

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

**M. Daniel Carey and Cliff Davenport,
COMPLAINANTS**

v.

**Afton-Lincoln County Municipal
Airport Joint Powers Board,
RESPONDENT**

Docket No. 16-06-06

Issued January 19, 2007

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA), Director of the Office of Airport Safety and Standards, to investigate pursuant to the Rules of Practices for Federally Assisted Airport Enforcement Proceedings found in Title 14 Code of Federal Regulations (CFR), Part 16.

M. Daniel Carey and Cliff Davenport (Complainants) filed a formal Complaint pursuant to 14 CFR Part 16 against the Afton-Lincoln County Municipal Airport Joint Powers Board (Respondent), operator of the Afton Municipal Airport. Complainants allege the Respondent violated Title 49 United States Code (U.S.C.) §§ 47107(a) and 40103(e), and related federal grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*, by (A) granting an exclusive right to one entity to provide certain aeronautical services on the airport, and (B) denying Complainants the opportunity to provide aeronautical services to the public. Complainants also allege respondent violated six additional grant assurances, and the FAA has determined that three more grant assurances are applicable to this case. Altogether, we considered Respondent's compliance with 11 grant assurances in reference to the issues raised in this Part 16 Complaint, including (in numerical order):

- (1) Grant assurance 5, *Preserving Rights and Powers*
- (2) Grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*
- (3) Grant assurance 21, *Compatible Land Use*
- (4) Grant assurance 22, *Economic Nondiscrimination*
- (5) Grant assurance 23, *Exclusive Rights*
- (6) Grant assurance 24, *Fee and Rental Structure*

- (7) Grant assurance 25, *Airport Revenues*
- (8) Grant assurance 26, *Reports and Inspections*
- (9) Grant assurance 29, *Airport Layout Plan*
- (10) Grant assurance 30, *Civil Rights*
- (11) Grant assurance 31, *Disposal of Land*.

Based on the Director's review and consideration of the evidence submitted, the administrative record designated at FAA DD Exhibit 1, the relevant facts, and the pertinent laws and policy, the Director concludes the Respondent is currently in violation of four grant assurances related to three of the 11 issues reviewed:

- Grant assurance 24, *Fee and Rental Structure*, as a result of failing to collect lease payments in accordance with the fee schedule for the fixed-base operator.¹ (See Issue 2, item 3.)
- Grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, as a result of enforcing airport minimum standards inconsistently. (See Issue 6.)
- Grant assurance 21, *Compatible Land Use*, as a result of (a) failing to enforce a prohibition on residential use of hangars on the airport, and (b) encouraging the development of a residential airpark adjacent to the airport. (See Issues 7(a) and 7(b).)

The Respondent is not currently in violation of the other seven (7) grant assurances considered in this Part 16 Complaint.

The basis for the Director's conclusion is set forth herein.

II. PARTIES

A. Airport

Afton Municipal Airport (AFO) in Wyoming is a federally obligated general aviation public airport owned jointly by the Town of Afton and Lincoln County. It is operated and controlled by the Afton-Lincoln County Municipal Airport Joint Powers Board (Airport Board), which was formed for this purpose. The airport has one runway and approximately 80 single engine airplanes, one multi-engine aircraft, two jets, and one helicopter based there. [FAA DD Exhibit 1, Item 1.]

The airport has received more than \$9 million in grant funds since 1983. The most recent grant of \$3.9 million to extend the runway was given in 2004. [FAA DD Exhibit 1, Item 2.]

¹ A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. [See FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, Appendix 5.]

B. Complainants

Complainants M. Daniel Carey and Cliff Davenport are individual tenants on the airport. Each has expressed a desire to operate some type of aeronautical business offering services to the public. At various points, they have submitted separate business proposals to the Airport Board. Most recently, the Complainants submitted a supplemental proposal indicating they would be conducting their business(es) jointly. To date, the Airport Board has not approved any of the Complainants' proposals.

III. BACKGROUND and PROCEDURAL HISTORY

The Afton Municipal Airport decided to expand the services it provided its aeronautical users with the establishment of a fixed-base operator (FBO). A lease was negotiated with Bradley D. Morehouse and Richard G. Russell doing business as Afton Aircraft Services Inc., to start its FBO operation in March 2004. Later the same year, Complainants submitted a proposal to offer competing services.

Initially, the Airport Board had granted an exclusive right to Afton Aircraft Services, Inc., preventing competition in various service areas, including those Complainants intended to offer. However, the FAA Denver Airports District Office advised the Airport Board that granting an exclusive right was contrary to the Airport Board's federal obligations. The Airport Board dissolved the exclusive right initially granted to Afton Aircraft Services, Inc.

At the FAA's suggestion, the Airport Board revised its minimum standards to place additional requirements on FBO services. While the minimum standards were being developed, a moratorium was placed on all new business ventures on the airport, including the proposals submitted by the Complainants. Once the revised minimum standards were adopted, the Complainants could resubmit their proposals to meet the new standards. The Airport Board excluded Afton Aircraft Services, Inc. from meeting the new standards since its business was started prior to the adoption of the revised minimum standards. Complainants objected to having to meet a higher level of standards than their FBO competitor. To date, Complainants have not entered into a business venture offering aeronautical services to the public at Afton Municipal Airport.

Following are the facts in chronological order.

At the July 17, 2002, Airport Board meeting, the Airport Board discussed the need for a fixed-base operator (FBO) location on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 5, page 6.]

At the December 17, 2003, Airport Board meeting, the Airport Board discussed proposals to establish a fixed-base operator (FBO) on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 35.]

At the January 21, 2004, Airport Board meeting, the Airport Board discussed the Bradley D. Morehouse² proposal for a fixed-base operator (FBO). The Airport Board agreed to accept the proposal with some stipulations. In addition, the Airport Board discussed reviewing the then-present hangar lease and agreed to draft a lease to cover the FBO buildings and property. (FAA DD Exhibit 1, Item 3, exhibit page 41, pages 41-42.)

At the February 25, 2004, Airport Board meeting, airport manager Charles Van Slyke reported to the Airport Board that the airport's consultants were working on a design for the entire ramp area including the space for an FBO operation. [FAA DD Exhibit 1, Item 3, exhibit page 50.]

On March 17, 2004, the Lincoln County Attorney stated in an e-mail he had reviewed the proposed FBO lease. [FAA DD Exhibit 1, Item 3, exhibit page 54.]

At the March 17, 2004, Airport Board meeting, the airport manager passed out a copy of the proposed FBO lease, and the Airport Board discussed it. There was a motion to accept the lease and sign it if there was no major opposition by the following day. [FAA DD Exhibit 1, Item 3, exhibit page 56.]

On March 22, 2004, the Airport Board entered into a lease agreement with Afton Aircraft Services, Inc. to provide various FBO services, including sale and maintenance of aircraft and aviation supplies and equipment; the maintenance and repair services for aircraft and aviation equipment; the sale of aviation fuel and oil; rental cars and trucks and corporate aircraft services. The lease granted the FBO the exclusive right to (A) sell all fuels and aviation fluids and supplies, and (B) provide all automobile and truck rentals. [FAA DD Exhibit 1, Item 3, exhibit page 60.]

At the April 21, 2004, Airport Board meeting, the Airport Board discussed selling or leasing the fuel system to the FBO operator at a determined fair price. [FAA DD Exhibit 1, Item 3, exhibit page 70.]

At the May 19, 2004, Airport Board meeting, the Airport Board agreed that a fair price to ask for the fuel system was \$85,000 plus the cost of any fuel in the tanks at the purchase date. [FAA DD Exhibit 1, Item 3, exhibit page 75.]

Also at the May 19, 2004, Airport Board meeting, the Airport Board agreed to cast lots to adjust the three-year terms of the six members so that the term of one member from the city and one member from the county would expire each year. [FAA DD Exhibit 1, Item 3, exhibit page 75.]

² Bradley D. Morehouse and Richard G. Russell entered into a lease agreement with the Afton-Lincoln County Airport Joint Powers Board as the entity Afton Aircraft Services, Inc. effective March 22, 2004. In the administrative record, this entity is referred to interchangeably as Mr. Morehouse, Morehouse, or Afton Aircraft Services, Inc. Respondent argues it has not entered into a contract with the person identified in the Complaint as Morehouse. [See FAA DD Exhibit 1, Item 5, page 2.] This is disingenuous. Mr. Morehouse clearly signed the contract and entered into this agreement on behalf of Afton Aircraft Services, Inc. In this determination, references to Mr. Morehouse or Morehouse shall be intended to refer also to the Afton Aircraft Service, Inc. FBO business entity.

At the July 21, 2004, Airport Board meeting, the Airport Board agreed to sell the fuel system to Bradley D. Morehouse (FBO owner) for \$60,000 plus the cost of fuel in the tanks. [FAA DD Exhibit 1, Item 3, exhibit page 86.]

At the August 18, 2004, Airport Board meeting, the Airport Board discussed the pros and cons of selling the fuel system. One member proposed selling it at a determined fair price with a reversion to the airport if the FBO were to go out of business. Another member opposed the motion. The motion passed. [FAA DD Exhibit 1, Item 3, exhibit page 92.]

At the September 15, 2004, Airport Board meeting, the Airport Board discussed living areas being built in the hangars. The airport manager agreed to meet with hangar owners, airport consultants, and the FAA to develop a set of guidelines for hangar living areas. [FAA DD Exhibit 1, Item 3, exhibit page 98.]

At the October 20, 2004, Airport Board meeting, the airport manager reported to the Airport Board that the FAA does not recommend living areas in hangars. [FAA DD Exhibit 1, Item 3, exhibit page 103.]

Also at the October 20, 2004, Airport Board meeting, Complainant Cliff Davenport requested that he be allowed to open a second fuel business. One Airport Board member suggested the airport should have a set of minimum operating standards for the FBO and fuel. [FAA DD Exhibit 1, Item 3, exhibit page 103.]

At the November 17, 2004, Airport Board meeting, Complainant Cliff Davenport presented a written proposal to install a second fuel farm on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 108.]

At the November 20, 2004, Airport Board discussion meeting, it was noted that the Airport Board needed to update the minimum standards. The airport manager provided the Airport Board with a copy of the old minimum standards, asking members to make updates. [FAA DD Exhibit 1, Item 3, exhibit page 113.]

Also at the November 20, 2004, Airport Board discussion meeting, the Airport Board noted it did not know that apartments were being put in hangars. Complainant M. Daniel Carey advised the Airport Board that a place to stay is important to the pilots, especially those who have crews to fly their planes. The Airport Board agreed it would prefer to change the lease to allow living quarters, with regulations governing use, and to look at rezoning. [FAA DD Exhibit 1, Item 3, exhibit page 113.]

At the January 27, 2005, Airport Board meeting, the airport manager noted that the FAA does not recommend apartments at the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.]

At the April 27, 2005, Airport Board meeting, the Airport Board noted the FAA was in the process of reviewing the revised minimum standards and zoning for the airport. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

Also at the April 27, 2005, Airport Board meeting, Complainant Cliff Davenport proposed to operate an open source of fuel. He had provided a proposal in December and wanted to have fuel production going by the spring. The Airport Board noted it was waiting for recommendations from the FAA on whether this type of business is allowed. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

Also at the April 27, 2005, Airport Board meeting, Complainant M. Daniel Carey presented a request for a second FBO operation at the airport. He distributed a copy of the request to Airport Board members. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

At the May 18, 2005, Airport Board meeting, Complainant Cliff Davenport asked the Airport Board for a decision regarding his proposed FBO operation. It was noted that Complainant Cliff Davenport wanted to provide fuel sales only. Complainant M. Daniel Carey wanted to operate an FBO with fuel sales and other services. An FAA representative from the Denver Airports District Office advised that the airport must allow everyone the right to operate an FBO who wants to. However, the FAA stressed the Airport Board should have detailed minimum standards that will require services beyond fuel sales alone. The Airport Board agreed to delay any decisions on new commercial activity for 90 days. [FAA DD Exhibit 1, Item 3, exhibit page 141.]

On July 7, 2005, the airport issued *draft* minimum standards for the airport. [FAA DD Exhibit 1, Item 3, exhibit page 152.] Individuals had an opportunity to comment on the draft minimum standards. [See FAA DD Exhibit 1, Item 3, exhibit page 199.]

On August 9, 2005, Complainant M. Daniel Carey wrote a letter to the FAA alleging grant assurance violations at the airport, as well as revenue diversion. [FAA DD Exhibit 1, Item 3, exhibit page 193.]

In an August 10, 2005, letter to the Joint Powers Board of Directors, Complainant M. Daniel Carey disagreed with the proposed minimum standards and provided comments in a letter to the Airport Board. [FAA DD Exhibit 1, Item 3, exhibit page 199.]

On September 8, 2005, Counsel for Complainant Cliff Davenport demanded the Airport Board allow Mr. Davenport nondiscriminatory access to the airport to operate a fuel farm on reasonable terms as required by the grant assurances. [FAA DD Exhibit 1, Item 3, exhibit page 212.]

On September 9, 2005, Counsel for Complainant Cliff Davenport sought FAA assistance in permitting both Complainants the opportunity to operate on the airport. Complainant Cliff Davenport wanted to operate a fuel farm; Complainant M. Daniel Carey wanted to operate a small FBO. [FAA DD Exhibit 1, Item 3, exhibit page 215.]

On September 22, 2005, FAA Denver Airports District Office advised the airport that a portion of airport land was sold without FAA approval; that the current FBO has an exclusive right contrary to the grant assurances; and that FAA would provide no funding for work associated with the taxiway on the north end of the airport. [FAA DD Exhibit 1, Item 3, exhibit page 219.]

On September 28, 2005, the airport issued its revised minimum standards. [FAA DD Exhibit 1, Item 3, exhibit page 233.]

On September 29, 2005, the Airport Board provided explanations to the FAA in response to issues raised in FAA's September 22, 2005 letter. The Airport Board agreed to resolve the exclusive rights violation with regard to the current FBO (Afton Aircraft Services, Inc.). In addition, the Airport Board stated it had recently adopted a set of minimum standards and would invite all parties to resubmit their plans for commercial development on the airport for Airport Board review. [FAA DD Exhibit 1, Item 3, exhibit page 275.]

