

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

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BMI Salvage Corporation &)	
Blueside Services, Inc.)	
)	
COMPLAINANT)	
)	Docket No. 16-05-16
v.)	
)	
Miami-Dade County, Florida)	Final July 25, 2006
)	
RESPONDENT)	
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DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) as a complaint filed against Miami-Dade County's Aviation Department (MDAD) regarding its management of the Opa-Locka Airport (OPF) pursuant to the Rules of Practice for Federally-Assisted Airport Proceedings, Title 14 Code of Federal Regulations (CFR) Part 16 (FAA Rules of Practice).

The decision in this matter is based on: (a) applicable law and FAA policy regarding the County's Federal obligations as imposed by grant assurance 22, *Economic Nondiscrimination*, as well as Title 49 United States Code (USC) §47107(a)(1); (b) arguments and supporting documentation submitted by the parties; and (c) the administrative record in this proceeding.

With respect to the allegations presented in this Complaint, under the specific circumstances at the Airport as discussed below and based on the evidence of record in this proceeding, the FAA finds the County is not in violation of its Federal obligations.

II. AIRPORT

OPF is a public-use, general aviation airport located in Miami-Dade County, Florida. The County of Miami-Dade, Florida owns the Airport and is the sponsor of Federal grants. [FAA Exhibit 2] The Miami-Dade Aviation Department (MDAD) operates OPF. The development of the Airport has been financed, in part, with funds provided to the County as the Airport sponsor under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 USC §47101, *et seq.* [FAA Exhibit 3]. As a result, the County is obligated to comply with the FAA sponsor assurances and related Federal law, 49 USC § 47107. Miami-Dade also is bound by a Quitclaim Deed issued pursuant to the Surplus Property Act of 1944, codified as 49 USC §§ 47151 through 47153. [FAA Exhibit 2]

III. BACKGROUND

Procedural History

On August 18, 2005, Stephen O'Neal, President of BMI Salvage Corp. and Blueside Services filed this formal complaint. Stephen O'Neal styles both BMI and Blueside as the Complainants and is filing this complaint on behalf of both entities. The parties refer to Stephen O'Neal's pleadings and statements as having been made by the "Complainants." In the pleadings, Stephen O'Neal signs and submits all pleadings, acting *pro se*, speaking for both BMI and/or Blueside (the "Complainants").

On September 7, 2005, the FAA issued a notice of docketing in this case, Docket No. 16-05-16.

On September 21, 2005, the FAA granted Miami-Dade County's motion for enlargement of time for the filing of its answer.

On October 19, 2005, Miami-Dade County submitted its answer motion to dismiss.

On October 20, 2005, FAA granted Complainants' first motion for extension of time to file their reply.

On November 10, 2005, FAA granted Complainants' second motion for extension of time to file their reply.

On November 22, 2005, Stephen O'Neal submitted Complainants' reply.¹

On December 23, 2005, FAA granted Miami-Dade County's motion for enlargement of time to file its rebuttal.

On January 20, 2006, Miami-Dade County filed its rebuttal.²

February 1, 2006, Miami-Dade submitted a withdrawal of exhibit H to its rebuttal and jointly submitted exhibit 1.

¹ Complainants' motion Requesting Further Investigation and Audit under section 16.29, served with Complainants' Reply, is denied. The investigation of the complaint in this case fully investigated the allegations raised by the Complainants in this proceeding, and did not require additional investigation. See section 16.29(b)(1). Similarly the request for an audit of airport financial records and transactions during the last 40 years, since 1965, pursuant to section 16.29 (b)(3) is excessive and not required for resolution of the issues addressed in this proceeding.

² Respondent's motion to strike exhibits A-F, L, N, O and X, served with Respondent's Rebuttal, is denied. The exhibits at issue are un-sworn, unsigned statements containing opinions and other information. Complainants are proceeding *pro se*, and Part 16 does provide that the pleadings should contain complete statements of the fact to substantiate pleadings, and should be filed with supporting documentation. See section 16.23(g) and (i). Respondent's alternative request for additional time to conduct discovery is also denied since Part 16 does not provide for discovery except when there is a hearing following a Director's Determination. See 14 C.F.R. Subpart F.

Factual Background

As stated above, this case involves two complaining parties: BMI Salvage Corp. and Blueside Services. The Complainants object to the manner in which MDAD has operated OPF, alleging violations of Miami-Dade County's Federal grant obligations. Mr. O'Neal is President of both BMI and Blueside. The parties refer to Stephen O'Neal's pleadings and statements as having been made by the "Complainants." BMI is currently operating at OPF. Blueside is not yet conducting aeronautical operations at OPF, since it does not have an approved operating lease with MDAD. This is one of the issues of this Complaint. As stated by Stephen O'Neal:

BMI Salvage Corporation is a Florida Corporation that has specialized in the teardown and demolition of over 100 transport category aircraft. BMI has been a tenant of [MDAD] for 17 years, of which 12 were at Miami International Airport and the last 5 years at [OPF]...

Blueside Services Inc is a Florida corporation which signed in 2002 a Letter of Intent to develop [OPF] with the Opa-Locka Community Development Corporation (OLCDC) a [MDAD] Approved developer to provide permanent facilities.

In October, 2004 Complainant Blueside signed a long term development agreement with OLCDC to expand new services to Fixed Base Operations for General, Corporate and Cargo. [FAA Exhibit 1, Item 1, pp.5-6]

On November 16, 1961, the United States of America deeded OPF to Dade County by a Quitclaim Deed pursuant to the Surplus Property Act of 1944.

On April 27, 1993, the Dade County Board of Commissioners issued a Memorandum and Resolution constituting Dade County's Authorization for County officials to execute standard aviation leases. [FAA Exhibit 1, Item 15, exh. I]

On March 7, 1995, the Dade County Board of Commissioners issued a Memorandum and Ordinance (Ordinance) constituting Dade County's revision of Aviation Department Rules and Regulations. This contained a provision regarding non-operating aircraft that amended Section 25-10.24 of the County Code. [FAA Exhibit 1, Item 15, exh. J] The Ordinance states:

a) Because the Board (of County Commissioners) has found and determined that Non-Operating aircraft and component parts pose a danger to the life and safety of users of the Airport and their property, as a result of the possibility of the aircraft and components (1) being blown about in storms, (2) becoming fire hazards, (3) being subjected to vandalism, and (4) interfering with orderly and rapid emergency response efforts of firefighters, police, and ambulance services, no person shall park or store any Non-Operating aircraft on Airport property, including leased premises, for a period in excess of sixty (60) days, without written authorization from the Department..... c) Whenever any aircraft is parked, stored, or left in Non-Operating condition on the Airport in violation of the provisions of subsection 25-10.24(a), the Department shall follow the procedures required by law to notify the owner of operator thereof and require removal of said aircraft within fifteen (15) days of receipt of such notice.... d) Where any federal or Florida law imposes on the County a specific requirement of

notice for the removal of Non-Operating aircraft, such law shall prevail and shall be followed by the Department. [FAA Exhibit 1, Item 6, exh. H]

Prior to Stephen O'Neal establishing BMI's business at OPF, the parties agree that he conducted 'salvage work' at Miami International Airport. [FAA Exhibit 1, Item 11, para. 3]

The parties agree that BMI relocated to OPF and entered into a five-year lease (1999 Lease) agreement for certain facilities at OPF that included 2.2 acres of a larger concrete ramp. The ramp contained no constructed airport facilities. The 1999 Lease expired upon its own terms on December 31, 2004. [FAA Exhibit 1, Item 6, para. 5 and exh. D]

On March 20, 2002, Stephen O'Neal expressed interest to the Respondent in leasing a building at OPF (Building 407). [FAA Exhibit 1, Item 11, exh. P]

On October 1, 2004, Stephen O'Neal, President of Blueside Services, Inc agreed to enter into a Sub-Lease Agreement with the Opa-Locka Community Development Corporation (CDC) for development of an aeronautical services business at OPF (CDC Development Lease). The CDC Development Lease is a 30-year lease with MDAD to develop significant portions of OPF. Subleases under the CDC required concurrence by MDAD. [FAA Exhibit 1, Item 11, exh. G] MDAD did not approve the proposed sub-lease. MDAD and the CDC have not executed a development lease that would allow CDC to then sub-lease the property in question to Blueside. [FAA Exhibit 1, Item 11, exh. H]

October 1, 2004 is 10.5 months prior to Stephen O'Neal filing of this formal complaint on August 12, 2005. However, the parties conducted negotiations for several leases during this period. [FAA Exhibit 1, Item 6, para. 15]

As stated above, on December 31, 2004, BMI's 1999 Lease expired under its own terms. However, BMI continued to occupy its leasehold. [FAA Exhibit 1, Item 6, exh. D] There is no record of MDAD taking action to remove BMI from its leasehold. As shown below, MDAD has expanded BMI's leasehold prior to and during the pleadings of this case.

On April 4, 2005, Stephen O'Neal reports an incident of allegedly improper cigarette smoking at OPF by an MDAD employee. [FAA Exhibit 1, Item 1, exh. L]

On April 14, 2005, the County Manager sent a memo to the Miami-Dade County Board of Commissioners, recommending Board approval of a 35-year development lease with Miami Executive Aviation, an aeronautical service provider at OPF. [FAA Exhibit 1, Item 1, Exh. H]

On May 11, 2005, MDAD and BMI President Stephen O'Neal executed a Lease Modification Letter enlarging BMI's leasehold. [FAA Exhibit 1, Item 6, exh. E]

May/June 2005, MDAD staff forward a draft Lease Agreement between Miami-Dade and Blueside Services, Inc. at OPF. [FAA Exhibit 1, Item 6, exh. K]

On July 28, 2005, MDAD sent an e-mail to OPF users, including 'so@bmisc.com' regarding NOTAM requiring prior permission for large aircraft landing at OPF. [FAA Exhibit 1, Item 1, exh. E].

On August 3, 2005, Stephen O'Neal sent an e-mail to MDAD officials regarding an August 8 meeting. [FAA Exhibit 1, Item 1, exh. C]

On August 5, 2005, MDAD sent an e-mail to Stephen O'Neal at 'JSO@BMISC.com' and others, regarding non-flyable aircraft at OPF and competition for demolitions services at OPF. [FAA Exhibit 1, Item 1, exh. F]

On August 12, 2005, Stephen O'Neal, President of BMI Salvage Corp. and Blueside Services filed this formal complaint.

On December 13, 2005, MDAD and Stephen O'Neal executed a Lease Modification Letter adding space to BMI's lease.

IV. ISSUES

The Complaint raises the following issues for FAA consideration:

1. *Whether the sponsor's proposed NOTAM³ for OPF requiring 72-hours notice for the arrival of all aircraft over 100,000 lbs constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issue 2)*
2. *Whether MDAD's one-time email miscommunication from MDAD to the Complainant regarding the NOTAM of Issue 1 constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issue 1)*
3. *Whether MDAD's alleged denial of access to a 'legal entity' controlled by O'Neal because of an alleged violation of airport rules by another 'legal entity' controlled by O'Neal constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 4, 5 and 6)*
4. *Whether MDAD's adoption of a 'derelict aircraft ordinance' mandating notification to MDAD of non-operating aircraft after 60 days constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 3, 5 and 6)*
5. *Whether MDAD's allegedly unequal enforcement of the 'derelict aircraft ordinance' on users of OPF constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 3, 4 and 6)*

³ Notice to Airmen. This is a notice in FAA publications to alert pilots to conditions and procedures at an airport.

