

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

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Glyn Johnson )  
d/b/a Zoo City Skydivers, )  
Complainant )  
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v. )  
 )  
Yazoo County & the Yazoo County )  
Port Commission )  
Respondent )  
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Docket No. 16-04-06

**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

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

Mr. Glyn Johnson, d/b/a Zoo City Skydivers (Complainant), has filed a formal complaint pursuant to 14 CFR Part 16 against Yazoo County and the Yazoo County Port Commission (Respondent)<sup>1</sup>, owner and operator of the Yazoo County Airport (Airport).

The Complainant alleges that Respondent's actions regarding sport parachute-jumping operations at the Airport have violated numerous provisions of law including 49 U.S.C. § 47107(a) and (b), § 40103(e), and obligations contained in the grant agreement executed August 1, 1988.<sup>2</sup> FAA found the issues alleged to be the following:

- Has Respondent violated its Federal obligations by denying Complainant access to conduct parachute-jumping activities on the Airport?

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<sup>1</sup> Complainant includes the Yazoo County Port Commission as respondent in the case. The Yazoo County Port Commission operates the airport for Yazoo County. Typically, FAA names airport sponsors as Respondents in 14 CFR Part 16 proceedings. In this case, Yazoo County is the airport sponsor. However, Yazoo County and the Yazoo County Port Commission filed their associative pleadings collectively as 'Defendants' in the case. Therefore, for simplicity, the term Respondent refers to both Yazoo County and the Yazoo County Port Commission.

<sup>2</sup> Respondent is also obligated through grant agreements executed in 2003 and 2005.

- Has Respondent violated its Federal obligations by failing to permit access to an established drop zone on the airport for operations under 14 CFR Part 105, *Parachute Operations*?

With respect to the allegations presented in this complaint, under the specific circumstances at the Yazoo County Airport as discussed below, and based on relevant facts and evidence, FAA finds that the Respondent is not currently in violation of its Federal obligations with regard to denying Complainant access to conduct parachute-jumping activities on the Airport, as either a business entity or an individual.<sup>3</sup> As further discussed in the **Analysis and Discussion**, at this time, Respondent is not currently in violation of its federal obligations by failing to permit access to the established drop zone on the Airport because there are no active, viable petitioners requesting use of the drop zone. However, should a future active, viable petitioner's request be denied, Respondent may be at risk of violating Grant Assurance 22, *Economic Nondiscrimination*.

## II. AIRPORT

Yazoo County Airport is a public-use airport owned by the County of Yazoo, Mississippi and operated through the Yazoo County Port Commission.<sup>4</sup> The Airport is classified as a general aviation airport, is the base of operations for 7 aircraft, and accounts for 16,000 annual operations.<sup>5</sup>

The Airport has one runway, Runway 17/35, which is a 5,000 foot long by 100 foot wide asphalt runway.<sup>6</sup> The runway can accommodate aircraft ranging in size from a small Piper J-3 Cub to large, high speed corporate jet traffic such as a Challenger CL-604. [FAA Exhibit 1, Item 7, Attachment 71.]

The established drop zone is located on the on the east side of the Airport. [Internal Communication.] It lies along the Airport's easternmost Building Restriction Line and to the south of the Airport's general aviation area. [Yazoo County Airport's Airport Layout Plan, conditionally approved 7/15/05.]

The Airport has four standard Instrument Approach Procedures as low as 600 foot ceiling with one-mile visibility. In addition, the Airport is located under a heavily traveled Federal Airway (V-74) and is located adjacent to a second Federal Airway (V-557). Aircraft utilizing these airways may be operating as low as 2,000 feet above sea level. [FAA Exhibit 1, Item 7, Attachment 71.]

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<sup>3</sup> FAA Exhibit 1 contains the Index of Administrative Record.

<sup>4</sup> FAA Form 5010 "Airport Master Record" for Yazoo County Airport, Date: 3/2/05 and FAA Exhibit 1, Item 7.

<sup>5</sup> FAA Form 5010 "Airport Master Record" for Yazoo County Airport, Date: 3/2/05 and FAA National Plan of Integrated Airport Systems (NPIAS), 2005-2009, Appendix A, pg. 68.

<sup>6</sup> FAA Form 5010 "Airport Master Record" for Yazoo County Airport, Date: 3/2/05.

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, codified at 49 U.S.C. § 47107, *et seq.* Specifically, Respondent is obligated under the assurances given in AIP grants since 1985. The Airport has been awarded a total of \$2,743,497 in grant funding through 2005. [FAA Exhibit 2.]

### **III. COMPLAINANT**

Zoo City Skydivers, owned by Mr. Glyn Johnson, is a parachute-jumping operator that provided such related services at the Yazoo County Airport. [FAA Exhibit 1, Item 1.]

### **IV. BACKGROUND**

The Airport began operations in 1989. [FAA Exhibit 1, Item 7, Attachment 44.]

Respondent adopted its 'Minimum Standards for Aeronautical Activities at Yazoo County Airport' (Minimum Standards) on or about March 13, 1996. Respondent established a section within the Minimum Standards regarding parachute-jumping. Respondent dictated that "all sport parachute landings at the Airport were to be made within the area marked as the 'Parachute Landing Zone' [also referred to as 'drop zone'] on the copy of the Airport Layout Plan attached at the end of the Minimum Standards." [FAA Exhibit 1, Item 7.] Deviations from the drop zone were permitted only when required for safety. Other than one change regarding aircraft radio provisions, Respondent made no substantial changes to the Minimum Standards until February 14, 2001. [FAA Exhibit 1, Item 7.]

Complainant submits that Zoo City Skydivers obtained permission to establish a drop zone on the Airport (i.e. Parachute Landing Zone) in 1994. Mr. Johnson purchased Zoo City Skydivers from a 3<sup>rd</sup> party in February 2000. [FAA Exhibit 1, Item 7, Attachment 79.]

Months after Mr. Johnson took over the business, Respondent alleged Complainant violated a number of its established Minimum Standards, including:

- Failure to have proper insurance as required by Section II.A.10 and Section IV.H.8
- Failure to comply with the self-fueling requirements set out in Section II.A.17 and Section III.A
- Use of the main administrative building in a manner which unreasonably restricts access to others who wish to use the building, in violation of Section II.A.20
- Use of alcoholic beverages at the airport in violation of Section II.A.21
- Failure to give proper notice of sport parachute-jumping activities at the Airport in accordance with Section IV.H.7

- Failure to file with the Commission executed Releases of Liability as required by Section IV.H.7
- Failure to conduct all sport parachute landings within the designated Parachute Landing Zone as required by Section IV.H.7
- Failure to operate and park vehicles in accordance with Section IV.H.7

[FAA Exhibit 1, Item 7.]

On April 14, 2000, Respondent suspended Complainant's right to operate at the Airport until it provided evidence that it could comply with Airport rules, regulations, and minimum standards. [FAA Exhibit 1, Item 7.]

Complainant notified FAA's Jackson Airports District Office (ADO) of Respondent's denial of access by letter dated April 20, 2000. [FAA Exhibit 1, Item 3, Attachment 7.] By letter of May 12, 2000, Respondent confirmed its commitment to allowing parachute-jumping at the Airport if it were conducted in accordance with FAA guidelines and its own Minimum Standards. Respondent also restated Complainant's violations of the Airport's Minimum Standards. [FAA Exhibit 1, Item 7, Attachment 7.]

Complainant filed an application to become a Sport Parachute-jumping Operator at the Airport in accordance with the Minimum Standards. [FAA Exhibit 1, Item 7.]

On June 14, 2000, Respondent accepted Complainant's application to become a Sport Parachute-jumping Operator at the Airport. [FAA Exhibit 1, Item 7, Attachment 9.]

Complainant and Respondent negotiated the terms of their Agreement between Zoo City Skydivers and the Yazoo County Port Commission Regarding Sport Parachute-jumping at the Yazoo County Airport (Agreement) on June 16, 2000. [FAA Exhibit 1, Item 3, Attachment 5 & Item 7, Attachment 8.]

Also on June 16, 2000, Respondent stipulated that the Airport could be used by skydivers without objection provided that a different drop zone was utilized that was not in as close proximity to the runways and flight patterns as the previous drop zone. [FAA Exhibit 1, Item 7.]

In its Answer, Respondent admits that it asked Complainant to wait until FAA could inspect the designated Parachute Landing Zone for safety, before resuming parachute-jumping and landing at the Airport. [FAA Exhibit 1, Item 7.] Respondent does not provide evidence of this request but does state that Complainant did not abide by the request and resumed parachute-jumping operations on the Airport. [FAA Exhibit 1, Item 7.] Complainant denies the allegation and states that landings were made at a remote location. [FAA Exhibit 1, Item 9.]

By letter of June 21, 2000, Respondent expressed its disappointment in Complainant's continued operations and with Mr. Johnson's inappropriate conduct toward its Airport Manager during a verbal altercation on June 17, 2000. Regarding Mr. Johnson's verbal

abuse, the Respondent stated, “Such action cannot and will not be tolerated on airport property.” [FAA Exhibit 1, Item 7, Attachment 11.]

Respondent notified the ADO on June 21, 2000, that both parties had reached an agreement regarding future use of the Airport by Complainant. The letter also acknowledged Respondent’s belief that the designated Parachute Landing Zone was inadequate for safe operations and requested that the FAA Flight Standards District Office (FSDO) conduct a safety study. [FAA Exhibit 1, Item 7, Attachment 12.]

In accordance with the Minimum Standards, Complainant executed and filed with Respondent a new Designation of Agent, Agreement and General Release of Liability on June 24, 2000. This Release states “if the Commission suspends or revokes, temporarily or permanently, the privileges and rights of the Zoo City Skydivers to conduct sport parachute-jumping activities at or about the Airport, such suspension and/or revocation shall include and apply to me...” [FAA Exhibit 1, Item 7, Attachment 13.]

The FSDO’s provided its assessment of the drop zone by letter dated August 3, 2000. In this letter, the FSDO states that “the proposed drop zone adjacent to the terminal building would be suitable for sport parachute activity.” However, the FSDO notes that “under certain conditions parachute activities would be considered unsafe due to agricultural, ultralight, and other non-radio aircraft operating out of, into, and through the landing zone area.” The FSDO recommended that Respondent add a provision to its Minimum Standards that would include notification to the jumpmaster or other responsible individual of any last minute agricultural activity or other non-radio aircraft activity that would hinder the operation of low altitude aircraft operating into or through the drop zone that would impact safety. The FSDO also noted that the alternate site proposed on the North end of the terminal area would not be acceptable at the time due to the ongoing industrial activity in and around the area [FAA Exhibit 1, Item 7, Attachment 14.]

Respondent notes that after receipt of the August 3, 2000 letter from the ADO, they advised Complainant that it could conduct parachute operations on the Airport. Respondent states that “during the next several months, the Defendants [Commission] continued to receive complaints about the conduct of ZCS [Zoo City Skydivers] at the Airport, particularly the manner in which they utilized the administrative building.” [FAA Exhibit 1, Item 7.] [See FAA Exhibit 1, Item 7, Attachments 15-17.]

By Affidavit, Respondent’s Airport Manager provided examples of Complainant’s Minimum Standards violations in December 2000 and January 2001. [FAA Exhibit 1, Item 7, Attachment 17.]

In December 2000, Respondent decided to lease the Parachute Landing Zone, which had previously been used free-of-charge by operators. Respondent submits that, in accordance with Mississippi law, it published a Notice to Bidders which described how a preference would be given to bids for aeronautical related usage, specifically a parachute drop zone. [FAA Exhibit 1, Item 7.]

Respondent was notified of Complainant's continued violations via letter dated December 18, 2000. Here, the Airport Manager and an aeronautical user, a U.S. Air Force Master Sergeant, alleged that on December 17, 2000, they "saw two sport parachutists jump without proper lights after sunset from the plane used by ZCS [Zoo City Skydivers] in violation of Section 105.33 of the applicable FAA regulations." [FAA Exhibit 1, Item 7.] During a public hearing held on February 6, 2001, Complainant admitted that he was one of the jumpers but denied claims of improper lighting. [FAA Exhibit 1, Items 3, 7, & 9.]

By the deadline for submission of bids for the leased area, January 2, 2001, Respondent states that it had received only one bid for lease of the area, which happened to be for non-aeronautical uses. [FAA Exhibit 1, Item 7.] Complainant claims he did submit a bid but Respondent lost it. [FAA Exhibit 1, Item 9.]

