UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Kent J. Ashton	)	
	)	
COMPLAINANT	)	**Docket No. 16-99-09**
v.	)	
	)	
City of Concord, NC	)	
	)	
RESPONDENT	)	
	)	

DIRECTOR'S DETERMINATION

I. INTRODUCTION

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

Kent J. Ashton (Complainant) filed a complaint against the City of Concord, North Carolina (Respondent), sponsor of the Concord Regional Airport (Airport), alleging that the City, in operating the Airport, has engaged in activity contrary to its Federal obligations.

The Complainant alleges that the sponsor violated Federal grant assurance #22, prohibiting unjust economic discrimination, under 49 U.S.C. §47107(a)(1). Specifically, the Complainant alleges:

> ... the Sponsor, in trying to establish a clean, modern, business airport, made formal and informal decisions to preclude aircraft and owners who did not fit the City's image and the City structured its rules and regulations to preclude aircraft which did not fit its business-airport image. The City's goal, I contend, was to keep out unattractive aircraft, small aviation businesses, hobbyists, greasy coveralls, collections of parts, and to attract wealthy owners with expensive aircraft. .... Taken individually, each rule promulgated might seem to be reasonable, but when considered on the whole, the result is to deny access to a considerable number of aeronautical activities, in violation of the Assurances. [FAA Exhibit 1, Item 1, page 3]

The Complainant also alleges the granting of an exclusive right, in connection with a special service agreement for a particular, unusual kind of aircraft operated by two private concerns at the Airport. [FAA Exhibit 1, Item 1, page 9]

A review of Complainant's allegations found in the record raises the following issues for FAA consideration:

1. Whether the City's rules, regulations, standards or facilities constitute an unreasonable denial of access;

2. Whether the City's rules, regulations, enforcement thereof, and allegedly disparate facilities create unjust discrimination by preferring some similarly situated aeronautical users over other aeronautical users; and

3. Whether the City has bestowed an exclusive right to two private operators by providing increased convenience for the conduct of self-maintenance within a leased hangar, as well as bestowing an exclusive right for the Airport's Fixed-base operator (FBO) by effectively prohibiting self-service for some.

Our consideration of this matter is based solely on a review of the arguments and supporting documentation listed in the administrative record [FAA Exhibit 1] and the applicable Federal law and FAA policy prohibiting a sponsor from practicing unjust economic discrimination, unreasonably denying access and establishing an exclusive right for the use of the Airport.

With respect to the allegations presented in this Complaint, under the specific circumstances at the Concord Regional Airport as discussed below, and based on the evidence of record in this proceeding, we find that the City is not currently in violation of its Federal obligations.

II. THE AIRPORT

Concord Regional Airport is a public-use, general aviation airport located in Cabarrus County, North Carolina, approximately 7 miles west of Concord, North Carolina. The City of Concord owns the Airport. The Airport has approximately 88 based aircraft and 55,250 operations annually at the Airport. [FAA Exhibit 2]

Concord Regional Airport opened in 1994 as a reliever airport to Charlotte/Douglas International Airport. The development of the Airport has been financed, in part, with funds provided to the City as the Airport sponsor under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq* and as administered by the State of North Carolina in the State Block Grant Program.

III. APPLICABLE LAW AND POLICY

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. Section 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 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

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

The Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the AAIA, the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 USC § 47107(a), *et seq.*, sets forth requirements 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 as assurances in every airport improvement 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.

Airport Owner Rights and Responsibilities

Assurance 5, "Preserving Rights and Powers," of the prescribed sponsor assurances implements the provisions of the AAIA, 49 USC Section 47107(a), et seq., and requires, in pertinent part, that the sponsor of a federally obligated airport "...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor."

FAA Order 5190.6A, *Airport Compliance Requirements*, (Order) describes the responsibilities under Assurance 5 assumed by the owners of public-use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. See Order, Secs. 4-7 and 4-8.

Use on Reasonable and Not Unjustly Discriminatory Terms

Assurance 22, "Economic Nondiscrimination," of the prescribed sponsor assurances implements the provisions of 49 U.S.C. 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport:

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

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

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

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

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. See Order, Secs. 4-14(a)(2) and 3-1.

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. See Order, Sec. 3-8(a).

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 reasonable terms, and without unjust discrimination. See Order, Sec. 4-13(a).

The Prohibition of the Establishment of an Exclusive Right

Section 308(a) of the FAAct, 49 USC § 40103(e), provides, in relevant part, that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

Section 511(a)(2) of the AAIA, 49 USC § 47107(a)(4), similarly provides, in pertinent part, that "there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

Assurance 23, "Exclusive Rights," of the prescribed sponsor assurances requires, in pertinent part, that the 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...and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982."

In the Order, the FAA discusses its exclusive rights policy and broadly identified 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, we have 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. However, a sponsor is under no obligation to permit aircraft owners to introduce on the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities. See Order, Sec.3-9(e).

The leasing to one enterprise of all available airport land and improvements planned for aeronautical activities 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.
See Order, Sec. 3-9(c).

Fee and Rental Structure

Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurances satisfies the requirements of 49 U.S.C. 47107(a)(13). It provides, in pertinent part, that the sponsor of a federally obligated airport "agrees that it will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport."

The obligation of airport management to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport. See Order, Sec. 4-14(a).

Each commercial aeronautical activity at any airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applied to all other commercial aeronautical activities making the same or similar uses of such airport utilizing the same or similar facilities. See Order, Sec. 4-14(a)(2).

FAA policy provides that, at general aviation airports, variations in commercial aeronautical activities' leasehold locations, leasehold improvements, and the services provided from such leasehold may be the basis for acceptable differences in rental rates, although the rates must be reasonable and equitable. See Order, Sec. 4-14(a)(2) and (d)(2). However, if the FAA determines that commercial aeronautical activities at an airport are making the same uses of identical airport facilities, then leases and contracts entered into by an airport owner subsequent to July 1, 1975, pursuant to the Airport and Airway Development Act of 1970, as amended, shall be subject to the same rates, fees, rentals and other charges. See Order, Sec. 4-14(a) and (d).

Federal law does not require a single approach to airport rate-setting. Fees may be set according to a "residual" or "compensatory" rate-setting methodology, as long as the methodology used is applied consistently to similarly situated aeronautical users. Airport proprietors may set fees for aeronautical use of airport facilities by ordinance, statute or resolution, regulation, or agreement.

The FAA Airport Compliance Program

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

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports; rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served.

FAA Order 5190.6A 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 to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition 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 nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

IV. BACKGROUND

This Section describes the FAA's understanding of the relevant facts after review of the information presented in the record. Most of the Complaint involves the Complainant's claim that the Sponsor's failure to provide the services and facilities that he desires is a violation of the Sponsor's Federal grant assurances discussed herein. The Complainant also alleges that the enjoyment by some of increased convenience demonstrates unjust economic discrimination. Conversely, the Respondent argues that its proprietary rights allow it to operate the Airport at its own discretion, within reasonable limits.

Complainants Dissatisfaction with Airport Services

In January 1995, the Complainant made arrangements to park his "Experimental-Amateur Built Cozy" on the ramp at the Airport. [FAA Exhibit 1, Item 1, page 2]

As stated by the Complainant, in 1996, the Complainant became dissatisfied with the services offered by Airport management. Subsequently, he participated in a meeting with other tenants, citizens, a local representative of the Aircraft Owners and Pilots Association, the Mayor of Concord, members of the City Council and a representative of the State of North Carolina's Division of Aviation.[1] [FAA Exhibit 1, Item 1, page 2 and Item 8, page 2] At this meeting, several issues were discussed, including problems identified by the Complainant. The Complainant states that one change to Airport procedures was instituted following this meeting, allowing aircraft owners to drive to their aircraft. [FAA Exhibit 1, Item 1, page 2]

Apparently the Complainant continued to be dissatisfied with Airport management, stating that he requested a list of tenants from Airport management so that he could "contact other tenants to discuss possible changes." Also, the Complainant wished to

[1] The State of North Carolina acts as an agent of the Federal Aviation Administration in its role as a State Block Grant State, administering FAA grant related activities, including compliance with Federal Grant Assurances.

receive a copy of the waiting list for T-hangars, so that he could protect his "place in line for new Hangars." [FAA Exhibit 1, Item 1, page 2] The Complainant sued the Sponsor for these documents.

