UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Valley Aviation Services, LLP **Complainant,** **v.** **City of Glendale, AZ** **Respondent.**	**FAA Docket No. 16-09-06**

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the Complaint filed under Title 14 of the Code of Federal Regulations (CFR) Part 16, by Valley Aviation Services, LLP (Complainant) against the City of Glendale, Arizona, (City, Respondent, or Sponsor), as owner and sponsor of the Glendale Municipal Airport (GEU or Airport).

In this Part 16 Complaint, the Complainant alleges the Respondent has encumbered Complainant's business through actions that cause the Respondent to be in violation of its grant assurance obligations. Complainant summarizes its allegations in its Complaint, stating: "The (Respondent's) activities are part of a long-term attempt to discriminate against Valley Aviation so that it will abandon its leasehold and turn the property back over to the city." [FAA Exhibit 1, Item 1, Page 10] Summarily, Complainant alleges Respondent has taken the following actions:

- Respondent allegedly has restricted Complainant's ability to set its rates comparably to other on airport hangars and leaseholders in a discriminatory manner;
- Respondent allegedly has prohibited Complainant's subtenants to conduct activities on its leasehold that it allows to take place on other leaseholds on the airport;
- Respondent allegedly has prevented Complainant from expanding and improving its leasehold by refusing to allow Complainant to engage in additional business; and

- Respondent's allegedly sporadic and inconsistent application of its rules and regulations has created an inequitable rental structures depriving the airport of nonaeronautical revenues and resulting in unlawful diversion of revenue.

In making the above noted allegations, Complainant contends the Respondent violated Grant Assurance 19, *Operation and Maintenance*, Grant Assurance 22, *Economic Nondiscrimination,* Grant Assurance 24, *Fee and Rental Structure,* and Grant Assurance 25, *Airport Revenues*. Specifically, the Complainant alleges the Respondent:

1. Caused or permitted activity or action on the airport that interfered with Complainant's use for airport purposes in violation of Grant Assurance 19(a);

2. Unjustly discriminated against the Complainant by not enforcing rules and regulations equally in violation of Grant Assurance 22; and

3. Allowed subleasing for commercial activity in a manner that violates the Airport's Minimum Standards and deprives the sponsor of revenue and taxes in violation of Grant Assurance 24 and Grant Assurance 25.

As part of this Complaint, Complainant requests that the FAA:

1. Take such action as is necessary to compel the Respondent to stop its discriminatory conduct;

2. Revoke and reclaim federal tax money that is not serving the purposes of the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987;

3. Deny any further federal funding to the Airport, and recover for the taxpayers dollars that have been used by the Respondent in violation of grant assurances;

4. Make a determination whether the Respondent can mandate rates charged by the Complainant; and

5. Take other appropriate action.

[FAA Exhibit 1, Item 1, page 11.]

Respondent denies each allegation and requests dismissal of the Complaint. Respondent offers five defenses:

1. The Complainant fails to state a claim against Respondent upon which relief can be granted;

2. Complainant has not satisfied the requirements of FAR § 16.21 in that Complainant has not engaged in good faith efforts to resolve the disputed matter informally;

3. Complainant should be estopped from raising claims that Complainant has raised before to the FAA and that the FAA has reviewed and decided in favor of the Respondent;

4. The remedies sought by the Complainant are not warranted by the facts.

[FAA Exhibit 1, Item 5, page 2.]

Respondent offers a fifth defense stating "it is without knowledge or sufficient information to form a belief as to the truth of the allegations." [FAA Exhibit 1, Item 5, pages 2-8.]

Based on the allegations, pleadings, and documentation submitted to the administrative record, the Director finds it appropriate to consider whether the sponsor is in compliance not only with grant assurances 19, 22, 24, and 25, as alleged by the Complainant, but also with Grant Assurance 29, *Airport Layout Plan.*

The decision in this matter is based on: (i) applicable law and FAA policy regarding the Respondent's federal obligations as imposed by grant assurances 19, *Operation and Maintenance;* 22, *Economic Nondiscrimination;* 24, *Fee and Rental Structure;* 25, *Airport Revenues;* and 29, *Airport Layout Plan;* as well as Title 49 United States Code (U.S.C.) § 47107 *et. seq.*; and (ii) arguments and supporting documentation submitted by the parties, which comprise the administrative record reflected in the attached FAA Exhibit 1.

With respect to the allegations in this Complaint and the information obtained in the investigation conducted in accordance with 14 CFR §16.29, under the specific circumstances as discussed below and based on the documentation submitted to the administrative record in this proceeding, the Director finds the Respondent is in violation of Grant Assurance 19, *Operation and Maintenance*; Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 29, *Airport Layout Plan.* The Director finds that the Respondent in not currently in violation of Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 25, *Airport Revenues*.

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

II. PARTIES

A. Respondent and Airport

The City of Glendale, Arizona, (City, Respondent, or Sponsor) is located approximately 10 miles northwest of downtown Phoenix, Arizona. The City owns and operates Glendale Municipal Airport (GEU or Airport), a general aviation airport, which has a single 7,150-foot by 100-foot north/south runway. GEU serves as a reliever to Phoenix's Sky Harbor International Airport (PHX). In addition to PHX, the Phoenix Airport System includes two general aviation reliever airports supported by the City: Phoenix Deer Valley, and

Phoenix Goodyear. Four other airports also serve the general aviation needs of the region. GEU, however, is the closest reliever airport to the downtown area.

The Airport is home to 193 aircraft and handles more than 136,000 operations annually, 87,000 of which are comprised of local traffic. [FAA Exhibit 1, Item 13.]

The Glendale Aviation Advisory Commission advises the City Council on the maintenance and operation of the Glendale Municipal Airport and its role in statewide air transportation. The commission, which meets monthly, is comprised of seven members appointed by the City Council for two-year terms.

The planning and development of the Airport has been financed in part with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.* [FAA Exhibit 1, Item 12.]

B. Complainant

The Complainant, Valley Aviation Services, LLP (Complainant), is an Arizona limited liability partnership. Complainant is a tenant at Glendale Municipal Airport (GEU) in Glendale, Arizona. Complainant is the "successor-in-interest to the original ground lessee."[1] [FAA Exhibit 1, Item 1, pages 1-2.] On October 18, 2005, Complainant's lease was extended to January 7, 2031. [FAA Exhibit 1, Item 5, exhibit F.2.] George Van Houten is a General Partner for Complainant, Valley Aviation Services, LLP. [FAA Exhibit 1, Item 5, exhibit H.]

Complainant operates the Glendale Airport Hangars. Complainant, in turn, commercially subleases portions of the leasehold to subtenants. The leasehold includes large hangars, small T-hangars, and T-shades[2]. Complainant also maintains ramp and office space on the southern end of the Airport. [*See* FAA Exhibit 1, Item 1, exhibit 1.] The Complainant does business with the airport and pays fees and rents to the airport; thus, by definition as set forth in the Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, the Complainant is directly and substantially affected by the alleged noncompliance and thereby has standing in accordance with 14 CFR Part 16.23(a).

III. BACKGROUND AND PROCEDURAL HISTORY

A. Background

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[1] On January 28, 1986, the City of Glendale entered into a ground lease agreement with Richard and Amy Ewing for the area now occupied by Complainant. The Ewings' lease was assumed by a debtor/trust. Richard and Joyce Smith, owners of Smith Enterprises, purchased the leasehold interests from the trust via an assumption and assignment lease executed on May 29, 1991. [FAA Exhibit 1, Item 5, exhibit 7.] On January 1, 1999, Smith Enterprises transferred and assigned all interests under the lease to Complainant. [FAA Exhibit 1, Item 5, exhibit 8.]

[2] A T-Shade is an aircraft parking and/or tie-down space with overhead cover from the sun; it does not have walls or doors as does a T-hangar. The footprint of a t-shade offered by Valley Aviation Services is similar to that of a small T-hangar. [*See*, http://www.glendalehangars.com/availability.html]

1. Events leading up to and including the 1999 Part 13.1 informal complaint

Complainant did not take over the leasehold interests for Glendale Airport Hangars until January 1, 1999. [*See* FAA Exhibit 1, Item 5, exhibit 8.] This Complaint includes actions and events that occurred prior to 1999. These prior events and actions led to a Part 13.1 informal complaint filed by the previous owner of the Glendale Airport Hangars leasehold, Richard Smith, in 1999.[3]

On April 12, 1994, Acting Airport Manager Bruce Burrows[4] issued three letters regarding the Airport Rules and Regulations[5] pertaining to tenant maintenance of tenant-owned aircraft. [FAA Exhibit 1, Item 1, exhibits 5.2, 5.3, and 5.4.] These letters referenced the Airport's Maintenance Covenants. [FAA Exhibit 1, Item 1, exhibit 5.1.] Two of the letters were specifically directed to tenants leasing hangars on what is now the Complainant's leasehold.[6] Specifically, the tenants that received these letters were Jim Creagh, President of J.C. Aircraft Marketing, and Bud Hayes, President of Action Aviation. [FAA Exhibit 1, Item 1, exhibits 5.2 and 5.3] These letters allowed certain maintenance operations to be performed by those tenants of Glendale Airport Hangars. [FAA Exhibit 1, Item 1, exhibits 5.2 and 5.3.]

The next year, on June 15, 1995, the new Airport Manager, James McCue[7], sent a letter to Smith notifying him of lease violations regarding subtenants storing items other than aircraft in the leased hangars. McCue's letter to Smith stated:

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[3] The Respondent has not asked the FAA to rule upon the issue of whether a complainant may be assigned on on-going Part 13 action. Notwithstanding, the FAA has ruled that, under certain circumstances, assignment of a Part 13 action is permissible. See, Venice Jet Center, LLC v. City of Venice, FAA Case No. 16-09-05 at p.15 (Director's Determination)(September 1, 2010) where the FAA concluded that VJC who had initiated informal resolution could transfer its interests to a receiver. However, ultimately, the receiver lost standing when he sold all of his interests to Tristate. In contrast, the Complainant here presently retains assignment of the lease and, therefore, standing.

[4] The Director concludes from evidence submitted to the administrative record that Mr. Bruce Burrows served as the Acting Airport Manager in 1994. Due to the fact that there were five airport managers since 1994, the Director will describe each manager's tenure as appropriate. This is important to this Director's Determination because the Complainant alleges each airport manager enforced or failed to enforce the Airport Rules and Regulations and act on behalf of the airport in very different manners. The Director compiled a list of the airport managers and the estimated times each served in that position based on documentation submitted to the Record. This list may be found on page 41 of this Director's Determination.

[6] Although Complainant was not the leaseholder at the time the letters were written, the Complainant assumed the lease in place. In the interest of continuity of reference in the instant Complaint, the Director will refer to the Smith ownership of the Complainant's lease as "the Smith/VAS Leasehold" and the Complainant's ownership of the leasehold as "Glendale Airport Hangars/VAS" where clarification is necessary.

[7] The Director concludes from the administrative record that Mr, James McCue served as Airport Manager from 1995 to sometime in 1999. [*See* FAA Exhibit 1, Item 1, exhibit 4; FAA Exhibit 1, Item 8, exhibit 4.1; and FAA Exhibit 1, Item 5, exhibit 9.] See list of airport managers on page 41 of this Director's Determination.

Since leasing hangar space for other than the storage and parking of aircraft is in direct violation of your existing lease, you are hereby notified that the City deems you to be in default of your obligations under the lease, I.E.: the obligation to use the leased premises only for the storage and parking of aircraft.

If the default is not cured within 30 days of receipt of this notice, the City shall terminate the lease pursuant to Article IX A 3.

[FAA Exhibit 1, Item 1, exhibit 4.]

Smith responded to McCue's letter on June 20, 1995, by stating that the previous airport manager had made specific exceptions for these subtenants. In addition, Smith references the letters where Mr. Burrows made the exceptions. Smith concluded his letter by stating:

If you are revoking the prior permission and policies of the previous Airport Manager, please contact me immediately, in writing, and we will commence eviction proceedings against Luke AFB, the Phoenix Warbirds, and the City of Glendale Police Department. Further, if your interpretation of permitted maintenance differs from that of your predecessor, please alert me, J.C. Aircraft Marketing Company, and Action Aviation at your earliest opportunity.

I can assure you that we will take every step necessary to comply with the requirements of the Lease Agreement and to protect our leasehold interest.

[FAA Exhibit 1, Item 1, exhibit 5.]

On July 14, 1995, McCue followed up with Smith in a letter stating they are in the process of inspecting hangars, and:

Upon completion of the inspection, you will be notified of those individuals that do not meet the qualifications of hangar tenants. In that regard, please be aware that the Glendale Police Department will be vacating the hangars.

[FAA Exhibit 1, Item 1, exhibit 10.1.]

McCue then sent another letter to Smith on August 3, 1995, stating some hangar inspections are still pending and notified Smith of the units still not completed. McCue then stated:

Also, with regard to the inspections, no one has been evicted. There has been some misunderstanding either by your office or some other quarter. However, all information will be presented to the Aviation Advisory Commission and a request for approval will be made to take actions that will insure full compliance with all lease provisions.

[FAA Exhibit 1, Item 1, exhibit 10.2.]

On August 7, 1995, Smith sent a letter to the Glendale Police Chief advising him that McCue has "decided to evict" [FAA Exhibit 1, Item 1, exhibit 10] the Police Department due to nonaeronautical storage, which violated Smith's lease according to McCue's June 15, 1995, letter. In that letter, McCue stated:

> *So that there is no misunderstanding between us, the City has not approved and does not approve the use of the leased premises except as provided for in Article II B 3.*
>
> [FAA Exhibit 1, Item 1, exhibit 4.]

Then on October 6, 1995, Smith sent letters to five of his subtenants on the leasehold, including the Glendale Police Chief, advising these subtenants Smith had been "instructed by James McCue, the Airport Director, to evict tenants who do not use hangars solely for 'the storage and parking of aircraft.'" [FAA Exhibit 1, Item 1, exhibits 30-34.] In each letter, Smith references a letter dated August 28, 1995, from McCue.[8] Smith also states in his letters to the subtenants that his attorneys "have advised us that we must be consistent in complying with the terms of the underlying Airport Ground Lease," which states tenants must use "hangars solely for aircraft storage." [FAA Exhibit 1, Item 1, exhibits 30-34.]

Nearly two years later, on August 6, 1997, Smith sent a letter to one of his subtenants, John Irwin of Action Aviation, explaining why Smith was forced to evict the company from its hangars. Smith cited McCue's June 15, 1995, letter informing Smith he was in violation of his lease and risked eviction. [FAA Exhibit 1, Item 1, exhibit 29.] According to McCue's letter to Smith, Action Aviation's hangar was among those inspected and found to be violation of the aircraft storage rules, which McCue stated precipitated a default under Smith's lease. [FAA Exhibit 1, Item 1, exhibits 29 and 4.] In Smith's letter to Irwin, Smith claims that despite Action Aviation and other subtenants having been granted exemptions by the previous airport manager, based on the more recent 1995 letter from McCue, Smith had to enforce his lease equally among all his subtenants unless the City agreed to amend Smith's lease. Smith states:

> *As we have repeatedly maintained in discussions with the City, and as we told you in our letter dated July 11, 1997, we are prepared to consider uses beyond a strict and literal interpretation of Article-II-B(3) of the lease, only if the Lease Agreement itself is amended to codify the specific terms, conditions, scope and requirements of such nonconforming and alternate uses. Only then can we guard against capricious enforcement of an airport manager's permitted exceptions. We don't want yet another manager to again establish a new set of rules. We've had three airport managers in the five years we've owned the Glendale Airport Hangars, and each one has differed in his or her interpretation of the Lease Agreement and the goals of the Glendale Municipal Airport. We've learned our lesson three times now: we cannot rely upon the selective authorization of an airport*

[8] The Parties did not submit a copy of the McCue letter for the administrative record in this proceeding.

manager. We will not allow commercial operations without specific changes allowing such use to the Lease Agreement itself.

[FAA Exhibit 1, Item 1, exhibit 29.]

As noted in Smith's letter, the original lease agreement that was signed on January 28, 1986, [FAA Exhibit 1, Item 1, exhibit 28] has been extended through January 7, 2031, by Complainant. [Exhibit 1, Item 5, exhibit F.2.] Article II B(3) of the lease states:

It is specifically understood and agreed upon between the Lessee and Lessor that the demised premises shall be used only for the storage and parking of aircraft.... Aircraft maintenance, repair, washing, commercial operation, or any other activity not specifically described by this agreement is prohibited unless prior written approval has been granted by the Aviation Director.

[FAA Exhibit 1, Item 1, exhibit 28.]

Furthermore, at Article XXIII, Rules and Regulations, the lease states:

Lessee shall observe and comply with all laws, ordinances, rules and regulations of the United States Government, the State of Arizona, the County of Maricopa, and the City of Glendale and all agendas thereof which may be applicable to its operations or to the operation, management, maintenance, or administration of the airport now in effect or hereafter promulgated; and further, Lessee will display to Lessor any permits, licenses, or other evidence of compliance with such laws upon request.

