UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Michael Pelzer and **Pegasus Parachuting Services,** **Complainant** **v.** **The State of Michigan,** **Respondent**

FAA Docket No. 16-16-05

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a complaint filed under Title 14 of the Code of Federal Regulations, Part 16 (14 CFR Part 16) by Michael Pelzer and Pegasus Parachuting Services (Complainant) against the State of Michigan (Respondent or Sponsor), owner of Romeo State Airport (Romeo State), a federally obligated airport. The Romeo State is managed and operated by Romeo Airport Management, LLC (Airport Management), having been granted this authority by the State of Michigan, Department of Transportation (FAA Item 2, Exhibit A; Airport Concession and Management Contract).

The Complainant alleges that the Sponsor violated its Federal obligations, namely Grant Assurance 5, *Preserving Rights and Powers*, Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*. The Complainant contends the Sponsor established prohibited exclusive rights at Romeo State, unjustly discriminated against a commercial aeronautical activity seeking airport access, and used arbitrary, irrational, *ad hoc,* unattainable, and discriminatory standards throughout its lease negotiations (FAA Exhibit 1, Item 1).

With respect to the allegations presented, under the specific circumstances at the Airport as discussed below and based on the evidence of record in this proceeding, the FAA finds the Sponsor is currently in violation of its Federal obligations with respect to Grant Assurance 22, Economic Nondiscrimination.
The FAA's decision in this matter is based on applicable Federal law and FAA policy and review of the pleadings and supporting documentation submitted by the parties, which constitutes the administrative record in the attached FAA Index.

II. PARTIES

A. The Respondent (Sponsor)

The Sponsor is a participant in the FAA's State Block Grant Program, as defined and as amended in 49 U.S.C. § 47128, which obligates the Sponsor to assume the responsibilities for administering the Airport Improvement Program (AIP) through the Block Grant Program Grant Assurances and as authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.* Romeo State is a public-use general aviation airport owned by the Sponsor. Through an Airport Concession and Management Contract with the Sponsor, Romeo Airport Management, LLC, owned by Steve Mazur (FAA Item 8, Exhibit 11) manages Romeo State.

The Sponsor owns six other public airports: Canton-Plymouth-Mettetal (1D2), Houghton Lake State (5Y2), North Fox Island (6Y3), Prices (9G2), Two Hearted Airstrip (6Y5). 1D2 and D98 are reliever airports, part of the National Plan of Integrated Airport Systems (NPIAS), and are obligated through AIP grant agreements. While 5Y2, 6Y3 and 9G2 are non-NPIAs airports, 5Y2 is shown in FAA Order 5190.2R as obligated through grants under the Federal-Aid Airport Program (FAAP) and/or Airport Development Aid Program (ADAP).

Airport Management oversees the day-to-day operation of Romeo State. The airport consists of 265 acres and runway 18/36, which is 4,000 by 75 feet. Romeo State is located about 2 miles from the Village of Romeo, within Ray Township and Macomb County, Michigan. The Romeo State Airport Master Record shows 51 based aircraft, and during the reported 12-month period ending December 31, 2015, there were an estimated 15,000 annual operations (FAA Item 7, Exhibit 1 – Romeo State Airport Master Record, FAA Form 5010).

The FAA records indicate that the planning and development of Romeo State has been financed, in part, with funds provided by the FAA under the AIP, authorized by the Airport and Airway Improvement Act of 1982 (AAIA), as amended, 49 U.S.C. § 47101, *et seq.* (For Grant History see FAA Item 7, Exhibit 2 and 3). Title 49 U.S.C. § 47101 and the grant agreements signed by the Sponsor obligate the Sponsor to comply with the FAA sponsor Grant Assurances and related Federal law.

B. The Complainant

Michael Pelzer has been a private tenant at Romeo State for over 20 years. Mr. Pelzer established Pegasus Parachuting Services in 1985. (FAA Item 1, p. 3).

III. BACKGROUND AND PROCEDURAL HISTORY

A. Background

In February 2015, the Complainant states he contacted Airport Management about setting up a commercial skydiving operation and a PDZ[1] at Romeo State.

On March 13, 2015, the Complainant states he met with Airport Management and presented his proposed business, "including [PDZ] location, hangar plan and projected fuel use. The business would be run from

[1] The Director's Determination refers to the drop zone, Parachute Landing Area (PLA), and Parachute Drop Zone as "PDZ."

the Airport's community hangar… [which was] run down and had been vacated" (FAA Item 1, p. 4 and Exhibit 1, p. 1).

On March 26, 2015, the Complainant states that he received a Concession and License Agreement (CLA) from Airport Management (FAA Item 1, Exhibit 3). The agreed upon lease rate for the hangar was $950 per month. However, Complainant claims that the CLA differed from terms discussed in previous conversations with Airport Management, such as: (1) no commercial operations were allowed to take place in the Airport Community Hangar (Hangar); (2) the CLA only allowed for storage of one airplane when the Hangar had the space for multiple airplanes, classrooms, and office; (3) the CLA required Complainant to maintain the deteriorated Hangar; and (4) the term of the CLA was for only one year, impeding the long-term commercial viability. On March 31, 2015, the Complainant wrote Airport Management raising concerns about the proposed CLA (FAA Item 1, pp. 4 and 5 and FAA Item 1, Exhibit 1, p. 1).

On April 17, 2015, the Complainant states he sent a copy of its participant waiver (hold harmless agreement) to Airport Management that the Complainant required from each skydiver (FAA Item 1, pp. 5-6, and Exhibit 1, p. 1).

On May 13, 2015, the Complainant states that he met with the Sponsor and Airport Management, and the parties discussed the PDZ locations at Romeo State (FAA Item 1, Exhibit 1, p. 1) and on May 14, 2015, Sponsor sent a letter to Airport Management with the recommended locations for the PDZ (FAA Item 2, Exhibit H, p. 1).

On May 21, 2015, the Complainant wrote to Airport Management asking for clarification on the CLA and later followed up with a telephone call. Complainant stated that Airport Management had verbally "promised the revised agreement the next day" (FAA Item 1, p. 6 and Exhibit 6).

On May 22, 2015, the Complainant states that Airport Management did not provide the paperwork agreements as previously stated. Complainant states he left Airport Management "multiple messages," but the Complainant received no response (FAA Item 1, Exhibit 1, p. 1).

On May 26, 2015, the Complainant asserts he received a telephone message from Airport Management saying there was "no excuse" for not getting back to Complainant (FAA Item 1, Exhibit 1, p. 1).

On May 27, 2015, the Complainant asserts he met with Airport Management to work on the Commercial Operating Agreement. The Complainant asked Airport Management if it was safe to tell Complainant's staff that Pegasus could start operations that weekend. The Complainant asserts that Airport Management agreed (FAA Item 1, Exhibit 1, p. 2).

On May 28, 2015, the Complainant asserts he attempted many times to contact Airport Management, but without success (FAA Item 1, p. 7; Exhibit 1, p. 2; and Exhibit 7).

On May 29, 2015, the Complainant states he met with the Sponsor and provided a copy of the insurance documents and the waiver to Airport Management. After the meeting, the Sponsor called the Complainant and stated that Airport Management was offering $200 per month for the PDZ area, which was land leased at the time "to a farmer for less than $100/acre per year" (FAA Item 1, p. 6; and Exhibit 1, p. 2). The Complainant states that the farmland "was nothing but grass" (FAA Item 1, p. 6). The Complainant called Airport Management (Steve Mazur), who stated in their conversation "He also said that he set aside four hours to complete the agreement on Friday and if it wasn't finished would complete it on Saturday." On the following day, the Complainant states he sent to the Sponsor a text message with an update of the negotiations (FAA Exhibit 1, Item 1, p. 2).

On June 1, 2015, the Complainant states he spoke with the Sponsor and received the second version of the CLA (FAA Item 1, Exhibit 8). As discussed on May 29, 2015, the new CLA increased the monthly fee by $200 to include the PDZ area (FAA Item 1, Exhibit 8, p. 4). The new CLA also limited the use of the Hangar to two aircraft and prohibited (1) commercial activity, (2) aircraft storage, (3) self-fueling, (4) maintenance, and (5) signage. The Complainant contacted the Sponsor and advised that Airport day Complainant sent an email to Airport Management with the concerns (FAA Item 1, pp. 7 - 8; Exhibit 1, p. 2).

On June 4, 2015, the Complainant and Airport Management met and they reached agreement on most areas of the concerns. The Complainant asserts he "[a]sked for written fuel price agreement, trailer, signage, entry way doors." "[Airport Management] showed [the Complainant] an email from his [insurance agent] with insurance requirements", and the Complainant explained that these requirements were unattainable, and so "[Airport Management] agreed to what was written in the contract." The Complainant further claims he "asked if it was safe to [direct his] staff [to get] started and again [Airport Management] said yes." (FAA Item 1, Exhibit 1, p. 3). As a result, Complainant states that it "took action to have everything ready to begin skydiving, expending resources on aircraft and equipment" (FAA Item 1, p. 8).