According to the Respondent,

> It is admitted that Complainant requested certain documents from [Airport management], and that [Airport management] concluded that Complainant's request was inappropriate under governing statutes, threatened the privacy of tenants and other users of [the Airport], and was tendered for an improper purpose. Complainant's request was therefore rejected.... [Airport management] ultimately entered into a compromise with Complainant under which Respondents produced appropriate public records to Complainant. [FAA Exhibit 1, Item 7, page 2]

In 1997, the Complaint removed his aircraft from the Airport to repaint and modify this aircraft, stating that it would be impossible to repaint his aircraft at the Airport. [FAA Exhibit 1, Item 1, page 2]

On or about July 7, 1998, the Complainant "took occupancy of a newly constructed public T-hangar and returned this airplane to the Airport." [FAA Exhibit 1, Item 1, page 2] Since the Complainant's return to the Airport, he has continued to be unsatisfied with the management of the Airport, as discussed below, forming the basis for this Complaint. For example, the Complainant states that the Sponsor does not offer several services that he desires, including:

> on-grass parking at lower rates, condominium hangars, shadeports, availability of auto fuel[2], appropriate self-maintenance facilities, sharing of facilities by users, and ground lease and private hangar building opportunities which would allow owners to combine interests into common hangar facilities. [FAA Exhibit 1, Item 1, page 3]

The Complainant states that other airport users of modest means might enjoy these facilities and services, as well. The Respondent states, "for reasons of health, safety, environmental protection, liability and managerial efficiency, [Airport management] has chosen not to offer on-grass parking, condominium hangars, shadeports, auto fuel, and sharing of T-Hangars." [FAA Exhibit 1, Item 7, page 3]

Facilities and Services

The complainant makes numerous allegations regarding the Complainants' and others use of Airport hangar and self-maintenance facilities.

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[2] The FAA understands the Complainant to be referring to the use of automobile fuel in aircraft designed to operate on such fuel.

Hangar Facilities

The record in this case refers to three types of hangar facilities on the Airport; T-Hangars, Hangars-In-Common (HICs), and Corporate Hangars. Generally, the complainant alleges that the Airport's rules regarding the use of T-Hangars constitute an unreasonable restriction to airport access; the Airport unjustly discriminates among classes of aircraft that can be based in HICs; the Airport unjustly discriminates against T-Hangar tenants by allowing tenants in HICs to store more than one aircraft and to enjoy other privileges not enjoyed by tenants of T-Hangars; and the Airport's private hangar building requirements constitute an unreasonable restriction to airport access.

T-Hangars

According to the Airport Permit rules, "T-Hangars are designed for storage of only single aircraft of the appropriate size for each given hangar, and the larger T-Hangars are designed for storage of larger single aircraft only." [FAA Exhibit 1, Item 7, page 11] On July 7, 1998, the Complainant requested that he be rented a T-Hangar larger than that required for the storage of his aircraft so that he could share it with another aircraft owner. In addition, the Complainant lists other instances of himself and others proposing to store more than one aircraft in a T-Hangar and proposing sharing T-Hangars. [FAA Exhibit 1, Item 1, page 11] The Airport management did not permit these proposals.

Hangars-In-Common (HIC)

The FAA understands that HICs are open hangers suitable for the storage of approximately a half-dozen aircraft. The HIC at issue in this Complaint "is equipped with the same firefighting equipment that is found in the [FBO's] hangar." [FAA Exhibit 1, Item 7, page 9] While the Respondent indicates that "[t]he Concord City Council designated that HICs to be built were to be used for storage of turboprop and jet aircraft," the FAA understands that some HICs are available for the storage of small, single engine and amateur-built aircraft, that these types of aircraft currently occupy such space, and that they are on the waiting list for additional spots. [FAA Exhibit 1, Item 13, page 3] In response to direct, written questions asked by the FAA during the investigation in order to clarify the written record, the Respondent states:

> Respondent does not discriminate among classes of aircraft that can be based in an HIC and small, single-engine, piston and amateur-built aircraft are assigned HIC space. Respondent has assigned single-engine, small twin-engine, amateur-built, and experimental aircraft to HIC storage since the first HIC opened in 1995. There are currently 7 single-engine and small twin-engine aircraft assigned to HIC storage and there are eight additional aircraft on the waiting list. There are currently 19 turbo-prop/turbine aircraft in HIC storage and three on the waiting list. There are also 67 single-engine, small twin, amateur-built and experimental aircraft stored in T-hangers. There are 14 aircraft on the T-hanger

> waiting lists. Respondent has attempted in all cases to balance construction of hanger space for all types and classes of aircraft in the most economical manner. [FAA Exhibit 1, Item 13, page 3]

Notwithstanding the Respondent's response to the FAA's question, the Complainant alleges that "[u]sers in Community hangars [Hangars-In-Common] are permitted to store two aircraft in a hangar[,]" [FAA Exhibit 1, Item 1, page 11] and a non-party to the complaint was denied space in one of these hangars. [FAA Exhibit 1, Item 1, Attachment 6] The Respondent admits that the non-party was redirected to T-hangar waiting-list, but did not pursue T-hangar storage. [FAA Exhibit 1, Item 7, page 6]

Corporate Hangars

The Complainant summarizes the private hangar building requirements from an apparent extract of a blank Corporate Lease Agreement:

> a user would be required to negotiate a corporate lease agreement, lease land from the City and construct a 6400 square foot corporate aircraft hangar, pave taxiway access and auto parking area, and install an expensive foam/water fire protection system meeting National Fire Protection Association standards, all at a cost of well over $100,000.... In addition, a private hangar builder who could afford such a hangar is prohibited from sub-leasing space to friends or other owners. [FAA Exhibit 1, Item 1, page 4]

Complainant states that Airport management has provided private building opportunities to parties on the Airport, "including Mr. Dickson, Mr. Rusty Wallace and S&D Coffee, Inc.,... [FAA Exhibit 1, Item 8, page 4] However, the Complainant alleges that the Sponsor's building rules make it prohibitively expensive for a private individual to meet the building requirements to construct private hangarage.

<u>Self-Maintenance Facility (SMF)</u>

As discussed more fully below, the Aircraft Storage Permit, signed by the Complainant on July 7, 1998, states, "Airplane maintenance in storage space is prohibited. Owner performed maintenance shall be undertaken only at the areas on the airport designated for such use. All engine run-ups for maintenance purposes will be conducted in designated areas so as not to disturb other tenants or surrounding residential communities." [FAA Exhibit 1, Item 1, Attachment 2]

In a copy of a memo, dated January 30, 1997, from Airport staff to an apparent user of the Airport, the Sponsor describes the SMF:

> The Self-Maintenance Facility is a lighted open-air structure with a roof. There is water, 115 volt electricity, and compressed air (90 psi) available at the site. The rate for use of this facility is $2.00 per hour. Maximum allowable time to

> occupy the structure is (24) continuous hours. However, if there are no customers requesting use of the facility, then you may remain at the structure for another (24) hours. We also have a waste oil drum at the structure to dispose of waste oil only. Any other fluids, such as, aviation fuels, Skydrol, toluene, acetone, mineral spirits, or any other hazardous material, must be properly disposed of by the customer... The facility can accommodate an aircraft with a wing span of 45'. [FAA Exhibit 1, Item 1, Attachment 7]

In its pleadings, the Respondent refers to the SMF as "an excellent facility, used by many tenants of [the Airport] to perform all types of maintenance." [FAA Exhibit 1, Item 7, page 7] The Respondent states that it "has, at a cost of more than $100,000, built a state of the art Self Maintenance Facility ("SMF") for use by all tenants of [the Airport], as well as a second wash area also used for maintenance. These areas have been used by tenants for all types of maintenance tasks, including on several occasions the complete replacement of engines." [FAA Exhibit 1, Item 7, page 3]

The Complainant describes the process of his making use of the SMF:

> In order to use this facility, the owner must first drive to the facility and see if it is in use (the Airport management does not have any communication with the facility). Then the owner must return to the terminal to book the facility and make arrangements to have his airplane towed to the facility. The owner must move his own tools, parts, work lights and materials to the facility. Consequently, it takes 30-45 minutes just to get in the SMF and get ready to work. In my case, I have to push my Experimental a quarter of a mile from my hangar to the SMF. In the course of work, the owner is expected to work out of his car, subject to the wind and weather in an open facility. If the owner wishes to leave and get a part or eat lunch, he must secure any tools in his car as the adjoining storage room cannot be locked by the user. If the SMF had previously been used to wash an airplane, the owner has booked the facility, the owner must discontinue his own work and vacate the SMF prematurely. When an owner is finished, he must carry his tools, parts, work lights, and materials back to his hangar or car and return to the terminal to notify them to stop the clock and make arrangements to tow the aircraft back to its parking spot. Then the owner returns to the aircraft to see that it is tied down properly and returns to the terminal to pay the trivial fee. [FAA Exhibit 1, Item 1, page 6]

The Respondent disputes the Complainant's characterization of the procedures, stating:

> Complainant need not drive to the SMF to determine whether it is in use. He may learn whether the SMF is in use by checking with the front desk, either by telephone or in person. The SMF may be reserved by telephone or in person, and may be reserved for periods of greater than 24 hours with the express permission of the Aviation Director, and permission will be granted for all reasonable requests. It is admitted that when Complainant has failed to schedule

> in advance sufficient time to perform his maintenance, he has been required to vacate the SMF... when another user with a properly reserved block of time arrived. Complainant could, nevertheless, continue his maintenance outside of the structure so long as he remained in the vicinity of the SMF, or he could perform maintenance at the other designated maintenance area. Moreover, Complainant need not push his aircraft as he alleges. [Airport management] offers all tenants the service of pushing or towing their aircraft free of charge.... [FAA Exhibit 1, Item 7, page 7]

The Complainant also describes the SMF as "a facility with no fire protection except portable extinguishers."

