UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

ORANGE COUNTY SOARING ASSOCIATION, INC.; Mary Rust; Larry Touhino; Chris Mannion **COMPLAINANT** **V.** **COUNTY OF RIVERSIDE, CALIFORNIA** **RESPONDENT**	**Docket No. 16-09-13**

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed in accordance with the FAA Rules of Practice for Federally Assisted Airport Proceedings (FAA Rules of Practice), Title 14 Code of Federal Regulations (CFR) Part 16.[1]

The Orange County Soaring Association, Inc. (OCSA), Mary Rust, Larry Touhino, and Chris Mannion (Complainants) have filed a formal complaint pursuant to Title 14 CFR Part 16 against the County of Riverside, California, (Respondent or County) owner, sponsor, and operator of Hemet-Ryan Airport (HMT or Airport), Hemet, California.

Complainants allege the Respondent is engaged in economic discrimination by failing to make the airport available for glider operations in violation of Title 49 United States Code (U.S.C.) § 47107(a) and the respective FAA Grant Assurance 22, *Economic Nondiscrimination.* The Complainants also allege the Respondent has violated FAA Grant Assurance 35, *Relocation and Real Property Acquisition.*

With respect to the allegations presented in this Complaint, under the specific circumstances at the Airport as discussed below and based on the evidence of record in this proceeding, the FAA

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

finds the County is currently in violation of its Federal obligations with respect to Grant Assurance 22, Economic Nondiscrimination, Grant Assurance 29, Airport Layout Plan, and its Surplus Property agreements. The FAA's decision in this matter is based on applicable federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, reviewed by the FAA, which comprises the administrative record reflected in the attached FAA Exhibit 1.

II. THE PARTIES

Airport

The Hemet-Ryan Airport (HMT or Airport) is a public-use airport owned by Riverside County, California and operated by the County's Economic Development Agency. The 440-acre facility, located three nautical miles southwest of Hemet, is classified as a general aviation airport. [FAA Exhibit 1, Item 1, p. 2] HMT has 79 based aircraft (single, multi and jet engine aircraft); 85 gliders; 47,153 local general aviation annual operations; and 28,291 transient general aviation annual operations. The Airport Layout Plan (ALP), conditionally approved by the FAA on July 6, 2006, depicts two runways: runway 4-22 is 2,045 feet in length and runway 5-23 is 4,315 in length.[2] [FAA Exhibit 1, Item 18][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, 49 U.S.C. § 47101, *et seq*. Since 1982, the County has accepted $4,032,692 in AIP grants for investments at HMT. [FAA Exhibit 1, Item 6, exhibit B]

On December 21, 1948, the War Assets Administration conveyed land to the County of Riverside for airport purposes. This indenture was made under and pursuant to Executive Order 9689 and the Surplus Property Act of 1944 as amended. The acceptance of the deed obligates Riverside County to specific requirements outlined in the deed. [FAA Exhibit 1, Item 1, exhibit 1 and FAA Exhibit 1, Item 1, exhibit 1, sub. exh. A]

Complainants

The four (4) Complainants in this proceeding are the Orange County Soaring Association, Inc. (OCSA), Mary Rust, Larry Touhino, and Chris Mannion. The Orange County Soaring Association (OCSA) is a non-profit glider flying club. It has been in continuous operation since 1959 when it began operations at Long Beach and John Wayne Airports. In 1991, the club permanently moved its operations to Riverside County's Hemet-Ryan Airport. OCSA's membership consists of owners of 4 club aircraft and numbers more than 100 members throughout the area. Mary Rust, Larry Touhino, and Chris Mannion are all members of the

[2] FAA Order 5050.1B, Airport Environmental Handbook and FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, limit the FAA's ability to approve an airport sponsor's ALP. Unconditional approval or funding of projects proposed on an ALP must be reviewed in accordance with the National Environmental Policy Act or NEPA. With that said, pursuant to Grant Assurance 29, *Airport Layout Plan*, the signature of an FAA official on the ALP denotes the Secretary's approval of that plan.

[3] The FAA Digital Airport/Facility Directory Effective 0901Z Thursday, November 18, 2010 to 0901Z Thursday, January 13, 2011, found at http://aeronav.faa.gov/afd.asp?cycle=afd_18NOV2010&eff=11-18-2010&end=01-13-2011, states, "Rwy 04–22, glider rwy CLOSED indef."

OCSA. Larry Touhino serves as president of the association and Chris Mannion serves as vice-president. [FAA Exhibit 1, Item 1, pp 2-4.]

III. BACKGROUND and PROCEDURAL HISTORY

Factual Background

Sailplanes and gliders have operated at HMT for over 50 years.[4] [FAA Exhibit 1, Item 1 p. 5.]

In 1972, the County entered into a lease with Sailplane Enterprises of Hemet, for the storage and tie-down of gliders, sailplanes, aircraft, and tow planes.[5] [FAA Exhibit 1, Item 6, exhibit E-1] In 1981, Sailplane Enterprises' lease was amended to include other services such as the sale of aircraft, aircraft parts, supplies and accessories, flight operations and flight instruction, aircraft rental, and other services. [FAA Exhibit 1, Item 6, pp 5-6 and FAA Exhibit 1, Item 6, exhibit E-2] In 1991, the lease was amended a fourth time to clarify Sailplane Enterprises' role as a fixed base operator.[6] [FAA Exhibit 1, Item 6, p. 6 and FAA Exhibit 1, Item 6, exhibit E-3]

In 1991, the OCSA permanently moved its operation to HMT. [FAA Exhibit 1, Item 1, p. 2 and FAA Exhibit 1, Item 1, exhibit 5 p. 4.]

In 1994, the lease with Sailplane Enterprises, Inc. was assigned to Larry Howell d.b.a. Larry Howell, Inc. [FAA Exhibit 1, Item 6, exhibit F]

On April 24, 2002, the California Department of Transportation (CalTrans) inspected the airport. CalTrans' follow up letter dated April 30, 2002, directed the County to close two unauthorized grass/dirt landing areas – one between runway 4/22 and runway 5/23 and one prior to the threshold of runway 22. These areas were being used by tow plane and glider operators. [FAA Exhibit 1, Item 1, exhibit 15] This letter stated:

> *"We would be glad to comment on or review plans to assist in expanding your facilities to accommodate your glider operations. The Department stands ready to permit additional airport runway surfaces that meet current FAA Airport Design Safety Standards in accordance with AC 150/5300-13, Change 6."* [FAA Exhibit 1, Item 1, exhibit 15, p. 2]

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[4] The FAA's Glider Flying Handbook states:

> "The FAA defines a *glider* as a heavier-than-air aircraft that is supported in flight by the dynamic reaction of the air against its lifting surfaces, and whose free flight does not depend on an engine. The term glider is used to designate the rating that can be placed on a pilot certificate once a person successfully completes required glider knowledge and practical tests.
>
> Another widely accepted term used in the industry is *sailplane*. Soaring refers to the sport of flying sailplanes, which usually includes traveling long distances and remaining aloft for extended periods of time." [*See*, FAA-H-8083-13, Glider Flying Handbook, 2003 at 1-1]

For this reason the terms *glider* and *sailplane* are used herein interchangeably.

[5] FAA Exhibit 1, Item 6, exhibits E-1, E-2 refer to Sailplane Enterprises of Hemet, but FAA Exhibit 1, Item 6, exhibit E-3 and FAA Exhibit 1, Item 6, exhibit F refer to Sailplane Enterprises, Inc., a California Corporation.