This reference incorporates adherence to published Airport Rules and Regulations. According to the 1989 version[9] of the Airport Rules and Regulations, Section 1-7 addresses Hangar Storage and states:

Aircraft storage hangars shall be used only for the storage of aircraft and associated aircraft equipment and supplies as approved by the Glendale Fire Department. The aircraft owner or operator's motor vehicle may be parked inside the storage hangar in the absence of the aircraft. Any other item to be stored must be approved by the Airport Manager. Minor aircraft maintenance may be performed in the hangar with the exception of the following.... Any maintenance performed by other than the owner, that person or company, must be approved by the City of Glendale to do business on the Airport.

[FAA Exhibit 1, Item 1, exhibit 7.]

Two subsequent versions of Airport Rules and Regulations, both published in 2004, address hangar storage and commercial activities separately. Regarding hangar storage,

[9] When the informal complaint was filed by Smith in 1999, the 1989 Version of the Airport Rules and Regulations was applicable.

one version of the 2004 Airport Rules and Regulations states at Section 2-11, Aircraft Storage Hangars:

> *a. Aircraft storage hangars shall be used for the following purposes:*
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> 1. *Storage and parking of a based aircraft and associated aircraft equipment and supplies as approved...*
> 2. *Parking of vehicles listed on access gate card permit form.*[10]
>
> *b. Use of aircraft storage hangars shall be subject to the following restrictions:*
>
> 1. *No major aircraft alternations and repairs shall be performed in hangars except by the owner of the aircraft;*
> 2. *No storage of equipment not necessary for the maintenance/assembly of the hangared aircraft;*
> 3. *No storage of construction equipment or materials.*
>
> *e. ... During the time that there is no based aircraft, the hangar must remain completely empty.*
>
> [FAA Exhibit 1, Item1, exhibit 3.]

In both versions of the 2004 Airport Rules and Regulations, Section 2-3(C) addresses commercial activities, stating:

> *No person shall use any portion of the Airport for any commercial activities unless such commercial activities are conducted as a tenant pursuant to a written lease, license, permit or agreement with or from the City. The Airport Manager may issue permits or licenses for commercial activities at the Airport to persons whose commercial activities do not require a formal lease, provided that such permits or licenses are effective for no more than 30 days or are terminable by the City without cause upon no more than 30 days notice. The Airport Manager will determine the fees for such permits or licenses unless such fees have otherwise been established by resolution of the City Council.*
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> [FAA Exhibit 1, Item 1, exhibits 2 and 3.]

On April 17, 1999, Richard Smith filed an informal complaint with the FAA's Los Angeles Airports District Office[11] (LAX ADO) alleging disparate economic treatment among lessees on the airport. Specifically, Smith alleged other tenants had been granted more favorable lease terms. [FAA Exhibit 1, Item 5, exhibit D; and FAA Exhibit 1, Item 8, exhibit 1.] The FAA's Compliance Specialist at the LAX ADO made inquiries to

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[10] The other version of the 2004 Airport Rules and Regulations simply states: "Parking of authorized vehicles." [FAA Exhibit 1, Item 1, exhibit 3.] The Director notes it is not clear in the administrative record which version was published first and therefore supersedes the other.

[11] Glendale Municipal Airport is in the service area of the FAA's Los Angeles Airports District Office (LAX ADO); thus informal complaints are handled in by the Western Pacific Region's Airport Compliance Office, which includes the LAX ADO.

the City with regard to the allegations. [FAA Exhibit 1, Item 5, exhibit I.] After conducting an informal investigation, the FAA concluded Smith's allegations that other tenants had negotiated more favorable lease terms did not amount to violations of Grant Assurance 22, *Economic Nondiscrimination*, or Grant Assurance 24, *Fee and Rental Structure*. [FAA Exhibit 1, Item 5, exhibit D.] The FAA found Smith's complaint to be without merit based on two principles:

1. The FAA will not entertain a complaint about the reasonableness of a fee set by agreement when filed by a party to the agreement, and

2. It is the FAA's general position that negotiations between an airport sponsor and different airport users over varying periods of time with differing business strategies and leaseholds will not likely result in the same lease terms and rates. [FAA Exhibit 1, Item 5, exhibit D.]

2. Period 1999 – 2008 Timeframe

On January 1, 1999, the Smith leasehold interests for Glendale Airport Hangars transferred by assumption and assignment to George Van Houten, general partner for Complainant, Valley Aviation Services, LLP (VAS). [*See* FAA Exhibit 1, Item 5, exhibit H.]

On April 24, 2001, Airport Manager Mark Ripley[12] sent a letter to Dean Stryker,[13] manager of Complainant's Glendale Airport Hangars/VAS, approving the use of a specific space to store non-aviation related items due to the space's size constraints and the Manager's recognition that the space could not house an aircraft in its configuration. [FAA Exhibit 1, Item 8, exhibit 2.3.]

In 2003, Smith died, and Van Houten assumed full control of the Glendale Airport Hangars/VAS leasehold. [FAA Exhibit 1, Item 5, exhibit H, page 2.]

On March 28, 2003, Airport Manager Mark Ripley sent another letter to Stryker at Complainant's Glendale Airport Hangars/VAS giving him permission to allow a subtenant, Brenda Kennedy, to operate an avionics shop from one of the hangars. [FAA Exhibit 1, Item 5, exhibit BB] Ripley recognized that, "This is a waiver from the standard airport rules and regulations, but I believe having an avionics shop on the airport will greatly benefit the based and transient pilots." [FAA Exhibit 1, Item 5, exhibit BB.]

Ripley concluded his letter noting:

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[12] The Director concludes from the administrative record that Mr. Mark Ripley served as the Airport Manager from approximately 2000 to 2006. [*See* FAA Exhibit 1, Item 11, exhibit 2, at 90.] See chart on page 40 of this Director's Determination.

[13] Dean Stryker served the manager of Glendale Airport Hangars/VAS preceding Clare Pryke, the manager at the time the Complaint was filed. [FAA Exhibit 1, Item 1, exhibit 29]

Please note that this is not a change in rules, but only a specific waiver applied to this particular operation. Thank you for inquiring about proper permission. I greatly appreciate your desire to operate the hangars within the airport guidelines.

[FAA Exhibit 1, Item 5, exhibit BB.]

Approximately six months later, Ripley sent a letter to Robert McCully, a representative of one of the Airport's hangar associations[14] at Glendale Municipal Airport called Partners in Flight, Inc., advising him two of the hangars did not have aircraft associated with them during the hangar inspection "several months ago" and requesting verification that aircraft were now stored in those hangars. [FAA Exhibit 1, Item 5, exhibit II.]

On November 12, 2003, the Airport Aviation Advisory Commission held a meeting where they discussed fees for covered tie-downs. According to the meeting minutes,

The airport manager recounted to the Commission that they had requested an opportunity to discuss the need for affordable covered tiedowns at the airport. The airport manager informed the Commission that the new owners of the Glendale Hangar and Shades [Complainant herein] had recently talked to him and Glendale Aviation concerning the lack of covered tie-down customers at his facility. Glendale Aviation and the airport manager both strongly suggested that they lower the price of the covered tie-downs by as much as 50%. The [Complainant] stated that if he did that, then his hangar tenants may move to the covered tie-down areas thus reducing his revenue, as the hangars are presently 100% full.

[FAA Exhibit 1, Item 5, exhibit J.]

A motion was made and passed unanimously suggesting the City look into investing in shaded tie-down areas. The motion also included a statement that the fees charged for the covered tiedowns be competitive with other airports.

The commission also discussed renting terminal building office space to a non-aviation community management company. The Airport Manager stated, "The rent charged will be the non-aviation rate of $17.50 per square foot." [FAA Exhibit 1, Item 5, exhibit J.]

On April 30, 2004, Airport Manager Mark Ripley sent a letter to Robert McCully, who appears to be a representative of the Partners in Flight, Inc., hangar association, advising him that the Airport's records indicate a hangar association member does not have an aircraft stored in its hangar, which is a violation of the lease agreement between the hangar association and the City. Specifically, Ripley states:

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[14] Based on the documentation submitted to the Record, the Director concludes there are at least four hangar associations at Glendale Municipal Airport: Partners In Flight, Inc. and Desert Hangar Owners Association [FAA Exhibit 1, Item 8, Page 8]; in addition to Glen Harbor Hangar Association and JAIR Hangar Association. [FAA Exhibit 1, Item 11, attachment E, page 129] Similar to Complainant, these hangar associations lease hangars to tenants at rental rates set by the associations. Although both the hangar associations and the Complainant lease hangars, the hangar associations do not provide other services such as lounge, conference, internet, etc. such as Complainant. *[See*, www.glendalehangars.com]

> *The one absolute requirement for all hangar occupants is that there be an aircraft stored in the hangar. Section 2-7 of the current Rules and Regulations states that* ***"Aircraft storage hangars shall be used only for the following purposes: (a) Storage and parking of aircraft..."*** [emphasis original]
>
> [FAA Exhibit 1, Item 5, exhibit JJ.]

Also on April 30, 2004, Ripley sent a similar letter to Charlie Grindstaff, who appears to be a representative of Desert Hangar Owners Association, advising him that some of the hangar association members do not have aircraft stored in their hangars, which is a violation of the lease agreement between the hangar association and the City. Again, Ripley recounts the current Airport Rules and Regulations, as he did in the letter to Mr. McCully. [FAA Exhibit 1, Item 5, exhibit KK.]

In both letters, Ripley states in bold type: "Bottom line, there must be an aircraft based and stored in the hangar." [FAA Exhibit 1, Item 5, exhibits JJ and KK.] Also in both instances, Ripley gave the hangar association members just over six (6) months to comply with the Airport Rules and Regulations and the lease agreements between the City and the hangar associations.

Four months later, Mr. Michael Bailey, Attorney for the City of Glendale, sent separate letters to airport tenants James Allen Blumer and Ken Tekut advising that unapproved commercial businesses are not permitted on their leaseholds. In his letter to Mr. Blumer, Bailey advised the tenant that he was operating an unapproved commercial business for ultralight instruction at the Airport. [FAA Exhibit 1, Item 5, exhibit GG.] In his letter to Mr. Tekut, Bailey advised the tenant that he was operating an unapproved commercial business at the Airport. [FAA Exhibit 1, Item 5, exhibit GG.]

On October 18, 2005, Complainant executed a Notice of Exercise of Option to Extend Airport Lease to January 27, 2031. [FAA Exhibit 1, Item 5, exhibit F.2.]

On November 16, 2005, Mr. Bailey sent a letter to Mike Ruiz of Glendale Airpark Hangars, LLC, advising him hangar inspections would take place in January 2006. Bailey states:

> *Please note the primary purpose of these regulations is to insure aeronautical use of the hangars. So long as the tenant stores an aircraft within the structure, the storage of ancillary nonaeronautical items will not be cause for a violation.*
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> [FAA Exhibit 1, Item 5, exhibit EE.]

On June 30, 2006, Complainant contacted a City staff member named Tracy Stevens regarding its business plans. Specifically, Complainant told Ms. Stevens that Complainant had tried to bring its corporate jet operation to Glendale Municipal Airport previously, but could not due to the City's refusal to provide a lease extension that would have enabled Complainant to amortize its investment in new structural facilities on the

leasehold grounds. Complainant then requested Stevens' assistance to persuade the City to allow Complainant to construct new facilities to bring another newly ordered jet to the Airport. [FAA Exhibit 1, Item 8, exhibit 2.5.]

Later that year, on or about October 2, 2006, Complainant met with the new interim Airport Manager, Michael Munroe,[15] to discuss plans to renovate the hangars on the Glendale Airport Hangars/VAS leasehold. Complainant advised Mr. Munroe that the costs of the renovations will result in major rent increases for the tenants. [FAA Exhibit 1, Item 8, exhibit 2.6.] In an email to Mr. Munroe dated October 2, 2006, Complainant recounts his plans per their meeting and notes that Glendale Airport Hangars/VAS had "not increased rents for more than seven years, despite three increases in [its] underlying Ground Lease by the City of Glendale over the same period." [FAA Exhibit 1, Item 8, exhibit 2.6.] Complainant offered to help keep rents low by working with the City and "passing any and all incremental leasehold savings on to [his Glendale Airport Hangars/VAS] tenants – 'dollar for dollar.'" [FAA Exhibit 1, Item 8, exhibit 2.6.] Complainant then recounts a litany of proposals Glendale Airport Hangars/VAS made to help keep rental rates low, ensure fair treatment of its subtenants, and increase occupancy and City revenue, all of which Complainant states were denied by the City. Finally, Complainant concludes by stating its continued desire to meet with the City. [FAA Exhibit 1, Item 8, exhibit 2.6.]

The following day, on October 3, 2006, Complainant sent another e-mail to City staff member Tracy Stevens noting that he "received her voice message (that) afternoon." [FAA Exhibit 1, Item 8, exhibit 2.5.] Complainant states that three months had passed since Complainant sent its request to meet and in that timeframe, Mr. Ripley had resigned as airport manager. Ms. Stevens responded to Complainant also via email later that same day, informing Complainant that she provided his request to the City's master plan consultant, Coffman and Associates, and notified Complainant that the City has "a new Airport Manger – Michael Munroe." [FAA Exhibit 1, Item 8, exhibit 2.5.] A meeting was set for October 18, 2006, among the parties.

Complainant told Ms. Stevens he did not have confidence in the master plan consultants as they published a "Phase One" report that showed the City owned the "215 T-hangars and shades" on Complainant's leasehold. [FAA Exhibit 1, Item 8, exhibit 2.5.] Complainant also stated that the former City Attorney, Michael Bailey, resigned recently, too, adding that both Mr. Bailey and Mr. Ripley tried to help Complainant but could not effect change and now both were gone. [FAA Exhibit 1, Item 8, exhibit 2.5.]

Complainant then restated its interest in building a corporate jet facility and investing approximately $4 million in the Airport. Complainant alleges the facility would allow Complainant to supplement T-hangar and shade rents by drawing revenue from this operation. Complainant contends the City's refusal to work with Complainant on this

[15] The Director concludes from the administrative record that Mr. Michael Munroe served as the interim airport manager from approximately 2006 to December 2007, immediately preceding Ms. Skeen's appointment as Airport Administrator in December 2007. [FAA Exhibit 1, Item 11, exhibit 4, at 13.] See chart on page 41 of this Director's Determination.

issue is costing the City revenue, as well as compromising future operations projections. [FAA Exhibit 1, Item 8, exhibit 2.5.]

On October 4, 2006, Complainant sent an e-mail to Acting Airport Manager Michael Munroe, including in it the e-mail string with Stevens cited above, as well as statements of Complainant's position with regard to working with the City in the past. Specifically, Complainant alleged it had been denied numerous opportunities to expand its business and thereby the City's revenue base in the past. Complainant expressed an interest in continuing to pursue its objectives and also expressed an interest in achieving a "level playing field" for its subtenants and its business. Complainant also warned Acting Airport Manager Munroe that if the City continued its "discrimination" against Complainant's Glendale Airport Hanagar/VAS and its subtenants, some subtenants might leave. Complainant concluded by stating the City should "complete the survey of the [Glendale Airport Hangars/VAS] ramp boundaries" in anticipation of upcoming events the City will be hosting.

The Respondent submitted to the administrative record a letter dated April 24, 2007, from Complainant's subtenant Michael Skrzecz to Acting Airport Manager Michael Munroe notifying Munroe that Skrzecz is relocating to Marana Regional Airport due to high rental rates of Complainant's Glendale Airport Hangars/VAS following the renovations Complainant referenced in its previous communications to Munroe and Stevens six months earlier. [FAA Exhibit 1, Item 5, exhibit NN.]

The next minutes of the Airport Aviation Advisory Commission are from the October 8, 2008, meeting. The minutes reflect an objection to the draft Master Plan by James Miller of John F. Long Properties who "questioned the number of based aircraft used for projections and the data approved and provided by the FAA and the consultant." [FAA Exhibit 1, Item 5, exhibit O.] The City of Glendale's Director of City Manager Relations, Cathy Gorham, stated, "The FAA and [Arizona Department of Transportation's] grant for the Glendale Airport Master Plan… had been extended to December 2008 and that getting the project before Council by this deadline was critical." Ms. Gorham also noted "no additional money would be available if the Master Plan Update was delayed." [FAA Exhibit 1, Item 5, exhibit O.]

In support of the undisputed allegation that Complainant's hangar subtenant numbers were decreasing, Respondent submitted a copy of the Complainant's October 2008 subtenant list, which reflected 16 hangar subtenants. [FAA Exhibit 1, Item 5, exhibit S.]

On December 9, 2008, Cushman and Wakefield Appraisers sent Airport Administrator Judith (Judy) Skeen[16] a letter thanking her for "requesting our proposal for appraisal services" and noting "this proposal letter will become, upon your acceptance, our letter of engagement to provide the services outlined herein" for the project Cushman and

[16] According to the administrative record, Ms. Skeen was appointed to the position of Airport Administrator in December 2007. [FAA Exhibit 1, Item 11, exhibit 5, at 24.] Ms. Skeen notes, "I am the manager, but I am also called airport administrator." [FAA Exhibit 1, Item 11, exhibit 5, at 23.] In light of this clarification, the Director will refer to Ms. Skeen's title as Airport Administrator.