On June 5, 2015, Complainant states "[Airport] Management called Complainant and changed the insurance requirements," which prevented Complainant from commencing jump operations that weekend. Airport Management "insisted that [Complainant] [had] to buy insurance from [Airport Management]'s Insurance Agent" and so the Complainant contacted the insurance agent. (FAA Item 1, p. 8).

Between June 10 and 19, 2015, the Complainant states he had various conversations with the insurance agent about the insurance requirements. Initially, the Complainant was offered a liability coverage somewhere between $15,000 and $200,000. However, the agent could not produce an insurance policy and stated "that there was no policy and that no such coverage existed." The Complainant forwarded this information to the Sponsor (FAA Item 1, Exhibit 1, pp. 8-9). "[Complainant claims he] struggled to find an insurance policy that met [Airport Management] insurance agent's requirements, but [Complainant] was able to find something." (FAA Item 1, Exhibit 1, p. 3).

On June 12, 2015 Airport Management "chose to accept the advice of their insurance vendor" and "required the Complainant to obtain the recommended insurance coverage" (FAA Item 2, p. 6 and Exhibit K, p. 14).

On June 19, 2015, Sponsor received an email from Complainant indicating that insurance issues were unresolved; Respondent scheduled a meeting with Airport Management and Complainant. (FAA Item 2, 2015, pp. 6-7 and Exhibit K, p. 8).

On June 26, 2015, the Complainant states he received a telephone voicemail message "from Airport Management saying that we are good to go but the rent is increased by $8,000/year and that 'the cost of doing business'" (FAA Item 1, Exhibit 1, p. 3). After the voicemail message Complainant received the third version of the agreement with a yearly cost increase of $8,000 (FAA Item 1, p. 9) and then Complainant requested via email from Airport Management a copy of the airport insurance policy and written description of the additional $8,000, but did not receive a response (FAA Item 1, Exhibit 10, p. 2; FAA Item 1, Exhibit 1, p. 3).

On June 30, 2015, the Complainant claims he received another version of the CLA and Commercial Operating Agreement. (FAA Item 1, Exhibit 1, p. 4; FAA Item 2, p.7 and Exhibit L, pp. 25-28). The agreements continued to prohibit commercial operations, self-fueling, maintenance, aircraft storage, and signage. The rent increased to $1,550 per month plus an additional $200 per month for the PDZ. June 30

through July 1 the Complainant raised these concerns and others to Airport Management and the Sponsor (FAA Item 1, p. 9; Exhibits 11, 12 and 13).

On July 3, 2015, the Complainant inquired about an additional parking space of 100 feet by 150 feet. On July 7, Complainant states that Airport Management responded and explained "that the additional $8,000 was for parking and insurance: $6,000 for insurance and $2,000 for parking." and that "the insurance increase would happen December or January, or maybe not at all" (FAA Item 1, Exhibit 1, p. 4 and FAA Item 2, Exhibit L, p. 14 - 16).

On July 7, 2015, a new version of the Concession and License Agreement was sent to Complainant (FAA Item 2, p. 7 and Exhibit L, pp. 20-14).

On July 15, 2015, the Complainant states he "was told [by Airport Management] that the insurance increase was immediate" and "that the nature of the business was increasing (Romeo State) liability" (FAA Item 1, Exhibit 1, p. 4).

On July 16, 2015, the Complainant sent the Sponsor a "FAA Rule 16 Settlement Letter." The letter attempted in part to fulfil the informal resolution requirements of 14 CFR Part 16.21(a), and proposed settlement conditions for presumed violations to Grant Assurances and an interim agreement to allow immediate access to the airport. (FAA Item 8, Exhibit 1). The Sponsor treated this letter as a Part 13 complaint (FAA Item 8, Exhibit 1).

On July 17, 2015, Complainant states he asked if the insurance increase was covering the jumpers. (FAA Item 1, Exhibit 1, p. 4).

On July 20, 2015, Airport Management responded that the airport insurance did not cover the Complainant or the jumpers: "For anyone or any business to cover your jumpers it is cost prohibitive." Up to now, the Complainant claims he could not get supporting documentation that explained what the additional $8,000 was intended for and so the Complainant asked to add the following to the agreement: "This Agreement is being entered into between [Airport Management] and Pegasus Parachuting Service, Incorporated, without prejudice to any 14 CFR Part 16 Airport Assurance matters raised by Pegasus Parachuting Service and/or [Complainant]" (FAA Item 1, Exhibit 1, p. 4). The Complainant further states he "suggested a temporary agreement to allow skydiving operations to begin—at the price [Airport] Management was demanding—while the two of them sorted out the details of the agreement." Airport Management denied Complainant a temporary agreement to begin operating at the airport. (FAA Item 1, p. 10; FAA Item 2, Exhibit L, p. 8).

Complainant states that on July 23, 2015, Airport Management requested "a meeting to measure the hangar space and parking area to set up yet another new pricing structure" and stated that the "Complainant had changed the area needed for parking three separate times." Complainant denies it and states there was only one inquiry to change the parking area. (FAA Item 1, Exhibit 1, p. 5).

On July 24, 2015, the Complainant claims that he "was informed that the previous tenant paid $900 per month for the same area in the Hangar [and] did not pay parking or ramp rentals." A previous tenant asserts that he "left when an attempt was made to raise their rent to $1693.75 per month." (FAA Item 1, Exhibits 1, p.5; and Exhibit 2).

On July 28, 2015, the Complainant states he "met with [Airport Management] at the airport [who] walked around with a measuring wheel" and proposed a new rate based on a per square foot basis. "[Airport Management] didn't ask what I needed for ramp area and informed me that I would now be responsible for the lawn maintenance in the parking area." (FAA Item 1, Exhibit 1, p. 5).

On July 29, 2015, the Complainant received a new price schedule for the skydiving operation, $1,925 per month for the Hangar space plus $995.07 per month for parking and ramp areas (FAA Item 1, Exhibit 1, p. 5; and Exhibit 17). Complainant stated that "this amount seemed excessive so [he] asked for a diagram showing what [Airport Management] had measured." On July 31, 2015, Complainant received the requested diagram. (FAA Item 1, Exhibit 1, p. 5).
Complainant states that on August 3, 2015, due to Airport Management changes of Romeo State price structure changes and delays in completing an agreement, the Complainant changed the areas needed for its operations. Complainant states that by this time, the skydiving season was nearing its end. On August 7, 2015, the Complainant asserts he "received an email from [Airport Management] in regard to changes in the area I needed." While the Complainant had expected a new agreement, Airport Management initiated additional inquiries of information that the Complainant asserts "[Airport Management] already had." On August 10, 2015, Airport Management sent "additional emails requesting information that [Airport Management] already had". (FAA Item 1, Exhibit 1, p. 5).

On August 11, 2015, the Sponsor sent a letter to Airport Management asking about the situation with Complainant and asking for "copies of all leases, contracts and commercial operating agreements the airport has with all commercial operators based at [Romeo State]" (FAA Item 2, Exhibit O, p. 24). In addition, the Sponsor reported to the FAA Airports Regional Division that it had initiated the investigation of an informal complaint at Romeo State. (FAA Item 8, Exhibit 2).

According to the Complainant, on August 12, 2015, Airport Management produced a new agreement which called for $1,925 per month for the Hangar and $689.43 for the ramp and vehicle parking areas. (FAA Item 1, p. 12).

On August 14, 2015, the Complainant claims to have "received word from [Airport Management] that [it] would not downsize the ramp area according to [the Complainant's] request," because of the "type of business." On August 17, 2015, the Sponsor recommended the Complainant "to continue pursuing a commercial agreement with [Airport Management] while the complaint process continues." On August 24, 2015, Complainant states the Sponsor sent a letter to Airport Management with an August 31, 2015, deadline for it to respond to the allegations made by the Complainant and provide the previously requested documents from the August 11, 2015 letter. (FAA Item 1, Exhibit 1, p. 5).

On September 2, 2015, the Sponsor was provided with the requested documents, which included the leasing agreements for other airport tenants—Victory Aviation and agricultural operator, Wilson Grain, LLC (FAA Item 2, Exhibit O, p 12; Exhibit J; FAA Item 8, Exhibit 3).

On September 10, 2015, Airport Management provided insurance certificate documents of Wilson Grain, LLC (FAA Item 2, Exhibit O, pp. 4 – 10). On September 18, 2015, the Complainant states that Airport Management "produced what appeared to be the remaining documents" (FAA Item 1, Exhibit 1, p. 6).