[6] A fixed-base operator (FBO) is an individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, and ground, and flight instruction. [FAA Order 5190.6B, Appendix Z]

On May 16, 2002, the County responded to CalTrans declining to suspend use of the unpaved runways. The County stated:

> *"Closing the two dirt runways would force sailplanes to use the main runway for either departures or landings. Given the lack of an air traffic control tower, we believe that this would be significantly less safe than the current arrangement."* [FAA Exhibit 1, Item 6, exhibit N, p. 2]

The County also explained that a master plan update was ongoing and invited CalTrans to contribute to that process. [FAA Exhibit 1, Item 6, exhibit N]

On May 29, 2002, CalTrans wrote to the Respondent reiterating its concerns about the unauthorized landing areas and its willingness to work with the County to accommodate the glider operations. Specifically, the letter noted that the use of these runways was not in compliance with several state regulations, had not been the subject of an FAA airspace determination, nor were they shown on the current, approved Airport Layout Plan (ALP). This letter also stated, "Your operation of the airport contrary to the ALP and in the present configuration assumes a great deal of liability and risk exposure for the County of Riverside that the Department is not willing to share" and recommended the FAA evaluate the actual operational usage during high activity periods. [FAA Exhibit 1, Item 1, exhibit 16]

On August 13, 2004, CalTrans commented on the County's proposed airport master plan. Again, CalTrans reminded the County of the need to obtain permits for the two unauthorized landing areas and advised that their use jeopardized the status of HMT's state airport permit and continued eligibility for state grants and loans. CalTrans encouraged the County to limit all take-offs and landings for aircraft, including gliders, to runways 4-22 and 5-23. The letter also encouraged the County to consider a high-speed taxiway between the two permitted runways to increase the efficiency of glider operations as well as the need to bring runway 4-22 up to airport design standards for an A-I runway.[7] [FAA Exhibit 1, Item 1, exhibit 17]

On May 25, 2005, CalTrans conducted an inspection at HMT and documented its observations in a June 6, 2005 letter to the County. This letter discussed some positive steps taken by the County to improve the safety of glider operations, but noted evidence of an alternate, unpermitted glider runway. CalTrans stated that the airport's management must take steps to ensure that glider operations be conducted in accordance with the airport's permit. [FAA Exhibit 1, Item 1, exhibit 18]

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[7] The term "A-I runway" refers to the runway's Airport Reference Code (ARC) designation. This coding system is used to relate airport design criteria to the operational and physical characteristics of the categories of aircraft for which the airport was designed. [*See* FAA Advisory Circular 150/5300-13 *Airport Design*, Chapter 1, p. 1] The ARC code has two components, both relating to the "critical design aircraft" for the airport. The critical design aircraft is defined as the category of aircraft which conducts 500 itinerant or more operations per year at the airport. The first component, depicted by the letters A-E, is the aircraft approach category and relates to aircraft approach speed. Category A aircraft has an approach speed of less than 91 knots. The second component, depicted by Roman numerals I-VI, is the airplane design group and relates to airplane wingspan. For example, a Group I aircraft have a wingspan of up to but not including 49 feet, while a Group II aircraft has a wingspan of 49 feet up to but not including 79 feet.

On June 21, 2006, CalTrans conducted an inspection at HMT. The June 29, 2006 letter explains that during the inspection, the Aviation Safety Officer observed a runway incursion. CalTrans recommended the County "attempt to better inform and educate your tenants and users, particularly the glider operator and their customers…" about the dangers of runway incursions. [FAA Exhibit 1, Item 1, exhibit 19]

On September 11, 2007, CalTrans conducted an inspection at HMT and documented its observations in an October 10, 2007 letter to the County. The letter discussed the use of orange traffic cones and nonstandard white markings between the two paved runways being used to identify "either a landing area or some other sort of aircraft or glider-related purpose." The County was advised to remove the cones and keep glider operations out of the area between the two runways. [FAA Exhibit 1, Item 1, exhibit 20]

On July 8, 2009, Sailplane Enterprises provided the Respondent with a written request to terminate its lease on October 1, 2009. [FAA Exhibit 1, Item 1, exhibit 10] The following day, Sailplane Enterprises sent a memorandum to its customers announcing the business owner's retirement and the closure of the business. This memorandum stated:

> *"The county has said that EVERYTHING must be gone. This includes all gliders, portable hangers (sic), and everything else you can think of. The RW [runway] will be closed to future operations. Anything remaining on the property after Oct. 1, 2009 will be subject to county enforcement. The county has requested that people do not call looking for deals or exemptions as there will be none."* [FAA Exhibit 1, Item 1, exhibit 11]

On July 10, 2009, the OCSA's Chris Mannion emailed the County requesting information regarding the future of glider operations at HMT and requesting guidance. [FAA Exhibit 1, Item 1, exhibit 12] Later that day, the County confirmed that with the termination of Sailplane Enterprises' leasehold, glider operations would cease on the north side and the sailplane runway. The email further states:

> *"This runway has never been incompliance (sic) with state aeronautical regulations and we have been told that it must be closed once the current lease is terminated or runs out. You can contact Hemet Aviation for possible storage of the sailplanes, but the county will not allow any sailplane operations to be conducted off of the main runway due to safety concerns with the GA traffic and CALFIRE operations.* [FAA Exhibit 1, Item 1, exhibit 13]

The email concludes with the County encouraging the Complainant to consider two other nearby airports for his sailplane operations. [FAA Exhibit 1, Item 1, exhibit 13]

On July 15, 2009, the OCSA's Larry Touhino wrote the FAA's Los Angeles Airports District Office seeking the reasons behind the runway closure and requesting the FAA look into the issue. [FAA Exhibit 1, Item 1, exhibit 14]

On July 27, 2009 the FAA responded by forwarding copies of the CalTrans' state permit compliance inspection follow up letters dated April 30, 2002, May 29, 2002, August 13, 2004, June 6, 2005, and June 29, 2006 as discussed above to Touhino. [FAA Exhibit 1, Item 1, exhibits 15-21] Later that day, Touhino replied back to the FAA advising that Complainants had not previously been advised of any safety deficiencies. Touhino responded to the issues raised in the inspection reports, discussing ways to address the safety concerns. [FAA Exhibit 1, Item 1, exhibit 21]

On July 31, 2009, Anthony Garcia, Certification Inspector/Compliance Specialist, FAA Western Pacific Region, sent an email to the County and the Complainants providing general guidance about the airport sponsor's obligations with regard to reasonable airport access and glider operations. [FAA Exhibit 1, Item 2, exhibit K]

On August 5 and 19, 2009, Touhino met with representatives from the County to discuss the feasibility of entering into a lease agreement to continue glider operations at HMT. Touhino's sworn statement notes that the County was not willing to offer a lease. [FAA Exhibit 1, Item 9, exhibit 1]

On August 6, 2009, Touhino sent a letter to the County expressing the OCSA's desire to open negotiations with regard to continuing glider operations at HMT. [FAA Exhibit 1, Item 9, exhibit 1]

On August 18, 2009, the County wrote to the FAA's Western Pacific Region citing the County's safety concerns regarding the continued operation of runway 4-22. The County stated:

> *"Upon termination of the lease with Sailplane Enterprises, the County will not consider continuation of unpowered glider operations that depart from the Hemet-Ryan Airport. On October 1, 2009, runway 4-22 will be permanently closed to* ***all operations*** *[emphasis original]."* [FAA Exhibit 1, Item 1, exhibit 23, p. 3]

On August 22, 2009, Touhino and Mannion send another letter to the County reiterating the OCSA's desire to continue glider operations at HMT and proposing the County provide the OSCA with a lease. [FAA Exhibit 1, Item 9, exhibit 1, sub exh. A]

On August 28, 2009, CalTrans documented the results of its July 31, 2009 airport inspection in a letter to the County. The letter included comments regarding a tow plane landing prior to the threshold of runway 22 and gliders landing in the unpaved area between runway 4-22 and runway 5-23. [FAA Exhibit 1, Item 6, exhibit T]

On September 1, 2009, Riverside County Supervisor Jeff Stone states that soaring operations are to continue at HMT for a six month period, with an additional extension of three months with the showing of good cause. Touhino attempted to confirm this statement with the Supervisor's staff and was told that a three month extension would need to be justified and made at the discretion of the County. [FAA Exhibit 1, Item 1, exhibit 24]

On September 16, 2009, the County responded to the OCSA's open records request. This letter stated:

> *"You are reminded that all sailplane operations from Rwy 4-22 and sailplane departure operations from Rwy 5-23, will cease on October 1, 2009. OCSA must vacate the former Sailplane Enterprise Inc, leasehold by October 1, 2009."* [FAA Exhibit 1, Item 1, exhibit 25]

On September 21, 2009, the FAA's Western Pacific Region advised the parties:

> *"Presently, justification for a complete ban on all glider operations at HMT has not been established. It appears that glider operations can be accommodated in the near term if rules are established that ensure safe glider operations."* [FAA Exhibit 1, Item 1, pp7-8 and FAA Exhibit 1, Item 1, exhibit 29]

On September 30, 2009, the County permanently closed runway 4-22 by painting a large yellow "X" on the runway. [FAA Exhibit 1, Item 1, p. 8]

Procedural History

On October 13, 2009, FAA received the Complaint. [FAA Exhibit 1, Item 1]

On October 22, 2009, FAA received the Complainant's addendum. [FAA Exhibit 1, Item 2]

On October 27, 2009, FAA docketed Orange County Soaring Association, Mary Rust, Larry Touhino, and Chris Mannion v. County of Riverside, California. [FAA Exhibit 1, Item 3]

