Complainant contends he used all due diligence and good faith in seeking and negotiating a reasonable compromise with the Respondent. Complainant asserts that the Respondent refused all efforts at reasonable resolution.¹⁶⁸

¹⁶³ On April 2, 2002, the FAA Seattle Airports District Office advised the Port that it should move forward on constructing a [security] fence *no more than* 20 feet from the property line [emphasis added]. [*See* FAA Exhibit 1, Item 10(e), volume II, exhibit S.]

¹⁶⁴ On October 7, 2002, the Mayor of the City of Anacortes sent a letter to the Director encouraging the Director to conduct an independent review of the fence placement issue. [*See* FAA Exhibit 1, Item 14.] Such an independent review is not possible under Part 16 outside the context of alleged grant assurance violations. [*See* e.g. 14 CFR § 16.1]. We have already concluded that there is no grant assurance violation as alleged with respect to the proposed construction of security fencing. Additionally, as previously stated, the FAA Seattle Airports District Office has advised the Port that it should move forward on constructing a security fence no more than 20 feet from the airport property line. Part 16 is not the appropriate forum for the City or the Port to request reconsideration of this FAA determination. Consequently, we will not address the fence setback issue further here. Rather, we will respond to the Mayor's October 7, 2002, letter under separate cover.

¹⁶⁵ FAA Exhibit 1, Item 10(c), page 1. The Port has actually cited 40 CFR; the correct cite is 14 CFR.

¹⁶⁶ FAA Exhibit 1, Item 10(c), page 1.

¹⁶⁷ FAA Exhibit 1, Item 10(c), page 1.

¹⁶⁸ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, page 3.

Part 16 § 16.21(a) states that a potential complainant “shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance.” Part 16 § 16.21(b) requires the Complainant to certify that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint were made and that there appears no reasonable prospect for timely resolution of the dispute. The section goes on to state, “this certification shall include a brief description of the party's efforts to obtain informal resolution ...” The *Rules of Practice for Federally-Assisted Airport Proceedings*, Final Rule, 61 Fed. Reg. 53998 (Oct. 16, 1996) states that the local FAA Airports District Office may be asked by the parties to assist them in resolving the dispute informally, but does not require such action by either party. This final rule does not require any particular informal resolution method. Additionally, Part 16, Subpart C, *Special Rules Applicable to Complaints*, does not state that efforts to resolve an issue must begin or conclude at any given point.

The record reflects that on October 30, 2000, the Complainant provided to the Director for the Port of Anacortes a proposal for the development of hangars and related facilities at Anacortes Airport.¹⁶⁹ Seventeen months later, at a March 27, 2002, special meeting of the Port Commission of the Port of Anacortes, the Port decided to follow a process that did not allow the Complainant to proceed with his proposal.¹⁷⁰

The minutes of that special meeting reflect that one of the Commissioners agreed there was room on the Airport for Mr. Martyn's hangar, but indicated the Commissioner wanted the FAA to put in writing that the Port was obligated to provide access to the Complainant. The minutes further reflect that the Commissioner believed the Port must deny the Complainant's request to force the FAA to provide a written determination.¹⁷¹ On April 8, 2002, the Complainant filed his formal complaint.¹⁷²

¹⁶⁹ FAA Exhibit 1, Item 4, exhibit 1, *Proposal for Development of Hangars and Related Facilities at Anacortes Airport*.

¹⁷⁰ FAA Exhibit 1, Item 7; [The minutes of the March 27, 2002 special meeting are also shown at Item 3 *Attachment A*.]

¹⁷¹ FAA Exhibit 1, Item 7, page 8.

¹⁷² FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*.

