UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Aircraft Owners and Pilots Association (AOPA) Members: Bill Bahlke, Reagan L. DuBose, Howard G. Soloff, Laurence K. Mellgren, David Watkins, Joseph Haughey, Robert Kwass, Herbert Jacobs, and Levent Erkmen, **COMPLAINANTS** **v.** **City of Pompano Beach, FL,** **RESPONDENT**

Docket No. 16-04-01

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA), Director of the Office of Airport Safety and Standards, to investigate pursuant to the Rules of Practices for Federally-Assisted Airport Enforcement Proceedings found in Title 14 Code of Federal Regulations (CFR), Part 16. Aircraft Owners and Pilots Association (AOPA)[1] members: Bill Bahlke, Reagan L. DuBose, Howard G. Soloff, Laurence K. Mellgren, David Watkins, Joseph Haughey, Robert Kwass, Herbert Jacobs, and Levent Erkmen (Complainants) filed a formal Complaint pursuant to 14 CFR Part 16 against the City of Pompano Beach, Florida, (Respondent or City), owner of the Pompano Beach Air Park (Air Park).

Complainants allege the Respondent violated its federal obligations to make the Air Park available to the public on reasonable terms without unjust discrimination and without granting an exclusive right as set forth in the 1947 and 1948 quitclaim deeds executed

[1] In order to have standing to file a Complaint under 14 CFR Part 16, "a person must be directly and substantially affected by any alleged noncompliance." [See 14 CFR §16.23(a).] As explained in the preamble to the Final Part 16 Rule "[a]n association will have to meet the same 'directly and substantially affected' standing requirement *individually*." (emphasis added) [See 61 F.R. 53998 (October 16, 1996).] The preamble to the Final Part 16 Rule further notes that an association will be able to file a Part 16 complaint as a representative of its members who meet the standing requirement. [See supra, 61 F.R. 53998.] While AOPA alleges it has been directly and substantially affected by the City's alleged noncompliance, the record does not support such a finding. It has also filed the Complaint in a representative capacity of its named members, who have also alleged they were directly and substantially affected by the City's alleged noncompliance.

under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 United States Code (U.S.C.) § 47152 (2) (3). Complainants argue this violation occurred as a result of the City's adoption of ordinances prohibiting and restricting certain aeronautical operations at the Air Park, including stop-and-go operations, intersection take-offs, manned glider operations, touch-and-go operations, taxi-back activity, prolonged engine run-ups, and the inclusion of rotorcraft in these restrictions.

Based on the Director's review and consideration of the evidence submitted, the administrative record designated at FAA Exhibit 1, the relevant facts, and the pertinent laws and policy, the Director concludes:

- The City is currently in violation of the obligations set forth in the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2), by failing to make the Pompano Beach Air Park available to the public on reasonable terms and without unjust discrimination as a result of restricting access for the following aeronautical operations: (a) stop-and-go operations, (b) intersection take-offs, (c) touch-and-go operations, (d) taxi-back activity, and (e) prolonged running of aircraft engines, as well as (f) the inclusion of rotorcraft in these restrictions, without providing appropriate supporting justification and demonstrated evidence for these restrictions.

- The Director finds the City is not currently in violation of the exclusive rights prohibition contained in the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2) (3) as a result of invoking various restrictions and limitations on certain aeronautical operations.

The Director finds that the City's continued noncompliance may be grounds to declare the City in default under the 1992 Agreement,[2] which would be cause for the FAA to withdraw its consent for the City to use Air Park property, including airport revenue, for non-aviation purposes.

Our determination in this matter is based on the applicable federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties, and the administrative record reflected in the attached FAA Exhibit 1.[3]

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

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[2] On July 28, 1992, the FAA and the City of Pompano entered into an agreement (1992 Agreement) as settlement of disputes regarding the underpayment of land rents by the City for its non-aviation use of Air Park property. Under this agreement, the City continues to occupy 444 acres of the Air Park for non-aeronautical purposes. [See FAA Exhibit 1, Item 25.]

[3] The attached FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.

II. AIRPORT AND ITS OBLIGATIONS

The Pompano Beach Air Park is a general aviation, public-use airport. It is the base of operations for over 140 aircraft, including single and multi-engine aircraft and helicopters, and accounts for approximately 170,000 operations each year.[4] The Air Park has three intersecting runways, two of which are used for more than two-thirds of all operations. The Air Park is also home base for the Goodyear Blimp. The Air Park has had an FAA contract tower since 1996. [FAA Exhibit 1, Item 12, attachment 1, pages 4-5.]

The City of Pompano Beach is the owner and operator of the Pompano Beach Air Park. The Air Park was transferred to the City of Pompano Beach by the United States government by Quitclaim Deed dated August 29, 1947; Correctional Quitclaim Deed dated December 18, 1947; and Supplemental Quitclaim Deed dated June 24, 1948, for public airpark purposes, henceforth referred to as "quitclaim deeds."

The Air Park is close to both Ft. Lauderdale Executive Airport and Ft. Lauderdale Hollywood International Airport. Air Park Class D airspace overlaps with Ft. Lauderdale Executive Airport Class D airspace, and the air traffic control towers have executed an agreement to establish pattern altitudes and ensure adequate separation within the overlapping airspace. Under the agreement, the established pattern altitude for fixed-wing aircraft is 800 feet, and the established pattern for helicopters is 500 feet. By contract, FAA normally requires aircraft flying over congested areas to maintain an altitude of at least 1,000 feet. [FAA Exhibit 1, Item 12, attachment 1, page 5.]

FAA records indicate that the Air Park is not obligated under any airport development grant agreements with the federal government.[5] On July 28, 1992, the Federal Aviation Administration and the City entered into an agreement (1992 Agreement) as settlement of disputes regarding the City's underpayment of land rent for its non-aviation use of Air Park property. Pursuant to that agreement, the City agreed to waive its eligibility for federal grants; the FAA agreed to allow the City to continue its non-aviation use of Air Park property for certain defined activities as designated on the Air Park Master Plan. The City continues to occupy 444 acres of the Air Park for non-aeronautical purposes, including a golf course, community park, water treatment plant, fire station, effluent treatment plant, and riding stables and associated training facilities. [See FAA Exhibit 1, Item 16, attachment 14.]

Even though the City is not obligated under any airport development grant agreements, it does incur obligations in the form of restrictive deed covenants that arise from the 1947 and 1948 conveyances of land under quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944 (Public Law 80-

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[4] FAA From 5010 "Airport Master Record" for Pompano Beach Air Park, Florida, dated April 5, 2005, http://www.gcr1.com/5010web/REPORTS/AFD03172005PMP.PDF and National Plan of Integrated Airport Systems (NPIAS), 2005-2009, http://www.faa.gov/arp/planning/npias/npias2005/NPIAS05AppAfn1.pdf. [See FAA Exhibit 1, Item 1.]

[5] See FAA Exhibit 1, Item 2.

289), as amended, 49 U.S.C. § 47151-153.[6] The Air Park is also obligated by Surplus Property obligations under Regulation 16-WAA (War Assets Administration).[7] In addition, the City is subject to terms in the 1992 Agreement.

III. BACKGROUND

August 29, 1947 – The United States government transferred airport property to the City of Pompano Beach for use as an airport through a quitclaim deed. The City agreed that the transferred airport would be used for public airport purposes on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right. [FAA Exhibit 1, Item 4, attachment 1.]

December 18, 1947 – Correctional Quitclaim Deed was issued. The same language regarding using the airport for public airport purposes on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right is included in this quitclaim deed. [FAA Exhibit 1, Item 4, attachment 2.]

June 24, 1947 – Supplemental Quitclaim Deed was issued, including the same language regarding public access and exclusive right. [FAA Exhibit 1, Item 4, attachment 3.]

May 23, 1972 – The City of Pompano Beach adopted Ordinance No. 72-40 prohibiting prolonged running of aircraft engines for maintenance purposes between the hours of 22:00 and 0600. [FAA Exhibit 1, Item 12, exhibit A-1

January 3, 1974 – The City of Pompano Beach adopted Ordinance No. 74-16 banning the operation of manned gliders at the Air Park. [FAA Exhibit 1, Item 12, exhibit A-2.]

May 13, 1975 – The City of Pompano Beach adopted Ordinance No. 75-167, prohibiting stop-and-go operations and banning all touch-and-go training operations by high performance single engine aircraft, identified as 300 horsepower or greater. The same Ordinance permitted touch-and-go operations for other aircraft between the hours of 7:00 a.m. and 11:00 p.m. [FAA Exhibit 1, Item 12, exhibit A-4.]

August 24, 1976 – The City of Pompano Beach passed Ordinance No. 76-93 with sound control measures restricting the level of any sound source within an area used for single-family residential property to 55 dB(A)[8] for day and 50 dB(A) for night. This ordinance restricted sound pressure levels to 60 dB(A) day and 55 dB(A) night for multi family residential property. [FAA Exhibit 1, Item 12, exhibit A-5, page 2.]

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[6] See FAA Exhibit 1, Item 4, Attachments 1-3.

[7] See FAA Order 5190.2R *List of Public Airports Affected by Agreements with the Federal Government*, April 30, 1990. Prior to the amendment of the Surplus Property Act in 1947 by P.L. 80-289, surplus federal properties were conveyed for airport purposes under the procedures of War Assets Administrator (WAA) Regulation 16.

[8] Noise exposure calculation expressed in terms of A-weighted decibels.

July 28, 1992 – The City of Pompano Beach and the FAA entered into an agreement (1992 Agreement) as settlement of disputes regarding the underpayments of land rents for the City's non-aviation use of Air Park property. Under this agreement, the City may not receive discretionary federal funding under the Airport Improvement Program. [FAA Exhibit 1, Item 25.]

May 5, 1994 – FAA responded to the City of Pompano Beach's request concerning proposed implementation of new airport rules and regulations. FAA advised that certain restrictions would be prohibited by requirements and obligations contained in the Surplus Property Quitclaim Deeds, Airport Noise and Capacity Act of 1990 (ANCA), and the 1992 Agreement.

July 18, 1995 – The City of Pompano Beach adopted Ordinance No. 95-79. Among other things, the ordinance provided for rights and limitations of transient air traffic,[9] limiting the time and hours for touch-and-go activity, prohibiting prolonged running of aircraft engines between certain hours, prohibiting intersection takeoffs, prohibiting stop-and-go activity, and prohibiting the operation of glider aircraft at the Air Park. [FAA Exhibit 1, Item 4, attachment 4.]

October 23, 2003 – FAA Orlando Airports District Office advised the Air Park Manager by letter that implementation of a proposed ordinance as submitted would be considered a violation of the quitclaim deed. The letter further advises that any restriction imposed without going through the required procedures in Federal Aviation Regulation (FAR) Part 161 would be considered unreasonable and unjustly discriminatory and would be in violation of the quitclaim deed. The letter briefly discusses how the Air Park may address alternatives proposed to reduce noise impacts through FAR Part 150 and FAR Part 161. [FAA Exhibit 1, Item 4, attachment 7.]

November 12, 2003 – Outside Counsel sent a memorandum to the City of Pompano Beach City Attorney with a copy to the Air Park Manager advising that the proposed amendments to the City ordinances may expose the City to certain legal risks. [FAA Exhibit 1, Item 4, attachment 6.]

November 25, 2003 – The City of Pompano Beach adopted Ordinance No. 2004-08, limiting touch-and-go and taxi-back[10] activity, restricting rotorcraft training to certain days and hours, and limiting the number of helicopters allowed to conduct traffic patterns at the Air Park. [FAA Exhibit 1, Item 4, attachments 5 and 8.]

December 16, 2003 – Complainants telephoned the City of Pompano Beach City Manager to request that the City reconsider the amendments to the City Code regarding training restrictions for both fixed wing and rotor aircraft at the Pompano Beach Air Park.

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[9] The Ordinance requires any commercial airline operations, scheduled or non-scheduled, to receive prior written approval of the City Commission. Complainants did not present any arguments regarding this issue; it is not addressed in this determination. [See FAA Exhibit 1, Item 4, attachment 4, pages 1 and 4.]

[10] Taxi-back activity refers to aircraft landing, turning around, going down to the other end of the runway, and taking off again. This is generally done in connection with pilot training.

The City of Pompano Beach City Manager notified the City Commission of the Complainants' telephone conversation and Complainants' request to reconsider the amendments restricting training activities. [FAA Exhibit 1, Item 4, attachment 9.]

January 6, 2004 – Complainants filed a Part 16 Complaint against the City of Pompano Beach. [FAA Exhibit 1, Item 3]

January 21, 2004 – FAA determined Complainants' initial Complaint was incomplete under 14 CFR Part 16, and dismissed the Complaint without prejudice. [FAA Exhibit 1, Item 3A.]

January 22, 2004 – The City of Pompano Beach filed a Motion to Dismiss the Part 16 Complaint. [FAA Exhibit 1, Item 3B.]

April 6, 2004 – City of Pompano Beach Air Park Advisory Board met. An update on the Complainants' complaint was included in the discussion. Board member Dr. Phil DeSantis noted that in order to fly at night, pilots must perform three nighttime taxi-backs every 90 days.[11] He noted that under the provisions of the ordinance amending Chapter 93, this activity could not be performed at Pompano Beach Air Park. [FAA Exhibit 1, Item 4, attachment 10, page 4.]

April 21, 2004 – Complainants refiled their Part 16 Complaint. [See FAA Exhibit 1, Item 4.]

August 13, 2004 – City submitted its Answer to the Complaint. [See FAA Exhibit 1, Item 12.]

September 13, 2004 – Complainants submitted their Reply to City's Answer. [See FAA Exhibit 1, Item 16.]

October 4, 2004 – City submitted its Rebuttal to Complainants' Answer. [See FAA Exhibit 1, Item 18.]

June 3, 2005 – The United States Court of Appeals rendered a decision in case No. 03-1308, City of Naples Airport Authority v. Federal Aviation Administration, which could have relevance to the instant Complaint. In City of Naples Airport Authority v. Federal Aviation Administration, the court supported FAA's right to withhold grants when an

[11] FAA Memorandum, *Formal Agency Position on Touch-and-Go and Stop-and-Go Training Operations; APP-600 memo dtd 7/24/95*, dated August 25, 1995, states, "…to carry passengers in a tail wheel equipped airplane, the pilot is required to have made three landings to a full stop within the previous 90 days in a tail wheel equipped airplane. To carry passengers at night in any airplane, the pilot is required to have made three landings to a full stop at night. While the [Federal Aviation Regulations] provide the requirements for pilots to perform various landing tasks for pilot training and certification and for meeting recent flight experience, the option remains available to perform stop-and-go, touch-and-go landing or full stop maneuvers." [See FAA Exhibit 1, Item 21B.]

airport operator imposes an unreasonable Stage 2[12] noise restriction. However, the Court remanded the case to FAA because the FAA's conclusion that the Stage 2 ban was not justified was not supported by substantial evidence. [FAA Exhibit 1, Item 22A.]

