UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

James Vernon Ricks, Jr.

Complainant

v.

Greenwood-Leflore Airport/Airport Board, City of Greenwood, Leflore County, Mississippi

Respondent

FAA Docket 16-09-04

DIRECTOR'S DETERMINATION

I. INTRODUCTION

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

James Vernon Ricks, Jr., (Complainant/Ricks) has filed this Complaint against the Greenwood –Leflore Airport and Airport Board, City of Greenwood and Leflore County, Mississippi (Respondent/Airport). Complainant alleges that the Respondent, as sponsor of Greenwood-Leflore Airport (Airport), has engaged in activity contrary to its Federal obligations. Specifically, the Complainant alleges that the Respondent has failed to comply with Grant Assurance 2, *Responsibility and Authority of the Sponsor*, Grant Assurance 5, *Preserving Rights and Powers*, Grant Assurance 19, *Operation and Maintenance*, Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, and Grant Assurance 29, *Airport Layout Plan*. These issues are listed in Section IV below and fully discussed herein.

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 Airport is not in violation of its Federal obligations at this time. The FAA's decision in this matter is based on applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

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

II. Parties

A. The airport and its Federal Obligations

The Greenwood-Leflore Airport is a public use airport located in Carroll County, Mississippi. The Airport was conveyed to the County on August 22, 1949, by the United States of America under the Surplus Property Act of 1944, as amended. Federal Aviation Administration (FAA) records indicate the planning and development of the Airport has been financed with funds provided by the FAA under the Airport Improvement Program (AIP) authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47107, *et seq*. Since 1988, the Airport has received more than $6,071,622.00 in federal financial assistance. (See FAA Exhibit 1, Item 9].

B. Complainant

The Complainant is James Vernon Ricks, Jr. (Ricks/Complainant). Ricks alleges that the Greenwood-Leflore Airport has unjustly discriminated against him by terminating his lease in order to expand the leasehold of another tenant. [FAA Exhibit 1, Item 1, pg 7] Ricks alleges that the Airport did not offer another site on the Airport for his use or help pay for relocation expenses that his lease with the Airport required. [FAA Exhibit 1, Item 1, exhibit 2, page 7]

III. Background and Procedural History

Ricks alleges that The Memphis Group[1], an aircraft salvage operation located on the Airport, wished to expand its current leasehold to include the space occupied by Ricks. Ricks has been a tenant on the Greenwood-Leflore Airport since 1980 and is under a lease agreement for a 'private operator.' [FAA Exhibit 1, Item 1 page 4/FAA Exhibit 1, Item 1, exhibit 84]

From November 2007 until March 3, 2008, when Ricks was informed by letter from the Airport that his leasehold would be needed to increase the size of the GE/Memphis Group's leasehold, the Airport Manager and Airport Board Chairperson were in frequent contact with Ricks and made attempts to include him in meetings regarding the possibility of a move to another location on the Airport. The record indicates that Ricks declined several meeting offers. [FAA Exhibit 1, Item 3, Exhibit R-4, pages 1-2] On November 6, 2008, Ricks and his attorney met with the Airport Board and discussed obtaining five (5) estimates to move Ricks' leasehold to another location on the Airport. [FAA Exhibit 1, Item 1, page 17

On January 18, 2008, Terry Rees, Portfolio Manager for the General Electric Company, sent a letter to the Greenwood-Leflore Airport Board and proposed terms and conditions for the GE/Memphis Group to enter into a lease renewal. One of the conditions was that the

[1] The Memphis Group has been named in the Complaint and has been referred to in various pleadings as "The Memphis Group," "TMG," "GE/Memphis Group," and "GECAS." General Electric appears to have purchased The Memphis Group sometime in 2007. The Director will refer to the entity as "GE/Memphis Group."

Airport would, *"...at its sole cost and expense, shall remove and relocate any and all tenants with leasehold interests in Building 700[2] prior to the Commencement Date of the Lease."* [FAA Exhibit 1, Item 1, exhibit 20]

On February 1, 2008, the Airport Board sent a letter to Ricks stating, *"...The Memphis Group would like to expand their lease to include the leased space you now occupy...No final decisions have been made, nor will they be made, regarding your lease, without your participation in discussions of the...proposal."* [FAA Exhibit 1, Item 1, exhibit 19]

On March 3, 2008, Elizabeth Evan, Chair of the Greenwood-Leflore Airport Board sent a letter to Mr. Ricks stating that *"...your leased area is needed to assist with the generation of additional direct and indirect economic public benefit. Therefore, please consider this your 90 day notification...that your lease in its current location is being terminated and a new location needs to be identified."* [FAA Exhibit 1, Item 1, exhibit 1]

On March 11, 2008, Ricks filed an informal complaint against the Airport with the FAA's Jackson, Mississippi, Airports District Office (JAN ADO) alleging that the Airport was discriminating against him. [FAA Exhibit 1, Item 1, exhibit 2]

On March 31, 2008, Jeff Orr, (JAN ADO) sent a letter to Ricks stating, *"By letter from the Greenwood-Leflore Airport Board...you were given a ninety day notification of the termination of your lease. According to you, you were given no options other than to vacate your lease before the end of the period. We are aware from our discussions with you and with Mr. Redditt[3] that there has been very little communication between the parties involved. We have advised the Airport to work with you to find a solution that is acceptable to you."* [FAA Exhibit 1, Item 1, exhibit 4]

On April 29, 2008, Bardin Redditt, Airport Manager, sent a letter to Jeff Orr (JAN ADO). This letter explained the events from the time the Memphis Group was purchased by GE (April 2007) and their subsequent desire to expand their leasehold into Ricks leased area. The letter details efforts by the Airport to engage Ricks in dialogue and to come to some agreement as to how Ricks would be accommodated. The letter notes in part, *"In order to answer your question regarding our proposed solution to the Ricks' matter, it is essential that you have the above background information. Your letter...states, 'according to Mr. Ricks, he has been given no options other than to vacate his lease before the end of this [90-day] period.' This is simply not true. In the Airport Board Chair's letter of 3/03/08, Mr. Ricks was given the opportunity to propose his choice of another parcel to lease, to state a proposed price for the Airport to purchase his structures, or to sub-lease his leasehold to a third party. (The implied intention here was for this sub-lease to be to the Airport or possibly to GE.) As noted, Mr. Ricks proposed to sub-lease to his son which would not have solved the issue of his operation being in the middle of GE's. The options to select another site or to name a price for his structures were ignored."* [FAA Exhibit 1, Item 3, exhibit R-4]

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[2] Building 700 is part of Ricks leasehold

[3] Bardin Redditt is the current Airport manager

On May 15, 2008, Jeff Orr sent a letter to the Airport stating, "*As we have pointed out to the Airport, an aircraft salvage and demolition operation is not an entirely aeronautical activity. We understand that the nature of the business requires the receipt of aircraft; however, once the aircraft become inoperable, the activity becomes a non-aeronautical activity.*" The letter goes on to state, "*Against this background, we conclude that if Mr. Ricks is evicted from his lease without a reasonable attempt having been made by the Airport to resolve this issue, the Greenwood-Leflore Airport may be in violation of certain obligations contained in grant agreements for development of the ...Airport. Therefore, we request that you take corrective action to ensure your compliance with the applicable Federal obligations as follows: If the Airport desires to expand the lease area of another tenant which requires the area presently occupied by Mr. Ricks, then the Airport should make a reasonable attempt to resolve this issue.*" The letter also states, "*We would consider the obligations of the grant agreements to have been met when the Airport makes a reasonable good faith effort to relocate Mr. Ricks. Refusal of a reasonable offer of accommodation from the Airport by Mr. Ricks would not constitute a violation of the grant obligations.*" [FAA Exhibit 1, Item 1, exhibit 6]

Also on May 15, 2008, the Airport sent Ricks a letter that stated, "*As you know, the Airport Board has determined that your leasehold is needed for industrial expansion, as set forth in Section 6 of your lease agreement with the...Airport. Please accept this as official notification that the Airport Board has not accepted your request to sub-lease your leasehold to your son. Since you have refused to accept any new location that we have suggest[ed] for your leasehold, or to make a suggestion as to any other location...the Board has designated the northeastern end of the ramp as the location for your leasehold as of June 2, 2008....This relocation site offers drive-through accessibility as you now have, parking for all your fuel trucks, and a place for your fuel tanks as well. In addition, to address your concerns regarding security, the Board has stated their willingness to install an automatic gate for the agricultural entrance.*" [FAA Exhibit 1, Item 1, exhibit 7]

On May 21, 2008, Ricks gave the Airport an estimate of the value of his lease holdings and offered to allow the Airport to purchase them. Ricks estimated the value of his hangar at $149,000 and his fuel farm at $80,000. Other items included brought the total requested by Ricks to $944,890.00. [FAA Exhibit 1, Item 1, exhibit 8 and 8A]

On May 30, 2008, the Airport sent a letter to Ricks that stated, "*The FAA has recently informed us that further submittals to them will be necessary before they concur with our plans to relocate your hangar and fuel tanks...Therefore, please note that we plan on delaying further action on your relocation until we have their concurrence...We will notify you when this process is complete. In the meantime, the option of further negotiation will remain an open issue.*" [FAA Exhibit 1, Item 1, exhibit 9]

Ricks alleges that during the time period from mid-July through September 2008, the Airport "went through a series of moves aimed at attempting to have Mr. Ricks' leasehold declared to be in a non-aeronautical area so that, per the airport manager,

"Mr. Ricks would have to move at his expense." Ricks also alleges that during this time frame, the Airport had appraisals made of his property that were *"fractions of the appraised values."* [FAA Exhibit 1, item 1, page 13]

On July 16, 2008, Bardin Redditt sent a letter to Jeff Orr and Rans Black at the JAN-ADO that stated:

"The following is an outline of our proposed offer to Mr. Vernon Ricks, along with several option parts:

First, I have several questions concerning Mr. Ricks' 'fuel farm.' According to the Airport Board minutes, this fuel farm was for the expressed purpose of self-fueling; however, Mr. Ricks has for a period of years been using this fuel farm as a business enterprise, defueling airliners scheduled for demolition....As noted in the appraisal, the fuel farm does not meet the requirements and is not suitable for aircraft fueling operations. The tanks are not attached to the pavement and the containment structure is not capable of containing any spill due to leakage underneath.

My proposal for Board consideration will be to purchase Mr. Ricks [sic] hangar and fuel farm at the appraised value. If this is not acceptable to Mr. Ricks, we will offer to give Mr. Ricks $68,500 to cover expenses incurred in moving his hangar to our new general aviation area.