The Complainant characterizes the alleged inadequacy of the Airport's facilities, especially the SMF, by alleging numerous incidences of his own or others inconvenience or incidences of others allegedly failing to abide by the Airport's or other applicable rules in their use of the Airport's facilities. For example, the Complainant alleges that on March 24, 1999, he was prevented from working near his own hangar when the SMF was being used by another operator and the weather was threatening rain. The Airport management accommodated the Complainant in the SMF by removing the other operator to a position adjacent to the SMF where this operator continued to wash his aircraft causing alleged inconvenience to the Complainant and allegedly violating Environmental Protection Agency and Airport rules. [FAA Exhibit 1, Item 1, page 7] Again, on April 23, 1999, the Complainant had to wait to use the SMF for approximately four hours because other operators were using the facility. Upon the Complainant's departure of the SMF, he alleges that a plane that was too large to fit inside the SMF was washed adjacent to the facility and caused wash runoff to enter storm drains. [FAA Exhibit 1, Item 1, page 7] On June 30, 1999, the Complainant alleges that he had been approved to use the SMF, but that it had not been made operational by the Airport staff. Therefore, the Complainant, on this occasion, did not have access to lights, water, and compressed air. He states, "It is true that I could have driven down to the terminal to get someone to unlock the facility, but it demonstrates another of the Airport's many barriers to owner-maintenance. [FAA Exhibit 1, Item 1, page 8]

The Respondent states that, in the first two instances cited above, the Complaint did not reserve the SMF in advance, as is required, and denies that Environmental Protection Agency regulations were violated.

Rules and Procedures

In order to take tenancy of the newly constructed T-hangar on July 7, 1998, the Complainant was required to sign an Aircraft Storage Permit. This permit sets forth specific rules and procedures that must be followed by tenant of the Airport. Specifically, the Airport's Aircraft Storage Permit rules require, among other things, the following:

4. COMPLIANCE – Tie-downs, T-Hangars and Conventional Hangars:

A. Permittee shall abide by the Airport rules of the City of Concord Aviation Department, Ordinances of the City of Concord, Federal and State Statutes, and Regulations of The Federal Aviation Administration including environmental laws regarding the handling, discharge, release and dumping of hazardous substances.

B. Airplane maintenance in storage space is prohibited. Owner performed maintenance shall be undertaken only at the areas on the airport designated for such use...

C. The premises covered by the Permit shall not be used for the storage of flammable or explosive substances or items except for those substances or items as allowed by the City of Concord Fire Department. Storage of fuel is restricted to the fuel cells/tanks of the stored airplane only....

E. All aircraft in storage space must be airworthy...

H. The City of Concord reserves the right to inspect area without notice at any time to insure that the areas are kept free of fire hazards and debris....

Compliance- T-Hangars only:

K. Hazardous activities such as, but not limited to, smoking, welding, painting, doping, open fuel lines, open flame, or the application of hazardous substances are expressly prohibited....

M. Storage of items not related to aviation is prohibited, except as noted in paragraph T, Electrical Appliances.

N. If Permittee fails to maintain the storage space as required herein, the City may take corrective action at the expense of Permittee upon ten (10) days notification.

O. The City reserves the right to enter T-hangars at any time. Only locks provided by the City may be used on T-hangar doors....

P. Permittee understands that the Aviation Director has implemented an airfield security plan or vehicle access program with which Permittee agrees to comply.

Q. Airplanes may not be parked outside in front of T-hangar on ramp unattended at anytime...

T. ELECTRICAL APPLIANCES- Limited electrical appliances are allowed in a T-hangar with prior approval of the Aviation Director and payment of any applicable fees....

V. T-Hangars are designed for single aircraft occupancy only. The Aviation Director reserves the right to assign the aircraft to the hangar most appropriate to its size....

8. ASSIGNMENT – The airplane storage space designated above is rented on a month-to-month basis for Permittee's airplane storage only. Such space may not be sublet, assigned or otherwise transferred....

11. TERMINATION – This Permit may be cancelled by the City or Permittee upon ten (10) days written notice by either party. Violations of any conditions hereof by Permittee, its employees, agents or invitees shall constitute cause of cancellation; provided also that the City of Concord reserves the right, as owner of the facility, to cancel for any reason and not solely for breach of the conditions of this permit. Permittee shall pay all charges for rental and services accrued to the cancellation date. [FAA Exhibit 1, Item 1, Attachment 2]

In addition to these rules, the Respondent states that "no Airport users are permitted to paint aircraft at the Airport." [FAA Exhibit 1, Item 7, page 2]

Enforcement

The Complainant presents circumstances of alleged unequal treatment in regards to enforcement of Airport rules and exceptions to standards. In regards to self-maintenance in leaseholds, the Respondent states that Airport management:

> ... entered into a lease agreement with Larry Hedrick Motorsports ("Hedrick") under which Hedrick leases aircraft storage space in HIC-B. It is further admitted that [Airport management] allows Hedrick to perform maintenance on his G-1 aircraft in the HIC because Spitfire (the FBO) does not currently possess the personnel or equipment necessary to adequately maintain the Hedrick G-1. The HIC occupied by Hedrick is equipped with the same firefighting equipment that is found in the Spitfire hangar (i.e. foam sprinkler system and firewalls). The firefighting systems located in the Hedrick HIC are appropriate for a maintenance facility. The firefighting systems located in the T-Hangars are not appropriate for a maintenance facility...
> ...[Airport management] entered into a lease agreement with Joe Gibbs Racing ("Gibbs") under which Gibbs leases aircraft storage space in an HIC. It is further admitted that [Airport management] allows a mechanic employed by Hedrick to perform maintenance on Gibbs' G-1 aircraft in the HIC under a specialized operating agreement between Hedrick and Gibbs because Spitfire (the FBO) does not currently possess the personnel or equipment necessary to

> adequately maintain the Gibbs G-1. Gibbs also possesses a Learjet; however, this aircraft can be maintained by Spitfire and therefore [Airport management] has not granted Gibbs permission to use Hedrick's mechanic to maintain this or any other aircraft. [FAA Exhibit 1, Item 7, page 9]

The Complainant puts forward numerous examples of alleged disparate treatment of Airport users, who are not parties to this Complaint.[3] He includes the names and addresses of several people conducting activities at the Airport that he observed, approached, questioned and/or photographed. He states that he observed, on May 29, 1999, an individual and

> two mechanics from an FBO on the field, working in the owner's leased T-Hangar to remove a broken prop bolt. In this T-Hangar I observed ... materials that indicate other maintenance was probably performed in this T-Hangar. I approached [the individual] and informed him that maintenance was not allowed in T-Hangars and asked if he was interested in joining my complaint, he stated that "he had a good relationship with John Crosby [the Aviation Director] and didn't want to spoil it". I took this to mean that Mr. Crosby knew he worked in his T-Hangar and looked the other way. When I reported to Mr. Crosby that this owner was working in his T-Hangar, he sent an employee to investigate, but he allowed the work to continue for another half hour until it was completed. I contend this is selective enforcement.... [FAA Exhibit 1, Item 1, page 9]

The Complainant also states that "on fifteen other occasions this year I observed owners or mechanics performing maintenance on their aircraft in leased T-Hangars. I questioned many of these owners..."[4] [FAA Exhibit 1, Item 1, page 10]

In an attachment to his Complaint, the Complainant lists 37 instances that he describes as "instances of lax enforcement or selective enforcement of the Airport's rules which I observed this year. Some may seem trivial (and they are) but each is an instance of someone breaking an airport rule which the airport did not care enough about to enforce." [FAA Exhibit 1, Item 1, Attachment 15] The list of 37 instances are dated from January 15, 1999 to June 4, 1999, a 5-month period.