On September 21, 2015, the Sponsor advised the Detroit Airports District Office (ADO) that the complaint needed to be handled by the FAA. Sponsor forwarded the complaint-related documentation to the ADO (FAA Item 8, Exhibit 5).

On September 25, 2015, the Complainant states he attended an aviation event and met with the Sponsor's Executive Administrator for the Office of Aeronautics. The Complainant says he expressed displeasure in the way the case was being handled. According to the Complainant, that evening in an email exchange, the Executive Administrator and Complainant decided to schedule a meeting with the main parties involved in this case. (FAA Item 1, Exhibit 1, p. 6).

On September 28, 2015, according to the Complainant, the Sponsor, Airport Management, and Complainant met at Romeo State. During the discussions, the parties concluded that the appropriate price for the agreement was about 30 percent lower than what Airport Management had proposed. Complainant claims that the new rental price was established as $1,800 per month for the first year, which included the earlier proposed $8,000 (about $666 per month) increase per year for parking and airport insurance that the Complainant disputed. This five-year agreement was confirmed by the Sponsor the next day in an email. (FAA Item 1, pp. 12-13 and Exhibit 20).

The Sponsor's September 29, 2015, follow up email described new lease term revisions, which included the lease term (5 years), rate and escalations (Starting at $1,800 per month), parking (to be assigned by the Airport), and Utilities (Paid and operator). (FAA Item 1, Exhibit 20 and FAA Item 2, Exhibit R, p. 6-7).

On September 30, 2015, the Complainant asked the Sponsor, via email, about Airport Management pricing structures and lack of attention to items discussed since day one." The Complainant expressed concern about (1) the different in price between what he was being offered versus the original quote, (2) requested clarification about the $8,000 surcharge, and (3) requested a discount on the fuel price offered. In response the Sponsor stated in part, "We have the right to establish rates and charges and rules that suit us and are not obligated to match other airports, only to be consistent. If we choose to charge higher fuel prices it may not make great business sense, but it is our right" (FAA Item 1, Exhibit 21).

On October 1, 2015, the Complainant states that he received the eighth revision of the agreement from Airport Management, which included a note saying that the Complainant was going to be charged for parking, which was rolled into the monthly rent rate. The $689.43 per month parking fee would be added to the $1,800.00 monthly rate stated earlier by Airport Management and Sponsor and would increase the contract by more than $43,000.00 over the 5-year period (FAA Item 1, Exhibit 1, p. 6).

On October 16, 2015, Airport Management asked the Complainant to obtain an occupancy permit from Ray Township, and to provide Architectural Plans and Drawings for the interior of the Hangar (FAA Item 1, Exhibit 22). Airport Management contends it made this request based on the changes to the Hangar proposed by the Complainant (FAA Item 2, Exhibit S, p. 17).

On October 26, 2015, the Complainant asserts that he had scale drawings made and sent to Airport Management. (FAA Item 1, Exhibit 1, p. 6).

On October 27, 2015, the Complainant states he contacted Ray Township for a meeting to discuss permit requirements and approvals. He claims he was told by Ray Township personnel that they had never inspected or issued permits for buildings on Romeo State property and did not require such buildings to go through its permitting and inspection processes. (FAA Item 1, p. 14 and Exhibit 1, p. 6).

On October 28, 2015, in an email exchange between the Complainant and Airport Management about building permit, plumbing, parking lot striping, flooring, heating, cooling, and other specifications, the Complainant charges that Airport Management has made unreasonable demands, knowing "full well that all of these [requested] items are additional roadblocks and hoops to jump through. Portable toilets don't use plumbing. The state approved the parking plan months ago. Carpeting or gym floor type padding would be laid on the floor to pack parachutes on. There is no heating or air conditioning to be added" (FAA Item 1, Exhibit 1, p. 6; and FAA Item 8, Exhibit 6).

On November 3, 2015, the Complainant claims that Airport Management accepted the Complainant's drawings of Hangar improvements. (FAA Item 1, Exhibit 1, p. 7).

On November 10, 2015, the Complainant sent a letter to the ADO with a brief description of the complaint filed with the Sponsor and requested the ADO to facilitate a meeting between the Complainant, Sponsor, and Airport Management. (FAA Item 8, Exhibit 7).

On November 19, 2015, email communication between the ADO and the FAA Regional Airports Division indicated that the ADO appeared to believe "that this issue was almost resolved." The ADO requested help from the FAA Regional Airports Division .(FAA Item 8, Exhibit 8).

On December 2, 2015, the ADO sent a letter to the Complainant in response to the November 10 request to arrange a meeting, acknowledging that the complaint had been filed on July 16, 2015, that the Complainant's floor plan had been approved by Airport Management, and that the Sponsor was waiting for the building permits from the Complainant. The ADO also provided a list of information necessary to process a part 13 complaint (FAA Item 8, Exhibit 9).

On December 9, 2015, the Complainant states he spoke with the Ray Township and they had not made a decision concerning their role in the permitting and approval of the plans (FAA Item 1, Exhibit 1, p. 7).

In late December, the Complainant asserts he learned that Ray Township established permitting and inspection requirements for buildings on the Airport (FAA Item 1, p. 5).

On February 23, 2016, the FAA received a formal Complaint from Complainant filed under 14 CFR Part 16 (FAA Item 1).

On March 14, 2016, Ray Township emailed the Sponsor and stated that Ray Township will not be able to issue a certification of occupancy or final approval because the Michigan Tax Tribunal had previously determined that the "Township of Ray had no authority at [Romeo State] since it is State owned and operated and that Ray Township did not witness the levels of inspection necessary to allow Ray Township to render an opinion or documentation on this structure" (FAA Item 2, Exhibit S, p. 1 and p. 2).

On March 18, 2016, the Sponsor informed Ray Township that the Michigan Department of Licensing and Regulatory Affairs (LARA) will be handling the plans review, permit applications, and inspections for Romeo State (FAA Item 2, Exhibit S, p. 0).

On April 17, 2016, "the main doors [of the Hangar] were replaced" (FAA Item 4, p. 3).

B. Procedural History

On February 23, 2016, FAA received a formal Complaint filed under CFR Part 16 (FAA Item 1).

On March 14, 2016, FAA issued a *Notice of Docketing* (FAA Item 5).

On April 4, 2016, Sponsor filed its *Answer to the Complaint* (FAA Item 2).

On April 9, 2016, Complainant filed its *Reply* (FAA Item 3).

On April 20, 2016, Sponsor filed its *Rebuttal* (FAA Item 4).

On August 16, 2016, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 1).

On November 17, 2016, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 2).

On January 18, 2017, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 3).

On March 17, 2017, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 4).

On May 31, 2017, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 5).

On August 7, 2017, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 6).

On November 3, 2017, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 7).

On January 18, 2018, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 8).

On March 12, 2018, FAA issued a *Notice for Extension of Time* (FAA Item 6, Exhibit 9).

IV. ISSUES

Issue 1: Whether the Sponsor, by allowing the Airport Manager to employ the lease review process applied to Complainant, violated Grant Assurance 5, *Preserving Rights and Powers.*

Issue 2: Whether the Sponsor violated Grant Assurance 23, *Exclusive Rights* by unreasonably denying access to a proposed aeronautical activity by delaying approval for airport access.

Issue 3: Whether the Sponsor violated Grant Assurance 22 (a), *Economic Nondiscrimination*, by failing to make the airport available to the Complainant under reasonable and nondiscriminatory terms.

V. APPLICABLE LAW AND POLICY

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 AIP established by the Airport and Airway Improvement Act of 1982 (AAIA) 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 to providing airport development assistance under the AIP, 49 U.S.C. § 47107, *et seq.,* the Secretary of Transportation and, by extension the FAA, must receive certain assurances from the airport sponsor.

The FAA has a statutory mandate to ensure that airport owners comply with these assurances. FAA Order 5190.6B, *FAA Airport Compliance Manual*, 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 or will restrict aeronautical activities.

Three FAA Grant Assurances apply to the circumstances in this Complaint: (1) Grant Assurance 5, *Preserving Rights and Powers;* (2) Grant Assurance 22, *Economic Nondiscrimination;* and (3) Grant Assurance 23, *Exclusive Rights.*

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

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

2. Grant Assurance 22, *Economic Nondiscrimination*

Grant Assurance 22, Economic Nondiscrimination, requires the owner of any airport developed with Federal grant assistance to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Grant Assurance 22 deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access.

