

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC



**Jim De Vries, et al.,**

**COMPLAINANTS**

**v.**

**City of St. Clair, Missouri,**

**RESPONDENT**

**Docket No. 16-12-07**

**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) based on a complaint filed under Title 14 of the Code of Federal Regulations (CFR) Part 16<sup>1</sup> against the City of St. Clair Missouri (City or Respondent) regarding its management of the St. Clair Regional Airport (Airport), a federally obligated airport owned and operated by the City.

Jim De Vries and eight additional named parties (collectively "Complainant" or "Complainants") filed a complaint alleging the City violated its Federal obligations imposed by Title 49 United States Code (U.S.C.) § 40103(e) and 47107(a)(1) and FAA Grant Assurance 5, *Preserving Rights and Powers*, Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 24, *Fee and Rental Structure*, Grant Assurance 38, *Hangar Construction*. The Complainants contend the City declined to negotiate in good faith for aircraft hangar leases on the airport.

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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. These enforcement procedures were updated on September 12, 2013, effective November 12, 2013 (*See* 78 FR 56135), however, as this complaint was filed before the publication of the updated Part 16 rules, it will be adjudicated under the previously published rules.

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 Director finds the City is currently in compliance with its grant assurances. The Director’s decision in this matter is based on applicable Federal law and FAA policy, as well as the Director’s review of the pleadings and supporting documentation submitted by the parties, which comprises the administrative record contained in the attached FAA Item 1.

## II. PARTIES

### Airport

The St. Clair Regional Airport (FAA Identifier K39) is a public-use, non-towered general aviation airport owned and operated by the City of St. Clair, Missouri, the airport sponsor (“City” or “sponsor”). The 83-acre airport is located two miles north of the City, adjacent to Interstate 44. The Airport has 2,780 annual operations and nine based aircraft, comprised of six single-engine aircraft, two ultralight aircraft, and one helicopter.<sup>2</sup> Since 1963, the City has accepted four grants totaling \$1,046,969 for various improvements at the airport. The City received its last federal grant in 2006 to rehabilitate Runway 2-20, drainage improvements, obstruction removal and lighting upgrade. In addition, in 1988, the City received \$450,000 to purchase land and other airport improvements. Based on the grant issued for land acquisition in 1988, the Sponsor is obligated to operate the Airport until released by the FAA.<sup>3</sup>

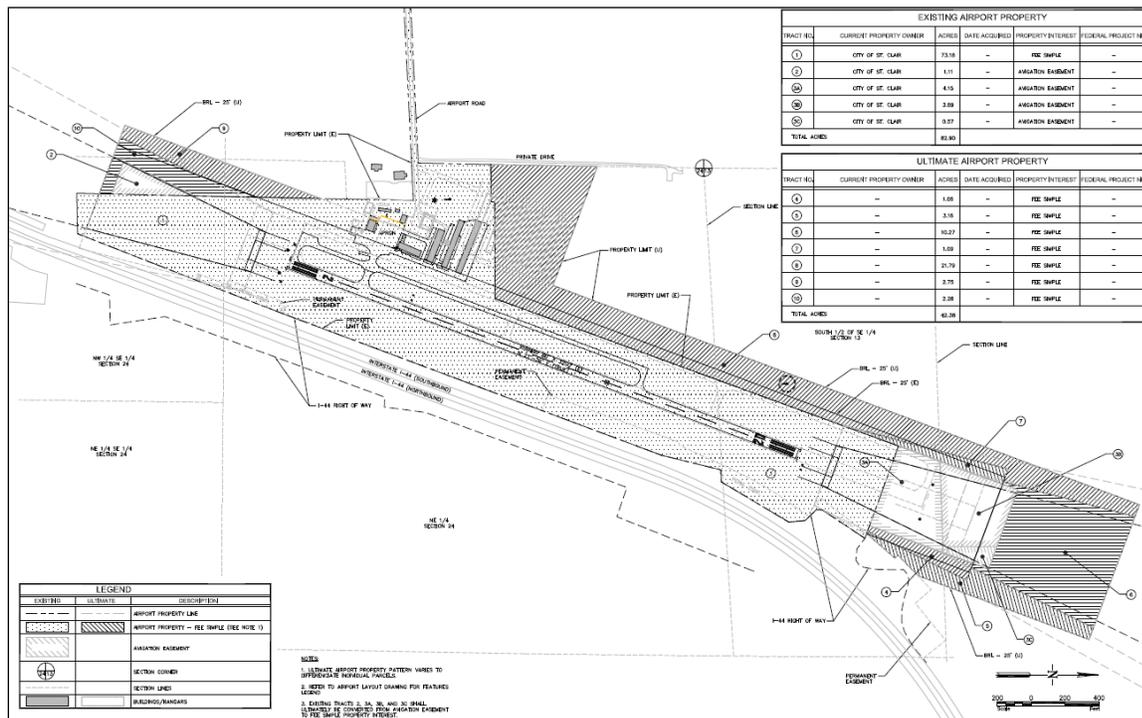


Figure 1 St. Clair Exhibit A Property Map

<sup>2</sup> Exhibit 16, Item 1

<sup>3</sup> Exhibit 17, Item 1

## **Complainants**

The following Complainants are tenants of the Airport who have paid rental fees to the City for hangars. The Complainants are aircraft owners or operators who were leasing hangars on the Airport in 2012 and attempted to negotiate with the City regarding hangar leases for calendar year 2013.<sup>4</sup>

Jim De Vries  
Pacific, MO

Tim Dempsey  
Pacific, MO

Dave Hardin  
Crestwood, MO

Grady Bowers  
Crestwood, MO

Chris Kempin  
Pacific, MO

Gilbert Hoffman  
St. Clair, MO

Grenville Sutcliffe  
Pacific, MO

George Brock  
Union, MO

In addition, the following party states that they were prospective tenants and that they attempted to rent a hangar at the Airport but were denied by the City.

Rosemary Ficken and Jerome Ficken  
Cedar Hill, MO

## **III. BACKGROUND AND PROCEDURAL HISTORY**

### **Background**

On March 5, 2012, Complainant Rosemary Ficken called the City Administrator to inquire about renting a hangar at the airport. According to the complaint, the City Administrator said

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<sup>4</sup> Exhibit 1, Item 1, Page 2

that the City was not renting hangars because the airport would be closing.<sup>5</sup> The City gave no indication for the timing of the airport closure. In its response to the complaint the City states that it never received a written application from Ms. Ficken for rental of a hangar. The City further notes that three hangar spaces remained available to rent at the time of the City's submission.<sup>6</sup>

On March 19, 2012, the Complainants, who were renting hangars at the Airport, sent a letter to the City requesting the opening of negotiations for their 2013 hangar leases. In the letter, the Complainants indicated that they would "[...] like to start now so that there is time to discuss the issues—unlike the 2012 leases [...]."<sup>7</sup>

The Complainants stated in their letter that if the 2013 hangar negotiations were not successful, they would like to open negotiations to construct their own hangars.<sup>8</sup>

The letter concluded with a statement that if the City failed to respond to their request to commence lease negotiations, the Complainants would consider the action by the City to be a refusal to negotiate a new lease for 2013.<sup>9</sup> The Complainants further stated that a refusal by the City "would be a step toward filing a part 16 formal complaint."<sup>10</sup>

Neither the Complainants nor the Respondent indicates that a response from the City was proffered in response to the March 19<sup>th</sup> letter.

On May 29<sup>th</sup>, 2012, the Complainants filed a formal complaint under 14 CFR Part 16.<sup>11</sup> Complainants allege Respondent is in violation of its grant obligations by failing to negotiate in good faith for 2013 hangar leases. Complainants further allege the Respondent:

- Has taken actions to deprive itself of the rights and powers necessary to meet its federal grant obligations by limiting certain types and classes of aeronautical activities, in violation of Grant Assurance 5, Preserving Rights and Powers.<sup>12</sup>
- Restricted the storage of aircraft in an unjustly discriminatory manner, in violation of Grant Assurance 22, Economic Nondiscrimination, and Grant Assurance 24, Fee and Rental Structure, by failing to negotiate a 2013 hangar lease at the time of the complaint.<sup>13</sup>
- Created an exclusive right for Air Evac, Inc. (Air Evac) at the airport by renewing the Air Evac Lease but not renewing the Complainants' hangar leases, in violation of Grant Assurance 23, Exclusive Rights.<sup>14</sup>

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<sup>5</sup> Exhibit 1, Item 1, Page 4

<sup>6</sup> Exhibit 3, Item 3, Page 5, No. 15

<sup>7</sup> Exhibit 1, Item 1, exhibit A

<sup>8</sup> Exhibit 1, Item 1, exhibit A

<sup>9</sup> Exhibit 1, Item 1, exhibit A

<sup>10</sup> Exhibit 1, Item 1, exhibit A

<sup>11</sup> Exhibit 1, Item 1

<sup>12</sup> Exhibit 1, Item 1 Page 4, No. 9

<sup>13</sup> Exhibit 1, Item 1 Page 3, No. 5 and Page 4, No. 10

<sup>14</sup> Exhibit 1, Item 1 Page 3, No. 6

- Created an exclusive right by taking actions that are discouraging potential tenants from leasing hangars at the airport, in violation of Grant Assurance 23, Exclusive Rights.<sup>15</sup>
- Refused to negotiate a ground lease in order to allow the Complainants to construct new hangars at the airport, in violation of Grant Assurance 38, *Hangar Construction*.<sup>16</sup>

In the complaint, the Complainants attest that substantial and reasonable good faith efforts were made to resolve the matter informally, but no resolution was foreseen. The Complainants ask that the FAA Administrator conduct an investigation and order the Respondent to cease and desist from imposing the prohibitions and restrictions previously alleged.<sup>17</sup>

In the July 13<sup>th</sup>, 2012, Answer to the complaint, the Respondent states in its Affirmative Defenses that the City intends to negotiate hangar leases with the Complainants if the airport remains open through the end of 2012.<sup>18</sup> In Respondent's Motion to Dismiss, the Respondent asks the FAA to dismiss the complaint because the Complainants have failed to attempt to resolve the matter through alternate dispute resolution, and because lease negotiations were premature because the Complainants attempted to negotiate the 2013 Lease with nine months remaining in the 2012 Lease.<sup>19</sup>

On November 5, 2012, in a regular City Council meeting, the members voted to increase hangar rents for 2013 to \$300 per month.<sup>20</sup>

On January 7, 2013, in a regular City Council meeting, the members voted to return the 2013 hangar rent rates to the 2012 rate of \$175 per month.<sup>21</sup>

### **City's Desire to Close the Airport**

Since at least 2008, the City has expressed an interest in closing St. Clair Regional Airport. In a July 7, 2008, letter to Missouri Department of Transportation (MoDOT) officials, the City expressed an interest in evaluating the feasibility of closing the Airport, citing lack of use and self-sustainability.<sup>22</sup> On August 30, 2012, following several communications between the Respondent, MoDOT, and the FAA, the Respondent submitted a formal request to close the airport.<sup>23</sup> On March 18, 2014, the City submitted a request to the FAA to remove

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<sup>15</sup> Exhibit 1, Item 1 Page 4, No. 7 and No. 11

<sup>16</sup> Exhibit 1, Item 1 Page 4, No. 8

<sup>17</sup> Exhibit 1, Item 1, Page 5

<sup>18</sup> Exhibit 3, Item 3, Page 4, No.10

<sup>19</sup> Exhibit 3, Item 2, Section A

<sup>20</sup> Exhibit 18, Item 1, Page 4

<sup>21</sup> Exhibit 18, Item 2, Pages 3-4

<sup>22</sup> Exhibit 14, Item 1

<sup>23</sup> Exhibit 15, Item 1

the airport from the National Plan of Integrated Airport Systems (NPIAS), based on its intent for closure.<sup>24</sup>

### **Ongoing Compliance Issues**

Concurrent to the investigation of this formal 14 CFR Part 16 complaint, the FAA, in conjunction with MoDOT, has investigated several outstanding compliance issues pertaining to an array of alleged grant assurance violations precipitated through a separate U.S. Department of Transportation Office of Inspector General (OIG) Hotline Complaint and an informal complaint under 14 CFR Part 13.1. Due to the ongoing nature of these investigations by MoDOT and the FAA Airports Central Regional Office, and because the Director considers such issues outside the scope of 14 CFR Part 16, the issues raised in those complaint processes will not be discussed in this formal complaint.

