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February 7, 2012

OVERNIGHT DELIVERY

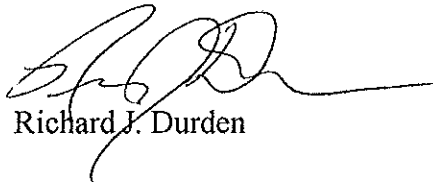
Office of the Chief Counsel
FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Re: *Jeff Bodin and Garlic City Skydiving v. The County of Santa Clara, California*
Docket No. 16-11-06

Dear Sir or Madam:

Enclosed for filing please find an original and three copies of COMPLAINANT'S OPPOSITION TO APPEAL BY THE COUNTY OF SANTA CLARA OF THE DIRECTOR'S DETERMINATION DATED DECEMBER 19, 2011 in the captioned matter. One copy is unbound, as requested by the FAA.

Very truly yours,



Richard J. Durden

enc.

cc: Miguel Marquez
Elizabeth G. Pianca
Jeff Bodin

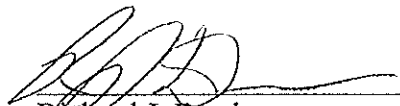
CERTIFICATE OF SERVICE

I hereby certify in accordance with 14 CFR Part 16.15(a) that today I served the foregoing **COMPLAINANT'S OPPOSITION TO APPEAL BY THE COUNTY OF SANTA CLARA OF THE DIRECTOR'S DETERMINATION DATED DECEMBER 19, 2011** Complainant's Motion to Dismiss Appeal of Director's Determination on the following persons at the following addresses by overnight delivery:

Miguel Marquez
Elizabeth G. Pianca
OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street
East Wing, 9th Floor
San Jose, CA 95110

Office of the Chief Counsel
FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Dated this 7th day of February, 2012


Richard J. Durden
For Complainant

BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

JEFF BODIN and)	
GARLIC CITY SKYDIVING)	
)	
Complainant,)	
)	
vs.)	Docket No. 16-11-06
)	
THE COUNTY OF SANTA CLARA, CALIFORNIA)	
)	
Respondent)	

**COMPLAINANT'S OPPOSITION TO APPEAL BY THE
COUNTY OF SANTA CLARA OF THE DIRECTOR'S
DETERMINATION DATED DECEMBER 19, 2011**

Please serve:

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Counsel for Respondent

Respondent, the County of Santa Clara, California, has appealed the Director's Determination in this matter by asserting that previously unavailable evidence supports its oft-repeated claim that skydiving cannot be conducted safely on the South County Airport (the

“Airport”); the FAA’s two Safety Studies regarding skydiving on the Airport were not to Respondent’s satisfaction and thus Respondent believes its opinion regarding safety trumps that of the FAA; and Respondent believes its fears of potential liability in the event of an accident justify it in determining which aeronautical activities it may allow on its federally-funded airport.

None of Respondent’s positions are supported by the record.

Of special significance, a portion of what Respondent provides and characterizes as new evidence demonstrates definitively that the landing area on the Airport meets industry standards for a parachute landing area, thus further supporting the FAA’s Safety Studies.

I. Background and Facts

In its brief, Respondent again goes through its version of the factual background of this matter. Despite concentrating on the memoranda and letters through which the FAA reached and reported the conclusions of its two Safety Studies, Respondent raises nothing new in its recitation. Predictably, Respondent urges its own interpretation of the FAA’s Safety Studies be based, as it has throughout its briefs, on selective plucking of sentences from various documents rather than on the full language of each document. The only new spin Respondent has put on the documents that have been reviewed throughout this matter in the utmost detail is to allege that the FAA revised its conclusion (Appeal at p. 8) that skydiving could be performed safely at the Airport. The assertion fails even the most relaxed scrutiny.

The documents that make up the Safety studies performed by the FAA have been dissected by both parties and the Director. Respondent offers nothing new in its brief, just its well-worn argument that the FAA must locate the landing area in the “safest” spot (without statutory or regulatory support). Respondent’s objections regarding safety do not reference a

single Federal Aviation Regulation, Joint Order (JO) or Advisory Circular. Respondent's position is based on its desire to unilaterally amend several regulations, terms of grant agreements, FAA Orders and Advisory Circulars so that the standard for allowing any aeronautical activity onto an airport is only if it can be conducted in the "safest" possible manner. As pointed out in the Director's Determination, that is not the standard for either allowing or banning an aeronautical activity on or from an airport.

