



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of Airport Safety and  
Standards

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Washington, D.C. 20591

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MAY 27 2008

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Dear Ms. Moutrie, and Messrs. Tachiki and Devine:

**FAA Docket No. 16-02-08**

Enclosed is a copy of the Director's determination in the above-captioned formal complaint under 14 Code of Federal Regulations (CFR) Part 16 and a disc containing the documents that comprise the Administrative Record for this proceeding.

As discussed in the Director's determination, we conclude that the City of Santa Monica is currently in violation of its federal obligations.

The Federal Aviation Administration (FAA) directs the City of Santa Monica and Santa Monica Airport to present a plan to the Office of Safety and Standards, Compliance Division, of the FAA within 20 days from the date of the Director's determination on how it intends to address the FAA's concerns by eliminating the violations outlined above. Pending FAA approval of the corrective action plan, or until further notice, the City and the Airport are ineligible to apply for new FAA grants pursuant to 49 U.S.C. § 47106(d).

This Director's determination is an initial agency determination and does not constitute final agency action and order subject to judicial review under 49 U.S.C. § 46110. Pursuant to 14 CFR Part 16, the City of Santa Monica may request a hearing under subpart F of Part 16 within 20 days after service of the Director's Determination. (14 CFR §§ 16.31(d) and 16.109(1)). The City of Santa Monica may waive a hearing and 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. If no appeal is filed by either party within thirty (30) days after service, the Director's determination becomes final.

Sincerely,

  
Byron K. Huffman  
Acting Director of Airport Safety  
and Standards

Enclosures

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**IN THE MATTER OF  
COMPLIANCE  
WITH FEDERAL OBLIGATIONS  
BY THE CITY OF SANTA  
MONICA, CALIFORNIA**



**FAA Docket No. 16-02-08**

**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) based on a Notice of Investigation (NOI) dated October 8, 2002, initiated by the Director of the Office of Airport Safety and Standards, and supplemented by his March 26, 2008 Order to Show Cause<sup>1</sup>. The NOI and Order to Show Cause were issued in accordance with the FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings, 14 Code of Federal Regulations (CFR) Part 16. The FAA's investigation seeks to determine the legality of the City of Santa Monica, California's ("the City") Ordinance adopted on March 25, 2008 banning Category C and D aircraft operations from the Santa Monica Municipal Airport (SMO). The Ordinance (FAA Exhibit 1, Item 8) bans all C and D category aircraft from SMO, affecting approximately 9,000 annual jet aircraft operations.<sup>2</sup>

For the reasons fully explained below this initial determination concludes that the City's Ordinance is unlawful. Federal aviation law preempts local ordinances such as the City's designed to control flight operations and impede safe and efficient airspace management. The FAA's role in regulating aviation and aviation safety is extensive and essentially plenary in terms of the agency's statutory, regulatory and policy responsibilities. The City's Ordinance is an unlawful attempt to manage the movement of aircraft and control, use of the navigable airspace.

The City has attempted to justify its action by asserting that the safety of its community is its highest priority. Safety is also the highest priority of the FAA. The FAA Office of Airport Safety and Standards gave serious consideration to the City's concerns, and the agency continues to believe that safety improvements can be made to the runway ends at SMO without interfering with reasonable access to the airport by aircraft operators. We find that key facts undercut the City's argument that Category C and D aircraft should be banned from SMO on safety grounds.

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<sup>1</sup> The City response to the NOI in November 2002, and did not adopt its proposed Aircraft Conformance Program but entered into discussions with the FAA. These discussions continued until recently, when the City adopted the Ordinance that is the subject of this determination. The FAA expedited the investigation because the Ordinance was scheduled to take effect thirty days after it was adopted by the City Council.

<sup>2</sup> The ban affects all jet aircraft and few, if any, propeller-driven aircraft at SMO. The term "category C and D aircraft" refers to types of aircraft having approach speeds of 121 knots or more but less than 166 knots at maximum certificated landing weight. This is discussed in detail in footnote 7, below.

First, operations at SMO meet every FAA safety requirement for aircraft operation; operators of C and D Category aircraft not only must comply with the same requirements as operators of Category A and B aircraft, in many cases the requirements for operation of these aircraft are more stringent. There is no evidence that C and D aircraft are any less safe than A and B aircraft. There is simply no aspect of the normal operation of aircraft at SMO that can be identified as a problem requiring a ban on use of the airport by these aircraft. In fact, the performance range of many B, C and even D aircraft overlap to such an extent that restricting C and D aircraft would be unjustly discriminatory to the operators of those aircraft.

Second, the City is basing its action on the possible consequences of a departure from normal operation, specifically an aircraft overrun that does not stop on airport property. However, that kind of event is no more likely to involve the banned aircraft than the types of aircraft not subject to the ban. The FAA recognizes the difficulty of balancing the need for safety enhancements with operational efficiency, but striking that balance is necessary to maintain a national airport system.

As explained in this initial determination, the 2008 Ordinance far exceeds the City's limited powers as an airport proprietor. Its action is not reasonable, necessary, or lawful. The FAA has statutory jurisdiction to determine the City's compliance with its grant assurance obligations and Surplus Property Act obligations and has conducted this investigation in accordance with 14 CFR Part 16 on an expedited basis as a result of the City's decision to implement the Ordinance a month after it was adopted.

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, the Director concludes that the City of Santa Monica is in violation of its Federal obligations.

The FAA's determination in this matter is based on the applicable Federal law and FAA policy, and review of the pleadings and supporting documentation submitted by the City and by the FAA as part of its investigation, which comprise the administrative record reflected in the attached FAA Exhibit 1.

## **II. BACKGROUND**

### **A. The Airport (SMO)**

SMO is a public-use airport owned and operated by the City of Santa Monica, California. (FAA Exhibit 1, Item 26.) The Airport is used by general aviation aircraft and provides access to Santa Monica and other surrounding communities in the Los Angeles metropolitan area.

The Airport is the base of operations for over 400 aircraft. (FAA Exhibit 1, Item 40.)

The 227-acre airport is located in a highly congested air traffic area, and is an important reliever airport for the Los Angeles International Airport (LAX), located just 7 miles to the north. As a reliever for LAX, SMO serves a vital and critical role as a general aviation reliever airport by diverting aircraft away from the air carrier airports and other more heavily used airports located in the Los Angeles area. SMO serves the role of a business airport capable of accommodating a wide range of business and personal aircraft, including corporate and business jets. As such, SMO is able to accommodate over 90% of aircraft types in the general aviation fleet, and it is capable of serving the vast majority of general aviation aircraft with a maximum take off weight greater than 12,500 lb. (See Advisory Circular AC 150/5325-4B *Runway Length Requirements for Airport Design*, 7/1/2005, Chapter 3.) The airport's reliever role with respect to high performance jet aircraft is especially important to LAX because those are the aircraft types that could and would otherwise use LAX if SMO was not accessible to them.

The Airport's runway 03-21 is approximately 5,000 feet long<sup>3</sup> and 150 feet wide, with a reported weight bearing capacity of 40,000 lbs single-wheel loading, 60,000 lb. dual wheel and 105,000 dual tandem wheel loading.<sup>4</sup> There are parallel taxiways on both sides, each 40 feet wide. The runway-taxiway centerline separation is 240 feet on the northwest side and on most of the southwest side. However, there is a taxiway on the south side, 1,100 feet in length, whose centerline is only 200 feet away from the runway centerline. This precludes operation of certain aircraft based on wingspan considerations. (FAA Exhibit 1, Item 2, p. 8.) The Airport has a VOR-A/GPS<sup>5</sup> approach with minimum of 1 ¼ mile visibility and 1,000-foot minimum descent altitude. Instrument approaches using these navigation aids are published for aircraft categories A, B, C, and D. (FAA Exhibit 1, Item 27.)

Although SMO is a popular destination airport in a region that has limited airport capacity, today the City reports only 135,000 annual operations, a low number of operations compared with years past. Since 1999, the Airport operations have not exceeded 200,000, and in 2007, the Airport had 165,000 operations (FAA Exhibit 1, Item 26.) As shown below, there has been a steady decrease in overall operations from a high of over 366,000 in 1966 to today's level of operations. Annual jet operations have risen to 18,000 from 1,176 operations in 1983. (FAA Exhibit 1, Item 31.) From 1999 to 2002, operations by jet aircraft rose from 9,608 to 16,157. Today there are approximately 18,000 jet operations annually at SMO serving over 450 Instrument Flight Rules (IFR) destinations including many in the continental United States, Hawaii, Alaska, Canada and Mexico.<sup>6</sup> (FAA Exhibit 1, Item 32.) About 9,000 of these jet operations are by C and D category aircraft, which are banned by the 2008 Ordinance.

## **B. Prior Attempts to Restrict Access at SMO and the 1984 Agreement**

In *Santa Monica Airport Association v. City of Santa Monica*, 481 F. Supp. 927 (C.D Cal, 1979), aff'd 659 F.2d 100 (9<sup>th</sup> Cir. 1981), the Ninth Circuit Court of Appeals upheld the City's aircraft-noise abatement ordinance and a night curfew on takeoffs and landings imposed by the City, but struck down the ban on jet aircraft as violating the Commerce and Equal Protection clauses of the Constitution.

The Ninth Circuit Court held as to equal protection that the proposed Ordinance was not rationally related to any legitimate state interest, whether that interest was safety or the prevention of noise. The Court found the impact on commerce from the jet ban to be a direct burden since it prohibited interstate travel in jets. The Court noted that the burden was not insubstantial. *Santa Monica Airport Association* at 945. The Court rejected the safety justification for the ordinance, finding "as to safety, the evidence is utterly convincing that modern, small, business or executive type jets of the type that would be able to fly out of this airport with the jet ban lifted, are at least as safe, if not much safer, than the types of piston-engine fixed wing aircraft which are now allowed to use the airport." *Santa Monica Airport Association* at 944.

In June 1981, before the Ninth circuit affirmed that the jet ban was unlawful, the Santa Monica City Council enacted Resolution No. 6296, which would have closed SMO. That action resulted in yet another lawsuit against the City by airport associations, joined this time by the FAA. The litigation concluded with a

<sup>3</sup> The actual length of SMO's runway is 4,987 feet. (FAA Exhibit 1, Item 27.)

<sup>4</sup> In 1966, the Airport had weight bearing capacities of 80,000 lbs single-wheel loading, 120,000 lb. dual wheel and 220,000 dual tandem wheel loading. The very strong pavement is the result of the runway reconstruction conducted by the Federal Government after World War II in order to accommodate large four-engine transport category transport aircraft weighing over 150,000 lbs. (FAA Exhibit 1, Item 5B.)

<sup>5</sup> A VOR is a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. It is a ground based navigational facility. A VOR-GPS approach is a non-precision instrument approach based on a VOR signal that also incorporates GPS of global positioning system signals for guidance.

<sup>6</sup> GCR & Associates, Inc. provides several aviation data sources, including FAA Form 5010 and airport-specific operations data.

settlement agreement memorialized on January 31, 1984 (the 1984 Agreement). (FAA Exhibit 1, Item 4, Exhibit 3.) The 1984 Agreement between the City and the FAA confirms the terms and conditions under which the City would continue to operate and maintain the Airport as a viable functioning facility without derogation of its role as a general aviation reliever airport until at least July 1, 2015. The 1984 Agreement specifically provides:

- the “Airport is to be open and available to and for public use as an airport on fair and reasonable terms, without unjust discrimination, and without granting any exclusive rights prohibited by law.” (Exhibit 1, Item 4, Exhibit 3, pg 2-3.)
- “pursuant to the Federal Aviation Act of 1958, as amended, exclusive authority is vested in the FAA for the regulation of all aspects of air safety, the management and control of the safe and efficient use of the navigable airspace, and movement of aircraft through that airspace.” (*Id.* at 3).

The 1984 Agreement also states that the “Airport will be capable of accommodating most kinds of general aviation aircraft, generally consistent with Group II Design Standards...”<sup>7</sup> (*Id.*, page 9.) Section 9 requires the City to maintain “continuously” the one designated runway (3/21) “which is 5,000 feet long and 150 feet wide.” (*Id.*, page 9.) The Airport Layout Plan (ALP) depicting the Airport’s existing runway and taxiway configuration was incorporated by reference into the 1984 Agreement “and shall guide the development of the Airport for the duration of this Agreement.” (*Id.* at 6.) Finally, the 1984 Agreement highlights SMO’s important role in the regional and national system of air transportation and air commerce. SMO serves a “vital and critical role in its functions as a general aviation reliever for the primary airports in the area ... by diverting aircraft away from the air carrier airports and other heavily used airports located in the Greater Los Angeles Area.” (*Id.* at 3-4.)

### **C. Chronology of Part 16 Proceeding**

On July 22, 2002, the Santa Monica Airport Commission voted to recommend that the Santa Monica City Council implement, by ordinance, an Aircraft Conformance Program (ACP) at SMO. The ACP would restrict aircraft operations at SMO to aircraft that meet the standards for an airport with an Airport Reference Code (ARC)<sup>8</sup> designation of B-II. Essentially, the ACP would prohibit Category C and D aircraft from operating at the Airport.

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<sup>7</sup> The Airport Reference Code (ARC) designations, including the B-II designation at issue, are a coding system used to relate airport design criteria to the operational and physical characteristics of the categories of aircraft for which the airport was designed. We note, however, that this provision in the 1984 Agreement would not permit the City of Santa Monica to prohibit the use of the airport by other aircraft that can safely operate at SMO. As discussed more fully below, Design Standards are not intended to be used to limit operations of an airport, and may not be used for that purpose.

<sup>8</sup> The ARC is a FAA coding system used to relate airport design criteria to the operational and physical characteristics of the aircraft types for which the airport was designed. FAA Advisory Circular No. 150/5300-13, “Airport Design” (September 29, 1989), chapter 1, p.4. 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. (FAA Exhibit 1, Item 40, p. 38.) The first component, depicted by the letters A-E, is the aircraft approach category and relates to aircraft approach speed. A Category A aircraft has an approach speed of less than 91 knots, a Category B aircraft has an approach speed of 91 knots but less than 121 knots, while a Category C aircraft has an approach speed of 121 knots or more, but less than 141 knots. A Category D aircraft has an approach speed of more than 141 knots but less than 166 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. (*Id.*, p. 1.) The ARC can be based on a composite aircraft if the fastest approach category aircraft is different from the largest design group aircraft.

On October 1, 2002, FAA representatives from the Air Traffic, Flight Standards, and Airports Divisions and the Regional Council for Western Pacific Region met with Santa Monica to discuss the proposed ACP. FAA cautioned the Santa Monica representatives that the proposal was not consistent with the City's Federal obligations and Federal law. FAA commented that safety determinations involving flight of aircraft are the responsibility of the FAA and the agency did not consider it inherently unsafe for an aircraft of a faster approach category or larger design group to use an airport designed to accommodate a lesser category or design group aircraft. (FAA Exhibit 1, Item 37.)

Additionally, Air Traffic and Flight Standards representatives reiterated that design standard limitations do not translate into operational limitations, and that FAA develops separate instrument approaches to permit safe aircraft operations. Finally, the FAA told Santa Monica that the agency expects the City to comply with the requirement under Section 9 of the 1984 Agreement to maintain the existing runway length and width. The FAA also advised the City that any action taken that conflicted with its Federal obligations would be of concern to the FAA. (FAA Exhibit 1, Item 37.)

On October 8, 2002, the FAA issued the Notice of Investigation (NOI) under Part 16 initiating the investigation concerning the legality of the Santa Monica Airport Commission recommendation that the City Council adopt an ACP that would restrict aircraft operations at SMO up to Category B-II aircraft, and thus exclude Category C and D aircraft. (FAA Exhibit 1, Item 1.) The City responded to the NOI on November 8, 2002. (FAA Exhibit 1, Item 2, p.1.) The City opposed the NOI but expressed some willingness to work with the FAA to achieve a voluntary and safe resolution. (FAA Exhibit 1, Item 4, p. 4-5.)

On December 10, 2002, the City Council received the Airport Commission's recommendation to approve the ACP and a report on the pending administrative proceeding. Following a public hearing, the City Council approved the ACP concept of implementing 300 foot runway safety areas (RSAs) at either end of the runway, a 300 foot relocated threshold from the departure end of the runway, and a ban on C and D aircraft. The City Council did not adopt the ACP as an ordinance but directed City staff to continue to meet with the FAA in an attempt to promptly resolve the matter. This was conveyed to the FAA in writing on December 23, 2002. (FAA Exhibit 1 Item 7LL.)

Between 2002 and 2008, there were several meetings and discussions between SMO officials and the FAA that addressed new proposals and counterproposals as alternatives to the ACP. The City's proposals included displaced thresholds<sup>9</sup> of several hundred feet, declared distances<sup>10</sup> and large engineered material arresting system (EMAS) installations,<sup>11</sup> all of which would have a significant impact on the utility of the Airport. FAA's proposals included EMAS, but sized appropriately to minimize the operational impact on airport operations and maintain the Airport's utility. (FAA Exhibit 1, Item 7B.)

In December 2006, the FAA hosted a presentation by the City to users of the Airport concerning the City's latest proposal for the Airport, which included a 250-foot EMAS unit at the end of Runway 3/21 and a 600-foot declared distance applied off the length of Runway 3/21, for a total loss of approximately 800 feet of

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<sup>9</sup> A displaced threshold is a threshold located at a point on the runway other than the designated beginning of the runway. Displacement of a threshold reduces the length of runway available for landings. The portion of runway behind a displaced threshold is available for takeoffs in either direction and landings from the opposite direction. (FAA 150/5200-13, *Airport Design*.)

<sup>10</sup> Declared distances are the distances the airport owner (with FAA concurrence) declares available for the airplane's takeoff run, takeoff distance, accelerate-stop distance, and landing distance requirements. (FAA 150/5200-13, *Airport Design*.)

<sup>11</sup> The current available EMAS is a bed of highly crushable concrete blocks that are installed at the ends of the runway. When an aircraft leaves the runway traveling at speed, the landing gear will crush the EMAS bed and the aircraft will come to a quick and safe stop. AC 150/5220-22A, *EMAS for Aircraft Overruns*.

runway.<sup>12</sup> Between December 2006 and March 2007, the FAA and City gathered user comments. The City also provided the FAA with public comments. (FAA Exhibit 1, Items 19A and 19B.)

On July 31, 2007, the FAA proposed the installation of one EMAS at each end of the runway. (FAA Exhibit 1, Item 7I-1.) On August 28, 2007, the FAA participated in a public hearing on SMO in Santa Monica. At the meeting, the FAA reiterated that its proposal provided an actual, physical stopping effect on overrunning aircraft that would directly benefit both persons on the aircraft and the areas off the ends of the runway. The FAA explained that the proposal, composed of two 130 foot EMAS beds with 25 foot lead-in ramps on each end of the runway, would significantly enhance safety at SMO while maintaining the utility of the Airport. (FAA Exhibit 1, Item 7E.) The City rejected the FAA's proposal as inadequate. (FAA Exhibit 1, Item 4, p. 6-7.)

On November 27, 2007, the new Ordinance was read (first reading) at the City Council meeting. The Ordinance would have the same effect as the Aircraft Conformance Program (ACP) proposed by the City in 2002, with respect to banning Category C and D aircraft from using the Airport. (FAA Exhibit 1, Item 4, Trimborn Declaration, p. 46-47.) The 2002 ACP had two major components: (1) the creation of runway safety areas at both ends of the runway; and (2) an Ordinance conforming Airport usage to the Airport Reference Code of B-II, banning C & D category aircraft. The 2008 Ordinance only proposed to ban C and D aircraft but argued that FAA's proposals were inadequate because the City asserted they fail to provide runway safety areas that meet FAA published design standards. (FAA Exhibit 1, Item 2, Trimborn Declaration, p. 24, Item 4, Trimborn Declaration, p. 46 and Item 8.)

On March 7, 2008, the FAA presented an integrated safety enhancement proposal which included modifications to its earlier EMAS proposal, a pilot runway safety awareness and education program and a Runway Protection Zone (RPZ) proposal. (FAA Exhibit 1, Item 7B.) The modified EMAS installation would be a 70-knot capable unit to be installed on the departure end of runway 21, on the west side of the Airport. This was based upon a risk assessment conducted using guidance prepared by the Airport Cooperative Research Program (ACRP) designed to improve aircraft arresting system. (FAA Exhibit 1, Item 23.) Complementing the EMAS element, is the FAA's pilot awareness and education program, which was designed to prevent accidents, while the RPZ proposal is the most effective way to enhance safety by removing residences within the runway protection zones of the Airport. (FAA Exhibit 1, Item 7B.)

On March 25, 2008, the FAA Associate Administrator for Airports gave testimony urging the City council to consider the agency's proposal. The proposal, he pointed out, would enhance safety at SMO while maintaining the utility of the Airport. The City again rejected the FAA's proposal stating that it again did not meet "FAA's own standards." (FAA Exhibit 1, Item 4, p. 6-7.) The City adopted the new Ordinance banning Category C and D aircraft from SMO effective within 30 days, that is on April 24, 2008. (*Id.*)

The Ordinance adds section 10.04.06.220 to the Municipal Code prohibiting Category C or D aircraft from landing or departing SMO except in a bona fide emergency. Violations of the Ordinance are punished as misdemeanors by a \$1,000 fine or six months imprisonment, or both. The stated purpose of the 2008 Ordinance is to protect the safety of persons living adjacent to the Airport and flying in aircraft using the Airport. (FAA Exhibit 1, Item 8.) The Ordinance claims to comport with agreements between the City and the FAA "recognizing the City's obligation to serve category A and B aircraft at the Airport." It further claims to be consistent with the 1984 Settlement Agreement and 1991 ALP assigning an ARC designation of B-II to the Airport and, obligating the City to operate it accordingly. The Ordinance also claims that it is

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<sup>12</sup> Such a reduction in runway would effectively prohibit operations by C and D Category aircraft.

enforcing Federal Runway Safety Area (RSA) Standards under FAA Advisory Circular 150-/5300-13 (Airport Design).

According to the City's executive summary to the Ordinance, the ban on Category C and D aircraft would affect 7% of 130,000 annual operations or 9,000 operations. (FAA Exhibit 1, Item 8.) These banned aircraft types constitute approximately 64% of the jet types that currently operate at SMO. The displaced operations could, according to the City, either downsize to Category A and B aircraft or use the five other airports in the region: Long Beach, Van Nuys, Burbank, Torrance, and LAX. (FAA Exhibit 1, Item 8.) All of the Category C and D aircraft that would be banned by the Ordinance at SMO are modern Stage 3 aircraft as defined under the Airport Noise and Capacity Act of 1990, (ANCA), 49 U.S.C. § 47524(c).

According to the City, the Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA §15301 because the proposed Ordinance modifies the operation of the Airport, an existing facility, in a manner that does not expand its use, and under the common sense exemption §15061(b)(3) because it will have no effect on the environment. The City concluded that it was too speculative to determine exactly where aircraft displaced from SMO would go.<sup>13</sup> (FAA Exhibit 1, Item 8.)

On March 26, 2008, the FAA issued an order requiring the City to show cause why the FAA should not supplement the existing Part 16 investigation with the facts pertaining to the Ordinance and expedite said investigation and issuance of the initial determination, pursuant to 14 CFR § 16.11. (FAA Exhibit 1, Item 3.)

On April 1, 2008, the FAA issued an order denying without prejudice the City's request for an extension of time to file its response to the Order to Show Cause and with an opportunity to renew its request if the renewal was based upon an agreement to suspend enforcement of the Ordinance while the FAA investigation remained pending. (FAA Exhibit 1, Item 10.) The Order explained that the requested 20 day extension would extend the response date to one day after the Ordinance banning the 9,000 annual jet aircraft operations went into effect. (*Id.*) The City refuses to suspend enforcement of the Ordinance pending the completion of the FAA's investigation.

On April 7, 2008, the City filed its response (2008 Reply) to the FAA's Order to Show Cause. (FAA Exhibit 1, Item 4.)

By letter dated April 21, 2008, and delivered by e-mail, facsimile, and express mail to the City and its counsel, the FAA requested that, by close of business Tuesday April 22, 2008, the City withdraw its April 14, 2008 letter to the aeronautical users of SMO advising them of the ban, and assure the FAA and those users in writing that the City would refrain from enforcing the ban on Category C and D aircraft operations pending the outcome of the Part 16 administrative proceeding. (FAA Exhibit 1, Item 79.) The FAA advised the City that if it did not withdraw its letter and refrain from enforcing the Ordinance, FAA would issue a cease and desist order and take legal action if the City refused to comply with that order.

On April 22, 2008, the City responded, and refused to withdraw the April 14, 2008 letter to the aeronautical users, and again stated the City's intention to enforce the Ordinance effective April 24, 2008. (FAA Exhibit 1, Item 81.)

On April 23, 2008, the FAA issued an interim cease and desist order requiring the City to cease and desist immediately from enforcing the Ordinance until a final agency decision is issued by the FAA under 14 CFR Part 16. The Order afforded the City ten days to respond. Also on April 24, 2008, the FAA served a

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<sup>13</sup> FAA notes that the Los Angeles Area may suffer an environmental impact as a result of SMO's actions.

complaint and application for temporary restraining order (TRO) on the City seeking to enforce its cease and desist order. (FAA Exhibit 1, Item 91.) On April 23, 2008, the City Attorney advised the Department of Justice that the City would accede to the Department of Justice's request and would not enforce the Ordinance until a TRO hearing was held.

On April 28, 2008, the United States District Court for the Central District of California, granted the FAA's request for a TRO enforcing the cease and desist order.

On May 5, 2008, the City responded to the cease and desist order within the 10 day period provided for a response. In its response, the City again objected to the cease and desist order and demanded that the FAA withdraw the order by May 9, 2008. The City averred it would file a petition for review in an appropriate court of appeals challenging the cease and desist order if it was not withdrawn by May 9, 2008. (FAA Exhibit 1, Item 92.)

After considering the City's May 5, 2008 response to the FAA's interim cease and desist order, the FAA issued its Supplemental Interim Cease and Desist Order on May 12, 2008. (FAA Exhibit 1, Item 100.)

The FAA also filed its Reply Memorandum on May 12, 2008 in support of its application for a Preliminary Injunction in order to ensure that the City complies with the agency's cease and desist orders. (FAA Exhibit 1, Item 96.) The City filed its response to the Preliminary Injunction application on May 6, 2008. (FAA Exhibit 1, Item 97.)

On May 15, 2008, the United States District Court for the Central District of California, granted the FAA's request for a preliminary injunction (PI) enforcing the cease and desist order pending completion of the Part 16 proceeding. (FAA Exhibit 1, Item 98.) As a result, the City's Ordinance has yet to be enforced.

On May 22, 2008, the City filed a Notice of Appeal from the court's order granting the motion for Preliminary Injunction. (FAA Exhibit 1, Item 119.)

On or about May 22, 2008, the City filed a Petition for Review challenging the FAA's cease and desist orders. (FAA Exhibit 1, Item 120.)

#### **D. Safety and Overrun Accident History at SMO**

The safety and overrun accident history at SMO does not substantiate the need for any ban of category C & d aircraft at SMO. According to National Transportation Safety Board (NTSB) data from 1981 to 2008, there were 8 accidents, two of which resulted in fatalities.<sup>14</sup> These accidents included 7 overruns and 1

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<sup>14</sup>The NTSB database provides records going back to 1964, which are incorporated in the record as FAA Exhibit 1, Item 82. These early accidents are not included in the statistics reported here because detailed information is absent.

undershoot,<sup>15</sup> 7 or which involved single-engine aircraft and 1 of which involved a multi-engine aircraft. Seven of these accidents, including the undershoot, were on runway 21. The location of one accident could not be determined from the NTSB data. All accidents involved aircraft that were small piston propeller driven A-I or B-I aircraft, none of which would be prohibited under the Ordinance.

Specifically, Piper PA-28s single-engine piston aircraft had accidents in May 1981 and December 2004, a Mooney M-20 had an accident in July 1995, a Cessna 177RG in December 1993, two Cessna 182s in January 1982 and September 1992, and a twin-engine Cessna 340A in November 2001 (2 fatalities).<sup>16</sup> The most recent overrun, early in 2008, was by an experimental Jabiru J400 single-engine aircraft. The record includes a detailed review of all SMO accident data since 1964 and details about the Jabiru J400 accident. (FAA Exhibit 1, Items 18 and 82.)

A review of the Aviation Safety Reporting System (ASRS)<sup>17</sup> data base, beginning in 1988 and ending in 2006, yielded a total of 223 reports concerning SMO. A detailed review of all of these ASRS reports indicates that none identified the runway length or runway safety areas at SMO as an issue. (FAA Exhibit 1, Item 17.) (The incidents all involved small (6,000 lb. and under) propeller driven aircraft, not banned by the Ordinance.)

## E. Jet Safety

### Propeller Driven Aircraft Have Higher Accident Rates Than Jets

The City's ban would affect all C and D Category jet aircraft and few if any propeller driven aircraft operating at SMO. NTSB data shown in the table below, establishes that, in fact, jets have a better safety record than all propeller driven types. Jets, as an aircraft type, have an accident rate 8 times lower than single-engine propeller aircraft, 5.75 times lower than twin-engine piston and 4.6 times lower than twin-engine turboprops.<sup>18</sup>

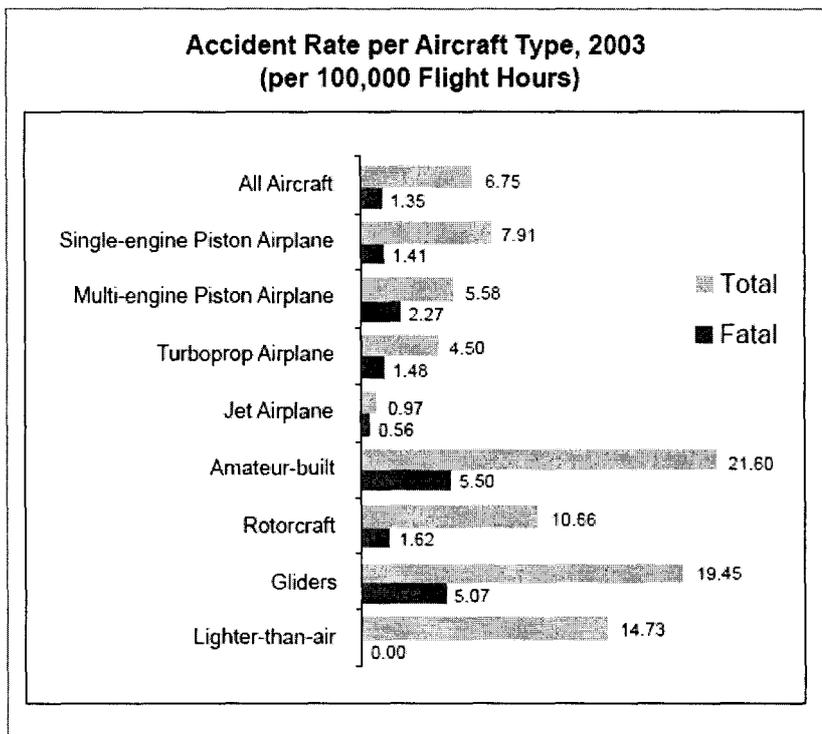
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<sup>15</sup> A runway overrun occurs when an aircraft rolls out, resulting from a landing or a rejected take off, extends beyond the end of the runway. An undershoot is an event where an aircraft touches down prior to the runway threshold. See AC No: 150/5220-22A AC No: 150/5220-22A. Also, see FAA Advisory Circular AC No. 91-79 *Runway Overrun Prevention*.

