



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Suite 540
1701 Columbia Avenue
College Park, GA 30337
Phone: 404-305-6700

March 17, 2017

Mr. Alan Armstrong, Esq.
2900 Chamblee-Tucker Road
Building 5, Suite 350
Atlanta, GA 30341

Mr. Nicholas M. Clabbers
Associate
Kaplan Kirsch & Rockwell LLP
1675 Broadway #2300
Denver, CO 80202

Part 13.1 Report – Complaint Review Letter

Dear Parties:

On December 6, 2016, the Federal Aviation Administration's (FAA) Southern Region Airports Division completed its preliminary review of the Complaint initiated by Errol Forman (see enclosure). Mr. Forman alleged that Palm Beach County (County), owner of the Palm Beach County Park (LNA), violated Grant Assurance 22, *Economic Nondiscrimination*, by restricting jets, including turbofan engine aircraft, from LNA. We preliminarily concluded that Palm Beach County's restriction on jet aircraft, as implemented at LNA, may be unjustly discriminatory and inconsistent with the County's federal obligations. We advised the parties that the FAA would analyze how the introduction of jet aircraft and turbofan engine aircraft may affect the safety and efficiency at LNA and surrounding airports. The FAA's Southern Region has completed its review of this matter; this letter outlines the FAA's Southern Region Airports Division's conclusions.

The FAA's Southern Region Airports Division, in coordination with the Air Traffic Division, has concluded that permitting jet aircraft operations on runway 9-27 will not affect safety or efficiency at LNA or surrounding airports. However, in accordance with paragraph (i) of Grant Assurance 22, the County may continue to restrict jet operations from runways 3-21 and 15-33.

The analysis and other conclusions contained in our December 6, 2016 preliminary review are herein incorporated by reference. The parties are reminded that the FAA's conclusions do not obligate the County to alter its existing plans for LNA; the length of runway 9-27, its design features, weather conditions, and federal regulations for aircraft operations may continue to reasonably restrict the type, kind, and class of jet aircraft that may take off and land.

The County is hereby requested to update information regarding its restriction on jet operations at LNA with the FAA's National Flight Data Center¹, the Florida Department of Transportation's Aviation and Spaceports Office², and the County's website within 60 days of receipt of this letter.

The Region's review of this matter is not a final agency decision subject to judicial review. If you believe this office has erred, you may file a formal complaint under 14 CFR part 16, *Rules of Practice for Federally-Assisted Airport Enforcement Proceedings*.

If we can be of any assistance or answer any questions that you might have, please do not hesitate to contact me at (404) 305-6739 or deandra.brooks@faa.gov.

Sincerely,



Deandra Brooks
Airport Compliance Specialist

Encl.

cc: Mr. Maverick Douglas, Manager, Safety and Standards Branch, Southern Region
Airports Division
Orlando Airports District Office
Office of Airport Compliance and Management Analysis

¹ The FAA's National Flight Data Center can be accessed at:
https://www.faa.gov/air_traffic/flight_info/aeronav/Aero_Data/.

² David Roberts, Administrator of Aviation Operations with the Florida Department of Transportation's Aviation and Spaceports Office, can be reached at 850-414-4507.



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December 6, 2016

Mr. Alan Armstrong, Esq.
2900 Chamblee-Tucker Road
Building 5, Suite 350
Atlanta, GA 30341

Part 13.1 Report – Complaint Review Letter
Preliminary Regional Review

Dear Mr. Armstrong:

The Federal Aviation Administration's (FAA) Southern Region Airports Division has completed its informal review of the Complaint initiated by your client, Errol Forman. Mr. Forman alleges that Palm Beach County, owner of the Palm Beach County Park (LNA), is in violation of Grant Assurance 22, *Economic Nondiscrimination*.¹ We conclude that Palm Beach County's restriction on jet aircraft, as implemented, may be unjustly discriminatory and not consistent with the County's federal obligations. This letter outlines the Southern Region Airports Division's preliminary conclusions. At this time, it is appropriate for this office, in coordination with the Air Traffic Organization, to assess whether continuation of the restriction at LNA is necessary for airspace safety and/or efficiency.

On April 13, 2016, Mr. Errol Forman (Complainant), emailed the FAA's Orlando Airports District Office (ADO) about the jet restriction at LNA. Initially, the Orlando ADO advised the Complainant that the restriction had been in place since 1973 and had been approved by the ADO. After several discussions with the Complainant, the Orlando ADO requested guidance from the FAA's Southern Region Airports Division about how to proceed. This office provided the Complainant with information about the informal complaint process under 14 Code of Federal Regulations (CFR) part 13.1, *FAA Investigative and Enforcement Procedures*, and the grant assurances. On April 20, the Complainant contacted this office and asked the FAA to provide a written objection to the jet ban. We advised the Complainant that the FAA would need to undertake a thorough review of the matter prior to reaching any conclusions about the restriction and reminded the Complainant of the informal complaint process. Later that same day, the Complainant emailed this office a detailed description of his concerns about the jet restriction, describing it as "somewhat discriminatory." The FAA's Southern Region asked the

¹ Palm Beach County owns and operates four airports. The allegations contained in this Complaint relate only to LNA.

Complainant to clarify his concerns within the context of the federal grant assurances, and on April 21, the Complainant described the County's restriction as a violation of Grant Assurance 22, *Economic Nondiscrimination*.

On April 25, 2016, the FAA's Southern Region forwarded the Complaint to Palm Beach County (Respondent or County) requesting a response to the allegations.² The County, through legal counsel, responded to the Complaint (Answer) on June 10, 2016. The Complainant's Reply was submitted through legal counsel on July 21, 2016, and the County submitted a Rebuttal on August 22, 2016. To investigate this complaint, our office reviewed the documentation submitted by the parties, as well as records pertaining to LNA in the Orlando ADO.

Summary of Pertinent Background

The Complainant is a retired Eastern Airlines pilot who owns and operates a Cessna Citation aircraft.³ The aircraft is powered by a turbofan engine.⁴

LNA is a federally-obligated general aviation airport located six statute miles south of West Palm Beach.⁵ The FAA has designated LNA as reliever airport, intended to divert slower-moving general aviation traffic, away from Palm Beach International Airport; the airport is classified by the FAA as serving a regional role.⁶ Approximately 298 aircraft are based at the airport and operate without an air traffic control tower.⁷ There are three runways; runway 9/27 is the longest runway at 3,489 feet.⁸ FAA Form 5010 "Airport Master Record" for LNA states that the airport is closed to jet aircraft and all aircraft over 12,500 maximum gross weight; the same restriction is published the FAA's Chart Supplement for the Southeast U.S.⁹ Since 1982, the Respondent has accepted \$6,353,815 in federal Airport Improvement Program (AIP) grants for LNA.¹⁰

On June 19, 1973, the Respondent adopted a policy prohibiting all jet aircraft in addition to all aircraft weighing in excess of 12,500 pounds engaged in aircraft cargo operations from parking, landing, or taking off from LNA effective July 1, 1973.¹¹ The FAA's Miami ADO¹² reviewed the proposed regulation and advised the Respondent that the FAA had "no objections to the proposed operational regulation."¹³

² The FAA's Southern Region considers the email correspondence from the Complainant, dated April 13, 20, and 21, 2016, including the attachments provided on April 13, 2016, as the Complaint.

³ Complaint, email from Complainant dated April 20, 2016 and Reply at 3.

⁴ Complaint, email from Complainant dated April 20, 2016; Reply at 3; and Affidavit submitted in support of Reply at 1.

⁵ See FAA Form 5010 "Airport Master Record" for LNA printed on October 14, 2016.

⁶ See Report to Congress National Plan of Integrated Airport Systems (NPIAS), for 2015-2019.

⁷ See FAA Form 5010 "Airport Master Record" for LNA printed on October 14, 2016.

⁸ *Id.*

⁹ *Id.* and Reply, Exhibit C-3.

¹⁰ See Airport Improvement Program Grant History for LNA printed on October 14, 2016.

¹¹ Complaint, unlabeled exhibit, and Answer, Tab 2.

¹² The ADO moved from Miami to Orlando in 1983.

¹³ Complaint, unlabeled exhibit, and Answer, Tabs 2 and 16.

On May 24, 1988, the Respondent adopted Ordinance No. 88-11.¹⁴ This Ordinance repealed all airport regulations adopted on or before October 27, 1987 and established new airport regulations.¹⁵ Noise abatement and control provisions specific to LNA are limited to the identification of a preferred runway.¹⁶

On March 12, 1991, the Respondent entered into an Interlocal Governmental Agreement with the City of Atlantis for LNA.¹⁷ The agreement includes various restrictions regarding the operation and use of LNA, and states that restricted aircraft will be pure turbo jet aircraft and aircraft in excess of 12,500 pounds engaged in air cargo operations.¹⁸

On February 26, 1992, the Respondent issued an Airport Directive regarding LNA, stating that pursuant to Ordinance No. 88-11, jet aircraft, of any type and weight classification are prohibited from operating (departing and arriving) at LNA.¹⁹

On February 24, 1998, the Respondent adopted Resolution No. R-98-220.²⁰ This Resolution repealed all existing airport rules and regulations and adopted new airport rules and regulations.²¹ Section 12-6 states that pure turbo-jet aircraft and aircraft in excess of 12,500 pounds engaged in air cargo operations are prohibited, and the restriction will be enforced in accordance with the Interlocal Governmental Agreement.²²

On June 1, 2016, the Respondent advised the Complainant that his recent jet operation at LNA was in violation of the County's Airports Rules and Regulations.²³ This letter also states that the Complainant was warned of the restriction on jet operations at LNA on May 11 and 28, 2016.²⁴

FAA's Standard of Compliance and Burden of Proof

FAA Order 5190.6B, *FAA Airport Compliance Manual*, provides the following standard of compliance at ¶2.8.b:

A sponsor meets commitments when: (1). The federal obligations are fully understood; (2). A program (e.g., preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments; (3). The sponsor satisfactorily demonstrates that such a program is being carried out; and (4). Past compliance issues have been addressed.

¹⁴ Answer, Tab 4.

¹⁵ Answer, Tab 4.

¹⁶ Answer, Tab 4, Sec. 7-1(f).

¹⁷ Complaint, unlabeled exhibit, and Answer, Tab 5.

¹⁸ Complaint, unlabeled exhibit, and Answer, Tab 5.

¹⁹ Answer, Tab 6.

²⁰ Answer, Tab 7. See also, Reply, Exhibit C-2.

²¹ Answer, Tab 7. See also, Reply, Exhibit C-2.

²² Answer, Tab 7.

²³ Answer, Tab 19.

²⁴ Answer, Tab 19. See also, Answer, Tab 20, and Reply, Exhibit C-4.

The FAA applies this standard of compliance to a sponsor's actions. The FAA does not judge an airport sponsor simply by the plain language of agreements or minimum standards, since such documents are rarely so perfectly crafted as to avoid all possibilities for inconsistency over time, changing circumstances, and interpretations. Rather, the FAA judges compliance by an airport sponsor's actions or inactions with respect to those agreements or minimum standards.²⁵

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations.²⁶

The burden of proof is borne by the complaining party. FAA Order 5190.6B, *FAA Airport Compliance Manual*, at ¶5.8(c) states:

When evaluating a complaint, the investigating FAA office must identify the facts and separate facts from unsubstantiated allegations. Only complaints supported by facts may be considered in finding an airport in noncompliance for purposes of withholding discretionary funding. The complaining party has the responsibility to provide sufficient factual information to support the allegation(s). A supported fact is one that can be substantiated through corroborating evidence.

Grant Assurance 22, Economic Nondiscrimination

Paragraph (a) of Grant Assurance 22 obligates an airport sponsor to make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities including commercial aeronautical activities offering services to the public at the airport. Paragraph (h) of Grant Assurance 22 permits an airport sponsor to establish 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. Paragraph (i) of Grant Assurance 22 permits an airport sponsor to 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. Paragraph (i) of Grant Assurance 22 represents an exception to paragraph 22(a) which permits the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public. In all cases involving restrictions on airport use imposed by owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport.²⁷

²⁵ See *Self Serve Pumps, Inc. v Chicago Executive Airport*, FAA Docket No. 16-07-02, (March 17, 2008) (Director's Determination) at 31-32.

²⁶ See e.g. *Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, (August 30, 2001) (Final Agency Decision) (Wilson Air Center FAD) at 5; see also *Wilson Air Center, LLC v. FAA*, 372 F.3d 807 (6th Cir. 2004).

²⁷ See FAA Order 5190.6B, *FAA Airport Compliance Manual*, at ¶14.3.

Summary of the Parties' Allegations and Statements

The initial Complaint provides general statements regarding the discriminatory nature of the Respondent's restriction, as it has been implemented against the Complainant's use of turbofan aircraft at LNA. When pressed to clarify the grant assurance violation alleged, the Complainant identified Grant Assurance 22, *Economic Nondiscrimination*.²⁸

The Respondent's Answer details the history of the restriction, describing any changes to the original 1973 policy as "inadvertent" or "clerical errors."²⁹ The Respondent states that the restriction is enforceable because it was implemented prior to the enactment of Public Law 101-508, the Airport Noise and Capacity Act (ANCA) in 1990.³⁰ The Respondent further states that it is in compliance with its federal obligations and discusses the exception contained in paragraph (h) of Grant Assurance 22. Finally, the Respondent states,

