

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

ISAAC W. JONES, JR. and ALABAMA HANG  
GLIDING ASSOCIATION

COMPLAINANT

v.

LAWRENCE COUNTY COMMISSION,  
ALABAMA

RESPONDENT

Docket No. 16-11-07

**DIRECTOR'S PRELIMINARY DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed in accordance with the FAA Rules of Practice for Federally Assisted Airport Proceedings (FAA Rules of Practice), Title 14 Code of Federal Regulations (CFR) Part 16.<sup>1</sup>

Isaac W. Jones, Jr. and the Alabama Hang Gliding Association<sup>2</sup> (Complainant) have filed a formal complaint pursuant to Title 14 CFR, Part 16, against the Lawrence County Commission, (Respondent or Commission) owner, sponsor, and operator of the Courtland Airport (9A4 or Airport) in Courtland, Alabama.

The Complainant alleges numerous violations of United States Code (U.S.C.), the airport sponsor assurances, surplus property restrictions, and FAA guidance. The Complainant alleges violations of:

- Title 49 U.S.C., § 47125, Conveyances of United States Government land;
- 49 U.S.C., § 40101(e), International Air Transportation;

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<sup>1</sup> Enforcement procedures regarding airport compliance matters may be found at *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings* (14 CFR, Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective on December 16, 1996.

<sup>2</sup> In Section VI, the Director finds that the FAA's decision to join the Alabama Hang Gliding Association as a co-complainant was done in error.

- Grant Assurance 22, *Economic Nondiscrimination*, codified at 49 U.S.C., § 47107(a);
- Grant Assurance 23, *Exclusive Rights*, codified at 49 U.S.C., § 40103(e) and 49 U.S.C., § 47107(a)(4);
- FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports*;
- FAA Order 5190.6B, *FAA Airport Compliance Manual*;
- Title 49 U.S.C., § 47101(a)(9)(C), *Policies*; and
- The Surplus Property Act of 1944 pursuant to 49 U.S.C., §§ 47151, 47152, and 47153.

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 preliminarily finds the Commission is currently in violation of its Federal obligation with respect to Grant Assurance 5, *Preserving Rights and Powers*. At this time, the Director declines to make findings with regard to Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights*. The FAA's preliminary 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 Director is issuing this as a Preliminary Determination, instead of a Director's Determination, because the FAA believes the parties should have an opportunity to address the issues discussed herein based on the evidence obtained by the FAA as part of its investigation of this Complaint.

## II. THE PARTIES

### Airport

The land comprising the Courtland Airport (9A4 or Airport) was originally acquired by the United States Government in order to construct an airport known as the Courtland Air Force Base. [FAA Exhibit 1, Item 32, p. 1] The property was conveyed by the United States Government to the State of Alabama through its Department of Aeronautics on June 2, 1948. [FAA Exhibit 1, Item 30, p. A-6 and FAA Exhibit 1, Item 32, p. 1] On December 14, 1979, the FAA issued a deed of release allowing the State of Alabama's Department of Aeronautics to sell the Airport to the Tennessee Valley Authority free from all reservations, restrictions, and conditions contained in the 1948 Quitclaim Deed. [FAA Exhibit 1, Item 30, p. A-6, FAA Exhibit 1, Item 32, p. 1, and FAA Exhibit 1, Item 36] The Tennessee Valley Authority acquired the Airport, by Quitclaim Deed, on January 29, 1980. [FAA Exhibit 1, Item 30 and FAA Exhibit 1, Item 32, p. 1] However, on March 14, 1985, the Tennessee Valley Authority sold the Airport to the Industrial Development Board of Lawrence County – George C. Wallace Airpark Authority. [FAA Exhibit 1, Item 29 and FAA Exhibit 1, Item 32, p. 1] Then on February 15, 2011, the

Industrial Development Board of Lawrence County – George C. Wallace Airpark Authority sold the Airport to Lawrence County.<sup>3</sup> [FAA Exhibit 1, Item 37]

The Courtland Airport is a public-use, nontowered airport owned and operated by the Lawrence County Commission. This facility, located two nautical miles northeast of Courtland, is classified as a general aviation airport.<sup>4</sup> [FAA Exhibit 1, Item 25] The Airport has 32 based aircraft and estimates 11,900 annual operations utilizing its two runways. [FAA Exhibit 1, Item 25] The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C., § 47101, *et seq.* Since 1982, the Commission has accepted \$2,863,470 in Airport Improvement Program (AIP) grants for investments at 9A4. [FAA Exhibit 1, Item 24]

### Complainants

Isaac W. Jones, Jr. is an individual who seeks to conduct ultralight flight operations<sup>5</sup> at the Airport. His hang glider utilizes a vehicle towed payout winch launch system. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶8.2]

The Alabama Hang Gliding Association<sup>6</sup> is a nonprofit organization located in the greater Birmingham, Alabama area. [FAA Exhibit 1, Item 4, exh. A, p. 1] Its primary purpose is to promote and advance all aspects of free flight for hang glider and paraglider pilots. [FAA Exhibit 1, Item 4, exh. A, p. 1] This organization averages 20 member pilots each year, and some members utilize the free launch services provided by Isaac W. Jones, Jr. [FAA Exhibit 1, Item 4, exh. A, p. 1]

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<sup>3</sup> The Corporate Warranty Deed reflecting this sale does not include the easements outlined in previous deeds, nor does it acknowledge the FAA grant obligations as a restrictive covenant on the property. [FAA Exhibit 1, Item 37, FAA Exhibit 1, Item 29, and FAA Exhibit 1, Item 30]

<sup>4</sup> The term “general aviation airport” is defined in 49 U.S.C., § 47102(8) as a public airport that is located in a State and that does not have scheduled service, or has scheduled service with less than 2,500 passenger boardings each year.

<sup>5</sup> Ultralight flight operations are an aeronautical activity regulated under 14 CFR Part 103 – Ultralight Vehicles. Throughout this Determination, the terms *hang gliding*, *paragliding*, and *ultralight* may be used interchangeably. Part 103.1 describes an ultralight vehicle as a vehicle that:

- (a) Is used or intended to be used for manned operation in the air by a single occupant;
- (b) Is used or intended to be used for recreation or sport purposes only;
- (c) Does not have any U.S. or foreign airworthiness certificate; and
- (d) If unpowered, weighs less than 155 pounds; or
- (e) If powered:
  - (1) Weighs less than 254 pounds empty weight, excluding floats and safety devices which are intended for deployment in a potentially catastrophic situation;
  - (2) Has a fuel capacity not exceeding 5 U.S. gallons;
  - (3) Is not capable of more than 55 knots calibrated airspeed at full power in level flight; and
  - (4) Has a power-off stall speed which does not exceed 24 knots calibrated airspeed.

<sup>6</sup> See footnote 2.

### III. BACKGROUND and PROCEDURAL HISTORY

#### Factual Background

In March of 2007<sup>7</sup>, Complainant Jones identifies the Courtland Airport as a location suitable for hang gliding and paragliding operations. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 1] Complainant Jones contacts the Memphis Central Air Traffic Control facility to obtain authorization to conduct ultralight operations at the Airport. [FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 1] Complainant Jones then contacts the airport manager to request permission to fly; the airport manager agrees to work with the Complainant. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] A couple weeks later, Complainant Jones conducts flight operations at the Airport.<sup>8</sup> [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] Several weeks after this, Complainant Jones returns to the Airport and conducts ultralight flight operations. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] At the end of these operations, the airport manager advises Complainant Jones that hang gliding will no longer be permitted at the Airport. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] Following this incident, Complainant Jones makes unsuccessful attempts to meet with the airport manager and the Airport Advisory Board. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2]

In the summer of 2007<sup>9</sup>, Complainant Jones attends the Respondent's<sup>10</sup> regularly scheduled monthly meeting open to the public and makes a presentation on hang gliding. [FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, pp. 2-3] Complainant Jones' request to fly is tabled. [FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 3]

In August of 2007<sup>11</sup>, Complainant Jones attends the Respondent's public meeting. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] The Record is unclear as to what occurred as a result of this meeting. Complainant Jones states, "our request was tabled to give the [Respondent] time to look into the matter." [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] In another document, Complainant Jones also states that the Respondent "advised it was not deciding the matter and therefore would let stand the [Airport Advisory Board's] previous decision to ban/prohibit our flight operations" at the Airport. [FAA Exhibit 1, Item 1, Volume 2, Enclosure

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<sup>7</sup> The Record does not specify the exact date this occurred.

<sup>8</sup> The Record does not specify what kind of aeronautical operations were conducted at this time. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0]

<sup>9</sup> The Record does not specify the exact date this occurred.

<sup>10</sup> The Complaint refers to the Lawrence County Commission as the "airport owner of record" in 2007. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] However, at this time, the Airport is owned by the Industrial Development Board of Lawrence County – George C. Wallace Airpark Authority. [FAA Exhibit 1, Item 29 and FAA Exhibit 1, Item 32, p. 1] The Airport is sold to the Lawrence County Commission in 2011. [FAA Exhibit 1, Item 37]

<sup>11</sup> The Record does not specify the exact date this occurred. FAA Exhibit 1, Item 1, Attachment 1.1.5.2, includes text from an article from the Decatur Daily which ran on August 14, 2007. This article describes statements made by the Complainant at the Lawrence County Commission meeting. [FAA Exhibit 1, Item 1, Attachment 1.1.5.2]

1, p. 3] After this meeting, Complainant Jones makes unsuccessful attempts to contact the Respondent by phone. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] Complainant Jones attends the Respondent's September 2007<sup>12</sup> public meeting. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Attachment 1.2.12, p. 2] The complaint states, "one Commissioner, Mose Jones, said publically, it was not in the County's best interest to allow us access and use of the LCA." [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] After this meeting, Complainant Jones makes unsuccessful attempts to discuss the matter with the Respondent. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0]

On March 7, 2008, Complainant Jones initiates an informal complaint with the Jackson Airports District Office. [FAA Exhibit 1, Item 1, Volume 2] The complaint alleges the Respondent has prohibited ultralight flight operations at the Airport. [FAA Exhibit 1, Item 1, Volume 2, p. 2]

On May 27, 2008, Jim Achord<sup>13</sup>, of Tennessee Valley Aero, copies the Jackson Airports District Office on an e-mail which states Complainant Jones' proposed operation falls under 14 CFR, Part 101, and will have to be reviewed by Flight Standards. [FAA Exhibit 1, Item 1, Attachment 1.2.10] On July 8, 2008, this e-mail is forwarded from the Jackson Airports District Office to Complainant Jones. [FAA Exhibit 1, Item 1, Attachment 1.2.10] On July 23, 2008, Complainant Jones responds to the e-mail and objects to the description of the proposed operation. [FAA Exhibit 1, Item 1, Attachment 1.2.11]

On August 7, 2008, Complainant Jones notifies the Jackson Airports District Office of his desire to be present at any meetings with other FAA organizations such as Flight Standards. [FAA Exhibit 1, Item 1, Attachment 1.2.11.6]

On November 12, 2008, the Jackson Airports District Office advises the Respondent that hang gliding is a bonafide aeronautical activity and every reasonable effort should be made to allow it at the Airport. [FAA Exhibit 1, Item 1, Attachment 1.1.2] This letter asks the Respondent to take corrective action which includes the "formulation of mutually-agreeable airport rules and regulation to permit the conduct of the hang-gliding activity while simultaneously ensuring the safe and efficient aeronautical operations." [FAA Exhibit 1, Item 1, Attachment 1.1.2, p. 2]

On November 18, 2008, Complainant Jones e-mails the Respondent recommended rules and procedures for hang gliding at the Airport. [FAA Exhibit 1, Item 1, Attachment 1.2.12.6]

On December 5, 2008, the Respondent's attorney writes the FAA's Southern Region requesting an opinion on whether or not hang gliding through the use of a pick-up truck on a public airport runway is an aeronautical activity, and if the Respondent can decline Complainant Jones' request. [FAA Exhibit 1, Item 1, Attachment 1.2.12]

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<sup>12</sup> The Record does not specify the exact date this occurred. FAA Exhibit 1, Item 1, Attachment 1.1.5.2, includes text from an article from the Decatur Daily which ran on September 11, 2007. This article describes statements made by the Complainant at the Lawrence County Commission meeting. [FAA Exhibit 1, Item 1, Attachment 1.1.5.2]

<sup>13</sup> FAA Exhibit 1 Item 1, Attachment 1.2.12, a letter from the Respondent's attorney to the FAA's Southern Region, describes Jim Achord as the Airport Manager.