June 24, 2005 – FAA issued a notice of extension of time and provided each side an opportunity to provide a brief and any supplemental information describing how the outcome of the decision in City of Naples Airport Authority v. Federal Aviation Administration, C.A.D.C., 6/3/2005, (Naples decision) affects or does not affect the allegations stated in this Complaint. [See FAA Exhibit 1, Item 22 and Item 22A.]

July 29, 2005 – Complainants submitted their Response to FAA's opportunity to provide a brief and supplemental information regarding the outcome of the Naples decision referenced in the preceding item. The Complainants state that a distinguishing feature of the instant Complaint and the Naples decision case is that the City of Naples conducted a study and analysis of the noise level exposure in the contours around the airport while the City of Pompano Beach conducted no such study. [FAA Exhibit 1, Item 23]

August 15, 2005 – Respondent submitted its Reply to Complainants' Response regarding the outcome of the Naples decision referenced above. Respondent agrees with Complainants that the Naples decision case "largely is factually and legally distinguishable from this investigation." Respondent argues that the Naples decision reconfirms that the challenger to a use restriction bears the burden of establishing unreasonableness with reliable, probative and substantial evidence. Respondent states that the Naples decision case revolves around whether a restriction on Stage 2 aircraft adopted pursuant to ANCA and Part 161 is subject to review under Part 16 for conformance with Federal Grant Assurance 22, *Economic Nondiscrimination*. Respondent states that the Pompano Beach Air Park operating restrictions are not subject to ANCA and Part 161. [FAA Exhibit 1, Item 24]

October 19, 2005 – Director, FAA Airport Safety and Standards requested a safety study determination from FAA Certification and GA Operations Branch (a division of FAA Flight Standards) regarding stop-and-go operations and intersection take-offs at Pompano Beach Air Park. [FAA Exhibit 1, Item 28.]

December 14, 2005 – FAA Flight Standards Certification and General Aviation Operations Branch manager advised the Director that the FAA had "no information suggesting that the conduct of stop and go and intersection take-off operations at [Pompano Beach Air Park] is inherently unsafe or that such operational practices cannot be safely accommodated at the airport." The analysis speaks only to safety of flight issues in terms of regulatory compliance, aircraft performance, and operating limitations. [FAA Exhibit 1, Item 29.]

[12] "Stage 2" refers to an aircraft that has been shown to comply with the Stage 2 requirements under 14 CFR Part 36.

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following two primary issues require analysis in order to provide a complete review of the City's compliance with its quitclaim deeds and applicable federal law and policy:

Issue 1: Whether the City, by invoking various restrictions and limitations on certain aeronautical operations at the Air Park, (stop-and-go operations, intersection take-offs, manned glider operations, touch-and-go operations, taxi-back activity, prolonged running of aircraft engines, and restrictions on rotorcraft) is in violation of the obligations set forth in the 1947 and 1948 quitclaim deeds executed under the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152(2) requiring that the Pompano Beach Air Park be available to the public on reasonable terms and without unjust discrimination.

Issue 2: Whether the City, by invoking various restrictions and limitations on certain aeronautical operations at the Air Park, is in violation of the exclusive rights prohibition contained in the 1947 and 1948 quitclaim deeds executed under the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2) (3).

V. APPLICABLE FEDERAL LAW AND FAA POLICY

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

A. Surplus Property Obligations

Surplus property instruments of transfer issued by the War Assets Administration (WAA) and its successor, the General Services Administration (GSA), are one of the means by which the federal government provides airport development assistance to public airport sponsors. The conveyance of surplus federal land to public agencies for airport purposes is administered by the FAA in conjunction with the U.S. Department of Defense and the GSA and pursuant to 49 U.S.C. §§ 47151, 47152, and, 47153. Pursuant to 49 U.S.C. § 47151, the FAA has the statutory power to ensure that airport owners comply with their federal obligations contained within surplus property deeds of conveyance.

As in the case of the City of Pompano Beach, under each surplus property conveyance the airport sponsor assumes certain obligations, reservations and conditions. These usually occur in the property deeds and conveyance instruments in the form of restrictive covenants to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Upon acceptance of a surplus property conveyance by an airport sponsor, the obligations in the instrument of disposal become a binding obligation between the airport sponsor and the federal government. Commitments assumed by airport sponsors in property conveyances are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring public access to the airport on reasonable, nondiscriminatory terms.

Two obligations in the restrictions listed in the 1947 and 1948 quitclaim deeds executed between the federal government and the City of Pompano Beach, which is the surplus airport property instrument of disposal, are applicable in this case.

- **Obligation 1**

  "That all of the property transferred hereby, hereafter in this instrument called the 'airport,' shall be used for public airport purposes, and only for such purposes, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of Section 303 of the Civil Aeronautics Act of 1938."[13]

- **Obligation 2**

  "That no exclusive right for the use of any landing area or air navigation facilities, as such terms are defined in WAA Regulation 16, dated June 26, 1946, included in or on the airport shall be granted or exercised."[14]

Today, 49 U.S.C. § 47152 (2) contains the reasonableness and unjust discrimination requirements originally stipulated under the Surplus Property Act and set forth in the 1947 and 1948 quitclaim deeds. Section 303 of the Civil Aeronautics Act of 1938 contained language prohibiting the granting of an exclusive right for the use of any landing area or air navigation facility upon which federal funds have been expended.

[13] See FAA Exhibit 1, Item 4, Attachments 1-3. Language in Attachment 3 Supplemental Quitclaim is slightly modified; it does contain the requirement that any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport.

[14] See FAA Exhibit 1, Item 4, Attachments 1-3. Language in Attachment 3 Supplemental Quitclaim is slightly modified; it does contain the requirement that no exclusive right for the use of the airport shall be vested in any person or persons to the exclusion of others in the same class.

The language in Section 303 of the 1938 Act was later incorporated in Section 308(a) of the Federal Aviation Act of 1958. Today, the exclusive rights prohibition is codified at 49 U.S.C. § 40103 (e).

The City is also obligated by Surplus Property obligations under Regulation 16-WAA. As such, the conveyances made under Regulation 16 incorporate the reversion of property interests in cases where obligations are not performed. This right to revert property is at the option of the FAA. Reversion language in the 1947 and 1948 quitclaim deeds state that "upon a breach of any of the aforesaid reservations or restrictions … the title, right of possession and all other rights transferred to the [City], or any portion thereof, shall at the option of the [U.S. Government] revert to the [U.S. Government] upon demand made in writing…"[15]

B. Terms and Conditions of Airport Use

FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989 (Order) describes in detail the responsibilities assumed by the owners of public use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those aeronautical 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, Sections 3-1.]

The FAA considers it inappropriate to provide federal assistance to improve 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 assistance is required to operate the airport for the use and benefit of the public and to make the airport available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination. [See Order, Sec. 4-13(a).] This requirement is consistent with related terms in the 1947 and 1948 quitclaim deeds.

The owner of an airport developed with federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. [See Order, Sec. 4-7(a).] For example, the airport owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport. [See Order, Sections 4-7 and 4-8.]

FAA further recognizes that conditions to be met by all users of the airport, as may be necessary for the safe and efficient operation of the airport, have to be reasonable and not unjustly discriminatory. However, an airport may limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. When this is the case, the FAA will make the final determination on the reasonableness of restrictions that deny or restrict use of the airport.

[15] See FAA Exhibit 1, Item 4, Attachments 1-3.

C. Restrictions on Aeronautical Use

The term "aeronautical use" includes any activity which involves, makes possible or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition include stop-and-go operations, intersection take-offs, operation of gliders, touch-and-go operations, taxi-back activities, operation of helicopters (rotorcraft) and in some cases, engine run-ups. These activities are considered aeronautical activities and, as such, must generally be accommodated on airports developed with federal assistance unless adequate justification acceptable to the FAA indicates the activity should not be accommodated on a particular airport.

FAA Advisory Circular 5190-5, dated June 10, 2002, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities*, recognizes that under some circumstances, an airport sponsor may deny a prospective business operator the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency. An airport may limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. The conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport must be reasonable and not unjustly discriminatory.

The justification for restrictions should be fully documented. In cases where complaints are filed with FAA regarding an aeronautical use restriction, FAA Office of Airports will make a determination regarding the reasonableness of the restrictions. Restrictions imposed for safety and/or efficiency should have supporting justification from FAA Flight Standards and Air Traffic offices. It may be appropriate for FAA to initiate a safety analysis to assess any safety issues and to conduct an airspace study to determine the efficiency and utility of the airport when considering a proposed restriction. [See FAA Order 5190.6A, *Airport Compliance Requirements*, 4-8(a)(1).]

The FAA is the final authority in determining what constitutes a compromise of safety. In addition, FAA will make the final determination on the reasonableness of an airport owner's restrictions that deny or restrict use of the airport. In making a final determination on safety, FAA must determine whether or not the aeronautical activity being restricted can be safely accommodated on the airport and, therefore, whether the proposed restriction meets the statutory requirements and/or the terms of surplus property deeds of conveyance. It may be necessary for FAA to address whether it is possible to accommodate an aeronautical activity with fewer restrictions than are contemplated.

D. The FAA Airport Compliance Program

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

to protect the public's interest in civil aviation and to ensure compliance with federal laws.

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

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of federal property to ensure that the public interest is being served. FAA Order 5190.6A, *Airport Compliance Requirements,* (Order) sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of federal funds or the conveyance of federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances and the terms of surplus property deeds of conveyance, addresses the nature of assurances and deed commitments in the operation of public-use airports, and facilitates interpretation of the assurances and deed commitments by FAA personnel.

The Airport Compliance Program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports under surplus property terms of conveyance and/or developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (8/30/01); upheld in *Wilson Air Center, LLC v. FAA*, 372 F.3d 807 (C.A. 6, June 23, 2004)]

E. Enforcement of Airport Sponsor Obligations and Assurances

FAA Order 5190.6A covers all aspects of the airport compliance program except enforcement procedures.

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

F. Legal Responsibilities of the Federal Government

Responsibility for the oversight and implementation of aviation laws and programs is assigned to the FAA under the Federal Aviation Act of 1958 (FAA Act), as amended, 49 U.S.C. § 40101 et seq. The basic national policies intended to guide FAA actions under the FAA Act are set forth in 49 U.S.C. § 40101(d), which declares that certain matters are in the public interest.[16]

To achieve these statutory purposes, 49 U.S.C. §§ 40103(b), 44502, and 44721 provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace, air traffic control, and air navigation facilities. The FAA has exercised this authority by promulgating wide-ranging and comprehensive federal regulations on the use of navigable airspace and air traffic control.[17] Similarly, the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under 49 U.S.C. § 44701 et seq. by extensive federal regulatory action.[18]

Again, the FAA is the final authority in making safety determinations. FAA Office of Airports makes the final determination on the reasonableness of an airport owner's restrictions that deny or restrict use of the airport. As noted, in making a final determination on safety, FAA must determine whether or not the aeronautical activity being restricted can be safely accommodated on the airport and, therefore, whether the proposed restriction meets federal requirements. It may be necessary for FAA to address whether it is possible to accommodate an aeronautical activity with fewer restrictions than are contemplated.

The federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and aviation safety. Under the legal doctrine of federal preemption, which flows from the Supremacy Clause of the Constitution, state and local authorities do not generally have legal power to act in an area that already is subject to federal regulation.

State and local governments are expressly prohibited by 49 U.S.C. § 41713 from regulating the prices, routes or services of a federally authorized air carrier. This section provides in relevant part that "a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that

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[16] These include: (1) assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce; (2) regulating air commerce in a way that best promotes safety and fulfills national defense requirements; developing civil aeronautics, including new aviation technology; (4) controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations; (5) consolidating research and development for air navigation facilities and the installation and operation of those facilities; and (6) developing and operating a common system of air traffic control and navigation for military and civil aircraft.

[17] See 14 CFR Parts 71, 73, 77, 91, 93, 95, and 97.

[18] See 14 CFR Parts 21-43, 61-67, 91, 121 through 147.

may provide air transportation under this subpart." However, an exception under 49 U.S.C. § 41713(b)(3) states the subsection does not limit a State and local governments that own or operate an airport served by an air carrier from carrying out their proprietary powers and rights.

An airport sponsor could be in violation of its federal obligations if the effect of the exercise of the proprietary power resulted in State or local regulation of air carrier prices, routes and services. Airport sponsors acting under their proprietary powers are limited to adopting restrictions that are reasonable, non-arbitrary and non-discriminatory. [See, British Airways Board v. Port Authority of New York and New Jersey, 558 F.2d 75 (2d Cir. 1977), aff'd, as modified, 564 F.2d 1002 (2d Cir. 1977).] The FAA has authority to consider preemption issues under 49 U.S.C. § 46101 and § 46105. These provisions grant the FAA the authority to investigate compliance with provisions of Title 49 of the United States Code, including section 41713(b). While the preemption provision, 49 U.S.C. § 41713(b), is not one of the express authorities listed under 14 CFR § 16.1 for Part 16 jurisdiction, the FAA may investigate an alleged violations in conjunction with an allegation of violation of an authority expressly listed under 14 CFR § 16.1 jurisdiction, such as the alleged violations of a sponsor's federal obligations.

Responsibilities Regarding Noise Compatibility Issues

Since the late 1950s, noise from aircraft and airport operations has generated controversy with many surrounding communities and has emerged as a constraint on airport development. Although new technology is making aircraft quieter, at some airports growth in air traffic may achieve levels that offset the net reduction in overall noise levels. Because of the increasing public concern about aircraft noise that accompanied the introduction of turbojet powered aircraft into commercial service in the 1960s, and the constraints such concern posed for the continuing development of civil aeronautics and the air transportation system of the United States, the federal government in 1968 sought -- and Congress granted -- broad authority to regulate aircraft for the purpose of noise abatement. This authority, codified at 49 U.S.C. § 44715, constitutes the basic authority for federal regulation of aircraft noise.

Under 49 U.S.C. § 44715, the FAA is required to consider whether a proposed aircraft noise rule is consistent with the highest degree of safety in air commerce and air transportation, economically reasonable, technologically practicable and appropriate for the particular type of aircraft. [Title 49 U.S.C. § 44715(b)(3), (4).] On November 18, 1969, the FAA promulgated the first aircraft noise regulations, which were codified at 14 CFR Part 36. [34 Fed. Reg. 18355 (1969).] Part 36 became effective on December 1, 1969, and prescribed noise standards for the type certification of subsonic transport category airplanes and for subsonic turbojet powered airplanes regardless of category.

Part 36 was initially applicable only to new types of aircraft. As soon as the technology had been demonstrated, the standard was to be extended to all newly manufactured aircraft of already certificated types. The preamble indicated that when technology was available, the standard would be extended to aircraft already manufactured and in

operation. This last step would require modification or replacement of all aircraft in the fleet that did not meet the Part 36 noise levels.