On November 12, 2009, the Respondent requested additional time to file its Answer. [FAA Exhibit 1, Item 4]

On November 13, 2009, the FAA granted the Respondent's request for additional time. [FAA Exhibit 1, Item 5]

On December 2, 2009, the Respondent filed an Answer and Memorandum of Points and Authorities in Support Thereof and In Support of Motion to Dismiss. [FAA Exhibit 1, Items 6]

On December 11, 2009, the Complainant requested additional time to file its Reply. [FAA Exhibit 1, Item 7]

On December 18, 2009, the FAA granted the Complainant's request for additional time. [FAA Exhibit 1, Item 8]

On January 7, 2010, the Complainant filed its Reply. [FAA Exhibit1, Item 9]

On January 8, 2010 the Respondent requested additional time to file its Rebuttal. [FAA Exhibit 1, Item 10]

On January 12, 2010, the FAA granted the Respondent's request for additional time. [FAA Exhibit 1, Item 11]

On January 28, 2010, the Respondent filed a Rebuttal. [FAA Exhibit 1, Item 12]

On May 13, 2010, the FAA extended the due date of the Director's Determination to on or before August 28, 2010. [FAA Exhibit 1, Item 14]

On August 18, 2010, the FAA extended the due date of the Director's Determination to on or before November 30, 2010. [FAA Exhibit 1, Item 15]

On November 30, 2010, the FAA extended the due date of the Director's Determination to on or before January 31, 2011. [FAA Exhibit 1, Item 21]

On January 28, 2011, the FAA extended the due date of the Director's Determination to on or before February 25, 2011. [FAA Exhibit 1, Item 22]

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances summarized above, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable federal law and policy:

- Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination* and its obligations contained in the surplus property quitclaim deed, by failing to make Hemet-Ryan Airport available to glider operations.

- Whether the Respondent is in violation of Grant Assurance 29, *Airport Layout Plan*, by closing runway 4-22.

- Whether the Respondent is in violation of Grant Assurance 35, *Relocation and Real Property Acquisition*, with regard to Sailplane Enterprises' lease termination.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

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

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

The Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway 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 precedent to providing airport development assistance under the Airport Improvement Program, 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.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.[8] FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order), issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with federal obligations of airport sponsors. The FAA considers it inappropriate to provide federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Three FAA grant assurances, as well as obligations arising from the Surplus Property Act, apply to the circumstances set forth in this Complaint: (1) Grant Assurance 22, *Economic Nondiscrimination;* (2) Grant Assurance 29, *Airport Layout Plan*; and (3) Grant Assurance 35, *Relocation and Real Property Acquisition*.

Grant Assurance 22, *Economic Nondiscrimination*

Grant Assurance 22, *Economic Nondiscrimination*, requires the owner of any airport developed with federal grant assistance to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Grant Assurance 22 deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 implements the provisions of

[8] *See, e.g.*, the 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), 47107(l), 47111(d), 47122.

49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport:

> *…will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.* [Assurance 22(a)]
>
> *…may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.* [Assurance 22(h)]
>
> *…may...limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.* [Assurance 22(i)]

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

In all cases involving restrictions on airport use imposed by airport 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. [*See* FAA Order 5190.6B, ¶14.3]

FAA Order 5190.6B describes the responsibilities under Grant Assurance 22 assumed by the owners or sponsor of public use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* FAA Order 5190.6B, Chapter 9]

The owner of an airport developed with federal assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activities on reasonable terms and without unjust discrimination. [*See* FAA Order 5190.6B, ¶9.1.a]

Grant Assurance 29, *Airport Layout Plan*

Grant Assurance 29, *Airport Layout Plan*, requires the airport owner or sponsor to keep its Airport Layout Plan (ALP), which is a planning tool for depicting current and future airport use, up to date. Grant Assurance 29 prohibits the airport owner or sponsor from making or permitting any changes or alterations in the airport or any of its facilities that are not in conformity with its FAA-approved ALP. Grant Assurance 29, in pertinent part, states:

…will keep up to date at all times an Airport Layout Plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such Airport Layout Plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the Airport Layout Plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the Airport Layout Plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport. [Assurance 29(a)]

If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the Airport Layout Plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities. [Assurance 29(b)]

The Administrator of the FAA has been given broad authority to regulate the use of the navigable airspace "in order to insure the safety of aircraft and the efficient utilization of such airspace …" and "for the protection of persons and property on the ground…" 49 U.S.C. 40103(b). Title 49 U.S.C. § 47107(a)(16)(B) states, “the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect.” Moreover, the Secretary’s ability to require airport sponsors to address alterations considered by the Secretary to have an adverse affect is explicitly stated in the statute at § 47107(a)(16)(D). As a result, an FAA-approved ALP (signed and dated) is a prerequisite to the grant of AIP funds. [*See* FAA Order 5190.6B at ¶7.18]

Airport layout plans and amendments, revisions, or modifications thereto, are subject to the approval of the FAA. From a compliance standpoint, if a change or alteration in the airport or its facilities is made which the FAA determines adversely affects the safety, utility, or efficiency of any federal investment on or off the airport and which is not in conformity with the ALP as approved by the FAA, an airport sponsor may be required to eliminate such an adverse effect in a manner approved by the FAA. This may include relocating the property (or replacement thereof) to a site acceptable to the FAA and bearing the costs of restoring the property (or

replacement thereof) to the level of safety, utility, and efficiency existing before the unapproved change was made in the airport or its facilities.

Grant Assurance 35, *Relocation and Real Property Acquisition*

Grant Assurance 35, *Relocation and Real Property Acquisition*, requires an airport sponsor to be guided in acquiring real property, to the greatest extent practicable under state law, by the land acquisition policies in Subpart B of 49 CFR Part 24. In addition, the airport sponsor is to provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.

Finally, the airport sponsor must make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24. The purpose of 49 CFR Part 24[9] is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

> (a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;
>
> (b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and
>
> (c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

Surplus Property Obligations

Surplus property instruments of disposal are issued under the Surplus Property Act of 1944 (SPA). The Act authorizes conveyance of property surplus to the needs of the federal government. The FAA (or its predecessor, the Civil Aeronautics Administration [CAA]) recommends to the GSA (General Services Administration) which property should be transferred for airport purposes to public agencies. Such deeds are issued by the GSA that has jurisdiction over the disposition of properties that are declared to be surplus to the needs of the Federal

[9] [54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

government. Prior to the establishment of the GSA in 1949, instruments of disposal were issued by the War Assets Administration (WAA). [*See* FAA Order 5190.6B, ¶1.10.a.]

Public Law 80-289, approved July 30, 1947, amended Section 13 of the Surplus Property Act of 1944. This authorized the Administrator of WAA (now GSA) to convey to any state, political subdivision, municipality or tax-supported institution, surplus real and personal property for airport purposes without monetary consideration to the United States. These conveyances are subject to the terms, conditions, reservations and restrictions prescribed therein.

Surplus property instruments of transfer are one of the means by which the Federal government provides airport development assistance to public airport sponsors. The conveyance of surplus Federal land to public agencies for airport purposes is administered by the FAA, in conjunction with the U.S. Department of Defense (DOD) and the GSA and pursuant to 49 U.S.C. §§ 47151, 47152, and 47153.

Public Law 81-311 specifically imposes upon the FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public agencies pursuant to the SPA. Furthermore, pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal obligations.

All surplus airport property instruments of disposal, except those conveying only personal property, provide that the covenants assumed by the grantee regarding the use, operation and maintenance of the airport and the property transferred shall be deemed to be covenants running with the land. Accordingly, such covenants continue in full force and effect until released under Public Law 81-311 or other applicable federal law.

Today, 49 U.S.C. § 47152 (2) and (3) contains the reasonableness and discriminatory requirements originally stipulated under the Surplus Property Act.

The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the 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 5190.6B sets forth policies and procedures

for the FAA Airport Compliance Program. The Order establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of federal funds or the conveyance of federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

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. [*See* e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (8/30/01) Wilson Air Center, LLC v FAA, 372 F.3d 807 (6th Cir. 2004)]

FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances.

VI. ANALYSIS AND DISCUSSION

Issue (1)

> Whether the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination* and its obligations contained in the surplus property quitclaim deed, by failing to make Hemet-Ryan Airport available to glider operations.