It appears reasonable to the FAA that Mr. Martyn – after having spent more than a year attempting to meet the demands of the Port prior to the March 27, 2002 decision, and hearing first-hand at the March 27, 2002 special meeting that a lease would not be forthcoming without a written determination by the FAA¹⁷³ – would proceed with the formal complaint process. After a review of the record, the FAA considers that Mr. Martyn did provide the FAA with a description of how he was directly and substantially affected by the things done or omitted to be done by the Respondent. We also find, based on record evidence that the Complainant engaged in pre-complaint resolution. In addition, the Complainant declares and certifies in his complaint that he made substantial and reasonable good faith efforts to resolve this dispute informally and that there appeared to be no reasonable prospect for timely resolution.¹⁷⁴

Furthermore, in the April 29, 2002 Partial Dismissal and Notice of Docketing regarding this complaint, the Director issued a partial dismissal and a Notice that the complaint had been docketed.¹⁷⁵ At that time, the Director concluded that the Complainant met the necessary procedural steps for the processing of the complaint. As a condition of accepting a complaint for processing, an initial decision must be made as to whether a complainant certified that it initiated and engaged in good faith efforts to resolve the disputed matter informally. A complaint will not be considered unless the complainant certifies that substantial and reasonable good faith efforts to resolve the disputed matter prior to filing a complaint have been made. The Director previously concluded that the Complainant met that burden, as reflected in the fact that the complaint was accepted for processing. The Port has not rebutted this.

Moreover the information submitted by the Respondent fails to persuade the Director that his preliminary assessment regarding the Complainant's efforts to initiate and engage in good faith efforts to resolve the matter informally was in error. The FAA is persuaded that the Complainant met the requirements of Part 16 § 16.21. The Motion to Dismiss the complaint by the Port on the grounds that Complainant failed to engage in pre-complaint resolution procedures is hereby denied.

2. Burden of Proof

The Port argues that the Complainant failed to meet his burden of proof.¹⁷⁶

Typically the standard of proof applicable to administrative proceedings under the Administrative Procedure Act is the preponderance of the evidence standard. [*See Steadman v. SEC*, 450 U.S. 91, 102 (1981).] Preponderance of the evidence means evidence which is of greater weight or more convincing than the evidence which is

¹⁷³ The minutes of the March 27, 2002 special meeting include a statement by one of the commissioners confirming that a written determination by the FAA would be necessary to persuade that commissioner to rent space for hangar construction to Mr. Martyn. [FAA Exhibit 1, Item 7, page 8.]

¹⁷⁴ FAA Exhibit 1, Item 4, *Complaint for Violation of Airport Compliance Requirements*, page 3.

¹⁷⁵ FAA Exhibit 1, Item 5, Director's Determination, *Partial Dismissal and Notice of Docketing*, April 29, 2002.

¹⁷⁶ FAA Exhibit 1, Item 10(c), *Port of Anacortes Motion to Dismiss*, page 1.

offered in opposition to it. [Black's Law Dictionary, Sixth Edition, 1990.] The preponderance standard of proof is that degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. [*Hale v. FAA*, 772 F.2d 882, 885 (Fed. Cir. 1985)]

In order to prevail, the party with the burden of proof shall prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence. [See e.g. 14 CFR § 16.227] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." [*Richardson v. Perales*, 402 U.S. 389, 401(1971).] The Director may properly rely on the complaint and the responsive pleadings in a Part 16 proceeding in finding reliable, probative and substantial evidence.

Unsworn statements submitted in such pleadings may constitute substantial evidence if such statements have sufficient indicia of reliability and probativeness. The FAA is free in its exercise of expertise to give conflicting evidence the suitable weight it deems appropriate in light of the accuracy and credibility of such evidence. In this instance, while admittedly the Complainant has submitted unsworn assertions, the fact that the Port acted on the proposal that the Complainant has alleged he submitted, lends credence to the Complainant's assertions.

The Director has to weigh conflicting evidence submitted and give credence to evidence he deems more convincing. In this instance, the Director concludes that the fact that the information submitted by the Complainant is unsworn does not diminish its credibility.

The preponderance of the evidence standard can be simply stated as the more-likely-than-not standard and is coupled with the broad standard for admissible evidence in administrative proceedings. As such, the Director may consider all the information submitted in compliance with Part 16, including all pleadings and exhibits attached to such pleadings. The Director may not issue an order except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. [See 5 U.S.C. 556(d).]