The letter goes to on discuss a proposal to designate 7.5 acres of land at the Airport as non-aeronautical to accommodate the GE/Memphis Group lease. [FAA Exhibit 1, Item 15, page 1]

On July 30, 2008, Jeff Orr replied to the July 16, 2008, letter and stated in part:

"The Jackson (ADO)...has completed our review of the proposals in your letter of July 16, 2008 regarding the designation of an area of the Greenwood-Leflore Airport as a non-aviation area." The letter goes on to state, *"...we have no objection to your proposal to offer Mr. Ricks the fair market value of his hangar and fuel farm. This proposal should also include an offer of another area for lease on the airport for him to construct a new hangar at his expense. We would also not object to the airport offering to pay Mr. Ricks the costs for the relocation of his hangar to another area on the airport."* [FAA Exhibit 1, Item 16, page 1]

On September 10, 2008, Bardin Redditt (Airport Manager) sent a memorandum to "whom it may concern" regarding "Additional Information Pertaining to Federal Register Notice for a Change in Use of Aeronautical Property at the Greenwood-Leflore Airport...." This memorandum stated, *"In late 2007, discussions began with GECAS-AMS (new owners of The Memphis Group) regarding the consolidation and expansion of their existing leases with the Airport. One condition they requested was to have Mr. Vernon Ricks relocated, according to the terms of his lease, due to the fact that their business, and leases, had grown up around his existing leasehold....They also wished to fence in their leasehold to*

secure their property....During this process, it was determined that a portion of GECAS' operation was considered non-aeronautical by the FAA; thus our reason for requesting the change of use for the indicated area." The memorandum also includes an offer to Ricks, presumably to buy out his leasehold. In a letter dated September 10, 2008, Elizabeth Evans, Chairperson of the Greenwood-Leflore Airport Board, stated, *"...the Airport Board hereby offers to purchase from you, at appraised value, the following items...*(1) One hangar with enclosed parts room (Building 700) for $37,250.00, (2) One fuel farm, consisting of two tanks and containment wall for $10,000.00. The letter also states, *"This offer is valid until 5:00 pm, 15 days from the date of this letter."* [FAA Exhibit 1, Item 1, exhibit 11]

On October 28, 2008, Rans Black, manager of the Jackson Airports District Office, sent a letter to Bardin Redditt, stating,

"We have reviewed the comments to the Federal Register notice of September 23, 2008 concerning the Greenwood-Leflore Airport Board's request to designate an area of the airport as a non-aeronautical use area. All of the comments received have been opposed to the proposal including an objection from the Leflore County Board of Supervisors, one of the co-owners of the airport. The primary reasons given for the objections are opposition to the termination of Mr. Ricks [sic] lease and the reduction in space available for aeronautical use at the airport." The letter goes on to state, *"It is also apparent that the airport owners and airport management are not in agreement with regard to the disposition of the lease with Mr. Ricks. We consider this to be a local matter that should be handled by the airport owners. We have no objection to Mr. Ricks remaining in this area. We also have no objections to the relocation or purchase of Mr. Ricks' facilities. If Mr. Ricks is to remain at this current location, measures should be taken by the airport to ensure that he has reasonable access to his lease area and to the airfield.* [FAA Exhibit 1, Item 1, exhibit 12]

On October 31, 2008, Ricks stated that *"There was a special, televised airport board meeting, with a full quorum, and held jointly with the City of Greenwood, Leflore County, and Carroll County during which meeting the airport board 'voted to move Ricks to a the NE ramp (with doors) or to build a new building which ever was the more economical,' to which the City and County consented and approved at that meeting."* [FAA Exhibit 1, Item 1, page 15]

On November 6, 2008, Ricks and his attorney met with the Airport Board and discussed obtaining five (5) estimates to move Ricks' leasehold to another location on the Airport. During this meeting, Ricks stated that there was some conversation about a hangar on the Airport that may be for sale. Ricks stated that the hangar, "was not tall enough" to accommodate his airplanes and would need substantial modification to equal his current hangar. [FAA Exhibit 1, Item 1, page 17]

On December 19, 2008, Ricks met with the Airport Board and stated, *"The airport board chairman announced that the airport has obtained an appraisal on the hangar 'that might be for sale' wanted Ricks to immediately negotiate to purchase that unsatisfactory, un-modified hangar for the... 'appraised value,' not for the alleged price that the owner was*

believed to have wanted (which was over $25,000 lower than the airport appraisal). [FAA Exhibit 1, Item 1, page 19]

On January 15, 2009, Ricks' attorney, *"mailed a detailed written submission of the content of the estimates to move...along with the statement that Ricks was ready to move in accordance with the JAN ADO May 15, 2008, letter to the Airport."* [FAA Exhibit 1, Item 1, page 21]

From January 16, 2009 until March 5, 2009, Ricks states that he, *"awaited action from the airport on the 'five estimates' in accordance with the October 31 and November 6 meetings with the airport board."* [FAA Exhibit 1, Item 1, page 21]

On March 9, 2009, the City Council met and Ricks alleges that they stated, *"You have two weeks for Bowman[4] to successfully negotiate with the City and County attorneys regarding relocating Ricks on the airport or Ricks would be thrown off the airport."* [FAA Exhibit 1, Item 1, page 22]

On March , 2009, Jeff Orr, JAN ADO, sent a letter to Bardin Redditt, stating in part:

"We have reviewed the drawing submitted by you showing a proposal under consideration for relocating Mr. Ricks' existing hangar to an area on the northeast end of the apron. This location would block off an area identified on your ALP as an area designated for future development at the airport. In addition to this, any obligations remaining from AIP grants for this area would have to be repaid by the airport.

If the hangar is going to be relocated, a better location would be to an area adjacent to the recently completed general aviation apron. Even though Mr. Ricks has expressed his objections to this option due to the slopes of the taxiway and apron and his desire to maintain drive through access provided by his present hangar location; the apron and taxiway would provide adequate access to his hangar.

We also understand from our conversations with you that another option has recently been presented with the availability of a vacant hangar located near the northeast end of the apron adjacent to the first option discussed above. We would have no objections to the Airport purchasing the facilities owned by Mr. Ricks. We also would have no objections to the Airport purchasing the vacant hangar and then negotiating an equitable trade with Mr. Ricks for his facilities. This option would also require a ground lease similar to the other privately owned facilities on the airport." [FAA Exhibit 1, Item 8]

On March 16, 2009, Ricks' attorney, Billy Bowman, met with the City and County. Ricks stated, *"The City attorney stressed that Ricks had to go to the new GA area, which...has been condemned as unfit for use by every person who has ever seen it."* [FAA Exhibit 1, Item 1, page 23]

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[4] Billy Bowman is Ricks' attorney

On March 20, 2009, Rans Black, Manager, Jackson Airport District Office, sent a letter to Vernon Ricks and stated,

"*Your March 17, 2009 letter requests that we assure that the Greenwood airport complies with our May 15, 2008 letter to the airport. We believe the airport has complied with the May 15th letter, which requires that they make a reasonable offer to you. We discussed this matter with the airport and they indicated they have made several offers to you and that you have made counter offers, which is typical in a negotiating process. Again, we believe these negotiations need to be resolved at the local level. Against this background, the Greenwood-Leflore Airport does not appear to have violated the obligations as set forth in its airport development assistance grant agreements or the terms and conditions of the Surplus Property quitclaim deed dated August 22, 1949. Therefore, on the basis of our above-discussed evaluation, we conclude that this matter warrants no further FAA action.*" [sic] [FAA Exhibit 1, Item 1, exhibit 76]

On March 24, 2009, the City Council passed a resolution that stated, "*That the City of Greenwood authorizes the Greenwood-Leflore Airport to exercise its rights as set forth in the lease agreement between the Greenwood-Leflore Airport and Vernon Ricks, including designating other premises for use by Vernon Ricks and removing building erected by Vernon Ricks at the expense of the Greenwood-Leflore Airport, inasmuch as Vernon Ricks' leasehold is needed for industrial expansion.*" [FAA Exhibit 1, Item 1, exhibit 27]

Between April 7 and May 4, 2009, Ricks states that he attempted to get a reply to letters sent to the City and County, and obtain a copy of the October 31, 2008 Minutes (Board of Supervisors meeting). [FAA Exhibit 1, Item 1, page 25-26]

On June 15, 2009, Ricks filed a formal complaint under 14 CFR Part 16. The gravaman of the Complaint appears to be that the Airport has failed to relocate Ricks' leasehold in a manner he finds acceptable. [FAA Exhibit 1, Item 1, page 4] Ricks also alleges that the Airport has failed to comply with its grant assurances and deed obligations in the Instrument of Conveyance and that the sponsor's noncompliance has resulted in "continuous, unsafe conditions on the airport and general undue, chronic discrimination by the airport in favor of an aircraft demolition company." [FAA Exhibit 1, Item 1, page 2]

On June 30, 2009, Respondent Greenwood-Leflore County Airport filed a Motion for Extension of Time to Respond to the Part 16 Complaint. [FAA Exhibit 1, Item 2]

On August 4, 2009, Complainant Ricks filed an Answer to Motion for Extension of Time, objecting to extension of time. [FAA Exhibit 1, Item 5]

On August 19, 2009, Greenwood-Leflore County filed an Answer to Part 16 Complaint, denying the allegations. [FAA Exhibit 1, Item 3]

On August 26, 2009, Complainant Ricks filed a Motion for FAA Investigation and Initial Determinations. Ricks requested an audit of the Airport financial records and transactions as provided by 49 U.S.C. 47107 and 47121. [FAA Exhibit 1, Item 4]

On September 1, 2009, Complainant Ricks filed a "Reply To Respondent Leflore County, Ms., August 14, 2009, Untimely Response That Was Due August 6, 2009 In Accordance With Paragraph 16.23(d)." [FAA Exhibit 1, Item 6]

On December 2, 2009, the FAA sent a letter to the parties extending the time for a Rebuttal until December 16, 2009. The letter further stated that the record will close on December 16, 2009, or upon the receipt of the Respondent's Rebuttal whichever comes first.

On December 30, 2009, the Respondent, Greenwood-Leflore Airport, filed a Rebuttal to the part 16 Complaint. [FAA Exhibit 1, Item 10] In the Rebuttal, the Respondent responds to the Complainant's allegations by 'complaint segment' and generally denies all allegations.

IV. ISSUES

Because of voluminous nature of this Complaint, and the often broad and nonspecific allegations, the Director has attempted to group the Complainant's allegations as closely as possible to a related grant assurance. However, in many instances, the Complainant has not pointed to specific evidence that supports an allegation. In other instances, the Complainant has made unsupported statements that imply corruption or malfeasance on the part of the Airport sponsor.

The Complainant has included 16 'complaint segments' that he states describe how the Respondent violated its Grant Assurances. In order to analyze these segments, the Director has grouped these segments into six (6) issues related to specific grant assurances.

The FAA is responsible for adjudicating airport compliance matters involving Federally-assisted airports arising under the Airport and Airway Improvement Act (AAIA) of 1982, as amended; certain airport-related provisions of the Federal Aviation Act of 1994, as amended; the Surplus Property Act, as amended; predecessors to those acts; and regulations, grant agreements, and documents of conveyance issued or made under those acts. [*See*, FAA Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, 14 CFR § 16.1] In accordance with this mandate, this Director's Determination addresses the following issues:

Whether the Greenwood-Leflore Airport is operating without proper authority in violation of Federal grant assurance 2, *Responsibility and Authority of the Sponsor.*

2. Whether the Greenwood-Leflore Airport encumbered its title or any other interest in the property shown on Exhibit A in violation of Federal grant assurance 5 (a) (b), *Preserving Rights and Powers.*

3. Whether the Greenwood-Leflore Airport is failing to operate the Airport in a manner that the airport and all facilities which are necessary to serve the aeronautical users of

the airport in a safe and serviceable condition in violation of Federal grant assurance 19, *Operation and Maintenance*.

4. Whether the Airport (1) acted unreasonably to move Complainant to another location on the Airport in a manner that unjustly discriminated against Complainant, (2) failed to provide adequate access to Complainant's leasehold due to the presence of armed guards, (3) provided preferential treatment of GE/Memphis Group by incorrectly identifying it as an fixed base operator (FBO)[5], and (4) prevented Complainant from self-serving his aircraft by denying the ability to wash aircraft in violation of Federal grant assurance 22, *Economic Nondiscrimination*. [FAA Exhibit 1, Item 1]

5. Whether the Greenwood-Leflore Airport has granted an exclusive right to the GE/Memphis Group by paying its utility costs on a monthly basis in violation of Federal grant assurance 23, *Exclusive Rights*.

6. Whether the Greenwood-Leflore Airport has failed to keep up to date at all times an airport layout map of the airport in violation of Federal grant assurance 29, *Airport Layout Plan*.