Wakefield entitled in its letter "Glendale Airport Hangars - Market Rent Analysis." [FAA Exhibit 1, Item 5, exhibit T.] Two days after this proposal letter was issued, and four days before it was signed, Cushman and Wakefield submitted its appraisal with various attachments including rates from nearby airports and pictures attached to a letter dated December 11, 2008, addressed to Ms. Skeen. [FAA Exhibit 1, Item 5, exhibit T. *See also* FAA Exhibit 1, Item 1, exhibit 26.3.]

The last set of Aviation Advisory Committee meeting minutes submitted to the administrative record are from the January 14, 2009, meeting. These minutes include an update by Airport Administrator Skeen regarding a recent hangar fire. Skeen noted the Airport night staff employee was on duty the night of the fire and helped the fire departments that responded and declared the hangar was condemned. The minutes show a recreational vehicle motorhome was damaged, but no aircraft was destroyed. [FAA Exhibit 1, Item 5, exhibit Q.]

3. Period 2009 up to and including the instant Complaint

Also on January 14, 2009, Airport Administrator Judy Skeen sent a letter to Complainant giving Complainant 30 days notice to restructure its T-hangar and T-shade rental rates by reducing the monthly fees or risk violation of its lease. In the letter, Skeen stated:

> *The City and its airport tenants are under obligation to ensure that airport facilities and services are available for the benefit and use of the public on fair and reasonable terms (15 Code of Federal Regulations Part 152: Airport Assurances (3/2005) [sic]) which have been and will continue to be incorporated into [Complainant's] lease with the City.*
>
> [FAA Exhibit 1, Item 1, exhibit 28.]

Skeen then states Complainant's hangar facilities are under-utilized and alleges this "under-utilization appeared to be due to rates not reflective of comparable rates in the local area." Skeen references an attached appraisal conducted "of local hangar rental rates," then concludes the letter by giving Complainant "30 day (sic) notice to cure under Article IX(A)3 of the lease with the City." [FAA Exhibit 1, Item 1, exhibit 28.] Article IX, "Cancellation by Lessor," (A)3 of the lease states:

> *The failure or refusal of Lessee to observe or perform any of the covenants, terms and conditions on its part to be observed and performed in this agreement or any other agreement with Lessor, and such failure shall continue for a period of more than thirty (30) days after delivery by the City of a written notice of such breach.*
>
> [FAA Exhibit 1, Item 1, exhibit 28.]

On February 11, 2009, Complainant responded to Airport Administrator Skeen's letter with letters to Skeen[17] [FAA Exhibit 1, Item 1, exhibit 27] and to Mayor Elaine Scruggs, City of Glendale. [FAA Exhibit 1, Item 8, exhibit 2.4.] In the letter to Skeen, Complainant concedes to reducing its rates temporarily under protest "in order to avoid a declaration of default of [Complainant's] lease." [FAA Exhibit 1, Item 27.] Complainant expressed opposition to Skeen's claim that Complainant's increased rental rates precipitated vacancies and instead alleged:

> *The city's discriminatory enforcement of published rules, regulations and standards, which govern all airport tenants equally, is the leading cause of our vacancy rate.*
>
> [FAA Exhibit 1, Item 27.]

Complainant continues the letter by outlining its dealing with the City over the past two decades, explaining the rates and increases, as well as proposed negotiations with the City to control costs. Complainant recounts its investments in its leasehold. Over the course of this ten-page letter to Skeen, Complainant narrates a litany of complaints and concludes with a request to meet with the Mayor with Skeen in attendance. [FAA Exhibit 1, Item 27.] Undisputed recent investments made by Complainant's include $300,000 plus in hangar renovations in 2007. [FAA Exhibit 1, Item 1, exhibit 27, page 2.] Regardng Complainant's lease rates, according to the original lease submitted to the Record, Complainant's annual rent is adjusted every three years based on the Phoenix Metropolitan Area's Consumer Pricing Index (CPI) For example, if the Phoenix CPI increased 1.8% in year one, 2% in year two, and .8% in year three, Complainant's annual lease rate for the following three years would increase by a total of 4.6%. [FAA Exhibit 1, Item 1, exhibit 28, page 3]

Complainant's seven-page letter to Mayor Scruggs outlines much of the same complaints and historical dealings between Complainant's leasehold and the City over the years. Complainant objects to the City's "bad faith" approach to dictate Complainant's business and concludes this letter, too, with a request to meet with the Mayor. [FAA Exhibit 1, Item 8, exhibit 2.4.]

On February 18, 2009, Airport Administrator Skeen sent a letter to Clare Pryke, manager for Complainant's Glendale Airport Hangars/VAS notifying Pryke of upcoming hangar inspections. This letter did not reference the February 11, 2009, letter from Complainant. [FAA Exhibit 1, Item 5, exhibit CC.]

Respondent responded to Complainant's February 11, 2009 letter on March 4, 2009 with a letter from City Attorney Craig Tindall.

On April 20, 2009, Natsuno Wolfe of AIG Aviation, sent a letter to Airport Administrator Skeen via facsimile requesting permission for a disabled aircraft to be stored in one of

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[17] Although the February 11, 2009, letter from Complainant to Skeen is included three times in the administrative record under different reference numbers, the Director will use the first citation only when referencing this letter. [*See* FAA Exhibit 1, Item 1, exhibit 27.]

Complainant's hangars. In the letter, Ms. Wolfe states: "I estimate that duration of the storage needed is approximately 3 months." Wolfe indicates she discussed this arrangement with Complainant's manager Pryke. [FAA Exhibit 1, Item 5, exhibit AA.]

On April 21, 2009, Airport Administrator Skeen sent a letter to Pryke granting permission to allow "a disabled aircraft" to be stored in one of Complainant's hangars "for a period not to exceed the three (3) month request" made by the insurance company. Skeen noted in her e-mail that because the aircraft is disabled "according to the Rule and Regulations, Section 4-5, (it) would require prompt removal from airport property." [FAA Exhibit 1, Item 1, exhibit 35.]

The next chronological submissions to the administrative record include a series of photographs showing the contents of numerous hangars in the north end not owned by the Complainant. The time and date stamp on nine of these photographs is April 22, 2009, during the 9:00 a.m. hour.[18] Included in this group are:

1. A photograph showing two non-airworthy aircraft on ramp space. [FAA Exhibit 1, Item 1, exhibit 17.]

2. A photograph showing a twin-engine aircraft without either engine. [FAA Exhibit 1, Item 1, exhibit 18.]

3. A photograph showing a high wing aircraft without an engine. [FAA Exhibit 1, Item 1, exhibit 19.]

4. A photograph showing high wing aircraft without its right wing and without propellers. [FAA Exhibit 1, Item 1, exhibit 20.]

5. A photograph showing a low wing aircraft with a severely damaged right wing and propeller blade. [FAA Exhibit 1, Item 1, exhibit 21.]

6. A photograph showing high wing tail dragger aircraft without its right wing. [FAA Exhibit 1, Item 1, exhibit 22.]

7. A photograph showing a twin-engine aircraft without its right engine. [FAA Exhibit 1, Item 1, exhibit 23.]

8. A photograph showing a twin-engine aircraft without its right engine. [FAA Exhibit 1, Item 1, exhibit 24.]

9. A photograph showing a low wing aircraft missing a propeller blade. [FAA Exhibit 1, Item 1, exhibit 25.]

[18] The Director notes that time and date stamp may or may not reflect precise dates and times. Even so, the Director will rely on the content of the photographs to support allegations in this Determination unless otherwise noted.

Another photograph in the administrative record, time and date stamped 2:44 p.m. on June 4, 2009, shows four police vehicles in a hangar including a S.W.A.T. truck, two other trucks, and a sport utility vehicle. [FAA Exhibit 1, Item 1, exhibit 9.]

A series of five (5) non-dated photographs also were submitted to the administrative record. This group includes the following exhibits:

1. A photograph showing at least four "classic" cars, tools, and workbenches, carpet rolls, a ladder, and other nonaeronautical equipment in a hangar. [FAA Exhibit 1, Item 1, exhibit 11.]

2. A photograph showing a "classic" car, numerous boxes, brooms, and other nonaeronautical equipment in a hangar. [FAA Exhibit 1, Item 1, exhibit 12.]

3. A photograph showing a boat, a hauling trailer, and a red tank in a hangar. [FAA Exhibit 1, Item 1, exhibit 13.]

4. A photograph showing the front cabin of a burned, inoperable recreational vehicle in a hangar. [FAA Exhibit 1, Item 1, exhibit 14.]

5. A photograph showing the rear portion of a burned, inoperable recreational vehicle in a hangar. [FAA Exhibit 1, Item 1, exhibit 15.]

The next photograph submitted to the administrative record is time and date stamped 13:14:18 on January 4, 2009.[19] This photograph shows white foam on the floor of a hangar that also contains workbench size tools, an auto tire, and other miscellaneous items. [FAA Exhibit 1, Item 1, exhibit 16.]

> The administrative record is silent until June 16, 2009, on which date Airport Administrator Skeen sent an e-mail to Complainant's manager Pryke stating that the airport rules and regulations were last revised in 2004. Skeen noted it was time to review them again and asked if anyone from Complainant's leasehold would like to serve on the review committee. [FAA Exhibit 1, Item 5, exhibit X.]

The agenda for the July 7, 2009, Rules and Regulations Update Meeting submitted to the administrative record indicates this was the first meeting. The sign-in sheet shows Complainant's manager Pryke attended the meeting. [FAA Exhibit 1, Item 5, exhibit Y.]

The current Complaint was filed on July 10, 2009.

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[19] The Director infers, based on the content of the January 14, 2009, meeting minutes submitted to the administrative record by the Respondent, that these photographs showing the fire damaged recreational vehicle motorhome and other fire related photographs were taken in January 2009 as indicated on the photograph's time and date stamp. [FAA Exhibit 1, Item 5, exhibit 17.]

B. Procedural History

On July 10, 2009, Complainant filed this Part 16 Complaint alleging the Respondent violated Grant Assurance 19, *Operation and Maintenance;* Grant Assurance 22, *Economic Nondiscrimination;* Grant Assurance 24, *Fee and Rental Structure;* and Grant Assurance 25, *Airport Revenues.* [FAA Exhibit 1, Item 1.]

On July 27, 2009, the FAA provided a Notice of Docketing for the Complaint. [FAA Exhibit 1, Item 2.]

During August 2009, Respondent requested an Extension of Time to file its Answer. [FAA Exhibit 1, Item 3.]

On August 28, 2009, the FAA granted Respondent's request for Extensions of Time to Answer Complaint to September 17, 2009. [FAA Exhibit 1, Item 4.]

On September 17, 2009, Respondent filed its Answer to the Complaint and Motion to Dismiss. [FAA Exhibit 1, Item 5, attachment 1 and exhibits A-OO.]

During September 2009, Complainant requested an Extension of Time to file its Reply to October 30, 2009. [FAA Exhibit 1, Item 6.]

On September 30, 2009, the FAA granted Complainant's requests for Extension of Time to files its Reply to October 30, 2009. [FAA Exhibit 1, Item 7.]

On November 5, 2009, Complainant filed its Reply. [FAA Exhibit 1, Item 8, exhibits 1-5.]

On November 12, 2009, Respondent filed a notice of request for Extension of Time to file its Rebuttal to December 11, 2009. [FAA Exhibit 1, Item 9.]

On November 12, 2009, the FAA granted Respondent's requests for Extension of Time to files its Rebuttal to December 11, 2009. [FAA Exhibit 1, Item 10.]

On December 11, 2009, Respondent filed its Rebuttal. [FAA Exhibit 1, Item 11, attachments A-E.]

On April 5, 2010, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to June 30, 2010. [FAA Exhibit 1, Item 14.]

On June 24, 2010, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to September 15, 2010. [FAA Exhibit 1, Item 15.]

On September 16, 2010, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about November 1, 2010. [FAA Exhibit 1, Item 16.]

On October 26, 2010, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about January 31, 2011. [FAA Exhibit 1, Item 17.]

On January 31, 2011, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about February 28, 2011

On March 3, 2011, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about April 18, 2011

On April 13, 2011, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about May 13, 2011

On May 13, 2011, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about May 27, 2011

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable federal law and policy:

- Whether the Respondent is in violation of Grant Assurance 19, *Operation and Maintenance*, or Grant Assurance 29, *Airport Layout Plan*, by allowing nonaeronautical use of Airport hangars for storing non-aviation items and for operating non-aviation related industries.

- Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by failing to apply its Airport Rules and Regulations consistently among similarly situated tenants.

- Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by imposing a rental rate on Complainant.

- Whether the Respondent is in violation of Grant Assurance 24, *Fee and Rental Structure*, or Grant Assurance 25, *Airport Revenues*, by failing to collect taxes and fees for commercial aeronautical and nonaeronautical businesses operating on the Airport.

While the Complainant alleges violations of grant assurance 19, *Operation and Maintenance,* the Director believes grant assurance 29, *Airport Layout Plan*, also is at issue.[20]

[20] In accordance with 14 CFR §16.29, "If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA investigates the subject matter of the complaint.' As part of his further investigation, the Director incorporated a copy of the airport's most recent airport layout plan on file with the agency's Los Angeles Airports District Office. [See, FAA Exhibit, Item 18]

V. APPLICABLE LAW AND POLICY

The federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or 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 the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, enforcement of Airport Sponsor Assurances, and the complaint and appeal process.

A. The 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 (AAIA) of 1982, as amended. Title 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

B. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *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.[21] FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order), issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with federal obligations of airport sponsors. 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.

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[21] *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.

Five FAA grant assurances apply to the circumstances set forth in this Complaint: (1) Grant Assurance 19, *Maintenance and Operations;* (2) Grant Assurance 22, *Economic Nondiscrimination;* (3) Grant Assurance 24, *Fee and Rental Structure*; (4) Grant Assurance 25, *Airport Revenues*; and (5) Grant Assurance 29, *Airport Layout Plan.*

(1). Grant Assurance 19, *Operation and Maintenance*

Grant Assurance 19, *Operation and Maintenance*, implements the provisions of the AAIA, 49 U.S.C. § 47107(a)(7), and requires, in pertinent part, that the sponsor of a federally obligated airport assure:

> a. *The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. ...*
>
> *In furtherance of this assurance, the sponsor will have in effect arrangements for:*
>
> *(1) Operating the airport's aeronautical facilities whenever required;*
> ....

Additionally, FAA Order 5190.6B provides that the owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety and efficiency of flight operations and to protect the public using the airport. "Restricting hangars to related aeronautical activities," and "setting time limits on the open storage of non-airworthy aircraft, wreckage, and unsightly major components," are included as examples of reasonable rules and regulations a sponsor may adopt to comply with this grant assurance. [*See* FAA Order 5190.6B at Section 11.6.]

(2). Grant Assurance 22, *Economic Nondiscrimination*

Grant Assurance 22 of the prescribed sponsor assurances implement requires, in pertinent part, that the sponsor of a federally obligated airport assure:

> a. *It 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.*
>
> b. *In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or*

corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to

1. furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

2. charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchases.

c. Each fixed-base operator 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.

* * *

f. It 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.

* * *

h. 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.

i. 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.

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.

The owner of an airport developed with federal assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination. [*See* FAA Order 5190.6B at Section 9.1.a.] 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. 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. [*See* FAA Order 5190.6B at Section 14.3.]

FAA Order 5190.6B describes the responsibilities under Assurance 22 assumed by the owners or sponsor of public use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* FAA Order 5190.6B at Chapter 9.]

(3). Grant Assurance 24, *Fee and Rental Structure*

Grant Assurance 24, *Fee and Rental Structure*, implements the provisions of the AAIA, 49 U.S.C. § 47107(a)(13), and requires, in pertinent part, that the sponsor of a federally obligated airport assure:

> *It 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.*

Grant Assurance 24 addresses fees the owner or sponsor levies on airport users in exchange for the services the airport provides and satisfies the requirements of § 47107(a)(13) by addressing self-sustainability. The intent of the assurance is for the airport operator to charge fees that are sufficient to cover as much of the airport's costs as is feasible while maintaining a fee and rental structure consistent with the sponsor's other federal obligations.

In addition, FAA Order 5190.6B states:

> *To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport.* [FAA Order 5190.6B at Section 9.6.e.]

(4). Grant Assurance 25, *Airport Revenues*

Grant Assurance 25, *Airport Revenues*, implements provisions of 49 U.S.C. § 47107(b) and § 47133, et seq., and requires, in pertinent part, that the sponsor of a federally obligated airport assure:

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.

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.*

FAA's Policy and Procedures Concerning the Use of Airport Revenues (64 Fed. Reg. 7696, February 16, 1999) (*Revenue Use Policy*) provides, among other things, the FAA's policy on the use of airport revenue. It provides, in relevant part, that:

> *All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:*
>
> *Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:*
>
> i. *From any activity conducted by the sponsor on airport property acquired with federal assistance;*
>
> ii. *From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or*
>
> iii. *From any nonaeronautical activity conducted by the sponsor on airport property not acquired with federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.*
>
> [*See Revenue Use Policy* at Section II.B.1.b., 64 Fed. Reg. 7696, 7716]

(5). Grant Assurance 29, *Airport Layout Plan*

Grant Assurance 29, *Airport Layout Plan*, implements provisions of 49 U.S.C. § 47107(a)(16), and requires that the sponsor of a federally obligated airport assure:

a. *It 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.*

Specifically, Grant Assurance 29 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:

C. The FAA Airport Compliance Program

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

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their federal obligations and the public's 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 that airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of federal property to ensure that airport sponsors serve the public interest.