On January 10, 2001, Respondent temporarily revoked the rights of Complainant to conduct parachute-jumping activities at the Airport, citing violations of the Minimum Standards regarding (i) drinking alcoholic beverages on Airport premises (Section IIA(21)), (ii) jumping after sundown without proper lights (FAR Part 105.33, historical), and (iii) unauthorized use of the administration building (local regulations). [FAA Exhibit 1, Item 7, Attachment 21] Respondent notified Complainant by letter dated January 10, 2001, of the temporary revocation and the public hearing to be held on February 6, 2001 to address these violations. [FAA Exhibit 1, Item 7, Attachment 22.]

Respondent states it posted Notice after January 10, 2001 in multiple locations informing the public of the date, time, and purpose of the February 6, 2001 Special Meeting. [FAA Exhibit 1, Item 7.]

On or about January 12, 2001, Complainant questioned Respondent via undated letter about the possible leasing of the existing drop zone to a party for non-aeronautical activities (i.e. agricultural activities). [FAA Exhibit 1, Item 7, Attachments 6 & 24.]

By letter dated January 17, 2001, Complainant takes issue with how Respondent has addressed its alleged violations. Complainant raises questions as to Respondent's compliance with its Federal obligations and states that it will file a complaint with the American Civil Liberties Union and other appropriate agencies for violations of certain civil rights. Complainant also alleges that some of the Respondent's ordinances and governing operations are pre-empted by Federal law. [FAA Exhibit 1, Item 7, Attachment 26.]

By undated letter received by the Commission on or about January 19, 2001, Complainant denies the allegations against him. Complainant requests a change of hearing date from February 6<sup>th</sup> at 9:00AM to February 7<sup>th</sup> at 5:00PM due to scheduling conflicts with Mr. Johnson's contract employment. Complainant notes his good faith effort to resolve the 'discrepancy' by suspending operations for a period of a weekend but notes the "extreme loss of revenue associated with such a stoppage." Complainant admits that it "intends to continue operations as normal." [FAA Exhibit 1, Item 1,

Attachment 5 & Item 7, Attachment 27.] Complainant objects to specific parts of the Airport's Minimum Standards and strongly objects "to the part of the minimum standards regarding parachute-jumping, which states that prior written notice be given to the commission in each and every case less than 24 hours prior to the time proposed." [FAA Exhibit 1, Item 1, Attachment 5 & Item 7, Attachment 27.]

On or about February 2, 2001, Complainant sent notification via facsimile expressing interest in leasing an unspecified area at the Airport for a mobile office and covered parking area for the use and benefit of parachute-jumping operations. [FAA Exhibit 1, Item 7, Attachment 29.]

Respondent held a public hearing on February 6, 2001. After hearing testimony and evidence regarding Complainant's alleged violations, Respondent unanimously adopted a resolution that stated:

"1. The Port Commission finds and determines that Johnson and ZCS [Zoo City Skydivers] were not in compliance with the applicable Minimum Standards and FAA regulations as set out in the Notice and have deliberately and repeatedly violated the temporary revocation of their right to conduct sport parachute-jumping activities at the Airport pending the Public Hearing, and by each separate violation have thereby jeopardized the safe and efficient operation of the Airport and the safety of those using the Airport.

2. Accordingly, the Port Commission permanently and immediately revokes all rights and privileges of Johnson and ZCS to conduct sport parachute-jumping activities at the Airport."

[FAA Exhibit 1, Item 7, Attachment 30.]

Respondent admits that "immediately after the public hearing on February 6, 2001, [it's] attorney advised the ADO by telephone that the Commission had permanently revoked the rights of Johnson d/b/a ZCS to conduct sport parachute-jumping activities at the Airport." [FAA Exhibit 1, Item 7.]

Again, via letter dated February 6, 2001, Complainant submitted its complaint to the ADO about the revocation of its permit to conduct parachute-jumping operations at the Airport. [FAA Exhibit 1, Item 1, Attachment 6 & Item 7, Attachment 32.] Complainant takes issue with the evidence provided by Respondent regarding violations of the Airport's Minimum Standards. Complainant asserts that he should not necessarily be completely absolved from responsibility for conducting skydiving operations after his permit to operate on the airport was revoked by Respondent. [FAA Exhibit 1, Item 1, Attachment 6 & Item 7, Attachment 32.]

On February 9, 2001, Complainant filed a complaint [Civil Action No. 2001-CI09] in the Circuit Court of Yazoo County, Mississippi against Respondent, individual County Board members, individual Commission members, and certain users of the Airport. The Circuit Court complaint alleged a violation of 42 U.S.C. § 1983 due to Respondent's ordinance that prevents, limits, and revokes the rights of Complainant and any skydiver to use the

Airport.<sup>7</sup> [FAA Exhibit 1, Item 7, Attachment 34.] At the same time, Complainant filed an Application for a Temporary Restraining Order and a Preliminary and Permanent Injunction against Respondent. [FAA Exhibit 1, Item 7, Attachment 35.]

Complainant posted a Notice to the Public sometime after February 11, 2001. [FAA Exhibit 1, Items 7 & 9.] The Notice stated,

“Glyn Johnson will continue to conduct sport parachute-jumping in accordance with applicable FARs [Federal Aviation Regulations] and BSRs [Basic Safety Requirements] set forth by USPA. Due to airplane repairs Zoo City Skydivers will not be operating this weekend (2-10-01). However, we will return the following weekend (2-17-01). The Yazoo County Port Commission does not give Zoo City Skydivers the privilege to conduct the business of skydiving, but rather the County of Yazoo grants that Privilege.” [FAA Exhibit 1, Item 7, Attachment 36.]

On February 14, 2001, Respondent amended the Airport’s Minimum Standards to reflect a new subsection titled, “No Parachute Landing Zone at Airport” which included the language, “No sport parachute landings may be made at the Airport.” [FAA Exhibit 1, Item 7, Attachment 37.]

In a letter dated March 1, 2001 to the ADO, Respondent stated that it had amended its Minimum Standards to reflect its interpretation of the ADO’s August 3, 2000 letter regarding the safety of the parachute landing zone and the fact that the area previously used as the parachute landing zone was leased for non-aeronautical use. [FAA Exhibit 1, Item 7, Attachment 39.]

On March 1, 2001, Respondent notified the FSDO of Complainant’s violations of applicable FARs [specifically, 14 CFR §§ 105.17 & 105.33]. [FAA Exhibit 1, Item 7, Attachment 40.]

On March 9, 2001, Respondent notified the ADO of its adoption of a resolution that permanently revoked all of Complainant’s rights and privileges to conduct sport parachute-jumping at the Airport. Respondent states,

“the Port Commission’s Resolution revoking sport parachute-jumping on the airport was limited to those individuals/businesses in violation of the Minimum Standards and the applicable FAA regulations, namely Mr. Johnson and Zoo City Skydivers. Others may participate in sport parachute-jumping activities at the

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<sup>7</sup> 42 U.S.C. § 1983, *Civil action for deprivation of rights*. “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was involved or declaratory relief was unavailable.”

Airport in compliance with the Minimum Standards and applicable FAA regulations.” [FAA Exhibit 1, Item 7, Attachment 42.]

On March 14, 2001, the ADO made an informal determination that Respondent (1) had met FAA requirements for the leasing of the property in question (drop zone) and (2) had not violated FAA regulations or Grant Assurances in denying Complainant access to the Airport for parachute-jumping operations. [FAA Exhibit 1, Item 1, Attachment 7 & Item 7, Attachment 43.]

On May 14, 2001, the Circuit Court of Yazoo County, Mississippi, in Case No. 2001-CI09, denied Complainant’s Motion for Preliminary Injunction. [FAA Exhibit 1, Item 7, Attachment 45.]

At some time before July 25, 2001, Complainant requested that Respondent permit him to conduct “some type of sport parachute activity” at the Airport. [FAA Exhibit 1, Item 7.] By letter dated July 25, 2001, Respondent requested more information regarding the specific type of activity in Complainant’s earlier request. [FAA Exhibit 1, Item 7, Attachment 47.]

Around August 15, 2001, Complainant had an altercation with Respondent’s Port Director regarding the use of airport utilities and Complainant’s placement of a travel trailer on airport property. [FAA Exhibit 1, Item 7, Attachment 50.] During that altercation, Complainant allegedly exposed himself, damaged County property, and drove a motor vehicle in an unsafe manner. [FAA Exhibit 1, Item 7, Attachment 48.] Complainant was arrested and convicted of reckless driving, indecent exposure, and malicious mischief. [FAA Exhibit 1, Item 7, Attachment 53.] Complainant admits to exposing himself but denies all other charges. [FAA Exhibit 1, Item 9.]

During testimony in Case No. 2000-CI09, on February 13, 2002, upon direct examination, Complainant admitted regarding the incident on August 15, 2001, “I wanted--what I wanted to do is I wanted to reach into his [Port Director] car and put my hands around his neck and choke the life out of him.” [FAA Exhibit 1, Item 7, Attachment 52.]

By letter of November 17, 2001, Complainant notified the ADO of Respondent’s alleged non-compliance with its Federal obligations. Here, Complainant provided the following examples of non-compliance:

“(1)Aircraft are not allowed to take off or land, if they pick up or discharge passengers that are carrying or wearing parachutes...(2)The Yazoo County Airport sponsor, the Yazoo County Port Authority has exceeded its authority by passing ordinances and laws prohibiting an aeronautical activity anywhere in the County...The Port Authority has prohibited all activities conducted under CFR 105...(3)The Yazoo County Port Authority prohibits ultralight activities without any study or investigation into the compatibility with other users of the

Airport...(4)The Yazoo County Port Authority attempted to prohibit a lighter-than-air craft from landing at the Airport.”  
[FAA Exhibit 1, Item 7, Attachment 56.]

By letter dated December 20, 2001, Respondent addressed the allegations of Complainant’s November 17, 2001 letter. Respondent maintained that it had not adopted any Ordinance or instructed the Port Director to not permit any aircraft to take off or land if they picked up or discharged passengers carrying or wearing parachutes. Additionally, “the Commission has not adopted any ordinance prohibiting an aeronautical activity anywhere in the County...the Commission revoked the permit by which Glyn Johnson d/b/a Zoo City Skydivers conducted a sport parachute-jumping business on the airport.” Furthermore, “the Commission has not prohibited ultralight activity at the airport.” [FAA Exhibit 1, Item 7, Attachment 58.]

On January 2, 2002, the ADO issued its determination regarding Complainant’s November 17, 2001 complaint. After reviewing documents submitted by Respondent regarding the allegations, the ADO concluded that there was no basis for action. [FAA Exhibit 1, Item 7, Attachment 59.]

In a letter received by the FSDO on December 19, 2001, Complainant again notified FAA of alleged violations of Respondent’s Federal obligations by its (1) aircraft radio requirements for aircraft operating on or near the airport and (2) failure to make the airport available on fair and reasonable terms when it prohibited Complainant access to the airport for operating its business. [FAA Exhibit 1, Item 7, Attachment 60.]

On January 14, 2002, Respondent addressed the allegations of Complainant’s December 19, 2001 letter, by confirming that the regulations do not require some types of aircraft have two way radio communication when operating in Class E airspace. Respondent confirmed that it has never attempted to enforce the provision in its Minimum Standards which requires an aircraft radio in any aircraft operating on the airport. [FAA Exhibit 1, Item 7, Attachment 62.]

On January 15, 2002, the ADO determined, based on Respondent’s letter of January 14, 2002, that no special privileges had been granted to a cropduster operation on the Airport, nor had the County unfairly discriminated against the Complainant regarding its radio requirements. [FAA Exhibit 1, Item 7, Attachment 63.]

In a letter dated March 16, 2002, Complainant advised Respondent of its plans to engage in aeronautical activity in the airspace over Yazoo County. Complainant intended to make parachute jumps but would not land on the Airport. Complainant requested a response to these statements if Respondent disagreed with the action. [FAA Exhibit 1, Item 7, Attachment 67.]

On April 3, 2002, Respondent addressed Complainant’s March 16, 2002 statement whereby it reaffirmed that Complainant was prohibited from participating in any

parachute-jumping activities at the Airport even if he intended to land off the Airport. [FAA Exhibit 1, Item 7, Attachment 68.]

During the week of January 7, 2002, Respondent confirmed to Complainant that it did not object to Complainant's use of a 'para-motor' activity on the airport. [FAA Exhibit 1, Item 7, Attachment 69.]

On June 17, 2002, Congressman Gene Taylor sent a letter to FAA's Southern Region Headquarters on behalf of Complainant regarding allegations of discrimination. The Region responded to this letter on June 26, 2002, noting FAA conducted several site visits to the Airport to assess the safety of parachute-jumping activities on and around the Airport. FAA investigated Complainant's claims that the Airport is in conflict with various obligations and concluded that Respondent was in compliance with its Federal obligations. [FAA Exhibit 1, Item 7, Attachment 76.]