The Complainants allege the Respondent has failed to operate the airport in accordance with its obligations under Grant Assurance 22. Specifically, the Complainants state:

> *"On September 30, 2009, Respondent permanently closed runway 4/22 by painting large yellow 'X's on it. To date, Respondent has failed to produce any set of facts supported by quantitative data or other safety study to support its contention that gliders constitute an unacceptable safety risk to aviation, presenting a clear need to restrict their activity."* [FAA Exhibit 1, Item 1, p. 8]

The Respondent admits that it closed runway 4-22, but denies that it has unreasonably discriminated against glider operations because closure of the runway was justified on the basis of safety and thereby well within the sponsor's proprietary rights. The Respondent states:

> *"The closure of Runway 4-22 was a proper exercise of the County's authority over the airport. The County justifiably determined the continued operation presented an unreasonable level of risk for the County and Airport users due to safety, liability and cost; and Runway 4-22 does not meet current FAA design standards."* [FAA Exhibit 1, Item 6, p. 2]

Grant Assurance 22 requires an airport sponsor to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Therefore, the Director must first determine if access has indeed been denied. The evidence of record clearly indicates that the Respondent's have essentially excluded glider operations at HMT:

- Runway 4-22, historically limited to sailplanes and gliders, is now closed. The Respondent admits this throughout its Answer and Rebuttal. [FAA Exhibit 1, Item 6, pp 2, 10, 13, 24, 25, and 29 and FAA Exhibit 1, Item 12, pp 2 and 5] In figure 1 below, this runway is marked as closed.

- While several documents indicate that sailplanes and gliders are permitted to land on runway 5-23, departures are prohibited. [FAA Exhibit 1, Item 1, exhibit 23, p. 4; FAA Exhibit 1, Item 1, exhibit 25; and FAA Exhibit 1, Item 12, p. 3] One email from the Respondent to the Complainant states, "the county will not allow any sailplane operations to be conducted off of the main runway due to safety concerns with GA traffic and the CALFIRE operations." [FAA Exhibit 1, Item 1, exhibit 13]

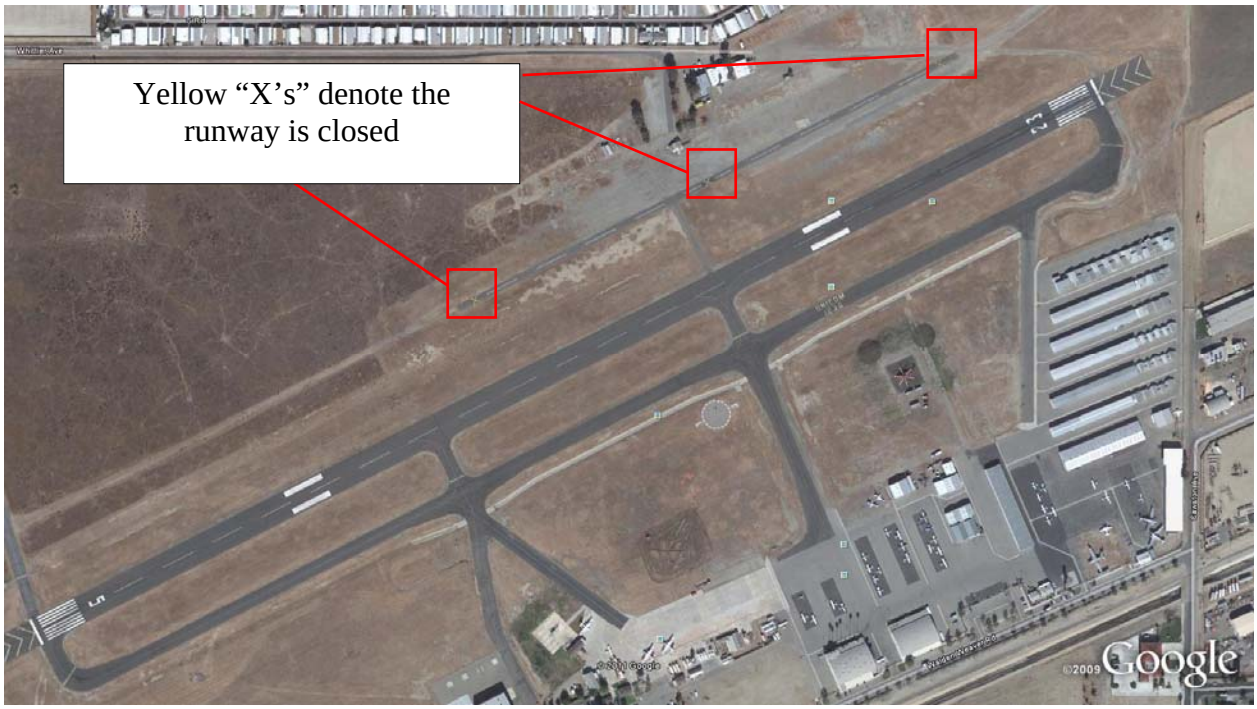

Figure 1 Hemet-Ryan Airport

The Director finds that Respondent's decision to close runway 4-22 and limit glider activity to landings only on the remaining runway constitutes a denial of aeronautical access. In order to establish a violation of Grant Assurance 22, the Complainants must demonstrate that the Respondent's denial of access was unreasonable or unjustly discriminatory.

The Respondent defends its unilateral decision to terminate glider operations at HMT with four general arguments related to the funding of runway 4-22, the safety of glider operations, economic viability and self sufficiency, and the sponsor's long-term plans for the airport. Each defense is analyzed below.

Funding of Runway 4-22

The Respondent argues that it is not obligated to keep runway 4-22 open because no federal Airport Improvement Program (AIP) funds were used to build or maintain it. [FAA Exhibit 1, Item 6, p. 14 and 19] The Respondent states:

> *"While the County acknowledges that the Airport is federally obligated pursuant to its acquisition under the Federal Surplus Properties Act, and through its acceptance of certain AIP Grants for certain improvements at the Airport, the County has not used any Federal Funds, in particular AIP Grants, in the construction and improvement of Runway 4-22…Because it was not built with AIP funds, nor was it part of any improvements in the original acquisition of property from the Federal government, the County is not obligated by its grant assurances to keep that Runway open."* [FAA Exhibit 1, Item 6, p. 19]

The Complainants argue that this interpretation of the sponsor's obligations is incorrect. The Complainants reply:

> *"It is well settled that once an airport becomes 'obligated,' the sponsor is required by contract and deed restrictions to observe the grant assurances as to the entire airport. [Emphasis original] It may not parse out various independent features based on which were paid for with the federal funds. This is especially true when the land for the airport is acquired as surplus federal land."* [FAA Exhibit 1, Item 9, p. 4]

Additionally, the Complainant cites Mr. William Dean Bardin d/b/a Ultralights of Sacramento v. County of Sacramento, California, FAA Docket No. 16-00-11, (August 9, 2001) (Director's Determination) (Ultralights) in support of its interpretation.

The Respondent, in its rebuttal, argues that Ultralights can be distinguished from the extant case because there was no claim or analysis of a claim arising out of the closure of an improvement which had not been developed with federal grant assistance. [FAA Exhibit 1 Item, 12, p. 2]

The Director rejects the Respondent's argument. First and foremost, Riverside County, as the airport sponsor is, with certain limitations, obligated by both the grant assurances and restrictive covenants contained in its surplus property deed to make its airport, land, building, structures, improvements, and equipment available to all aeronautical users on reasonable terms and without unjust discrimination. FAA Order 5190.6B explains that:

> The FAA Airport Compliance Program enforces contractual federal obligations that a sponsor accepts when receiving federal grant funds or the transfer of federal property. These contractual federal obligations serve to protect the public's interest in civil aviation and achieve compliance with federal statutes. [*See* FAA Order 5190.6B, ¶2.2]

There is nothing in this statement that limits the sponsor's obligations to specific projects funded by or land transferred from the federal government. The sponsor accepts these obligations when such a transaction occurs. If the FAA were to interpret sponsor obligations narrowly as advocated by the Respondent, local governments would have the ability to selectively restrict the use of aviation assets, which would undermine the utility and efficiency of the federal airport system. A patchwork of obligated improvements, comingled with unobligated assets, would provide little protection for the public's interest in civil aviation. This approach would neither be consistent with the legislatively mandated terms upon which FAA conditions its approval of AIP grant applications or FAA policy. [*See* 49 U.S.C. § 47107]

The Complainant is correct that once an airport becomes federally-obligated, the grant assurances attach to the entire airport, not just specific pieces of infrastructure paid for with grant funds. [*See* FAA Order 5190.6B, ¶22.1]

The Record establishes that the Respondent has received over $4,000,000 in AIP grants. [FAA Exhibit 1, Item 1, exhibit 30] The Director finds that the Respondent is obligated to operate all parts of the airport in a manner consistent with Grant Assurance 22.