On December 23, 2008, the Respondent sends the Jackson Airports District Office a letter voicing its opposition to hang gliding at the Airport for safety and practical reasons. [FAA Exhibit 1, Item 11, exhibit B, p. 1]

On January 22, 2009, the Jackson Airports District Office sends a letter to the Respondent reiterating that hang gliding is an aeronautical activity. [FAA Exhibit 1, Item 1, Attachment 1.1.4 and FAA Exhibit 1, Item 11, exhibit A] This letter also states that the FAA will conduct an internal study to determine whether this activity is likely to compromise the safety of aeronautical operations at the Airport. [FAA Exhibit 1, Item 1, Attachment 1.1.4] The Respondent replies on January 29, 2009, stating the Airport Manager and attorney are available to answer any questions the FAA might have about safety issues at the Airport and restating safety concerns compounded by the lack of an air traffic control tower. [FAA Exhibit 1, Item 1, Attachment 1.2.13] On February 12, 2009, Complainant Jones sends a letter to the Jackson Airports District Office objecting to the statements in the Respondent's January 29, 2009 letter. [FAA Exhibit 1, Item 1, Attachment 1.2.13.1]

On June 2, 2009, Complainant Jones sends an e-mail to the Jackson Airports District Office providing information about the hang gliding operation. [FAA Exhibit 1, Item 1, Attachment 1.2.13.2]

On December 31, 2009, Complainant Jones requests the Jackson Airports District Office issue its written decision with regard to the informal complaint. [FAA Exhibit 1, Item 1, Attachment 1.1.5.6]

On June 14, 2010, Complainant Jones requests the Jackson Airports District Office provide copies of all documents related to the informal complaint. [FAA Exhibit 1, Item 1, Attachment 1.1.6] The Jackson Airports District Office responds on August 24, 2010, with an e-mail to Complainant Jones which states:

*...we initiated a safety review in January 2009, but are still unable to provide a response. All safety evaluations are temporarily on hold, pending further guidance from [headquarters]. There is a draft Advisory Circular and Order being circulated for internal review and comment. Publication of the revised guidance will most likely depend on the number and types of comments received, and how long it takes to resolve any issues that arise from that process. Unfortunately, I do not know when the revised guidance will become effective.*

[FAA Exhibit 1, Item 1, Attachment 1.1.6.3]

### Procedural History

On June 5, 2011, FAA receives the Complaint.<sup>14</sup> [FAA Exhibit 1, Item 1]

On July 6, 2011, Complainant Jones submits Amendment No. 1 to the Complaint. [FAA Exhibit 1, Item 2] This amendment updates the list of Respondents contained in the Complaint. [FAA Exhibit 1, Item 2]

On July 21, 2011, the FAA docketed Isaac W. Jones, Jr. v. Lawrence County Commission, Alabama. [FAA Exhibit 1, Item 3]

On August 10, 2011, Complainant Jones submits Amendment No. 2 to the Complaint. [FAA Exhibit 1, Item 4] This amendment requests the Alabama Hang Gliding Association be joined as co-complainant. [FAA Exhibit 1, Item 4]

On August 25, 2011, the FAA grants the Alabama Hang Gliding Association's request to be joined as co-complainant and amends the caption as Isaac W. Jones, Jr. and Alabama Hang Gliding Association v. Lawrence County Commission, Alabama.<sup>15</sup> [FAA Exhibit 1, Item 5]

On September 9, 2011, the Respondent files a Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 6]

On September 7, 2011, Complainant Jones submits Amendment No. 3 to the Complaint. [FAA Exhibit 1, Item 7] This amendment requests eight individuals be joined as co-complainants. [FAA Exhibit 1, Item 7, exh. B]

On September 14, 2011, the Respondent sends a letter to the FAA advising of the Complainant's opposition to the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 8]

On September 19, 2011, Complainant Jones files a rebuttal to the Respondent's Motion for Extension of Time to Respond and submits Amendment No. 4 to the Complaint. [FAA Exhibit 1, Item 9] This amendment requests the Tennessee Tree Toppers be joined as co-complainants. [FAA Exhibit 1, Item 9, exh. A]

On September 27, 2011, the FAA grants the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 10]

On September 29, 2011, the Respondent files a Motion to Dismiss and preliminary Answer; the Respondent also requests additional time to file a more comprehensive answer. [FAA Exhibit 1, Items 11]

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<sup>14</sup> Although Complainant Jones describes his Complaint as a "Class Action Formal Complaint," FAA Exhibit 1, Item 1 did not identify an association meeting the standing requirements contained in 14 CFR, § 16.23(a). This is discussed in the FAA's Notice of Docketing. [FAA Exhibit 1, Item 3]

<sup>15</sup> See footnote 2.

On October 5, 2011, the Respondent advises the FAA's Office of Chief Counsel of a request made under the Freedom of Information Act in support of the Respondent's September 29, 2011 motion for extension of time. [FAA Exhibit 1, Item 12]

On October 9, 2011, the Complainant Jones files a Reply and requests the status of the FAA's actions with regard to Amendments No. 3 and No. 4. [FAA Exhibit 1, Item 13]

On October 24, 2011, the Respondent files a Motion for Extension of Time to File Rebuttal. [FAA Exhibit 1, Item 14]

On October 26, 2011, the Respondent sends a letter to the FAA advising of the Complainant's opposition to the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 15]

On October 31, 2011, Complainant Jones answers the Respondent's Motion for Extension of Time to Respond and requests the status of the FAA's actions with regard to Amendments No. 3 and No. 4. [FAA Exhibit 1, Item 16]

On October 31, 2011, the Respondent files a Rebuttal. [FAA Exhibit 1, Item 17] The Rebuttal renews the Respondent's Motion to Dismiss and the Request for Extension of Time contained in the Answer. [FAA Exhibit 1, Item 17] The Rebuttal also opposes Complainant's amendments No. 3 and No. 4. [FAA Exhibit 1, Item 17]

On November 1, 2011, the Respondent sends a letter responding to allegations contained in Complainant Jones' October 31, 2011 letter. [FAA Exhibit 1, Item 18]

On November 3, 2011, the Director issues an Order denying Complainant's Amendments No. 3 and No. 4. [FAA Exhibit 1, Item 19]

On November 9, 2011, Complainant Jones answers the Respondent's Renewal of Motion to Dismiss and Motion for Extension of Time and objects to the Respondent's Delinquent Rebuttal to Complainant Reply. [FAA Exhibit 1, Item 20]

On November 14, 2011, Complainant Jones asks the FAA to reconsider its November 3, 2011 Order. [FAA Exhibit 1, Item 21]

On November 17, 2011, the FAA grants the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 22]

On December 22, 2011, the FAA advises the Respondent that its amended Answer is due on January 20, 2012. [FAA Exhibit 1, Item 23]

On February 21, 2012, the FAA requests additional information from the Respondent and affords the Complainant an opportunity to reply to the Respondent's response. The FAA also extends

the due date of the Director's Determination to on or before May 31, 2012. [FAA Exhibit 1, Item 28]

On March 7, 2012, the Respondent provides the additional information requested by the FAA. [FAA Exhibit 1, Item 33]

On March 17, 2012, Complainant Jones replies to the Respondent's submission of additional information requested by the FAA. [FAA Exhibit 1, Item 35]

On May 23, 2012, the FAA extends the due date of the Director's Determination to on or before June 29, 2012. [FAA Exhibit 1, Item 39]

On June 28, 2012, the FAA extends the due date of the Director's Determination to on or before July 25, 2012. [FAA Exhibit 1, Item 40]

#### **IV. ISSUES**

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

- Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport violates Grant Assurance 22, *Economic Nondiscrimination*.
- Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport violates the Respondent's Surplus Property obligations.
- Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport results in a constructive granting of an exclusive right in violation of Grant Assurance 23, *Exclusive Rights*, 49 U.S.C., §40103(e), and 49 U.S.C., § 47107(a)(4).
- Whether the Respondent's agreement with the U.S. Army violates Grant Assurance 5, *Preserving Rights and Powers*.

#### **V. APPLICABLE FEDERAL LAW AND FAA POLICY**

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

The following is a discussion pertaining to the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, and enforcement of Airport Sponsor Assurances.

### **The Airport Improvement Program**

Title 49 U.S.C., § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act 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.<sup>16</sup> FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order), issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with Federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Three FAA grant assurances, as well as obligations arising from the Surplus Property Act, apply to the circumstances set forth in this Complaint: (1) Grant Assurance 5, *Preserving Rights and Powers*; (2) Grant Assurance 22, *Economic Nondiscrimination*; and (3) Grant Assurance 23, *Exclusive Rights*.

### **Grant Assurance 5, Preserving Rights and Powers**

Grant Assurance 5, *Preserving Rights and Powers*, (Assurance 5) requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its Federal obligations. This assurance implements the provisions of the AAIA, 49 U.S.C., § 47107(a), *et seq.*, and requires, in pertinent part, that the owner or sponsor of a federally obligated airport "...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act

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<sup>16</sup> *See, e.g.*, the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C., § 40101 *et. seq.* and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C., § 47101 *et. seq.*

promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.”

Assurance 5 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.*

[Assurance 5]

### **Grant Assurance 22, *Economic Nondiscrimination***

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

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

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

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

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

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

FAA Order 5190.6B describes the responsibilities under Grant Assurance 22 assumed by the owners or sponsor of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport, and to make all airport facilities and services available on reasonable terms without unjust discrimination. [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 activities on reasonable terms and without unjust discrimination. [See FAA Order 5190.6B, ¶9.1.a]

### **Grant Assurance 23, *Exclusive Rights***

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, *FAA Airport Compliance Manual*, 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, the 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 (11<sup>th</sup> 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 Order, Sec.11.2.]

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 Order, Sec. 8.9.d *Space Limitation*.]

FAA Order 5190.6B provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [See Order, Chapter 8.]

### **Surplus Property Obligations**

Surplus property instruments of disposal are issued under the Surplus Property Act of 1944 (SPA). The Act authorizes conveyance of property surplus to the needs of the Federal Government. The FAA (or its predecessor, the Civil Aeronautics Administration [CAA]) recommends to the General Services Administration (GSA) which property should be transferred for airport purposes to public agencies. Such deeds are issued by the GSA that has jurisdiction over the disposition of properties that are declared to be surplus to the needs of the Federal government. Prior to the establishment of the GSA in 1949, instruments of disposal were issued by the War Assets Administration (WAA). [See FAA Order 5190.6B, ¶1.10.a.]

Public Law 80-289, approved July 30, 1947, amended Section 13 of the Surplus Property Act of 1944. This authorized the Administrator of WAA (now GSA) “to convey to any state, political subdivision, municipality or tax-supported institution surplus federally owned real and personal property for airport purposes without monetary consideration to the United States.” These conveyances are subject to the terms, conditions, reservations and restrictions prescribed therein. [Order, ¶3.3]

Surplus property instruments of transfer are one of the means by which the Federal Government provides airport development assistance to public airport sponsors. The conveyance of surplus Federal land to public agencies for airport purposes is administered by the FAA, in conjunction with the U.S. Department of Defense (DOD) and the GSA and pursuant to 49 U.S.C., §§ 47151, 47152, and 47153.

“Public Law (P.L.) 81-311 specifically imposes upon FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is, or has been, conveyed to non-federal public agencies” pursuant to the SPA. [Order, ¶1.10.a.] Furthermore, pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their Federal obligations.

All surplus airport property instruments of disposal, except those conveying only personal property, provide that the covenants assumed by the grantee regarding the use, operation and maintenance of the airport and the property transferred shall be deemed to be covenants running with the land. Accordingly, such covenants continue in full force and effect until released under Public Law 81-311 or other applicable Federal law.

Today, 49 U.S.C., § 47152 (2) and (3) contains the reasonableness and discriminatory requirements originally stipulated under the Surplus Property Act.

### **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. The Order 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. The Order 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 Agency Decision) at 5, *see also* Wilson Air Center, LLC v FAA, 372 F.3d 807 (6<sup>th</sup> Cir. 2004)]

### **FAA Enforcement Responsibilities**

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C., § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The Federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities

safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C., § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their Federal grant assurances.

## VI. PRELIMINARY ANALYSIS AND DISCUSSION

### Allegations Not Considered by the Director

Complainant Jones alleges numerous violations in FAA Exhibit 1, Item 1, exhibit C. However, the Director is unclear as to how some alleged violations pertain to the matter at hand. In addition, some alleged violations listed are outside the scope of 14 CFR, Part 16.<sup>17</sup> As noted above, the Complainant bears the burden of proof in establishing all allegations contained in the Complaint. The Director will disregard the following alleged violations for the reasons noted below.