### **Procedural History**

On May 29<sup>th</sup>, 2012, FAA received the formal complaint filed under 14 CFR Part 16.

On June 18<sup>th</sup>, 2012, FAA docketed Jim De Vries, et al. v. City of St. Clair, Missouri, FAA Docket No. 16-12-07.<sup>25</sup>

On July 13<sup>th</sup>, 2012, FAA received Respondent's Entry of Appearance,<sup>26</sup> Motion to Dismiss,<sup>27</sup> and Answer and Affirmative Defenses to the Complaint.<sup>28</sup>

On July 12, 2012, Complainants emailed a Response to Respondent's Motion to Dismiss and a response to the Respondent's answer to the Complaint. Due to an incorrect email address, the FAA did not receive these documents until the Complainants resent them via email on January 25, 2013.<sup>29</sup>

On November 7, 2012, FAA issued a Request for Additional information and Notice of Extension of Time for issuance of Director's Determination to February 5, 2013.<sup>30</sup>

On November 15, 2012, MoDOT received a 14 CFR Part 13.1 informal complaint from Complainants alleging the Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, by proposing increased 2013 hangar rental rates. This informal 14 CFR Part 13.1 Complaint is still under review by MoDOT at the time of the issuance of this Director's Determination, and is therefore not included as part of this administrative record and will not be discussed in this document, as mentioned above.

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<sup>24</sup> Exhibit 19, Item 1

<sup>25</sup> Exhibit 2, Item 1

<sup>26</sup> Exhibit 3, Item 1

<sup>27</sup> Exhibit 3, Item 2

<sup>28</sup> Exhibit 3, Item 3

<sup>29</sup> Exhibit 4, Items 1 and 2

<sup>30</sup> Exhibit 5, Item 1

On November 21, 2012, FAA received Respondent's Reply to the FAA's request for additional information.<sup>31</sup>

Complainants state that a response to the FAA's request for additional information was emailed to the FAA in November 2012. Due to an incorrect email address, the FAA did not receive this document until the Complainants resent it via email on January 25, 2013.<sup>32</sup>

On November 29, 2012, FAA received Respondent's Reply to Complainants' Reply to the FAA's request for additional information.<sup>33</sup>

On November 30, 2012, Complainants submitted a Reply to Respondent City's Submission of Additional Information, and two additional submissions containing additional information. Due to an incorrect email address, the FAA did not receive this document until the Complainants resent it via email on January 25, 2013.<sup>34</sup>

On February 6, 2013, FAA issued a Notice of Extension of Time for issuance of Director's Determination to May 13, 2013.<sup>35</sup>

On February 13, 2013, the Complainants submitted an email to the Part 16 Docket regarding the status of the tenant's hangar negotiations for calendar year 2013.<sup>36</sup>

On May 13, 2013, FAA issued a Notice of Extension of Time for issuance of Director's Determination to July 15, 2013.<sup>37</sup>

On July 22, 2013, FAA issued a Notice of Extension of Time for issuance of Director's Determination to September 16, 2013.<sup>38</sup>

On September 30, 2013, Respondents submitted a letter inquiring as to the status of the Director's Determination after the September 16, 2013, extension of time.<sup>39</sup>

On October 8, 2013, FAA issued a Notice of Extension of Time for issuance of Director's Determination to December 16, 2013.<sup>40</sup>

On December 17, 2013, FAA issued a Notice of Extension of Time for issuance of Director's Determination to January 30, 2014.<sup>41</sup>

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<sup>31</sup> Exhibit 6, Item 1

<sup>32</sup> Exhibit 7, Item 1

<sup>33</sup> Exhibit 8, Item 1

<sup>34</sup> Exhibit 9, Items 1, 2, and 3

<sup>35</sup> Exhibit 5, Item 2

<sup>36</sup> Exhibit 10, Item 1

<sup>37</sup> Exhibit 5, Item 3

<sup>38</sup> Exhibit 5, Item 4

<sup>39</sup> Exhibit 11, Item 1

<sup>40</sup> Exhibit 5, Item 5

<sup>41</sup> Exhibit 5, Item 6

On February 4, 2014, FAA issued a Notice of Extension of Time for issuance of Director's Determination to March 3, 2014.<sup>42</sup>

On March 4, 2014, FAA issued a Notice of Extension of Time for issuance of Director's Determination to April 3, 2014.<sup>43</sup>

On March 24, 2014, the Complainants submitted a motion requesting a 120-day extension of time to amend the original complaint.<sup>44</sup>

On March 26, 2014, the Complainants submitted further information related to the March 24, 2014 motion requesting a 120-day extension. This information did not appear to have been served on the Respondent when it was submitted to the FAA.<sup>45</sup>

On March 27, 2014, the Respondent submitted an Objection to Complainants' Request for 120 Day Extension of Time.<sup>46</sup>

On April 14, 2014, the FAA issued a Notice of Complainants' Additional Information and Time to Respond, providing the Complainants' March 26, 2014 submission to the Respondent and allowing the Respondent 10 days from receipt of the submission to respond. This Notice also suspended issuance of the Director's Determination in this matter until the Complainants' motion was adjudicated.<sup>47</sup>

On April 18, 2014, the Complainants submitted a document to the Part 16 docket clarifying that Complainants' March 26, 2014 submission was intended to support Complainants' March 24, 2014 request for an extension of time to amend the complaint, and was not intended to serve as Complainants' final amendment to the complaint.<sup>48</sup>

On April 29, 2014, the Respondent submitted a Continuing Objection to Complainants Request for 120 Day Extension to File a Revised Complaint Regarding the St. Clair Regional Airport.<sup>49</sup> This Objection states that Respondent requests Complainants' request for an extension be denied and that Respondent believes Complainants' request is "nothing more than a dilatory tactic designed to impede the implementation of justice."<sup>50</sup>

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<sup>42</sup> Exhibit 5, Item 7

<sup>43</sup> Exhibit 5, Item 8

<sup>44</sup> Exhibit 12, Item 1

<sup>45</sup> Exhibit 12, Item 2

<sup>46</sup> Exhibit 13, Item 1

<sup>47</sup> Exhibit 5, Item 9

<sup>48</sup> Exhibit 12, Item 3

<sup>49</sup> Exhibit 13, Item 1

<sup>50</sup> Exhibit 13, Item 2, Page 3

#### IV. ISSUES

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

- Issue #1: Whether the Respondent is in violation of Grant Assurance 5, *Preserving Rights and Powers*, by taking actions that deprive it of any of the rights and powers necessary to abide by its federal obligations.
- Issue #2: Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by not responding to the Complainants' request to negotiate a 2013 hangar lease at the time of the complaint.
- Issue #3: Whether the Respondent has unjustly discriminated against a similarly-situated tenant by allowing Air Evac EMS, Inc., a helicopter air ambulance operator, to renew a lease while denying negotiations with existing fixed-wing hangar tenants, in violation of Grant Assurance 22, *Economic Nondiscrimination*.
- Issue #4: Whether the Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, by not agreeing to a long-term lease to allow the Complainants to construct a hangar on the airport.
- Issue #5: Whether the Respondent has created an exclusive right by allowing Air Evac EMS, Inc., a helicopter air ambulance operator, to renew a lease while denying negotiations with existing fixed-wing hangar tenants, in violation of Grant Assurance 23, *Exclusive Rights*, 49 U.S.C. § 40103(e) and 49 U.S.C. § 47107(a)(4).
- Issue #6: Whether the Respondent has created an exclusive right by denying an aircraft owner the opportunity to lease a hangar, in violation of Grant Assurance 23, *Exclusive Rights*, 49 U.S.C. § 40103(e) and 49 U.S.C. § 47107(a)(4).
- Issue #7: Whether the Respondent is in violation of Grant Assurance 24, *Fee and Rental Structure*, by not responding to the Complainants' request to negotiate a 2013 hangar lease at the time of the complaint, preventing the airport from being as self-sustaining as possible.
- Issue #8: Whether the Respondent violated Grant Assurance 38, *Hangar Construction*, by not agreeing to allow the Complainants to construct private hangars at the airport.

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

The following is a discussion pertaining to (a) the FAA's enforcement responsibilities; (b) the FAA compliance program; (c) statutes, sponsor assurances, and relevant policies; and (d) the complaint process.

## **FAA Enforcement Responsibilities**

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

### **A. FAA Airport Compliance Program**

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

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their federal obligations and the public's interest in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of valuable rights, which airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of federal property, to ensure that airport sponsors serve the public interest.

FAA Order 5190.6B, *FAA Airport Compliance Manual*, September 30, 2009, (hereinafter Order 5190.6B) sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA compliance program is designed to achieve voluntary compliance with the federal obligations accepted by owners and/or operators of public-use airports and 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.”<sup>51</sup>

## **B. Statutes, Sponsor Assurances, and Relevant Policies**

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), codified at Title 49 U.S.C. § 47101, et seq., the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 U.S.C. § 47101, et seq., sets forth assurances to which an airport sponsor receiving federal financial assistance must agree as a condition precedent to receipt of such assistance. These sponsorship requirements are included in every airport improvement program (AIP) grant agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the federal government.

The following grant assurances apply to the specific circumstances of this complaint:

## **C. 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

- a. [The airport owner or sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in 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.
- b. [The airport owner or sponsor] will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible

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<sup>51</sup> See, e.g., Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (August 30, 2001) (Final Decision and Order), Page 5 (Wilson Air FAD).

under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

#### **D. Assurance 22, Economic Nondiscrimination**

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

[The airport owner or sponsor] 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.<sup>52</sup>

[The owner or sponsor] may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.<sup>53</sup>

[The airport sponsor] may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.”<sup>54</sup>

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

Order 5190.6B describes the sponsor's 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.<sup>55</sup>

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<sup>52</sup> Assurance 22(a).

<sup>53</sup> Assurance 22(h).

<sup>54</sup> Assurance 22(i).

<sup>55</sup> See Order 5190.6B, Chapter 9.1.

## **E. 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 states, 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 Order 5190.6B, the FAA discusses its exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, FAA has taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another.<sup>56</sup> 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.<sup>57</sup>

Leasing all available airport land and improvements planned for aeronautical activities to one enterprise will be construed as evidence of an 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.<sup>58</sup>

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.<sup>59</sup>

## **F. Assurance 24, Fee and Rental Structure**

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<sup>56</sup> See, e.g., *City of Pompano Beach v FAA*, 774 F2d 1529, 1544 (11<sup>th</sup> Cir, 1985).

<sup>57</sup> Order 5190.6B Section 11.2

<sup>58</sup> Order 5190.6B Section 8.9.d *Space Limitation*

<sup>59</sup> See Order 5190.6B Chapter 8, Exclusive Rights, generally.

Grant Assurance 24, *Fee and Rental Structure*, (Assurance 24) addresses fees the owner or sponsor levies on airport users in exchange for the services the airport provides.