The Respondent is also obligated under the powers contained in the Surplus Property Act of 1944 as amended, 49 U.S.C. §§ 47151 - 47153. Surplus Property agreements contain restrictive deed covenants similar to those under 49 U.S.C. § 47107 (a)(l), 49 U.S.C. §47107 (a)(4) and 49 U.S.C. § 40103 (e) addressing reasonableness, unjust discrimination and exclusive rights. Therefore, these surplus property obligations also apply in this case. Surplus property deed covenants run with the land and do not expire.[6]

FAA's decision in this matter is based on the applicable Federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties and reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

V. APPLICABLE LAW AND POLICY

The federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing federal funds and other assistance to local communities for the development of Airport facilities. In each such program, the Airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its Airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by Airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the Airport.

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[5] A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground, and flight instruction, etc., to the public. [FAA Order 5190.6A, Appendix 5]
[6] See footnote 8.

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

Airport Sponsor Assurances

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

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.[7] FAA Order 5190.6B, *FAA Airport Compliance Manual* (FAA Order 5190.6B), issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances.

The Airport Sponsor Assurances and Deed Covenants

The AAIA, 49 U.S.C. § 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 U.S.C. § 47107(g)(1), the Secretary is authorized to prescribe project sponsorship requirements to ensure compliance with 49 U.S.C. § 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 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.

The Greenwood-Leflore Airport is also bound to the terms of deeds issued pursuant to the Surplus Property Act of 1944, codified as 49 U.S.C. §§ 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 essentially the same as the Federal

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

grant assurances discussed below and that are also imposed upon the Respondent. Our analysis and enforcement of the obligations is identical.[8]

Grant Assurance 2, *Responsibility and Authority of the Sponsor*

Grant Assurance 2, Responsibility and Authority of the Sponsor, implements the provisions of Title 49 U.S.C., 47107, and states, in pertinent part

> *(a) Public Agency Sponsor: It has the legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.*

Grant Assurance 5, *Preserving Rights and Powers*

Grant Assurance 5, *Preserving Rights and Powers*, implements the provisions of Title 49 U.S.C. 47107, and requires, in pertinent part, that the sponsor of a federally obligated airport

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

The FAA Order 5190.6B describes the responsibilities under Grant Assurance 5 assumed by the owners of public-use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. [*See* FAA Order 5190.6B, Sec. 6.3(b)]

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[8] The Airport is also bound to the terms of deeds issued pursuant to the Surplus Property Act of 1944, codified as 49 U.S.C. §§ 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 that are also imposed upon the Respondent. Insofar as the commonality between the Surplus Property Act and the Grant Assurances, our analysis and enforcement of the obligations is identical. Notwithstanding, the remedy for the violation of each differs (for example, violations of the Surplus Property Act may result in a reverter of the property, whereas a violation of a grant assurance may affect AIP grants to an airport).

Grant Assurance 19, *Operation and Maintenance*

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

> *"a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:*
>
> *(1) Operating the airport's aeronautical facilities whenever required;*
> *(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and,*
> *(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.*
>
> *Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.* [*See* FAA Order 5190.6B, Sec. 7.3]

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended." [*See* FAA Order 5190.6B, Sec. 4.6.g.(3)]

Assurance 22, *Economic Nondiscrimination*

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

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

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

(1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
(2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

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

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

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

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

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport. [*See* FAA Order 5190.6B, Sec. 14.3.]

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

The owner of an airport developed with federal assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination. [*See* FAA Order 5190.6B, Sec. 14.2]

Grant Assurance 23, *Exclusive Rights*

Federal grant assurance 23, *Exclusive Rights*, (Assurance 23) implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the owner or sponsor of a federally obligated airport:

> "...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public."
>
> "...will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities..."
>
> "...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code."

In FAA Order 5190.6B, the FAA discusses its exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, FAA has taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [*See* e.g. Pompano Beach v FAA, 774 F2d 1529 (11th Cir, 1985).] An owner or sponsor is under no obligation, however, to permit aircraft owners to introduce onto the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities. [*See* FAA Order 5190.6B, Sec. 8.8.b.(3)]

Leasing all available airport land and improvements planned for aeronautical activities to one enterprise will be construed as evidence of intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease. [*See* FAA Order 5190.6B, Sec. 1.3.c.]

Grant Assurance 29, *Airport Layout Plan*

Grant Assurance 29, *Airport Layout Plan,* implements 49 U.S.C. § 47107(a)(16) and, in pertinent part, requires the airport owner to

"keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon. Such airport layout plan and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or in any of the facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport."

An airport layout plan (ALP) depicts the entire property, current facilities, and plans for future development of the airport. The FAA requires an approved ALP as a prerequisite to the grant of Federal funds for airport development. FAA approval of the ALP represents the concurrence of the FAA in the conformity of the plan to all-applicable airport design standards and criteria. Any construction, modification, or improvement that is inconsistent with the ALP requires FAA approval of a revision to the ALP. [See FAA Order 5190.6B, Sec. 7.18.]

The FAA Airport Compliance Program

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

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

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of federal property to ensure that the public interest is being served. FAA Order 5190.6B sets forth policies and procedures for the FAA Airport Compliance Program. FAA Order 5190.6B is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to

the United States by airport owners as a condition of receiving a grant of federal funds or the conveyance of federal property for airport purposes. FAA Order 5190.6B analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [*See* e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 30, 2001) (Final Decision and Order) (*Wilson*)]

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

Enforcement of Airport Sponsor Assurances

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances.

The Complaint and Appeal Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant(s) shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint(s) shall also describe how the complainant(s) directly and substantially has/have

been affected by the things done or omitted by the respondent(s). [*See*, 4 CFR § 16.23(b)(3-4)]

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

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

Title 14 CFR § 16.31(b-d), in pertinent parts, provides that "(t)he Director's determination will set forth a concise explanation of the factual and legal basis for the Director's determination on each claim made by the complainant." In accordance with 14 CFR § 16.33(b) and (e), upon issuance of a Director's determination, "a party adversely affected by the Director's determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination;" however, "(i)f no appeal is filed within the time period specified in paragraph (b) of this section, the Director's determination becomes the final decision and order of the FAA without further action. A Director's determination that becomes final because there is no administrative appeal is not judicially reviewable."

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

VI. ANALYSIS AND DISCUSSION

The Director has construed the gravaman of Ricks' Complaint to be that the Greenwood-Leflore County Airport discriminated against him by failing to provide acceptable space on the Airport to relocate his leasehold or to pay an amount of money acceptable to Ricks to move his buildings and other materials in order to accommodate the expansion of another tenant. The parties have engaged in some negotiation but at this time there has been no

agreement between the parties. As this Determination is issued, the Airport has not taken any action to remove Ricks from his current leasehold.

Ricks has also alleged numerous other assertions that are unrelated to the actual issue of relocating the leasehold and provided voluminous - often unclear - documents supporting his claims. Ricks alleges that the Airport has (1) operated the Airport without proper authority, (2) encumbered its title or other interests in the property shown on Exhibit A, (3) failed to operate the airport in a safe and serviceable condition, (4) failed to pay reasonable costs to move leasehold infrastructure to another site and failed to provide adequate access to his leasehold due to the presence of armed guards, (5) granted an exclusive right to the GE/Memphis Group by agreeing to pay its utility bills, and (6) failed to keep its Airport Layout Plan up to date at all times.

The Respondent denies the allegations and argues that Ricks has not been directly and substantially affected by anything done or omitted. [FAA Exhibit 1, Item 10] The Respondent also submits, *"...that Complainant harbors ill will toward the Greenwood Leflore Airport because he has been asked to relocate his hangar to allow GE/Memphis Group onto Complainant's current location. The Complainant has not yet been affected by this request, as there is no place he can relocate on the Airport as this time. Complainant still has his leasehold in the same location and is free to come and go as he pleases."* [FAA Exhibit 1, Item 10, page 1]

In their Rebuttal, the Respondent also moves that the Part 16 Complaint be dismissed, *"for lack of merit, and because of the litigious and frivolous nature of the Complainant's unfounded and unjust allegations."* [FAA Exhibit 1, Item 10, Rebuttal]

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

1) Whether the Greenwood-Leflore Airport is operating without proper authority in violation of Federal grant assurance 2, *Responsibility and Authority of the Sponsor.*

2) Whether the Greenwood-Leflore Airport encumbered its title or any other interest in the property shown on Exhibit A in violation of Federal grant assurance 5, *Preserving Rights and Powers.*

3) Whether the Greenwood-Leflore Airport is failing to operate the Airport in a manner that the airport and all facilities which are necessary to serve the aeronautical users of the airport in a safe and serviceable condition in violation of Federal grant assurance 19, *Operation and Maintenance.*

4) Whether the Greenwood-Leflore Airport (1) acted unreasonably to move Complainant to another location on the Airport in a manner that unjustly discriminated against Complainant, (2) whether the Greenwood-Leflore Airport failed to provide adequate access to Complainant's leasehold due to the presence of armed guards, (3) provided

preferential treatment of GE/Memphis Group by incorrectly identifying it as an FBO, and (4) whether the Airport prevented Complainant from self-serving his aircraft by denying the ability to wash aircraft in violation of Federal grant assurance 22, *Economic Nondiscrimination.* [FAA Exhibit 1, Item 1] [9]

5) Whether the Greenwood-Leflore Airport has granted an exclusive right to the GE/Memphis Group by paying its utility costs on a monthly basis in violation of Federal Grant Assurance 23, *Exclusive Rights.*

6) Whether the Greenwood-Leflore Airport has failed to keep up to date at all times an airport layout map of the airport in violation of Federal grant assurance 29, *Airport Layout Plan.*

The GE/Memphis Group is an aircraft demolition company that has been located on the Airport since 1990. In the 2006-2007 timeframe, the GE/Memphis Group requested additional space for its leasehold. [FAA exhibit 1, Item 1, exhibit 12 (R-4)] This additional space would incorporate the leasehold currently held by Ricks. Ricks' lease allows for the Airport to relocate him if the leasehold is needed for 'industrial expansion.' The lease states, *"Lessee hereby agrees that, in the event the premises leased under this agreement become necessary for use for industrial expansion...then the Lessor shall, upon ninety (90) days notice to Lessee, have the right in its sole discretion to designate other premises for use by said Lessee, and to remove buildings erected by the Lessee and property thereon as the expense of the Lessor."* [FAA Exhibit 1, Item 1, exhibit 2-K]

The Airport sent Ricks a letter on March 3, 2008, that stated that his leasehold was needed for economic development and gave Ricks the prescribed 90 days notice to relocate. Early negotiations were not successful and by June 15, 2009, Ricks filed this instant Complaint. However, the Director notes that Ricks has not focused solely on the issue of the change in leasehold in his Complaint, but has instead alleged a myriad of wrongdoings by the Airport reaching back to the inception of the Airport Board in 1967. In an effort to perform a complete review of the allegations brought in the Complaint, the Director has provided an analysis of these allegations. While the Complainant's pleadings were rambling and disjointed, the Director was able to glean the facts from the record upon which the findings and conclusions of law were based.

Ricks also alleges various acts of malfeasance and corruption on the part of the Airport in numerous circumstances, which Ricks maintains violated the Airport's Federal sponsor obligations. However, our review of this matter is based solely on the applicable Federal law and FAA policy and review of the arguments and supporting documentation submitted by the parties to the administrative record in this proceeding. [FAA Exhibit 1]

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[9] See footnote 8

Arguments of the Parties and the Director's Findings

The Complainant carries the burden of proof. The Complainant must present complete allegations and substantial and probative evidence to sustain an allegation of a grant assurance violation.