Throughout its brief, Respondent sets itself up as the judge to be convinced that the FAA has conducted its Safety Studies in a fashion that meets the requirements of Respondent. Yet, tellingly, Respondent stated to the FAA in its Answer to the Complaint at p. 26, that it has "no professional expertise to review training and safety practices for skydiving." However, throughout the Appeal, it continues to set itself out as being the arbiter of whether the FAA's process of doing a standard Safety Study for skydiving on an airport was satisfactory. Without citing authority, the County repeatedly demands evidence from the FAA regarding its Safety Studies, and then, upon receipt of the Studies themselves, is always critical of them. One assumes that the only time in which the County would accept FAA methodology would be if the FAA were to come to the precise conclusion desired by the County.

It should be noted that, despite its avowed lack of expertise, the County claimed it did an in-depth analysis of the safety of skydiving onto the Airport. The process was not disclosed, but it did not actually consult with the FAA, liaise with industry experts in the field, the United States Parachute Association, nor did it meet with the users of the Airport, who strongly support skydiving on the Airport (Users' letter, Director's Determination, Exhibit 1, Item 1, Exhibit 9). Respondent claims the FAA was not sufficiently transparent in its two Safety Studies; however,

Respondent never provided any details of what it did, if anything, beyond hypothesizing a parade of horrors that could happen if skydiving were allowed on the Airport.

At no time throughout this matter has the County stated objective guidelines for the minimum size of a skydiving landing zone or traffic in airspace above; it has confined itself to shrilly saying that the landing zone on the Airport is too small and the airspace too busy.

As the FAA succinctly stated in responding, early on, to Respondent's reasons skydiving could not safely take place on the airport (population density, nearby highway, congested airspace),

“It appears the County used inappropriate evidence to make it appear that skydiving should not take place at E16. Strangely, the same reasons the County used to deny skydiving could be used purport that other aeronautical activities are unsafe at E16.” (Director's Determination, Exhibit 1, Item 1, Exhibit 11)

The County had numerous opportunities to express its concerns for skydiving safety on the Airport to the FAA as the FAA went through not one, but two, Safety Studies. The above letter from the FAA makes it clear that the County made its concerns heard.

Further, no one denies that FAA personnel came to the Airport and inspected the proposed parachute landing zone. Respondent has produced no new evidence regarding the landing zone, the Airport or the airspace above. Other than acidly asserting the FAA did not do its Safety Studies in a fashion suitable to Respondent, it has provided no evidence that the FAA Studies were in some fashion flawed, did not follow the established procedures for analyzing a landing zone on an airport or reached an unreasonable conclusion.

II. New Evidence

A. Respondent

1. Respondent provided a letter from the FAA Western Region ADO (Appeal Exhibit 1) stating that it was not going to respond to the most recent of Respondent's communications (Director's Determination, Exhibit 1, Item 1, Exhibit 15) because this Part 16 matter was in progress. While this letter was not previously produced, it is not relevant to any matter on Appeal, especially as the Director's Determination responded to the Respondent's letter (Exhibit 1, Item 1, Exhibit 15) as set forth on page 10 of the Determination, even though, Respondent considers the response inadequate.

2. Respondent attached a chart comparing obstruction distances (Exhibit 3 to Appeal) from landing zones at a few selected airports in California. How these airports were chosen is not stated. The chart does not provide any sort of industry standard or objective guideline as to what is acceptable obstruction distance. Further, the chart is notable for what it omits; for example, it did not include the landing zone at the Lodi, California airport (upon available information, is approximately the third busiest skydiving drop zone in the State of California) which is 50 feet from a major, four-lane highway comparable to the highway Respondent claims is a concern near the Airport; and the chart did not mention that the airspace over one airport it referenced, Byron (C83), has similar airspace congestion to the Airport in that it is between two Victor Airways that join just west of Byron Airport and is on the main arrival route to Oakland, California International Airport. The brief did not provide any evidence that the FAA was unaware of the circumstances of other skydiving landing zones in the California, the Western Region or the U.S.

3. Respondent also provided two photographs in its Appeal Exhibit 2. One photo very nicely shows the effect of foreshortening of a two-dimensional image when looking across an airport. On the photo, it appears that an airplane that is probably about to land on the

runway may be actually about to land on the highway. Other than to show the runway is very near the highway and the landing zone is farther from the runway, there is no objective measurement of any sort supplied.