<sup>16</sup> <http://www.nts.gov>.

<sup>17</sup> The ASRS, a joint effort by the FAA and NASA, collects aviation safety incident/situation reports from pilots, controllers, and others and identifies deficiencies and discrepancies in the National Aviation System (NAS) so that the appropriate authorities can remedy them. <http://asrs.arc.nasa.gov>

<sup>18</sup> <http://www.nts.gov/publicitn>



Source: NTSB, <http://www.nts.gov/publicatn/2007/ARG0701.pdf>

### III. ISSUES UNDER INVESTIGATION

The issues under investigation in this case are:

- Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is consistent with the Federal obligation 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 – Grant Assurance 22.
- Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is consistent with the Federal obligation prohibiting the granting of an exclusive right at the airport to conduct any aeronautical activities –Grant Assurance 23.
- Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is consistent with the Surplus Property Act of 1944.
- Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is consistent with the terms of the 1984 Agreement.
- Whether the implementation of the City’s Ordinance prohibiting Category C and D aircraft is preempted under Federal law.<sup>19</sup>

<sup>19</sup> Any arguments not specifically addressed herein, have been considered, and found to be without merit.

## IV. APPLICABLE LAW AND POLICY

### A. FAA Legal Authority Over Air Safety

The FAA's role in regulating aviation and aviation safety is extensive and essentially plenary in terms of the agency's statutory, regulatory and policy responsibilities. FAA's safety responsibility includes regulation of the safety of aircraft take offs and landings.<sup>20</sup> Indeed, as noted in section II B above, the City has acknowledged the preeminent role of the FAA to determine safety matters in the context of SMO in the 1984 Settlement Agreement.

Pursuant to 49 U.S.C. § 40103, the United States has sovereignty over navigable airspace, which includes that needed for takeoff and landing aircraft. The principal aviation responsibilities assigned to the FAA under the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101 et seq., concern promoting the safety of air commerce.

The basic national policies intended to guide FAA actions under the Federal Aviation Act are set forth at 49 U.S.C. § 40101(d), which provides public interest standards. These include: (1) Assigning, maintaining, and enhancing safety as the highest priorities in air commerce; (2) Regulating air commerce in a way that best promotes safety and fulfills national defense requirements; (3) Encouraging and developing civil aeronautics, including new aviation technology; (4) Controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations; (5) Consolidating research and development for air navigation facilities and the installation and operation of those facilities; and (6) Developing and operating a common system of air traffic control and navigation for military and civil aircraft.

To achieve these statutory purposes, 49 U.S.C. §§ 40103(b), 44502, and 44721 provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace, air traffic control, and air navigation facilities. The FAA has exercised this authority by promulgating wide-ranging and comprehensive Federal regulations on the use of navigable airspace and air traffic control. See 14 CFR Parts 71, 73, 75, 91, 93, 95, and 97. Similarly, the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under Title VI of the Federal Aviation Act, section 601 et seq., 49 U.S.C. §§ 44701, et seq. by extensive Federal regulatory action. See 14 CFR Parts 21-43, 61-67, 91, 121 through 149.

Title 49 of the United States Code assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety and, among other things, the promotion, encouragement, and development of civil aeronautics. 49 U.S.C. §§ 40101(c), (d), 40104.<sup>21</sup> Under these broad powers, the FAA seeks to achieve safety and efficiency of the total airspace system through direct regulation of airman, aircraft, and airspace. 49 U.S.C. §§ 40103, 44702-44705.

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<sup>20</sup> See Section A of the Applicable Law Section in this determination.

<sup>21</sup> In addition, the FAA shall make long-range plans and policy for the orderly development and use of the navigable airspace and air navigation facilities that will best meet the needs and serve the interests of civil aeronautics and national defense. (49 U.S.C. § 44501(a).) Moreover, the FAA Administrator prescribes air traffic regulations on the flight of aircraft for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects. (49 U.S.C. § 40103(b)(2).)

The FAA achieves a target level of safety by employing a layered, integrated approach that includes standards for the certification and oversight of airmen (pilots and mechanics), aircraft, training providers, and maintenance centers. (See 14 CFR Part 61, Part 25, Part 141/142, and Part 145.)

The vast majority of existing turbojet airplanes, including those that operate at SMO, were certified in accordance with 14 CFR Part 25, *Airworthiness Standards: Transport Category Airplanes*. The certification standard applies to airplanes ranging from business jets to large airliners and includes requirements to determine the minimum safe distances required for an airplane to take off and land under all possible conditions, airplane weights, and configurations within the operating envelope defined for the airplane.

For takeoff, the current Part 25 certification rules require that an airplane be able to safely continue or reject a takeoff if an engine fails at the most critical point in the takeoff. For both takeoff and landing, the probability of the failure of any system needed to show compliance with the certification requirements must be inversely related to the severity of the failure. Failures that could result in a catastrophic outcome must be extremely improbable. (FAA Exhibit 1, Item 85.)

The rules under which the airplane is operated (i.e., Parts 91, 121, 125, 135) relate the minimum safe takeoff and landing distances determined under Part 25 to the specific operation and airport for each takeoff. The combination of the airplane certification rules and the operating rules provide the requirements and parameters under which takeoff and landing operations can be safely conducted. (FAA Exhibit 1, Items 47 and 85.)

## **B. The Airport Improvement Program and the Airport Sponsor Assurances**

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 (AAIA), as amended. Section 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 obligation between the airport sponsor and the Federal Government. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.<sup>22</sup> FAA Order 5190.6A, *Airport Compliance Requirements* (1989) (Order 5190.6A or Airport Compliance Handbook), provides the policies and procedures to be followed by the FAA in carrying out its legislatively-mandated functions related to Federally-obligated airport owners' compliance with their sponsor assurances.<sup>23</sup>

The City is obligated to provide reasonable access to SMO for all aeronautical users as a condition to the City's acceptance of Federal grants under the Airport Improvement Program, (AIP), authorized by the Airport and Airway Improvement Act of 1982, (AAIA), as amended, 49 U.S.C. § 47101, *et seq.*

FAA records indicate that the planning and development of SMO has been financed, in part, with funds provided by the FAA. Between 1985 and 1994, the Airport has received a total of \$9.7 million in Federal airport development assistance. (FAA Exhibit 1, Item 41.)

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<sup>22</sup> See, e.g., 49 U.S.C. §§ 40101, 40103(e), 40113, 40114, 46101, 46104, 46105, 46106, 46110, 47104, 47105(d), 47106(d), 47106(e), 47107, 47108, 47111(d), 47122.

<sup>23</sup> Except for the grant assurance regarding exclusive rights (which runs in perpetuity) the federal grant assurances remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development program project or compatibility program project. This period does not exceed twenty (20) years from the date of the acceptance of federal funds for the project. See Federal Grant Assurances B.

In 2003 the City requested, and the FAA approved a grant amendment for \$240,000, increasing its AIP grant total to \$10.2 million.<sup>24</sup> (FAA Exhibit 1, Item 6.) This was the last AIP-funded project at SMO to date. As a result, SMO is obligated under its AIP grant assurances until at least 2023.

### **C. Enforcement of Airport Sponsor Grant Assurances**

Various laws actions augment the Federal role in developing civil aviation, including programs providing funds and other assistance to local communities for the development of airport facilities. In each 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, 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 reasonable access to the airport. Pursuant to 49 U.S.C. §§ 47107 and 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances. Federal Regulation 14 CFR Part 16 *FAA Rules of Practice for Federally-Assisted Airport Enforcement Proceedings* was published in the Federal Register (61 FR 53998, October 16, 1996) and implemented on December 16, 1996 as the rules of practice in such compliance actions.

Pursuant to 49 U.S.C § 40113(a) FAA is authorized to issue orders to carry out Part A of Subtitle VII of 49 U.S.C., including section 40103(e) prohibiting the granting of exclusive rights. That section provides explicit authority for the Administrator of the FAA to “take action the . . . Administrator . . . considers necessary to carry out this part . . .” including the authority for “issuing orders.” The FAA does have the authority to issue cease and desist orders pursuant to the general authority of 49 U.S.C. §§ 40113 and 47122 coupled with that provided under 14 C.F.R. 16.11, 16.31(d) and 16.109(a).

### **D. The FAA Airport Compliance Program**

The FAA ensures that airport owners comply with their Federal grant obligations through the FAA’s Airport Compliance Program. The program is based on the obligations that 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; it monitors the administration of the valuable rights pledged by airport sponsors to the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served.

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<sup>24</sup> On June 29, 1994, the City accepted a grant offer with a maximum Federal obligation of \$1,604,700 to repair taxiways and aprons, pave infield areas, and construct blast walls, fencing, gates, a perimeter road alignment, lighting and signing, and an aircraft run-up enclosure. The specific grant was identified as AIP 3-06-0239-06. This grant agreement AIP 3-06-0239-06 was amended at the request of the City in November 1999 in *Amendment No. 1 to Grant Agreement for Project No. 3-06-0239-06*. The grant agreement was amended a second time as *Amendment No. 2 to Grant Agreement for Project No. 3-06-0239-06*, in August 27, 2003 to address an increase in funding of \$240,000. (FAA Exhibit 1, Item 6.) The FAA offered and the City accepted an additional \$240,000 in AIP grant funds.

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. The FAA may also take into consideration any action or program the sponsor has taken or implemented, or proposed action or program the sponsor intends to take, which in FAA's judgment is adequate to reasonably carry out the obligations under the grant assurances.

#### **E. Public Use of the Airport – Grant Assurance 22**

The owner of any airport developed with Federal grant 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 activity on reasonable terms, and without unjust discrimination. Grant Assurance 22, *Economic Nondiscrimination*, in the prescribed sponsor assurances implements the provisions of 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 reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport” (Assurance 22(h)); and

“[t]he sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.” (Assurance 22(i).)

FAA Order 5190.6A describes in detail these responsibilities assumed by the owners of public-use airports developed with Federal assistance as well as the applicable limitations.<sup>25</sup> The Order provides the FAA is the ultimate decision maker concerning whether a restriction that an airport sponsor proposes to impose on the ground of safety is justified. Section 4-8 specifically states that “in all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions which denied or restricted use of the airport.”

#### **F. The Prohibition Against Exclusive Rights – Grant Assurance 23**

In Title 49 U.S.C. § 40103(e), Congress re-codified and adopted substantially unchanged the exclusive rights prohibition prescribed in Section 303 of the Civil Aeronautics Act of 1938 and in Section 308(a) of the Federal Aviation Act of 1958, as amended. The statute prohibits exclusive rights at certain facilities and states, in pertinent part, that “[a] person does not have an exclusive right to use an air navigation facility on which Government money has been expended.”

49 U.S.C. § 47107(a)(4) similarly provides, in pertinent part, that “a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport.” Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances requires, in pertinent part, that the sponsor of a Federally obligated airport:

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<sup>25</sup> See Order, Sec. 4-13(a).

“will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.... It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities....”

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.<sup>26</sup>

Therefore, it is FAA’s policy that the sponsor of a Federally obligated airport will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public, and will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities. FAA Order 5190.6A clarifies the applicability, extent, and duration of the prohibition against exclusive rights under 49 U.S.C. § 40103(e) with regard to airports developed with FAA-administered grant assistance and Federal property conveyances.

The exclusive rights prohibition remains in effect as long as the airport is operated as an airport. FAA takes the position that the grant of an exclusive right for the conduct of any aeronautical activity on such airports is regarded as contrary to the requirements of the applicable laws, whether such exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means.

### **G. Surplus Property Obligations and Regulation 16**

Obligations of airport sponsors to allow all aircraft operators to utilize their airports without unjust discrimination and on reasonable terms are also imposed pursuant to the surplus property instruments of disposal issued under the Surplus Property Act of 1944 (SPA),<sup>27</sup> presently codified at 49 U.S.C. § 47151, et seq. The SPA authorizes conveyance of property surplus to meet the needs of the Federal Government. The FAA (successor to the Civil Aeronautics Administration (CAA)) recommends which property should be transferred to public agencies for airport purposes. Before the FAA assumed responsibility for conveyances for airport purposes, the General Services Administration (GSA) had jurisdiction over the disposition of all government property declared to be surplus to the needs of the Federal Government and issued deeds, instruments of transfer and other conveyance documents for that purpose. Prior to the establishment of the GSA in 1949, instruments of disposal were issued by the War Assets Administration (WAA).<sup>28</sup>

Property duly declared surplus was assigned to the WAA for disposal, acting pursuant to the provisions of the SPA, as amended, as implemented by Regulation 16 (which is discussed in detail below) and agency orders.<sup>29</sup> 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 and improvements to public agencies for airport purposes is administered today by the FAA, in conjunction with the U.S. Department of Defense (DOD) and the GSA pursuant to 49 U.S.C. § 47151 et seq.

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<sup>26</sup> See FAA Advisory Circular 5190-6 *Exclusive Rights At Federally Obligated Airports*, January 4, 2007.

<sup>27</sup> Surplus Property Act of 1944, 58 Stat. 765, 770. Section 13 (g) of the Surplus Property Act of 1944 (49 U.S.C. §47151), which is continued in effect by section 602(a) of the Federal Property and Administrative Services Act of 1949 and amended by Public Law 311, 81st Congress (50 U.S.C. App. 1622(a)-(c)).

<sup>28</sup> FAA Order 5190.6A, Section 1-5(a).

<sup>29</sup> For example, see 1948 conveyance at FAA Exhibit 1, Item 15A, and SPA Regulation 16 at Exhibit 1, Item 16.

Surplus airport property instruments of disposal 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.<sup>30</sup> Accordingly, such covenants continue in full force and effect until released under Public Law 81-311<sup>31</sup> or other applicable Federal law. Pursuant to 49 U.S.C. § 47151, the FAA has the statutory authority to ensure that airport owners comply with their Federal obligations contained in surplus property deeds and instruments of conveyance.

Under each surplus property conveyance the airport sponsor assumes certain obligations, reservations and conditions. These usually occur in the property deeds and conveyance instruments in the form of restrictive covenants to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions.

Standard surplus instruments of conveyance required that the acceptance of the instrument, or any rights thereunder, by the airport receiving the property, for itself, its successors and assigns, assumes the obligations of, covenants to abide by and agrees that the property will remain subject to specific reservations and restrictions set forth in the document which run with the land.

The conditions contained in deeds and other instruments of conveyance executed between the Federal Government and airport sponsors under the Surplus Property Act at issue in this case are as follows:

• **Restriction 1**

"the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, *on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right*<sup>32</sup> for use of the airport..."

• **Restriction 2**

" the entire landing area, as defined in Regulation 16..., and all structure, improvements, facilities and equipment in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable condition...."

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<sup>30</sup> Surplus property interests disposed of by the Federal Government included airports and were in the form of (1) leasehold interests, (2) fee simple ownership, (3) combined fee simple and leasehold interests and (4) airfields improvements. In the 1944 SPA, "property" is defined as "any interest in property, real or personal owned by the United States." This included leases, and included the lease between the U.S. Government and the City of Santa Monica for the use of SMO. The SPA allowed (1) all personal property, (2) all landing facilities and (3) non landing facilities, which are owned, leased, or otherwise controlled by the United States to be declared surplus and disposed of by the WAA in the manner and under the terms and conditions prescribed in the Act and in accordance to such regulations as the WAA may prescribe to effectuate they provisions of the Act. Concurrent CAA policy concerning surplus property disposals of airfields specifically required the CAA to report on potential uses of surplus property for airport purposes and describe the portions of the land, owned or leased, which, in the opinion of the CAA should be classified as airport property. In addition, any deed, bill of sale, lease, or other instrument executed by or on behalf of a government agency purporting to transfer title or any other interest in property under the Act was "conclusive evidence of compliance with the provisions of the Act."

<sup>31</sup> 50 App. U.S.C.A. § 1622(g) (1949) (originally enacted as Surplus Property Act of 1944, ch. 479, § 13, 58 Stat. 765, 770.) See 49 U.S.C. § 47151 and 49 CFR Part 155.

<sup>32</sup> Today, 49 U.S.C. § 47152 (2) contains the reasonableness and unjust discrimination requirements contained in the original Surplus Property Act and set forth in the 1948 *Instrument of Transfer*.

• **Restriction 3**

"no exclusive right for use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the terms "*exclusive right*" being defined to mean.... (FAA Exhibit 1, Item 15A.)

The terms set forth in the Instrument of Transfer to maintain the airport for public use and benefit, without unjust discrimination and prohibiting the grant of an exclusive rights are statutory. The additional terms were deemed necessary to protect or advance the interests of the United States in civil aviation or for national defense.

In addition, certain terms imposed pursuant to requirements of Regulation 16 Part 8316-*Surplus Airport Property*-WAA also apply here. Conveyances made under Regulation 16 incorporate terms authorizing the reversion of property interests in cases where obligations are not performed. The right to revert property is at the option of the FAA. Typical reversion language (and as contained in the 1948 *Instrument of Transfer*) states that "upon a breach of any of the aforesaid reservations or restrictions ... the title, right of possession and all other rights transferred to the (City), or any portion thereof, shall at the option of the (Federal Government) revert to the (Federal Government) upon demand made in writing...." (FAA Exhibit 1, Item 15A.)

Under Regulation 16, all four types of government property interests, namely (1) leasehold interests, (2) fee simple ownership, (3) combined fee simple and leasehold interests and (4) airfields improvements were covered under the 1944 Surplus Property Act and related regulations. SPA Regulation 16 (Regulation 16) was adopted by the WAA on November 16, 1945 and amended, June 26, 1946 and in effect at the time of the SMO surplus classification and disposal. (FAA Exhibit 1, Item 16.) Regulation 16, section 8316.5, specifically states that declarations of surplus property include leasehold interest and that those interests not cancelled shall be filed with the WAA.<sup>33</sup> Regulation 16, Section 8316.9, *Disposal of Leasehold Interests and Improvements by Owning Agencies* specifically discusses the process by which the government could dispose of leasehold interests under the Act.

Regulation 16 section 8316.1 defines airport property as the entire interest owned by the Government in any airport. Airport means any area of land or water and the *improvements* thereon. In instances where an airport consisted of property a portion of which is owned by the Government and the balance of which is property under lease to the Government, the lease was not cancelled, but the leasehold interest as well as the Government-owned property was declared surplus in accordance with Regulation 16 section 8316.9(d).

The FAA has 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 Surplus Property Act of 1944 (SPA).<sup>34</sup> Accordingly, such covenants continue in full force and effect until released.

All of these SPA conditions are fully applicable at SMO.

In 1941 the Federal Government leased the Airport from the City to provide protection for Douglas Aircraft - then a growing defense contractor during World War II.<sup>35</sup> The Federal Government also participated in the

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<sup>33</sup> This is the applicable regulation at issue here. (FAA Exhibit 1, Item 16.)

<sup>34</sup> 41 CFR § 102-75.425

<sup>35</sup> SMO is not a unique airport with regards to the use of leases. Leases were very common. Several hundred airports in the

expansion of the facility. Between 1941 and 1942, a significant amount of Civil Aeronautics Administration (CAA) Development of Land Areas for National Defense (DLAND) funding (defense related civilian CAA funds/grants) was used to improve the Airport. With Federal assistance, the Airport was extensively reconstructed in 1942 to accommodate the wartime needs. (FAA Exhibit 1, Item 80A/F.)

The Federal Government's improvements included the acquisition of additional land through a condemnation proceeding on behalf of the City; construction of hangars, a \$30 million manufacturing plant, and construction and improvement of the runways. Additional improvements to the Airport by the Federal government followed during the War and immediately thereafter. For example, the main concrete Northeast-Southwest runway (at the time there were two runways at Santa Monica) was constructed by the Works Progress Administration (WPA) and the CAA paid in part for the work with government funds. (See Leases at FAA Exhibit 1, Item 4, Exhibit 25 and Exhibit 26.)

On May 7, 1946, the Army granted the City of Santa Monica a revocable Interim Permit for the operation of the Airport, effectively returning some operational control of the Airport back to the City pending its disposition as surplus property. (FAA Exhibit 1, Item 60 and 80A/E.) This followed requests by the City for such a permit in December, 1945. (FAA Exhibit 1, Item 80A/A and A/B.) On July 29, 1946, the War Assets Administration (WAA) issued Form SPB-5 *Declaration of Surplus Real Property* concerning the Santa Monica Airport and declaring as surplus, all leased land and improvements at the Airport. (FAA Exhibit 1, Item 80A/F.) On September 19, 1946, the City requested that the WAA grant the City the opportunity to acquire the government's surplus property interest at the Airport. Specifically, in asking that the facility be disposed of as an airport, the City stated that it would accept the associated conditions under the SPA Regulation 16. The City also understood that the government could not terminate the leases until the government surpluses its interest. (FAA Exhibit 1, Item 80A/G.) The WAA Director of the Airports Division responded on September 25, 1946 and said that the City's "desires as outlined in (their) letter will be given every consideration consistent with the Surplus Property Act." (FAA Exhibit 1, Item 80A/I.)

On October 14, 1946, the final CAA airport disposal report concerning Santa Monica Airport (also known as "Clover Field" at that time) was sent to the WAA. (FAA Exhibit 1, Items 60 and 80A/J.) On January 9, 1947, the government made the determination that its 168 acre leasehold interest at the Airport, along with improvements valued at \$1.12 million and its landing facilities, including two runways, taxiways, aprons, should be disposed of under SPA Regulation 16 subject to the applicable restrictions.<sup>36</sup> (FAA Exhibit 1, Item 80A/M.) As a result, in August 1947, the government published a public disposal notice for the Santa Monica Airport in the local newspaper. (FAA Exhibit 1, Item 80A/N.) By April 1948, the WAA had agreed to transfer the Airport to the City under the SPA.<sup>37</sup> (FAA Exhibit 1, Item 80A/P.)

The WAA, on behalf of the Federal Government, and upon the recommendations and approval of the CAA, transferred the Airport land and improvements to the City of Santa Monica for use as a public civilian airport.

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US have surplus property deed and instrument of transfer restrictions similar to SMO's. About 168 acres out of 227 at SMO were subject to a leasehold interest (FAA Exhibit 1, Items 15A, 60, 80A/D.)

<sup>36</sup> All of the property, including real, personal and mixed property, constituting SMO was duly declared surplus and was assigned to the WAA for disposal, acting pursuant to the SPA, as amended, and applicable regulations (including Regulation 16) and orders.

<sup>37</sup> The government's leasehold interests, approximately 168 acres, consisted of leases executed in 1941 and subsequently amended, one for 85.87 acres and the other for 83 acres. The government's interest in fee simple land was for 21 acres quit claimed back to the City. (FAA Exhibit 1, Items 15A, 15B, 4, Exhibits 25, 26 and 27, Items 57 and 80A/Q and 80B/H.) Information in the record indicates that in 1944, the City reimbursed the Federal Government for several parcels of property used for the expansion of the Airport and that in 1945, the City acquired approximately 39 acres from the Federal Government for inclusion into the Airport. (FAA Exhibit 1, Item 39, p. 9.)

In completing this transfer, the Federal Government executed an “Instrument of Transfer” dated August 10, 1948” (1948 *Instrument of Transfer*, FAA Exhibit 1, Items 15A and 80A/Q) in which the Federal Government relinquished to the City several easements, and its leasehold interest in the Airport along with airfield improvements, including the entire landing area, the Airport’s concrete 5,000-foot runway and taxiway system. The 1948 *Instrument of Transfer* remised, released and forever quitclaimed the subject premises to the City subject to reservations, restrictions and conditions specified in the document. The conditions which run with the land (and do not expire) required that the property be used for public airport purposes for the use and benefit of the public and without grant or exercise of an exclusive right. *Id.* The 1948 Instrument of Transfer was duly executed by the United States of America acting through the WAA and attested to by the Santa Monica City Manager and the City Clerk on or about August 10, 1948.

A second surplus property transfer was executed on April 9, 1949 (1949 *Quit Claim Deed*) and transferred approximately 18-21 acres of government owned property under the applicable Surplus Property Act process and regulations, but did not include the standard restrictions at the request of the City.<sup>38</sup> (FAA Exhibit 1, Items 15B and 80B/H.)

Prior to its transfer of the Airport back to the City, the Federal Government completed the relocation and expansion of the runway and taxiway system to a condition that resembles its current configuration.<sup>39</sup> This was done in 1947 when the main runway was moved approximately 1,000 ft south from its original location, replacing the previous two-runway configuration with a single east-west runway, runway 03-21<sup>40</sup>. As part of the Airport expansion projects between 1944 and 1947, the Federal Government condemned property on the West side of the airport, over 130 lots and totaling about 21 acres. (See also FAA Exhibit 1, Items 30, 57, 65, and 80B/H.) Part of this government-owned land was conveyed to the City in the 1949 *Quit Claim Deed* mentioned above.

When the Santa Monica Airport was finally returned to civilian control, the United States government had effectively conveyed to the City under the SPA a larger much improved airport, consisting of the original government leasehold interests as well as additional land and improvements constructed at Government expense. As a result of these expansions and improvements, by 1949, SMO’s 5,000-foot runway met air carrier standards. (See FAA Exhibit 1, Item 29, p. 65.)

On the tenth of August in 1948, the City confirmed its acceptance of the 1948 *Instrument of Transfer*, including the restrictions stated above, by passing Resolution No. 183, *Resolution of the City of Santa Monica Accepting An Instrument of Transfer From the United States of America*. (FAA Exhibit 1, Item 4, Exhibit 31.) The 1948 *Instrument of Transfer* is a Surplus Property Act, Regulation 16 conveyance, which includes restrictive covenants, and incorporates a reversion clause at the option of the Federal Government, giving title, and right of possession. Specifically, it states:

“that in the event that any of the aforesaid terms, conditions, reservations or restrictions is not met, observed, or complied with by the Party of the Second Part (City) or any subsequent transferee, whether caused by the legal inability of said party of the Second Part or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the Party of the Second part, or any portion thereof, shall at the

<sup>38</sup> Premises conveyed via this deed were obtained in a condemnation proceeding brought by the Federal Government and paid with funds from the City. City requested that no restrictions attach to this conveyance. This is distinguishable from the 1948 transfer where the City accepted the premises with the SPA restrictions and without any request for a special conveyance.

<sup>39</sup> [http://santa-monica.org/airport/n\\_airport\\_h.aspx](http://santa-monica.org/airport/n_airport_h.aspx)

<sup>40</sup> [http://www.smc.edu/schedules/archives/profiles/2006/061/coverstories\\_061.htm](http://www.smc.edu/schedules/archives/profiles/2006/061/coverstories_061.htm)

option of the Party of the First Part (Government) revert to the Party of the First part sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administration or his successor in function...". (FAA Exhibit 1, Item 15A.)

During the period from 1952-1956, several parcels of land were released from the Federal obligations contained in the 1948 *Instrument of Transfer*, e.g. Lot A, George Tract, released on April 25, 1952 and other parcels released from the aeronautical use requirements over time.<sup>41</sup> (FAA Exhibit 1, Items 36 and 90.)

In 1962, the Santa Monica City Attorney notified the City Council that he had concluded in a written opinion that the City could not unilaterally, on the motion of the City Council, legally abandon the use of the Airport as an airport. (FAA Exhibit 1, Item 13.)

In 1975, the California Attorney General opined that the City could not at the present time cease using the Airport for airport purposes. The Attorney General noted that the City agreed that property transferred was to be used for public airport purposes for the use and benefit of the public; the U.S. has the right to make non-exclusive use of the landing area; and that no property could be used, leased, sold, salvaged or disposed of by the City for other than airport purposes without the written consent of the Federal Government. (FAA Exhibit 1, Item 48.)

As stated above, under the August 10, 1948 *Instrument of Transfer*, executed under the provisions of the SPA of 1944, the City assumed certain obligations, reservations and conditions. Upon acceptance of surplus property conveyance by the City, including land and improvements to the airport, the obligations in the instrument of disposal became a binding obligation between the City and the Federal Government.<sup>42</sup> (FAA Exhibit 1, Items 15A and 80A/Q.) On October 2, 1948, the Chief of the General Services Branch wrote in an Office Memorandum to the Real Property Files regarding the transfer of SMO (Clover Field) that the "consideration involved in the transfer was the assumption by the transferee (the City) of the usual conditions, restrictions and reservations in connection with the transfer of property as prescribed by the WAA regulations and procedures." The City stated that it would comply with these very regulations in its letter requesting the transfer. (FAA Exhibit 1, Item 80A/G and A/T.)

## **H Airport Reference Code (ARC), Runway Safety Area (RSA) and Runway Protection Zone (RPZ)**

### **1. Airport Reference Code (ARC)**

FAA guidance and policies on airport design standards are based, in part, on a coding system known as the Airport Reference Code (ARC). This coding system relates airport design criteria to operational and physical characteristics of aircraft (AC 150/5300-13, *Airport Design*, Change 12, Paragraph 4, *Airport Reference Code (ARC)*). The ARC is derived from identification of the "critical aircraft" and is used to support decisions for airport planning and design, and for Federal funding of airport capital development. FAA Order 5100.38C, *Airport Improvement Program Handbook*, Paragraph 428, *FAA Approval Actions*, subparagraph (a), states "[M]ore than one critical aircraft may control the design of any specific airport's different facility features, such as runway length, strength of paved areas or lateral separations in airfield layout. A critical design

<sup>41</sup>On March 5, 1956, the CAA granted permission to abandon Runway No. 1 and released the City from the terms, covenants, conditions, reservations, and restrictions set forth in *Instrument of Transfer* dated August 10, 1948 with respect to Runway No. 1. (FAA Exhibit 1, Item 50, FAA Exhibit 1, Item 90D.)

<sup>42</sup>In FAA Docket No. 16-03-11, *Bombardier Aerospace Corp., and Dassault Falcon Jet Corp. v. the City of Santa Monica*, the FAA reconfirmed that "SMO is also obligated under the powers and authority contained in the provisions of the Surplus Property Act (SPA) of 1944 as amended, 49 U.S.C. §§ 47151-153. This Part 16 Director's Determination became a final agency decision because it was not challenged by the City or the complainants.

aircraft is that airplane using (or is highly likely to use) the airport on a regular basis. A regular basis is at least 500 annual itinerant operations.”

This airplane classification relies on approach speed – the *Aircraft Approach Category*, classified as category A, B, C, D and E. Aircraft Approach Category is a grouping of aircraft based on 1.3 times their stall speed in their landing configuration ( $V_{so}$ ) at their maximum certificated landing weight (MLW). (AC 150/5300-13, *Airport Design*, Change 12, Paragraph 2, *Definitions*.)