- The Complainant alleges the Respondent has violated 49 U.S.C., § 40101(e), International Air Transportation. [FAA Exhibit 1, Item 1, exhibit C, p. 1] This section of law discusses matters the Secretary of State and the Secretary of Transportation must consider when formulating U.S. international air transportation policy. The Director is unclear as to how this section of law pertains to the Respondent's Federal obligations. The Complainant supports this allegation stating the Respondent "has made no attempt to make the Lawrence County Airport (LCA), available for the resumption of ultralight aeronautical operations on any terms whatsoever." [FAA Exhibit 1, Item 1, exhibit C, p. 1] However, the Director believes this argument is more clearly associated with allegations related to Grant Assurance 22, *Economic Nondiscrimination*, and will be discussed as Issue One.
- The Complainant alleges the Respondent has violated FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally-Obligated Airports*. [FAA Exhibit 1, Item 1, exhibit C, p. 1] The Advisory Circular is not controlling with regard to the airport sponsor's conduct; its purpose is to provide basic information pertaining to the prohibition on granting exclusive rights. The actual prohibition is contained in 49 U.S.C. §§ 40103(e) and 47107(a)(4), Grant Assurance 23, *Exclusive Rights*, and the Surplus Property Act of 1944. Therefore, these allegations will be discussed as Issues Two and Three.
- The Complainant alleges violations of FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order). [FAA Exhibit 1, Item 1, exhibit C, p. 1] While this Order is useful in helping airport sponsors interpret their obligations under the FAA's Airport Compliance

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<sup>17</sup> Under 14 CFR, Part 16.1, the FAA's jurisdiction is specifically limited to proceedings involving complaints against federally assisted airports arising under legal authority including portions of the Federal Aviation Act of 1958, as amended, 49 U.S.C., § 40101, et seq.; the Airport and Airway Improvement Act (AAIA) of 1982, as amended and recodified at 49 U.S.C., § 47107, et seq.; the Surplus Property Act, as amended, 49 U.S.C., § 47151, et seq.; predecessors to those Acts; and regulations, grant agreements, and documents of conveyance, pursuant to those Acts.

Program, it is not controlling with regard to airport sponsor conduct. The Order sets forth policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. As a result, these allegations will be analyzed only when used in direct support of a grant assurance violation.

- The Complainant alleges the Respondent has violated 49 U.S.C. § 47101(a)(9)(C). [FAA Exhibit 1, Item 1, exhibit C, p. 1] This section of law discusses the policy of the United States with regard to artificial restrictions on airport capacity and states that any such restriction should not discriminate unjustly between categories and classes of aircraft. This Federal policy is embodied in the obligations airport sponsors accept as a condition of receiving Federal financial aid through the Airport Improvement Program. Therefore, the Director will address this allegation as it relates to Grant Assurance 22, *Economic Nondiscrimination*, in Issue One.

For the sake of clarity, the Director has grouped the Complainants' remaining allegations into three issues discussed below. Additionally, the Director will discuss one additional issue that arose during the investigation of the Complaint.

### **Standing**

#### **1. Whether Complainant Jones complied with Part 16's pre-complaint resolution requirements.**

The Respondent's Motion to Dismiss states:

*The Federal Aviation Administration (FAA) is without jurisdiction to consider the complaint because the complainants failed to comply with the pre-complaint resolution provisions and the certification requirements of 14CFR§16.21(sic). Alternatively, the complaint fails to state a claim upon which relief can be granted for non-compliance with this regulation.*

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

However, the Respondent goes on to acknowledge Complainant Jones' attendance at its August and September 2007 meetings. [FAA Exhibit 1, Item 11, p. 2] The Respondent also acknowledges the informal complaint initiated by Complainant Jones with the Jackson Airports District Office in March 2008. [FAA Exhibit 1, Item 11, p. 2]

As discussed in the background, the Jackson Airports District Office advised the Respondent that it would conduct a study to determine whether the proposed ultralight operations are likely to compromise the safety of aeronautical operations at the Airport. [FAA Exhibit 1, Item 1, Attachment 1.1.4] This study was never completed.

The Respondent states:

*In the two years and five months since the respondent received the January 22, 2009 letter the respondent had no further contact with Jones. As a result, the respondent assumed that Jones had elected not to pursue his grievance with the respondent.*

[FAA Exhibit 1, Item 11, p. 2]

This argument is reiterated in the Respondent's Rebuttal. [FAA Exhibit 1, Item 17, pp. 1-2]

The Director believes the Respondent misconstrues the language contained in 14 CFR, §16.21. After Complainant Jones attempted to resolve the matter directly with the Respondent, Complainant Jones initiated an informal complaint with the Jackson Airports District Office. [FAA Exhibit 1, Item 1, Volume 2] The FAA's inaction should not be misinterpreted as the Complainant's disinterest, because the Record notes that Complainant Jones continued to communicate with the Jackson Airports District Office about his informal complaint approximately every six months between January of 2009 and the time the formal complaint was initiated. [FAA Exhibit 1, Item 1, Attachment 1.2.13.2, FAA Exhibit 1, Item 1, Attachment 1.1.5.6, and FAA Exhibit 1, Item 1, Attachment 1.1.6] The Complainant certifies that steps were taken to resolve this matter in FAA Exhibit 1, Item 1, exhibit B. Upon examination of the Record, the Director finds that Complainant Jones has satisfied the requirements of 14 CFR, §16.21.

The Respondent does not explain its statements that "[...] complaint fails to state a claim upon which relief can be granted for non-compliance with this regulation." [FAA Exhibit 1, Item 11, p. 1] The Director notes the Complainant includes a list of alleged violations in FAA Exhibit 1, Item 1, exhibit C, and the Complainant proposes relief at FAA Exhibit 1, Item 1, exhibit E, p. 9.<sup>18</sup>

## **2. Whether the Alabama Hang Gliding Association has standing as a party in this Part 16 proceeding.**

The Respondent's Rebuttal states:

*The complainant, Alabama Hang Gliding Association, also failed to comply with [14 CFR Part] §16.21(a). This organization made no attempt at informal dispute resolution either before or after the complaint was filed. Moreover, the complaint fails to allege, even in general, conclusory fashion, that this organization engaged in any efforts to*

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<sup>18</sup> The Complaint states:

*Pursuant to FAA authority under 49 U.S.C. §§ 40113 and 47122 coupled with that provided under 14 C.F.R. Part 16, Subpart B, paragraphs 16.11, 16.31(d) and 16.109(a), we humbly request: (1) the FAA issue a cease and desist or compliance order(s), without a hearing, for the expressed purpose to allow immediately resumption of our safe and successful flight operations at the [Airport], and (2) the FAA initiate an expedited process, without a hearing, to be utilized to affect a final resolution of this formal class action complaint.*

[FAA Exhibit 1, Item 1, exhibit E, p. 9]

*obtain an informal resolution of this matter. For this reason, the organization failed to satisfy the requisites of §16.21(b), as well as §16.21(a), and should be dismissed as a party to these proceedings.*

[FAA Exhibit 1, Item 17, p. 2]

The preamble to 14 CFR, Part 16, contemplates that associations may file Part 16 complaints as a “representative” on behalf of its members who are “directly and substantially affected.” [See 61 Fed. Reg. 53998, 53998 (October 16, 1996)] The preamble also contemplates that associations may file Part 16’s “individually” if they can meet the “directly and substantially affected” requirement individually. Only in this latter case would the Alabama Hang Gliding Association actually have standing as a party.

Although the Alabama Hang Gliding Association establishes that its members utilize the free launch services offered by Complainant Jones, it does not discuss how it *individually* as an association has been impacted by the alleged violations of noncompliance. [FAA Exhibit 1, Item 4, p. 1] Part 16 precedent explains that an association meets this threshold when it discusses how “*its* leasehold or *its* rights as an airport user are being directly and substantially affected” by the airport sponsor’s alleged noncompliance. [See Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica Air Center v. City of Santa Monica, California, FAA Docket No. 16-99-21, (November 22, 2000) (Director’s Determination) at 17] The Alabama Hang Gliding Association fails to document this, and as a result, does not meet the requirements for standing under 14 CFR, §16.23(a). Moreover, the Record does not establish any actions taken by the Alabama Hang Gliding Association to address its concerns with the Respondent informally as required by 14 CFR, §16.21. In fact, this organization is not discussed in the Record until after the Complaint was filed and initially docketed by the FAA. [FAA Exhibit 1, Item 4]. The Director finds that the FAA’s decision to join the Alabama Hang Gliding Association as a co-complainant was done in error. As a result, Isaac W. Jones alone is now the Complainant in this proceeding.

### **Terminology**

The parties refer to the Complainant’s proposed use of the Airport as “hang gliding,” “paragliding,” and “ultralight” activities or flight operations. The FAA regulates ultralight flight operations under 14 CFR, Part 103 – Ultralight Vehicles.<sup>19</sup> Throughout this Determination, the terms hang gliding, paragliding, and ultralight may be used interchangeably.

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<sup>19</sup> See footnote 5.

## Issue (1)

Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport violates Grant Assurance 22, *Economic Nondiscrimination*.

The Complaint states:

*The Lawrence County Commission (LCC) has made no attempt to make the Lawrence County Airport (LCA), available for the resumption of ultralight aeronautical operations on any terms whatsoever. In fact the LCC's actions to date, more particularly set forth in this formal complaint package, have been for the sole purpose to unjustly deny and purposely discriminate against a bonafide [sic] aeronautical activity in complete violation of this statute.*

[FAA Exhibit 1, Item 1, exhibit C]

The Respondent answers:

*[...]there are a number of safety concerns which lead the respondent to take the position it took previously in regard to Jones' conduct of hang gliding operations at the Airport. The safety of pilots using the Airport, as well as the safety of a person who is hang gliding, would be put in jeopardy if the Airport is not closed while hang gliding operations are taking place. This would deprive the respondent of needed revenue and would be extremely inconvenient to the pilots who are based at the Airport and to those pilots wishing to land there. In addition, the respondent would incur significant expense in paying the Airport Manager or some other qualified individual whose presence would be necessary for the closure of the Airport while hang gliding activities are taking place.*

[FAA Exhibit 1, Item 11, p. 3]

The Respondent acknowledges that it has prohibited the Complainant from conducting further ultralight operations the Airport. The Respondent justifies its decision based on safety concerns, but also raises objections based on security and safety needs of the adjacent Lockheed Martin Corporation Space Systems Company (LMCSSC), its agreement with the U.S. Army's Redstone Test Center, and local economic concerns. [FAA Exhibit 1, Item 11, pp. 3-4]

Grant Assurance 22 requires an airport sponsor 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. FAA Order 5190.6B clearly defines ultralight activities as an aeronautical activity. [FAA Order 5190.6B, Appendix Z at 314] Therefore, the Director must determine if the Complainant has indeed been unlawfully denied access.

The evidence of record persuasively supports the Complainant's allegation with regard to denial of access. The Director will now analyze the Respondent's reasons for prohibiting ultralight operations on the Airport to determine whether they are unreasonable or unjustly discriminatory.

### Safety

Although Grant Assurance 22 obligates an airport sponsor to make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, paragraph 22(i) provides for an exception to this requirement. Paragraph 22(i) states that a sponsor "may prohibit or limit any given type, kind or class of aeronautical use of the airport" if such action is necessary on the grounds of safety or efficiency. Although the Respondent never references 22(i) in its pleadings, the Respondent's rebuttal seems to imply that it is up to the Complainant to establish that his proposed operation is safe. The rebuttal states:

*Jones addresses the respondent's legitimate safety concerns by asserting simply that hang gliding at a public airport and the presence [of] hang-gliding launch vehicles on airport runways is "safe".*

[FAA Exhibit 1, Item 17, p.2]

The Respondent goes on to state that the Complainant's position is unreasonable. [FAA Exhibit 1, Item 17, p. 3]

The courts have determined that Congress has preempted the field of aviation safety through implied field preemption. In City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 638-639 (1973), the Supreme Court stated that, "the interdependence of [safety, efficiency, and the protection of persons on the ground] requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled." In Montalvo v. Spirit Airlines, 508 F.3d 464, 468 (9th Cir. 2007), the court notes that "the FAA preempts the entire field of aviation safety through implied field preemption. The FAA and regulations promulgated pursuant to it establish complete and thorough safety standards for air travel, which are not subject to supplementation by ... state laws." See also Greene v. B.F. Goodrich Avionics Sys., Inc., 409 F.3d 784, 795 (6th Cir.2005), cert. denied, 547 U.S. 1003 (2006); and Abdullah v. American Airlines, Inc., 181 F.3d 363, 367-68 (3d Cir. 1999).

While Grant Assurance No. 22(i) indicates that the sponsor may limit operations for reasons of safety, the sponsor has no unilateral authority to do so. Under FAA Order 5190.6B, section 14.3., "Restricting Aeronautical Activities,"

[a]ny restriction proposed by an airport sponsor based upon safety and efficiency, including those proposed under Grant Assurance 22(i), must be adequately justified and supported. Prohibitions and limits are within the sponsor's proprietary power only to the extent that they are consistent with the sponsor's obligations to provide access to the airport on reasonable and not unjustly discriminatory terms and other applicable federal

law. The Associate Administrator for Airports, working in conjunction with Flight Standards and/or the Air Traffic Organization, will carefully analyze supporting data and documentation and make the final call on whether a particular activity can be conducted safely and efficiently at an airport. In all cases, the FAA is the final arbiter regarding aviation safety and will make the determination regarding the reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport. (Emphasis added).

[FAA Order 5190.6B, ¶14.3.] (Emphasis added).