6. *Whether MDAD's alleged denial of access to 'legal entities' controlled by O'Neal because of discriminatory enforcement of the 'derelict aircraft ordinance' constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 3, 4 and 5)*
7. *Whether MDAD's management system and processes in Miami-Dade County constitute a violation of grant assurance 22, Economic Nondiscrimination.*
8. *Whether a MDAD employee's allegedly false statements regarding the preparation of a 5-year development lease for the Complainant constitutes a violation of grant assurance 22, Economic Nondiscrimination.*

V. APPLICABLE LAW AND POLICY

The Federal Aviation Act of 1958, as amended (FAAct), 49 USC § 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 developing civil aviation has been augmented by various legislative actions that authorize programs for providing funds and surplus Federal property to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions.

The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program, authorized by the Airport and Airway Improvement Act of 1982, (AAIA), 49 USC § 47101 *et seq.* This program provides financial assistance to an airport sponsor for airport development in exchange for binding commitments designed to assure that the public interest will be served. These commitments are set forth in the sponsor's applications for Federal assistance and in the grant agreement as sponsor assurances, *i.e.*, a list of applicable Federal laws, regulations, executive orders, statute-based assurances, and other requirements binding the sponsor upon acceptance of the Federal assistance. Pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

The City also is bound to the terms of a Quitclaim Deed issued pursuant to the Surplus Property Act of 1944, codified as 49 USC §§ 47151 through 47153.

FAA Order 5190.6A, *Airport Compliance Requirements*, (hereinafter Order) provides policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances and restrictive covenants in property deeds and conveyance instruments.

The Airport Sponsor Assurances and Deed Covenants

The AAIA, 49 USC § 47107, et seq., sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance.

Pursuant to 49 USC § 47107(g)(1), the Secretary is authorized to prescribe project sponsorship requirements to ensure compliance with 49 USC § 47107. These sponsorship requirements are included in every AIP agreement as explained in the Order, Chapter 2, “Sponsor’s Obligations.” Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal government.

The City is also bound to the terms of deeds issued pursuant to the Surplus Property Act of 1944, codified as 49 USC §§ 47151 through 47153.

A Surplus Property Deed provides, in relevant part, that “. . . the property transferred hereby . . . shall be used for public airport purposes, and only for such purposes, on reasonable terms and without unjust discrimination.” These deed covenants are the same as the Federal grant assurances discussed below and that are also imposed upon the City. Our analysis and enforcement of the obligations is identical.

Federal Grant Assurance 22, Economic Nondiscrimination

Federal grant assurance 22, *Economic Nondiscrimination*, deals with the sponsor's obligation to make the airport available for aeronautical use on reasonable and not unjustly discriminatory terms.

Grant assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances implements the provisions of 49 USC §47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport:

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

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

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

The grant assurance specifically addresses the issue of the treatment of fixed-based operators (FBOs), stating that “Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.”

Assurance 22(c). Subsection (c) specifies the application of subsection (a) to the treatment of FBOs, providing additional specific guidance as to the sponsor obligations.

The Order describes the responsibilities under grant assurance 22, *Economic Nondiscrimination*, assumed by the owners of public-use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport, and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* Order, Secs. 4-14(a)(2) and 3-1.]

The 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. [*See* Order, Sec. 3-8(a).]

Federal Grant Assurance 24, Fee and Rental Structure

Federal grant assurance 24, *Fee and Rental Structure*, deals with charges the sponsor levies on airport users in exchange for the services the airport provides. It provides in pertinent part, that sponsor of a federally obligated airport agrees that 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. An appropriate fee and rental structure will be consistent with Federal grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*.

Grant assurance 24, *Fee and Rental Structure*, of the prescribed sponsor assurances satisfies the requirements of Federal law. Section 47107 (a)(13) of 49 USC states that the FAA shall require a sponsor of a federally obligated airport to “maintain a schedule of charges for use of facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the airport... and without including in the rate base used for the charges the Government’s share of costs for any project for which a [Federal airport] grant is made.”

The Order states that the sponsor’s obligation to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility. The sponsor is expected to recover its costs through the establishment of fair and reasonable fees, rentals, or other user charges. [*See* Order, 4-14(a).]

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.

The Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. The Order provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for 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 Complaint Process

Pursuant to 14 CFR, Part 16, §16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. [14 CFR, Part 16, §16.23(b)(3,4)]

If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [14 CFR, Part 16, §16.29]

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

VI. ANALYSIS AND DISCUSSION

Before discussing the eight specific issues raised by the Complainants and a general comprehensive review of MDAD's compliance, the Director notes that certain important characteristics of the case should be reviewed.

Aeronautical and nonaeronautical aspects of aircraft salvage

MDAD's Federal grant assurance 22 requires it to provide reasonable aeronautical access and to refrain from unjust economic discrimination among similarly-situated aeronautical entities. The Complainants' currently operating business, BMI Salvage Corporation, is an aircraft demolition operation. Thus, it is not a completely aeronautical activity. The FAA recognizes that the receipt of aircraft unto the leasehold for demolition, along with a reasonable time period after the aircraft is last parked under its own power, is an aeronautical activity. Thus, we are denying MDAD's motion to dismiss. However, the nature of any aircraft salvage/demolition operation presents understandable challenges for the management of a Federally-obligated airport, and for the consideration of a formal complaint of a violation of an airport sponsor's Federal obligations.

These challenges for a sponsor include the requirement to provide reasonable access for the landing of aircraft; the requirement to reserve aeronautical facilities for aeronautical activities; the requirement to charge fair-market value for the use of airport facilities for nonaeronautical purposes; the requirement to operate and maintain the airport in a safe and serviceable condition; the sponsor's legitimate proprietary interest in maintaining good order at the airport; and retaining the ability to develop aeronautical areas of the airport for purely aeronautical activities. Grant assurance 24 requires an airport sponsor to be as self-sustaining as possible. This includes the requirement to charge nonaeronautical, fair-market value rates for nonaeronautical activities at the airport. Also, MDAD's surplus property deed of conveyance and its Airport Layout Plan (ALP) designate aeronautical areas of the airport that must be used for aeronautical purposes, unless specifically authorized by FAA pursuant to a possible ALP change and notice to the public of the change from aeronautical to nonaeronautical-use.

While MDAD may accommodate aircraft demolition operations at OPF, appropriate management of such operations requires preserving a reasonable balance between aeronautical and nonaeronautical-use of the airport.

Complainants' focus on personal motives, political corruption and the perception of ill will.

The Director's focus under Part 16 proceedings is strictly upon allegations of violations of a sponsor's Federal obligations. (See 14 CFR 16.1) The Director does so by consistently applying a general standard of compliance to the airport specific circumstances in all compliance cases. This standard is found in the Order:

The judgment to be made in all cases is whether the airport owner is reasonably meeting the Federal commitments. It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in the

FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out. [Order, Sec 5-6(a)(2)]

These Federal commitments are the obligations contained in the FAA grant assurances and surplus property deeds.⁴

However, the Complainants extensively discuss perceived inadequacies of MDAD's business practices and actions allegedly taken against the Complainants' interests or against Complainants' interpretation of contracts with MDAD. The Complaint writer, Stephen O'Neal, submits material regarding personal motives, personal behavior, corruption, poor management strategies and other inadequacies that are not specifically part of a properly submitted allegation of noncompliance by a sponsor with its Federal obligations. The FAA does not enforce contracts or leases between parties, investigate allegations of criminal behavior, nor review personal complaints.⁵ The FAA only issues findings of fact that directly relate to a question of compliance under the FAA grant assurances and surplus property deeds of conveyance.

As stated in the Applicable Law and Policy Section, the FAA does not manage airports. Similarly, the Part 16 process is not a mechanism by which complainant's may petition FAA to establish an alternative management direction for an airport. Consequently, the Director will only consider the record regarding issues related to MDAD's obligations under FAA grant assurance 22 as specifically alleged by the Complainants, but will not address further issues that do not bare, directly, on MDAD's compliance with its Federal obligations or that are not clearly and completely identified as violations of MDAD's Federal obligations.

Lack of clear and concise allegations comprising essential fact elements

As noted above in the Issues section, the Complainants presented eight 'complaints' for FAA review and investigation. The eight 'complaints,' (addressed herein as Issues) are separate, discrete allegations. Additionally, the parties trade arguments regarding an introductory statement made by the Complainants in a cover letter that generally casts aspersions upon the manner in which MDAD runs OPF and the political culture of Miami-Dade County. However, most of these accusations are not clearly, concisely, or completely described as required by Part 16. In some cases, they are incomprehensible in that they are not set in a specific time-frame or connected to a specific set of circumstances or facts. The FAA can only make findings on clear, reliable facts. In the analysis below, the FAA has construed the fact elements of the allegations to the extent it can do so confidently, in order to give the parties as complete an analysis as possible. However, FAA is not able to provide factual findings in regard to all accusations. As stated, the FAA does not make findings of fact that relate to personal, political or legal issues

⁴ In this case, an analysis of the Complainants' allegations under grant assurance 22 will provide a complete analysis since the obligations under the Respondent's surplus property obligations are identical.

⁵ Based upon the authorities listed in 14 C.F.R. 16.1 and the grant assurances, the FAA has no jurisdiction under Part 16 to adjudicate allegations of violations of criminal laws or of corruption by local officials, and these allegations are best referred to the appropriate state or Federal officials. . See Boca Airport, Inc. v. Boca Raton Airport Authority, FAA Final Agency Decision and Order, Docket No. 16-04-02 (Nov. 29, 2004). In that case the FAA noted that allegations of public corruption had been properly referred to state ethics officials. See Docket No. 16-04-02, footnote 12.

that cannot be directly and clearly connected to noncompliance under MDAD's Federal obligations.

The Complainants allege an unreasonable denial of access or unjust economic discrimination by quoting the actual language of grant assurance 22. This is appropriate. However, the Complainants then focus on motive, personal enmity and differences of opinion with MDAD, rather than presenting facts identifying how they were denied reasonable aeronautical access or how they were subject to unjust economic discrimination. So, with some Issues, the Complainants neglect to provide a clear factual basis for their allegations of a violation of grant assurance 22.

With regard to an allegation of an unreasonable denial of access under grant assurance 22, a complaint must clearly and concisely include a description in the initial Complaint of the aeronautical access that was denied, how such access was effectively denied, and why the sponsor's actions were unreasonable. With regard to an allegation of unjust economic discrimination under grant assurance 22, an allegation should contain a description of the alleged preferential treatment of another party, how the other party is similarly-situated, and that the complainant requested similar treatment and was denied. Many of the Issues discussed below do not contain sufficient elements of fact to make a determination of noncompliance. In some Issues, the actual allegations are complete but not supported by factual evidence.

Burden of proof.