The Respondent states that Airport management, "regularly inspects T-Hangars and upon discovery of violations of Airport regulations issues notice to the offending party to cease the violation. [Airport management] contends that it would be impossible to discover every violation that might occur, however, when it has in the past discovered violations, [Airport management] has acted swiftly in accordance with [Airport management's] Operational Regulations." [FAA Exhibit 1, Item 7, page 10] The Sponsor's Operations

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[3] The FAA notes that the Complainant describes other individuals making use of the Airport's facilities for conducting aeronautical activities.

[4] The Complainant characterizes the meaning of the statements of these numerous anonymous persons. The FAA does not find this evidence relevant.

Code is included in the Record as FAA Exhibit 1, Item 17. Although not cited by the Respondent, it would appear that Section 01.08 "Violation of Rules and Regulations" contains the procedures referenced.

Insurance and Liability Waiver Requirements

The Concord Regional Airport Aircraft Storage Permit, cited above, states the following:

> 2. INSURANCE – Permittee shall provide the Aviation Director a copy of Certificate of Insurance for the airplane to be stored under this Permit, before occupying the space. Certificate must name the City of Concord as the Certificate Holder and contain an endorsement naming the City of Concord as "additional insured".
>
> 4. I. The City of Concord assumes no liability for damage or loss to aircraft or other personal property stored under this permit. All aircraft and other personal property are stored at Permittee's risk....
>
> 6. PROPERTY DAMAGE – The City assumes no liability for damage or loss to aircraft or other approved personal property stored under this Permit. Aircraft and other approved personal property are stored at Permittee's sole risk. Any insurance protecting Permittee's personal property against fire, theft or damage must be provided by the Permittee. [FAA Exhibit 1, Item 1, Attachment 2]

The Complainant alleges that the Sponsor requires based aircraft to carry liability insurance, but does not require transient aircraft to carry insurance. [FAA Exhibit 1, Item 1, page 10]

Restrictions of non-aeronautical use of the Airport

The Respondent admits that the Aviation Director repeatedly, verbally restricted the Complainant's activities on the Airport "to those needed for his own aviation purposes," [FAA Exhibit 1 Item 11, page 2] beginning as early as April 1999. [FAA Exhibit 1, Item 10, page 2] This conflict over the activities described below, by the Complainant, resulted in the citation of the Complainant for trespassing on September 20, 1999, by the Concord Police Department [FAA Exhibit 1, Item 10, page 3]. The Complainant had been previously warned, according to Robert Cansler, Chief of Police for the City of Concord, who states, "On at least two occasions prior to September 20, officers of the Concord Police Department were present at the Airport and informed Ashton that he was not to go anywhere in the restricted area on the Airport that was not necessary for the use of his aircraft." [FAA Exhibit 1, Item 11, Attachment K]

The Complainant summarizes some of his activities[5]:

[5] The Complainant's activities are also discussed in the Enforcement Section above.

> In preparation for good-faith negotiations with the Sponsor and to document his allegations for the Sponsor's consideration, the Complainant began, on or about January 1, 1999 to take a camera to the airport and take photographs of airfield activities, talk to other Airport users and tenants concerning Airport management issues, and write letters to the Airport managers and the Sponsor, with the intention of documenting Complainant's observations and seeking relief in certain matters....
>
> Although Complainant generally made such investigations in conjunction with aeronautical uses, at times, the Complainant entered the airfield solely for the purpose of observing activities and talking with persons on the airfield....
>
> Complainant admits that some few tenants were bothered at having their picture taken or bothered when the Complainant sought to discuss their activities with them. Complainant admits that he may have "bothered" a few tenants. [FAA Exhibit, Item 10, page 3]

In another letter to the Concord City Manager, the Complainant summarizes his activities on May 29, 1999, stating, "... I observed a woman waxing [an airplane] in a T-Hangar... I believe I surprised this woman by taking a picture of her activity without first warning her, but I apologized and explained why." [FAA Exhibit 1, Item 11, Attachment E]

V. ANALYSIS

As summarized above, the Complainant alleges:

> ... the Sponsor, in trying to establish a clean, modern, business airport, made formal and informal decisions to preclude aircraft and owners who did not fit the City's image and the City structured its rules and regulations to preclude aircraft which did not fit its business-airport image. The City's goal, I contend, was to keep out unattractive aircraft, small aviation businesses, hobbyists, greasy coveralls, collections of parts, and to attract wealthy owners with expensive aircraft. While some of these goals may be legal by the Assurances, the effect of these rules has also been to illegally restrict aircraft restorers, hobbyists, warbird owners, experimental owner-builders, tinkerers, rebuilders, and to restrict inexpensive storage. Taken individually, each rule promulgated might seem to be reasonable, but when considered on the whole, the result is to deny access to a considerable number of aeronautical activities, in violation of the Assurances. [FAA Exhibit 1, Item 1, page 3]

The Complainant also alleges exclusive rights violations in connection with special maintenance contracts on the Airport.

In this section, the FAA analyzes the facts to determine whether they establish that the Sponsor has (1) denied access through unreasonable standards and procedures and

inadequate facilities; (2) unjustly discriminated between similarly situated aeronautical users; and (3) granted and exclusive right to provide aeronautical services to the public.

Unreasonable Restriction of Access

One aspect of compliance with Grant Assurance 22(a) is that a sponsor "will make the airport available as an airport for public use on reasonable terms.... to all types, kinds and classes of aeronautical activities." However, as stated in the Applicable Law and Policy Section, above, Assurance 22(h) allows the Sponsor to "establish such reasonable... conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport." In this section, the FAA will examine whether, individually, or cumulatively, the Sponsor has violated Grant Assurance 22, in regards to its obligation to "make the airport available as an airport on reasonable terms."

Rules and Procedures

The Complainant contends that enforcement of paragraph 4(E) of the Airport's Aircraft Storage Permit signed by the Complainant, requiring stored aircraft to be airworthy, cited in the Background section,

> limits and restricts the aeronautical activities of any person or firm who wishes to repair, build, rebuild, restore, or modify aircraft..... In my case, the Airport rule prohibits me from bringing to the Airport and assembling my newly built, but non-airworthy Experimental-Amateur Built aircraft. This airplane is not airworthy until it receives an Airworthiness Certificate issued by the FAA, however, in the building process, there comes a time when the airplane is essentially finished, but it must be assembled at the airport... This activity is not practical or allowed under the Sponsor's rule. [FAA Exhibit 1, Item 1, page 3]

The Sponsor concurs that "the Lease prohibits Complainant from storing nonairworthy aircraft." The Sponsor also states that the construction of amateur-built aircraft at the Airport is currently permitted, but that, as discussed below, the Complainant cannot do so in his leased T-hangar. [FAA Exhibit 1, Item 7, page 4]

The FAA notes that the construction of aircraft is not an aeronautical activity. See Order, Appendix 5(a). Therefore, the storage of aircraft parts is not a protected aeronautical activity under the grant assurances, leaving the Sponsor with the discretion to regulate such storage in leaseholds. The record is insufficient to determine whether the final stages of the Complainant's potential construction of his amateur-built, experimental aircraft would be within the definition of "repair and maintenance of aircraft" and thus constitute a protected aeronautical activity. See Order, App. 5(a)(1)(k). In any event, the Sponsor may limit such "final-stage" activities:

> An airport owner is under no obligation to permit aircraft owners to introduce on 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 by others. Reasonable rules and regulations should be adopted to confine aircraft maintenance and fueling operations to appropriate locations with equipment commensurate to the job being done[6]. Unless the aircraft owner is in a position to meet such standards with his own equipment and personnel, his right to service his own aircraft does not override the prerogative of the airport owner to control the sources of providing fuel and other aeronautical services. [Order, Sec 3-9(e)(3)]

Restricting final-stage experimental aircraft assembly to particular locations on the Airport, and requiring that the nonairworthy components be delivered to the Airport at a certain level of construction are reasonable requirements separately and cumulatively and do not constitute a denial of access for an aeronautical activity. Moreover, the FAA is unpersuaded by the Complainants allegations that the Airport's rules prohibit delivery of nonairworthy aircraft components to the Airport for final assembly. The Complainant supplied a memo from the Sponsor to a third party that describes such a delivery, at an apparent cost to the aircraft owner of $75, [FAA Exhibit 1, Item 1, Attachment 7] thereby confirming the Sponsors' testimony that assembly of amateur-built aircraft at the Airport is currently permitted.