1. Responsibility and Authority of the Sponsor

> ISSUE: Whether the Greenwood-Leflore Airport is operating without proper authority in violation of Federal grant assurance 2, *Responsibility and Authority of the Sponsor*.

Federal grant assurance 2 states in part:

> *(a) Public Agency Sponsor: It has the legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.*

The Complainant has alleged that the co-ownership of the Airport by Leflore County by means of the August 25, 1967 deed is, *"questionable in its legality."* [FAA Exhibit 1, Item 1, exhibit 2, page 1] The Complainant states, *"The Sponsors have been in noncompliance and in violation of the deed of conveyance and the grant assurances in their invalid, lacking FAA consent, unapproved exchange of ownership of the airport, the joint appointment of airport boards, the joint receipt of funds, and the joint operation of the airport since August 25, 1967.* [sic]" [FAA Exhibit 1, Item 1, exhibit 2, page 2]

The Complainant also argues, "*Ricks was directly and substantially affected...due to the unclear, unsupervised lines of responsibility, authority, and communication with the airport that developed due to the co-ownership/co-sponsorship of the airport by the absentee co-owners...that forced the compulsory dealing with the airport manager or airport board to be indecisive, vacillating, unfulfilled, unilateral and with undue discrimination.*" [FAA Exhibit 1, Item 1-A, page 2]

In its Rebuttal, the Respondent denies these allegations and provides a copy of the document conveying the Airport to Greenwood, Mississippi under the Surplus Property Act and a letter and deed dated September 14, 1967, to the Federal Aviation Administration's Memphis office that adds Leflore County as a co-sponsor of the Airport. [FAA Exhibit 1, Item 10, exhibit 1]. The Respondent stated, "*...FAA was noticed [sic] of the transfer of land to Leflore County, Mississippi, in 1967 and did not lodge a complaint against the City of Greenwood, nor did they attempt to exercise their reversionary rights. Therefore, the Greenwood-Leflore Airport is in full compliance of the Surplus Property Act and its grant agreements. As an alternate rebuttal, Respondent Leflore County states that the*

Complainant has not been directly and substantially affected by anything done or omitted. [FAA Exhibit 1, Item 10, page 1-2]

The Respondent also states, *"The land transfer from the United States of America to the City of Greenwood, Mississippi for public airport purposes for the use and benefit of the public is still the purpose of the Greenwood-Leflore Airport today."* [FAA Exhibit 1, Item 10, page 2]

In the letter to the FAA's Memphis Area Office on September 14, 1967, the airport manager at that time attached a copy of the new deed that reflected the joint sponsorship of the Airport. The deed was signed and notarized. The FAA did not object to the joint sponsorship of the Airport when notified in 1967. In subsequent years, grants from the FAA to the Airport identified both the City of Greenwood and Leflore County as joint sponsors. [FAA Exhibit 1, Item 10, exhibit 1].

Ricks has not provided any evidence that is persuasive to the Director that the co-sponsorship of the Airport by the City and County has in any way affected his ability to do business on the Airport. Ricks has not demonstrated that he has been substantially affected by the structure of the Airport's governing board. Simply alleging that the co-sponsorship has in some way *"adversely affected the safety, utility, and efficiency of the Airport ...in regard to Complainant Ricks' operation,"* [10] is not reliable, probative, and substantial evidence required to find that the Airport has violated Grant Assurance 2.

The fact that both the City of Greenwood and the County of Leflore share in the sponsorship of the Airport is acceptable to the FAA as evidenced by the fact that grants to the Airport are given jointly to the City and County. The FAA has no reason to object to the current sponsorship of the Greenwood-Leflore Airport. The Complainant has failed to offer reliable, probative, and substantial evidence showing that the present airport sponsor lacks the legal authority regarding the application for and use of grants. The allegations by the Complainant that the Airport is in violation of Grant Assurance 2 are dismissed.

2. Preserving Rights and Powers

Whether the Greenwood-Leflore Airport encumbered its title or any other interest in the property shown on Exhibit A in violation of Federal grant assurance 5 (a) (b), Preserving Rights and Powers.

Federal grant assurance 5, Preserving Rights and Powers, requires that an airport, *"...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor."*

[10] FAA Exhibit 1, Item 1-A, page 2

Ricks has alleged that the Airport Board was involved in an agreement with Sorvan Bank/Central South that offered the GE/Memphis Group certain special or exclusive rights that had the effect of diluting the Airport's rights and powers, stating, "*...the airport board on behalf of The Memphis Group...a (non-aeronautical) aircraft demolition company, by the airport board's direct involvement in a bank security agreement modified the aircraft demolition company's lease on the airport to give special (exclusive rights to The Memphis Group, Inc.) by means of the airport board's multiple, noncompliant, encumbrance actions and promises to and with a third party lender, Sorvan Bank/Central South* [sic]." [FAA Exhibit 1, Item 1-A, exhibit 5]

Ricks argues that he was "*directly and substantially affected by this complaint issue due to the airport board's breach Federal Grant Assurance 5 (a) and 5(b) to permit an action that could deprive the airport of its rights and powers as well as to directly encumber the airport by being a co-signor [sic] for obtaining the financing for a non-aeronautical, noncompliant, industrial development activity that was to emplace [sic] an aircraft demolition company on the airport.*" [FAA Exhibit 1, Item 1, Item 1-A, exhibit 4]

In their Rebuttal, the Respondent states, "*The allegations...are denied as to any direct involvement in the security agreement between The Memphis Group, Inc. and Sovran Bank/Central South. The...agreement was to verify that the...Memphis Group...leased a site on the airport premises and allowed the Lender...in case of default to enter onto the airport premise. Such allowance would give the Lender, Sovran Bank/South Central, right to remove the property of the Lessee...and to step into the shoes of the Lessor...to cure any default. This is a standard business transaction. Complainant has not been directly and substantially affected by anything done or omitted.*" [FAA Item 10, exhibit 4]

The Complainant additionally alleges, the "*Sponsors...conspiring with (the Foundation)*[11] *breach[ed] Federal Grant Assurances 5 (a) and 5(b) to finance an aircraft demolition company expressly for the purpose of aircraft demolition to conduct non-aeronautical activities contrary to the Deed/Instrument of Transfer 'for public airport purposes....*" The Complainant goes on to state, "*This conspiracy between the airport Sponsors and the Foundation...directly and substantially affected Complainant Ricks in this complaint issue due to the ongoing, unsafe conditions that were promulgated by the aircraft demolition company that was instituted on the airport due to the continuous cooperative efforts of the Sponsors and the Foundation.*" [FAA Exhibit 1, Item I-A, exhibit 3]

In their Rebuttal to this allegation, the Respondent stated, "*Respondents...rebut the Complainant's Allegations in Segment 3 which contained (a) more allegations of the Greenwood-Leflore Carroll Economic Foundation wrongfully indebting airport land...in order to 'lure the demolition company to the airport, (b) a previously unknown, recorded, additional Land Deed of Trust whereby the aircraft demolition company encumbered land leased on the airport on November 14, 1990 and (c) sponsor's are in noncompliance with the airport's Deed/Instrument of Transfer, the Airport's Compliance Requirements FAA Order 5190.6A, Federal Grant Assurance 24 Fee and Rental Structure. Respondents, Greenwood-Leflore Airport, Greenwood-Leflore Airport Board and Leflore County,*

[11] The "Foundation" refers to the "Greenwood Leflore Carroll Economic Foundation."

Mississippi move for a dismissal of all the allegations contain[ed] in Segment 3 as Complainant has not been directly and substantially affected by anything allegedly done or omitted. The Greenwood Leflore Carroll Economic Foundation emphatically denies the allegation." [sic] [FAA Exhibit 1, Item 10, exhibit 3]

It appears from the pleadings that the lease may have been modified to allow the lender, Sorvan Bank, to enter onto the GE/Memphis Group premises in the event of a default of the lease terms to protect their interests. [FAA Exhibit 1, Item 3, page 2-3] However, the record did not contain a copy of the lease referred to by Ricks.

The record contains no evidence to show that actions taken by the Respondent regarding the lease modification to allow the lender to enter onto the airport premises in the event of a default by GE/Memphis Group is a violation of Grant Assurance 5. Additionally, the Director finds that the Complainant was not directly and substantially affected by this lease modification between the parties. Allegations regarding the unsafe conditions that were caused by the aircraft demolition company will be examined in Issue 3, Operations and Maintenance.

As stated above, a Complainant cannot simply allege that an airport sponsor is in violation of its grant assurance without fulfilling its burden of proof. The Complainant must present complete allegations and substantial and probative evidence to sustain an allegation of a grant assurance violation. The Director finds that the Complainant has failed to provide a preponderance of evidence showing that the Respondent transferred any of its rights and powers to the GE/Memphis Group or its lender, by entering into the lease agreement described above. Therefore, the allegations that the Airport violated Grant Assurance 5, *Rights and Powers*, are dismissed.

3. Operation and Maintenance

> Whether the Greenwood-Leflore Airport is failing to operate the Airport in a manner that the airport and all facilities which are necessary to serve the aeronautical users of the airport in a safe and serviceable condition in violation of Federal grant assurance 19, *Operation and Maintenance*.

Grant Assurance 19 states that the "*airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions.*"

Ricks alleges that the Airport allowed a large amount of foreign objects "*continuously generated by the demolition company on the airport that went uncorrected and damaged tires, aircraft propellers and aircraft engines without compensation by the demolition*

company." Ricks also alleges that there was, *"random placement of aircraft, aircraft pieces and parts that, frequently and unpredictably, blocked both Ricks' and Ricks' instructional clients' ingress and egress to the Ricks leasehold.* [FAA Exhibit 1, Item 1-A, exhibit 7]

Ricks also alleges that the efficiency of the Airport was affected due to Airport personnel abandoning, *"any maintenance for, and 'not daring' to risk going into the demolition company's leased and un-leased areas to check the status of the ramp, the security of the airport, and other necessary airport functions in the fear of the uncompensated damage to themselves, their vehicles and/or machines on the federally funded, public use airport and Complainant Ricks' operations in particular."* [FAA Exhibit 1, Item 1-A, exhibit 7]

The Respondent did not respond to these specific allegations in their Answer or Rebuttal.

Although an acceptable level of maintenance is difficult to express in measurable units, the FAA will consider a sponsor compliant with its federal maintenance obligation when the sponsor does the following: **a.** Fully understands that airport facilities must be kept in a safe and serviceable condition. **b.** Makes available the equipment, personnel, funds, and other resources, including contract arrangements, to implement an effective maintenance program. **c.** Adopts and implements a detailed program of cyclical preventive maintenance adequate to carry out this commitment. FAA Order 5190.6B, par. 7.5.

The FAA considers that incidental violation of airport rules by tenants is not sufficient to create the presumption of failure by the sponsor to maintain the airport in a safe and serviceable condition. *cf.*, Ashton v. Concord, FAA Docket No. 16-99-09, (July 3, 2000) (Final Decision and Order), at 19. ([I]ncidental noncompliance by Airport users does not constitute unjust economic discrimination by the Sponsor.) An airport owner should adopt and enforce adequate rules, regulations or ordinances as necessary to ensure safety and efficiency of flight operations and to protect the public using the airport. FAA Order 5190.6B, par. 7.8. In fact, the prime requirement for local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and to people on the ground. FAA Order 5190.6B, par. 7.9.