FAA Order 5190.6B, *Airport Compliance Manual*, dated September 30, 2009, sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures to be followed by FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for receiving federal funds or federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates the interpretation of grant assurances by FAA personnel.

The FAA Airport 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 of whether an airport sponsor currently is 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 an applicable federal obligation to be grounds for dismissal of such allegation. [*See* e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket 16-99-10 (8/30/01); upheld in Wilson Air Center, LLC v. FAA, 372 F.3d 807 (C.A. 6, June 23, 2004).]

FAA Order 5190.6B outlines the standard for compliance, stating:

> *A sponsor meets commitments when: (1) The federal obligations are fully understood; (2) A program (e.g., preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments; (3) The sponsor satisfactorily demonstrates that such a program is being carried out; and (4) Past compliance issues have been addressed.*
>
> [*See* FAA Order 5190.6B at Section 2.8.b.]

D. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of

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

E. The Complaint and Appeal Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant(s) shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint(s) shall also describe how the complainant(s) directly and substantially has/have been affected by the things done or omitted by the respondent(s). [*See* 14 CFR § 16.23(b)(3-4).]

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

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedures Act (APA) and federal case law. The APA provision [*See* 5 U.S.C. § 556(d)] states, "(e)xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." [*See also* Director, Office Worker's Compensation Programs, Department of Labor v. Greenwich Colleries, 512 US 267, 272 (1994) and Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155 (DC Cir, 1998).] Title 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires the Complainant to submit all documents then available to support his or her complaint. Similarly, 14 CFR § 16.29 states, "Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance."

Title 14 CFR §§ 16.31(b) and (c), provide "The Director's determination will set forth a concise explanation of the factual and legal basis for the Director's determination on each claim made by the complainant. A party adversely affected by the Director's determination may appeal the initial determination to the Associate Administrator as provided in §16.33." In accordance with 14 CFR §§ 16.33(b) and (e), upon issuance of a Director's determination, "a party adversely affected by the Director's determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination;" however, "(i)f no appeal is filed within the time period

specified in paragraph (b) of this section, the Director's determination becomes the final decision and order of the FAA without further action. A Director's determination that becomes final because there is no administrative appeal is not judicially reviewable."

Title 14 CFR § 16.247(a) defines procedural recourse for judicial review of the Associate Administrator's final decision and order, as provided in 49 U.S.C. § 46110 or section 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended, (AAIA), 49 U.S.C. §§ 47106(d) and 47111(d).

VI. ANALYSIS AND DISCUSSION

Prior to analyzing and discussing the pertinent issues in this case, it is relevant to restate that the FAA's Office of Airports reviews matters pertaining to a sponsor's compliance with its federal grant assurance agreements. [*See* 14 CFR § 16.1.] The agency does not replace or act on behalf of local law enforcement, civil courts, or other legal forums outside the scope of the FAA's Part 16 purview.

A. Complainant's Request for Relief

In its Complaint the Complainant set forth five specific requests in its prayer for relief. These were enumerated previously and will be addressed here:

A. Take such action as is necessary to compel the Respondent to stop its discriminatory conduct;

As set forth above, the purpose of the Airport Compliance Program is to ensure that airport sponsors comply with their federal obligations in the form of grant assurances, surplus and nonsurplus obligations, or other applicable federal law. It is expected that airport sponsors will voluntarily comply with their grant assurance obligations. When all reasonable efforts have failed to achieve voluntary compliance on the part of the sponsor, the FAA may take more formal compliance actions. This may result in withholding federal funds, issuing a Notice of Investigation (NOI) under 14 Code of Federal Regulations (CFR) Part 16, or initiating judicial action if warranted. An option available to the ADOs and regional airports divisions during the informal resolution process is to limit AIP grant funding to entitlement funding only; issuing a NOI or initiating formal legal action are options exercised by the FAA Headquarters (HQ) Airport Compliance Division (ACO-100) in accordance with 14 CFR Part 16 procedures. FAA Order 5190.6B, at 2.4.a. It is the determination of the Director at the initial stage and the Associate Administrator for Airports at the final stage to determine the appropriate sanction. 14 CFR §§ 16.31(b), 16.109(a), and 16.241(c).

The Complainant's request to "[t]ake such action as is necessary to compel the Respondent to stop its discriminatory conduct" is granted as set forth below, insofar as the Director's authority as described above. "[S]uch action as is necessary" is described in the Order below.

B. Revoke and reclaim federal tax money that is not serving the purposes of the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987;

This prayer for relief is denied. The Complainant has failed to describe how the "federal tax money is not serving the purposes of the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987." Notwithstanding, as discussed immediately above the FAA has the discretion to impose certain sanctions upon a noncompliant airport. And the FAA has the authority to recover illegally diverted funds or to make an offset against future grants. See, 49 U.S.C. 47107(n)(3). As set forth below, the appropriate action in this instance is described in the Airport Corrective Action Plan.

C. Deny any further federal funding to the Airport, and recover for the taxpayers dollars that have been used by the Respondent in violation of grant assurances;

This prayer for relief is denied. See discussions and conclusions set forth in B., above.

D. Make a determination whether the Respondent can mandate rates charged by the Complainant; and

As set forth, *infra* the Airport has a federal obligation to ensure airport rates are fair and reasonable, including rates charged by tenant service providers. A sponsor may impose rates, if justified, to comply with this federal obligation. There must, however, be a reasonable basis for establishing the rates, and the rate requirement must be applied consistently to all similarly situated tenant service providers. Accordingly, the Complainant's request that the FAA make a determination whether the Respondent can mandate rates charged by the Complainant is granted. The Respondent is permitted, within the scope described herein, to mandate rates charged by the Complainant.

E. Take other appropriate action.

The Complainant's request is granted. See the action described in the Order, *infra*.

B. Respondent's Motion to Dismiss

In accordance with 14 CFR Part 16.23(j), the Respondent filed with its Answer "a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities." [FAA Exhibit 1, Item 5; and FAA Exhibit 1, Item 5, Attachment A.] In the supporting memorandum, the Respondent asserts the Complaint should be dismissed because Complainant's allegations:

> *Are not only unsupported by the facts, but procedural issues justify dismissal of all, or at least part, of the allegations on at least two grounds:*

1. *Complainant has failed to engage in good faith efforts to resolves Complainant's issues with the Respondent as required before submitting a Part 16 complaint; (and)*

2. *The FAA has already reviewed, and dismissed, allegations of discriminatory treatment made by Complainant's predecessor to FAA officials in 1999.*

[FAA Exhibit 1, Item 5, Attachment A, page 4.]

With regard to its Motion to Dismiss, Respondent first addresses its reasoning why it believes Complainant has not engaged in good faith efforts to resolve the issues in this Complaint. Summarily, Respondent alleges a series of previous disputes are "symptomatic of a pattern of [Complainant's] failing to work with Airport officials to resolve issues" and thus support Respondent's contention that Complainant did not engage the Respondent as required by Part 16. [FAA Exhibit 1, Item 5, Attachment A, page 23.]

As its second reason for requesting dismissal, Respondent states that similar issues were adjudicated previously by the FAA. Respondent claims "many of [Complainant's] allegations in the Complaint took place before May 1999" and that Complainant's allegations "either rehash allegations that have already been reviewed and found to be incorrect by the FAA or they raise issues that are now stale and should have been raised with the FAA in 1999." [FAA Exhibit 1, Item 5, Attachment A, page 24.]

Based on the documentation submitted to the administrative record, the Director finds Complainant completed adequate steps to attempt to pursue remedies. The administrative record reflects that Complainant requested numerous meetings with the Mayor and other personnel with the capacity to make long-term planning decisions regarding the Respondent[22] up to and including Complainant's response to the eviction letter in early 2009. The Director finds the Glendale City Attorney's own statements[23] to Complainant's attorney indicate Respondent was not interested in engaging in good faith negotiations or opening up a dialogue with Complainant as Complainant repeatedly requested. Thus, the Director finds Respondent's motion to dismiss on the first grounds to be unsupported by the facts and documentation submitted to the administrative record.

Respondent's second premise for requesting dismissal is based on its claim that the issues cited by the Complainant in the instant Complaint were dismissed previously by the FAA's 1999 informal complaint resolution letter. [FAA Exhibit 1, Item 5, exhibit D.] The Director notes that a significant amount of evidence submitted to the administrative record

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[22] While Respondent claims its Airport Administrator Judith Skeen was available to attend meetings with Complainant, Ms. Skeen herself noted she "didn't do anything" to work towards a solution with Complainant and, in fact, also admits she does not "always set all policy…" [FAA Exhibit 1, Item 11, exhibit 5, page 80.]

[23] In a March 4, 2009, letter to Complainant's attorney replying to Complainant's February 11, 2009, letter to the City Mayor and Airport Administrator Skeen requesting a meeting, Glendale City Attorney Craig Tindall wrote, "I do not believe it is a good use of anyone's time to address each accusation individually and will merely dispute them in their entirety." [FAA Exhibit 1, Item 5, exhibit W.]

includes allegations of noncompliance after the 1999 informal complaint. Furthermore, the documentation pre-dating the 1999 informal complaint supports Complainant's allegations that there is a trend of inconsistent administration of Airport policy, which precipitated Complainant's accusations in the instant Complaint regarding possible violations of Grant Assurance 22, *Economic Nondiscrimination*. [FAA Exhibit 1, Item 8.] Once again, based on a prima facie review of the documentation submitted to the administrative record, the Director finds there are sufficiently substantiated, currently applicable allegations to sustain this Complaint being adjudicated under 14 CFR Part 16.

The Director hereby denies Respondent's motion to dismiss.

We have identified four issues to review in this matter:

Issue (1): Whether the Respondent is in violation of Grant Assurance 19, *Operation and Maintenance*, and/or Grant Assurance 29, *Airport Layout Plan*, by allowing nonaeronautical use of Airport hangars for storing non-aviation items and for operating non-aviation related industries.

Issue (2): Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by failing to apply its Airport Rules and Regulations consistently among similarly situated tenants.

Issue (3): Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by imposing a maximum rental rate that Complainant may charge to its subtenants.

Issue (4): Whether the Respondent is in violation of Grant Assurance 24, *Fee and Rental Structure*, or Grant Assurance 25, *Airport Revenues*, by failing to collect taxes and fees for commercial aeronautical and nonaeronautical businesses operating on the Airport.

A. ISSUE (1)

Whether the Respondent is in violation of Grant Assurance 19, *Operation and Maintenance*, and/or Grant Assurance 29, *Airport Layout Plan*, by allowing nonaeronautical use of Airport hangars for storing non-aviation items and for operating non-aviation related industries.

Complainant alleges Respondent's willingness to allow nonaeronautical activity in hangars designated for aeronautical use violates Grant Assurance 19, *Operation and Maintenance*. [FAA Exhibit 1, Item 1; and FAA Exhibit 1, Item 8.] Complainant alleges the Respondent:

1. Allowed nonaeronautical activities such as "commercial businesses that have nothing to do with aviation activities" – including cabinet making shops – to

operate in airport hangars. [FAA Exhibit 1, Item 1, pages 7-8; and FAA Exhibit 1, Item 8.]

2. Allowed tenants to store nonaeronautical items, such as police vehicles, classic cars, carpet rolls, recreational vehicles (RVs), and other nonaeronautical related items in airport hangars. [FAA Exhibit 1, Item 1; and FAA Exhibit 1, Item 8.]

3. Allowed extended and unlimited storage of non-airworthy, disabled aircraft on the airport[24]. [FAA Exhibit 1, Item 1, page 8; and FAA Exhibit 1, Item 8.]

Complainant submitted fifteen (15) photographs showing some of the alleged nonaeronautical activity and storage. [*See* FAA Exhibit 1, Item 1, exhibits 9, and 11-25.] For example, three of these photographs show a burned recreational vehicle (RV) in a hangar. Another photograph shows the flame retardant foam apparently used to extinguish the fire. Complainant's contention that the RV caught fire while stored in a hangar is supported by evidence submitted to the administrative record by the Respondent. [FAA Exhibit 1, Item 5, exhibit Q.] The January 14, 2009, GEU Aviation Advisory Commission Meeting Minutes state:

> *[The airport administrator] updated the Commission on the recent hangar fire... The hangar was condemned... An RV Motorhome was damaged but no aircraft was destroyed.*
>
> [FAA Exhibit 1, Item 5, exhibit Q]

The Respondent does not deny or refute any part of these allegations regarding the nonaeronautical use of hangars. Rather, Respondent argues it does not prohibit the storage of some of the items identified by Complainant in Airport hangars. [*See* FAA Exhibit 1, Item 5, pages 5-6.]

At the same time, Respondent states it is not aware of hangar storage for such inappropriate items as the RV. Respondent addresses the RV allegation by stating Respondent "is without knowledge or information sufficient to form a belief as to the truth of the allegations." [See FAA Exhibit 1, Item 1, page 7; and FAA Exhibit 1, Item 5, pages 5-6.] Yet the administrative record includes Respondent's own submission with minutes from the January 14, 2009, GEU Aviation Advisory Commission Meeting acknowledging the hangar fire and the presence of a burned out RV in that hangar. [*See* FAA Exhibit 1, Item 5, exhibit Q; and Answer, paragraph 27.]

Respondent ultimately does not deny Complainant's allegations that it allows nonaeronautical use of aeronautical land. In its Memorandum supporting its Answer, the Respondent states, "[Complainant] seems to imply that [Grant Assurance 19] prohibits any non-aeronautical use of an airport." Respondent argues that Grant Assurance 19

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[24] Complainant also states that by allowing the storage of non-airworthy aircraft on the Airport, the City is violating its own Airport Rules and Regulations. [*See* FAA Exhibit 1, Item 1; and FAA Exhibit 1, Item 1, exhibit 2 at Section 4-5.] The Director examines the Respondent's compliance with, and enforcement of, its own Airport Rules and Regulations under Issue 2 in this Determination.

permits non-aeronautical uses, so long as they do not interfere with aeronautical uses. [FAA Exhibit 1, Item 5, Attachment A, page 38.]

Grant Assurance 19, *Operation and Maintenance*, obligates the airport sponsor to operate the Airport in a safe and serviceable condition at all times. This assurance prohibits a sponsor from causing or permitting any activity or action on the airport that would interfere with its use for airport purposes.

The Director will determine whether the use of aeronautical leaseholds, to include but not limited to the use of aviation land such as hangars, as well taxiways and aprons developed with AIP funds, for nonaeronautical purposes amount to a violation of Grant Assurance 19, *Operation and Maintenance*..

Grant Assurance 19 requires a sponsor to "not cause or permit any activity or action (on the airport) which would interfere with its use for airport purposes." [*See*, FAA Airport Sponsor Assurances, #19 and 49 U.S.C. § 47107(a)(7-8)] To understand the intent and determine the applicability of the language "use for airport purposes," the Director relies upon statute, guidance in FAA's Compliance Order, and precedent.

Section 737 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, now codified under 49 USC § 47131, requires the compilation of the Land Use Compliance Report by the FAA, which is submitted to Congress annually. This report is to provide a detailed statement listing airports that are not in compliance with Federal grant assurances or other Federal land use requirements with respect to airport lands. The reporting requirement was instituted in the wake of a 1999 General Accounting Office (GAO) Report to Congressional Questioners entitled, "General Aviation Airports: Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement." ["Report" or "Report to Congress"] This Report found there were significant issues pertaining to the unauthorized use of aeronautical land for nonaeronautical purposes.

Chapter 21 of FAA Order 5190.6B provides explicit guidance for land use inspections mandated under the statute resulting from the Report to Congress[25]. In fact, one of the ten problem areas identified is nonaeronautical use of aeronautical land. Specifically, the Order states:

> *The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are located on designated aeronautical use land without FAA approval or on property not released by FAA, and permitting dedicated aeronautical property to be used for nonaeronautical uses. Examples of typical uses include using hangars to store vehicles or other unrelated items. Other improper land uses found in the past have included using aeronautical land for nonaeronautical purposes such as animal control facilities, non airport vehicle and maintenance equipment storage, aircraft museums, and municipal administrative offices.* [FAA Order 5190.6B at Section 21.6(f)(5)]

[25] In FAA Order 5190.6A, similar guidance was found under Section 5-8 although it did not include a specific reference to the statute since it was enacted more than a decade after this guidance was published.