The Director requested FAA's Flight Standards Service conduct a safety assessment of the Complainant's proposed ultralight activity at the Airport. [FAA Exhibit 1, Item 27] This assessment was conducted on April 5, 2012. [FAA Exhibit 1, Item 38] The Complainant and the Airport Manager were in attendance. [FAA Exhibit 1, Item 38, exhibit A]

The Director has reviewed the safety risk assessment completed by Flight Standards to assess the safety of the Complainant's proposed activity. This assessment reviews the proposed activity, its potential location, and the manner in which the proposed activity might occur. In addition, the assessment identifies specific characteristics associated with the airport and its existing aircraft mix. Levels of risk are identified as low, moderate, or high. The adoption of recommended mitigating procedures can lower the overall risk of the proposed activity. [FAA Exhibit 1, Item 38] Although the current level of risk associated with ultralight operations at the Airport is considered high, this level of risk can be mitigated by implementing a range of safety procedures. [FAA Exhibit 1, Item 38, exhibit B, p. 9] The Director preliminarily finds that conducting ultralight operations on the runway is problematic. However, this issue can be addressed by relocating the launch/landing area away from the runways. In fact, this is identified as a method to reduce the level of risk on pages 2 and 6 of the safety assessment. [FAA Exhibit 1, Item 38, exhibit B] Relocating the launch/landing area away from the runways would address the two major concerns identified by Flight Standards (the possible collision hazard for approaching and departing aircraft caused by the ultralight lingering over the airport while trying to generate enough lift and the possible collision hazard caused by the tow line). [FAA Exhibit 1, Item 38] In addition, this would allow the Respondent to avoid closing the runways to other users during ultralight operations or during the recovery of the tow line.

Based upon the safety assessment, the Director strongly encourages the parties to carefully review the assessment and work together to:

1. Identify a location on the Airport, away from the active runways, suitable for ultralight activities;
2. Develop a use agreement which establishes clear written procedures for ultralight operations, as recommended in the safety assessment;
3. Communicate agreed-upon procedures to airport tenants and itinerant users;
4. Conduct safety briefings with all parties to increase awareness about the ultralight operations; and

5. Develop and conduct any training that might be necessary for ultralight operators to begin using the airport and become familiar with any special rules.

FAA Order 5190.6B describes the purpose for reviewing safety-based restrictions:

The purpose of any investigation regarding a safety-based or efficiency-based restriction of an aeronautical use is to determine whether or not the restricted activity can be accommodated on less restrictive terms than the terms proposed by the airport sponsor without adversely affecting the efficiency and utility of the airport. If so, the sponsor will need to revise or eliminate the restriction in order to remain in compliance with its grant assurances and federal surplus property obligations.

A complete prohibition on all aeronautical operations of one type, such as ultralights, gliders, parachute jumping, balloon and airship operations, acrobatic flying, or banner towing should be approved only if the FAA concludes that such operations cannot be mixed with other traffic without an unacceptable impact on safety or the efficiency and utility of the airport.

[FAA Order 5190.6B, ¶ 14.7.]

The Director recognizes that the information contained in the safety assessment has not yet been made available to the parties. Therefore, the Director will refrain from making a final determination on this matter. The Director expects the parties to review the safety assessment and work expeditiously to complete the actions recommended above within 90 days of the date of this preliminary determination.

#### Respondent's Other Objections

Rather than fully analyze in this preliminary determination the other objections raised by the Respondent, the Director will remind the Respondent of its prime obligation to serve the interest of the aeronautical using public. [*See United States Construction Corporation v. City of Pompano Beach, Florida*, FAA Docket No. 16-00-14, (July 10, 2002) (Final Agency Decision) at 21] Additionally, "FAA safety determinations pursuant to the Federal Aviation Regulations take precedence over any airport sponsor views or local ordinances pertaining to safety." [*See Jeff Bodin and Garlic City Skydiving v County of Santa Clara, California*, FAA Docket No. 16-11-06, (December 19, 2011) (Director's Determination) at 29; *Drake Aerial Enterprise, LLC v City of Cleveland, Ohio*, FAA Docket No. 16-09-02, (February 22, 2010) (Director's Determination) at 14; *In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California*, FAA Docket No. 16-02-08, (July 8, 2009) (Final Agency Decision) at 9, *aff'd* *City of Santa Monica v. F.A.A.*, 631 F.3d 550 (DC Cir) (2011); *Skydive Paris Inc. v Henry County, Tennessee*, FAA Docket No. 16-05-06, (January 20, 2006) (Director's Determination) at 15 (*Skydive Paris*); and *Florida Aerial Advertising v St. Petersburg-Clearwater International Airport*, FAA Docket No. 16-03-01, (December 18, 2003) (Director's Determination) at 11] This is especially true when the Director is asked to make a determination regarding a sponsor's

compliance with its Federal obligations in cases where restrictions or limitations are instituted in the interest of safety. Under 49 U.S.C., § 40103(b), the FAA develops “plans and policy for the use of the navigable airspace” and assigns “by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.”

In pursuing its mission to provide the safest, most efficient aerospace system in the world, the FAA must balance the needs of various aeronautical users competing for use of the nation’s skies. However, the FAA has no obligation to consider the local needs of nonaeronautical neighbors or local economic concerns. Actions which serve to prohibit classes of aeronautical users intrude into the FAA’s field in a manner directly contrary to this national approach. As the United States Supreme Court stated, the FAA “requires a delicate balance between safety and efficiency [. . .] and the protection of persons on the ground. [. . .] The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.” [*City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 638-639 (1973)]

#### Summary of Issue (1)

The Director believes that the FAA has established important facts in its investigation of the Complainant’s allegations with regard to Grant Assurance 22, *Economic Nondiscrimination*. Because this information has not been shared with the parties, it would be premature to make a final determination. Instead, the Director believes it is appropriate to encourage the parties to work together to resolve this issue taking into account the contents of the FAA safety study.

#### Issue (2)

Whether the Respondent’s refusal to allow ultralight operations at the Courtland Airport violates the Respondent’s Surplus Property obligations.

The Complainant states:

*Obligations contained [in the] 1948 conveyances of land under quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944 (Public Law 80-289), as amended, 49 U.S.C. § 47151-153, requires that the [Airport] be made available to the public on reasonable terms and without unjust discrimination. The [Respondent] has granted an exclusive right by its actions to prohibit our access and use of the [Airport] while allowing other aeronautical activities full access and use of these facilities. This action on the part of the [Respondent] places it in clear violation and noncompliance with respect to the covenants of its 1948 quitclaim deed and the related Surplus Property statute.*

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

In support of this allegation, the Complainant relies on FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government* (April 30, 1990). [FAA Exhibit 1, Item 1, exhibit C, p. 5]

The Respondent does not answer this allegation.

The Director has reviewed FAA Order 5190.2R, as well as the quitclaim deeds and releases in the Airport's file with the Jackson Airports District Office. FAA Order 5190.2R notes that the Airport is subject to a grant agreement with the FAA and obligations pertaining to Title VI, Civil Rights Act. [FAA Order 5190.2R, p. 3 and p. 60] However, it does not indicate any obligations with regard to the Surplus Property Act. Although the Courtland Airport was originally acquired by the United States Government and later conveyed to the State of Alabama under the authority contained in the Surplus Property Act, all obligations with regard to this quitclaim deed were released by the FAA in 1979. [FAA Exhibit 1, Item 32, p. 1, and FAA Exhibit 1, Item 36] Therefore, the Director finds the Respondent is no longer subject to any obligations associated with the Surplus Property Act of 1944. As a result, the allegation has no merit.

### **Issue (3)**

Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport results in a constructive granting of an exclusive right in violation of Grant Assurance 23, *Exclusive Rights*, 49 U.S.C., §40103(e) and 49 U.S.C., § 47107(a)(4).

In previous determinations, the Director has made a finding with regard to Grant Assurance 23, *Exclusive Rights*, after establishing an unreasonable denial of access under Grant Assurance 22. [See *Skydive Paris* at 19] However, in view of the preliminary findings made with regard to Issue One, the Director believes it would be premature to analyze allegations raised in Issue Three in this preliminary decision.

### **Issue (4)**

Whether the Respondent's agreement with the U.S. Army violates Grant Assurance 5, *Preserving Rights and Powers*.

In its Answer and Rebuttal, the Respondent cited its agreement with the U.S. Army's Redstone Test Center as a reason to deny the Complainant's proposed ultralight activities at the Airport. The Respondent states:

*Currently, the U.S. Army's Redstone Test Center is conducting test operations pursuant to a contract entered into between the Army and the Lawrence County Commission last year. The Army's operations would be greatly impeded by the hang gliding activities that Jones has proposed.*

[FAA Exhibit 1, Item 11, p. 3]

*The U.S. Army Redstone Test Center's use of the airport to conduct flight tests involving helicopters and fixed-wing aircraft would be jeopardized.*

[FAA Exhibit 1, Item 17, p. 2]

The Director asked the Respondent to provide a copy of its agreement with the U.S. Army. [FAA Exhibit 1, Item 28] Based on the review of this agreement, the Director believes it is necessary to determine if the terms of this agreement compromise the Respondent's ability to fulfill its obligations with regard to Grant Assurance 5, *Preserving Rights and Powers*.

The Respondent submitted an undated Memorandum of Agreement between the Commander, U.S. Army Aviation Flight Test Directorate (AFTD), Redstone Arsenal, Alabama and the Airport Manager, Courtland/Lawrence County Airport, Courtland, Alabama. [FAA Exhibit 1, Item 33, exhibit A] This agreement "defines AFTD's habitual use of Courtland/Lawrence County Airport for rotary wing, fixed wing, and associated systems developmental testing, and aircrew day/night/NVS training." [FAA Exhibit 1, Item 33, exhibit A, p. 1] The agreement states:

*3. Details of Agreement*

*a. Courtland Airport will provide*

- (1.) When coordinated, as much as 4500 sq ft dedicated hangar space for flight test activities.*
- (2.) When coordinated, a dedicated 5000 ft runway for exclusive use.*
- (3.) Dedicated conference room and briefing area for AFTD Flight Test Operations.*
- (4.) Courtland is prepared to add additional hangar space as required.*
- (5.) Twenty-four hour operations upon request.*
- (6.) A fire truck on site.*

*b. AFTD will provide:*

- (1.) Advance coordination for use of facilities outside the normal scope of FBO operations at Courtland Airport when it is most convenient to the government.*
- (2.) A good faith agreement to purchase aviation fuel when conducting operations at Courtland Airport when it is most convenient to the government.*
- (3.) At present time, AFTD has no financial commitment for use of Courtland Airport and facilities.*

[FAA Exhibit 1, Item 33, exhibit A, pp. 1-2]

The terms of this agreement may not be consistent with several of the Respondent's obligations as an airport sponsor. Specifically, the Respondent has agreed to provide the U.S. Army with dedicated hangar space and possibly add additional hangar space, at its own expense, free of charge. The Respondent has also agreed to assume other expenses such as a dedicated conference room, twenty-four hour operations, and a fire truck on site without any financial compensation. This may not be consistent with Grant Assurance 24, *Fee and Rental Structure*,

which requires the airport sponsor to maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible given its particular circumstances.

More alarming is the apparent express granting of an exclusive right. FAA Order 5190.6B defines an exclusive right “as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right.” [See FAA Order 5190.6B, ¶8.2] This agreement expressly grants the U.S. Army exclusive use of a runway and would exclude all other aeronautical users from its use. This does not appear to be consistent with the Respondent’s obligations under Grant Assurance 23, *Exclusive Rights*.

In addition, Grant Assurance 5, *Preserving Rights and Powers*, requires airport sponsors to refrain from taking or permitting actions 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. This means an airport sponsor cannot enter into an agreement or take any action that may deprive it of its rights and powers to direct and control airport development and comply with the applicable Federal obligations. [See Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, Illinois, FAA Docket No. 16-06-09, (June 4, 2007) (Director’s Determination) at 55<sup>20</sup> (Platinum Aviation) and Goodrich Pilot Training Center, LLC and Aviation Management Group, LLC v Village of Endicott, New York, FAA Docket No. 16-08-03, (April 3, 2009) (Director’s Determination) at 30 (Goodrich Pilot Training Center)]

In Platinum Aviation, the Director found that the airport sponsor entered into agreements which were inconsistent with its Federal obligations, but later corrected them.<sup>21</sup> The Director stated the airport sponsor:

[...]has not only the right, but the *obligation*, when needed, to amend or attempt to amend those agreements to ensure that it meets its Federal obligations.

[Platinum Aviation at 55<sup>22</sup>] (Emphasis added).

The fact that this agreement was executed by the Airport Manager, and not a member of the Lawrence County Commission, does not alleviate or absolve the Respondent’s responsibilities. In Goodrich Pilot Training Center, the Director analyzed how delegating certain airport

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<sup>20</sup> The Director’s findings with regard to Grant Assurance 5, *Preserving Rights and Powers*, were upheld on appeal in Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, Illinois, FAA Docket No. 16-06-09, (November 28, 2007) (Final Decision and Order) at 31.