49 U.S.C. § 47107(a)(13) requires, in pertinent part, that the owner or sponsor of a federally obligated airport “will maintain a fee and rental structure for the facilities and services being provided to airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport.” In addition, under 49 U.S.C. § 47107(a), fees levied on aeronautical activities must be reasonable and not unjustly discriminatory.

Assurance 24 satisfies the requirements of 49 U.S.C. § 47107(a)(13). It states:

[The airport owner or sponsor] will maintain a fee and rental structure for the facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act, or the Airport and Airway Development of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

The owner or sponsor’s obligation to make an airport available for public use does not preclude the owner or sponsor from recovering the cost of providing the facility. The owner or sponsor is expected to recover its costs through the establishment of fair and reasonable fees, rentals, or other user charges that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.<sup>60</sup>

### **G. Assurance 38, Hangar Construction**

Grant Assurance 38, *Hangar Construction*, implements 49 U.S.C. § 47107(a)(21), and requires airport sponsors to allow long-term hangar leases for aircraft owners who have constructed hangars at their own expense.

Grant Assurance 38 states:

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner’s expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

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<sup>60</sup> See Order 5190.6B, Chapter 17, Self-sustainability

## The Complaint Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant “shall provide a concise but complete statement of the facts relied upon to substantiate each allegation.”<sup>61</sup> The complaint shall also “describe how the complainant was directly and substantially affected by the things done or omitted by the respondents.”<sup>62</sup>

If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. “Each party shall file documents it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.”<sup>63</sup>

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act (APA) and federal case law. The APA provision states, “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”<sup>64</sup> Title 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires that the complainant must submit all documents then available to support his or her complaint. Similarly, 14 CFR § 16.29 states that “[e]ach party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.”

## VI. RESPONSE TO COMPLAINANTS’ REQUEST FOR 120 –DAY EXTENSION OF TIME TO FILE AMENDED COMPLAINT

On March 24, 2014, the FAA received from the Complainants a request for a 120-day extension of time to amend their complaint.<sup>65</sup> This request stated that “events have transpired during the original filing period, to date, that have bearing on this case, [and] the complainants would like additional time to document these events, and provide new evidence that is relevant to this case.”<sup>66</sup> This extension request did not contain a proposed amendment to the complaint or further information about the events mentioned.

On March 26, 2014, employees of the FAA’s office of Airport Compliance and Management Analysis spoke to Complainant Jim DeVries by telephone and requested that the Complainants submit further information supporting their request for an extension of time.

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<sup>61</sup> 14 CFR Part 16.23(b)(3)

<sup>62</sup> 14 CFR Part 16.23(b)(4)

<sup>63</sup> 14 CFR Part 16.29(b)(1).

<sup>64</sup> 5 U.S.C. § 556(d). *See also*, Director, Office of Worker’s Compensation Programs, Department of Labor v. Greenwich Collieries, 512 US 267, 272 (1994); Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155 (DC Cir, 1998).

<sup>65</sup> Exhibit 12, Item 1

<sup>66</sup> Exhibit 12, Item 1

On March 26, 2014, the FAA received a submission of additional information from the Complainants in support of their request for a 120-day extension of time.<sup>67</sup> This submission of additional information did not appear to have been served by the Complainants on the Respondent in accord with Part 16 requirements when it was submitted to the FAA.

This information states that the Missouri Department of Transportation (MoDOT) has failed to provide the Complainants with information it has requested related to an outstanding informal complaint filed by the Complainants under 14 CFR Part 13.1 on November 20, 2012, which is being adjudicated by MoDOT.<sup>68</sup> This informal complaint relates to rental rates charged by the City of St. Clair for hangars leased at the St. Clair Regional Airport, and does not address any of the allegations made here in this Part 16 complaint.

In the additional information submitted by the Complainants, Complainants state their view that the City of St. Clair is in violation of Grant Assurances 22, *Economic Nondiscrimination*, 24, *Fee and Rental Structure*, and 38, *Hangar Construction*.<sup>69</sup> The submission further states that the Complainants believe that “the city failed to negotiate in good faith” with regard to 2013 hangar leases at the St. Clair Regional Airport, and discusses the per-square-foot rates of the tenants’ leases as compared to the per-square-foot rates for existing maintenance hangar rentals.<sup>70</sup> Complainants state that “the T-hangar tenants were forced to sign a lease that was discriminatory or face eviction,”<sup>71</sup> and that they believe the T-hangar rental rates, which they state have been increasing since 2007, are above fair market value and are not fair and reasonable.<sup>72</sup> The Complainants state that they believe the increase in rental rates is intended to “entice the tenants to move to other airports, to support its [the City’s] closure documentation.”<sup>73</sup> In their submission the Complainants also reiterate an allegation made in the original complaint that the Respondent’s refusal to allow the tenants to build private hangars on the airport is in violation of Grant Assurance 38, *Hangar Construction*.<sup>74</sup>

On March 27, 2014, the Respondent submitted an Objection to Complainants’ Request for 120 Day Extension of Time.<sup>75</sup> In this Objection, Respondent states its belief that Complainants extension request “is merely a continuing and ongoing effort by Complainants to delay and postpone the FAA’s ruling on the Part 16 complaint and frustrate the City’s pending request for closure of its airport.”<sup>76</sup>

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<sup>67</sup> Exhibit 12, Item 2

<sup>68</sup> Exhibit 12, Item 2, Page 1

<sup>69</sup> Exhibit 12, Item 2, Page 2

<sup>70</sup> Exhibit 12, Item 2, Page 2

<sup>71</sup> Exhibit 12, Item 2, Page 3

<sup>72</sup> Exhibit 12, Item 2, Page 4 and Page 5. *See also* Page 6, stating “The city started to raise the T-hangar rates in 2007 [...]”

<sup>73</sup> Exhibit 12, Item 2, Page 4

<sup>74</sup> Exhibit 12, Item 2, Page 6

<sup>75</sup> Exhibit 13, Item 1

<sup>76</sup> Exhibit 13, Item 1

On April 14, 2014, the FAA issued a Notice of Complainants' Additional Information and Time to Respond, providing the Complainants' March 26, 2014 submission to the Respondent and allowing the Respondent 10 days from receipt of the submission to respond, if desired. This Notice also suspended issuance of the Director's Determination in this matter until the Complainants' motion was adjudicated.<sup>77</sup>

On April 18, 2014, the Complainants submitted a document to the Part 16 docket clarifying that Complainants' March 26, 2014 submission was intended to support Complainants' March 24, 2014 request for an extension of time to amend the complaint, and was not intended to serve as Complainants' final amendment to the complaint.<sup>78</sup> This submission also reiterates Complainants' statements from their March 26, 2014 submission that MoDOT has not made information available to the Complainants, which has "caused undue hardship on the complainants to produce the additional information in such a short period of time."<sup>79</sup>

On April 28, 2014, the Respondent submitted a Continuing Objection to Complainants Request for 120 Day Extension to File a Revised Complaint Regarding the St. Clair Regional Airport.<sup>80</sup> This Objection states that Respondent requests Complainants' request for an extension be denied, and that Respondent believes Complainants' request is "nothing more than a dilatory tactic designed to impede the implementation of justice."<sup>81</sup>

The Complainants' request for an extension of time and their additional information submitted raise three main issues upon which the Complainants' request is predicated:

1. MoDOT's failure to provide the Complainants with requested information;
2. Allegations of violations of Grant Assurances 22 and 24 related to the rental rates charged by the City of St. Clair for 2013 T-hangar leases; and
3. Allegations of violations of Grant Assurance 38 as a result of the City's refusal to allow airport tenants to construct private hangars on the airport.

#### Information Requested by Complainants from MoDOT

Complainants state that they have requested information from MoDOT related to a 14 CFR Part 13.1 informal complaint that is being adjudicated by MoDOT, and that the Complainants have not yet received this information.<sup>82</sup> Complainants state their belief that this information is relevant to this Part 16 complaint being adjudicated by the FAA.<sup>83</sup>

While the FAA encourages MoDOT to provide to the Complainants any relevant information that the Complainants have requested and that MoDOT is able to release, the FAA will not further delay this Part 16 adjudication because of MoDOT's failure to provide the Complainants with information. When submitting a Part 16 complaint, a complainant is

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<sup>77</sup> Exhibit 5, Item 9

<sup>78</sup> Exhibit 12, Item 3.

<sup>79</sup> Exhibit 12, Item 3, Page 2

<sup>80</sup> Exhibit 13, Item 2

<sup>81</sup> Exhibit 13, Item 2, Page 3

<sup>82</sup> Exhibit 12, Item 2, Page 1

<sup>83</sup> Exhibit 12, Item 3, Pages 1-2

required to submit “all documents then available in the exercise of reasonable diligence, offered in support of the complaint.”<sup>84</sup> Furthermore, “each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.”<sup>85</sup> As such, the Complainants should have submitted all of the relevant information upon which they were basing their complaint when they submitted that complaint to the FAA.

The Director recognizes that the information in question here may not have been available at the time the complaint was filed because, as the Complainants state, it relates to the Complainants’ informal complaint before MoDOT, which was filed after this Part 16 was initiated. If that is the case, due to relation of those documents to the ongoing Part 13.1 complaint, as further discussed below, this information will not be discussed by the FAA in its Part 16 decision, as it is an ongoing matter before MoDOT.

### T-Hangar Rental Rates

The Complainants’ allegations of violations of Grant Assurance 22 and 24 both relate to 2013 T-hangar rental rates. The Complainants admit that the 2013 T-hangar rental rates are the subject of an informal Part 13.1 complaint process that is still open before MoDOT.<sup>86</sup>

The Complainants’ state their belief that the Part 13.1 and Part 16 processes are related, and that therefore any objection to the consideration here of information contained in the Part 13.1 complaint should be “ignored.”<sup>87</sup> The Director agrees that the Part 13.1 and Part 16 processes are related, and that the information being adjudicated in these particular Part 13.1 and Part 16 complaints is predicated upon the same general set of facts. The filing of a Part 13.1 informal complaint with an FAA regional office or a state Department of Transportation participating in the FAA’s State Block Grant Program, of which MoDOT is one, is often the first step towards filing a formal Part 16 complaint with the FAA. The Director also acknowledges that the facts at issue in the Part 13.1 complaint and the Part 16 complaint both relate to the actions of the City of St. Clair with regard to the St. Clair Regional Airport and its tenants, and the desire of the City to close the airport, along with the desire of the tenants to remain at the airport. However, the Director disagrees with the Complainants’ conclusion that in his adjudication of this Part 16 the Director should consider information submitted to the Part 13.1 process as a result of this relation.

The informal Part 13.1 complaint filed by the Complainants that is being adjudicated by MoDOT is an ongoing process. The FAA will not attempt to usurp the judgment of MoDOT and the informal complaint process with regard to those allegations. To do so would be to prematurely escalate the adjudication of those issues, and to presume that they cannot be resolved between the parties through the informal process.

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<sup>84</sup> 14 CFR § 16.23(b)(2)

<sup>85</sup> 14 CFR § 16.29

<sup>86</sup> Exhibit 12, Item 2, Page 2. *See also* Exhibit 12, Item 3, Pages 1-2

<sup>87</sup> Exhibit 12, Item 3, Page 2

The Complainants chose to file the 13.1 complaint while this Part 16 process was ongoing, and the Director believes the issues contained in that informal complaint should remain separate from those being adjudicated in this formal Part 16 complaint.

In addition, with regard to any other allegations of violations of Grant Assurances 22 and 24 that the Complainants have made in their submissions of additional information outside of those related to the Part 13.1 complaint, the Director believes this information does not bring to light additional evidence that is relevant or essential to the Director's decision in this matter. The Director therefore will not consider the additional information submitted by the Complainants with regard to allegations of violations of Grant Assurances 22 and 24, and will instead rely on the information previously submitted by the parties with regard to those allegations.