Ricks has presented no evidence that debris or other material in the public areas of the airport, or on his leasehold, caused him any danger or damage to his aircraft. Other than Ricks' statements above, there was no additional information provided in the pleadings to substantiate these claims. Ricks did submit two photographs of a ramp area that depicted a 'Keep Out' sign placed in front of aircraft that were apparently undergoing some demolition. However, these pictures do not depict a ramp area littered with aircraft parts or other objects that could be construed as a hazard. [FAA Exhibit 1, Item 2, exhibit 2-F] Ricks also submitted several photographs that depict aircraft in various stages of de-construction but it was not evident from the photographs that there was debris or other materials lying about to such an extent that it could create an unsafe environment. [FAA Exhibit 1, Item 1, exhibit 72].

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. There must exist in the record reliable, probative and substantial evidence for the Complainant to carry the burden of proof. See, 14 CFR § 16.227. In this matter there is lacking any reliable, probative and substantial evidence to conclude that debris and other material existed so as to create a hazard. Without such evidence the Director cannot make a finding on this issue in favor of the Complainant. Ricks v. Millington Municipal Airport Authority, FAA Docket 16-98-19, (December 30, 1999) (Final Decision and Order) at 17.

The Airport should continue to monitor any legitimate complaints of unsafe airport conditions by Ricks or any other tenant and take appropriate steps to ensure reasonable steps are taken to allow unimpeded access to leaseholds and the public areas of the Airport. The Director finds that the allegations and evidence presented by Ricks are insufficient to conclude that the Respondent has so neglected the facilities at the Airport as to arise to a violation of grant assurance 19. Therefore, the allegations that the Airport violated Grant Assurance 19, *Operation and Maintenance*, are dismissed.

4. Economic Nondiscrimination

To the extent that the Director can construe the Complainant's allegations, it appears that Ricks (1) objects to the Respondents attempts to exercise its lease option to move Ricks leasehold for 'industrial expansion,' claiming instead that the Respondent was acting in a effort to increase 'economic benefit,' (2) objects to the presence of security personnel employed by the GE/Memphis Group, (3) asserted preferential treatment of GE/Memphis because Respondent has recognized it as an FBO, and (4) whether the Airport prevented Complainant from self-serving his aircraft by denying the ability to wash aircraft in violation of Federal grant assurance 22, *Economic Nondiscrimination.* [FAA Exhibit 1, Item 1]

This section, "4. Economic Nondiscrimination," has four specific issues:

> a. Whether the Greenwood-Leflore Airport is acting unreasonably to move Complainant to another location on the Airport in a manner that unjustly discriminates against Complainant in violation of Federal grant assurance 22, *Economic Nondiscrimination.*

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

The FAA Airport Compliance Program is contractually based; it does not attempt to control or direct the operation of airports. Rather, the program is designed to monitor and enforce

obligations agreed to by airport sponsors in exchange for valuable benefits and rights granted by the United States in return for substantial direct grants of funds and for conveyances of federal property for airport purposes. The Airport Compliance Program is designed to protect the public interest in civil aviation. Therefore, this analysis will review the reasonableness of the Authority's actions as applied to their Federal obligations under Grant Assurance 22. [FAA Order 5190.6B, par. 1.5.]

It appears that the most central and material part of the Complaint was that Ricks had received an eviction letter on March 3, 2008, that states; *"...your leased area is needed to assist with the generation of additional direct and indirect economic benefit. Therefore, please consider this your 90 day notification...that your lease in its current location is being terminated and a new location needs to be identified...If we do not hear from you within 30 days of the receipt of this letter, we will take that as your agreement and that you will consent to relocate your structures and personal property at the end of the 90 day period."* [FAA Exhibit 1, Item 1, exhibit 1]

Prior to this letter, on February 1, 2008 the Airport sent a letter to Ricks that stated, *"The Memphis Group would like to expand their lease to include the leased space that you now occupy. It is our practice to engage all affected parties/tenants when such a proposal is presented to us. No final decisions have been made, nor will they be made, regarding your lease, without your participation in discussions of The Memphis Group's proposal."* [sic]. [FAA Exhibit 1, Item 1, exhibit 19].

The terms of Ricks' lease state in part, *"Lessee hereby agrees that, in the event the premises leased under this agreement become necessary for use for industrial expansion ...then the Lessor shall, upon 90 days notice to Lessee, have the right in its sole discretion to designate other premises accessible...for use by said Lessee, and to remove buildings and fixtures erected by the Lessee and property herein and relocate said buildings and fixtures to the designated area at the expense of the Lessor."* [FAA Exhibit 1, Item 1, exhibit 84]

The Airport states that the GE/Memphis Group has requested permission to expand their leasehold to incorporate Ricks' existing space. [FAA Exhibit 1, Item 1, exhibit 19]
The Respondent has stated, *"The decline in revenues has forced the airport to focus on industrial development and consider non-aeronautical uses of airport property."* [FAA Exhibit 1, Item 10]

Prior to this instant formal Complaint, Ricks filed an informal complaint with the FAA's JAN ADO regarding this potential move from his leasehold. In a letter dated May 15, 2008 to the Airport, the JAN ADO concluded that, *"...If Mr. Ricks is evicted from his lease without a reasonable attempt having been made by the Airport to resolve this issue, the Greenwood-Leflore Airport may be in violation of certain obligations contained in grant agreements...."* The letter also stated, *"We would consider the obligations of the grant agreements to have been met when the Airport makes a reasonable good faith effort to relocate Mr. Ricks. Refusal of a reasonable offer of accommodation from the Airport by Mr. Ricks would not constitute a violation of the grant obligations."* [FAA Exhibit 1, Item 1, exhibit 6]

The Airport attempted to work with Ricks in coming to a decision on the location of a new leasehold that would meet Ricks' needs. There were several letters between the Airport, Ricks and the FAA's JAN ADO that discussed various proposals for a new leasehold for Ricks. The parties appeared unable to come to an agreement on location or costs for the relocation. [*See* FAA Exhibit 1, Item 1, exhibits 4, 6, 7, 9, 12 (R-4), 16, 19, 38, and Items 8, 15 and 16]

In another letter to Ricks dated May 15, 2008, the Airport stated, *"As you know, the Airport Board has determined that your leasehold is needed for industrial expansion...Since you have refused to accept any new location that we have suggest [sic] for your leasehold, or to make a suggestion as to any other location...the Board has designated the northeastern end of the ramp as the location for your leasehold as of June 2, 2008...This relocation site offers drive-through accessibility as you now have, parking for all your fuel trucks, and a place for your fuel tanks, as well. In addition, to address your concerns regarding security, the Board has stated their willingness to install an automatic gate for the agricultural entrance...."* [12] [FAA Exhibit 1, Item 1, exhibit 7]

A letter from the Airport to Ricks on May 30, 2008, states, *"The FAA has recently informed us that further submittals to them will be necessary before they concur with our plans to relocate your hangar and fuel tanks....Therefore, please note that we plan on delaying further action on your relocation until we have their concurrence. Please note that as of Monday, June 2, 2008, we feel the required 90-day notification to you of our intentions to relocate your facilities will be complete; however, we will await FAA's concurrence before we take further action...the option of further negotiations will remain an open issue."* [FAA Exhibit 1, Item 1, exhibit 9]

The Respondent also submits, *"The Complainant has not yet been affected by this request, as there is no place he can relocate on the Airport as this time. Complainant still has his leasehold in the same location and is free to come and go as he pleases."* [FAA Exhibit 1, Item 10, page 1]

FAA decisions in similar cases have found that the standards for reasonable terms of airport access do not include a guarantee of occupancy by tenants and subtenants in their current hangar facilities or on their leaseholds.[13] In fact, the FAA recognizes the value in airport

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[12] Early discussions about the relocation of Ricks' leasehold seem to center on the northeastern end of the Airport and this was Ricks' stated preference for the relocation. However, a March 11, 2009 letter from the JAN ADO stated in part, "If the hangar is going to be relocated, a better location would be an area adjacent to the recently completed general aviation apron. Even though Mr. Ricks has expressed his objections to this option due to the slopes of the taxiway and apron and his desire to maintain drive though access provided by his present hangar location; the apron and the taxiway would provide adequate access to his hangar." [FAA Exhibit 1, Item 8]

[13] ALCA, The Cylinder Shop/Wayman Aviation, Suncoast Aviation, And National Aviation, V. Miami-Dade County, Florida, FAA docket No. 16-08-05, (August 31, 2010) (Director's Determination) at p.31, citing Thermco Aviation, Inc., and A-26 Company v. City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airports, FAA Docket No. 16-06-07, (December 17, 2007) (Final Agency Decision) at 18.

sponsors retaining flexibility to provide for the future development of aeronautical facilities and the need to periodically demolish and reconstruct existing facilities to respond to changes in the civil aviation market. The grant assurances and federal obligations do not require that an airport sponsor recognize past occupancy as a preference for future occupancy but rather it may exercise its proprietary rights and powers to develop and administer the Airport's land in a manner consistent with the public's interest. Nor do the federal obligations require sponsors to adhere to the location preferences of current tenants and subtenants when planning for the future development of the airport. [14]

Ricks complains that he has been unjustly discriminated against because he claims that he is being forced to relocate. While he has not, according the available record, yet moved the issue is ripe for review because the Sponsor is or has taken action to initiate the relocation forcing the Complainant to take action. Precedent states that the Director cannot investigate allegations of an airport sponsor's grant assurance violations if the Complainant has not yet been harmed. [See 14 CFR § 16.23] "*The Respondent may contemplate a future action which alters its fee schedule. But the issue is not ripe for review until the Complainant is adversely affected by it.*" See, Northwest Airlines, Inc., Delta Airlines, Inc., AirTran Airways, Inc., Continental Airlines, Inc., Southwest Airlines, Inc. v Indianapolis Airport Authority, Indianapolis International Airport, BAA-Indianapolis., FAA Docket No. 16-07-04, (August 18, 2008) (Director's Determination) at 28 and 37. However, in our present case Ricks has undertaken efforts to relocate by determining alternate operating costs, by changing his access procedures to the airport, by engaging legal advice to determine the feasibility of relocation, and, most noteworthy, he has received written notification from the Sponsor that he must relocate.

However, the actions of the Sponsor do not amount to discrimination. The record notes that the Airport has been making reasonable good faith efforts to accommodate Ricks on an alternate site at the Airport and engage in ongoing communication regarding the relocation process.[15] Nothing in the record indicates that the Airport has refrained from relocating another tenant under these circumstances. The lease agreement between the parties and the minimum standards allow the Airport to relocate Ricks under these circumstances. And the Airport has committed to reimbursing Ricks at what appears to be a fair value for his relocation. .

The FAA has long held that in order to sustain a finding of unjust economic discrimination, a complainant must establish that it was treated differently than other similarly-situated airport users for unjust reasons. *See,* Aerodynamics of Reading, Inc. v Reading Regional Airport Authority. FAA Docket No. 16-00-03, (December 22, 2000) (Director's Determination) at 19, and Aero Ways, Inc., v. Delaware River and Bay Authority, FAA Docket No. 16-09-12, (August 30, 2010) (Director's Determination) at 35. The record clearly establishes no other tenants were allowed to retain their tenancies while Ricks was

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[14]See, Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica Air Center v. City of Santa Monica, FAA Docket No. 16-99-21 (February 4, 2003]

[15] The parties are encouraged to continue to engage in good faith negotiations as long as there is a reasonable chance for an agreement. However, the Airport is not obligated to continue to negotiate indefinitely.

dispossessed under these or similar circumstances; therefore, the Director concludes that the Complainant was not treated differently than similarly-situated tenants.

Because Ricks has not provided any evidence that the Airport has treated another similarly situated tenant more favorably, the Director does not find that Respondent is currently in violation of Grant Assurance 22.