On July 1, 2002, the ADO issued a letter regarding the FSDO and Air Traffic's airspace study and safety determination for the established drop zone at the Yazoo County Airport. The ADO noted that FAA<sup>8</sup> conducted an inspection on June 30, 2000 and determined that the established drop zone was the only area suitable and safe for a parachute-landing zone. However, since that visit, questions were raised about the safety and adequacy of the drop zone. Therefore, FAA decided to conduct another safety study. The July 2001 safety study found:

- (1) Aircraft at the Airport are operating on the surface or in Class E airspace.
- (2) A federal prison is located in close proximity to the east side of the Airport. It would be hazardous for a parachutist to fall into or in close proximity to this prison.
- (3) The Airport is located under a heavily traveled Federal Airway (V-74) and is located adjacent to another heavily used Federal Airway (V-557). Aircraft traverse these Airways as low as 2,000 feet above sea level.
- (4) The Airport has a 5,000 foot by 100 foot runway which can accommodate aircraft ranging in size from a small Piper J-3 Cub to a large-high speed corporate jet aircraft like a Challenger CL-604. Additionally, the Airport has available both major airframe and powerplant repair facilities, thus making it attractive for both major and minor aircraft maintenance.
- (5) The Airport has 4 standard instrument approach procedures as low as 600 foot ceiling and 1 mile visibility.
- (6) Sport parachutists exit the aircraft usually between 12,500 feet msl and 14,000 feet msl.

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<sup>8</sup> The ADO uses the term 'FAA' to describe the agency's activities regarding the airspace study and safety determination at the Yazoo County Airport. FAA's Jackson FSDO and Regional Air Traffic Division conducted the airspace analysis and safety determination regarding the established drop zone on the Airport. The ADO issued a letter that presented the findings released by FSDO and Air Traffic in reference to their second safety study for the Airport. The FSDO and Air Traffic's memorandum and electronic messages to the ADO for this safety study are included as FAA Exhibit 3, Item 1.

The ADO stated,

“The position of the FAA is that airspace is to be safely shared. However, based on the fact that 2 Federal Airways lie over and east of the Airport, the Airport has 4 instrument approaches, the mix of slow to very fast aircraft, and the proximity to a Federal prison, it would not be prudent to establish a sport landing zone on this airport, including the area north of the Airport. To permit skydiving activities by establishing a jump zone or landing area on or near the Airport has the potential of creating a significant adverse affect to safety. Therefore, the FAA has determined that a landing zone should not be established on this Airport.” [FAA Exhibit 1, Item 7, Attachment 71.]

In a September 1, 2002 letter to the ADO, Complainant again wrote to the ADO regarding his status at the Airport. Specifically, Complainant stated, “I am not permitted to board an aircraft if I intend to participate in activity conducted under Part 105...this means I’m not permitted to board a certified aircraft...for the purposes of flying to another state or participating in aeronautical activity conducted under Part 105.” [FAA Exhibit 1, Item 7, Attachment 73.]

Respondent addressed Complainant’s claims by letter of October 30, 2002. [FAA Exhibit 1, Item 7, Attachment 75.] Respondent stated, “...because of Mr. Johnson’s repeated and flagrant violations of (i) Minimum Standards applicable to sport parachute-jumping at the Airport, (ii) the agreement he had entered into with the Commission regarding sport parachute-jumping at the Airport, and (iii) certain FAA regulations...,” Respondent permanently revoked all rights and privileges of Complainant to conduct parachute-jumping activities at the Airport. Respondent referred to the June 16, 2000 agreement between Complainant and Respondent that states, “...the Commission may permanently revoke all rights and privileges of ZCS and said individuals relating to sport parachute-jumping at the Airport.” Therefore, Respondent believed it had a contractual right to bar Complainant from all sport parachute-jumping activities at the Airport. Respondent provided that although Complainant has been prohibited from all sport parachute-jumping activities at the Airport, Mr. Johnson is still permitted use of the Airport for other purposes. However, Respondent provided evidence to support its claim that Complainant “continues to be an issue.” [FAA Exhibit 1, Item 7, Attachment 75.]

On December 12, 2002, the ADO notified Respondent that it must “...make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial activities offering services to the public at the airport.” [FAA Exhibit 1, Item 7, Attachment 76.] Therefore, Complainant “should be allowed to come to the airport, meet and board the aircraft, and then proceed to a location away from the airport and participate in sport parachuting.” [FAA Exhibit 1, Item 7, Attachment 76.]

On December 30, 2002, Respondent confirmed that “as directed by the FAA in [its] letter of December 12, 2002, unless a court orders otherwise, the Commission will permit Mr. Johnson to board an airplane at the Yazoo County Airport, while wearing or carrying a

parachute, to fly to another location (i.e. outside the Airport) to participate in sport parachute-jumping.” [FAA Exhibit 1, Item 7, Attachment 77.]

On June 24, 2003, the Circuit Court of Yazoo County, Mississippi dismissed Civil Action No. 2001-CI09 with prejudice. [FAA Exhibit 1, Item 7, Attachment 80.]

#### 14 CFR Part 16 Procedural Background

On July 7, 2004, FAA’s Office of Chief Counsel received Complainant’s formal filing under Part 16, whereby Complainant alleged violation of applicable law and assurances because he was “denied a lease of premises on the airport for the purpose of conducting aeronautical activity under 14 CFR Part 105.” [FAA Exhibit 1, Item 1.]

On July 13, 2004, FAA dismissed Complainant’s July 7, 2004 filing without prejudice as incomplete. [FAA Exhibit 1, Item 2.]

Complainant refiled his amended formal complaint, which FAA’s Office of Chief Counsel received on August 3, 2004. [FAA Exhibit 1, Item 3.]

FAA accepted the amended complaint and docketed it as FAA Docket No. 16-04-06 on August 16, 2004. [FAA Exhibit 1, Item 4.]

FAA’s Office of Chief Counsel received Respondent’s Answer in FAA Docket No. 16-04-06 on October 12, 2004.<sup>9</sup> [FAA Exhibit 1, Item 7.]

FAA’s Office of Chief Counsel received Complainant’s Reply in FAA Docket No. 16-04-06 on December 6, 2004. [FAA Exhibit 1, Item 9.]

FAA’s Office of Chief Counsel received Respondent’s Rebuttal in FAA Docket No. 16-04-06 on December 30, 2004. [FAA Exhibit 1, Item 10.]

## **V. ISSUES**

While the complaint contains numerous issues, FAA will examine only those issues properly within the scope of Part 16. The issues upon examination are:

1. Whether Respondent violated its Federal obligations when it denied Complainant access to conduct parachute-jumping activities on the Airport? (Grant Assurance 22, *Economic Nondiscrimination* & Grant Assurance 23, *Exclusive Rights*)
2. Whether Respondent violated its Federal obligations when it failed to permit access to an established drop zone on the Airport for operations under 14 CFR

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<sup>9</sup> Both parties requested and received extensions for time to file throughout the pleadings. Letters permitting these extensions have not been included in the procedural background. References for these letters may be found in FAA Exhibit 1.

Part 105, *Parachute Operations?* (Grant Assurance 22, *Economic Nondiscrimination* & Grant Assurance 23, *Exclusive Rights*)

## VI. APPLICABLE LAW AND POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or 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 fair and reasonable access to the airport.

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

### Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for Federal financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. Title 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

### Airport Sponsor Assurances

Those assurances applicable to this complaint are identified below.

#### *Grant Assurance 22, Economic Nondiscrimination*

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport:

“...will make its airport available 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.” [Assurance 22(a).]

“...may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.” [Assurance 22(h).]

“...may... limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.” [Assurance 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 that would be detrimental to the civil aviation needs of the public.

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

The owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. [See FAA Order 5190.6A, Parag. 4-7(a).] This means, for example, that the owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport. [See FAA Order 5190.6A, Parag. 4-7 & 4-8.]

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

However, an airport may limit any 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. When this is the case, and restrictions are imposed upon any user, FAA will make the final determination on the reasonableness of the restriction that denied or restricted user of the airport. [See Order, Sec. 4-8(a)(1).]

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport. [FAA Order 5190.6A, Parag. 4-8.]

- ***Restrictions on Aeronautical Use – Parachute-Jumping Operations.***

Parachute-jumping operations are considered an aeronautical activity and, as such, must normally be accommodated on airports that have been developed with Federal assistance.

With regard to parachute-jumping, FAA Order 5190.6A provides:

**“b. Parachute-jumping.** Parachute-jumping is an aeronautical use and requests to airport owners from parachute-jumping clubs, organizations, or individuals to establish a drop zone within the boundaries of an airport should be evaluated on the same basis as other aeronautical uses of the airport. Any restriction, limitation, or ban against parachute-jumping on the airport must be based on the grant assurance which provides that the sponsor may prohibit or limit an aeronautical use ‘for the safe operation of the airport or when necessary to serve the civil aviation needs of the public’ [*see* Parag. 4-8(a)]. Among the reasonable limitations on parachute-jumping than an airport owner might require are:

- (1) The airport owner designate reasonable time periods for jumping and specific areas for drop zones.
- (2) Jumpers (or requesting organization) agree to pay a reasonable fee that is not unjustly discriminatory.
- (3) Jumpers hold a general liability insurance policy that names the airport owner as an additional ensured party, with the amount of insurance to be reasonable and not unjustly discriminatory.

The airport owner is not required to permit this activity if, in his judgment, it creates a safety hazard to the normal operations of aircraft arriving or departing from the airport, nor is the airport owner required to close the airport to provide a safe environment for the parachute jumpers. In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the airport owners’ restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when considering the proposed restriction. In all cases, the FAA will make the final determination of the reasonableness of the airport owner’s restrictions which denied or restricted use of the airport.” [FAA Order 5190.6A, Parag. 4-8(b).]

*Grant Assurance 23, Exclusive Rights*

Title 49 U.S.C. § 40103(e), provides, in relevant part, that “there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended.”

Title 49 U.S.C. § 47107(a)(4), similarly provides, in pertinent part, that “there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

Grant Assurance 23, Exclusive Rights, of the prescribed sponsor assurances implements both statutory provisions, requiring 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...and that it 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 Advisory Circular 150/5190-5, Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities, dated June 10, 2002, FAA published its exclusive rights policy and broadly identified aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airport 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 standard that is applied in an unjustly discriminatory manner may constitute a 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 Pompano Beach v. FAA*, 774 F.2d 1529 (11<sup>th</sup> Cir, 1985).]

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right. Therefore, it is FAA’s policy that the sponsor of a Federally obligated airport will permit no exclusive right for the use of the airport by any person 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.

#### Administrative Authority

Congress has given FAA authority to implement 49 U.S.C. § 47107 and to monitor compliance thereof by airports which receive public financing. [*See* 49 U.S.C. § 47122.] FAA's interpretation of the relevant federal aviation statutes at issue is entitled to deference under Chevron USA, Inc. v. NRDC, 467 U.S. 837, 842-43 (1984), because Congress has authorized the agency to interpret these provisions through regulations and other means.<sup>10</sup> [*See* 49 U.S.C. § 40113, 47107(g)-(h), 47122(a); Nichols v. United States, 260 F.3d 637, 644 (6th Cir. 2001).] Accordingly, when the statutory language of these provisions ambiguously speaks to the precise issue at hand, the agency's reasonable

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<sup>10</sup> This authority is derived from 49 U.S.C. § 47122(a) which states: “The Secretary of Transportation may take any action the Secretary considers necessary to carry out this subchapter, including conducting investigations and public hearings, prescribing regulations and procedures, and issuing orders.”

interpretation of the statute will control. [*See id*; see also United States v. Mead Corp., 533 U.S. 218 (2001) <sup>11</sup>.]

"[W]hen a litigant challenges an agency determination on grounds that, in essence, allege that the agency's expert review was incomplete, inconclusive, or inaccurate, the greater degree of deference expressed by the arbitrary and capricious standard is appropriate." Greenpeace Action v. Franklin, 14 F.3d 1324, 1331 (9th Cir.1992) (alterations, quotations, and citations omitted). Once the court determines that an agency's discretion is truly informed, it must defer to that informed discretion. [See Marsh, 490 U.S. at 377, 109 S.Ct. 1851; Greenpeace, 14 F.3d at 1332.]

FAA's interpretation of its grant assurances (issued after notice and comment) are entitled to substantial deference. [*See Auer v. Robbins*, 519 U.S. 452, 461 (1997).]