In order for the Director to find a sponsor in violation of its Federal obligations under a Part 16 proceeding, not only must the Complainant include sufficient factual evidence to support its allegations, but also establish by a preponderance of substantial and credible evidence that the sponsor has violated its Federal obligations. Despite the large size of the Complainants' submissions to the record, the Complainants do not present substantial and credible evidence. Rather they present first person accounts of conversations and an abundance of argumentative opinion and criticism of MDAD.

The FAA has various means to communicate with airport sponsors and to implement its compliance program. The formal Part 16 complaint process is one tool. However, disagreements between an airport operator and a complainant do not necessarily require the FAA to conduct an on-site inspection. In the normal course of business separate and apart from this Complaint, FAA has conducted an extensive inspection of MDAD's land-use and leasing practices at OPF. [FAA Exhibit 1, Item 19] While that inspection identified issues with MDAD's management of OPF's land and leases, it did not find MDAD to be in noncompliance with its Federal obligations.⁶ This is an appropriate mechanism for FAA to advise an airport sponsor concerning its management and leasing practices as related to its Federal obligations.

⁶ As stated in a November 8, 2005 cover letter to the Land-Use Inspection Report, the FAA included as concerns: "non-aeronautical uses of airport property by the County or other agencies not approved by the Federal Aviation Administration (FAA), property disposition and conversion of aeronautical property to non-aeronautical use not approved by the FAA, the existence of long term master lease arrangements that may be creating conditions that could lead to potential conflicts with federal obligations..." [FAA Exhibit 1, Item 19, p. 1]

In a formal Part 16 complaint, the complainant has the burden of proof to establish the complaint's allegations by a preponderance of substantial and reliable evidence.

Issue (1) *Whether the sponsor's proposed NOTAM⁷ for OPF requiring 72-hours notice for the arrival of all aircraft over 100,000 lbs constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issue 2 that follows herein)⁸*

Issue 1 does present the elements of an allegation of noncompliance with grant assurance 22, both in regard to an alleged unreasonable denial of aeronautical access and in regard to unjust economic discrimination. The allegations are discussed in two sub-sections, below.

Unreasonable denial of access

The Complainants state:

On July 28, 2005 Respondent through its Miami-Dade Aviation Department General Aviation Supervisor George W. Manion sent via email to the tenants of Opa-Locka Airport containing a proposed NOTAM (Exhibit E) which states that prior landing permission is required, 72 hours in advance for all aircraft with a MGTOW over 100,000 lbs to land at OPF. This proposed restriction is discriminatory will make the airport unavailable to and discriminate against certain types, kinds and classes of aircraft and aeronautical activities, more specifically Complainant core business and its services being offered to the public at OPF. (sic) [FAA Exhibit 1, Item 1, pp. 8-9]

MDAD answers, "The intent of the NOTAM is not to foreclose the general aviation airport to a certain class of aircraft. Rather, the intent is to impose reasonable controls over the entry to this general aviation airport of heavy jet aircraft that are intended for demolition. As noted in Mr. Manion's Declaration, MDAD has never refused entry of any aircraft over 100,000 pounds MGTOW." [FAA Exhibit 1, Item 6, para 26] MDAD also states, "Any aircraft brought to OPF by BMI or Blueside is destined for salvage and chopping on BMI's concrete ramp area.⁹ That area is jammed with aircraft and cannot easily accommodate any additional aircraft. For the safety of all users of OPF, MDAD requires BMI to comply with the NOTAM so that suitable arrangements can be made for additional aircraft destined for BMI's already-filled ramp area. [FAA Exhibit 1, Item 6, para. 33]

On May 1, 2006, no NOTAM requiring prior permission at OPF for the landing of any aircraft appeared on the list of Current NOTAMS. [FAA Exhibit 1, Item 20] However, MDAD provides a quote of the NOTAM from the summer of 2005: "Opa-Locka Airport, PPR (Prior Permission Required) for all aircraft over 100,000 MGTOW (pounds miximum gross take off weight) due to

⁷ Notice to Airmen. This is a notice in FAA publications to alert pilots to conditions and procedures at an airport.

⁸ The Complainants mention an accusation that an airport staff person implied to other tenants at OPF that BMI's demolition services were 'too expensive.' [FAA Exhibit 1, Item 1, p. 9] This was not presented as an allegation of a violation of MDAD's Federal obligations, does not state a claim under Part 16, and is not further addressed herein.

⁹ FAA finds it reasonable for MDAD to treat BMI Salvage Corporation as an entity that would usually accept aircraft onto its leasehold by flight, but that are to be demolished.

limited aircraft parking, excluding military aircraft. 72 house advance request required. Address request to: Airport Manager..." (sic) [FAA Exhibit 1, Item 6, para. 23]

The Record of this Complaint does not present an instance of MDAD denying access to land at OPF for any reason. There is no record or allegation that MDAD denied access to larger aircraft because they failed to request prior permission at least 72 hours in advance, nor does the record establish that MDAD has denied access due to lack of space. In fact, the General Aviation Supervisor for MDAD denies ever denying landing rights to aircraft over 100,000 MGTOW. [FAA Exhibit 1, Item 6, exh. A, paras. 23-24] Complainants do not offer an example of an aircraft denied landing because of lack of space or lack of compliance with the NOTAM. However, the Complainants continue to state in their reply, "It is here in this paragraph that the true nature of Respondent's action comes to light which is to deny BMI not only public access but public use of the airport." [FAA Exhibit 1, Item 11, para 33, p. 82] This statement is perplexing, considering that the Complainants do not present an example of an aircraft being denied landing at OPF. Here, as in other places in the Complaint, the Complainants focus on an alleged motive of ill will against a business operated by Stephen O'Neal.

As discussed above, the FAA recognizes the aeronautical and nonaeronautical aspects of the Complainants' business. The questions for MDAD are: how to manage the influx of aircraft by air that will become nonaeronautical parts at some point in their disassembly; and how to design a program that demonstrates MDAD's responsible management of OPF with the accumulation of nonaeronautical parts. MDAD might be exposing itself to grant assurance violations if it failed to monitor the build-up of aircraft parts or equipment that no longer served an aeronautical purpose.¹⁰ Also, MDAD may reasonably choose to implement a monitoring program to be able to respond effectively to concerns with the use of airport property, such as having some control of and knowledge of aircraft currently at OPF that are likely to be in some state of demolition. Recognizing that a company named BMI Salvage might be a source of a build-up of aircraft in various stages of demolition, it is reasonable for MDAD to efficiently manage the use of OPF aeronautical property.

Additionally, the FAA is not persuaded without supporting evidence that the simple publication of a requirement to request permission to be so burdensome or chilling on BMI's business as to amount to unreasonable denial of access. In fact, the record suggests that not only has MDAD never refused access, but it has never actually received a request for permission on or before October 13, 2005. [FAA Exhibit 1, Item 6, exh. A, para. 23] The FAA cannot find evidence in the record that BMI has ever requested prior permission. This lack of implementation of the NOTAM would be a sufficient cure of noncompliance, even if the underlying procedure were found to be noncompliant, which it is not.

¹⁰ Failing to recognize that BMI is in the business of removing the aeronautical nature of aircraft and adjusting airport policies accordingly could expose MDAD to violating grant assurance 23, Fee and Rental Structure, by providing below FMV leases to activities that are not aeronautical. As stated above, the business of aircraft demolition and/or salvage occupies the boundary between aeronautical and nonaeronautical activities. Nonaeronautical activities must not be conducted on aeronautical areas of the airport and must be charged fair-market value. Providing a time-limit to remove nonaeronautical parts is one way to ensure that MDAD complies with its grant assurances, while generously accommodating BMI's business at OPF.

Unjust economic discrimination

The Complainants state:

At the August 8 2005 meeting it was stated by Respondents Agent GA Supervisor George Manion that the Fixed Base Operation, Miami Executive Aviation has been granted “blanket authority” on the NOTAM for its customers to bring any size aircraft to OPF at any time without any restriction to its leasehold.

Respondents agent Mr Manion after inquiry by Complainant stated that Complainant would be required at all times to have his customers obtain permission 72 hours in advance. [FAA Exhibit 1, Item 1, p. 9]

Also with regard to the August 8, 2005 meeting, the Complainants reply to MDAD’s Answer:

Respondent does not state MDAD requires all tenants including BMI to comply but; “MDAD requires BMI to comply with NOTAM”.

For what purpose, “so suitable arrangements can be made for additional aircraft destined for BMI’s already-filled ramp area”

Respondent does not state for “all tenants, including Aircraft Parts and Sales, a Hispanic tenant engage in the same business as BMI at OPF but selectively selects BMI for enforcement of a NOTAM that it created for that purpose. (sic) [FAA Exhibit 1, Item 11, para. 33, p. 81]

The Complainants appear to take personal statements at the August 8, 2005 meeting that MDAD’s personnel are targeting BMI’s business, while MDAD excuses an “Hispanic tenant” and an FBO from complying. However, as stated above, the Complainants present no information that any entity complied with the procedure, or that MDAD enforced the procedure upon any entity. The FAA does not take the Complainants’ interpretation of verbal encounters as admission of intent by MDAD to target BMI, even if the words spoken were correctly quoted by Complainants or witnesses. Moreover, such intent does not amount to discrimination, since no action was taken. Enforcement appears to have been even-handed in that no enforcement was taken on any entity.

The Director notes that the Complainants’ allegation that the 72-hour notice requirement makes the airport unavailable is not supported by evidence or argument. In Complainants’ Reply to para. 26, Stephen O’Neal does not contradict the assertion that MDAD has never refused entry of heavier aircraft. [see O’Neal’s response to MDAD’s paragraph 26 at Item 11, pp. 56-58] The burden to provide notice is not onerous considering the airport specific circumstances, regarding the need to monitor congestion and safety. Finally, since there appears to have been no enforcement of the provision upon BMI, the FAA finds no discrimination.

Consequently, the Director finds that the record is insufficient to determine that MDAD violated grant assurance 22 with regard to this issue.

Issue (2) *Whether MDAD's one-time email miscommunication from MDAD to the Complainant regarding the NOTAM of Issue 1 constitutes a violation of grant assurance 22, Economic Nondiscrimination.*

The statements made under this issue fail to include a description of actions by MDAD that could support an allegation of unreasonably denying aeronautical access; however, we will review the allegation based on the facts presented.

The Director notes that under the standard for compliance discussed above, motive or ill will does not, alone, amount to non-compliance, even if established by the Complainant. Such evidence must be accompanied by an actual unreasonable denial of access for an aeronautical activity or unjust economic discrimination. Motive alone does not establish non-compliance. The FAA does not find that the record establishes a finding of intent to harm Stephen O'Neal's business(es) at OPF.