Industrial Expansion v. Economic Growth

The Complainant also argues that the eviction letter he received was contrary to the lease terms allowing the Airport to relocate his leasehold based on the need for 'industrial expansion.' [FAA Exhibit 1, Item 1, page 7] When the Respondent informed the Complainant in the March 3, 2008, letter that his leasehold was needed for another tenant's expansion, the term used to justify the action was "economic public benefit." [FAA Exhibit 1, Item 1, exhibit 1]

Ricks' lease states that "*in the event the premises leased under this agreement become necessary for use for* ***industrial expansion*** *...then the Lessor shall, upon 90 days notice to Lessee, have the right in its sole discretion to designate other premises accessible....*" [emphasis ours] [FAA Exhibit 1, Item 1, exhibit 84]

The letter of March 3, 2008 [FAA Exhibit 1, Item 1, exhibit 1] from the Airport stated that Ricks' leased area was needed for the, "***generation of additional direct and indirect economic public benefit.***" [emphasis ours] Counsel for Ricks argued in a March 25, 2008, letter that, "*The need for economic growth at the airport, while worthwhile and certainly needed, does not allow the airport board to exercise its authority for forced relocation or removal contained in this provision of the lease. The rights of the Lessor under this provision may be invoked only if the premises leased become necessary for industrial expansion.*" [FAA Exhibit 1, Item 1, exhibit 3]

In a letter dated May 15, 2008, from the Airport to Ricks, the Airport used the term, "***industrial expansion***" to continue discussions on the relocation of Ricks' leasehold. [FAA Exhibit 1, Item 1, exhibit 7]

The Complainant argues that the terms, "industrial expansion" or "economic development" are substantially different enough to result in a violation of Grant Assurance 22. The Director disagrees with such an interpretation and notes that Ricks' lease allows the Airport to "*...have the right, in its sole discretion to designate other premises accessible to runways for use by said Lessee...*" Ricks agreed to this lease language in repeated lease renewals. As stated in Rick Aviation, Inc. v. Peninsula Airport Commission, FAA Docket No. 16-05-18, (May 8, 2007) (Director's Determination) at 17, (November 6, 2007) (Final Agency Decision) at 15 (*Rick Aviation*), "The FAA will not step in to overturn a lease provision simply because the aeronautical tenant has discovered the provision the tenant agreed to has created an undesirable position for the tenant."

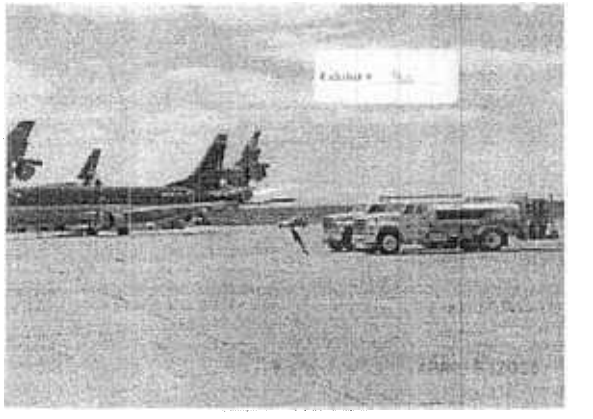
The Director notes that expansion by the GE/Memphis Group could easily be construed as 'industrial expansion.' This company offers a commercial salvage and demolition service. It is currently on land that has been identified as non-aeronautical use and it is not in the business of providing aviation services to based or transient aircraft. In fact, in this instant Complaint, Ricks has complained that the GE/Memphis Group was not an aeronautical service provider and was incorrectly identified as such.

While the Complainant may object to the Respondent's decision to exercise this lease term, the Complainant must recognize that he agreed to such a possibility when he signed the lease. As a result, the Director does not find that the Respondent's decision to evict and relocate the Complainant from his current leasehold constitutes a violation of Grant Assurance 22.

b. Whether the Greenwood-Leflore Airport failed to provide adequate access to Complainant's leasehold due to the presence of armed guards in violation of Federal Grant Assurance 22.

Ricks' leasehold is situated within the outer edges of the GE/Memphis Group leasehold and he allegedly must pass security guards employed by GE/Memphis Group to enter his leasehold. [FAA Exhibit 1, Item 1]

Ricks has alleged that the presence of armed security guards employed by the GE/Memphis Group denied him access to his leasehold. Ricks states that he alerted the Airport that armed guards were stopping him for identification before allowing him to proceed to his leasehold and in one case, denied him access entirely. From December 2007 until July 3, 2008, Ricks sent several letters and e-mails on this issue to the Airport board. [FAA Exhibit 1, Item 1-A, exhibit 6] Ricks also stated that an exhibit submitted in the Complaint was a *"photo of armed guard preventing ingress/egress for Ricks with a flying student."* [FAA Exhibit 1, Item 1, exhibit 7, page 2]



In their Rebuttal, the Respondent states, *"The allegations of Segment VI are denied as to the existence of armed guards. GE/The Memphis Group, Inc. had experienced theft of expensive materials on its leased site. As a result of these thefts, GE/The Memphis Group, Inc. asked for permission to undertake security measures to prevent future thefts and was granted such permission. The allegations that the armed guards denied Complainant access to his leasehold are neither admitted nor denied since insufficient knowledge or information exists."* The Respondent goes on to state, "*...upon further inquiry of the Airport manager Barton Redditt,[sic] submits that none of the security guards are armed...and none have denied Complainant's access to his leasehold. The guards do ask for proper identification before one enters onto the premises." [sic]* [FAA Exhibit 1, Item 10, exhibit 6]

The Airport Manager, Bardin Redditt, sent a letter to Joyce Chiles, counsel for the Airport, that stated in part, "*In response to your inquiry regarding the employment of armed security guards by (GECAS[16]) at their leasehold on the Greenwood-Leflore Airport, I can state without any qualification that there are not now, nor have there ever been armed security guards in the employ of GECAS.*" [FAA Exhibit 1, Item 10, Exhibit 6, exhibit R-Collective 14]

In a memorandum from Bardin Redditt on December 16, 2009, it is stated, *"Security guards have been employed by GE at the Airport since late 2007. During the last two plus years, I have never observed any of GE security guards being armed. On occasion, I have asked them if they were ever armed. There (sic) answer has always been "NO."* [FAA Exhibit 1, Item 10, exhibit 6]

It is evident from the pleadings that whether or not the security guards were armed with guns, Ricks may have believed them to be. In the informal complaint submitted to the JAN ADO in March, 2008, Ricks stated,

"I AM AFRAID FOR MY LIFE TO GO TO THE AIRPORT IN DARKNESS. I AM AFRAID THAT THESE 'NOT BRIGHT' (TO STOP A MARKED MUNCIPAL VEHICLE WITH A BADGED OPERATOR) "GUARDS" MAY KILL ME IN THE 'DARK' UNDER THE GUISE OF PROTECTING SCRAP AIRPLANES." Ricks goes on to state, *"I AM ALSO AFRAID THAT THESE 'MENTAL GIANT' GUARDS WILL PROVOKE ME INTO SOME SENSELESS VIOLENCE TO PROTECT MYSELF DURING AN UNNECESSARY, ILLEGAL CONFRONTATION ON THE PUBLIC RAMP. I HAVE STOPPED GOING TO THE AIRPORT AND USING MY AIRPLANES THAT ARE HANGARED THERE FOR THESE REASONS.* ***I HAVE A MILLION DOLLAR INVESTMENT IN AIRCRAFT AND EQUIPMENT IN A LEGAL LEASEHOLD ON THE AIRPORT THAT I AM AFRAID TO USE BECAUSE [of] SOME 'SPECIAL' AIRPORT TENANT; A 'CONSULTANT' TURNED 'AIRPORT AGENT'; AND A 'LYING AIRPORT MANANGER' WHO WANT ME 'GONE' BY ANY MEANS POSSIBLE.*** [sic] [capitalization and bold original][FAA Exhibit 1, Item 1, exhibit 2, page 11]

An examination of FAA Exhibit 1, Item 1, exhibit 80, which purports to depict *"armed guard preventing ingress/egress for Ricks with a flying student"* [FAA Exhibit 1, Item 1, exhibit 7] is a photograph of a ramp with four parked aircraft, two fueling trucks and a car. There are no people visible in the photograph. It is impossible to conclude from this photograph that any level of security is in effect, much less an armed security guard preventing the Complainant from entering his leasehold.

It appears from the pleadings that the GE/Memphis Group employed guards to provide some measure of security for the aircraft awaiting demolition and the various aircraft parts that were stored on the ramp. The GE/Memphis Group received permission from the Airport to use security guards. [FAA Exhibit 1, Item 10, exhibit 6 and Item 3, exhibit R-4]

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[16] GE/The Memphis Group and GECAS are the same entity but are referred to by both these names interchangeably throughout the pleadings.

Ricks has not presented any evidence that he was denied access to his leasehold or to the public areas of the Airport by security guards (armed or unarmed) employed by the GE/Memphis Group. Rather, the Complainant's alleged facts appear to reflect tension between co-located tenants. Such alleged facts do not rise to a violation of the Sponsor's obligations according to the standards of compliance.

The fact that the Complainant's leasehold is adjacent/within the GE/Memphis Group leasehold, and the fact that the GE/Memphis Group employs security guards, is very likely inconvenient to the Complainant. However, this does not rise to a violation of Grant Assurance 22. Tenants may utilize reasonable security measures approved by the airport sponsor to protect their property. Checking identification for those entering a portion of such secured leasehold may be viewed as unacceptable by some individuals, but it does not rise to a violation on the part of the airport sponsor unless there is clear and unambiguous evidence that this practice is denying access to the airport or to the tenant's leasehold. The Complainant has not presented reliable evidence showing that he has been denied access to his leasehold or to the public areas of the Airport.

Considering the above, the Director finds that the Complainant has not presented sufficient evidence to establish that the Airport has unreasonably denied access, in violation of grant assurance 22, to the Complainant. The Director is not persuaded that the presence of security personnel employed by the GE/Memphis Group resulted in the Complainant's inability to freely enter and exit his leasehold. With this said, the Director encourages the Airport to monitor this situation and promptly respond to any complaints of denial of access due the presence or actions of security guards.

> c. Whether the Greenwood-Leflore Airport, by failing to properly identify the GE/Memphis Group as a non-aeronautical user and by not requiring adherence to the terms of the Airport minimum standards, discriminated against the Complaint.

The sponsor has the prerogative to establish minimum standards for commercial service providers and to establish self-service rules and regulations for all other airport activities. A sponsor's establishment of minimum standards and self-service rules and regulations contributes to the nondiscriminatory treatment of airport tenants and users. [Order 5190.6B, 10.2] There is no requirement that airports develop or implement airport minimum standards although it is strongly recommended.