<sup>21</sup> The Director did not find a violation of Grant Assurance 5, *Preserving Rights and Powers*, in Platinum Aviation because the Director found the sponsor had taken adequate steps to correct the portions of the agreements which could have placed the Respondent in breach of its grant assurance obligations. [Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, Illinois, FAA Docket No. 16-06-09, (June 4, 2007) (Director’s Determination) at 55 upheld on appeal in Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, Illinois, FAA Docket No. 16-06-09, (November 28, 2007) (Final Decision and Order) at 31]

<sup>22</sup> See footnote 21.

management responsibilities to a third party could impact the sponsor's ability to address its obligations under Grant Assurance 5, *Preserving Rights and Powers*. The Director relied on language from FAA Order 5190.6A stating:

None of these contractual delegations of responsibility absolve or relieve the airport owner from the primary obligations to the Government. As principal party to the agreement the owner alone is accountable for conformity to its terms and conditions.

[Goodrich Pilot Training Center at 31 citing FAA Order 5190.6A, Chapter 4, Section 4.2.c.]

This fundamental premise has been carried forward into FAA Order 5190.6B which states:

If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's agreement.[...][T]he sponsor is not relieved of its responsibility under the grant assurances by such an arrangement.

[FAA Order 5190.6B, ¶6.6.f.]

The Respondent's agreement with the U.S. Army may potentially conflict with Grant Assurance 24, *Fee and Rental Structure*, and appears to expressly conflict with Grant Assurance 23, *Exclusive Rights*. Therefore, the Director preliminarily finds the Respondent's agreement with the U.S. Army violates Grant Assurance 5, *Preserving Rights and Power*.<sup>23</sup>

## VII. PRELIMINARY FINDINGS AND CONCLUSIONS

Upon consideration of the submissions of the parties, and the entire record herein, and the applicable law and policy and for the reasons stated above, the Director, Airport Compliance and Management Analysis, preliminarily finds and concludes as follows:

- The Alabama Hang Gliding Association lacks standing as a party to the Complaint.
- The Director declines to make a finding with regard to the Complainant's allegation of denial of access and Grant Assurance 22, *Economic Nondiscrimination*. Critical information contained in the safety assessment has not yet been made available to the parties.

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<sup>23</sup> The Director declines to make a preliminary finding with regard to Grant Assurance 24, *Fee and Rental Structure*, because the Record is unclear as to whether or not these services have actually been provided to the U.S. Army free of charge. It is unnecessary for the Director to make a separate finding with regard to Grant Assurance 23, *Exclusive Rights*. This violation will be cured by the same action required to address the Director's preliminary findings with regard to Grant Assurance 5, *Preserving Rights and Powers*.

- The Respondent has no current obligations under the Surplus Property Act; therefore, any alleged violations under this Act would not be applicable.
- The Director declines to make a finding with regard to Grant Assurance 23, *Exclusive Rights*. Given the preliminary findings made under Issue One, it would be premature for the Director to opine on this issue as a preliminary matter.
- The Respondent's agreement with the U.S. Army may impede its ability to fulfill its obligations with the FAA and may constitute a violation of Grant Assurance 5, *Preserving Rights and Powers*.

### **PRELIMINARY ORDER AND INSTRUCTIONS**

**ACCORDINGLY**, the Director finds that the Lawrence County Commission appears to be in violation of Federal law and its Federal grant obligations. The County is directed to take immediate steps to (1) revise its agreement with the U.S. Army to comply with the sponsor's Federal obligations; (2) submit a copy of the airport's management agreement to the FAA for review; and (3) work with the Complainant to identify a location on the Airport, away from the active runways, suitable for ultralight activities; and then (a) develop a use agreement which establishes clear written procedures for ultralight operations, as discussed in the safety assessment; (b) communicate these procedures to airport tenants and itinerant users; (c) conduct safety briefings with all parties to increase awareness about the ultralight operations; and (d) develop and conduct any training that might be necessary for ultralight operators to begin using the Airport.

The County is directed to advise the Director of its intent with regard to the actions described above within 30 days of receipt of this decision. The Director expects the County to work expeditiously and complete the actions described above within 90 days of receipt of this decision. Should the County decline to undertake the actions described above, the Director will proceed with issuing a Director's Determination based on the administrative record reflected in the attached FAA Exhibit 1.

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

### **PRELIMINARY FINDINGS AND RIGHT OF APPEAL**

As stated above, this is a preliminary finding providing the Respondent with 30 days to advise the Director of its intent to take corrective actions. After such date, the Director will issue the Director's Determination, an initial agency determination, which is appealable, and make findings regarding the Respondent's compliance with its Federal obligations. Neither this Preliminary Determination, nor the Director's Determination to be issued, constitutes a final agency decision and order subject to judicial review. [14 CFR, § 16.247(b)(2)] A party adversely affected by the Director's

Determination once issued may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR, § 16.33(b) within thirty (30) days after service of the Director's Determination.



Randall Fiertz  
Director, Office of Airport Compliance  
and Management Analysis

7-16-12

Date

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

ISAAC W. JONES, JR. and ALABAMA HANG  
GLIDING ASSOCIATION

COMPLAINANT

v.

LAWRENCE COUNTY COMMISSION,  
ALABAMA

RESPONDENT

Docket No. 16-11-07

**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed in accordance with FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings (FAA Rules of Practice), Title 14 Code of Federal Regulations (CFR), Part 16.<sup>1</sup>

Isaac W. Jones, Jr. and the Alabama Hang Gliding Association<sup>2</sup> (Complainant) filed a formal complaint pursuant to Title 14 CFR, Part 16, against the Lawrence County Commission, (Respondent or Commission) owner, sponsor, and operator of the Courtland Airport (9A4 or Airport) in Courtland, Alabama. Although the Complaint alleged numerous violations of the United States Code (U.S.C.), the airport sponsor assurances, surplus property restrictions, and FAA guidance, FAA reviewed issues associated with the Surplus Property Act, Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 22, *Economic Nondiscrimination*; and Grant Assurance 23, *Exclusive Rights*. On July 16, 2012, FAA issued a Preliminary Determination, incorporated herein by reference. [FAA Exhibit 1, Item 42]

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<sup>1</sup> Enforcement procedures regarding airport compliance matters may be found at *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings* (14 CFR, Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective on December 16, 1996.

<sup>2</sup> In the Preliminary Director's Determination, the Director found that FAA's decision to join the Alabama Hang Gliding Association as a co-complainant was done in error. [FAA Exhibit 1, Item 42, pp. 17-18] The parties raised no timely objection to this finding. The Director upholds this finding in this Determination.

### The Director's Preliminary Determination

The Director elected to issue a Preliminary Determination, instead of a Director's Determination, because FAA's investigation of the Complaint included a safety risk assessment which was conducted after the parties had submitted their pleadings.<sup>3</sup> [FAA Exhibit 1, Item 42, p. 22] The Director believed this critical information should be relayed to the parties, and that the parties should be given an opportunity to respond to this information before the Director made certain final findings. Based on the Director's review and consideration of the evidence submitted, the administrative record designated as FAA Exhibit 1, the relevant facts, and pertinent law and policy, the Director preliminarily concluded the Respondent was in violation of Grant Assurance 5, *Preserving Rights and Powers*. [FAA Exhibit 1, Item 42, pp. 27-28] The Director declined to make findings with regard to Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights*. [FAA Exhibit 1, Item 42, pp. 27-28] Additionally, the allegations related to the Surplus Property Act were found to be without merit. [FAA Exhibit 1, Item 42, p. 24 and p. 28]

The Director's Preliminary Determination instructed the Respondent to revise its agreement with the U.S. Army's Redstone Test Center. [FAA Exhibit 1, Item 42, p. 28] The Director expressed concern that the terms of the agreement were not consistent with several of the Respondent's obligations as an airport sponsor. [FAA Exhibit 1, Item 42, p. 25] Since issuing the Director's Preliminary Determination, the Respondent has revised its Memorandum of Agreement with the U.S. Army. [FAA Exhibit 1, Item 53, exhibit A] On May 1, 2013, the Director advised the Respondent that its new agreement appears to satisfy FAA's original concerns. [FAA Exhibit 1, Item 55]

The Director's Preliminary Determination also instructed the Respondent to submit a copy of its airport management agreement to FAA for review. [FAA Exhibit 1, Item 42, p. 28] The Respondent submitted this document on October 15, 2012. [FAA Exhibit 1, Item 47, Appendix 2] The FAA reviewed this agreement and had no comments on it. [FAA Exhibit 1, Item 49, p. 3]

The Director declined to make findings with regard to the Complainant's allegations of violations of Grant Assurances 22 and 23, because the Director believed FAA's safety risk assessment discussed important information which could help the parties resolve their differences with regard to ultralight operations at the Airport. [FAA Exhibit 1, Item 42, p. 22] As such, the Director asked the parties to review the safety risk assessment and work together to identify a location on the Airport, away from the active runways, suitable for ultralight activities. [FAA Exhibit 1, Item 42, pp. 21 and 28] The Director also asked the parties to develop a use agreement establishing clear written procedures for ultralight operations, to communicate these procedures to tenants and itinerant users, to conduct safety briefings, and to develop and conduct any training that might be necessary for ultralight operators to begin using the Airport. [FAA Exhibit 1, Item 42, pp. 21 and 28] The Preliminary Order and Instructions stated the Director's desire that the parties work expeditiously to complete these actions within 90 days of receiving the decision. [FAA Exhibit 1, Item 42, p. 28]

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<sup>3</sup> The FAA's safety risk assessment is identified in the Record as FAA Exhibit 1, Item 38.

Despite the information contained in the risk assessment, the parties have been unable to agree on a location suitable for ultralight activities at the Airport. For the reasons set forth herein, the Director concludes the Respondent is currently not in violation of Grant Assurance 22, *Economic Nondiscrimination*, or Grant Assurance 23, *Exclusive Rights*.

## II. THE PARTIES

### Airport

The land comprising the Courtland Airport (9A4 or Airport) was originally acquired by the United States Government in order to construct an airport known as the Courtland Air Force Base. [FAA Exhibit 1, Item 32, p. 1] The property was conveyed by the United States Government to the State of Alabama through its Department of Aeronautics on June 2, 1948. [FAA Exhibit 1, Item 30, p. A-6 and FAA Exhibit 1, Item 32, p. 1] On December 14, 1979, FAA issued a deed of release allowing the State of Alabama's Department of Aeronautics to sell the Airport to the Tennessee Valley Authority free from all reservations, restrictions, and conditions contained in the 1948 Quitclaim Deed. [FAA Exhibit 1, Item 36; *see also* FAA Exhibit 1, Item 30, p. A-6, FAA Exhibit 1, Item 32, p. 1] The Tennessee Valley Authority acquired the Airport by Quitclaim Deed on January 29, 1980. [FAA Exhibit 1, Item 30; *see also* FAA Exhibit 1, Item 32, p. 1] On March 14, 1985, the Tennessee Valley Authority sold the Airport to the Industrial Development Board of Lawrence County – George C. Wallace Airpark Authority. [FAA Exhibit 1, Item 29; *see also* FAA Exhibit 1, Item 32, p. 1] Then on February 15, 2011, the Industrial Development Board of Lawrence County – George C. Wallace Airpark Authority sold the Airport to Lawrence County.<sup>4</sup> [FAA Exhibit 1, Item 37]

The Courtland Airport is a public-use, nontowered airport owned and operated by the Lawrence County Commission. This facility, located two nautical miles northeast of Courtland, is classified as a general aviation airport.<sup>5</sup> [FAA Exhibit 1, Item 25] The Airport has 32-based aircraft and estimates 11,900 annual operations utilizing its two runways. [FAA Exhibit 1, Item 25] The planning and development of the Airport has been financed, in part, with funds provided by FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C., § 47101, *et seq.* Since 1982, the Commission has accepted \$2,863,470 in AIP grants for investments at 9A4. [FAA Exhibit 1, Item 24]

### Complainant

Isaac W. Jones, Jr. is an individual who seeks to conduct ultralight flight operations<sup>6</sup> at the

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<sup>4</sup> The Corporate Warranty Deed reflecting this sale does not include the easements outlined in previous deeds, nor does it acknowledge FAA grant obligations as a restrictive covenant on the property. [FAA Exhibit 1, Item 37; *see also* FAA Exhibit 1, Item 29, and FAA Exhibit 1, Item 30]

<sup>5</sup> The term "general aviation airport" is defined in 49 U.S.C., § 47102(8) as a public airport that is located in a State and that does not have scheduled service, or has scheduled service with less than 2,500 passenger boardings each year.