AC 150/5300-13 defines the specific aircraft approach categories as follows:

- Category A: Speed less than 91 knots (e.g. single-engine piston PA-28)
- Category B: Speed 91 knots or more but less than 121 knots (e.g. twin-engine turboprop King Air)
- Category C: Speed 121 knots or more but less than 141 knots (e.g. Learjet 31 corporate jet)
- Category D: Speed 141 knots or more but less than 166 knots (e.g. Gulfstream GIV corporate jet)
- Category E: Speed 166 knots or more (e.g. military trainer Northrop T-38)<sup>43</sup>

FAA Exhibit 1, Item 83 provides a sample visual representation of aircraft and their respective categories. In addition to approach category, the other variable in the *Critical Design Aircraft* is Airplane Design Group, classified as I, II, III, IV, V and VI, as shown in the table below:

**Table 1-1. Airplane Design Groups (ADG)**

Group #	Tail Height (ft)	Wingspan (ft)
I	<20	<49
II	20 - <30	49 - <79
III	30 - <45	79 - <118
IV	45 - <60	118 - <171
V	60 - <66	171 - <214
VI	66 - <80	214 - <262

While the design ARC is used in airport planning, design, and funding, it is never used to control aircraft operations. The Advisory Circular expressly provides “these standards and recommendations...do not limit or regulate the operations of aircraft” - AC 150/5300-13, *Airport Design*, Change 12, Paragraph 1, and that the standards and recommendations in this publication complement, but are not intended to take precedence over, aircraft operating rules and procedures.

The overlap between planning, design and operations exists because aircraft-specific runway length requirements are a function of aircraft physical characteristics at time of flight, weather conditions, runway conditions and many other performance variables, and are determined on case-by-case basis and rely upon FAA-Approved Airplane Flight Manual (AFM) performance data.<sup>44</sup> The FAA, in designing, approving and ultimately funding runways, has already incorporated aircraft performance and operational needs as a variable.

There is a significant level of flexibility in upgrading airports from one design standard to another. Noteworthy is that in many cases, only a few changes are needed to go from one standard to another. The

<sup>43</sup> 91 knots is approximately 105 mph.

<sup>44</sup>See e.g., FAA AC 150/5325-4, *Runway Length Requirements for Airport Design*.

implication is that there is no underlying safety of operation issue automatically raised by operations of higher category aircraft at an airport originally designed for a lower category or design group. See, e.g., the *Increases in Airport Design Standards* table in FAA Exhibit, Item 84.

The FAA's publication of approach minima (sometimes referred to as "minimums") for airports, including SMO, already contains a safety determination by FAA. FAA Order 8260.3B, Change No. 19, *United States Standard for Terminal Instrument Procedures (TERPS)*, FAA Order 8260.19D, *Flight Procedures and Airspace*,<sup>45</sup> contains criteria used to formulate, review, approve, and publish procedures for instrument approach and departure of aircraft to and from civil and military airports in the United States. These criteria are for application at any location over which an appropriate United States agency exercises jurisdiction.

Concerning take off and landing minimums, *TERPS* provides that minimums should be published for each approach category that can be accommodated at each airport. The airport landing surfaces must accommodate aircraft that can be reasonably expected to use the instrument procedure. Appropriate runway markings, hold position markings, and signs, shall be established and in place; and certain runway design standards must be met.<sup>46</sup> However, where the airport landing surface is not adequate in meeting certain approach design criteria other restrictions exist which prohibit certain categories of aircraft from making an instrument approach at an airport.

No Federally obligated airport in the U.S. restricts operations on the basis of airport reference code.

## 2. Runway Safety Areas (RSAs)

Runway Safety Areas (RSAs) enhance safety in the event of an undershoot, overrun, or excursion from the side of the runway. Federally funded airports like SMO are required to establish standard runway safety areas, to the extent practicable, when improving their runways. (See FAA Order No. 5200.8, Runway Safety Area Program (Order 5200.8).)<sup>47</sup> The RSA standard is part of FAA's airport design standards. The FAA requires certificated airports and federally funded airports building new and rehabilitating existing runways to meet FAA standards, including the RSA standard. However, design standards for airport RSAs are independent of safety requirements for aircraft operations. No FAA aircraft operating rule requires a standard RSA. (FAA Advisory Circular (AC) 150/5300-13, *Airport Design*.)

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<sup>45</sup>This order provides guidance for FAA personnel in the administration of the Flight Procedures and Airspace Program. It defines responsibilities, establishes criteria, and provides standards to ensure effective and orderly processing of all types of procedures actions. The FAA Flight Technologies and Procedures Division, AFS-400, is responsible for the rulemaking process of the Flight Procedures Program, which includes development, application, and oversight of the National Flight Procedures Program and development of criteria pertinent to designing instrument flight procedures.

<sup>46</sup>FAA Order 8260.3B, Change No. 19, *United States Standard for Terminal Instrument Procedures (TERPS)*, Par 122, and AC 150/5340-1, *Marking of Paved Areas on Airports* and Appendix 16 of Advisory Circular 150/5300-13, *Airport Design* Change 12.

<sup>47</sup> Pursuant to FAA Order 5200.8, "the objective of the Runway Safety Area Program is that all RSAs at federally obligated airports and all RSAs at airports certificated under 14 Code of Federal regulations (CFR) part 139 shall conform to the standards contained in AC 150/5300-13 *Airport Design*, to the extent practicable." (emphasis added). This policy guidance for FAA employees is consistent with requirements for federally funded airports to comply with applicable FAA advisory circulars, including the AC for Airport Design, when proposing airport development projects. In addition, all airports certificated by the FAA for commercial service under 49 U.S.C. § 44706, as implemented by 14 CFR Part 139, are required to establish standard runway safety areas, to the extent practicable, by 2015. (Title 49 U.S.C §44706 note II (2005).) We agree with the City that federally funded airports as well as commercial service airports are required to establish standard runway safety areas, but for slightly different reasons than, and not to the extent, claimed by the City.

There is no basis in Federal law for Federally funded airports to restrict access based upon runways that do not meet Federal airport design standards for runway safety areas.

FAA Advisory Circular (AC) 150/5300-13, *Airport Design Change 12*, Paragraph 305, *Runway Safety Area (RSA)*, prescribes RSA design standards. This document sets forth the basic design standards for all airports in the U.S. that are certificated for commercial service under 14 CFR Part 139, *Certification of Airports* (Part 139) and for all airports that are subject to assurances from AIP grant funding. The standard dimensions of the RSA depend upon the aircraft and the approach procedure visibility minimums associated with the runway. Except under special conditions, the RSA standard dimensions for runways used by aircraft with approach speeds of 121 knots or more (approach category C) are 500 feet wide, 600 feet prior to the threshold, and 1,000 feet beyond the end of the runway. (AC 150/5300-13, *Airport Design, Change 12*, Table 3-3.)

Not all runways meet RSA standards, even at commercial airports. Under an FAA program to expedite RSA improvements at commercial airports using targeted grant funding, the number of runways at airports with an RSA complying with 100% of the FAA standard has increased from 30% in 2000 to 54% in 2006.<sup>48</sup> However, this does not mean that the other 46% are unsafe, or that operations by a higher category aircraft requiring larger RSA dimensions are prohibited. As runways are built or rehabilitated, the FAA and the airport sponsors work to improve the runway's RSA to meet FAA design standards, to the extent practicable, as discussed in more detail below. Also, these figures apply only to commercial airports certificated under 14 CFR Part 139, i.e., airports with scheduled and large aircraft charter airline service.

The FAA has determined that a blanket application of the RSA standards to all existing runways is neither realistic nor reasonable.<sup>49</sup> Although runway safety area standards cannot be modified like other dimensional standards contained in AC 150/5300-13, the FAA makes practicability determinations of the best alternative for improving any RSA that does not meet standards. (FAA Order 5200.8, *Runway Safety Area Program*.) Order 5200.8 contains procedures for making RSA practicability determinations. This order also encourages alternative improvements, when full RSA standards are not possible.

The phrase, “[t]o the extent practicable” as used in the FAA Order 5200.8 requires the weighing of various relevant factors, such as technical difficulty, benefit/cost, ownership or control of land, and effect on airport operations. (FAA Exhibit 1, Item 88, p. 5.) Thus, “to the extent practicable” includes not only engineering feasibility and cost, but also the effect on operations at the airport.

Order 5200.8 identifies acceptable alternatives to constructing or expanding the RSA (such as the installation of an Engineered Materials Arresting System (EMAS)), reconfiguration of the runway, or the use of declared distances. However, consistent with FAA Order 5200.8 guidance in general, the FAA must ensure that in applying RSA standards as requirements, it is not eliminating the aircraft operations that routinely are accommodated by the airport. For example, Order 5200.8, Appendix 2, states that a reduction in runway length to meet RSA standards may be considered only when the existing runway length exceeds that which is required for the existing or projected design aircraft.<sup>50</sup>

To date, consistent with its policy, the FAA has not required an airport sponsor to physically reduce the length of a runway or effectively shorten a runway through the use of declared distances to meet runway safety area standards if there is an operational impact to the airport even at commercial airports subject to 14 CFR Part

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<sup>48</sup>Runway Safety Areas Improvements in the United States, June 20, 2007. See website <http://www.icao.int>

<sup>49</sup> Part 139, Paragraph 139.309, *Runway Safety Areas*, FAA Order 5200.8, *Runway Safety Area Program*, and FAA Order 5200.9, *Financial Feasibility and Equivalency of Runway Safety Area Improvements and Engineered Material Arresting Systems*.

<sup>50</sup>It is not FAA's policy to require an owner or operator to reduce runway length or use declared distances if it would limit aircraft operations at the airport. In these instances, installing EMAS is a way of enhancing safety. (AC 150/5220-22A.)

139.<sup>51</sup> “Safety area upgrading methods... should be tailored to each airport, *without degrading the safety and efficiency of aircraft operation.*” (FAA Exhibit 1, Item 25.)

Busy commercial airports such as LaGuardia, Reagan National, and San Diego all have nonstandard RSAs, while others, like Boston, and Chicago Midway, have EMAS with a performance below 70 knots. (FAA Exhibit 1, Item 74.)

EMAS may provide safety enhancements at airports like SMO where a standard RSA is not possible.<sup>52</sup> As explained above the FAA has recommended installation of a 70-knot capable EMAS unit to be installed on the departure end of runway 3/21, on the West side of the Santa Monica Municipal Airport.

The existence of an RSA is not, in any event, an operating requirement for safe operations. Although the FAA will work with airport sponsors to enhance RSA safety in balance with the utility of the airport, at non Part 139 airports such as SMO. There is no regulatory requirement to meet RSA standards, nor is it required for any operation under FAA aircraft operating rules. (See 14 CFR Parts 91, 121, 125, 135, FAA Order 5200.8, *Runway Safety Area Program*, and FAA Order 5200.9, *Financial Feasibility and Equivalency of Runway Safety Area Improvements and Engineered Material Arresting Systems.*) Thus, the City cannot base its ban on Category C and D aircraft on the absence of RSAs at SMO.

### 3. Runway Protection Zone (RPZ)

In response to concerns articulated by the City the FAA has addressed Runway Protection Zone’s (RPZ) at SMO. The RPZ’s function is to enhance the protection of persons and property on the ground. It is achieved through the airport owner’s control over RPZs. Such control often includes clearing RPZ areas (and maintaining them clear) of incompatible objects and activities. Control is preferably exercised through the acquisition of sufficient property interest in the RPZ. (AC 150/5300-13, *Airport Design*, Change 12, Paragraph 212, *Runway Protection Zone (RPZ).*)

The RPZ is trapezoidal in shape and centered about the extended runway centerline. The central portion and controlled activity area are the two components of the RPZ. *Id.* The RPZ dimensions for a particular runway are based on the type of aircraft and approach visibility minimum associated with the end of that runway. There are land use criteria for the RPZ. For example, land uses that should not be in the RPZ are residences and places of public assembly such as schools, hospitals, office buildings, shopping centers, and other uses with similar concentrations of persons typify places of public assembly. (AC 150/5200.8, *Runway Safety*

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<sup>51</sup>For example, in the case of the Memphis International Airport (MEM), Memphis, Tennessee, the FAA determined that “the existing RSA does not meet standards contained in AC 150/5300-13 but can be improved to enhance safety.” The *Runway Safety Area Determination* for Memphis states the existing RSA does not meet the standards contained in the AC 150/5300-13, but can be improved to enhance safety, but the RSA will still not meet current standards. The Memphis ADO concluded that all reasonable alternatives considered by Memphis such as full application of declared distances, shortening the runway, and relocating an existing major street were deemed impractical and/or would adversely impact operations at Memphis. (See *RSA Determination*, dated September 25, 2000.)

<sup>52</sup>FAA Order 5100.9, *Financial Feasibility and Equivalency of Runway Safety Area Improvements and Engineered Material Arresting Systems*, was issued in 2004 to provide additional guidance for making practicability determinations. This order establishes a maximum feasible RSA improvement cost above which improvements may not be practicable. It also encourages the use of EMAS as an acceptable and desirable alternative when the full RSA is not practicable. In fact, it establishes EMAS as an equivalent alternative to a standard RSA in terms of safety enhancement. It also requires a life cycle cost comparison with any alternative that results in a standard-sized RSA. The maximum feasible cost under Order 5100.9 is based on the cost of adding EMAS beds on either end of an existing, sub-standard RSA. Change 8 to AC 150/5300-13 allows the use of EMAS as an alternative way to meet RSA standards.

*Area Program* and AC 150/5300-13, *Airport Design*, Change 12, Paragraph 212, *Runway Protection Zone (RPZ)*.)

As with the RSA, the existence of a non-standard RPZ, i.e. an RPZ that is not clear of incompatible land uses, does not mean that safe aircraft operations cannot take place from the runway and airport in question. Safe operation of aircraft requires the availability of a suitable runway, protected airspace around the runway, and protection of approach and departure airspace for visual and instrument approaches and departures. For example, FAA allows operations at airports such as LaGuardia, and many other airports where the RPZ are not completely clear of incompatible land uses. In addition, the RPZ is not mentioned in any Flight Standards operational rules (see 14 CFR Parts 91, 121, 125, 135). Although the FAA will work with airport sponsors to enhance RPZ safety in balance with the utility of the airport, there is no operational regulatory requirement to meet RPZ standards.

## V. ANALYSIS AND DISCUSSION

### A Preliminary Matters Raised by Santa Monica

#### 1. Jurisdiction

Contrary to the City's argument in its Reply to the Order to Show Cause, the FAA did not expressly or implicitly waive future enforcement jurisdiction to enforce the exclusive rights prohibition, the grant assurances or the Surplus Property Act by entering into a settlement agreement in 1984 to settle then existing litigation with the City. The 1984 Agreement does not contain any such waiver of statutory jurisdiction by the FAA, nor could it. The FAA may not by agreement waive its statutory enforcement jurisdiction over future cases.

The FAA has express jurisdiction under 49 U.S.C §§ 40113(a), 46101(a) and 47122 to conduct investigations and issue orders pertaining to the issues in this case: prohibition on granting exclusive rights, 49 U.S.C. § 40103(e); violations of the grant assurances, 49 U.S.C. §47107; and violations of the Surplus Property Act, 49 U.S.C. § 47151 et seq. These statutes form the basis for jurisdiction under 14 CFR Part 16 for investigating and deciding this case. (See e.g., 14 CFR §§16.1(a)(1),(5),(8).)

The FAA is the Federal agency assigned responsibility by Congress for enforcing the statutory safety and AIP grant obligations referenced in the 1984 Agreement. The FAA did not and could not abdicate that responsibility by signing an agreement with Santa Monica that settled existing litigation.

The City's argument that the 1984 Agreement is a contract that can only be enforced in federal court is mistaken. The City agreed to make the 1984 Agreement a special grant condition in a subsequent 1985 grant agreement. (FAA Exhibit 1, Item 4, Exhibit 3 and Item 6.) As such the City agreed that the 1984 Agreement was also enforceable as a grant condition by the FAA.

In any event, FAA Part 16 actions, like the present case, may address the 1984 Agreement because the Agreement incorporates and restates several of the City's Federal grant and SPA obligations. Therefore, if the FAA were to find on the record that the City violated assurance 22 requiring SMO to permit access on reasonable terms and not engage in unjust discrimination, then that same evidence would also establish a violation of the corresponding section in the 1984 Agreement by the City (section 2(a)(i) of the 1984 Agreement). In this regard, the FAA is not "interpreting the agreement" as the City claims, rather it is making

a supplementary finding pertaining to the violation of the City's Federal obligations as restated in the Agreement.

In addition, the FAA does not need the Agreement to enforce grant assurances 22 or 23 because FAA has independent jurisdiction to enforce these assurances based on 49 U.S.C. §§ 40103(e) and 47107(a) and the applicable grant agreements between the City and the FAA that contain the assurances. The City entered into several grant agreements after the 1984 Agreement in which the City renewed the assurances at issue herein. The City could not have entered into the subsequent grant agreements in which it gave new grant assurances as part of its valuable consideration to the United States for the grant funds that the City accepted, if, as the City appears to argue, the earlier 1984 Agreement somehow was the exclusive contract evidencing the assurances.

The provision in the 1984 Agreement that the City will operate the Airport until 2015 clearly does not imply, as the City seems to argue, that the parties agreed to waive the City's existing Federal statutory obligations through 2015 and be subject only to the 1984 Agreement. Just as the FAA cannot agree to waive its statutory enforcement jurisdiction, the agency cannot, and did not, agree to a waiver by a Federally obligated airport of its statutory obligations under the grant assurances or the SPA. Indeed, the argument is particularly frivolous given that the 1984 Agreement resulted from the City's attempts then to ignore its Federal obligations, and embodies the City's undertaking that this would, in fact not happen again.

The City also argues that preemption lies outside FAA Part 16 jurisdiction and may only be adjudicated in court.<sup>53</sup> However the City's Ordinance regulating as airport proprietor the safety of pilots, passengers and others, raises the issue of whether the City has exceeded its limited authority as an airport proprietor and whether it has legislated in an area that is preempted by Federal law. See Section F on Preemption Law below. Indeed, the City raises as a defense that as an airport proprietor the City has a legal responsibility to keep the airport safe. (FAA Exhibit 1, Item, 2). The issue of preemption and proprietary authority is inherent in Assurance 22, which is within Part 16 jurisdiction. (See 14 CFR § 16 (a) (5).) Assurance 22(a) prohibits denial of reasonable access to aeronautical users while 22(i) provides for limited proprietary rights, which represent an exception to Federal preemption.

## 2. Burden of Proof

It is true that the burden of proof of noncompliance with "an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act is on the agency." (See 14 CFR § 16.229(a).) The City, however, has the burden of proof with respect to establishing its affirmative defenses.<sup>54</sup> (See 14 CFR § 16.229(c).) For example, assuming, without conceding, that the City's ordinance is not federally preempted on its face as a matter of law<sup>55</sup>, the City has the burden of proof to establish that the 2008

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<sup>53</sup> The City relies on *Millard Refrigerated Services, Inc. v Omaha Airport Authority*, FAA Docket No. 13-93-19 as support for this contention. The language cited by the City is dicta. *Millard* actually refutes the City's contention because after noting the jurisdictional issue, the decision addressed the federal preemption issue on the merits. (See *Millard* at pg. 23 and FAA Exhibit 1, Item 4, pgs 11-12.)

<sup>54</sup> In determining what constitutes an affirmative defense, fairness and convenience are relevant considerations. *Wright & Miller, Federal Practice & Procedure: Civil 2d* § 1271. Thus, if all or most of the relevant information is within the control of the defending party, then fairness and convenience suggest that the matter should be considered an affirmative defense. *Id.*

<sup>55</sup> For example, an airport sponsor may institute Minimum Standards based on safety concerns. (FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, August 28, 2006, discusses FAA policy regarding the development and enforcement of airport minimum standards.) Grant Assurance 19 requires an airport sponsor to ensure the airport and all facilities necessary to serve aeronautical users are operated at all times, in a safe and

Ordinance is a reasonable regulation under its authority as an airport proprietor that does not impose unlawful or unreasonable burdens. The City also has the burden to establish that the ban is justified because operations of C and D Category Jets, which have operated from the airport for over 20 years, are now somehow unsafe at SMO. Nothing the City has offered justifies overruling the conclusion reached by the Ninth Circuit more than 21 years ago that the City's safety justification is insufficient to support a ban of jet aircraft operations.

The FAA, as permitted by 14 CFR § 16.101, initiated its own investigation concerning the action taken by the City, as the sponsor, proprietor, or operator of a Federally assisted airport, alleging the specified violations. Hence, the FAA is a party to the current proceeding and is required under 14 CFR §16.229(a) to carry the burden of proof of noncompliance. The FAA did so by pointing out that the City had no authority to promulgate the Ordinance and that in any event, a ban on Category C and D aircraft operations was not supported by the City's safety concerns. Having established noncompliance, the burden shifted to the City to demonstrate that the Ordinance was reasonable within its authority to issue and was reasonable in light of the City's expressed concerns. The City has every opportunity to provide the evidence on which it based its safety and public needs determination. Even if the City had shown that it had the authority to ban categories of aircraft at SMO, and it did not since such authority is federally preempted on its face as a matter of law, it still had not presented evidence showing that the Ordinance is reasonable and necessitated by safety. Thus, the City fails to meet its burden of proof.

### 3. Due Process

The City argues that it was denied due process because the FAA has prejudged the case as reflected by the Associate Administrator of Airports D. Kirk Shaffer's remarks on the matter, and because the Order to Show Cause added the City's Federal Surplus Property Act obligations as an issue to the investigation although not included in the 2002 NOI and only provided the City 10 days to respond. (FAA Exhibit 1, Item 4, p. 16.)

Prejudice on the part of a decision maker must be evident from the record and cannot be based on surmise or report. (*Cheney v U.S. District Court*, 541 U.S. 913 (2004).) (Where a decision maker has taken a public position on a policy issue related to the dispute, he will not be disqualified absent a showing that they cannot objectively judge the particular controversy.) (*Hortonville Joint School District v Hortonville Educ. Association*, 426 US 482, 493 (1976).) (That an official has a philosophy in tune with their appointed function is an asset not a defect.).

The City has not presented any evidence of bias, but merely provided allegations and surmise, in other words, speculation. However, in order to avoid even the appearance of alleged bias, the Associate Administrator, who under 14 CFR §§16.33 or 16.241(c) is authorized to make the final agency decision in a Part 16 case, has removed himself as the final decision maker in this case and delegated his authority as the final decision maker to an FAA executive outside the Office of Airports who is not subordinate to him. (FAA Exhibit 1, Item 117.)

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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. The airport sponsor may impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must be fair, equal, and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied. [ See FAA Order 5190.6A, Sec. 3-12]

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies access to a public-use airport. FAA's determination is generally limited to a judgment as to whether failure to meet the qualifications of the standard is a reasonable basis for such denial, unjustly discriminatory, or whether the standard results in an attempt to create an exclusive right. [See Order, Sec. 3-17(b).]

The City's contention that the FAA as a whole should be disqualified is ludicrous, especially in light of the City's Federal obligations. The FAA has and will continue to afford the City a fair hearing. The very act by the Associate Administrator of removal is consistent with the process presented by the City in *Cinderella v. FTC*, 425 F2d 583 (1970). The Associate Administrator's actions are consistent with a continued effort by the FAA to protect the City's due process rights. The review, preparation and issuance of this determination reflects a fair and balanced approach, in determining whether the City has conformed with its Federal obligations. The FAA has conducted its investigation consistent with its ordinary Part 16 process. The City was afforded due process protections and will continue to be afforded the same should it choose to request a hearing and or to appeal this determination seeking a final agency decision.

While the City asserts that the FAA is result driven and not supportive of the City's supposed safety efforts, the FAA throughout this process has carefully considered the implications of both safety as well as the utility of the Airport. The FAA supports and encourages safety measures that do not unreasonably curtail the very use of the Airport.

In *Rombough v. FAA*, 594 F2d 893, 900 (1979), the Court found that the FAA properly determined that it was not necessary to disqualify the Federal Air Surgeon from a hearing.<sup>56</sup> Citing *Cinderella*, the court acknowledged that courts have forced members of regulatory agencies to step down when they have exhibited prejudice or bias, but more importantly recognized "it is not improper for members of regulatory commissions to form views about law and policy on the basis of their prior adjudications of similar issues which may influence them in deciding later cases." The Associate Administrator has had significant experience in airport matters which would lead him to form views and policy regarding compliance with Federal obligations. Nonetheless, he has elected to remove himself as the final decision-maker in this matter.

The Order to Show Cause properly added an issue to be investigated concerning the City's SPA obligations and provided the City with an adequate opportunity to respond. The City was in fact able to respond concerning that issue and has not shown that its ability to do so meaningfully was prejudiced in any way. Pursuant to 14 CFR § 16.102 the FAA may issue a Notice of Investigation setting forth the agency's concerns and the reasons therefore. The Order to Show Cause did that with respect to the SPA obligations and then requested a response within 10 days instead of the usual 30 days, because the Ordinance itself was scheduled to take effect in 30 days. Ten days is the normal time period for responding to a motion under 14 CFR Part 16.

Nor was there anything prejudicial or unfair in the FAA's decision to expedite the Part 16 proceeding. As stated in the Order Denying Extension of Time (FAA Exhibit 1, Item 10), and elsewhere in this determination, Part 16 permits expedition of the process where the Director finds that circumstances require it. See 14 CFR § 16.11(b). The Order to Show Cause correctly found that the City's adoption of the Ordinance, effective within 30 days on April 24, 2008, warranted expedited processing. Furthermore, the City could have had the normal 30 day period to respond under the Notice of Investigation procedure of subsection 16.103 had it agreed to suspend enforcement of the Ordinance. (FAA Exhibit 1, Item 10.) It was the City that chose to expedite initiation of the ban where no emergency had been demonstrated, and after over 5 years of

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<sup>56</sup>The question at issue in this case pertained to the "Age 60 Rule." The petitioner alleged the proceeding was tainted by the participation of the Federal Air Surgeon. The petitioner asserted that the Air Surgeon should have been disqualified because of his bias and prejudgments on the question of exemptions from the Age 60 Rule. The Court found that the Federal Air Surgeon was not involved in the consideration of the petition, but that he had warned petitioners and others of the agency's position regarding such petitions. The Court concluded that the petitioner had not shown that the Federal Air Surgeon did not form his views in the course of performing his proper functions in connection with earlier controversies relating to the Age 60 Rule.

negotiations. It cannot complain that it has been denied due process when its actions banning aeronautical users from a Federally obligated airport resulted in the response time of which it complains.

As stated in the Order on Motion for Extension of Time:

“The shortened time period for the City’s response is a problem of the City’s own making. The City chose to adopt the Ordinance and make it effective in 30 days, on April 24<sup>th</sup>. The City’s request for a 20 day extension, if granted would make its response due one day after the ban goes into effect, thus ensuring that approximately 9000 Category C and D aircraft operations are banned from SMO. The Part 16 investigation has been pending subject to good faith efforts to resolve the matter between the City and the FAA. The City filed a response in 2002 to the Notice of Investigation and could have supplemented the record at anytime during the past five years. Under the circumstances, 10 days, the normal time period for responding to a motion under Part 16, is reasonable due to the April 24<sup>th</sup> effective date imposed by the City’s adoption of the Ordinance. The City has waited five years to adopt the Ordinance. It could have waited until the end of the administrative process to make it effective. Instead it chose to make it effective within 30 days even though there is no emergency warranting such precipitous action, and by April 14, 2008 had begun notifying users and that it intends to implement the Ordinance on April 24, 2008.” (FAA Exhibit 1, Item 10.)

Further, contrary to the City’s argument, the Part 16 NOI process has no set time limit for issuance of a director’s determination. The reference in 14 CFR § 16.31(a) to a 120 day deadline for issuing a director’s determination, itself refers to “120 days of the date the last pleading specified in 16.23 was due.” Section 16.23 only applies to Part 16 proceedings initiated by the complaint of a third-party and not to proceedings like this one initiated by the FAA pursuant to a Notice of Investigation. This makes sense since the NOI procedure permits the FAA to invite good faith efforts by the airport sponsor to resolve the matter informally. (See 14 CFR §§ 16.103, 16.105.) The City accepted the FAA’s invitation in the 2002 NOI to continue discussions regarding the ACP. The City Council expressly directed City officials to negotiate with the FAA after the Council decided not to adopt the proposed ACP in 2002. (FAA Exhibit 1, Item 7LL.) Certainly the City never complained that it was being denied due process by not receiving a determination during the 5 years that the FAA and the City were in discussions.

Although the City responded to the 2002 NOI allegation that the 2002 proposed Ordinance was preempted (FAA Exhibit 1, Item 2.), it is only when the preemption issue was restated in the Order to Show Cause, that the City argues that the preemption claim is so vague as to deny the City due process. The record shows that the FAA NOI and Order to Show Cause both advised that the City’s regulation of safety with respect to Category C and D aircraft operations could be preempted by the Federal Government’s sovereignty over airspace. (FAA Exhibit 1, Items 1 and 3.) The documents did not need to further specify a theory of preemption.

The City’s claim that it was denied due process because the Order to Show Cause stated that the issues “include but are not limited to” the issues listed for investigation, is also without merit. The phrase “includes but is not limited to” reflects the fact that additional issues may arise during the investigation other than those listed in the NOI or Order to Show Cause. Regardless, no additional issues have been included and all due process rights are afforded including appropriate rights to a hearing and an appeal.

There is also no violation of the Tenth Amendment, as alleged by the City in its Response to the Order to Show Cause. After a recitation of general Tenth Amendment case law, the City alleges that the FAA is in violation of that Amendment because it intends to coerce the City into using its municipal resources and into exercising its proprietary authority to maximize the convenience of aircraft operators at the expense of public

safety. But as discussed in this determination, it is in fact the City that has exceeded its limited airport proprietary rights and legislated in an area preempted by Federal law.

The City relies on *NY v. US*, 505 US 144 (1992), in support of its contention that FAA's action to invalidate the Ordinance would violate the 10<sup>th</sup> Amendment. However, in the City's attempts to categorize FAA's actions as coercive within its limited reading of *NY v. US*, it totally ignores a fundamental aspect of the case. As the Supreme Court noted, citing *South Dakota v. Dole*, 483 U.S. 203, 210 (1987), "Congress may attach conditions on the receipt of Federal funds." *NY*, supra at 145. The Tenth Amendment does not restrict the range of conditions Congress can impose on the receipt of Federal funds when the conditions bear some relationship to the purpose of the Federal spending. *Id.*<sup>57</sup>

The City willingly accepted Federal surplus property and grants, each with designated terms and conditions that directly relate to the Congressional purpose of airport development and aeronautical use. The City's Tenth Amendment argument ignores the City's Federal contractual obligations and is unpersuasive.

The City argues that this FAA action conflicts with the policy in 49 U.S.C. § 40101(d) that the FAA should promote the public interest by assigning the goals of maintaining and enhancing safety and security as the highest priorities in air commerce, and by regulating air commerce in a way that best promotes safety and fulfils national defense requirements. There is no such conflict here.

Here, the FAA has followed and implemented all of the policies in § 40101, which require the balancing of many different public interests. The City conveniently omits FAA's statutory mandates to enforce the grant assurances and SPA covenants at issue in this case. Aviation safety is an area wholly regulated by the Federal Government and not state and local governments, as this determination confirms.<sup>58</sup> Thus, the FAA is the agency with the authority to implement 49 U.S.C. § 40101 through its regulations and guidance, and as its interpretation of the statute is reasonable, it should receive deference. *Chevron USA, Inc. v. National Resources Defense Council*, 467 U.S. 837 (1984).