Grant Assurance 22 carries out the provisions of 49 U.S.C. § 47107(a)(l) through (6). Three subsections from Grant Assurance 22 are pertinent in this determination. They specify the sponsor of a federally obligated airport:

- ... will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a)]

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

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

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

The two subsections that relate to safety—Subsection (h) and Subsection (i)—are exceptions Subsection (a) that requires sponsors to make the airport available as an airport for public use without discrimination. These provisions permit the sponsor to exercise control of the airport sufficient to preclude unsafe and

inefficient conditions that would be detrimental to the civil aviation needs of the public. In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of the restrictions when they deny or limit access to, or the use of the airport (FAA Order 5190.6B, Chapter 14).

FAA Order 5190.6B describes the responsibilities under Grant 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 (FAA Order 5190.6B, Chapter 9).

3. Grant Assurance 23, Exclusive Rights

- Grant Assurance 23, Exclusive Rights, carries out the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4). It requires, in part, that the owner or sponsor of a federally obligated airport meet these assurances: It will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public. . . .

- [It] will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities. . . .

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

C. The FAA Airport Compliance Program

The Federal Aviation Act of 1958, as amended, 49 U.S.C., § 40101, *et seq.*, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics.

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

D. The Complaint Process

Under 14 CFR § 16.23, persons directly and substantially affected by an alleged noncompliance may file a complaint with the FAA. Complainants shall provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how they were directly and substantially affected by the things done or omitted by the Sponsors. If these statements provide a reasonable basis for further investigation, the FAA will investigate the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.

The Airport Compliance Program is administered by FAA's ACO-1, the Airport Compliance and Management Analysis Division. The Airport Compliance Division (ACO-100) oversees the Airport Compliance Program. ACO-100 holds primary responsibility for interpreting, recommending, and

developing policies and resolving matters that involve the Federal obligations of airport sponsors. It also adjudicates formal complaints and FAA-initiated investigations under 14 CFR Part 16. The FAA Compliance Program is designed to achieve voluntary compliance with Federal obligations accepted by owners and operators of public-use airports developed with the FAA-administered assistance.

In accordance with 14 CFR §§ 16.31 and 16.33, upon issuance of a Director's determination, "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within thirty days after the date of service of the initial determination." However, "if no appeal is filed within the time period specified in paragraph (c) of this section, the Director's Determination becomes the final decision and order of the FAA without further action." Whenever there is no administrative appeal, a Director's Determination becomes final and is therefore ineligible for judicial review. Title 14 CFR § 16.247(a) provides for judicial review of the Associate Administrator for Airports' final decision and order.

VI. ANALYSIS AND DISCUSSION

A. Issues

ISSUE 1: Whether the Sponsor, by allowing the Airport Manager to employ the lease review process applied to Complainant, violated Grant Assurance 5, *Preserving Rights and Powers.*

Complainant's Arguments

Complainant alleges that Sponsor has violated Grant Assurance 5, *Preserving Rights and Powers*, by permitting Airport Management to employ processes and procedures for the review of aeronautical service requests that lack transparency and act as a deterrent to new aeronautical entrants:

> The inexplicable, *ad hoc*, incoherent actions of the Airport sponsor's agent, [Airport Management], supported by MDOT, in repeatedly changing the price for the Agreement, reneging on agreements reached in face-to-face meetings between the parties, failing to amend draft Agreements to reflect the agreements reached between the parties, suddenly demanding insurance estimated to cost as much as $200,000, then withdrawing the demand and substituting a demand for $8,000 as a cost of doing business (FAA Item 1, p. 18).

Grant Assurance 5 states that a sponsor:

> will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor (5a).

Grant Assurance 5 further points out that a sponsor's authority is not relinquished when a third party is contracted to manage and operate an airport:

> If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and

maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith (5f).

Sponsor's Arguments

The Sponsor claims that its conduct was appropriate, its proposed rates reasonable and in line with similar tenants, and that the Complainant's allegation are without merit, by stating it "has continually offered to lease space to Complainant's commercial, for profit, parachuting service at approximately the same square rate as other existing non-commercial tenants. Complainant has failed to offer any proof whatsoever to the contrary." (FAA Item 2, pp. 12-13).

Director's Analysis

The airport owner and Sponsor is the State of Michigan and in particular its Department of Transportation, Office of Aeronautics. The Office of Aeronautics carries out the administrative responsibilities of the State Block Grant Program and the AIP in the State of Michigan. Under the State Block Grant Program's Memorandum of Agreement in AC 150/5100-2,1 the Sponsor is charged with managing and adjudicating Part 13 informal complaints.

It is not clear from the record how the Sponsor took actions to deprive itself from operating the airport. The record is not clear how the Sponsor did not reserve sufficient rights and authority in its management agreement with Romeo Airport Management, LLC.

For example, in *Frank Hinshaw, Skydiving School,Inc., d/b/a Skydive Hawaii and Island Skidiving, L.L.C v. The State of Hawaii* [FAA Docket No. 16-12-04 (August 18, 2014)], the Director affirmed that there was a need to demonstrate in the record that the sponsor took an action to deprive itself of the rights or powers to control the airport. The Director further explained that while the sponsor inaction and delay could contribute to economic discrimination, such actions did not demonstrate that the sponsor had deprived itself from its rights and powers.

The record shows changes in the conditions and leasing rates and errors and/or omissions in the Sponsor's negotiations process, but these do not represent an action that deprived the Sponsor of its authority to carry out its "rights and powers necessary to perform any or all of the terms, conditions, and assurances." The Sponsor's coordination for building permits and inspections with the Township also do not represent an action that would deprive the Sponsor from meeting Grant Assurance 5 obligations. An alleged failure of the Sponsor to take over the leasing negotiations does not demonstrate that Sponsor did not have "sufficient rights and authority." Thus, the Director dismisses alleged violations based on Grant Assurance 5.

ISSUE 2: Whether the Sponsor violated Grant Assurance 23, *Exclusive Rights* by unreasonably denying access to a proposed aeronautical activity by delaying the approval for airport access.

Complainant's Arguments

The Complainant alleges that its skydiving business was effectively denied access by the Sponsor, in violation of Grant Assurance 23, because "it's airport management company, has implemented a *de facto* policy of prohibiting skydiving and implemented it through continuously imposing new barriers, conditions and pricing structures and refusal to live up to agreements reached in face-to-face meetings" (FAA Item 1, p. 22). Complainant also argues that Airport Management repeatedly made

false or misleading promises by stating that skydiving operations could start on a particular "weekend," such as May 27 and June 6. (FAA Item 1, pp. 6 and 8). Since this was not ultimately permitted, it "caused Complainant to gather resources to start operations, which led to a revenue loss of about $200,000 to $300,000" (FAA Item 1, p. 24).

Complainant states that he is willing to go through the necessary leasing procedures, however, Complainant will not "spend... money for a permit until... [Complainant] has a suitable signed Concession and Lease Agreement in hand" (FAA Item 1, p. 15).

Sponsor's Position

The Sponsor denies it has violated Grant Assurance 23 and claims the Complainant's allegations are unsubstantiated:

> [Romeo State] does not, nor ever has, offered any person an exclusive right to use the airport. [Romeo State] currently has two flight schools operating on the grounds and offers aircraft storage facilities to dozens of individuals and businesses. The Sponsor adds that "although Complainant alleges a Grant Assurance 23 violation in his complaint, Complainant fails to provide any evidence whatsoever to support his claim.

The Sponsor explains that its changes in lease terms and delay in a final agreement stemmed from the Complainant's own changing requests. The changes in rates were due in part to changes in the size needed for the operation, new information concerning the negotiation of the space needed, fueling, building permits, classroom and office." (FAA Item 2, Exhibit O and Item 4, Exhibit I).

Finally, Sponsor states that the delays to the Complainant's expected start date were due to the Complainant not having a signed agreement in place. The Sponsor would have violated its minimum standards were it to allow the Complainant's operation to begin without a signed agreement:

> When [Airport Management]...stated that the Complainant could start operating 'that weekend', it was always understood that the Complainant had to sign the Concession and License Agreement before he could start operations," and that "Conducting commercial operations at the airport without a properly executed agreement would be a violation of the airport's Minimum Standards & Requirements for Commercial Aeronautical Activities (Exhibit B, p 3; FAA Item 2, p. 4).

Director's Analysis

The record does not establish the granting of an exclusive right, but, rather, illustrates difficulties in negotiating agreements. Title 14 CFR, § 16.23 requires the Complainant to submit all documents then available to support his or her complaint. Similarly, 14 CFR, § 16.29 states that, "(e)ach party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance."

Although it may have been understood that Complainant had to sign the Concession and License Agreement prior starting operations, giving verbal permission to start operations may imply that there was an agreement that both parties could settle on. A written agreement of some kind, however, is nonetheless necessary.

The record shows no evidence that the Sponsor granted a person or entity an exclusive right to use the airport as prohibited by Grant Assurance 23. In the exercise of its rights and powers the Sponsor requested Complainant to follow a building and permitting process. While the Sponsor's building permit directions appear to have been initially incorrect the Sponsor did inform complainant and others of the correct procedure. Although such errors added to delays in the negotiation process, the fact remains that Complainant did not continue the process as provided by the Sponsor.