The Complainant further contends that enforcement of paragraph 4 (B) of the Lease agreement, cited above, prohibiting aircraft maintenance in all storage spaces leased from the airport, denies access to the public on fair and reasonable terms. The Complainant states:

> ...the T-Hangars constructed by the Sponsor and provided to the public are an appropriate location for most non-hazardous aircraft maintenance operations... These T-Hangars are Group III aircraft hangars under National Fire Protection Association (NFPA) chapter 409, section 5-2.2. [FAA Exhibit 1, Item 1, page 4]

The Respondent states:

> It is admitted that the Complainant is required to perform maintenance on his aircraft in designated areas only, and that Complainant's storage space is not a designated area for such maintenance. Complainant's storage space is a T-Hangar which was designed and built to accommodate the storage of single aircraft only. These hangars were not designed or intended to be maintenance facilities. ... [Airport management] may reasonably determine that to protect the safety and welfare of tenants and users, and for environmental protection, liability and managerial reasons, the Airport is best served by requiring maintenance to be performed only in designated areas. The fact that some maintenance activities might be otherwise permissible under the Fire Code in

[6] The FAA notes that this sentence means that the sponsor may require the aeronautical user to use equipment commensurate to the job being done. It does not require the sponsor to provide such equipment.

> Complainant's hangar does not strip [the Sponsor] of its discretion to determine that another area is more appropriate for maintenance. Moreover, ...[the Sponsor] has ... built a [Self-Maintenance Facility] for use by all tenants of [the Airport]. [FAA Exhibit 1, Item 7, page 5]

The FAA concurs that the above quoted statement sufficiently reflects the discretion of the Sponsor to prohibit self-maintenance in facilities provided for lease to aeronautical users. The aim of defending the "safety and welfare of tenants and users" and "managerial reasons" constitutes the reasonable exercise of the Sponsor's discretion under Assurance 22(h) and (i). The FAA notes that it is not an uncommon provision for the protection of the airport users, as well as the public's investment in the Airport's facilities, to make such a maintenance restriction. Furthermore, the Order reinforces the Grant Assurances, stating "Reasonable rules and regulations should be adopted to confine aircraft maintenance and fueling operations to appropriate locations with equipment commensurate to the job being done."[7] [Order, Sec 3-9(e)(3)]

In addition to the above cited rules and in regard to the Complainant's contention that "the painting of an aircraft, or a section or component of an aircraft, whether by brush or spray or other method is 'maintenance'" [FAA Exhibit 1, Item 8, page 2], the Respondent states that

> No Airport users are permitted to paint aircraft at the Airport, and the cost of constructing an appropriate hangar and complying with all environmental regulations for such operation would likely substantially exceed $100,000... Complainant does not contend that Respondents are obligated to build such a complying facility so that he may paint his aircraft. [FAA Exhibit 1, Item 7, page 2]

It is unclear by the Record whether the parties were intending to discuss incidental painting of components with a brush and can, constituting activity that would be allowed without extraordinary environmental protection, or if the parties were discussing painting of the type referenced above. In any case, the same arguments regarding the discretion of the Sponsor to designate appropriate areas for maintenance activities apply. The Complainant contends that "[a]t the most basic level, such accommodation might consist of identifying a point on the airfield, away from other activity, where painting can be performed." Complainant contends that no federal or state laws prohibit a private individual from painting an entire aircraft in the open, or in a temporary shelter, or in an adequately equipped structure..." [FAA Exhibit 1, Item 8, page 3]

As discussed more fully above, an airport owner is under no obligation to permit aircraft owners to introduce on the airport equipment, personnel or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient

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[7] The FAA notes that this sentence means that the sponsor may require the aeronautical user to use equipment commensurate to the job being done. It does not require the sponsor to provide such equipment.

use of airport facilities by others. [See Order at Sec. 3-9(e)(3)]. Certainly the painting facility suggestions of the Complainant could be presumed to be unsightly, at the very least. Also, the FAA is unpersuaded that the Sponsor is overstating its environmental concerns. Lastly, the Complainant has made no statement that he has proposed developing such an appropriate painting facility, or that Airport management has refused to negotiate for the leasing of available property for such a purpose. Consequently, the FAA is not persuaded that the Sponsor has unreasonably restricted this activity.

The Complainant states that the aforementioned rules, coupled with the private hangar building requirements, prevent the Complainant from enjoying his allegedly protected aeronautical activity of constructing amateur-built aircraft. [FAA Exhibit 1, Item 1, page 4] The Complainant summarizes an apparent extract of a blank Corporate Lease Agreement:

> ... the Sponsor's building rules make it prohibitively expensive for a private individual to meet the building requirements to construct private hangarage. In order for an individual or club to construct an airplane at this Airport, a user would be required to negotiate a corporate lease agreement, lease land from the City and construct a 6400 square foot corporate aircraft hangar, pave taxiway access and auto parking area, and install an expensive foam/water fire protection system meeting National Fire Protection Association standards, all at a cost of well over $100,000. Consequently, there is only one non-business privately owned hangar on the airport.... In addition, a private hangar builder who could afford such a hangar is prohibited from sub-leasing space to friends or other owners. [FAA Exhibit 1, Item 1, page 4]

The Complainant admits that it is possible to negotiate with Airport management to obtain a private hangar. Furthermore the Complainant does not state that he has made a proposal to the Sponsor for the leasing of land to construct any sort of hangar. In fact, the Complainant states that he "does not wish to get bogged down in land lease, square footage and building costs." [FAA Exhibit 1, Item 8, page 5]. At Sec. 4-15(b), the Order describes this situation, stating that a problem arises,

> ....when an aircraft operator, unable to arrange satisfactory terms for hangar space and service with an existing fixed base operator, seeks to construct its own facilities. The obligation to operate an airport for the use and benefit of the public requires that reasonable provision be made for essential support services for those who use it [the airport]. Therefore, when neither the airport owner nor the tenant FBOs can provide adequate storage, fueling, and other basic services to an airport user, the user may not be denied the right to lease space, if available, on reasonable terms to install such facilities at its own expense.

The fact that some people may not be able to afford to meet the minimum standards is not tantamount to an unreasonable restriction to aeronautical access. Also, the Complainant has not established that the Sponsor has turned down any reasonable proposal for the

leasing of available space appropriate for building. The Sponsor is not obligated to displace some other aeronautical users' preferred use of space available for lease, particularly if that preferred use enjoys a higher demand. Finally, constructing an aircraft is not an aeronautical activity and does not enjoy the same protections by the grant assurances as does self-maintenance of aircraft. Consequently, the FAA is unpersuaded that the building requirements cited by the Complainant are unreasonable or deny access for an aeronautical use of the Airport.

Facilities and Services

In terms of facilities and services, the Complainant states that the Sponsor fails to offer the following "fair and reasonable accommodation," listing

> on-grass parking at lower rates, condominium hangars, shadeports, availability of auto fuel, appropriate self-maintenance facilities, sharing of facilities by users, and ground lease and private hangar building opportunities which would allow owners to combine interests into common hangar facilities" [FAA Exhibit 1, Item 1, page 3]

The Respondent states:

> ... for reasons of health, safety, environmental protection, liability and managerial efficiency, [Airport management] has chosen not to offer on-grass parking, condominium hangars, shadeports, auto fuel, and sharing of T-Hangars. [FAA Exhibit 1, Item 7, page 3]

Regarding the sharing of T-hangars, the Complainant contends that the prohibition on the sharing of T-hangars denies access to "the kind of people who share hangars, ... people who fly junky little aircraft, want to work on their own aircraft, use auto gas, and make messes." The Complainant also states that "I own a flying aircraft and two incomplete aircraft. I obviously have a need to store more than one aircraft in a hangar." [FAA Exhibit 1, Item 1, page 11] The Respondent summarizes the Airport rules stating that "T-Hangars are designed for storage of only single aircraft of the appropriate size for each given hangar, and the larger T-Hangars are designed for storage of larger single aircraft only." [FAA Exhibit 1, Item 7, page 11] The FAA finds that the Sponsor's discretion to manage its Airport as stated in Grant Assurance 22(h) and (i) clearly includes the ability to restrict T-hangar storage to single aircraft.

Regarding the lack of availability of auto fuel for use in aircraft, the Respondent states that it does not offer auto fuel "reasons of health, safety, environmental protection, liability and managerial efficiency...." [FAA Exhibit 1, Item 7, page 3] The Complainant states that the Respondent has failed to provide justification for the lack of availability of auto fuel and that the Respondent is obligated to provide such justification, pursuant to his Complaint. [FAA Exhibit 1, Item 8, page 1]

The FAA understands, although it is not specifically stated in the record, that the Sponsor exercises its right to hold a proprietary exclusive regarding fueling. As stated in the Order, "The owner of a public-use airport... may elect to provide any or all of the aeronautical services needed by the public at the airport." [Order, Sec.3-9(d)] Grant Assurance 22(g) states, "In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers." Therefore, its decision not to offer auto fuel is a business decision within its rights to make. The Sponsor is simply not obligated to provide a more detailed reason for this business decision.