Furthermore, the proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof in a Part 16 proceeding is consistent with the Administrative Procedure Act (APA) and Federal case law. The APA provision states, "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." 5 U.S.C. § 556(d). See also, *Director, Office of Worker's Compensation Programs, Department of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994); *Air Canada et al. v. Department of Transportation*, 148 F3d 1142, 1155 (DC Cir, 1998). Title 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires that the Complainant submit all documents then available to support his or her complaint. Similarly, 14 CFR § 16.29 states that "each party shall file documents that it considers

sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.”

Title 14 CFR Part 16 requires that a complainant provide a concise but complete statement of the facts relied upon to substantiate each allegation. The Complainant has provided complete statements of the facts, including copies of the proposals he submitted to the Port requesting consideration and information related to the Port’s decision to vote down the proposal and to deny the Complainant access to the Airport. While it is readily apparent that the Complainant’s submittal was unsworn, the Director finds it credible and convincing. This is especially true when taken in context with the Port’s meeting minutes of March 27, 2002, which provide additional proof of the Port’s mind-set regarding the Complainant’s lease proposal.

The Port, even by submitting sworn affidavits, failed to persuade the Director that it did not engage in actions that violate its grant assurance obligations. The Director finds that the evidence submitted by the Complainant is more convincing than the evidence submitted by the Port. Accordingly, the Complainant has met his burden of proof. The Port’s Motion to Dismiss on this ground is denied.

3. FAA Jurisdiction

The Port argues that the Complainant raised issues and seeks remedies over which the FAA lacks jurisdiction.¹⁷⁷ The Respondent does not specify the issues and remedies to which it refers.

The FAA has jurisdiction under 14 CFR Part 16 for this matter. In accepting Federal airport development funds, an airport owner assumes certain obligations, memorialized in the grant assurances. Fundamental among those obligations is the responsibility for accommodating civil aviation by operating the airport in a reasonable and not unjustly discriminatory manner, particularly with regard to the terms and conditions of use by aeronautical activities. The Port has signed grant assurances and is therefore subject to review of matters pertaining to the Port’s compliance with its grant assurance obligations. The Administrator, accordingly, has jurisdiction to review the matter raised in Mr. Martyn’s complaint.

The Complainant, however, requests an award of compensatory and punitive damages against the Respondent. While the FAA has enforcement authority over the airport sponsor, it does not award damages to persons subjected to an airport sponsor’s non-compliance with its grant assurances. As referenced above in Section V, *Applicable Law and Policy*, the purpose of the FAA Airport Compliance Program is to ensure that airport sponsors comply with their federal obligations under grant assurances in order to maintain a national system of safe and properly maintained public-use airports. The program does not provide a means for restitution and the award of financial damages to

¹⁷⁷ FAA Exhibit 1, Item 10(c), *Port of Anacortes’ Motion to Dismiss*, page 1.

complainants. [*See* e.g. § 14 CFR 16.109(a).] Consequently, the FAA seeks current compliance by airport sponsors and generally does not take punitive action for past behavior except in some very limited circumstances (such as in the case of unlawful diversion of airport revenue).

The FAA has the authority to terminate an airport sponsor's eligibility for Airport Improvement Program grants when the airport sponsor is engaged in actions that are not in compliance with the sponsor's grant assurance requirements. The FAA's determination of whether or not to take this type of enforcement action is dependent on protecting the public's interest in civil aviation generally. Accordingly, even upon a finding that the Respondent is in noncompliance with its grant assurance obligations, the FAA will not award damages to the Complainant. Any remedy for alleged damage by the Complainant would lie in the Courts. The goal of the Airport Compliance Program is to bring airport sponsors into a state of compliance.

Although the Complainant requested monetary remedies outside the purview of the FAA, the Director is not persuaded that such a request is sufficient to support a Motion to Dismiss. The FAA has jurisdiction over all matters relating to an airport sponsor's compliance with its Federal grant assurances. The Director will not abdicate this responsibility on the argument that the Complainant requested a remedy not available from the FAA.

4. Standing

The Port argues that the Complainant lacks standing to file a complaint under 14 CFR Part 16 § 16.23(a).¹⁷⁸ This section states,

“A person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator. A person doing business with an airport and paying fees or rentals to the airport shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b).”