On October 12, 2005, the FAA advised the Airport Board that its request for approval to release a parcel from aeronautical use was inadequate. Among other requirements, the Airport Board was advised that it needed an appraisal and a review appraisal of the subject property. [FAA DD Exhibit 1, Item 3, exhibit page 278.]

On January 23, 2006, Counsel for Complainants M. Daniel Carey and Cliff Davenport demanded resolution of various grievances, including allowing both Complainants to operate commercial enterprises on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 283.]

On March 17, 2006, Complainants filed this Part 16 Complaint, received March 21, 2006. [FAA DD Exhibit 1, Item 3.]

On March 30, 2006, FAA Office of Chief Counsel docketed the Complaint. [FAA DD Exhibit 1, Item 4.]

On April 19, 2006, Respondent filed its Answer, received April 25, 2006. [FAA DD Exhibit 1, Item 5.]

On April 27, 2006, Complainants requested a 30-day extension to file their Reply to Respondent's Answer. [FAA DD Exhibit 1, Item 6.]

On April 28, 2006, FAA granted Complainants an extension to May 31, 2006, to file their Reply to Respondent's Answer. [FAA DD Exhibit 1, Item 7.]

On June 29, 2006, Complainants filed their Reply to Respondent's Answer, received July 7, 2006. [FAA DD Exhibit 1, Item 9.]

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following 11 issues require analysis in order to provide a complete review of Respondent's compliance with applicable federal law and policy. The Director notes that grant assurances 5, *Preserving Rights and Powers*; 21, *Compatible Land Use*; and 24, *Fee and Rental Structure*, were not raised in the Complaint, but are being raised by the FAA based on information developed during the investigation of the Complaint.

A. Issue 1:

Whether Respondent is in violation of grant assurance 23, *Exclusive Rights*, by granting an exclusive right to one tenant to provide all fixed-base operator (FBO) services, including aviation supplies and equipment, sale of fuel and oil, and rental cars and trucks. [FAA DD Exhibit 1, Item 3, page 4.]

B. Issue 2:

Whether Respondent is in violation of grant assurance 25, *Airport Revenues*, or grant assurance 24, *Fee and Rental Structure*, by transferring or leasing property and assets at less than fair market value. [FAA DD Exhibit 1, Item 3, pages 7-8.]

C. Issue 3:

Whether Respondent is in violation of grant assurance 26, *Reports and Inspections*, by failing to provide requested documents to Complainants. [FAA DD Exhibit 1, Item 3, pages 8-9.]

D. Issue 4:

Whether Respondent is in violation of grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, by failing to prepare or maintain reliable accounting systems. [FAA DD Exhibit 1, Item 3, page 10.]

E. Issue 5:

Whether Respondent is in violation of grant assurance 30, *Civil Rights*, by excluding individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

F. Issue 6:

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, by enforcing airport minimum standards inconsistently. [FAA DD Exhibit 1, Item 3, page 12.]

G. Issue 7:

(a) Whether Respondent is in violation of its federal grant assurances by failing to enforce a prohibition on residential use of hangars on the airport. [FAA DD Exhibit 1, Item 3, pages 12-13.]

(b) Whether Respondent is in violation of grant assurance 21, *Compatible Land Use*, by encouraging the development of a residential airpark adjacent to the airport.

(c) Whether Respondent is in violation of grant assurance 24, *Fee and Rental Structure*, by failing to assess a reasonable fee for airport access to off-airport individuals and entities.

H. Issue 8:

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by excluding Complainants from conducting a commercial aeronautical business on the airport. [FAA DD Exhibit 1, Item 3, page 13.]

I. Issue 9:

Whether Respondent is in violation of grant assurance 29, *Airport Layout Plan*, by permitting or building airport features that are not consistent with the approved Airport Layout Plan (ALP). [FAA DD Exhibit 1, Item 3, page 14.]

J. Issue 10:

Whether Respondent is in violation of grant assurance 31, *Disposal of Land*, or grant assurance 5, *Preserving Rights and Powers*, by transferring or releasing airport property without FAA permission. [FAA DD Exhibit 1, Item 3, pages 15-16.]

K. Issue 11:

Whether Respondent is in violation of its federal obligations as a result of (1) awarding contracts without public disclosure and FAA oversight, (2) promoting and concealing conflicts of interest among Airport Board members, (3) accepting gratuities and business accommodations from an airport tenant, (4) conducting secret meetings in violation of Wyoming law, and (5) failing to observe requirements of the Joint Powers Agreement and the Airport Board's Charter and Bylaws.

In addition to reviewing the issues above, Complainants request that the FAA conduct an audit of the airport's finances and management and asks that the Comptroller General of the United States conduct an audit of the airport's accounting system.

Our determination in this matter is based on the applicable federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties, and the administrative record reflected in the attached FAA DD Exhibit 1.³

³ The attached FAA DD Exhibit 1 provides the *Index of Administrative Record* in this proceeding.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal Aviation Act of 1958, as amended (FAAAct), 49 U.S.C. § 40101, *et seq.*, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in 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 by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and 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 (A) the Airport Improvement Program, (B) Airport Sponsor Assurances, (C) the FAA Airport Compliance Program, and (D) Enforcement of Airport Sponsor Assurances.

A. Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for federal airport 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 (AAIA), as amended. Title 49 U.S.C. § 47101, *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.

B. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47101, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.⁴ FAA Order 5190.6A, *Airport Compliance Requirements* (Order

⁴ See, e.g., the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

5190.6A), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances. The FAA considers it inappropriate to provide federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Two federal grant assurances apply directly to the circumstances set forth in this complaint: (1) grant assurance 22, *Economic Nondiscrimination*, and (2) grant assurance 23, *Exclusive Rights*. Complainants also allege violations of six additional grant assurances, including grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, grant assurance 25, *Airport Revenues*, grant assurance 26, *Reports and Inspections*, grant assurance 29, *Airport Layout Plan*, grant assurance 30, *Civil rights*, and grant assurance 31, *Disposal of Land*. The FAA has determined that grant assurance 5, *Preserving Rights and Powers*, grant assurance 21, *Compatible Land Use*, and grant assurance 24, *Fee and Rental Structure*, are also applicable to this case.

The 11 applicable grant assurances are listed below in numerical order for ease in reference: (1) grant assurance 5, *Preserving Rights and Powers*, (2) grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*; (3) grant assurance 21, *Compatible Land Use*; (4) grant assurance 22, *Economic Nondiscrimination*; (5) grant assurance 23, *Exclusive Rights*; (6) grant assurance 24, *Fee and Rental Structure*; (7) grant assurance 25, *Airport Revenues*; (8) grant assurance 26, *Reports and Inspections*; (9) grant assurance 29, *Airport Layout Plan*, (10) grant assurance 30, *Civil Rights*; and (11) grant assurance 31, *Disposal of Land*.

1. Grant Assurance 5, *Preserving Rights and Powers*

Grant assurance 5, *Preserving Rights and Powers*, requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its federal obligations. This assurance implements the provisions of the Airport and Airway Improvement Act of 1982 (AAIA), 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the owner or sponsor of a federally obligated airport “...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.”

Grant assurance 5 states in pertinent part:

- a. [The airport owner or sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which

would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. [The airport owner or sponsor] will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

2. **Grant Assurance 13, Accounting System, Audit, and Record Keeping Requirements**

Grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, states:

- a. [The airport owner or sponsor] shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. [The airport owner sponsor] shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

3. Grant Assurance 21, Compatible Land Use

Grant assurance 21, *Compatible Land Use*, implements 49 U.S.C. § 47107 (a)(10) and requires that:

“[The airport owner or sponsor] will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.”

Noise compatible land use in the vicinity of airports is necessary to protect the public's health and welfare while preserving the airport's capability to meet aviation transportation needs efficiently.

Incompatible land use includes usage that adversely affects flight operations at and near airports, such as obstructions to aerial navigation, noise impacts resulting from residential construction too close to the airport, or any other land usage that creates a negative impact on the operation of an airport.

FAA guidance regarding airport-related environmental assessments identifies documentation needed to support the requirements stipulated in grant assurance 21. Specifically, documentation relating to existing and planned land uses is to include information depicting what is being done by the jurisdiction(s) having land use control authority.⁵ FAA recognizes that not all airport owners or sponsors have direct jurisdictional control over property surrounding or near the airport. However, for the purpose of evaluating airport owner or sponsor compliance with compatible land use, the FAA does not *per se* accept an owner or sponsor declining any action on the simple grounds that it does not possess zoning authority outside the airport boundaries.

In those cases, FAA expects appropriate actions to the extent reasonable on the part of the owner or sponsor to minimize incompatible land use and hence minimize the adverse impact on the airport. More often than not, airport owners or sponsors have a voice in the affairs of the community in which the airport development is undertaken and should be required, as a minimum, to make their best effort to assure proper zoning or other land use controls near the airport. Some level of participation in local zoning activities pertaining to or having an impact on the operation of the airport is expected.

Depending upon the owner or sponsor's capabilities and authority, "appropriate action" could include actions such as exercising zoning authority as granted under state law or

⁵ FAA Order 5050.4A, *Airport Environmental Handbook*, paragraph 47, (e) (2).

active representation and defense of the airport's interests before the pertinent zoning authorities. Appropriate action may also include taking steps with respect to implementing sound insulation, land acquisition, purchase of easements, and real estate disclosure programs or initiatives to establish that areas are compatible with airport operations.

4. 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. 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:

[The airport sponsor] will 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 aeronautical activities offering services to the public at the airport. [Assurance 22(a).]

Each fixed-base operator (FBO) at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities. [Assurance 22(c).]

[The airport sponsor] will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including but not limited to maintenance, repair, and fueling) that it may choose to perform. [Assurance 22(f).]

In the event the sponsor itself exercises any of the rights and privileges referred to in the assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions. [Assurance 22(g).]

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

The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. [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.

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the 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.

5. 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, and states in its entirety:

[The airport sponsor] will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-base operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide such services, and
- b. If allowing more than one fixed-base operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-base operator and such airport.

[The airport sponsor] further agrees that it 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, including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, 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.

6. Grant Assurance 24, *Fee and Rental Structure*

Grant assurance 24, *Fee and Rental Structure*, states in pertinent part:

[The airport] will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.

7. Grant Assurance 25, *Airport Revenues*

Grant Assurance 25, *Airport Revenues*, states:

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

8. Grant Assurance 26, Reports and Inspections

Grant assurance 26, *Reports and Inspections*, states,

[The airport sponsor] will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

9. Grant Assurance 29, Airport Layout Plan

Grant assurance 29, *Airport Layout Plan*, requires the airport owner or sponsor to keep its Airport Layout Plan (ALP), which is a planning tool for depicting current and future airport use, up to date. Grant assurance 29 prohibits the airport owner or sponsor from making or permitting any changes or alterations in the airport or any of its facilities that are not in conformity with its FAA-approved Airport Layout Plan. Grant assurance 29 states:

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

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

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

10. Grant Assurance 30, Civil Rights

Grant assurance 30, *Civil Rights*, states:

[The airport owner or sponsor] will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which federal financial assistance is extended to the program, except where federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

11. Grant Assurance 31, Disposal of Land

Grant assurance 31, *Disposal of Land*, states:

- a. For land purchased under a grant for airport noise compatibility purposes, [the airport owner or sponsor] will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.
- b. (1) For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (a) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

(2) Land shall be considered to be needed for airport purposes under this assurance if (a) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- c. Disposition of such land under (a) and (b) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

C. The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The 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, *Airport Compliance Requirements*, sets forth policies and procedures for the FAA Airport Compliance Program. Order 5190.6A 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 the 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. Order 5190.6A analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application 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, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation 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).]

D. 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 Enforcement Proceedings (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective on December 16, 1996.

VI. ANALYSIS, DISCUSSION, and FINDINGS

The Complainants allege the Respondent violated (A) grant assurance 23, *Exclusive Rights*, by granting an exclusive right to one entity to provide certain aeronautical services on the airport, and (B) grant assurance 22, *Economic Nondiscrimination*, by denying Complainants the opportunity to provide aeronautical services to the public. Complainants also allege respondent violated grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, grant assurance 25, *Airport Revenues*, grant assurance 26, *Reports and Inspections*, grant assurance 29, *Airport Layout Plan*, grant assurance 30, *Civil Rights*, and grant assurance 31, *Disposal of Land*. The FAA has also determined that grant assurance 5, *Preserving Rights and Powers*, grant assurance 24, *Fee and Rental Structure*, and grant assurance 21, *Compatible Land Use*, are applicable to this case.

In addition, Complainants request that the FAA conduct an audit of the airport's finances and management and asks that the Comptroller General of the United States conduct an audit of the airport's accounting system.

The Complainants' allegations are addressed in the 11 issues discussed below. The issues are numbered and presented in the order in which the Complainants numbered and addressed them in the Complaint.⁶ The Complainants' audit request is addressed following the 11 numbered issues.

⁶ The first allegation presented by Complainants includes multiple issues in addition to alleging Respondent violated grant assurance 23, *Exclusive Rights*. Only the exclusive rights allegation in Complainants' section "A" related to the fixed-base operator (FBO) lease agreement between the Respondent and Afton Aircraft Services, Inc. is discussed in Issue 1 in this determination. The remaining allegations from Complainants' "Count 1" are discussed in the Complainants' other ten issues under the categories where they more appropriately belong, or are included under *Issue 11*, which was added by FAA to address allegations not falling into the other categories. For example, Complainants include a section "C" in the first issue alleging an exclusive rights violation as a result of instituting the airport's revised minimum standards. This allegation is covered in *Issue 6* of this determination. Items raised in section "B" of Complainants' first issue are likewise covered in the remaining issues: Item 1 is covered in *Issue 8*; item 2 is covered in *Issue 1*; item 3 is covered in *Issue 6*; item 4 is covered in *Issue 11*; item 5 is covered in *Issue 2*; item 6 is covered in *Issue 11*; item 7 is covered in *Issue 2* and *Issue 11*; item 8 is covered in *Issue 11*. [See FAA DD Exhibit 1, Item 3, pages 5-6.]