For the reasons discussed above, the Director finds that the City's objections based on Jurisdiction, Burden of Proof and Due Process in its response to the Order to Show Cause lack merit. The remaining objections in the City's response to the Order to Show Cause are addressed below.<sup>59</sup>

Finally, the City's 2008 Ordinance also presents issues of compliance with the ANCA, 49 U.S.C. § 47524. Section 47524(c) provides that an airport noise *or* access restriction that affects Stage 3 aircraft, may become

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<sup>57</sup>The Court did acknowledge that "decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns to compulsion.'" However, that is clearly not the case here and the City makes no showing or argument that it is.

<sup>58</sup>The declarations attached to the City's response to the Order to Show Cause of the SMO Director, a former NTSB Chairman, are not adequately supported by documented evidence, and are rebutted by evidence in this record, including FAA Exhibit 1, Items 47 and 85 attached hereto.

<sup>59</sup>In its response to the Order to Show Cause the City also contends that the FAA failed to take action on the City's September 8, 2004 proposal to amend its airport layout plan (ALP). Specifically, the City argues that the FAA "has taken no action on the proposed ALP and other materials submitted to them in September 2004." (FAA Exhibit 1, Item 4, p. 45.) The proposed ALP included displaced thresholds for both runway 3 and runway 21 in addition to use of declared distances, resulting in a loss of 600 feet in available runway length. Under 49 U.S.C. § 47107(a)(16) and grant Assurance 29, Airport Layout Plan, the City is obligated to maintain an updated ALP and to seek approval from the FAA to make or permit any changes or alterations in the Airport or any of its facilities. The FAA reviews and approves proposed changes to the ALP if they would not adversely affect the safety, efficiency, and utility of the airport. The FAA did not act upon the changes proposed by the City in September 2004, (FAA Exhibit 1, Item 7V.), because the FAA determined it would adversely affect the utility of the Airport.

effective only if agreed to by the airport proprietor and all aircraft operators or has been submitted and approved by the Secretary of Transportation. Restrictions covered by this paragraph include any restriction on Stage 3 aircraft. The ANCA statute also provides in part that unless the Secretary is satisfied that an airport is not imposing an airport or access restriction not in compliance with this subchapter, the airport may not receive grants or impose Passenger Facility Charges (PFCs). 49 U.S.C. § 47526. While the City's 2008 Ordinance presents issues of compliance with ANCA, ANCA has its own separate enforcement procedure and process.<sup>60</sup>

**B. Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft operations by the City of Santa Monica is consistent with the Federal obligation 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.**

As the owner of an airport developed with Federal grant assistance, SMO 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<sup>61</sup> of aeronautical activity on reasonable terms, and without unjust discrimination. Grant Assurance 22(a), *Economic Nondiscrimination*, implementing the provisions of 49 U.S.C. § 47107(a)(1) through (6).

The City's March 25, 2008 Ordinance declares that the Airport in its current state is unsafe for operations of C and D category aircraft. The progenitor of the City's 2008 Ordinance was the Aircraft Conformance Program (ACP) that the City proposed in 2002<sup>62</sup>. Both measures ban C and D Category aircraft as a purported safety measure. (FAA Exhibit 1, Item 2, p. 11.) The 2002 ACP is based on the City's Design Standards Study (Study).<sup>63</sup> The Study claims to show the ACP would keep the Airport safe by merely implementing existing "Federal safety guidelines." (FAA Exhibit 1, Item 2, p. 11.) There are no significant differences between the ACP and the 2008 Ordinance. The City contends "because the Federal standards and guidelines are themselves reasonable, their application to the indisputable factual realities of the Airport's surroundings, topography and layout cannot yield an unreasonable result."<sup>64</sup> Thus "the proposal (ACP) is a reasonable means of ensuring safety." "Any resulting limitations upon access should therefore be viewed as the

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<sup>60</sup> The C and D category aircraft affected by the City's ban are Stage 3 aircraft. The applicability of ANCA to the circumstances of the SMO ban will not be further addressed in these proceedings.

<sup>61</sup> FAA Order 5190.6A, Appendix 5. "Class" of aircraft is defined in 14 CFR Section 1.1:

Class:

(1) As used with respect to the certification, ratings, privileges, and limitations of airmen, means a classification of aircraft within a category having similar operating characteristics. Examples include single engine; multiengine; land; water; gyroplane; helicopter; airship; and free balloon; and

(2) As used with respect to the certification of aircraft, means a broad grouping of aircraft having similar characteristics of propulsion, flight, or landing. Examples include: airplane; rotorcraft; glider; balloon; landplane; and seaplane.

<sup>62</sup> As explained previously, this Part 16 investigation was initially triggered by the City's proposed Aircraft Conformance Program (ACP) in 2002, which forms the basis for the adopted 2008 Ordinance. (See, e.g. FAA Exhibit 1, Item 4, Trimborn, Declaration.)

<sup>63</sup> Coffman and Associates, an independent airport consulting firm, prepared the City's Design Standards Study in 2002. (FAA Exhibit 1, Items 2, p. 10, and Exhibit A, 4, p. 4, and 78.)

<sup>64</sup> "(T)he Airport is bordered, at both runway ends, by residential neighborhoods. There are no runway safety areas on the Airport at the runway ends. There are no buffer zones between the Airport and its neighbors' homes. Instead, the homes to the Airport's east and west are within 250 feet of the runway ends." (FAA Exhibit 1, Item 2, p. 8-9.) The Airport sits on a plateau. Immediately to the west of the Airport boundary, the plateau drops off about 10-30 feet. Directly below is a two-lane arterial road, which feeds into the Santa Monica Freeway. Single family residences line the opposite side of that street which marks the eastern edge of a dense neighborhood. The end of the runway is above the roofs of those homes. This topography combined with the airport's western boundary currently limits any opportunity to create a buffer zone to address safety concerns. (FAA Exhibit 1, Item 2, p. 9.)

foreseeable and inevitable result of applying reasonable and salutary Federal standards.”<sup>65</sup> (FAA Exhibit 1, Item 2, p. 11.)

With its adoption on March 25, 2008, effective on April 25, 2008, the City’s Ordinance prohibits C and D Category aircraft from landing and taking off at SMO. The Ordinance does not prohibit the landing and take-off of A and B Category aircraft. The plain language bans C and D Category aircraft from the Airport and thus makes the Airport unavailable to these categories of aircraft. In order to be compliant with the aviation statutes and grant assurances, this ban must be reasonable and not unjustly discriminatory. (See Grant Assurance 22(h).)

The City’s ban of C and D Category aircraft from SMO relies on a safety justification based on City’s studies and general conclusions. In this case, the first question to be answered is whether the City’s restriction is reasonable. The City justifies the Ordinance on the following grounds:

1. The City alleges that its Airport Reference Code designation of B-II prevents it from serving C and D category aircraft;
2. The City alleges that the FAA Advisory Circulars mandate no deviation from FAA Order 5200.8 (Runway Safety Area Program) and the standards defined in FAA Advisory Circular 150/5300-13 (Airport Design);
3. The City alleges that the Airport was designed to accommodate a fleet of general aviation aircraft with slow approach speeds; and
4. The City alleges that FAA is only concerned with operational impact at SMO and not safety. (FAA Exhibit 1, Item 8.)

1. The City alleges that its Airport Reference Code designation of B-II prevents it from serving C and D category aircraft. (See FAA Exhibit 1, Item 8.)

### Airport Reference Code (ARC)

The City argues that as a B-II Airport, it cannot safely accommodate Category C and D aircraft. The B-II designation refers to SMO’s ARC. The ARC is an FAA coding system which relates airport design criteria to the operational and physical characteristics of the aircraft types for which the airport was designed. (FAA Advisory Circular No. 150/5300-13, Change 12, *Airport Design*, para. 4 (September 29, 1989).)

The ARC code has two components, both relating to the “critical aircraft” for the airport, and is used in planning, design, and to support decisions for Federal funding of airport capital development. FAA Order 5100.38C, *Airport Improvement Program Handbook*, Paragraph 428, *FAA Approval Actions*, subparagraph (a), states “[M]ore than one critical aircraft may control the design of any specific airport’s different facility features, such as runway length, strength of paved areas or lateral separations in airfield layout. A critical

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<sup>65</sup>Generally, the FAA and many airport sponsors take action to improve airports and increase runway length to 5,000 feet, not erode away their utility. In example, at Flying Cloud Airport (FCM), a reliever airport in the Minneapolis-St. Paul metropolitan area, the runway extension increased the pavement from 3,900 to 5,000 feet at a cost of over \$15 millions is considered a needed asset to accommodate growing jet operation levels from 5,900 in 2007 up to 24,000 by 2010. Therefore, in function, FCM is not unlike SMO. Another good example is Ohio State University (OSU) with its longest runway 09R/27L at 5,004 feet and a large number of jet operations, over 11,000 operations in 2005.

design aircraft is that airplane using (or is highly likely to use) the airport on a regular basis. A regular basis is at least 500 annual itinerant operations.” Critical aircraft is the type of aircraft, which conducts 500 or more itinerant operations per year at the airport. (FAA Exhibit 1, Item 83, p. 38.) The first component of the ARC, depicted by the letters A-E represents the aircraft approach category, and relates to aircraft approach speed, specifically, 1.3 times its stall speed in landing configuration at maximum certificated landing weight. For example, a Category A aircraft has an approach speed of less than 91 knots while a Category C aircraft has an approach speed of 121 knots or more, but less than 141 knots. The second component of the ARC, depicted by Roman numerals I-VI, is the airplane design group, and relates to airplane wingspan and tail height. For example, a Group I aircraft has a wingspan of up to but not including 49 feet with a tail height of up to but not including 20 feet, while a Group II aircraft has a wingspan of 49 feet up to but not including 79 feet with a tail height of up to but not including 30 feet. (*Id.*, p. 1.)

The ARC is a reference code for use in airport planning and design, not a safety standard. “These standards and recommendations...do not limit or regulate operations of aircraft.”<sup>66</sup> (AC No. 150/5300-13, Change 12, *Airport Design*, para. 1 (September 29, 1989).)

On the contrary, the use of a 500-operation per year threshold to trigger design to a certain standard inherently assumes that fewer operations by aircraft in a higher category could occur, safely, without the corresponding change to airport standards. That is in fact the case throughout the U.S. If operations by aircraft in the higher category increase above 500 a year over time, that does not trigger a requirement for an upgrade in airport standards, and is not a basis for limiting those operations. Although the runway itself was designed for much larger aircraft, because the airport was historically used for aircraft manufacturing, SMO generally meets standards to accommodate general aviation aircraft consistent with Group II Design Standards in AC 150/5300.13B. Aircraft in the C and D categories can use an airport meeting Group II design standards if the runway is sufficiently long and wide, and the pavement will support the aircraft weight. (See generally AC 150/5325-4, *Runway Length Requirements for Airport Design*.) The C and D operations at SMO meet all of those requirements, and the fact that the Airport generally meets Group II standards is irrelevant to those operations. AC 150/5200-13 is a manual for airport design, and neither this AC nor any other FAA guidance provides authority for the City to ban aircraft types simply because 500 operations per year of such aircraft trigger designing of airfield construction projects using a higher design category.

Airport design standards do not determine whether a given airplane can safely land or take off at a given airport. (FAA Exhibit 1, Items 47 & 85.) Thus, the B-II design standards do not determine whether it is safe for aircraft to land. The FAA does provide a standard for pilots to determine if a particular operation is safe: reference to the FAA-approved aircraft certification manuals for each aircraft, which define minimum requirements for safe operation under various conditions, e.g. wind conditions and available runway length. (See 14 CFR Part 25, *Airworthiness Standards: Transport Category Airplanes*.) Often the manual will indicate it is safe for certain aircraft of a higher design category than the airport to utilize the airport. It is incorrect to assume that the aircraft operating at SMO that are larger or faster than B-II aircraft are not compatible with the Airport’s Airport Reference Code. (FAA Exhibit 1, Items 47 & 85.)

The FAA finds that SMO’s Airport Reference Code Design Category Designation of B-II is a code reference to a design standard. The ARC has no bearing on whether it is safe to land a particular aircraft at an airport. Use of the ARC to support the ban of C and D Category aircraft operations is unreasonable and unjustly

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<sup>66</sup> “The standards and recommendations in this publication complement, but are not intended to take precedence over aircraft operating rules and procedures.” (AC 150/5300-4B, Chg. 6, *Utility Airports-Air Access to National Transportation*, superseded by AC 150/5300-13.)

discriminates against C and D Category aircraft by denying those aircraft access to a Federally obligated airport that is capable of handling such aircraft.

2. The City alleges that the FAA Advisory Circulars mandate no deviation from FAA Order 5200.8 (Runway Safety Area Program) and the standards defined in FAA Advisory Circular 150/5300-13 (Airport Design). (FAA Exhibit 1, Item 8.)

The City argues that it must ban C and D Category aircraft because the Airport's runway lacks the RSAs that the FAA has determined are "binding."<sup>67</sup> (FAA Exhibit 1, Item 2, p. 17.) The City avers that "the vitally important topic of averting calamity in the event of such overruns is addressed in FAA Order 5200.8 *Runway Safety Area Program*" and explains that the Runway Safety Area (RSA) program "is an integral part of a runway safety environment." (FAA Exhibit 1, Item 2, p. 12.)

The City claims that the FAA's RSA design standards must be applied to SMO. (FAA Exhibit 1, Item 2.) The City justifies the C and D ban in part because "the City applied the criteria of FAA Order 5200.8 to analyze the alternatives available to the City." (FAA Exhibit 1, Item 2, p. 12-13.) The City also relies on written testimony by James E. Hall (Mr. Hall), former Chairman of the NTSB, who left the NTSB more than seven years ago in 2001. (FAA Exhibit 1, Item 4, Hall Declaration, p. 55.)

In making his declaration, Mr. Hall states that he examined an aerial photograph of SMO. He opines that "in the absence of meeting the Federal standards for RSAs at Santa Monica Airport, Category C and D aircraft should not be permitted to operate due to the serious risk of injuries and deaths to occupants of the aircraft and members of the community resulting from aircraft operating on the margins of safety with no provision for the possibility of mechanical failure or pilot error." (FAA Exhibit 1, Item 4, Hall Declaration, p. 55.)

The RSA is a defined surface surrounding the runway and prepared or suitable for reducing the risk of damage to airplanes in the event of an undershoot, overshoot, or excursion from the runway. (AC 150/5300-13, *Airport Design*.) Runway Safety Area RSA dimensions are based on the ARC. *Id.* The RSA is intended to provide an additional measure of safety in the event of an aircraft's excursion from the runway. It is not a guarantee that an aircraft will never get beyond the safety area.<sup>68</sup>

As to the City's argument that it is enforcing the FAA's RSA standard, the standard is clearly a safety enhancement for airports, which is applied to new runway projects at airports to the degree practicable.<sup>69</sup> The concept of "practicable" includes the need to align technical difficulty, cost and cost-benefit, ownership or

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<sup>67</sup>The City admits that airports are not strictly required to conform to the RSA standard as it quotes FAA's AC 150/5300-13, "RSA standards cannot be modified or waived like other airport design standards...a continuous evaluation of all *practicable* alternatives for improving each substandard RSA is required until it meets all standards...". (FAA Exhibit 1, Item 2, p. 17.) The use of "practicable" clearly indicates FAA's realistic approach to updating safety areas. The City alleges that neither end of its runway has a Runway Safety Area (buffer zones) to protect airport neighbors and users against the risk of accidents occurring during takeoffs and landings. The City argues that in addition to the residential neighborhoods bordering the Airport to the east and west, a gasoline station is situated opposite the eastern end of the runway and heavily utilized public facilities are located in the residential neighborhood to the west, including a child care facility. However, the gas station the City refers to is located outside the RSA and the RPZ, and there are no daycare centers located within the RSA of either runway. The City also argues that the natural terrain (drop offs) exacerbates the risks inherent in the proximity of homes to the runway ends, and it limits the options for enhancing safety. (FAA Exhibit 1, Item 4, p. 3.) These factors are considered in determining practicable alternatives for RSA improvements.

<sup>68</sup> RSA's are designed for the protection of flight crews and aircraft. Runway Safety Zones (RPZs) are designed for the protection of persons and property on the ground, rather than crew and passengers of aircraft. (FAA's AC 150/5300-13, *Airport Design*, para 212.)

<sup>69</sup> The RSA standard applies to certificated airports and Federally obligated airports, *to the extent practicable*. FAA Order 5200.8, Runway Safety Area Program.

control of land, and effect on airport operations. (FAA Exhibit 1, Item 88, p. 5.) The RSA design standard is not an operating requirement or condition under any FAA aircraft operating rules. RSA improvements to meet FAA design standards must be considered when airports like SMO seek federal funding for runway projects and then only to the extent practicable. FAA's aircraft operating rules do not require a standard RSA, and there is no basis in FAA regulations for prohibition of any operation based on the status of the RSA. While an RSA enhances safety, it does not define what is safe at any airport. The safety of an aircraft's operation is a function of the requirements of the FAA-approved aircraft certification manual and the underlying regulatory frame work.<sup>70</sup> (FAA Exhibit 1, Items 47 & 85.)

Mr. Hall also acknowledges that Runway Safety Area's are "safety enhancements" and designed to provide protection when something goes wrong. (FAA Exhibit 1, Item 4, Hall Declaration, p. 55-56.) He recognizes that the FAA's standards or specifications "in no way guarantees that an actual operation on such a runway by such an aircraft will be accomplished safely." (*Id.*, p. 55-56.)

Mr. Hall states "For aviation safety, it is very important that aircraft only operate at airports that meet the design criteria for those aircraft." (*Id.*, p. 55-56.) As discussed above this statement is not accurate, if the phrase "airports that meet the design criteria for those aircraft" is intended to refer to an airport's ARC designation. *Supra.* If the runway meets the aircraft operating requirements, there is no safety basis for prohibition of that operation. The applicable FAA operational limitations for category C and D aircraft are found in FAA's regulations and in Airplane Flight Manual performance data. (See also 14 CFR Part 91 and Part 135.)

The FAA recognizes that it is not practicable for all airports to meet the RSA standards in the Advisory Circular, even at commercial airports that must comply with the RSA requirements in 14 CFR Part 139 by 2015. (See also FAA Orders 5200.8, *Runway Safety Area Program* and 5200.9, *Financial Feasibility and Equivalency of Runway Safety Area Improvements and Engineered material Arresting Systems.* ) Most of the airports that cannot meet the standard are older, urban airports. Busy commercial airports such as La Guardia, Washington- Ronald Reagan National Airport, and San Diego all have non-standard RSAs. To provide standard RSAs, each of these airports would need to shorten its runways. Shortening the runways restricts use and is not necessary to assure safety. The FAA requires sponsors of federally obligated non-Part 139 airports such as SMO, to consider improving RSAs to meet airport design standards, to the extent practicable, when they seek federal funding for runway projects. Moreover, the Order states its object as to the extent practicable. (See FAA Order 5200.8, *Runway Safety Area Program.*) At many airports it is simply not practicable to obtain the standard RSA, and a smaller RSA is considered acceptable.<sup>71</sup>

When an airport is unable to meet the standard, there are alternatives that can be implemented to enhance safety. While RSAs are an integral part of runway safety, FAA also recognizes that RSAs are not the sole component to safety for people in aircraft or on the ground. In some cases, EMAS can be used to achieve a

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<sup>70</sup> The rules under which the airplane is operated (i.e., Parts 91, 121, 125, 135) relate the minimum safe takeoff and landing distances determined under Part 25 to the specific operation and airport for each takeoff. The combination of the airplane certification rules and the operating rules provide the requirements and parameters under which takeoff and landing operations can be safely conducted. (FAA Exhibit 1, Items 47 & 85, para 7.)

<sup>71</sup> Generally, the FAA Regional Airports Division Manager reviews data collected for each RSA on existing runways and makes a determination. Where the determination is that the proposed RSA is not consistent with the standard, or it is not practicable to improve a safety area to meet current standards, the documentation and determination must address the alternatives that were considered and explain the reasons why one was selected over the others. Of course, a new runway must meet RSA standards. (See FAA Order 5200.8, *Runway Safety Area Program, Appendix 2.*) The alternative concepts should be evaluated to determine if it is a practicable alternative. *Id.* A runway reduction is a consideration if the current fleet of aircraft requires less than what is presently available or the use of other runways will accommodate the faster aircraft. *Id.* As there is only one runway at SMO, no such option is available at SMO.

standard RSA, or at least enhance safety, even where only a nonstandard installation is possible.<sup>72</sup> (See also FAA Orders 5200.8, *Runway Safety Area Program* and 5200.9, *Financial Feasibility and Equivalency of Runway Safety Area Improvements and Engineered material Arresting Systems* and AC 150/5220-22, *Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns*.)

Between 2002 and 2008, SMO officials and the FAA met several times to discuss new proposals and counterproposals as alternatives to the ACP. The City's proposals included displaced thresholds<sup>73</sup> of several hundred feet, declared distances<sup>74</sup> and large engineered material arresting system (EMAS) installations,<sup>75</sup> which would have a significant impact on the utility of the Airport.<sup>76</sup>

On August 28, 2007, the FAA proposed an actual, physical stopping effect on overrunning aircraft, that would directly benefit both persons on the aircraft and the areas off the ends of the runway. The FAA's proposal comprised two 130 foot EMAS beds with 25 foot lead-in ramps on each end of the runway. Such EMAS beds would significantly enhance safety at SMO while maintaining the utility of the Airport, and despite the loss of about 140 feet of runway as part of the EMAS installations. (FAA Exhibit 1, Item 7E) The City rejected the FAA's proposal. (FAA Exhibit 1, Item 4, p. 6-7.)

Finally, on March 7, and March 25, 2008, the FAA proposed an integrated safety enhancement proposal for SMO, which included modifications to its EMAS proposal, a pilot runway safety awareness and education program, and a Runway Protection Zone (RPZ) proposal.<sup>77</sup> The modified EMAS installation would be a 70-knot capable unit to be installed on the departure end of runway 21, on the West side of the Airport.<sup>78</sup> Complementing the EMAS element, the FAA's pilot awareness and education program was designed to prevent accidents, while the RPZ proposal, is the most effective way to enhance safety by removing residences within the runway protection zones of the Airport in a voluntary program. (FAA Exhibit 1, Item 7B.)

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<sup>72</sup> In the 1990s, FAA began research seeking to ensure maximum safety at airports where the full RSAs cannot be obtained. Working in concert with the University of Dayton, the Port Authority of New York and New Jersey, and the Engineered Arresting Systems Corporation (ESCO) of Logan Township, NJ, a new technology emerged to provide an added measure of safety. An Engineered Materials Arresting System (EMAS) uses materials of closely controlled strength and density placed at the end of a runway to stop or greatly slow an aircraft that overruns the runway. The best material found to date is a lightweight, crushable concrete. When an aircraft rolls into an EMAS arrestor bed, the tires of the aircraft sink into the lightweight concrete and the aircraft decelerates when it rolls through the material. (See FAA Exhibit 1, Item 45.)

<sup>73</sup> A displaced threshold is a threshold located at a point on the runway other than the designated beginning of the runway. Displacement of a threshold reduces the length of runway available for landings. The portion of runway behind a displaced threshold is available for takeoffs in either direction and landings from the opposite direction.

<sup>74</sup> Declared Distances are the distances the airport owner (with FAA concurrence) declares available for the airplane's takeoff run, takeoff distance, accelerate-stop distance, and landing distance requirements.

<sup>75</sup> EMAS is a bed of highly crushable concrete blocks that are installed at the ends of the runway. When an aircraft leaves the runway traveling at speed, the landing gear will crush the EMAS bed and the aircraft will come to a quick and safe stop.

<sup>76</sup> The FAA's proposals included EMAS, but sized more appropriately to minimize the impact on airport operations while preserving the Airport's same level of utility.

<sup>77</sup> As explained above, the FAA defines a Runway Protection Zone (RPZ) as an area off the end of a runway that is free of incompatible land uses, including residential areas. (AC 150/5300-13, *Airport Design*, para. 212.) The RPZ is for protection of persons and property near the end of the runway. Thus, a RPZ limits land uses at the ends of runway areas. When necessary, the FAA promotes and funds the acquisition and clearing of structures located in the RPZ to eliminate non-compatible land uses. *Id.* Many communities have undertaken voluntary programs to buy out homes and clear other incompatible uses in RPZs, often with financial assistance from the FAA. Since 1982, the FAA has expended about \$2 billion of Airport Improvement Program funds to acquire homes near airports. Some homes were located in RPZs. The record herein reflects that the FAA has offered to fund RPZ land acquisition and relocation for SMO, but the City has rejected all of the FAA's recommendations to buy out residences and other incompatible uses in the RPZ, with or without Federal assistance to enhance safety in the RPZs at SMO. (FAA Exhibit 1, Item 8.)

<sup>78</sup> Recent analysis enabled FAA to determine that the greatest safety enhancement would be gained by maximizing stopping capability in that direction, due to the overwhelming percentage of operations on runway 21 versus runway 3.

The City's arguments regarding RSAs are very similar to those regarding parachute drop zones in a prior Part 16 Case; *Skydive Paris Inc. v. Henry County, Tennessee (Skydive)*, FAA Docket No. 16-06-06, Director's Determination (January 20, 2006).<sup>79</sup> Here, the City argues safety requires the SMO to ban C and D Category aircraft, and that "the program would not ban any person or entity from the Airport so long as they utilized aircraft consistent with Airport design standards.... A commercial operator who presently utilized Class C and D aircraft could, under the Aircraft Conformance proposal, continue to use the Airport by simply opting for a smaller aircraft that is compatible with the facility's Airport Reference Code." (FAA Exhibit 1, Item 2, p. 15-16.) The airport in *Skydive* declared that its safety concerns were twofold; conflicts with other aeronautical activities and current drop zone sites were inconsistent with FAA airport design standards in AC 150/5300-13, *Airport Design*.

The FAA found that the airport improperly based its prohibition on AC 150/5300-13, *Airport Design*. The FAA concluded after study that drop zones could be safely accommodated at that airport, that the coexistence of an Object Free Area (OFA) with an established drop zone was not inherently unsafe, and that each situation must be judged on its individual merits. FAA also noted that in certain cases it is operationally sound and not inherently unsafe for flight operations to take place in the OFAs. *Skydive* at 18.

Here, the City similarly claims that FAA airport design standards justify its restriction on access. The FAA has concluded that RSA's are safety enhancements to be applied to the extent practicable, and only required when a federally obligated airport proposes runway improvements. The safety of an aircraft's operation is a function of the requirements of the FAA-approved aircraft certification manual and the underlying regulatory framework. The FAA has specifically determined that C and D Category aircraft can safely land on SMO's 5000 ft. runway.

In *Skydive*, the Director acknowledged the airports' right as a proprietor to designate the location of on-airport drop zones. However, the Director found that the evidence did not support the airport's assertion that there were no areas on the airport that could safely accommodate a drop zone. The FAA, as the authority on issues of aviation safety, determined that the previously established drop zones were safe. Furthermore, since FAA found that the airport could safely accommodate a drop zone, the airport was required to accommodate skydiving operations through use of an on-airport drop zone as long as needed by aeronautical users provided they used it in accordance with applicable standards.

For the purpose of making a determination on reasonableness when aviation safety is at issue, FAA safety determinations pursuant to the Federal Aviation Regulations take precedence over any local ordinances or local actions taken in regard to safety. (See *Skydive and Florida Aerial Advertising v. St. Petersburg-Clearwater International Airport*, FAA Docket No. 16-03-01, Director's Determination (December 18, 2003).) This is especially true for the purpose of determining compliance with Federal obligations in cases where restrictions are imposed in the interest of safety. The FAA, on behalf of the United States, preempts flight safety, flight management, and the control of navigable airspace under 49 U.S.C. § 40103. See discussion *infra*.

Based on the above, the Director finds that C and D Category aircraft can safely operate at SMO, which has a designated airport reference code of B-II, based on the limitations of the applicable AFMs and regulations. Such operations occur frequently, on a repetitively, daily basis on many runways across the country – both at

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<sup>79</sup>The airport essentially withdrew complainant's permission to use the airport's skydive drop zones which resulted in a ban to skydivers' use of the airport. The airport in *Skydive* suggested that the skydivers could just land at other airports. The results are similar here in that SMO's also asserts that the outcome is not a ban on use because commercial operators could just opt for smaller aircraft compatible with the ARC or use other airports.

commercial and GA airports. Aircraft-specific runway length requirements are a function of aircraft physical characteristics at the time of flight, in conjunction with weather and runway conditions, plus many other variables. (FAA Exhibit 1, Items 47 & 85.) The RSA is not a factor in computing necessary runway length for aircraft and provides no basis to restrict access to C and D aircraft to SMO's 5,000-foot runway. (FAA Exhibit 1, Items 47 & 85.) The City has viable alternatives available to enhance safety and runway safety areas without degradation of the runway at SMO.

In the past, FAA has addressed matters of aviation safety in Part 16 cases. See, e.g., *Skydive* and *Glynn Johnson d/b/a Zoo City Skydivers v. Yazoo County and Yazoo County Port Commission*, FAA Docket 16-04-06, Director's Determination (February 9, 2006).<sup>80</sup>

When making 14 CFR Part 16 findings regarding matters of aviation safety, the Director may rely on other offices within the FAA for their safety expertise and experience. (See *Skydive*) In this case, the Director relies on the expertise of the Aircraft Certification and Flight Standards divisions of the FAA. (FAA Exhibit 1, Items 47 & 85.)

It is incorrect to categorically assume that operations of Category C and D airplanes operating into and out of SMO are less safe than operations of Category A and B airplanes. Airport design standards do not determine whether a given airplane can safely land or take off at a given airport; this is the function of the airplane certification and operating rules. The airplane certification and operating rules take into account the airplane design features and characteristics (for example, airplane weight, configuration, engine thrust, stopping capability, speeds, and procedures) and the operating environment (for example, airport elevation, runway surface condition (dry or wet), runway length and slope, and atmospheric conditions such as wind and temperature) to determine the conditions under which takeoff and landing operations can be conducted. Airplane approach categories only categorize airplanes in terms of their approach speed at the maximum certificated landing weight. They are not intended to and should not be used as a sole criterion for determining whether or not a takeoff or landing can be safely conducted, nor for evaluating the relative safety risk of different airplanes for takeoff or landing at a particular airport. (FAA Exhibit 1, Items 47 & 85.)