The second sentence of this section does not exclude previous or potential airport users who do not have current fee-paying arrangements with an airport from filing complaints under Part 16. Rather, it confirms that a complainant presently engaged in a business arrangement with the airport in question would be assumed to suffer from a direct and substantial effect when revenue diversion is alleged without having to demonstrate that effect. This point relates directly to § 16.23(b)(4) that requires a complaint filed under Part 16 to contain a description of how the complainant was directly and substantially affected by the things done or omitted to be done by the respondents. Allegations related to revenue diversion do not require the complainant to describe how it was directly and

¹⁷⁸ FAA Exhibit 1, Item 10(c), *Port of Anacortes' Motion to Dismiss*, page 1. The Respondent actually cites 40 CFR § 16.23(a); the correct cite is 14 CFR.

substantially affected. [*See e.g. Rules of Practice for Federally-Assisted Airport Proceedings*, Final Rule, 61 Fed. Reg. 53998 (Oct. 16, 1996).]

The fact that the Complainant is not currently paying fees or rentals to the Anacortes Airport does not preclude him from being directly and substantially affected by any alleged noncompliance. The Complainant must meet the requirement of § 16.23(b)(4) by providing a brief description of how he was affected.

This requirement has already been addressed in the discussion above regarding *Burden of Proof*. The Complainant has provided complete statements of the facts, including copies of the proposals he submitted to the Airport which together with a copy of the minutes in the record reflect the Port's decision to vote down the Complainant's proposal and to deny him access to the Airport. The Complainant was directly and substantially affected by the Port's decision to deny him access to Anacortes Airport for the purpose of constructing a hangar and office. The Complainant, as a person who alleged he was directly and substantially affected by being denied access to the Airport by the Port, has standing to file a complaint under Part 16. Therefore, the Port's Motion to Dismiss contending the Complainant does not have standing is denied.

VII. FINDINGS and CONCLUSION

Upon consideration of the submissions by the parties, relying on the record herein and the applicable law, and for the reasons stated above, the Director of the FAA Office of Airport Safety and Standards finds and concludes as follows:

- Issue 1:** The Respondent, by denying the Complainant the right to lease land and develop hangar facilities in order to offer aeronautical services to the public at the Anacortes Airport, is in violation of Federal Grant Assurance No. 22, *Economic Nondiscrimination*, regarding the Respondent's obligation to make the airport available for public use on reasonable terms and without unjust economic discrimination to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at that airport.
- Issue 2:** The Respondent, by denying a lease to the Complainant, whose proposal was essentially on the same terms as a lease already held by another aeronautical user, has effectively granted an exclusive right to the other aeronautical leaseholder in violation of 49 U.S.C. § 47107(a)(4) and 40103(e) and related Federal Grant Assurance No. 23, *Exclusive Rights*.
- Issue 3:** The Respondent, by involving the City and local community, including a special interest group, in the planning process for developing hangar design and mitigation standards, has not diluted the Respondent's rights and powers in violation of 49 U.S.C. § 47107(a) *et seq.*, and is not currently in

violation of related Federal Grant Assurance No. 5, *Preserving Rights and Powers*.

Issue 4: The Respondent, by:

- (a) leasing aeronautical-use real property at the Airport for non-aeronautical interim use;
- (b) using Airport property approved by the FAA for a temporary compatible interim-use vegetation zone bordering both airport and residential property; and
- (c) proposing to construct security fencing, is not currently in violation of Federal Grant Assurance No. 29, *Airport Layout Plan*.

ORDER

Accordingly, it is ordered that:

1. The Respondent Port of Anacortes, Washington, is required to submit a corrective action plan consistent with the principles discussed herein within 20 days from the date of this Order to the Director, Airport Safety and Standards that explains how the Respondent intends to eliminate the violations outlined above.
2. Pending FAA approval of the corrective action plan specified in Ordering paragraph No. 1, or until further notice, pursuant to 49 U.S.C. § 47106(d) the FAA will withhold approval of any applications submitted by the Respondent Port of Anacortes, Washington, for amounts apportioned under 49 U.S.C. § 47114(c) and (d), and/or authorized under 49 U.S.C. § 47115.
3. All Motions not expressly granted in this Determination are denied.