Ricks alleges that the Airport granted the GE/Memphis Group FBO status in 1991 in violation of airport's minimum standards. [FAA Exhibit 1, Item 1, exhibits 12-16] In addition, Ricks takes issue with various lease terms and conditions between the GE/Memphis Group and the Airport, alleging non-specific preferential treatment of the GE/Memphis Group or faulty Airport business practices. [FAA Exhibit 1, Item 1, exhibit 12, page 3]

Ricks elaborates extensively on the point that the GE/Memphis Group should not have been considered an FBO in 1991. Ricks states, "*The aircraft demolition company is a primarily non-aeronautical activity that should have only been issued a standard non-FBO lease to*

'receive' the operable aircraft, not an FBO leasehold to stating that the demolition company would perform its full range of operations in accordance with the Rules and Regulations-Minimum Standards of the airport." [sic] [FAA Exhibit 1, Item 1, exhibit 13]

Ricks goes on to state that he was, "*...directly and substantially affected due to the airport board's* [efforts] *to emplace an aircraft demolition company on the airport with FBO privileges for which the demolition company never qualified in accordance with the Airport Rules & Regulations –Minimum Standards. This false FBO empowerment for the aircraft demolition company allowed that company to pollute, block and encroach upon Complainant Ricks' leasehold and operation during the demolition company's entire tenure on the airport."* [sic] [FAA Exhibit 1, Item 1, exhibit 13][17]

In their Rebuttal, the Airport stated, *"Complainant alleges that the...Airport has known for 19 years that the 'demolition company' did not meet the criteria for an FBO. Complainant presumes to read the minds of others in stating what someone else knew. Steps have been taken to correct this problem and all future leases with the 'demolition company' will not contain the FBO language."* [FAA Exhibit 1, Item 10, exhibit 12]

The Airport also states, *"The decline in revenues has forced the airport to focus on industrial development and consider non-aeronautical uses of airport property. Complainant complains of an 'aircraft salvage and demolition operation' on the airport. The Greenwood-Leflore Airport took appropriate steps in requesting and having approved the space occupied by the 'aircraft salvage and demolition operation' as non-aeronautical...."* [FAA Exhibit 1, Item 10, exhibit 2, page 2]

The Airport did use a lease agreement for the GE/Memphis Group lease dated May 1, 1990, that stated, *"...the premises are let and leased to the Lessee for the purpose of conducting thereon a fixed base operation for general aviation."* [FAA Exhibit 1, Item 10, exhibit 16] In a lease amendment between the two parties dated February 1, 1998, the document cites to a "Fixed Base Operator Lease Contract and Agreement." [FAA Exhibit 1, Item 10, exhibit 16]

The GE/Memphis Group is clearly not a fixed base operator providing services to general aviation. It is an aircraft salvage and demolition company that de-constructs aircraft. It appears to offer no services on site to based or transient aircraft. Ricks is also not an FBO; the lease that Ricks has with the Airport is for a "Private Operator" and it states that Ricks must comply with the minimum standards as they apply to a 'private operator.' [FAA Exhibit 1, Item 1, exhibit 84]

In order to sustain an allegation of unjust economic discrimination, the discrimination must be unjust. It can only be unjust if the two parties at issue are similarly-situated. It is insufficient to simply state that another party is managing to escape sanction from the airport sponsor by departing from standards. Self Serve Pumps, Inc. v Chicago Executive Airport, FAA Docket No. 16-07-02, (March 17, 2008) (Director's Determination). In this case, Ricks, who is a private operator engaging in pilot instruction and agricultural

[17] Similar allegations are addressed in Issue 3, Operations and Maintenance

operations is not similarly situated to the GE/Memphis Group, which is a corporation engaging in aircraft demolition. The Director finds the lack of similarity between the Complainant and GE/Memphis Group significant enough to preclude the possibility of the Airport unjustly discriminating against one of them.

Even if the Airport deliberately identified the GE/Memphis Group as an FBO, it is unclear as to how this granted them special privileges or injured Ricks. Moreover, the Airport has indicated that all lease agreements will be changed to reflect GE/Memphis's non-FBO, non-aeronautical status. Lastly, Ricks has provided no evidence whatsoever that he is similarly situated to the GE/Memphis Group or that he has been harmed by any of these events.

d. Whether the Greenwood-Leflore Airport denied tenants the right to self-service their aircraft by preventing aircraft, propellers or engines from being washed on the Airport for a period of time.

Grant assurance 22 (d) states in part, *"It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform."*

Although the Complainant is asserting that the Airport is in non-compliance with grant assurance 19 because for a period of time from November 26, 2007 until July 15, 2008, the washing of aircraft was not permitted on the Airport, this issue is more appropriately discussed under grant assurance 22. [FAA Exhibit 1, Item 1, exhibit 12]

In the Complaint, Ricks appears to be alleging that the Airport denied him the right to wash his aircraft, stating, "*Ricks had completed an annual inspection on his Beechcraft Baron N41258 on January 14, 2008, and was preparing to 'wash' the airplane, engines and propellers prior to returning it to service when an airport employee 'stopped' Ricks and advised that Ricks could not 'wash' on the airport.*" [sic] [FAA Exhibit 1, Item 1, exhibit 12]

It can be construed from the pleadings that the Airport might have been in violation of the provisions of its Stormwater Pollution Prevention Plan and took steps to halt aircraft washing until they were in compliance. In its Rebuttal, the Airport provided several letters that address this issue. In a letter dated November 9, 2007, from the Mississippi Department of Environmental Quality to Bardin Redditt it is stated, "*Regarding the washing of planes, the SWPPP*[18] *should specifically address this activity and specify best management practices implemented to prevent the discharge of wash water...Please submit a written response no later than November 9, 2007, detailing all steps taken or planned to ensure that washing of planes does not result in a discharge.*" [FAA Exhibit 1, Item 10, exhibit 11] [19]

[18] Storm Water Pollution Prevention Plan

[19] The Federal Water Pollution Control Act of 1972 prohibits the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit.

The Airport issued a Memorandum to "All Airport Tenants" on November 26, 2007, that stated, "*I have recently learned that washing aircraft or vehicle on the Airport ramp with detergents is in violation of our Storm Water Permit, of which all Airport tenants are participants." I have requested a permit amendment to allow washing. Pending the outcome of this request, please honor the current permit that we are operating under.*" [FAA Exhibit 1, Item 10, exhibit 11]

On July 15, 2008, the Airport issued another Memorandum to "Airport Tenants" that stated, "*As you are aware, last year we were instructed not to wash aircraft on the ramp due to the possibility of run-off including certain detergents/materials not acceptable to the DEQ*[20]*. At that time, I requested a deviation from standard regarding this issue. We have been notified by the DEQ that we can simply update our SWPPP to ensure prevention of a positive flow of wash water and the use of detergents that are biodegradable. At the last meeting on July 8, 2008, the Airport Board approved this update to the SWPPP...Permit.*" [FAA Exhibit 1, Item 10, exhibit 11]

The Permit Update states in part, "*Washing of aircraft or related machinery may be performed on the ramp area provided that no positive flow is allowed to be discharged from the ramp.*" [FAA Exhibit 1, Item 10, exhibit 11]

Airports typically have an airport-wide storm water permit obtained from the state environmental regulatory agency. This permit typically includes sampling requirements (usually managed by the airport authority), storm water pollution prevention team members, inspection requirements training requirements, and requirements for the preparation of a SWPPP. Entities covered under a SWPPP are obligated to meet the terms and conditions of their permit. In this case, when notified that aircraft washing was outside the permit parameters, the Airport took appropriate steps to halt the activity until their permit could be modified. It appears that the Airport did not unduly delay obtaining the permit modification and, when approved, the Airport notified its tenants that washing aircraft was allowed within the restrictions identified on the permit.

Additionally, the aircraft washing moratorium appears to have been applied uniformly to all airport tenants. Also, Ricks complained on January 14, 2008 that he could not wash his airplane, however, the Sponsor had advised him in writing on November 26, 2007, that washing would have to be discontinued. Therefore, Ricks had notice, he was not singled out to cease washing, and Ricks has not provided evidence showing that other tenants continued washing aircraft after November 26, 2007. The record contains no evidence showing that the Airport failed to act within its responsibilities under Grant Assurance 22 when it instructed the Complainant that he could not wash his aircraft during the approximately seven-month period pending resolution of the waste water runoff issue. It is unfortunate if Ricks was inconvenienced in that he could not wash his aircraft for a period of time, but this does not rise to a failure of the Airport to meet its obligations to allow individuals or corporations the ability to perform services on their own aircraft with their own employees.

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[20] Mississippi Department of Environmental Quality

The Director finds that the Airport is not presently in violation of grant assurance 22 as alleged by the Complainant. Therefore, the allegations that the Airport violated Grant Assurance 22, *Economic Nondiscrimination*, are dismissed

5. Exclusive Rights

Whether the Greenwood-Leflore Airport has granted an exclusive right to the GE/Memphis Group by paying its utility costs on a monthly basis in violation of Federal Grant Assurance 23, *Exclusive Rights.*

Federal grant assurance 23, *Exclusive Rights*, (Assurance 23) implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the owner or sponsor of a federally obligated airport:

"...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public."

Under the Exclusive Rights prohibition, the sponsor may not grant a special privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally obligated airports.

An exclusive right is defined as a "power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements or by another means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or right, would be an exclusive right." [FAA Order 5190.6B, paragraph 8.2]

In the 1991 "purple lease" between the GE/Memphis Group and the Airport, Ricks alleges that the Airport agreed to pay for all of the utilities for the GE/Memphis Group. Ricks states, *"THIS is the most discriminatory, noncompliance subsidy that I have ever seen on any airport, and, significantly, changes the fee and rate structure for the aircraft demolition company on the airport."* Ricks goes on to state, *"This lease clause states that the airport is paying for all 'utilities' or all, water, sewerage, electricity, gas for heating, and telephone, internet, etc costs for the aircraft demolition company..." [sic]* [FAA Exhibit 1, Item 1, exhibit 16]

A review of the lease shows that the clause in question is from a lease between the GE/Memphis Group and the Airport dated April 19, 1991, and reads, "The **Lessor** shall furnish and pay for any and all other public utility service that may be required in the operation of the leased premises." [FAA Exhibit 1, Item 10, exhibit 16] However, in a subsequent lease agreement between the GE/Memphis Group and the Airport dated February 1, 1998, it is stated, "The **Lessee** [emphasis ours] shall pay for any and all public

utility service that may be required in the operation of the leased premises." [FAA Exhibit 1, Item 10, exhibit 16]

In their Rebuttal, the Airport responded, "*The Airport Manager emphatically denies paying or providing any utilities for GE/Memphis Group. This language in the contract that states "Lessor shall furnish and pay for any and all public utility service" is a typographical error. It should read the "Lessee" instead of the "Lessor."* [FAA Exhibit 1, Item 10, exhibit 17]

The Respondent also states in their Rebuttal that, "*Leflore County submits that the Greenwood Leflore Airport does not discriminate on any basis, nor does anyone on the Airport have Exclusive rights.*"[sic] [FAA Exhibit 1, Item 10, exhibit 16]

The Director can find no evidence presented in this Complaint that the Airport allowed GE/Memphis Group an exclusive right by paying for the utilities on their leasehold. The Director is persuaded that lease language from a 1991 lease that committed the Airport to paying for utilities was a typographical error. Ricks has provided no documentation that the Airport ever actually paid any utilities for the GE/Memphis Group. The Director also notes that this error was corrected in 1998, more than 12 years ago.

With regard to allegations of past non-compliance, the Director relies on established FAA policy, stating:

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. Wilson at p.5.

This FAA policy and citation to *Wilson* are commonly included in Part 16 decisions and speak to the import of current compliance. [*See* Clarke v. City of Alamogordo, FAA Docket No. 16-05-19 (September 20, 2006) (Director's Determination), at 11; and, Ingram v. Port of Oakland, FAA Docket No. 16-03-12 (April 7, 2006) (Final Decision and Order), at 21; Roadhouse Aviation v. City of Tulsa, FAA Docket No. 16-05-08 (December 14, 2006) (Director's Determination), at 31; and, Atlantic Helicopters Inc./Chesapeake Bay Helicopters v. Monroe County, Florida, FAA Docket No. 16-07-12 (September 11, 2008) (Director's Determination), at 26] Not only does the FAA policy stand for 'current compliance,' but it also stands for the concept of voluntary compliance.