#### The FAA Airport Compliance Program

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

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served. FAA Order 5190.6A 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 to be followed by FAA personnel in carrying out FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the

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<sup>11</sup> The Supreme Court in Mead clarified that the absence of "administrative formality" is not dispositive on the question of Chevron deference. 533 U.S. at 231. Rather, courts may consider "the interstitial nature of the legal question, the related expertise of the Agency, the importance of the question to administration of the statute, the complexity of that administration, and the careful consideration the Agency has given the question over a long period of time." [Barnhart v. Walton, 535 U.S. 212 (2002).]

nature of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA compliance program is designed to achieve voluntary compliance with Federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable Federal obligations. Consequently, FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable Federal obligations to be grounds for dismissal of such allegations. [*See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, (8/30/01).]

#### Enforcement of Airport Sponsor Assurances

FAA Order 5190.6A covers all aspects of the airport compliance program except enforcement procedures.

Enforcement procedures regarding airport compliance matters may be found at *FAA Rules of Practice for Federally-Assisted Airport Proceedings* (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and made effective on December 16, 1996.

#### The Complaint Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant 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. [*See* 14 CFR § 16.3 and 16.23(b)(3,4).]

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

The proponent of a motion, request, or order has the burden of proof. [*See* 14 CFR § 16.229(b).] A party who has asserted an affirmative defense has the burden of proving the affirmative defense. [*See* 14 CFR § 16.229(c).] Furthermore, 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires that the complainant must submit all documents when 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 arguments necessary for the FAA to determine whether the sponsor is in compliance.”

### FAA Orders

Under Part 16, the FAA may initiate an investigation or accept a complaint against an airport sponsor. 14 CFR 16.101. If the FAA determines from its investigation that the sponsor is in noncompliance with its federal obligations and the FAA is unable to secure voluntary compliance, the agency will issue an initial decision with a proposed compliance order. [See 16.31(d), 16.103-105, 16.109(a) and 49 U.S.C § 47122(a).]

Effectiveness of such orders is governed by statute. 49 U.S.C. § 46105(a) addresses the effectiveness of FAA Orders and states:

“The regulation or order remains in effect under its own terms or until superseded. Except as provided in this part, the Secretary, Under Secretary, or Administrator may amend, modify, or suspend an order in the way, and by giving the notice, the Secretary, Under Secretary, or Administrator decides.” *Id.*

Thus, FAA has the discretionary authority to amend, modify, or suspend its orders and administrative decisions. The weight [accorded to an administrative] judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” [United States v. Mead Corp., 533 U.S. at 227-28 (2001) citing Justice Jackson in Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).] [See also Friends of Richards-Gebaur Airport v. FAA, 251 F. 3d 1178 (8<sup>th</sup> Cir 2001).]

Pursuant to FAA’s vested authority, it is also within FAA’s discretion to clarify the scope and breadth of its opinions. [See AT & T Communications Inc. v. Consolidated Rail Corporation, 285 F. Supp. 2d 649, 662 (E.D. Pa 2003) (when an agency has the authority to approve an action, it is permitted to clarify the scope of its own approval and the corresponding breadth.)]

### 14 CFR Part 105

14 CFR Part 105, *Parachute Operations*, prescribes the rules and regulations under which parachute operators must conform while operating within the United States airspace system. Section 105.3 defines drop zone as “any pre-determined area upon which parachutists or objects land after making an intentional parachute jump or drop.” Specific provisions of this Regulation that pertain to the case are described below<sup>12</sup>:

- §105.5 specifically states “no person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from an aircraft, if that operation creates a hazard to air traffic or to persons or property on the surface.”

<sup>12</sup> FAA has revised 14 CFR Part 105 over the years to incorporate changes in policy and procedures regarding parachute-jumping operations. This Director’s Determination will refer to the case based on the regulations in place as of the signature of this Determination.

- §105.15(b) mandates that “each holder of a certificate of authorization issued under §§105.21(b) and 105.25(b) of this part must present that certificate for inspection upon the request of the Administrator or any Federal, State, or local official.”
- §105.19 prescribes rules for operations between sunset and sunrise. Under this section, those individuals conducting parachute operations during this time must display a light that is visible for at least 3 statute miles. This light must be maintained from the time the individual operates under a properly functioning open parachute until they reach the surface.
- For operations over or onto airports, §105.23 specifies:
  - “No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft, over or onto any airport unless –
  - (b) For airports without an operating control tower, prior approval has been obtained from the management of the airport to conduct parachute operations over or on that airport.
  - (c) A parachutist may drift over that airport with a fully deployed and properly functioning parachute if the parachutist is at least 2,000 feet above that airport’s traffic pattern, and avoids creating a hazard to air traffic or to persons and property on the ground.”

FAA’s Flight Standards Service (FSS), through its local FSDOs, provides regulation and oversight of those individuals conducting parachute-jumping operations under Part 105. FSS/FSDOs have the authority to determine whether an operation violated provisions of 14 CFR Part 105.<sup>13</sup>

## **VII. ANALYSIS AND DISCUSSION**

FAA conducted its review and analysis to determine whether Respondent is in violation of its Federal obligations regarding economic nondiscrimination (Grant Assurance 22) and exclusive rights (Grant Assurance 23). Each area of analysis is structured to reflect the docketed issues.

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<sup>13</sup> Investigation or adjudication of specific violations of 14 CFR Part 105 are not within the jurisdiction of FAA’s Associate Administrator for Airports or this Part 16 process. Allegations of violations of Part 105 should be addressed to FAA’s Flight Standards Service. Additionally, local jurisdictions like Respondent, do not have the legal and statutory authority to determine whether its tenants violated applicable Federal Aviation Regulations. Only FAA may make those determinations. There is no private right of action.

**Issue 1: Has Respondent violated its Federal obligations when it denied Complainant access to conduct parachute-jumping activities on the Airport? (Grant Assurance 22, *Economic Nondiscrimination*, & Grant Assurance 23, *Exclusive Rights*)**

Complainant alleges Respondent is operating Yazoo County Airport in a manner inconsistent with its Federal obligations to make the airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical users. Specifically, Complainant states that Respondent violated its Federal obligations, under Grant Assurance 22, *Economic Nondiscrimination*. Complainant also avers violation of 49 U.S.C. §§ 40103(e) & 47104(a)(4), and Grant Assurance 23, *Exclusive Rights* when it denied Complainant “a lease of premises at the airport for the purposes of conducting aeronautical activity under 14 CFR Part 105.” [FAA Exhibit 1, Item 3.] Complainant also alleges violation of applicable statutes and grant assurances by Respondent’s failure to equally enforce the Airport’s Minimum Standards. [FAA Exhibit 1, Item 3.]

Specifically, Complainant states “local public officials in Yazoo County have taken action to make it totally impossible for Glyn Johnson to continue in the normal day to day business of conducting parachute operations at the Yazoo County Airport as they have been conducted prior to his purchase of the operation.” [FAA Exhibit 1, Item 3.] Complainant alleges that Respondent has enacted arbitrary and capricious ordinances and utilized excessive use of police power. [FAA Exhibit 1, Item 3.]

A review of all pleadings presented by the parties disclose the following pertinent facts:

- Mr. Johnson is a parachute-jumping instructor who purchased a pre-existing parachute-jumping operation [Zoo City Skydivers] at the Airport in February 2000. [FAA Exhibit 1, Item 3 & Item 7, Attachment 80.]
- Because of allegedly violating a number of established Minimum Standards at the Airport, Respondent suspended and terminated Complainant’s right to operate at the Airport until Complainant provided evidence that it could comply with Airport rules, regulations, and minimum standards. [FAA Exhibit 1, Item 7.]
- Complainant, following the procedures prescribed by the Airport’s Minimum Standards, filed an application with Respondent to become a Sport Parachute-Jumping Operator at the Airport, to operate a business on the Airport. [FAA Exhibit 1, Item 7.]
- Before agreeing to issue a permit, Respondent negotiated with Complainant terms of an agreement. Respondent indicates that an agreement was necessary because of Complainant’s repeated violations of the Minimum Standards before submitting his application. [FAA Exhibit 1, Item 7, Attachment 75.] A key provision of the agreement states:

“7. In the event that the Commission asserts that ZCS and/or any individual engaged in sport parachute-jumping at the Airport under permit granted hereby to ZCS, has failed to abide by any Minimum Standards

applicable to its activities at the Airport, upon notice thereof in writing, all rights and privileges of ZCS and/or said individual pertaining to sport parachute-jumping at the Airport shall be immediately temporarily revoked and neither ZCS nor said individual shall be permitted to conduct sport parachute-jumping activities at the Airport. Such written notice must state the specific provision(s) of the Minimum Standards deemed to be violated. Within thirty (30) days after receipt of such written notice, the Commission shall hold a public hearing on the alleged violation(s), and ZCS shall have an opportunity to appear and present evidence before the Commission at that hearing. If, after evaluating the evidence and circumstances, the Commission finds that ZCS and/or said individual was not in compliance with all Minimum Standards applicable to its activities at the Airport, the Commission may permanently revoke all rights and privileges of ZCS and said individual relating to sport parachute-jumping at the Airport.”

[FAA Exhibit 1, Item 3, Attachment 5 & Item 7, Attachment 8.]

- Both parties signed the agreement on June 16, 2000. Respondent accepted and approved Complainant’s application for operator permit. [FAA Exhibit 1, Item 3, Attachment 5 & Item 7, Attachments 8 & 9.]
- On June 16, 2000, Respondent submitted that the current drop zone was unsafe and that a different drop zone on the Airport would need to be identified. [FAA Exhibit 1, Item 7, Attachment 10.] Respondent requested that Complainant not utilize the Airport’s established drop zone until FAA could inspect the area for safety. However, Respondent states that Complainant ignored those requests. [FAA Exhibit 1, Item 7.] Complainant denies the allegation and states that landings were made at a remote location. [FAA Exhibit 1, Item 9.]
- In August 2000, FAA determined that the proposed drop zone would be suitable for parachute activity provided certain conditions be incorporated into the Airport’s Minimum Standards. [FAA Exhibit 1, Item 7, Attachment 14.]
- Complainant thereafter was permitted to engage in parachute-jumping operations on the Airport for the next few months. [FAA Exhibit 1, Item 7.] However, Respondent alleges receipt of numerous complaints regarding Complainant’s violation of the Airport’s Minimum Standards during that time period. [FAA Exhibit 1, Item 7.]
- Thereafter, the County decided to lease the drop zone, which had previously been used free-of-charge by operators. [FAA Exhibit 1, Item 7.] Respondent published a Notice to Bidders on December 9, 2000 and December 16, 2000, specifying that preference would be given to bids for aeronautical usage like a parachute drop zone. [FAA Exhibit 1, Item 7.] Respondent claims Complainant did not submit a bid. [FAA Exhibit 1, Item 7.] However, Complainant claims he did submit a bid but Respondent lost it. [FAA Exhibit 1, Item 9.] Complainant did not provide the Director with a copy of the bid in the submitted pleadings. Based on attached documents provided by both parties, it appears that Respondent received only one bid which was for non-aeronautical use. [FAA Exhibit I, Item 7.] Respondent accepted this non-aeronautical bid for leasing the former

parachute drop zone on January 12, 2001. [FAA Exhibit 1, Item 7, Attachment 25.]

- Respondent's Airport Manager noted another alleged violation by Complainant on December 18, 2000. This allegation specified violation of applicable FAA regulations (essentially Minimum Standards, since the applicable FAA regulations were included by reference). [FAA Exhibit 1, Item 7.]
- On January 10, 2001, Respondent invoked provision 7 of the Agreement by temporarily revoking the rights of Complainant to conduct parachute-jumping activities at the Airport. [FAA Exhibit 1, Item 7.] Alleged violations include drinking alcoholic beverages on Airport premises, jumping after sundown without prior illumination, and unauthorized use of the administration building.

Respondent references the following provisions of its Minimum Standards:

- (i) Regarding drinking alcoholic beverages on Airport premises  
Section II  
**A. General Standards**  
21. *Use of Alcohol, Narcotics Prohibited*  
“No Operator shall sponsor, facilitate or provide any Aeronautical Activity on or about the Airport by or to any person under the influence of alcohol or narcotics, For purposes of this standard, “under the influence of alcohol or narcotics” shall mean the consumption of any alcohol or narcotics within six (6) hours prior to such Aeronautical Activity or within such longer period of time as may be required for the effects of such consumption to completely abate.”
- (ii) Regarding jumping after sundown without proper illumination  
Historical Reference: FAR Part 105.33  
Current Reference: FAR Part 105.19, *Parachute operations between sunset and sunrise.*  
(a) “No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a person to conduct a parachute operation from an aircraft between sunset and sunrise, unless the person or object descending from the aircraft displays a light that is visible for at least 3 statute miles.  
(b) The light required by paragraph (a) of this section must be displayed from the time that the person or object is under a properly functioning open parachute until that person or object reaches the surface.”
- (iii) Regarding unauthorized use of the administration building  
Local Regulations, as incorporated by reference in the Minimum Standards

- Complainant denied these allegations and requested a local hearing. [FAA Exhibit 1, Item 1, Attachment 5 & Item 7, Attachment 27.] The Respondent

provided a hearing on February 6, 2001. Respondent unanimously voted to permanently revoke Complainant's rights and privileges to conduct parachute-jumping activities at the Airport due to Complainant's deliberate and repeated violations of Minimum Standards and operations during temporary revocation of rights. [FAA Exhibit 1, Item 7, Attachment 30.]