In 1973, the FAA amended Part 36 to extend the applicability of the noise standards to newly produced airplanes irrespective of type certification date. [38 Fed. Reg. 29569 (1973).] In 1977, the FAA amended Part 36 again to provide for three stages of aircraft noise levels, each with specified limits. This regulation required applicants for new type certificates applied for on or after November 5, 1975, to comply with "Stage 3" noise limits, which were more strict than the noise limits then being applied. Airplanes in operation at the time that did not meet the Stage 3 noise limits were designated either as "Stage 2" or "Stage 1" airplanes.

The 1976 amendments to the 1970 Airport and Airway Development Act increased funding levels and provided new authority to share in the costs of certain noise abatement activities as part of a pilot program initiated under the 1976 Aviation Noise Abatement Policy. In 1979, Congress enacted the Aviation Safety and Noise Abatement (ASNA) Act, 49 U.S.C. § 47501, et seq., to support federal efforts to reduce noise and to encourage development of compatible land uses around civil airports in the United States. This was done because residential development adjacent to an airport may greatly restrict the usefulness of federal funding in aviation due to aircraft noise.

In 1990, Congress established the basics of a National Aviation Noise Policy in the Airport Noise and Capacity Act of 1990 (ANCA), 49 U.S.C. § 47521.[19] This Policy included two elements:

1. The first element was a program for transition to an all-Stage 3 civil subsonic turbojet aircraft fleet. In 1991, pursuant to ANCA, the FAA amended Part 91 to establish a phased program to require operations by aircraft weighing more than 75,000 pounds to meet Stage 3 noise standards by the year 2000. This

[19] The Airport Noise and Capacity Act of 1990 (ANCA), 49 U.S.C. § 47521, et seq., required the phase out of Stage 2 civil subsonic turbojet aircraft over 75,000 pounds maximum gross takeoff weight, required a national noise policy to be implemented in consideration of local interests, and required a final rule establishing procedures for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. The latter requirement was implemented by the FAA at 14 CFR Part 161, and applies to new or amended noise and access restrictions that affect Stage 2 and Stage 3 aircraft operations. [See 49 U.S.C. § 47524(b) and (c); 14 CFR § 161.3(a).]

Before a restriction that affects Stage 2 aircraft may be found to be in compliance with ANCA by FAA, the airport sponsor proposing it must comply with Subpart C of Part 161. The requirements for a Stage 2 restriction proposal include an extensive consultation and notice process and a study of the proposal and alternatives in a cost-benefit analysis. Either Subpart B or D of Part 161 must be satisfied if the restriction affects Stage 3 aircraft. This includes, for Subpart D, Federal approval of the restriction proposal and completion of any required environmental analysis. The FAA reviews a Stage 2 restriction proposal to determine if the requirements of the analysis and consultation processes were satisfied for purposes of compliance with ANCA. Under ANCA/Part 161, the FAA does not approve a proposed Stage 2 restriction; it reviews the restriction for completeness under the ANCA statute. However, a Stage 3 restriction cannot be implemented without FAA approval. The penalty for violation of Part 161 is rescission of Federal grants-in-aid and authority to collect passenger facility charges.

phase-out requirement applied to all operators of large Stage 2 civil subsonic turbojet aircraft operating in the contiguous United States.

2. The second element was a national program for review of airport noise and access restrictions on operations by Stage 2 and Stage 3 aircraft.[20] ANCA applies to restrictions affecting operations by any Stage 2 aircraft[21] proposed after October 1, 1990, and to restrictions affecting operations by any Stage 3 aircraft if the restriction was not in effect before October 1, 1990. In 1991, as a companion rulemaking to the Part 91 amendment, the FAA adopted Part 161 to implement the requirements under ANCA relating to airport restrictions.

G. Airport Noise and Part 150 Program

Congress, in the Aviation Safety and Noise Abatement (ASNA) Act of 1979, 49 U.S.C. § 47501, et seq., has provided for a program to address noise impacts from aircraft operations on areas surrounding airports. The statute requires the FAA to establish a single system measuring noise and a single system for determining the exposure of individuals to airport noise resulting from airport operations, including noise intensity, duration, frequency, and time of occurrence. [Title 49 U.S.C. § 47502.]

By regulation, the FAA has established as the single system for determining noise exposure the calculation of the yearly day-night average sound level (DNL) expressed in terms of A-weighted decibels ("dB(A)"). [Title 14 CFR 150.9(b). [See City of Bridgeton v. FAA, 212 F.3d 448, 459-460 (8th Cir. 2000).] Under the FAA's regulations, this calculation must be made by a computer model known as the Integrated Noise Model (INM), which incorporates information about the number of aircraft operations at the airport, the mix of aircraft, the general flight tracks, and information about the noise characteristics of the aircraft operating at the airport. [Title 14 CFR Part 150, Appendix A, Sections A150.1, A150.103.]

The INM model is used to develop a noise exposure map of an airport's surrounding area that shows noise contours, or lines of equal noise exposure. [Title 14 CFR Part 150, Appendix B, Section A150.101(a). See City of Bridgeton, 212 F.3d at 459.] Although actual sound levels are frequently measured, it is impractical to develop a noise contour based on such measurements; thus, the contours represent estimates of noise exposure derived from the Integrated Noise Model. The DNL is a weighted day-night average.

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[20] The final element of the national noise policy was the provision of another source of fund eligibility -- the Passenger Facility Charge (PFC) program -- conditioned upon compliance with the national program for review of airport noise and access restrictions on Stage 2 or Stage 3 aircraft.

[21] As directed by ANCA, 49 U.S.C. § 47525, the FAA concluded after careful study that Part 161 should cover operations by all Stage 2 aircraft, including those weighing less than 75,000 pounds that are not subject to the phase-out requirement. ANCA, as implemented by Part 161, provides that airports must give 180 days notice and an opportunity for public comment on a cost-benefit analysis concerning proposals to restrict operations by Stage 2 aircraft. Proposals to restrict operations by Stage 3 aircraft must (1) be agreed upon by the airport and all users at the airport or (2) meet specific requirements and be approved by FAA.

The noise exposure map must show contours for DNL levels of 65, 70 and 75 dB(A). [Title 14 CFR Part 150, Appendix A, Part B, Section A150.101(a).]

For purposes of Part 150, the FAA has determined that all land uses are compatible with sound levels that are less than DNL 65 dB(A) and has designated what land uses are compatible with sound levels higher than DNL 65 dB(A). [14 CFR Part 150, Appendix A, Part B, Section A150.101(d).]

Part 150 also establishes a voluntary noise compatibility program. An airport operator wishing to participate must submit to the FAA a plan that incorporates a noise exposure map showing current conditions and a map showing conditions based on forecasted operations of at least five years later. [14 CFR 150.21(a).] The plan also will include proposed program measures and procedures and an analysis of their expected effect on reducing noise exposure and land uses designated as non-compatible.[22] [14 CFR 150.23(e)(3), (4) & (5).]

The airport operator must provide an adequate opportunity for the public, the affected states and localities, appropriate planning agencies, and the aeronautical users of the airport to submit comments on the plan. [14 CFR 150.23(d).] The FAA reviews the plan and either approves or disapproves the plan or portions thereof. [14 CFR 150.35(a).] Approval of a noise compatibility program, measures, or procedure by the FAA enables the operator to apply for federal grants to implement that compatibility program, measure, or procedure. [See Title 49 U.S.C. § 47504.]

The FAA's approval under Part 150 is only for the purpose of establishing the noise compatibility program. The FAA's approval of program measures indicates that those measures satisfy the criteria of 14 CFR Part 150.33 and 150.35. The FAA's regulations provide that:

> [a]pproval of a noise compatibility program under this part does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action, pursuant to the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*) and applicable regulations, directives, and guidelines. [14 CFR 150.5(c).]

In making its evaluations under the National Environment Policy Act (NEPA), the FAA applies FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures* (Order 1050.1E) [23]; and FAA Order 5050.4A, *Airport Environmental Handbook* (Order 5050.4A).

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[22] Program measures proposed to reduce or eliminate present and future non-compatible land uses and the description of the relative contribution of those proposed measures to the overall effectiveness of the program are commonly referred to and include "noise abatement procedures" and "noise abatement measures."

[23] In June 2004, FAA updated FAA Order 1050.1D, *Policy and Procedures for Considering Environmental Impacts* to FAA Order 1050.1E. Complainants' allegations stem from actions arising prior to June 2004

Under these guidelines, the FAA has chosen to use the DNL noise metric for the evaluation of noise impacts around airports. [See Order 1050.1D, Attachment 2, page A60.] Those procedures also establish a "threshold of significance" for noise impacts: if there is an increase within the DNL 65 dB(A) contour of 1.5 dB(A) or more affecting a noise sensitive area, there is a significant noise impact. [See Order 1050.1D, Attachment 2, page A61.]

VI. ANALYSIS, DISCUSSION, and FINDINGS

The Complainants allege the City violated its Surplus Property obligations by imposing unreasonable terms of use that are unjustly discriminatory and provide for an exclusive right as a result of adopting an ordinance or ordinances prohibiting and restricting the following operations at the Airport:[24]

- Prohibiting stop-and-go[25] activity at all times;
- Prohibiting intersection take-offs[26];
- Prohibiting the operation of manned glider aircraft[27];
- Restricting touch-and-go[28] activity to Monday through Friday during the hours of 9:00 a.m. and 5:00 p.m., and banning touch-and-go activity on weekends and legal holidays;
- Restricting taxi-back[29] activity to Monday through Friday during the hours of 9:00 a.m. and 5:00 p.m., and banning taxi-back activity on weekends and legal holidays;
- Prohibiting prolonged running of aircraft engines[30] between the hours of 10:00 p.m. and 7:00 a.m.; and

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and also after June 2004. Therefore, both Order 1050.1D and Order 1050.1E are applicable for Complainants' allegations herein.

[24] Complainants acknowledge that the ordinance or ordinances provide an exemption for aircraft operated by governments or law enforcement and for emergency operations. [See FAA Exhibit 1, Item 4, page 3; and Item 4, attachment 4, pages 1, 3 and 6-7.]

[25] Stop-and-go is defined as a simulated full-stop landing preceding a take-off without exiting the active runway. [See FAA Exhibit 1, Item 4, attachment 4, page 3.]

[26] Intersection take-off is defined as a take-off not conducted from the departure end of the runway, or those take-offs performed from runway or taxi-way intersections. [See FAA Exhibit, Item 4, attachment 4, page 4.]

[27] Glider aircraft is defined as any winged aircraft not having an engine. [See FAA Exhibit 1, Item 4, attachment 4, page 6.]

[28] Touch-and-go is defined as a landing, not to a full stop or simulating a full stop, that precedes a take-off without exiting the active runway. [See FAA Exhibit 1, Item 4, attachment 4, page 3.]

[29] Taxi-back is defined as a pilot training operation where an airplane lands on an active runway, rolls out to a full stop landing, taxis the airplane off the active runway and back to the beginning of the runway to start a new take-off run. [See FAA Exhibit 1, Item 4, attachment 5, page 2.]

- Including rotorcraft in the prohibitions and restrictions on aircraft.

[FAA Exhibit 1, Item 4, page 3.]

The City admits, and the record supports, the limitations described above were implemented by ordinance, including Ordinance No. 72-40 passed May 23, 1972; Ordinance No. 74-16 passed January 3, 1974; Resolution No. 75-167 dated May 13, 1975; Ordinance No. 95-79 passed July 18, 1995; and Ordinance No. 2004-08 passed November 25, 2003.

Ordinance No. 95-79, passed July 18, 1995, is the most recent ordinance containing most of the restricted activities. The noise abatement section of this ordinance includes limitations on the following restricted activities:

> "Stop-and-go activity shall not be conducted at any time." [FAA Exhibit 1, Item 4, attachment 4, page 5.] (The record reflects that stop-and-go operations were prohibited as far back as May 13, 1975, under Resolution No. 75-167.) [FAA Exhibit 1, Item 12, exhibit A-4.]
>
> "Intersection take-offs are prohibited. Use of the full length of the runway should be used so as to gain as much altitude as possible while over airport property." [FAA Exhibit 1, Item 4, attachment 4, page 6.] (The restriction on intersection take-offs is not noted in previous ordinances.)
>
> "Touch-and-go activity shall be conducted Monday-Friday only between the hours of 9:00 a.m. and 5:00 p.m. Touch-and-go activity shall not be conducted on weekends or legal holidays." [FAA Exhibit 1, Item 4, attachment 4, page 5.] (The restrictions on touch-and-go activity are repeated in Ordinance No. 2004-08, passed November 25, 2003.)
>
> "Prolonged running of aircraft engines between the hours of 10:00 p.m. and 7:00 a.m. is prohibited. Aircraft noises shall be kept to a minimum by adhering to standard takeoff and landing flight paths…." [FAA Exhibit 1, Item 4, attachment 4, page 6.] (The prohibition on prolonged running of aircraft engines dates back to May 23, 1972, with the passage of Ordinance No. 72-40, which prohibited the prolonged running of aircraft engines for maintenance purposes between the hours of 10:00 p.m. and 6:00 a.m.) [FAA Exhibit 1, Item 12, exhibit A-1.]

Ordinance 95-79 also includes a prohibition on manned glider aircraft under a section titled, “Aircraft Operation.”

> "No person shall operate any manned glider aircraft so as to cause it to land or take off from within the confines of the Pompano Beach Air Park or within the corporate

[30] Engine run-ups, as they relate to the restrictions at the Air Park, are described in the record as "prolonged running of aircraft engines." [FAA Exhibit 1, Item 4, attachment 4, page 6] Engine run-ups are performed during maintenance and pre-flight checks. [See FAA Exhibit 1, Item 12, attachment 1, page 26.]

limits of the City." [FAA Exhibit 1, Item 4, attachment 4, page 6.] (The record shows that the City banned manned gliders in 1974 by Ordinance No. 74-16. [FAA Exhibit 1, Item 12, exhibit A-2.] The ban was reiterated in Ordinance No. 75-57, passed May 20, 1975, [FAA Exhibit 1, Item 12, exhibit A-3] and again in Ordinance 95-79 passed July 18, 1995.)

Ordinance No. 2004-08, passed November 25, 2003, repeats the limitation on touch-and-go activity and provides an additional noise abatement limitation for taxi-back activity. The Ordinance states:

> "Touch-and-go and taxi-back activity shall be conducted Monday through Friday only between the hours of 9:00 a.m. and 5:00 p.m. Touch-and-go and taxi-back activity shall not be conducted on weekends or legal holidays." [FAA Exhibit 1, Item 4, attachment 5, page 2.] (The restrictions on taxi-back activity were not included in earlier ordinances.)

