UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Rudy J. Clarke Complainant	)	
v.	)	Docket No. 16-05-19
City of Alamogordo, NM Respondents	)	

DIRECTOR'S DETERMINIATION

I. INTRODUCTION

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

Mr. Rudy J. Clarke (Complainant) has filed a formal complaint pursuant to 14 CFR Part 16 against the City of Alamogordo, New Mexico, owner of the Alamogordo-White Sands Regional Airport.

Complainant alleges that Respondent violated Federal Grant Assurances 5, *Preserving Rights and Powers*; 22, *Economic Nondiscrimination*; 24, *Fee and Rental Structure*; and 25, *Airport Revenues*, when it failed to invoke certain provisions of its leases and not retain the highest value of rent for its leased aeronautical property.[1]

As discussed below, based on the record herein and relevant law and policy, FAA finds that the Respondent is not currently in violation of its Federal obligations under the grant assurances.[2]

[1] Respondent, in its Answer, also addresses its compliance with Grant Assurance 29, *Airport Layout Plan*. However, Complainant does make a clear allegation as to violations of Grant Assurance 29. Therefore, FAA does not address Respondent's compliance with Grant Assurance 29 in this Director's Determination.
[2] FAA Exhibit 1 contains the Index of Administrative Record.

II. COMPLAINANT

Complainant is Rudy J. Clarke, an individual. At the time of filing, Complainant served as the part-time Airport Manager at the Alamogordo-White Sands Regional Airport. [FAA Exhibit 1, Item 4, Attachment 2, pg. 1.]

III. AIRPORT

Alamogordo-White Sands Regional Airport (Airport) is a public-use airport owned and operated by the City of Alamogordo.[3] The Airport, located 5 miles west of Alamogordo, New Mexico, is classified as a general aviation airport with 47 based aircraft and 33,700 annual operations.[4] At the time of filing, the Airport had 26 ground leases with 45 based aircraft. [FAA Exhibit 1, Item 1, pg. 1.]

The Airport has two runways, Runway 03/21, a 7,006 foot long by 150 foot wide asphalt runway, and Runway 16/34, a 3,512 foot long by 200 foot wide dirt runway.

The Airport is funded by the City of Alamogordo through a separate 'Airport' account and is provided an annual subsidy to cover expenses above the Airport's earned revenue. [FAA Exhibit 1, Item 1, pg. 1.] The City provides an estimated two-thirds of the Airport's operating budget. [FAA Exhibit 1, Item 4, pg. 3.]

The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, and codified at 49 U.S.C. § 47101 *et seq.*[5] Specifically, the City of Alamogordo is obligated under the assurances given in AIP grants since 1982. The Airport has been awarded a total of $4,360,214 in grant funding through 2003. [FAA Exhibit 2.]

IV. BACKGROUND

In 2004, Respondent began a major evaluation of its Airport operations including reviews of its leasing practices. [FAA Exhibit 1, Item 4, pg. 1.] As Respondent's Airport Manager, Complainant participated in the review of the Airport's leases. [FAA Exhibit 1, Items 1 & 4.]

There has been a history of inserting provisions into leases, which essentially 'revert' improvements made on the leased property to the City at the end of the lease term. [FAA

---

[3] FAA Form 5010 "Airport Master Record" for Alamogordo-White Sands Regional Airport, Date: 1/11/06.
[4] FAA Form 5010 "Airport Master Record" for Alamogordo-White Sands Regional Airport, Date: 1/11/06 and FAA National Plan of Integrated Airport Systems (NPIAS), 2005-2009, Appendix A, pg. 81.
[5] Respondent has also received Federal financial assistance through grants authorized under the Federal Aid to Airports Program (FAAP) and Airport Development Aid Program (ADAP). Other than the funds granted through AIP, Respondent has been awarded over $1.74 million since 1959. [FAA Grant Documentation.]

Exhibit 1, Item 1, pgs. 1 & 5.] These provisions are commonly referred to as 'reverter clauses'.

The earliest agreement on record for the Airport is between Respondent and Edward J. Pavelka (d/b/a Ed's Flying Service, Inc.), dated May 1, 1966. It included the following provision:

> *"31. After expiration date of this agreement, contractor shall have a reasonable period of time for removal of trade fixtures, furnishings, equipment and installations previously furnished at cost of contractor. Upon abandonment or failure of contractor to remove said fixtures and installations within a reasonable time, title thereof shall vest in owner. Contractor shall be given an opportunity to purchase at any agreed price any fixtures and installations which contractor is entitled to remove. Owner may, by notice, require that contractor remove part or all the property left by him upon the airport. Should this agreement be terminated by owner for default of contractor, the privilege of removing trade fixtures shall be forfeited, but contractor shall retain the duty upon written notice by owner to remove part or all property left upon the airport. Any property which contractor might otherwise be authorized to remove shall be subject to a lien by owner for unpaid fees or charges." [FAA Exhibit 1, Item 1, Attachment A.]*

Upon completion of this lease, Respondent entered into at least two more lease agreements with Ed's Flying Service, Inc. over the course of 36 years. [FAA Exhibit 1, Item 1, Attachment A.]

The record provided herein does not reflect whether Respondent invoked the 'reverter' provision at the end of any of Ed's Flying Service's three lease terms.

The Record does reflect that longer-term leases often contained a clause that improvements not removed at the end of the lease could become Respondent's property. [FAA Exhibit 1, Item 4, pg. 3; *see also* Item 4, Attachment C.]

In February 1978, Peat, Marwick, Mitchell, and Company prepared Respondent's Airport Master Plan and cited "gradual reversion to the City of title to tenant-owned buildings, allowing the Airport to obtain rental revenues" as an "important [source] of untapped revenue not previously identified." [FAA Exhibit 1, Item 1, Attachment C, pg. 80.]

Complainant identified and addressed airport issues believed to be non-compliant with Federal grant assurances to various entities including the City Council, City Manager, and City Attorney. [FAA Exhibit 1, Item 1, Attachment D; Attachment F; Attachment H; Attachment M; Attachment N -- FAA Exhibit 1, Item 4, Attachment F, Enclosures 1 thru 3; Attachment J, Enclosure 1; Attachment K, Enclosures 1 thru 2; Attachment M; Attachment N, Enclosures 1 thru 3; Attachment Q, Enclosure 1 & 3.]

In the summer of 2004, Complainant hand delivered his evaluation of some existing Airport leases to FAA's Albuquerque Airport Facility Office. [FAA Exhibit 3, Item 1.] The staff evaluation included a brief historical review of the leases for Hangar #2 at the Airport and descriptions of specific terms of those leases. [Id.]

On September 24, 2004, FAA's Southwest Region Airport Compliance Officer sent a letter to Respondent's City Manager advising Respondent to correct the lease disparities presented in the leases by Complainant or jeopardize future funding due to possible violations of Respondent's Federal obligations. [FAA Exhibit 3, Item 2.]

On October 7, 2004, Respondent responded to FAA stating, "Prior to the City telling private property owners that the property they bought and paid for is not theirs, the City will thoroughly investigate the history, legal questions, and any other pertinent matters on the subject." [FAA Exhibit 3, Item 3, pgs. 1-2.]

On October 25, 2004, FAA's Southwest Region Airport Compliance Officer responded to Respondent's October 7, 2004 letter noting FAA's concern that Respondent treat similarly situated fixed-base operators (FBOs) in a similar manner with reasonable and not unjustly discriminatory lease rates. [FAA Exhibit 3, Item 4.]

On December 7, 2004, Respondent wrote to FAA's Southwest Region Airport Compliance Officer. [FAA Exhibit 1, Item 4, Attachment G, Enclosure 1.] The letter noted that Respondent added an internal auditor to its staff to assist in the review and updated FAA on the status of the City's efforts to review the Airport's leases. [Id.]