In addition, the Respondent, as the recipient of federal surplus property, is obligated to adhere to certain requirements as stipulated in its quitclaim deed. The deeds states:

> *"…the land, building, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes and for the use and benefit of the public on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the terms 'exclusive right' as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term 'airport' shall be deemed to include at least all such land, buildings, structures, improvements, and equipment."* [FAA Exhibit 1, Item 1, exhibit 1, sub. exh. A, p.3]

This requires the Respondent to operate the airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. The quitclaim deed further stipulates that the Respondent's failure to meet any of the terms, conditions, reservations, or restrictions contained in the deed may result in the reversion of the property back to federal government. [FAA Exhibit 1, Item 1, exhibit 1, sub. exh. A, p. 5] As a result, even if the Respondent had never assumed federal grant obligations through its acceptance of AIP grants, Riverside County would still be contractually required to uphold a key principle contained in Grant Assurance 22.

The Respondent's attempt to distinguish its circumstances from Ultralights is also without merit. In Ultralights, the Director found that the respondent's decision to ban a class of aeronautical activity resulted in unjust discrimination. Riverside County's actions, with respect to glider operations, have the same effect as the respondent's actions in Ultralights. In both cases, the Director found that an aeronautical activity was restricted. The method used to create the restriction is not the critical factor in distinguishing between the facts outlined in Ultralights vis-à-vis the extant case.[10]

Safety

In response to the Complainants' allegation that the Respondent unjustly discriminated against them by closing runway 4-22 and restricting glider operations on runway 5-23, the Respondent asserts:

> *"The closure of Runway 4-22 was necessary as it remained a safety hazard and the current configuration is not compliant with design and safety guidelines. Moreover, the length of Runway 4-22 was inefficient for the level of sailplane activity."* [FAA Exhibit 1, Item 6, p. 10]

[10] However, the method used to create the aeronautical restriction in the extant case gives rise to concerns related to Grant Assurance 29, *Airport Layout Plan*, and will be discussed under Issue 2 below.

To support this argument, the Respondent cites a series of letters from CalTrans which note specific concerns about glider operations at HMT. [FAA Exhibit 1, Item 1, exhibits 15-20 and FAA Exhibit 1, Item 6, exhibit T] Based upon the Director's review of these letters and the Respondent's resulting closure of runway 4-22, it appears the Respondent has drawn overly broad conclusions about the safety of glider operations on runway 4-22. The primary concern raised by CalTrans was the use of unauthorized landing areas and not runway 4-22 specifically. These letters state:

> *"Two unauthorized landing areas in active use by tow plane and glider operators must be closed. One landing area between Runway 4/22 and Runway 5/23 penetrates the Runway Safety Area (RSA) of both runways. The second landing area is a dirt area on the approach end of Runway 4/22 within the Runway Protection Zone (RPZ) and RSA. The approach to this unauthorized dirt runway intersects the approach to the permitted glider runway and is obstructed by tall trees."* [FAA Exhibit 1, Item 1, exhibit 15, p. 1]
>
> *"Because you have acknowledged adding runways to the airport, it is important for us to point out this deviation from the Department/State permitting process."* [FAA Exhibit 1, Item 1, exhibit 16, p. 1]
>
> *"Please be advised that the State airport permit for HMT does not reflect the sailplane landing area in between Runway 4-22 and Runway 5-23. The airport permit does not reflect the tow plane landing area northeast of Runway 4-22, either. The use of either of these areas for any non-emergency aircraft operation is strictly prohibited. The continued use of either unpermitted runway jeopardizes the status of the State airport permit, and the eligibility for State grants and loans… Instead of using unpermitted runways, all landings and take-offs for aircraft including those for gliders, should be limited to Runway 4-22 and Runway 5-23."* [FAA Exhibit 1, Item 1, exhibit 17, p. 2]
>
> *"…we still saw evidence of an alternate glider runway.* ***The use of non-permitted runways for glider operations is not permitted*** *[emphasis original]. Airport management must take steps to ensure glider operations comply with the airport permit."* [FAA Exhibit 1, Item 1, exhibit 18, p. 1]
>
> *"We observed a series of orange 'traffic cones' and nonstandard white markings located to the southeast of Runway 4/22 between Runway 4/11 and Runway 5/23… These cones and markings appear to have been set up to mark either a landing area or some other sort of aircraft or glider-related purpose. The only runway authorized for glider use is Runway 4/22. At 350 feet from runway centerline to parallel runway centerline, the distance between Runways 4/22 and 5/23 is already insufficient to meet FAA standards. Decreasing that distance further with glider operations would compromise safety standards and is unacceptable. The cones must be removed and the glider operator must be*

advised to keep glider operations out of the area between the runways." [FAA Exhibit 1, Item 1, exhibit 20, p. 1][11]

"During our inspection we observed that several sailplanes (gliders) and a tow plane were operating on and in the vicinity of Glider Runway 4/22. I observed several permitted towplane/glider launches from Glider Runway 4/22. But I also observed numerous incidents of a tow plane landing in the field several hundred feet prior to the Glider Runway 22 threshold (see photo 1) and gliders landing to the southeast of and paralleling Glider Runway 22 (see photo 2). Several orange traffic cones located southeast of and parallel to Glider Runway 4/22, in the Runway Safety Area (RSA), would appear to indicate this is a sanctioned operating area. Except in an emergency, all fixed-wing aircraft, including gliders, shall takeoff and land only on the two permitted runways." [FAA Exhibit 1, Item 6, exhibit T, p. 1]

CalTrans' first letter is dated April 30, 2002. [FAA Exhibit 1, Item 1, exhibit 15] Their last letter is dated August 28, 2009. [FAA Exhibit 1, Item 6, exhibit T] Thus, in a seven-year period, CalTrans asked the Respondent to address its concerns related to the use of unauthorized landing areas being used by gliders six times. Although the Respondent provides a sworn statement asserting that these concerns were passed on to Sailplane Enterprises, the record includes no documentation to suggest that the Respondent took steps to communicate directly with its glider operators. [FAA Exhibit 1, Item 6, exhibit G, ¶5] Instead, the Respondent chose ultimately to unilaterally close the runway traditionally referred to as the "glider" runway.

The CalTrans letters do not address runway 4-22 specifically and do not state that this runway is unsafe. The letters indicate that CalTrans' concern was with the operations conducted in the "unauthorized landing areas" *between* the runways – and not necessarily with the operations *on* runway 4-22. Notwithstanding, the Respondent did nothing to address CalTrans' concerns other than to close the runway. Given CalTrans' actual concerns, the Director questions the logic which resulted in the Respondent's decision to close runway 4-22, and reminds the sponsor of its obligations under Grant Assurance 19, *Operation and Maintenance*.[12]

Although Grant Assurance 22 obligates an airport sponsor to make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, paragraph 22(i) provides for an exception to this requirement. As noted by the Respondent in its Answer, paragraph 22(i) states that a sponsor may prohibit or limit any given type, kind or class of aeronautical use at the airport if such action

[11] FAA Advisory Circular 150/5300-13, *Airport Design* at paragraph 207, Parallel Runway Separation – Simultaneous VFR Operations, states "For simultaneous landings and takeoffs using visual flight rules (VFR), the minimum separation between centerlines of parallel runways is 700 feet (214 m)." The Director addresses the fact that HMT does not meet this design standard on the following page.