Finally, the Director looked to Part 16 precedent, which also reflects the findings in the Report to Congress regarding a sponsor's obligations for operating and maintaining an airport for aviation purposes. Specifically, in United States Construction Corp. v. City of Pompano Beach, FAA Docket No. 16-00-12, (July 10, 2002) (Final Agency Decision) [Pompano], the Director found:

> *Operating the airport for aeronautical use is not a secondary obligation; it is the 'prime obligation.' This prime obligation includes the opportunity for leaseholders to develop airport property for aeronautical use.* [Pompano at page 21]

In Asheville Jet, Inc. d/b/a Million Air Asheville v. Asheville Regional Airport Authority; City of Asheville, North Carolina; and Buncombe County, FAA Docket No. 16-08-02, (October 1, 2009) (Director's Determination) [Asheville Jet], the Director held, "Airport projects funded with federal grants are expected to be for the benefit and use of the aviation public." [Asheville Jet at page 13]

According to the FAA Grant History Report for GEU, significant AIP funds have been expended on land acquired for development as well as on airport construction projects including taxiways and aprons, which provide access to hangars. [FAA Exhibit 1, Item 12] In fact, the Respondent has received more than $5.1 million in discretionary funds from the FAA since 1982 to "acquire land for development." [*See*, FAA Exhibit 1, Item 12]

In analyzing the evidence submitted to the Record, the Director notes that the Respondent agrees that Grant Assurance 19 obligates the City "to operate and maintain the airport for aeronautical users of the Airport." [FAA Exhibit 1, Item 5, Attachment A at page 38] However, the Director is confounded by the Respondent's unorthodox interpretation of Grant Assurance 19 when it alleges this Assurance:

> *Does not obligate Glendale to prohibit non-aeronautical uses of the Airport. Instead it prohibits Glendale from unreasonably interfering with, or permitting interference with, aeronautical use of the Airport.* [FAA Exhibit 1, Item 5, Attachment A at page 38]

The Director is concerned that the Respondent does not comprehend that allowing nonaeronautical usage of aeronautical land, a significant portion of which was purchased and developed with AIP funding that is specifically set aside for aviation uses, is interfering with its intended use. If the Federal government had intended its investment to be used for purposes other than aeronautical, it would not have provided funding via the Airport Improvement Program and its predecessor programs,[26] to on-airport projects. When an airport sponsor requests and is awarded AIP funds to acquire land for

[26] The Director notes GEU has received funding for airport land as well as improvements under FAAP (Federal Aid to Airports Program) and ADAP (Airport Development Aid Program); these are FAA funding vehicles that preceded the current AIP program, which was instituted under the Airport and Airway Improvement Act of 1982.

development, it is obligated to ensure such lands are used for aeronautical purposes. [*See*, 49 USC §47107(c)] As noted above, guidance for restricting nonaeronautical use of aeronautical land is clearly delineated in statute as well as FAA Order 5190.6B (see above) and its predecessor, FAA Order 5190.6A at Section 5-8.

Even more disconcerting to the Director is the fact that Respondent itself admitted that hangar space was needed on the field. In the deposition of Airport Administrator Judith Skeen, Ms, Skeen was asked if the Respondent intended to evict Complainant by sending the January 14, 2009 letter [*See*, FAA Exhibit 1, Item 1, Exhibit 26]. Ms Skeen, responded: "No. We had a number of people that were coming to us complaining and wanting their aircraft in hangars and tie-downs." [FAA Exhibit 1, Item 11, Attachment E at page 63] This statement directly contravenes Respondent's previous statement regarding its interpretation of Grant Assurance 19 when Respondent stated, "Grant Assurance 19 permits non-aeronautical uses, so long as they do not interfere with aeronautical uses." [FAA Exhibit 1, Item 5, Attachment A at page 38]

The Director also notes that nonaeronautical commercial uses of hangar space may pose additional safety hazards. For example, a cabinet shop may use paint thinners, or a car racing team may use other flammable products. While the Director understands the cabinet shop is no longer located on the Airport, the City is reminded that nonaeronautical commercial uses of land designated and maintained for aeronautical uses are not consistent with Grant Assurance 29[27] and applicable statute. [*See* 49 U.S.C. § 47107(c).]

Grant Assurance 29, *Airport Layout Plan*, obligates the airport sponsor to ensure its designated aeronautical areas are used exclusively for aeronautical purposes. In addition, Section 737 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, now codified under 49 U.S.C. § 47131, requires FAA to compile the Land Use Compliance Report, submitted to Congress annually, documenting whether or not areas designated for aeronautical use are being used inappropriately for nonaeronautical purposes on general aviation airports.[28]

Allowing nonaeronautical use of land developed and designated as aeronautical on an approved airport layout plan is a violation of Grant Assurance 29, *Airport Layout Plan.* Among other requirements, Grant Assurance 29, *Airport Layout Plan*, requires a sponsor keep up to date at all times an airport layout plan of the airport showing… the location of

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[27] If the Respondent wishes to allow interim nonaeronautical use of specific aeronautical land, it may request FAA approval as set forth in FAA Order 5190.6B, chapters 21 and 22. However, as stated in the Order, any "approved interim or concurrent revenue-production uses may not interfere with safe and efficient airport operations. These uses will terminate as soon as the land is needed for aeronautical use." [FAA Order 5190.6B, page 21-4.]

[28] The Land Use Compliance Report provides a detailed statement listing airports that are not in compliance with federal grant assurances or other federal land use requirements with respect to airport lands. The reporting requirement was instituted in the wake of a 1999 General Accounting Office (GAO) Report to Congressional Questioners entitled, "General Aviation Airports: Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement." This GAO Report found there were significant issues pertaining to the unauthorized use of aeronautical land for nonaeronautical purposes.

all existing and proposed nonaviation areas and of all existing improvements thereon. [*See* FAA Airport Sponsor Assurances, #19 and #29, and 49 U.S.C. §§ 47107 (a)(7, 8 and 16).]

If a sponsor intends to use aeronautical land and facilities for a nonaeronautical purpose, the sponsor must obtain explicit FAA approval for interim non-aviation use. [*See* Boca Airport, Inc. d/b/a Boca Aviation v Boca Raton Airport Authority, FAA Docket No. 16-00-10 (March 20, 2003) (Final Decision and Order), page 4.] In this case, the Airport Layout Plan was not submitted by the parties to the administrative record. However, the Director has added to the Administrative Record, as Item 18, the current ALP on file with the FAA's Los Angeles Airports District Office, which was submitted by the sponsor to and approved by the FAA on June 3, 1998. [FAA Exhibit 1, Item 1, exhibit 18] After reviewing the current ALP, the Director has confirmed the airport's hangars, aprons, and ramps are identified as aeronautical use. Thus, upon review of the ALP and in accordance with the documentation submitted to the Record that such areas are being inappropriately used for non-aviation purposes combined with Respondent's admission that it permits nonaeronautical use of aeronautical hangars and land, the Director finds with certainty that the Respondent's ALP does not identify its aeronautical facilities being used for nonaeronautical purposes and, therefore, is currently in violation of Grant Assurance 29. The Director advises the Respondent to ensure any hangars, tie-downs, ramps, or other areas on the Airport designated for aeronautical use are used for aeronautical purposes and not used for storage of nonaeronautical items or for non-aviation commercial businesses

Director's Conclusion on Issue 1:

The Director finds the Respondent is in violation of Grant Assurance 19, *Operation and Maintenance*, by allowing nonaeronautical use of Airport hangars for storing non-aviation items and for operating non-aviation related industries. The Director finds that the Respondent is causing or permitting an activity or action thereon which interferes with its use for airport purposes. The Director further finds that the Respondent is in violation of Grant Assurance 29, *Airport Layout Plan*, and 49 U.S.C. § 47131, in that the Respondent's current ALP does not correctly reflect the aeronautical and nonaeronautical uses of the Airport property. The Director cautions the Respondent to ensure its Airport use is consistent with its approved Airport Layout Plan.

B. Issue (2)

> Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by failing to apply its Airport Rules and Regulations consistently among similarly situated tenants.

Complainant argues the Airport Rules and Regulations are enforced zealously against the Complainant, but ignored for other tenants. [FAA Exhibit 1, Item 1, page 5; and Item 8.] In the Complaint, Complainant states Respondent's "disparate treatment" of Complainant is rooted Respondent's failure to apply the Airport Rules and Regulations consistently in violation of Grant Assurance 22. [FAA Exhibit 1, Item 1, page 3] Complainant alleges numerous instances when Respondent did not apply its Airport Rules and Regulations consistently, including (1) when Respondent forced Complainant to evict subtenants for

storing nonaeronautical equipment, and (2) when Respondent forced Complainant to evict disabled aircraft and later limited the time disabled aircraft could remain on Complainant's leasehold.[29] [FAA Exhibit 1, Item 1; and FAA Exhibit 1, Item 8.]

(1). Storing Nonaeronautical Equipment

Among its allegations, Complainant claims it was threatened with eviction for allegedly violating its lease and the Airport Rules and Regulations for allowing nonaeronautical storage in its hangars. [FAA Exhibit 1, Item 1, exhibit 4.] Complainant states a previous Airport Manager informed it that several subtenants on Complainant's leasehold were "not using the leased premises for the purpose of storing or parking aircraft" and that such "improper use" is in direct violation of [Complainant's] existing lease." [FAA Exhibit 1, Item 1, exhibit 29.1.] On June 15, 1995, Airport Manager James McCue[30] sent a letter to Richard Smith[31] notifying him of lease violations regarding tenants storing items other than aircraft in the Complainant's leased hangars. McCue's letter to Complainant stated:

> *Since leasing hangar space for other than the storage and parking of aircraft is in direct violation of your existing lease, you are hereby notified that the City deems you to be in default of your obligations under the lease, I.E.: the obligation to use the leased premises only for the storage and parking of aircraft.*
>
> *If the default is not cured within 30 days of receipt of this notice, the City shall terminate the lease pursuant to Article IX A 3.*
>
> [FAA Exhibit 1, Item 1, exhibit 4.]

The pertinent language in Complainant's lease states:

> *The demised premises shall be used only for the storage and parking of aircraft... any other activity not specifically described by this agreement is prohibited unless prior written approval has been granted by the Aviation Director.*
>
> [FAA Exhibit 1, Item 1, exhibit 28, page 2.]

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[29] Complainant identifies numerous instances of alleged violations of unjust economic discrimination. [FAA Exhibit 1, Item 1 and FAA Exhibit 1, Item 8]The Director has chosen to limit review to two of these examples since the general premises of these allegations are similar. The Director believes limiting the analysis is not detrimental to the outcome since finding a single violation is sufficient to find a sponsor in noncompliance.

[30] The Director infers from the administrative record that Mr. James McCue served as Airport Manager from 1995 to sometime in 1999. [*See* FAA Exhibit 1, Item 1, exhibit 4; FAA Exhibit 1, Item 1, exhibit 5; FAA Exhibit 1, Item 1, exhibits 10.1 and 10.2; FAA Exhibit 1, Item 1, exhibit 29.1; FAA Exhibit 1, Item 5, exhibit I; and FAA Exhibit 1, Item 8, exhibit 4.1.]

[31] Richard Smith was the former leaseholder for Complainant's Glendale Airport Hangars/VAS leasehold. In January 1999, George Van Houten became a general partner with Smith in the leasehold. With the death of Smith in 2003, Van Houten assumed full control of the Glendale Airport Hangars/VAS leasehold. The Director refers to the entire entity and all partners as the Complainant.

Smith advised Airport Manager McCue that a previous airport manager had made specific exceptions for Complainant's tenants. The record shows on April 12, 1994, Acting Airport Manager Bruce Burrows[32] issued three letters regarding the Airport Rules and Regulations pertaining to tenant maintenance of tenant-owned aircraft. [FAA Exhibit 1, Item 1, exhibits 5.2, 5.3, and 5.4.] These letters referenced the Airport's Maintenance Covenants. [FAA Exhibit 1, Item 1, exhibit 5.1.] Two of the letters were specifically directed to tenants leasing hangars on what is now the Complainant's leasehold. These letters allowed certain maintenance to be performed by Complainant's subtenants. [FAA Exhibit 1, Item 1, exhibits 5.2 and 5.3.]

The Director notes these letters reference maintenance, not storage. Nothing in the record shows that Airport Manager Burrows granted an exception for Complainant's subtenants to use airport hangars to store nonaeronautical equipment in 1994. The record shows some exceptions were granted later, on or about 2001, and over the term of the lease for storing nonaeronautical equipment, these exceptions are limited and based on size and space. [FAA Exhibit 1, Item 8, exhibit 2.3.] For example, on April 24, 2001, Airport Manager Mark Ripley[33] sent a letter to Complainant's manager Dean Stryker[34] approving the use of a specifically identified corner unit space to store non-aviation related items. The basis for the request and subsequent approval was that due to the space being small and awkwardly configured, the Airport Manager recognized that the space could not house an aircraft in its configuration and thus granted the specific limited waiver. [FAA Exhibit 1, Item 8, exhibit 2.3.] There is no record that exceptions were granted to Complainant for entire hangar areas or for large spaces capable of accommodating aircraft.

In the wake of Airport Manager Bruce McCue's hangar inspections and subsequent notice of lease default to Complainant, Complainant initiated evictions proceeding. Specifically on June 15, 1995, McCue sent a letter to Complainant regarding its potential lease default due to hangar storage violations. [FAA Exhibit 1, Item 1, exhibit 4] In that same letter, McCue advised Complaint, "if the default is not cured within 30 days of receipt of this notice, The City shall terminate thee lease pursuant to Article IX A 3." [FAA Exhibit 1, Item 1, exhibit 4] After several letters were exchanged between Complainant and the airport manager over the course of the summer, on October 6, 1995, Complainant initiated eviction proceedings against the five subtenants cited by McCue as using hangars for nonaeronautical storage. One of those subtenants was the Glendale Police Department.

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[32] The Director concludes from evidence submitted to the administrative record that Mr. Bruce Burrows served as the Acting Airport Manager in 1994. [FAA Exhibit 1, Item 1, exhibits 5.1, 5.2, 5.3, 5.4, and 6.] See chart on page 41 of this Director's Determination for a full list of airport managers mentioned in this Determination.

[33] The Director concludes from the administrative record that Mr. Mark Ripley served as the Airport Manager from approximately 2000 to 2006. [See FAA Exhibit 1, Item 11, exhibit 2, at 90.]

[34] Dean Stryker is an employee of Complainant Glendale Airport Hangars/VAS; he served as a manager, preceding current manager Clare Pryke.

[*See* FAA Exhibit 1, Item 1, exhibit 10; FAA Exhibit 1, Item 1, exhibit 4; and FAA Exhibit 1, Item 1, exhibits 30-34.]

Even though the Respondent forced Complainant to evict the Glendale Police Department from its hangars in 1995 for storing police vehicles, at the time this Complaint was filed, the documentation submitted to the record shows Respondent allowed the Maricopa County Police department to store similar vehicles in a hangar leasehold not managed by Complainant. [FAA Exhibit 1, Item 8, page 10.] Complainant provided a photograph showing the Maricopa County Police Department storing nonaeronautical police vehicles in an airport hangar. (*See* Photo 1.) [FAA Exhibit 1, Item 1, exhibit 9.]

Respondent states it has insufficient knowledge and information to determine the truth or accuracy of the allegation that the Maricopa County Police Department is storing police vehicles in a hangar on the airport. [FAA Exhibit 1, Item 5, page 5.] This is at odds with what Airport Administrator Judith Skeen stated in her deposition when she admitted she has been aware that the Sheriff's office has been storing vehicles in these hangars "off and on" since spring of 2008. [*See* FAA Exhibit 1, Item 11, Attachment E, page 95.] Airport Administrator Skeen explains that "this could be emergency equipment." She acknowledges she does not know what equipment is stored in this hangar, but states that "maybe some of this equipment responds to [incidences] at the Airport." [FAA Exhibit 1, Item 11, Attachment E, page 93.] The Respondent provides no evidence that Maricopa County Police vehicles are first or emergency service responders to incidents in the City of Glendale, which funds its own police department.

Photo 1: Maricopa County Police Department Vehicles

Respondent argues that the Airport Rules and Regulations in effect when Complainant's subtenants were evicted in 1995 are different from the current Airport Rules and Regulations, which took effect in 2004. Respondent argues there has been an evolution in the enforcement of the Airport Rules and Regulations resulting in a "lessening of

restrictions on some uses of the Airport." [FAA Exhibit 1, Item 5, Attachment A, page 26.]

It is possible the Airport Rules and Regulations may have enjoyed many interpretations between 1994 and today. The record shows there have been five different airport managers since 1994. (*See* Table 1, Airport Managers from 1994 to Present.)

Table 1: Airport Managers from 1994 to Present

Airport Manager Name	Title	Dates Served	
Bruce Burrows	Acting Airport Manager	1994	*See* footnote 2
James McCue	Airport Manager	1995-1999	*See* footnote 4
Mark Ripley	Airport Manager	2000-2006	*See* footnote 9
Michael Munroe	Interim Airport Manager	2006-2007	*See* footnote 11
Judith Skeen	Airport Administrator	2007-present	*See* footnote 13

It is clear from the administrative record that Airport Manager James McCue was aware that storing nonaeronautical items in hangars was not permitted in 1995. Airport Administrator Judith Skeen also demonstrates she is aware of this requirement today because she attempts to justify an exception to the rules for emergency vehicles that may potentially respond to an incident on the airport. In addition, a 15-year airport employee who works as an operations crew leader and employee supervisor confirmed he knows it would be improper for the sheriff to be parking police vehicles in an airport hangar.[35]

As the Director clarified under Issue 1 above, it is a violation of the airport sponsor's federal obligations to permit aeronautical hangars to be used for nonaeronautical purposes, including storing police vehicles, when there is a need for aeronautical use and where the ALP indicates the use is aeronautical. Furthermore, if the nonaeronautical use of the airport meets these standards, the rates for the use must be at fair market value.