<sup>6</sup> Ultralight flight operations are an aeronautical activity regulated under 14 CFR, Part 103 – Ultralight Vehicles. Throughout this Determination, the terms *hang gliding*, *paragliding*, and *ultralight* may be used interchangeably. Part 103.1 describes an ultralight vehicle as a vehicle that:

(a) Is used or intended to be used for manned operation in the air by a single occupant;

Airport. His hang glider utilizes a vehicle towed payout winch launch system. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶8.2]

### III. BACKGROUND and PROCEDURAL HISTORY

#### Factual Background

In March of 2007<sup>7</sup>, Complainant Jones identifies the Courtland Airport as a location suitable for hang gliding and paragliding operations. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 1] Complainant Jones contacts the Memphis Central Air Traffic Control facility to obtain authorization to conduct ultralight operations at the Airport. [FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 1] Complainant Jones then contacts the airport manager to request permission to fly; the airport manager agrees to work with the Complainant. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] A couple weeks later, Complainant Jones conducts flight operations at the Airport.<sup>8</sup> [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] Several weeks after this, Complainant Jones returns to the Airport and conducts ultralight flight operations. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] At the end of these operations, the airport manager advises Complainant Jones that hang gliding will no longer be permitted at the Airport. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] Following this incident, Complainant Jones makes unsuccessful attempts to meet with the airport manager and the Airport Advisory Board. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2]

In the summer of 2007<sup>9</sup>, Complainant Jones attends the Respondent's<sup>10</sup> regularly scheduled monthly meeting open to the public and makes a presentation on hang gliding. [FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, pp. 2-3] Complainant Jones' request to fly is tabled. [FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 3]

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- (b) Is used or intended to be used for recreation or sport purposes only;
  - (c) Does not have any U.S. or foreign airworthiness certificate; and
  - (d) If unpowered, weighs less than 155 pounds; or
  - (e) If powered:
    - (1) Weighs less than 254 pounds empty weight, excluding floats and safety devices which are intended for deployment in a potentially catastrophic situation;
    - (2) Has a fuel capacity not exceeding 5 U.S. gallons;
    - (3) Is not capable of more than 55 knots calibrated airspeed at full power in level flight; and
    - (4) Has a power-off stall speed which does not exceed 24 knots calibrated airspeed.

<sup>7</sup> The Record does not specify the exact date this occurred.

<sup>8</sup> The Record does not specify what kind of aeronautical operations were conducted at this time. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0]

<sup>9</sup> The Record does not specify the exact date this occurred.

<sup>10</sup> The Complaint refers to the Lawrence County Commission as the "airport owner of record" in 2007. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 2] However, at this time, the Airport is owned by the Industrial Development Board of Lawrence County – George C. Wallace Airpark Authority. [FAA Exhibit 1, Item 29 and FAA Exhibit 1, Item 32, p. 1] The Airport is sold to the Lawrence County Commission in 2011. [FAA Exhibit 1, Item 37]

In August of 2007<sup>11</sup>, Complainant Jones attends the Respondent's public meeting. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] The Record is unclear as to what occurred as a result of this meeting. Complainant Jones states, "Our request was tabled to give the [Respondent] time to look into the matter." [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] In another document, Complainant Jones also states that the Respondent "advised it was not deciding the matter and therefore would let stand the [Airport Advisory Board's] previous decision to ban/prohibit our flight operations" at the Airport. [FAA Exhibit 1, Item 1, Volume 2, Enclosure 1, p. 3] After this meeting, Complainant Jones makes unsuccessful attempts to contact the Respondent by phone. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] Complainant Jones attends the Respondent's September 2007<sup>12</sup> public meeting. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0 and FAA Exhibit 1, Item 1, Attachment 1.2.12, p. 2] The complaint states, "One Commissioner, Mose Jones, said publically, it was not in the County's best interest to allow us access and use of the LCA." [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0] After this meeting, Complainant Jones makes unsuccessful attempts to discuss the matter with the Respondent. [FAA Exhibit 1, Item 1, Volume 1, Enclosure 1, ¶1.0]

On March 7, 2008, Complainant Jones initiates an informal complaint with the Jackson Airports District Office. [FAA Exhibit 1, Item 1, Volume 2] The complaint alleges the Respondent has prohibited ultralight flight operations at the Airport. [FAA Exhibit 1, Item 1, Volume 2, p. 2]

On May 27, 2008, Jim Achord<sup>13</sup>, of Tennessee Valley Aero, copies the Jackson Airports District Office on an e-mail which states Complainant Jones' proposed operation falls under 14 CFR, Part 101 and will have to be reviewed by Flight Standards. [FAA Exhibit 1, Item 1, Attachment 1.2.10] On July 8, 2008, this e-mail is forwarded from the Jackson Airports District Office to Complainant Jones. [FAA Exhibit 1, Item 1, Attachment 1.2.10] On July 23, 2008, Complainant Jones responds to the e-mail and objects to the description of the proposed operation. [FAA Exhibit 1, Item 1, Attachment 1.2.11]

On August 7, 2008, Complainant Jones notifies the Jackson Airports District Office of his desire to be present at any meetings with other FAA organizations such as Flight Standards. [FAA Exhibit 1, Item 1, Attachment 1.2.11.6]

On November 12, 2008, the Jackson Airports District Office advises the Respondent that hang gliding is a bonafide aeronautical activity and every reasonable effort should be made to allow it at the Airport. [FAA Exhibit 1, Item 1, Attachment 1.1.2] This letter asks the Respondent to take corrective action which includes the "formulation of mutually-agreeable airport rules and

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<sup>11</sup> The Record does not specify the exact date this occurred. FAA Exhibit 1, Item 1, Attachment 1.1.5.2, includes text from an article from the Decatur Daily which ran on August 14, 2007. This article describes statements made by the Complainant at the Lawrence County Commission meeting. [FAA Exhibit 1, Item 1, Attachment 1.1.5.2]

<sup>12</sup> The Record does not specify the exact date this occurred. FAA Exhibit 1, Item 1, Attachment 1.1.5.2, includes text from an article from the Decatur Daily which ran on September 11, 2007. This article describes statements made by the Complainant at the Lawrence County Commission meeting. [FAA Exhibit 1, Item 1, Attachment 1.1.5.2]

<sup>13</sup> FAA Exhibit 1 Item 1, Attachment 1.2.12, a letter from the Respondent's attorney to the FAA's Southern Region, describes Jim Achord as the Airport Manager.

regulation to permit the conduct of the hang-gliding activity while simultaneously ensuring the safe and efficient aeronautical operations.” [FAA Exhibit 1, Item 1, Attachment 1.1.2, p. 2]

On November 18, 2008, Complainant Jones e-mails the Respondent recommended rules and procedures for hang gliding at the Airport. [FAA Exhibit 1, Item 1, Attachment 1.2.12.6]

On December 5, 2008, the Respondent’s attorney writes the FAA’s Southern Region requesting an opinion on whether or not hang gliding through the use of a pick-up truck on a public airport runway is an aeronautical activity, and if so, if the Respondent can decline Complainant Jones’ request. [FAA Exhibit 1, Item 1, Attachment 1.2.12]

On December 23, 2008, the Respondent sends the Jackson Airports District Office a letter voicing its opposition to hang gliding at the Airport for safety and practical reasons. [FAA Exhibit 1, Item 11, exhibit B, p. 1]

On January 22, 2009, the Jackson Airports District Office sends a letter to the Respondent reiterating that hang gliding is an aeronautical activity. [FAA Exhibit 1, Item 1, Attachment 1.1.4 and FAA Exhibit 1, Item 11, exhibit A] This letter also states that the FAA will conduct an internal study to determine whether this activity is likely to compromise the safety of aeronautical operations at the Airport. [FAA Exhibit 1, Item 1, Attachment 1.1.4] The Respondent replies on January 29, 2009 stating the Airport Manager and attorney are available to answer any questions the FAA might have about safety issues at the Airport and restating safety concerns compounded by the lack of an air traffic control tower. [FAA Exhibit 1, Item 1, Attachment 1.2.13] On February 12, 2009, Complainant Jones sends a letter to the Jackson Airports District Office objecting to the statements in the Respondent’s January 29, 2009 letter. [FAA Exhibit 1, Item 1, Attachment 1.2.13.1]

On June 2, 2009, Complainant Jones sends an e-mail to the Jackson Airports District Office providing information about the hang gliding operation. [FAA Exhibit 1, Item 1, Attachment 1.2.13.2]

On December 31, 2009, Complainant Jones requests the Jackson Airports District Office issue its written decision with regard to the informal complaint. [FAA Exhibit 1, Item 1, Attachment 1.1.5.6]

On June 14, 2010, Complainant Jones requests the Jackson Airports District Office provide copies of all documents related to the informal complaint. [FAA Exhibit 1, Item 1, Attachment 1.1.6] The Jackson Airports District Office responds on August 24, 2010 with an e-mail to Complainant Jones which states:

*...we initiated a safety review in January 2009, but are still unable to provide a response. All safety evaluations are temporarily on hold, pending further guidance from [headquarters]. There is a draft Advisory Circular and Order being circulated for internal review and comment. Publication of the revised guidance will most likely depend on the number and types of comments received,*

*and how long it takes to resolve any issues that arise from that process.  
Unfortunately, I do not know when the revised guidance will become effective.*

[FAA Exhibit 1, Item 1, Attachment 1.1.6.3]

**Procedural History**

On June 5, 2011, FAA receives the Complaint.<sup>14</sup> [FAA Exhibit 1, Item 1]

On July 6, 2011, Complainant Jones submits Amendment No. 1 to the Complaint. [FAA Exhibit 1, Item 2] This amendment updates the list of Respondents contained in the Complaint. [FAA Exhibit 1, Item 2]

On July 21, 2011, the FAA docketed Isaac W. Jones, Jr. v. Lawrence County Commission, Alabama. [FAA Exhibit 1, Item 3]

On August 10, 2011, Complainant Jones submits Amendment No. 2 to the Complaint. [FAA Exhibit 1, Item 4] This amendment requests the Alabama Hang Gliding Association be joined as co-complainant. [FAA Exhibit 1, Item 4]

On August 25, 2011, the FAA grants the Alabama Hang Gliding Association's request to be joined as co-complainant and amends the caption as Isaac W. Jones, Jr. and Alabama Hang Gliding Association v. Lawrence County Commission, Alabama.<sup>15</sup> [FAA Exhibit 1, Item 5]

On September 9, 2011, the Respondent files a Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 6]

On September 7, 2011, Complainant Jones submits Amendment No. 3 to the Complaint. [FAA Exhibit 1, Item 7] This amendment requests eight individuals be joined as co-complainants. [FAA Exhibit 1, Item 7, exh. B]

On September 14, 2011, the Respondent sends a letter to the FAA advising of the Complainant's opposition to the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 8]

On September 19, 2011, Complainant Jones files a rebuttal to the Respondent's Motion for Extension of Time to Respond and submits Amendment No. 4 to the Complaint. [FAA Exhibit 1, Item 9] This amendment requests the Tennessee Tree Toppers be joined as co-complainants. [FAA Exhibit 1, Item 9, exh. A]

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<sup>14</sup> Although Complainant Jones describes his Complaint as a "Class Action Formal Complaint," FAA Exhibit 1, Item 1 did not identify an association meeting the standing requirements contained in 14 CFR, § 16.23(a). This is discussed in FAA's Notice of Docketing. [FAA Exhibit 1, Item 3]

<sup>15</sup> In Section VI of the Director's Preliminary Determination, the Director finds that FAA's decision to join the Alabama Hang Gliding Association as a co-complainant was done in error.

On September 27, 2011, the FAA grants the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 10]

On September 29, 2011, the Respondent files a Motion to Dismiss and preliminary Answer; the Respondent also requests additional time to file a more comprehensive answer. [FAA Exhibit 1, Items 11]

On October 5, 2011, the Respondent advises the FAA's Office of Chief Counsel of a request made under the Freedom of Information Act in support of the Respondent's September 29, 2011 motion for extension of time. [FAA Exhibit 1, Item 12]

On October 9, 2011, Complainant Jones files a Reply and requests the status of the FAA's actions with regard to Amendments No. 3 and No. 4. [FAA Exhibit 1, Item 13]

On October 24, 2011, the Respondent files a Motion for Extension of Time to File Rebuttal. [FAA Exhibit 1, Item 14]

On October 26, 2011, the Respondent sends a letter to the FAA advising of the Complainant's opposition to the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 15]

On October 31, 2011, Complainant Jones answers the Respondent's Motion for Extension of Time to Respond and requests the status of the FAA's actions with regard to Amendments No. 3 and No. 4. [FAA Exhibit 1, Item 16]

On October 31, 2011, the Respondent files a Rebuttal. [FAA Exhibit 1, Item 17] The Rebuttal renews the Respondent's Motion to Dismiss and the Request for Extension of Time contained in the Answer. [FAA Exhibit 1, Item 17] The Rebuttal also opposes Complainant Jones' amendments No. 3 and No. 4. [FAA Exhibit 1, Item 17]

On November 1, 2011, the Respondent sends a letter responding to allegations contained in Complainant Jones' October 31, 2011 letter. [FAA Exhibit 1, Item 18]

On November 3, 2011, the Director issues an Order denying Complainant Jones' Amendments No. 3 and No. 4. [FAA Exhibit 1, Item 19]

On November 9, 2011, Complainant Jones answers the Respondent's Renewal of Motion to Dismiss and Motion for Extension of Time and objects to the Respondent's Delinquent Rebuttal to Complainant Reply. [FAA Exhibit 1, Item 20]

On November 14, 2011, Complainant Jones asks the FAA to reconsider its November 3, 2011 Order. [FAA Exhibit 1, Item 21]

On November 17, 2011, the FAA grants the Respondent's Motion for Extension of Time to Respond. [FAA Exhibit 1, Item 22]

On December 22, 2011, the FAA advises the Respondent that its amended Answer is due on January 20, 2012. [FAA Exhibit 1, Item 23]

On February 21, 2012, the FAA requests additional information from the Respondent and affords the Complainant an opportunity to reply to the Respondent's response. The FAA also extends the due date of the Director's Determination to on or before May 31, 2012. [FAA Exhibit 1, Item 28]

On March 7, 2012, the Respondent provides the additional information requested by the FAA. [FAA Exhibit 1, Item 33]

On March 17, 2012, Complainant Jones replies to the Respondent's submission of additional information requested by the FAA. [FAA Exhibit 1, Item 35]

On May 23, 2012, the FAA extends the due date of the Director's Determination to on or before June 29, 2012. [FAA Exhibit 1, Item 39]

On June 28, 2012, the FAA extends the due date of the Director's Determination to on or before July 25, 2012.