The other photo in Respondent's Appeal Exhibit 2, an aerial photograph with distances to obstructions, is of major significance. Respondent does not assert that the distances in this photograph are different than they were when the FAA inspectors examined the area for the second Safety Study; thus the information in the photo is implied to have been available and presented to the inspectors, especially as employees of Respondent were also present and had full opportunity to present all relevant information and concerns to the inspectors.

With that in mind, the most important piece of data to be gained from Respondent's aerial photograph is that Respondent has now proven and admitted that the landing zone meets all industry standards for even the most inexperienced skydiver, a student.¹ Using objective evidence, Respondent has itself provided proof that upholds the FAA's finding in its Safety Studies that skydiving can be conducted safely on a landing zone on the Airport.

B. New Evidence -- Complainant

During the course of the Safety Studies, the Flight Standards Division, Western Pacific Region, was one of the offices involved in the analysis. On March 24, 2011, Nicholas Reyes, the

¹ United States Parachute Association, Skydiver's Information Manual, Section 2-1: Basic Safety Requirements. H. Drop Zone Requirements: 1. Areas used for skydiving should be unobstructed, with the following minimum radial distances to the nearest hazard: [S]

- a. solo students and A-license holders -100 meters
- b. B- and C- license holders and all tandem skydives-50 meters
- c. D-license holders -12 meters

2. Hazards are defined as telephone and power lines, towers, buildings, open bodies of water, highways, automobiles, and clusters of trees covering more than 3,000 square meters. [NW]

3. Manned ground-to-air communications (e.g., radios, panels, smoke, lights) are to be present on the drop zone during skydiving operations. [NW]

<http://www.uspa.org/SIM/Read/Section2/tabid/164/Default.aspx>

Manager, sent a memo regarding the airspace over the Airport and the safety of skydiving at the Airport (Director's Determination, Exhibit 1, Item 1, Exhibit 14, sub.exh. A). It noted that the previous Safety Study report was correct and stated:

“The proposed drop zone’s location relative to a significant amount of [Visual Flight Rules] and [Instrument Flight Rules] traffic will require strict compliance by Garlic City Skydiving with 14 CFR § 91.123 and § 105, and close coordination with Air Traffic Control. *Additional safety margins may be secured through a Letter of Agreement between [Northern California Terminal Radar Control Facility] and Garlic City Skydiving, as outlined in FAA Order 7210.3W*” (Emphasis added)

Effective January 31, 2012, Northern California Terminal Radar Approach Control and Garlic City Skydiving entered into a Letter of Agreement setting forth the procedure for coordination between Garlic City Skydiving and Air Traffic Control during skydiving operations through the airspace above the Airport for skydiving onto the Airport. (Exhibit A)

III. Response to the Director

A. Grant Assurance 22 - Economic Nondiscrimination

1. Safety

Respondent selectively quotes from the Director’s Determination, the Grant Assurance and FAA Orders and reverts to its long-stated position that the FAA has the burden of proving that skydiving may be conducted on Respondent’s Airport once Respondent has banned it for reasons Respondent alone considers to be adequate. Despite no showing at any time by Respondent of objective safety standards for skydiving at its Airport, Respondent continues to claim that there is no way Complainant can meet Respondent’s standards. Even though the FAA has performed two Safety Studies, they were inadequate to convince Respondent that its own, unstated standards are wrong.

The assumption underlying Respondent's entire approach to banning skydiving on its Airport is two-fold: a.) that its Airport is unlike any other in the United States in size, surroundings on the surface and overlying airspace and, b.) skydiving is something new and untested, something so unusual that for it to take place at Respondent's Airport the FAA must undertake a massive study (although no measurables as to what would constitute an adequate study have been provided by Respondent) to confirm that it can occur under the safest of conditions.

The assumption does not withstand the test of reality. Skydiving has been a recognized aeronautical activity for decades, and has been subject to FAA regulation, just as any other aeronautical activity. It takes place on hundreds of airports throughout the United States, through all sorts of different airspace. Skydiving is not a poor stepchild aeronautical activity; its practitioners are entitled to the same rights, privileges and protections as other types of aeronautical activities. The FAA regulations for skydiving are contained within 14 CFR §§ 91 and 105. They set the safety standards for skydiving.

The FAA has taken further steps in the regulation of skydiving so that it safely blends with other aeronautical activities in our national airspace system. FAA Order JO 7210.3W provides guidance for day to day operation of Air Traffic Control facilities. Section 4 of the Order provides procedures for Air Traffic Control handling of skydiving operations. It specifically sets out procedures for skydiving operations in high density or constrained airspace. Respondent has never referenced this Order, alleged that the FAA has not followed it or provided some evidence that the airspace above the Airport is in some way unique and thus beyond the FAA's regulatory procedures.