These Determinations are made under 49 U.S.C. §§ 40103(e), 44502, 40113, 40114, 46104, and 46110, respectively, and 49 U.S.C. §§ 47105(b), 47107(a)(1)(4)(5)(7)(13), 47107(g)(1), 47110, 47111(d), 47122, respectively.

RIGHT OF APPEAL

Pursuant to 14 CFR Part 16, the Port of Anacortes may request a subpart F hearing under subpart E of Part 16 within 20 days after service of the Director's Determination. [14 CFR §§ 16.31(d) and 16.109(c)(1).] The Port of Anacortes may waive a hearing, and appeal the Director's Determination directly to the FAA Associate Administrator. [14 CFR §§ 16.31(c), 16.33, and 16.109(c)(2).] In the alternative to a hearing or an appeal, the Port may file, jointly with the Complainant, a motion to withdraw the complaint and to dismiss the proposed compliance action; or submit jointly with an FAA attorney a proposed consent order. [14 CFR § 16.243.]

The Complainant, if adversely affected by the Director's Determination, may appeal the initial determination to the FAA Associate Administrator for Airports, pursuant to 14 CFR § 16.33(b).

This Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 U.S.C. § 46110. [See 14 CFR § 16.247(b)(2).]

SIGNED

April 14, 2003

David L. Bennett, Director
Office of Airport Safety and Standards

Date

INDEX OF ADMINISTRATIVE RECORD

Director's Determination

Docket No. 16-02-03

Jim Martyn, *Complainant*

v.

The Port of Anacortes, Washington,
Respondent

Item 1 June 22, 2000, Letter from FAA's Seattle Airports District Office (SEA-ADO) to Ian Munce, Director of Planning Commission, City of Anacortes, WA, regarding proposed conditions and mitigations measures for Anacortes Airport rezoning efforts.

Item 1A October 20, 2000 letter from Carol Key, Supervisor, Seattle Airports District Office, to City Councilman William G. Carlisle.

Item 2 October 2, 2001, Transcript of Proceedings, Court's Ruling Following Summary Judgment Hearing, the Port of Anacortes vs. the City of Anacortes, No. 01-2-00834-2.

Item 3 April 2, 2002, Letter from Seattle Airports District Office (SEA-ADO) to Dan Stahl, Executive Director and Port Commissioners, regarding Anacortes Airport Sub-Area Plan – Draft Work Program. [This is the same letter identified as Item 10(e) volume II, exhibit S.]

Attachment A Minutes from Port of Anacortes Special Meeting, March 27, 2002.

Item 4 *Complaint for Violation of Airport Compliance Requirements.* April 8, 2002, 14 CFR Part 16 formal Complaint from Jim Martyn v. the Port of Anacortes, Docket No. 16-02-03, and certificates of service and a Request for Production (Documents).

exhibit 1 *Proposal for Development of Hangars and Related Facilities at Anacortes Airport.* October 30, 2000, letter to Daniel Stahl, Executive Director for the Port of Anacortes, from Jim Martyn regarding proposal for development of hangars and related facilities at Anacortes Airport, and proposal. Includes the following sub-sections:

- Location of Development Area
- Phased Development
- Minimizing Impact on Adjacent Neighborhoods
- Proposal Benefits the Port and the Community
- Development will Provide High-Value Buildings

exhibit 2 *Request for Consideration of Lease Proposal Pursuant to FAA Order 5190.6A.* December 7, 2001, letter to Daniel Stahl, Executive Director for the Port of Anacortes, from Jim Martyn regarding Mr. Martyn's request for consideration of lease proposal pursuant to FAA Order 5190.6A.

exhibit 3 *Proposed Lease Agreement.* January 14, 2002, Proposed Lease Agreement to the Port of Anacortes, followed by February 14, 2002 Clarification of Proposals for Leases at Anacortes Airport. February 14, 2002 letter from Jim Martyn to Daniel H. Stahl, Executive Director, Port of Anacortes. Includes the following sub-sections:

- Clarification of Proposals for Leases at Anacortes Airport
- Overview of Proposed Lease Terms
- Proposed Lease Area: Pad #1
- Map of Anacortes Airport and Vicinity
- Projected Revenues from Proposed Leases
- Community-Oriented Aviation: Creating opportunities for our Children
- Proposal Benefits the Port and the Community
- Rationale for Terms of Lease Agreement
- Rationale for Design and Layout of Lease Pads
- Airport Development: Balancing Legal Obligations with Community Interests
- Minimizing the Impact of Development

Item 5 April 29, 2002, Director's Determination: Partial Dismissal and Notice of Docketing to Jim Martyn from David Bennett, FAA's Director of the Office of Safety and Standards.

Item 6 May 8, 2002, Notice of Appearance and Certificate of Service from Port of Anacortes to FAA's Office of the Chief Counsel.

- Item 7** March 27, 2002, Minutes from Port of Anacortes Special Meeting. (*See also Item 3, Ex. A*)
- Item 8** May 15, 2002, letters from various individuals regarding the placement of the security fence.
- Item 9** May 16, 2002, Port of Anacortes, Second Notice of Appearance, identifying attorneys to be served in Docket No. 16-02-03 and attached Certificate of Service to Complainant. (Faxed copies received on May 16, 2002.)
- Item 10** *Answer and Affirmative Defenses of Defendant Port of Anacortes.* May 20, 2002, Answer and Affirmative Defenses of Defendant Port of Anacortes. Contains Volume I and II of supporting documents – Table of Contents for Volumes One and Two (I) (II).
- Item 10(a)* May 20, 2002, Certificate of Service from Port of Anacortes (received May 23, 2002).
- Item 10(b)* May 20, 2002, Port of Anacortes' Memorandum in Support of Port's Motion to Dismiss (received May 23, 2002).
- Item 10(c)* May 20, 2002, Port of Anacortes' Motion to Dismiss (received May 23, 2002).
- Item 10(d)* May 20, 2002, Declaration of Dan Stahl in Support of the Port of Anacortes' Motion to Dismiss (received May 23, 2002).
- Item 10(e)* Volume I and Volume II Table of Contents for additional exhibits.

Volume I

exhibit A Port of Anacortes, Anacortes Airport Master Plan, October 1994.

exhibit B Aerial Photograph of Anacortes Airport.

exhibit C Letters from the Port of Anacortes to the City of Anacortes and to the City of Anacortes City Council Members.

C.1 October 13, 2000, letter from Dan Stahl, Port of Anacortes Executive Director, to Dean Maxwell, Mayor of the City of Anacortes, Ian Munce, and the City of Anacortes City Council regarding Anacortes Airport Rezone and Zoning Code Amendment Proposals and attachments.

Attachment A: Anacortes Airport Buffer Plan, Preliminary Site Plan dated March 29, 2000.

Attachment B: June 14, 2000, letter from Dan Stahl, Port of Anacortes Executive Direct, to Ian Munce, Planning Director, and Planning Commission regarding *Proposed Conditions and Mitigation Measures for Anacortes Airport Rezone*.

Attachment C: June 21, 2000, letter from Eric Johnson, Airport Coordinator, to Ian Munce, Planning Director regarding *Proposed Buffer Overlays for Anacortes Airport Rezone*.

Attachment D: June 22, 2000, Letter from Carol A. Key, FAA Supervisor, Washington Section Seattle Airport District Office, to Ian Munce, Planning Director for the City of Anacortes and Planning Commission regarding proposed conditions and mitigation measures for Anacortes Airport Rezone.

Attachments E-I: Charts, Maps, and Pictures

C.2 December 29, 2000, Letter from Port of Anacortes Commissioners to Bill Carlisle, City Councilman, City of Anacortes, regarding request for reconsideration of decision regarding the Anacortes Airport Rezone and Zoning Code Amendment Proposal.

exhibit D June 6, 2000, Port of Anacortes' Rezoning Proposal and Zoning Code Amendment Presentation to the City of Anacortes Planning Commission.

exhibit E October 9, 2000, Port of Anacortes' Rezone Proposal and Zoning Code Amendment Presentation to the City of Anacortes City Council.

exhibit F Letters from FAA to the City of Anacortes

F.1 June 22, 2000, Letter from Carol A. Key, FAA Supervisor, Washington Section Seattle Airport District Office, to Ian Munce, Planning Director for the City of Anacortes and Planning Commission regarding proposed conditions and mitigation measures for Anacortes Airport Rezone.