[12] Grant Assurance 19, *Operation and Maintenance* requires, in pertinent part, "[t]he airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned and controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation."

is necessary on the grounds of safety or efficiency. [FAA Exhibit 1, Item 6, pp 17-18] The Respondent argues paragraph 22(i) gave it the authority to close runway 4-22 in order to address the concerns raised by CalTrans, as well as three additional safety reasons: nonstandard separation between the two parallel runways, insufficient length for efficient and safe glider operations, and the possibility that both gliders and the runway could be damaged because gliders are not designed to land on hard surfaces.[13] [FAA Exhibit 1, Item 6, p. 13]

While the Director agrees that issues regarding the safety of glider operations at HMT merit the FAA's attention, the Director finds the Respondent's specific objections offer little value to this analysis. The Respondent attempts to support its safety argument on the basis of FAA airport design standards. This is not appropriate. FAA airport design standards are mandatory only when constructing new runways and are not intended to limit or regulate the operations of aircraft. [*See*, City of Santa Monica v. F.A.A.,__ F.3d__, 2011 WL 192494, Case No. 09-1233 at p. 10, (DC Cir)(January 21, 2011), and FAA Advisory Circular 150/5300-13 *Airport Design*, p. 1] Moreover, the FAA's Airport Engineering Division recently issued a memorandum clarifying airport design standards as they relate to glider operations. This memorandum states:

> *"In FAA advisory circular 150/5300-13, paragraph 207, Parallel Runway Separation – Simultaneous VFR Operations, states 'For simultaneous landings and takeoffs using visual flight rules (VFR), the minimum separation between centerlines of parallel runways is 700 feet (214 m).' This separation is required for independent operations on parallel runways. Dependent operations on parallel runways, where aircraft using each runway are not taking off and/or landing simultaneously, only require that Runway Safety Area and Obstacle Free Zone standards be met."* [FAA Exhibit 1, Item 20]

The Director reviewed the ALP and confirmed that runway 4-22 meets the A-I Runway Safety Area and Obstacle Free Zone standards outlined in paragraphs 305 and 306 of FAA Advisory Circular 150/5300-13, *Airport Design*. Therefore, the Respondent's first claim with regard to the safety of glider operations on runway 4-22 cannot be supported.

The Respondent's other claims attempt to substitute its judgment for that of the glider pilot. Determining whether a particular airplane can safely land on or take off from a particular airport runway must be made on a case-by-case basis by the pilot. [*See*, 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 (Santa Monica), affirmed at, City of Santa Monica v. F.A.A.,__ F.3d__, 2011 WL 192494, Case No. 09-1233, (DC Cir)(January 21, 2011) and 14 CFR 91.3(a), "The pilot in command of an aircraft is directly responsible for, and is the final authority to, the operation of that aircraft."]

Numerous Federal courts have found that Congress intended to occupy the entire field and thereby preempt state or local regulation of air safety. Air Transport Ass'n of America, Inc. v. Cuomo, 520 F.3d 218, 224 -225 (2d Cir. 2008); Montalvo v. Spirit Airlines, 508 F.3d 464, 468

[13] Respondent does not offer any evidence to support its premise that "gliders are not designed to land on hard surfaces."

(9th Cir. 2007) ("[T]he FAA preempts the entire field of aviation safety through implied field preemption. The FAA and regulations promulgated pursuant to it establish complete and thorough safety standards for air travel, which are not subject to supplementation by ... state laws."). See also Abdullah v. American Airlines, Inc., 181 F.3d 363, 367-68 (3d Cir.1999), and French v. Pan Am Express, Inc., 869 F.2d 1, 5 (1st Cir.1989). The Federal Aviation Act of 1958, as amended and recodified, was enacted to create a "uniform and exclusive system of federal regulation" in the field of air safety. City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 639, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973). The FAA Act was passed by Congress for the purpose of centralizing in a single authority-indeed, in one administrator-the power to frame rules for the safe and efficient use of the nation's airspace." Air Line Pilots Ass'n, Int'l v. Quesada, 276 F.2d 892, 894 (2d Cir. 1960); see also British Airways Bd. v. Port Auth. of N.Y. & N.J., 558 F.2d 75, 83 (2d Cir. 1977) ("[The FAA] requires that exclusive control of airspace management be concentrated at the national level."). Congress and the Federal Aviation Administration have used this authority to enact rules addressing virtually all areas of air safety. These regulations range from a general standard of care for operating requirements, see 14 C.F.R. § 91.13(a) ("No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."), to the details of the contents of mandatory onboard first-aid kits, id. pt. 121, app. A.

As a result, for the purpose of making a final determination on reasonableness when aviation safety is at issue, FAA safety determinations pursuant to the Federal Aviation Regulations take precedence over any airport sponsor views or local ordinances pertaining to safety. [*See* Drake Aerial Enterprise, LLC v. City of Cleveland, Ohio, FAA Docket No. 16-09-02, (February 22, 2010) (Director's Determination) at 14; Santa Monica; 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] This is especially true when the Director is asked to make a determination regarding a sponsor's compliance with its federal obligations in cases where restrictions or limitations are instituted in the interest of safety. Under 49 U.S.C. § 40103, the FAA develops plans and policy for the use of the navigable airspace and assigns by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.

The Director's Determination is guided by FAA Order 5190.6B which states:

> "The Associate Administrator for Airports, working in conjunction with Flight Standards and/or the Air Traffic Organization, will carefully analyze supporting data and documentation and make the final call on whether a particular activity can be conducted safely and efficiently at an airport. In all cases, the FAA is the final arbiter regarding aviation safety and will make the determination regarding the reasonableness of the sponsor's proposed measures that restrict, limit, or deny access to the airport." [*See* FAA Order 5190.6B, ¶14.3.] (Emphasis added).

The Respondent's Answer acknowledges FAA's preemption with regard to safety restrictions and accurately notes that the "reasonableness and unjustly discriminatory aspect of a restriction,

as well as final determination …can only be determined by a final FAA determination."[14] [FAA Exhibit 1, Item 6, pp 23-24] The Record also explains that on September 21, 2009 the FAA's Western Pacific Region advised the Respondent that "justification for a complete ban on all glider operations at HMT has not been established." [FAA Exhibit 1, Item 1, exhibit 29] Given these facts, the Director finds that the Respondent fails to meet the standard of compliance.

FAA Order 5190.6B explains:

> "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." [*See* FAA Order 5190.6B, ¶2.8.b.]

If the Respondent fully understood its commitments, the County would have requested an FAA safety analysis of glider operations at HMT prior to closing runway 4-22.

As part of its investigation of the Complainants' allegations, the FAA initiated a safety study to determine whether glider operations could be safely conducted at the Airport. This study was conducted by the Riverside Flight Standards District Office (FSDO) and it included a review of the Airport's layout and references the dedicated glider runway. A memorandum outlining the FSDO's findings is referenced as FAA Exhibit 1, Item 13.[15] This memorandum states:

> *"This office finds that the physical facility and geographic location of HMT to be consistent with safe simultaneous operations of glider and powered aircraft.*
>
> *This office recommends the following safety enhancements for future operations:*
>
> 1. *All tow and glider aircraft make and monitor traffic calls on the CTAF [Common Traffic Advisory Frequency] that is currently listed in the A/FD [Airport Facilities Directory] as 123.0MHz.*
> 2. *All winch launches be provided a two-minute window clear of any other runway traffic, assuring the safe retrieval of the launch line without compromising the safe operation of aircraft on the adjacent runway.*
> 3. *Airport management ensures the A/FD, Los Angeles Sectional and VFR [Visual Flight Rules] Terminal Area Charts are updated and depict glider operations.*

[14] The Respondent accurately references Florida Aerial Advertising v St. Petersburg-Clearwater International Airport, FAA Docket No. 16-03-01, (December 18, 2003) (Director's Determination) in support of these statements. [FAA Exhibit 1, Item 6, pp 23-24]

[15] Attached to this memorandum is a drawing which depicts glider operations as they have been observed by FAA staff at HMT. The Director realizes that this drawing depicts a landing strip not identified on the Airport's FAA-approved ALP. This drawing should not be misconstrued to imply or infer FAA approval of this landing area. This drawing inaccurately identifies the runway separation at 400 feet. The FAA-approved ALP states that the runways are separated by 350 feet. [FAA Exhibit 1, Item 18]

4. *These, and other Special Operating Procedures deemed necessary by the Hemet-Ryan Airport Manager, be posted in a conspicuous place where pilots are likely to gather."* [FAA Exhibit 1, Item 13]

In short, the Director finds that the Respondent inappropriately relied on its judgment, as opposed to the FAA's, with regard to a safety-related aeronautical restriction. The FAA has preempted aviation safety. Airport sponsors are not permitted to unilaterally restrict aircraft operations for safety reasons without advance concurrence by the FAA's Offices of Airports, Flight Standards, and Air Traffic. [FAA Order 5190.6B, ¶14.3]

Economic Viability and Self-Sufficiency

The Respondent further argues that Grant Assurance 24, *Fee and Rental Structure*, lends support to its decision to close runway 4-22.[16] The Respondent states:

> *"The glider operation was not economically viable for Sailplane, nor was there any interest in taking over the operation. However, the increased need for facilities and operations by other classes of aircraft, including for the CDF fire suppression operation may, in the future necessitate changes to ensure the ongoing safety of that operation, as well."* [FAA Exhibit 1, Item 6, p. 16]

The fact that Sailplane Enterprises chose to terminate its lease earlier than required does not validate or support the Respondent's argument. According to the record, the Respondent took no steps to secure another FBO to support glider operations, and made its decision to close runway 4-22 "concurrent with the termination of the lease." [FAA Exhibit 1, Item 6, p. 13] Furthermore, Sailplane Enterprises advised its customers:

> *"The RW [runway 4-22] will be closed to future operations. Anything remaining on the property after Oct. 1, 2009 will be subject to county enforcement. The county has requested that people do not call looking for deals or exemptions as there will be none."* [FAA Exhibit 1, Item 1, exhibit 11]

Both parties acknowledge that they met to discuss the future of glider operations at HMT in August 2009. The Respondent provided the Complainants with a copy of the County's standard form lease agreement. However, the Respondent argues that the Complainants never followed up or made a request for an actual lease. [FAA Exhibit 1, Item 6, p. 9] The Complainants dispute this fact and state that a formal letter requesting to undertake a lease with the County was sent to the Director of the Riverside County Economic Development Agency on August 22, 2009. [FAA Exhibit 1, Item 9, exhibit 1, sub. exh. A] The Respondent claims this letter was never received and concludes[17]:

---

[16] Grant Assurance 24, *Fee and Rental Structure*, requires an airport sponsor to 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.