### Grant Assurance 38 Allegations

The Complainants' submission of additional information regarding the Respondent's alleged violation of Grant Assurance 38, *Hanger Construction*, states that the Respondent denied the Complainants' the ability to construct private hangars on the airport due in part to the Respondent's belief that such construction was not allowed under the existing Airport Layout Plan (ALP), and that deviation from the ALP would require FAA approval of a new ALP.<sup>88</sup> Complainants state that the ALP is "a planning document," and that "a simple modification of the ALP could accommodate the construction of private hangars."<sup>89</sup>

The Director does not believe this additional information is new information necessary for the adjudication of this matter. While these particular statements have not previously been presented in the pleadings process, this information is not so new or substantial as to require the amendment of the complaint. The Complainants have alleged in their complaint and throughout the pleadings process that the Respondent has violated Grant Assurance 38. The information previously presented in those pleadings will be considered and adjudicated as part of the Director's Determination, but this additional information will not be considered.

### Conclusion

Under 14 CFR § 16.11, the Director has discretion to allow the submission of additional information outside of the regular pleadings process. However, the Part 16 process is intended to be an expedited process, and a 120-day extension of time would unduly delay this adjudicatory process. The Director must balance his discretionary right to allow the submission of additional information with the need to reasonably expedite the Part 16 proceedings before him.

The Complainants' submitted their request for an extension ten days before the Director's Determination was due to be issued in this case. To delay the issuance of the Director's Determination an additional four months would be unreasonable. The Director does not

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<sup>88</sup> Exhibit 12, Item 2, Pages 6-7

<sup>89</sup> Exhibit 12, Item 2, Page 7

believe a 120-day extension, or an extension of a lesser period of time, is necessary for a fair and complete hearing on this matter. The information submitted by the Complainants in support of their request relates either to an ongoing informal complaint being adjudicated by MoDOT, which the Director finds is not relevant in the adjudication of this complaint, or to allegations previously made by the Complainants in earlier submissions to the FAA, which the Director finds is not new or necessary for a fair and complete hearing of this matter.

Again, pursuant to 14 CFR § 16.23(b)(2), the Complainant is required to submit all information relevant to the adjudication of the complaint with the complaint when it is filed.<sup>90</sup> The Complainants have not shown that the information they are now offering to submit is essential to the adjudication of this matter and is newly discovered by the Complainants or was not otherwise reasonably available to the Complainants at the time the complaint was filed, within the requirements of 14 CFR § 16.29.

Accordingly, the Complainants' request for a 120-day extension of time to amend their complaint is denied. The information submitted by the Complainants related to this request will not be considered in the adjudication of this Part 16 complaint.

## VII. ANALYSIS AND DISCUSSION

### Pre-complaint Resolution Requirements

On July 13, 2013, Respondent submitted a Motion to Dismiss, alleging that the Complainants "have failed to attempt to resolve this matter through other means of alternate dispute resolution before filing this action, as required by 14 CFR Part 16, Rules and Administrative Decisions, Section 16.21 (a) and (b), Pre-complaint resolution [...]"<sup>91</sup> Respondent states that "no request for mediation or other dispute resolution" has been made by the Complainants, and that therefore the complaint is "premature and should be dismissed."<sup>92</sup>

In response to Respondent's allegations of lack of pre-complaint resolution in the Motion to Dismiss, Complainants state that "complainants have attempted to resolve this dispute informally by asking the respondent to negotiate a lease for 2013, which the [respondent] has refused to do."<sup>93</sup>

14 CFR Part 16.21, *Pre-complaint resolution* states that 1) "a person directly and substantially affected by the alleged noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally,"<sup>94</sup> and requires that 2) "the person or authorized representative filing the complaint certif[y] that substantial and reasonable good

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<sup>90</sup> See 14 CFR § 16.23(b)(2), requiring that complaints be served "along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint [...]."

<sup>91</sup> Exhibit 3, Item 2, Page 1, Para. (A)(1)

<sup>92</sup> Exhibit 3, Item 2, Page 2, Para (A)(2)

<sup>93</sup> Exhibit 4, Page 1

<sup>94</sup> 14 CFR Part 16.21(a)

faith efforts to resolve the disputed matter informally prior to filing the complaint have been made and that there appears no reasonable prospect for timely resolution of the dispute.”<sup>95</sup>

The Director notes that while alternative dispute resolution is one means of complying with the Pre-complaint resolution requirements of Part 16, it is not the sole method of engaging in good faith efforts to resolve the matter informally.

In this case, neither party has presented evidence that the Respondent replied to the Complainants’ letter requesting hangar lease negotiations for 2013. In addition, the Complainants have presented ample evidence in the record regarding the Respondent’s stated intent to close the airport. The Respondent has stated to the Complainants that it would not negotiate leases for 2013 because of the potential for the airport to be closed.<sup>96</sup> Respondent also appears to have stated in conversation with a Complainant seeking to rent a hangar that hangars were not being rented because the airport was going to be closed.<sup>97</sup> In addition, since the filing of this complaint, the Respondent has submitted a formal request to the FAA for permission to close the airport.<sup>98</sup>

In light of the specifics here and the totality of circumstances present in this situation, including the Respondent’s stated intent to close the airport, and the Respondent’s non-response to the Complainants’ request, the Director considers there to be sufficient evidence that no reasonable prospect for timely resolution of the dispute was likely.

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

*Issue #1: Whether the Respondent is in violation of Grant Assurance 5, Preserving Rights and Powers, by taking actions that deprive it of any of the rights and powers necessary to abide by its federal obligations.*

The Complainants allege that the Respondent is in violation of Grant Assurance 5, *Preserving Rights and Powers*, by taking actions that deprive it of any of the rights and powers necessary to abide by its federal obligations. In support of this allegation, the Complainants states that “among the responsibilities of an airport sponsor is [the responsibility] to make the airport available for all types and classes of aeronautical activities.”<sup>99</sup> Complainants do not make any more specific allegations regarding the Respondent’s alleged violation of Grant Assurance 5, and therefore the Director analyzes this issue generally and with regard to the City’s request to close the St. Clair Regional airport.

Grant 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. Under Assurance 5, the City may not take or permit any action that would dilute

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<sup>95</sup> 14 CFR Part 16.21(b)

<sup>96</sup> Exhibit 3, Item 2, Page 3 No. 6

<sup>97</sup> Exhibit 1, Item 1, Page 4, No. 11

<sup>98</sup> Exhibit 15, Item 1

<sup>99</sup> Exhibit 1, Item 1, Page 4

its power to operate and manage the airport, including development of the airport, in a manner consistent with its Federal obligations.

Generally, a Grant Assurance 5 violation occurs when a sponsor enters into an agreement that has terms that may subsequently result in actions that may place the sponsor in noncompliance with its Federal obligations.<sup>100</sup> These actions include any action taken by the sponsor that may cede to another entity the sponsor's rights to make decisions about the airport. Assurance 5 "prohibits the airport sponsor from giving away rights and powers it needs to control and operate the airport. It obligates the sponsor to retain financial and legal control of airport property to ensure the airport's continued operation as an airport."<sup>101</sup> An example of a ceded power that would rise to the level of a violation of Grant Assurance 5 is issuing another entity a right of first refusal to use airport land.<sup>102</sup> The Director has also held in previous cases that a sponsor's lack of transparent process and procedures for reviewing a request to provide aeronautical services could result in a violation of Grant Assurance 5 where the lack of transparency was so significant as to make the sponsor's decision-making processes appear to be ad-hoc and incoherent.<sup>103</sup>

The Complainants have not provided evidence to demonstrate that the Respondent has ceded any decision-making rights or powers to operate the airport to another entity. As previously noted, the Director acknowledges that the sum of the Respondent's actions were predicated on its desire to close the Airport. While the sponsor is obligated to continue to make the airport available for public use on reasonable conditions and without unjust discrimination for the duration of its federal obligations, or until such time as the FAA releases it of its obligations, it is not a violation of Grant Assurance 5 for the sponsor to publicly disclose its intent to close the airport.

In its Motion to Dismiss, the Respondent stated that "it would be a folly to execute a lease renewal at this point in time since the potential for the St. Clair Regional Airport to close remains viable."<sup>104</sup> While the Respondent's comments clearly demonstrate its intent to close the airport, there is insufficient evidence in the administrative record to suggest the City actually relinquished any decision-making powers through its actions with regard to hangar availability or lease negotiations as detailed in this complaint. A request by an airport sponsor to close an airport does not itself relinquish any rights or powers belonging to the airport sponsor. Therefore, the Director finds the Respondent is not in violation of Grant Assurance 5, Preserving Rights and Powers.

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<sup>100</sup> Order 5190.6B 6.3(b)

<sup>101</sup> Jetaway Aviation, Inc. v Montrose County, Colorado and the Montrose County Building Authority, FAA Docket No. 16-08-01 (July 2, 2009) (Director's Determination), Page 21 (Jetaway DD).

<sup>102</sup> Jetaway DD, Page 21.

<sup>103</sup> Gina Michelle Moore, individually and d/b/a Warbird Sky Ventures, Inc. v. Sumner County Regional Airport Authority, FAA Docket No. 16-07-16 (February 27, 2009) (Director's Determination), Page 46, upheld in Final Agency Decision, July 13, 2010.

<sup>104</sup> Exhibit 3, Item 2, Page 3, No. 6

## **Assurance 22, Economic Nondiscrimination**

*Issue #2: Whether the Respondent is in violation of Grant Assurance 22, Economic Nondiscrimination, by not responding to the Complainants' request to negotiate a 2013 hangar lease at the time of the complaint.*

The Complainants allege the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by not responding to the Complainants' request to negotiate 2013 hangar leases at the time of the complaint, in the first half of the 2012 calendar year. The Complainants argue that “[t]his is economic discrimination due to the fact that the city will not negotiate for the purpose of development of a commercial enterprise for the construction of hangars by an entity wishing to offer hangar space to the public.”<sup>105</sup> The Director notes that the issue of hangar construction will be addressed separately in Issue #4 of this section.

As evidence of this violation, the Complainants provide evidence of two actions by the Respondent. First, the Complainants sent a letter to the Respondent on March 19, 2012, to initiate the process for hangar lease negotiations for 2013. In the letter, the Complainants stated that “a non-response to this request must be considered a refusal by the City to negotiate a new lease for 2013.”<sup>106</sup> The Complainants allege that Respondent provided no response to this letter, and the Respondent has provided no evidence of a response.

The Respondent counters this by arguing that the lease negotiations were premature. In their Motion to Dismiss, the Respondent argues that the Complainants cannot unilaterally demand in March 2012 that negotiations begin immediately for a lease that takes effect in January 2013. The Respondent compared such actions to a professional athlete attempting to renegotiate a 10 year contract after the first year of performance.<sup>107</sup> The Respondent further notes that negotiations are premature because they have filed a petition with the Secretary of Transportation seeking approval to close the airport.<sup>108</sup> As such, the Respondent was unwilling to negotiate 2013 hangar leases prior to the fourth quarter of 2012.<sup>109</sup>

Second, in the Complainants' response to the Respondent's Motion to Dismiss, the Complainants allege that the leases for years previous to 2012 contained a renewal clause that was removed from the 2012 lease.<sup>110</sup> They further claim the Respondent removed this paragraph from the 2012 draft lease and replaced it with the statement “this lease is not

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<sup>105</sup> Exhibit 1, Item 1, Page 3, No. 5

<sup>106</sup> Exhibit 1, Item 1, Exhibit A

<sup>107</sup> Exhibit 3, Item 2, Page 3

<sup>108</sup> Exhibit 3, Item 2, Page 3, No. 6. The Director notes that this statement was made in a submission received by the FAA on July 13, 2012. The FAA did not receive an official request from the City of St. Clair to close the St. Clair Regional Airport until August 30, 2012. The Director does not have record of any official petition to close the airport made by the City to the Secretary of Transportation or the FAA before this July 13, 2012 submission. The Director acknowledges that prior to this official request the City of St. Clair and the FAA had engaged in discussions related to the potential closure of the airport and the City had made clear its desire to close the airport, but wishes to clarify this point.