Ordinance No. 2004-08 also includes rotorcraft in its definition of aircraft affected by these restrictions and limits the number of helicopters allowed to conduct traffic patterns at the Air Park. [FAA Exhibit 1, Item 4, attachment 5.] (The restrictions on rotorcraft activity were not included in earlier ordinances.)

The Director has conducted his review and analysis to determine whether the Respondent is currently in violation of its federal obligations with respect to its policies and practices regarding these restrictions and limitations.

Issue 1: Whether the City, by invoking various restrictions and limitations on certain aeronautical operations at the Air Park, (stop-and-go operations, intersection take-offs, manned glider operations, touch-and-go operations, taxi-back activity, prolonged running of aircraft engines, and restrictions on rotorcraft) is in violation of the obligations set forth in the 1947 and 1948 quitclaim deeds executed under the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152(2), requiring the Pompano Beach Air Park to be available to the public on reasonable terms and without unjust discrimination.

The restrictions and limitations noted above are identified by the City as needed for two reasons: (a) safety and efficiency concerns, and/or (b) noise abatement issues. The Complainants dispute that the restrictions are necessary; Complainants also argue that the restrictions and limitations are unjustly discriminatory because they primarily target aircraft training activities. In evaluating whether these restrictions and limitations are reasonable and not unjustly discriminatory, the Director considered the evidence submitted, the relevant facts, and the pertinent law and policy.

A. Safety and Efficiency Concerns

The City argues that certain restrictions and limitations are necessary to ensure the safety and efficiency of the Air Park for all Air Park users. The City further argues that airport proprietors act within their authority when they prohibit certain operations or aircraft based on reasons of safety and efficiency. The City cites FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, section 4-8, in support of its position.[31]

FAA Order 5190.6A, Section 4-8(2) states,

> "In the interest of safety, the airport owner 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. This allows the imposition of reasonable rules or regulations to restrict use of the airport. For example, they may prohibit aircraft not equipped with a reasonable minimum of communications equipment from using the airport. They may restrict or deny use of the airport for student training, for taking off with towed objects, or for some other purpose deemed to be incompatible with safety under the local conditions peculiar to that airport."

Section 4-8(2) further states,

> "In cases where complaints are filed with FAA, Flight Standards and Air Traffic should be consulted to help determine the reasonableness of the airport owner's restrictions. It may be appropriate to initiate an FAA airspace study to determine the efficiency and utility of the airport when considering the proposed restriction. <u>In all cases, the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.</u>" [Emphasis added.]

It is true that the airport owner 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. Airport owners may impose reasonable rules or regulations to restrict or deny use of the airport for purposes deemed to be incompatible with safety under the local conditions peculiar to that airport. However, as noted in the Order, this authority is not unbridled. The airport may propose an access restriction based on safety and efficiency, but when such a restriction triggers a complaint, such as this complaint, the FAA Airports Office will review the supporting justification and make the final determination regarding

[31] As stated in the Applicable Federal Law and FAA Policy Section, 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 of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes.

the reasonableness of an access restriction. Restrictions based on safety and/or efficiency require supporting justification from the appropriate Flight Standards and/or Air Traffic Offices.

The City has identified certain restrictions based on safety and/or efficiency concerns, including: (1) stop-and-go operations and intersection take-offs, and (2) manned glider aircraft. [FAA Exhibit 1, Item 12, attachment 1, pages 27, 29.]

1. Stop-and-Go Operations and Intersection Take-offs

The City states that stop-and-go operations and intersection take-offs do not reliably depart from predetermined locations. This lack of consistency in aircraft operations creates a significant risk of potential incursions and accidents according to the City. As a result, the City argues that it is justified in imposing regulations to alleviate the risk. [FAA Exhibit 1, Item 12, attachment 1, page 28.]

The record reflects that stop-and-go operations were prohibited as far back as May 13, 1975, under Resolution No. 75-167. [FAA Exhibit 1, Item 12, exhibit A-4.] Intersection take-offs have been banned at the Air Park since July 18, 1995, under Ordinance 95-79. [See FAA Exhibit 1, Item 4, attachment 4, page 6.]

The City states that the prohibition on stop-and-go operations and intersection take-offs prevents inconsistent and potentially dangerous aircraft operations and ensures that pilots have sufficient runway length to complete their take-offs. [FAA Exhibit 1, Item 18, page 14.] The City also states, "FAA has explicitly concurred with the prohibition of stop-and-go operations at the Air Park." [FAA Exhibit 1, Item 12, attachment 1, page 28.] Indeed, a letter dated May 5, 1994, from Charles E. Blair, Manager, FAA Orlando Airports District Office, confirms the FAA concurred with the prohibition of all stop-and-go operations. [FAA Exhibit 1, Item 12, exhibit B-5.]

The administrative record does not include supporting justification from FAA Flight Standards and/or Air Traffic to confirm that stop-and-go operations and intersection take-offs pose an inherent safety hazard or interfere with efficiency.

In order to provide a fair and complete review in determining whether the restrictions on stop-and-go operations and intersection take-offs pose an inherent safety hazard at the Air Park, the Director requested a safety determination from FAA Flight Standards. There is also a process for conducting an efficiency study. However, even though the City states that the prohibition on stop-and-go operations and intersection take-offs are necessary to ensure safety *and efficiency* for all Air Park users[32] the administrative record does not provide a sufficient basis to request an efficiency study at this time.

In a memorandum received December 14, 2005,[33] FAA Flight Standards, General Aviation and Commercial Division, AFS-800 noted that conducting stop-and-go

[32] See FAA Exhibit 1, Item 12, attachment 1, pages 27-28.
[33] See FAA Exhibit 1, Item 29.

operations and intersection take-offs are aeronautical activities and operational practices commonly used throughout the national airspace system. Their execution involves the application of the pilot-in-command authority, and when conducted in Class D airspace, relies on operational and procedural coordination between the pilot-in-command and the Air Traffic facility in question, which in this case would be the Air Traffic Control Tower.

The memorandum states,

> While these operational practices may impose an additional degree of pilot preparation, both are consistent with the planning required for normal operations. For example, Title 14 of the Code of Federal Regulations (CFR) section 91.103 states, "…each pilot in command shall, before beginning a flight, become familiar with all available information concerning that flight. This information must include:
>
> > (b) For any flight, runway lengths at airports of intended use, and the following takeoff and landing distance information:
> >
> > (1) For civil aircraft for which an approved Airplane or Rotorcraft Flight Manual containing takeoff and landing distance data is required, the takeoff and landing distance data contained therein; and
> >
> > (2) For civil aircraft other than those specified in paragraph (b)(1) of this section, other reliable information appropriate to the aircraft, relating to aircraft performance under expected values of airport elevation and runway slope, aircraft gross weight, and wind and temperature."

Flight Standards acknowledged "it is conceivable that one aircraft type may be able to safely execute the aforementioned operations, while another may not. Similarly, a given aircraft may be able to safely conduct these same operations under one specific set of conditions, while another set of conditions may not afford a requisite level of safety. However, for all conditions, the Flight Standards Service asserts that it is for the [pilot-in-command] to determine if stop and go operations and intersection take offs can be safely conducted."

Flight Standards concluded, "Based on our knowledge of flight operations at [Pompano Beach Air Park], we have no information suggesting that the conduct of stop and go and intersection take-off operations at [the Air Park] is inherently unsafe or that such operational practices cannot be safely accommodated at the airport. Both Miami and Orlando Flight Standards District Offices confirm these findings."

Flight Standards specified that its analysis speaks only to safety of flight issues in terms of regulatory compliance, aircraft performance, and operating limitations. Because the

Air Park has an operating air traffic control tower, Flight Standards recommends that any concerns/questions associated with air traffic management be addressed directly with that facility's supervisor.

Without supporting justification from FAA Flight Standards and/or FAA Air Traffic, the FAA Airports Office cannot approve the access restrictions for either stop-and-go operations or intersection take-offs based on safety or efficiency reasons as being consistent with the terms and conditions of the 1947 and 1948 quitclaim deeds. FAA Flight Standards found no basis to restrict stop-and-go operations or intersection take-offs for safety reasons. The administrative record contains neither the evidence to support a restriction based on efficiency nor sufficient detail to justify requesting an airspace study from Air Traffic at this time. Therefore, the Director finds the restrictions on stop-and-go operations and intersection take-offs are not justified and cannot be enforced as safety and efficiency restrictions.

2. Manned Glider Aircraft

The record shows that the City banned manned gliders in 1974 by Ordinance No. 74-16. [FAA Exhibit 1, Item 12, exhibit A-2.] The ban was reiterated in Ordinance No. 75-57, passed May 20, 1975. [FAA Exhibit 1, Item 12, exhibit A-3.]

The City argues that manned glider aircraft present unique concerns due to their slow approach in landing, making it difficult to mix traffic on the same runway and increasing the risk of accidents. This is a particular concern given the number of student pilots operating within the Air Park's air space. The City states that the Air Park has an 800-foot ceiling requirement and accommodates multiple training operations, helicopter flights, and the Goodyear Blimp. [FAA Exhibit 1, Item 12, attachment 1, page 29.]

Manned glider aircraft have been prohibited at the Air Park since January 3, 1974. City of Pompano Beach Ordinance No. 74-16 states, "…the operation of glider aircraft at the Pompano Beach Airport constitutes a hazard to other operations at the said Airport…" and declares, "No person shall operate any manned glider aircraft so as to cause the same to land or take off from within the confines of the Pompano Beach Airport…." Glider aircraft is defined as any winged aircraft not having any engine. [FAA Exhibit 1, Item 12, exhibit A-2.] The prohibition on manned glider aircraft is reaffirmed in Ordinance No. 75-57, passed May 20, 1975. [FAA Exhibit 1, Item 12, exhibit A-3.]

The administrative record contains no evidence of supporting justification from FAA Flight Standards and/or Air Traffic representatives regarding manned glider aircraft. However, as noted above, the airport may propose an access restriction based on safety and efficiency. An FAA review will be triggered when such a restriction leads to a complaint. The Complainants have listed the restriction on manned glider aircraft in this Complaint, however, during the course of the Part 16 investigation it was confirmed that none of the individuals listed as Complainants flies manned glider aircraft. Consequently, the Director concludes there is no substantive complaint regarding the restriction on manned glider aircraft at this time. This restriction may continue to be enforced as a safety and efficiency

restriction until such time as it is reviewed further based on an actual substantiated complaint from an individual with standing to file such a complaint. The Director's conclusion on this matter does not infer that the required justification from FAA Flight Standards and/or Air Traffic has been provided or is not needed to support this restriction should a complaint later be filed. The Director makes no determination on the validity of this restriction based on safety and efficiency or on the reasonableness of such a restriction at this time. The City of Pompano Beach may find it advantageous to seek the opinion on the validity of this restriction directly from the FAA Flight Standards and/or Air Traffic.

Analysis of Restrictions based on Safety and Efficiency

The three restrictions identified as safety or efficiency restrictions have been in place for years, one for 10 years, and two of them for more than 20 years:

- Stop-and-go operations have been prohibited since May 13, 1975,
- Intersection take-offs have been banned at the Air Park since July 18, 1995, and
- Manned glider aircraft have been prohibited at the Air Park since January 3, 1974.

Local ordinances, even when supported by consultation with aviation organizations, cannot replace an FAA safety analysis. This is especially true for the purpose of determining compliance with federal obligations in cases where restrictions are imposed in the interest of safety. The FAA has authority over flight safety, flight management, and the control of the navigable airspace.[34] Restrictions imposed by the airport owner in the interest of safety or efficiency require concurrence and supporting justification from the appropriate FAA Flight Standards and/or Air Traffic representatives. FAA Airports will review the supporting justification and make the final determination regarding the reasonableness of an access restriction. It may be appropriate for an airport owner to request the FAA perform an FAA airspace study to determine the efficiency and utility of the airport when considering a restriction. FAA – not the airport owner – makes the final determination on the reasonableness of the airport owner's restrictions that deny or restrict use of the airport. [See FAA Order 5190.6A, *Airport Compliance Requirements*, 4-8(a)(1).][35]

The administrative record shows that FAA Orlando Airports District Office manager Charles E. Blair advised the City in a letter dated April 8, 1994, that opinions regarding issues such as control of aircraft and/or safety of operations should be solicited from the local Airport Traffic Control Tower Manager and the Flight Standards District Office. [FAA Exhibit 1, Item 12, exhibit B-4.] On May 5, 1994, the FAA Orlando Airports District Office approved the restriction on stop-and-go operations. However, the administrative record in this matter provides insufficient evidence of appropriate supporting justification from FAA Flight Standards and/or Air Traffic to support the access restrictions implemented for safety and efficiency reasons. On the contrary, FAA Flight Standards has reviewed the restrictions on stop-and-go operations and intersection take-offs at the request of the Director and found no information suggesting that the

[34] Title 49 U.S.C. § 40103.
[35] See e.g., Arapahoe County Public Airport Authority v. FAA, 242 F.3d 1213, 1223, (C.A.10, 2001).

conduct of stop-and-go operations and intersection take-offs are inherently unsafe or that such operations cannot be safely accommodated at the Air Park.

Restrictions that are not supported are contrary to the City's obligation to make the airport available to the public on reasonable terms and without unjust discrimination as required by the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2). Moreover, as far back as 1994, the City was on notice that a total ban of touch-and-go operations would be contrary to the terms of the 1992 Agreement.[36]

A complaint has been raised regarding the City's restrictions on stop-and-go operations and intersection take-offs; these restrictions, based on safety and efficiency, are not supported by justification from FAA Flight Standards and/or Air Traffic. Therefore, the Director cannot accept these restrictions as approved access restrictions based on safety and efficiency concerns. In the absence of the City taking appropriate prompt corrective action, the City faces possible sanctions as described below.

Although the City also has provided no justification from FAA Flight Standards and/or Air Traffic to support its restrictions on manned glider aircraft based on safety and efficiency concerns, it was confirmed that none of the individuals listed as Complainants flies manned glider aircraft and thus none has standing to bring that claim. Therefore, the FAA will not intercede in the City's restriction on manned glider aircraft at this time. The Director makes no determination on the validity of this restriction based on safety and efficiency or on the reasonableness of such a restriction. The City of Pompano Beach may find it advantageous to seek the opinion on the validity of this restriction directly from the FAA Flight Standards and/or Air Traffic.

B. Noise Concerns

The City has passed ordinances restricting or limiting stop-and-go operations, intersection take-offs, touch-and-go operations, taxi-back activity, and prolonged running of aircraft engines, as well as including rotorcraft in the restrictions. Even though some of these restrictions are identified as safety and efficiency restrictions, it appears from the documentation submitted that the City's intent in restricting or limiting these activities at the Air Park is to control noise.