- Respondent thereafter amended its Minimum Standards to reflect its decision to deactivate its established drop zone on the Airport due to safety concerns and its new lease agreement for non-aeronautical activities. [FAA Exhibit 1, Item 7, Attachments 37 & 39.]
- In August 2001, Complainant had an altercation with Respondent's staff regarding the use of airport utilities and Complainant's placement of a travel trailer on airport property. [FAA Exhibit 1, Item 7, Attachment 50.] During that altercation, Respondent claims Complainant exposed himself, maliciously destroyed County property, and drove a motor vehicle in an unsafe manner. [FAA Exhibit 1, Item 7, Attachment 48.] Complainant was arrested and convicted of reckless driving, indecent exposure, and malicious mischief. [FAA Exhibit 1, Item 7, Attachment 53.] In the Reply, Complainant agrees that an altercation occurred. [FAA Exhibit 1, Item 9.] Complainant admits to exposing himself but denies all other charges. [FAA Exhibit 1, Item 9.]

During testimony before the Circuit Court of Yazoo County, Complainant admitted regarding the altercation, "I wanted—what I wanted to do is I wanted to reach into his [Port Director's] car and put my hands around his neck and choke the life out of him." [FAA Exhibit 1, Item 7, Attachment 52.] In the Reply, Complainant denies Respondent's interpretation and use of this statement in this case. Regardless, on February 13, 2002, the County Court of Yazoo County, Mississippi entered an Order convicting Johnson of indecent exposure, malicious mischief, and reckless driving at the Airport. [FAA Exhibit 1, Item 7, Attachment 53.] Respondent claims Complainant exhausted all appeals and the convictions remain on record. [FAA Exhibit 1, Item 7.]

- Complainant requested that he be permitted to engage in aeronautical activity in the airspace over Yazoo County without using the Airport for a landing zone. [FAA Exhibit 1, Item 7, Attachment 67.] Complainant later notified the ADO that he was not allowed to board an aircraft on the Airport carrying or wearing a parachute. [FAA Exhibit 1, Item 7, Attachment 73.]
- Respondent responded to request by reaffirming its resolution that Complainant's rights and privileges concerning parachute-jumping at the Airport were denied. [FAA Exhibit 1, Item 7, Attachment 68.]
- However, the ADO notified Respondent on December 12, 2002 that Complainant should be allowed to come to the Airport and board aircraft to conduct sport parachute-jumping operations off of the Airport (i.e., where the landing area would be off-Airport). [FAA Exhibit 1, Item 7, Attachment 76.]

The record demonstrates that Complainant violated some of the Airport's Minimum Standards and acted in an inappropriate manner toward Respondent's staff.<sup>14</sup>

The FAA encourages airport operators to establish minimum standards for their airports that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public.<sup>15</sup> [See FAA Advisory Circular 150/5190-5, Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities.] In this case, Respondent appropriately adopted such minimum standards for operations on the Airport. In fact, FAA suggests that airport sponsors establish reasonable minimum standards. FAA Advisory Circular 150/5190-5, Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities, provides under Parag. 2-1:

“The sponsor of a Federally obligated airport agrees to make the opportunity to engage in commercial aeronautical activities available to any person, firm, or corporation that meets reasonable minimum standards established by the airport sponsor. In exchange for this opportunity, a business operator agrees to comply with minimum standards developed by the airport. The minimum standards then, by virtue of the business operator's agreement, become mandatory.”

Applying this guidance, FAA finds it acceptable that Respondent required Complainant to apply for a permit to operate on the Airport, as established through the Airport's Minimum Standards. FAA also understands that Respondent believed that a written Agreement with Complainant was required based upon Complainant's past actions. Prior determinations under 14 CFR Part 16 have established that requiring such agreements is an acceptable business practice for purposes of ensuring compliance with the Airport's rules, regulations, and minimum standards. [See Kent J. Ashton v. City of Concord, NC, FAA Docket No. 16-00-01]

Complainant takes issue with the Agreement, specifically that it “was forced to sign the agreement under duress and against his free will...[he] reluctantly signed the agreement to remain free of incarceration.” [FAA Exhibit 1, Item 9.] Whether or not Complainant willingly entered into the Agreement with Respondent is a matter of local law and beyond FAA's jurisdiction. However, for purposes of this Part 16 process, the Agreement includes signatures of both parties and we consider it binding. Complainant does not deny that he signed the agreement.

Under the Agreement, Complainant agreed to the terms of provision 2, which essentially states that Complainant received, reviewed, and is familiar with the Airport's Minimum

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<sup>14</sup> Respondent also notes violations of Federal Aviation Regulations (FARs). FAA notes that Respondent does not have the legal authority to determine whether Complainant violated applicable FARs; that authority rests solely with the Federal Aviation Administration. Therefore, those allegations of violations of the FARs will not be included as evidence in this Part 16 proceeding. Allegations of violations of 14 CFR Part 105 should be brought to the attention of FAA's Flight Standards Service through their local FSDO in Jackson, Mississippi.

<sup>15</sup> Many airports tend to separate their Minimum Standards from their rules and regulations. In this case, it appears that Respondent has incorporated the Airport's rules and regulations into the Minimum Standards document.

Standards.<sup>16</sup> Complainant also agreed to the terms of provision 7, which as discussed above, provides a local enforcement process for violations by Complainant of the Airport's Minimum Standards. This provision also provides a means for Complainant to appeal the alleged violations before permanent revocation of Complainant's rights and privileges to operate on the Airport. Provision 7 of the Agreement [FAA Exhibit 1, Item 3, Attachment 5 & Item 7, Attachment 8.], specifies that in the event Respondent found Complainant in violation of the Airport's Minimum Standards, "the Commission may permanently revoke all rights and privileges of ZCS and said individuals relating to sport parachute jumping at the Airport." [See Provision 7 of Agreement.]

FAA policy dictates that the Airport has the right and obligation to protect itself from future litigation and to ensure the safe and efficient operation of the Airport. Respondent's revocation of Complainant's right to operate on the Airport appears to be directed at satisfying that right and obligation.

To determine whether Respondent can revoke Complainant's rights and privileges to conduct parachute-jumping operations at the Airport, we must consider two cases: (1) the Complainant as a business entity; and (2) the Complainant as an individual.

Regarding Complainant's rights and privileges as a business entity to engage in an aeronautical activity on the Airport, Respondent may restrict Complainant's ability to engage in business activities (i.e., operating a parachute training business) on the Airport.

Complainant – the business entity – is Zoo City Skydivers, an unincorporated association of individuals, which provides parachute-jumping services [FAA Exhibit 1, Item 7, Attachment 8.] Complainant signed the Agreement between Complainant and Respondent. Complainant agreed, by signature, to abide by Federal, state, and local laws and regulations and those applicable rules and regulations as stipulated in the Airport's Minimum Standards. Respondent provides compelling evidence that Complainant violated the Airport's Minimum Standards and local laws.

FAA's final decision for Kent J. Ashton v. City of Concord, NC (FAA Docket No. 16-00-01) establishes that "tenant violations of state or local laws (including airport laws, minimum standards, and lease provisions) could reasonably serve as a legitimate basis for the airport management to restrict the tenant's ability to conduct aeronautical activities on the airport."

Written statements of Respondent's staff and other individuals at the Airport support Respondent's argument that Complainant failed to abide by the terms and conditions of the Agreement and Airport Minimum Standards. Complainant himself agreed that he posted Notice at the Airport in February 2001 of his intention to disregard Respondent's directives with regard to revoking Complainant's right to conduct sport parachute jumping at the Airport. [FAA Exhibit 1, Items 7 & 9.] Complainant also acknowledged that he asserted that he should not necessarily be completely absolved from responsibility

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<sup>16</sup> FAA finds the Agreement and Minimum Standards are suitable methods for ensuring compliance with the Airport's rules, regulations, and minimum operating standards.

for conducting skydiving operations after his permit to operate on the airport was revoked by Respondent. [FAA Exhibit 1, Item 1, Attachment 6 & Item 7, Attachment 32.]

Based on the record presented by the parties, Complainant has repeatedly violated provisions of the Minimum Standards, broken local laws and provisions, and continued to engage in aeronautical operations even while his status as an operator at the Airport was temporarily revoked.

Complainant's conviction, while not an issue within the FAA's jurisdiction under 14 CFR Part 16, supports Respondent's argument that Complainant has engaged in unacceptable behavior on the Airport. FAA realizes that violations of state or local law by an individual may have the effect of restricting his or her ability to conduct aeronautical activities at an Airport. [See Kent J. Ashton v. City of Concord, NC, FAA Docket No. 16-99-09.]

The altercation of August 2001, as established by the state court conviction, further indicates a pattern of conduct that is inappropriate and unacceptable for safe and orderly operations on an airport. It also provides an example in the record of Complainant's violation of airport rules and regulations.

FAA would expect a sponsor to protect its tenants from non-aeronautical behavior that might have the effect of diminishing safety or reducing the efficient use of aeronautical facilities, impede the interests of the public in civil action, or constitute a nuisance, through rules of conduct and reasonable terms in business agreements or minimum standards.

FAA also expects an airport to enforce its rules and regulations as specified in its minimum standards. As previously discussed, FAA would expect that violators of an airport's minimum standards be provided due process and an appeal process. Here, the Agreement, as signed by both parties, established a procedure for appeal under provision 7.

Therefore, FAA finds that Complainant's pattern of behavior – as a business entity - including multiple violations of the Airport's Minimum Standards, supports Respondent's termination of Zoo City Skydivers' operating permit at the Airport. Complainant's conduct that led to his arrest supports Respondent's actions in terminating the permit.

Concerning the Complainant as an individual user of the Airport, in Kent J. Ashton v. City of Concord (FAA Docket No. 16-00-01), FAA established that individuals could be denied access to certain areas, specifically leaseholds, on an Airport but generally may not be denied access to the public airfield for the purposes of conducting aeronautical activities. In the Ashton case, Mr. Ashton's misconduct was associated with his activities in and around the leasehold areas of the Airport, where Mr. Ashton was a tenant renting a hangar. Mr. Ashton was therefore not prevented from using the public areas of the airfield to conduct aeronautical activities.

It appears that Respondent did attempt to deny Complainant access to the airfield. [FAA Exhibit 1, Item 7, Attachment 68.] However, the ADO notified Respondent that denying Complainant access to the public airfield was unreasonable. [FAA Exhibit 1, Item 7, Attachment 76.] Respondent notified FAA that "...the Commissioners will permit Mr. Johnson to board an airplane at the Yazoo County Airport while wearing or carrying a parachute, to fly to another location to participate in sport parachute-jumping."<sup>17</sup> [FAA Exhibit 1, Item 7, Attachment 77.]

In the case at hand, the record shows that Complainant, Mr. Johnson, has an established pattern of misbehavior on the entire Airport, not just in the leasehold or established drop zone areas. The record shows multiple infractions of established standards (i.e. Minimum Standards), potential violations of Federal rules and regulations, and non-compliance with local law and policy. Even without court order, the Director would not find it unreasonable for Respondent to restrict Mr. Johnson's access to the Airport as a means for protecting its rights and assets.

Since the Director finds the Respondent's restrictions on Complainant's access to operate on the Airport to be consistent with the grant assurances and related Federal law, the Director finds that there was no economic discrimination and no granting of an exclusive right to other users of the Airport. As previously discussed, the Director also finds Respondent's restrictions on Complainant's access to conduct his business on the airport reasonably consistent with the grant assurances and related Federal law. However, should the Airport deny access to another viable future operator willing to provide skydiving services on the Airport, the Airport's compliance with Grant Assurances 22 and 23 could be raised as an issue.

Previous FAA decisions have maintained that an airport sponsor's obligations may require that a previously evicted tenant/operator that presents a good faith application for tenancy and presents a credible willingness to abide by reasonable rules of tenancy and a airport's rules and regulations, should be provided with a procedure to re-establish tenancy/operations at the airport. [*See Jacquelin R. Ashton & Kent J. Ashton v. City of Concord, NC*, FAA Docket No. 16-02-01.] Any decision regarding the tenancy on an airport is the airport sponsor's responsibility to make.