The Complainants state:

On July 28, Respondent through its Miami Dade Aviation Department General Aviation Supervisor George W. Manion sent via email to the tenants of Opa-Locka Airport containing a proposed NOTAM... The proposed NOTAM was distributed to all Opa-Locka Airport tenants with the exception of Complainant whose email address is not included, in addition Respondent's MDAD agent... offers to discuss the proposed NOTAM with all OPF tenants to the exclusion of Complainant; both acts are unjustly discriminatory in their nature. [FAA Exhibit 1, Item 1, pp. 11-12]

MDAD answers, "As reflected in Exhibit F to the Complaint, BMI was sent the e-mail to the e-mail address then known to the author of the NOTAM.... In any case, BMI ultimately received the NOTAM and within days of its issuance could have discussed it with MDAD at any time." [FAA Exhibit 1, Item 6, para. 36]

The Complainants reply, "Respondent's argument is flawed by the fact the email address and the server is the domain of BMI's web site www.bmisc.com and at that time, but not now due to spam issues all email came to Stephen O'Neal from multiple email addresses and multiple domains." [FAA Exhibit 1, Item 11, para. 36]

Again, the Complainants focus on alleged motive and intent instead of establishing an actual denial of access or unjust economic discrimination.¹¹ The FAA finds that no circumstance of leaving a user off of one mass e-mail could amount to a violation of grant assurance 22,

¹¹ In fact, the Complainants focus on personal motivations, by devoting more discussion upon Mr. Manion's alleged motive for allegedly deliberately omitting Stephen O'Neal's correct e-mail address. (Mr. O'Neal accused Mr. Manion of smoking in a prohibited, unsafe location at OPF.) This discussion of smoking at OPF creates multiple pleadings and affidavits, but does not relate to whether or not MDAD unreasonably denied aeronautical access or unjustly discriminated in regard to aeronautical activity. Even if, Mr. Manion had motive, because of some personal dislike of Stephen O'Neal, that does not convince the Director that one mis-directed e-mail that did not result in a denial of aeronautical access amounted to a violation of grant assurance 22. Therefore, the FAA will not address the facts surrounding the alleged improper one-time, cigarette smoking at OPF. [FAA Exhibit 1, Item 1, p. 12 and Item 11, para. 38]

considering that the action alleged simply did not have a consequence of denying aeronautical access, regardless of motive. As discussed above, the record does not establish that the Complainants experienced any unreasonable denial of aeronautical access or unjust economic discrimination, since the NOTAM was never enforced. The grant assurances address aeronautical access and economic discrimination regarding aeronautical activities.

Having said that, the FAA is not convinced that the Complainants were intentionally omitted from the e-mail list. In the Complainants' own Exhibit E to his Complaint, the e-mail address list to the e-mail announcing the NOTAM on July 28, 2005, from Mr. Manion, includes addressee, "SO@bmisc.com." In the Complainants' own Exhibit F to his Complaint, a subsequent e-mail on August 5, 2005, from Steve Baker, includes addressee, "JSO@BMISC.COM." The FAA finds that the allegation of intentional omission of Stephen O'Neal from the July 28, 2005 e-mail regarding the NOTAM is not supported by a preponderance of substantial evidence.

Consequently, the Director finds that the record is insufficient to determine that MDAD violated grant assurance 22 with regard to this issue. Again, the FAA re-iterates that even a deliberate omission does not appear to amount to a violation of MDAD's Federal obligations, because it is simply without sufficient consequence to rise to a violation of MDAD's Federal obligations.

Issue (3) *Whether MDAD's alleged denial of access to a 'legal entity' controlled by O'Neal because of an alleged violation of airport rules by another 'legal entity' controlled by O'Neal constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 4, 5 and 6)*

Issue 3 does not contain a clear and concise description of all of the fact elements necessary to comprise an allegation of noncompliance in that it does not describe an unreasonable denial of aeronautical access. The Director will consider the Issues 3-6, cumulatively, under Issue 6, below. Here, in Issue 3, the Director will focus on the Complainants' allegation that MDAD's alleged recognition that Stephen O'Neal is the principal behind both BMI and Blueside is a violation of grant assurance 22. The Director will address the alleged unreasonable denial of a lease and/or unjust economic discrimination in regard to a lease, in the following Issues. Without this distinction, Issue 3 and 6 appear to be identical.

The Complainants state, "Respondent unjustly discriminates against Blueside Services by denying availability to the airport to develop on the grounds that a separate legal entity (Stephen O'Neal's business, BMI) is alleged to be in violation of a local county ordinance concerning non-operating aircraft and competition for demolition services at OPF. Respondent's agency Deputy Director MDAD Baker states the impediments to Blueside's proposed development are the services provided by and alleged actions by separate entity BMI." [FAA Exhibit 1, Item 1, p. 13]

MDAD denies that Mr. Baker

...ever made a comment that the impediments to Blueside's proposed development 'are the services provided by and the alleged actions by a separate entity BMI.' Second,

even if Mr. Baker had made such a comment—and MDAD denies that he did—it would not be illogical or unreasonable for MDAD to take into account the fact that Mr. O’Neal is the principal of both companies and hence the failure of performance by one of the companies is a matter any landlord or airport would take into consideration in determining how to structure any proposed development agreement with a company run by the same person. This is not discrimination. This is common sense and prudent business practice. [FAA Exhibit 1, Item 6, para. 39]

MDAD’s Federal obligations reserve rights to the public in regard to the operation of OPF. They do not enforce state law or contracts between parties. Nothing in MDAD’s Federal obligations prevent it from recognizing Stephen O’Neal as the principal behind BMI and Bluesides. In fact, the FAA has previously found that an airport sponsor may enforce sanctions against an individual across corporate entities.¹²

The Director finds that the record is insufficient to determine that MDAD’s recognition of Stephen O’Neal as the principle behind both BMI and Bluesides is a violation of grant assurance 22.¹³

We will discuss the related components of an allegation of an unreasonable denial of aeronautical access and unjust economic discrimination in Issues 4-6.

Issue (4) *Whether MDAD’s adoption of a ‘derelict aircraft ordinance’ (Ordinance) mandating notification to MDAD of non-operating aircraft after 60 days constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 3, 5 and 6)*

Issue 4 does not contain a clear and concise description of all of the elements necessary to comprise an allegation of noncompliance in that it does not describe an unreasonable denial of aeronautical access.

Complainants state:

Respondent has created a discriminatory condition in the form of a derelict aircraft ordinance that any non operating aircraft may not be parked on airport property for more than 60 days and if it does is considered derelict then subject to a seizure and removal process after 15-day notice.... This ordinance restricts airport availability for public use and discriminates against any aircraft owner or business by placing a restriction on access to the airport with a preset condition that he must complete any and all maintenance, repairs, teardowns or restoration on his aircraft within a 60 day period or submit justification and seek a written waiver authorization which is unduly burdensome, restrictive and discriminately favors those individuals and or entities that

¹² In *Jack H. Cox v. the City of Dallas*, Docket No. 16-97-02, the FAA found that “The City of Dallas, by amending its lease with Redbird Development Corp. (RDC) to prohibit Jack H. Cox or any entity in which he has an interest from leasing, subleasing or participating in the use of the RDC-leased premises, is not violating its Federal obligations” with regard to grant assurance 22. [Director’s Determination, 16-97-02, p. 17]

¹³ The Director notes that Mr. Stephen O’Neal is filing this single Formal Part 16 Complaint on behalf of Complainants BMI Salvage Corp. and Blueside Services, Inc.

have greater financial resources or access. If a person and or entity fails to respond after 15 day notice the aircraft may be seized by the Respondent and removed from the Airport. (sic) [FAA Exhibit 1, Item 1, p. 15-16]

MDAD answers:

The Derelict Aircraft Ordinance does not automatically limit the period of time a derelict aircraft may remain at OPF; rather, the Derelict Aircraft Ordinance provides that a derelict aircraft may not remain on OPF beyond 60 days without the express written approval of MDAD. [FAA Exhibit 1, Item 6, para. 43]

To the extent that Complaint 4 challenges the legitimacy or reasonableness of the Derelict Aircraft Ordinance in the abstract, MDAD suggest that such a challenge be denied. There is nothing inherently unreasonable about the Derelict Aircraft Ordinance. [FAA Exhibit 1, Item 5, para. 44]

MDAD is correct that the Ordinance does not appear unreasonable as written, or even as described by the Complainants. The Ordinance states:

a) Because the Board (of County Commissioners) has found and determined that Non-Operating aircraft and component parts pose a danger to the life and safety of users of the Airport and their property, as a result of the possibility of the aircraft and components (1) being blown about in storms, (2) becoming fire hazards, (3) being subjected to vandalism, and (4) interfering with orderly and rapid emergency response efforts of firefighters, police, and ambulance services, no person shall park or store any Non-Operating aircraft on Airport property, including leased premises, for a period in excess of sixty (60) days, without written authorization from the Department..... c) Whenever any aircraft is parked, stored, or left in Non-Operating condition on the Airport in violation of the provisions of subsection 25-10.24(a), the Department shall follow the procedures required by law to notify the owner of operator thereof and require removal of said aircraft within fifteen (15) days of receipt of such notice.... d) Where any federal or Florida law imposes on the County a specific requirement of notice for the removal of Non-Operating aircraft, such law shall prevail and shall be followed by the Department. [FAA Exhibit 1, Item 6, exh. H]

The Ordinance is written in a manner that allows MDAD and the County to act well within their proprietary interests to maintain OPF to acceptable standards of safety and good order. The Ordinance also permits MDAD and the County to act in a manner consistent with its Federal obligations. As discussed above, these Federal obligations include assuring that aeronautical areas of the airport remain available for aeronautical activity; that nonaeronautical users of the airport are charged a financially self-sustaining rent; and that the airport be operated and maintained in a safe condition.

The Complainants do not present sufficient evidence or argument that MDAD has unreasonably enforced the Ordinance with respect to BMI. In fact, the Complainants do not present an argument that MDAD has enforced the Ordinance at all. The record does not mention any

seizure of aircraft or parts of aircraft, nor is there any evidence that MDAD has sought to compel compliance with the Ordinance in a court.

The Ordinance does clearly apply a requirement on owners of non-operating aircraft parked, stored or left on OPF for 60 days. This is not an unreasonable burden. Nor is it unreasonable as applied to persons or entities of varying financial resources.¹⁴ While, some activities involving non-operating aircraft might still be considered aeronautical beyond a time-period of 60 days, this period of time appears to be a reasonable point for the airport sponsor to make a judgment as to whether the aircraft, or parts of aircraft, have any chance of returning to aeronautical-use within a reasonable period of time, or need to be removed from aeronautically-designated leaseholds. Furthermore, it appears reasonable for MDAD to focus most intently on areas of OPF with concentrations of non-flyable aircraft and parts. Again, the Complainant does not cite examples of when BMI was denied written approval to maintain non-operating aircraft on BMI's aeronautical leasehold.