FAA Order JO 7110.65T establishes air traffic control procedures and phraseology for use by personnel providing air traffic control services. Section 7 sets forth those procedures for skydiving operations. Respondent has never referenced this Order, never provided any evidence as to why the airspace over the Airport is so extraordinary that FAA procedures used throughout the country for skydiving are inadequate to allow for safe operations on the Airport.

FAA Advisory Circular AC 150/5190-7 provides guidance to airport sponsors for establishing minimum standards for aeronautical activities on their airports. Not surprisingly, it has information for airport sponsors on skydiving (at page 10). That section begins with the sentence, "Skydiving is an aeronautical activity." It outlines how an airport sponsor can go about determining how to fit skydiving into its airport operations and whether limitations are appropriate. Respondent has nowhere shown that its Airport is so special and unusual that it is somehow outside those contemplated by the FAA in the Advisory Circular.

The Director's Determination dealt at length with Respondent's claims, repeated in its Appeal, that the FAA did not perform adequate analysis to determine that skydiving could safely take place through the airspace above the Airport and onto a landing zone on the Airport (see Director's Determination pp. 24-32). A few of the findings from the Director's Determination bear repeating: "These claims [FAA had not analyzed safety aspects of airspace and landing zone on the Airport] are not supported by the record. The evaluations conducted by the FAA were specific to the Complainant's proposal, including the proposal to establish an on-airport drop zone and prescribed specific mitigations as discussed above." (at page 28) "The Respondent's affirmative defense attempts to substitute its judgment for the expertise of the FAA." (at page 29)

LETTER OF AGREEMENT

EFFECTIVE: 01-31-2012

SUBJECT: Parachute Operations at South County Airport of Santa Clara County

- 1. PURPOSE:** To standardize coordination and communication procedures for parachute operations conducted at South County Airport of Santa Clara County (E16). These procedures supplement Title 14 Code of Federal Regulations (14 CFR) Part 91, General Operating and Flight Rules; 14 CFR Part 105, Parachute Operations; Federal Aviation Administration (FAA) Order 7110.65, Air Traffic Control; and, FAA Order 7210.3, Facility Operation and Administration.
- 2. CANCELLATION:** Northern California Terminal Radar Approach Control (NCT) may modify or cancel this agreement at any time.
- 3. SCOPE:** The procedures outlined herein are for use in the conduct of parachute operations in Class E airspace overlying the South County Airport of Santa Clara County (E16).
- 4. DEFINITIONS:**

E16 Drop Zone: The E16 Drop Zone is defined as a two nautical mile radius around the E16 airport which is located at 37° 04' 53.71" N / 121° 35' 48.50" W.

NOTE –

1. The E16 Drop Zone is located on the initial approach segments of numerous instrument approach procedures that service the Norman Y. Mineta San Jose International Airport (SJC). These instrument approach procedures are utilized by aircraft landing at SJC, including air carrier turbojets, regardless of weather conditions or time of day.

2. The E16 Drop Zone is located beneath Class E Airspace, 700 feet Above Ground Level (AGL) up to 17,999 feet above Mean Sea Level (MSL). Aircraft operating under the provisions of Visual Flight Rules are not required to contact Air Traffic Control in Class E Airspace. This, along with the limitations of Air Traffic Control radar, will preclude NCT from being aware of all air traffic operating in and around the E16 Drop Zone.

- 5. RESPONSIBILITIES:** Garlic City Skydiving must:
 - a. Ensure that pilots operating in their employ are familiar with and comply with the procedures and provisions of this LOA; and
 - b. Ensure that parachute operation aircraft are equipped with an operable radar beacon transponder with automatic altitude reporting capability and an operable VHF radio transceiver.

EXHIBIT
A



Federal Aviation Administration

Memorandum

Date: JAN 09 2012

To Stephen Lloyd, District Manager, Las Vegas District, TWE-L30

From: *John Warner*
John Warner, Manager, Operations Support Group, Western Service Center, AJV-W2

Subject: Letter of Agreement: Parachute Operations at South County Airport of Santa Clara County.

The Operations Support Group has reviewed the attached Letter of Agreement reference Standardizing coordination and communication procedures for parachute operations conducted at South County Airport of Santa Clara County, and finds it to be in compliance with FAA JO 7210.3.

If you have any questions, contact Dale Richards, Support Specialist, Operations Support Group, Western Service Center, at (425) 203-4549.

Attachment: