U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
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March 17, 2017

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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 Center[1], the Florida Department of Transportation's Aviation and Spaceports Office[2], 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

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
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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 ADO[12] 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]

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[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.

Subsequently, the FAA has continued to rely on its 1973 decision when asked about the restriction. This approach has limited the usefulness of the airport and denied a class of aeronautical users the benefits of federally funded improvements at LNA.

While the parties disagree about the purpose of the restriction, its application, and how the restriction must be justified, the parties agree that a restriction has historically and continues to apply to LNA, and this restriction denies access to a class of potential airport users. Given the time that has passed since the Respondent adopted the restriction in 1973, as well as changes in federal law, aircraft technology, and air navigation and separation, we found the Complaint to have merit.

With that said, the arguments and allegations presented in the Reply do not fully speak to the facts presented. For example, the Complainant's reliance on AOPA Members DD attempts to subject the Respondent to requirements that did not exist at the time the restriction was adopted. Moreover, the Complainant ignores the fact that the FAA was advised of the restriction prior to its original adoption and elected not to object despite the Respondent's obligations at that time and the aircraft noise regulations that had been adopted by the FAA in 1969.[42] The background of AOPA Members DD notes that the FAA advised the airport sponsor that restrictions contained in its proposed airport rules and regulations would be prohibited by its obligations, ANCA, and an agreement between the FAA and the City, in 1994. As discussed in AOPA Members DD, ANCA includes a grandfather provision for restrictions that were in place prior to October 1, 1990.[43]

Historically, the FAA has considered the jet restriction at LNA to be grandfathered by ANCA. However, documentation submitted by the Respondent leads this office to conclude that this is not the case. In 1988, the Respondent adopted Ordinance 88-11. Section 1 states

> Appendix B of the Code of Laws and Ordinances Pertaining to Palm Beach County Government is adopted. Such appendix supercedes (sic) and repeals all airport regulations adopted on or before October 27, 1987. [Answer, Tab 4.]

Noise abatement and control provisions specific to LNA are limited to the identification of a preferred runway.[44] Also included is an aircraft operation rule that permits

> [t]he director or his authorized representative may delay or restrict any flight or other operations at the airport and may refuse takeoff clearance to any aircraft for any justifiable reason. [Answer, Tab 4, Sec. 6-4(g).]

[42] The FAA's first aircraft noise regulations were codified at 14 CFR part 36, *Noise Standards: Aircraft Type and Airworthiness Certification*, on November 18, 1969. [34 Fed. Reg. 18355 (1969).]
[43] AOPA Members DD at 35 and 49 U.S.C. §47524(d).
[44] Answer, Tab 4, Sec. 7-1(f).

The Respondent attempts to minimize the significance of Ordinance 88-11 stating that Florida Statute requires counties operating one or more airports to adopt resolutions.[45] The Florida Statute referenced by the Respondent states, in its entirety,

> If a county operates one or more airports, its regulations for the governance thereof shall be by resolution of the board of county commissioners, recorded in the minutes of the board, and promulgated by posting a copy at the courthouse and at every such airport for 4 consecutive weeks or by publication once a week in a newspaper published in the county for the same period. Such regulations shall be enforced in the same manner as the criminal laws. Violation thereof is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. [Fla. Stat. § 332.08(2).]

The Reply states,

> Ordinance 88-11 was not adopted by resolution, and therefore under Florida law could not have functioned to substantively change the airport regulations at LNA. Because it was not a resolution, Ordinance 88-11 could only have functioned as a recodification of County airport regulations. [Reply at 6.]

The FAA's Southern Region believes this is a distinction without a difference. Florida's Statutes distinguish "Ordinances" from "Resolutions" in Chapter 166. An "Ordinance"

> means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law. [Fla. Stat. § 166.041(a).]

Whereas a "Resolution"

> means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body. [Fla. Stat. § 166.041(b).]

Clearly, it is necessary for Florida counties that operate airports to take actions in furtherance of the operation of their airports of the character necessitated by ordinance, as described in the Florida statute. We do not believe that it is reasonable to assume the statute intended to preclude a county's authority to adopt ordinances in furtherance of its airport purposes, especially as pertaining to the safe and efficient operation of the airport.

Moreover, if the FAA's Southern Region was to accept this argument on its face, the original implementation of the regulation, which does not appear to have been adopted by a resolution of the County Commission, could not have functioned to effect the ban and, arguably, would not be enforceable.

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[45] Reply at 6.

Perhaps more significantly, the Respondent relied on the broadly drafted aircraft operation rule, contained in Ordinance 88-11, Appendix B Sec. 6-4(g), to implement the Interlocal Governmental Agreement's noise restrictions. On February 26, 1992, the Respondent issued an Airport Directive regarding LNA which stated

> Pursuant to Palm Beach County Code of Ordinances Number 88-11, Appendix B Section 6-4.(g) "Aircraft Operating Rules", and effective immediately,
>
> JET AIRCRAFT, OF ANY TYPE AND WEIGHT CLASSIFICATION ARE PROHIBITED FROM OPERATING (DEPARTING AND ARRIVING) AT PALM BEACH COUNTY PARK AIRPORT – LANTANA.
>
> Enforcement of this Directive and prosecution of violators of this Directive shall be applicable as outlined in Palm Beach County Code of Ordinances Number 88-11, Appendix B, Section 1-3. [Answer, Tab 6.]