- F.2* August 3, 2000, Letter from Carol A. Key, FAA Supervisor, Washington Section Seattle Airports District Office to Ian Munce, Planning Director for the City of Anacortes regarding proposed conditions for Anacortes Airport Rezone.
- F.3* September 28, 2000, Letter from Carol A. Key, FAA Supervisor, Washington Section Seattle Airports District Office, to Ian Munce, Planning Director for the City of Anacortes regarding proposed conditions and mitigation measures for Anacortes Airport Rezone.
- F.4* October 2, 2000, Letter from Carol A. Key, FAA Supervisor, Washington Section Seattle Airports District Office, to Ian Munce, Planning Director for the City of Anacortes regarding proposed conditions for the Anacortes Airport Rezone.
- exhibit G March 31, 2000, Port of Anacortes' Rezone Application for Portion of Anacortes Airport and Proposed Zoning Code Amendment Defining Terminal Facilities, submitted to the City of Anacortes with attachments.
- G.1* Aerial Photograph of Airport.
- G.2* Location Map.
- G.3* Vicinity Map.
- G.4* Preliminary Site Plan denoting Scriveners Error Area.
- G.5* Correspondence pertaining to Scriveners Error.
- G.6* Proposed Zoning Code Amendment for definition of Terminal Facilities.
- G.7* Legal Analysis.
- G.8* Scriveners Error Area Illustration.
- G.9* Scriveners Error Area Legal Description.
- G.10* Airport Land Use Plan.
- G.11* List of Names and Addresses of Adjacent Property Owners.
- G.12* Map designating parcels of Adjacent Property Owners.

G.13 State Environmental Protection Act (SEPA) Checklist.

G.14 Determination of Non-Significance.

G.15 Future Facilities Plan.

exhibit H March 31, 2000, Port of Anacortes' Environmental Checklist, prepared pursuant to SEPA, RCW Ch. 43.21C.

exhibit I June 14, 2000, Letter from Dan Stahl, Acting Port of Anacortes Executive Director, to Ian Munce, City of Anacortes Planning Director and Planning Commission, regarding proposed condition and mitigation measures for the Anacortes Airport Rezone, and enclosing photos and Airport Master Plan.

exhibit J June 28, 2000, City of Anacortes Planning Commission Meeting Minutes.

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exhibit K June 22, 2000, Letter from Carol A. Key, FAA Supervisor, Washington Section Seattle Airports District Office, to Ian Munce, Planning Director for the City of Anacortes and Planning Commission regarding proposed conditions and mitigation measures for Anacortes Airport Rezone.

exhibit L May 21, 2001, City of Anacortes Ordinance #2557; passed and approved.

exhibit M *Port of Anacortes v. City of Anacortes*, Skagit County Superior Court, No. 01-2-00030-9 (February 23, 2001) Transcript of Proceedings of Motion Hearing.

exhibit N *Port of Anacortes v. City of Anacortes*, Skagit County Superior Court, No. 01-2-00834-2, (October 2, 2001) Transcript of Proceedings of Ruling on Summary Judgment.

exhibit O Undated, City of Anacortes Ordinance #2573.

exhibit P *CCARE and Port of Anacortes v. City of Anacortes*, No. 01-2-0019c (Western Washington Growth Management Hearings Board), (December 12, 2001) Final Decision and Order.

- exhibit Q April 8, 2002, City of Anacortes Ordinance #2587; passed and approved.

- exhibit R January 11, 2002, Letter from Port Commission to Mayor Dean Maxwell and City Council Members, the City of Anacortes.

- exhibit S April 2, 2002, Letter from Carol A. Key, FAA Supervisor, Washington Section Seattle Airports District Office, to Dan Stahl, Executive Director, Port of Anacortes and the Port Commissioners regarding the Port's Draft Work Program.