There can be a significant performance overlap in take off and landing capability between Category B, C, and D aircraft. The approach category is determined by the stall speed at the maximum certificated weight. Actual approach speeds vary with the weight of the aircraft, and increase as weight increases. At lighter weights, the landing approach speed will be lower. Depending on the aerodynamics and weight of the aircraft, the landing approach speed of a Category C or D aircraft can be less than that of a Category B aircraft operating at a heavier weight. The City, in its response (FAA Exhibit 1, Item 24, p. 25), appears confused by this fact and states that aircraft speeds are defined by category. Of course, they are not, and each aircraft will operate at a range of approach speeds depending on the above factors. This is significant, because the City has banned two categories of aircraft types based solely (it claims) on approach speed at the aircraft's maximum certificated landing weight, which is not the operating condition for C and D Category landing operations at SMO. Aircraft do not routinely operate at their maximum certificated landing weight as this is a structural design limitation for the aircraft, not a routine operating condition.<sup>81</sup> Moreover, if a Category C

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<sup>80</sup>Conversely, the FAA has also noted that in the interest of immediacy, some safety judgments are best handled outside of the Part 16 process. (See *Richard Steere v. County of San Diego*, FAA Docket No. 16-99-15, Final Agency Decision (December 7, 2004). (Complainant did not cite any specific safety concerns in either the complaint or appeal. FAA's office of compliance forwarded Complainant's general concerns to the regional FAA safety personnel.)

<sup>81</sup>By example, automobile manufacturers design their vehicles with an ever increasing number of safety design features. If a vehicle is designed to safely operate under test track conditions at 90 miles per hour, it should not be banned from public roadways because the posted speed limit is 55 miles per hour. The driver can safely operate the vehicle at the 55 mile per hour posted speed. So too with aircraft.

aircraft is operating at lightweight, at an approach speed within the Category B range, then there is no basis for safety concerns even under the City's theory.

Also, because the stopping performance of a given Category C or D aircraft may be better than that of a given Category B aircraft, the Category C or D aircraft may be able to land in a shorter distance than the Category B aircraft even if the landing approach speed is higher. The landing distance depends not only on the landing approach speed, but also on the capability of the aircraft's braking system (including anti-skid system efficiency, if the aircraft has an anti-skid system), spoilers and speedbrakes (if the aircraft has them), time delays associated in using any deceleration means, and the airplane's lift and drag characteristics on the ground in the landing configuration. An airplane's approach category has an even lesser relationship to its takeoff performance capability, since the takeoff configuration (and hence takeoff speeds) is likely to be different than the landing configuration, and the airplane's thrust/weight ratio, which is not reflected in the airplane's approach category, is a very important factor for takeoff performance capability. (FAA Exhibit 1, Items 47 & 85.)

In addition to the above, there may be other differences between different airplanes, independent of the approach category, that provide additional safety benefits over and above adherence to the applicable takeoff and landing performance requirements. These differences may include airplane design features, operating procedures, and pilot training. Examples of airplane design features that provide enhanced takeoff and/or landing safety include items such as autothrottles, autobrake systems, automatic spoilers, enhanced flight deck displays, and thrust reversers. (FAA Exhibit 1, Items 47 & 85.)

As illustrated by the foregoing analysis, it is incorrect to assume that because an airplane is in approach category C or D, it cannot safely operate, or that such operations categorically carry a higher risk at SMO. (FAA Exhibit 1, Items 47 & 85.) Moreover, federally funded airports like SMO are not required to meet the RSA standard set forth in AC 150/5300-13, *Airport Design*, where, as here, there is no proposed runway improvement. Even if there were such a project and request, RSA standards only have to be met to the extent practicable. (FAA Order 5200.8, *Runway Safety Area*.) Therefore, the Director finds that the City's non-standard RSA and RPZ will safely support the operations of C and D Category aircraft at SMO. Thus, the City's reliance upon FAA Order 5200.8 to support the ban of C and D Category aircraft operations is unreasonable and unjustly discriminates against C and D Category aircraft by denying those aircraft access to a Federally obligated airport.

3. The City alleges that the Airport was designed to accommodate a fleet of general aviation aircraft with slow approach speeds. (FAA Exhibit 1, Items 47 & 85.)

The City alleges it is reasonable to ban C and D Category aircraft from SMO because the Airport was designed to accommodate a fleet of general aviation aircraft with slow approach speeds.<sup>82</sup> (FAA Exhibit 1, Items 47 & 85.) Notably, in its March 2008 Reply to Order to Show Cause, the City takes exception to references to "large or larger aircraft" in the Order to Show Cause. (FAA Exhibit 1, Item 4, p. 5.) The Ordinance passed by the City Council bans C and D Category aircraft. The C and D Category aircraft excluded by the City, are generally faster on approach than Category A and B aircraft permitted to continue to operate at SMO, irrespective of size. The FAA's A-E designations categorize aircraft solely based on approach speeds. (FAA AC 150/5300-13, *Airport Design*, para.2.) Upon reconsideration, the city's point about large aircraft is well taken. Indeed, many B aircraft are larger (i.e. heavier) than many C category types

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<sup>82</sup> Whether larger, faster, or a combination of the two attributes, the City has banned C and D Category aircraft from operations at SMO based on its contention that the Airport was not designed to handle these Category of Aircraft.

(by several thousand pounds.) For example, a B-II 45,000 lb. Falcon 900 far exceeds the weight of a C-I Lear Jet 35 at 17,000 lb.<sup>83</sup>

The City states “[t]he bigger and faster the planes, the larger the RSA needed to ensure safety.” (FAA Exhibit 1, Item 2, p. 12.) In its 2008 Reply, the City states that “over the last twenty years, traffic at the Airport has changed; as have attendant safety risks. In particular, the number of aircraft with faster approach speeds has increased.”<sup>84</sup> (FAA Exhibit 1, Item 4, p. 4, see also Item 2.)

FAA airport design standards do provide for a larger RSA for C and D aircraft than for some B aircraft. However, this simply has no relevance to the safety of a particular operation. First, as explained in our analysis of the previous issue, the ARC categories are based on speeds at maximum certificated gross weight. C and D aircraft would rarely if ever operate at maximum certificated gross weight at SMO, because the mission would not require it or because the runway length would limit the gross weight. In either case the final approach speed would generally be slower than the maximum used for maximum weight operation. As a result, approach speeds for C and D operations may be slower than for B operations in some cases. In fact, there can be substantial performance overlaps between many B, C and even D Category aircraft operations, notwithstanding how they are categorized under the ARC. As discussed above, the ARC design categories are based on maximum certificated landing weights, not the routine operating conditions of the aircraft within the different categories. This operating performance overlap exists in terms of approach speed ( $V_{Ref}$ ), take off speed ( $V_L$ ), take off distance, and landing distance.

For example, the approach speed of a C-I Learjet 35 is ( $V_{Ref}$ ) speed of 115 knots at 12,000 lb. This 115 knots speed is lower than the Category C designated speed of “121 knots or more but less than 141 knots” and falls within the Category B speed of “91 knots or more but less than 121 knots”, hence the overlap. Thus, the actual approach speed for this C-I aircraft is more akin to an approach speed of a slower B aircraft.

Several B-II types, including several turboprops, have approach speeds that can exceed 115 knots. For example, the approach speed of a King Air 200 turboprop<sup>85</sup> at 11,500 lb. is about 128 knots. The Piaggio P-180 Avanti typically lands at approach speeds of about 115 knots,<sup>86</sup> and it is not uncommon for the Fairchild 300 turboprop to fly its approach at 135 knots.<sup>87</sup> Thus, the actual approach speeds of these Category B aircraft overlap with the C-1 Learjet 35 described above.

Finally, a D-II Gulfstream GIV has an approach speed over 141 knots at its maximum landing weight. (*Pilot's Checklist, Gulfstream IV*, Basic Issue, June 2005) This aircraft would not operate at those weights at SMO (GIV operations at SMO are limited to less than 66,000 lb.) The City therefore is prohibiting aircraft from operating at SMO because of its category under the ARC reference code, not the aircrafts actual operating approach speed when landing at SMO. This aircraft has the capability to reach an approach speed under that which the City would ban.

Moreover, higher approach speed does not always mean longer landing and take off distances. Additional performance related variables, such as higher performance of aircraft can also result in overlaps where a B-II turboprop has a take-off length requirement that exceeds that of a C-I jet. In each of these examples, a

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<sup>83</sup> See Vref Aircraft Value Reference, 2005 (Volume 3).

<sup>84</sup> For example, when the FAA initiated this proceeding six years ago, there were about 6,800 C & D operations per year; currently there are about 9,000 such operations. (FAA Exhibit 1, Item 4, p. 4.)

<sup>85</sup> Best Single Engine Rate of Climb Airspeed, *Flying Light Twins Safely*, FAA-P-8740-66, AFS-803 (2001).

<sup>86</sup> See FAA Exhibit 1, Item 101, p. 54-60.

<sup>87</sup> See FAA Exhibit 1, Item 104, p. 70-74.

restriction on an operation based solely on its classification under an airport design category would result in unjust discrimination against that operation.

The City has offered no evidence showing that C and D Category aircraft are less safe than A and B Category aircraft that are permitted to continue to operate in unlimited numbers at SMO. Moreover, the City's reliance upon FAA airport design standards to justify the ban is not reasonable. As a matter of federal law, there is no rational relationship between airport design standards and safety of operations by particular aircraft at an airport. Aircraft of a larger design category may safely utilize an airport that has been designed to accommodate a lesser design category if the aircraft meets the FAA approved operational requirements for using that aircraft. This is the case at SMO for category C and D aircraft.

There is no documentation or study to suggest that conditions at SMO make an accident more likely than at any other airport. The Airport's difficult terrain and incompatible land uses off the runway ends do not meet FAA design standards for an RSA or RPZ, and the current terrain and standards do not affect aircraft operations. Operations into and out of the Airport are ordinary. (FAA Exhibit 1, Item 45 and 85.)

In 2001, in order to address safety risks, the City hired Coffman Associates (consultant),<sup>88</sup> an aviation consulting firm, to assess increased safety risks resulting from: the proximity of homes, arterials, a gas station and other development, the physical constraints of topography, the lack of runway safety areas or other safety measures, and the increase in faster approach speed aircraft. Since the Santa Monica Airport is an ARC B-II airport, the City's consultant studied FAA airport design standards and applied them to the Airport and its fleet mix. Ultimately, the consultant recommended various safety measures, which became known as the Aircraft Conformance Program ACP. (FAA Exhibit 1, Item 4, p. 4.) The consultant prepared a report in 2002 and an update in 2004. (FAA Exhibit 1, Items 2 and 78.)

The City's safety justification is based on the reports, which assume and conclude that because there has been an increase in operations by certain faster aircraft, the safety risks are higher. There is no data substantiating this conclusion. The City's report "describes existing conditions at the Airport, provides a sufficiency analysis, and identifies alternatives." (FAA Exhibit 1, Item 2, p. 10, Exhibit A, Item 4, p. 4 and Item 78.) In general, it identifies several specific concerns arising as a result of the Airport's layout and design in combination with its use by an increasing number of faster aircraft. The most serious concern identifies the lack of a RSA at the stop end of the runway. The study concludes that the most reasonable alternative for addressing the concern is a displaced threshold (See Footnote 12 Supra.) which has the effect of creating an RSA on airport property which is sufficient to meet the design standards for Category B aircraft. (FAA Exhibit 1, Items 2 and 78.)

Neither of the two reports provides a legitimate safety basis for restricting access (other than misinterpreting the FAA's design guidance as mandatory requirements for safe operations). Neither of the reports discuss accident data, risk analysis, or any other relevant or meaningful evidence that C and D Category aircraft are unsafe or more likely to have an accident than other types of aircraft at SMO. None of the documents provided by the City to FAA as part of its 2008 reply demonstrate that a comprehensive safety or risk assessment of C and D Category aircraft versus A and B Category aircraft operations has been undertaken by the City for SMO.

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<sup>88</sup> Coffman Associates, specializes in Airport planning, airport master planning, noise and environmental consulting. See <http://www.coffmanassociates.com/experience.php>

## Current Jet Operations Are Safe

SMO was specifically built to accommodate large four-engine piston transport aircraft (e.g. DC-6 and DC-7), which weighed over 150,000 lbs., and operated at approach speeds that equaled and in many cases exceeded those of jets. For example, a typical DC-6 operating at SMO is 92,360 lb. (15,000 lb. below maximum gross take off weight) would have an approach speed of 124 knots, higher than some jets.<sup>89</sup> (FAA Exhibit 1, Item 34.) than, the same 124-knot approach speed used by a 1967 G-II (similar in size, weight and flying characteristics to today's GIV) at about 46,000 lb.<sup>90</sup> Use by large transport category aircraft is the reason why SMO's runway 21/3 is 5,000 feet long and 150 feet in width with a dual tandem wheel weight bearing capacity of 105,000 lbs. SMO, therefore, was not designed as a "recreational" or small GA airport, and was not designed to accommodate only small aircraft, as the City argues.

The Airport has experienced an increase in traffic by larger and faster aircraft during the last two decades. (FAA Exhibit 1, Item 4, p. 4.) The Airport's total 2001 total operations were 147,869. Approximately 90% were piston powered aircraft and 9% were turbine powered aircraft. The 13,252 turbine-powered aircraft operations represents an increase over the 1,556 turbine powered aircraft operations in 1984 (up by over 10,000 annual operations). (FAA Exhibit 1, Item 2, p. 9.)

The City and FAA agree that "aircraft can and do overrun the ends of runways, sometimes with devastating results." (See AC No. 150/5220-22A, *Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns.*) However, the increase in the number of jets in the general aviation (GA) fleet does not translate into an increase in dangerous runway conditions. The opposite is true. Corporate jet operations have an excellent safety record and that record has improved significantly. (FAA Exhibit 1, Item 113.) In fact, as NTSB Chairman Jim Hall recognizes the "U.S. business jet fleet has almost doubled in size in the last 10 years and some segments have grown at an even faster rate... despite that growth, corporate aviation has an enviable safety record and history of improvement."<sup>91</sup> Of all aircraft types used in general aviation, corporate jets, large and small, like the ones using SMO, have the lowest accident rates. The facts demonstrate that many C and D aircraft not only have better safety records than many B-IIs, but that in many of those cases, are able to perform, in terms of runway requirements, much better than many B-II. (FAA Exhibit 1, Items 47, 85 and 86.) Thus, there is no reason, or justification, to restrict C and D aircraft because of their approach speed at maximum landing weight.

Jet aircraft are responsible for nearly 11% of the total annual operations (18,000 out of 165,000 operations in 2005) at SMO. (FAA Exhibit 1, Item 26.) This is not unusual at a reliever airport such SMO. Many reliever and GA airports like SMO have a similar or an even larger ratio of jets to total operations. (FAA Exhibit 1, Item 118.) More than 1,360 of the jets in the US registry, or about 14% of the corporate/business jet fleet (540,000 annual operations annually), are based at over 342 airports with a runway length between 5,500 and 3,500 feet.<sup>92</sup>

Corporate operations typically involve professional crews. These flights operate under regulations that often require specialized training and other requirements that do not apply to lower performance aircraft (i.e., 14 CFR Part 135 and 14 CFR Part 91K – or, charter and fractional operators).

<sup>89</sup> FAA Item 1 Exhibit 102. This would be 130% of the stalling speed at that weight about (92,500 lb.), which would be about 95 knots.

<sup>90</sup> FAA Exhibit 1, Item 103.)

<sup>91</sup> <http://ntsb.gov/speeches/former/hall/jhc001215.htm>

<sup>92</sup> FAA Data, 5010 database. Query completed April 9, 2006. Note: An assumption of 400 operations per based aircraft was used.

Many of the jets that are today using 5,000-foot runways are straight-wing types and have approach speeds similar to those of many twin-engine piston and turboprop aircraft. Many C and D aircraft are smaller than B-II types and, in several cases, perform very well in short field operations. New technologies make this possible. (FAA Exhibit 1, Items 47 & 85.)

The City argues that C and D category jets should not operate at SMO because the runway was not (originally) designed and built for them. (FAA Exhibit 1, Item 8.) As discussed above, SMO was built for large four-engine transports. Assuming pavement that is in good condition (as is the case at SMO), operations by jet aircraft on older 5,000-foot runways are not any more or less safe than on a new 5,000 foot runway. Jet aircraft routinely operated on 5000-foot runways throughout the U.S. Many, if not most airports in the U.S. were built without anticipating the level of jet or other types of operations these airports would handle today. The airports are not unsafe simply because they were built in the 1940s. For example, in 1977 there were 3,137 airports in the *National Airport System Plan* (NASP) and by 2007, the number of airports in the *National Plan of Integrated Airport Systems* (NPIAS) has only risen by 294 to 3,431 airports. (See FAA Exhibit 1, Items 106 and 107.) There are over 800 airports today that were built and improved during WWII, and none of them was originally built or improved with today's jets in mind, yet thousand of jet operations take place *safely* every day on these airports.<sup>93</sup> Aircraft size is not necessarily related to safety as far as overruns are concerned. In any event, overrun studies show that as far as distance traveled during an overrun is concerned, smaller and larger aircraft exhibit similar behaviors. (See FAA Exhibit 1, Item 108. p.9-12.)

Additionally, aircraft manufacturers design aircraft to safely operate at the existing inventory of airports in the Nation's airport system, including SMO. The City's ban does not take in account the performance characteristics of existing C and D categories of aircraft; nor does the City consider the potential for future enhancements to aircraft design.

Aircraft in the banned C and D categories do not necessarily require more runway than B category aircraft. For example, on landing, better and more effective braking systems, automatic spoilers and other new technologies may reduce the landing distance of a C or D aircraft to shorter distances than some B types would require. In addition, on take off, more powerful engines may allow a C or even a D type to outperform some B types in terms of takeoff length requirements. In the end, the performance range of many C or even D aircraft allows them to safely operate at useful weights on a 5,000 foot runway. (FAA Exhibit 1, Items 47 & 85.)

As the Court noted in *Santa Monica Airport Ass'n v. City of Santa Monica*, 481 F. Supp. 927 (C.D. Cal 1979), in the context of SMO operations, the evidence was utterly convincing that modern, small, business and executive type jets are at least as safe, if not much safer than the piston-engine powered aircraft. Accident data for corporate/executive aircraft shows that accident rates have decreased significantly over the years to the point that they are similar to the rates for air carriers. For example, the accident rate for corporate aviation is 0.08 per 100,000 hours, 0.14 for fractional jets and 0.17 for scheduled airlines. (FAA Exhibit 1, Item 113.) Moreover, not only do accident rates indicate that jets have lower accident rates than other types, such a propeller driven aircraft, large jet aircraft have lower accident rates than smaller types. (FAA Exhibit 1, Item 71.)

#### **To Date, Accidents At SMO Only Involve A And B Category Aircraft**

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<sup>93</sup> See FAA Order 5190.2R for a listing of all existing airports originally built during WWII or in the years immediately following the War.

The City suggests that its safety concern is reflected in its accident data. (FAA Exhibit 1, Item 8.) It states that “two fatalities recently occurred at SMO when a propeller aircraft overran the runway while attempting to abort a takeoff” and that “similarly, in Burbank, a commercial aircraft recently overran the runway and came to rest in a busy commercial area.” (FAA Exhibit 1, Item 8.) The City states that “these accidents, and others, demonstrate the importance of maintaining a margin for error.” (FAA Exhibit 1, Item 2, p. 12.)

According to NTSB data from 1981 to 2007, there were eight accidents, including the two fatalities at SMO. However, all eight accidents involved aircraft that were small piston propeller driven A-I or B-I aircraft, and the type of aircraft not prohibited under the 2008 Ordinance. (FAA Exhibit 1, Item 82.) See NTSB database at ntsb.gov.<sup>94</sup> The almost 300% reduction (nationally) in overruns between 1970 and 2004 is most likely the result of improved braking devices (antiskid, autobrakes, etc.), a better understanding of runway friction issues, and safety awareness campaigns. (See FAA Exhibit 1, Item 109.) Some research data also indicates that the accident rate for large jets is actually lower than the accident rates for medium and light jets. (See FAA Exhibit 1, Item 110, p. 109-114.) Another study for 1998-2002 shows that the accident rate for larger jet is lower than for other jet categories. (See FAA Exhibit 1, Item 111.) Moreover, there is also some indication that that C or D category jets have a lower overrun rate than B aircraft. (FAA Exhibit 1, Item 86.)

The City has not provided documentation or evidence to support its contention that C and D aircraft are more likely to have an overrun than other category aircraft. The City’s concern for safety rests on the assumption that an overrun by a C or D aircraft would have greater consequences than the overrun of an A or B aircraft, because C and D aircraft are typically larger and faster. However, the actual circumstances of each accident are unique, and it is sheer speculation that certain categories of aircraft at an airport will result in a certain kind of accident, in a certain place given performance variations and weights of among categories of aircraft. This speculation, with no support other than the excellent safety record of the types of aircraft operating at SMO, provides no basis for the ban of C and D aircraft types from SMO.

In making this determination, the FAA fully recognizes that any kind of accident could happen at any time. The FAA works to anticipate the causes of accidents, and to minimize the probability of future accidents and also to minimize the risk of injury and damage when they occur. However, the C and D aircraft operations banned by the City are now being conducted safely, in accordance with all FAA operating requirements, including the safety margins built into those requirements and into runway length calculations. If these operations could be banned because an accident involving a C or D aircraft is conceivable, then any aircraft operation at any airport could be banned for the same reason.

The fact that an accident could happen involving an overrun and extension from the runways may justify making safety improvements at the Airport, as the FAA has repeatedly recommended, but it does not justify restricting access to C and D aircraft. Since this is the only justification offered for the ban on C and D aircraft operations, the Ordinance is unreasonable.

4. The City alleges that FAA is only concerned with operational impact at SMO and not safety. (FAA Exhibit 1, Item 8.)

### **Operational Impact**

The City maintains that its ordinance would cause only a relatively minimal inconvenience on a small number of aircraft operators and passengers. (FAA Exhibit 1, Items 4 and 92.)

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<sup>94</sup> The NTSB data goes back to 1964 but pre-1981 data is not complete. Prior to 1981 there were reports of three overruns, all involving Category A aircraft, but these reports lack descriptive details.

The City's evidence of only a relatively minimal inconvenience on a small number of aircraft operators and passengers appears based on a 4-page table, dated June 12, 2007, listing aircraft departures by stage length. The table identifies as impacted by the loss of pavement only large aircraft traveling long distances, e.g. SMO to the East Coast of the U.S. As a result, the table shows 235 jet takeoffs impacted out of a total of 9,000 jet departures annually.<sup>95</sup> (FAA Exhibit 1, Item 67.) On September 21, 2007, the FAA submitted its own comprehensive impact assessment to the City. (FAA Exhibit 1, Item 68)<sup>96</sup> The City then revised and presented its study again as part of the March 25, 2008 City Council proceedings. The revised study concludes that only a small number of operations would be affected by a shortening of the runway, but uses a methodology calculated to understate impacts. (FAA Exhibit 1, Item 4, Exhibit 19.) Specifically, the study fails to consider the most basic variables in aircraft performance such as useful load; disregards user input reflected in comments between December 2006 and February 2007; considers the effects on only a few selected types of aircraft; does not consider non-jet aircraft; does not consider Part 91K and Part 135 landing requirements; and considers stage length as the only critical variable. (FAA Exhibit 1, Items 19, 67 and 68.)

But more importantly, the City's March 25, 2008, impact study also assesses the impact of a shorter runway but not of an outright ban on operation by aircraft types. The Ordinance, of course, includes a ban on C and D aircraft, but does not address operation on a shorter runway. (FAA Exhibit 1, Item 8.) No specific plan to obtain additional RSA by shortening the runway has been approved by the FAA or implemented by the City, and the March 25 impact study is not relevant to the City's conclusion that the ban on C and D aircraft will have no substantial effect.

The City argues that the vast majority of flights in and out of the Airport are less than 1000 nautical miles, which means that slower planes, carrying less fuel could readily be substituted for the C and D aircraft now used for these trips. According to the City, participants in fractional share ownership arrangements are, as a matter of right, able to trade down to other aircraft, and fractional operators tout the ease of such trades. Similarly, travelers who charter aircraft may choose to charter aircraft that are in conformity with the Airport's reference code. Passengers in both categories will be safer, the City argues, using aircraft appropriate for the Airport facilities. Finally, the City asserts that any travelers who feel that they must travel in private aircraft in the C & D categories may use other airports in the area, of which there are several." (FAA Exhibit 1, Item 4, p. 38-39.)

However, the City's assumption that users can simply replace a C or D Category aircraft with a Category B-II aircraft minimizes the value of these flights to customers and the operational considerations involved. First, although some fractional companies do have trade-down options, not all contracts have that option. Second, if the option already exists for fractional and charter users to use a smaller, slower B-II aircraft, presumably at a lower price, then users could already be expected to be using this option when appropriate, and generally using the more expensive C and D flights only when required for the purpose of the flight. Moreover, some

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<sup>95</sup> Following a more thorough FAA analysis, loss of runway length indicated that the number of impacted flights is estimated to be at least 1,400 takeoffs and at least 3,800 landings per year. (FAA Exhibit 1, Item 68.)

<sup>96</sup> FAA used several variables in its analysis, i.e. useful load of 60% and preserving non-stop capability. Both are FAA planning standards and criteria used in airport and runway length determinations. Other variables considered are based on regulatory requirements such as Part 135 and Part 91K landing distance computations, fuel reserve requirements (Part 91 and NBAA reserves). For example, the landing distance for all Part 135 operations would be only 2,848 feet if 300 feet were removed from runway 21-03. Depending on aircraft type and certification, takeoff needs were not limited to a generic takeoff distance or takeoff roll, but rather accelerate-stop, accelerate-go, balanced field, second climb segment, and possible combinations, when appropriate. Specific operational values in terms of weight, range, and other variables were also accounted for. For example, a loss of 200 nautical miles in range and a loss of 500 pounds in weight capability (in some aircraft 200 lb.) were used as guidelines and benchmarks. Finally, analyzing impact was not limited to jet aircraft as several turboprop and some piston-powered aircraft would be affected by a loss of pavement. (See FAA Exhibit 1, Item 68.)

users, such as a corporate flight department with one aircraft, would have no ability to use a different aircraft.<sup>97</sup> Even more importantly, the City's suggestion ignores the fact that it has committed to make SMO available to all aircraft on a reasonable and nondiscriminatory basis. This is not accomplished by requiring existing users to substitute other aircraft for the category C and D jets they now have.

The City's argument that the ban on Category C and D aircraft imposes no harm on aircraft operations because operations may still be conducted at SMO with Category A and B aircraft is frivolous. The argument completely disregards the City's Federal obligation to provide reasonable access to aeronautical users. Under section 47107(a)(1) and assurance 22 the reasonable access requirement applies to aircraft access, not to operators who elect, consistent with the City's ban, to utilize other aircraft. The ban on Category C and D aircraft is unlawful because it precludes those aircraft from operations at SMO. Harm will also result from having a federally-obligated airport proprietor appear to have unbridled discretion to violate its grant obligations and usurp the agency's jurisdiction over safety of aircraft operations.

The City also assumes that intermediate fueling stops which would be unnecessary with a C or D category aircraft, but necessary for a B aircraft on the same flight, are simply a matter of inconvenience. In fact, an additional stop for a jet aircraft means descent from high altitude and climb back to altitude, a substantial increase in fuel used, an additional landing cycle on the aircraft airframe, use of ATC services, and additional cost and lost time for the user.

The City's Ordinance would subvert present operations of Category C and D airplanes and thus is harmful on its own and because of its effects on the national air system. Santa Monica is an important general aviation reliever airport for Los Angeles International Airport (LAX). As stated in the background section, the ban would affect over 9,000 Category C and D aircraft operations or approximately 7% of total operations at SMO according to the City's own estimates. Disruption of over 9,000 annual operations is a significant number for the Los Angeles region and nationally as well. The exclusion of 9,000 operations and the effect on these critical design aircraft,<sup>98</sup> could also burden the travel of approximately 20,000-30,000 passengers annually.

The LAX Master Plan Final EIS states that "all of the general aviation airports are constrained from large scale expansion and there is a concern to avoid displacing general aviation operations from those busy facilities into other commercial airports in the region."

The ban will likely affect interstate travel because the Category C and D aircraft are used for a substantial portion of non-stop interstate flights. This will result in a significant burden on interstate commerce.

By banning 9,000 or more operations from SMO, and forcing those operations to use other airports, the ban affects Federal air traffic and airspace management in the greater Los Angeles region. As discussed in more detail below, several other airports in the region, Los Angeles International Airport ("LAX"), Van Nuys (VNY), and Burbank (BUR), are already at or near capacity.<sup>99</sup> LAX is at capacity and the others are working

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<sup>97</sup> Many users, be it fractional or charter, use C and D aircraft because of cost and performance. A used 1989 Category D-II Gulfstream GIV sells for approximately \$17 million, while the newer and comparable 2004 G400 costs approximately \$ 31 million. See Vref Aircraft Value Reference, 2005 (Volume 3). A B-II Falcon 900, as a 1986 model costs \$14 million while the 1996 model costs \$27 million. See Vref Aircraft Value Reference, 2005 (Volume 3).

<sup>98</sup> Supra page 34. Airplane using (or is highly likely to use) the airport on a regular basis; a regular basis is at least 500 annual itinerant operations. (FAA Order 5100.38C A.)

<sup>99</sup> The primary role of SMO and other general aviation airports in the region is to act as relievers for the commercial airports like LAX. General aviation jet operation numbers drop as delays increase at LAX because general aviation jet operations move to reliever airfields like SMO that do not experience such delays. The role of commercial airports like LAX is not to accept general aviation from SMO, it is the other way around. Single engine piston operations may have dropped at VNY over the last 20 years,

to petition the FAA to institute noise access restrictions that could affect the very aircraft that the City seeks to displace at SMO. The LAX Master Plan Final EIS states that “all of the general aviation airports are constrained from large scale expansion and there is a concern to avoid displacing general aviation operations from those busy facilities into other commercial airports in the region.” Diverting general aviation operations to LAX is inconsistent with SMO’s reliever status obligation: to relieve general aviation operations from LAX. Given capacity constraints, and the petition of other airports in the region to restrict access, it is simply incorrect for the City to claim that other airports could absorb, without consequence, the effects of the City’s unilateral decision to ban 9,000 annual operations of category C & D operations at SMO.

Accordingly, the elimination of 9,000 operations a year has significant implications for operators and passengers now using SMO, and the impact of the Ordinance cannot be considered a “relatively minimal inconvenience” as the City portrays it.

### **Importance of SMO as a Reliever Airport**

The importance of SMO as a reliever<sup>100</sup> was clearly stated in the 1984 Agreement. The Agreement declared that SMO serves a “vital and critical role in its functions as a general aviation reliever for the primary airports in the area ... by diverting aircraft away from the air carrier airports and other heavily used airports located in the Greater Los Angeles Area...” (FAA Exhibit 1, Item 4, Exhibit 3, pg. 3-4.) There is no doubt that the Santa Monica Airport plays a critical role in the regional and national air transportation systems. It is responsible for approximately 18,000 jets operations in the LA area. SMO was designated as one of 274 reliever airports in CY 2004.<sup>101</sup> (FAA Exhibit 1, Item 40, p. 9.) Along with Van Nuys Airport (VNY), SMO is the most important reliever airport for LAX, and ranks in the first 15 most important GA airports in the country in terms of based aircraft and operations. (FAA Exhibit 1, Item 113.)