[17] FAA Exhibit 1, Item 12, exhibit Z, offers a sworn statement provided by Colby Cataldi, Assistant Director of Airports, Economic Development Agency, County of Riverside. Paragraph 5 states, "The County has no record of

> *"Nevertheless, the County had no obligation to allow Complainants to assume the Sailplane Fixed Base Operator lease or any other lease considering its planned closure of Runway 4-22."* [FAA Exhibit 1, Item 12, p. 7]

While the Respondent is not obligated to allow the Complainants to assume the FBO's lease or any other, the Director believes it is disingenuous for the Respondent to attempt to characterize its reason for declining to do so for the reason of attempting to comply with the self-sustaining requirement. The Director notes:

> "The FAA interprets the willingness of a prospective provider to lease space and invest in facilities as sufficient evidence of a public need for those services. In such a situation, the FAA does not accept a sponsor's claim of insufficient business activity as a valid reason to restrict the prospective provider access to the airport." [*See* FAA Order 5190.6B ¶9.7.c.]

After losing an FBO offering specialized services to one segment of the airport's users, the Respondent took definitive steps to restrict the use of the airport from those users. It is not apparent from the pleadings how this action supports the sponsor's efforts to operate in a self-sustaining manner.

Sponsor's Long-Term Plans for the Airport

The Respondent states that it has "wrestled with various alternatives to bring the glider operation into compliance with FAA design standards and to make the operation more safe and efficient" over the years. [FAA Exhibit 1, Item 6, p. 21] To document these efforts, the Respondent provides excerpts from its 1989 Master Plan and its 2004 draft Master Plan.[18] [FAA Exhibit 1, Item 6, exhibit A and D]

The FAA recognizes an airport sponsor's proprietary rights with regard to future planning. Airport sponsors retain the prerogative to develop their airports in any manner that meets their federal obligations and is consistent with the approved Airport Master Plan and Airport Layout Plan for that airport. [*See* Thermco Aviation, Inc., and A-26 Company v. City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airports, FAA Docket No. 16-06-07, (June 21, 2007) (Director's Determination) at 29]

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receiving a letter from Complainants addressed to Rob Field and dated August 22, 2009, which is attached to Complainants Reply as Exhibit No.33. Had the County received the referenced letter, pursuant to its standard practices, and particularly under the circumstances, the County would have provided a response."

[18] The Respondent refers to its 2004 Master Plan as a draft in its Answer, Rebuttal, and in two sworn statements provided by the Assistant Director of Airports, Economic Development Agency, County of Riverside. [FAA Exhibit 1, Item 6, p. 11; FAA Exhibit 1, Item 12, p. 4; FAA Exhibit 1, Item 6, exhibit G, ¶7; and FAA Exhibit 1, Item 12, exhibit Z, ¶7] The complete document can be found at http://www.rivcoeda.org/Airports/HemetRyan/Resources/MasterPlan/tabid/519/Default.aspx. Nothing on the Respondent's webpage denotes that the document is a draft.

The Director has carefully reviewed the Respondent's 2004 draft Master Plan. Chapter Three identifies issues and makes specific recommendations with regard to soaring activities at HMT. [FAA Exhibit 1, Item 6, exhibit D, Chapter 3] The record indicates the Respondent planned to pursue some of the recommendations from the draft Master Plan because they are reflected on the FAA approved ALP.[19] But then in 2009, the Respondent deviated from the recommendations made in its draft Master Plan and closed runway 4-22. This action was clearly not contemplated during the master planning process and contradicts the approvals the FAA provided when it approved HMT's ALP.[20]

In its Rebuttal, the Respondent states that it cannot afford improvements to runway 4-22. [FAA Exhibit 1, Item 12, p. 5] The Assistant Director of Airports' sworn statement explains:

> *"The improvements considered in the 1989 Master Plan and the draft 2004 Master Plan were not pursued because they were not economically feasible. The County has not identified funding to cover the costs of the proposed improvements. Furthermore, the sailplane operation would not generate sufficient revenue stream to pay for the improvements, including but not limited to development costs, land acquisition, operational costs and staffing. One of the reasons that Sailplane Enterprises sought early termination of its lease and ceased operations was due to the poor economics associated with the glider/sailplane operation."* [FAA Exhibit 1, Item 12, exhibit Z, ¶3]

In August 2009, the Complainants identified several ways to address the safety concerns raised by CalTrans. One recommendation was operational, suggesting that all glider operations be confined to runway 4-22 with the exception of emergencies. Another recommendation required glider operators not currently equipped to communicate on the Common Traffic Advisory Frequency (CTAF) to incur the expense of a radio to do so. The Complainants also expressed support for recommendation previously made by CalTrans that would require tow planes to use runway 5-23 and cross over to 4-22. [FAA Exhibit 1, Item 1, exhibit 21]

The Respondent's 2004 draft Master Plan states that runway 4-22 was resurfaced in 1998 and was in excellent condition as of the time of the study. [FAA Exhibit 1, Item 6, exhibit D, p. 1-5] Additionally, the 2004 draft Master Plan identifies two projects associated with sailplane operations at HMT: sailplane runway grading and fee simple land acquisition. However, neither of these projects is identified for the Airport's short-term planning range. The grading is identified as a mid-range project, to be conducted in approximately five to ten years, and the land acquisition is identified as a long-range project, to be conducted in approximately ten to 20 years. [FAA Exhibit 1, Item 19]

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[19] The 2004 draft Master Plan recommends moving the end of runway 22. [FAA Exhibit 1, Item 6, exhibit D, pp. 3-24 and 3-25] This would reduce the overall length of runway 4-22 from 2,045 feet to 1,485 feet as depicted on the FAA-approved ALP. [FAA Exhibit 1, Item 18] The 2004 draft Master Plan recommends acquiring 21 acres of land northeast of the sailplane operations area. [FAA Exhibit 1, Item 6, exhibit D, p. 3-28] This is depicted on the FAA-approved ALP. [FAA Exhibit 1, Item 18]

[20] This is discussed extensively under Issue 2 below.

The FAA accepts that a sponsor may need to deviate from its master plan in order to accommodate changing airport conditions or new requirements. [*See* Pacific Coast Flyers, Inc., Donnya Daubney d/b/a Carlsbad Aircraft Pilot Supply, and Roger Baker v. County of San Diego, California, FAA Docket No. 16-04-08, (July 25, 2005) (Director's Determination) at 35 (Pacific Coast Flyers)] However, that does not appear to be the case here. The Complainants expressed their desire to remain at HMT immediately after Sailplane Enterprises' announcement of the Respondent's plans to close runway 4-22. [FAA Exhibit 1, Item 1, exhibit 12] The Respondent never identifies any pressing financial needs associated with the ongoing use of runway 4-22 as depicted on the FAA-approved ALP. Moreover, the FAA's Western Pacific Region specifically recommended alternative methods to address the long-standing safety concerns previously ignored by the Respondent. [FAA Exhibit 1, Item 1, exhibit 29]

In Richard M. Grayson and Gate 9 Hangar, LLC v. DeKalb County, Georgia, FAA Docket No. 16-05-13, (February 1, 2006) (Director's Determination) (Gate 9), the Director found that:

> *"Pursuing lease terms, plans, or managerial processes, that unnecessarily limit the airport's aeronautical utility by restricting development is inconsistent with the City's Federal obligations. It is unreasonable for an airport operator to refuse to develop a Federally-obligated airport in response to aeronautical demand, as the airport was conveyed for this very purpose and Federal grant funds have been expended for the purpose of enhancing the aeronautical utility of the airport."* [Gate 9 at 13-14]

The Respondent's decision to close runway 4-22 and prohibit gliders from departing on runway 5-23 unnecessarily limits the airport's aeronautical utility. Therefore, the Director believes the Respondent's actions are not consistent with its grant assurance obligations.