<sup>109</sup> Exhibit 3, Item 2, Page 3 No. 7

<sup>110</sup> Exhibit 4, Item 2, Page 1

renewable.”<sup>111</sup> The Complainants identified this as one of four changes to the 2012 lease. The Complainants state that the cover letter prepared by the Respondent for the new lease referenced only two changes made to the lease agreement. The Complainants consider the omission of the change in renewal status in the cover letter to be deceptive.<sup>112</sup> The Respondent provided no response to this allegation.

Both parties acknowledge that in past years, hangar lease negotiations took place in the final quarter of the prior year.<sup>113</sup> In the original March 19, 2012 letter to the Respondent, the Complainants justify the early negotiation period as a desire to “[...] start now so that there is time to discuss the issues—unlike the 2012 leases [...]”<sup>114</sup>

The Complainants assert that in 2011 the Respondent waited until December 5<sup>th</sup> to approve the lease for 2012, and, in doing so, changed the language of the lease agreement as noted above. The Complainants argue that 30 days is an insufficient amount of time to negotiate a lease.<sup>115</sup>

Grant Assurance 22(a), *Economic Nondiscrimination* states that the sponsor “[W]ill 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.”

The sponsor’s obligation to operate the airport for the public’s use and benefit is not satisfied only by keeping the runways open to all classes of users. “Sponsors are also obligated to make space available to support aeronautical activity of noncommercial aeronautical users (i.e., hangars and tie-down space for individual aircraft owners).”<sup>116</sup> However, airport sponsors also have a proprietary right to manage their airport as they see fit, according to local standards and consistent with their federal obligations.<sup>117</sup> In addition, specifically with regard to lease negotiations and lease terms, the “grant assurances do not obligate the sponsor to renegotiate lease terms early to suit the Complainant. Rather, the grant assurances obligate the sponsor to provide access to aeronautical users on reasonable, not unjustly discriminatory terms.”<sup>118</sup>

The varied nature of lease negotiations makes it impossible for the Director to define what constitutes an appropriate lead time for the negotiation of a new lease, and the FAA does not require sponsors to abide by any specific timetable when negotiating lease terms with airport

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<sup>111</sup> Exhibit 4, Item 2, Page 1, No. 3

<sup>112</sup> Exhibit 4, Item 1, Page 2, No. 1

<sup>113</sup> Exhibit 3, Item 3, Page 6, No. 20 and Exhibit 4, Item 2, Page 4, No. 20.

<sup>114</sup> Exhibit 1, Item 1, Exhibit A.

<sup>115</sup> Exhibit 4, Item 2, Page 2, No. 5

<sup>116</sup> Order 5190.6B Section 9.7, *Availability of Leased Space*.

<sup>117</sup> Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica Air Center v. City of Santa Monica, FAA Docket No. 16-99-21 (February 4, 2003) (Final Agency Decision) (Santa Monica Airport Ass’n FAD), Page 19.

<sup>118</sup> Jimsair Aviation Services, Inc., v. San Diego County Regional Airport Authority, FAA Docket No. 16-06-08 (April 12, 2007) (Director’s Determination) (Jimsair DD) Page 17.

tenants. In general, though, negotiations should begin early enough that both parties are afforded sufficient time to negotiate in good faith. With regard to local negotiation and resolution, Order 5190.6B states:

To permit aeronautical users time to evaluate proposed rate changes, consultation should be well in advance, if practical, of introducing significant changes in charging systems, procedures or level of charges. Adequate information should be provided so users can evaluate the airport's justification for the change and to assess its reasonableness. Due regard should be given to the views of both the aeronautical users and the airport and its financial needs. The Rates and Charges Policy notes that the parties should make a good-faith effort to reach agreement, and encourages airports and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements to facilitate resolution and reduce the need for direct federal intervention to resolve differences over aeronautical fees.<sup>119</sup>

In addition, though the FAA discourages sponsors from engaging in practices that may seem deceptive, a lessee or potential lessee is not entitled to any specific lease terms.<sup>120</sup> Further, "the grant assurances and federal obligations do not require that an airport sponsor recognize past occupancy as a preference for future occupancy."<sup>121</sup>

In this case, the Respondent did not at any time deny the Complainants access to the airport or to the hangars the Complainants were leasing. The Respondent did not express willingness to negotiate 2013 leases in March of 2012, but there is no evidence in the record to indicate that this unwillingness to negotiate the following year's leases less than halfway through the year would have negatively affected the parties' abilities to negotiate in good faith at any point during the rest of the year leading up to the 2013 lease period. In fact, the Respondent expressed a clear willingness to negotiate 2013 leases in the last quarter of the 2012 calendar year.<sup>122</sup> An airport sponsor's unwillingness to negotiate hangar leases at the time specified by the Complainants does not in itself establish a violation of Grant Assurance 22, especially where there is no evidence that the sponsor has actually denied the Complainants access to leased space.<sup>123</sup>

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<sup>119</sup> Order 5190.6B Section 18.6(b).

<sup>120</sup> ALCA, the Cylinder Shop/Wayman Aviation, Suncoast Aviation, and National Aviation v Miami-Dade County, Florida, FAA Docket No. 16-08-05 (August 31, 2010) (Director's Determination) (ALCA DD), Page 31, quoting Santa Monica Airport Ass'n FAD, Page 19 and stating that no entity is entitled to a lease on an airport "upon its preferred terms and conditions."

<sup>121</sup> ACLA DD Page 31, citing Thermco Aviation, Inc., and A-26 Company v. City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airports, FAA Docket No. 16-06-07, (December 17, 2007) (Final Agency Decision) (Thermco FAD), Page 18.

<sup>122</sup> Exhibit 3, Item 2, Page 3 No. 7

<sup>123</sup> See Exhibit 13, Item 2, Page 2, stating that the parties agreed to a lease "that was signed by each of the remaining seven (7) hangar tenants at the St. Clair Regional Airport in the spring of 2013." See also Page 3, stating that "the rental rate to which Complainants are now complaining in April, 2014, is \$175 per month, which has been paid by Complainants and every other tenant since the rate was established back in January, 2012." From this statement the Director concludes that the Complainants have not been denied access to the airport, that they remain tenants on the airport and continue to pay monthly rent in the amount of \$175, and that the Respondents continue to accept those rental payments. See also Exhibit 18, Item 2, Page 4.

The Complainants also allege that the Respondent made changes to the 2012 lease that were not identified in the Respondent's cover letter sent with the lease. Negotiations that may have the appearance of impropriety do not alone rise to the level of a violation of Grant Assurance 22. The Complainants have not presented any evidence that the Respondent attempted to deceive the Complainants with regard to the actual language in the lease or to conceal from the Complainants the terms in the lease itself. The Respondent could reasonably have expected that the Complainants would carefully review the legally binding documents they were signing and would raise any concerns they had with the Respondent.

In addition, the Complainants appear to assume that the Respondent was required by Grant Assurance 22 to sign a 2013 lease with the Complainants. Grant Assurance 22 does not require a sponsor to agree to any specific terms with a potential lessee.<sup>124</sup> As long as the lease terms sought by a sponsor are not themselves unjustly discriminatory or otherwise in violation of the grant assurances, the FAA does not require a sponsor and a potential lessee to come to agreement. If a sponsor wishes to require lease terms that the FAA considers fair and reasonable, and a potential lessee does not wish to agree to those terms, neither party is under obligation to lower their standards in order to sign a lease.

The Complainants do not identify any specific lease terms they feel are in violation of the grant assurances. In the 14 CFR Part 13.1 informal complaint being adjudicated by MoDOT, the Complainants do state that they believe the hangar rental rates are in violation of the grant assurances, but as discussed previously in this document, those issues will not be discussed or adjudicated here, as they remain pending with MoDOT.

Because the parties ultimately signed leases for 2013 and identified lease rates acceptable to both parties, and because no evidence of a current denial of access exists in regards to hangar leases, the Director finds the sponsor is not in violation of Grant Assurance 22 for not negotiating 2013 leases in March of 2012. The Director's findings in this investigation rely on the status of the Respondent's current compliance with its federal obligations.<sup>125</sup>

However, the Director is concerned that the Respondent appears to have used its active petition to close the airport as part of its justification to postpone hangar negotiations. As previously discussed, an airport sponsor's federal obligations are not altered or suspended based on its intent and desire to close the airport. The Director notes that the Respondent's continued practice of waiting until November to begin lease negotiations for the following year—particularly if rate increases are involved—could create a situation in the future in which it may fail to make a good-faith effort to reach an agreement. While at no time were the Complainants denied access to their leased hangars, the Director cautions the Respondent

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<sup>124</sup> See ALCA DD, Page 31, and Santa Monica Airport Ass'n FAD, Page 19.

<sup>125</sup> Wilson Air FAD, Page 5 stating "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". See also The Aviation Center, Inc. v. City of Ann Arbor, Michigan, FAA Docket No. 16-05-01 (December 16, 2005) (Director's Determination) Page 8 (Aviation Center DD), stating "FAA's primary role in this investigation is to determine if [the sponsor] acted in a manner consistent with its grant obligations. Conjectures or statements [...] about things that may or may not happen contingent on some future event are not germane to this investigation."

that the continued practice of using the City's airport closure petition as a means to dissuade, intimidate, or otherwise turn away potential tenants could potentially be a violation of Grant Assurance 22, Economic Nondiscrimination, or Grant Assurance 24, Fee and Rental Structure, in the future.

*Issue #3: Whether the Respondent has unjustly discriminated against a similarly-situated tenant by allowing Air Evac EMS, Inc., a helicopter air ambulance operator, to renew a lease while denying negotiations with existing fixed-wing hangar tenants, in violation of Grant Assurance 22, Economic Nondiscrimination.*

The Complainants allege the Respondent has created an exclusive right by allowing Air Evac, a helicopter air ambulance operator, to renew its lease for 2013, while denying the existing fixed-wing hangar tenants' March 19, 2012 request to commence negotiations for lease renewal for calendar year 2013, in violation of Grant Assurance 23, *Exclusive Rights*.<sup>126</sup> The Director will analyze this issue with regard to Grant Assurance 23 in the next section, however, the Director believes this issue is more appropriately analyzed under Grant Assurance 22, *Economic Nondiscrimination*, and thus analyzes and discusses it with regard to the treatment of similarly situated tenants here.