On July 16, 2012, the FAA issues its Preliminary Director's Determination. [FAA Exhibit 1, Item 42]

On August 22, 2012, the Respondent advises the FAA of its intent to comply with the preliminary order contained in the Preliminary Director's Determination. [FAA Exhibit 1, Items 43 and 44]

On October 4, 2012, the Director provides a response to the Respondent's August 22, 2012 letter. [FAA Exhibit 1, Item 45]

The Respondent submits information related to its corrective action efforts on October 15, 2012, January 4, 2013, and February 11, 2013. [FAA Exhibit 1, Items 46, 47, 51, and 53]

On October 12, 2012, the parties meet at the Airport to identify a location suitable for the Complainant's ultralight activities. [FAA Exhibit 1, Item 47, p. 2 and FAA Exhibit 1, Item 48, p. 1]

On November 8, 2012, the Complainant submits a reply to the Preliminary Director's Determination. [FAA Exhibit 1, Item 48]

On December 12, 2012, the Director provides a response to the Respondent's October 15, 2012 submission regarding its corrective action efforts. [FAA Exhibit 1, Item 49]

On December 20, 2012, the Director requests additional information from the parties. [FAA Exhibit 1, Item 50] Both parties respond to this request on January 4, 2013. [FAA Exhibit 1, Item 51 and 52]

On March 28, 2013, the FAA extends the due date of the Director's Determination to on or before June 14, 2013. [FAA Exhibit 1, Item 54]

On May 1, 2013, the Director issues a letter responding to the Respondent's submissions related to its corrective action efforts and concludes the FAA's review of the Respondent's corrective action plan. [FAA Exhibit 1, Item 55]

On June 6, 2013, the FAA extends the due date of the Director's Determination to on or before July 15, 2013. [FAA Exhibit 1, Item 56]

On July 9, 2013, the FAA extends the due date of the Director's Determination to on or before August 30, 2013. [FAA Exhibit 1, Item 57]

On September 3, 2013, the FAA extends the due date of the Director's Determination to on or before September 20, 2013. [FAA Exhibit 1, Item 58]

#### IV. ISSUES

Upon review of the actions taken by the parties in response to the FAA's Preliminary Director's Determination, the allegations contained in the record, and the relevant airport-specific circumstances summarized above and in FAA Exhibit 1, Item 42, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

- Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport violates Grant Assurance 22, *Economic Nondiscrimination*.
- Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport results in a constructive granting of an exclusive right in violation of Grant Assurance 23, *Exclusive Rights*, 49 U.S.C. § 40103(e), and 49 U.S.C. § 47107(a)(4).

#### V. APPLICABLE FEDERAL LAW AND FAA POLICY

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

airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a discussion pertaining to the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, and enforcement of Airport Sponsor Assurances.

### **The Airport Improvement Program**

Title 49 U.S.C., § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act 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.<sup>16</sup> FAA Order 5190.6B, *FAA Airport Compliance Manual* (September 30, 2009), provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with Federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Two FAA grant assurances apply to the remaining circumstances set forth in this Complaint: (1) Grant Assurance 22, *Economic Nondiscrimination*; and (2) Grant Assurance 23, *Exclusive Rights*.

### ***Grant Assurance 22, Economic Nondiscrimination***

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

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<sup>16</sup> *See, e.g.*, the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C., § 40101 *et. seq.* and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C., § 47101 *et. seq.*

for limiting access. Grant Assurance 22 implements the provisions of 49 U.S.C., § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport:

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

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

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

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

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

FAA Order 5190.6B describes the responsibilities under Grant Assurance 22 assumed by the owners or sponsor of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport, and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See generally* 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 activities on reasonable terms and without unjust discrimination. [*See* FAA Order 5190.6B, ¶9.1.a]

### **Grant Assurance 23, *Exclusive Rights***

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, *FAA Airport Compliance Manual*, 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, the 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 (11<sup>th</sup> Cir, 1985)] An owner or sponsor is under no obligation, however, to permit aircraft owners to introduce onto the airport “equipment, personnel, or practices that would be unsafe, unsightly, detrimental to the public welfare, or that would affect the efficient use of airport facilities.” [FAA Order 5190.6B, ¶11.2]

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, ¶8.9.d *Space Limitation*] FAA Order 5190.6B provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [See FAA Order 5190.6B, Chapter 8]

### **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, *FAA Airport Compliance Manual*, sets

forth policies and procedures for the FAA Airport Compliance Program. The Order establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes. Order 5190.6B 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 obligations" 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 Agency Decision) at 5, upheld in *Wilson Air Center, LLC v FAA*, 372 F.3d 807 (6<sup>th</sup> Cir. 2004)]

#### **FAA Enforcement Responsibilities**

The Federal Aviation Act of 1958, as amended (FAAct, Pub. L. 85-726, August 23, 1958), 49 U.S.C., § 40101, et seq., assigns 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.

## **VI. ANALYSIS AND DISCUSSION**

### **Issue (1)**

Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport violates Grant Assurance 22, *Economic Nondiscrimination*.

The Director's Preliminary Determination<sup>17</sup> concluded that conducting ultralight operations on the runway would be problematic, but also concluded that the Complainant could be accommodated somewhere else on the Airport property. [FAA Exhibit 1, Item 42, p. 21] The Director encouraged the parties to work together to identify a location on the Airport, away from the active runways, suitable for ultralight activities. [FAA Exhibit 1, Item 42, p. 21]

Letters from the parties indicate that they met at the Airport to do this on October 12, 2012. [FAA Exhibit 1, Item 47, p. 2 and 48, p. 1] However, these letters offered different accounts of this meeting.

The Respondent's October 15, 2012 letter to the Director states:

*Unfortunately, after a number of peripheral matters related to safety were discussed, an impasse developed in regard to the threshold provision of the Director's order, i.e., that the parties work together to identify a location away from the active runways for the Complainant to conduct his ultralight activities. For its part, the Respondent proposed that the Complainant's launch activities be conducted on a straight taxiway or runway apron which was 3500 feet long. The Respondent believed that this area could be safely used by the Complainant to conduct his launch operations.*

*The Complainant, however, stated that 3500 feet was not a sufficient length for his payout winch vehicle launch system, which was powered by his pick-up truck, to launch hang gliders. The Complainant maintained that towing hang gliders for only 3500 feet would not enable them to reach a satisfactory altitude. For this reason, the Complainant stated, it would be necessary for him to use the 5000-foot-long active runways to launch the hang gliders. However, the Complainant did agree that hang glider landing activities could occur a safe distance from the runways. [FAA Exhibit 1, Item 47, p. 2]*

The Complainant's November 8, 2012 letter to the Director states:

*The FAA's [Preliminary Determination] "strongly encouraged" the parties to work together and I am happy to report in a recent meeting on October 12, 2012 between the Airport Manager and myself, in the presents [sic] of the Respondent's Attorney, much progress was made. The Airport Manager and I came to agreement that virtually all operational and safety issues addressed in the FAA [Preliminary Determination] could be resolved in short order between he and I. The only two issues that remain unresolved are (1) the use of the runways launching our aircraft and (2) the FAA's Safety Assessment's recommendation to add colored streamers or pennants to our tow line. [FAA Exhibit 1, Item 48, pp. 1-2]*

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<sup>17</sup> The parties' arguments related to this issue are discussed in the Preliminary Director's Determination. [See FAA Exhibit 1, Item 42, p. 19]

*With regard to unresolved issue (1) the use of the runways for launching our aircraft; there are numerous and compelling facts and circumstances which support using the runway to launch our aircraft as the safest, most practical, and least disruptive relative to the integration of our flight operations with the other flight operations being conducted at the Courtland Airport (formally the Lawrence County Airport). [FAA Exhibit 1, Item 48, p. 2]*

*Within the 90 day timeframe stipulated in the FAA [Preliminary Determination], we surveyed the airport to “identify a location on the Airport, away from the active runways, suitable for our ultralight activities”. Except for launching our aircraft, we concluded that all phases of our flight operations can be performed on the airport, well clear of the active runways, at a mutually agreeable downwind location on the airport’s apron. The Airport Manager identified and unilaterally designated the north/south taxiway as the only location he would allow us to launch our aircraft. We agree that use of the taxiway to launch our aircraft is technically possible; however and unfortunately, the taxiway (as opposed to the runways) greatly increases risk (decreases safety) for us and all users of the airport and is therefore unacceptable. [FAA Exhibit 1, Item 48, p. 3]*

To confirm the status of the parties negotiating positions, on December 20, 2012, the Director requested additional information from the parties. [FAA Exhibit 1, Item 50] The Director asked the Complainant and the Respondent to answer the following:

- Using the enclosed Airport Layout Plan, identify the location(s) on the Airport, away from the active runways, you have proposed as suitable for ultralight activities.
- Describe the discussions you have had with the other party regarding these locations(s).
- Describe the discussions you have had with the other party with regard to developing written procedures for ultralight operations as recommended in the FAA’s safety assessment.
- Describe the current status of your discussions with the other party and any steps you have taken to facilitate this process.

[FAA Exhibit 1, Item 50, p. 1]

On January 4, 2013, the Respondent provided a response to the Director’s request for additional information. [FAA Exhibit 1, Item 51] The Respondent returned the Airport Layout Plan provided by the Director and indicated that it proposed to accommodate the Complainant’s ultralight activities on an area of pavement east of runway end 17. [FAA Exhibit 1, Item 51, exhibit A] Staging would occur in front of the existing t-hangars. [FAA Exhibit 1, Item 51, exhibit A] This is also depicted in FAA Exhibit 1, Item 51, exhibit B on the following page.

FAA Exhibit 1, Item 51, exhibit B



On January 4, 2013, the Complainant provided a response to the Director's request for additional information. [FAA Exhibit 1, Item 52] The Complainant also returned the Airport Layout Plan provided by the Director and indicated areas suitable for ground operations and landing zones away from the active runways. [FAA Exhibit 1, Item 52, exh. A] In response to the Director's first question, the Complainant states:

*After careful review and analysis of the Airport, there is no suitable area(s) to safely tow our gliders to an acceptable altitude other than using the runways. We have already proven by actual demonstrations and by comprehensive analysis that using the runways to launch our aircraft is the safest and most efficient method that has no impact to safety and/or efficiency at the Airport. Using the taxiway (as dictated by the Respondents) to launch our aircraft increases risk (decreases safety) to unacceptable levels for all users of the airport. For us it (1) unduly restricts and forces our launch activities to be performed in the most high risk area (the taxiway) of any airport (according to the FAA's own Pilot Safety Data), (2) unduly restricts our glider from gaining sufficient launch altitude to be able to work lift, soar, and thereby leave the airport's airspace, (3) unduly restricts by greatly reducing the amount of flight time (a critical factor to gliders) available for our pilots to make safe decisions as to how to enter landing patterns and land, [4] unduly restricts our flight envelope to 'only launch*

*followed by an immediate landing” with no time allotted for our pilots to evaluate and perform an[y] avoidance maneuvers or consider alternate landing approaches or zones’, and [5] forces our pilots to perform cross wind launches (increased risk/decrease safety) rather than use the runways which accommodate all wind directions. Using the taxiway for our launch activities increases the risk/decreases the safety for all other powered aircraft using the airport, by; (1) totally disrupting their normal day to day operations, (2) prevents any aircraft from powering up regardless of their location on the apron, coming out of a hanger [sic], using the taxiway, or from using the runways. [FAA Exhibit 1, Item 52, pp. 1-2]*

The Director is disappointed that the parties were not able to agree on a location, away from the active runways, to accommodate the Complainant’s ultralight activities. While the location proposed by the Respondent would require extensive coordination with the tenants in the t-hangars adjacent to staging area, the Respondent has offered to accommodate the Complainant as directed by FAA in the Preliminary Determination. It appears the Complainant is now insisting it be permitted to launch from the active runways, as it has proposed no other locations.