Summary of Issue (1)

The Respondent admits it closed runway 4-22 and generally prohibits gliders from departing on runway 5-23 because these actions were both permitted and justified. The Director does not find the Respondent's explanations to be convincing or reasonable. The Respondent is obligated by its grant assurances and its surplus property deed to operate the airport – not just specific pieces of infrastructure on it – on reasonable terms and without unjust discrimination. The closure of runway 4-22 and limitations on runway 5-23 effectively closes HMT to glider operations. This restriction is not reasonable because the FAA's safety evaluation found that glider operations could be conducted safely from runway 4-22. Moreover, the Respondent's other reasons for closing runway 4-22, in addition to being flawed or unsupported by the evidence of record, are not sufficient to overcome the Director's concerns regarding the denial of access. As a result, the Director finds the Respondent is in violation of Grant Assurance 22, *Economic Nondiscrimination*, and its obligations contained in the surplus property quitclaim deed.

Issue (2)

> Whether the Respondent is in violation of Grant Assurance 29, *Airport Layout Plan*, by closing runway 4-22.

Although this issue was not raised by the Complainants, the Director's review of the Record raised concerns with regard to Grant Assurance 29, *Airport Layout Plan*. In a Part 16 investigation, the role of the Director is to determine whether or not the Respondent is in compliance with its federal obligations and grant assurances. He is authorized to address additional issues as he sees fit, and may initiate a Part 16 investigation unilaterally with no complaint. [14 CFR 16.101] As such, the review of this issue is consistent with the FAA's Compliance Program. [*See* FAA Order 5190.6B, Chapter 2]

Grant Assurance 29 requires the airport sponsor to "*keep up to date at all times an Airport Layout Plan of the airport showing … the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads)…"* The Director asked the FAA's Western Pacific Region to provide a copy the Respondent's FAA-approved ALP and has included this document as FAA Exhibit 1, Item 18. This ALP was conditionally approved and signed by an FAA official on July 6, 2006.[21]

The Respondent acknowledges that it closed runway 4-22. [FAA Exhibit 1, Item 6, pp 2, 10, 13, 24, 25, and 29 and FAA Exhibit 1, Item 12, pp 2 and 5]

The ALP depicts runway 4-22. It notes that the current length and width is 2,045 feet by 25 feet, but is planned to decrease to 1,485 feet by 25 feet. [FAA Exhibit 1, Item 18] The Respondent's decision to close runway 4-22 is not consistent with its FAA-approved ALP. The Respondent has not taken the appropriate steps to ensure that its ALP is up to date. Therefore, the Director finds that the Respondent is currently in violation of Grant Assurance 29, *Airport Layout Plan*.[22]

Issue (3)

> Determine whether the Respondent is in violation of Grant Assurance 35, *Relocation and Real Property Acquisition*, with regard to Sailplane Enterprises' lease termination.

The Complainants contend that they are entitled to relocation assistance because they have been evicted by the airport sponsor. The Complaint states:

> *"To date, the County has failed to fulfill this obligation. All users of the glider portion of the airfield were forced to move their equipment out of the County on short notice at their own expense, with some selling their aircraft and hangars at considerable discount under pressure from an unreasonable deadline. None of*

[21] FAA Order 5050.1B, Airport Environmental Handbook and FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, limit the FAA's ability to approve an airport sponsor's ALP. Unconditional approval or funding of projects proposed on an ALP must be reviewed in accordance with the National Environmental Policy Act or NEPA. With that said, pursuant to Grant Assurance 29, *Airport Layout Plan*, the signature of an FAA official on the ALP denotes the Secretary's approval of that plan.

[22] The Respondent acknowledges that it is in the process of exploring redevelopment of the area previously used by gliders. [FAA Exhibit 1, Item 12, p. 7] The Director notes that the FAA-approved ALP depicts existing sailplane facilities and a future FBO area north of runway 4-22. Any plans to deviate from these uses require the Respondent to update its ALP.

> *these affected persons received any payment or relocation to comparable facilities."* [FAA Exhibit 1, Item 1, p. 11]

The Respondent denies this allegation and states:

> *"Complainants' reliance on Grant Assurance 35 (Assurance 35) is misplaced. They are not entitled to relocation under Assurance 35, or 49 C.F.R. Part 24 cited herein. The alleged acts do not involve acquisition of real property by Respondent. Moreover, Respondent is not a 'displacing agency' and Complainants are not 'displaced persons' as defined for purposes of 49 C.F.R. Part 24."* [FAA Exhibit 1, Item 6, p. 25]

The purpose of Grant Assurance 35, *Relocation and Real Property Acquisition*, is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.[23] This law prescribes guidance pertaining to the acquisition of real property when it is acquired for federal and federally assisted projects. In order to establish a violation of Grant Assurance 35, the Complainants must demonstrate that the Respondent has displaced them as a result of acquiring real property with federal funds.

The record does not support such a claim. In fact, the Complainants present no evidence to establish that the OCSA or any individual Complainants leased property on the airport or held good title to any property the Respondent sought to acquire. The Complainants allege that the Respondent forced the OCSA to "remove its aircraft, trailers, storage unit, classroom and glider winch" from HMT. [FAA Exhibit 1, Item 1, p. 2] However, the record contains no evidence of any type of leasing arrangement between the Respondent and the Complainants. The Complaint notes that the OCSA operated "in conjunction with Sailplane Enterprises…" and " as the only description of its tenancy at the Airport. [FAA Exhibit 1, Item 1, p. 5] In July of 2009, the owner of Sailplane Enterprises sent a memo to his customers announcing his retirement and the closure of his business. [FAA Exhibit 1, Item 1, exhibit 11] Based on the Complainants' account of the events, the Director surmises that the OCSA was a customer of Sailplane Enterprises and an airport user.

Secondly, nothing in the record documents the Respondents use of federal assistance for the acquisition of real property. The Respondent correctly cites Pacific Coast Flyers in support of its position. [FAA Exhibit 1, Item 6, p. 28] In Pacific Coast Flyers, the Director found Grant Assurance 35 did not apply because the redevelopment project which displaced some airport users did not involve the acquisition of real property for federal or federally assisted projects. [*See* Pacific Coast Flyers at 46]

The Director finds that the Complainants are not "displaced persons" under 42 U.S.C. § 4601. As a result, the Respondent has not violated Grant Assurance 35, and the Director dismisses this allegation.

[23] The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is codified at 42 U.S.C. § 4601 et seq.

VII. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions and responses by the parties, and the entire record herein, and the applicable law and policy and for the reasons stated above, the Director, Airport Compliance and Field Operations, finds and concludes:

- The Respondent's unilateral decision to close of runway 4-22 and prohibit glider departures from runway 5-23 constitutes an unreasonable denial of access for glider operations in violation of Grant Assurance 22, *Economic Nondiscrimination* and the Respondent's obligations contained in the surplus property quitclaim deed.

- The Respondent's unilateral closure of runway 4-22 is not depicted on the FAA-approved airport layout plan and constitutes a violation of Grant Assurance 29, *Airport Layout Plan*.

- The Respondent is not a displacing agency under 42 U.S.C. § 4601 et seq. and is not in violation of Grant Assurance 35, *Relocation and Real Property Acquisition*.

ORDER

ACCORDINGLY, the Director finds that Riverside County is in violation of Federal law and the Federal grant obligations. The County has 30 days to submit a corrective action plan including the projected timeframe for completion that (1) provides glider operators access to the airport; (2) negotiates in good faith with those entities desiring to provide glider-related commercial aeronautical services; (3) utilizes the expertise of FAA staff to develop appropriate operating procedures applicable to all airport users; (4) adopts and enforces appropriate operating procedures applicable to all airport users; (5) develops a process to improve communication between the County and aeronautical tenants at the Airport; and (6) completes the draft airport Master Plan and any necessary ALP updates.

Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, may lead to suspension of future grant applications for AIP discretionary grants under 49 U.S.C. § 47115 and general aviation airport grants under 49 U.S.C. § 47114(d).

All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute final agency action and order subject to judicial review. [14 CFR 16.247(b)(2)] A party to this Complaint 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.

February 11, 2011
Date

Randall Fiertz
Director, Office of Airport Compliance
and Field Operations