The Complainants state:

The city has created an exclusive right for the storage of aircraft on the airport in the Airevac Corporation by debarring fixed wing aircraft storage. By not negotiating a lease for fixed wing aircraft, but choosing to renew the Airevac lease, the Airevac Corporation will have an exclusive right to hangar aircraft on the field, to the exclusion of any other interested tenants.<sup>127</sup>

The Respondent does not respond directly to this allegation in its pleadings other than to generally deny having granted Air Evac an exclusive right on the airport.<sup>128</sup> The Respondent did, however, provide a copy of the current lease agreement with Air Evac in response to the FAA's November 7, 2012 Request for additional information, which provides information regarding the lease terms between the Respondent and Air Evac.<sup>129</sup>

The Complainants state in response to the additional information provided to the FAA by the Respondent that they believe they are similarly situated to Air Evac. They state,

The fixed wing tenants share the airfield with Airevac. When Airevac established a helipad on the airport, we were informed by the city that [d]ue to positioning of the helipad and its proximity to the taxiway and runway, [t]he FAA determined that Airevac was to use the traffic patterns, approaches, taxiways and runways just as if

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<sup>126</sup> Exhibit 1, Item 1, Page 3

<sup>127</sup> Exhibit 1, Item 1, Page 3, No. 6

<sup>128</sup> Exhibit 3, Item 3, Page 5

<sup>129</sup> Exhibit 5, Item 1

they were fixed wing aircraft. In other words Airevac and the fixed wing tenants are similarly situated users of the airfield components of the airport.<sup>130</sup>

For purposes of analysis under Grant Assurance 22, the Director will analyze the differing lease terms between the Complainants and Air Evac as airport tenants. Though the Complainants allege this differing treatment of the Air Evac and the Complainants is a violation of Grant Assurance 23, *Exclusive Rights*, dissimilar treatment of two tenants may be grounds for a violation of Grant Assurance 22, *Economic Nondiscrimination* where those tenants are similarly situated and where “one tenant is treated substantially differently from another similarly situated tenant.”<sup>131</sup>

Order 5190.6B states:

[... T]he sponsor must impose nondiscriminatory and substantially comparable rates, fees, rentals, and charges on all air carriers and users that assume similar obligations, use similar facilities, and make similar use of the airport. Aside from rates, fees, and rentals, the sponsor must also impose comparable rules, regulations, and conditions on the use of the airport by its air carriers and users, regardless of whether they are tenants, subtenants, or nontenants.<sup>132</sup>

An airport sponsor is not obligated to treat all leases on an airport exactly the same, regardless of the purpose and use of the airport by lessees. In fact,

the FAA has acknowledged that several factors can distinguish parties that a sponsor can justly treat differently, without violating its Federal obligations. Such factors may be: period of lease, business plan proposed, location of facilities, level of service and amenities, scope of services, investment, market conditions, and reasonable actions by the sponsor to promote and protect its ability to continue to serve the interests of the public in civil aviation, including the enlistment of prudent business practices that may change over time.<sup>133</sup>

In addition, with regard to lease terms in particular, an airport sponsor may impose different lease terms over time, including different lease terms on tenants that co-exist on the airport.

A sponsor is not foreclosed from revising its rental rate structure from time to time. An airport sponsor does not engage in unjust discrimination simply by imposing different lease terms on carriers and users whose leases have expired. FAA recognizes rate differences based partly on differences in other lease terms and facilities. Ideally, a new rate should be imposed at a time when the rates can be changed for all similarly situated tenants at the same time to avoid any claims of

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<sup>130</sup> Exhibit 9, Item 1, Page 4

<sup>131</sup> Jimsair DD, Page 38. *See also* ALCA DD, Page 39.

<sup>132</sup> Order 5190.6B, Section 9.2(a)

<sup>133</sup> Richard M. Grayson & Gate 9 Hangar, LLC v. DeKalb County, Ga., FAA Docket No. 16-05-13 (February 1, 2006) (Director's Determination), Page 11. *See also* ALCA DD, Page 39.

unjust discrimination. In some cases, however, the sponsor will have reason to revise rates even though existing contracts at lower rates have not yet expired. In such cases, the sponsor should make every effort to provide terms for new contracts that will support any difference in rates between new tenants and existing tenants. The sponsor should also consider limiting the term of new agreements to expire when existing agreements expire in order to bring all similarly situated tenants under a common rate structure at one time.<sup>134</sup>

Further, a sponsor may justifiably offer one tenant a long-term or longer-term lease rate compared to other tenants when that tenant has made a significant financial investment in the airport. “Prospective tenants considering a substantial investment in the airport generally seek a lease term sufficiently long to ensure that the tenant gets not only a return *of* its investment, but a return *on* its investment as well.”<sup>135</sup>

Where two airport tenants offer different levels of service on the airport, investment in the airport, business plans, or where there are other differences in on-airport operations and use of the airport, those tenants are not similarly situated, and thus a sponsor may justifiably treat the two tenants dissimilarly without running afoul of its obligations under Grant Assurance 22.

Contrary to the Complainants’ belief, shared use of airfield components is not a determining factor in identifying whether or not two aeronautical users of an airport are similarly situated under Grant Assurance 22. In comparing the Complainants to Air Evac, the Director finds they are not similarly situated. The Complainants are all individual pilots leasing on-airport hangars for storage of their aircraft.<sup>136</sup> Throughout the pleadings the Complainants do not make clear whether any of them are individuals who are providing or wish to provide commercial aeronautical services to the public. However, the 2012 lease between the Complainants and the Respondent includes a provision which states “Lessee shall not conduct any commercial aviation activity as defined by the Federal Aviation Administration on the Premises unless Lessee receives prior written approval for such activity from the City.”<sup>137</sup> The Complainants have not provided any evidence in the record that any of them have such an agreement or seek to have such an agreement with the Respondent, and therefore the Director assumes that they are all operating as private pilots who are not exercising commercial pilot privileges on the airport. In addition, the Complainants all

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<sup>134</sup> Order 5190.6B, Section 9.2(d)

<sup>135</sup> Skydance Helicopters, Inc. d/b/a Skydance Operations, Inc. v. Sedona Oak-Creek Airport Authority and Yavapai County, Arizona, FAA Docket No. 16-02-02 (March 7, 2003) (Director’s Determination), Page 29. *See also* Pacific Coast Flyers, Inc., Donnya Daubney d/b/a Carlsbad Aircraft Pilot Supply, & Roger Baker v. County of San Diego, Cal., FAA Docket No. 16-04-08 (July 25, 2005) (Director’s Determination), Pages 25-26, stating that in that case, “When necessary, fixed-term leases are granted for the minimum number of years adequate to allow a lessee to amortize, and receive a reasonable return on, the lessee’s investment in leasehold improvements.”

<sup>136</sup> Exhibit 1, Item 1, Page 1, stating “the individual Complainants named below are persons who operate, own, and store, and wish to store, aircraft at the Airport.”

<sup>137</sup> Exhibit 1, Item 1, Page 10

operated under one-year lease agreements that were renewed annually.<sup>138</sup> Those leases were for the lease of on-airport infrastructure built by the sponsor with no investment from the lessees.<sup>139</sup>

In contrast to the Complainants, Air Evac is a commercial entity offering helicopter air ambulance services.<sup>140</sup> In the November 7, 2012 Request for additional information, the Director asked the Respondent to provide a copy of the current lease agreement with Air Evac.<sup>141</sup> The Respondent provided a copy of the August 1, 2005 commercial lease, which has an initial term of five years with a provision to automatically extend an additional five years.<sup>142</sup> This provided Air Evac with a total lease term of ten years unless the lease was terminated earlier, at the five year mark.<sup>143</sup> The Respondent provided no indication that the lease was terminated or otherwise amended in 2010, after the initial five year period. Based on the evidence in the Record, the Director therefore assumes that this lease has been extended until July 31, 2015. The lease also provided for the construction of a hangar, helipad, and crew quarters on the airport, at Air Evac's sole cost and expense.<sup>144</sup>

The Director finds that the Complainants, as individuals or as a group, and Air Evac, as a commercial entity, are not similarly situated entities. They offer vastly different levels of commercial service and amenities to the public (in the case of the Complainants, none), they conduct very different on-airport activities, and they made differing levels of investment in the airport infrastructure. Even if the Complainants were offering commercial services on the airport, Air Evac's level of investment in the airport as compared to the Complainants lack of investment indicates that the entities would still not necessarily be similarly situated. As discussed above, where a tenant has made an investment in the airport facilities, they may reasonably be given a longer term lease than other tenants in order to recoup their investment. Where two tenants on an airport are not similarly situated, they may be treated differently by the airport sponsor without the sponsor being in violation of Grant Assurance 22.

In addition, as discussed above with regard to the previous allegation under Grant Assurance 22, the Respondent's refusal to negotiate 2013 calendar year leases with the Complainants in March of 2012 cannot be construed to be a decision not to renew the Complainants' leases at some point during the remainder of 2012. This is especially true because the parties did eventually come to terms with regard to acceptable 2013 lease rates, and as previously

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<sup>138</sup> See Exhibit 6, Item 1, Page 2, stating "Rental rates and lease forms are approved annually by the Board of Aldermen in a public meeting." See also Exhibit 3, Item 3, Page 4, stating "[...] the City intends to renegotiate hangar leases *as it always has* in the final portion of the calendar year [...]" (emphasis added), and Exhibit 8, Item 1, Page 1, stating "The City has historically established the hangar rental rates in conjunction with its annual budgeting process. The City's budget is on a calendar year."

<sup>139</sup> Exhibit 1, Item 1, Exhibit B

<sup>140</sup> Exhibit 3, Item 3, Page 4

<sup>141</sup> Exhibit 5, Item 1

<sup>142</sup> Exhibit 6, Item 1, Exhibit B

<sup>143</sup> Exhibit 6, Item 1, Exhibit B

<sup>144</sup> Exhibit 6, Item 1, Exhibit B, Para (1)

discussed the evidence in the record suggests that the Complainants remain tenants on the airport to this day.<sup>145</sup>

Accordingly the Director finds the Respondent is not in violation of Grant Assurance 22 with regard to the dissimilar lease terms of the Complainants and Air Evac.

*Issue #4: Whether the Respondent violated Grant Assurance 22, Economic Nondiscrimination, by not agreeing to a long-term lease to allow the Complainants to construct a hangar at the airport.*

The Complainants state in the March 19, 2012 letter to the Respondent requesting negotiations for 2013 hangar leases that “should these negotiations not be successful, we would then like to open negotiations to construct our own hangars. We would like to have them completed by the termination of our current leases on December 31, 2012. The incentive for this is that our current leases state that they are not renewable.”<sup>146</sup>

The Complainants allege the Respondent violated Grant Assurance 38, *Hangar Construction*, by not responding to this letter.<sup>147</sup> The Complainants further allege that the Respondent’s refusal to negotiate with the Complainants for the construction of private hangars “is economic discrimination due to the fact that the city will not negotiate for the purpose of development of a commercial enterprise for the construction of hangars by an entity wishing to offer hangar space to the public.”<sup>148</sup> The Respondent does not directly address this allegation in its pleadings.

While the Director will evaluate the merits of this allegation under Grant Assurance 38 in a later section of this analysis, the Director believes this issue is more properly analyzed under Grant Assurance 22, *Economic Nondiscrimination*, and therefore will consider whether the Respondent’s failure to respond to a request to negotiate a ground lease for hangars constitutes a violation of Assurance 22.

With regard to airport tenants seeking to build private facilities, FAA policy states that “where adequate facilities are otherwise available, Grant Assurance 22, *Economic Nondiscrimination*, does not compel sponsors to lease property to entities that desire to construct facilities for private aeronautical use.”<sup>149</sup> An example of such a situation would be “making property available so that private aircraft owners or flying clubs may construct their

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<sup>145</sup> See Exhibit 13, Item 2, Page 2, stating that the parties agreed to a lease “that was signed by each of the remaining seven (7) hangar tenants at the St. Clair Regional Airport in the spring of 2013.” See also Page 3, stating that “the rental rate to which Complainants are now complaining in April, 2014, is \$175 per month, which has been paid by Complainants and every other tenant since the rate was established back in January, 2012.” From this statement the Director concludes that the Complainants have not been denied access to the airport, that they remain tenants on the airport and continue to pay monthly rent in the amount of \$175, and that the Respondents continue to accept those rental payments. See also Exhibit 18, Item 2, Page 4.