On January 24, 2005, FAA's Southwest Region Airport Compliance Officer sent a letter to Respondent announcing that FAA would conduct a general aviation compliance inspection at the Airport beginning February 2, 2005. [FAA Exhibit 3, Item 5.]

On February 14, 2005, FAA's Southwest Region Airport Compliance Officer issued a letter to Respondent notifying it of the results of the general aviation compliance inspection. [FAA Exhibit 1, Item 1, Attachment G.] FAA commended Respondent for its efforts to maintain the Airport but identified areas of improvement.

On March 24, 2005, Respondent's Public Works Director transmitted the completed review of the Airport's leases and operations to FAA's Louisiana/New Mexico Airports Development Office (ADO). [FAA Exhibit 1, Item 4, Attachment G, Enclosure 3.]

On April 29, 2005, FAA's Louisiana/New Mexico ADO received a fax from Complainant regarding a suspicious lease transaction approved by Respondent over the objections of the City Attorney, Airport Manager, and FAA Southwest Region Airports Division. [FAA Exhibit 3, Item 6.]

On May 25, 2005, Respondent submitted a Monthly Progress Report to FAA's Louisiana/New Mexico ADO. [FAA Exhibit 1, Item 4, Attachment G, Enclosure 4.] The letter detailed Respondent's efforts to cure deficiencies in the Airport's leasing practices.

The letter also stated that Respondent provided a sample draft lease for review, but this sample was not provided in the Record.

On June 17, 2005, FAA's Southwest Region Airport Safety and Standards Branch Manager sent a letter to Respondent requesting a plan of action to correct deficiencies found in the Airport's leases within 30 days. [FAA Exhibit 1, Item 4, Attachment E.]

On June 28, 2005, Respondent's Public Works Director submitted copies of numerous documents to FAA's Southwest Region Airport Compliance Officer. [FAA Exhibit 3, Item 7.] The submitted documents included Respondent's Revised Airport Ordinance, Generic Lease Applications, Land Lease template/boilerplate, Commercial Lease template/boilerplate, and an evaluation of the Airport's policies. [Id.]

On June 29, 2005, Respondent submitted another Monthly Progress Report to FAA's Louisiana/New Mexico ADO. [FAA Exhibit 1, Item 4, Attachment G, Enclosure 5.] Respondent explained that it continues to develop a 'boilerplate' lease form as a method of moving away from customized leases that could potentially leave out key lease provisions from lease to lease. [Id at 1.]

On June 30, 2005, FAA's Southwest Region Airport Compliance Officer sent a letter to Respondent regarding Respondent's request for FAA to review the proposed changes to the City ordinances and Airport's minimum standards. [FAA Exhibit 3, Item 8.] The Compliance Officer recommended that Respondent review and amend the Airport's Minimum Standards and Ordinances to accommodate self-service fueling without granting that privilege to a specialized aeronautical service operation. [Id at 2.]

On September 19, 2005, Complainant issued a Memorandum to the New Mexico Department of Transportation, with copies sent to FAA's Southwest Region Airport Safety and Standards Branch Manager, regarding lease provisions at the Airport. [FAA Exhibit 3, Item 9.] Complainant estimates the value of Respondent's potential loss, by not reclaiming reverted property at over $100,000 per year. [FAA Exhibit 1, Item 1, pg. 4.]

On February 17, 2006, Respondent submitted another Progress Report to FAA. [FAA Exhibit 3, Item 10.] Respondent is negotiating a new basic Land Lease Agreement with its Airport tenants. This new lease agreement will be applicable to non-City owned hangars. [Id.]

Procedural Background

On November 15, 2003, FAA received the Complaint. [FAA Exhibit 1, Item 1.]

On December 7, 2005, FAA docketed Rudy J. Clarke v. City of Alamogordo, NM, FAA Docket No. 16-05-19. [FAA Exhibit 1, Item 2.]

On December 20, 2005, Respondent filed an Unopposed Motion for Extension of Time to File Answer in Rudy J. Clarke v. City of Alamogordo, NM, FAA Docket No. 16-05-19. [FAA Exhibit 1, Item 3.]

On January 10, 2006, FAA received Respondent's Answer to Rudy J. Clarke v. City of Alamogordo, NM, FAA Docket No. 16-05-19. [FAA Exhibit 1, Item 4.]

Complainant did not file a Reply to Respondent's Answer.

V. ISSUES

The issues upon examination are:

1. Whether Complainant has standing to bring the Complaint;
2. Whether Respondent violated its Federal obligations (Grant Assurances 5, *Rights and Powers*; 22, *Economic Nondiscrimination*; 24, *Fee and Rental Structure*; 25, *Airport Revenues*) by failing to invoke certain provisions of its airport lease agreements (i.e. reverter provisions); and
3. Whether Respondent violated its Federal obligations by permitting disparity in its aeronautical lease rates (Grant Assurance 22, *Economic Nondiscrimination*).

VI. APPLICABLE LAW AND POLICY

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

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

Airport Improvement Program

Title 49 U.S.C. § 47101 *et seq.*, provides for Federal financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airways Improvement Act of 1982, as amended. Title 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a

condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

Airport Sponsor Assurances

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

FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.[6] FAA Order 5190.6A, *Airport Compliance Requirements* (Order 5190.6A), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances. FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Grant Assurances discussed at length in this determination are Assurances 5, *Preserving Rights and Powers*; 22, *Economic Nondiscrimination*, 24, *Fee and Rental Structure*; and, 25, *Airport Revenues*.

Grant Assurance 5, Preserving Rights and Powers

Grant Assurance 5, "Preserving Rights and Powers" of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the sponsor of a federally-obligated airport:

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

Grant Assurance 5 also provides that the airport sponsor:

> *"will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of*

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

> *the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement."*

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

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

> *"will make the airport available as an airport for public use and on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [(a)]*
>
> *b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-*
>
> *(1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and*
> *(2) charge reasonable, and not unjustly discriminatory. Prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.*
>
> *c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.*

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

FAA Order 5190.6A describes in detail the responsibilities under Grant Assurance 22 assumed by the owners of public use airports developed with Federal assistance.

Grant Assurance 24, Fee and Rental Structure
Grant Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurances satisfies the requirements of 49 U.S.C. § 47107(a)(13). It provides, in pertinent part, that the airport sponsor:

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

FAA's *Policy and Procedures Concerning the Use of Airport Revenues* (64 Fed. Reg. 7696, February 16, 1999) provides, among other things, the FAA's policy on the maintenance of a self-sustaining rate structure by federally-assisted airports. It provides, in relevant part, that:

> *"Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. [Section VII(B)(1)]*
>
> *If market conditions or demand for air service does not permit the airport to be financially self-sustaining, the airport proprietor should establish long term goals and targets to make the airport as financially self-sustaining as possible. [Section VII(B)(2)]*
>
> *…the FAA does not consider the self-sustaining requirement to require airport sponsors to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to sponsors of providing aeronautical services and facilities to users. [Section VII(B)(5).]*

> *…the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport. [Section VII(C).]"*

Grant Assurance 25, Airport Revenues
Grant Assurance 25, "Airport Revenues," of the prescribed sponsor assurances implements provisions of 49 U.S.C. § 47107(b), et seq., and requires, in pertinent part, that:

> *"a. All revenues generated by the airport and any local taxes on aviation fuel established after December 20, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.*
>
> *b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law including any regulation promulgated by the Secretary or Administrator.*
>
> *c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.'*

FAA's Policy and Procedures Concerning the Use of Airport Revenues (64 Fed. Reg. 7696, February 16, 1999) provides, among other things, the FAA's policy on the use of airport revenue. It provides, in relevant part, that:

> *"Unlawful revenue diversion is the use of airport revenue for purposes other than the capital and operating costs of the airport, the local airport*

system, or other local facilities owned and operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. [Section II(C).]

Prohibited uses of airport revenue include but are not limited to: (1) Direct or indirect payments that exceed the fair and reasonable value of services provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value. [Section VI(B)(1).]"