Regardless of whether the ordinance conformed to the requirements of Florida's laws for airport governance, the Respondent acted as though it did and advised LNA's users that it would be enforced. The Respondent relied on the 1988 ordinance to implement the terms it agreed to under the Interlocal Governmental Agreement. As stated in Self Serve Pumps, Inc. v Chicago Executive Airport, FAA Docket No. 16-07-02, (March 17, 2008) (Director's Determination) at 31-32, the FAA judges compliance by an airport sponsor's actions or inactions with respect to its agreements.

The 1991 Interlocal Governmental Agreement and its ban on pure turbo jet aircraft and aircraft in excess of 12,500 pounds engaged in air cargo operations was adopted after the passage of ANCA. This restriction is not subject to the grandfathering provision of ANCA and is being used to deny access to the airport in a manner that is not consistent with paragraph (a) of Grant Assurance 22.

Given that the FAA incorrectly assumed the Respondent had not changed its 1973 ban, as well as the concerns previously identified by the Respondent and directly related to safety and efficiency, the FAA's Southern Region concludes the FAA must begin its process to assess whether this ban is reasonable and permitted under paragraph (i) of Grant Assurance 22.

Therefore, the parties are advised:

- This office, in conjunction with the Air Traffic Organization, will analyze how the introduction of jet aircraft and turbofan engine aircraft may affect the safety and efficiency at LNA and surrounding airports;

- The FAA is the final arbiter regarding aviation safety;[46]

[46] See FAA Order 5190.6B, *FAA Airport Compliance Manual*, at ¶14.3. FAA safety determinations take precedence over any airport sponsor views or local ordinances pertaining to safety. [Frank Hinshaw, Skydiving School, Inc., d/b/a Skydive Hawaii and Island Skydiving, LLC v The State of Hawaii, FAA Docket No. 16-12-04, (August 18, 2014) (Director's Preliminary Determination) at 27-29; Jeff Bodin and Garlic City Skydiving v County

- Regardless of the FAA's final conclusions, the Respondent is not obligated to alter its existing plans for LNA; the runway lengths, design features, weather conditions, and federal regulations for aircraft operations may continue to reasonably restrict the type, kind, and class of aircraft that may take-off and land at LNA; and

- The FAA will provide its final conclusions to the parties.

Respondent's Request for Guidance

The Respondent's Answer requests the FAA "provide guidance on how to best remain in compliance with applicable grant assurances and procedural rules while pursuing enforcement against the Complainant in this matter for violation of the disputed jet restriction."[47] The FAA's Southern Region declines to respond to this request. The FAA's Airport Compliance Program is contractually based; it does not attempt to control or direct the operation of airports.[48] This preliminary regional review concludes that the Respondent's restriction is not consistent with paragraph (a) of Grant Assurance 22, *Economic Nondiscrimination*, and the FAA may request that the Respondent eliminate or alter restrictions at LNA after further analysis is conducted by the FAA. Moreover, the Respondent derives its municipal and police powers to enforce rules developed for operation of its airports from the Florida Statutes, not the FAA. Nevertheless, the FAA requests that the Complainant avoid conducting any further operations with his Cessna Citation at LNA until the FAA completes its review of this matter.

Summary

This letter outlines the Southern Region Airports Division's preliminary conclusions with regard to the Complaint. We conclude that the Respondent's action to repeal and rescind all airport regulations adopted prior to October 27, 1987 voided the 1973 restriction. The Respondent used a broadly drafted aircraft operation rule included in its 1988 ordinance to implement the restrictions outlined the Interlocal Governmental Agreement subsequent to ANCA. The parties agree that jet and turbofan jet aircraft are restricted as a result of subsequent resolutions adopted by the Respondent that mirror the language contained in Interlocal Governmental Agreement. This is not consistent with paragraph (a) of Grant Assurance 22, but could be permitted per paragraph (i) of Grant Assurance 22, if the FAA concludes that the restrictions are necessary for

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of Santa Clara, California, FAA Docket No. 16-11-06, (August 12, 2013) (Final Agency Decision) at 29 and 34-35; Orange County Soaring Association, Inc.; Mary Rust; Larry Touhino; Chris Mannion v County of Riverside, California, FAA Docket No. 16-09-13, (February 11, 2011) (Director's Determination) at 21; Drake Aerial Enterprise, LLC v City of Cleveland, Ohio, FAA Docket No. 16-09-02, (February 22, 2010) (Director's Determination) at 14; In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California, FAA Docket No. 16-02-08, (July 8, 2009) (Final Agency Decision) at 9 *aff'd* City of Santa Monica v. F.A.A.,631 F.3d 550 (DC Cir) (2011); Skydive Paris Inc. v Henry County, Tennessee, FAA Docket No. 16-05-06, (January 20, 2006) (Director's Determination) at 15; and Florida Aerial Advertising v St. Petersburg-Clearwater International Airport, FAA Docket No. 16-03-01, (December 18, 2003) (Director's Determination) at 11.]

[47] Answer at 7-8.

[48] See FAA Order 5190.6B, *FAA Airport Compliance Manual*, at ¶1.5.

safety and/or efficiency. At this time, it is appropriate for this office, in coordination with the Air Traffic Organization, to assess this matter further.

This preliminary review 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 I 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

cc: Mr. Peter J. Kirsch, Counsel to Respondent
Mr. Nicholas M. Clabbers, Counsel to Respondent
Mr. Maverick Douglas, Manager, Safety and Standards Branch, Southern Region Airports Division
Orlando Airports District Office
Office of Airport Compliance and Management Analysis