The City stated in Ordinance No. 95-79, "the City of Pompano Beach, by its City Commission, is empowered to restrict or deny the use of its Air Park based upon noise considerations and finds it is in the public interest to minimize any risk of potential liability to the City of Pompano Beach for claims of damage caused by noise associated with aircraft operations at Pompano Beach Air Park." [FAA Exhibit 1, Item 4, attachment 4, pages 2-3.]

[36] See FAA exhibit 1, Item 12, exhibit B-5.

The Air Park prohibited or restricted stop-and-go operations and touch-and-go operations, as part of the City's "Noise Abatement Rules and Regulations for the Pompano Beach Air Park" in 1975. [FAA Exhibit 1, Item 12, exhibit A-4.] These restrictions are incorporated in the "Noise Abatement Limitations" section of Ordinance 95-79 (passed July 18, 1995), along with additional prohibitions and restrictions on intersection take-offs and prolonged running of aircraft engines. [FAA Exhibit 1, Item 12, exhibit A-6, pages 5-6.] In November 2003, the City added a restriction on taxi-back activity as part of its "Noise Abatement Limitations." [FAA Exhibit 1, Item 12, exhibit A-7.]

The noise abatement prohibitions and restrictions provide an exemption for aircraft operated by the government, by law enforcement, emergency, fire, or rescue aircraft, and by aircraft operated for a bona fide emergency purpose. [FAA Exhibit 1, Item 12, exhibit A-6, pages 6-7.]

1. Stop-and-Go Operations and Intersection Take-offs

Resolution No. 75-167, passed and adopted May 13, 1975, prohibits stop-and-go operations. [FAA Exhibit 1, Item 12, exhibit A-4.] Ordinance No. 95-79, passed July 18, 1995, reiterates the prohibition on stop-and-go operations and further prohibits intersection take-offs. [FAA Exhibit 1, Item 12, exhibit A-6, pages 5-6.] The City argues that the restrictions and limitations applied to stop-and-go operations and intersection take-offs for safety and efficiency reasons are also justified for noise reasons. The City asserts that since these operations do not have as much time as traditional flight departures to gain altitude before traversing residential areas, they present a "significantly increased noise burden to residents living beyond the ends of the runways." [FAA Exhibit 1, Item 12, attachment 1, pages 28-29.]

2. Touch-and-Go Operations

As of May 13, 1975, touch-and-go operations were permitted at the Air Park between the hours of 7:00 a.m. and 11:00 p.m. The City limited the hours of touch-and-go operations effective May 30, 1994, to between the hours of 9:00 a.m. and 7:00 p.m. [FAA Exhibit 1, Item 12, exhibit B-6.] In November 2003, the City further limited the hours to between 9:00 a.m. and 5:00 p.m. with a ban on touch-and-go operations on weekends and legal holidays. [FAA Exhibit 1, Item 4, attachment 5, page 2.] The City states it is reasonable to restrict touch-and-go operations, which is a repetitive, frequent operation, during the hours when most residents are likely to be at home and at rest. [FAA Exhibit 1, Item 12, attachment 1, page 3.]

The May 16, 1995, Air Park Advisory Board minutes reflect that Mr. Mark Beaudreau, Air Park Supervisor, advised the Board based on noise complaint records for the preceding year that most noise complaints regarding touch-and-go operations resulted from operations between the hours of 5:00 and 6:00 p.m. Complaints over the year for this one-hour time slot totaled 167. Complaints for operations between the hours of 3:00 p.m. and 4:00 p.m. totaled 134 for the year while 130 noise complaints were registered for operations between the hours of 4:00 p.m. and 5:00 p.m. (The minutes do not identify

the number of complaints, if any, attributed to the hour between 6:00 p.m. and 7:00 p.m.) [FAA Exhibit 1, Item 12, exhibit C-7, page 6.]

The FAA Orlando Airports District Office concurred with the 1994 restriction limiting touch-and-go operations to the period between 9:00 a.m. and 7:00 p.m. with the understanding that fixed-wing training flights would be permitted from 7:00 p.m. to 9:00 a.m. with full-stop landings. At the same time, the FAA denied a total ban of touch-and-go operations. [FAA Exhibit 1, Item 12, exhibit B-5.]

In a May 5, 1994, letter to Pompano Beach City Manager Lawrence McNerney, FAA Airports District Manager Charles E. Blair states,

> "We cannot under any circumstances consider a total ban of touch-and-go operations nor the restriction of Stage II aircraft. Such restrictions would be prohibited by requirements and assurances contained in the Surplus Property Act of 1944, Airpark Quitclaim Deeds, Airport Noise and Capacity Act of 1990 (including Federal Aviation Regulations (FAR's) Parts 150 and 161) and our Agreement (incorporating the Master Plan) dated July 28, 1992." [FAA Exhibit 1, Item 12, exhibit B-5.]

3. Taxi-back Activity

In Ordinance 2004-08, passed November 25, 2003, the City added a limitation on taxi-back activity to its "Noise Abatement Limitations." The City restricted taxi-back activity to the hours of 9:00 a.m. through 5:00 p.m. Monday through Friday and banned taxi-back activity on weekends and legal holidays. [FAA Exhibit 1, Item 12, exhibit A-7.] The City argues that it is reasonable to restrict taxi-back activity, which is a repetitive, frequent operation, during the hours when most residents are likely to be at home and at rest. [FAA Exhibit 1, Item 12, attachment 1, page 3.]

4. Prolonged Running of Aircraft Engines

Ordinance No. 72-40, passed May 23, 1972, prohibits prolonged engine run-ups between 10:00 p.m. and 6:00 a.m.[37] [FAA Exhibit 1, Item 12, exhibit A-1.] Ordinance No. 95-79, passed July 18, 1995, adds one additional hour to the restriction, prohibiting prolonged running of aircraft engines between the hours of 10:00 p.m. and 7:00 a.m. [FAA Exhibit 1, Item 12, exhibit A-6, page 6.]

5. Rotorcraft

In Ordinance 2004-08, passed November 25, 2003, the City included rotorcraft in its definition of aircraft for purposes of enforcing access restrictions. [FAA Exhibit 1, Item 4, attachment 5.] A "rotorcraft" is a heavier-than-air aircraft that depends principally for

[37] Although the Respondent stated in its pleadings that the prohibition on engine run-ups from the 1972 Ordinance was from 11:00 p.m. to 6:00 a.m. [FAA Exhibit 1, Item 12, Attachment 1, page 26], the Ordinance itself states the prohibition is from 22:00 (10:00 p.m.) until 06:00 (6:00 a.m.). [FAA Exhibit 1, Item 12, exhibit A-1, page 2, section 28.5.]

its support in flight on the lift generated by one or more rotors (such as a helicopter). [14 CFR 1.1.] A "helicopter" is a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors. [14 CFR 1.1.]

Analysis of Restrictions Based on Noise

In analyzing the restrictions from a noise standpoint within the framework of the City's federal obligations, the Director reviewed the restrictions for consistency with the reasonableness and unjust discrimination requirements under the sponsor's 1947 and 1948 quitclaim deed covenants. Part 16 addresses exclusively airport compliance matters arising under the Airport and Airway Improvement Act (AAIA) of 1982, as amended; certain airport-related provisions of the Federal Aviation Authorization Act of 1994, as amended; the Surplus Property Act, as amended; predecessors to those acts; and regulations, grant agreements, and documents of conveyance issued or made under those acts. [See *Summary, Rules of Practice for Federally Assisted Airport Enforcement Proceedings,* 61 FR 53998 (1996).]

The parties also raised issues involving Part 150, as well as ANCA and its implementing regulation, Part 161. The disposition of complaints involving alleged FAA violations of ANCA are not governed by 14 CFR Part 16. [See 14 CFR § 16.1.] Under its 14 CFR Part 16 jurisdiction, the FAA may investigate an alleged violation of an authority expressly listed under 14 CFR § 16.1, such as the alleged violations of the sponsor's 1947 and 1948 quitclaim deed covenants. ANCA is not one of the enumerated authorities subject to Part 16 jurisdiction and thus Part 16 is not the appropriate venue for addressing issues regarding ANCA. Therefore, while the Director mentions the requirements of Part 150, ANCA, and Part 161 under the *Applicable Federal Law and FAA Policy* section of this determination and discusses ANCA in the analysis section, the Director's conclusions are based on the City's responsibilities under its quitclaim deed covenants only and not on the requirement under Part 150, ANCA, or Part 161.

Additionally, the Director's analysis is in consideration of the proprietary powers exception under 49 U.S.C. § 41713(b)(3) which permits an airport owner to enact very limited reasonable, non-arbitrary and non-discriminatory restrictions that advance a local interest.[38]

[38] An airport owner's proprietary powers play an "extremely limited" role in the regulation of aviation British Airways Bd v. Port Auth., 564 F.2d 1002, 1010 (2d Cir.1977). [See also, National Helicopter Corp. of America 137 F.3d at 88-89 (limiting the permissible subject matter of local regulations to "aircraft noise and other environmental concerns at the local level"); British Airways, 558 F.2d at 84 (stating that a proprietor "is vested only with the power to promulgate reasonable, non-arbitrary and non-discriminatory regulations that establish acceptable noise levels for the airport and its immediate environs."); cf. City and County of San Francisco v. FAA, 942 F.2d 1391, 1394 (9th Cir.1990) ("Congress made it clear, however, that the power delegated to airport proprietors to adopt noise control regulations is limited to regulations that are not unjustly discriminatory.")]

1. Airport Noise Compatibility Planning

The Secretary of the Department of Transportation has established a single system for measuring noise consistent with 49 U.S.C. § 47502. That single system for measuring noise and determining exposure of individuals is described in 14 CFR Part 150.

One of the purposes of a noise compatibility program is to develop comprehensive and implementable noise reduction techniques and land use controls which, to the maximum extent feasible, will confine severe aircraft yearly day-night average sound levels[39] of L_{dn} 75 decibels or greater to areas included within the airport boundary and will establish and maintain compatible land uses in the area affected by noise between the L_{dn} 65 and 75 decibel contours. The noise exposure map must contain and identify noise contours of L_{dn} 65, 70, and 75 decibels resulting from aircraft operations.

As noted, the City has not completed the voluntary Part 150 process or a comparable process. Therefore, the City was not able to provide evidence of a noise exposure map or study consistent with this guidance. The City states that it used census data and examined noise exposure measured on a single event basis to quantify noise exposure. [FAA Exhibit 1, Item 18, page 8, footnote #4.] The Complainants did provide to the FAA excerpts from the *Pompano Beach Air Park Capital Improvement Plan & Noise Contour Map Update* depicting noise contour maps. These maps show the 65 L_{dn} perimeter to be wholly contained within Air Park property.[40]

The City does not indicate that the residents it is seeking to protect from the noise levels related to the restricted or limited aeronautical activities live between the L_{dn} 65 and 75 decibel contours. In fact, the City states, "the mere fact that the DNL 65 dB noise contour does not extend into surrounding neighborhoods does not preclude the City from deciding that the noise exposure of aircraft operations is serious enough to warrant imposing minimal burdens on Air Park users." [See FAA Exhibit 1, Item 18, page 9.] The City argues that there is no authority for the Complainants' belief that all use restrictions are unreasonable unless the airport proprietor can establish, that, at the time of inquiry, there are residents exposed to noise in excess of DNL 65dB. [FAA Exhibit 1, Item 18, page 9.] (The City does not identify a different L_{dn} decibel level for its noise contour.) The City states,

> "The only regulatory documents referencing DNL 65 dB, FAR Part 150, states explicitly that 'FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.'" [FAA Exhibit 1, Item 18, page 9]

[39] Yearly day-night average sound level (YDNL) means the 365-day average, in decibels, day-night average sound level. The symbol for YDNL is also $L_{dn.}$

[40] See FAA Exhibit 1, Item 16, attachments 12 and 13.

The City has interpreted this statement to mean the airport sponsor has flexibility in establishing noise compatibility programs involving access restrictions. However, the referenced statement addresses compatible land uses only and does not extend to restrictions and limitations on aeronautical users.

The City was provided an attachment to a May 5, 1994, letter from the FAA Orlando Airports District Manager titled, "The Airport Noise Abatement Powers of the Federal Government and Airport Owners." [See FAA Exhibit 1, Item 26.] That attachment states in pertinent part:

> Because of their liability for airport noise, airport owners have limited authority to determine the "permissible level of noise" of aircraft operations under their proprietary (ownership) powers…This exception is referred to as the "proprietary exception."

The attachment goes on to state in pertinent part,

> A noise limitation issued by an airport under the "proprietary exception" --
>
> (1) May not interfere with the federal responsibility for flight safety and efficiency…;
>
> (2) May not unjustly discriminate between classes of aircraft, such as by unjustly singling out jets, general aviation, or flight training…;
>
> (3) May not create an 'exclusive right' to access to the airport;
>
> (4) May not regulate in an arbitrary or unreasonable manner. This requires, at a minimum, that the regulation (i) be based on a demonstrated noise problem and (ii) respond in a rational manner to that noise problem; and
>
> (5) May not impose an undue burden on air commerce. There are two kinds of undue burden: (i) where the burden in absolute terms is unacceptable (i.e., closure of JFK); or (ii) where the impacts are unreasonable or excessive in relation to the noise problem or benefits (i.e., a curfew where a lesser ban would work well).

Prior to enacting Ordinance No. 95-79, the City identified the hours when aircraft noise posed the greatest problem based on complaints recorded over the previous year. [FAA Exhibit 1, Item 12, exhibit C-7, page 6.] These complaint records showed that five people comprised 57 percent of the noise complaints while 10 people made up 73 percent of the noise complaints. [FAA Exhibit 1, Item 12, exhibit C-7, page 5.]

While complaints may be a valid indication of *individual* annoyance, they do not accurately measure *community* annoyance.[41] Reactions of individuals to a particular level of noise vary widely, while community annoyance correlates well with particular noise exposure levels. As the FAA stated in a 1994 report to Congress on airport noise:

> The attitudes of people are actually more important in determining their reactions to noise than their noise exposure level. Attitudes that affect an individual's reactions include (1) apprehension regarding the safety of a noise source, (2) the belief that the noise is preventable, (3) awareness of non-noise environmental problems, (4) a general sensitivity to noise, and (5) the perceived economic importance of the noise source.
>
> The resultant variability in the way individuals react to noise makes it essentially impossible to predict with any accuracy how any one *individual* will respond to a given noise. When *communities* are considered as a whole, however, reliable relationships are found between reported annoyance and noise.[42]

This relationship between community annoyance and noise exposure levels "remains the best available source of predicting the social impact of noise on communities around airports. . . ."[43] As the Federal Interagency Committee on Noise (FICON) noted in its 1992 report, "the best available measure of [community annoyance] is the percentage of the area population characterized as 'highly annoyed' (%HA) by long-term exposure to noise of a specified level (expressed in terms of DNL)."[44] To accept the City's use of complaint data to support its restrictions, the FAA would have to agree, for example, that 0.46 complaints per day[45] justifies restricting touch-and go operations between 5:00 and 6:00 pm. The FAA has neither suggested nor accepted a range in which the complaint data alone would be sufficient to support access restrictions. The use of complaint data does not supersede the need to ascertain a noise problem in terms of a cumulative impact and in terms of DNL impact, i.e. impact on the L_{dn} 65.