In general, distribution of traffic among airports in a region reduces delays in the national transportation system and is one of the cornerstones of the FAA airport planning process. ( FAA Exhibit 1, Item 107, p. 23.) The FAA views SMO as an extremely important airport, not only for the Los Angeles area, but also for Southern California, the state and the national system, as presented in the National Plan of Integrated Airport Systems (NPIAS).<sup>102</sup> Imagine if Teterboro, NJ (a reliever in the New York City area), Chicago Executive, IL

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however, multi-engine and jet powered aircraft operations have grown. Van Nuys will be petitioning FAA to consider noise restrictions on the growth of jet aircraft at Van Nuys. Therefore, SMO can't assume LAX and Van Nuys can accept SMO's displaced Category C and D aircraft anymore than Van Nuys can assume it can displace aircraft to SMO.

<sup>100</sup> The FAA's standard for an airport classified as a reliever airport is to have at least 100 based aircraft or 25,000 annual itinerant operations. (See FAA Exhibit 1, Item 40., p. 9.) SMO has 400 based aircraft, and 135,000+ operations. (FAA Exhibit 1, Item 26 and 105.)

<sup>101</sup> As previously, stated reliever airports are airports designated by the FAA to relieve congestion at a commercial service airports, like LAX, Burbank, and Ontario, and to provide improved general aviation access to the overall community. *Report to Congress Nineteenth Annual Report of Accomplishments Under the Airport Improvement Program, Fiscal Year 2000*, Report of the Secretary of Transportation to the United States Congress Pursuant to Section 47131 of Title 49, United States Code, Federal Aviation Administration, Washington DC, December 2003. Large metropolitan areas, like LA, usually have a system of reliever airports, one or more of which can accommodate general aviation, including corporate jet aircraft and smaller, propeller-driven aircraft and rotorcraft. Over the years, relievers have been very successful at relocating general aviation activity from congested airports and as a result, general aviation activity at congested airports is a small and decreasing percentage of total operations. *S) 2007-2011*, FAA, September 29, 2006, p. 23.

[http://www.faa.gov/airports\\_airtraffic/airports/aip/grant\\_histories/media/aip\\_annual\\_report\\_fy2006.pdf](http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories/media/aip_annual_report_fy2006.pdf)

<sup>102</sup> Section 47103 of Title 49 U.S.C. requires the Secretary of Transportation to publish a national plan for the development of public-use airports in the United States. This plan, the National Plan of Integrated Airport Systems (NPIAS), lists development considered necessary to provide a safe, secure, efficient, and integrated airport system meeting the needs of civil aviation. *Report to Congress Nineteenth Annual Report of Accomplishments Under the Airport Improvement Program, Fiscal Year 2000*, Report

(a reliever for Chicago O'Hare), Hanscom Field, MA (a reliever for Boston Logan) all decided to divert their C and D Category aircraft operations to the airports they relieve. The commercial airports would suffer as a consequence, and the impacts would be felt nationwide.

The FAA's standard for an airport's classification as a reliever airport is to have at least 100 based aircraft or 25,000 annual itinerant operations.<sup>103</sup> SMO has 400 based aircraft, and 135,000+ annual operations. The 2008-2012 FAA Flight Plan clearly indicates that one of the Agency's primary targets is to create new capacity with new reliever airports, not to reduce it.<sup>104</sup>

All of the other commercial and reliever airports in the Los Angeles area already experience substantial traffic and several are proposing some form of access restriction, like SMO. Many, like LAX, have serious capacity limitations.<sup>105</sup> FAA does not view moving additional operations from SMO to these airports as without impact, as the City suggests. A discussion of the relevant airports follows:

**a. Burbank Airport (BUR).** Space around the airport to expand is virtually non-existent due to the encroachment of the surrounding city. The option of an aggressive land acquisition by Burbank is almost entirely out of fiscal reach. A 2004 FAA report cited the need for expansion at this airport, but for now this seems impossible due to agreed upon restrictions in the size and number of aircraft gates. (See FAA Exhibit 1, Item 63.) In addition, this airport has initiated a study under 14 CFR Part 161 with the goal of restricting access by adopting a mandatory nighttime curfew.<sup>106</sup>

**b. Van Nuys Airport (VNY).** Located on 730 acres, VNY is approximately 25 miles northwest of downtown Los Angeles. VNY is the busiest general aviation airport in the world and seventh busiest airport in the United States. VNY has unscheduled jet charter service and is base to over 150 corporate jets. The airport, which is the major reliever for LAX, is the base of operations for over 750 aircraft and accounts for approximately 504,000 operations each year.

VNY has an average of 1,380 operations per day. The airport contains approximately 82 jet airplane hangars of all sizes, 41 helicopter hangars, and 201 piston aircraft hangars. In addition, since 1969, it has implemented several noise restrictions and has implemented several non-restrictive noise control measures.

Recently, VNY has initiated a 14 CFR Part 161 study with the goal of further restricting operations at the airport. The scope of the Part 161 Study proposes (1) establishing a system of differential landing fees for aircraft using VNY; (2) establishing fines for violations of the airport's noise abatement policies; (3) establishing maximum daytime noise limits; (4) establishing a limit on the number of Stage 3 jets; and (5) expand the curfew.<sup>107</sup>

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of the Secretary of Transportation to the United States Congress Pursuant to Section 47131 of Title 49, United States Code, Federal Aviation Administration, Washington DC, December 2003.

<sup>103</sup> Airport Improvement Program - Fiscal Year 2006, p. 9.

[http://www.faa.gov/airports\\_airtraffic/airports/aip/grant\\_histories/media/aip\\_annual\\_report\\_fy2006.pdf](http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories/media/aip_annual_report_fy2006.pdf)

<sup>104</sup> As an example, in FY 2006, the FAA expended over \$219 million for funding of the reliever systems nationwide. Airport Improvement Program - Fiscal Year 2006, p.16, (over \$27 million in California alone) Airport Improvement Program - Fiscal Year 2006, p.1-2. [http://www.faa.gov/airports\\_airtraffic/airports/aip/grant\\_histories/media/aip\\_annual\\_report\\_fy2006.pdf](http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories/media/aip_annual_report_fy2006.pdf)

<sup>105</sup> Airfield capacity is expressed in terms of the number of aircraft operations that can be conducted in a given period of time. Capacity is most often expressed as annual capacity (or annual service volume) and hourly capacity (or throughput capacity) for a particular runway and taxiway configuration. See AC No: 150/5070-6B Airport Master Plans, July 29, 2005.

<sup>106</sup> <http://www.ci.burbank.ca.us/airport/current/faqs.html>

<sup>107</sup> See <http://www.vnypart161.com/ProjectBackground.cfm>. VNY also initiated a \$15-million residential soundproofing program in 2000.

**c. Long Beach Airport (LGB).** Long Beach Airport is also a busy general aviation airport, serving 400,000 annual general aviation operations.<sup>108</sup> Its capacity is also limited. The airport is under one of the strictest ordinances in the United States on both airport noise and the number of commercial flights. Long Beach has a noise budget program in place, which effectively controls airport operations by capping them.<sup>109</sup> The current noise levels allow for a maximum of 41 daily commercial flights and 25 commuter flights. LGB is also physically located away from the areas served by SMO.<sup>110</sup> (FAA Exhibit 1, Item 28.)

**d. Torrance Airport (TOA).** Torrance Airport is a general aviation airport owned by the city of Torrance. TOA is approximately 16 nautical miles away from SMO. With the displaced threshold, the runway length is approximately 4,460 feet long. In addition, the pavement at TOA is concrete asphalt and rated in fair condition. TOA has implemented noise level restrictions. TOA is not a federally obligated airport. (FAA Exhibit 1, Item 28.) TOA is generally not an appropriate substitute for SMO's C and D Category aircraft.

**e. Hawthorne Municipal Airport (HHR).** Hawthorne Municipal Airport, also known as Jack Northrop Field, is an FAA-designated general aviation reliever airport owned by the City of Hawthorne. The Airport features a 4,956-foot long, 100-foot wide lighted runway that can accommodate aircraft weighing up to 90,000 pounds (with dual tandem wheel loading). The airport is also home to an FAA-operated Air Traffic Control Tower, and houses Northrop Grumman Aviation, Inc., a subsidiary of Northrop Grumman Corporation.

Although Hawthorne Airport will develop up to 190,000 square-feet of new hangar space, the airport is physically limited for future development or expansion.<sup>111</sup> The location of the airport, close to LAX, and the already tight airspace constrictions, presents little room for a significant increase of Instrument Flight Rules (IFR) traffic (typical for corporate jet operations) in and out of the airport, especially additional facilities to accommodate the corporate aviation needs that could be displaced from SMO.

**f. Los Angeles International Airport (LAX).** With over 650,000 operations annually,<sup>112</sup> LAX handles more origin and destination (i.e. not connecting) passengers than any other airport in the world. It is the world's fifth-busiest airport by passenger traffic and sixth-busiest by cargo traffic, serving some 60 million passengers and more than two million tons of freight in 2004. Moreover, LAX is the busiest airport in the state of California, and the third-busiest airport by passenger traffic in the United States. In terms of international passengers, LAX is the second-busiest in the U.S. (behind only JFK International Airport in New York City), and 20th worldwide. LAX is an airport that already has capacity and delay problems. Delay is estimated at an average of 7 minutes per operation. (FAA Exhibit 1, Item 63.)<sup>113</sup> From a capacity standpoint, with its 145 hourly arrival and departure rates, LAX is not a suitable airport to be receiving traffic displaced from SMO. (FAA Exhibit 1, Item 114, p.30.)

Nevertheless, the City would have LAX serve as a reliever for SMO. The City claims that SMO's increase in transient business jets is due to "inadequate air side and landside facilities at LAX" and that LAX development should "not only stop the displacement of business jet aircraft but must, in fact, return these previously displaced traffic to its proper setting..." that there should be a "re-positioning of LAX as the center of business jet aircraft activity" and that "LAX is the most appropriate setting for business jet aircraft

<sup>108</sup> <http://www.gcr1.com/5010web/REPORTS/AFD04102008LGB.pdf>

<sup>109</sup> <http://www.longbeach.gov/airport/>

<sup>110</sup> Long Beach Airport is situated midway between Los Angeles and Orange County.

<sup>111</sup> <http://www.cityofhawthorne.com/depts/airport/default.asp>

<sup>112</sup> <http://www.gcr1.com/5010web/airport.cfm?Site=LAX>

<sup>113</sup> In addition, LAX's Master Plan Final EIS calls for maintaining general aviation levels at or below 34,000 operations. (LAX Master Plan Final EIS, Executive Summary), January 2005, A.1-6.

accessing the Southern California area, particularly the Westside of the region.” The City also argues that “business jet aircraft are more appropriately served at LAX as it can provide for a higher margin of safety with longer runway surfaces and safety areas, more high speed turn outs and taxiways, dedicated airspace, continuous tower support and a full complement of emergency facilities and services. The re-focusing of business jet aircraft activity to LAX will provide opportunities for better integration with commercial air operations, rental cars, customs, and better maintenance and support services for such aircraft.” (FAA Exhibit 1, Item 115.)

The FAA’s Office of Airports has approved use of AIP grant funds for a project to study of the Los Angeles metropolitan areas capacity issues.<sup>114</sup> The FAA rejects the City’s logic because diverting jet operations to LAX is not consistent with the fact that LAX is a commercial service airport and the third largest airport in the U.S. (in terms of enplanements and the fourth in terms of operations). (FAA Exhibit 1, Item 114, p. 21.) LAX needs reliever airports in its system; it is certainly not a general aviation reliever airport itself for SMO or any other airport. LAX is hardly an option to accommodate SMO corporate jet operations.

Future growth at LAX is limited and constrained by special circumstances. The LAX Master Plan<sup>115</sup> promotes a regional solution to air transportation demand (Alternative D), improves the level of passenger service, and addresses both community and environmental concerns. More information on LAX’s overall plan can be found on <http://www.laxmasterplan.org/>.

There are noise restrictions already in place at LAX.<sup>116</sup> LAX’s Part 161 study determined that “a serious noise disturbance problem exists with the late night easterly departures and has asked LAWA to eliminate these operations through the Part 161 process....”<sup>117</sup>

The goal of the Part 161 Study at LAX is to establish an operational restriction that would prohibit the easterly departure of all aircraft, with certain exemptions, between the hours of 12:00 midnight and 6:30 a.m. when the airport is in over ocean operations, or when it remains in westerly operations during these hours.<sup>118</sup>

Against this background, it seems obvious that LAX has limited ability to accommodate SMO’s traffic and that, contrary to what the City has stated, SMO is the reliever for LAX, not the other way around.

#### **f. Los Angeles Regional Airport System Considerations.**

The City’s actions impact the regional airport system. The Southern California Airport and Airspace System Study commissioned by the Southern California Association of Governments (SCAG) states that although there is some capacity in the Los Angeles airport system, several airports have significant interactions with each other as to impact capacity, and SMO is one of them. (FAA Exhibit 1, Item 62, p. 34.) SCAG also finds that that LAX, Burbank, Long beach and Ontario, all airports the City proffers as destinations for its banned operations, have either physical, policy-based or legal constraints. (FAA Exhibit 1, Item 66.)

<sup>114</sup> Airport Improvement Program - Fiscal Year 2006, p.74.

[http://www.faa.gov/airports\\_airtraffic/airports/aip/grant\\_histories/media/aip\\_annual\\_report\\_fy2006.pdf](http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories/media/aip_annual_report_fy2006.pdf)

<sup>115</sup> Airport Master Plans – An airport master plan is a comprehensive study of the airport and typically describes short-, medium-, and long-term plans for airport development. Master planning studies, that address major revisions are commonly referred to as “Master Plans,” while those that change only parts of the existing document and require a relatively low level of effort tend to be known as “Master Plan Updates.” In common usage, however, the distinction refers to the relative levels of effort and detail of master planning studies. See AC No: 150/5070-6B Airport Master Plans, July 29, 2005.

<sup>116</sup> *LAX Rules and Regulations, Aircraft Noise Abatement*, (2005), <https://www.lawa.org/airops/rules.cfm>

<sup>117</sup> <http://www.laxpart161.com/en/index.cfm>

<sup>118</sup> <http://www.laxpart161.com/en/index.cfm>

SCAG also reports that C and D operations take place at B airports, including SMO, and that the regional airport analysis by Airport Reference Code (ARC) is very limited for the corporate jet fleet, which is represented primarily by B-III through C-II aircraft. Of the 56 airports in the regional study, only 5 would typically be used by a corporate jet fleet represented by B-III through C-II ARC and only 3 would typically be used by aircraft represented by D-II through D-III ARC. (FAA Exhibit 1, Item 64.) In addition to this limited number of airports, one of these, Rialto, will soon close, and while others, such as Camarillo and Barstow-Daggett, are too far away from SMO to be effective replacements. (FAA Exhibit 1, Item 64.)

Finally, as the Los Angeles region is one of the most congested air traffic control areas in the country, air traffic and airspace implications should be considered before the City bans 9,000 operations. The FAA has proposed and made modifications to jet arrival routes, air traffic control sectors, and air traffic control (ATC) coordination procedures between the Los Angeles Air Route Traffic Control Center (ARTCC) and the Southern California (SOCAL) Terminal Radar Approach Control (TRACON).<sup>119</sup>

The very nature of air traffic control and airspace management requires uniform regulations and planning. The City has provided no information on the consequences its actions may have on air traffic control and airspace management. To date, SMO has not requested that the FAA's ATC personnel study the effect of its ban.

By banning all of its C and D category aircraft operations, SMO would impact not only its facility, but that of other airports, all of which are critically tied to air traffic control and airspace management. In the end, the same number of operations would be divided among fewer facilities. Depending on traffic volume, this may necessitate the enlargement of normal arrival and departure routes, or modification to procedures to handle the realignment of traffic. This could put a large number of aircraft over places they normally wouldn't fly.

The restricted C and D aircraft from SMO are not easily absorbed by the systems, and if every B-II airport similarly were to ban all C and D aircraft, the Southern California airport system would be seriously compromised.

The City's argument that the ban on category C and D aircraft operations has not impact because such operations may still be conducted at SMO with Category A and B aircraft lacks merit. This argument discounts the City's federal grant and surplus property obligations to provide access on fair and reasonable terms to all aeronautical users. The ban also causes impact because harm will result from having a federally-obligated airport exercise unbridled discretion to violate its assurances and deed covenants and usurp the agency's jurisdiction over safety of aircraft operations.

Based on all of the above, the Director finds that even if operations diverted from SMO can be operated at surrounding airports that does not negate the fact that the Ordinance would have an impact on SMO users and neighboring communities in the region. The ban affects Federal air traffic and airspace management in the greater Los Angeles region. That impact would still be significant and not de minimus and thus the ban is unreasonable.

## **CONCLUSION ON ECONOMIC DISCRIMINATION**

Whether a proposed restriction on airport access is reasonable and not unjustly discriminatory is determined by the FAA, in accordance with 49 U.S.C. §§ 40103 and 47107(a)(1), and FAA Order 5190.6A, Par 4-8(a), which states:

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<sup>119</sup> See FAA Exhibit 1, Item 116. <http://www.tc.faa.gov/acb300/techreports/laxdraft.pdf>

“In all cases the FAA will make the final determination of the reasonableness of the airport owner's restrictions, which denied or restricted use of the airport.”

FAA also has statutory authority in making determinations of safety. ( *See* 49 U.S.C. § 40101, *et seq.*, and 40103(b).) FAA is the final arbiter of matters regarding aviation safety. The City's arguments concerning Assurance 22(i) are not persuasive and are addressed in Section F, *infra*.

When making 14 CFR Part 16 findings regarding matters of aviation safety, the Director may consult with other offices within the FAA for their safety expertise and experience. In this case, the Director relies on FAA's operational safety experts (including, the FAA Aircraft Certification Service, Air Carrier and Transportation Divisions and the opinions of those offices contained in the record of this determination). The opinion offered by the Aircraft Certification Service and Air Carrier and Transportation Divisions, corresponds to and fully supports the conclusions taken by the Office of Airport Safety and Standards since the initial Notice of Investigation in 2002.

Based on the above, the Director finds that the operation of C and D Category aircraft at SMO takes place with an acceptable level of safety. FAA's runway safety area design standards can further enhance safety and should be implemented whenever it is practicable to do so, even at general aviation airports such as SMO that are not required by regulation to have an RSA. However, the presence or absence of a standard RSA is not a factor in any FAA operating rule for safe aircraft operations. Here, the safety concern cited by the City appears to be based solely on the potential consequences of a certain kind of accident in certain locations off of airport property, and not on anything inherently unsafe (or even unusual) about the use of the runway itself. Because aircraft can use the SMO runway safely and in accordance with all applicable FAA safety regulations and practices, the Director finds that it is unreasonable to ban such aircraft from use of the airport for reasons of safety.

Based on the above, the Director finds that banning C and D Category aircraft operations from SMO is an unreasonable requirement for aeronautical access to SMO that unjustly discriminates against aeronautical users or C and D Category aircraft by denying them reasonable access to a Federally obligated airport. The Director finds that the record does not support the City's claim that it must restrict access to ensure safety, nor does the City have the authority to ban Category C and D aircraft based upon such a determination. The Director finds the City in violation of Grant Assurance 22, in that Ordinance adopted on March 25, 2008 banned C and D Category aircraft from using SMO. This ban is found to be unreasonable in light of the circumstances discussed above. The City is in violation of its Federal obligations to ensure reasonable access on reasonable terms without unjust discrimination. The FAA continues to urge the City to consider establishing a Runway Protection Zone off the ends of the SMO runway. Federal funding may be available to assist with this alternative.

**C. Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is consistent with the Federal obligation prohibiting the granting of an exclusive right at the airport to conduct any aeronautical activities.**

Title 49 U.S.C. § 40103(e) states that “(a) person does not have an exclusive right to use an air navigation facility on which government money has been expended.”

49 U.S.C. § 47107(a)(4) provides, in pertinent part, that “a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport.”

Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances requires and subsumes the statutes' pertinent parts, so that the sponsor of a Federally obligated airport:

“will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.... It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities....”

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right. (FAA Advisory Circular 5190-6 *Exclusive Rights At Federally Obligated Airports*, January 4, 2007.)

The exclusive rights prohibition remains in effect as long as the airport is operated as an airport. FAA Order 5190.6A Section 3-8 (b). Any grant of an exclusive right for the conduct of any aeronautical activity (on an airport) is regarded as contrary to the requirements of the statute and grant assurances, regardless of whether such exclusive right result from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means. (FAA Order 5190.6A Section 3-8 (b).)

Here, the ordinance directly confers an exclusive right on Category A aircraft over Category C and D aircraft. The ordinance also directly confers an exclusive right on Category B over Category C and D aircraft. The exclusive right is conferred on both Category A and B aircraft because the ordinance absolutely denies the privilege of using the Airport's runways to Category C and D aircraft. The ordinance specifically excludes Category C and D aircraft from enjoying and exercising the same rights as the Category A and B aircraft.

In *William Dean Bardin d/b/a Ultralight of Sacramento v. County of Sacramento, California*, FAA Docket No. 16-00-11 (August 9, 2001) the FAA found that a sponsor's ban of ultralights created an exclusive right for certain airport users. As a result of the ban, certain aeronautical users were granted a special privilege in the use of the public use airport facilities while those with restricted activities did not enjoy those rights. Consequently, the FAA concluded that the airport sponsor's restrictions on certain aeronautical activities at the airport were not consistent with the applicable deed covenant obligations under the surplus property agreement signed by the airport sponsor. Specifically, the FAA stated that precluding certain aeronautical activities “as currently implemented is unreasonable, unjustly discriminatory, and constitutes the granting of an exclusive right. Such actions on the part of the Respondent are contrary to the requirement to make its airport available for public use on reasonable terms and without unjust discrimination to all aeronautical uses without granting any person, either directly or indirectly, the exclusive right to conduct aeronautical activities at the airport.” (*Id.*, p. 11-12.)

The City argues here that “the prohibition against exclusive rights addresses unfair and arbitrary discrimination as between similarly situated persons” and thus “the prohibition would be violated if Santa Monica gave an unfair advantage to one particular business operator over others conducting business in a similar manner.” (FAA Exhibit 1, Item 2, p. 15-16.) The City infers that the ACP and adopted ordinance would not have such an effect in that it “would not ban any person or business entity from the Airport so long as they utilized aircraft consistent with Airport design standards” and that it “would not create any unlawful monopoly” since “a commercial operator who presently utilizes Class C and D aircraft could, under the ACP continue to use the Airport by simply opting for a smaller aircraft that is compatible with the facility's Airport Reference Code.” (FAA Exhibit 1, Item 2, p. 15-16.)

It further argues that “even if the (ACP and adopted ordinance) did create disadvantages for a business operator, public safety interests would prevail over the operator's private interests” and that “even if the proposed program arguably did constitute an impermissible exclusive right because it might give an advantage to one private business owner over another, Advisory Circular No. 150/5190-5 recognizes that certain safety interests must prevail over the financial interests of a particular operator.”<sup>120</sup> (FAA Exhibit 1, Item 2, p. 16.)

The City correctly notes that Advisory Circular No. 150/5190-5 allows an airport sponsor to deny a prospective business operator the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency *under some circumstances* (emphasis added). However, as discussed above, the FAA is the final arbiter for safety issues. The City's arguments concerning safety are addressed elsewhere in this determination and found to be without merit as applied to the circumstances here. An airport may not create an exclusive right under the guise of an operational safety issue. The Director finds that that is the effect of the City's Ordinance.

**D. Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is consistent with the Surplus Property Act of 1944.**

**1. Applicability of the Surplus Property Act of 1944**

The City argues that SMO is not obligated under the Surplus Property Act of 1944 (SPA) and that “the FAA utterly mischaracterizes the nature of these transfers.” (FAA Exhibit 1, Item 4, p. 16.) The City argues that “the Federal government, which leased the Airport from the City during World War II, did not and legally could not impose restrictive covenants governing airport operations when the Airport land reverted to its owner” and that such restrictions cannot be “imposed now, sixty years after the reversion.” (FAA Exhibit 1, Item 4, p. 19.)

According to the City, “there was no deed – only leases from the City to the Federal government and a reversion back to the City.” (FAA Exhibit 1, Item 4, p. 20.) The City argues “during WWII, the United States government leased from the City portions of the Santa Monica Municipal Airport and surrounding lands” and as a “mere lessee, it did not and could not impose conditions upon the City when the wartime leases ended,” that the City “retained its fee interest in the airport land.” Specifically, the City adds that “on December 1, 1941, the City and Federal government entered into Lease No. W- 3460-Eng-549 for property, then occupied by a golf course, that is now part of the Airport” and that “by amendment to the original lease, the lease terms establish an expiration date of June 30, 1945 with annual extensions that, under no circumstances would extend longer than 12 months after the termination of Proclamation 2487, declaring a national war emergency.” (FAA Exhibit 1, Item 4, p. 20.)

The City contends that “President Truman terminated the Proclamation on April 28, 1952, and, by its own terms, the lease therefore expired on April 28, 1953.” Another lease dated December 8, 1941, between the City and Federal government (Lease No. W- 04-193-Eng-4894 and City Contract No. 832(CC)) covered “about 86 acres of land, including the land now occupied by the runway...that lease expired by its own terms 12 months after the expiration of Proclamation 2487 by which the President declared a national emergency...the President terminated that proclamation on April 28, 1952; and the lease therefore expired on April 28, 1953.” (FAA Exhibit 1, Item 4, 20-21, and Exhibits 25-30.)

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<sup>120</sup> The FAA notes that the City relies on Advisory Circular No. 150/5190-5, last updated on August 28, 2006 to AC No. 150/5190-7.

The City recognizes that on August 10, 1948, “the City and Federal government entered into an agreement entitled *Instrument of Transfer*,” and that “an accompanying resolution of the City Council, approving the agreement, characterized it as the United States' surrender of its leasehold interests to the Santa Monica Airport and certain appurtenant easements and rights of way” but argues that “as a matter of law, a tenant cannot impose restrictive conditions on a landlord or the landlord's reversion” and that “a lease transfers the right of exclusive possession and use of the leased property to the tenant for the duration of the lease, but it does not transfer any title interest to the tenant.” (FAA Exhibit 1, Item 4, p. 21.)

The City contends that “as to the Santa Monica Airport in particular, the FAA has already tacitly recognized that there is no deed from the Federal government to the City imposing restrictions on the Airport's operation” because “in a finding important to the outcome of a previous Part 16 case, the FAA stated that “the (1984) Settlement agreement makes clear that the City is obligated to operate the Airport only for the duration of the Agreement (through July 1, 2015)” referring to Docket No. 16-99- 21 *Santa Monica Airport Assoc. v. City of Santa Monica*.” “Had any obligations or restrictions been imposed on the Airport land through a deed covenant, the City's obligation to operate the Airport would not expire in 2015, as the FAA determined in 2000...however, there were no such restrictions, because there was no deed. Consequently, the FAA correctly observed in the same decision that the future of the Airport in 2015 “is a local land use matter.” (FAA Exhibit 1, Item 4, p. 22.)

It is the City that mischaracterizes the present status of its Federal obligations. The City misconstrues the terms of the valid 1948 *Instrument of Transfer* and statements in the November 22, 2000 Part 16 Director's Determination. The City also conveniently overlooks statements acknowledging SMO's surplus property obligations in the final agency decision on appeal from the November 2000 determination and a subsequent Part 16 Director's Determination issued on January 3, 2005 in *Bombardier Aerospace Corp.; Dassault Falcon Jet Corp. v. City of Santa Monica*. The City of Santa Monica assumed Federal obligations in the form of AIP grant assurances until 2023, and surplus property obligations (1948 *Instrument of Transfer*) in perpetuity. Thus, the City is required to operate its airport facilities in accordance with specified conditions in all of these documents, including making SMO available for public use on reasonable terms, and without unjust discrimination, and without granting an exclusive right, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. (See Applicable Law section)

## **2. The Record Shows the City Is On Notice that it is Obligated Under the Surplus Property Act of 1944**

The City's position is also contrary to reported opinions issued by both the California Attorney General and a former Santa Monica City Attorney. (FAA Exhibit 1, Item 13, and FAA Exhibit 1, Item 48.) As referenced in the Applicable Law section, both the California Attorney General and the City Attorney opined that the City could not cease using the Airport for airport purposes. The California Attorney General in Opinion No 74-317 premised his conclusion on only a few of the conditions in the 1948 *Instrument of Transfer*, namely, that the property transferred was to be used for public airport purposes for the use and benefit of the public; the U.S. has the right to make non-exclusive use of the landing area; and that no property could be used, leased, sold, salvaged or disposed of by the City for other than airport purposes without written release of the conditions in the Instrument of Transfer.

In a 1962 legal memorandum from the City Attorney to the City Council,<sup>121</sup> the City Attorney notified the City Council that he had concluded in a written opinion that the City could not legally unilaterally, on the

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<sup>121</sup> The California Attorney General references this Memorandum in his Opinion No. 74-317, dated May 30, 1975. (FAA Exhibit 1,

motion of the City Council, abandon the use of the Airport as an airport. (FAA Exhibit 1, Item 13.) The City Attorney recognized that “(i)t is to this ‘Instrument of Transfer’ that we must look to determine the present status of the Airport.” (FAA Exhibit 1, Item 13, p. 4-5, 9-10.) Nothing in the 1984 Agreement changes or supersedes this.

It is also clear from the 1948 *Instrument of Transfer*, as detailed in the Applicable Law Section, that the obligations transferred run with the land.<sup>122</sup> The leased land and improvements were conveyed to the City in accordance with Regulation 16. (FAA Exhibit 1, Item 16.)

Specific provisions of Regulation 16 are pertinent here. Regulation 16 at section 8316.1 defines airport property as the *entire* interest owned by the government in any airport. Airport is defined as any area of land or water and the *improvements* thereon, including a runway. Regulation 16 at section 8316.5 states that declarations of surplus property, including leasehold interests under leases or similar rights of occupancy not cancelled by the owning agency pursuant to section 8316.9 shall be filed with the WAA.<sup>123</sup> Section 8316.9, *Disposal of Leasehold Interests and Improvements by Owning Agencies*, specifically discusses at subsection (d) the process by which the government could dispose of leasehold interests under the Act. In instances where an airport consisted of property, a portion of which is owned by the government and the balance was property under lease to the government, the lease could not be cancelled by the owning agency, but the leasehold interest as well as the government-owned property was declared surplus in accordance with Regulation 16, Section 8316.9(d).

Contrary to the assertions by the City, the government could not cancel the lease, but rather was required to comply with the requirements of Regulation 16 and had to declare the property surplus. This is what occurred in this case. In furtherance of this, on May 7, 1946, the Army granted the City of Santa Monica a revocable Interim Permit for the operation of the Airport. This grant effectively returned some operational control of the Airport back to the City pending its disposition as surplus property. The final CAA airport disposal report concerning “Clover Field” (Santa Monica Airport) was sent to the WAA on October 14, 1946. (FAA Exhibit 1, Items 60 and 80A/F and A/J.)