<sup>146</sup> Exhibit 1, Item 1, Exhibit A

<sup>147</sup> Exhibit 1, Item 1, Page 4

<sup>148</sup> Exhibit 1, Item 1, Page 3

<sup>149</sup> Order 5190.6B Section 9.7(b)

own hangars while vacant hangars are available on the airport that can meet the potential tenant's needs."<sup>150</sup> The sponsor's federal obligations would not require this action. Instead, where a sponsor can arrange satisfactory terms for a tenant's use of existing facilities, the sponsor will be required to lease such facilities to a tenant "on reasonable terms."<sup>151</sup>

In addition, even where an entity seeks to construct facilities that may be for commercial or public use, as the Director stated in the Santa Monica Airport Ass'n FAD (FAA Docket No. 16-99-21), "a sponsor is not required to develop any and all parcels of land in a manner consistent with the wishes of any one party, but rather may exercise its proprietary rights and powers to develop and administer the airport's land in a manner consistent with the public's interest."<sup>152</sup>

Though the Complainants state that they seek to build their own hangars on the airport "for the purpose of development of a commercial enterprise for the construction of hangars by an entity wishing to offer hangar space to the public,"<sup>153</sup> there is no evidence in the record submitted by either party to support this statement. In fact, the Complainants also refer repeatedly to their desire to construct "private hangars."<sup>154</sup> In addition, as discussed in the previous section, the lease between the Complainants and the Respondents actually prohibits the Complainants from engaging in commercial aviation activities on the airport without the express written permission of the Respondent, evidence of which is not in the record here.<sup>155</sup> The Director therefore assumes this statement was made in error, and analyzes this issue based on the Complainants' other statements that the hangars are desired for Complainants' private use.

As previously mentioned, the Respondent is required to provide "reasonable terms" for the lease of the existing available facilities. However, as discussed under Issue #2, "reasonable terms" does not mean whatever terms a potential lessee (in this case, the Complainants) desires. Grant Assurance 22 does not require "the Airport sponsor to enter into specific lease arrangements to suit a particular Airport tenant so long as the aeronautical user is provided access on reasonable, nondiscriminatory terms."<sup>156</sup> The Complainants have presented no evidence that the Respondent's lack of response to the Complainants' request to negotiate a lease for hangar construction on the assumption that the Respondent was refusing to negotiate a 2013 lease in March of 2012 is unreasonable or discriminatory.

The example from Order 5190.6B mentioned above is especially relevant here. There is no evidence in the record to suggest that there are insufficient facilities available on the airport – and in fact, there is ample evidence to suggest the opposite. The Complainants in their

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<sup>150</sup> Order 5190.6B Section 9.7(b)

<sup>151</sup> Order 5190.6B Section 9.7(b)

<sup>152</sup> Santa Monica Airport Ass'n FAD, Page 19.

<sup>153</sup> Exhibit 1, Item 1, Page 3

<sup>154</sup> Exhibit 1, Item 1, Page 3, stating twice in numbered paragraph 5 that the Complainants' letter requests the Respondent allow the construction of private hangars, and that the Respondent's lack of response to that letter indicates a desire not to negotiate a ground lease for private hangars.

<sup>155</sup> Exhibit 1, Item 1, Exhibit B, Article V, No. 6

<sup>156</sup> See Thermco FAD, Page 21. See also ALCA DD, Page 31, and Santa Monica Airport Ass'n FAD, Page 19.

pleadings admit there are hangars available for rent on the airport.<sup>157</sup> The Complainants further indicate their preference to remain in the existing hangars.<sup>158</sup> There is also no evidence in the record to suggest that the existing hangars at the airport are materially inadequate for storage of their aircraft or deficient in any other way. This indicates to the Director that there is no need for the Complainants to build new hangars in addition to the existing hangars. As such, the Respondent has no obligation to enter negotiations with the Complainants for construction of new hangars on the airport.

Because there is no evidence in the record suggesting either a lack of available aircraft hangars or that the existing hangars are materially insufficient for the needs of the aeronautical users of the airport, including the Complainants, the Director finds the Respondent is not in violation of Grant Assurance 22 due to its unwillingness to negotiate a ground lease for construction of new hangars on the airport.

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

*Issue #5: Whether the Respondent has created an exclusive right by allowing Air Evac EMS, Inc., a helicopter air ambulance operator, to renew a lease while denying negotiations with existing fixed-wing hangar tenants, in violation of Grant Assurance 23, Exclusive Rights, 49 U.S.C. § 40103(e) and 49 U.S.C. § 47107(a)(4).*

The Complainants allege the Respondent has created an exclusive right by allowing Air Evac, a helicopter air ambulance operator to renew its lease, while denying the existing fixed-wing hangar tenants' March 19, 2012 request to commence negotiations for lease renewal for calendar year 2013, in violation of Grant Assurance 23, *Exclusive Rights*.<sup>159</sup>

The Complainants state:

The city has created an exclusive right for the storage of aircraft on the airport in the Airevac Corporation by debarring fixed wing aircraft storage. By not negotiating a lease for fixed wing aircraft, but choosing to renew the Airevac lease, the Airevac Corporation will have an exclusive right to hangar aircraft on the field, to the exclusion of any other interested tenants.<sup>160</sup>

The Complainants state in response to the additional information provided to the FAA by the Respondent that they believe they are similarly situated to Air Evac. They state,

The fixed wing tenants share the airfield with Airevac. When Airevac established a helipad on the airport, we were informed by the city that [d]ue to positioning of the

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<sup>157</sup> Exhibit 7, Item 1, Page 2. *See also* Exhibit 10, Item 1, a February 13, 2013 submission from Complainant Jim DeVries stating "St. Clair Regional Airport has at this time four empty hangars."

<sup>158</sup> *See* Exhibit 1, Item 1, Exhibit A, stating that the Complainants seek to begin negotiations to construct hangars only "should these negotiations [for 2013 leases of the existing hangars] not be successful."

<sup>159</sup> Exhibit 1, Item 1, Page 3

<sup>160</sup> Exhibit 1, Item 1, Page 3, No. 6

helipad and its proximity to the taxiway and runway, [t]he FAA determined that Airevac was to use the traffic patterns, approaches, taxiways and runways just as if they were fixed wing aircraft. In other words Airevac and the fixed wing tenants are similarly situated users of the airfield components of the airport.<sup>161</sup>

In its Reply to Federal Aviation Administration's Request for Additional Information, the Respondent provided a copy of the lease agreement between the City of St. Clair and AIR EVAC EMS, Inc. This agreement is dated August 1, 2005 and extends to July 31, 2010 with a provision for an automatic five (5) year extension. It appears the lease will terminate on July 31, 2015 unless the parties act to extinguish the lease sooner.<sup>162</sup> This lease agreement allowed Air Evac to lease land and construct a 16' x 30' crew quarters building, a 65' x 40' storage building and a 37' x 80' helicopter pad.

In the Respondent's Answer and Affirmative Defenses to Complaint, the Respondent denied the exclusive rights allegations contained in paragraph 6 of the complaint without supportive argument.<sup>163</sup>

Grant Assurance 23, *Exclusive Rights*, (Assurance 23) implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and states, 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 person providing, or intending to provide, aeronautical services to the public."

Pursuant to Order 5190.6B,

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements, or by another means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or right[s], would be an exclusive right.<sup>164</sup>

Pursuant to the FAA's decision in In the Matter of the City of Santa Monica, FAA Docket No. 16-02-08,<sup>165</sup> Grant Assurance 23 is "intended to prohibit anti-competitive, monopolistic behavior at airports receiving Federal funds."<sup>166</sup> The decision further states that the language of 49 U.S.C. § 47104(a)(4), upon which Assurance 23 is based, "indicates that Congress had competitive enterprises in mind," and indicates that the legislative history of 49 U.S.C. § 40103(e) also makes clear that this was the Congressional intent.<sup>167</sup> The prohibition on the

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<sup>161</sup> Exhibit 9, Item 1, Page 4

<sup>162</sup> Exhibit 6, Item 1, Exhibit B, Pages 9-13

<sup>163</sup> Paragraph 6 of the complaint contained the allegation that the City had granted an exclusive right to Air Evac EMS, Inc. See Exhibit 1, Item 1, page 3

<sup>164</sup> See Order 5190.6B, section 8-2

<sup>165</sup> In the Matter of the City of Santa Monica, FAA Order No. 2009-1, FAA Docket No. 16-02-08 (July 8, 2009) (Final Agency Decision and Order) (City of Santa Monica FAD)

<sup>166</sup> City of Santa Monica FAD, Page 47 (internal citations omitted).

<sup>167</sup> City of Santa Monica FAD, Page 47.

grant of an exclusive right in Assurance 23, then, is “a prohibition on anti-competitive behavior,” and to prove a violation of Assurance 23, an “anti-competitive result” must be shown.<sup>168</sup>

As discussed above with regard to Issue #3, the Complainants are not commercial entities, and are in fact prohibited from conducting any commercial aviation activities on the airport pursuant to their leases with the Respondent.<sup>169</sup> The Complainants are therefore incapable of showing that Air Evac’s lease terms as compared to their own have created an “anti-competitive result” on the airport. In short, there is no economic competition of aeronautical services between the Complainants and Air Evac.

In light of this, the Director finds the Respondent is not in violation of Grant Assurance 23, *Exclusive Rights*, for allowing Air Evac to continue its existing lease while not negotiating 2013 leases with the Complainants in March of 2012. The Director refers the parties to Issue #3 above for a discussion of the Air Evac lease as it relates to whether or not the Complainants and Air Evac are similarly situated for purposes of unjust discrimination under Grant Assurance 22, *Economic Nondiscrimination*.

*Issue #6: Whether the Respondent has created an exclusive right by denying an aircraft owner the opportunity to lease a hangar, in violation of Grant Assurance 23, Exclusive Rights, 49 U.S.C. § 40103(e) and 49 U.S.C. § 47107(a)(4).*

The Complainants allege that the Respondent is in violation of Grant Assurance 23, *Exclusive Rights*, by denying an aircraft owner the opportunity to lease a hangar.

Complainants allege Rosemary Ficken, one of the co-Complainants, called the City and spoke with City Administrator Rick Childers about the availability of hangars for rent. The Complainants allege that based on Ms. Ficken’s account of the conversation, the City Administrator indicated that the City was not renting any hangars because the airport will be closing.<sup>170</sup> The Complainants further add that Ms. Ficken was notified that no tie-downs were currently available.<sup>171</sup>

The Respondent denies this allegation and states that Rosemary Ficken never submitted a written application to rent a hangar.<sup>172</sup> The City does also state in its pleadings that they do not have a formal written application for hangar rentals.<sup>173</sup> The Complainants indicated that a few weeks later another former tenant called the City inquiring about hangars, and was told hangars were available, but was not told that a formal request was necessary.<sup>174</sup>

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<sup>168</sup> City of Santa Monica FAD, Page 47 and Page 51.

<sup>169</sup> Exhibit 1, Item 1, Page 10.

<sup>170</sup> Exhibit 1, Item 1, Page 4, No. 11

<sup>171</sup> Exhibit 1, Item 1, Page 4, No. 11

<sup>172</sup> Exhibit 3, Item 3, Page 3, No. 11; Page 5, No. 17

<sup>173</sup> FAA Exhibit 1, Item Exhibit 8]

<sup>174</sup> Exhibit 4, Item 2, Page 2, No. 11

The Complainants allege the actions by the Respondent exemplified in the telephone conversation between Ms. Ficken and the City Administrator constitute a violation of Grant Assurance 23, *Exclusive Rights*.