As explained in *41 North 73 West, Inc. DBA Avitat Westchester and Jet Systems v. The County of Westchester, New York* [FAA Docket 16-07-13, September 18, 2009] "a claimant must show that it actually has been barred from conducting a 'particular aeronautical activity' at the airport, through the imposition of unreasonable standards." In the case of the Romeo State the Complainant ceased to follow the leasing process established by Sponsor, thus remains unclear if the negotiation delays and errors on the Sponsor's part acted as an exclusive rights violation. While the Director dismisses alleged violations of Grant Assurance 23, negotiation delays will be considered under Issue 3, Grant Assurance 22.

ISSUE 3: Whether the Sponsor violated Grant Assurance 22 (a), Economic Nondiscrimination, for by failing to making the airport available to the Complainant under reasonable and nondiscriminatory terms.

Overview

Through various communications in the leasing negotiations, it appears that the sponsor failed to provide the complainant a clear set of requirements for leasing and commencing skydiving operations at Romeo State. The Sponsor provided leasing requirements to Complainant in an incremental basis, which appears to have led to unnecessary delays. On the other hand, Complainant did not provide details about its proposed business and space requirements. The Sponsor denied access to Complainant by not allowing temporary skydiving operations.

Complainant's Arguments

The Complainant alleges that the Sponsor did not make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities. The Complainant states that Airport Management had established a *de facto* ban on skydiving by refusing to enter into a lease and by "repeatedly erecting barriers to Airport access in the form of new or changed conditions and a 'pay to play' demand" (FAA Item 1, p. 20). The Complainant alleges the Sponsor is operating Romeo State in a manner inconsistent with its Federal obligations by not making the airport available for public use on fair and reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical users. (FAA Item 1, p. 19). Finally, the Complainant contends that the actions and inactions of the Sponsor, including the denial to consider temporary skydiving operations, as well as multiple changes to leasing requirements, have prevented the Complainant from obtaining access to a Federally obligated airport in violation of Grant Assurance 22, *Economic Nondiscrimination*. (FAA Item 1, p. 20; FAA Item 3, p. 13).

Sponsor's Position

In response to Complainant's allegations, the Sponsor states that Complainant "has offered no evidence supporting its allegations," and that "it has not prohibited or limited any given type of aeronautical use at the

airport." The Sponsor asserts it "acted in a reasonable manner to insure safe and effective aeronautical operations at the airport, which is available for public use" (FAA Item 2, p. 13).

Director's Analysis of Grant Assurance 22 Allegations

To make a decision on the merits of this last alleged violation, the Director analyzed two central issues as related to Grant Assurance 22: (1) Leasing Negotiations, and (2) Temporary Commercial Operations.

1. Leasing Negotiation

The record shows a lack of clarity concerning the Airport's requirements for leasing to new entrants. The Complainant focuses on the failed lease negotiations with the Sponsor and represents, as part of its attempts concerning leasing negotiations, the Sponsor's irregular behavior:

> The sponsor continually and without warning, changed the conditions for a [Hangar] lease, refused to authorize temporary operations, repeatedly changed the pricing for the space in an old, nearly worn-out Hangar, imposed an $8,000 pay to play fee and then tried to cover it up by charging for parking and ramp space even though the documents provided showed it didn't do so for other commercial operators. The actions of the Sponsor and its agent have had the effect of denying skydiving access (FAA Item 3, p. 13).

The Complainant further discusses the difficulty of coming to terms with the Sponsor on five issues: leasing rates, space requirements, building permit, fueling, and insurance.

a. Leasing Rates

Complainant's Arguments

On the issue of leasing rates, Complainant states that Airport Management, supported by the Sponsor, continually shifted or added new lease conditions:

> [T]he inexplicable, ad hoc, incoherent actions of the Airport sponsor's agent, [Airport Management], supported by MDOT [was evidenced by its] . . . repeatedly changing the price for the Agreement (eight different prices), reneging on agreements reached in face-to-face meetings between the parties, failing to amend draft Agreements to reflect the agreements reached between the parties, suddenly demanding insurance estimated to cost as much as $200,000, then withdrawing the demand and substituting a demand for $8,000 as a "cost of doing business," which he later tried to cover up as paying for a potential liability concern (FAA Item 1, p. 18).

The Complainant adds that the initial monthly rent quoted was $950 per month, which through "eight different [amendments]" evolved to $2,480.43 (FAA Item 3, pp. 1-5).

The record shows that a series of reasons required adjustments to the leasing rates. The reasons include changes in the required space within and outside the Hangar, errors in the agreement documents, and negotiations relating to self-fueling, insurance, permitting, and Hangar condition.

Sponsor's Position

In response, the Sponsor argues that the "Complainant was offered space in the terminal building but…declined because it was too expensive." The Sponsor states that "the commercial operators renting space in the terminal building pay $10.98 sq ft for space that includes sanitary facilities, automobile parking and ramp space" (FAA Item 2, Exhibits M & N). The Sponsor states that it "never denied access, or discriminated against, Complainant and only insists that Complainant meet all requirements published in the Airport Rules and Minimum Standards" (FAA Item 4, p. 4). The Sponsor provides specific rate information on what was offered and notes that the Hangar "rate provided to Complainant was based on the dimensions provided to the previous tenant of 7,500 square feet," and that "this is equivalent to a rate of $1.52/square foot for commercial space." The Sponsor adds "the average rate paid at the [Romeo State] for non-commercial hangars is $3.68/sq ft. (Exhibit F)," and that "Complainant…pays $3.68/sq ft for hangar 38 (Exhibits F & G)" (FAA Item 2, p. 4).

Finally, the Sponsor states that the "original request by the Complainant was to operate the skydiving business from the T-hangar he is currently renting at the airport," but "this request was denied, so he requested to move his aircraft to the [Hangar] and operate his skydiving business here. This is reflected in the original rental rate of $950 per month offered to Complainant for the [Hangar]" (FAA Item 1, Exhibit 3). The Sponsor notes that this offer was "a similar rate to what the previous tenant was paying to rent 3,500 sq feet of the [Hangar]," and that "all other changes to the monthly rent amount have been based on the changing needs of the Complainant" (FAA Item p. 2).

Director's Analysis

Aeronautical rates, including leasing rates, do not have to be the same, but the Sponsor should be able to identify methodologies which explain differences. The record shows that there was a series of valid reasons that required adjustments to the leasing rates. The reasons include changes to the required space within and outside the Hangar, errors in the agreement documents, and negotiations related to self-fueling, insurance, permitting, and Hangar condition.

However, the record is somewhat deficient in finding justification for the difficulties encountered given the wide variations in rates (FAA Item 3, pp. 1-5). There is little information that would assist in comparing existing market rates and the rate being offered to the Complainant. However, the Sponsor established that "the hangar which is part of the deliberations with Complainant is scheduled for demolition" (FAA Item 2, p. 4). Based on this, it is reasonable to expect that the

equivalent leasing rate for that facility would be lower than other places on the airport with facilities in better conditions and additional amenities. Also, even though the Sponsor did offer space options for Complainant, such as the terminal building, these options did not work for the Complainant's skydiving business, presumably because of the higher costs.

As explained in the FAA Final Decision and Order of *Kent J. Ashton and Jacquelin R. Ashton v. City of Concord, North Carolina* [FAA Docket No. 16-02-01 (February 27, 2004)], each party is responsible for filing documents it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [14 CFR § 16.29.] In addition, the proponent of a motion, request, or order - in this case, the Complainants - has the burden of proof. [[14 CFR § 16.229(b).] Thus, the Director does not find sufficient proof to determine that a violation of Grant Assurance 22 has occurred based on the leasing rates.

b. Space Requirements

Complainant's Arguments

The Complainant requested the "approval…to lease the [Hangar] for office and classroom space, as well and ramp and parking use at the price originally quoted [at] $950 per month" (FAA Item 1, pp. 24-25). In March 2015, its business requirements for the skydiving operation included one or two aircraft parking spaces in the Hangar, space for a trailer to be used for the storage of equipment, and the temporary assembly of a classroom and office unattached from the Hangar. Complainant states that it had requested additional parking space on July 3, 2015 (FAA Item 3, p. 4) and that the proposal included "the plan for the business including the space to be rented, [PDZ] location, plan for structures for classrooms and storage in the [Hangar] and for fuel use" (FAA Item 3, p. 3). Complainant stated that the poor condition of the Hangar precluded making necessary improvements to it and that he would bring in a trailer for equipment storage and erect temporary classroom and office space that would not be attached to the Hangar and that he would also store one or two airplanes in the Hangar (FAA Item 1, p. 4).