The FAA Airport Compliance Program

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

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

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served. FAA Order 5190.6A is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes policies and procedures to be followed by FAA personnel in carrying out 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 addresses the various obligations set forth in the standard airport sponsor assurances, and the nature of those assurances in the operation of public use airports.

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

(August 2, 2000); Steere v. County of San Diego, FAA Docket No. 16-99-15, Final Agency Decision (December 7, 2004) and Director's Determination (July 21, 2004).]

Enforcement of Airport Sponsor 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 Proceedings* (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 Fed. Reg. 53998, October 16, 1996) and made effective on December 16, 1996.

The Complaint Process
Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. [*See* 14 CFR § 16.3 and 16.23(b)(3,4).]

A person doing business with an airport and paying fees or rentals to the airport shall be considered directly and substantially affected by alleged revenue diversion. [*See* 14 CFR § 16.23(a).]

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

The proponent of a motion, request, or order has the burden of proof. [*See* 14 CFR § 16.229(b). A party who has asserted an affirmative defense has the burden of proving the affirmative defense. [*See* 14 CFR § 16.229(c).] 14 CFR § 16.23, requires that the complainant must submit all documents when available to support his or her complaint. Similarly, 14 CFR § 16.29 states that "each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance."

VII. ANALYSIS AND DISCUSSION

A discussion and analysis of the issues is provided below.

Issue 1: Whether Complainant, a part-time airport manager has standing to bring a Part 16 complaint for:

1. an allegation that Respondent violated its Federal obligations by failing to invoke certain provisions of its airport lease agreements (i.e. reverter provisions); and
2. an allegation that Respondent violated its Federal obligations by permitting disparity in its aeronautical lease rates.

Before addressing Complainant's allegations, we must first address the issue of whether Complainant has standing to file a complaint with the FAA under the *Rules of Practice for Federally-Assisted Airports* (14 CFR Part 16).

Respondent has motioned for dismissal of the above referenced case, asserting Complainant lacks standing to file a 14 CFR Part 16 complaint. [FAA Exhibit 1, Item 4, Attachment 1.] Respondent asserts that Complainant is neither an aeronautical user nor non-aeronautical user. [FAA, Exhibit 1, Item 4, Attachment 2] Complainant does not refute that contention; however, the airport employs Complainant as an airport manager. [FAA Exhibit 1, Item 1, pg. 1; Item 4, Attachment 2, pg. 1]

Title 14 CFR § 16.23(a) provides, "A person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator. A person doing business with an airport and paying fees shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b)."

1. Complainant does not explain how he is directly and substantially affected by the alleged noncompliance in regard to whether Respondent violated its Federal obligations (Grant Assurances 5, *Rights and Powers*; 22, *Economic Nondiscrimination*; and 24 *Fee and Rental Structure*) by failing to invoke certain provisions of its airport lease agreements and allegedly permitting disparity in its aeronautical lease rates.

Employment by the airport does not automatically convey standing to Complainant. While FAA agrees that an Airport Manager should assist the airport in maintaining compliance with its federal grant assurances, the airport authority or sponsor is directly responsible for compliance with the airport's federal grant assurances – not the Airport Manager. The consequences of any finding of noncompliance are levied by the FAA on the airport and not the Airport Manager. Hence, a violation of those assurances has no direct effect on the Airport Manager.

Argument aside, the Complainant has failed to provide a complete statement of facts or documentation as to how *he* is directly and substantially affected by the alleged noncompliance concerning the above federal obligations, which would permit the Director to find Complainant has standing.

2. Complainant also alleges that the Respondent has diverted revenue from the airport by failing to invoke certain provisions of its airport lease agreements (i.e. reverter

provisions)[7]. [FAA, Exhibit 1, Item 1, p. 2] Respondent's motion to dismiss also emphasizes that Complainant does not have standing for this allegation. [FAA, Exhibit 1, Item 4, p. 3-8]

Complainant does not contend that he is a user of the airport, but merely a witness to issues of leasing irregularities. His charges culminate with the allegation that the airport authority has engaged in revenue diversion. Complainant charges that these [rent and reverter] irregularities ultimately affect how an airport can and will be maintained. [FAA Exhibit 1, Item 1, p. 2] Complainant implies that this alleged lost revenue could reduce the amount of city subsidy and indirectly the burden to local residents.

A complainant under § 16.23(b)(4) is required to describe how he/she was directly and substantially affected by the things done, or omitted to be done, by the respondent. Allegations related to revenue diversion do not require the complainant to describe how it was directly and substantially affected. [Jim Martyn v. Port of Anacortes, FAA No. 16-02-03, Director's Determination April 8, 2003] A person doing business with an airport and paying fees shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b). [14 CFR § 16.23(a)] This special applicability provision operates for cases where revenue diversion is alleged. It is necessary because revenue diversion principally affects the United States as the grantor of the federal airport funds allegedly diverted. That said, entities that do business on the airport and pay fees also have some interest in alleging revenue diversion because their payments constitute airport revenue. [61 Fed. Reg. 53998 (October 16, 1996.)]

Complainant is not a tenant, but an employee of the airport. Complainant fails to demonstrate that he is a person doing business with the airport and paying fees to the airport. Thus, Complainant is not entitled to the automatic standing conveyed on a person doing business with the airport and paying fees. As discussed above, employment by the airport does not automatically convey standing to Complainant. Based on the record, the FAA finds Complainant lacks standing pursuant to 14 CFR § 16.23.

The standing requirement is necessary to assure that scarce agency resources are devoted to matters in which the complainant's interest is sufficient to justify the burden of processing a complaint under Part 16. [See 61 Fed. Reg. 53998 (Oct. 16, 1996) (codified at 14 CFR pt. 13 and 16.)]

However, since the FAA will investigate an allegation of revenue diversion regardless of whether the reporting complainant has standing, the FAA will examine the merits of the complaint's remaining allegations by making a determination in the alternative on whether the airport violated its federal obligations[8].

---

[7] Complainant alleged that Respondent has violated Grant Assurances 25, *Airport Revenue.*

[8] In this unique case, the complaint was docketed without a final finding on standing in order to postpone deciding the issue until the complete record of the case was submitted. FAA's interest in revenue diversion is sufficient to justify the burden of processing a complaint and consequential pleadings prior to reaching a determination on standing in the Director's Determination.

Issue 2: Whether Respondent violated its Federal obligations (Grant Assurances 5, *Rights and Powers*; 22, *Economic Nondiscrimination*; 24, *Fee and Rental Structure*; 25, *Airport Revenues*) by failing to invoke certain provisions of its airport lease agreements (i.e. reverter provisions).

Complainant alleges Respondent violated its Federal obligations when it chose to not invoke 'reverter' provisions in its airport lease agreements. [FAA Exhibit 1, Item 1.] Complainant states:

> *"The City has failed to enforce the revenue increasing potential of the leases and has in the same manner systematically divested itself of income opportunities in favor of the local tenant base to the detriment of the airport income…this then leads to the charge of Revenue Diversion that has deprived the airport of the opportunity to even strive to be self-sufficient." [FAA Exhibit 1, Item 1, pg. 6.]*

Respondent denies these allegations and states that the City is "currently engaged in a thorough review of its procedures and practices at the Alamogordo-White Sands Regional Airport." [FAA Exhibit 1, Item 4, pg. 1.] Respondent believes that "Complainant's real grievance appears to be that the City of Alamogordo has not adopted all of his proposals, especially that of suing the current tenants, nor acted according to his preferred timeline." [FAA Exhibit 1, Item 4, pg. 2.] Respondent also states, "the former leases and practices Mr. Clarke described do not constitute revenue diversion, unjust discrimination, or an unreasonable effort to promote the self-sustaining character of the Alamogordo-White Sands Regional Airport." [FAA Exhibit 1, Item 4, pg. 2.]

Grant Assurances analyzed under this issue include Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 22, *Economic Nondiscrimination*; Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 25, *Airport Revenues*.