As for the other issues of compliance with Grant Assurance 22, Complainant puts forward examples of alleged disparate treatment of Airport users (e.g., alleged violations of Minimum Standards by other Airport tenants without similar repercussions as Complainant). [FAA Exhibit 1, Items 3 & 9.]

Even if the FAA were to assume as true Complainant's allegations that other Airport tenants' activities may be violative of the Airport's Minimum Standards, incidental

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<sup>17</sup> The Record suggests that the civil suit in the Circuit Court of Yazoo County, MS may produce a finding that would limit Complainant –the individual and business entity– from engaging in aeronautical activity on the Airport. [FAA Exhibit 1, Item 7, Attachment 77.] FAA finds it premature to address a hypothetical access restriction in this proceeding.

noncompliance by Airport users does not constitute unjust economic discrimination by the airport operator. The FAA has previously found that a claim of unjust discrimination must include a showing that similarly situated users have been treated dissimilarly without adequate justification. [See Kent J. Ashton v. City of Concord, FAA Docket No. 16-00-01.] Complainant has provided speculation - with no evidence- regarding these claims of similar Minimum Standard violations. Accordingly, the record does not support Complainant's allegations of unjust economic discrimination. The FAA can find no unjust economic discrimination with respect to Complainant's revocation of rights and privileges as a result of violating the Minimum Standards.

**Issue 2: Whether Respondent violated its Federal obligations when it failed to permit access to an established drop zone on the Airport? (Grant Assurance 22, *Economic Nondiscrimination* & Grant Assurance 23, *Exclusive Rights*)**

Complainant alleges Respondent is operating Yazoo County Airport in a manner inconsistent with its Federal obligations to make the Airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical users. Specifically, Complainant believes Respondent violated its Federal obligations, under Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights* by failing to reasonably accommodate parachute-jumping activities through denial of access to an established drop zone on the Airport. [FAA Exhibit 1, Items 1 & 3.]

Complaint asserts that between 1994 and 2001 there were no skydiving incidents or accidents related to operations on the Airport. [FAA Exhibit 1, Item 9.] Complainant states that in 2001, local legislation totally prohibited parachute landings on the Airport. [FAA Exhibit 1, Item 3.]

Under Grant Assurance 22, *Economic Nondiscrimination*, an airport owner must make the airport available 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. Grant Assurance 23, *Exclusive Rights*, prohibits the granting of an exclusive right for the use of the airport by anyone providing or intending to provide services to the public. A violation of Grant Assurance 22 may invoke a violation of Grant Assurance 23.

In this case, the first question to be asked is whether parachute-jumping is an aeronautical activity. FAA Order 5190.6A confirms that "parachute-jumping is an aeronautical use." [See Parag. 4-9(b).] Therefore, parachute-jumping activities must generally be accommodated at a federally-obligated airport under the obligations related to Grant Assurance 22.

In this case, Complainant seeks accommodation through the use of an established drop zone on the Airport.<sup>18</sup> [FAA Exhibit 1, Items 1 & 3.]

While FAA Order 5190.6A establishes that an airport owner must allow use by all types, kinds, and classes of aeronautical users, the obligations do provide for exceptions, specifically when the use would compromise the safety, efficiency, or utility of the airport. [See FAA Order 5190.6A, Parag. 4-8(a).] Additionally, “requests to airport owners from parachute-jumping clubs, organizations, or individual to establish a drop zone within the boundaries of an airport should be evaluated on the same basis as other aeronautical uses of the airport.” [See Order 5190.6A, Parag. 4-9(b).]

Specific to this case, “any restriction, limitation, or ban against parachute-jumping on the airport must be based on the grant assurance which provides that the sponsor may prohibit or limit an aeronautical use ‘for the safe operation of the airport when necessary to serve the civil aviation needs of the public’”. [See FAA Order 5190.6A, Parag. 4-9(b).]

Respondent, concerned over the safety of continued operations on the established drop zone, enacted a resolution to prohibit parachute landings in the established drop zone. [FAA Exhibit 1, Item 7, Attachment 10.] At the time of resolution, Respondent expressed no objection to the use of a different drop zone on the Airport if it was not in close proximity to the runways and flight pattern as the previous zone. [FAA Exhibit 1, Item 7, Attachment 10.]

However, in March 2001, Respondent determined that there was no other safe or suitable area at the Airport for a drop zone. [FAA Exhibit 1, Item 7, Attachment 39.] Thus, Respondent amended its Minimum Standards for the Airport on February 1, 2001, to prohibit any parachute landings on the Airport. [FAA Exhibit 1, Item 7, Attachment 39.]

For the purpose of making a final determination on reasonableness, when aviation safety is at issue, FAA safety determinations made pursuant to the Federal Aviation Regulations take precedence over any airport sponsor views on safety as well as any local ordinances or local actions addressing safety.<sup>19</sup> This is especially true for determining compliance with Federal obligations in cases where restrictions are imposed by the airport sponsor in the interest of safety. FAA has preempted flight safety and the control of navigable airspace under 49 U.S.C. § 40103. Therefore, any airport sponsor restriction or prohibition enacted for air safety reasons must be coordinated with the FAA.

FAA order 5190.6A, Parag. 4-8(a) states:

“In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the airport owner’s restrictions. It may be appropriate to initiate an FAA airspace study to determine

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<sup>18</sup> Complainant also provides that other areas of the airport may be suitable for use as a drop zone. [FAA Exhibit 1, Items 1 & 3.]

<sup>19</sup> See 49 U.S.C. § 40103; Florida Aerial Advertising v. St. Petersburg-Clearwater International Airport, FAA Docket No. 16-03-01.

the efficiency and utility of the airport when considering the proposed restriction. In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions, which denied or restricted use of the airport."

In this case, the ADO was intimately aware of the restriction on parachute landings at the Airport, as evidenced by the correspondence provided by both parties. In fact, two safety studies were conducted by FAA before Complainant filed its formal complaint. [FAA Exhibit 1, Items 1 & 7.]

In the first safety study, completed in August 2000 (August 2000 safety study), the FSDO determined that "the proposed drop zone adjacent to the terminal building would be suitable for sport parachute activity." [FAA Exhibit 1, Item 7, Attachment 14.] The FSDO also recommended that Respondent add provisions to its Minimum Standards that would include notification to the jumpmaster or other responsible individual of any last minute agricultural activity or other non-radio aircraft activity. As a result of this study, Respondent continued to allow use of the designated drop zone. [FAA Exhibit 1, Item 7.]

However, Complainant later notified the ADO that Respondent had deactivated the drop zone by leasing the area to a non-aeronautical activity for agricultural operations. [FAA Exhibit 1, Item 1, Attachment 6.] Respondent claimed that it only received one bid for the lease which was publicly advertised. [FAA Exhibit 1, Item 7.] Additionally, Respondent claimed that the designated drop zone was unsafe. [FAA Exhibit 1, Item 7.] At that time, the ADO initiated a second safety study.

The ADO coordinated the second safety study, completed in July 2002 (July 2002 safety study). [FAA Exhibit 1, Item 7, Attachment 71 & Exhibit 3, Item 1.] Documents obtained during investigation reflect that FAA Airports relied on Flight Standards and Air Traffic to help determine whether Respondent could safely accommodate a drop zone on the Airport. [FAA Exhibit 3, Item 1.] The ADO issued a letter that presented findings released by Flight Standards and Air Traffic in reference to its second safety study for the Airport. [FAA Exhibit 1, Item 7, Attachment 71 & FAA Exhibit 3, Item 1.]

In its July 2002 safety study, Flight Standards stated, "to permit skydiving activities by establishing a jump zone/landing area on or near Yazoo County Airport, to include a proposed area north of the apron, has the potential of creating a **significant adverse effect** to safety." [FAA Exhibit 3, Item 1.] This finding presented a significant reversal from the August 2000 safety study. Specifically, the study cited the following facts as part of its recommendation:

- Aircraft are either operating on the surface or in Class E airspace at the Yazoo County Airport.
- A Federal Prison is located in close proximity to the east side of the airport. It would be hazardous for a parachutist to fall into or in close proximity to this prison.

- Yazoo County Airport is located under a heavily traveled Federal Airway (V-74) and is located adjacent to another heavily used Federal Airway (v-557). Aircraft traverse these Airways as low as 2,000 feet above sea level.
- The Yazoo County Airport has a 5,000 foot long by 100 foot wide runway. This runway will accommodate aircraft ranging in size from a small Piper J-3 Cub to large high speed corporate jet aircraft such as a Challenger CL-604.
- The Yazoo County Airport has available both major airframe and powerplant repair facilities thus making it attractive for both minor and major aircraft maintenance.
- The mix of aircraft using the Yazoo County Airport include such aircraft as small as Piper J-3 Cubs, aerial applicator aircraft, multi-engine aircraft, and corporate jet aircraft.
- The Yazoo County Airport has four standard Instrument Approach Procedures as low as 600 foot ceiling and one mile visibility.
- Sport parachutists exit the aircraft usually between 12,500 feet msl and 14,000 feet msl.

[FAA Exhibit 1, Item 7, Attachment 71.]

Air Traffic also objected to the landing zone for sport parachute-jumping on the airport. Air Traffic stated, “with the numerous surfaces that surround the airport it is 520[Branch Manager’s] position that it would not be wise to drop people through it.” [FAA Exhibit 3, Item 1.]

FAA’s July 2002 safety study determined that the airport could not safely accommodate an on-airport drop zone. [FAA Exhibit 3, Item 1.]

From July 2002 through the investigation of this case, FAA’s position has been that the Airport’s restriction on denying access to the established drop zone was reasonable, and that the Airport’s non-aeronautical use of the drop zone was an acceptable interim use.

However, after docketing this case, the Manager of the Certification and General Aviation Operations Branch, a part of FAA’s Flight Standards Service, contacted the Director to discuss the July 2002 safety study for Yazoo County Airport. The Manager had received a phone call from the United States Parachute Association (USPA) regarding the safety study. USPA (not a party in this proceeding) suggested that the July 2002 study provided an inadequate safety basis for prohibiting skydiving operations at the Airport. Upon further review, the Manager discovered inconsistencies and questioned the validity of the July 2002 safety study.

The Director concurred with the Manager’s decision to conduct a third independent safety study for the Yazoo County Airport drop zone. To ensure the most accurate findings in this Director’s Determination, the Director waited for Flight Standards to issue its latest safety study. On September 29, 2005, the Manager of the Southern Region Air Safety Regulations Branch issued his findings through a memorandum, *Independent*

*Safety Review of the Suitability of the Yazoo County Airport for a Sport Parachute Drop Zone* (September 2005 safety study). [FAA Exhibit 3, Item 2.]

The September 2005 safety study independently reviewed the July 2002 study using two aviation safety inspectors from the Southern Region with extensive experience in evaluating parachute drop zones. The experts utilized the previous aeronautical study (No. 02-ASO-2018), aerial photos of the Yazoo County Airport taken in 2004, and their extensive experience in the field to make a determination regarding the safety of skydiving operations at the Airport. [FAA Exhibit 3, Item 2.]

As part of their study, the aviation safety inspectors compared the operations at Yazoo County Airport to that of the Deland-Taylor Airport in Florida. Skydive Deland at the Deland-Taylor Airport is FAA’s Southern Region’s largest drop zone and the second most active drop zone in the United States. The following table, as presented by the evaluation team presents the comparison between the two airports.