As stated above, an airport sponsor's Federal obligations protect the public's interest in aeronautical activity, not nonaeronautical activity. Considering BMI's business of aircraft demolition, it is, by definition, in the business of destroying the aeronautical nature of aircraft. Clearly, most of the aircraft that are non-operating on BMI's leasehold beyond 60-days will never be returned to aeronautical-use. Apart from the legitimate safety and good-order reasons provided by Miami-Dade County, the FAA notes that it is not consistent with MDAD's Federal obligations to provide below fair-market value leases to entities that are no longer engaged in aeronautical activity. By placing a time limit, with appropriate and reasonable extensions, MDAD is protecting its ability to offer BMI leases at aeronautical rates. Indefinite storage of permanently disabled aircraft upon Federally-obligated, surplus property, designated for aeronautical use might expose MDAD to violation of its obligations under grant assurance 24, Fee and Rental Structure and its quitclaim deed obligations to use certain airport properties for aeronautical use.¹⁵

It appears that Complainants have the mechanisms in place to work out a mutually beneficial relationship with MDAD, with regard to responsible milestones in the demolition of aircraft and the removal of the nonaeronautical remnants from OPF property. If there is not a mutually beneficial relationship, the fault may not be exclusively that of MDAD. In fact, Stephen O'Neal was explicitly invited to 'work out' these issues with MDAD. Instead, Stephen O'Neal filed this Complaint. As stated elsewhere, the FAA finds that resolving such issues with Stephen O'Neal before finalizing an agreement for an additional lease with another O'Neal business (Blueside) is a reasonable and prudent business requirement of MDAD.¹⁶

¹⁴ A sponsor's Federal obligations do not provide protection to airport users based on a relative lack of financial resources.

¹⁵In *Adventure Aviation v. the City of Las Cruces*, Docket No. 16-01-14, the FAA stated that it "interprets the self-sustaining assurance to require that the airport receive fair market value only for the provision of **nonaeronautical** facilities and services, to the extent practicable considering the circumstances at the airport. [See [Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, pg. 7721](#), Sec. VI, Par. C]" Considering that BMI's leasehold is a concrete ramp, suitable for the tie-down of operating aircraft, a time-limit to demolish and salvage an aircraft is an appropriate and reasonable solution.

¹⁶ The FAA will examine the Complainants theory that MDAD is using the application of the Ordinance upon BMI as an excuse to deny Blueside a lease, below.

In their Reply, Complainants cite examples of where MDAD has not removed aircraft that have been non-operating for over 60-days.¹⁷ [FAA Exhibit 1, Item 11, para. 44] This, however, may show that MDAD has not, in fact, enforced the provision that the Complainants state is unreasonable and noncompliant. Complainants also mention a time when MDAD staff contacted AirTran Airways in regard to an aircraft the MDAD staff believed to be AirTran's property but that had been non-operating for sometime at OPF. [FAA Exhibit 1, Item 1, p. 16] MDAD informed AirTran that it may be liable for damage done by the non-operating aircraft. [FAA Exhibit 1, Item 6, para. 45] The Complainants and MDAD dispute the ownership and liability. These cited examples do not rise to allegations of noncompliance; nor are they styled as allegations by the Complainants.

The Director finds that the record is insufficient to determine that MDAD's adoption of the Derelict Aircraft Ordinance constitutes a violation of grant assurance 22. It neither creates an unreasonable denial of aeronautical access, nor is unjustly discriminatory, as discussed below.

Issue (5) *Whether MDAD's allegedly unequal enforcement of the 'derelict aircraft ordinance' on users of OPF constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 3, 4 and 6)*

Complainants state, "Respondent discriminates by the unequal and unjust application of Miami Dade County Ordinance 25-10.24 *Derelict Aircraft* (Ordinance) that is discriminatorily applied.... Complainant BMI is being held to a different and discriminatory standard." [FAA Exhibit 1, Item 1, pp. 18-19] In the Complaint, Complainants don't describe the alleged manner by which BMI is being held to a different standard than any other similarly-situated entity at OPF.

MDAD states:

Complainants do not allege, nor can they show, that MDAD has singled BMI out for enforcement under the Derelict Aircraft Ordinance." [FAA Exhibit 1, Item 6, para. 48] Also MDAD states, "MDAD repeats that it has not denied consideration of Blueside's proposed development plans either on their face or because of BMI's overall activities. MDAD acknowledges that the Blueside plans were sometimes placed on hold while specific activities of BMI needed attention, such as the time BMI was issued a Notice of Violation ("NOV") for a County Code violation.... As stated before, MDAD is ready, willing and desirous of entering into meaningful negotiations with Blueside to reach a reasonable development lease agreement. [FAA Exhibit 1, Item 6, para. 51]

In its Reply to MDAD's Answer, Complainants reach back to collect examples of alleged disparate treatment that Complainants mention in the initial Complaint. In their Reply Complainants state:

¹⁷ For example, Complainants state, "A B-727-200 left abandoned on a Hispanic Tenants leasehold for the last three Hurricane seasons as shown in Reply Exhibit D-19 and Complaint Exhibit J-48 and is driven into an airworthy B-727-200." [FAA Exhibit 1, Item 11, para. 44]

... Respondent has intentionally and discriminately singled out BMI for selective enforcement under (the Ordinance)

1. It has without reason interfered with one customer with unfounded statements of legal liability without cause (Answer paragraph 45 and Exhibit W) claiming justification under (the Ordinance)¹⁸
2. It has denied Complainant Blueside Development stating in Answer Paragraph 39 of this Answer concerning unfounded statements of a “proliferation of non-flyable aircraft” as impediments to development when allowing other Tenants to proceed
3. It has clearly let un-airworthy and unsightly aircraft remain on the airport for multiple years without any action against Hispanic Tenants i.e. National and Aircraft Parts B757 for 6 months abandoned next to BMI’s leasehold while holding BMI to a stricter and discriminatory standard
4. It has authorized the development of another Hispanic Tenant MEA who has multiple non-flyable aircraft
5. It has authorized the development of another tenant JP Aviation who has multiple non flyable aircraft but as a result of a lawsuit against Respondent
6. It has authorized development of National Aviation Inc for its fuel farm despite multiple derelict aircraft.

Respondent has not just engaged in one or two but multiple actionable acts of discrimination under (the Ordinance). [FAA Exhibit 1, Item 11, para. 48]

The evidence that MDAD’s denial of awarding Blueside or BMI any expansion or extension of a lease is a result of BMI’s undocumented ‘violation’ of the Ordinance is unconvincing. As discussed in Issue 3 above, the Complainants point to exhibit F of their Complaint: an e-mail, dated August 5, 2005, to Stephen O’Neal, from MDAD. The e-mail states, “Just as a follow-up to our conversation this afternoon, the concerns that I have are about the risk of non-flyable aircraft and maintaining competition for demolition services at Opa locka. Please feel free to give me (or other staff) a call as we work through these issues.” [FAA Exhibit 1, Item 1, exh. F] One week later, Stephen O’Neal filed this formal Complaint.

Enforcement opportunities present themselves to airport management in a variety of ways. Requiring a leaseholder to clear up some operational concerns within the process of negotiating a large expansion of the business relationship between the sponsor and a leaseholder is a sensible and appropriate opportunity for informal enforcement. The Complainants do not state that other entities exploring leasehold expansions did not have discussions with MDAD regarding their compliance with airport rules and procedures. Instead the Complainants simply state that others with non-flyable aircraft on their premises have opportunities at OPF that the Complainants do not have. The Complainants go to great efforts to demonstrate that other OPF leaseholders have non-flying aircraft on their leaseholds, but they do not demonstrate that MDAD’s efforts to achieve compliance from other parties have been significantly less strict than that applied to the Complainants.

¹⁸ This is the AirTran incident. Complainants did not raise this under Issue 5 in the Complaint, but rather mention it as an aside, under Issue 4.

Again, instead of presenting facts sufficient to establish that MDAD has favored other similarly-situated aeronautical enterprises, the Complainants focus on motive and Stephen O'Neal's understanding of the political environment of Miami-Dade County. Admittedly, the Complainants present evidence that there are some non-flying aircraft on other entities' leaseholds. [FAA Exhibit 1, Item 1, exhs.H-J & M] The Complainants state, and present limited evidence [FAA Exhibit 1, Item 1, exh. H] that other entities may have better access to OPF than that enjoyed by the Complainants. However, Complainants don't show how this difference is unwarranted or unjust. Instead Stephen O'Neal states in his Reply:

Respondent has not "repeatedly and reasonably engaged in enforcement activities under the Derelict Aircraft Ordinance."

In fact Respondent MDAD has "repeatedly and unreasonably"¹⁹ treated its tenants at OPF by a differing set of standards along ethnic (sic) lines as exemplified in this Complaint and Reply. What Respondent fails to point out, in true Orwellian form "that while all tenants are treated equally some tenants are treated more equally than others.

This is confirmed by Respondent's actions, there is an Hispanic board and a everyone else board as exemplified by National Aviation, MEA and Aircraft Parts all Hispanic tenants that have been permitted quiet enjoyment because as Respondent's agents are fully aware if they were to confront these Hispanic tenants with one quarter of the "alleged non compliance activities of BMI" they would have their hats handed to them in one form or another by a non MDAD Respondent Hispanic political agents.

The political interjection of Respondent into MDAD affairs is a well known fact and on occasion over the last 18 years senior management at MDAD has told Complainants of the devastating toll on MDAD employee morale this has caused. (sic) [FAA Exhibit 1 Item 11, para. 50]

MDAD rebuts, denying the allegations of paragraph 50, moving to strike and stating that these allegations "raise matters that are outside the scope of or are irrelevant to the allegations of the Complaint." [FAA Exhibit 1, Item 15, para. 50] MDAD is correct that allegations of corruption are not the jurisdiction of the FAA. Such allegations should be made to appropriate entities.²⁰ Once those entities have proceeded with their appropriate due process, the FAA may take action. The Director notes that the Complainants do not allege civil rights violations under MDAD's Federal civil rights obligations.

With regard to the denial of development opportunities, again, Complainants skip over describing the essential elements of an allegation of unjust economic discrimination and jump to assigning motives. Have the Complainants clearly objected to certain terms? Have the Complainants made a clear, definitive and consistent proposal? How have the Complainants been treated differently than others acting in a similar fashion? What are the circumstances of

¹⁹ The Complainants do not specifically describe how MDAD has acted repeatedly or unreasonably.

²⁰ Based upon the authorities listed in 14 C.F.R. 16.1 and the grant assurances, the FAA has no jurisdiction under Part 16 to adjudicate allegations of violations of criminal laws or of corruption by local officials, and these allegations are best referred to the appropriate state or Federal officials. . See Boca Airport, Inc. v. Boca Raton Airport Authority, FAA Final Agency Decision and Order, Docket No. 16-04-02 (Nov. 29, 2004). In that case the FAA noted that allegations of public corruption had been properly referred to state ethics officials. See Docket No. 16-04-02, footnote 12.

the respective negotiations with similarly-situated parties proposing leases with MDAD? These are the questions relevant to whether or not MDAD has unjustly discriminated.

The Complainants' description of the disparate treatment is unclear and insufficient for the Director to determine that any alleged 'unequal application' amounts to unjust economic discrimination. The simple presence of non-flyable aircraft on other entities leaseholds is not sufficient to determine that MDAD is unjustly discriminating. Resolving such issues, within the context of lease negotiations is a reasonable and prudent strategy. The record does not establish that MDAD did not pursue a reasonable and prudent strategy with regard to other leaseholders at OPF.

In Issue 6, we will focus on the issue of MDAD's alleged discriminatory and unreasonable application of rules against BMI as an alleged pretext by MDAD to deny access to Blueside Services.

Issue (6) *Whether MDAD's alleged denial of access to 'legal entities' controlled by O'Neal because of discriminatory enforcement of the 'derelict aircraft ordinance' constitutes a violation of grant assurance 22, Economic Nondiscrimination. (See Issues 3, 4 and 5)*

The Director notes that Issue 6 is similar to Issue 3. Issue 3 appears to focus more on MDAD's allegedly improper linkage of businesses run by Stephen O'Neal. That issue was fully analyzed under Issue 3. In Issue 6, we will focus on the issue of MDAD's alleged discriminatory and unreasonable application of rules against BMI as an alleged pretext by MDAD to deny access to Blueside Services.

The Complainants state in their Complaint:

Respondent unjustly and unreasonably discriminates against Blueside Services by denying availability to the airport to develop based on the alleged failure of BMI to remove non-operating aircraft yet two OPF tenants, Miami Executive Aviation (MEA) and JP Aviation, both of whom have multiple derelict and non-operating aircraft on their respective leaseholds were granted authority to develop in April and May 2005 by the Board of County Commissioners. [FAA Exhibit 1, Item 1, p. 21]

MDAD states in its Answer:

MDAD has not denied Blueside access to the airport to develop. MDAD has discussed several proposals with Complainants for their development plans at OPF. Mr. O'Neal has presented MDAD with several proposals for accomplishing these ends, including: (1) entering a sublease agreement with CDC; (2) entering into an interim development agreement with MDAD, which would include provisions that would allow the lease to be absorbed into the deal with the CDC and MDAD, once approved by the County; and (3) entering into a five-year development lease agreement directly with the County. Despite numerous discussions about these proposed plans, the actual drafting and finalization of a development lease agreement has not occurred at this point because

the parties have not come to a clear agreement as to which option is best to use at OPF.
[FAA Exhibit 1, Item 6, para. 54]

Unreasonable Denial of Access

The Director notes that the evidence pointed to by the Complainants does not support a conclusion that MDAD's actions were unreasonable, or that MDAD actually denied access to a lease for Blueside. The Complainants point to exhibit F of their Complaint. The entire text of the e-mail, dated August 5, 2005, from Steve Baker to Stephen O'Neal states, "Just as a follow-up to our conversation this afternoon, the concerns that I have are about the risk of non-flyable aircraft and maintaining competition for demolition services at Opa-Locka. Please feel free to give me (or other staff) a call as we work through these issues. As you can see, it's sometimes faster than email for me." [FAA Exhibit 1, Item 1, exh. F] Another e-mail from Steve Baker, dated July 26, 2005, states:

Staff has advised me that there are some impediments to proceeding with your proposed lease (among them how to resolve the proliferation of non flyable aircraft and maintain a competitive environment for aircraft demolition services). I would like to meet with you and my staff to better understand and resolve these issues. I would also like to include Susan Warner Dooley and Bruce Drum in that meeting.

By copy of this email, I am asking Greg Owens to set up the meeting for early next week.... MDAD needs to act quickly particularly as it pertains to the safety issues surrounding non-flyable aircraft in the midst of hurricane season. [FAA Exhibit 1, Item 11, para. 39]

The e-mails invite Stephen O'Neal to continue to work to resolve these issues. The Director notes that the most recent e-mail inviting Stephen O'Neal to 'work through these issues' was dated August 5, 2005. The record does not reflect that Stephen O'Neal accepted this invitation. Stephen O'Neal filed his formal Complaint on August 12, 2005. This invitation to address issues of reasonable concern to MDAD, in no way, constitutes a denial of access for a lease opportunity.

With regard to the Complainants' descriptions of his various efforts to pursue various lease arrangements with MDAD and CDC, the Director notes that they were not properly raised as part of the Complaint. Obviously, lease negotiations are a two-way street and a lease applicant should be cooperative and clear regarding its proposal. The evidence presented by the Complainants, including the statements presented as exhibits B, C and D to the Reply [FAA Exhibit 1, Item 11, exhs. B, C, and D] do not persuade the Director that the current situation with regard to the Complainants' leaseholds at OPF is fully the result of unreasonable actions, or delay, by MDAD. In fact, the record reflects MDAD expanding BMI's leasehold during the pleadings of this case. [FAA Exhibit 1, Item 16, exh. 1]

Unjust economic discrimination

In the case of an allegation of unjust economic discrimination, the FAA needs a description of how similarly-situated aeronautical parties are both requesting similar treatment from the

sponsor, while the sponsor denies such preferred treatment to the complainant. Details and facts matter in such a determination. The initial Complaint fails, entirely, to present this information. Simply stating that one entity has non-flyable aircraft on its leasehold; was subsequently awarded an expanded leasehold; and is an “Hispanic” business is not sufficient to sustain a finding of unjust economic discrimination. Many reasonable factors might result in one entity with non-flyable aircraft finalizing a lease prior to another: better communication; more focused proposals; simpler business plan, etc. None of these aspects are described in the record.

The Complainants state “two OPF tenants, Miami Executive Aviation (MEA) and JP Aviation, both of whom have multiple derelict and non-operating aircraft on their respective leaseholds were granted authority to develop in April and May 2005.” [FAA Exhibit 1, Item 1, p. 21 and FAA Exhibit 1, Item 1, exh. H] In August 2005, MDAD invited Stephen O’Neal to ‘work through’ the issue of non-flyable aircraft on BMI’s leasehold. Seven days later in August 2005, Stephen O’Neal filed his formal Complaint. This timeline is far too short to establish clear discriminatory treatment.

To summarize, the Director’s findings under Issues 3, 4 and 5 include:

- MDAD’s Federal obligations do not prevent it from linking the various business entities controlled by Stephen O’Neal nor do they prevent MDAD from declining to enter into expanded leases with a party that is not compliant with reasonable airport rules (Issue 3);
- MDAD’s application of its Derelict Aircraft Ordinance is not unreasonable and does not constitute an unreasonable denial of aeronautical access (Issue 4);
- the Complainants have not provided a preponderance of substantial and reliable evidence that MDAD’s allegedly unequal enforcement of its Derelict Aircraft Ordinance constitutes unjust economic discrimination (Issue 5).

With regard to Issue 6, as summary, the Director finds that the Complainants have not presented a preponderance of substantial evidence that MDAD is unreasonably denying an aeronautical lease to Complainants. The Director finds that the Complainants have not presented a preponderance of substantial evidence that MDAD has unjustly discriminated against the Complainants.

Issue (7) *Whether MDAD’s management system and processes in Miami-Dade County constitute a violation of grant assurance 22, Economic Nondiscrimination.*

Complainants state:

Respondent has created a management system and processes in Miami Dade County that are discriminatory in their nature which obstruct and restrict the public’s access to develop the airport on reasonable terms so as to be able provide commercial aeronautical activities and services.

Any entity desiring to perform any work at any of Respondent’s airports must run a bureaucratic gauntlet that by its very nature is unnecessary and discriminatory which in turn restricts and blocks the public’s ability to provide all types, kinds and classes of aeronautical activities and use on reasonable terms. [FAA Exhibit 1, Item 1, pp. 23-24]

MDAD states, “The County denies that it has created a ‘management system and processes... that are discriminatory in their nature.’” [FAA Exhibit 1, Item 6, para. 59]

The Complainants provide examples of allegedly unreasonable terms and processes in their Complaint, but do not support an allegation of discrimination. However, in their Reply and exhibits to the Reply, they provide an argument regarding preferential treatment provided by the broader Miami-Dade County political structure towards Hispanic tenants of OPF. Despite not being properly raised in the Complaint, the Director provides the following analysis regarding both alleged unreasonable denial of access and unjust economic discrimination.

Unreasonable Denial of Access

Permits

Complainants describe some of the process required of “all applicants desiring to obtain building permits to effect repairs or develop... In the last three years BMI has spent over \$60,000 and untold man hours without success to obtain permits for permanent electricity, water and sewer utilities from MDAD and the Miami Dade County Building Department.” [FAA Exhibit 1, Item 1, p. 24] The Complainants state, “Any entity desiring to perform any work at any of Respondent’s airports must run a bureaucratic gauntlet that by its very nature is unnecessary duplicative and discriminatory which in turn restricts and blocks the public’s ability to proved all types, kinds and classes of aeronautical activities and use on reasonable terms.”²¹ [FAA Exhibit 1, Item 1, pp. 23-24] The Complaint then describes processes for the review and approval of building permits at OPF. [FAA Exhibit 1, Item 1, p. 24] The Complainants’ description does not persuade the Director that the procedures in Miami-Dade County are unreasonable, or that the Complainants difficulties were entirely the responsibility of MDAD or Miami-Dade.

Telephone Service

Complainants state that it has experienced difficulty in obtaining telephone service, spending “68 months to obtain legal telephone service.” [FAA Exhibit 1, Item 1, p. 25] MDAD responds that, according to MDAD’s lease, telephone service, and all utilities, are the responsibility of the Complainants. [FAA Exhibit 1, Item 6, para. 62 and exh. D] Accordingly, the arguments presented do not persuade the Director that the procedures in Miami-Dade County are unreasonable, or that the Complainants difficulties were entirely the responsibility of MDAD or Miami-Dade.

Signage

The Complainants state that their name was not included in signage at various entrances to OPF over the course of years. [FAA Exhibit 1, Item 1, p. 25] MDAD does not dispute this allegation. MDAD states, “all tenants did not have their name at the main entrance at OPF until MDAD

²¹ Whether the implementation of the permitting process of MDAD is unjustly discriminatory will be discussed below. However, we note, here, that the Complainants state that “Any entity desiring to perform any work at any of Respondent’s airports must run a bureaucratic gauntlet.” [FAA Exhibit 1, Item 1, p. 23]

revised the signage to a smaller font and added all main tenants to the central sign.” [FAA Exhibit 1, Item 15, para. 62] The Director does not consider such an oversight to amount to an unreasonable denial of aeronautical access. Additionally, it appears that the oversight has been corrected.

Leasehold reduction request

Complainants state that MDAD took 11 months to process a “simple leasehold reduction request.” MDAD admits the 11 month delay and provided a rental credit to compensate the Complainants. [FAA Exhibit 1, Item 6, para. 63] MDAD’s Federal obligations do not necessarily obligate MDAD to accommodate any leasehold reduction request. A delay in such a request under the facts presented here cannot be an unreasonable denial of access in violation of the grant assurances.

FOD (foreign object debris) on airfield

Complainants state that “Complainant must take his employees and conduct off leasehold FOD sweeps up to active taxiways and runways to protect incoming customer aircraft because Respondent’s Agent MDAD cannot keep Airside FOD clean.” [FAA Exhibit 1, Item 1, p. 25] MDAD answers, “MDAD does a FOD sweeping once a week at each of its general aviation airports, and more frequently as the need arises. In addition, inspections for FOD are performed at least three times a day.” [FAA Exhibit 1, Item 6, para. 65]

This argument does not support an allegation of unreasonable denial of access, since the Complainants do not state that the condition of the airfield has prevented its operation. The Director does not find that tenant cooperation in monitoring and clearing FOD, voluntarily, is an unreasonable term of tenancy. As stated above, the standard for compliance is that a sponsor understands its obligations, has a program in place to implement its obligations and demonstrates execution of that program. In order for the FAA to determine a violation involving ongoing maintenance failures by a sponsor, it must have more substantial evidence of repeated failure. Incidental presence of FOD is inadequate for a finding of noncompliance. In order to sustain an allegation that the condition of an airport is so egregious, Complainants should report any unsafe condition to MDAD and to the FAA’s local office. The FAA, itself, advises sponsors regarding its maintenance practices and can put in place procedures to monitor such activity, if necessary.

Flooding

Complainants raises the issue of “repetitive flooding of leasehold as a result of drainage issues brought on by poor airport maintenance by Respondent which makes portions of its leasehold unusable during the summer season.” [FAA Exhibit 1, Item 1, p. 26] MDAD answers, “Flooding is a perpetual problem in South Florida. Flooding occurs at OPF from time to time.” [FAA Exhibit 1, Item 6, para. 66] In its Reply, the Complainants point to a one-time incident where alleged lack of preventive maintenance resulted in flooding of BMI’s trailer. [FAA Exhibit 1, Item 11, para. 66]

As stated above, an incidental or one-time maintenance problem is not sufficient to determine a finding of noncompliance. The Record does not support this allegation. Unsafe conditions should be reported to MDAD management and to the FAA.

Unjust Economic Discrimination

Permits

Complainant states that, “Reply Exhibit O clearly shows how at the request of a Hispanic Commissioner a Hispanic tenant is treated more equally than others.” [FAA Exhibit 1, Item 11, para. 60] MDAD denies the allegations made in Complainants’ Reply para. 60. [FAA Exhibit 1, Item 15, para. 60] Complainants’ Reply Exhibit O provides documents allegedly showing a 43-day time period for the approval of electrical plans for another entity’s building at OPF. The Complainant points to the existence of “Hispanic” business and the “Hispanic” political culture of Miami-Dade. The evidence provided does not establish that the other entity was afforded preferential treatment by MDAD or Miami-Dade. Different applicants may have differing levels of success, based on circumstance unrelated to an ethnic group. Success of one aeronautical entity, which is not experienced by another, is not sufficient for a finding of unjust economic discrimination. Furthermore, the FAA does not investigate allegations of political corruption or ethnic favoritism.²²

Signage

The Complainants state in their Reply, “Respondent has provided at no charge signage for all OPF tenants, with the exception of BMI for 3 years on the east side and 55 months into 60 months at the main entrance, a discriminatory act.” [FAA Exhibit 1, Item 11, para. 62] MDAD states, “all tenants did not have their name at the main entrance at OPF until MDAD revised the signage to a smaller font and added all main tenants to the central sign.” [FAA Exhibit 1, Item 15, para. 62] The Complainants do not describe the consequences to BMI of MDAD’s failure to provide street signage. Additionally, it appears that the oversight has been corrected. The FAA notes that the record is insufficient to show a consequence of MDAD’s failure to act. Also, the FAA does not find sponsors in non-compliance once they have cured the potentially non-compliant act by the time of the issuance of a Director’s Determination. There is no point, since providing signage is the cure to any non-compliance found in regard to lack of signage.

The Complainants do not argue unjust economic discrimination with regard to the other issues raised under Issue 7.

The Director finds that the record of the pleadings in this case does not present a preponderance of substantial and credible evidence that the municipal functions of Miami-Dade County or the

²² Based upon the authorities listed in 14 C.F.R. 16.1 and the grant assurances, the FAA has no jurisdiction under Part 16 to adjudicate allegations of violations of criminal laws or of corruption by local officials, and these allegations are best referred to the appropriate state or Federal officials. See Boca Airport, Inc. v. Boca Raton Airport Authority, FAA Final Agency Decision and Order, Docket No. 16-04-02 (Nov. 29, 2004). In that case the FAA noted that allegations of public corruption had been properly referred to state ethics officials. See Docket No. 16-04-02, footnote 12.

management processes of MDAD are so burdensome with regard to the issues raised in Issue 7 as to rise to an unreasonable denial of access. The FAA acknowledges that local governments own and operate the vast majority of Federally-obligated airports. The FAA does not manage airports or run local governments. The FAA does not have managerial oversight in the running of municipal airports. The FAA does have a direct relationship with MDAD and can and does advise MDAD as to how to promote the development of its airports. [FAA Exhibit 1, Item 19]

Issue (8) *Whether an MDAD employee's allegedly false statements regarding the preparation of a 5-year development lease for the Complainant constitutes a violation of grant assurance 22, Economic Nondiscrimination.*

The allegations under this issue fail to include a description of actions that state a claim that MDAD engaged in an unreasonable denial of aeronautical access.

The Director notes that under the standard for compliance discussed above, motive or ill will does not amount to non-compliance, even if established by the Complainants. Such supporting evidence must be accompanied by an actual unreasonable denial of access for aeronautical activity or unjust economic discrimination. Motive alone is not non-compliance. The FAA does not find that the record establishes a finding of intent to harm Stephen O'Neal's business(es) at OPF.

Complainants state

At the August 8 2005 meeting conducted for the purpose of complying with FAR 16.21(a) Respondents Agent MDAD GA Development/Properties Manager Gregory Owens knowingly made materially false statements that he had never received, had knowledge of from any source prior to 8 August 2005 nor been instructed by his then direct supervisor Ms. Susan Warner Dooley to prepare a 5 year Development Lease an act which intentionally and discriminately denies Complainant's access to the airport and demonstrates that the Respondent negotiates in bad faith. [FAA Exhibit 1, Item 1, p. 27]

The Complainants state that they intended this meeting to constitute the Complainants' demonstration of good-faith efforts to resolve the disputed matters informally, in preparation for this Complaint, which was filed four days later. Complainants state, "Complainant and Respondent met for two hours on August 8th and Respondent was informed at the outset that a Part 16 had been prepared and that this meeting was final effort to resolve all issues." [FAA Exhibit 1, Item 1, exh. D] Inexplicably, the Complainants do not concisely complain about the lack of a lease to sign in their Complaint, focusing, instead, on some alleged ill motive on the part of individual persons. However, the Complainants do vaguely discuss the delay with regard to lease preparation in their Exhibit D to their Complaint. This exhibit is not presented as an allegation, but rather provided for the purposes of demonstrating good-faith efforts to informally resolve the dispute, which is required before filing of a formal Part 16 complaint.

Clearly, the Complainants do not now possess a lease which is to their liking; however, the record regarding the issues raised in the original complaint do not create a picture of an

unreasonable denial of access to a lease by MDAD. Despite this, BMI is still operating at OPF and is still invited by MDAD to negotiate a new or different lease.

The FAA is not clear on what basis BMI is legally able to remain at OPF after the expiration of its original five-year lease. [FAA Exhibit 1, Item 6, exh. D] We note that MDAD has provided a Lease Modification Letter #O-583C expanding the seemingly expired lease for BMI. The Lease Modification Letter was signed on May 11, 2005. [FAA Exhibit 1, Item 6, exh. E] The parties submit evidence to the record that MDAD further expanded BMI's presence at OPF during the pleadings to this Complaint. On December 13, 2005, the parties executed Lease Modification Letter #O-583D, adding pavement to BMI's leasehold. [FAA Exhibit 1, Item 16, exh. 1] Furthermore, the Complainants acknowledge MDAD's Proffered Lease for Blueside Services for a new 5-year term, submitted to Stephen O'Neal in May or June 2005, with a June 1, 2005 effective date. [FAA Exhibit 1, Item 6, exh. K] The Complainants state that this so-called 5-year lease was deficient in that it contained a 30-day cancellation clause. However, the Complainants present no evidence that they requested the removal or alteration of such a clause; nor do they claim that they requested a removal or alteration of this clause. The record is unclear as to whether Stephen O'Neal objected to the Blueside 5-year Proffered Lease on August 8. In any case, the Complainants did not sign the lease.

So with regard to contemporary lease expansions and negotiations between the Complainant and MDAD, we note that BMI's original lease expired on December 31, 2004; MDAD did not evict BMI and BMI continues to operate under agreement with MDAD; MDAD provided BMI with two lease expansions; and offered a 5-year development lease to Blueside Services; MDAD states it is willing to continue to work with the Complainants (BMI and Blueside's agent Stephen O'Neal) to "discuss amending the cancellation clause in the Proffered Lease to increase the notice period provided to a time that would be amenable to both parties." [FAA Exhibit 1, Item 6, para. 57]²³

Considering the above time span from December 31, 2004 (when BMI's original 5-year lease expired) to August 12, 2005 (when Stephen O'Neal filed this formal complaint on behalf of both BMI and Blueside), the FAA can in no way find that the actions of MDAD with regard to providing access to property at OPF to the Complainants constitutes an unreasonable denial of access. In fact, it would appear that MDAD's allowing BMI to continue to occupy the property, MDAD's expanding the property twice and MDAD's proffer of a 5-year development lease to Blueside represents an accommodating posture with regard to the Complainants.

²³ With regard to longer-term leases discussed as background to the Complaint, this issue was not properly raised per Part 16 requirements in the Complaint. The FAA declines to construe an allegation for the Complainants because the issue is not fully developed in the pleadings. However, we note that development leases are complicated. It appears that a long term lease with MDAD is still possible with proper negotiations and the FAA is aware, through independent means of the difficulties MDAD has experienced with past under-performing leases. The FAA does not find that MDAD's lack of action on the CDC sub-lease [FAA Exhibit 1, Item 11, exh. G] in this context amounts to an unreasonable denial of access.

General allegations *Whether MDAD has created a hostile business environment and a perception of corruption and discrimination.*

In a cover letter, the Complainants introduce the Complaint, stating, “Respondent has discriminated against Complainants and has created a hostile business environment where a palpable perception of corruption, economic discrimination and favoritism exists.” [FAA Exhibit 1, Item 1, p. 2]

This general statement is not connected to a specific allegation. It is not properly raised as an allegation. The FAA notes that it is not presented with the formal ‘complaints,’ addressed in the Issues, above. The Complainants do not cite a violation of specific grant assurances or Federal law. The Complainants do not appear in the above statement of their pleadings to be referring to specific grant assurance violations, such as unreasonable denial of access or unjust economic discrimination, instead referring to dictionary definitions of some of these words.

While MDAD answers this general allegation in one page in its Answer and with a few mentions in Answer exhibits, the Complainants reply with over 100-pages of previously unmentioned allegations and accusations. As examples in support of the Complainants’ general allegation, they present examples of actions that could be interpreted as an allegation of noncompliance. However, the pleadings do not present a persuasive argument of noncompliance by MDAD or Miami-Dade County. Considering how the Complainants submitted the issues, the Director is not clear whether the Complainants intended to present additional allegations of noncompliance or were presenting the information to the record for background or other purposes.

As stated above, the FAA finds facts that are relevant to a sponsor’s compliance with its Federal obligations. The FAA does not investigate criminal behavior or inappropriate political conduct. The Associate Administrator sustained the Director’s declining to examine allegations of criminal behavior in the form of alleged kickbacks and unethical behavior with regard to leasing land at an Airport. The Associate Administrator stated:

that the Director did give due consideration to potential forums for [the Complainant’s] allegations of criminal ethics violations. The Director noted that Boca Aviation previously submitted a similar ethics complaint to the Florida Commission on Ethics.... He suggests that the appropriate recourse ... is to have the Florida Commission on Ethics re-open its case as an appropriate forum to adjudicate ... ethics issues.... The Associate Administrator agrees this is an appropriate forum for Boca Aviation’s allegations. [Boca Airport, Inc. v. Boca Raton Airport Authority, FAA Final Agency Decision and Order, Docket No. 16-04-02 (Nov. 29, 2004) p. 16]

In any case, if the Complainants mean to allege unlawful or unethical behavior, they should take that issue up with the appropriate agencies. The circumstances presented in this case are similar to *Boca*.

Finally, the pleadings with regard to this allegation are not clear and concise. They are not limited to events occurring before the filing of the Complaint. The FAA is not confident that it

can reach a conclusion of the facts with regard to the accusations in the Reply and the exhibits to the Reply.

Consequently, the FAA will not further construe the general allegation in the cover letter as an allegation of noncompliance by the Complainants. As stated, the arguments and evidence discussed do not present facts that cause the FAA to instigate an investigation.

VII. CONCLUSION

Based on the foregoing discussion and analysis, which takes into account the procedural history and background information as well as the applicable law and policy, the Director finds that neither MDAD nor Miami-Dade is in violation of 49 USC § 47107(a) or its Federal obligations pursuant to grant assurance 22, *Economic Nondiscrimination*.

ORDER

Accordingly, it is ordered that:

1. The Complaint is dismissed.
2. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination, FAA Docket No. 16-05-16, 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 adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(b) within thirty (30) days after service of the Director's Determination.

Signed,



July 25, 2006

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

Date

BMI Salvage Corp & Blueside Services Inc.

v.

Miami-Dade County, Florida

Docket No. 16-05-16

INDEX OF ADMINISTRATIVE RECORD

- Item 1** August 12, 2005, **Complaint** filed by Stephen O’Neal, President of BMI Salvage Corp. and Blueside Services Inc.
- Exhibit A undated, photographs labeled “BMI Leasehold since January 1 2000.”
- Exhibit B undated, document described as a BMI Development Summary from Feb. 2005.
- Exhibit C 08-03-05, email from Stephen O’Neal to MDAD officials regarding August 8 meeting.
- Exhibit D 08-09-05, Complainant document ‘certifying’ efforts to resolve dispute.
- Exhibit E 07-28-05, MDAD email to OPF users regarding NOTAM.
- Exhibit F 08-05-05, MDAD email to Stephen O’Neal and others, regarding non-flyable aircraft at OPF.
- Exhibit G undated, excerpts of Dade County Code, Aviation Dept. Rules and Regulations.
- Exhibit H 04-14-05, excerpt of memo from Miami-Dade County Manager to Board of County Commissioners, recommending approval of a 35-year lease with Miami Executive Aviation at OPF.
- Exhibit Ha undated, 6 photographs non-operating aircraft at OPF.
- Exhibit I undated, 6 photographs of anchoring of non-operating aircraft at OPF.
- Exhibit J undated , 14 photographs of various leasehold conditions and aircraft at OPF.
- Exhibit K 07-18-05, Letter from Stephen O’Neal the Opa-Locka Development Task Force.
- Exhibit L 04-07-05, email from Stephen O’Neal to Bruce Drum regarding smoking.
- Exhibit M undated, 2 photographs of non-operating aircraft/parts at OPF.
- Exhibit N 08-12-05, Letter from Gold Coast Engineering Consultants to Stephen O’Neal.

- Item 2** September 7, 2005, 2005, FAA Notice of Docketed Complaint 16-05-16.
- Item 3** September 19, 2005, Motion for Enlargement of Time, filed by the Assistant Miami-Dade County Attorney on behalf of MDAD.
- Item 4** September 19, 2005, Letter from Stephen O’Neal opposing MDAD’s Motion for Enlargement of Time to file Answer.
- Item 5** September 21, 2005, Letter from FAA Airports Law Branch, granting Motion for Enlargement of Time.
- Item 6** October 19, 2005, **Answer** and Incorporated Motion to Dismiss filed by Respondent.
- Exhibit A 10-13-05, Declaration of George Manion in Support of Miami-Dade County’s Answer.
- Exhibit B 10-13-05, Declaration of Gregory C. Owens in Support of Miami-Dade County’s Answer.
- Exhibit C 11-16-61 Quitclaim Deed to Dade County from United States for OPF.
- Exhibit D 11-01-99, Lease Agreement between MDAD and BMI Salvage Corp.
- Exhibit E 05-11-05, Lease Modification Letter between MDAD and BMI.
- Exhibit F 10-22-04, Slide Presentation for a BMI development proposal at OPF.
- Exhibit G undated, photograph of aircraft at OPF.
- Exhibit H undated, excerpt of Dade County Code regarding derelict aircraft.
- Exhibit I 07-22-05, email from Stephen O’Neal to George Manion of MDAD.
- Exhibit J 10-13-05, Declaration of Chris McArthur in Support of Miami-Dade County’s Answer.
- Exhibit K undated, Draft Lease Agreement between Miami-Dade and Blueside Services, Inc. at OPF.
- Item 7** October 19, 2005, Letter from Stephen O’Neal requesting Complainant’s first extension of time to file Complainant’s Reply.
- Item 8** October 20, 2005, Letter from FAA Airports Law Branch, granting Complainant’s first motion for extension of time to file Reply.

Item 9 November 7, 2005, Fax letter from Stephen O’Neal requesting Complainant’s second extension of time to file Complainant’s Reply.

Item 10 November 10, 2005, Letter from FAA Airports Law Branch, granting Complainant’s second motion for extension of time to file Reply.

Item 11 November 22, 2005, Complainant’s **Reply**.

Exhibit A undated, unsigned, 25-page statement regarding OPF.

Exhibit B undated, unsigned, 22-page statement regarding OPF long-term development.

Exhibit C undated, unsigned, 6-page statement regarding OPF five-year development.

Exhibit D undated, unsigned, 36-page statement regarding BMI standard five-year lease.

Exhibit E undated, unsigned, 16-page statement regarding trailers.

Exhibit F undated, unsigned, 12-page statement regarding ‘Relationship with Respondent.’

Exhibit G 10-01-04, Sub-Lease Agreement between Opa-Locka Community Development Corporation and Blueside Services Inc.

Exhibit H undated, unsigned, “Development Lease Agreement between Miami-Dade County, Florida, as Lessor, and the Opa-Locka Community Development Corporation as Lessee, at Opa-Locka Airport.

Exhibit I 10-30-05, MDAD Opa-Locka Tenants List.

Exhibit J undated, unsigned list labeled “Respondents Agents OPF.”

Exhibit K Affidavits, attached:

1. Sam Knaub
2. Stephen Kolski
3. Stephen O’Neal
4. Laphia Bromfield
5. George Seiler
6. Carl Daugherty

Exhibit L undated, unsigned 7-page essay on “Flying Clubs” at OPF.

Exhibit M 11-22-02, “Second Amended Complaint for Damages and Declaratory Relief” filed by JP Aviation Investments against Miami-Dade County.

- Exhibit N undated, unsigned, 5-page essay on “Self-Fueling” at OPF.
- Exhibit O undated, unsigned, 8-page essay on “Building 137” at OPF.
- Exhibit P 03-20-02, fax from Stephen O’Neal to Rosy Pastrana, DCAD Properties.
- Exhibit Q 02-25-02, Letter from Stephen O’Neal to Carol Anne Klein, Manager MDAD Aviation Properties.
- Exhibit R 10-21-05, “Petition for Writ of Mandamus” filed by Stephen O’Neal upon Miami-Dade County Manager.
- Exhibit S 11-04-05, Herald.com news article, “MIA secures duty-free company.’
- Exhibit T January 2003, Demolition Permit.
- Exhibit U 04-07-05, email trail from Stephen O’Neal to Bruce Drum to Anne Syrcie Lee.
- Exhibit V 11-07-05, email trail from Stephen O’Neal to William Logan and response.
- Exhibit W 11-07-05, FAA Registry Report of six aircraft.
- Exhibit X undated, unsigned, description of Stephen O’Neal’s complaint to MDAD regarding a leasehold issue from 1999/2000.
- Exhibit Y 12-24-02, email from Stephen O’Neal.
- Exhibit Z 11/12-02, *Airliners* magazine article, “End of the Line, Scrapping an Airliner.”

- Item 12** December 2, 2005, Complainant’s extra-procedural submission of errata and additional evidence from Stephen O’Neal to MDAD.
- Item 13** December 22, 2005, Unopposed Motion for Enlargement of Time, filed by Assistant Miami-Dade County Attorney on behalf of MDAD.
- Item 14** December 23, 2005, Letter from FAA Airports Law Branch, granting Motion for Enlargement of Time.
- Item 15** January 20, 2006, **Rebuttal** of Respondent Miami-Dade County.
 - Exhibit A 01-16-06, Declaration of Miguel Southwell in Support of Respondent Miami-Dade County’s Rebuttal.
 - Exhibit B 01-19-06, Declaration of Susan Warner Dooley in Support of Respondent Miami-Dade County’s Rebuttal.

- Exhibit C 01-19-06, Declaration of Sonia Bridges in Support of Respondent Miami-Dade County's Rebuttal.
- Exhibit D 01-19-06, Declaration of John O'Neal in Support of Respondent Miami-Dade County's Rebuttal.
- Exh. 1 undated, Clero Aviation Lease at OPF.
- Exhibit E 01-19-06, Declaration of George Manion in Support of Respondent Miami-Dade County's Rebuttal.
- Exhibit F 01-19-06, Declaration of Gregory C. Owens in Support of Respondent Miami-Dade County's Rebuttal.
- Exhibit G 01-19-06, Declaration of Chris McArthur in Support of Respondent Miami-Dade County's Rebuttal.
- Exhibit H 12-13-05. WITHDRAWN Exhibit: Lease Modification Letter.
- Exhibit I 04-27-93, Memorandum and Resolution constituting Dade County's Authorization for County officials to execute standards aviation leases.
- Exhibit J 03-07-95, Memorandum and Ordinance constituting Dade County's revision of Aviation Department Rules and Regulations.
- Item 16** February 1, 2006, Notice of withdrawal of Rebuttal Exhibit H and Joint Notice of Exhibit 1.
- Exh. 1 12-13-05, Lease Modification Letter adding space to BMI's lease.
- Item 17** February 23, 2006, Complainant's Request for an Evidentiary Hearing and On-Site Inspection.
- Item 18** March 8, 2006, Respondent's Response to Complainant's Request (Item 17, above).
- Item 19** November 8, 2005, Post-Inspection Land-Use Report for OPF with a cover letter from Orlando Airports District Office, FAA of the same date.
- Item 20** May 1, 2006 Notice to Airmen, OPF.
- Item 21** May 26, 2000, Notice of Extension of Time for Director's Determination.