Aside from the propriety of such hangar usage, the allegation brought forward by the Complainant is that the Airport Rules and Regulations have been applied in an unjustly discriminatory manner by permitting some hangar tenants to store nonaeronautical equipment – including police vehicles – in airport hangars while denying Complainant the same opportunity.

Respondent admits it has applied its Airport Rules and Regulations differently for the Complainant and for other hangar owners, but argues this different treatment is justified. Respondent argues the Complainant is not similarly situated to other hangar owners. Respondent claims the hangars on the north and south end[36] of the Airport are dissimilar

[35] Mr. Richard Klink identifies himself as an "airport operations crew leader" and supervisor of three employees at the Glendale Municipal Airport. He states he has held this position for approximately 15 years. [FAA Exhibit 1, Item 11, exhibit 2, pages 5-6.] When deposed and asked if it would be improper under the current Airport Rules and Regulations "for the sheriff to be parking armored cars and tanks and command centers and other vehicles in a hangar if there were not airplane (sic) there," Mr. Klink responded, "Right. Yes." [FAA Exhibit 1, Item 11, Attachment E, page 40.]

[36] Complainant's hangars are at the southern end of the Airport.

and, therefore, may be treated differently without violating Grant Assurance 22, *Economic Nondiscrimination.* [*See* FAA Exhibit 1, Item 1, exhibit 1.]

While making this argument, Respondent does not describe how the Complainant's hangars are substantially different, or are not similarly situated, from north end hangars. Instead, Respondent relies on precedent and policy that supports a finding that tenants may be deemed not similarly situated for purposes of lease terms when those leases are negotiated at different times.[37] Respondent's defense is that the leases were negotiated at different times; however Respondent also argues that Complainant alleged unjust economic discrimination with regard to dissimilar lease terms in an informal complaint filed in 1999. Respondent points out the FAA did not find the City in noncompliance in that action because leases negotiated at different times may justify differing lease terms. [FAA Exhibit 1, Item 5, Attachment A, Footnote 68, page 29.] Respondent concluded that the Complainant's allegations regarding dissimilar treatment are moot.

The Director recognizes the Respondent's point that the Complainant may not be similarly situated to other hangar owners with regard to lease terms; but that is not the issue here. The issue under review here is whether the Respondent failed to apply its Airport Rules and Regulations consistently among similarly situated tenants.

Respondent contends the issue of storing police vehicles in Airport hangars in 1995 is not relevant today. Complainant was required to evict tenants storing police vehicles in 1995 when different Airport Rules and Regulations were in place. The police vehicles stored in Airport hangars today fall under the 2004 Airport Rules and Regulations. [*See* FAA Exhibit 1, Item 5, Attachment A, page 24.]

The Director recognizes the Airport Rules and Regulations applicable in 1995 were published in 1989. [FAA Exhibit 1, Item 1, exhibit 7.] Two versions of the current Airport Rules and Regulations were published in 2004.[38] After reviewing the 1989 and both of the 2004 versions of the Airport Rules and Regulations, the Director finds that the section pertaining to aircraft hangar storage is essentially the same in all three.

The 1989 version states:

> "Aircraft storage hangars shall be used only for the storage of aircraft and associated aircraft equipment." [FAA Exhibit 1, Item 1, exhibit 7.]

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[37] Respondent cites Adventure Aviation v. City of Las Cruces, New Mexico, FAA Docket No. 16-01-14, (September 9, 2003) (Final Agency Decision), which shows tenants who are not similarly situated may have dissimilar lease terms.

[38] The Airport published two versions of the Airport Rules and Regulations in 2004. It is not clear in the administrative record which version was published first and therefore supersedes the other. [FAA Exhibit 1, Item 1, exhibits 2 and 3.]

Both versions of the 2004 Airport Rules and Regulations include generally the same language.[39] One version of the 2004 Airport Rules and Regulations states at Section 2-11, Aircraft Storage Hangars:

> *a. Aircraft storage hangars shall be used for the following purposes:*
>
> *1. Storage and parking of a based aircraft and associated aircraft equipment and supplies as approved...*
>
> *2. Parking of vehicles listed on access gate card permit form.*[40]
>
> *b. Use of aircraft storage hangars shall be subject to the following restrictions:*
>
> *1. No major aircraft alternations and repairs shall be performed in hangars except by the owner of the aircraft;*
>
> *2. No storage of equipment not necessary for the maintenance/assembly of the hangared aircraft;*
>
> *3. No storage of construction equipment or materials.*
>
> * * *
>
> * * *
>
> *e. ... During the time that there is no based aircraft, the hangar must remain completely empty.*
>
> * * *
>
> [FAA Exhibit 1, Item1, exhibit 3.]

The Airport Rules and Regulations applicable to storing police vehicles in aircraft storage hangars appear to be unchanged. Further, the record does not show that any other condition has changed that would permit the sublessor of the police hangar to be treated any differently than the Complainant. Any differences in the lease agreements between the Respondent and the Complainant or the subleasor of the police hangar do not create a condition whereby Complainant and the subleasor are not similarly situated as to the application of the Airport Rules and Regulations. Therefore, the Director concludes that the 1995 letter requiring eviction of police vehicles from airport hangars is as applicable under the currently published Airport Rules and Regulations as it was in 1995. By enforcing the Airport Rules and Regulations against the Complainant for storing police vehicles in 1995 while not enforcing comparable Airport Rules and Regulations against another tenant for storing police vehicles today is a violation of Grant Assurance 22, *Economic Nondiscrimination.*

(2). Disabled Aircraft

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[39] The two 2004 versions have the same language in the first paragraph of Section 2-11, Aircraft Storage Hangars, however, in one version the second paragraphs restricts parking to "authorized vehicles" while the other version restricts parking to "vehicles listed on access gate card permit forms." [FAA Exhibit 1, Item1, exhibits 2 and 3.]

[40] The other version of the 2004 Airport Rules and Regulations simply states: "Parking of authorized vehicles." [FAA Exhibit 1, Item 1, exhibit 3.] The Director notes it is not clear in the administrative record which version was published first and therefore supersedes the other.

Complainant alleges the current Airport management allows disabled aircraft to be stored indefinitely on other leaseholds, but holds Complainant to the "prompt removal" standards enumerated in the Airport Rules and Regulations.

The 1989 Airport Rules and Regulations include a section on damaged and dismantled aircraft. Both versions of the 2004 Airport Rules and Regulations include the same language, but also add a section specifically addressing disabled aircraft. The 1989 Airport Rules and Regulations state:

> *The prolonged storage of damaged or dismantled aircraft is prohibited. The aircraft owner is expected to diligently correct such condition in as short a period of time as possible to prevent an unsightly Airport appearance.*
>
> [FAA Exhibit 1, Item 1, exhibit 7,.]

The 2004 Airport Rules and Regulations add:

> *Aircraft owners and pilots shall be responsible for the prompt removal of disabled aircraft and parts thereof, unless required or directed by the Airport Manager or the Federal Aviation Administration to delay such action pending an investigation of the accident. In the event of failure to promptly remove such disabled aircraft, the Airport Manager may cause the aircraft to be removed and bill the owners thereof for all charges incurred in the removal of same. The City shall not be responsible for damage to disabled aircraft removed by the owner, the pilot, the City, or other persons.*
>
> [FAA Exhibit 1, Item 1, exhibits 2 and 3.]

Complainant states the Respondent forced Complainant to evict "derelict" aircraft from its leasehold, only to have the Respondent enter into agreements with these same "derelict" aircraft owners to store their aircraft in City-owned tie-down spaces on the City-owned ramp. [FAA Exhibit 1, Item 1, pages 8-9; see also Item 1, exhibits 17-25 and exhibit 35.] Complainant does not state when this eviction occurred or how soon afterwards the same aircraft ended up in the City's tie-down spaces.

The Respondent argues that because Complainant did not state the dates of these alleged evictions, the derelict aircraft cited may not have been subject to the "current" rules the Respondent began applying some time after the 2004 rules were published but prior to hiring Airport Administrator Skeen in December 2007. [FAA Exhibit 1, Item 5, Attachment A, page 29.] Respondent also argues that because Complainant's allegations do not detail "the circumstances surrounding the departure of aircraft from [Complainant's] spaces," Respondent does not have sufficient facts to determine if "current Airport policies are being violated." [FAA Exhibit 1, Item 5, Attachment A, page 30. *See also* FAA Exhibit 1, Item 5, page 6.]

Respondent suggests this situation represents a misunderstanding among the parties. Respondent asserts in its Answer that the current policy permits storing disabled aircraft, stating:

> *With respect to the storage of disabled aircraft, the current Airport policy allows for more liberal storage than expressed in the 2004 Rules and Regulations. [Complainant] alleges ... [Complainant's] tenants were not permitted to store disabled aircraft at the Airport. Unfortunately, [Complainant] does not state when this occurred. Thus, the denial may have been at a time when the Airport policy did not permit such storage.*
>
> [FAA Exhibit 1, Item 5, Attachment A, pages 26 and 29.]

Respondent states this alleged current policy on storing disabled aircraft evolved at some point before Ms. Skeen arrived at the airport in December 2007. [FAA Exhibit 1, Item 5 and Item 11] Specifically, Respondent offers the following explanation:

> *Most of the evolution of Glendale's current Airport policies from the standards enunciated in the 2004 Airport Rules and Regulations and Minimum Operating Standards occurred prior to the current Airport Administrator took her position in 2007). That evolution involved lessening restrictions on some uses of the Airport.*
>
> *For instance, Glendale's current policy (applicable to all) with respect to the use of hangars, shades, and tie downs at the Aiport... (ix) permits the storage of disabled aircraft on the field.*
>
> *[FAA Exhibit 1, Item 5, Attachment A, page 26.]*

Respondent then claims Ms. Skeen has been administering and enforcing this newly evolved policy "uniformly" since she came to the airport. [FAA Exhibit 1, Item 5, Attachment A, 29.]

When deposed, the Airport Administrator, Ms. Skeen, was asked if she knew "it was contrary to the rules and regulations to have disabled aircraft on the field." [FAA Exhibit 1, Item 11, Attachment E, page 117.] Ms. Skeen replied:

> *Yes. I do know that there are some clauses in the rules and regulations. And I do know that some of the aircraft that we do have on the field are non-flyable.*
>
> [FAA Exhibit 1, Item 11, Attachment E, page 117.]

When asked if some disabled aircraft have been on the field since her arrival as Airport Administrator in December 2007, Ms. Skeen replied, "that could very well be." [FAA Exhibit 1, Item 11, Attachment E, page 118.]

The Director recognizes that Airport Rules and Regulations are rewritten and evolve as conditions and circumstances change. The FAA determines airport sponsor compliance by comparing airport sponsor's actions or inactions to the Rules and Regulations in

existence at the time of the action or inaction. [*See* Self Serve Pumps v. Chicago Executive Airport, FAA Docket No. 16-07-02, (March 17, 2008) (Director's Determination), pages 31-32.] However, compliance must be determined at the time of the action or inaction with regard to all airport users. "Grandfathered" practices that result in economic discrimination among airport users are a violation of Grant Assurance 22. In addition and notwithstanding, the Director notes that incidental violation of airport rules by tenants is not sufficient to create the presumption of unjust discrimination by the airport sponsor. [Ricks v. Greenwood – LeFlore Airport, FAA Docket 16-09-04 (January 24, 2011) (Director's Determination) at p.23 (The FAA considers that incidental violation of airport rules by tenants is not sufficient to create the presumption of failure by the sponsor to maintain the airport in a safe and serviceable condition.) citing, Ashton v. Concord, FAA Docket No. 16-99-09, (July 3, 2000) (Final Decision and Order), at 19. ([I]ncidental noncompliance by Airport users does not constitute unjust economic discrimination by the Sponsor.)]

In this case, the record shows a subtenant of Complainant requested permission to store a disabled aircraft for approximately three months in April 2009. [FAA Exhibit 1, Item 5, exhibit AA.] Airport Administrator Skeen responded April 21, 2009, granting permission to allow "a disabled aircraft" to be stored in one of Complainant's hangars "for a period not to exceed the three (3) month request" made by the insurance company. Skeen noted in her e-mail that because the aircraft is disabled "according to the Rule and Regulations, Section 4-5, (it) would require prompt removal from airport property." [FAA Exhibit 1, Item 1, exhibit 35.]

Respondent uses this example to point out it did apply its Airport Rules and Regulations equitably by allowing the Complainant to store this non-airworthy aircraft for a term not to exceed three months in 2009. The Director notes, however, that this e-mail clearly states that storing disabled aircraft is not permitted by the current Rules and Regulations and makes no reference to an expanded policy that permits such storage as Respondent had attempted to argue in its Answer, when Respondent explicitly stated:

> *For instance, Glendale's current policy (applicable to all) with respect to the use of hangars, shades, and tie downs at the Aiport... (ix) permits the storage of disabled aircraft on the field.*
>
> *[FAA Exhibit 1, Item 5, Attachment A, page 26.]*

If the current policy allows such storage and that policy has been equitably applied since Ms. Skeen's arrival in December 2007 as Respondent argues [FAA Exhibit 1, Item 5, Attachment A], the Director finds it curious that Ms. Skeen would send an e-mail on April 21, 2009, invoking the 2004 Airport Rules and Regulations that Respondent argued were not applicable at that time. [FAA Exhibit 1, Item 1, exhibit 35.] It would appear that the sponsor's 2009 communication was not consistent with its then current policy and was thus in error.

The Director finds no evidence that this more liberal policy allowing disabled aircraft to be stored on the field has been published or communicated to airport tenants, including the

Complainant. The Director finds it unlikely the Respondent could expect its tenants to abide by – and its Airport Administrator to enforce equitably – a policy that has neither been published nor communicated.

The Director finds the application of the Respondent's Airport Rules and Regulations (1989 and both 2004 versions), as analyzed herein, have been enforced intermittently and inconsistently over the past 16 years. Moreover, the Respondent's failure to enforce these terms equitably appears to have been the Respondent's deliberate choice at times.

Enforcing the Airport Rules and Regulations against the Complainant for storing disabled aircraft while not enforcing these same Rules and Regulations against other users (without a reasonable explanation) is a violation of Grant Assurance 22, *Economic Nondiscrimination.*

Director's Conclusion on Issue 2:
The Director finds the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by failing to apply its Airport Rules and Regulations consistently among similarly situated tenants. The policy regarding storing nonaeronautical vehicles and equipment in hangars and storing disabled aircraft on the Airport has not been equitably applied to all tenants. The Director notes that storing nonaeronautical vehicles and equipment, which may include non-flyable aircraft, is also a violation of grant assurances 19, Operation and Maintenance and 29, *Airport Layout Plan*, as discussed in Issue (1) above.

C. ISSUE (3)

> Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by imposing a rental rate on Complainant that it must charge to its subtenants or customers.

Complainant alleges Respondent forced Complainant to lower its hangar and tie-down rates or face eviction. [FAA Exhibit 1, Item 1, paragraph 36 and Item 8.]

In a letter dated January 14, 2009, Respondent notified Complainant it was in default of its lease. Respondent cited hangar and tie-down "rates not [being] reflective of comparable rates in the local area" as the reason for the default. [FAA Exhibit 1, Item 1, exhibit 26.] Respondent requested that Complainant "restructure its T-hangar and T-shade rental rates in order to conform to federal regulatory requirements." Respondent concluded its letter stating, "Please consider this letter [your] 30 day notice to cure …." [FAA Exhibit 1, Item 1, exhibit 26.]

Respondent denies it acted improperly in requiring Complainant to lower its rates or face eviction. Respondent argues this step was necessary to increase occupancy rates at the Airport and to ensure subtenants are charged fair and reasonable rates. [*See* FAA Exhibit 1 Item 5, Attachment A, page 36.]

Complainant does not dispute that its hangars and tie-downs had a significant amount of vacancies in 2008. [FAA Exhibit 1, Item 1, exhibit 27 and FAA Exhibit 1, Item 5, Attachment A.] Complainant argues the high vacancy level was not due to Complainant's rental and sublease rates at that time; Complainant contends its rates were reasonable.[41] [FAA Exhibit 1, Item 1, exhibit 27.]

Respondent argues that the rates, indeed, were the cause of the vacancies. [FAA Exhibit 1, Item 1, exhibit 26.] Respondent points to a letter dated April 24, 2007, from subtenant Michael Skrzecz to Acting Airport Manager Michael Munroe notifying Munroe that Skrzecz is relocating to Marana Regional Airport[42] due to Complainant's high rental rates following Complainant's renovations. [FAA Exhibit 1, Item 5, exhibit NN.] Affirming the City's position, City Attorney Craig Tindall told the Complainant in a letter dated March 4, 2009:

> *For any airport facility to be virtually unused for many months for no other reason than the fees charged unquestionably indicates the fees set for those facilities are not within the reasonable market range."*
>
> [FAA Exhibit 1, Item 5, exhibit W, page 1.]

Complainant points out it has complied with the directive and lowered its rates as demanded; however, this "has had no effect on occupancy …" [FAA Exhibit 1, Item 1, page 10.]

Complainant alleges Respondent's demand for lower rates is unreasonable for two reasons: (1) Complainant alleges its previous sublease rates were justified; and (2) Complainant argues the Respondent's imposed subtenant rates are based on a flawed appraisal.

(1). Complainant's Prior Sublease Rates

Complainant argues its sublease rates – prior to the Respondent's imposition of lower rates – were justified. Complainant states it spent more than $300,000 renovating its hangars in 2007. [FAA Exhibit 1, Item 1, exhibit 27, page 2.] Complainant points out that from 1998 through February 11, 2009, its incremental rate charged to subtenants has increased by just $100 a month for a large hangar, which Complainant states equates to a 3.4% annualized increase. [FAA Exhibit 1, Item 1, exhibit 27, page 2.] Complainant contends that, on a percentage basis, its hangar rates have increased by much less than the

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[41] Complainant alleges the cause of the vacancies was due to the Respondent's application of its Airport Rules and Regulations in an unjustly discriminatory manner. [FAA Exhibit 1, Item 1] Respondent disputes this claim. [FAA Exhibit 1, Item 5] Allegations pertaining to the Respondent's application of the Airport Rules and Regulations are addressed separately under Issue (2) of this determination and are not discussed under Issue (3).

[42] The Director notes that Marana Regional Airport is located approximately 78 nautical miles from Glendale Municipal Airport (GEU), or approximately 120 statute miles by interstate. The Director finds that moving 120 miles because of rates is not credible when there are numerous other airports within 120 miles to which Mr. Skrzecz could have moved. The Respondent's use of one non-credible example to support its position does not help to carry its burden of proof.

ground lease adjustment by the Respondent. Complainant points out the Respondent raised its ground lease rate four times in the past 10 years, with the last increase in 2007 at 9.45%. [FAA Exhibit 1, Item 1, exhibit 27, page 2.]

Complainant also states it attempted to work with the Respondent to mitigate its own rent increases by using the consumer price index combined with Complainant's costs for insurance, utilities, management salaries and benefits, services and materials. [FAA Exhibit 1, Item 1, Exhibit 27] Complainant requested permission to diversify its aeronautical services and offered to pass along all incremental leasehold savings to its subtenants on a dollar for dollar basis. [FAA Exhibit 1, Item 1, exhibit 27, page 2 and FAA Exhibit 1, Item 8, exhibit 2.6.]

Respondent did not challenge Complainant's reasoning for justifying its original sublease rates. Rather, Respondent continued to defend its decision to require Complainant to lower its sublease rates because of the low occupancy rate and because of its belief the rates were inconsistent with the federal obligations and unreasonable. Respondent states:

> *After the underutilization increased to the point where [Complainant] had only 17 subtenants*[43] *as of November 2008, [Respondent] came to believe that it was necessary to take further steps to encourage [Complainant] to reduce its rates. Contrary to allegations by [Complainant], [Respondent] took these steps not to "evict" [Complainant], but to comply with [Respondent's] grant assurance obligations, and to ensure that Airport users and prospective users were being charged fair, market rates. [Respondent] believes that a byproduct of fair, market rates will be the improved economic vitality of [Complainant], since it will likely attract additional subtenants if it has a more reasonable, market-based rate and fee structure.*
>
> [FAA Exhibit 1, Item 5, Attachment A, page 36.]

Grant Assurance 22, *Economic Nondiscrimination*, obligates airport sponsors to insert provisions in tenant contractor or service provider agreements that will ensure services are furnished on a reasonable and not unjustly discriminatory basis to all users, and charges for these services are reasonable and not unjustly discriminatory. [*See* FAA Airport Sponsor Assurances, # 22(b and § 47107 (a)(1,-3 and 5-6).]

In defense of its decision to require Complainant to reduce Complainant's rental rates, Respondent contends it was simply abiding by its grant assurance obligations, "to ensure that airport facilities and services are available for the benefit and use of the public on fair and reasonable terms." [FAA Exhibit 1, Item 1, exhibit Z.]

Respondent's January 14, 2009, notice of default and eviction supports Respondent's claim that it believed Complainant's rates were the cause of the vacancies and violated the grant assurances. Respondent stated in its January 14, 2009, letter:

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[43] Complainant has 104 hangars and 112 tie-downs. [*See* FAA Exhibit 1, Item 5, exhibit T.]

By this letter the City of Glendale ("City") requests that [Complainant] restructure its T-hangar and T-shade rental rates in order to conform to federal regulatory requirements.

The City and its airport tenants are under obligation to ensure that airport facilities and services are available for the benefit and use of the public on fair and reasonable terms...

It has come to the City's attention that for some time hangar facilities under the control of [Complainant] are extremely under-utilized. This under-utilization appeared to be due to rates not reflective of comparable rates in the local area.

[FAA Exhibit 1, Item 1, exhibit 26.]

Complainant argues it is not a party to the grant assurances that Respondent is using as the basis for threatening lease termination. [FAA Exhibit 1, Item 1, page 10.]

The grant assurances are set forth in an agreement between the FAA and the airport sponsor. Those assurances obligate the airport sponsor to ensure the terms imposed on aeronautical users of the airports for services, including rates and charges, must be reasonable and applied without unjust discrimination, whether by the owner or by a licensee or tenant who has been granted rights to offer services or commodities normally required at the airport. [*See* FAA Order 5190.6B, *Airport Compliance Manual*, at Section 9.1.a.] Complainant is a service provider tenant on the Airport. The Respondent has an obligation to ensure the Complainant has access on reasonable terms and without unjust discrimination and that the Complainant, in turn, provides its services on reasonable terms and without unjust discrimination. Complainant cannot step outside the requirement to provide its services on a reasonable, not unjustly discriminatory, basis to all users or to charge reasonable, not unjustly discriminatory, prices for its services. [*See*, FAA Airport Sponsor Assurances, #22(b) and 49 U.S.C. §§ 47107(a)(1-3 and 5-6)]

The Respondent not only has the right, but the obligation to ensure its tenant service providers offer reasonable pricing. [*See* FAA Order 5190.6B, *Airport Compliance Manual*, at Section 9.1.a.] Respondent attempts to justify the reasonableness of its imposed pricing requirements by showing the rates were obtained using an independent appraisal. [FAA Exhibit 1, Item 5] Complainant argues the Respondent's appraisal is flawed as it does not include other airport tenants at Glendale Airport. [FAA Exhibit 1, Item 8]

(2). Appraisal

On December 11, 2008, Cushman and Wakefield of Arizona, Inc.[44] submitted its Appraisal of Real Property report to the City of Glendale. [FAA Exhibit 1, Item 5, exhibit

[44] Cushman and Wakefield of Arizona, Inc. is a real property appraisal firm. There is nothing in the record, including in the report submitted by Cushman and Wakefield, categorizing Cushman and Wakefield as airport property or aviation specialists.

T. *See also* FAA Exhibit 1, Item 1, exhibit 26.3.] The Director notes the appraisal report compares large and small T-hangar and tie-down rates at six general aviation airports in Metropolitan Phoenix, including the Complainant's Airport. [FAA Exhibit 1, Item 5, exhibit T.] Four of these hangar complexes are owned by public sponsors; only the Complainant's and one other hangar complex are privately owned. Table 2, *Hangar Complexes in Appraisal Comparison*, shows the airports and hangar complexes included in the appraisal comparison, as well as the number of hangars and tie-downs in each complex, and the airport ownership.

Table 2: Hangar Complexes evaluated in Appraisal

Airport	Airport Ownership	Comparative Hangars Ownership	No . of Hangars and tie-downs
Glendale Municipal	City of Glendale	Complainant, private	104 & 112
Phoenix Goodyear	City of Phoenix	Phoenix, public sponsor	147 & 21
Phoenix Deer Valley	City of Phoenix	Phoenix, public sponsor	779 & 240
Scottsdale	City of Scottsdale	Scottsdale, public sponsor	9 & 23
Mesa Falcon Field	City of Mesa	Mesa, public sponsor	402 & 116
Phoenix Mesa Gateway	City of Mesa	Wings Valet, private	20 & 0

[*See* FAA Exhibit 1, Item 5, exhibit T.]

Complainant objects to Respondent's reliance on this appraisal as its rationale for imposing new rates. [FAA Exhibit 1, Item 1 and FAA Exhibit 1, Item 8] Complainant argues the appraisal relies heavily on rates at Phoenix Deer Valley Airport and Phoenix Goodyear Airport, where the City of Phoenix subsidizes hangar rates.[45] Complainant states these units are heavily discounted. [FAA Exhibit 1, Item 1, exhibit 27, page 3.] Complainant challenges the appraisal because it includes rates for publicly owned hangars that are subsidized. The Director notes the appraisal compares public sponsor owners and private owners for rate comparisons. The only other private operator included in the comparison is Wings Valet, which has 20 hangars and no tie-downs compared to Complainant's 104 hangars and 112 tie-downs.

The Director also notes the appraisal does not include the rates of other hangars at Glendale Municipal Airport where the Complainant is located. The Respondent owns tie-downs at the Airport. There are also at least four hangar associations[46] that rent hangars to individuals on the north side and south side of Glendale Municipal Airport. It would seem reasonable to include these hangars and tie-down in a comparison of rates on the Airport.

Respondent defends the appraisal it commissioned[47] to encourage Complainant to reduce its rates. [FAA Exhibit 1, Item 5, Attachment A, page 36.] Respondent states the scope

[45] The City-owned hangars at Deer Valley and Goodyear Airports are operated using airport system funds. Neither the appraisal nor the Record includes information on the cost structures of any hangars evaluated.
[46] See Footnote 14 on page 11 infra.
[47] The administrative record shows Cushman and Wakefield of Arizona, Inc. submitted an appraisal report to the Airport Administrator dated December 11, 2008. [*See* FAA Exhibit 1, Item 5, exhibit 20.]

of the appraisal involved inspecting, measuring, and photographing airport property, which was done initially in February 2008 and followed with a drive by in December 2008. The appraisers identified, surveyed, and analyzed various rent comparables on airports throughout Metropolitan Phoenix.[48] In the report, Cushman and Wakefield states in the Assumptions and Limiting Conditions clause:

> *The information contained in the Report or upon which the Report is based has been gathered from sources the Appraiser assumes to be reliable and accurate. The owner of the Property may have provided some of such information. Neither the Appraiser nor C&W shall be responsible for the accuracy or completeness of such information, including the correctness of estimates, opinions, dimensions, sketches, exhibits and factual matters.*
>
> [FAA Exhibit 1, Item 5, Attachment 7, page 28.]

Respondent states, "The study confirmed that the rates being charged by [Complainant] significantly exceeded market rental rates." [FAA Exhibit 1, Item 5, Attachment 1, page 15.] Respondent refers to the appraisal report, which states that Complainant's rates should be reduced between 8% and 37% for hangar rentals and as much as 139% for tie-downs. Table 3, *Complainant's Rates and Appraiser's Recommended Rental Rates*, shows the appraiser's suggested reductions. [FAA Exhibit 1, Item 5, exhibit T.]

Table 3: Complainant's Rates and Appraiser's Recommended Rental Rates

Facility Type	Complainant's 2007 Rate	Complainant's Dec 2008 Rate	Appraiser suggested rates	Approximate Percentage Differences
Large T Hangar	$295	$395	$335 - $365	8 - 18%
Small T Hangar	$235	$335	$245 - $255	31.5 - 37%
Tie-down	$90	$295	$115 - $125	128 - 139 %

The 2007 rates were the rates Complainant charged before its renovation project. After Complainant's $300,000 renovation in 2007, Complainant increased its rates as shown in 2008. The appraisal recognizes Complainant's rates should reasonably be increased from the 2007 pre-renovation rates. However, the appraisal's recommended rental rates are less than the Complainant's 2008 rates.

Setting hangars rental rates based on an analysis of comparable rents charged at nearby airports is a common and acceptable practice in the general aviation community.[49] Here,

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[48] Respondent submitted to the administrative record a full copy of the appraisal report. [*See* FAA Exhibit 1, Item 5, exhibit T.]

[49] *See* Delbert Johnson d/b/a Two Dogs Aviation v. Goldsboro-Wayne Airport Authority, FAA Docket 16-08-11 (October 9, 2009) (Director's Determination), page 52.

the Director has concerns with the Respondent's methodology for developing and administering its rate imposition policy.

The Director also recognizes it is reasonable to increase rental rates to amortize the cost of improvements. [*See*, Langa Air, Inc. v. St. Louis Regional Airport Authority, FAA Docket No. 16-00-07, (December 13, 2001) (Final Agency Decision) [Langa Air]. It is also reasonable to pass along ground lease increases. The Respondent, however, argues that while it may be reasonable to increase the rates, Complainant's increases resulted in rates significantly beyond those charged by five of six hangar service providers surveyed at other airports in the metropolitan Phoenix area, as documented in its appraisal. [FAA Exhibit 1, Item 5, exhibit W, page 1.] In this case, those five hangar complex providers were also the public airport sponsors.

When using data from other airports, the rates may not necessarily be comparable unless the Respondent can substantiate that the Complainant is similarly situated to the others in the analysis. The administrative record does not include documentation showing the Complainant is similarly situated to the publicly owned hangar complexes whose rates were used as a basis for imposing lower rates on the Complainant.[50] It would appear to the Director that the economic advantages to public-owned hangar landlords would differ substantially from those affecting private landlords. For example, public-owned complexes may not need to have a profit to sustain continued operations whereas private-owned complexes would under normal operations. The term "similarly situated" includes, but is not limited to, an evaluation of the terms of the leases, the ownership and financial investment interests, the services and amenities offered and available, the location of the airport and location and access on the airport of the comparative facilities, and other terms and limitations of the ground leases.[51] Respondent has not included any analysis to determine if the Complainant is similarly situated to the publicly owned hangar complexes in the appraisal. Accordingly, the Director cannot find, based on the documentation submitted to the administrative record, that the Complainant is similarly situated to any of the hangar complexes included in the appraisal report.

While both Complainant and Wings Valet are private hangar complex owners, the Director cannot find, based on the documentation submitted to the administrative record, that the Complainant is similarly situated to Wings Valet either. Wings Valet has just 20 hangars and no tie-downs compared to Complainant's 104 hangars and 112 tie-downs. [*See* FAA Exhibit 1, Item 5, exhibit T.] While the T-hangar rates for Wings Valet and Complainant are about the same,[52] there is no comparison possible for tie-downs as Wings Valet does not have any on its leasehold.

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[50] The appraisal used hangars at six airports in its appraisal including the city-owned hangars at Phoenix Goodyear, Phoenix Deer Valley, Scottsdale, and Mesa Falcon Field, and the privately owned hangars at Phoenix Mesa Gateway, as well as the Complainant's leasehold. [FAA Exhibit 1, Item 5, exhibit 20.]

[51] *See* Richard M. Grayson & Gate 9 Hangar, LLC v. DeKalb County, Ga., FAA Docket No. 16-05-13 (February 1, 2006) (Director's Determination) (Gate 9), page 11.

[52] Wings Valet charges $5-$55 more than Complainant for large T-hangars and $10 less than Complainant for small T-hangars. [*See* FAA Exhibit 1, Item 5, exhibit T.]

The Complainant's rates for tie-downs increased dramatically, going from $90 in 2007 to $295 by December 2008. The 2008 tie-down rate was actually the same rate as the 2007 large hangar rate. [FAA Exhibit 1, Item 5, exhibit T.] The tie-down increase is the rate that needs to be substantiated – either by the Complainant as reasonable or by the Respondent as unreasonable.

In accordance with 14 CFR § 16.227, the standard of proof for a decision or ruling must be supported by, and in accordance with the reliable, probative, and substantial evidence contained in the record and in accordance with law. Additionally, under 14 CFR § 16.229, a party who has asserted an affirmative defense has the burden of proving the affirmative defense. In the instant Complaint, the Complainant did not provide evidence justifying its original tie down rates; however, the Respondent did not produce credible documentation supporting its defense. Neither party met their burdens in this matter.

While using hangar and tie-down rates at nearby airports is an acceptable practice for determining a rate base when the comparisons involve similarly situated entities, in this case, the Respondent did not support its assertion that the hangar complexes selected for the comparison are sufficiently similar to the Complainant to form a reasonable comparison in light of Complainant's extensive investment in the leasehold and services it provides.

The Director agrees with the Complainant that the appraisal is flawed. In addition to comparing hangar complexes that may not be similarly situated to Complainant at other airports, Respondent failed to include in its analysis the other hangar and tie-down rates of leaseholds on the Airport where Complainant is located.

The Respondent's reasoning for requiring the Complainant – and only the Complainant – to lower its rates were reflected in the deposition of Airport Administrator Judith Skeen. [*See* FAA Exhibit 1, Item 11, Attachment E.]

When Airport Administrator Skeen was asked if she believed the grant assurances required the Respondent to impose lower rates on the Complainant, Ms. Skeen stated:

> *What we are looking at is the grant assurance that we have, that we are trying to have the airport be competitive and profitable for everyone on the field, And it's kind of - - you know, it kind of goes through us to [Complainant] that we're not keeping track of - - of what's maybe happening with the price structure in that regard.*
>
> [FAA Exhibit 1, Item 11, Attachment E at 105.]

When asked if she "kept track of the price structure on any other hangar other than [Complainant's] hangars," [FAA Exhibit 1, Item 11, Attachment E at 105] Ms. Skeen replied:

Not right at the moment because [Complainant] is the one that we've had the number of complaints on in regard to the dollar amount that it was costing and, you know, to get the aircraft into those shades and spaces.
[FAA Exhibit 1, Item 11, Attachment E, pages 105-106.]