<b>Yazoo County Airport (871)</b>	<b>Deland-Taylor Airport (DED)</b>
Aircraft are operating on the surface or in Class E Airspace. <sup>20</sup>	Aircraft are operating on the surface or in Class E Airspace.
Yazoo County Airport is located under heavily traveled Federal Airway (V74) and is located adjacent to another heavily used Federal Airway (V-557). Aircraft traverse these airways as low as 2000ft.	Deland-Taylor Airport is located under a heavily traveled Federal Airway (V-152) and is located adjacent to the Daytona Beach Class C airspace. It is also located in an area with the heaviest general aviation activity in the United States. Aircraft traverse this area at all useable altitudes.
The Yazoo County Airport has a 5000ft long by 100ft wide runway. This runway will accommodate aircraft in size from a small Piper J-3 Cub to a large high-speed corporate jet such as a Challenge CL-604.	The Deland-Taylor Airport has two runways. Runway 12/30 is 6000ft long by 100ft wide and 05/23 is 3984ft long by 75ft wide. The airport accommodates aircraft ranging in size from an ultralight to a large high-speed corporate jet.
The Yazoo County Airport has available both major airframe and powerplant repair facilities, thus making it attractive for both minor and major aircraft maintenance.	The Deland-Taylor Airport has both major airframe and powerplant repair facilities available thus making it attractive for both minor and major aircraft maintenance.
The mix of aircraft using the Yazoo County Airport includes aircraft as small as Piper J-3 Cubs, aerial applicator aircraft, multi-engine aircraft, and corporate jet aircraft.	The mix of aircraft using the Deland-Taylor Airport includes aircraft as small as ultralights, multi-engine aircraft and corporate jet aircraft. The airport hosts a pilot training facility.
The Yazoo County Airport has four	The Deland-Taylor Airport has four

<sup>20</sup> “Class E airspace does not preclude any type of aviation activity...controllers are not authorized to impose restrictions (for example, to deny or approve a jump) on parachute operations in Class E airspace, as they are authorized to do in Class A, B, C, or D airspace.” [FAA Exhibit 3, Item 2.]

standard instrument Approach Procedures as low as 600ft ceiling and one-mile visibility.	standard instrument Approach Procedures as low as 480 ft ceiling and one-mile visibility.
Sport parachutists exit the aircraft usually between 12,500ft MSL and 14,000ft MSL.	Skydive operations at Deland-Taylor routinely exit the aircraft at 14,000ft AGL, and on special occasion, exit the aircraft at 21,000ft AGL.
A Federal Prison is located in close proximity of the airport.	The Deland-Taylor airport is located adjacent to a major 4-lane highway on the East, South, and West sides.

One of the aviation safety inspectors noted that the Federal Prison located in close proximity of the Airport should not be an issue. The inspector noted,

“The prison is located over two nautical miles from the airport and Ram Air Parachutes offer controllability and forward speed sufficient enough to eliminate the prison as a valid risk. Most drop zones operating in the United States have some type of hazard within the same distance. Even beginning skydivers would not be in jeopardy during normal and anticipated abnormal jumps.” [FAA Exhibit 3, Item 2.]

One of the inspectors also stated that “a review of 2004 aerial photos revealed sufficient alternate landing sites in case of a bad spot, unexpected winds, or unanticipated bailout due to a jump aircraft emergency.” [FAA Exhibit 3, Item 2.]

The evaluation team identified only one operational safety concern regarding the drop zone at the Yazoo County Airport. The September 2005 safety study noted,

“The only operational safety concern at the Yazoo County Airport was its location with respect to a federal airway (V74). The airport’s location in Class E airspace only requires air traffic to be notified via telephone no earlier than 24 hours before and no later than 1 hour before the parachute operation begins, in accordance with 14 CFR § 105.25(a)(3).” [FAA Exhibit 3, Item 2.]

The September 2005 safety study concluded, “the airspace in and around the Yazoo County Airport could be safely shared by parachutists (skydivers) and other aeronautical activities.” [FAA Exhibit 3, Item 2.]

Although the July 2002 safety study inferred that Respondent’s prohibition was not inappropriate, the FAA’s September 2005 safety study conducted in response to Complainant’s Part 16 submission, and the phone call from USPA to Flight Standards, provides more accurate, complete, and timely evidence. This study finds that skydiving can be safely accommodated at the Airport. As a result, the only issue is how best skydiving activities may be accommodated at the Airport. Again, this latest study was coordinated with several FAA offices. While Respondent is to be commended for its consultation with various agencies, including the ADO, prior to implementing the

restrictions, the agency's September 2005 safety analysis supersedes any guidance previously given.<sup>21</sup>

As previously discussed in the **Applicable Law and Policy**, the FAA has preempted air safety, including the safety of parachute jumping. Part 105 is under the exclusive jurisdiction of the FAA and not, as presented in the pleadings, under the jurisdiction of the sponsor. The Respondent/sponsor has no role in enforcing Part 105, or making safety determinations as to the safety of parachute jumping operations. Therefore, FAA finds that it is not appropriate for Respondent to justify the restriction on the grounds of compliance with Part 105.

Given the findings in FAA's September 2005 safety study, there is no longer any reasonable basis for this exclusion. However, FAA does not currently find Respondent in violation of its obligations under Grant Assurance 22, *Economic Nondiscrimination*, since given the findings in Issue 1, there appear to be no viable skydiving operators at the Airport to manage or lease the established drop zone.

The Director recognizes that the established drop zone is currently leased for non-aeronautical activities (i.e. agricultural operations). However, under the Federal obligations, the FAA would expect the Airport's lease with the non-aeronautical/agricultural operator to be for interim use and not a long-term lease, for example, to extend only through the current growing season.

Since the latest study was only recently completed and presents a departure from past FAA guidance to Respondent, and there is no request pending from an active, viable skydiving operator at the Airport, the Director would not find it unreasonable for Respondent to permit the non-aeronautical lease with the agricultural operator to continue until such time as an active, viable aeronautical operator expresses interest in operating the drop zone. The Director would not find it inappropriate for the Airport to continue interim use should there be no interest from the skydiving community to operate and use the designated drop zone on the Airport. The Director recommends that the Airport only offer annual leases with the agricultural operator that expire with the end of the growing season. It is also suggested that the Airport include proper 'vacation' clauses that permit cancellation during the lease with proper notification by the Airport should an active, viable aeronautical user express interest in operating the drop zone. The aeronautical use of airport property must take precedence over non-aeronautical use under the FAA grant assurances.

In light of these findings, FAA will not make a determination with regard to exclusive rights at this time.

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<sup>21</sup> See William Dean Bardin d/b/a Ultralights of Sacramento v. County of Sacramento, CA, FAA Docket No. 16-00-11.

## VIII. FINDINGS AND CONCLUSIONS

Therefore, upon consideration of the submissions and responses by the parties, the entire record herein, the applicable law and policy, and for the reasons stated above, the Director of FAA's Office of Airport Safety and Standards finds and concludes as follows:

- (i) Respondent's restriction on Complainant's access to operate on the Airport – as both a business entity and an individual – is reasonable and not unjustly discriminatory since Complainant violated the Minimum Standards and valid airport policies and regulations.
- (ii) Respondent's reasons for prohibiting use of the established drop zone are not supported by the Record. FAA determines that the Airport can safely accommodate an on-airport drop zone. However, at this time Respondent is not in violation of its obligations because there are no active, viable petitioners requesting use of the drop zone.

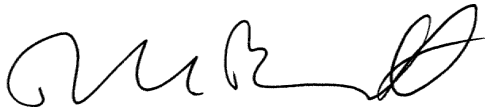
**ORDER**

**ACCORDINGLY**, the Director finds Yazoo County, Mississippi is not currently in violation of applicable Federal law and its Federal grant obligations.

1. The complaint is dismissed.
2. All motions not specifically granted in this Determination are denied.

**RIGHT OF APPEAL**

The 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).] Any party to this proceeding adversely affected by the Director's Determination may appeal this initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(b) within thirty (30) days after service of the Director's Determination.



February 9, 2006

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David L. Bennett  
Director  
Office of Airport Safety and Standards

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Date

**GLYN JOHNSON d/b/a ZOO CITY SKYDIVERS**  
**v.**  
**YAZOO COUNTY AND THE YAZOO COUNTY PORT AUTHORITY**

**DIRECTOR'S DETERMINATION**  
**DOCKET NO. 16-04-06**

Exhibit 1

INDEX OF ADMINISTRATIVE RECORD

- Item 1** July 7, 2004, 14 C.F.R. Part 16 formal complaint from *Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo County and Yazoo County Port Commission*, FAA Docket No. 16-04-06. Submission included the following exhibits:
- Attachment 1 April 21, 2000, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors
- Attachment 2 Loss of Income Record for April 2000, sent to Yazoo County Port Commission and Board of Supervisors
- Attachment 3 April 14, 2000, Order by the Yazoo County Board of Supervisors regarding prohibition of 14 CFR Part 105 operations at the Yazoo County Airport
- Attachment 4 June 16, 2000, Order by the Yazoo County Board of Supervisors regarding prohibition of parachute landing area at the Yazoo County Airport
- Attachment 5 Undated Letter from Mr. Glyn Johnson to the Yazoo County Port Commission
- Attachment 6 February 6, 2001, Letter from Mr. Glyn Johnson to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 7 March 14, 2001, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office, to Mr. Glyn Johnson
- Attachment 8 July 1, 2000, Police Report from the Yazoo County Sheriff's Department
- Attachment 9 Exert from Yazoo County Airport Minimum Standards

- Item 2** July 13, 2004, Letter from Mr. David Bennett, Director, FAA Office of Airport Safety and Standards to Mr. Glyn Johnson regarding incomplete 14 CFR Part 16 complaint. Complaint was dismissed without prejudice.
- Item 3** August 3, 2004, Amended 14 C.F.R. Part 16 formal complaint from *Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo County and Yazoo County Port Commission*, FAA Docket No. 16-04-06. Submission included the following exhibits:
- Attachment 1 July 13, 2004, Letter from Mr. David Bennett, Director, FAA Office of Airport Safety and Standards to Mr. Glyn Johnson regarding incomplete 14 CFR Part 16 complaint. Complaint was dismissed without prejudice (*See also Item 2*)
- Attachment 2 April 3, 2002, Letter from Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission to Mr. Glyn Johnson
- Attachment 3 March 13, 1996, Minimum Standards for the Yazoo County Airport
- Attachment 4 Public Notice for February 6, 2001 Special Meeting of the Yazoo County Port Commission regarding sport parachute-jumping at the Yazoo County Airport
- Attachment 5 June 16, 2000, Agreement between Zoo City Skydivers and the Yazoo County Port Commissioners regarding parachute-jumping at the Yazoo County Airport
- Attachment 6 Undated Letter from Mr. Glyn Johnson to the Yazoo County Board of Supervisors
- Attachment 7 April 20, 2000, Letter from Mr. Glyn Johnson to the Jackson Airports District Office
- Attachment 8 January 8, 2001, Letter from Mr. Glyn Johnson to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Item 4** August 16, 2004, Notice of Docketing for *Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo County and Yazoo County Port Commission*, FAA Docket No. 16-04-06.

- Item 5** August 27, 2004, Letter from Mr. Jonathan Cross, Senior Managing Attorney, Airports and Environmental Law Division, FAA Office of the Chief Counsel to Mr. Alan Moore, McGlinchey Stafford PLLC, regarding extension of time.
- Item 6** September 20, 2004, Letter from Mr. Jonathan Cross, Senior Managing Attorney, Airports and Environmental Law Division, FAA Office of the Chief Counsel to Mr. Alan Moore, McGlinchey Stafford PLLC, regarding extension of time.
- Item 7** October 12, 2004, Answer, Affirmative Defenses, and Motion to Dismiss for *Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo County and the Yazoo County Port Commission*, FAA Docket No. 16-04-06. Submission included the following exhibits:
- Attachment 1 (i) August 27, 2004, Letter from Mr. Jonathan Cross, Senior Managing Attorney, Airports and Environmental Law Division, FAA Office of the Chief Counsel to Mr. Alan Moore, McGlinchey Stafford PLLC, regarding extension of time (*See also Item 5*)  
(ii) September 30, 2004, Letter from Mr. Jonathan Cross, Senior Managing Attorney, Airports and Environmental Law Division, FAA Office of the Chief Counsel to Mr. Alan Moore, McGlinchey Stafford PLLC, regarding extension of time (*See also Item 6*)
- Attachment 2 March 13, 1996, Minimum Standards for the Yazoo County Airport (*See also Item 3, Attachment 3*)
- Attachment 3 (i) March 12, 1997, Minutes of Yazoo County Port Commission regular meeting regarding amendment of Minimum Standards for the Yazoo County Airport  
(ii) February 24, 1997, Letter from Mr. E.W. Allen and Mr. Ferris Sanders to Mr. Wayne Atkinson, Jackson Airports District Office  
(iii) February 27, 1997, Letter from Mr. Keafur Grimes, Project Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors requesting that the County review the radio requirement in the Minimum Standards for the Yazoo County Airport
- Attachment 4 April 14, 2000, Minutes of Yazoo County Board of Supervisors, regarding suspension of rights of parachute jumpers at the Yazoo County Airport (*See also Item 1, Attachment 3*)