We have conducted our review and analysis to determine whether the Respondent is currently in violation of its federal obligations with respect to its policies and practices.

A. Issue 1:

Whether Respondent is in violation of grant assurance 23, *Exclusive Rights*, by granting an exclusive right to one tenant to provide all fixed-base operator (FBO) services, including aviation supplies and equipment, sale of fuel and oil, and rental cars and trucks. [FAA DD Exhibit 1, Item 3, page 4.]

The record shows that the Afton-Lincoln County Municipal Airport Joint Powers Board entered into a real property lease/FBO agreement with Afton Aircraft Services, Inc., signed by Bradley D. Morehouse, President of Afton Aircraft Services, Inc., and Richard G. Russell, Vice President of Afton Aircraft Services, Inc., on March 25, 2004, and effective as of March 22, 2004. [FAA DD Exhibit 1, Item 3, exhibit pages 60-68.]

This agreement included terms granting various exclusive rights to Afton Aircraft Services, Inc., including the exclusive right (a) to sell all fuels and aviation fluids and supplies at the Airport, (b) to provide all automobile and truck rentals, and (c) to provide FBO services at the Airport. [FAA DD Exhibit 1, Item 3, exhibit pages 61 and 64]

Grant assurance 23, *Exclusive Rights*, prohibits an airport owner or sponsor from granting an exclusive right for the use of the airport by any person providing or intending to provide aeronautical services to the public. The lease agreement, as presented, includes exclusive rights provisions that are in conflict with grant assurance 23.

On May 18, 2005, representatives from the FAA Denver Airports District Office attended a meeting of the Afton-Lincoln County Municipal Airport Joint Powers Board (Airport Board) and advised the Airport Board members that the exclusive rights granted to Mr. Morehouse in the Afton Aircraft Services, Inc. lease were a direct violation of grant assurance 23. The FAA followed this with a letter dated September 22, 2005, asking how the Respondent intended to correct the violation. [FAA DD Exhibit 1, Item 3, exhibit page 220.] On September 29, 2005, the Airport Board advised the FAA that it had been working with the lessee's attorney to develop an acceptable modification to the lease agreement. In addition, the Airport Board stated it had adopted a set of minimum standards and would invite all parties to resubmit their plans for commercial development on the Airport. [FAA DD Exhibit 1, Item 3, exhibit page 277.]

In its Answer to this Complaint, the Respondent reports again that it has been working with the FAA and with the lessee to resolve the improper exclusive use language in the lease. [FAA DD Exhibit 1, Item 5, page 2.] To that end, Respondent passed a resolution stating that it "could not and cannot enter into any exclusive lease, past or present, with any person or entity unless approved in writing, by the Federal Aviation Administration." The resolution further states, "no person or entity may rely on any document or lease that states that the Afton-Lincoln County [Municipal] Airport Joint Powers Board has provided an exclusive lease in any matter, unless approved in writing by the Federal Aviation Administration." The administrative record includes a copy of Resolution No.

01-2006, passed, approved, and adopted by the Afton-Lincoln County Municipal Airport Joint Powers Board on March 30, 2006. [FAA DD Exhibit 1, Item 5, exhibit A.]

At the time the Respondent entered into the lease agreement with Afton Aircraft Services, Inc. granting various exclusive rights to the lessee, the Respondent was in violation of grant assurance 23, *Exclusive Rights*. The Respondent was notified of this violation by the FAA and corrected this issue of noncompliance through its Resolution two years later. In addressing allegations of noncompliance, the FAA looks for *current* compliance. The successful action by the airport owner or sponsor to cure a past violation is grounds for dismissal of that allegation. [See section V.C, *The FAA Airport Compliance Program*, above.]

Therefore, the Director finds that the Afton-Lincoln County Municipal Airport Joint Powers Board is not currently in violation of grant assurance 23, *Exclusive Rights*, as a result of having entered into a past agreement offering various exclusive rights that have since been rescinded.⁷

B. Issue 2:

Whether Respondent is in violation of grant assurance 25, *Airport Revenues*, or grant assurance 24, *Fee and Rental Structure*, by transferring or leasing property and assets at less than fair market value. [FAA DD Exhibit 1, Item 3, pages 7-8.]

Complainants argue the Respondent violated grant assurance 25, *Airport Revenues*, and diverted airport revenue by (1) transferring approximately 5½ acres of airport property in exchange for less valuable access to a water line, (2) selling the airport's fuel depot at less than fair market value, (3) failing to charge or collect ground rent, (4) selling grant-funded construction material at below market rate, and (5) giving valuable trees and shrubs away without consideration.⁸ [FAA DD Exhibit 1, Item 3, pages 7-8.] While making land available or giving land away for less than fair market value could be effective revenue diversion in some cases, we have determined that grant assurance 24, *Fee and Rental Structure*, is the more appropriate standard to assess the allegations made by the Complainants in *Issue 2*.

Complainants provide over 300 pages in exhibits, but they do not cite specific documents to support these allegations. They argue in their Reply to Respondent's Answer that documents requested in January 2006 were not produced. [FAA DD Exhibit 1, Item 9, page 8.]

The Respondent denies these allegations. [FAA DD Exhibit 1, Item 5, page 12.]

⁷ The administrative record does not contain a fully executed amendment to the lease. However, the FAA is satisfied the Respondent has taken appropriate actions to extinguish, and is no longer honoring, the express exclusive right initially granted under the lease.

⁸ Under *Issue 2*, Complainants allege airport property items were disposed of at less than fair market value. Under *Issue 10*, Complainants allege the same items were disposed of without FAA permission. These are discussed separately.

(1) Transferring Land for Access to Water Line

Complainants argue the Respondent engaged in unauthorized diversion of airport revenue by transferring approximately 5½ acres of airport property in exchange for less valuable access to a water line. [FAA DD Exhibit 1, Item 3, page 7.]

The Complainants do not state the basis for this allegation.

Minutes from the January 27, 2005, meeting of the Afton-Lincoln County Municipal Airport Joint Powers Board (Airport Board) describe the following land swap: “Mr. Morehouse and Mr. McCutcheon will receive the old taxiway from the airport. In return, Mr. Morehouse and Mr. McCutcheon will pay for an 8-inch water line to run from the airport’s property line South to North and then West to Lincoln Street access, along with boring under Highway 89.” [FAA DD Exhibit 1, Item 3, exhibit page 118.] The motion was passed. The minutes from this meeting do not reflect any specific discussion regarding the value of the land or the value of the water line.

Later, in the April 27, 2005, Airport Board minutes, the value of the trade is discussed.⁹ The estimated value of the old runway property was stated to be \$3,000 to \$5,000 per acre.¹⁰ Based on 5 ½ acres, the total value if sold would be between \$16,500 and \$27,500. The cost of installing 1,600 feet of water line was estimated at \$40 per foot, which would cost the airport \$64,000. In addition, the airport would save the cost of removal and disposal of the runway, estimated at \$40,000, if they traded it. [FAA DD Exhibit 1, Item 3, exhibit page 136.]

The record, however, does not include an independent appraisal to determine the fair market value of this airport property at its highest and best use. Airport real property cannot be released for sale without FAA approval¹¹; the FAA will not authorize the sale or disposal of airport land unless the fair market value has been supported by at least one independent appraisal report determined to be acceptable by the FAA. [See FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, sec. 7-8(d).]

The Director notes that several federal obligations and grant assurance violations are involved in this land transfer, including the potential violation of revenue diversion. In September 2005, the FAA Denver Airports District Office informed the airport manager that the Afton-Lincoln County Municipal Airport Joint Powers Board did not follow the appropriate steps required to obtain a release from federal obligations prior to giving up this land, which is shown on the airport’s “Exhibit A” property map. [FAA DD Exhibit 1, Item 3, exhibit pages 220-221.] Again on October 12, 2005, the FAA informed the Airport Board that proper procedures were not followed and the FAA requires an

⁹ See FAA DD Exhibit 1, Item 3, exhibit page 136.

¹⁰ The record does not reflect how the estimate was derived or who prepared the estimate.

¹¹ See Federal Grant Assurance 5, *Preserving Rights and Powers*, which states: “[The airport sponsor] will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A ... for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary.”

appraisal and a review appraisal for the property. [FAA DD Exhibit 1, Item 3, exhibit page 278.] We confirmed with the FAA Denver Airports District Office that the Respondent is working with the FAA Denver Airports District Office to resolve these matters and to ensure the equivalent of the fair market value for this land is deposited into the airport account. Thus, for the purpose of this Part 16, the issue is moot. Therefore, it is unnecessary for the Director to make a finding regarding the Respondent's compliance with its federal obligations with respect to transferring or releasing this airport property. This issue is addressed in *Issue 10*. [See FAA DD Exhibit 1, Item 10.]

(2) Fuel Depot

Complainants argue the Respondent engaged in unauthorized diversion of airport revenue by selling the airport's fuel depot at less than fair market value. [FAA DD Exhibit 1, Item 3, page 7.]

The Complainants do not state the basis for this allegation, and the Respondent does not address this specific allegation in its Answer.

Minutes from the April 21, 2004, Airport Board meeting show that the Airport Board discussed the pros and cons of selling or leasing the airport's fuel system to the FBO operator (Afton Aircraft Services, Inc./Bradley D. Morehouse). The Airport Board decided to sell the system at a "determined fair price." [FAA DD Exhibit 1, Item 3, exhibit page 70.] The minutes did not indicate how the fair price would be determined.

Minutes from the May 19, 2004, Airport Board meeting show that an Airport Board member moved that a fair price to ask for the fuel system was \$85,000 plus the cost of any fuel in the tanks at the purchase date. The move was seconded and passed. [FAA DD Exhibit 1, Item 3, exhibit page 75.] The minutes do not indicate how the amount was determined. There is no mention of obtaining independent appraisals in the minutes.

Minutes from the July 21, 2004, Airport Board meeting show that after some "interesting ideas concerning the fuel system" were presented by Bradley D. Morehouse, the Airport Board agreed to sell the fuel system for \$60,000 plus the cost of fuel in storage. [FAA DD Exhibit 1, Item 3, exhibit page 86.] The minutes do not include the specific justification for the drop in price from \$85,000 to \$60,000.

Neither the Complainant nor Respondent provides appraisals or other documents to support the contention that the final price of \$60,000 was – or was not – fair and reasonable under the circumstances. The obligation to obtain an independent fair market value appraisal for the highest and best use applies to the sale and disposal real property, such as the land transfer discussed above, and not to chattel, as in this case.

Grant assurance 24, *Fee and Rental Structure*, obligates the airport sponsor to maintain a fee and rental structure that will make the airport as self-sustaining as possible under the particular circumstances of that airport. Airport sponsors must receive fair market value from nonaeronautical users for real and personal property. However, it is FAA policy to

permit airport sponsors to set fees for aeronautical facilities and services at below fair market price as circumstances warrant. The fuel depot is an aeronautical facility. The administrative record in this Complaint does not contain persuasive evidence to show the fee obtained from the fuel depot was not reasonable under the circumstances.

The Director finds the Respondent is not currently in violation of grant assurance 24, *Fee and Rental Structure*, as a result of selling the airport's fuel depot.

(3) Ground Rent

Complainants argue Respondent engaged in unauthorized diversion of airport revenue by failing to charge and collect ground rent from Mr. Morehouse for the area occupied by his FBO building, as well as an undetermined amount of ramp space Mr. Morehouse controls and uses for personal activities. [FAA DD Exhibit 1, Item 3, page 7.] Respondent does not address this specific allegation in its Answer.

While a failure to charge for use of the airport or transfer airport property for less than fair market value could, in some cases, be revenue diversion, it is more appropriate in this case to analyze the alleged actions as a potential violation of the obligation to maintain a self-sustaining rate structure.

Grant assurance 24, *Fee and Rental Structure*, requires the airport sponsor to maintain a fee and rental structure for the facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. It is FAA policy that airport sponsors may set fees at below fair market value price for aeronautical activities so long as the amount is not de minimis. In complying with this grant assurance, the FAA expects the airport sponsor to charge fees sufficient to cover airport costs and to collect the fees it has assessed.

The administrative record includes a copy of the March 22, 2004, lease between the Afton-Lincoln County Airport and Afton Aircraft Services, Inc., represented by Bradley D. Morehouse, President, and Richard G. Russell, Vice President. [FAA DD Exhibit 1, Item 3, exhibit pages 60-68.] The leased property is identified as FBO Space, described as a parcel of real property including improvements and fixtures thereon. [FAA DD Exhibit 1, Item 3, exhibit page 60.] The lease amount¹² is set in the agreement at \$320 per year for the first ten-year period payable the first day of each year. Payments more than 30 days late accrue interest at the rate of ten percent per year. [FAA DD Exhibit 1, Item 3, exhibit page 62.] As Table 1 shows, the Respondent should have collected \$320 on or about March 22, 2004, March 22, 2005, and March 22, 2006.¹³

¹² The administrative record shows lease payments for all tenants are recorded in airport account 4500, *Lease Income*.

¹³ Complainants submitted this Part 16 Complaint May 17, 2006, five days before the third lease payment would have been due on the lease in question. [FAA DD Exhibit 1, Item 3, page 16.]

Table 1: Fees Set for Fixed-base Operator (FBO) Lease

Date Due	Expected Lease Payment
March 22, 2004	\$320
March 22, 2005	\$320
March 22, 2006	\$320

Complainants allege that the rent was not paid. [FAA DD Exhibit 1, Item 3, page 7.] Respondent does not address Complainants allegations that the airport did not receive timely rent payments for the FBO lease from Afton Aircraft Services, Inc.