The Complainant states that “there are numerous and compelling facts and circumstances which support using the runway to launch our aircraft as the safest, most practical, and least disruptive relative to the integration of our flight operations with other flight operations being conducted at the Courtland Airport.” [FAA Exhibit 1, Item 48, p. 2] The Complainant further states that while he agrees that “use of the taxiway to launch our aircraft is technically possible [...] the taxiway (as opposed to the runways) greatly increases risk (decreases safety) for us and all users of the airport and is therefore unacceptable.” [FAA Exhibit 1, Item 48, p. 3] The Complainant cites FAA warnings on the general risks of taxiways and states that he believes the plain language of FAA’s safety assessment “does not prohibit the use of the runways for launching our aircraft.” [FAA Exhibit 1, Item 48, p. 3]

Grant Assurance 22 requires the Respondent to make the Airport available as an airport on reasonable terms. However, it “does not guarantee any particular individual aeronautical user access to the airport on whatever terms that user may desire.” [Pacific Coast Flyers, Inc., Donnya Daubney d/b/a Carlsbad Aircraft Pilot Supply, and Roger Baker v. County of San Diego, California, FAA Docket No. 16-04-08, (July 25, 2005) (Director’s Determination) at 31; *see also* Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica Air Center v. City of Santa Monica, California, FAA Docket No. 16-99-21, (February 4, 2003) (Final Decision and Order) at 19] In this case, the Respondent has not refused to allow ultralight operations at the Airport. The Respondent is proposing to accommodate the Complainant at a location that is different from the Complainant’s preference, but consistent with the type of location the FAA recommends (i.e., away from active runways).

This is especially important given the fact that FAA conducted a safety risk assessment on April 5, 2012. [FAA Exhibit 1, Item 38] The assessment specifically recommends relocating both the launch and landing areas away from the active runways in order to address the two major concerns identified by Flight Standards (i.e., the possible collision hazard for approaching

and departing aircraft caused by the ultralight lingering over the airport while trying to generate enough lift, and the possible collision hazard caused by the tow line). [FAA Exhibit 1, Item 38 and FAA Exhibit 1, Item 42, p. 21] As a result, the Director encouraged the parties to carefully review the safety assessment and identify a location on the Airport, away from the active runways, suitable for ultralight activities.

FAA Order 5190.6B, *FAA Airport Compliance Manual*, explains:

[a]ny restriction proposed by an airport sponsor based upon safety and efficiency, including those proposed under Grant Assurance 22(i), must be adequately justified and supported. Prohibitions and limits are within the sponsor's proprietary power only to the extent that they are consistent with the sponsor's obligations to provide access to the airport on reasonable and not unjustly discriminatory terms and other applicable federal law. The Associate Administrator for Airports, working in conjunction with Flight Standards and/or the Air Traffic Organization, will carefully analyze supporting data and documentation and make the final call on whether a particular activity can be conducted safely and efficiently at an airport. In all cases, the FAA is the final arbiter regarding aviation safety and will make the determination regarding the reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport. [Emphasis added]

[FAA Order 5190.6B, ¶14.3] (Emphasis added)

In this case, the Respondent has appropriately deferred to the judgment of FAA in formulating its decision to limit ultralight activities to locations away from the active runways.<sup>18</sup> The Respondent's current posture meets the standard of compliance.<sup>19</sup>

Typically, the Director cautions a party against substituting its judgment for the expertise of FAA, as FAA safety determinations take precedence over the views of a party with regard to safety. [*See Jeff Bodin and Garlic City Skydiving v County of Santa Clara, California*, FAA Docket No. 16-11-06, (December 19, 2011) (Director's Determination) at 29; *See also Drake Aerial Enterprises, LLC d/b/a Air America Aerial Ads and James Miller v. City of Cleveland*, 16-09-02 at 14; *In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California*, FAA Docket No. 16-02-08, (July 8, 2009) (Final Agency Decision) at 9 *aff'd* *City of Santa Monica v. F.A.A.*, 631 F.3d 550 (DC Cir) (2011); *Skydive Paris Inc. v Henry*

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<sup>18</sup> The Preliminary Director's Determination discusses the issue of Federal preemption in the field of aviation safety on p. 20. [*See* FAA Exhibit 1, Item 42, p. 20]

<sup>19</sup> FAA Order 5190.6B, *FAA Airport Compliance Manual*, defines the standard of compliance in ¶2.8.b:

A sponsor meets its 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 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. [FAA Order 5190.6B, ¶2.8.b]

County, Tennessee, FAA Docket No. 16-05-06, (January 20, 2006) (Director's Determination) at 15; and Florida Aerial Advertising v St. Petersburg-Clearwater International Airport, FAA Docket No. 16-03-01, (December 18, 2003) (Director's Determination) at 11] The Respondent has taken steps to work with the Complainant to make the Airport available based on FAA's safety risk assessment. Furthermore, nothing in this Determination precludes the parties from continuing to work together to identify other locations, away from the active runways, which might better accommodate the Complainant and his specific needs, and then address the other operational issues associated with integrating ultralight operations at the Airport.<sup>20</sup> However, as previously discussed, FAA considers the actions taken by the airport sponsor to cure any alleged or potential past violation of its grant assurances 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 Agency Decision) at 5, upheld in Wilson Air Center, LLC v FAA, 372 F.3d 807 (6<sup>th</sup> Cir. 2004)] Thus, the Director finds the Respondent is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*.

## Issue (2)

Whether the Respondent's refusal to allow ultralight operations at the Courtland Airport results in a constructive granting of an exclusive right in violation of Grant Assurance 23, *Exclusive Rights*, 49 U.S.C. § 40103(e), and 49 U.S.C. § 47107(a)(4).

The Complaint states:

*The LCC's denial of access and use by our ultralight flight operations while allowing other aeronautical activities full access and use of the LCA constitutes a granting of an exclusive right of airport use in violation of the prohibition against exclusive rights under Grant Assurance No. 23 Exclusive Rights, and 49 USC 3 [sic] 40103(e), and 49 USC 5 [sic] 40103(e). [FAA Exhibit 1, Item 1, exh. C]*

In its Answer to the Complaint, the Respondent admitted its opposition to ultralight activities based on safety and practical reasons. [FAA Exhibit 1, Item 11, p. 3 and FAA Exhibit 1, Item 11, exhibit B, p. 1] However, since the FAA issued its Preliminary Decision, the Respondent has taken steps accommodate the Complainant in accordance with the FAA's safety risk assessment.

The Complainant agrees "that use of the taxiway to launch our aircraft is technically possible" but places a caveat on this statement based on his own views regarding safety. [FAA Exhibit 1, Item 48 p. 3] The Complainant agrees to be a "secondary user" of the airport's runways for

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<sup>20</sup> The Director reminds the parties that Mr. Eric Stout, an Aviation Safety Inspector in FAA's Southern Region Flight Standards Service and the Jackson Airports District Office are available to assist the parties with these efforts. These resources were identified to the Respondent in FAA's October 4, 2012 letter. [See FAA Exhibit 1, Item 45, p. 2] Issues such as whether or not colored streamers or pennants should be attached to the tow line, as discussed by the parties in FAA Exhibit 1, Item 48, p. 2; Item 51, p. 2; and Item 52, exhibit B, p. 2, should be brought to the attention of Mr. Stout. This specific concern was not raised by the Director in the Preliminary Order and Instructions, and the Director declines to discuss it in this Determination.

launching its ultralight operations and states that a restriction which denies access to the runways when no other aircraft is present “constitutes and establishes an exclusive right and an unreasonable restriction on our flight operations that is clearly inconsistent with FAA AIP Guidelines and Policy, past FAA Director Determinations, the Respondent’s Grant Assurances, applicable Federal Statues, and FAA approve[d] practices at many other airports all across the United States.” [FAA Exhibit 1, Item 48 pp. 3-4] The Complainant offers no reference to Federal law, FAA policy, or past precedent to support this statement.

FAA Order 5190.6B, *FAA Airport Compliance Manual*, explains that an exclusive right is “a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right.” [FAA Order 5190.6B, ¶8.2] As noted above, 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 (11<sup>th</sup> Cir, 1985)] FAA policy also states, however, that airport sponsors are permitted to make exceptions to this requirement based on safety and efficiency. Any denial based on safety must be based on reasonable evidence demonstrating that airport safety will be compromised if the applicant or individual is allowed to engage in the proposed aeronautical activity. [FAA Order 5190.6B, ¶ 8.8a] In this case there is reasonable evidence – FAA’s own safety study.

The facts in this case simply do not rise to the level of an exclusive rights violation. The FAA’s safety study found that the Complainant’s operation could not be safely conducted on the active runways. [FAA Exhibit 1, Item 38 and FAA Exhibit 1, Item 42, p. 21] Based upon FAA’s safety study, the Respondent is justified in refusing to permit the Complainant’s operations to take place on the active runways. The Complainant is not being unreasonably debarred or excluded from using a part of the Airport. Though the Complainant has been denied the ability to conduct his ultralight operations on the active runways at the Airport, the County has expressed its willingness to work with the Complainant to identify another suitable location for him to conduct his operation. [*See* FAA Exhibit 1, Item 47, p. 2] The County has in fact proposed an alternate on-airport location for the Complainant’s activities, but as discussed above, the Complainant does not find this location suitable. Requiring an aeronautical activity to be conducted in a manner that is consistent with an FAA safety determination does not place a “significant burden” on the individual seeking to conduct the activity, and therefore does not create an exclusive right to any competing aeronautical activity, either directly or indirectly.

As discussed above, an owner or sponsor is under no obligation to permit aircraft owners to introduce onto the airport “equipment, personnel, or practices that would be unsafe, unsightly, detrimental to the public welfare, or that would affect the efficient use of airport facilities.” [FAA Order 5190.6B, ¶11.2] Here, FAA has determined that conducting ultralight operations on the active runways would be problematic. The FAA is the final arbiter with regard to restrictions based on safety and/or efficiency.<sup>21</sup> [FAA Order 5190.6B, ¶8.8.a] The Respondent is therefore

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<sup>21</sup> The Preliminary Director’s Determination discusses how FAA safety determinations pursuant to the Federal Aviation Regulations take precedence over any airport sponsor views or local ordinances pertaining to safety. [*See* FAA Exhibit 1, Item 42, pp. 22 – 23]

under no obligation under Assurance 23 or 49 U.S.C., §§ 40103(e) or 47107(a)(4) to permit the Complainant to operate ultralight activities if FAA has determined that it would be unsafe. Such a result is not a violation of Assurance 23 or statute.

The Respondent proposed to permit the Complainant to operate from the taxiway. This proposal is consistent with the guidance offered by the Director in the Preliminary Determination. The Complainant does not explain how this proposal is unreasonable; the Complainant instead argues that it “greatly increases risk (decreases safety) for us and all users of the airport and is therefore unacceptable.” [FAA Item 1, Exhibit 48, p. 3] The Complainant simply substitutes its judgment for the expertise of FAA, and the Director finds that unacceptable. The FAA appreciates the Complainant’s concerns about safety; however, if the Complainant finds the restrictions unacceptable, it would be appropriate for the Complainant to consider other locations for its recreational activity. The FAA believes some restrictions on ultralight operations, including the requirement that these operations take place away from the active runways, are necessary for safe operations at the Airport. Additionally, the Complainant does not explain how this constitutes a significant burden that is not placed on other competitors. In light of the Respondent’s current compliant posture, the Director dismisses this allegation.

## VII. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions of the parties, including the County’s corrective actions, the entire record herein, the applicable law and policy, and for the reasons stated above, the Director, Airport Compliance and Management Analysis, finds and concludes as follows:

- The Respondent has not refused to allow ultralight operations at the Courtland Airport in violation of Grant Assurance 22, *Economic Nondiscrimination*.
- Restricting ultralight operations at the Courtland Airport to certain areas of the Airport does not result in a constructive granting of an exclusive right in violation of Grant Assurance 23, *Exclusive Rights*, 49 U.S.C., §§ 40103(e) or 47107(a)(4) because FAA supports this restriction for safety reasons.
- Corrective actions taken by the Respondent to amend its agreement with the U.S. Army address the concerns raised in the Director’s Preliminary Determination with regard to Grant Assurance 5, *Preserving Rights and Powers*.

In addition, the Director adopts as final the following preliminary findings:

- The Alabama Hang Gliding Association lacks standing as a party to the Complaint.
- The Respondent has no current obligations under the Surplus Property Act; therefore, any alleged violations under this Act would not be applicable.

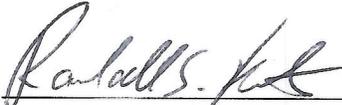
**ORDER**

**ACCORDINGLY**, it is ordered that:

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

**RIGHT OF APPEAL**

This Director's Determination is an initial agency determination and does not constitute final agency action and order subject to judicial review. [14 CFR, § 16.247(b)(2)] A party to this Complaint adversely affected by the Director's Determination may appeal the initial determination to 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, Office of Airport Compliance  
and Management Analysis

**SEP 19 2013**

\_\_\_\_\_  
Date