- exhibit T May 9, 2002, Port of Anacortes, Memorandum on Airport Hangar Request for Proposals (RFP) Process.

- exhibit U May 17, 2002, Port of Anacortes' Waiting List for Hangars at the Anacortes Airport.

- exhibit V Knutsen Martyn LLC, Preliminary Proposal for Development of Hangars and Related Facilities at the Anacortes Airport, dated October 30, 2000.

- exhibit W Knutsen Martyn LLC, Revised Anacortes Airport Proposals and Proposal Clarifications.

- W.1* December 10, 2001, Revised Proposal for Development of Hangars and Related Facilities at the Anacortes Airport.

- W.2* December 18, 2001, Proposed Lease Agreement regarding new South Hangar Area Lease Pads 1-10.

- W.3* January 14, 2002, Proposed Lease Agreement (Final Proposal).

- W.4* February 14, 2002, Clarification of Proposals for Leases at Anacortes Airport.

- W.5* March 6, 2002, Alternate Proposal for Hangar Development at Anacortes Airport Using Hangar Development and Relocation of Runup Area to Reduce Noise Impacts on Neighbors.

- W.6* March 13, 2002, Letter from Jim Martyn to Dan Stahl, Executive Director, Port of Anacortes regarding Ports'

request for information related to lease pads at the Anacortes Airport.

exhibit X April 26, 2002, *Jim Martyn v. The Port of Anacortes*, No. 02 2-00608-9, Skagit County Superior Court, Notice and Application for Writ of Mandamus.

Item 11 May 30, 2002, Complainant's Reply to Port of Anacortes' Answer and Motion to Dismiss and Certificate of Service.

Item 12 June 10, 2002, *Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss*. Port of Anacortes Rebuttal to Complainant's Reply and Reply on Motion to Dismiss with exhibits.

exhibit 12y Northwest Marine Technology Website Information.

exhibit 12z June 6, 2002, WWGM Hearing Board Order Finding Compliance.

Item 12(a) June 6, 2002, Declaration of Katherine Pittis, Director of Real Estate and Community Development, in Support of Port's Reply and Rebuttal of Complainant's Reply to Port's Motion to Dismiss.

Item 12(b) June 10, 2002, Supplemental Declaration of Dan Stahl, Port of Anacortes Executive Director, in support of Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss.

Item 12(c) June 7, 2002, Declaration of Guy Thornburgh, CEO, Northwest Marine Technology, in Support of Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss.

Item 12(d) June 10, 2002, Certificate of Service. Notice that Declarations in support of Port's Rebuttal to Complainant's Reply and Port's Reply on Motion to Dismiss have been served on all parties to the Complaint.

Item 13 September 4, 2002, letter from H. Dean Maxwell, Mayor of the City of Anacortes, to David Bennett, Director, Office of Airport Safety and Standards, requesting to submit some comments to FAA.

Item 13A September 24, 2002, letter from David Bennett, Director, Office of Airport Safety and Standards in response to the Mayor of the City of Anacortes.

Item 14 October 7, 2002, letter from H. Dean Maxwell, Mayor of the City of Anacortes, to David Bennett, Director, Office of Airport Safety and

Standards, regarding the 1994 Airport Master Plan and the location of security fence at the Anacortes Airport.

Attachment A Anacortes Airport Master Plan Update, October 1994

- Item 15** October 28, 2002. Notice of Extension of Time. Notice extending the due date of the Director's Determination until November 29, 2002.
- Item 16** December 18, 2002. Notice of Extension of Time. Notice extending the due date of the Director's Determination until January 30, 2003
- Item 17** February 5, 2003. Notice of Extension of Time. Notice extending the due date of the Director's Determination until March 17, 2003.
- Item 18** Undated. Memo to File.
- Item 18A* April 3, 2003. Memo to File.
- Item 19** Airport Master Record for Anacortes Airport, operations for 12 months ending December 31, 2001 (dated July 22, 2002).
- Item 20** Grant History for Anacortes Airport.