The administrative record includes the record of deposits for airport account 4500, lease income, from March 15, 2004, through June 2, 2005. No lease payments at all are recorded for Afton Aircraft Services, Inc. during this time.¹⁴ In addition, there is no record of payment for the dates or amounts identified in the Afton Aircraft Services, Inc., lease from either Bradley D. Morehouse or Richard G. Russell.¹⁵

As Respondent does not refute the allegation, and based on the record, the Director finds that the Respondent did not collect fees it established for the Afton Aircraft Services, Inc. FBO lease in violation of grant assurance 24, *Fee and Rental Structure*.

(4) Construction Material

Complainants argue Respondent engaged in unauthorized diversion of airport revenue by selling grant-funded construction material at below market rates without approval. [FAA DD Exhibit 1, Item 3, page 8.]

The Complainants do not state the basis for this allegation. They do not identify the price received. They do not provide an amount or documents to support a market rate. They do not identify whether the personal property was sold for aeronautical or

¹⁴ We did not review the administrative record for other types of payments Afton Aircraft Services, Inc. may have made to the airport. (We did note a payment of \$82,021 from Afton *Aviation* Services on August 4, 2004, for the purchase of fuel. We understand that Afton *Aviation* Services is actually Afton *Aircraft* Services. Nonetheless, it is not a lease payment.) [See FAA DD Exhibit 1, Item 3, exhibit page 95.]

¹⁵ Bradley D. Morehouse made a lease payment of \$374.40 on April 1, 2004. [FAA DD Exhibit 1, Item 3, exhibit page 71.] We have determined that was not a lease payment on behalf of Afton Aircraft Services, Inc. According to the terms of the lease, late payments incurred a fee of 10% per year added to the payment. The lease payment due on March 22, 2004, was \$320. Had payment on that lease been made on April 1, 2004, the penalty would have brought to lease payment to \$320.88 (10% per year for 10 days), not \$374.40.

Richard G. Russell made lease payments of \$100 on October 12, 2004, and \$693 on March 15, 2005. [FAA DD Exhibit 1, Item 3, exhibit pages 111 and 128.] Bradley D. Morehouse made a lease payment of \$100 on December 30, 2004. [FAA DD Exhibit 1, Item 3, exhibit page 120.] The amounts and dates suggest these payments were not on behalf of the Afton Aircraft Services, Inc. lease.

nonaeronautical purposes. They do not provide evidence to show the construction material should not have been sold at all.

Respondent does not address this specific allegation in its Answer.

As noted in the sections above, grant assurance 24, *Fee and Rental Structure*, might be applicable to this allegation if the Complainants had shown that (a) the fee obtained was indeed below market rate, (b) the property was sold for a nonaeronautical purpose, *and* (c) the rate was not justified by the specific circumstances at Afton Municipal Airport. Complainants neither stated this to be the case, nor did they provide documentation to support such a possibility.

The FAA makes conclusions of fact and law regarding the Complainant's allegations. Underlying these conclusions is the basic requirement of Part 16 that the Complainant show with evidence that the airport owner or sponsor is violating its commitments to the federal government to serve the interests of the public by failing to adhere to its grant assurances. [See Part 16, Sections 16.23 and 16.29.] The burden of proof rests with the Complainants. Complainants have not met this burden with respect to this allegation.

(5) Trees and Shrubs

Complainants argue Respondent engaged in unauthorized diversion of airport revenue by giving valuable trees and shrubs away without consideration. [FAA DD Exhibit 1, Item 3, page 8.]

The Complainants do not state the basis for this allegation, and Respondent does not address this specific allegation in its Answer.

Grant assurance 24, *Fee and Rental Structure*, might be applicable. However, Complainants have failed to provide sufficient information or documentation on which to evaluate this allegation. In a Part 16 Complaint, the burden of proof rests with the complainant.

Conclusion on Issue 2:

Complainants do not state a basis for any of the five allegations in *Issue 2*. Rather, Complainants state simply, "Complainants are informed and believe that Respondents have engaged in unauthorized diversion of airport income ..." [FAA DD Exhibit 1, Item 3, page 7.] Complainants rely on their argument that Respondent "failed to produce any evidence to controvert" the five counts of alleged revenue diversion. [FAA DD Exhibit 1, Item 9, page 8.] However, the burden of proof rests with the Complainants (who are bringing the action), not the Respondent. It is the Complainants' responsibility to provide a concise but complete statement of the facts relied upon to substantiate each allegation. [14 CFR § 16.23(b)(3).]

Complainants provide numerous documents in the administrative record without identifying which of the supporting records, if any, relate to a specific allegation. While

we are not obligated to sort through records that are not directly cited to the Complainants' statement of facts, we have attempted to do so in this case. We have also contacted the FAA Denver Airports District Office for clarification on some of these issues. Based on the record and clarifying information, the Director finds the Respondent is not currently in violation of grant assurance 25, *Airport Revenues*, or grant assurance 24, *Fee and Rental Structure*, by transferring or leasing property and assets at less than fair market value.¹⁶

The Director does find, however, based on the record, that the Respondent is in violation of grant assurance 24, *Fee and Rental Structure*, by failing to collect lease payments. In addition, the Respondent is advised that failing to collect lease payments from one airport tenant while collecting such lease payments from other similarly situated tenants is also a violation of grant assurance 22, *Economic Nondiscrimination*. In this case, the Complainants have neither made such an allegation nor provided evidence to support that such is the case.¹⁷

C. Issue 3:

Whether Respondent is in violation of grant assurance 26, *Reports and Inspections*, by failing to provide requested documents to Complainants. [FAA DD Exhibit 1, Item 3, pages 8-9.]

Complainants allege they have requested and been denied access to numerous airport documents. [FAA DD Exhibit 1, Item 3, pages 8-9.] The administrative record reflects scheduling difficulties that did impede document review. [FAA DD Exhibit 1, Item 9, exhibit pages 321-322.] Nonetheless, Complainants have submitted over 300 pages of exhibits, some of which appear to have come from city or airport files.

Respondent counters that it "opened their entire files for [Complainants'] review." [FAA DD Exhibit 1, Item 5, page 4.]

The request to review the documents listed in the Complaint was made pursuant to Wyoming Statute 16-4-201 to 205. [FAA DD Exhibit 1, Item 3, exhibit page 286.] Respondent argues that the only documents in its possession that it did not provide were protected under Wyoming Law primarily under attorney client privilege. [FAA DD Exhibit 1, Item 5, page 4; and Item 5, exhibit B, March 29, 2006, letter from Bowers & Associates Law Offices.]

FAA is not in a position to interpret Wyoming Law or privilege.

¹⁶ Respondent is in noncompliance with its grant assurances by releasing airport real property without FAA approval and without obtaining independent appraisals to determine the fair market value of the land. These items – and their resolution – are discussed in *Issue 10*.

¹⁷ While the administrative record includes a limited history of lease payments in airport account 4500, the record does not include sufficient information to track any given lease payment to an agreement with the Airport. Therefore, the FAA cannot determine from the administrative record whether all, some, or none of the airport tenants are remitting the correct lease payments.

Complainants' request for documents also included a request for financial report FAA Forms 5100-126 and 127,¹⁸ pursuant to 49 U.S.C. § 47107(a)(19) and grant assurance 26.

Grant assurance 26, *Reports and Inspections*, refers to financial and operations reports that the Secretary of Transportation may request. Financial reports and budgets requested by the Secretary must also be available to the public at reasonable times. FAA Forms 5100-126 and 127 are forms required by federally obligated commercial service airports that enplane 2,500 or more passengers in a calendar year. The Secretary does not require airports with fewer than 2,500 enplanements in one year to file the financial forms for the following year. Afton Municipal Airport is a small general aviation airport. It had just six (6) enplanements in 2003 and seven (7) enplanements in 2004. It does not meet the criteria for being required to submit the financial forms referred to in grant assurance 26 and in 49 U.S.C. § 47107(a)(19). [See Advisory Circular (AC) 5100-19C, dated April 19, 2004.]

The Director finds the Respondent is not currently in violation of grant assurance 26, *Reports and Inspections*, by failing to provide documents it is not required by the Secretary to prepare.

D. Issue 4:

Whether Respondent is in violation of grant assurance 13, *Accounting System, Audit and Record Keeping Requirements*, by failing to prepare or maintain reliable accounting systems. [FAA DD Exhibit 1, Item 3, page 10.]

Complainants state, "Complainants are informed and believe that Respondents have failed to prepare and maintain reliable accounting systems as required by [grant] assurance 13." [FAA DD Exhibit 1, Item 3, page 10.]

The Complainants do not state the basis for this allegation.

Respondent argues that its accounting records are audited by a professional auditing company and the information is available for public review and forwarded to the FAA. [FAA DD Exhibit 5, page 5.] We contacted the FAA Denver Airports District Office. They advised us that they had telephone conversations with the company performing the audit on or around June 1, 2006, but as of December 28, 2006, have not received the financial audit for fiscal year 2005. [FAA DD Exhibit 1, Item 10.]

Grant assurance 13 requires obligated airports to maintain an adequate accounting system to record and disclose all amounts associated with grant-funded projects. This Complaint does not address grant-funded projects other than an allegation that grant-funded construction material was sold at less than fair market value.¹⁹ The FAA Denver Airports District Office advised us that the Respondent has submitted the necessary

¹⁸ Complainants identify FAA forms 5100-125 and 126. The referenced forms have been renumbered 5100-126, *Financial Government Payment Report*, and 5100-127, *Operating and Financial Summary*. In this determination, we have referred to 126 and 127 for accuracy.

¹⁹ See Issue 2, Item (4), *Construction Material*, above.

requests for reimbursement as well as project invoices for its Airport Improvement Program grant with no apparent irregularities. [FAA DD Exhibit 1, Item 10.]

It is the Complainants' responsibility to provide a concise but complete statement of the facts relied upon to substantiate each allegation. [14 CFR § 16.23(b)(3).] Complainants have not met this burden.

Based on the record herein, the Director does not find that the evidence shows the Respondent failed to prepare or maintain a reliable accounting system to track grant-funded projects. Therefore, the Director finds the Respondent is not in currently violation of grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, by failing to prepare or maintain reliable accounting systems.

E. Issue 5:

Whether Respondent is in violation of grant assurance 30, *Civil Rights*, by excluding individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

Complainants state that all members of the Airport Board, with the exception of one former member, are closely affiliated with The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church). Complainants state their primary competitor, FBO operator Mr. Morehouse, is also a member of this church. Complainants state it is widely known that Complainants are not members of this church. [FAA DD Exhibit 1, Item 3, page 11.]

In support of this allegation, Complainants makes several statements, which are listed below. After each statement, we identify where the point raised has been addressed in other *Issues* in this document. If it is not addressed elsewhere, we have addressed it under this *Issue*.

- The Respondent awarded an exclusive right to parishioner Bradley D. Morehouse to operate an FBO on the airport. [FAA DD Exhibit 1, Item 3, page 11, #1.]

The exclusive right violation referred to here is addressed in *Issue 1* in this determination.

- The Respondent instituted minimum standards designed to protect Mr. Morehouse and exclude others. [FAA DD Exhibit 1, Item 3, page 11, #2.]

Matters related to the Respondent's revised minimum standards are addressed in *Issue 6*.

- Respondent involuntarily removed the one Airport Board member, Gene Shinkle, who was not affiliated with the Mormon Church Ward, after Mr. Shinkle expressed support for Complainants. [FAA DD Exhibit 1, Item 3, page 11, #3.]

Respondent counters that Mr. Shinkle was removed from the Airport Board because he relocated his primary residence out of the State of Wyoming to the State of Idaho. [FAA DD Exhibit 1, Item 5, page 6.] Complainants do not dispute this.

Complainants do not point out where in the administrative record it shows Mr. Shinkle's support of their proposals was followed by his dismissal from the Airport Board. On the contrary, the administrative record shows that Airport Board Chairman Chad Burton may have been supporting Complainants' desire to operate a business on the airport when he reminded the Airport Board on May 18, 2005, that Complainant Cliff Davenport would like an answer regarding his proposal to operate an FBO. [FAA DD Exhibit 1, Item 3, exhibit page 144.] The discussion that followed, which included FAA representatives from the Denver Airports District Office, supported placing a moratorium on new construction until new, stronger minimum standards could be developed.

- Respondent failed to observe provisions in the Airport Board's Charter and Bylaws relating to specific term period. [FAA DD Exhibit 1, Item 3, page 11, #4.]

This item is discussed in *Issue 11*.

- Respondent permitted the Airport Board chairman to remain in his post beyond the proscribed end to his term. [FAA DD Exhibit 1, Item 3, page 11, #5.]

This item is discussed in *Issue 11*.

- Respondent manipulated Airport Board membership by abandoning the schedule of terms of appointed members. [FAA DD Exhibit 1, Item 3, page 11, #6.]

This item is discussed in *Issue 11*.

- Respondent granted, and then perpetuated, the exclusive right to fellow parishioner Bradley D. Morehouse to provide the only fixed-base operator (FBO) service at the airport. Complainants argue Mr. Morehouse is less qualified than they are to provide this service. Complainants also state Mr. Morehouse has not provided all of the services specified in his lease. [FAA DD Exhibit 1, Item 3, page 11, #7.]

The granting of the exclusive right to Mr. Morehouse in his initial lease is addressed in *Issue 1*. Perpetuating the exclusive right, whether intentionally or not, through the application of the revised minimum standards is addressed in *Issue 6*. The Complainants' business proposals and Respondent's failure to approve their individual or joint proposals are covered in *Issue 8*.

- Respondent observes a de facto policy that a controlling majority of Airport Board members must be officers, members, and regular attendees of the local Mormon Church Wards. [FAA DD Exhibit 1, page 11, #8.]

Complainants provide no supporting documents for this statement. If such a policy exists, it is not apparent from reviewing the administrative record in this matter. The March 23, 2005, Airport Board meeting minutes describe the recommended size for the Airport Board, which would be increased to seven (7) members: three (3) appointed by the City, three (3) appointed by the County, and one (1) appointed by the Airport Board itself. [FAA DD Exhibit 1, Item 3, exhibit page 127.] No other criteria are stated.