The Complainants argue that the noise restrictions listed above were implemented without completing a Part 150 noise study. The City counters that "the Part 150 program is voluntary" and therefore the City was not required to prepare a Part 150 study or submit any of the aircraft operating rules to the FAA as part of a proposed noise compatibility program prior to implementing any of the seven operating rules identified

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[41] See *Federal Agency Review of Selected Airport Noise Analysis Issues* (FICON, 1992), Vol. 2, page 3-6. The FICON report was the product of an interagency working group, initiated by the respective Deputy Administrators of the FAA and Environmental Protection Agency, to review the technical and policy issues related to measuring noise impacts around airports. As explained in the FICON report, community annoyance "can exist without complaints and, conversely, complaints may exist without high levels of annoyance."

[42] See *Report to Congress on Effects of Airport Noise* (FAA, 1993), page 20.

[43] Id., page 1.

[44] See *Federal Agency Review of Selected Airport Noise Analysis Issues* (FICON, 1992), Vol. 2, pages 3-3, 3-4.

[45] See FAA Exhibit 1, Item 12, exhibit C-7, page 6. The City indicates that between 5:00 and 6:00 p.m. complaints over the year for this one-hour time slot totaled 167. Therefore, 167/365 days = 0.46.

in the Complaint. [FAA Exhibit 1, Item 18, page 11.] While the FAA encourages airport proprietors to implement airport noise compatibility programs under Part 150 [46] because this provides an effective process for determining whether the proposed restriction is consistent with applicable legal requirements, it is nonetheless a voluntary process. The City has not accepted grants to complete a Part 150 study under the Aviation Safety and Noise Abatement (ASNA) Act of 1979, which provides assistance to airport owners to prepare and carry out noise compatibility programs, and so had no federal obligation to complete a Part 150 study.

However, the fact that a Part 150 study is voluntary does not mean that airport access restrictions may be imposed without justification. Aside from the requirements under Part 150, the FAA interprets the requirement in 49 U.S.C. § 47107(a)(1) that a federally-funded airport will be "available for public use on reasonable conditions" as requiring that a regulation restricting airport use for noise purposes: (1) be justified by an existing noncompatible land use problem, (2) be effective in addressing the identified problem, and (3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.[47] The City is subject to an analogous interpretation under the terms and conditions of the 1947 and 1948 surplus property quitclaim deeds requiring it to be available for public use on reasonable terms.

The record contains no evidence that the operational restrictions imposed by the City to control noise are based on existing noncompatible land use problems or that the restrictions imposed are the only way to address the City's stated noise problem effectively. The City has not provided evidence that it addressed the perceived noise problem using a balanced approach, which would take into consideration both local and federal interests. Even where restrictions may be adequately justified by existing noncompatible land uses, those restrictions still must reflect a balanced approach that fairly considers both the local interest in noise mitigation and the federal interest in maintaining access to airports conveyed under surplus property deeds of conveyance and/or federally-funded airports before the FAA will consider the restrictions to be reasonable. There is no evidence that the City analyzed alternative measures to the restrictions it imposed. Therefore, the Director cannot determine that the restrictions imposed are reasonable and not unjustly discriminatory. As a result, the noise abatement restrictions affecting stop-and-go operations, intersection take-offs, touch-and-go operations, taxi-back activity, prolonged running of aircraft engines, and restrictions on rotorcraft are unreasonable and unjustly discriminatory.[48]

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[46] See, e.g., Advisory Circular 150/5020-1, *Noise Control and Compatibility Planning for Airports* (1983), ¶ 1.

[47] See FAA Docket No. 16-01-15, Director's Determination in the matter of compliance with federal obligations by the Naples Airport Authority, Naples, Florida, issued March 10, 2003, affirmed in Final Agency Decision dated August 25, 2003. Decision appealed in City of Naples Airport Authority v. Federal Aviation Administration, C.A.D.C., 6/3/2005.

[48] The record indicates that warning letters were sent to Air Park users who violated recently enacted restrictions to educate Air Park users of changes in the restrictions. The warning letters indicated that fines or other penalties could be imposed in the future. [See FAA Exhibit 1, Item 5, FAX Attachments 1 and 2.]

2. Part 161, Notice and Approval of Airport Noise and Access Restrictions

The Complainants argue in their Reply that the noise restrictions listed above were implemented without following the requirements of Title 14 CFR Part 161.

The City argues that neither ANCA nor Part 161 applies. Specifically, the City states that because the Complainants did not include a claim for a violation of Part 161 in their Complaint, it should not be permitted to subsequently introduce such a claim in its Reply. [FAA Exhibit 1, Item 18, page 11.] The City has also argued that claims of violations of ANCA and Part 161 are not justiciable under Part 16. [FAA Exhibit 1, Item 18, page 11, footnote #5.] The City further alleges that even if ANCA and Part 161 applied, the City's operating rules are not subject to these requirements.

While the Complainants did not raise ANCA or Part 161 noncompliance in their April 20, 2004, Complaint, they did so in their September 13, 2004 Reply.[49] For reasons of administrative efficiency, the FAA will generally consider issues raised for the first time in a reply only if the opposing party has had an opportunity to respond. Since the City was able to respond to and rebut Complainants' allegation concerning noncompliance with ANCA and Part 161, the Director disagrees with the City that they could not be addressed in this determination for that reason.

As noted earlier, however, ANCA is not among the authorities listed in 14 CFR § 16.1. The Part 16 complaint process is not the appropriate venue for reviewing compliance with ANCA and Part 161. ANCA has its own administrative process for approval and enforcement. In addition, even if the City did meet the requirements of ANCA, meeting those requirements alone will not necessarily satisfy the City's obligations under the surplus property deed of conveyance to use the Air Park for public airport purposes on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right.

In order to determine that a noise restriction is reasonable under the City's 1947 and 1948 quitclaim deeds, there must be demonstrated evidence that the restriction (a) is justified by an existing noncompatible land use problem, (b) is effective in addressing the identified problem, and (c) reflects a balanced approach to addressing the identified problem that fairly considers both local and federal interests.[50]

The City's compliance with ANCA and Part 161 is separate and apart from its compliance with its obligations under its 1947 and 1948 Surplus Property Act quitclaim deeds, which is the focus of this determination.

[49] The Complainants have also raised compliance under ANCA and Part 161 in its December 31, 2003, Complaint, which was dismissed by FAA as incomplete.
[50] See footnote 47.

3. "Grandfather" Provision of ANCA

The City argues that some of its restrictions are not subject to ANCA even if Part 161 otherwise applied. Particularly, the City argues that since the prohibition on manned gliders and stop-and-go operations were adopted prior to 1990, the restrictions on these operations would be protected under the grandfather provision of ANCA. [FAA Exhibit 1, Item 18, pages 11-12.]

Part 161 applies to airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airports imposing restrictions on Stage 3 aircraft operations that became effective after October 1, 1990. [See Part 161, § 161.3(a).] Even when ANCA would otherwise apply, restrictions that were in place prior to October 1, 1990, are permitted under the grandfather provision of ANCA. Restrictions implemented subsequent to that date would not be protected by the grandfather provision.

Some of the restrictions implemented by the Air Park do meet the timing guidelines for grandfathering under ANCA if ANCA applies.[51] However, as noted earlier, ANCA issues are not within the purview of this Part 16 review process. Our determination is based on the City's requirement under its quitclaim deeds to make the airport available on reasonable terms and without unjust discrimination.

C. Impact on Training Activities

The Complainants argue that the restrictions implemented by the City impact training activities. Specifically, the Complainants argue that pilots who otherwise have weekday jobs routinely conduct touch-and-go and taxi-back operations during the day on the weekends and at night for proficiency or for training. In addition, the Complainants contend that FAA-required nighttime training and operational currency, including practicing takeoffs and landing and Instrument Flight Rules (IFR) approaches, must be conducted at night. [FAA Exhibit 1, Item 4, page 4.]

The City argues that the use restrictions do not limit a pilot's ability to satisfy FAA currency requirements [FAA Exhibit 1, Item 12, attachment 1, page 4], and denies that the restricted operations are necessary to satisfy any FAA or other regulatory requirement. [FAA Exhibit 1, Item 12, page 2.] The City states, "…there is no prohibition in effect at the Air Park preventing flight training operations or preventing pilots from satisfying their currency requirements." [FAA Exhibit 1, Item 12, attachment 1, page 21.]

The City further argues, "…none of the operating rules (with the exception of the prohibition on manned gliders) precludes use of the Air Park by any user or aircraft. The rules pertaining to touch-and-go, taxi-back and engine run-ups limit only the times during

[51] Based on the timing of various noise abatement restrictions implemented at the Air Park, the prohibition on stop-and-go activity would meet the requirements to be grandfathered under ANCA if ANCA applies. The 1975 noise abatement restrictions on touch-and-go operations would also meet the grandfather provision under ANCA. However, when the City increased the restrictions on touch-and-go operations in 1995, the new restrictions would not be grandfathered.

which pilots and mechanics can conduct these ground activities, and do not preclude or prevent any pilot from conducting flight training or meeting pilot certification currency requirements." [FAA Exhibit 1, Item 18, page 7.] In addition, since the restrictions and limitations listed apply equally to all aircraft owners and operators seeking to use the Air Park, the City argues the restrictions are not discriminatory. [FAA Exhibit 1, Item 12, attachment 1, page 3.]

The City acknowledges, "FAA currency regulations for 'pilots in command' (pilots of aircraft carrying passengers or aircraft certificated for more than one pilot flight crewmember) require at least three daytime takeoffs and three landings within the preceding 90 days. … Pilots must also make three takeoffs and three landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise during that same period." [FAA Exhibit 1, Item 12, attachment 1, pages 21-22.] However, the City argues that aircraft owners or operators who base or rent their aircraft at the Air Park simply can fly to another airport, perform their landing and takeoff, and return to the Air Park. [FAA Exhibit 1, Item 12, attachment 1, page 23.]

The City argues that any pilot who works weekdays between the hours of 9:00 a.m. and 5:00 p.m. can satisfy the currency requirements by conducting single operations (rather than stop-and-go operations) at the Air Park on any three nights over a three-month period or by using the Air Park and nearby airports on one or two nights. Similarly, the City argues that a pilot may satisfy the daytime operation requirement by conducting single operations at the Air Park on any three weekend or holiday days during a three-month period or by combining use of the Air Park with another nearby airport to satisfy the currency requirements in fewer than three days. The City also argues that pilots can satisfy the currency requirements without conducting any actual operations by using flight simulators for this purpose. [FAA Exhibit 1, Item 12, attachment 1, page 22.]

The City argues that FAA currency regulations require full stop landings for nighttime operations, so the restriction on touch-and-go operations after dark has no effect on a pilot's ability to comply with these requirements. [FAA Exhibit 1, Item 12, attachment 1, page 22.] The City notes that pilots who want to meet the daytime portion of their currency requirements by performing touch-and-go operations or taxi-back activity may use two nearby airports, Fort Lauderdale Executive (FXE) and Boca Raton (BCT). In addition, the City states there are over a dozen other airports within fifty nautical miles of the Air Park that are available for pilots who desire to conduct these activities during times when such operations are not permitted at the Air Park. [FAA Exhibit 1, Item 12, attachment 1, pages 22-23.]

The restrictions and limitations, while applicable to all aircraft operators at the Air Park, target activities closely associated with training operations. Therefore, these restrictions limit access to a particular type, kind, or class of aeronautical activity.

While the restrictions, whether argued on the basis of safety and efficiency reasons or for noise abatement purposes, do impact training operations negatively, the impact on training requirements is not a deciding factor since restrictions could be justified.

However, the City has not otherwise provided justification for these restrictions, and the FAA agrees that the restrictions do have a negative impact on training.

In any event, the activities impacted by the restrictions are aeronautical activities. Aeronautical activities must generally be accommodated by airports unless there is adequate justification acceptable to the FAA to restrict access. The presumption that aeronautical users could use other nearby airports to conduct these activities does not relieve the City of its obligation to accommodate these activities at Pompano Beach Air Park. In addition, shifting aeronautical activity from one airport to another impacts the air transportation system.[52] At the same time, the Air Park cannot arbitrarily decide that a particular aircraft operation can be restricted because it is not needed for certification or currency purposes.

D. Supplemental briefing on extent to which Naples Airport Authority v. FAA (June 3, 2005) affects the parties' arguments.

On June 24, 2005, in a Notice of Extension of Time and Opportunity to Brief and Supplement the Record, the FAA requested each party to provide a brief and any supplemental information describing how the outcome of the decision in City of Naples Airport Authority v. Federal Aviation Administration, 409 F.3d 431 (D.C. Cir. June 3, 2005) (Naples decision) affects or does not affect the allegations stated in the Complaint. [See FAA Exhibit 1, Item 22 and Item 22A.] Both Complainants and Respondent subsequently submitted briefs.

In the Naples decision, the court reviewed the FAA's August 25, 2003 order, in which the FAA found that a ban on the use of Stage 2 aircraft weighing no more than 75,000 pounds at Naples Airport based upon noise levels below the DNL 65 dB federal guideline for compatible land use was unreasonable and violated Naples Airport Authority's (NAA) grant assurances. The court ruled on two issues: (1) whether the enactment of the Airport Noise and Capacity Act of 1990 (ANCA) superceded NAA's contractual obligations under the grant assurances to make the airport available for public use on reasonable terms, and (2) whether the FAA had a sound basis to determine that NAA's ban was unreasonable, when NAA failed to show that residential land use in the vicinity of the airport was incompatible with airport noise.

On the first issue, the court decided in the FAA's favor, finding that the agency continues to have the authority to review Stage 2 noise restrictions and withhold grant funds for violations of the grant assurances. The NAA had wrongly argued that its ban was not subject to the Authority's contractual grant assurances because a later statute (ANCA) granted airport proprietors the right to ban (after going through a few procedural steps) Stage 2 aircraft.

On the second issue, the court found that the FAA failed to provide enough evidence concerning why NAA's selection of DNL 60 dB as the maximum acceptable noise level was unreasonable under the grant assurances. It therefore remanded the decision to the

[52] See e.g., City of Burbank v. Lockheed Air Terminal, 411 US 624, 640 (1973).

FAA because FAA's conclusion on the Stage 2 ban was not supported by substantial evidence. The court indicated that the FAA should have explained how a local government could demonstrate the existence of a land use compatibility problem. While the court's ruling on this issue reverses the FAA's case against the NAA, it applies only to the facts of that case.