- Attachment 5 April 20, 2000, Letter from Mr. Glyn Johnson to the Jackson Airports District Office (*See also Item 3, Attachment 7*)
- Attachment 6 April 21, 2000, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors (*See also Item 1, Attachment 1*)
- Attachment 7 May 12, 2000, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC, to Mr. Glyn Johnson describing alleged violations of Minimum Standards by Johnson and Zoo City Skydivers, offering to allow Johnson and Zoo City Skydivers to resume 14 CFR Part 105 operations at the Airport if agreement to comply with Minimum Standards of the Yazoo County Airport
- Attachment 8 June 16, 2000, Agreement between Zoo City Skydivers and the Yazoo County Port Commissioners regarding sport parachute-jumping at the Yazoo County Airport (*See also Item 3, Attachment 5*)
- Attachment 9 July 14, 2000, Minutes of Yazoo County Port Commission regular meeting regarding acceptance of application filed by Mr. Glyn Johnson to become a sport parachute-jumping operator at the Yazoo County Airport and approval and authorized execution of the Agreement between Zoo City Skydivers and the Yazoo County Port Commission
- Attachment 10 June 16, 2000, Minutes of Yazoo County Board of Supervisors regarding acknowledged execution of the Agreement between Mr. Glyn Johnson and the Yazoo County Port Commission and the expressed 'no objection' to the use of the Airport by skydivers, subject to utilization of a different, safer landing zone at the Yazoo County Airport
- Attachment 11 June 21, 2000, Letter from Mr. Gerald Fraizer, Port Director, Yazoo County Port Commission to Mr. Glyn Johnson
- Attachment 12 June 21, 2000, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC, to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office

- Attachment 13 June 24, 2000, Designation of Agent, Agreement, and General Release of Liability signed by Mr. Glyn Johnson
- Attachment 14 August 3, 2000, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Alan Moore, McGlinchey Stafford PLLC
- Attachment 15 Undated Letter from Mr. James Allen to the Yazoo County Port Authority
- Attachment 16 Undated Memorandum from Mr. Les Clanton, Manager, Yazoo County Airport to the Yazoo County Port Commission
- Attachment 17 February 5, 2001, Affidavit of Mr. Les Canton, Manager, Yazoo County Airport
- Attachment 18 (i) Proof of Publication of Notice to Bidders  
(ii) Posted Notice to Bidders, giving notice of Yazoo County's intent to lease the parachute landing zone at the Yazoo County Airport with a preference to aeronautical usage such as a drop zone
- Attachment 19 December 18, 2000, Letter from Mr. Bobby King to the Yazoo County Board of Supervisors
- Attachment 20 January 8, 2001, Letter from Mr. Glyn Johnson to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office (*See also Item 3, Attachment 8*)
- Attachment 21 January 10, 2001, Minutes of Yazoo County Port Commission regarding temporary revocation of Mr. Johnson, d/b/a Zoo City Skydivers from conducting parachute-jumping activities at the Yazoo County Airport
- Attachment 22 January 10, 2001, Letter from Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission to Mr. Glyn Johnson
- Attachment 23 Public Notice for February 6, 2001 Special Meeting of the Yazoo County Port Commission regarding parachute-jumping at the Yazoo County Airport (*See also Item 3, Attachment 4*)

- Attachment 24 Undated Letter from Mr. Glyn Johnson to the Yazoo County Board of Supervisors (*See also Item 3, Attachment 6*)
- Attachment 25 January 12, 2001, Minutes of the Yazoo County Board of Supervisors regarding grant of lease to Mr. Thomas Stricklin
- Attachment 26 January 17, 2001, Letter from Mr. Glyn Johnson to the Yazoo County Port Commission and the Yazoo County Board of Supervisors
- Attachment 27 Undated Letter from Mr. Glyn Johnson to the Yazoo County Port Commission (*See also Item 1, Attachment 5*)
- Attachment 28 January 26, 2001, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors
- Attachment 29 Undated Letter from Mr. Glyn Johnson to the Yazoo County Port Commission
- Attachment 30 February 6, 2001, Resolution revoking rights of Mr. Glyn Johnson and the Zoo County Skydivers to conduct or participate in parachute-jumping at the Yazoo County Airport
- Attachment 31 February 5, 2001, Affidavit of Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission
- Attachment 32 February 6, 2001, Letter from Mr. Glyn Johnson to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office (*See also Item 1, Attachment 6*)
- Attachment 33 February 9, 2001, Letter from Mr. Alan Moore, McGlinchey Stafford to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 34 February 9, 2001, Complaint filed by Mr. Glyn Johnson in the Circuit Court of Yazoo County, MS (Civil Action No. 2001-CI09)
- Attachment 35 February 9, 2001, Application for a Temporary Restraining Order and a Preliminary and Permanent Injunction filed by Mr. Johnson (Civil Action No. 2001-CI09)

- Attachment 36 Undated Notice, posted by Mr. Glyn Johnson after February 11, 2001
- Attachment 37 February 14, 2001, Resolution Amending Minimum Standards at the Yazoo County Airport, regarding prohibition of parachute landings on the Airport
- Attachment 38 February 20, 2001, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors
- Attachment 39 March 1, 2001, Letter from Mr. Gerald Fraizer, Port Director, Yazoo County Port Commission to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 40 March 1, 2001, Letter from Mr. Gerald Fraizer, Port Director, Yazoo County Port Commission to Mr. Mel Athey, Geographic Program Manager/Operations, Jackson Flight Standards District Office
- Attachment 41 March 16, 2001, Letter from Mr. Mel Athey, Geographic Program Manager/Operations, Jackson Flight Standards District Office to Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission
- Attachment 42 March 9, 2001, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 43 March 14, 2001, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Glyn Johnson (*See also Item 1, Attachment 7*)
- Attachment 44 March 15, 2001, Affidavit of Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission
- Attachment 45 May 16, 2001, Order by Circuit Court of Yazoo County, denying Mr. Glyn Johnson's Application for Temporary Restraining Order and Preliminary and Permanent Injunction (Civil Action No. 2001-CI09)
- Attachment 46 May 24, 2001, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC to Mr. Mel Athey, Geographic Program Manager/Operations, Jackson Flight Standards District Office

- Attachment 47 July 25, 2001, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC to Mr. Glyn Johnson
- Attachment 48 April 15, 2001, Affidavits of Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission
- Attachment 49 August 18, 2001, News article from The Yazoo Herald
- Attachment 50 August 21, 2001, Memorandum for Record by Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission to Mr. Alan Moore, McGlinchey Stafford PLLC
- Attachment 51 Criminal Docket, Justice Court for Yazoo County, MS
- Attachment 52 February 13, 2002, Transcript from Mr. Glyn Johnson's sworn Testimony before the County Court of Yazoo County, MS
- Attachment 53 February 13, 2002, Order by the County Court of Yazoo County, MS
- Attachment 54 September 5, 2001, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC to Mr. Mel Athey, Geographic Program Manager/Operations, Jackson Flight Standards District Office
- Attachment 55 September 5, 2001, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC to Mr. Robert Kay, U.S. Postal Inspection Service
- Attachment 56 November 17, 2001, Letter from Mr. Glyn Johnson to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 57 November 23, 2001, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors
- Attachment 58 December 20, 2001, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 59 January 2, 2002, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Glyn Johnson

- Attachment 60 Undated Letter from Mr. Glyn Johnson to Unknown party (received at FAA's Flight Standards District Office, Jackson, MS on December 19, 2001)
- Attachment 61 January 4, 2002, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors
- Attachment 62 January 14, 2002, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC, to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 63 January 15, 2002, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Glyn Johnson
- Attachment 64 January 14, 2002, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC to Mr. Robert Kay, U.S. Postal Inspection Service
- Attachment 65 January 22, 2002, Letter from Mr. R.A. Lay, Postal Inspector to McGlinchey Stafford PLLC
- Attachment 66 January 25, 2002, Motion for Injunction Relief in Civil Action No. 2001-CI09
- Attachment 67 March 16, 2002, Letter from Mr. Glyn Johnson to Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission
- Attachment 68 April 3, 2002, Letter from Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission to Mr. Glyn Johnson
- Attachment 69 (i) January 25, 2002, Memorandum of Record by Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission to Mr. Alan Moore, McGlinchey Stafford PLLC  
(ii) May 8, 2002, Letter from Mr. Glyn Johnson to Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission
- Attachment 70 June 26, 2002, Letter from Ms. Carolyn Blum, Regional Administrator, FAA Southern Region to Congressman Gene Taylor

- Attachment 71 July 1, 2002, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Alan Moore, McGlinchey Stafford PLLC
- Attachment 72 Undated Letter from Ms. Anne Graham, Manager, General Aviation Operations and Safety Branch to Mr. Glyn Johnson
- Attachment 73 September 1, 2002, Letter from Mr. Glyn Johnson to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 74 September 25, 2002, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Sam Fisher, President, Yazoo County Board of Supervisors
- Attachment 75 October 30, 2002, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC, to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 76 December 12, 2002, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Alan Moore, McGlinchey Stafford PLLC
- Attachment 77 December 30, 2002, Letter from Mr. Alan Moore, McGlinchey Stafford PLLC, to Mr. Patrick Vaught, Program Manager, Jackson Airports District Office
- Attachment 78 January 3, 2003, Letter from Mr. Patrick Vaught, Program Manager, Jackson Airports District Office to Mr. Glyn Johnson
- Attachment 79 May 19, 2003, Amended Complaint of Mr. Glyn Johnson in Civil Action No. 2001-CI09
- Attachment 80 June 24, 2003, Judgment of Dismissal of Circuit Court of Yazoo County, MS
- Item 8** November 29, 2004, Letter from Mr. Jonathan Cross, Senior Managing Attorney, Airports and Environmental Law Division, Office of the Chief Counsel to Mr. Glyn Johnson regarding request for extension of time.
- Item 9** December 6, 2004, Reply for *Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo County and Yazoo County Port Commission*, FAA Docket No. 16-04-06. Submission included the following exhibits:

Attachment 1      March 20, 2001, Testimony of Sheriff James T. Williams in Civil Action No. 2001-CI09

Attachment 2      November 30, 2004, Affidavit of Mr. Glyn Johnson

**Item 10**      December 29, 2004, Rebuttal for *Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo County and Yazoo County Port Commission*, FAA Docket No. 16-04-06. Submission included the following exhibits:

Attachment 1      December 21, 2004, Letter from Mr. Jonathon Cross, Senior Managing Attorney, Airports and Environmental Law Division, FAA Office of the Chief Counsel to Mr. Alan Moore, McGlinchey Stafford PLLC regarding request for extension of time.

Attachment 2      December 23, 2004, Affidavit of Mr. Gerald Fraiser, Port Director, Yazoo County Port Commission

Attachment 3      Historical 14 CFR § 105.17, effective until July 9, 2001

**Item 11**      Notice of Extension of Time for dated April 26, 2005

**Item 12**      Notice of Extension of Time dated May 25, 2005

**Item 13**      Notice of Extension of Time dated June 30, 2005

**Item 14**      Notice of Extension of Time dated August 31, 2005

**Item 15**      Notice of Extension of Time dated November 8, 2005

**Item 16**      Notice of Extension of Time dated December 21, 2005

**GLYN JOHNSON d/b/a ZOO CITY SKYDIVERS**  
**v.**  
**YAZOO COUNTY AND THE YAZOO COUNTY PORT AUTHORITY**

DIRECTOR'S DETERMINATION  
DOCKET NO. 16-04-06

Exhibit 2

RECORD OF FEDERAL ASSISTANCE SINCE 1982  
FOR  
YAZOO COUNTY AIRPORT

**GLYN JOHNSON d/b/a ZOO CITY SKYDIVERS**  
**v.**  
**YAZOO COUNTY AND THE YAZOO COUNTY PORT AUTHORITY**

**DIRECTOR'S DETERMINATION**  
**DOCKET NO. 16-04-06**

Exhibit 3

**DOCUMENTS OBTAINED DURING ADJUDICATION**

- Item 1**      March 26, 2002, Memorandum from Patrick Vaught, Mr. Program Manager, Jackson Airports District Office to ASO-520 and the Jackson Flight Standards District Office; includes responses and findings from March 26, 2002 request by Memorandum
- Item 2**      September 29, 2005, Memorandum from Manager, Air Safety Regulations Branch (ASO-250) to Manager, Certification and General Aviation Operations Branch (AFS-810) regarding Independent Safety Review of the Suitability of the Yazoo County Airport for a Sport Parachute Drop Zone

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on \_\_\_\_\_ I caused to be placed in the United States mail (first class mail, postage paid) a true copy of the foregoing document addressed to:

Glyn Johnson  
3704 Townsend Rd.  
Gautier, MS 39553  
(228)872-8491

Alan L. Moore  
McGlinchey Stafford, PLLC  
City Center South, Suite 1100  
200 South Lamar Street (39201)  
Post Office Drawer 22949  
Jackson, MS 39225-2949  
(601)960-8411

FAA Part 16 Airport Proceedings Docket

Airport Compliance Division, Office of Airport Safety and Standards, AAS-400

Southern Region Airports Division, ASW-600 (c/o Compliance Officer)

Rans D. Black, Jackson Airports District Office, ADO-JAN

\_\_\_\_\_  
Suzanne Ball  
Office of Airport Safety and Standards