- Respondent cancels regular public meetings of the Airport Board in favor of conducting airport business at informal, private meetings among Airport Board members at unspecified locations. Complainants state these last-minute cancellations occurred in December 2005 and February 2006, coinciding with Complainants' attempts to resolve issues. [FAA DD Exhibit 1, Item 3, pages 11-12, #9]

The administrative record shows that Complainant Cliff Davenport expressed concern in January 2005, that notification was not always received when Airport Board meeting dates and times changed. [FAA DD Exhibit 1, Item 3, exhibit page 118.] At the following Airport Board meeting, the airport manager advised the Airport Board based on information obtained from the airport attorney that meeting dates and times need to be made available to the newspaper, but the Respondent need not pay for a special advertisement. For changes in scheduled meetings, a flyer would need to be distributed. [FAA DD Exhibit 1, Item 3, exhibit page 122.]

- Respondent calls executive sessions without appropriate justification and without summary disclosure of the items considered or decided in these meetings. Complainants allege the purpose of these executive sessions is to exclude individuals who are not members of the Mormon Church Ward from the meetings. [FAA DD Exhibit 1, Item 3, page 12.]

The matter of calling executive session meetings is addressed in *Issue 11*. If the purpose of calling these executive session meetings is to exclude individuals who are not members of the Mormon Church Ward, that is not clear from the administrative record. The administrative record shows that the Airport Board called an executive session on April 27, 2005. Complainant M. Daniel Carey was present, and he questioned the need to go into executive session at that time. The Airport Board explained that it is standard procedure to go into executive session when the Airport Board needs to talk about employees, legal issues, or land issues. [FAA DD Exhibit 1, Item 3, exhibit page 135.] On May 18, 2005, the Airport Board meeting minutes reflect that the Airport Board again went into executive session. It is clearly stated in the meeting minutes that the purpose was to discuss legal and personnel issues. [FAA DD Exhibit 1, Item 3, exhibit page 144.]

Conclusion on Issue 5

Complainants argue that Respondent excludes individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

Complainants point out that their primary competitor, Mr. Morehouse, and members of the Airport Board are all parishioners of the same church.

That may be, but there is no indication in the administrative record that being a member of a particular church is a requirement for Airport Board membership. Three (3) members are selected by the City, three (3) by the County, and one (1) is appointed by the Airport Board itself. [FAA DD Exhibit 1, Item 3, exhibit page 127.]

The administrative record shows that Mr. Morehouse, whether a member of the Mormon Church Ward or not, has received some preferential treatment. (This is addressed in *Issue 6*.) If the underlying reason for this preferential treatment is Mr. Morehouse's affiliation with a particular church group, then that is not evidenced in the administrative record.

Complainants argue Respondent is excluding individuals (not just Complainants) from entering into business opportunities on the airport based on religion. Yet Complainants do not state, nor do they provide evidence to show, that all airport business enterprises currently on the airport are owned by members of the Mormon Church Ward. In addition, Complainants do not state, nor do they provide evidence to show, that all proposals from individuals who are not members of the Mormon Church Ward are denied access to the airport to establish a business.

What the administrative record shows is that Complainants have submitted proposals to conduct business on the airport, and those proposals have not been approved. Complainants are not members of the Mormon Church Ward. The Airport Board members are affiliated with the Mormon Church Ward. Those are two facts, but they are not necessarily related. The Respondent argues, and the FAA agrees, that Complainants' proposals to date do not comply with the current minimum standards. (This matter is discussed fully in *Issue 8*.) Nothing in the administrative record supports Complainants' contention that decisions relating to their proposals were based on religious affiliation.

Based on the record herein, the Director finds the Respondent is not currently in violation of grant assurance 30, *Civil Rights*, by excluding individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

F. *Issue 6: Minimum Standards:*

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, by enforcing airport minimum standards inconsistently. [FAA DD Exhibit 1, Item 3, page 12.]

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner or sponsor to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must be

fair, equal, and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied.

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies access to a public-use airport. If such a determination is requested, it is limited to a judgment as to whether failure to meet the qualifications of the standard is a reasonable basis for such denial or whether the standard results in an attempt to create an exclusive right.

The airport owner or sponsor may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the public. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable.

FAA Advisory Circular (AC) 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, August 28, 2006, provides guidance on developing effective airport minimum standards.

Complainants allege Respondent instituted inappropriate minimum standards and began enforcing them against everyone except Mr. Morehouse. [FAA DD Exhibit 1, Item 3, page 12.] Respondent argues that the revised minimum standards were adopted to protect the welfare, health, and safety of the airport and the community. Respondent also states the minimum standards were adopted after input from the FAA and were modified after similar airports in Wyoming. [FAA DD Exhibit 1, Item 5, page 7.] Respondent does not address in its Answer the allegation that the revised minimum standards are applied inconsistently. Complainants provided documents in its Reply detailing the areas where it alleges Afton Aircraft Services, Inc. (represented by Mr. Morehouse and Mr. Russell) does not meet the revised minimum standards. [FAA DD Exhibit 1, Item 9, exhibit pages 310-316.] Respondent did not provide a Rebuttal to Complainants' Reply.

(1) Adoption of Minimum Standards

Complainants argue the minimum standards adopted are not relevant to the needs and requirements of airport users at Afton Municipal Airport. They state the “sham” minimum standards were obtained from a dissimilar airport with no adaptation to Afton Municipal Airport.²⁰ [FAA DD Exhibit 1, Item 3, page 12.] Complainant M. Daniel Carey identified problems he had with the proposed minimum standards in an August 10, 2005, memorandum to the Joint Powers Board of Directors. [FAA DD Exhibit 1, Item 3, exhibit pages 199-201.]

²⁰ While Complainants argue the minimum standards were “lifted wholesale from another airport,” they do not identify the airport in the Complaint. [FAA DD Exhibit 1, Item 9, page 10.] However, the administrative record includes an August 10, 2005, memorandum from Complainant M. Daniel Carey stating the minimum standards for Yellowstone Regional Airport were adopted by the Afton-Lincoln County Municipal Airport. [FAA DD Exhibit 1, Item 3, exhibit page 199.]

Respondent argues that the minimum standards are relevant, and that Respondent consulted with the FAA before adopting the referenced minimum standards. Respondent also states the minimum standards were modified based on similar airports in Wyoming.²¹ [FAA DD Exhibit 1, Item 5, page 7.] The Airport Board meeting minutes from April 27, 2005, state, “the FAA is reviewing the minimum standards and zoning for the airport” and “after approval from the FAA, the Airport Board will then review it before it is finalized.” [FAA DD Exhibit 1, Item 3, exhibit page 135.]

The FAA confirmed in the May 18, 2005, Airport Board meeting the need to have “really strong detailed minimum standards.” At this meeting, FAA representative Craig Sparks from the FAA Denver Airports District Office stated that he reviewed the minimum standards; he recommended they be made stronger. He also advised the Airport Board that there needs to be a timeframe listed in the minimum standards for those who don’t meet the standard to come up to code. The timeframe would be decided by the Airport Board. FAA representative Mark Neiner confirmed the Airport Board could put a moratorium on building while the minimum standards were being developed. [FAA DD Exhibit 1, Item 3, exhibit pages 141-142.]

Complainants argue the FAA review of the minimum standards was cursory and FAA did not actually approve the new standards. [FAA DD Exhibit 1, Item 9, page 10.]

FAA suggests that airport sponsors establish reasonable minimum standards that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public. Minimum standards should be tailored to the airport to which they will apply. [See FAA Advisory Circular (AC) 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, dated August 28, 2006.]

The FAA will review proposed minimum standards at the airport sponsor’s request to identify areas where the revised standards may conflict with the airport sponsor’s federal obligations. We contacted the FAA Denver Airports District Office. They advised us they had reviewed a draft copy of the minimum standards and provided comments in a letter dated July 1, 2005. [FAA DD Exhibit 1, Item 10.] FAA advice provided with respect to minimum standards is optional, but highly recommended.

The FAA does not *approve* minimum standards.

(2) Application of Minimum Standards

Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical activities and services. [See FAA Advisory Circular (AC) 150/5190-7, section 1.1.]

Complainants argue the minimum standards were established to perpetuate the monopoly given to Mr. Morehouse. [FAA DD Exhibit 1, Item 3, exhibit page 215.]

²¹ Respondent states the minimum standards were modified based on similar Wyoming airports, but does not identify the airports.

The FAA advised the Airport Board at its May 18, 2005, meeting that the revised minimum standards should include a timeframe listed for those who don't meet the standard to come up to code. [FAA DD Exhibit 1, Item 3, exhibit pages 141-142.]

The September 28, 2005 minimum standards, however, do not include such a timeframe. Rather, they state, "These Minimum Standards are not retroactive and do not bear on or affect any written agreement or lease properly executed prior to the date of adoption and approval of these Minimum Standards." [FAA DD Exhibit 1, Item 3, exhibit page 237.] This would tend to give an economic advantage to Mr. Morehouse by not requiring him to meet the more stringent revised minimum standards. However, this statement in the minimum standards is in conflict with the terms of the Afton Aircraft Services, Inc. lease itself.

We note that the March 22, 2004, lease agreement with Afton Aircraft Services, Inc. signed by Mr. Morehouse and Mr. Russell, includes a clause stating, "Lessee shall comply with all laws, rules and regulations, or code of ordinances of the Afton Airport as the same now exist or as may be properly amended in the future." [FAA DD Exhibit 1, Item 3, exhibit page 61.] Airport minimum standards fall into this category. They have been properly amended.

The Airport Board could have elected to establish a specified period to allow tenants not meeting the revised minimum standards to come up to code; it elected not to do so.

We do not expect the revised minimum standards to be applied retroactively to actions that have already been completed, such as the application requirements.²² We do expect to see reasonable current standards for commercial aeronautical activities met by those entities operating such a business. For example, the September 28, 2005, minimum standards require:

- A fixed-base operator to offer at least five of nine services and facilities identified in the minimum standards. [FAA DD Exhibit 1, Item 3, exhibit page 250.]
- A fixed-base operator to maintain hours of operation not less than 12 hours per day, seven days per week (adjusted seasonally) with at least one qualified employee on duty during the hours of operation. [FAA DD Exhibit 1, Item 3, exhibit page 250.]

We would expect to see every fixed-base operator on the airport meeting these standards. Complainants allege Afton Aircraft Services, Inc. offers only two services and facilities identified in the minimum standards. Complainants state that six other services and

²² Complainants submitted an explanation of how Mr. Morehouse's March 22, 2004, lease does not meet the September 28, 2005, minimum standards. Twenty-one (21) points refer to application requirements established in the September 28, 2005 minimum standards. [FAA DD Exhibit 1, Item 9 exhibit pages 310-312.] The FAA does not agree that Mr. Morehouse should have met application standards in 2004 that were not even adopted until 2005.

facilities have been approved, but are either not provided or are not operating. [FAA DD Exhibit 1, Item 9, exhibit page 312.]

Complainants allege Afton Aircraft Services, Inc. has just one employee. [FAA DD Exhibit 1, Item 9, exhibit page 313.] Complainants argue they would be required to employ several employees for 12 hours a day, seven days a week while competitor Afton Aircraft Services, Inc. employs just one person for 40 hours a week. [FAA DD Exhibit 1, Item 9, page 11.] This would place Complainants at an economic disadvantage.

The Director finds the Respondent expects the Complainants to meet the revised minimum standards while others on the airport are not required to do so. In this case, excluding the Afton Aircraft Services, Inc. fixed-base operator lease from the revised minimum standards while holding other similarly situated airport tenants to these same standards results in a violation of grant assurance 22, *Economic Nondiscrimination*.

Minimum standards that are not objectively and uniformly applied to all similarly situated on-airport aeronautical activities and services results in a violation of grant assurance 23, *Exclusive Rights*, as well.

We are aware that the explicit exclusive rights initially granted to Mr. Morehouse through the March 22, 2004, agreement between the Afton-Lincoln County Municipal Airport Joint Powers Board and Afton Aircraft Services, Inc., was effectively extinguished March 30, 2006, by Resolution No. 01-2006. [See *Issue 1* above.] Nonetheless, the prohibition on exclusive rights applies regardless of how the exclusive right was created. An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. [See FAA Advisory Circular (AC) 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, January 4, 2007, section 1.2.] In this case, the minimum standards may not be unreasonable, but the Respondent is applying the minimum standards in such a manner to provide an advantage for one tenant to the detriment of others. This results in the granting of an exclusive right to the tenant enjoying the advantage.

The administrative record demonstrates that the Respondent is enforcing its revised minimum standards inconsistently. Respondent failed to enforce the Afton Aircraft Services, Inc. lease, which requires it to meet properly amended rules and regulations. The revised minimum standards are properly amended rules and regulations.

At the same time, Respondent requires others to meet these standards as a condition of providing services and facilities on the airport. This action gives Afton Aircraft Services, Inc. an economic advantage over potential competitors. It also grants an exclusive right to Afton Aircraft Services, Inc., to be the only fixed-based operator to enjoy a reduced level of requirements.

The Director finds the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, as a result of enforcing airport minimum standards inconsistently.

G. Issue 7: Residential Hangars

Information contained in the administrative record led us to review the use and development of residential hangars both on the airport and adjacent to airport property, as well as fees charged for through-the-fence access.

(1) Issue 7(a): Residential Hangars on the Airport

Whether Respondent is in violation of its federal grant assurances by failing to enforce a prohibition on residential use of hangars on the airport.

Complainants assert the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by allowing one tenant to use his hangar as a residence while not allowing others to have residential hangars on the airport. [FAA DD Exhibit 1, Item 3, pages 12-13.] We found grant assurance 21, *Compatible Land Use*, is applicable.

Complainants state that Afton City officials notified airport hangar owners and the Airport Board on or about December 14, 2004, that city zoning laws prohibit residential use of hangars. The Airport Board advised that the FAA also prohibits such use. On September 19, 2005, the City Attorney sent notices to all hangar owners that it would fine any person residing in his hangar \$750 per day. [FAA DD Exhibit 1, Item 3, exhibit page 217.] Nonetheless, Complainants argue, Mr. Morehouse continues to reside in his hangar while all others are denied the same privilege. [FAA DD Exhibit 1, Item 3, pages 12-13.]