As discussed above, Grant Assurance 23 states that the sponsor of a federally obligated airport will not permit one person or entity on the airport an exclusive right to conduct an aeronautical activity on the airport. In addition, relevant here is the fact that “the simple denial of access to store aircraft is not enough to establish the granting of an exclusive right and does not constitute an express agreement to grant a prohibited exclusive right.”<sup>175</sup>

In addition, pursuant to 14 CFR § 16.29, “each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.” This means “the Complainants [are] required to submit all of their pleadings and other documentation in support of their case so that in rendering the Director’s Determination, the FAA [will] have the entire record before it.”<sup>176</sup>

In this case, the complaint has provided only first person accounts of a telephone conversation between parties. A telephone inquiry about hangar space with an airport representative does not in and of itself equate to substantial and credible evidence that Ms. Ficken was denied access. The Director expects that if the Complainant believed at the time that she was being unjustly excluded from leasing a hangar that she would have followed up on the telephone conversation with a letter or other communication to the Respondent seeking resolution.

Sponsors have the obligation to negotiate in such a way that does not deter potential tenants from doing business with the airport. Because the Respondent had requested permission from the FAA to close the St. Clair airport it appears that it believed it could begin to close out services to its aeronautical users. This is not the case. Although the Director acknowledges that the information provided to Ms. Ficken gave her the impression that she was not allowed to rent a hangar because the airport was going to close soon, the Director is not persuaded that one telephone call by a potential tenant amounts to a full denial of access or a violation of the sponsor’s obligation not to grant an exclusive right on the airport.

From the pleadings, the Director surmises that loose or informal business practices, fueled by a belief that the airport would be closing soon, led to Ms. Ficken being told she was not allowed to lease a hangar. It appears as though there was intent on the Respondent’s part to turn away potential hangar tenants to allow for the airport to close. As noted below, it is incumbent upon the Respondent to provide aeronautical access on reasonable and not unjustly discriminatory terms and make the airport as self-sustaining as possible, as it agreed to do when it received federal funds to use on the airport. However, the Complainants have not submitted evidence to the record that Ms. Ficken further engaged the Respondent in an

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<sup>175</sup> Jacquelin R. Ashton & Kent J. Ashton v City of Concord, North Carolina, FAA Docket No. 16-02-01 (August 22, 2003) (Director’s Determination), Page 18.

<sup>176</sup> BMI Salvage Corporation & Blueside Services, Inc. v Miami-Dade County, Florida, FAA Docket No. 16-05-16 (March 5, 2007) (Final Decision and Order), Page 22.

effort to resolve the issue beyond a single phone call. The Director finds that the Complainants have not provided enough evidence to substantiate their allegation of a violation of Grant Assurance 23, Exclusive Rights with regard to the availability of hangars for lease at the St. Clair Regional airport.

Accordingly, the Director finds there is no violation of Assurance 23 with regard to Rosemary Ficken's hangar inquiry.

### **Assurance 24, Fee and Rental Structure**

*Issue #7: Whether the Respondent is in violation of Grant Assurance 24, Fee and Rental Structure, by not responding to the Complainants' request to negotiate a 2013 hangar lease at the time of the complaint and by otherwise preventing the airport from being as self-sustaining as possible.*

The Complainants allege the Respondent is in violation of Grant Assurance 24, *Fee and Rental Structure*, by not responding to the Complainants' request to negotiate a 2013 hangar lease at the time of the complaint. The Complainants allege that the Respondent is unwilling to agree to fair leases in a timely manner, which is preventing the airport from being as self-sustaining as possible.<sup>177</sup>

Grant Assurance 24, *Fee and Rental Structure*, directs airport sponsors to operate the airport in a manner which will make the airport as self-sustaining as possible. As such, sponsors have the obligation to negotiate in such a way that does not deter potential tenants from doing business with the airport. Order 5190.6B provides further guidance on the self-sustaining principle:

Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at that airport. The requirement recognizes that individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport. The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.<sup>178</sup>

Airport sponsors have a proprietary right to manage their airport according to local standards, consistent with their federal obligations.<sup>179</sup> Furthermore, Assurance 24 "does not require airport sponsors to establish fees that will generate the greatest possible income. The airport sponsor is expected to make appropriate business decisions that will make the airport as self-sustaining as circumstances will permit while maintaining a fair and reasonable pricing structure for aeronautical users."<sup>180</sup>

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<sup>177</sup> Exhibit 1, Item 1, Page 4, No. 7

<sup>178</sup> Order 5190.6B, Section 17.5

<sup>179</sup> Santa Monica Airport Ass'n FAD, Page 19

<sup>180</sup> Thermco FAD, Page 19

The Director notes that an informal complaint filed by the Complainants in this case under 14 CFR Part 13.1 with MoDOT regarding hangar lease rates at the airport is ongoing. As noted in Section VI above, while MoDOT is actively reviewing this informal complaint, the Director will abstain from addressing issues of hangar lease rates in regards to Grant Assurance 24. The Director will instead evaluate allegations of Grant Assurance 24 violations based on the merit of the Complainants' claim that "The City's failure to provide for the timely execution of fair leases with its current and prospective tenants has created a situation that will keep the airport from [being as self-sustaining] as possible."<sup>181</sup>

The Complainants' allegation of a violation of Grant Assurance 24 for failure to negotiate fair leases is based on the Complainants' allegation that the Respondent refused to negotiate 2013 hangar leases in March of 2012, and that this action by the Respondent will result in the airport having "ten empty hangars that could be producing revenue," in violation of Grant Assurance 24.<sup>182</sup> The Complainants appear to believe that the Respondent's refusal to negotiate 2013 leases in March of 2012 is based on its desire to close the airport, which is discussed elsewhere in this complaint.

As noted previously, an airport sponsor's unwillingness to negotiate hangar leases at the time specified by the Complainants does not in itself establish a violation of the grant assurances. This is especially true where there is no evidence to suggest the Complainants have actually been denied access to the airport or to their hangars, and where the Respondents appear to continue to collect rental payments from the Complainants.<sup>183</sup>

The Director reviews current compliance, and the Complainants have presented no evidence to suggest that the Respondent's refusal to negotiate 2013 leases in March of 2012 resulted in lost revenue to the airport. The Respondent's lack of response to this March 2012 letter did not in any way preclude the parties from negotiating at any point during the remainder of the 2012 calendar year. And in fact, as mentioned elsewhere in this document, the evidence in the record suggests that the parties came to terms with regard to lease rates acceptable to both parties for 2013, and that the Complainants remain on the airport today.

Furthermore, as noted earlier in this document with regard to Grant Assurance 22, a failure of parties to come to terms and sign a rental lease would not itself be a violation of Grant Assurance 24. As long as the terms are fair and reasonable, the parties to a lease or potential lease are under no obligation to come to agreement simply to sign a lease. As also discussed elsewhere in this document, an airport sponsor has the propriety right to manage their airport according to local standards but consistent with their federal obligations.

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<sup>181</sup> Exhibit 1, Item 1, Page 4, No. 7

<sup>182</sup> Exhibit 1, Item 1, Page 4, No. 7

<sup>183</sup> See Exhibit 13, Item 2, Page 2, stating that the parties agreed to a lease "that was signed by each of the remaining seven (7) hangar tenants at the St. Clair Regional Airport in the spring of 2013." See also Page 3, stating that "the rental rate to which Complainants are now complaining in April, 2014, is \$175 per month, which has been paid by Complainants and every other tenant since the rate was established back in January, 2012." From this statement the Director concludes that the Complainants have not been denied access to the airport, that they remain tenants on the airport and continue to pay monthly rent in the amount of \$175, and that the Respondents continue to accept those rental payments.

The Director concludes that the Complainants have not provided sufficient evidence that the Respondent actually has “ten empty hangars that could be producing revenue,”<sup>184</sup> and instead the evidence in the record indicates that the Complainants continue to pay, and the Respondents continue to collect, revenue generated from the rental of the hangars on the airport. The Director therefore finds the Respondent is not in violation of Assurance 24.

While at no time were the Complainants denied access to their leased hangars, the Director cautions the Respondent that the continued practice of using its closure petition as a means to dissuade, intimidate or otherwise turn away potential tenants could potentially be a violation of Assurance 24 in the future.

### **Assurance 38, Hangar Construction**

*Issue #8: Whether the Respondent violated Grant Assurance 38, Hangar Construction, by not agreeing to allow the Complainants to construct private hangars at the airport.*

The Complainants state in the March 19, 2012 letter to the Respondent requesting negotiations for 2013 hangar leases:

Should these negotiations not be successful, we would then like to open negotiations to construct our own hangars. We would like to have them completed by the termination of our current leases on December 31, 2012. The incentive for this is that our current leases state that they are not renewable.<sup>185</sup>

The Complainants allege the Respondent violated Grant Assurance 38, *Hangar Construction* by not responding to this letter.

Grant Assurance 38 states that if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner’s expense, the airport owner or operator will grant to the aircraft owner a long term lease for the hangar that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

This assurance allows for negotiations between an airport sponsor and an aircraft owner over long-term leases for construction of aircraft storage space—even when the aircraft owner may not plan to offer aeronautical services to the public—provided the aircraft owner is qualified and meets the airport’s minimum standards.

This assurance does not compel a sponsor to negotiate with a party who wishes to construct a hangar at its own expense. Instead, it addresses an individual aircraft owner’s ability to secure a lease sufficiently long enough to amortize the cost of constructing a hangar for the

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<sup>184</sup> Exhibit 1, Item 1, Page 4, No. 7

<sup>185</sup> Exhibit 1, Item 1, Exhibit A

individual's own aircraft.<sup>186</sup> This assurance requires the sponsor to grant a builder of a hangar a long term lease, provided both parties agree that a hangar is to be constructed.

It appears to the Director that the Complainants have misinterpreted the purpose and meaning of Grant Assurance 38 in alleging a violation under this assurance. As is clear from the explanation of Assurance 38, the allegation made by the Complainants is not properly made under Assurance 38, because the Respondent never agreed to allow the Complainants to construct hangars at the airport.

Based on the Complainants' statement that they believe the Respondent's unwillingness to negotiate for the construction of private hangars "is economic discrimination due to the fact that the city will not negotiate for the purpose of development of a commercial enterprise for the construction of hangars by an entity wishing to offer hangar space to the public,"<sup>187</sup> The Director believes the Complainants should have alleged this violation under Grant Assurance 22, *Economic Nondiscrimination*. The Director has analyzed this allegation under Grant Assurance 22 above in Issue #4

Consequently, the Director finds that the Respondent is not in violation of Grant assurance 38, *Hangar Construction*.

## VIII. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions, responses by the parties, the record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office of Airport Compliance and Management Analysis finds that The City of St. Clair, Missouri is currently not in violation of Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 22, *Economic Nondiscrimination*; Grant Assurance 23, *Exclusive Rights*; Grant Assurance 24, *Fee and Rental Structure*, or Grant Assurance 38, *Hangar Construction*.

## IX. ORDER

Accordingly, it is ordered that:

1. The complaint is dismissed; and
2. All motions not expressly granted in this Determination are denied.

## X. RIGHT OF APPEAL

The Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 U.S.C. § 46110.<sup>188</sup> Any party to this

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<sup>186</sup> 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), page 3.

<sup>187</sup> Exhibit 1, Item 1, Page 3

<sup>188</sup> 14 CFR § 16.247(b)(2).

proceeding adversely affected by the Director's Determination may appeal this initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(b) within thirty (30) days after service of the Director's Determination.



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

**MAY 20 2014**

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Date