With the war over, the WAA and the CAA administered the surplus property disposal for the entire airfield property (original leasehold and improvements). All of the subject property was duly declared surplus and was assigned to the WAA for disposal, acting pursuant to the provisions of the SPA, as amended, and applicable rules, regulations (including Regulation 16) and orders.<sup>124</sup> (FAA Exhibit 1, Item 16, and Item 80A.) The surplus property instrument of disposal was prepared and in this case, it was the 1948 *Instrument of Transfer*. The City accepted the 1948 *Instrument of Transfer* including the terms, conditions, and restrictions contained therein. The City acquiescence is demonstrated by its properly-approved City resolution accepting the 1948 *Instrument of Transfer*; the 1948 *Instrument of Transfer* was recorded in the County of Los Angeles

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Item 48.)

<sup>122</sup> This is further evidenced in the Title Report prepared by Chicago Title Insurance Company which sets out the 1948 *Instrument of Transfer* as a quit claim deed. (FAA Exhibit 1, Item 76.)

<sup>123</sup> Regulation 16 Part 8316 –Surplus Airport Property was adopted by the WAA on November 16, 1945 and amended by Regulation 16 dated, June 26, 1946. The 1946 amended Regulation 16 was in effect at the time of the SMO surplus classification and disposal.

<sup>124</sup> Surplus property instruments of disposal are issued under the SPA which authorizes conveyance of property surplus to the needs of the Federal Government.

on August 23, 1948 as Document No. 1746. At the time, the City had requested the property it specifically acknowledged that it knew it would have to take the premises subject to the provisions of Regulation 16.<sup>125</sup>

The City's tries to discount the weight of the 1948 *Instrument of Transfer* by arguing that it is not actually a deed. However, this argument is disingenuous. The 1948 *Instrument of Transfer* is an instrument in writing conveying the government's interest in the airport premises to the City with restrictions. It was duly delivered, accepted and recorded. The City's arguments are belied by a 2001 Title Report which classifies the 1948 *Instrument of Transfer* as a quit claim deed. (FAA Exhibit 1, Item 76.) Accordingly, the document speaks for itself and it clearly remised, released and quitclaimed the property to the City subject to the reservations, restrictions, conditions, and exceptions set out in it.

As the record shows, the process undertaken in 1948 for the Santa Monica Airport was standard practice for transferring surplus airport property. This process is very similar to the process undertaken today; any conveyance of surplus Federal land to public agencies for airport purposes is administered today by the FAA, in conjunction with the U.S. Department of Defense (DOD) and the GSA and pursuant to 49 U.S.C. § 47151, et seq.. 50 U.S.C. App. 1622(a)-(c) 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.

The SPA and Regulation 16 both covered the transfer of real property in fee simple, leasehold interests and government improvements (the whole airfield) under the same obligations provided under the Act and incorporated in the 1948 *Instrument of Transfer*. The Director is not questioning the validity of leases the City had with the Federal government or whether they were valid when amended, but rather recognizes that the leases were superseded by other events, namely the government surrender of its leasehold interests together with improvements conveyed via the specific obligations outlined in the 1948 *Instrument of Transfer*. Accordingly, Proclamation 2487 and its termination by President Truman on April 28, 1952, has no application to the circumstances at SMO since these acts only applied to existing leases, not surrendered leases like the ones discussed herein. The 1948 *Instrument of Transfer* superseded the December 1944 "Resolution Constituting Agreement With the United States Relative to Operation and Maintenance of the Santa Monica Airport," in that with the executed surplus property conveyances, the City's obligations run with the land – in perpetuity.

### **3. Specific Restrictions in the 1948 *Instrument of Transfer***

In accepting the 1948 *Instrument of Transfer*, the City assumed certain obligations, reservations and conditions as part of this transfer (Federal obligations), and these took the form of restrictive covenants in the conveyance instruments requiring the grantee to maintain and operate the airport in accordance with specified conditions. (FAA Exhibit 1, Item 15A and 80A/Q.) Three of the restrictions listed in the 1948 *Instrument of Transfer* executed between the Federal government and the City of Santa Monica, are at issue in this case. The first restriction is that:

"the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes *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...."

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<sup>125</sup>City requested facilities constructed on airport land owned by City be classified for "disposal as an airport or as airport facilities, subject to such conditions as the Administrator may desire to impose under the provisions of Surplus Property Administration Regulation 16 and amendments thereto." (FAA Exhibit 1, Item 80A/G.)

The second restriction in the 1948 *Instrument of Transfer* pertains to the improvements transferred (in this case a new 5000 foot runway):

“the entire landing area, as defined in Regulation 16..., and all structure, improvements, facilities and equipment in which this instrument transfers any interest shall be maintained *for the use and benefit of the public at all times* in good and serviceable condition...”

A third relevant restriction independently re-states the exclusive rights prohibition that:

"no exclusive right for use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the terms “*exclusive right*” being defined to mean... and any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft.”

In addition, the 1948 *Instrument of Transfer* states that:

“the entire landing area, as defined in Regulation 16..., and all structure, improvements, facilities and equipment in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable condition...”

The FAA has 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.<sup>126</sup> Accordingly, such covenants continue in full force and effect until released under 50 App. U.S.C.A. § 1622(g) (1949) (originally enacted as Surplus Property Act of 1944, ch. 479, § 13, 58 Stat. 765, 770) or other applicable Federal law. While FAA recognizes certain approved property was released from the obligations in the 1950’s and thereafter, the restrictions embedded in the 1948 *Instrument of Transfer* remain on bulk of the airport premises transferred.

Violations of the restrictive covenants trigger the provision of the 1948 *Instrument of Transfer* providing for reversion of the premises. The specific language states:

“that in the event that any of the aforesaid terms, conditions, reservations or restrictions is not met, observed, or complied with by the Party of the Second Part (City) or any subsequent transferee, whether caused by the legal inability of said part of the Second Part or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the Party of the Second part, or any portion thereof, shall at the option of the Party of the First Part (government) revert to the Party of the First Part sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administration or his successor in function”

Equally noteworthy is the fact that the City, as grantee under the 1948 *Instrument of Transfer*, accepted the transfer subject to the specific reservations and restrictions, including the three stated above, which were set out in the document and stated to run with the land.

This also can be contrasted with the subsequent 1949 *Quit Claim Deed*, which transferred approximately 18-21 acres of government owned property without the standard restrictions at the request of the City. (FAA Exhibit 1, Item 15B, FAA Exhibit 1, Item 80B/H.) A February 21, 1949, US Army communications

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<sup>126</sup> 41 CFR § 102-75.425.

discussing the City's request to have the subject premises conveyed without the restrictions confirms that the remainder of the installation (SMO) "has been transferred to the City of Santa Monica under all the restrictions imposed by Regulation 16 of the Surplus Property Act of 1944." (FAA Exhibit 1 Item 80B/D.)

The City completely ignores the climate and the times when this transfer occurred. As the 9<sup>th</sup> Circuit noted in *U.S. v. Jones*, 176 F2d 278, 289 (9<sup>th</sup> Cir, 1949), the Surplus Property Act of 1944 was not a casual statute, enacted in haste to cover an unexpected situation. The statute became effective on October 3, 1944, at a time when the tide of the war was turning. Congress anticipated that the early end of hostilities would find many governmental agencies in possession of property intended 'for war purposes and common defense', and which, no longer needed, would become surplus. They, therefore, devised a comprehensive scheme for disposing of the property in a most effective manner, and in conformity with their conception of the American way of life, which they set forth in twenty avowed aims, 50 U.S.C.A. Appendix, § 1611(a) to (t).

Moreover, the City is plainly wrong in stating that California state law has any application to the validity and reading of the terms of the 1948 *Instrument of Transfer*. (FAA Item 1, Exhibit 92, p. 21.) The *Jones* court addressed this issue as well and disposed of it with "brevity". The court relied on *U.S. v. Allegheny County*, 322 U.S. 174 (1944), and reiterated that the "validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of Federal law not controlled by the law of any state." 176 F.2d at 281.

The Surplus Property Act of 1944 was passed to aid the reconversion from a war to a peace economy through the distribution of surplus government property. (See Surplus Property Act of 1944, Pub. L. No. 78-457, 58 Stat. 765 (1944)) "Whenever any government agency is authorized to dispose of property under this Act, then the agency may dispose of such property by sale, exchange, lease, or transfer ... with or without warranty, and upon such other terms and conditions, as the agency deems proper" *Id.* at § 15(a). (emphasis added.) The City conveniently sidesteps the fact, that it received millions of dollars of significant valuable improvements to the airfield for free with the only caveat that the transfer was conditioned on the inclusion of certain restrictions designed to protect subsequent users of that property. This was in keeping with the SPA and Regulation 16; the City's acceptance of the 1948 *Instrument of Transfer* with the stated conditions is clearly evidenced by its request for the property and its actual recording of the document. Now, the City contends that the restrictions only attached to the improvements and that "any improvements that may have been made and conveyed by the Federal Government as of 1948 have exhausted their useful lives". (FAA Exhibit 1, Item 92, p. 24.)

The City is again mistaken. The restrictions attached to the whole transfer, per Regulation 16, which is discussed in detail in the Applicable Law Section and subsection two of this section. As stated, where an airport consisted of property a portion of which is owned by the Government and the balance of which is property under lease to the Government, the lease was not cancelled, but the leasehold interest as well as the Government-owned property was declared surplus in accordance with Regulation 16, Section 8316.9(d). In this case, the whole of the airport premises at Santa Monica was declared surplus and the restrictions properly attached to the leasehold interest as well as the improvements. Additionally, the City has a continuing obligation to maintain the improvements, including the brand new 5000 foot runway that was transferred in 1948. This critical infrastructure improvement continues to have value today.

The City cites to FAA Order 5190.6A, paragraph 8-2 as support for its narrow construction of the City's surplus property obligations. Paragraph 8-2 addresses the Federal government's right to revert surplus property. The City overlooks the portion of paragraph 8-2 which states that the right to revert extends to not only title and right of possession but also to *other rights vested in the US* at the time the property described in the instrument of conveyance was transferred to the grantee. The SPA restrictions were imposed in

accordance with Regulation 16 as stated above and such rights were vested in the US at the time the property was transferred. As previously mentioned, SMO is not unique in this regard. The Federal government held leasehold interests in substantial numbers of airports across the county and several hundred of these airports have surplus property deed and instrument of transfer restrictions similar to SMO's.

#### 4. Prior Santa Monica Part 16 Cases

As noted, the City contends in its 2008 Reply that the FAA in executing the 1984 Agreement, released the City from the “conditions, covenants, and restrictions imposed by the Instrument of Transfer dated August 10, 1948, Deed No. 4 (CCS), and allowed “use of land designated as parkland and residual land therein for other than airport and aviation purposes.” (FAA Exhibit 1, Item 4, Exhibit 3, p. 7.) The Director finds that this argument lacks merit. The 1984 Agreement, agreed to by the City, only evidences release of *some* airport land covered by the Surplus Property Act, specifically certain residual land to be used for non-aeronautical uses, but not remaining aeronautical use property. (See FAA Exhibit 1, Item 4, Exhibit 3.)

The 1984 Agreement, as discussed is subsection IIB above and V.E below, is subject to review here and did not result in a release of Federal obligations permitting the City to close the Airport. For example, formal releases of Federal obligations for disposal would include a “Deed of Release,” as provided for under FAA Order 5190/6A, Chapter 7 and Appendix 4 and in accordance with 14 CFR Part 155. (See also FAA Exhibit 1, Items 80A and 90.) Title 14 CFR Part 155 contains procedures which must be followed to release *airport* property from surplus property disposal restrictions contained in the conveyance instrument. (FAA Order 5190.6A, Section 7-6 (a).) In addition, the Associate Administrator for Airports (ARP-1) must concur before an airport sponsor may be released from its obligations and permitted to abandon or dispose of an entire airport for non-airport purposes. (FAA Order 5190.6A, Section 7-20 (a).)

No record evidencing the same has been presented for consideration in this proceeding. Based on the foregoing, all of the property today classified for airport purposes remains obligated under the 1948 *Instrument of Transfer*.

Additionally, the City relies on a faulty reading of a Director’s Determination issued on November 22, 2000 in *Santa Monica Airport Association, Krueger Aviation, Inc., and Santa Monica Air Center v. City of Santa Monica (Krueger)*, FAA Docket No. 16-99-21. The Complainants in that 1999 case did not allege violations of surplus property obligations. Therefore, the Director did not find it necessary to reach issues concerning potential violations of the obligations contained in the 1948 *Instrument of Transfer* in his determination. This is clear from the Applicable Law Section of the determination, which does not recite the Surplus Property Act. The City refers to one sentence in the determination, which states: “[T]he Settlement Agreement makes clear that the City is obligated to operate the Airport only for the duration of the Agreement (through July 1, 2015).” This one sentence is not sufficient to establish that the City has no surplus property obligations. It must be read in context of the case in its entirety, including – the footnote that the Associate Administrator included on appeal in the final agency decision clarifying the very limited relationship between the 1984 Agreement and the City’s Federal obligations to use certain property for airport purposes. (See *Krueger* Final Agency Decision (FAD), footnote 4.)<sup>127</sup>

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<sup>127</sup>The Associate Administrator noted on appeal in the February 4, 2003 *Krueger* FAD that “(t)he Appellants mention the existence of a ‘1948 Instrument of Transfer’ that obligates the Sponsor to operate the Airport. However, the FAA, as specified in the 1984 Agreement to which the FAA is a party, approved the boundary of the Airport as shown on the Airport Layout Plan and consented to the use of land designated as parkland and residual land therein for other than airport purposes. FAA also released the City and these parcels from the restrictions imposed in this instrument of conveyance, and agreed that the City may develop these parcels in accordance with the 1984 Agreement.” (See *Krueger* FAD, footnote 12.)

Ten months later, on October 15, 2003, (over a year after the issuance of the NOI) and as part of an extensive letter concerning proposed safety enhancements at SMO, the FAA notified the City that SMO was obligated under the SPA. Specifically, the FAA stated:

“In addition, the Airport has incurred obligations in the form of restrictive [instrument of transfer] covenants arising from conveyances of land executed on August 10, 1948... under the Surplus Property Act of 1944, as amended, 49 U.S.C. 47151-47153.” (FAA Exhibit 1, Item 12.)

Moreover, in the Director’s Determination for *Bombardier Aerospace Corp.; Dassault Falcon Jet Corp. v. City of Santa Monica*, issued on January 3, 2005, No. 16-03-11,<sup>128</sup> the Director made abundantly clear that the City is obligated under the SPA and also found that the City was in violation of the SPA. The Determination stated:

“SMO is also obligated under the powers and authority contained in provisions of the Surplus Property Act (SPA) of 1944 as amended, 49 U.S.C. § 4715 1 - 1 5 3. Surplus Property agreements contain restrictive deed covenants similar to those under 49 U.S.C. § 47107 (a)(1), 49 U.S.C. § 47107 (a)(4) and 49 U.S.C. § 40103 (e) addressing reasonableness, unjust discrimination and exclusive rights. Therefore, these surplus property obligations also apply in this case. Surplus property deed covenants run with the land and do not expire.”

These extensive examples of notice to the City of its SPA obligations, in addition to the actual record notice in the Los Angeles County Clerk’s Office and the absence of any recorded release, refute any legitimate claim by the City that the restrictive covenants do not apply or are not enforceable. Additionally, the notices counter any merit to the City’s claim that the SPA allegations are flawed since they were not raised in the 2002 NOI.

As mentioned above, the FAA has the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property has been conveyed to non-Federal public agencies pursuant to the SPA. Based upon a comprehensive review of the record, the Director finds that the City’s actions are contrary to the obligations contained in the 1948 *Instrument of Transfer*, which run with the land and do not expire. Specifically, the City’s actions in, implementing the Ordinance to restrict access to category C and D aircraft are not consistent with the City’s Federal SPA obligations.

## **5. Conclusion on the Applicability of the Surplus Property Act of 1944 to SMO**

The 1948 *Instrument of Transfer* is standard, valid and enforceable. The SPA, applicable regulations and policy permitted the military, the CAA and the WAA to classify the government’s property interests (lease and improvements) in SMO as surplus property and dispose of its property interests, in exchange for standard restrictions on the use of the property. These restrictions included the obligations that the airport be operated as an airport, that it be properly maintained, without granting an exclusive right, without unjust discrimination and on reasonable terms that run with the land.

In summary, the record shows that the government disposed of the property in a transparent manner, in accordance with all existing laws, regulations and polices, and that the City willingly agreed to the terms and conditions imposed by the government when the lease was surrendered. Moreover, the government’s property interest was conveyed to the City under the 1948 *Instrument of Transfer*, by which the government

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<sup>128</sup> The Director’s Determination was not appealed and thus became the final decision and order of the FAA without further action. (See 14 CFR § 16.33(e).)

specifically quit claimed its property interest to the City but with specific terms and conditions as provided for in the 1944 SPA.

The record also shows that the City's adoption of the Ordinance is contrary to the provisions requiring public access at SMO and thus conflict with the City's Federal obligations contained in the 1948 *Instrument of Transfer* in that the City's action is inconsistent with the SPA obligations to make SMO available to the public as an airport under reasonable terms, without unjust discrimination and without granting an exclusive right.

Therefore, based on the above, the Director rejects the City's argument that SMO is not obligated under the Surplus Property Act of 1944 (SPA) and that "the FAA utterly mischaracterizes the nature of these transfers" in addition to asserting these "new claims against the City" for the first time. (FAA Exhibit 1, Item 4, p. 16.) The Director concludes that the City has acted contrary to the obligations contained in the 1948 *Instrument of Transfer*, which run with the land and do not expire.

**E. Whether the implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is consistent with the terms of the 1984 Agreement.**

As explained above in the discussion on jurisdiction, we address the 1984 Agreement in the present Part 16 action because the Agreement incorporates and restates several of the City's Federal obligations including the reasonable access requirement and prohibitions on unjust discrimination and the granting of exclusive rights. The FAA has statutory jurisdiction to determine the City's compliance with its grant assurance and surplus property act covenants independently of the 1984 agreement. However, the Agreement entered into by the City in the context of similar litigation also stands as a separate specific undertaking by the City to be bound by those assurances. So having found on the record in this determination that the City violated its assurance and surplus property act obligations requiring SMO to impose reasonable terms, not engage in unjust discrimination, and not grant exclusive rights, the same evidence establishes a violation of the corresponding section in the 1984 Agreement by the City (section 2(a)(i) of the 1984 Agreement). The FAA is not "interpreting the agreement" as the City claims, but rather making a supplementary finding pertaining to the violation of the City's Federal obligations as restated in the Agreement and as agreed to by the City.

The City's arguments on the 1984 Agreement are addressed in other sections of this determination but are reviewed here as well.

The City takes the position that "by reference to and incorporation of FAA Advisory Circular 150/5300.4B, dated February 24, 1983 regarding aircraft with slower approach speeds, the 1984 Settlement Agreement establishes that the Airport will continue to accommodate Category A & B aircraft until 2015" and that the 1984 Agreement does not require the City to accommodate Category C & D aircraft. (FAA Exhibit 1, Item 4, p. 3.) In fact, the City goes as far as referring to A & B design references in the 1984 Agreement "mandate" a certain level of access. (FAA Exhibit 1, Item 4, p. 24-25.)

As stated above while the design Airport Reference Code (ARC) is used in airport planning, design, and in funding airports and runways, it is never used to control aircraft operations ("These standards and recommendations...do not limit or regulate the operations of aircraft" - AC 150/5300-13, *Airport Design*, Change 12, Paragraph 1. Also, "[t]he standards and recommendations in this publication complement, but are not intended to take precedence over, aircraft operating rules and procedures" - (superseded) AC 150/5300-4B, Change 6, *Utility Airports – Air Access to National Transportation*.)

The City misquotes and misinterprets the express language of FAA Advisory Circular on Airport Design. Its interpretation of the 1984 Agreement is also not supported by the terms of the agreement or the relevant facts. The section of the 1984 Agreement at issue, Section 8, clearly commits the City to operate and maintain the airport without derogation of its role as a general aviation reliever airport or its capacity in terms of runway length and width (5000 feet by 150 feet). It further provides that the Airport will be capable of accommodating most kinds of general aviation aircraft generally consistent with Group II Design Standards set forth in FAA Advisory Circular 150/5300.4B.

When the 1984 agreement was executed, Category C and D aircraft were qualified to operate and were operating safely at SMO and have continued to so qualify and operate through the present day. Said operations are in keeping with SMO's role a general reliever airport and generally consistent with Group II Design standards because, as explained above it is not inherently unsafe for an aircraft of a larger design category to utilize an airport that has been designed to accommodate a lesser design category of aircraft if the aircraft meets the FAA approved operational requirements for using SMO. The FAA strictly regulates the safe operation of aircraft from certification (e.g. 14 CFR Part 25) to the manner in which the aircraft is operated (e.g. 14 CFR Part 135). Both types of regulations cover runway length requirements. Moreover, pilot certification, the operation of a particular aircraft/flight, including the amount of required runway for a take off and landing, are all regulated by the FAA.

For over 20 years Category C and D aircraft have operated at SMO in keeping with the 1984 Agreement. Separate and apart from other requirements that it not unjustly discriminate against operators, the City is also bound by its own specific promise not to unjustly discriminate against airport users in the 1984 Agreement, which was included as a special grant assurance condition in its federal grant agreements.

**F. Whether the implementation of the adopted Ordinance prohibiting category C and D aircraft by the City of Santa Monica is otherwise preempted by Federal law.**

**The Ordinance is Preempted**

The City in response to the Order to Show Cause argues that the FAA has identified no basis for its finding that the Ordinance in question is either expressly or impliedly preempted, and that the Ordinance is entitled to a strong presumption of validity as a proper exercise of police power. The City is wrong in every respect.

**The FAA Has Exclusive Authority Over Aviation Safety**

Congress's clear desire for a uniform, nationwide system of aviation safety, and the FAA's exercise of its authority, leave no room for state or local regulations promulgated expressly on the basis of aircraft safety. When Congress enacted the Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731 (codified as amended at 49 U.S.C. § 40101 et seq.) (See H.R. REP. NO. 85-2360 (1958), reprinted in 1958 U.S.C.C.A.N. 3741, 3742) it provided for a single, uniform scheme of nationwide regulation and authorized the FAA "to provide for the regulation and promotion of civil aviation in such manner as to best foster its development and safety, and to provide for the safe and efficient use of the airspace by both civil and military aircraft." Pub. L. No. 85-726, 72 Stat. at 731; *see also id.* § 103(c), 72 Stat. at 740 (declaring that the FAA consider, "as being in the public interest," "[t]he regulation of air commerce in such manner as to best promote its development and safety") (codified as amended at 49 U.S.C. § 40101(a)(1) (placing "safety" as "highest priority in air commerce")). In accordance with this goal, Congress authorized the FAA to exercise "full responsibility and authority for the advancement and promulgation of civil aeronautics generally, including the promulgation and enforcement of safety regulations." H.R. REP. NO. 85-2360, reprinted in 1958 U.S.C.C.A.N. at 3741; *see also* S. REP. NO. 85-1811, at 1 (1958).

In accordance with its statutory obligations under the Federal Aviation Act, the FAA has developed an extensive system of aviation safety certification and regulation. This system governs, among other aspects of aviation safety, certification of aircraft design and manufacture in accordance with federal airworthiness standards, 14 C.F.R. Parts 21, 23, 25, 27, 29, 31, and 33; certification of the safety of operators seeking to transport cargo or members of the public in specified operations, 14 C.F.R. Parts 119, 121, 125, and 135; the operation of aircraft in specific classes of airspace, 14 C.F.R. §§ 91.101-91.145; and the flight rules under which an aircraft is operated, 14 C.F.R. §§ 91.151-91.193.<sup>129</sup>

The courts have properly recognized that this comprehensive statutory and regulatory scheme endows the FAA with exclusive authority over aviation safety. *Montalvo v. Spirit Airlines*, 508 F.3d 464, 476 (9<sup>th</sup> Cir. 2007); *Greene v. B.F. Goodrich Avionics Systems, Inc.*, 409 F.3d 784, 794-95 (6<sup>th</sup> Cir. 2005); *Abdullah v. American Airlines, Inc.*, 181 F.3d 363 (3<sup>d</sup> Cir. 1999). A local ban affecting categories of aircraft otherwise free to serve an airport intrudes onto this field in a manner directly contrary to this national approach.<sup>130</sup> Even the case relied upon by the City, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947), acknowledges that there is no presumption against preemption in these circumstances.

Santa Monica's invocation of *Rice* for the proposition that its Ordinance is entitled to a presumption against preemption as an exercise of police power is misplaced. In *Rice*, Congress had legislated "in a field which the States have traditionally occupied." But that is not the case with regulation of the nation's airways and aircraft, where (as the *Rice* Court noted) the Federal scheme is one "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." 331 U.S. at 230. The presumption on which the City relies has no application in these circumstances. See *United States v. Locke*, 529 U.S. 89 (2000) (there is no initial assumption that State laws are valid in the traditionally Federal domain of national and international maritime commerce).

#### Airport Proprietary Powers Do Not Authorize the Ordinance

Equally unpersuasive is the City's contention that its Ordinance is proper under the airport proprietor exception to Federal preemption. The exception, codified in 49 U.S.C. § 41713(b)(3), is "extremely limited in scope." *American Airlines, Inc. v. DOT*, 202 F.3d 788, 806 (5<sup>th</sup> Cir. 2000) and cases cited therein. The exception has never been held to allow a proprietor to ban categories of aircraft from an airport based on safety.<sup>131</sup> Even actions within the exception's scope must be reasonable, nonarbitrary, and nondiscriminatory. *Id.*; *Arapahoe County Public Airport Authority v. FAA*, 242 F.3d 1213, 1221-22 (10<sup>th</sup> Cir. 2001); *City and County of San Francisco v. FAA*, 942 F.2d 1391, 1394 (9<sup>th</sup> Cir. 1990). The City's effort to ban Category C and D aircraft, which have qualified to operate and have operated safely at SMO for over twenty years, is

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<sup>129</sup> According to the Supreme Court, the Federal Aviation Act was enacted to create a "uniform and exclusive system of Federal regulation" in the field of aviation safety. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 639 (1973).

<sup>130</sup> The Federal Aviation Act of 1958, recodified at 49 U.S.C. 40101, et seq., "requires a delicate balance between safety and efficiency, and the protection of persons on the ground." *Id.*

<sup>131</sup> *Millard Refrigerated Services, Inc. v. FAA*, 98 F.3d 1361 (D.C. Cir. 1996) is not to the contrary. In that case the airport did not purport to exercise proprietary authority to ban aircraft on safety grounds in defiance of FAA. To the contrary, the proprietor of a small design category airport acted to ban large airplanes in accordance with the agency's specific direction. The FAA advised the airport that continued operation of large aircraft on a regular basis in the circumstances of that case would be unsafe and violate the airport's federal grant assurance obligations. The facts were that FAA issued newly effective standards for large and small airplane design category airports while the airport was planning improvements using federal funding. Due to physical constraints and the great expense, the airport could not make the modifications needed to meet large airplane design category airport standards. Moreover, the strength of the airport pavement, given frost conditions, could not support regular operations by large airplanes. The court ruled only that the FAA had to consider an argument it had addressed outside the Part 16 proceeding, e.g. the applicability of the Airport Noise and Capacity Act of 1990.

unreasonable, arbitrary, and discriminatory. Not only does its proprietary power not extend so far, but it is difficult to imagine a more clear-cut local attempt to frustrate Federal law. *Arapahoe County, supra*.<sup>132</sup>

The City cites Grant Assurance 22(i), which provides that an airport may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or to serve the civil aviation needs of the public. But that assurance reflects only the limited proprietary authority discussed above, and is limited so as to ensure consistency with FAA safety determinations. *Arapahoe County, 242 F.3d at 1223* See also *AOPA v. Pompano Beach*, Docket No. 16-04-01, (December 15, 2005) (“Airport owners may impose reasonable rules or regulations to restrict or deny use of the airport for purposes deemed to be incompatible with safety under the local conditions peculiar to that airport. However, as noted in the Order, this authority is not unbridled. The airport may propose an access restriction based on safety and efficiency, but when such a restriction triggers a complaint, such as this complaint, the FAA Airports Office will review the supporting justification and make the final determination regarding the reasonableness of an access restriction. Restrictions based on safety and/or efficiency require supporting justification from the appropriate Flight Standards and/or Air Traffic Offices.”) Accordingly, assurance 22(i) does not authorize proprietors to act outside that “vary limited” scope, much less in a manner contrary to FAA’s express safety determinations. The FAA has concluded that category and C and D aircraft operate safely at SMO, and the City’s proprietary authority does not empower it to ban their operations on the basis of unfounded safety concerns.

The City contends that the courts have recognized airport proprietary rights to restrict access based on local considerations, citing *Western Airlines v Port Authority*, 658 F. Supp 952 (SDNY 1986), *aff’d*, 817 F.2d 222 (2<sup>nd</sup> Cir. 1987); *cert. denied* 485 U.S. 1006 (1988); see e.g. *City of Burbank v Lockheed Air Terminal, Inc.*, 411 U.S. 624, 635 n.14 (1973); *British Airways Board v Port Authority of New York and New Jersey*, 558 F.2d 75, 84 (2<sup>nd</sup> Cir. 1977); *Santa Monica Airport Assoc. v City of Santa Monica*, 659 F.2d 100, 102-104 (9<sup>th</sup> Cir. 1981). The City argues that the Ordinance furthers the compelling local interest in managing potential governmental liability. It maintains that “the risk of financial loss is greatly exacerbated by the disparity between the FAA’s own design standards and the physical realities of the Santa Monica Airport....” It further argues that there is no field preemption with regard to a proprietor’s ordinance and that “the only conceivable question is whether the City’s Ordinance must yield to conflict preemption.”

The City cites no authority for the proposition that airport proprietors may restrict access based upon financial liability for operations that comply with federal safety laws because there is none. All of the cases cited by the City (i.e. *City of Burbank*, *British Airways*, and *Santa Monica Airport Ass’n*.) are inapposite. These cases address liability for noise damages and ground congestion, not restrictions based upon local safety concerns about aircraft approach speed. In any event, it is recognized that proprietary exceptions in the context of aviation must be narrowly construed. Cf., *Rowe v New Hampshire Motor Transport Ass’n*, 128 S. Ct. 989, 996 (2008)(In the context of the Airline Deregulation Act the Supreme Court recognizes only the narrowest proprietary exception). Indeed, state and local laws purporting to regulate landings and takeoffs and infringe upon federal regulation of the navigable airspace are

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<sup>132</sup> Neither does the FAA Airport Compliance Requirements Handbook on which the City relies, support its contentions. Although the reference airport proprietary authority in the context of safety, the Handbook explicitly reserves to the FAA the power to “make the final determination of the reasonableness of the airport owner’s restrictions which denied or restricted use of the airport.” (FAA Order 5190.6A, section 4.8.),

unenforceable under the supremacy clause and may properly be enjoined by a federal court. *U.S. v. City of New Haven*, 496 F.2d 452 (2d Cir. 1974)(orders of state court purporting to halt use of airport runway extension in connection with use of expanded clear zones in adjacent town held federally preempted).

The City's reliance upon City of Burbank as authority for restrictions based upon local considerations is also misplaced. According to the *Burbank* court,

If we were to uphold the Burbank ordinance and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of FAA in controlling air traffic flow.