Sponsor's Position

In response, the Sponsor states that the Complainant did not provide the information needed to put together a lease agreement:

> [He] never indicated how much space (was needed) and how it would be laid out in the [Hangar]" and that Complainant could not give "the dimensions of the office and open space needed to fold and unfold parachutes, educate and train his customers on the aeronautic activity they were about to experience, his personal office needs, and the most important aspect on how to safely combine storage space, office space, and aircraft storage space all together in the [Hangar]."

The Sponsor stated that because of this, it "could never finalize the agreement." The Sponsor adds that the Hangar was not designed to have office space, classrooms, and sanitary facilities, which raised concerns over Complainant's proposal "to change the current use of the facility, by installing walls, restrooms, electrical outlets, and doors" (FAA Item 4, p. 3).

The Sponsor adds that in its "attempts to finalize the [Hangar]/office space requirement term, [it gave the Complainant] examples of [costs] and the corresponding [non-discriminating] pricing as charged at the airport" (FAA Item 2, Exhibit O, p. 2). Sponsor states that on June 30, a new agreement was provided to Complainant with a fee increase that is shown in Exhibit F to cover the agreement for additional parking requirements (FAA Item 2, p. 7). Finally, the Sponsor states that it communicated to the Complainant "when the Complainant submits its final figure for the amount of square feet that he is wanting to lease at the airport, [Airport Management] will issue a lease to the Complainant," and that it "has never denied access or discriminated against Complainant" (FAA Item 4, p. 2). Finally, the Sponsor states that as Complainant provided clarification of the needs of the business, Airport Management had to take time to reevaluate Complainant's requirements (FAA Item 2, p. 3).

Director's Analysis

The Director finds the evidence inconclusive.

First, the Director notes that the Complainant did not include its business plan in the Record, which leaves multiple questions answered concerning the skydiving operation requirements. It is also not clear if the Sponsor provided the Complainant a clear set of requirements at the start of negotiations.

Second, the record is unclear about the Complainant's intended improvements and whether the classroom and office area were intended to be inside the Hangar or outside the Hangar in a temporary structure (FAA Item 1, p. 4; FAA Item 3, p. 3).

Third, although Airport Management requested architectural plans and drawings for the Hangar, which were submitted by Complainant and Airport Management approved, neither the Complainant nor the Sponsor included these plans in their submissions to the record (FAA Item 1, pp. 13-14).

Fourth, although the Complainant submitted architectural plans to Airport Management, he did not want to follow the permitting process to modify the Community Hangar. The record therefore is not conclusive that the Complainant intended to make the improvements in the plans and drawings for the Hangar (FAA Item 1, p. 15).

Fifth, the Complainant requested approval "to lease the (Hangar) for office and classroom space, as well and ramp and parking." The record is not clear on this, and it lacks details concerning Complainant's March proposal showing the requested dimensions for the entire skydiving operation (FAA Item 2, Exhibit O, p. 2; FAA Item 1, pp. 24-25).

Sixth, the record does not state the dimensions of the original parking area requested and how additional parking requirements increased the total parking spaced required. (FAA Item 2, p. 7).

As explained in other Director's Determinations such as *R.L.S. Rental Company, Inc., D/B/A Mizzou Aviation v. City of Joplin, Missouri* [FAA Docket No. 16-13-06 (June 10, 2016)] the lack of detail in the allegations makes it difficult to substantiate them; thus the evidence of alleged violation based on space requirements is insufficient.

Against this background, the Director finds that the evidence surrounding the space requirements leaves several questions unanswered and it does not permit an assessment on whether the Sponsor violated of Grant Assurance 22 (a), *Economic Nondiscrimination*, by making the airport available in unreasonable terms and discriminating against skydiving operations. The Director lacks evidence to support a violation.

c. Building Permit

Complainant's Arguments

The Complainant alleges that it was not going to make improvements to the Community Hangar, but rather "simply park airplanes and an equipment storage trailer and put in temporary classroom and office space not attached to the Hangar." (FAA Item 1, pp.13-14). Further Complainant states that the Sponsor "engaged in sub rosa action by going to a sovereign Township and demanding that it create a building permit and inspection procedure for the Airport" (FAA Item 1, p. 16).

Complainant states that Airport Management required Complainant to go through Ray Township's permitting process; however, when Complainant contacted Ray Township for an occupancy permit, it discovered that the "Township had [never] inspected nor issued permits for buildings on the Airport and did not require such buildings to go through its permitting and inspection process" (FAA Item 1, p. 14). Similarly, when Dan's Excavation Corporation, the previous tenant of the Community Hangar, contacted Ray Township "to inquire if it would issue a building permit, inspect the (new)

hangar and issue an occupancy permit [it] was informed that Ray Township does not go through a permitting process for buildings on the Airport" (FAA Item 1, Exhibit 2, p. 3).

The affidavit from Dan's Excavation supports the claim that permitting requirements were being enforced in the case of the Complainant, but it had not been enforced for the construction of the Dan's Excavation Corporation's new hangar:

> "the construction of the new hangar went forward without a permit from either Ray Township or the State Building Department" (FAA Item 1, Exhibit 2, p. 3).

The Complainant cited photos from the affidavit to support its contention that it was not going to modify the Hangar because of its poor condition:

> The Hangar (photos attached, Exhibit 2, Affidavit of Mark Weigand) was/is run down and had been vacated by the previous tenant due to its condition—the subject of a previous Part 13 Complaint against [Airport Management] and the State of Michigan. (Exhibit 2) [Complainant] explained that the condition of the [Hangar] precluded making necessary improvements to it—he would bring in a trailer for equipment storage and erect temporary classroom and office space that would not be attached to the Hangar. He would also store one or two airplanes in the Hangar. [Airport Management] expressed approval of the plan (FAA Item 1, p. 4).

The Complainant states he, nonetheless, submitted architectural plans and drawings Airport Management requested for the Hangar, which it then approved (FAA Item 1, pp. 13-14), and would be "willing to go through the permitting and inspection procedure" with one condition:

> After expending over $30,000 on aircraft, life-limited skydiving equipment, insurance and attorney fees in preparing to start operations every time [Airport Management] said he could begin 'this weekend' only to have another roadblock erected by [Airport Management], he is not willing to spend the money for a permit until such time as he has a suitable signed Concession and Lease Agreement in hand. (FAA Item 1, p.15).

Sponsor's Position

In response to the Complainant's allegations about the Hangar's condition, the Sponsor states that the Hangar "was scheduled for demolition in 2018 in the 2014 ACIP (Exhibit E, p. 1)," and that "The demolition date has been moved back to 2022 in the latest ACIP (Exhibit E, p. 2)" (FAA Item 2, p. 3).

Sponsor adds that "The Complainant claims that he should not be paying as much rent as other operators at [Romeo State] because he will 'have to install temporary structures and portable toilets to make the (Hangar) useable' " (FAA Item 3, p. 10) The Sponsor states that the Complainant's proposed structural changes would necessitate compliance with state fire and building codes:

> [The Sponsor] reiterates that the Complainant is requesting an agreement to rent an aircraft storage building. The Hangar was not designed to have office space, classrooms and sanitary facilities. Complainant is proposing to change the current use of the facility, by installing walls, restrooms, electrical outlets, and doors without having to comply with the state of Michigan building and fire codes (FAA Item 4, p. 3).

Airport Management further stated to Complainant that his proposed changes equally required compliance with Romeo State's Rules and Regulations and local Township codes because they changed the intended use of the Hangar:

> [A]s I have been telling you since the inception of our negotiations regarding your proposal, when you requested in building out or the need for the office and classroom space, you changed the intended use of the [Hangar] building. By doing so, you are required to not only abide by Romeo State Rules and Regulations, the Departments codes and laws but Ray Township building and fire codes and laws (FAA Item 1, Exhibit 23).

The Sponsor states that the building permit and occupancy permits were always required on Romeo State and that it provided a copy of the executed agreement between Dan's Excavation construction company, ESB1 LLC, and Airport Management ((FAA Item 2, p. 11, and Exhibit S). This agreement states in part: "Lessee agrees not to commence any land improvements before obtaining and securing any and all local and state building permits necessary to build Hangar B." In addition, in the 2001 airport management agreement between the Sponsor and Management, Management agrees…to comply with… all necessary permit requirements of the [Sponsor]"
(FAA Item 2, Exhibit A, p. 9).

Director's Analysis

First, based on the information in the record, the Sponsor consistently required permits for new buildings or building modifications in the cases of the Complainant and Dan's Excavation. Both contacted Ray Township for permitting. Thus, it appears that the Sponsor's efforts to identify the appropriate entity for permitting were consistent with its requirements.

Second, the record is inconclusive and lacks information about what were the procedural differences between what Dan's Excavation was asked to do for permitting versus what the Complainant was asked to do. The Complainant was initially only asked to contact Ray Township; the Dan's Excavation Corporation contacted the "State Building Department" in addition to Ray Township. Therefore, it appears that initially the Airport Management may have asked the tenants to work with different entities for the permitting.

Third, based on the record, the Sponsor did not know what agencies or entities their tenants needed to work with to obtain their building permits. The Sponsor required the Complainant to contact Ray Township for the permitting. Ray Township's response to the Sponsor's request was that "the Michigan Tax Tribunal issued an opinion that the Township of Ray had no authority at [Romeo State] since it is State owned and operated and that [Ray Township] did not witness the levels of inspection necessary to allow us to render an opinion or documentation" (FAA Item 2, Exhibit S, p.1).

Through the Complainant's lease negotiations and after about a year since the negotiations had started, the Sponsor was finally able to determine that the Michigan Department of Licensing and Regulatory Affairs (LARA) was the appropriate party to conduct the permitting actions. Correspondence between the Sponsor, Ray Township, and LARA (FAA Item 2, Exhibit S) shows that on March 17, 2016, LARA formally notified the Sponsor that they were going to provide the requested services to include plans and application reviews, inspection assistance, and approvals and permits for Romeo State (FAA Item 2, Exhibit S, p. 2).

Fourth, the record appears to indicate that the Sponsor inconsistently enforced permitting requirements, for example, when it allowed Dan's Excavation to begin construction without a permit. Nonetheless, the Sponsor did notify the construction representative for Dan's Excavation of LARA's role in the permitting and inspection of buildings (FAA Item 2, p. 11). Thus, the Director notes that the arrangements made by the Sponsor to establish the responsible entity for the permitting requirements represent the Sponsor's corrective action to its previous lack of inconsistent enforcement of the Sponsor's permitting requirements.

Fifth, although Airport Management states that "since the inception of our negotiations" it had communicated to the Complainant the requirements from the airport, the record does not provide evidence that the permitting requirements were part of the initial negotiations on March 2015. The record shows that the Complainant did not learn about the permitting requirement until October 16, 2015, about seven months after the initial request (FAA Item 1, Exhibit 22; FAA Item 8, Exhibit 6).

Sixth, the record is inconclusive to whether the Complainant intended to modify the Hangar. The Complainant stated that it was not going to modify the Hangar. Even so, the Complainant submitted architectural plans and drawings for the interior of the Hangar and contacted Ray Township. These actions may indicate that Complainant did intend to do some type of modification to the Hangar (FAA Item 1, p.13). These plans and drawings were not included in the record. In addition, Complainant states that it was "willing to go through the permitting and inspection procedure" (FAA Item 1, p.15), which seems to support the Sponsor's statement that the "Complainant is proposing to change the current use of the facility, by installing walls, restrooms, electrical outlets, and doors" (FAA Item 4, p. 3).

Finally, the Complainant states that on March 26, 2015, he received a new Concession and Lease Agreement as a result of a previous conversation with Airport Management in which they discussed having classrooms and office in the Hangar. Airport Management, however, did not include them in the agreement:

> [The Complainant] reviewed the Agreement…and noted some internally conflicting terms … not consistent with what [they] had discussed. For example, [the agreement stipulated that] no commercial operations were allowed to take place in the Hangar even though that was where [the Complainant] had advised [Airport Management] the business would take place within temporary structures. Also, despite there being room for multiple airplanes, the classrooms and office [that the Complainant] planned to put in the Hangar, the Agreement only allowed for storage of one airplane (FAA Item 1, pp. 4 and 5).

This language seems to indicate that the temporary structures were supposed to be located inside the Hangar.

One of the ramifications of inconsistently enforcing airport requirements is unjust discriminatory preferences among tenants. However, the Director notes that the Sponsor has taken steps to correct previous erroneous instructions given to tenants concerning the required permitting process and requirements they should follow. In the FAA Final Agency Decision, *Thermco Aviation, Inc. and A-26 Company v. City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airports* [FAA Docket No. 16-06-07, December 17, 2007] the Associate Administrator for Airports found that while the Sponsor had violated Grant Assurances, the voluntary correction action from the sponsor was sufficient to dismiss the matter.

The Sponsor clarified that the entity with jurisdiction at the Romeo State for building permits was LARA and not the Township, and this appears to be adequate corrective action from the Sponsor. Thus, the Director dismisses alleged Grant Assurance 22 violation based on the building permit requirements.

d. Self-Fueling

Complainant's Arguments

The Complainant provided Airport Management its projected fuel use in March 2015 (FAA Item 1, p. 4). However, the Complainant did not find the fuel pricing provided by Airport Management reasonable and inquired about a "self-fueling agreement" (FAA Item 3, Exhibit 24). The Complainant was denied "details on the self-fueling agreement," which is referenced in the Airport's Rules and Regulations as the "Aviation Self-Fuel Agreement" and states:

> "The owner or operator of an aircraft is permitted to fuel, wash, repair, paint and otherwise take care of his own aircraft, provided there is no attempt to perform such services for others.... Individuals desiring to exercise their right to [self-fuel] are required to obtain an aviation [self-fueling] agreement."

Airport Management required the Complainant to meet the self-fueling criteria and have an agreement signed with the Airport, before the details of an Aviation Fuel Self-Fuel Agreement could be provided and or further discussed. (FAA Item 2, Exhibit L, p. 11).

The record shows the Complainant as well as Dan's Excavating attempted to establish self-fueling. Dan's Excavating stated in its affidavit that after three years of negotiations they were able to secure a lease agreement from Airport Management to build a new hangar but not to allow self-fueling: "We did not reach agreement on self-fueling and have been unable to do so as of this date. The terms [Airport Management] proposes make self-fueling impossible, so [Airport Management's] FBO has a monopoly on fueling on the Airport" (FAA Item 1, Exhibit 2, p. 3, par. 14).

Sponsor's Position

The Sponsor does not address self-fueling directly, but has stated in the context of leasing rates and other charges that it has the "right to establish rates and charges and rules that suit us and are not obligated to match other airports, only to be consistent." The Sponsor adds that if it chooses "to charge higher fuel prices it may not make great business sense but it is our right" (FAA Item 1, Exhibit 21).

Director's Analysis

The Director has established in determinations such as *Brown Transport Co. v. City of Holland, Michigan* [FAA Docket 16-15-09, March 1, 2006], that tenants have the right to self-service and self-fuel their aircraft. While the Sponsor has proprietary exclusive rights in the sale of fuel, Grant Assurance 22(f) requires the sponsor to allow aircraft owners and operators to service their aircraft.

Airport Management required from the Complainant a Hangar or Land Agreement as a prerequisite to provide details of what an Aviation Self-Fuel Agreement may or not entail. While such a prerequisite does not establish a violation to the self-fuel requirements, it appears to add uncertainties to the decision-making process for the Complainant or new tenants when attempting to establish a new business at the airport. Although the Director agrees that it may have been premature for Airport

Management to finalize a self-fuel agreement without a signed Hangar or Land Agreement, the success of lease agreement negotiations maybe in part contingent on allowing prospective parties to review ahead of time the conditions and details of the Aviation Self-Fuel Agreement.

The Director finds that the record does not substantiate a violation of self-fueling requirements. Nonetheless, the Sponsor should consider improving its current negotiation procedures. Even if there are losses in airport revenues from lower airport fuel sales, the Sponsor must ensure that tenants and new entrants are not deprived from the right to self-fuel.

e. Insurance

Complainant's Arguments

The Complainant states that trying to come to terms with Airport Management and its insurance agent on insurance requirements complicated the negotiations:

> [O]n June 5, [Airport Management] called [the Complainant] and changed the insurance requirements—saying the insurance policy [the Complainant] had provided and had never been a problem, was suddenly inadequate. Interestingly, [Airport Management] also insisted that [the Complainant] was to buy insurance from [Airport Management's] insurance agent, Paul Galley rather than allow [the Complainant] to continue using the insurance agent he had worked with for years" (FAA Item 1, p. 8).

The Complainant adds that negotiations with Airport Management's insurance agent were vague, and eventually inconclusive:

> Initially, the agent said that a policy that would provide liability coverage if a skydiver hit persons or property was available and the cost would be somewhere between $15,000 and $200,000. When [the Complainant] asked for a copy of the policy, the agent was unable to produce one. The agent eventually said that there was no policy and that no such coverage existed (FAA Item 1, pp. 8-9).

Complainant also asserts that after he arranged a meeting on June 24, 2015, with Airport Management and Sponsor, Airport Management allowed Complainant to use its own insurance agent as originally proposed. Complainant explains that a couple of days later Airport Management left this (and later notarized) phone message for the Complainant: "I just got confirmation from my agent and the insurance company that we are all set. No additional insurance is required but the rental and the cost of doing business for that hanger is going to go up $8,000.00 annually" (FAA Item 1, Exhibit 9).

The Complainant also alleges that the Sponsor did not provide airport insurance documents showing the actual insurance costs for accommodating the skydiving operation. However, the Complainant cites how Airport Management explained its costs in its first justification on July 7: "$2,000 was for automobile parking-the first time paying for parking was ever demanded [FAA Item, Exhibit 1, p. 4] and the remaining $6,000 was for an insurance price increase" (FAA Item 3, p. 9).

Sponsor's Position

In response to the allegations, the Sponsor states that Airport Management "chose to accept the advice of their insurance vendor Paul Calley's email dated June 12, 2015 [Exhibit K, p. 14], and went

ahead and required the Complainant to obtain the recommended insurance coverage" (FAA Item 2, p. 6).

Director's Analysis

In the process of accommodating new aeronautical operations, airports may incur additional expenses such as for development, maintenance, and insurance coverage. These additional expenses need to be recovered, and the airport may opt to charge the new entrants the additional expenses associated with accommodating their operations.

In *Skydive Sacramento v. City of Lincoln* [FAA Docket 16-09-09, May 4, 2011] the Director found the City was in violation of Grant Assurance 22 when it required an unattainable, non-existent insurance policy. In the case of Romeo State the Complainant was asked to get insurance coverage that appeared to be unattainable or non-existent. The Sponsor eventually took corrective action from the initial request and allowed Complainant to use its own skydiving insurance agent.

Even though the Complainant was eventually allowed to use its own skydiving insurance agent, Airport Management stated that an additional $8,000 was the "cost of doing business for that hanger" (FAA Item 1, Exhibit 9; FAA Item 2, Exhibit L, p.11). Later, Airport Management stated that $6,000 was to pay for insurance and $2,000 for the parking space needed by the Complainant (FAA Item 2, Exhibit L, p. 16). The Sponsor did not provide documentation demonstrating the exact amount of airport insurance cost increase, as requested by the Complainant, and the Director is left to rely on a Notarized Audio Recording Transcript and email exchanges between Airport Management and Complainant (FAA Item 1, Exhibit 9; FAA Item 2, Exhibit L, p.11; FAA Item 2, Exhibit L, p. 16).

The Director notes, however, that negotiations started in February and Airport Management did not make its insurance requirements known until five months later. In addition, the Sponsor made the leasing negotiations less transparent and more problematic for the Complainant by not providing supportive documentation showing the additional airport insurance costs for accommodating the Complainant's operation.

f. Leasing Negotiations Conclusion

The Director concludes the above factors individually do not represent a violation of grant assurances, the cumulative effect represents a barrier to airport leasing negotiations. *See Martyn v. Anacortes* [FAA Docket No. 16-02-03, April 14, 2003]. The Sponsor did not behave in a transparent manner during the leasing negotiations. From the record it is not clear how the leasing rates were derived and or if they were based on market rates. While the Sponsor made corrections, the instructions provided to prospective tenants regarding building permits were misleading and contributed to negotiation delays. The lack of clarity and details about what an Aviation Self-Fuel Agreement may entail added additional uncertainties. The insurance requirements were not made known at the beginning of the negotiations and were initially misleading. The combination of the above factors as presented acted as a barrier for airport access and a violation of Grant Assurance 22.

2. Temporary Commercial Operations

Complainant's Arguments

The Complainant argues that five months into negotiations, Complainant suggested Airport Management to consider a temporary agreement to allow skydiving operations to begin while they

continued the negotiations of the long-term agreement. On July 20, 2015, Airport Management refused to consider the possibility of a temporary short-term agreement to allow skydiving operations at the airport (FAA Item 2, Exhibit L, p. 8).

The Complainant explains that "by July skydiving season had already started and Complainant was willing to meet the price and other conditions if the temporary agreement had been considered" (FAA Item 1, p. 10). As previously described, the PDZ was already established by the Sponsor and there were no safety issues that prevented skydiving from operating at Romeo State. In addition, when the temporary agreement was requested, the Sponsor had already approved the Complainant's skydiving insurance (FAA Item 1, p. 9; FAA Item 2, p. 7).

Sponsor's Position

Airport Management stated that it would not enter into an agreement for temporary skydiving operations. In the Rebuttal the Sponsor states that "the State of Michigan does not provide temporary agreements for commercial operations at our airports… [and that Airport Management] is continuing to negotiate a lease agreement for the Complainant." (FAA Item 4, p. 2). The record lacks the sponsor's reasons for the denial of temporary aeronautical.

However, the Sponsor asked Airport Management on August 26, 2015, about allowing a month-to-month agreement with the Complainant:

> "[The Complainant] has the required liability insurance (effective June 12, 2015)" for Airport Management to "consider granting a month to month agreement effective September 1 until resolution of complaint" and that "[the Complainant] has offered to pay $1150/month" (FAA Item 2, Exhibit O, p. 14).

The record does not have Airport Management's response to the above question.

Director's Analysis

It has been established in the record that Complainant asked for temporary skydiving operations and Airport Management refused on behalf of the Sponsor. While it appears that the Sponsor had questioned Airport Management about its decision on August 26, 2015, later in the Rebuttal the Sponsor supported the restriction of temporary aeronautical commercial operations and neither Airport Management or the Sponsor provided a rationale for this restriction.

The Director notes that some commercial aeronautical operations may make use of an airport in a seasonal and or temporary bases, such as skydiving. Grant Assurance 22(a) states that the Sponsor "will make the airport available as an airport for public use on reasonable terms and with unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities". However, Grant Assurance 22(i) allows the Sponsor to deny access to any type, kind or class of aeronautical activity on 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." In *Ultralights of Sacramento v. County of Sacramento* [FAA Docket No. 16-00-11, August 9, 2001] after it had been determined that the aeronautical operation could be safely accommodated, the Director found that access restrictions on the aeronautical operation were inconsistent with the Sponsor's federal obligations. Such access restrictions on aeronautical users were justly discriminatory because it unlawfully and unjustly excluded a legitimate aeronautical use from a federally obligated airport while it permitted other aeronautical uses.

The record establishes that the Sponsor did not have grounds to deny skydiving access as per Grant Assurance 22(i) based on safety. The Sponsor had identified two PDZs that could safely accommodate skydiving operations (FAA Item 1, Exhibit 5). The Sponsor had determined that feasible PDZ areas where available to accommodate the skydiving operation request.

The Sponsor's statement that "the State of Michigan does not provide temporary agreements for commercial operations at our airports" without the legal grounds for prohibiting temporary aeronautical commercial operations appears to be unreasonable, arbitrary, and a violation of the Sponsor's Federal obligations. Since the Sponsor did not provide the basis for denying temporary commercial skydiving operations, the Director is left to make a decision lacking an understanding of the Sponsor's reasons for such denial. As a Block Grant State, the Sponsor is charged with the proper management of the AIP program and Federal obligations to include compliance with Grant Assurance 22. The Director finds that prohibitions against temporary commercial operations, such as skydiving, not based on Federal law and Grant Assurances are inconsistent with the Sponsor's Federal obligations.

VII.CONCLUSION

Upon consideration of the submissions of the parties, the entire record, the applicable law and policy, and for the reasons stated above, the Director finds and concludes:

Issue 1 – The Sponsor is not in violation of Grant Assurance 5, *Preserving Rights and Powers.*
Issue 2 – The Sponsor is not in violation of Grant Assurance 23, *Exclusive Rights.*
Issue 3 – The Sponsor is in violation of Grant Assurance 22, *Economic Nondiscrimination.*

VIII. FINDINGS AND ORDER

For the reasons stated above, the Director, Airport Compliance and Management Analysis, finds and concludes that the following constitute a violation of Grant Assurance 22, *Economic Nondiscrimination*:

- The Sponsor's reasons for prohibiting the establishment of a temporary skydiving operation are not supported by the record.
- the Complainant failed to complete the Sponsor's permitting requirements, the Sponsor's lack of process and transparency when accommodating the skydiving operation constitute an unreasonable denial of access to Romeo State.

ORDER

ACCORDINGLY, the Director finds that the Sponsor is in violation of Federal law and the Federal grant obligations. The Sponsor is directed to take immediate steps to (1) to accommodate seasonal skydiving operations, (2) establish transparent leasing and permitting requirements for new entrants, and (3) Develop procedures to permit self-fueling. The Sponsor is directed to notify the Director that it has a corrective action plan in place for its AIP obligated airports (Romeo Airport and Canton-Plymouth-Mettetal) to address steps (2) and (3) and that action is taken within 60 days of receipt of this decision.

RIGHT OF APPEAL

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

Kevin C. Willis

Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

Date 5-16-18