[i]n at least two previous instances, FAA has definitively opined on the validity of the LNA restriction and found it to be valid and enforceable. In 1973, FAA did not object to the content of the original restriction. In 2001, after the 1988 and 1998 amendments, FAA again had the opportunity to opine on the restriction. While we have been unable to confirm the disposition of the 2000-2001 investigation, we believe that FAA again found the restriction to be enforceable. And most recently, in December of 2015, FAA found the restriction to be enforceable, specifically referencing the 1973 enactment and implicitly dismissing any arguable effect of the 1988 or 1998 amendments. [Answer at 7, references omitted here.]

The Respondent concludes that changing course now, absent any new or changed circumstances, would be unfair to the County and LNA stakeholders who have relied on FAA's prior determinations over the last 43 years.³¹

The Complainant's Reply argues that the restriction violates Grant Assurance 22

...because the supposed basis for its restrictions excluding turbo jet aircraft from the Airport is noise; and it has failed to carry its burden of proof and failed to demonstrate the exclusion of turbo jet aircraft: (1) is justified by an existing non-compatible 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 interests and federal interests. [Reply at 2, relying on Aircraft Owners and Pilots Association (AOPA) Members, et al v City of Pompano Beach, Florida, FAA Docket No. 16-04-01, (December 15, 2005) (Director's Determination) (AOPA Members DD).]

²⁸ Complaint, email from Complainant to FAA dated April 21, 2016.

²⁹ Answer at 2-6.

³⁰ Answer at 4-5.

³¹ Answer at 7.

Although the Reply states that the Respondent must bear the burden of proof to support its restriction, the Reply, in reliance on AOPA Members DD, argues that there is no land use compatibility problem for the Respondent to address.³²

The Reply, also in reliance on AOPA Members DD, argues that the Respondent cannot be exempt from the requirements of 14 CFR part 161, *Notice and Approval of Airport Noise and Access Restrictions*, because the Respondent is statutorily required “to make the Airport available to all classes of aeronautical users on reasonable terms and conditions without unjust discrimination.”³³ The Reply asserts that previous FAA determinations have ignored this fact.³⁴

The Reply also focuses on the distinctions between “pure, turbo jet” aircraft and “turbo-fan” aircraft, alleging that the Respondent enforces its restriction in a manner that is different from what is communicated to pilots and was adopted in 1998.³⁵ The Reply further argues that excluding jets as a class of aircraft is prohibited.³⁶

The Respondent’s Rebuttal explains that the County has several policy and practical justifications for its restriction at LNA, one of which is noise.³⁷ The Respondent reiterates that the FAA has permitted the restriction for over 40 years “despite numerous opportunities to overturn or challenge it,” and concludes that the restriction is therefore reasonable.³⁸ The Rebuttal states that the Complainant misinterprets and misapplies the AOPA Members DD, noting several examples of airport-use restrictions enacted prior to ANCA.³⁹ In addition, the Respondent argues that it has continued to “enforce the restriction exactly as originally enacted in 1973” and that this “demonstrates that any change in language was unintentional and that the intent of the Board of County Commissioners was to retain, unchanged, the restriction on jet operations at Lantana.”⁴⁰

Analysis and Discussion

As a preliminary matter, the FAA has never provided any detailed analysis with regard to the Respondent’s aircraft restrictions at LNA to the Respondent or to pilots who have previously contacted the FAA about the restriction. Although the FAA stated that it had “no objections” to the proposed restriction in 1973, we are not aware of any documented explanation as to why previous FAA reviewers believed this discriminatory restriction was just or reasonable and are unable to establish what analysis, if any, may have been performed. As noted by the Respondent, the FAA received an informal complaint, regarding this same issue, from Florida Airmotive, Inc. in 2000.⁴¹ Our review of the Orlando ADO’s files document conversations about this complaint between the ADO, Southern Region Airports Division, and the Office of Airport Compliance up until 2002. However, no determination was provided to the parties.

³² Reply at 6 and 9.

³³ Reply at 10-12.

³⁴ Reply at 12-13.

³⁵ Reply at 4-5 and 14-15.

³⁶ Reply at 8.

³⁷ Rebuttal at 1-2.

³⁸ Rebuttal at 3 and 6.

³⁹ Rebuttal at 5.

⁴⁰ Rebuttal at 7.

⁴¹ Answer at 3; Answer, Tabs 8-10; and Rebuttal at 3.