The Complainants submitted their response stating that a distinguishing feature of the instant Complaint and the Naples decision is that the City of Naples conducted a study and analysis of the noise level exposure in the contours around the airport while the City of Pompano Beach conducted no such study – that the City is merely speculating the noise impact. Complainants also state that unlike the Naples decision, the City of Pompano Beach has not provided an analytic description of the off-airport aviation noise impact on persons living in the vicinity of the airport. The Complainants note that the City's only noise study indicates that there is no significant aviation-related noise impact area extending beyond the airport boundaries. [FAA Exhibit 1, Item 23.] The Respondent agrees with Complainants that the Naples decision "largely is factually and legally distinguishable from this investigation." Respondent argues that the Naples decision "concerned a legal issue – the applicability of Grant Assurance 22 to a Stage 2 restriction adopted pursuant to ANCA – that is not relevant to [Pompano]." Respondent also states that the Naples situation involved a restriction on an entire class of aircraft, rather than restrictions that primarily regulate the timing of operations and use of the airfield. Respondent notes that the Naples restriction was adopted exclusively to reduce noise, whereas several of the Pompano restrictions address safety and efficiency of operations. Respondent finally argues that the Naples decision reconfirms that the challenger to a use restriction bears the burden of establishing unreasonableness with reliable, probative and substantial evidence, and that Complainants failed to meet this burden here.

The Director agrees with the parties that the Naples decision can be factually distinguished from the situation at Pompano. As Respondent points out, in the Naples decision, the Naples Airport Authority (NAA) banned an entire class of aircraft, whereas here, the City has, over time, enacted various restrictions that may limit Stage 2 and Stage 3 operations but they do not ban them. As Complainants point out, in the Naples decision, the NAA conducted a detailed study and analysis of the noise level exposure in the vicinity of the Naples Airport (in accordance with ANCA and Part 161), whereas at Pompano Air Park, the City has chosen not to complete the Part 161 process or conduct noise analyses. Also, some of the Pompano Air Park restrictions were enacted to address safety and efficiency rather than noise.

Concerning the legal questions addressed by the Naples court, the holding that ANCA does not override the contractual grant assurances is not relevant to the Pompano Air Park situation since the City has not conducted or submitted a Part 161 study. Moreover, the court's finding that the FAA's conclusion that the Stage 2 ban was not supported by substantial evidence is limited to the specific facts of the Naples situation. However, the Naples decision court upheld the FAA's ability to take appropriate enforcement action when an airport sponsor imposes an unreasonable noise restriction. Such enforcement

authority would include the ability to enforce deed covenants relating to reasonableness, unjust discrimination, and exclusive rights in surplus property instruments, such as those that obligate the City of Pompano Beach.

The City's assertion that "Part 16 is clear that the burden of proving noncompliance remains with the challenger, whether that be the FAA or a complaining party such as [Complainants]," need not be addressed to any great extent because this decision finds noncompliance in part, thus Complainants at a minimum met their burden of proof in part. Therefore, the FAA need not "conclude that [Complainants have] failed to meet [their] burden" and "dismiss [Complainants'] Complaint."

E. Director's Conclusion on Issue 1

The City is obligated under the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2) to make the Air Park available on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities. The City imposed restrictions based on safety and efficiency concerns and for noise abatement purposes, which have been challenged by the Complainants. While the restrictions apply to all aircraft, including stage-designated aircraft operating at the Air Park, many of the restrictions primarily affect flight training activities.

Safety and Efficiency. Restricting aeronautical activities on the basis of safety and efficiency (or for any other purpose) without adequate FAA-approved justification could result in the imposition of unreasonable terms and conditions upon those aeronautical users affected by the restrictions, and could lead to unjust discrimination as well.

The three restrictions implemented in response to safety and efficiency concerns were imposed without following FAA-required procedures for approval from Flight Standards and/or Air Traffic. At the Director's request, FAA Flight Standards conducted a safety study to consider the safety implications of stop-and-go operations and intersection take-offs at the Air Park. Based on that study, there is no inherent safety justification to support these restrictions. Therefore, the City may not continue to enforce its restrictions on stop-and-go operations and intersection take-offs on the basis of safety and efficiency.

While the administrative record also contained no supporting safety justification for the restriction on manned glider aircraft, during the course of the Part 16 investigation, it was confirmed that none of the Complainants owned or operated manned glider aircraft. The Director makes no determination regarding the reasonableness of the safety restriction on manned glider aircraft at this time. Therefore, the City may continue enforcing the restriction on manned glider aircraft at this time.

Noise Abatement. The FAA interprets the City's obligation to make the Air Park "available for public use on reasonable conditions" to require any regulation restricting airport use for noise purposes: (1) to be justified by an existing noncompatible land use problem, (2) to be effective in addressing the identified problem, and (3) to reflect a

balanced approach to addressing the identified problem that fairly considers both local and federal interests.[53] The evidence in the record does not demonstrate that the City's restrictions enacted for noise purposes meet the above test.

In interpreting the obligation to make the airport available on reasonable and not unjustly discriminatory basis, the FAA relies in part upon 14 CFR Part 150. Part 150 "permits, for reasonable circumstances, a degree of flexibility in determining a study area and the compatibility of land uses to noise."[54] FAA Advisory Circular (AC) 150/5020-1, "Noise Control and Compatibility Planning for Airports," discusses the importance of exploring a wide range of feasible options and alternatives. The AC states:

> Development of reasonable alternatives is the nucleus of the compatibility planning process. The objective is to explore a wide range of feasible options and alternative compositions of land use patterns, noise control actions, and noise impact patterns, seeking optimum accommodation of both airport users and airport neighbors within acceptable safety, economic, and environmental parameters. . . . It is. . . unlikely that any single option, by itself, will be capable of totally solving the problem(s) without having objectionable impacts of its own. Some … options may have little or no value in the situation, especially if used alone. *Realistic alternatives, then, will normally consist of combinations of the various options in ways which offer more complete solutions with more acceptable impacts or costs*. [FAA Advisory Circular 150/5020-1, section 306. (Emphasis added.)]

The record contains no evidence that the operational restrictions imposed by the City to control noise are justified by an existing noncompatible land use problem. Since the Director finds the City's restrictions are not justified by an existing noncompatible land use problem, the Director need not determine whether the restrictions are effective in addressing the City's stated noise problem. In addition, the City has not provided evidence that it used a balanced approach in addressing the perceived noise problem that fairly considers both local and federal interests.

The Director notes that the record includes an April 8, 1994, opinion letter from Charles E. Blair, FAA Orlando Airports District Office manager, regarding various issues at the Air Park. That letter states in relevant part:

> "On March 25, 1994, you coordinated a draft outline of various controls and restrictions that the City was considering in order to enhance your recently adopted Airport Noise Abatement Procedures. Our opinion at this time is that in the absence of major, significant objections from the

[53] See FAA Docket No. 16-01-15, Director's Determination in the matter of compliance with federal obligations by the Naples Airport Authority, Naples, Florida, issued March 10, 2003, affirmed in Final Agency Decision dated August 25, 2003. Decision appealed in City of Naples Airport Authority v. Federal Aviation Administration, C.A.D.C., 6/3/2005

[54] See Notice and Approval of Airport Noise and Access Restrictions, Final Rule, 14 CFR Part 161, Federal Register Notice, September 25, 1991, 56 Fed. Reg. 48668.

> airport users most, if not all, of your proposed actions would appear to be allowed under the provisions of your master plan, the [1992] 'Agreement,' and your compliance obligations to the U.S. Government." [FAA Exhibit 1, Item 12, exhibit B-4.]

The opinion letter does not name the specific noise abatement procedures addressed. Nonetheless, the statement does make clear that Mr. Blair's opinion is prefaced on the assumption that there would be no major, significant objections from the airport users. The fact that this Complaint is filed pursuant to Part 16 clearly demonstrates that airport users have significant objections.

Restricting aeronautical activities on the basis of noise abatement (or for any other purpose) without adequate FAA-approved justification could result in the imposition of unreasonable terms and conditions upon those aeronautical users affected by the restrictions, and could lead to unjust discrimination as well. Even if the noise abatement restrictions identified in this Complaint were adequately justified by existing noncompatible land uses, those restrictions may still be unreasonable in this case because they do not reflect a balanced approach that fairly considered both the local interest in noise mitigation and the federal interest in maintaining access to federally-funded airports. There is no evidence that the City analyzed alternative measures to the restrictions it imposed.

Training Activities Targeted. Many of the restricted activities primarily affect aeronautical activities closely associated with flight training. These include stop-and-go operations, intersection take-offs, touch-and-go operations, and taxi-back activity. While the City insists that aeronautical users may conduct the restricted training activities at nearby airports, the FAA does not recognize this as an appropriate alternative to making the airport available on reasonable terms.

Issue I Conclusion. Restricting aeronautical activities without adequate justification acceptable to FAA is unreasonable and could result in unjust discrimination. Here, the restrictions and limitations were implemented without obtaining necessary approvals or following recognized processes for justifying such restrictions, and are being challenged by the Complainants. FAA Flight Standards found no inherent safety justification for restricting stop-and-go operations or intersection take-offs at the Air Park. In addition, the City has not demonstrated that its restrictions for noise purposes: (1) are justified by an existing noncompatible land use problem, (2) are effective in addressing the identified problem, and (3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interest.

Without appropriate justification for limiting a given type, kind, or class of aeronautical activity, the Director cannot approve such a restriction. Therefore, based on the foregoing discussions and analysis and the evidence provided in the administrative record, the Director finds the City is not currently in compliance with the reasonableness and unjust discrimination provisions in the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of

1944, as amended, 49 U.S.C. § 47152 (2), regarding the restricted access for (1) stop-and-go operations, (2) intersection take-offs, (3) touch-and-go operations, (4) taxi-back activity, (5) prolonged engine run-ups, and (6) including rotorcraft in its restrictions.

The Director makes no determination at this time regarding the reasonableness of the safety and efficiency restriction on manned glider aircraft, since that restriction has not been challenged by an owner or operator of manned glider aircraft.

- The Director will require the City to cease enforcement of its safety restrictions on stop-and-go operations and intersection take-offs.

- The Director will also require the City to cease enforcement of its noise-abatement restrictions that are not supported by demonstrated evidence that the noise restriction (1) is justified by an existing noncompatible land use problem, (2) is effective in addressing the identified problem, and (3) reflects a balanced approach to addressing the identified problem that fairly considers both local and federal interest. These include the restrictions on (1) stop-and-go operations, (2) intersection take-offs, (3) touch-and-go operations, (4) taxi-back activity, (5) prolonged engine run-ups, and (6) including rotorcraft in the restrictions. The City may initiate actions to document and meet the requirements for implementing a noise-based restriction. When such supporting evidence is documented and presented, the FAA Orlando Airports District Office may reconsider the City's restrictions at that time.

(For a summary of the Director's conclusions regarding actions that must be taken for each of the seven restricted aeronautical activities identified in this Complaint, see Table 1 on the following page.)

Table 1: Summary of Actions Required for each Restricted Activity

Aeronautical Activity	Basis for Restriction	Enforcement of Restrictions
Stop-and-Go Operations	Implemented without Flight Standards and/or Air Traffic supporting justification as a safety and efficiency measure. (Airports District Office approval does not satisfy the requirement to have concurrence from Flight Standards and/or Air Traffic.) FAA Flight Standards found no inherent safety justification for the restriction. Also implemented as a noise abatement procedure without meeting the three tests of reasonableness.	Director requires the City to cease enforcement of this restriction based on safety and efficiency. Director requires the City to cease enforcement of this restriction based on noise abatement pending appropriate documented evidence to support the noise restriction.
Intersection Take-offs	Implemented without Flight Standards and/or Air Traffic supporting justification as a safety and efficiency measure. FAA Flight Standards found no inherent safety justification for the restriction. Also implemented as a noise abatement procedure without meeting the three tests of reasonableness.	Director requires the City to cease enforcement of this restriction based on safety and efficiency. Director requires the City to cease enforcement of this restriction based on noise abatement pending appropriate documented evidence to support the noise restriction.
Manned Glider Operations	Implemented without Flight Standards and/or Air Traffic approvals as a safety and efficiency measure. This restriction has not been challenged by an owner or operator of manned glider aircraft. Not implemented as a noise abatement procedure.	Director makes no determination on the reasonableness of this restriction; City may to continue its enforcement of this restriction based on safety and efficiency at this time.
Touch-and-Go Operations	Implemented as a noise abatement procedure without meeting the three tests of reasonableness.	Director requires the City to cease enforcement of this restriction pending appropriate documented evidence to support the noise restriction.
Taxi-back Activity	Implemented as a noise abatement procedure without meeting the three tests of reasonableness.	Director requires the City to cease enforcement of this restriction pending appropriate documented evidence to support the noise restriction.
Prolonged Engine Run-ups	Implemented as a noise abatement procedure without meeting the three tests of reasonableness.	Director requires the City to cease enforcement of this restriction pending appropriate documented evidence to support the noise restriction.
Rotorcraft	Implemented as a noise abatement procedure without meeting the three tests of reasonableness.	Director requires the City to cease enforcement of this restriction pending appropriate documented evidence to support the noise restriction.

Issue 2: Whether the City, by invoking various restrictions and limitations on certain aeronautical operations at the Air Park, is in violation of the exclusive rights prohibition contained in the 1947 and 1948 quitclaim deeds executed under the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2) (3).

The Complainants state "The City has imposed on the public and the Complainants herein, terms of use of the Airpark that are unreasonable and otherwise in violation of the restriction and agreement that the Airpark shall be used for airport purposes for the use and benefit of the public on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for the Airpark…" (Emphasis added.) [FAA Exhibit 1, Item 4, page 3, #5.]

The exclusive rights prohibition contained in the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2) (3) addresses an airport sponsor's assurance that it will neither provide for, nor allow, any exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. [See section V, Applicable Federal Law and FAA Policy, above.]

It is unclear from the Complaint or the administrative record how the Complainants have construed the existence of an exclusive right based on the access restrictions and limitations. It is possible that an exclusive rights violation may result from denying access to certain types and classes of aeronautical users, but the Complainants have not made such a case.

The administrative record does not provide sufficient evidence to demonstrate that the restrictions, whether appropriate or not, are applied in such a way as to grant an exclusive right benefiting one or more aeronautical users at the Air Park. Therefore, the Director finds the City is not currently in violation of the exclusive rights prohibition contained in the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2)(3), as a result of invoking various restrictions and limitations on certain aeronautical operations.

VII. FINDINGS and CONCLUSIONS

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

A. The Director finds the City is currently in violation of the terms of the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2), as a result of implementing access restrictions without appropriate FAA approvals. Specifically, the City is currently in violation of its federal obligations

by failing to make the Pompano Beach Air Park available to the public on reasonable terms and without unjust discrimination as a result of restricting access for aeronautical operations either (1) for the purpose of safety and efficiency without presenting supporting justification with respect to stop-and-go operations and intersection take-offs, or (2) for noise abatement purposes without presenting demonstrated evidence that the noise restriction (a) is justified by an existing noncompatible land use problem, (b) is effective in addressing the identified problem, and (c) reflects a balanced approach to addressing the identified problem that fairly considers both local and federal interest for the following activities:

- stop-and-go operations, and
- intersection take-offs.
- touch-and-go operations
- taxi-back activity
- prolonged engine run-ups
- including rotorcraft in the restrictions

B. The Director makes no determination on the reasonableness of the safety and efficiency restriction on manned glider aircraft at this time.

C. The Director finds the City is not currently in violation of the exclusive rights prohibition contained in the 1947 and 1948 quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, 49 U.S.C. § 47152 (2) (3) as a result of invoking various restrictions and limitations on certain aeronautical operations.

D. The Director finds that implicit in the terms of the 1992 Agreement between the City and the FAA is the City's obligation to comply with the terms and conditions of the surplus property deeds of conveyance. The City's failure to comply with the obligations set forth in the 1947 and 1948 quitclaim deeds by failing to make the Pompano Beach Air Park available to the public on reasonable terms and without unjust discrimination as a result of restricting access for aeronautical operations, including (a) stop-and-go operations, (b) intersection take-offs, (c) touch-and-go operations, (d) taxi-back activity, (e) prolonged running of aircraft engines, as well as (f) the inclusion of rotorcraft in these restrictions, without meeting the criteria for establishing a noise abatement restriction and without appropriate supporting justification from FAA Flight Standards and/or Air Traffic is cause for the FAA to review whether the City is in default of its contractual obligations under the 1992 Agreement. A default under the 1992 Agreement would be cause for the FAA to withdraw its consent for Air Park property, including airport revenue, to be used for non-aviation purposes.[55]

[55] The Director notes that the Associate Administrator for Airports upheld the Director's prior determination that the City has engaged in an ongoing pattern of inhibiting aeronautical activity at the Air Park. Continued acts of inhibiting aeronautical activity through unreasonable restrictions may be cause for the FAA to take all appropriate steps to ensure public access to the Pompano Beach Air Park, including exercising its right of reversion under the surplus property deeds of conveyance.

ORDER

Accordingly, it is ordered that:

1. The Respondent, the City of Pompano Beach, is ordered to cease enforcement of its restrictions on (a) stop-and-go operations and (b) intersection take-offs based on safety and efficiency until such time as FAA Flight Standards and/or Air Traffic determine that these activities impact the safety and/or efficiency at the Air Park.

2. The Respondent, the City of Pompano Beach, is ordered to cease enforcement of its restrictions on (a) stop-and-go operations, (b) intersection take-offs, (c) touch-and-go operations, (d) taxi-back activity, (e) prolonged engine run-ups, and (f) the inclusion of rotorcraft in these restrictions until such time as the City provides demonstrated evidence to the FAA Orlando Airports District Office that the noise restriction (a) is justified by an existing noncompatible land use problem, (b) is effective in addressing the identified problem, and (c) reflects a balanced approach to addressing the identified problem that fairly considers both local and federal interest, and the FAA Orlando Airports District Office makes a determination regarding the reasonableness of these restrictions based on noise abatement.

3. The Respondent, the City of Pompano Beach, is required to submit a corrective action plan consistent with the principles discussed herein within 30 days from the date of this Order to the Manager, FAA Orlando Airports District Office, that explains how the Respondent intends to eliminate the current violations outlined above within a reasonable timeframe acceptable to the FAA. Should the Respondent not submit a corrective action plan acceptable to the FAA, the Director may issue a further order that would provide an appropriate sanction for noncompliance. Such sanction may include declaring the City in default on the terms of the 1992 Agreement and/or any other remedy available under the surplus property deeds of conveyance.

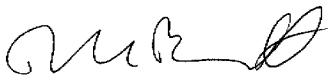
4. All Motions not expressly granted in this Determination are denied.

These Determinations are made under 49 U.S.C. §§ 40101, 40103(a)(b)(e), 41713, 44502, 44701, 44715, 44721, 47151, 47152(2)(3), 47501, 47502, and 47521 respectively.

[See *Pompano Beach v FAA*, 774 F.22d 1529 (11th Cir, 1985) and *USCC v. Pompano Beach*, FAA Docket No. 16-00-14, (July 10, 2002).]

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. [Title 14 CFR 16.247(b)(2).] A party to this proceeding 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.



December 15, 2005

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

Date: _____

Index of Administrative Record
Director's Determination

Aircraft Owners and Pilots Association (AOPA) Members: Bill Bahlke, Reagan L. DuBose, Howard G. Soloff, Laurence K. Mellgren, David Watkins, Joseph Haughey, Robert Kwass, Herbert Jacobs, and Levent Erkmen

v.

City of Pompano Beach, FL

Docket No. 16-04-01

Following is the list of exhibits forming the Administrative Record for the Director's Determination.

Item 1 Airport Master Record, FAA Form 5010, dated April 5, 2005

Item 2 Grant History Report -- (Pompano Beach Air Park has received no Airport Improvement Program grants as of the date of this determination.)

Item 3 **Complaint** of the Aircraft Owners and Pilots Association and Individual Members of the Association, received January 6, 2004.

Item 3A Letter from FAA Office of Airport Safety and Standards Director David L. Bennett to Bill Dunn, Vice President, Aircraft Owners and Pilots Association, and Kathleen A. Yodice, Law Offices of Yodice Associates, advising that the Complaint filed against Respondent was determined to be incomplete under 14 CFR Part 16, dated January 21, 2004.

Item 3B City of Pompano Beach filed a Motion to Dismiss Complaint, dated January 22, 2004.

Item 4 **Complaint** of the Aircraft Owners and Pilots Association and Individual Members of the Association, received April 21, 2004.

Attachment 1 Quitclaim Deed, dated August 29, 1947.

Attachment 2 Quitclaim Deed Correctional, dated December 18, 1947.

Attachment 3 Supplemental Quitclaim Deed and War Assets Administration Certificate, both dated June 24, 1948, and Delegation of Authority No. R-F 82, dated April 9, 1948.

Attachment 4 City of Pompano Beach Ordinance No. 95-79

Attachment 5 City of Pompano Beach Ordinance No. 2004-08

Attachment 6 Memorandum from Kaplan Kirsch & Rockwell, LLP, to Gordon B. Linn, City Attorney, City of Pompano Beach, regarding Proposed Use Restrictions at Pompano Beach Airpark, dated November 12, 2003. (Copy to Steven P. Rocco, Airport Manager.)

Attachment 7 Grid copy of letter from FAA Orlando Airports District Office to Steven P. Rocco, Airport Manager, regarding Pompano Beach Airpark Ordinance Amending Chapter 93 "City Air Park," dated October 23, 2003.

Attachment 8 City of Pompano Beach Commission Meeting Minutes for November 25, 2003.

Attachment 9 Memorandum from City Manager to City Commission regarding Air Park Ordinance Amendment, dated December 16, 2003.

Attachment 10 City of Pompano Beach Air Park Advisory Board Minutes for April 6, 2004.

Item 5 FAX from FAA Orlando Airports District Office to FAA Airport Compliance Division, received May 4, 2004.
FAX Attachment 1: FAX of letter dated April 15, 2004, from Steven P. Rocco, Air Park Manager, to Florida Aviation Academy regarding Warning Letter, Notice of Restricted Taxi-Back Operation.

FAX Attachment 2: FAX of letter dated April 22, 2004, from Levent Erkmen, Director, Florida Aviation Academy, to FAA Orlando Airports District Office regarding warning letters for the period February 25-April 15, 2004. (Copies of the warning letters were NOT attached.)

Item 6 NOTICE from the FAA Office of Chief Counsel advising that the Complaint filed by the Aircraft Owners and Pilots Association and its individual members has been docketed as Docket No. 16-04-01, dated May 10, 2004.

Item 7 Designation of Persons to Receive Service for the City of Pompano Beach, Florida, and Respondent's *Unopposed Motion for Extension of Time to File Answer*, received May 28, 2004.

Item 8 ORDER granting extension of time until July 2, 2004, for Respondent to file its Answer, dated June 1, 2004.

Item 9 Respondent's *Unopposed Motion for Extension of Time to File Answer*, received June 30, 2004.

Item 10 Respondent's *Unopposed Motion for Extension of Time to File Answer*, received July 29, 2004.

Item 11 ORDER granting extension of time until August 13, 2004, for Respondent to file its Answer, dated July 30, 2004.

Item 12 **Answer** of the Respondent City of Pompano Beach, received August 13, 2004.

Attachment 1 Memorandum of Points and Authorities in Support of Respondent City of Pompano Beach's Answer, dated August 12, 2004.

Exhibits

A-1 City of Pompano Beach Ordinance No. 72-40
A-2 City of Pompano Beach Ordinance No. 74-16
A-3 City of Pompano Beach Ordinance No. 75-57
A-4 City of Pompano Beach Ordinance No. 75-167
A-5 City of Pompano Beach Ordinance No. 76-93
A-6 City of Pompano Beach Ordinance No. 95-79
A-7 City of Pompano Beach Ordinance No. 2004-08
A-8 City of Pompano Beach Code of Ordinances Chapter 93

B-1 Air Park Memorandum #94-25 (February 28, 1994)
B-2 Letter from L. McNerney, City, to C. Blair, FAA (March 25, 1994)
B-3 Proposed FAA Response to City Letter Dated March 25, 1994 (Undated)
B-4 Letter from C. Blair, FAA, to L. McNerney, City (April 8, 1994)
B-5 Letter from C. Clair, FAA, to L. McNerney, City (May 5, 1994) [See also Item 26 for attachment to this letter.]
B-6 Letter from M. Beaudreau, City, to T. Benson, FAA (May 21, 1994)
B-7 Letter from C. Blair, FAA, to L. McNerney, City (October 3, 1994)
B-8 Letter from M. Beaudreau, City, to T. Benson, FAA (October 20, 1994)
B-9 Letter from C. Blum, FAA, to Senator Graham, with attachments (March 15, 1995)

B-10 Thirty letters from M. Beaudreau to area pilots (March 1995-April 1995)
B-11 City of Pompano Beach, Month Operations 1990 through 2005
B-12 City of Pompano Beach Department of Development Services Memorandum No. 04-626 (August 5, 2004)

C-1 Advisory Board Minutes (March 1, 1994)
C-2 Advisory Board Minutes (April 5, 1994)
C-3 Advisory Board Minutes (May 24, 1994)
C-4 Advisory Board Minutes (November 1, 1994)
C-5 Advisory Board Minutes (February 7, 1995)
C-6 Advisory Board Minutes (March 7, 1995)
C-7 Advisory Board Minutes (May 16, 1995)

Item 13 FAX from Yodice Associates to FAA Office of Airport Safety and Standards with *Complainant's Request for Extension of Time to Reply to Answer by Respondent*, dated August 20, 2004.

Item 14 Letter dated August 23, 2004, from FAA Airports Law Branch to Kathleen Yodice, Law Office of Yodice Associates; Daniel S. Reimer, Kaplan Kirsch & Rockwell, LLP; and Gordon B. Linn, City of Pompano Beach, granting extension of time until September 13, 2004, for Complainant to file its Reply.

Item 15 Complainant's *Request for Extension of Time to Reply to Answer by Respondent*, received September 1, 2004.

Item 16 **Reply** of the Aircraft Owners and Pilots Association and Nine Individual Members, received September 13, 2004.

Attachment 11 Page 2-14 of the *Pompano Beach Air Park Capital Improvement Plan & Noise Contour Map Update*.

Attachment 12 Page 2-18 of the *Pompano Beach Air Park Capital Improvement Plan & Noise Contour Map Update*.

Attachment 13 Exhibit 5-2: 2006 Noise Contour Map

Attachment 14 City of Pompano Beach Ordinance No. 92-54

Item 17 Respondent's *Unopposed Motion for Extension of Time to File Rebuttal,* received September 22, 2004.

Item 17A Letter dated September 27, 2004, from FAA Airports Law Branch to Daniel S. Reimer, Kaplan Kirsch & Rockwell, LLP; Gordon B. Linn, City of Pompano Beach; and Kathleen Yodice, Law Office of Yodice Associates, granting extension of time until October 4, 2004, for City to file its Rebuttal.

Item 18 **Rebuttal** of Respondent City of Pompano Beach to Reply of Complainant's Aircraft Owners and Pilots Association and Nine Individual Members, received October 4, 2004.

Item 19 Notice of Extension of Time, dated February 2, 2005, extending the due date for this determination to April 22, 2005.

Item 20 Notice of Extension of Time, dated April 14, 2005, extending the due date for this determination to June 24, 2005.

Item 21A *Request for Formal Agency Position on Touch-and-Go and Stop-and-Go Training Operations*, undated.

Item 21B FAA Memorandum, *Formal Agency Position on Touch-and-Go and Stop-and-Go Training Operations; APP-600 memo dtd 7/24/95*, dated August 25, 1995.

Item 22 Notice of Extension of Time and Opportunity to Brief and Supplement the Record, dated June 24, 2005, extending the due date for this determination to September 30, 2005.

Item 22A United States Court of Appeals for the District of Columbia, No. 03-1308, City of Naples Airport Authority v. Federal Aviation Administration, argued March 4, 2005; decided June 3, 2005.

Item 23 Complainants' Response to FAA Notice of Opportunity to Brief and Supplement the Record, dated July 25, 2005, received July 29, 2005.

Item 24 Reply of Respondent City of Pompano Beach to July 25, 2005 Response of Complainants Aircraft Owners and Pilots Association and Nine Individual Members, dated August 12, 2005, received August 15, 2005.

Item 25 Agreement dated July 28, 1992, between the City of Pompano Beach, Florida, and the Federal Aviation Administration (1992 Agreement).

Item 26 May 5, 1994, letter from Charles E. Blair, Manager, FAA Orlando Airports District Office, to City Manager Lawrence McNerney, including attachment titled, "The Airport Noise Abatement Powers of the Federal Government and Airport Owners."

Item 27 Notice of Extension of Time, dated October 13, 2005, extending the date by which a decision would be rendered to December 14, 2005.

Item 28 Memorandum from David L. Bennett, Director, FAA Airport Safety and Standards, to Manager, FAA Certification and General Aviation Operations Branch, AFS-840, (a division of Flight Standards) requesting a safety study

for Pompano Beach Air Park regarding stop-and-go operations and intersection take-offs.

Item 29 FAA memorandum regarding the safety study for Pompano Beach Air Park as it pertains to stop-and-go operations and intersection take-offs. Memorandum from the manager, FAA General Aviation and Commercial Division, AFS-800 (prepared by the manager, FAA Certification and General Aviation Operations Branch, AFS-810), to the Director, Airport Safety and Standards, AAS-1, received December 14, 2005.