The Complainant alleges that conditions of the SMF, in connection with the restrictions associated with T-hangar storage and use, and the private building requirements mentioned above, cumulatively amount to the Sponsor operating "to prevent Complainant from performing services on his own aircraft in violation of [grant assurance #22]." [FAA Exhibit 1, Item 1, page 6] The Complainant states that the Order at paragraph 3-9,e,(3) "emphasizes that the Sponsor may confine aircraft maintenance to appropriate locations 'with equipment commensurate to [do] the job being done.'"[8] [FAA Exhibit 1, Item 1, page 6] He continues, "While I do not believe the Sponsor must supply my equipment, it must provide an appropriate place to employ my equipment, provide timely access to a location where I can perform servicing, allow me to secure the work area between work sessions, and complete servicing without unreasonable interruptions." [FAA Exhibit 1, Item 1, page 6] The Complainant also alleges that confining all maintenance activity to such a facility is a violation of National Fire Protection Association codes, "in that the Airport forces those who would perform hazardous service operations such as oxygen and fuel maintenance, cleaning with combustible materials, welding and the like, to work in a facility without adequate fire protection. Consequently, those types of servicing are impractical." [FAA Exhibit 1, Item 1, page 4] The FAA notes that paragraph 3-9(e)(3) of the Order means that the sponsor may require the aeronautical user to use equipment commensurate to the job being done. It does not require the sponsor to provide such equipment, nor does the Sponsor have to provide facilities to perform hazardous operations, absent a proposal to pay for such a facility and the availability of space to locate such a facility.

The FAA notes that the Complainant does not describe his inability to use the SMF, but rather its inconvenience and impracticality. As summarized in the Background Section, the Complainant goes on to describe his use of the SMF for self-maintenance, as well as the use by others of this facility, including his frustration and desire for a better facility. The Complainant states, "That some tenants have persevered in the use of this facility, such as Complainant, is immaterial." [FAA Exhibit 1, Item 8, page 4] The FAA notes that the Complainant's and others' use of the SMF is material, establishing that the facility does provide access to self-maintenance. This fact is further substantiated by

[8] The Complainant slightly misquotes the sentence in the Order, inserting the word "do" as noted in the quote.

statements by the Respondent. The Respondent states, "These areas have been used by tenants for all types of maintenance tasks, including on several occasions the complete replacement of engines." [FAA Exhibit 1, Item 7, page 3] The Respondent also states, "The SMF may be reserved.... for periods of greater than 24 hours." [FAA Exhibit 1, Item 7, page 7] Also, the Complainant submitted a memo from the Sponsor to a third party that describes the procedures for delivery of a nonairworthy aircraft to the Airport for repair in the SMF, including the apparent installation of an engine and the removal and/or attachment of wings [FAA Exhibit 1, Item 1, Attachment 7]

Moreover, FAA officials have visited the SMF and have not determined that it is sufficiently inadequate to constitute the denial of the opportunity to perform protected self-maintenance activities. In its letter to the City of Concord, dated July 14, 1999, responding to a complaint from Mr. Ashton, the State of North Carolina Department of Transportation states, "... the self maintenance facility has been reviewed by FAA on at least two previous occasions and found to be acceptable." [FAA Exhibit 1, Item 7, Attachment 1]

Given the above summary of the Complainant's usage of the SMF, as well as his summary of other's usage of the SMF, in conjunction with the Sponsor's description of the SMF, its willingness to allow procedures for its usage, and the lack of any determination by the FAA or the State of North Carolina that the facility is sufficiently inadequate to constitute an unreasonable restriction, the FAA determines that the SMF is not an unreasonable restriction to self-maintenance.

Also, the FAA does not find that the cumulative effect of the rules, procedures and facilities of the Airport constitute an unreasonable restriction of the use of the Airport as an airport.

Insurance

The Complainant alleges that "paragraph 4.I. and 6[9] of the Storage Permit require the Complainant to waive rights to recover damages against the Sponsor before being permitted to base an aircraft at the Airport, and that the Sponsor's requirement to be named an Additional Insured on my insurance policy, violates [grant assurance #22]." He goes on to state, "The City's desire to insulate itself from the risk of operating a public airport is understandable, but I contend that in choosing to construct and operate a public airport, it undertook to operate a public facility with public access rights which are not contingent on waiving its liability." [FAA Exhibit 1, Item 1, page 10]

It is consistent with the Sponsor's grant assurances for the sponsor to protect itself against exposure to the liability associated with public use of airport property. The Sponsor may protect its ability to remain a going concern, while continuing to make itself available on a fair, reasonable and not unjustly discriminatory basis, by establishing general liability

[9] These provisions are quoted in the Background Section.

insurance requirements for users of the airport, including those objected to by the Complainant. The argument that the grant assurances simply prevent this is unfounded and unsupported by the Complainant.

Against this background and policy, the FAA finds that the evidence presented does not support the conclusion that the Sponsor has adopted and/or implemented policies or practices which are unreasonable in regard to liability insurance requirements or waivers of liability at the Airport. Therefore, the Sponsor's treatment of the Complainant in regard to this issue appears to be in compliance with their grant assurances.

Non-aeronautical activities

Complainant filed a Motion for Cease and Desist Order and Brief in Support Thereof, seeking that the Administrator of the FAA Order the "Sponsor and its employees and agents to cease and desist from limiting or restricting the access of any members of the general public to the use of Concord Regional Airport." [FAA Exhibit 1, Item 10, page 8] The FAA's authority over the Complainant's access to the Airport is limited to his use of the Airport as an airport. See grant Assurance #22. The FAA accepts that violations of state of local law by an individual, and subsequent prosecution, might have the effect of restricting his or her ability to conduct aeronautical activities. Providing protection to an individual from the consequences of his or her nonaeronautical activity, such as being cited for trespassing, is not the responsibility of the Sponsor under the Grant Assurances and is not within the jurisidiction of the FAA. The FAA is satisfied from the statements of the Complainant, summarized in the Background Section, that he conducted nonaeronautical activities on the Airport. These activities appear to have been the subject of state or local court proceedings. The character of the Complainant's nonaeronautical actions is not within the jurisdiction of the FAA to determine. Because the record appears to show that the Respondent's concerns involved the Complainant's clearly nonaeronautical use of the Airport, the Complainant's Motion is denied.

Summary of Unreasonable Restriction

The FAA notes that the Sponsor's obligation to make the airport available to the public, does not mean that the sponsor is obligated to provide a specific level of service or level of convenience. The Order states at 4-15(a), "The Assurance establishes a privilege (to service one's own aircraft) but does not, by itself, compel the sponsor to lease such facilities which may be necessary to exercise that right." It follows that the Airport is also not required to provide specific levels of convenience regarding the exercise of said activity. Also, "Public-use" does not mean use by any individual user on individual terms. Rather, the Sponsor must generally provide access to the public without unjust discrimination. In fact, the Sponsor may even "limit any given type, kind or class of aeronautical uses... to serve the civil aviation needs of the public." [Assurance 22 (i)] Finally, the FAA is not conceding that some collection of reasonable and nondiscriminatory standards, procedures and facilities can combine to create the violation

of the grant assurance requiring reasonable access to use the airport as an airport. However, the FAA has found no such cumulative effect here.

Unjust Economic Discrimination

Grant assurance #22 only provides protection from unjust economic discrimination to aeronautical activities. Also, grant assurance #22 at (h) and (i) provide that the airport may treat dissimilarly, dissimilar aeronautical uses of the Airport. Management issues such as economy of collection and efficient use of the airport's limited facilities can be justifications for differing treatment of differing users of the airport. Furthermore, incidental or isolated failings to treat all users exactly the same are not sufficient to determine that the Sponsor is in noncompliance. The Order states:

> The judgment to be made in all cases is whether the airport owner is reasonably meeting the Federal commitments. It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in the FAA's judgement is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out. [Order, Sec 5-6(a)(2)]

Against this background, the FAA considers the following allegations made by the Complainant.

<u>Rules, Procedures and Facilities</u>

The Complainant alleges that the FBO (Spitfire) does paint repaired areas of aircraft in its leasehold [FAA Exhibit 1, Item 8, page 3]; while, the Complainant is prohibited from painting at the Airport. As was noted above, it is unclear by the record whether the Sponsor intends to prohibit incidental painting of repaired, discrete areas of an aircraft with a brush and can by those users self-maintaining aircraft at the SMF. The Complainant mentions that he presumes that painting with a brush or spray is a protected maintenance activity. Also, it is unclear by the record, whether the FBO is exercising this limited painting, as described by the Complainant, with the knowledge and permission of the Sponsor.