Respondent does not deny this allegation. Rather, Respondent states that zoning violations and enforcement of the ban on residential hangars is the responsibility of the Town of Afton. In addition, Respondent states that the Complainants and their family members have also used their hangars for personal activities. [FAA DD Exhibit 1, Item 5, pages 7-8.] Respondent does not indicate the time period referenced for the “personal activity.” However Complainant M. Daniel Carey acknowledged that he had previously intended to have living accommodations in his hangar, but that as of September 22, 2005, he no longer had living quarters in either hangar. [FAA DD Exhibit 1, Item 3, exhibit page 218.]

While the Respondent argues that the matter of residential hangars on airport property is a zoning issue that is outside the control or influence of the Airport Board, the administrative record clearly shows that the Airport Board has been actively involved in discussions on this topic.

- September 15, 2004 -- The Airport Board discussed residential hangars. At that time, the Airport Board asked the airport manager to meet with various groups, including the FAA to formulate a set of guidelines. [FAA DD Exhibit 1, Item 3, exhibit page 98.]

- October 20, 2004 -- The airport manager reported to the Airport Board that the FAA does not recommend living areas in hangars. [FAA DD Exhibit 1, Item 3, exhibit page 103.]
- December 20, 2004 – The Airport Board meeting minutes reflect that airport tenants had been advised by the City Attorney that building residential units in aircraft hangars was a building violation. At that time, the Airport Board suggested it rezone the airport. The airport manager was asked to check with the FAA to see if airports can have apartments. The Airport Board indicated a desire to allow apartments for temporary stays, but not for permanent living quarters. The Airport Board acknowledged a problem controlling pedestrians and automobiles with residential hangars. [FAA DD Exhibit 1, Item 3, exhibit page 113.]
- January 27, 2005 – The Airport Board meeting minutes reflect that board members were still trying to find a way to allow living quarters at the airport. The airport manager informed the Airport Board that the FAA does not recommend apartments at the airport. [FAA DD Exhibit 1, Item 3, exhibit page 118.]
- April 27, 2005 – The Airport Board chairman acknowledged that the Airport Board could prevent hangar owners from using the facility as an apartment. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

The Respondent is responsible for overseeing activities on the airport and for ensuring the sponsor meets its federal obligations, including the grant assurances. Allowing residential hangars to exist on an airport could create a conflict with various grant assurances.

In this case, Complainants assert a violation of grant assurance 22, *Economic Nondiscrimination*. An airport sponsor is obligated to 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. The Complainants assert the Respondent is in violation of grant assurance 22 by allowing one tenant to use his hangar as a residence while not allowing others to have residential hangars on the airport. [FAA DD Exhibit 1, Item 3, pages 12-13.] Grant assurance 22 refers to unjust discrimination regarding *aeronautical* activities only. Using hangars to store aircraft is an aeronautical purpose; using hangars for a personal residence is not. Complainants should have no expectation that the grant assurances will enable them to enjoy a privilege that is improperly granted to another. Grant assurance 22 does not convey a right to engage in an unapproved activity. On the contrary, the FAA insists that the improper use be discontinued.

Grant assurance 21, *Compatible Land Use*, obligates the airport sponsor to restrict the use of the airport to activities and purposes compatible with normal airport operations. The FAA has determined that having residential communities on airport property is not compatible with normal airport operations. The FAA does not permit residential hangars

on airport property.²³ Neither does the Town of Afton permit residential dwellings on airport property.²⁴ [FAA DD Exhibit 1, Item 3, exhibit page 33.] Even though zoning may be the responsibility of the Town of Afton, the Respondent is expected to meet its grant assurance obligations. The Respondent is responsible for ensuring hangars are not used for residential facilities and that no residential facilities are developed on the airport in conflict with the Airport Layout Plan and the other grant assurances.

The administrative record in this matter is persuasive. Complainants allege at least one tenant is permitted to use his hangar as a residence. The Respondent does not deny the claim. Rather, the Respondent attempts to deflect attention by stating (a) it is not the responsibility of the Respondent to enforce zoning violations, and (b) the Complainants have or had also used hangars for personal activities. [FAA DD Exhibit 1, Item 5, pages 7-8.] It does appear the Respondent is not enforcing the ban on residential hangars on airport property. We expect the Respondent to confirm that hangars are not being used for residential facilities and to exert whatever effort is necessary to ensure this activity is not permitted on airport property. At this time, the Director finds the Respondent is in violation of grant assurance 21, *Compatible Land Use*, by failing to enforce a prohibition on residential use of hangars on the airport.

(2) Issue 7(b): Residential Hangars Adjacent to Airport Property

Whether Respondent is in violation of grant assurance 21, *Compatible Land Use*, by encouraging the development of a residential airpark adjacent to the airport.

The administrative record shows a residential airpark was developed adjacent to airport property with Airport Board support.

- On August 18, 2004, the Airport Board discussed a proposal to combine privately owned acreage adjacent to the airport for use as an airpark that would include hangars, residences, and a camping area. The Airport Board discussed turning the old runway into a road to provide access to the park area. [FAA DD Exhibit 1, Item 3, exhibit page 93.]
- On November 17, 2004, the Airport Board again discussed plans for the proposed airpark. [FAA DD Exhibit 1, Item 3, exhibit page 109.]
- On January 27, 2005, the Airport Board discussed the water source for the airpark, the resolution of the old taxiway, and the general aviation camping area.

²³ See *Land Use Compatibility and Airports: A Guide for Effective Land Use Planning* at http://www.faa.gov/airports_airtraffic/airports/environmental/land_use/. Page 2 of 141 lists examples of incompatible land uses, including residential, schools, and churches. Grant assurance 21, *Compatible Land Use*, obligates the airport to implement whatever steps are necessary to prevent incompatible land use.

²⁴ In a September 19, 2005, letter to Complainant M. Daniel Carey from James K. Sanderson, Counsel for the Town of Afton, Mr. Sanderson stated, “under no circumstances were there to be living quarters contained within the hangars at the airport. The airport is not currently zoned for any residential dwellings.” [FAA DD Exhibit 1, Item 3, exhibit page 217.]

In addition, the Airport Board discussed whether airpark residents should be assessed a user fee for accessing the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.]

- On September 29, 2005, the Airport Board acknowledged in a letter to the FAA that it traded a parcel of airport property to the airpark development company in exchange for certain access rights and taxiway repairs, as well as extending a water line through the development to airport property. [FAA DD Exhibit 1, Item 3, exhibit pages 275-276.]

The FAA generally discourages residential airparks adjacent to airport property because such airparks can create a compatible land use problem, especially with noise compatibility and zoning issues, in the future. Grant assurance 21, *Compatible Land Use*, requires airport sponsors to take appropriate action, including the adoption of zoning laws, to restrict the use of land adjacent to, or in the immediate vicinity of, the airport to activities and purposes compatible with normal airport operations, including landing and taking off of aircraft. The FAA recognizes residential development adjacent to airport property as an incompatible land use.

In this case, the Respondent not only failed to object to establishing the residential airpark, but also is actively involved in promoting its development. The Respondent made airport property available to the developer for the airpark,²⁵ which includes residential homes.²⁶ In addition, an Airport Board member is listed as the contact person for the residential airpark.²⁷ Having residential homes adjacent to the airport is an incompatible land use. The Director finds the Respondent is in violation of grant assurance 21, *Compatible Land Use*, by allowing and promoting the development of a residential airpark adjacent to the airport.

(3) Issue 7(c): Fees for Through-the-Fence Access

Whether Respondent is in violation of grant assurance 24, *Fee and Rental Structure*, by failing to assess a reasonable fee for airport access to off-airport individuals and entities.

On January 27, 2005, the Airport Board discussed having a user fee in the future for airpark residents to access the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.] FAA advised the Airport Board May 18, 2005, that anyone wanting to access the airport should be charged a user fee. [FAA DD Exhibit 1, Item 3, exhibit page 142.] This could be accomplished with through-the-fence agreements between the Respondent and the airpark residents. A through-the-fence agreement establishes fees and requirements the

²⁵ See FAA DD Exhibit 1, Item 3, exhibit pages 275-276.

²⁶ An advertisement for the airpark states, “Live with your airplane...” [FAA DD Exhibit 1, Item 9, exhibit page 325.]

²⁷ Mr. Blake Hoopes is listed as the contact person at www.airporthomes.com for Afton Airpark. In addition, he is identified as an Airport Board member and an employee of fixed-base operator Mr. Morehouse. [See FAA DD Exhibit 1, Item 3, page 13.] It is unknown whether he continues to be a member of the Airport Board.

user must meet for the privilege of accessing the airport from an off-airport site rather than leasing space on the airport property itself.

As a rule, the FAA discourages through-the-fence agreements. If not structured properly, these agreements can create a situation where on-airport tenants bear a greater burden of the cost of airport operations than off-airport users, who may pay little or nothing. The airport sponsor has no federal obligation to provide airport access to off-airport enterprises or individuals. In addition, through-the-fence users are not protected by the grant assurances.

The administrative record includes an undated advertisement for residential hangars in Afton Airpark. [FAA DD Exhibit 1, Item 9, exhibit page 325.] On August 9, 2006, we contacted a representative from Hale's Valley Properties, LLC, who advised there would be no through-the-fence agreement necessary and no user fee charged for access to the airport from off-airport residential hangars.²⁸

However, on August 31, 2006, we called Mr. Blake Hoopes, who is listed as a contact for the Afton Airpark and is, or has been, a member of the Airport Board.²⁹ He told us the airport charges an annual per-lot fee of \$400 for property owners to access the airport from the airpark. We confirmed this on October 4, 2006, with Respondent's attorney who advised the fee was included in the property owner's association fees.³⁰ We do not find the Respondent currently in violation of grant assurance 24 regarding access fees charged to airpark residents.

H. Issue 8: Excluding Complainants

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by excluding Complainants from conducting a commercial aeronautical business on the airport. [FAA DD Exhibit 1, Item 3, page 13.]

The Complainants in this case are two individuals who are each seeking to establish some type of business enterprise on the airport. They have at various times indicated an interest in establishing one or more business activities separately and together. For example, the administrative record shows the following requests were made or discussed:

²⁸ We called the phone number listed on an undated advertisement included in the administrative record. [FAA DD Exhibit 1, Item 9, exhibit page 325.] We also reviewed the web site at www.hvpsold.com. A representative from the real estate firm stated that (1) the property was off the airport, (1) there would be a \$200 association fee that did not go to the airport, (3) there was no requirement for a through-the-fence agreement with the airport, and (4) there were no fees charged by the airport for direct access to the taxiway and runway.

²⁹ Internet site www.airporthomes.com listed Blake Hoopes at (307) 885-7030, as the contact person for the Afton Airpark. Blake Hoopes is also identified in the administrative record as a member, or former member, of the Airport Board. [See FAA DD Exhibit 1, Item 3, page 13.]

³⁰ Respondent's attorney, John D. Bowers, confirmed this rate is comparable or higher than the access fees charged to on-airport tenants.

- October 20, 2004 – Complainant Cliff Davenport orally requested permission to operate a fuel business. [FAA DD Exhibit 1, Item 3, exhibit page 103.]
- November 17, 2004 – Complainant Cliff Davenport submitted a written request for approval to construct, maintain, and operate a second fuel farm on the airport, including operating fuel trucks and fuel storage tanks. The proposal also asked for approval for storage and ramp parking of transient and home-based aircraft on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 108.]
- April 27, 2005 – Complainant Cliff Davenport presented a proposal to operate an open source of fuel. [FAA DD Exhibit 1, Item 3, exhibit page 136.]
- April 27, 2005 -- Complainant M. Daniel Carey presented a request to operate a second FBO on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 136.] Complainant's proposal included a flight school, aviation maintenance, aircraft appraisal, and War Bird Restorations in addition to fuel sales. [FAA DD Exhibit 1, Item 5, exhibit C.]
- May 18, 2005 – Airport Board meeting minutes note Complainant Cliff Davenport intended to provide fuel sales only as an FBO. [FAA DD Exhibit 1, Item 3, exhibit page 144.]
- May 18, 2005 – Airport Board meeting minutes note Complainant M. Daniel Carey would like to operate an FBO with fuel sales and other services. (The "other services" were not identified.) [FAA DD Exhibit 1, Item 3, exhibit page 144.]
- September 8, 2005 – In a letter through his attorney, Complainant Cliff Davenport repeats his request to operate a fuel farm. [FAA DD Exhibit 1, Item 3, exhibit page 214.]
- January 23, 2006 – In a letter through their attorney, Complainants request jointly to operate an FBO with fuel service, as well as a flight school and repair facility. [FAA DD Exhibit 1, Item 3, exhibit page 283.]
- May 30, 2006 – Complainants submitted a joint supplement to their previous written proposals. This supplement identifies services to be offered in addition to fuel sales, including airframe, power plant, inspections and repair, flight instruction and rental, and aircraft storage. Although the document refers to FBO services on the airport, it identifies the proposed activity as a modified Specialized Aviation Service Operation (SASO). [FAA DD Exhibit 1, Item 9, exhibit page 303.]
- June 29, 2006 -- Complainants state in their Reply that they intend to operate a small flight school, maintenance shop, and fuel facility. [FAA DD Exhibit 1, Item 9, page 11.]

Table 2 identifies the services each Complainant requested permission to provide and the dates the proposal was either presented or discussed at various Airport Board meetings.

Table 2: Services Complainants Requested Permission to Provide

Date	Complainant	Service	Service	Service	Service
		<i>FBO</i>	<i>SASO</i>	<i>Fuel</i>	<i>Other Services</i>
October 20, 2004	Davenport			X	
November 17, 2004	Davenport			X	
April 27, 2005	Davenport			X	
April 27, 2005	Carey	X			X
May 18, 2005	Davenport	X		X	
May 18, 2005	Carey	X		X	X
September 8, 2005	Davenport			X	
January 23, 2006	Davenport & Carey	X		X	X
May 30, 2006	Davenport & Carey		X	X	X
June 29, 2006	Davenport & Carey			X	X

Both Complainants Davenport and Carey consistently requested permission to provide fuel sales. These requests began as early as October 2004. Sometimes the requests were combined with an intent to operate as an FBO; other times, the requests were to sell fuel as a stand-alone operation. To date, permission has not been granted for either Complainant to offer commercial fuel sales on the airport.