When Complainant's counsel alleged that "there are hangars on the north end [of the Airport] where the monthly rate is many times greater than what is charged for or by [Complainant]," [FAA Exhibit 1, Item 11, exhibit 5 at 106.] Ms. Skeen answered:

I don't know what the rate structure is on the north end. Those are privately owned individual hangars. And I have not had any complaints in regard to the rate structures on the north hangars.
[FAA Exhibit 1, Item 11, Attachment E, pages 105-106.]

Respondent submitted only two complaints regarding Complainant's rates to the administrative record. One complaint was dated July 31, 1998. [*See* FAA Exhibit 1, Item 5, exhibit 41.] The other complaint was dated April 24, 2007. [*See* FAA Exhibit 1, Item 5, exhibit 40.]

The Director is not persuaded that two subtenant complaints nine years apart – and only one documented complaint after the rate increase following renovations – is justification for treating the Complainant differently from other hangar owners who rent out hangars on the Airport. The Director accepts that Complainant's low occupancy rate caused concern for the Respondent. The initial reaction to attribute that low occupancy rate to high rental rates might be reasonable. Initiating an independent appraisal to determine whether Complainant's rates were excessive was reasonable. However, because the appraisal compared Complainant to entities that may not be similarly situated, the appraisal was flawed. In addition, the study did not include any of the other hangar or tie-down rates on the Glendale Municipal Airport. The assumption that the low occupancy rate of Complainant's hangars was caused solely by the high rental rates was not valid; the administrative record shows the occupancy rates have remained low despite decreasing the rental rates.

Airport sponsors do have a federal obligation to ensure airport rates are fair and reasonable, including rates charged by tenant service providers. [See, FAA Airport Sponsor Assurances, #22(b) and 49 U.S.C. § 47107(a)(1-3 and 5-6)] A sponsor may impose rates, if justified, to comply with this federal obligation. [See, FAA's Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31994, 31995 (June 21, 1996), FAA's Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7705 (February 16, 1999), and Air Transport Association v DOT, 119 F 3d. 38, 44 (DC Cir. 1997), amended 129 F.3d 625. There must, however, be a reasonable basis for establishing the rates, and the rate requirement must be applied consistently and in a transparent manner to all similarly situated tenant service providers. [*See*, Langa Air.] In this case, a rate structure was imposed on one tenant without considering – or even knowing – the rate structure applied by others offering the same type of service on the Airport.

Director's Conclusion on Issue 3:

The Director finds the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by requiring Complaint to reduce its rental rates based on Respondent's flawed appraisal and without considering other tenant rental rates on the Airport. The Director makes no finding regarding the validity of the rate structure of either the Complainant or the Respondent.[53] The Director limits his review to the process followed by the Respondent in arriving at the recommended rate structure and to the applicability of the grant assurances, and that process was found to be unjustly discriminatory.

D. Issue (4)

> Whether the Respondent is in violation of Grant Assurance 24, *Fee and Rental Structure,* or Grant Assurance 25, *Airport Revenues,* by failing to collect taxes and fees for commercial aeronautical and nonaeronautical businesses operating on the Airport.

Complainant alleges Respondent failed to collect applicable taxes and fees on multiple levels of subleases in violation of Grant Assurance 24, *Fee and Rental Structure*. Complainant characterizes this subleasing activity as a commercial activity under the Airport Rules and Regulations. [FAA Exhibit 1, Item 1, exhibit 1, page 6.] In addition, Complainant alleges this failure to collect such taxes and fees "deprives the [Airport] of revenue" in violation of Grant Assurance 25, *Airport Revenues.* [FAA Exhibit 1, Item 1, exhibit 1, page 4.]

Grant Assurance 24, *Fee and Rental Structure*, obligates the Respondent to establish a fee and rental structure that will make the Airport as self-sustaining as possible under the existing conditions. [*See* FAA Airport Sponsor Assurances, # 24 and 49 U.S.C. § 47107(a)(13).]

Complainant contends Respondent violated Grant Assurance 24 by allowing uncontrolled subleasing, including subleasing to nonaeronautical entities, without establishing any fee structure or controls for these subleases in violation of the Airport's Minimum Operating Standards for Commercial Service Operators (Minimum Standards). [FAA Exhibit 1, Item 1] Specifically, Complainant states:

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[53] The Director notes the Complainant and Respondent are involved in civil litigation over the terms of the lease and whether it allows for rate setting. The Director reminds the parties that the legal issues in dispute in the civil court forum, including alleged contractual breaches pertaining to the imposition of rent and fee structures, are not within the purview of the FAA's Part 16 proceedings. Whether or not a contractual breach has occurred is a matter to be decided in state court. [*See* Rick Aviation, Inc. v. Peninsula Airport Commission, FAA Docket No. 16-05-18, (November 6, 2007) (Final Decision and Order), page 21.]

The [Respondent] has permitted north-end lessees to condominiumize [sic] hangars, and there are multiple levels of subtenants. The [Respondent] does not know in all instances who is occupying hangar space at the Airport nor what they are paying, so the [Respondent] is not collecting applicable taxes on multiple levels of subleases.

[FAA Exhibit 1, Item 1, exhibit 1, at 6.]

Complainant alleges these multiple levels of leasing and subleasing violates the Airport's Minimum Standards. [FAA Exhibit 1, Item 1, exhibit 1, at 6.] The Airport's Minimum Standards allow an applicant to build and use private non-commercial hangars in accordance with the following stipulations:

a. *The tenant shall lease at least 17,424 square feet of land (0,4 acres) for its hangars*

b. *The hangars shall be used only for those purposes, which are specified for aircraft storage hangars in the Rules and Regulations.*

c. *c. All aircraft which are stored in the hangars shall be owned by the tenant or one of the following persons associated with the tenant, if the tenant is a non-natural person:*

1. A person who is a general partner of a tenant, which is a partnership;

2. A person who is a manager of a tenant which is a limited liability company, or if there is no designated manager, a member of such tenant;

3. The president of a tenant, which is a corporation;

4. The chief executive officer of any other legal entity, which is a tenant.

d. The tenant shall not sublease any hangar or make any partial assignment of its leasehold interest. Any assignment of all of the tenant's leasehold interest shall be subject to the approval of the City pursuant to Article 3.

e. All insurance provisions contained in Article 4 shall apply to the tenant, except that the tenant shall not be required to maintain any automobile liability insurance (except as required by State law), aircraft liability insurance or hangar keeper's liability insurance as a part of its lease for private non-commercial hangars.

[FAA Exhibit 1, Item1 , exhibit 8, section 8-2]

Complainant alleges the "individual hangar 'owners' on the north-end who rent space to others do not comply with" the requirement to "lease at least 17,424 square feet of land" as prescribed in the Section 8-2(a). [FAA Exhibit 1, Item 1, page 6]

Additionally, Complainant alleges:

> *The minimum operating standards require insurance for all commercial operations... but most of the commercial operations at the airport do not have the requisite insurance with its associated costs.*
>
> [FAA Exhibit 1, Item1, page 6 and FAA Exhibit 1, Item 1, exhibit 8, section 4-1]

And finally, Complainant alleges Respondent's practice of allowing hangar association tenants to sublease, and therefore "act" like commercial service operators such as Complainant, without paying associated taxes, fees, and licenses in accordance with the Airport's Minimum Standards, deprives the Airport of appropriate revenue in violation of Grant Assurance 25, Airport Revenue. [FAA Exhibit 1, Item 8, page 15 and FAA Exhibit 1, Item 1, exhibit 8.]

Respondent objects to Complainant's allegation in general terms stating:

> *[Complainant] does not explain what "fees and taxes" it is referring to, and does not address what hangar associations it thinks are at issue. [Respondent] is unaware of any property leased out at the Airport from which the Airport does not derive an appropriate rental.*
>
> [FAA Exhibit 1, Item 11, page 8.]

Respondent does acknowledge "lessees of the north-end hangars are permitted to subdivide the property rights through condominium ownership of the individual hangars." [FAA Exhibit 1, Item 5, page 4.]

The Respondent provides no further details on this practice, but states:

> *Airports routinely allow entities and individuals that sublease airport property to make a profit for those activities. [Complainant] does not explain why allowing Airport tenants, such as [Complainant], the opportunity to profit from their businesses would violate Grant Assurance 24. Thus, [Complainant] states no claim that identifies a failure of [Respondent] to comply with Grant Assurance 24.*
>
> [FAA Exhibit 1, Item 5, Attachment A, page 39.]

It is undisputed that tenants in the north-end hangars are allowed to offer subleases for their aircraft hangar leases. Based on the Airport Rules and Regulations and the Airport's Minimum Standards, it appears that these tenants are engaging in a commercial activity. There is no evidence these tenants have commercial lease agreements or pay the associated taxes and fees comparable to what Complainant pays for the privilege of providing aeronautical services at the Airport. The FAA has previously found that an airport sponsor should not permit, and should object to, a tenant's commercial use of

Airport property under a non-commercial lease.[54] In addition, the sponsor must be able to intervene if an aeronautical tenant decides to lease aeronautical space to a nonaeronautical tenant to the detriment of aeronautical users. [*See* FAA Order 5190.6B, *Airport Compliance Manual*, page 12-4.]

In this case, there is no evidence to show whether the subtenants are aeronautical or nonaeronautical. There were no subleases submitted to the administrative record. In addition, there is no evidence to show the Respondent has not established a reasonable fee for the hangar rentals in the north end. Respondent states it "is unaware of any property leased out at the Airport from which the airport does not derive an appropriate rental." [FAA Exhibit 1, Item 11, page 8.] The fact that the Respondent might be able to collect additional fees or a higher rate is not sufficient to show the Respondent is in violation of Grant Assurance 24, *Fee and Rental Structure*.

Regarding the allegation pertaining to use of airport revenue, , Grant Assurance 25, *Airport Revenues*, requires the airport sponsor to use airport revenue it receives only for the capital or operating costs of the Airport or for noise mitigation purposes on or off the Airport. [*See* FAA Airport Sponsor Assurances, #25 and 49 U.S.C. §§ 47107(b) and 47133.] Complainant provides no evidence to show airport revenues received were unlawfully diverted for some use other than the capital or operating costs of the Airport or for noise mitigation. Complainant contends that Respondent's failure to derive the greatest amount of revenue from the leasing and subleasing of north-end hangars equates to unlawful diversion of revenue under assurance 25. [FAA Exhibit 1, Item 1, at 4 and FAA Exhibit 1, Item 8, page 15.] It does not. [Rudy J. Clarke v. City of Alamogordo, NM, FAA Docket No. 16-05-19 (September 20, 2006) (Director's Determination) (loss of 'potential revenue' is highly subjective and very speculative)].

If the north-end tenants are able to operate as a commercial business by entering into subleases without meeting the same standards and paying taxes and fees comparable to what the Complainant pays, then this is likely to be inconsistent with Respondent's own Airport Rules and Regulations and thus likely constitutes a violation of Grant Assurance 22, *Economic Nondiscrimination*. In fact, Respondent compares Complainant's leases with its subtenants to the leases the hangar associations have with their subtenants [FAA Exhibit 1, Item 11, pages 8-9], alluding to the idea that these tenants are perhaps similarly situated. However, the Complainant did not allege a violation of Grant Assurance 22 related to the payment of taxes and fees, and the administrative record is insufficient to support such a finding. Nonetheless, the Director cautions the Respondent to review its policies and practices to ensure (1) the Respondent has not inadvertently created an unjustly discriminatory practice by permitting some tenants to operate commercial businesses without meeting the Airport Rules and Regulations, and (2) aeronautical land is not being inappropriately used for nonaeronautical purposes.

Director's Conclusion on Issue 4:

[54] *See* JetAway Aviation LLC v. Board of County Commissioners, Montrose County, Colorado, FAA Docket No. 16-06-01, (November 6, 2006) (Director's Determination), page 48.]

The Director finds the Respondent is not currently in violation of Grant Assurance 24, *Fee and Rental Structure,* or Grant Assurance 25, *Airport Revenues,* by failing to collect taxes and fees for commercial aeronautical and nonaeronautical businesses operating on the Airport. Even though the Respondent may or may not be administering its lease agreements in accordance with its own Airport Rules and Regulations, the administrative record contains no evidence that the Respondent did not establish a reasonable fee and rental structure. In addition, the administrative record contains no evidence the Respondent used airport revenue it received for any purpose other than the capital or operating costs of the Airport or for noise mitigation programs.

VII. FINDINGS AND CONCLUSION

Upon consideration of the submissions by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

- The Respondent is currently in violation of Grant Assurance 19, *Operation and Maintenance*, by allowing nonaeronautical use of airport hangars for storing non-aviation items and for operating non-aviation related industries thereby causing or permitting an activity or action thereon which interferes with its use for airport purposes. The Respondent is also currently in violation of Grant Assurance 29, *Airport Layout Plan*, and 49 U.S.C. § 47107(a)(16), by not showing on its ALP the nonaeronautical use of airport hangars for storing non-aviation items and for operating non-aviation related industries. The Director cautions the Respondent to ensure its Airport use is consistent with its approved Airport Layout Plan. The Director further cautions the Respondent that a change in aeronautical use of Airport property must be approved by the FAA through a determination that the change will not adversely affect the safety, utility, or efficiency of any federally funded property. FAA Order 5190.6B at 7.18.a.; Airport and Airway Safety and Capacity Expansion Act of 1987. [*See* Issue (1).]

- The Respondent is currently in violation of Grant Assurance 22, *Economic Nondiscrimination*, by failing to apply its Airport Rules and Regulations consistently among similarly situated tenants storing nonaeronautical vehicles and equipment in hangars and storing disabled aircraft on the Airport. [*See* Issue (2).]

- The Respondent is currently in violation of Grant Assurance 22, *Economic Nondiscrimination*, by imposing rental rates on Complainant using a flawed appraisal and without considering other tenant rental rates on the Airport. The Director makes no finding regarding the validity of the rate structure of either the Complainant or the Respondent. The Director limits his review to the process followed by the Respondent in arriving at the recommended rate structure and to the applicability of the grant assurances. [*See* Issue (3).]

- The Respondent is not currently in violation of Grant Assurance 24, *Fee and Rental Structure,* or Grant Assurance 25, *Airport Revenues,* by failing to collect

taxes and fees for commercial aeronautical and nonaeronautical businesses operating on the Airport. Even though the Respondent may not be administering its lease agreements in accordance with its own Airport Rules and Regulations and Minimum Standards, the administrative record contains no evidence the Respondent did not establish a reasonable fee and rental structure. In addition, the administrative record contains no evidence the Respondent used airport revenue it received for any purpose other than the capital or operating costs of the Airport or for noise mitigation programs. [*See* Issue (4).]

ORDER

ACCORDINGLY, it is ordered that:

Respondent will submit a corrective action plan to the Director, Airport Compliance and Management Analysis, within 30 days of the date of this Determination that will address the following issues and provide a date for implementation of each step in the corrective action plan:

- identify all aeronautical land and facilities currently being used for nonaeronautical purposes;

- submit any proposed changes in use of aviation land from aeronautical to nonaeronautical to the FAA for interim use approval on its Airport Layout Plan (ALP);

- ensure aeronautical land and facilities currently being used for nonaeronautical purposes that is not approved for interim use is converted to aeronautical only use in a timely manner;

- provide a plan that demonstrates how Respondent will maintain on ongoing program to monitor the contents and use of hangars to ensure the safe and proper use of the airport and its facilities;

- provide a plan for ensuring all tenants and Airport staff are aware of and abide by the 2004 Airport Rules and Regulations;

- provide a plan either to (a) cease imposing a rate structure for hangars and tie-downs or (b) determine reasonable hangar and tie-down rates for all tenants renting or leasing to subtenants at the Airport; in the interim, remove the imposed rate structure for Complainant;

Successful completion of the FAA accepted corrective action plan will result in the Director issuing a letter changing the Sponsor's status from noncompliant to compliant. Failure to submit the corrective action plan within the specified period, failure to submit a corrective action plan acceptable to the Director, and/or failure to accomplish the requirements of the corrective action plan may result in the continued determination of

noncompliance. In that event the Airport Sponsor will be placed on the Airport Noncompliance List (ANL), an internal notification from ACO-100 to other FAA Airports offices regarding which airports are not to receive any further discretionary grants authorized under 49 U.S.C. § 47115 and the General Aviation $150,000 apportionment under 49 U.S.C. § 47114(d)(3)(A) until corrective action is achieved. The ANL includes formal findings of noncompliance under 14 CFR Part 16 that support the withholding of grants under 49 U.S.C. § 47114(c). [*See*, FAA Order 5190.6B at par. 2.10.]

All motions not expressly granted in this Determination are denied.

RIGHT TO APPEAL

This Director's Determination, FAA Docket No. 16-09-06, is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. [14 CFR § 16.247(b)(2)]. A party to this proceeding adversely affected by the Director's Determination may appeal the initial determination pursuant to 14 CFR § 16.33(b) within thirty (30) days after service of the Director's Determination.

Randall S. Fiertz
Director, Office of Airport Compliance
and Management Analysis

May 24, 2011
Date