As discussed more fully above, the FAA has not determined that the lack of specific facilities at the Airport to permit extensive painting constitutes an unreasonable denial of access to the Complainant. The FAA is not persuaded by the limited information provided by the Complainant that the Sponsor is prohibiting identical activity by the Complainant that it is allowing by the FBO. Therefore, the FAA cannot conclude that the Sponsor is unjustly discriminating against the Complainant.

Regarding the opportunities for private hangar building and, the lack of condominium hangars, on the Airport, the Complainant states:

> ...it is not "fair" or "reasonable" to require a person with a single-engine aircraft who wishes to build a hangar on the airfield, to construct a 6400 square foot corporate hangar which could accommodate 4-8 aircraft... Complainant contends it is unfair and unreasonable to set the bar so high that only wealthy users' buildings are accommodated, while other users are restricted to the use of their leased hangars, confined for maintenance to a substandard facility, and not permitted to sublease space to defray costs of satisfying the Sponsor's requirement to build a large private hangar... These building requirement conditions discriminate against some economic classes of aeronautical users who want facilities but cannot afford to meet the Sponsor's standard... [FAA Exhibit 1, Item 8, page 5]

Complainant states that Airport management has provided private building opportunities to parties on the Airport, "including Mr. Dickson, Mr. Rusty Wallace and S&D Coffee, Inc., therefore they are obligated to offer such private building opportunities to all users, particularly in view of the restrictive regulations in force for their leased facilities." [FAA Exhibit 1, Item 8, page 4] The record is not definitive as to how, where or if the Complainant or other interested parties, organized as individuals, a club or corporation, may have proposed to provide such facilities or services under a lease or other mechanism. However, the Complainant states that he "does not wish to get bogged down in land lease, square footage and building costs." [FAA Exhibit 1, Item 8, page 5] The Complainant seems to be demanding an opportunity to sublease from a private hangar owner, stating, "it is more difficult to find other owners who are willing to invest in an expensive hangar but it is easy for the builder of an expensive hangar to find owners able and willing to sublease space." [FAA Exhibit 1, Item 8, page 5]

The Complainant does not identify any parcels on the Airport that would be suitable for his preferred use (possibly including condominium hangars) and that aren't under demand by other users. Furthermore, the Sponsor is not obligated by force of the grant assurances to overcome the realities of the market. If the Sponsor has a demand for a particular private aeronautical use of the facilities, and the proponents of that use are willing and eager to pay for that use, then the Sponsor is not obligated to withhold suitable property for the convenience of some other individual aeronautical use. Generally, this is a business judgment to be left to the Sponsor. The FAA cannot find that the Sponsor has unjustly discriminated against the Complainant in regard to land lease or building requirements.

The Complainant does specifically allege that

> The Sponsor discriminates against aircraft owners of modest means by failing to offer fair and reasonable accommodation for low-intensity users in violation of ...the Assurances. Examples of such fair and reasonable accommodation <u>not</u> offered would be on-grass parking at a lower rates, condominium hangars, shadeports, availability of auto fuel... [FAA Exhibit 1, Item 1, page 3]

Since none of these facilities are available on the Airport, there can be no unjust discrimination among users of the Airport. As has been established, the Airport is under no obligation to offer these particular facilities. The Airport has competing demands for its limited resources and is best positioned to determine the facilities and services that the market will sustain. Also, the City of Concord is not required to put its capital or credit at risk in providing these facilities. The Complainant has not identified a parcel upon which these facilities could be appropriately and efficiently located. Therefore, the Complainant has not established that the failure to provide these facilities or services is unjustly discriminatory.

Regarding the Sponsor's prohibition of the sharing of T-Hangars and the assignment of aircraft to appropriate hangars at the Airport, the Complainant lists occasions when he and others proposed sharing T-hangars and storing multiple aircraft and aircraft parts in T-hangars, having consistently been turned down by the Sponsor. [FAA Exhibit 1, Item 1, page 11] As cited above, the Respondent summarizes the Airport rules stating that "T-Hangars are designed for storage of only single aircraft of the appropriate size." [FAA Exhibit 1, Item 7, page 11] The Respondent states that HICs are designed for multiple aircraft storage and are used by multiple owners. [FAA Exhibit 1, Item 7, page 12] The Respondent states, "It is admitted that users of HICs are permitted to store more than one aircraft in the HIC because this type of hangar is specifically designed for storage of multiple aircraft." [FAA Exhibit 1, Item 7, page 12]

The FAA recognizes the Sponsor's discretion to assign aircraft to appropriate accommodations and to control the usage of the leaseholds. It is common industry practice to limit the usage of T-hangars to the storage of a single, airworthy aircraft. Such a practice is clearly a reasonable implementation of grant assurance #22(h), which allows the Sponsor to provide for "the safe and efficient operation of the airport." Also, the Sponsor's determination that, generally, "HICs are most appropriate for large aircraft such as jets and turboprops" is a reasonable and understandable conclusion in support of the efficient use of limited facilities, as permitted by grant assurance #22(h). Logically, displacing a large aircraft in favor of a smaller aircraft that could be accommodated in a T-hangar could result in displacing the larger aircraft from finding any accommodation on the Airport. Finally, the record is not clear that the Complainant has made a specific proposal to occupy an HIC. The fact that the Complainant prefers another option that might also be allowed by the grant assurances does not alter the fact that the Sponsor can appropriately exercise this authority within the limits of the grant assurances.

Enforcement

The Complainant presents circumstances of alleged unequal treatment in regards to enforcement of Airport rules and exceptions to standards. One such example of alleged unequal treatment involves the ability of two tenants to perform self-maintenance activities within their leasehold in a HIC. As stated in the Background Section and

admitted to by the Respondent, the Sponsor has provided an increased level of convenience to these operators of G-1 aircraft:

> It was determined at the time the G-1's were first based at [the Airport] that [the FBO] had neither the equipment nor manpower to properly maintain the aircraft. A G-1 is an older, very unique and specialized airplane that requires several hours of routine and mandatory maintenance for each hour of flight. A meeting was held with the owner of each G-1, the mechanic for the aircraft, the FBO and [Airport management] to formulate a maintenance plan pursuant to which the owners could operate without violating the minimum standards of [the Airport]. Pursuant to the maintenance plan, each owner pays [the Sponsor] a fee of $1910.00 per month[10] for the privilege of performing minor, routine and scheduled maintenance in the HIC. The maintenance is allowed to be conducted in the HIC because it is very time intensive and would monopolize the self-maintenance area.... Other aircraft are stored in the same HIC under a normal HIC lease agreement that prohibits maintenance except in authorized locations such as the self-maintenance area or open wash rack area. [FAA Exhibit 1, Item 13, pages 1-2]

The Record shows that the lease agreement with Larry Hedrick Motorsports does provide that "Lessee is extended the right under this contract to perform owner operator maintenance by Lessees employees on its stored aircraft under guidelines set forth by the Aviation Director." [FAA Exhibit 1, Item 16, section 2] This provision of a level of convenience to the tenant is provided pursuant to Section IV(2)(b) of the Airport's "Minimum Standards and Requirements for the Conduct of Commercial Aeronautical Services and Activities," which states:

> Lessee may perform maintenance on aircraft owned by himself or his firm by his own employees. No commercial maintenance may be performed at any time, such performance requiring certification as a Fixed Base or Commercial Service Operator. Maintenance ... [is] restricted to appropriate areas as defined by the Aviation Director. [FAA Exhibit 1, Item 17, page 103]

In order for the FAA to determine that this provision with Larry Hedrick Motorsports, as well as that with the operator of the other G-1 aircraft is unjustly discriminatory, the FAA would have to determine that another entity, in a similar situation, was unjustly denied a similar arrangement. The FAA notes that this lease provision constitutes an increased level of convenience that is afforded the tenant due to the appropriate nature of the hangar and the fact that the tenant is paying a fee for the increased level of convenience. The record does not reflect a specific proposal by the Complainant or any party to pay any fee for this increased level of convenience in a HIC. The fact that the aircraft's unique

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[10] The FAA got clarification by phone as to the fee schedule. Counsel to the Sponsor stated that the G-1 tenants actually pay monthly fees as follows: $650 rent for the space in the HIC, $1,150 fee for the privilege to conduct some self-maintenance in the leasehold, $50 for water use, and $60 for lockers.

maintenance requirements would cause it to monopolize the SMF, if it were required to use that facility, is a common-sense justification, in pursuit of the efficient use of the Airport, for the Sponsor to provide this increased level of convenience for a fee.[11]

The fact that the Complainant notes that there is a party on the airport that enjoys a privilege and convenience that he might wish to enjoy is not sufficient evidence that the airport is unjustly discriminating.[12] Grant assurance #22(i) states that "the Sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." Therefore, the Sponsor may make distinctions between differing uses of the Airport and make reasonable distinctions regarding the standards and services applicable to those uses. The FAA accepts that the totality of the Sponsor's efficient assignment of aircraft to hangars, discussed above, the providing for self-maintenance facilities, as described above, and the limited exceptions made for a fee is not unjustly discriminatory and is allowed under the grant assurances.