The FAA advised the Airport Board on May 18, 2005, that the airport must allow everyone the right to operate an FBO. [FAA DD Exhibit 1, Item 3, exhibit page 144.] However, the FAA also advised that detailed minimum standards should be in place to prevent the FBO from limiting its services to selling fuel only. Although the FAA has no restriction against allowing an FBO to limit its services to selling fuel only, experience has shown that FBOs will not develop the necessary aeronautical support services if there is no requirement to do so. [FAA DD Exhibit 1, Item 3, exhibit page 141.] Fuel sales tend to be the most lucrative service of the FBO business. It is important to tie this activity to other commercial services in order to provide aeronautical users with the commercial support service necessary to use the airport fully. [See FAA DD Exhibit 1, Item 3, exhibit page 144.]

Following the advice of FAA on May 18, 2005, the Respondent placed a moratorium on allowing new service while it revised its minimum standards. [FAA DD Exhibit 1, Item 3, exhibit page 142.] The revised minimum standards, which required FBOs to offer additional services besides fuel sales, were adopted September 28, 2005. [FAA DD Exhibit 1, Item 3, exhibit page 233.]

Respondent states it has not permitted Complainants to establish an FBO on the airport because Complainants have not submitted a written proposal consistent with the revised minimum standards. Respondent argues that Complainants submitted a two-page document stating they wanted to start some type of business activity at the airport without stating how they would meet the minimum standards. Respondent states it “would expect

the Complainants to file some type of information with the Respondent, stating how the minimum standards are to be met or in the alternative, why certain areas of the minimum standards cannot be met, providing other alternatives that would ensure the safety of the airport and the community. [FAA DD Exhibit 1, Item 5, page 7.]

The administrative record includes a two-page proposal from Complainant M. Daniel Carey, doing business as Star Valley Aeronautical Services, Inc., requesting permission to provide multiple commercial aeronautical activities, including flight school, aviation maintenance aircraft appraisal service, and War Bird Restoration, in addition to fuel sales. This proposal is dated April 27, 2005, prior to the date of the revised minimum standards. [FAA DD Exhibit 1, Item 5, exhibit C.]

The administrative record also includes a one-page proposal from Complainant Cliff Davenport for fuel sales and related activities. This proposal was presented November 17, 2004, prior to the date of the revised minimum standards. [See FAA DD Exhibit 1, Item 3, exhibit page 108.]

Complainants argue that these proposals were preliminary and designed to obtain Airport Board input regarding the concepts addressed. Complainants state these preliminary proposals were never intended to be presented as the final product. According to the Complainants, the Airport Board did not provide the input needed to proceed with the proposals. [FAA DD Exhibit 1, Item 9, page 7.]

Complainants refer to amended proposals dated May 2006. [FAA DD Exhibit 1, Item 9, page 7.] The administrative record contains a combined proposal from both Complainants M. Daniel Carey and Cliff Davenport, doing business as Star Valley Aeronautical Services, Inc., dated May 30, 2006. This two-page document is identified as a *supplement* to the prior proposals. The prior proposals were *individual* proposals, not joint. In the prior proposal for Complainant Cliff Davenport, only fuel sales and related activities had been identified. The prior proposal for M. Daniel Carey identified his proposed business as a fixed-base operator (FBO). The supplement identifies the joint business as a Specialized Aviation Service Operation (SASO). [FAA DD Exhibit 1, Item 9, exhibit page 303.]

The September 28, 2005, minimum standards have separate sections for FBOs and for SASOs. An FBO is defined as an entity that offers fuel sales *plus* at least *five* of nine services identified.³¹ [FAA DD Exhibit 1, Item 3, exhibit page 250.] A SASO may offer as few as one specialized service, but cannot sell fuel. [FAA DD Exhibit 1, Item 3, exhibit page 254.]

The various proposals from Complainants Carey and Davenport show they want to sell fuel. Even the May 30, 2006, supplemental proposal includes a fueling operation. That

³¹ The additional five services must be from the following list: (1) ramp services, (2) aircraft repair, maintenance and preventive maintenance, (3) aircraft loading, unloading and towing, (4) new or used aircraft sales, (5) flight instruction and aircraft rental, (6) air charter/air taxi service, (7) aerial application, (8) commercial hangar storage, and (9) car rental. [FAA DD Exhibit 1, Item 3, exhibit page 250.]

means the Complainants are attempting to establish an FBO, not a SASO. As such, they must offer five additional services from a list of nine specified in the minimum standards. The Complainants' proposal(s) do not clearly identify five additional services from the specified list. As table 3 below shows, Complainants have proposed three (rather than the five) of the nine optional additional services.

Table 3: Additional Fixed-base Operator (FBO) Services Offered by Complainants

	FBO Additional Services (5 of 9 Required)	Services Offered by Complainants	Proposal Date
(1)	Ramp services		
(2)	Aircraft repair, maintenance and preventative maintenance	X	April 27, 2005 May 30, 2006
(3)	Aircraft loading, unloading, and towing		
(4)	New or used aircraft sales		
(5)	Flight instruction and aircraft rental	X	April 27, 2005 May 30, 2006
(6)	Air charter/taxi service		
(7)	Aerial application		
(8)	Commercial hangar storage	X	May 30, 2006
(9)	Car rental		

Complainants presented two separate individual proposals for fuel sales and FBO services.³² Then they submitted a combined supplement to the individual proposals indicating they will now be going into business together.³³ Although they still identify fuel sales, they call the joint business a SASO instead of an FBO. Different minimum standards apply to SASOs and to FBOs. A SASO cannot sell fuel.

The FAA does not find it unreasonable that the Respondent could not approve a conglomeration of proposals that are inconsistent and do not comply with the current minimum standards. It appears that the Respondent should have been able to work with the Complainants to develop a proposal that will meet the needs of the airport, the desires of the Complainants, and comply with the minimum standards.

It appears from the administrative record that the Respondent has worked with other tenants who presented equally short proposals to develop a commercial business on the airport. For example:

- The administrative record includes an undated, unsigned one-page proposal identified as the "Morehouse Proposal," offering to provide FBO services, including fuel service, mechanical service, flight instruction, charter and air taxi

³² See Cliff Davenport's one-page written proposal on November 17, 2004 [FAA DD Exhibit 1, Item 3, exhibit page 108]; See M. Daniel Carey's two-page written proposal on April 27, 2005 [FAA DD Exhibit 1, Item 5, exhibit C].

³³ See supplemental joint SASO proposal dated May 30, 2006. [FAA DD Exhibit 1, Item 9, exhibit pages 304-305.]

service, and freight operations. [FAA DD Exhibit 1, exhibit page 317.] The Respondent was able to work with Mr. Morehouse to develop a suitable lease.

- The administrative record also shows at the January 27, 2005, Airport Board meeting, Mr. Trent Peterson with Star Valley Helicopters, LLC, verbally requested approval to operate a helicopter scenic flight business at the airport. The Airport Board approved the proposal pending Mr. Peterson's ability to get a business license and insurance. [FAA DD Exhibit 1, Item 3, exhibit page 117.] There does not appear to be any written proposal. The Respondent was able to work with this tenant to develop a suitable plan.

We agree with the Respondent that the Complainants have not yet submitted a cohesive proposal consistent with the minimum standards for their desired business enterprise. Respondent is not obligated to permit Complainants to establish a commercial fuel service if Complainants do not comply with the minimum standards for an FBO.³⁴ Complainants may elect to offer some services, excluding fuel sales, under a SASO. If so, we would expect the Respondent to work with the Complainants to meet the applicable minimum standards for that service.

At this time, the Respondent is not in violation of grant assurance 22, *Economic Nondiscrimination*, by excluding Complainants from conducting a commercial aeronautical business on the airport. Complainants have not submitted a cohesive proposal consistent with current minimum standards. However, we expect the Respondent to work with the Complainants in the same manner Respondent worked with Mr. Morehouse and Mr. Trent to bring Complainants' incomplete proposal(s) to fruition.

I. Issue 9:

Whether Respondent is in violation of grant assurance 29, *Airport Layout Plan*, by permitting or building airport features that are not consistent with the approved Airport Layout Plan (ALP). [FAA DD Exhibit 1, Item 3, page 14.]

Complainants allege Respondent has permitted unauthorized structures, including (1) an aircraft hangar placed on a planned and approved taxiway, and (2) nonconforming placement of the fuel depot. [FAA DD Exhibit 1, Item 3, pages 14-15.]

The record reflects that FAA representatives advised the Airport Board in the May 18, 2005, Airport Board meeting that an updated Airport Layout Plan was required with each construction project or every five years, whichever comes first. [FAA DD Exhibit 1, Item 3, exhibit page 142.] Respondent states it has been working with a consultant and the FAA to update its Airport Layout Plan. [FAA DD Exhibit 1, Item 5, page 8.]

We contacted the FAA Denver Airports District Office. They advised us that they are currently working with the Respondent and the consultant on construction updates to the current Airport Layout Plan for the runway extension project. The update does not

³⁴ Complainants' objections to a competitor Afton Aircraft Services, Inc., FBO being allowed to follow a more lenient earlier version of airport minimum standards is addressed under *Issue 6* above.

include revising the terminal area layout sheet, which depicts the hangar locations. All of the hangars have been through the airspace process, which has allowed FAA to comment and/or object to any proposed construction that would adversely affect the safe use of the airport by aeronautical users. The Denver Airports District Office states it does not object to the hangars being built on the proposed taxiway. They advised us that the next scheduled Airport Layout Plan update will reflect the changes to the layout. The Denver Airports District Office is not aware of any fuel depot located in an unauthorized location. [FAA DD Exhibit 1, Item 10.]

The Director finds the Respondent is not currently in violation of grant assurance 29, *Airport Layout Plan*, by permitting or building airport features that are not consistent with the approved Airport Layout Plan (ALP). [FAA DD Exhibit 1, Item 3, page 14.]

J. Issue 10:

Whether Respondent is in violation of grant assurance 31, *Disposal of Land*, or grant assurance 5, *Preserving Rights and Powers*, by transferring or releasing airport property without FAA permission. [FAA DD Exhibit 1, Item 3, pages 15-16.]

Complainants allege Respondent is in violation of grant assurance 31, *Disposal of Land*, as a result of unauthorized disposal of airport property, including: (1) transferring approximately 5½ acres of airport property in exchange for access to a water line without FAA permission, (2) selling the airport's fuel depot without FAA permission, (3) selling construction material without FAA permission, and (4) giving valuable trees and shrubs away without FAA permission.³⁵ [FAA DD Exhibit 1, Item 3, pages 15-16.] We have determined grant assurance 5, *Preserving Rights and Powers*, is appropriate for this allegation.

Grant assurance 31, *Disposal of Land*, discusses how airport land purchased under a grant is to be disposed of when it is no longer needed for airport purposes or for noise compatibility purposes. Basically, the land must be sold at fair market value and the proceeds reinvested in another projects or returned to the Trust Fund.

Grant assurance 5, *Preserving Rights and Powers*, states that the airport sponsor will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on "Exhibit A" or for a noise compatibility program without FAA approval. "Exhibit A" is the airport property map that accompanies grant agreements.

(1) Land Transfer

Complainants allege Respondent disposed of 5½ acres of airport property without FAA approval and without receiving fair market value. [FAA DD Exhibit 1, Item 3, page 15.] (This land transfer is also addressed in *Issue 2*.)

³⁵ Complainants allege in *Issue 10* that airport property was disposed of without FAA permission. Under *Issue 2*, Complainants allege the same items were disposed of at less than fair market value. These issues are discussed separately.

The Respondent states in its Answer that the 5½ acres referred to in this allegation was donated land, not land acquired with grant funds. However, the property was shown on the “Exhibit A” airport property map. [FAA DD Exhibit 1, Item 5, page 3.]

All land shown on the “Exhibit A” airport property map constitutes the airport property obligated for compliance under the terms and covenants of a grant agreement. A sponsor is obligated to obtain FAA consent to delete any land so described and shown.

The Respondent admits it transferred this property without getting proper FAA approval and without obtaining the appropriate appraisals. [FAA DD Exhibit 1, Item 5, page 3.]

The FAA Denver Airports District Office became aware of this situation prior to the filing of this Part 16 Complaint and brought the matter to the attention of the Airport Board. We contacted the FAA Denver Airports District Office. They advised us that they received the appraisals for this land on August 28, 2006. Along with the appraisals, the Respondent submitted a formal request to release the parcel from aeronautical use and from the “Exhibit A” airport property map. The Denver Airports District Office is in the process of evaluating the request for release. [FAA DD Exhibit 1, Item 10.]

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, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation 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).]

Although the Respondent is currently in noncompliance with grant assurance 31, *Disposal of Land*, and grant assurance 5, *Preserving Rights and Powers*, as a result of disposing of airport property without FAA permission, the Respondent is actively working with the FAA Denver Airports District Office to cure this noncompliance. The FAA Denver Airports District Office is working with the Respondent to resolve this matter and to ensure the equivalent of the fair market value for this land is deposited in to the airport account. Thus, for the purpose of this Part 16, the issue is moot. Therefore, it is unnecessary for the Director to make a finding regarding the Respondent’s compliance with its federal obligations with respect to transferring or releasing this airport property.

(2) Fuel Depot

The fuel depot referred to in this allegation was an improvement on the land. This improvement (not the land) was sold to an aeronautical service provider who continued to use it for an aeronautical purpose. Whether or not to sell the fuel depot was an airport business decision not subject to FAA review. Selling the fuel depot is neither a violation

of grant assurance 31, *Disposal of Land*, nor grant assurance 5, *Preserving Rights and Powers*.