411 U.S. at 639-640.

*See also Air Transport Ass'n of America, Inc v Cuomo*, ---F. 3d ---, 2008 WL 763163 (2d Cir., Mar. 25, 2008 at 6 (differing restrictions would "unravel[] the centralized Federal framework for air travel"); *French v. Pan Am Express, Inc*, 869 F.2d at 6 ("Such a "patchwork of state laws in this airspace ... would create a crazy-quilt effect") and *Rowe v. New Hampshire Motor Transport Ass'n*, 128 S.Ct. 989, 996 (2008) (to interpret the Federal law to permit these, and similar, state requirements could easily lead to a patchwork of state service-determining laws, rules, and regulations).

The FAA has, in any event, offered to assist the City with installation of EMAS on the runways and other reasonable measures to enhance safety but the City has refused to consider such measures. Similarly, FAA's proposal for a Federally funded voluntary program of property acquisition, initially limited to approximately 15-20 homes in the most critical areas in the RSA and RPZs for both runways at SMO, has not been acted upon by the City. As opposed to an outright ban the City has available a number of options to address its claimed potential liability, but has failed to act upon any of them.

## VI. FINDINGS AND CONCLUSIONS

Under the particular circumstances existing at SMO and the entire record herein, and upon consideration of the submissions and responses by the City and the applicable law and policy and for the reasons stated above, the Director concludes that:

- The implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is not consistent with the Federal obligation 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 (Grant Assurance 22 *Economic Nondiscrimination*).
- The implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is not consistent with the Federal obligation prohibiting the granting of an exclusive right at the airport to conduct any aeronautical activities (Grant Assurance 23 *Exclusive Rights*).
- The implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is not consistent with the Surplus Property Act of 1944.
- The implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is not consistent with the terms of the 1984 Agreement.

- The implementation of the adopted Ordinance prohibiting Category C and D aircraft by the City of Santa Monica is preempted under Federal Law.

## VIII. ORDER

### ACCORDINGLY, the FAA Orders that:

- a. The City of Santa Monica and Santa Monica Airport (SMO) present a plan to the Office of Safety and Standards, Compliance Division, of the FAA within 20 days from the date of this Director's Determination on how it intends to address the FAA's concerns by eliminating the violations outlined above;
- b. Pending FAA approval of the corrective action plan specified in Ordering Paragraph 1, or until further notice, the City and SMO are ineligible to apply for new FAA grants pursuant to 49 U.S.C. § 47106(d);<sup>133</sup>
- c. If the City and SMO do not submit a corrective action plan in accordance with the Ordering Paragraph 1 above or appeal this determination as set forth below, the FAA proposes to issue a Final Cease and Desist order pursuant to 49 U.S.C. § 47122 and 14 CFR §16.109(a) directing the City of Santa Monica to permanently cease and desist from banning by Ordinance or otherwise, from Santa Monica Municipal Airport, Category C and D aircraft operations or any other aircraft operations that the FAA considers to be operationally safe to use the Airport;<sup>134</sup>
- d. The FAA will provide a copy of this Determination and Order to the Secretary of Transportation to permit the Secretary to notify the appropriate Department operating administrations of the City's non-compliance posture with its Federal obligations when considering an award of future Federal funds that would otherwise be made available to the City, and funds that would be made available to the State of California for the City (including any multimodal transportation agency or transit authority of which the City is a member entity) as part of a Title 49 apportionment or grant;
- e. The Supplemental Interim Cease and Desist Order of May 12, 2008 is incorporated by reference herein and continues in effect until such time as the FAA accepts a corrective action plan from the City and SMO resolving this matter or the final cease and desist order is issued.

All motions not expressly granted herein are denied.<sup>135</sup>

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<sup>133</sup> The 180-day limit on suspension of eligibility contained in § 47106(d) applies only to applications to receive AIP funds apportioned under 49 U.S.C. §§ 47114(c) and (e). The City and SMO are not eligible to receive these apportioned funds. Therefore, the 180-day limit does not apply.

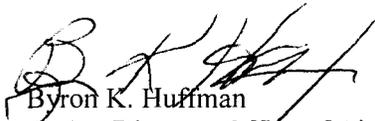
<sup>134</sup> Based on the record, the City has stopped taking Federal AIP grants as of 2003, Therefore the immediate suspension of grant payments pursuant to 49 U.S.C. § 47111(d) and future grant applications pursuant to 49 U.S.C § 47106(d) are not an effective sanction in this case.

<sup>135</sup> **Safety Recommendation:** The Director notes that restricting C and D aircraft, in addition to being inconsistent with the City's Federal obligations, is not an effective means to enhance safety at SMO. As the FAA has advised on several occasions in the past few months, and as represented in the record, the FAA's proposal to enhance safety at SMO would both help prevent, reduce the likelihood, and reduce the severity of an accident, should one occur. This proposal, outlined by the FAA to the City in writing on March 7, 2008 and again at the City Council meeting on March 25, 2008, includes (1) a pilot awareness program to be developed in conjunction with FAA's Flight Standards office and based on an *Information for Operators* (InFo), (2) a 70-knot Engineered Materials Arresting System (EMAS) on the departure end of runway 21, where a risk analysis indicates the potential for overrun is higher and hence where the maximum benefits lie, including arresting aircraft of any category that exceed 12,500 lb (and possibly even lower to 9,000 lb. single-wheel), and (3) the implementation of a voluntary program of property acquisition, initially limited to approximately 15-20 homes in the most critical areas in the RSA and RPZs for both runway at SMO. (FAA Exhibit 1, Items 7b and 113.)

## RIGHT TO APPEAL OR REQUEST A HEARING

Pursuant to 14 CFR Part 16, the City may request a hearing under subpart F of Part 16 within 20 days after service of the Director's Determination. (14 CFR §§ 16.31(d) and 16.109(1).) There is no statutory requirement to afford the opportunity to request a hearing in this matter. (See e.g., 49 U.S.C. §§ 47106(d) and 47111(d).) However, the FAA is affording the City this opportunity here in the exercise of the FAA's discretion. The City may waive a hearing and appeal this 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 (14 CFR §§ 16.31(c), 16.33, and 16.109(c)(2).) Alternatively, the City may submit, jointly with FAA counsel, a proposed consent order under §16.243(e). (14 CFR §16.109(4).)

This Director's Determination is an initial agency determination and does not constitute final agency action subject to judicial review under 49 U.S.C. § 46110. See also 14 CFR § 16.247. However, if the City elects not to request a hearing or to file an appeal in writing within the time period specified in 14 CFR § 16.109, the Director's Determination becomes final. (14 CFR § 16.109(d))



Byron K. Huffman  
Acting Director, Office of Airport Safety and Standards<sup>136</sup>

Date: 5/27/08

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<sup>136</sup> The Office was reorganized effective April 29, 2008 and the functions that were formerly performed by AAS-1 are now the responsibility of ACO-1. Byron K. Huffman is acting AAS-1 and acting ACO-1. The Office of Airports expects to fill the ACO-1 position in June.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 27, 2008, I caused to be served by electronic mail (e-mail) a true copy of the foregoing document, and by overnight express delivery service (Federal Express), a true copy of the foregoing document and a disc containing the documents comprising the Administrative Record addressed to:

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Elizabeth Newman  
FAA Office of Chief Counsel

## INDEX OF THE ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

### **FAA Exhibit 1**

#### **Item 1**

Notice of Investigation (NOI), October 8, 2002.

#### **Item 2**

City's Reply to the NOI, dated November 7, 2002 containing the following documents:

Trimborn Declaration, dated November 7, 2002 and

- Exhibit A Santa Monica Airport Design Standards Study.
- Exhibit B Santa Monica City Charter Sections 1015 and 1016.
- Exhibit C Aerial photo of SMO.
- Exhibit D Aerial photo and 6 close up photos of SMO's East End.
- Exhibit F Aerial photo and 7 close up photos of SMO's West End.
- Exhibit G Airport Commission Recommendation, May 20, 2002.

#### **Item 3**

FAA's Order to Show Cause, March 26, 2008.

#### **Item 4**

City's Reply to the Order to Show Cause, April 7, 2008 containing the following documents:

Declaration of Robert Trimborn, dated April 4, 2008.

Declaration of James E. Hall, dated April 4, 2008.

Declaration of Lamont Ewell, dated April 4, 2008 and

- Exhibit 1 Aerial picture of Airport.
- Exhibit 2 Airport Layout Plan of 1991.
- Exhibit 3 Santa Monica Airport Agreement ("1984 Agreement").
- Exhibit 4 FAA Advisory Circular 150/5300.4B dated 2/24/1983.
- Exhibit 5 City Council Minutes and Staff Reports from 12/10/2002.
- Exhibit 6 Letter dated 2/3/2004 from David L. Bennett to Robert Trimborn.
- Exhibit 7 Letter dated 9/2/2004 from R. Austin Wiswell to Woodie Woodward.
- Exhibit 8 Letter dated 9/8/2004 from Robert Trimborn to David L. Bennett.
- Exhibit 9 Letter dated 1/20/2006 from David L. Bennett to Robert Trimborn.
- Exhibit 10 Written responses from Aviation Operators dated 3/2/2007.
- Exhibit 11 Statement of Brian Armstrong dated 3/26/2007.
- Exhibit 12 Letter dated 7/31/2007 from Kirk Shaffer to Robert Trimborn.
- Exhibit 13 Council Minutes and Staff Report from 8/28/2007.
- Exhibit 14 Council Minutes and Staff Report from 10/09/2007.
- Exhibit 15 Letter dated 11/26/2007 from Kirk Shaffer to Mayor Bloom.
- Exhibit 16 Council Minutes and Staff Report from 11/27/2007.
- Exhibit 17 Packet for Congressional representatives at January 29, 2008 meeting.
- Exhibit 18 Letter dated 3/7/2008 from Kirk Shaffer to P. Lamont Ewell.
- Exhibit 19 City Analysis of Impact of Relocated Threshold RSA of 300 feet.
- Exhibit 20 Copy of Netjets website regarding trade-down rights.
- Exhibit 21 Copy of Flight Options website regarding trade-down rights.
- Exhibit 22 Copy of FlexJet website regarding trade-down rights.
- Exhibit 23 Letter dated 3/12/2008 from P. Lamont Ewell to Kirk Shaffer.
- Exhibit 24 Council Meeting Minutes and Staff Report from 3/25/2008.
- Exhibit 25 Copy of Lease No. W-04-193-eng-4894.
- Exhibit 26 Copy of Supplemental Agreement No. 1 of Lease No. W-3460-eng-549

- dated 12/20/1944.
- Exhibit 27 Copy of Supplemental Agreement No. 2 of Lease No. W-04-193-4894 dated 7/15/1946.
- Exhibit 28 Copy of Supplemental Agreement No. 1 to Lease No. W-3460-eng-549 dated 12/20/1944.
- Exhibit 29 Copy of Supplemental Agreement No. 2 to Lease No. W-3460-eng-549 dated 7/15/1946.
- Exhibit 30 Printout from Government Printing Office of Miscellaneous Proclamation and other Executive Orders.
- Exhibit 31 Resolution No. 183 (CCS) dated 8/10/1948.
- Exhibit 32 Aerial View of Runway Ends at Santa Monica Airport.
- Exhibit 33 NTSB Safety recommendation A-77-16 of 4/20/1977
- Exhibit 34 NTSB Recommendation A-94-211 of 1/5/1995
- Exhibit 35 NTSB Recommendation A-03-11 of 5/6/2003
- Exhibit 36 Order on Motion for Extension of Time dated 4/1/2008.
- Exhibit 37 Letter to Congressman Waxman from Marion C. Blakey of the FAA dated 6/12/2006.
- Exhibit 38 Video Recording of August 28, 2007 City Council Meeting.
- Exhibit 39 Video Recording of March 26, 2008 City Council Meeting.

**Item 5**

- A. FAA Form 5010 and other Airport data.
- B. FAA Form-29A (1-61) Airport Facilities Record, 1/20/1966.

**Item 6**

Grant Agreement, Santa Monica Airport, June 27, 1994 for Project No. 3006-0239-06, Amendment No. 2 , August 27, 2003 and Amendment No. 1, November 8, 1999 and project status report; Grant Agreement, Santa Monica Airport, September 5, 1985 for Project No. 3-06-0239-02 and Amendment No. 1, September 15, 1992 and project status report; Grant Agreement, Santa Monica Airport, September 23, 1985 for Project No. 3-06-0239-03 and Amendment No. 1, August 27, 1993 and project status report; Grant Agreement, Santa Monica Airport, August 23, 1991 for Project No. 3-06-0239-05 and Amendment No. 1, December 31, 1991 and project status report; project status reports for Project Nos. 3-06-0239-04 and 3-06-0239-01.

**Item 7**

Correspondence between the City, FAA and others from 2000 through June 2007:

- A. City Manager to Associate Administrator, dated March 12, 2008.
- B. Associate Administrator to City Manager, dated March 7, 2008.
- C. Associate Administrator to Mayor, dated November 26, 2007.
- D. Acting Administrator to Congresswoman Harman, dated October 12, 2007.
- E. Associate Administrator's Presentation to City Council, dated August 28, 2007.
- F. NBAA to Associate Administrator, dated August 24, 2007.
- G. Congresswoman Harman to Administrator, dated August 14, 2007.
- H. Congresswoman Harman to Administrator, dated June 5, 2007.
- I-1 Acting Associate Administrator to Airport Manager, dated July 31, 2007.
- I. Congressman Waxman to Administrator, dated May 22, 2007.
- J. AAS Director to City Airport Commission Chairman, dated April 11, 2007.
- K. Airport Director to AAS Director, dated March 7, 2007.
- L. AAS Director to Whom It May Concern, dated December 1, 2006.
- M. Airport Director to AAS Director, dated September 7, 2006.
- N. AAS Director to Kaplan, Kirsch & Rockwell, dated August 11, 2006.
- O. AAS Director to Kaplan, Kirsch & Rockwell, dated August 1, 2006.
- P. Kaplan, Kirsch & Rockwell to AAS Director, dated June 13, 2006.
- Q. AAS Director to Airport Manager, dated May 12, 2006.
- R. Acting Associate Administrator to Senator Feinstein, dated March 17, 2006.

- S. Edwards Angell Palmer & Dodge to AAS Director, dated February 2, 2006.
- T. AAS Director to Airport Manager, dated January 20, 2006.
- U. AAS Director to Airport Manager, dated November 22, 2004.
- V. Airport Manager to AAS Director, dated September 8, 2004.
- W. Airport Manager to AAS Director, dated May 10, 2004.
- X. AAS Director to Airport Manager, dated February 3, 2004.
- Y. Airport Manager to AAS Director, dated November 26, 2003.
- Z. AAS Director to Airport Manager, dated November 10, 2003.
- AA. Airport Manager to AAS Director, dated November 6, 2003.
- BB. Associate Administrator to Senator Feinstein, dated October 30, 2003.
- CC. Bailey & Partners to AAS Director, dated October 29, 2003.
- DD. AAS Director to Airport Manager, dated October 15, 2003.
- EE. Senator Feinstein to Quentin Burgess, dated October 6, 2003.
- FF. Airport Manager to AAS Director, dated August 12, 2003.
- GG. Acting Manager to Airport Manager, dated July 2, 2003.
- HH. Airport Manager to AAS Director, dated May 21, 2003.
- II. Airport Manager to AWP Manager, dated May 7, 2003.
- JJ. Santa Monica Airport Association to AAS Director, dated April 27, 2003.
- KK. Associate Administrator to Senator Feinstein, dated January 29, 2003.
- LL. Airport Manager to AAS Director, dated December 23, 2002.
- MM. Regional Administrator to Deputy City Attorney, received December 19, 2002.
- NN. FOIA Coordinator to Deputy City Attorney, dated November 5, 2002.
- OO. Deputy City Attorney to FOIA Coordinator, dated October 29, 2002.
- PP. AAS Director to Airport Manager, dated October 8, 2002.
- QQ. Airport Manager to AWP-621, dated September 10, 2002.
- RR. Hogan & Hartson to AAS Director, dated August 6, 2002.
- SS. AOPA to Mayor, dated August 2, 2002.
- TT. NBAA to City Airport Commission, dated July 22, 2002.
- UU. AWP Manager to Airport Director, dated July 22, 2002.
- VV. AWP-620 Report of City Airport Commission, dated July 22, 2002.
- WW. AWP-620/621 Phone Discussion Record with City Airport Commission Vice-Chairman, dated July 23, 2002.
- XX. Regional Administrator to Joni Jacobson, dated December 18, 2000.
- YY. AAS Director to Congressman Waxman, dated December 11, 2000.
- ZZ. Regional Administrator to Congressman Waxman, dated July 19, 2000.
- AAA. Airport Manager to AWP-621, dated July 10, 2000.
- BBB. Congressman Waxman to Administrator, dated May 26, 2000.

**Item 8**

City Ordinance, dated March 25, 2008, and Municipal Code Section 10.04.06.220.

**Item 9**

City of Santa Monica's Motion for Extension of Time to respond to FAA's Order to Shaw Cause, March 28, 2008.

**Item 10**

Order on Motion for Extension of Time, April 1, 2008.

**Item 11**

City FOIA Request (March 28, 2008) and FAA's Response (March 31, 2008).

**Item 12**

Letter from David L. Bennett to Robert Trimborn, dated October 15, 2003.

**Item 13**

Memorandum from the City Attorney to the City Council, January 23, 1962.

**Item 14**

FAA Record of Meeting – October 1, 2002.

**Item 15**

- A. 1948 *Instrument of Transfer*
- B. 1949 *Quitclaim Deed*.

**Item 16**

Regulation 16.

**Item 17**

NASA ASRS Reports for SMO.

**Item 18**

Sample NTSB reports for SMO accidents. Includes some local media coverage.

**Item 19**

- A. Users Comments – December 2006-March 2007.
- B. Community Comments – June 6, 2007.

**Item 20**

Leasehold examples.

**Item 21**

- A. FAA Order 5200.8 *Runway Safety Area Program*.
- B. Advisory Circular AC 150/5220-22 *Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns*.

**Item 22**

Listing of EMAS installation in the US.

**Item 23**

*Developing Improved Civil Aircraft Arresting Systems*, Interim Report, prepared for the Airport Cooperative research Program (ACRP), Project No. 07-03, January 31, 2008.

**Item 24**

Excerpt from AC 15/5300-4B, Change 6.

**Item 25**

Letter from Congressmen Bud Shuster and James L. Oberstar to FAA Administrator Jane F. Garvey, August 30, 2000.

**Item 26**

Airport Master Record, FAA Form 5010, dated 5/14/2007.

**Item 27**

SMO Airport Diagram, Airport Facility Directory extract and SMO VOR-A or GPS-A approach plate.

**Item 28**

- A. Airport Facility Directory Reports for SMO, LAX, BUR, HHR, LGB, TOA and VNY.

B. FAA Form 5010 for LAX, BUR, HHR, LGB, TOA and VNY.

**Item 29**

Frederick, John H., *Airport Management*, Richard E. Irwin, Chicago, Illinois, 1949,

**Item 30**

LA Times 1944 newspaper excerpts.

**Item 31**

*Evaluation of the City of Santa Monica's Authority to Address Environmental Impacts from Santa Monica Municipal Airport's Operations*, Frank G. Wells Environmental Law Clinic, UCLA School of Law, November 2006,

**Item 32**

GCR's *Market Share Report for Santa Monica*, dated 12/19/2004 to 12/19/2005.

**Item 33**

FAA Airports Response to NTSB Safety Recommendations A-03-11 and A-03-12.

**Item 34**

Selective aircraft performance chart Manual excerpts (DC-6, Learjet 23, GII, A/B-26).

**Item 35**

*Runway Overshoot/Runway Side Excursion US Registered Business Jet Accidents 1997 through 2006*, Robert E. Breiling Associates, Inc., May 2007.

**Item 36**

Surplus Property Map.

**Item 37**

FAA Record of Meeting with City, October 1, 2002.

**Item 38**

Public Runway Census, Continental US, July 2006.

**Item 39**

Excerpts from *Defendant City of Santa Monica's response to First Set of Interrogatories and Request For Admissions From Santa Monica Airport Association*, Volume I, Case No. 77 2852-1H.

**Item 40**

National Plan of Integrated Airport Systems (NPIAS), 1998-2002

**Item 41**

SMO Grant History.

**Item 42**

- A. Letter from Santa Monica to California Aviation, Inc., August 5, 1981.
- B. Letter from FAA to Santa Monica, February 9, 1989.

**Item 43**

FAA 2005 Report to Congress on Declared Distances.

**Item 44**

*Aerodynamics for Pilots*, Air Training Command, USAF, ATC Manual 51-3, 15 May 1966, Reprinted 3 April 1967 With Change "A" Included, 88.

**Item 45**

FAA Fact Sheet on EMAS.

**Item 46**

*Improved Standards for Determining Rejected Takeoff and Landing Performance*, RIN: 2120-AB17, 63 Federal Register 8298, February 18, 1998.

**Item 47**

FAA Memorandum, Air Transportation Division, Air Carrier Operations Branch re: Safety of C and D Aircraft Operations at the Santa Monica Municipal Airport.

**Item 48**

California Attorney General's Opinion No. CV 74-317 – May 30, 1975.

**Item 49**

Conference Record, Santa Monica Airport, California, and Review of City's Planning Effort, March 31, 1982.

**Item 50**

Major Instruments and Agreements on Santa Monica Airport Land (prepared by the LA ADO – August 2007)

**Item 51**

Declaration by the SMAA and Notification of Grievances Relating to the 1984 Agreement and the Santa Monica Municipal Airport (SMO) Grant Agreements.

**Item 52**

Compliance Inspection Reports for SMO, 1966-1994.

**Item 53**

Letter from FAA Regional Counsel to City of Santa Monica, February 12, 1981

**Item 54**

January 19, 1983 Agreement. This exhibit includes the Consolidated Scope of Work and Task Orders.

**Item 55**

*Response by Bailey & Partners to the Reply of the City of Santa Monica to the Notice of Investigation; Declaration of Scott Wardle and Carolyn Shields in Support*, September 30, 2003.

**Item 56**

Commercial Operations Permit, AirShares Elite West, July 23, 2007.

**Item 57**

Plat of the properties (lots) condemned by the government in 1944-1945. Source: LA County land records.

**Item 58**

*Interrelationships Between the Federal Aviation Administration and the City of Santa Monica regarding the Operation of the Santa Monica Airport*, February 25, 2002.

**Item 59**

Letter from the Airport Manager to Air Group Inc., April 14, 2008 and letter from users in response.

**Item 60**

CAA references concerning Clover Field/Santa Monica Interim Permit, January 8, 1946.

**Item 61**

*2007 Capacity Needs in the National Airspace System Report, Draft, (January 2007).*

**Item 62**

*Southern California Association of Governments (SCAG) Simulation & Analysis Report, Final Report Revision 1, June 13, 2007.*

**Item 63**

*2008 Regional Transportation Plan: Aviation and Airport Ground Access Report, DRAFT, December 2007.*

**Item 64**

Excerpt from SCAG Analysis, Chapter 2: Analysis of Existing General Aviation System.

**Item 65**

Condemnation and Declaration of Taking No. 1, November 23, 1945.

**Item 66**

*Regional Aviation Planning in Southern California, SCAG, March 11, 2008.*

**Item 67**

City's June 12, 2007 Impact Data.

**Item 68**

FAA Revised Impact Assessment Released to the City and Users on September 17, 2007.

**Item 69**

Listing of SMO users, December 2006.

**Item 70**

Listing of contacted SMO users, October - December 2006.

**Item 71**

*Business Aviation Safety Brief, Summary of Global Accident Statistics 1998-2002, International Business Aviation Council, Issue No. 2, March 10, 2004.*

**Item 72**

NTSB Records (1998-2008) for Gulfstream GIV, Learjet 45, Learjet 60, Hawker 800 and Falcon 900.

**Item 73**

NTSB Records (1998-2008) for Cirrus SR20/22.

**Item 74**

Engineered Materials Arresting System (EMAS) installation in the US.

**Item 75**

Excerpt from House Report 108-143 – Flight 100, Sec. 419 *Runway Safety Standards*.

**Item 76**

Title Report, prepared by Chicago Title Insurance, dated December 1, 2001.

**Item 77**

Newspaper article *Council Bans Faster Planes at Airport*, LookOut News, November 28, 2007.

**Item 78**

2002 and 2004 (*Santa Monica Design Standards Study and Addendum #1*).

**Item 79**

FAA letter to the City, April 21, 2008.

**Item 80**

A. Documents related to 1948 Surplus Property Conveyance including:

- A. City Mayor to SPA, December 11, 1945.
- B. City Commissioner of Finance to SPA, December 17, 1945.
- C. Adjutant General declaration, dated February 5, 1946.
- D. Lt. Col. To War Assets Corporation, dated February 8, 1946.
- E. Air Corps Colonel to WAA, dated April 26 1946.
- F. Declaration of Surplus, dated July 29, 1946, and Supplemental Report.
- G. City Clerk to WAA, dated September 19, 1946.
- H. City Clerk to WAA, dated September 20, 1946.
- I. WAA to City, dated September 25, 1946.
- J. CAA Chief to WAA, dated October 14, 1946.
- K. Office Memorandum, dated November 26, 1946.
- L. Transmittal Memo, dated December 31, 1946.
- M. Office of Real Property Disposal Memo, dated January 9, 1947.
- N. Newspaper Notice of Sale, August 18, 1947.
- O. General Counsel Memo on Unconditional Conveyances of Property, dated January 27, 1948.
- P. WAA Memo, dated April 9, 1948.
- Q. WAA Memo, dated August 24, 1948, conformed copy of August 10, 1948 Instrument of Transfer, and related documents including Delegation of Authority, City Resolution and Certificate of Delivery.
- R. District Director to CAA, August 27, 1948.
- S. WAA Memo, dated September 13, 1948.
- T. WAA Memo, dated October 2, 1948.
- U. WAA Memo, dated March 9, 1949.

B. Documents related to 1949 Surplus Property Conveyance, including:

- A. Congressman Jackson to WAA, dated October 28, 1948.
- B. Real Property Disposal to CAA, dated December 22, 1948.
- C. CAA to WAA, dated January 27, 1949.
- D. Office of Real Property Disposal to Air Force, dated February 21, 1949.
- E. Memo dated March 28, 1949 enclosing March 17, 1949 letter from Secretary of Air Force to WAA Office of Real Property.
- F. WAA Real Property Classification, April 20, 1949.
- G. WAA Memo, dated April 22, 1949.
- H. WAA Regional Counsel Memo, dated May 27, 1949.

**Item 81**

City letter to the FAA, April 22, 2008.

**Item 82**

NTSB Accident data for SMO.

**Item 83**

Visual Depiction of the Airport Reference Code (ARC).

**Item 84**

Increases in Airport Design Standards, Excerpt Table 1-1, Airport Design AC 150-5300.13.

**Items 85**

Declaration of Donald K. Stimson, April 23, 2008.

**Item 86**

Letter from Gulfstream to the City, November 30, 2007.

**Item 87**

NetJets.com Summary on Safety Standards, printed April 30, 2008.

**Item 88**

FAA Powerpoint Presentation, Runway Safety Areas, presented to NTSB on June 20, 2006.

**Item 89**

SMO Map, August 20, 1946.

**Item 90**

Surplus Property Release Documents

- A. Release from USA to City, dated April 25, 1952.
- B. Agreement between USA and City regarding proceeds from sale of released premises, dated May 16, 1952.
- C. Amended Release from USA to City, dated September 15, 1952.
- D. Instrument of Release from USA to City, dated March 5, 1956.

**Item 91**

Cease and Desist Order, April 23, 2008.

**Item 92**

City's Response to Cease and Desist Order, including Declarations, May 5, 2008.

**Item 93**

Application for TRO and Supporting Declarations, April 23, 2008.

**Item 94**

City's Response in Opposition to TRO, Declarations, and Exhibits, April 23, 2008.

**Item 95**

Order Granting TRO, April 28, 2008.

**Item 96**

FAA's Reply Memorandum in Support of Application for Preliminary Injunction and Declaration, May 12, 2008.

**Item 97**

City's Response to Preliminary Injunction, May 6, 2008

**Item 98**

Order Granting Preliminary Injunction, May 16, 2008.

**Item 99**

City Letter to User's Regarding Implementation of Ban, April 14, 2008.

**Item 100**

Supplemental Interim Cease and Desist Order, May 12, 2008.

**Item 101**

McClellan, Advantage, Avanti. *Flying*, Vol. 114, No. 12 (December 1987): 54-60.

**Item 102**

1955 *Characteristic Speed Chart* from the DC-6 Operation Manual, and *DC-6A and DC-6B Description and Operations Manual*. Douglas Aircraft Co., Inc., Santa Monica, December 24, 1951, Rev. June 1, 1959.

**Item 103**

*Airplane Flight Manual for Grumman Gulfstream II G-1159*, Approved 19 October 1967, Grumman Aerospace Corporation, Savannah, Georgia, Figure 4-68.

**Item 104**

Collins, Richard, Fairchild 300. *Flying*, Vol. 111, No. 3 (March 1984): 70-74.

**Item 105**

FAA Data, 5010 database. Query completed April 9, 2006. Note: An assumption of 400 operations per based aircraft was used.

**Item 106**

*National Airport System Plan*, Revised Statistics 1978-1987, iii.

**Item 107**

Report to Congress, *National Plan of Integrated Airport Systems* (NPIAS), 2007-2011.

**Item 108**

*Risk Analysis in Support of Aerodrome Design Rules; Additional Studies Concerning Overrun Accidents Involving Smaller Aircraft*. AEA Technology, December 2003.

**Item 109**

Report No. NLR-TP-2005-498, *Running Out Of Runway*, G.W.H. van Es, September 2005.

**Item 110**

Veillette, Patrick. Slip Sliding Away. *Business & Commercial Aviation*, Vol. 97 No. 5 (November 2005).

**Item 111**

1998-2002 data, See *Business Aviation Safety Brief, 1998-2002*, International Business Aviation Council, Table 4.3a.

**Item 112**

*Business Aviation Safety Brief Summary of Global Accident Statistics 1998-2002*, International Business Aviation Council, Montreal, Quebec, Canada, Issue No. 2, March 10, 2004.

**Item 113**

Presentation on *Enhancing Safety at SMO* to Santa Monica City Council by Associate Administrator for Airports, March 25, 2008.

**Item 114**

*Aviation Capacity Enhancement Plan (ACE) 2000*, excerpt.

**Item 115**

Item 8-A, Council Meeting July 10, 2001, Santa Monica, California, To Mayor and City Council, from City Staff, Subject: *Recommendation to Adopt a Formal Position on the Los Angeles International Airport Master Plan*, <http://www.santa-monica.org/cityclerk/council/agendas/2001/s2001071008-A.htm>

**Item 116**

*Los Angeles Arrival Enhancement Project, Real-Time Simulation Test Report (Draft), Prepared by System Resources Corporation and the William J. Hughes Technical Center Atlantic City International Airport, NJ.*

**Item 117**

Declaration of Associate Administrator for Airports, May 23, 2008.

**Item 118**

AAS-400 Memo To File, March 2007.

**Item 119**

City's Notice of Appeal of Preliminary Injunction Order, May 22, 2008.

**Item 120**

City's Petition for Review of Cease and Desist Orders, May 22, 2008.