Grant Assurance 5, Preserving Rights and Powers

Complainant alleges Respondent violated Grant Assurance 5, *Preserving Rights and Powers*, when it chose to not invoke the 'reverter' provisions in the Airport's aeronautical leases. Complainant avers Respondent violated Grant Assurance 5 by giving up its rights and powers over the ownership of the airport property and investment. Complainant does not provide a concise description of how Respondent violated Grant Assurance 5, but attempts to provide examples in his Exhibits to support his allegation.

- Complainant alleges by failing to 'revert' the improvements on airport property, Respondent 'donated' the properties to the tenants, thereby giving up their rights and responsibilities over the improvements. [9] [*See* FAA Exhibit 1, Item 1,

[9] Complainant claims such a donation could be a violation of New Mexico's Anti-Donation Clause. [FAA Exhibit 1, Item 1, pg. 4.] Complainant's allegations regarding a violation of New Mexico's Anti Donation Clause are not an issue for adjudication through the Part 16 process. Allegations of state law violations are generally outside the Part 16 process.

Attachment G, pg. 2.] Complainant alleges such a donation of the property is a violation of Grant Assurance 5.

- Complainant alleges that in some cases, Respondent has no record of who currently leases or subleases the aeronautical leaseholds. [FAA Exhibit 1, Item 1, Attachment F.] Complainant alleges Respondent's internal auditor found that in some cases, tenants believe they "own" hangars and land on the Airport. [FAA Exhibit 1, Item 1, Attachment G.]

Respondent does not directly or separately address the allegations regarding rights and powers. However, it details its efforts to review the Airport's leasing practices. Specifically, Respondent conveyed its plan to investigate its leasing practices after receiving the September 24, 2004 letter from FAA's Southwest Region Airport Compliance Officer. [FAA Exhibit 1, Item 4, Attachment G, Enclosure 1.]

Respondent obtained a legal opinion from Respondent's counsel regarding the disposition of tenant improvements on real property owned by the City. [FAA Exhibit 3, Item 10.] The attorney advised that "the City is acting within its discretion in deciding that the City and Airport are better served by leaving the existing tenancies in place, rather than trying to find new tenants and negotiating new leases." [Id at 6.]

Respondent later submitted:

> *"For reasons set forth in both the response in the FAA proceedings, and in response to an inquiry from our own state auditor, the hangars are considered to be the property of the lessees at this time." [See FAA Exhibit 3, Item 10, pg. 1.]*

Respondent's attorney appears to agree with this basic proposition that hold over tenants (lessees) must adhere to the same lease terms and conditions as in the original agreement.[10] [FAA Exhibit 3, Item 10, pgs. 4-5.]

As discussed in the Applicable Law and Policy section, under Grant Assurance 5, an airport sponsor must not permit or take any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement. Additionally, an airport sponsor will not sell, lease encumber, or otherwise transfer or dispose of any part of its title or other interests in the property. Aeronautical tenants may obtain a mortgage to their property improvements, as long as the airport sponsor is identified as the owner of the land upon which the improvement rests.

Based on the record herein, FAA must determine whether failure to invoke reverter provisions in the Airport's leases is a violation of Respondent's obligations under Grant Assurance 5 and whether Respondent maintained adequate control of its land and did not violate Grant Assurance 5.

---

[10] This is also true for the lessor.

FAA does not construe Respondent's refusal to invoke its reverter provisions and claim improvements on airport property, as a donation. Nor are such acts necessarily a violation of Grant Assurance 5. In fact, the leases between Respondent and the individual aeronautical tenants are contracts. FAA has no jurisdiction in enforcing a contract where FAA is not a party. Disputes regarding contracts are generally a matter of state law and not covered under the Part 16 process.

FAA finds that in this case, Respondent and the parties to each lease did not, either through negotiation or oversight, invoke certain provisions of the lease. Regardless, the parties in any contract may, by agreement, elect not to enforce certain provisions of the contract. Whether Respondent took this approach with all its leases on a reasonable and not unjustly discriminatory basis will be discussed later.

Complainant may contend that failure to enforce the lease amounts to a donation, however refusal to invoke the 'reverter clause' provisions is not a violation of the FAA Grant Assurances. Therefore, with regard to Respondent's refusal to invoke the reverter provisions in its aeronautical leases, FAA finds that such action was a decision within the right of the Airport and the parties to the contract, and not a violation of Grant Assurance 5.

As for the issue regarding Respondent's lack of past oversight with the lease files (i.e. lease history), FAA will examine compliance issues with Grant Assurance 5.

Complainant cites the lease history for Hangar A-3 on the Airport. [FAA Exhibit 1, Item 1, pg. 5.] Complainant appears to take issue with the 'mortgage' associated with Hangar A-3 and references a letter from FAA's Southwest Region Airport Compliance Officer which states "We understand that one of the tenant's hangar construction loan involved a mortgage on the building and the land the building sits on…this is unacceptable and needs to be cured." [FAA Exhibit 1, Item 1, pg. 5; *see also* Item 1, Attachment J.]

Generally, tenants of private hangars typically must secure financing through a mortgage to afford the cost of improvements on airport property. A review of the Record show that the documents provided for Hangar A-3 all correctly identify Respondent as the owner of the land upon which the mortgaged improvement exists. [FAA Exhibit 1, Item 1, Attachment O.]

Here, it appears, based on the internal communications between Complainant and Respondent that there is some confusion regarding ownership of some hangars and assignment of leaseholds [*See* FAA Exhibit 1, Item 1, Attachment F.], Respondent is aware of the confusion and has taken steps to analyze the situation and proceed cautiously in the future. FAA concedes that both Complainant and the Internal Auditor's reports clearly demonstrate that Respondent lacked adequate controls to ensure enforcement of lease provisions, payment for leaseholds, and correct assignment of leases to new parties. [FAA Exhibit 1, Item 1, Attachment I.]

It is clear that Respondent is now aware of its deficiencies and working to correct them. Respondent began a major reevaluation of its Airport operation, including leasing practices, in 2004. [FAA Exhibit 1, Item 4, pg. 3.] Respondent is currently engaged in reviewing its leases and leasing practices to "make sure that the interests of all parties are adequately protected while complying with the provisions of the grant assurance language..." [FAA Exhibit 1, Item 4, Attachment G, Enclosure 1, pg. 1.] Respondent is considering a standard lease for future use that would include provisions for reversion of improvements and increases in rental rates. [FAA Exhibit 1, Item 4, pg. 4.] Respondent states, "To address any possible ambiguity as to the ultimate ownership of improvements, Alamogordo is negotiating a new standard lease with standard language concerning improvements." [FAA Exhibit 1, Item 4, pg. 12.]

Complainant seeks forceful action, such as 'padlocking' hangars [FAA Exhibit 1, Item 1, Attachment F.] on defaulted property. Whether or not such action is taken is a decision for Respondent and not one that FAA will force upon an airport sponsor. While Respondent may not have thoroughly understood the extent of its obligations in the past, through consultation with the FAA over the past two years, it appears to now recognize its deficiencies and is seeking to fix them. In any case, Respondent is entitled to enforce its own contracts in a matter it chooses, and here, there is no violation of its grant assurances.

FAA Order 5190.6A, *Airport Compliance Requirements*, states the airport sponsor meets its obligatory commitments when "(a) the obligations are fully understood, (b) a program is in place which in FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out." [*See* Par 5-6(a)(2).]

In this case, FAA finds Respondent has met its obligatory commitments because:

1. It is aware of its obligations, evidenced through the numerous letters between Complainant, Respondent, and the FAA. [*See* FAA Exhibit 1, Item 4, Attachment G, Enclosures 1-5; Attachment K, Enclosure 2; and Exhibit 3, Items 1-10.]
2. Respondent is currently engaged in review and analysis of its deficient programs. [*See* FAA Exhibit 3.]
3. Respondent has continually updated FAA to its progress in this effort. [*See* FAA Exhibit 3.]

Regardless of past poor management controls, FAA is interested in current compliance. [*Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, Director's Determination (August 2, 2000).] The Record demonstrates, based on FAA policy as described above that Respondent is currently complying with its obligations.

FAA's Compliance Program is designed to achieve voluntary compliance with the grant assurances accepted by owners and/or operators of public use airports. [*See* Item 61,

FAA Order 5190.6A (October 2, 1989), paragraphs 5-1 and 5-1(b)(1), "voluntary compliance", *see also Paul D. Asmus and P.D. Aviation Consulting v. State of Hawaii Department of Transportation*, FAA Docket No. 16-05-11, Director's Determination (April 12, 2006) at 13 (in addressing allegations of non compliance, the FAA makes a determination as to whether an airport sponsor is currently in compliance with the applicable federal obligations and whether the sponsor is reasonably meeting those obligations)].

The goal of the Part 16 is to return the airport sponsor to a state of compliance with its grant assurances. As a result, it is against FAA policy to enforce retroactively the grant assurances for past violations (assuming there are such violations) that have been cured. [*See Guy Heide et al v. Metropolitan Airports Commission*, FAA Docket No. 16-05-15, Order of Dismissal (September 9, 2005) at 10 affirmed in FAA Final Agency Decision (July 7, 2006).]

However, since Respondent is currently undergoing its review during this proceeding under Part 16, this Office will direct the Louisiana/New Mexico ADO to follow up with Respondent's progress to ensure that Respondent makes and implements the corrections as promised. FAA may conduct a second Land Use Compliance Inspection to verify that these changes have been adequately implemented.

Therefore, based on the analysis above, Respondent is not currently in violation of its obligations under Grant Assurance 5.

Grant Assurance 22, Economic Nondiscrimination
Complainant avers that Respondent's failure to uniformly include and enforce reverter provisions in the aeronautical leases is discriminatory. [FAA Exhibit 1, Item x, pg. x.]

Respondent does not directly address this allegation in its Answer.

Grant Assurance 22, *Economic Nondiscrimination*, provides in part that the airport sponsor will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds, and classes of aeronautical activities. Under this grant assurance, airport sponsors must also ensure that each fixed-base operator on the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar use of the airport.

Based on the Record, it appears that some leases did not include the reverter provisions while some leases did. [FAA Exhibit 1.] The record reflects that Respondent appears not to have invoked the 'reverter' provisions in any of its leases to date. [FAA Exhibit 1.] Indeed, Complainant agrees that Respondent never invoked the 'reverter' provisions in the Airport's lease agreements. [FAA Exhibit 1, Item 1, pg. 5.] Whether or not the reverter provisions were included in the various aeronautical leases here, is irrelevant since Respondent never invoked the provision in any lease.

Moreover, FAA is unaware of any complaints by aeronautical tenants making the same claims as Complainant. Complainant's case fails to be supported by any complaints from any of the Airport's aeronautical tenants. Ordinarily, affected aeronautical tenants bring disparate treatment to the attention of the FAA that the terms of their leases are unjustly discriminatory or unreasonable. In fact, Alamogordo appears to have treated the tenants the same because it has not exercised the reverter clauses.

Finally, Complainant does not provide any information or documentation to this record explaining or providing that one tenant is treated more favorably over another.

Therefore, based on the analysis above, Respondent is not in violation of its obligations under Grant Assurance 22.

Grant Assurance 24, Fee and Rental Structure

Complainant contends that through Respondent's failure to invoke 'reverter' provisions in the Airport's aeronautical leaseholds, and charge fair market value rent for the reverted improvements, Respondent is in violation of FAA Grant Assurance 24, *Fee and Rental Structure*. [FAA Exhibit 1, Item 1, pgs. 3 & 5-6.]

Complainant provides estimates predicting the Airport's revenue if Respondent charged fair market value rent for the reverted improvements. [FAA Exhibit 1, Item 1, Attachment B.] These predictions are based on Complainant's review of Artesia Municipal Airport's lease rates.[11] Complainant believes that if Respondent charged 'his' assessed fair market value, the Airport could potentially earn an additional $111,809 in revenue, which would make it more self-sustaining. [FAA Exhibit 1, Item 1, pg. 4.]

Respondent denies it violated Grant Assurance 24. Respondent states:

> *"Complainant's claim that in the past Alamogordo failed to charge as high of rates…, and failed to fully litigate possible claims to improvements is simply and only unhinged and unsupported Monday-morning quarterbacking…" [FAA Exhibit 1, Item 4, pg. 9.]*

Respondent believes it is desirable to have a self-sustaining rental structure. Respondent also believes that it is "not required" to have a self-sustaining rental structure. [FAA Exhibit 1, Item 4, pg. 9.] Respondent quotes *Boca Aviation v. Boca Raton Airport Authority* [FAA No. 16-00-10, Final Agency Decision (March 20, 2003)], "Under FAA policy, the self-sustaining assurance is a goal rather than an absolute requirement." [Id. at pg. 9.] Respondent further quotes *Bombardier Aerospace Corp. v. City of Santa Monica*, [FAA No. 16-03-11, Director's Determination (January 3, 2005).] and FAA's *Policy and Procedures Concerning the Use of Airport Revenue* [64 Fed. Reg. 7696 (February 16, 1999)] where "the FAA has considered it acceptable for an airport operator

[11] Artesia is a city owned, public use airport in New Mexico. Complainant states that Artesia builds and owns its aeronautical hangars and that its rates were the lowest among all the airports in which he compared lease rates. Complainant fails to provide what other similarities Alamogordo and Artesia share in order to proffer equivalent lease rates.

to charge fees to aeronautical users that are less than Fair Market Value, but more than nominal charges." [Id. at pg. 10.]

As discussed in the Applicable Law and Policy section, under Grant Assurance 24, *Fee and Rental Structure*, the airport sponsor "will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection." [emphasis added.]

FAA policy recognizes that "at some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services…in such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances." [64 Fed. Reg. 7696 (February 16, 1999 Section IV(B)(3).]

FAA does not consider the self-sustaining language in Grant Assurance 24 to require airport sponsors to charge fair market rates to aeronautical users. [*See* 64 Fed. Reg. 7696 (February 16, 1999) Section VII(B)(5).]

Respondent correctly relies on past FAA Part 16 cases. FAA permits airports to charge below fair market value rents to aeronautical users. [*Bombardier Aerospace Corp. v. City of Santa Monica*, FAA Docket No. 16-03-11, Director's Determination (January 3, 2005).] While FAA policy provides that the self-sustaining grant assurance is a goal rather than an absolute requirement, the assurance is prefaced by the airport sponsor's obligation to have a fee and rental structure that is based on the circumstances of the airport. [*Boca Aviation v. Boca Raton Airport Authority*, FAA Docket No. 16-00-10, Final Agency Decision (March 20, 2003) & 64 Fed. Reg. 7696 (February 16, 1999).]

FAA agrees that Complainant's charge is speculative. In fact, no one knows for sure whether the Airport could maintain its current tenancy at Complainant's estimated 'fair market value' rates.

Complainant's assumed fair market value is also speculative. The documentation in this record fails to provide enough information to conclude whether Artesia Municipal Airport and Alamogordo are similarly situated. While FAA's regional staff may have advised the parties to consult with other local airports on determining a fair market value rental rate [*See* FAA Exhibit 1, Item 4, Attachment J, Enclosure 2.], the Director cannot conclude that, in this particular case, the lease rates for Artesia should be applied to Alamogordo. Moreover, the Director notes lease rates are usually based on a variety of factors. The Director also notes that this is not a case of a tenant complaining about its rates. Ordinarily, the FAA will not make a determination as to the rates.

The Airport is currently reviewing their leasing and rate-making policies. [FAA Exhibit 1, Item 4, pg. 1.] FAA recognizes Respondent's willingness to comply with its obligations, specifically here, FAA Grant Assurance 24. Respondent is aware of its commitments and is reviewing its leasing practices to make them more succinct and cost-based. [*See* discussion on page 21.]

Complainant has not provided any information or documentation to the record which would contradict Respondent's opinion that its rates reflect what the market will bare. Since this is a municipally owned airport, the taxpayers of the community likely would not accept unreasonable subsidization of the Airport's costs. Respondent also argues that the cost of litigation and the uncertainty of tenancy are substantial reasons why Complainant's demands are unreasonable. [*See* FAA Exhibit 1, Item 4, pgs. 6 & 12.] FAA finds this logic not unreasonable under the circumstances.

Respondent appears able to cover the Airport's expenses either through airport revenue or city subsidy. The Record herein does not indicate that the Respondent is unable to cover the costs of the Airport, including the maintenance, and upkeep of the Airport's airfield and facilities. In fact, FAA's Southwest Region Airport Compliance Officer commended Respondent for its efforts to maintain the Airport after completing the February 2005 Land Use Inspection. [FAA Exhibit 1, Item 1, Attachment G.]

FAA policy permits, Respondent to charge below fair market value rent to aeronautical leaseholders. FAA would expect that to compensate for the lower aeronautical rental rates, a sponsor maintain its non-aeronautical rental rates at a fair market level or higher. However, as neither party addresses the non-aeronautical leaseholds on this Airport, the issue of non-aeronautical revenue is not ripe for discussion.

Therefore, based on the Record herein, law, and applicable FAA policy and precedent, FAA does not find Respondent in violation of Grant Assurance 24, with regard to its alleged failure to maintain a self-sustainable aeronautical rental structure.

<u>Grant Assurance 25, Airport Revenues</u>

Complainant alleges that Respondent's inaction with regard to fixture reversion and failure to obtain fair market rental rates constitutes revenue diversion, a violation of Grant Assurance 25. Complainant suggests that failure to institute new leases for higher rates based on added value of tenants self-financed fixtures amounts to revenue diversion. [FAA Exhibit 1, Item 1, pgs. 4 & 6.] Complainant states, with reference to a land trade and lease, "Again the City granted a lease which amounted to Revenue Diversion to the benefit of the individual and away from the airport." [FAA Exhibit 1, Item 1, pg. 6.]

Respondent denies engaging in unlawful revenue diversion. [FAA Exhibit 1, Item 4, pg. 7.] Respondent claims "Complainant fails to show that Alamogordo has used revenues generated by the airport for unlawful purposes." [Id.]

Title 49 U.S.C. § 47133, *Restriction on use of revenues*, describes the unlawful uses of airport revenue which include:

> *"(a) Prohibition – Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of –*
>
> *(1) the airport;*
> *(2) the local airport system; or*
> *(3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property."*

Grant Assurance 25, Airport Revenues, reflects the direction of Section 47133 and states:

> *"a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; local airport system; or other facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property…"*

FAA's *Policy and Procedures Concerning the Use of Airport Revenue* (Revenue Use Policy), defines revenue diversion as "the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause." [*See* 64 Fed. Reg. 7696 (February 16, 1999).] Hence, unlawful revenue diversion constitutes a violation of Grant Assurance 25.

FAA's Revenue Use Policy also describes particular prohibited uses of airport revenue. These include:

1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport.
2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.
3. Use of airport revenues for general economic development.
4. Marketing and promotional activities unrelated to airports or airport systems.
5. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government.

6. Payments to compensate non-sponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport.
7. Loans to or investment of airport funds in a state or local agency at less than prevailing rate of interest.
8. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than fair rental/market value, except to the extent permitted by Section VII.D of the policy.
9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates except to the extent permitted by Section VII.E of this policy.
10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport.
11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property except to the extent permitted by the policy.
12. Direct subsidy of air carrier operations.

The question here is whether Respondent's inaction and failure to obtain "fair market value" rental rates for its aeronautical leaseholds constitutes revenue diversion.

Based on the statute, grant assurance, and FAA policy, Respondent's conduct does not meet the definition of revenue diversion. Respondent may be providing below fair market value rent to aeronautical leaseholds. As it is, the statute and grant assurances allow for below fair market value rent in the case of aeronautical leaseholds. [*See* discussion beginning on page 16.]

Additionally, Respondent's failure to invoke 'reverter' provisions in its aeronautical leaseholds does not amount to revenue diversion. Respondent's failure to collect monies based on the reverter clauses is not revenue diversion. Whether to exercise the reverter clause is matter of contract and an issue for the parties to the contract. Exercise of the reverter clauses remain at the discretion of the Respondent. There is no question that the original terms and conditions of the leases would apply to a hold over tenant. It is, however, questionable or speculative to assume that departing tenants are taking any of the fixtures (of value) with them as their leases terminate. In fact, the record fails to reflect that any tenant has actually removed Fixtures from its leasehold.[12]
According to the statute, grant assurance, and applicable FAA policy, Complainant's assertion cannot accurately be characterized as revenue diversion. Respondent has not taken 'revenue' from the Airport. "Potential" revenue based on Complainant's estimated calculations may not be construed as actual revenue generated on the Airport or revenue in the Airport's accounts. The so-called potential cost or potential revenue has not been realized by the Airport. Complainant's assertion that Respondent has lost 'potential revenue' is highly subjective and very speculative. Regardless, it does not amount to a prohibited revenue use or revenue diversion.

[12] In support of its decision not to exercise the reverter clauses, Respondent provides news articles that infer tenants desire to remove the Fixtures should Respondent chose to enforce the reverter provisions. [FAA Exhibit 1, Item 4, Attachment L, Enclosures 1 & 2.]

In this case, based on the record, applicable law and policy, FAA has determined that Respondent's actions do not constitute revenue diversion. Therefore, Respondent is not currently in violation of Grant Assurance 25.

Issue 3: Whether Respondent violated its Federal obligations by permitting disparity in its aeronautical lease rates (Grant Assurance 22, *Economic Nondiscrimination*).

Complainant alleges Respondent violated its Federal obligations by permitting disparity in its aeronautical lease rates. Respondent's compliance with Grant Assurance 22, *Economic Nondiscrimination*, is analyzed with regard to this issue.

Grant Assurance 22, Economic Nondiscrimination

Complainant suggests any disparity between lease rates constitutes a violation of Grant Assurance 22. [FAA Exhibit 1, Item 1, pg. 5.] Specifically, Complainant provides examples where one tenant continued to pay $0.04 per square foot after the rates were increased by Public resolution to $0.08 per square foot. [Id.]

Respondent confirms that in Complainant's example, the tenant was, in fact, charged a rate of $0.04 from 1992 through 1998. [FAA Exhibit 1, Item 4, pg. 13.] Respondent asserts it is compliant with Grant Assurance 22, because that tenant was not similarly situated with other tenants. [FAA Exhibit 1, Item 4, pgs. 13-14.] Respondent's justification rests on the following:

- "Leases signed on different dates are sufficient justification for different lease terms.
- Market situations change with time.
- Differences in space, location, or requirement also justify different lease terms." [FAA Exhibit 1, Item 4, pg. 14.]

Additionally, Respondent states "after reviewing its past leases, Alamogordo can state that generally leases with similar terms that began at similar times had similar rates...Any variations among the leases represent Alamogordo's response to individual factors, and do not constitute unjust discrimination." [FAA Exhibit 1, Item 4, pg. 14.] Respondent does not provide any examples, but the burden of proof is not theirs. Complainant does not provide documents or information for the record to support its allegations; describe and compare the leaseholds and terms; nor the implied allegation that the tenants are similarly situated.

Grant Assurance 22 provides in part that the airport sponsor will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds, and classes of aeronautical activities. Under this grant assurance, airport sponsors must also ensure that each fixed-base operator on the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar use of the airport.

As for Complainant's allegation regarding aeronautical lease rates, Complainant's allegation appears to hinge on one example of inconsistent lease rates. Based on the information provided, FAA is not persuaded by Complainant's allegation.

Respondent posits that its lease practices are fair since the tenant was not similarly situated as other Airport tenants. [FAA Exhibit 1, Item 4, pg. 13.] Respondent correctly infers that the grant assurances permit differences in lease rates for dissimilar tenants. Long-standing FAA policy and precedent that has withstood judicial challenge establish that Assurance 22(c) does not require that airport sponsors charge all tenants identical lease rates. FAA does not require a sponsor to maintain equal lease rates over time between different tenants. [See, *Aerodynamics of Reading, Inc. v. Reading Regional airport Authority*, FAA Docket N. 16-00-03, Director's Determination (December 22, 2000), Final Agency Decision (July 23, 2001), p. 17; See also, *Penobscot Air Services LTD v. FAA*, 164 F.3d 713, 726 (1st Cir., 1999)] Further, two tenants may not be considered essentially similar as to rates and charges even though they offer the same services to the public. For example, differences in lease terms are permitted when there is a difference in space, location, facilities, or time of lease execution. [FAA Order 5190.6A, Chapter 4, Sec. 4-14d(2)(a, b)] Complainant fails to allege or provide any documents to argue that the tenant was similarly situated with other airport tenants.

Furthermore, Respondent's inconsistent lease rate from 1992 to 1998 for an individual tenant is irrelevant because FAA is interested in current compliance. [*See* W*ilson Air Center, LLC v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, Director's Determination (August 2, 2000).]

Again, FAA's Compliance Program is designed to achieve voluntary compliance with the grant assurances accepted by owners and/or operators of public use airports. [*See* Item 61, FAA Order 5190.6A (October 2, 1989), paragraphs 5-1 and 5-1(b)(1), "voluntary compliance", *see also Paul D. Asmus and P.D. Aviation Consulting v. State of Hawaii Department of Transportation*, FAA Docket No. 16-05-11, Director's Determination (April 12, 2006) at 13 "in addressing allegations of non compliance, the FAA makes a determination as to whether an airport sponsor is currently in compliance with the applicable federal obligations and whether the sponsor is reasonably meeting those obligations."

The goal of the Part 16 is to return the airport sponsor to a state of compliance with its grant assurances. As a result, it is against FAA policy to enforce retroactively the grant assurances for past violations (assuming there are such violations) that have been cured. [*See Guy Heide et al v. Metropolitan Airports Commission*, FAA Docket No. 16-05-15, Director's Determination (September 9, 2005) at 10 affirmed in FAA Final Agency Decision (July 7, 2006).]

Past FAA decisions have also determined that "incidental or isolated failings to treat all users exactly the same are not sufficient to determine that the Sponsor is in

noncompliance." [*Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, Director's Determination (August 2, 2000).]

FAA is encouraged by Respondent's current actions to review its leasing practices. Respondent acknowledges that it is working toward establishing a rate structure that is based on city ordinance. [FAA Exhibit 1, Item 4, pgs. 4 & 6.] FAA notes that establishing lease rates through city ordinance is one way of ensuring consistency in future executed leases.

Complainant does not believe Respondent is acting in a timely manner to update its leasing practices. FAA recognizes that resolution of leasing inconsistencies in its leasing practices takes time, especially considering the fiscal and legal ramifications of such changes. It is important that Respondent diligently pursues the changes to its leasing practices as outlined in its letters to FAA.

Thus, based on the Record, and applicable law and policy, FAA does not find Respondent currently violation of FAA Grant Assurance 22.

VIII. FINDINGS AND CONCLUSIONS

Upon consideration of the entire record herein, the applicable law and policy, and for the reasons stated above, the Director finds and concludes:

With regard to Issue 1,

1. The Complainant lacks standing. The FAA however, finds the issues as alleged in the case serious enough to warrant further investigation under its own authority to initiate investigations through the Part 16 process, and makes an alternative decision on the merits of the case as set forth below.
2. The FAA finds the issues as alleged in this case serious enough to warrant further investigation through the Part 16 process.

With regard to Issue 2,

1. Respondent's failure to invoke the reverter provisions in its aeronautical leases does not constitute a violation of Grant Assurance 5, *Preserving Rights and Powers*.
2. Respondent's failure to uniformly include and enforce 'reverter' provisions in its aeronautical leases does not constitute a violation of Grant Assurance 22, *Economic Nondiscrimination*, since Respondent never enforced the reverter provisions on any of its aeronautical leaseholders.
3. Respondent's failure to invoke 'reverter' provisions and charge fair market value rent for reverted aeronautical leasehold improvements is not a violation of Grant Assurance 24, *Fee and Rental Structure*. Respondent may charge below fair market value rent to aeronautical leaseholds and

still be compliant with its obligations to maintain a fee and rental structure that will make the Airport as self-sustaining as possible.

4. Respondent's failure to invoke 'reverter' provisions in its aeronautical leases does not constitute a prohibited use of airport revenue or revenue diversion, and does not violate Grant Assurance 25, *Airport Revenue*.

With regard to Issue 3,

1. Respondent's disparate lease terms for an individual tenant between 1992 and 1998 do not constitute a violation of Grant Assurance 22, *Economic Nondiscrimination*.

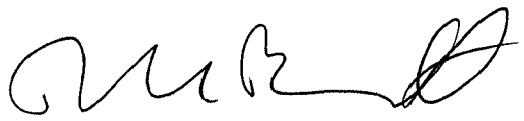
ORDER

ACCORDINGLY, the Director finds the City of Alamogordo not currently in violation of applicable Federal law and its Federal grant obligations.

1. The case is dismissed.
2. All motions not specifically granted herein are denied.

RIGHT OF APPEAL

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



_____ Signed 9/20/06

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

RUDY J. CLARK

v.

CITY OF ALAMOGORDO, NM

DIRECTOR'S DETERMINATION
DOCKET NO. 16-05-19

Exhibit 1

INDEX OF ADMINISTRATIVE RECORD

Item 1 November 15, 2005, 14 CFR Part 16 formal complaint for *Rudy J. Clarke v. City of Alamogordo, NM*, FAA Docket No. 16-05-19. Submission included the following exhibits:

Attachment A	Items regarding Hangar Area A
Enclosure 1	Special City Commission Meeting Minutes, April 19, 1966
Enclosure 2	Airport Use Agreement dated May 1, 1966 between Mr. Edward Pavelka and Airport Sponsor
Enclosure 3	Hangar Lease Agreement dated April 9, 1974
Enclosure 4	November 1, 1978, Letter from Mr. Edward Pavelka to City of Alamogordo notifying sponsor of intent to exercise option to Renew Term of Lease
Enclosure 5	Airport Lease Agreement dated April 12, 1983
Attachment B	Spreadsheet detailing Airport Use Agreements, market rates, and potential revenue loss
Attachment C	Excerpt from *Airport Master Plan Study – 2000* for Alamogordo-White Sands Regional Airport dated February 1978
Attachment D	Memorandum from Complainant regarding Airport leases dated July 25, 2005
Attachment E	Spreadsheets detailing Airport Use Agreements and their terms

Attachment F	Electronic Message from Complainant to City Manager dated December 7, 2004
Attachment G	February 14, 2005, Letter from FAA SW Region Airport Compliance Officer to Mayor of Alamogordo
Attachment H	Electronic Message from Complainant to City Manager dated February 18, 2005
Attachment I	March 24, 2005, Letter from Public Works Director for City of Alamogordo to Director, New Mexico Department of Transportation Aviation Division
Attachment J	Electronic Message from FAA SW Region Compliance Program Manager, to City Attorney (undated)
Attachment K	Agenda Report for City of Alamogordo City Commission, June 28, 2005
Attachment L	June 29, 2005, Letter from Director, New Mexico Department of Transportation Aviation Division to All New Mexico Airport Managers and Airport Sponsors
Attachment M	Undated Letter from Complainant to Director New Mexico Department of Transportation Aviation Division
Enclosure 1	Airport Lease Agreement dated August 26, 1975
Enclosure 2	March 20, 1989 City of Alamogordo proposal increasing rates at the Airport & March 29, 1989 Letter to Leaseholder approving increase in land lease rates
Enclosure 3	Supplemental Agreement (Extension of Lease Term) dated January 27, 1992
Enclosure 4	Agenda Report for City of Alamogordo City Commission dated June 3, 1993 regarding assignment of leases of Black Hills Aviation and Air Park, Inc. to Mark W. Timmons
Enclosure 5	May 17, 1996, Letter to Mr. Dean Hunt from unknown party
Enclosure 6	Airport Lease Agreement for Neptune Aviation Services dated June 25, 2002