(3) Construction Material

The construction material referred to in this allegation is loose property. It is not land shown on the airport property map. Whether or not to sell the construction material was an airport business decision not subject to FAA review. Selling the construction material is neither a violation of grant assurance 31, *Disposal of Land*, nor grant assurance 5, *Preserving Rights and Powers*.

(4) Trees and Shrubs

The trees and shrubs referred to in this allegation are personal property, not real property, and are severable from the land. Whether or not to sell the trees and shrubs was an airport business decision not subject to FAA review. Selling the trees and shrubs is neither a violation of grant assurance 31, *Disposal of Land*, nor grant assurance 5, *Preserving Rights and Powers*. (The allegation that the trees and shrubs were given away without receiving any compensation for them is addressed in *Issue 2* above.)

K. Issue 11:

Whether Respondent is in violation of its federal obligations as a result of (1) awarding contracts without public disclosure and FAA oversight, (2) promoting and concealing conflicts of interest among Airport Board members, (3) accepting gratuities and business accommodations from an airport tenant, (4) conducting secret meetings in violation of Wyoming law, and (5) failing to observe requirements of the Joint Powers Agreement and the Airport Board's Charter and Bylaws, as well as canceling public meetings in favor of private meetings and calling executive session meetings without justification or disclosure.

(1) Awarding Contracts

Complainants allege Respondent awarded lucrative government contracts to Mr. Morehouse and his related companies without public disclosure and FAA oversight. [FAA DD Exhibit 1, Item 3, page 6.] Complainants do not provide the facts upon which this allegation is based. Two contracts are referenced in the administrative record with regard to Mr. Morehouse: (a) a lease agreement between the Airport Board and Afton Aircraft Services, Inc., which is discussed fully in other issues of this determination, and (b) a contract for concrete work between Mr. Morehouse and the Airport Board Chairman. [FAA DD Exhibit 1, Item 3, page 13.] Neither of these is a government contract. One is a lease agreement between the Respondent and an airport tenant; the other is a contract between an airport tenant and a member of the Airport Board acting in a personal capacity. The FAA neither approves nor enforces the terms of lease agreements between and among sponsors and tenants.

(2) Conflicts of Interest

Complainants allege Respondent promoted and concealed conflicts of interest among Airport Board members, airport employees, and Mr. Morehouse's companies. [FAA DD Exhibit 1, Item 3, page 6.] Specifically, Complainants allege a conflict of interest with (a) Airport Board chairman Chad Burton and (b) Airport Board member Blake Hoopes. [FAA DD Exhibit 1, Item 3, page 13.] Complainants allege these conflicts of interest resulted in excluding the Complainants from conducting an aeronautical business on the airport in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*. [FAA DD Exhibit 1, Item 3, pages 6 and 13.]

(a) Chad Burton

Complainants allege Mr. Morehouse awarded Mr. Burton's concrete firm a contract to install concrete for the construction of Mr. Morehouse's FBO during the time that Mr. Burton presided, without recusal, over matters involving Mr. Morehouse and his affiliates. [FAA DD Exhibit 1, Item 3, page 13.]

Complainants provide no statement of facts to support this allegation, nor do Complainants explain how this alleged conflict directly, or indirectly, resulted in Complainants' failure to obtain approval for an on-airport aeronautical business venture.

(b) Blake Hoopes

Complainants state that Airport Board Chairman Chad Burton allowed and supported the continued appointment of Airport Board member Blake Hoopes for approximately 10 months after becoming a direct employee of Mr. Morehouse. During the time that Mr. Hoopes was both employed by Mr. Morehouse and served on the Airport Board, Complainants allege Mr. Hoopes regularly voted and advocated on Mr. Morehouse's behalf without recusal on matters involving Mr. Morehouse and on Complainant's requests to establish a commercial business on the airport. [FAA DD Exhibit 1, Item 3, page 13.]

Complainants do not provide a statement of facts to support their allegation that Mr. Hoopes' dual responsibilities were, in fact, concealed from public information. In reviewing the Airport Board minutes included in the administrative record, we found Mr. Blake Hoopes first listed as an Airport Board member in the February 23, 2005, meeting minutes. [FAA DD Exhibit 1, Item 3, exhibit page 122.] At the following month's meeting, March 23, 2005, Complainant M. Daniel Carey pointed out to the Airport Board members that Mr. Hoopes was employed by Afton Aircraft Services, Inc. and that Mr. Carey considered this a conflict of interest. [FAA DD Exhibit 1, Item 3, exhibit page 127.] At the next meeting, April 27, 2005, the Airport Board discussed the possibility of a conflict of interest regarding Mr. Hoopes. The Airport Board meeting minutes from that date state, "A letter was sent from the Airport Board attorney stating that there was not a conflict of interest with Blake on the [Airport] Board." [FAA DD Exhibit 1, Item 3, exhibit page 136.]

The administrative record does not support Complainants' contention that the Airport Board concealed Mr. Hoopes' connection to Mr. Morehouse's business. The possibility that there might have been a conflict of interest was addressed by the Airport Board in conjunction with the airport attorney.

Complainants do not state whether the situation continues to exist. However, based on the language in the Complaint, it appears Mr. Hoopes may no longer be serving in both capacities at this time.

The FAA does not oversee the appointment of members to airport management teams or airport boards. Nor does the FAA monitor management decisions of the airport sponsor or individual airport tenants. Allegations of conflict of interest by local officials are a state law matter for the applicable state or local ethics agency of officials; they will not be addressed by the Director.³⁶

(3) Gratuities and Business Accommodations

Complainants allege the Respondent accepted gratuities and business accommodations from competitor Mr. Morehouse. [FAA DD Exhibit 1, Item 3, page 6.] Complainants do not provide a statement of facts to support this allegation. Nonetheless, the administrative record shows that the Airport Board at least considered accepting an arrangement that included office accommodations for the airport manager in the FBO building operated by Mr. Morehouse.

- On September 15, 2004, Mr. Morehouse offered to provide office space for the airport manager in exchange for supervising the fixed-base operator (FBO) operation at a cost of \$25 per month. [FAA DD Exhibit 1, Item 3, exhibit page 104.]
- On December 20, 2004, the Airport Board agreed it did not want the airport manager's office in Mr. Morehouse's FBO building. [FAA DD Exhibit 1, Item 3, exhibit page 114.]
- Five months later, on May 18, 2005, the Airport Board made another motion to lease office space in Mr. Morehouse's FBO building. At this meeting, an FAA representative from the Denver Airports District Office questioned whether a future FBO operator might feel unfairly treated if the airport manager had an office in the current FBO building. Others present also objected. (It is unclear from the minutes whether the motion passed or was defeated.) [FAA DD Exhibit 1, Item 3, exhibit page 143.]

³⁶ The Director notes Complainants allege the conflict of interest referred to in this allegation resulted, either directly or indirectly, in violations of the Respondent's grant assurances. That connection is not clearly demonstrated in the administrative record. The Director notes that the Complainants' primary concern – that of being prohibited from establishing a commercial aeronautical business on the airport under comparable terms with competing aeronautical businesses – is addressed elsewhere under *Issue 6* and *Issue 8*.

The FAA may advise, but does not monitor or control the management decisions of airport sponsors. Where the actions of the sponsor result in a violation of the sponsor's federal grant assurances, the FAA will step in to resolve the matter. Otherwise, the FAA does not intercede in the management decisions of the airport sponsor. Complainants do not provide a statement of facts or supporting documents to show that the location of the airport manager's office is currently resulting in a grant assurance violation.

(4) Violation of Wyoming Law

Complainants allege Respondent conducted secret airport business meetings in violation of the *Wyoming Open Meetings Act: Wyo. Stat. §§ 16-4-401 to 16-4-407*. [FAA DD Exhibit 1, Item 3, page 6.]

The FAA monitors airport sponsor compliance with its federal obligations. The FAA does not intercede in state law matters. Complainants must address matters of state law with the appropriate authorities in the state.

(5) Joint Powers Agreement, Charter and Bylaws

Complainants allege Respondent refuses to observe appropriate corporate formalities when conducting Airport Board meetings and has not conducted votes and appointment renewals in accordance with the Joint Power's Agreement. [FAA DD Exhibit 1, Item 3, page 13.]

Complainants allege the Airport Board cancels regular public meetings without meaningful notice in favor of conducting airport business at informal, private meetings among Airport Board members. Complainants state such private meetings have occurred regularly from late 2003 to the present, with the latest last-minute cancellations occurring in December 2005 and February 2006, coinciding with the Complainants' attempts to resolve their issues with the Respondent. [FAA DD Exhibit 1, Item 3, pages 11-12.]

Complainants also allege the Airport Board calls executive sessions without appropriate justification and without summary disclosure of the items considered or decided in these meetings. Complainants allege the purpose of these executive sessions is to exclude individuals who are not members of the Mormon Church Ward from the meetings. [FAA DD Exhibit 1, Item 3, page 12.]

Complainants also allege the Airport Board members failed to observe the provisions in the Airport Board's Charter and Bylaws relating to specific term periods. In particular, Complainants allege Airport Board Chairman Chad Burton remained in his position as Chairman beyond the end of his term.³⁷ Complainants also state the Respondent manipulated Airport Board membership by abandoning the schedule of terms of appointed members. [FAA DD Exhibit 1, Item 3, page 11.]

³⁷ The administrative record shows that Chad Burton eventually relinquished his position, and Mark Heiner was later acting as the Airport Board Chairman. [See FAA DD Exhibit 1, Item 9, page 4.]

As noted earlier, the FAA does not monitor or control the management decisions of airport sponsors. The FAA is not a party to the Airport Board's Joint Power's Agreement or the Airport Board's Charter and Bylaws; we have no role in enforcing their requirements. Complainants have not shown that failure of the Airport Board members to comply with the terms of the Joint Powers Agreement or the Airport Board's Charter and Bylaws has resulted in a grant assurance violation.

Conclusion on Issue 11

Complainants allege the various points addressed in *Issue 11* combine to prevent Complainants from being approved to start an aeronautical business on the airport. While the points addressed here may have contributed to that outcome, the causal relationship is not clear. Moreover, it appears that the state process is the appropriate forum for such allegations. As a result, the Director finds the Respondent is not currently in violation of its federal obligations as a result of the following allegations: (1) awarding contracts without public disclosure and FAA oversight, (2) promoting and concealing conflicts of interest among Airport Board members, (3) accepting gratuities and business accommodations from an airport tenant, (4) conducting secret meetings in violation of Wyoming law, and (5) failing to observe requirements of the Joint Powers Agreement and the Airport Board's Charter and Bylaws. The Director notes the Complainants' primary concern – that of being prohibited from establishing a commercial aeronautical business on the airport under comparable terms with competing aeronautical businesses – is addressed under *Issue 6* and *Issue 8* in this determination.

L. Audit Request

Complainants request that the FAA conduct an audit of the airport's finances and management to evaluate the propriety of the land swaps and other private deals discussed under *Issue 2* above. [FAA DD Exhibit 1, Item 9, page 8.] Complainants also request that the Comptroller General of the United States conduct an audit of the airport's accounting system under *Issue 4* above. [FAA DD Exhibit 1, Item 3, page 10.] The FAA declines both of these requests.

VII. CONCLUSIONS

Throughout the administrative record, Complainants argue that Respondent's failure to refute Complainants' claims with evidentiary support is proof of the allegation. This is not correct. The burden of proof lies with the Complainants. Complainants who file under 14 CFR Part 16 shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. [See 14 CFR § 16.23(b)(3).] For many of the issues raised, Complainants did not meet this burden. Although Complainants submitted over 300 pages in exhibits, they consistently failed to explain how the individual exhibits supported specific allegations. Nonetheless, FAA reviewed all documents submitted in this Complaint to determine whether allegations could be supported by the administrative record. We also contacted the FAA Denver Airports District Office for additional information where warranted, pursuant to § 16.29.

Upon consideration of the submissions and responses by the parties, the entire record herein, applicable law and policy, and for the reasons stated in the *Analysis, Discussion, and Findings* section above, the Director of the FAA Office of Airport Safety and Standards finds and concludes as follows:

The Director finds the Respondent is currently in violation of four grant assurances related to three of the 11 issues reviewed.

(1) Respondent is currently in violation of grant assurance 24, *Fee and Rental Structure*, as a result of failing to collect lease payments in accordance with the fee schedule for the fixed-base operator. (See Issue 2, item 3.)

(2) Respondent is currently in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, as a result of enforcing airport minimum standards inconsistently. (See Issue 6.)

(3) Respondent is currently in violation of grant assurance 21, *Compatible Land Use*, as a result of (a) failing to enforce a prohibition on residential use of hangars on the airport, and (b) encouraging the development of a residential airpark adjacent to the airport. (See Issues 7(a) and 7(b).)

The Director notes the Respondent is currently working with the FAA Denver Airports District Office to resolve issues related to the unapproved transfer of airport property (*Issue 2* and *Issue 10*). The Director makes no finding on this matter pending the successful resolution with the Denver Airports District Office.

The Director finds the Respondent is not currently in violation of the remaining grant assurances related to the 11 issues reviewed.

ORDER

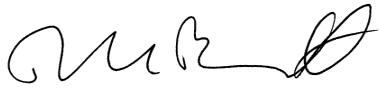
Accordingly, it is ordered that:

1. The Respondent, Afton-Lincoln County Municipal Airport Joint Powers Board, is required to submit a corrective action plan consistent with the principles discussed herein within 30 days from the date of this Order to the Director, Airport Safety and Standards that explains how the Respondent intends to eliminate the violations outlined above.
2. At the expiration of the 30 day period listed in paragraph (1) above, if the Respondent has not filed a corrective action plan acceptable to the FAA, the FAA will withhold, pursuant to 49 U.S.C. § 47106 (d), approval of any applications submitted by the Respondent, Afton-Lincoln County Municipal Airport Joint Powers Board, for grant amounts apportioned under 49 U.S.C. § 47114(d) and/or discretionary fund grant amounts authorized under 49 U.S.C. § 47115.

3. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's determination is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. [Title 14 CFR 16.247(b)(2).] A party to this proceeding adversely affected by the Director's determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's determination.



January 19, 2007

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

Date: _____