The Complainant puts forward numerous examples of alleged disparate treatment of Airport users. He includes the names and addresses of several people conducting activities at the Airport that he observed, approached, questioned and/or photographed. The Respondent states that Airport management, "regularly inspects T-Hangars and upon discovery of violations of Airport regulations issues notice to the offending party to cease the violation.... When it has in the past discovered violations, [Airport management] has acted swiftly in accordance with [Airport management's] Operational Regulations." [FAA Exhibit 1, Item 7, page 10]

The FAA accepts that the Complainant's descriptions of other Airport users' activities may be incidents of individuals breaking Airport rules. The FAA notes that incidental noncompliance by Airport users does not constitute a Sponsor's unjust economic discrimination. As quoted above, the Order states:

> ... the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating

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[11] However, the FAA is not convinced by the record that the fact of the size of the aircraft; the fact that the particular maintenance involved is time-consuming; and the fact that the FBO does not desire the business of servicing the aircraft are necessarily just distinctions that would operate to prevent others wishing to enter into similar arrangements from making such proposals to the Sponsor. Such proposals should be considered by the Sponsor to determine if the proposed maintenance is suitable to a HIC. The motivation for the request is immaterial. However, the Sponsor can take into account its right to manage the airport for safety, efficiency and to serve the needs of the public. Such measures justify the Sponsor's discretion to assign aircraft to appropriate locations, to segregate self-maintenance activities, and to allow only those activities that are appropriate for the location in which specific activities are proposed.

[12] The FAA notes here that the record strongly suggests that the Complainant wishes to construct aircraft. The record is not sufficient for the FAA to determine that this activity is sufficiently similar to that which is allowed in the HIC, under the lease agreement allowing limited self-maintenance of the G-1 aircraft in the leasehold, to require similar treatment by the Sponsor. Common sense suggests that this activity would be significantly different and much more extensive than that activity allowed in the HIC.

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

The Complainant himself reports an incident of the Sponsor inspecting all of the T-hangars. [FAA Exhibit 1, Item 1, Attachment 14] Therefore, the FAA is not persuaded by the record that the Airport is failing to reasonably carry out the enforcement of its regulations in such a manner that would constitute a violation of the grant assurances.

Considering the above analysis of the Airport's implementation of its rules, as well as its enforcement thereof, the FAA is not persuaded that the Sponsor has unjustly discriminated against the Complainant.

Insurance

The Complainant alleges that requiring leaseholders to carry liability insurance, to name the Sponsor as an additional insured and to waive recovery rights is unjustly discriminatory in that the Sponsor does not require transient users of the Airport to carry such insurance provisions. [FAA Exhibit 1, Item 1, page 10] Paragraphs 2, 4.I. and 6 of the Storage Permit describe these requirements and are quoted in the Background Section. The FAA has already determined that such requirements do not constitute an unreasonable term or condition.

In order for the terms to be deemed discriminatory, the Complainant would have to have had provided the FAA with persuasive evidence that a similar user of the Airport was provided with some preferential treatment. The grant assurances, and long-standing FAA policy recognize that leaseholders, based at the Airport, are not similarly situated to transient users. Furthermore, the FAA recognizes the impracticality of requiring transient users, with no contract with the Sponsor, to demonstrate compliance with these insurance standards. Finally, it is accepted practice for an airport sponsor to protect itself, the public and the airport users from risk by requiring these insurance standards of tenants, but not transient users.

Therefore, the FAA is not persuaded by the record that the Complainant is being unjustly discriminated against by the Sponsor in regard to these insurance terms.

Moreover, grant assurance #22 (h) and (i), allow the Sponsor to treat differing uses of the Airport with differing standards. The FAA notes that Grant Assurance #24 states that the Sponsor may take "into account such factors as the volume of traffic and economy of collection" in the setting of fees. This same concept acknowledges the impracticality of requiring insurance standards for transient users of the Airport.

Non-aeronautical activities

The Complainant states that other users of the Airport were not subject to the increased scrutiny of their nonaeronautical activities, as was the Complainant, suggesting that this amounted to unjust discrimination under grant assurance 22. As stated above, the nonaeronautical activities described above are beyond the jurisdiction of the FAA grant assurances. Furthermore, a Sponsor may be acting within the letter and spirit of the grant assurances by restricting the nonaeronautical activity of an individual, if that activity has the effect of interfering with the safe and efficient enjoyment of the conduct of aeronautical activities by users of the Airport. Even if the Complainant were to be exonerated of any alleged violation of state or local law, he would still have to show that his use of the Airport as an Airport was subject to unreasonable terms or restrictions, or that another similar aeronautical user was provided with a preference amounting to unjust economic discrimination. For these reasons, and those discussed above, the Complainant's Motion for Cease and Desist Order is denied.

Summary of Unjust Economic Discrimination

In this analysis, the FAA recognizes that the Airport appears by the record to assign leaseholders to hangar facilities of differing standards as is appropriate for the efficient management of the Airport; the Sponsor provides an increased level of convenience to two operators for limited maintenance in a leasehold for a fee; and the record does not reflect that the Complainant has proposed using a similar leasehold for similar purposes for a reasonable, nondiscriminatory fee. These circumstances represent variations in services provided by the Sponsor, based on reasonable distinctions and in pursuit of appropriate goals. The fact that some dissimilar users of the Airport enjoy a level of service that the Complainant does not is not sufficient to conclude unjust economic discrimination.

Exclusive Right

The Complainant states:

> The Aviation Director granted an exclusive right to Mr. Hedrick to use Hedrick Motor Sports employees to work on the Gulfstream owned by Joe Gibbs Racing (Exhibit 18), presumably as a part of a contractual service agreement worked out between the two owners... This discriminates against on-airfield FBOs paying the required fees. [FAA Exhibit 1, Item 1, page 9]

The FAA notes that the FBO (Spitfire) is not a party to this Complaint and has presented no evidence that it is being discriminated against. Furthermore, the FAA notes that Hedrick and Gibbs pay a significant fee for the ability to use their leasehold for maintenance and no evidence has been presented to show that this fee is not adequate to balance whatever fees the FBO might pay. The FAA is not persuaded by the record that this arrangement between Hedrick and Gibbs violates either the prohibition of the

granting of an exclusive right or has demonstrated unjust economic discrimination against Spitfire.

Separate from the above allegation regarding the granting of an exclusive right to Hedrick, the Complainant's allegation that the airport unreasonably restricts self-service has implications for the grant assurance prohibiting the granting of an exclusive right. However, at the very least the FAA would have to determine that some standard or practice of the Sponsor that limited self-service was sufficiently, unreasonably restrictive as to have granted an exclusive right to the FBO contrary to grant assurance #23. The FAA is not persuaded by the record that this is the case. Therefore, the FAA does not find that the Sponsor has granted an exclusive right to the FBO.

VI. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions and responses by the parties, and the entire record, herein, and the applicable law and policy and for the reasons stated above, the FAA Office of Airport Safety and Standards finds and concludes as follows:

1. The City's rules, regulations, standards and facilities, taken individually and collectively do not constitute an unreasonable restriction, denying access to the Complainant;

2. The City's rules, regulations, enforcement and facilities do not unjustly discriminate against the Complainant; and

3. The City has not bestowed an exclusive right to two private operators by providing increased convenience for the conduct of self-maintenance nor has the City bestowed an exclusive right for the Airport's FBO by prohibiting self-service.

ORDER

Accordingly, it is ordered that:

1. The Complaint is dismissed.

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

These Determinations are made under Sections 313(a), 1002(a) and 1006(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §§ 40103(e), 44502, 40113, 40114, 46104, and 46110, respectively, and Sections 511(a), 511(b), and 519 of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. §§47105(b), 47107(a)(1)(2)(3)(5)(6)(7)(8)(17), 47107(g)(1), 47110, 47111(d), 47122, respectively.

RIGHT OF APPEAL

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

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

Date JAN 28 2000