Allegations that the Airport violated Grant Assurance 23, *Exclusive Rights*, are dismissed because the Complainant provided no evidence that the Airport ever granted the GE/Memphis Group an exclusive right by paying any utility bills incurred by the GE/Memphis Group on its leasehold. The record substantiates that the word "Lessor" in the

1991 lease was a typographic error and that the Airport did not intend to pay utilities for the GE/Memphis Group.

6. Airport Layout Plan

Whether the Greenwood-Leflore Airport has failed to keep up to date at all times an airport layout map of the airport in violation of Federal grant assurance 29, *Airport Layout Plan.*

Grant assurance 29 states in part that an airport will, "*"keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon*

Ricks' appears to be alleging that the Airport has failed to maintain an up-to-date ALP since 1989. Ricks also appears to allege that in a modification to the ALP, his leasehold was not depicted on the ALP. Additionally, Ricks states that the GE/Memphis Group's leasehold was at one time identified as being on the aeronautical portion of the Airport and listed as an FBO. [FAA Exhibit 1, Item 1, exhibit 9, page 6]

Ricks states in this Complaint, "*There was no Airport Layout Plan (that can be found or released) prior to the October 1989 LPA Group, Inc. plan that was conditionally approved on January 9, 1990, by Paul A. Fruzzetti of the JAN ADO.*" Ricks goes on to state, "*There was no allocation of any area on the airport for industrial development, any non-aeronautical activity or, any aircraft demolition company large commercial hangar on this October 1989...ALP for the airport. There was no interview with Ricks by any party in any way associated with this ALP before the ALP's production."[sic]* [FAA Exhibit 1, Item 1, exhibit 8]

Ricks also states that a 1995 version of the ALP for the Airport did not depict his leasehold. "*There was no FAA approval, nor proposed revision of the 1990 ALP that can be found, or released, that could have caused this omission of the placement of the Ricks leasehold on this October 6, 1995 ALP.*" [FAA Exhibit 1, Item 1, exhibit 9]

In discussing the 2004 Airport Layout Plan, Ricks alleges, "*A very significant, even unusual, aspect of the April 19, 2004 FAA Approved ALP is that the airport manager, Bardin Redditt, endorsed/authenticated the plan on April 13, 2004, before it was submitted to the FAA for approval. Complainant Ricks can only wonder if this joint effort by Willis Engineering, Inc. and the airport manager was some devious conspiracy against Ricks and others on the airport in the errors on the ALP that was presented to the FAA, or if the ALP submitted to the ALP is a simple combination of apathy, negligence, and/or incompetence in both Willis and the airport manager?*" [FAA Exhibit 1, Item 1, exhibit 10, page 2-3]

The Airport states, "*The allegations...are admitted as to the omission of Ricks Hangar because of an oversight by the engineering company who prepared the 1995 ALP. Respondents...also admitted that The Memphis Group, Inc. is not a full FBO pursuant to the definition of a FBO: however, steps have been taken to conform the new lease with GE as in not listing GE as an FBO." [sic]* [FAA Exhibit 1, Item 3, page 4]

In their response, the Airport rebuts the allegations made by Ricks and states "*...that the inadvertent omission of Complainant's leasehold from the 1995 ALP was just that, an inadvertent omission, nothing more and nothing less...Complainant alludes to other possible unsubstantiated violations or omissions by which Complainant has not been directly and substantially affected by anything done or omitted. A FBO lease will no longer be used for any non-aeronautical leaseholder...*" [FAA Exhibit 1, Item 10, exhibit 8]

The Airport goes on to assert that "*...Respondents...submit that the current FAA approved ALP applicable today is the 2009 ALP which was approved by the FAA on May 28, 2009.*" [FAA Exhibit 1, Item 1, page 4]

An Airport Layout Plan is a scaled drawing of existing and proposed land and facilities necessary for the operation and development of the airport. It represents an understanding between the airport owner and the FAA regarding the current and future development and operation of the airport. FAA approval of Airport Layout Plans assists to ensure that federally funded airport development will be safe, useful and efficient. FAA Order 5190.6B, App. R, par. V.A.1.

Typical violations of grant assurance 29 include refusals to cooperate with the FAA in an ongoing planning process, or refusing to mitigate a significant problem arising from an un-planned circumstance at an airport upon a demand from the FAA to do so. Conversely, the Director has found that refusal to alter an ALP as a means to deny access may be a violation of a grant assurance. The Director acknowledges that a deviation from an airport plan may be occasionally necessary and expected.

In this case, Ricks is alleging that many errors were made on the ALP over a period of 20 years. Inadvertently failing to depict a particular leasehold on the ALP would not be considered a violation of Grant Assurance 29.[21] Identifying the GE/Memphis Group as a fixed-base operator, when in fact it was an aircraft demolition and salvage operation, is also a minor error and it appears that the GE/Memphis Group was not given any preferential treatment or special rights as a result of this misclassification. The current ALP, dated May 28, 2009, is accurate in depicting the Complainant's leasehold and in depicting the land occupied by the GE/Memphis Group as "non-aeronautical" use.

The Complainant has identified errors and omissions that were contained in several past versions of the Airport Layout Plan from 1989 through 2005. However, merely identifying these inconsistencies, and implying some level of consequence without any evidence, is not

[21] Although not a violation, the FAA would expect the ALP to be corrected as soon as practicable. See, FAA Order 5190.6B, paragraph 7.19.b.

sufficient to prove that the Airport has violated its grant assurances. Ricks has not met the burden of proof to show that inaccuracies in past ALP's have caused him to be directly and substantially affected by actions taken or not taken by the Airport. Further, if there were violations of grant assurance 29 through some omission or misidentification in the past ALPs, it is not disputed that the current ALP accurately shows the Complainant's leasehold and identifies GE/Memphis Group correctly. Past violations (albeit the Director does not find this to be a past violation) are not a basis for a finding of non-compliance and the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. Wilson, at p.5. Based on the record, and evidence presented by the Complainant, the Director finds that the Airport is not a violation of Grant Assurance 29.

Miscellaneous Issue:

Grant Assurance 24, *Fee and Rental Structure*

Federal grant assurance 24, *Fee and Rental Structure*, (Assurance 24) addresses fees the owner or sponsor levies on airport users in exchange for the services the airport provides. Section 47107(a)(13) of 49 U.S.C. requires, in pertinent part, that the owner or sponsor of a federally obligated airport *"will maintain a fee and rental structure for the facilities and services being provided to airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport.* "In addition, under 49 U.S.C. §47107(a), fees levied on aeronautical activities must be reasonable and not unjustly discriminatory.

Assurance 24 satisfies the requirements of 49 U.S.C. §47107(a)(13). It provides, in pertinent part, that the owner or sponsor of a federally-obligated airport agrees that it will maintain a fee and rental structure consistent with Grant Assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*. The airport owner or sponsor agrees to establish a fee and rental structure that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. The intent of the assurance is for the airport operator to charge fees that are sufficient to cover as much of the airport's costs as is feasible.

Ricks asserts, but does not support, an allegation that the Airport is in violation of Grant Assurance 24 stating, *"All other Limited and full FBO's listed...who were actually fulfilling the airport's Rules & Regulations-Minimum Standard, and who were all really aeronautical FBO's performing maintenance, major and minor repairs, etc. in accordance with the Rules & Regulations-Minimum Standards were charged 'varying' rates for land use by the airport which is noncompliant with the Order and the Federal Grant Assurances. The mostly non-aeronautical aircraft demolition company received the very lowest, best combination of rates by the airport which is noncompliant with the Order and the Federal Grant Assurances."* [sic] [FAA Exhibit 1, Item 1, exhibit 17]

Ricks has provided no evidence or additional information in the pleadings that support his apparent contention that the lease rates charged to other airport tenants were somehow discriminatory. The Airport did not address this statement in its Answer or Rebuttal. The Complainant did not point to any evidence to support his allegation and the Director has not been able to find any evidence in this voluminous record. As stated above, the Complainant carries the burden of proof. The Complainant must present complete allegations and substantial and probative evidence to sustain an allegation of a grant assurance violation.

The Director finds that the record lacks the required evidence to show that there was a disparate fee and rental structure resulting in unjust discrimination against the Complainant and in favor of any other tenant. The Director finds that there is no evidence in the record to sustain a charge that the Airport's fee and rental structure precluded it from being self-sustaining as contemplated by the grant assurance. Therefore, the allegations that the Airport violated Grant Assurance 24, *Fee and Rental Structure*, are dismissed.

VII. SUMMARY OF FINDINGS AND CONCLUSIONS

The Director finds the Authority did not violate:

Airport Grant Assurance 2, *Responsibility and Authority of the Sponsor*, in that both the City of Greenwood and the County of Leflore share in the sponsorship of the Airport which is acceptable to the FAA. Grants to the Airport were given jointly to the City and County as co-sponsors, and the FAA has not objected to the current governance of the Airport.

Grant Assurance 5, *Preserving Rights and Powers*, in that the lease modification to allow the lender to enter onto the airport premises in the event of a default by GE/Memphis Group is not an abdication of any right or power reserved to the Airport.

Grant Assurance 19, *Operation and Maintenance*, in that the record is void of evidence proving that the Airport did not operate the airport in a safe and serviceable condition; that is, there is no evidence in the record showing the Airport failed to remove debris from the ramp, taxiways and runways, as alleged by the Complainant.

Grant Assurance 22, *Economic Nondiscrimination*, because the Director is persuaded that the Airport is acting properly to negotiate in good faith with the Complainant to relocate his leasehold according to the terms of his lease. Additionally, the Director is not persuaded that the presence of security personnel employed by the GE/Memphis Group has denied the Complainant the ability to freely enter and exit his leasehold. The Director is not persuaded that the Airport, by failing to properly identify the GE/Memphis Group as a non-FBO, discriminated against the Complainant; the Complainant is not similarly situated to the GE/Memphis Group and was unable to document that their different relationships with the Respondent was unreasonable. Lastly, the Director finds that the Airport did not deny the Complainant the ability to service his own aircraft by disallowing aircraft washing for a period of time to come into compliance with their Stormwater pollution prevention plan.

Grant Assurance 23, *Exclusive Rights*, because there is no evidence that the Airport granted the GE/Memphis Group an exclusive right by paying any utility bill incurred by the GE/Memphis Group.

Grant Assurance 29, *Airport Layout Plan* because the current ALP, dated May 28, 2009, is accurate in depicting the Complainant's leasehold and in depicting the land occupied by the GE/Memphis Group as "non-aeronautical" use.

Further, the Director finds that the Respondent is not in violation of the terms of deeds issued pursuant to the Surplus Property Act of 1944, codified as 49 U.S.C. §§ 47151 through 47153.

ORDER

ACCORDINGLY, it is ordered that:

The Complaint is dismissed.

2. All motions not specifically granted herein are denied.[22]

RIGHT TO APPEAL

This Director's Determination is an initial agency determination and does not constitute final agency action subject to judicial review under 49 U.S.C. § 46110.[23] A party to this proceeding adversely affected by the Director's Determination may appeal this initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(b) within thirty (30) days after service of the Director's Determination.

Randall S. Fiertz
Director
Airport Compliance & Field Operations

1/24/2011
Date

[22] The Complainant has submitted many documents that are not specifically addressed herein. For example, he has challenged the Respondent's request for an extension of time to file its Rebuttal. In his challenge dated December 21, 2009, the Complainant notes, among other things, that the postmark of the envelope containing the request is dated December 18, 2009, whereas the certificate of service and the postage meter stamp are dated December 16, 2009. The Director has not reconciled this difference, but considers the disparity insignificant, and concludes that the parties have substantially complied with the rules and that the disparity does not work to prejudice any party. Accordingly, parties' motions not addressed herein (including but not limited to the Complainant's December 21, 2009, letter) are denied.

[23] See also 14 CFR § 16.247