Attachment N Memorandum from Complainant to Public Works Director regarding County Assessor Records

Attachment O Airport Lease Agreement for White Sands Hangar Association dated October 10, 1989

Item 2 December 7, 2005, Notice of Docketing for *Rudy J. Clarke v. City of Alamogordo, NM*, FAA Docket No. 16-05-19

Item 3 December 29, 2005, Unopposed Motion for Extension of Time to File Answer

Item 4 January 9, 2006, Answer from the City of Alamogordo for *Rudy J. Clarke v. City of Alamogordo, NM*, FAA Docket No. 16-05-19

Attachment 1 Motion to Dismiss Complaint

Attachment 2 Memorandum in Support of Respondent's Motion to Dismiss Complaint

Attachment A March 9, 2005, Memorandum from the Office of the Internal Auditor to City Commission of Alamogordo regarding review of airport leases and operations

Attachment B Affidavit of City Attorney dated January 9, 2006

Attachment C Airport Lease Agreement for Weldon O. Wade dated December 27, 1988

Attachment D Airport Lease Agreement for Gil Arroyo dated November 9, 1982

Attachment E June 16, 2005, Letter from FAA SW Region Safety and Standards Branch to Mayor of Alamogordo

Attachment F Electronic Messages from Complainant to various parties

Enclosure 1 April 13, 2005, message to City Attorney

Enclosure 2 June 22, 2005, message to Public Works Director, et al

Enclosure 3 October 11, 2005, message to Public Works Director, et al

Attachment G Letters

Enclosure 1 December 7, 2004, Letter from Internal Auditor to FAA SW Region Airport Compliance Officer

Enclosure 2	February 1, 2005, Letter from Internal Auditor to FAA SW Region Airport Compliance Officer
Enclosure 3	March 24, 2005, Letter from Public Works Director to Program Manager, FAA Louisiana/New Mexico ADO
Enclosure 4	May 25, 2005, Letter from City Attorney to Program Manager, FAA Louisiana/New Mexico ADO
Enclosure 5	June 29, 2005, Letter from City Attorney to Program Manager, FAA Louisiana/New Mexico ADO
Attachment H	Agenda Report for City of Alamogordo City Commission dated June 6, 2005 regarding re-written Ordinance relating to the Airport
Attachment I	Land Lease for White Sands Regional Airport (general)
Attachment J	Electronic Messages
Enclosure 1	Electronic Message from City Manager to Complainant, et al regarding base rental rates at the airport (undated)
Enclosure 2	Electronic Message from FAA SW Region Airport Compliance Officer to City Attorney dated June 22, 2005
Attachment K	Correspondence
Enclosure 1	Electronic Message from Complainant to City Attorney dated May 6, 2005
Enclosure 2	September 20, 2005, Letter from Public Works Director to Complainant
Attachment L	News Articles
Enclosure 1	“Battle lines drawn” Alamogordo Daily News (undated)
Enclosure 2	‘Airport users keep it short” (undated, unknown publisher)
Attachment M	Electronic Message from Complainant to Public Works Director dated March 31, 2005
Attachment N	Electronic Messages

Enclosure 1	Electronic Message from City Manager to unknown party (undated)
Enclosure 2	Electronic Message from Complainant to Public Works Director, et al dated June 16, 2005
Enclosure 3	Electronic Message from Complainant to City Manager, et al dated June 17, 2005
Attachment O	
Enclosure 1	Note of Michael R. Haymes dated May 12, 2005
Enclosure 2	Memorandum dated May 23, 2005 from Public Works Director, For the Record
Attachment P	Electronic Message from Internal Auditor to City Manager, et al dated February 11, 2005
Attachment Q	Correspondence
Enclosure 1	Electronic Message from Complainant to Public Works Director, et al dated April 13, 2005
Enclosure 2	Electronic Message from City Attorney to “lnichols” et al dated July 26, 2005
Enclosure 3	Undated letter (received July 20, 2005) from Complainant to New Mexico State Aviation Director
Enclosure 4	July 21, 2005 Letter from New Mexico State Auditor to Nick Landers
Attachment R	Airport Lease Agreement for Blackhills Aviation, Inc. dated February 25, 1992
Attachment S	March 29, 1989, Letter from Airport Manager to Black Hills Aviation
Attachment T	Commercial and Non-Commercial Airport Lease Agreements
Enclosure 1	Airport Lease Agreement for Fambrough Trust (undated) (missing page 10)

Enclosure 2 Airport Lease Agreement for Barry & DeeAnn Burke dated October 24, 2001

Attachment U June 1992 Airport Master Plan Study by Muller, Sirhall & Associates, Inc.

Item 5 May 10, 2006, Notice of Extension of Time to Issue Director's Determination

Item 6 June 26, 2006, Notice of Extension of Time to Issue Director's Determination

Item 7 August 3, 2006, Notice of Extension of Time to Issue Director's Determination

RUDY J. CLARK

v.

CITY OF ALAMOGORDO, NM

DIRECTOR'S DETERMINATION
DOCKET NO. 16-05-19

Exhibit 2

RECORD OF FEDERAL ASSISTANCE SINCE 1982
FOR
ALAMAGORDO-WHITE SANDS REGIONAL AIRPORT

RUDY J. CLARK

v.

CITY OF ALAMOGORDO, NM

DIRECTOR'S DETERMINATION
DOCKET NO. 16-05-19

Exhibit 3

DOCUMENTS OBTAINED DURING INVESTIGATION

Item 1	Hand carried documents admitted to FAA Albuquerque Field Office by Complainant
Item 2	September 24, 2004, Letter from FAA Southwest Region Airport Compliance Officer to City Manager
Item 3	0ctober 7, 2004, Letter from City Manager to FAA Southwest Region Airport Compliance Officer
Item 4	October 25, 2004, Letter from FAA Southwest Region Airport Compliance Officer to City Manager
Item 5	January 24, 2005, Letter from FAA Southwest Region Airport Compliance Officer to City Manager
Item 6	April 29, 2005, Facsimile from Complainant to FAA Louisiana/New Mexico Airport District Office Program Manager
Item 7	July 11, 2005, Letter from Public Works Director to FAA Southwest Region Airport Compliance Officer
Item 8	June 30, 2005, Letter from FAA Southwest Region Airport Compliance Officer to Mayor of Alamogordo
Item 9	September 23, 2005, Memorandum from Complainant to Assistant General Counsel, New Mexico Department of Transportation
Item 10	April 12, 2006, Facsimile from FAA Southwest Region Airport Compliance Officer to FAA Airport Compliance Branch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____ I caused to be placed in the United States mail (first class mail, postage paid) a true copy of this Director's Determination addressed to:

Rudy J. Clarke
1702 Corte Alegre
Alamogordo, NM 88310
(505) 430-8499

Adam Greenwood
Attorney for Respondent
P.O. Box 2168
Albuquerque, NM 87103-2168
(505) 848-1800

FAA Part 16 Airport Proceedings Docket

Airport Compliance Division, Office of Airport Safety and Standards, AAS-400

Southwest Region Airports Division, ASW-600

_____
W. Celeste Colbert-King
Office of Airport Safety and Standards