



October 14, 2022

**VIA HAND DELIVERY AND ELECTRONIC MAIL**

Office of the Chief Counsel,  
Attention: FAA Part 16 Docket Clerk, AGC-600,  
Federal Aviation Administration,  
800 Independence Avenue SW.,  
Washington, DC 20591  
[AWA-AGC-Part-16@faa.gov](mailto:AWA-AGC-Part-16@faa.gov)

Re: *Aircraft Owners and Pilots Association, et. al v. County of Santa Clara, California*  
Docket No. unassigned

Dear Docket Clerk:

Enclosed please find an original and three copies of a Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at Reid-Hillview airport (KRHV) and San Martin airport (E16).

The person designated to be served with documents in this proceeding is:

Justine Harrison  
General Counsel  
Aircraft Owners and Pilots Association  
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Frederick, MD 21701  
(301) 695-2000  
[Justine.Harrison@aopa.org](mailto:Justine.Harrison@aopa.org)

Regards,

Justine Harrison  
General Counsel

Date: October 14, 2022

Office of Chief Counsel  
Attention: FAA Part 16 Airport Proceedings Docket, AGC-610  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591  
9-AWA-AGC-Part-16@faa.gov

**COMPLAINT FILED PURSUANT TO 14 C.F.R. PART 16**

Aircraft Owners and Pilots Association, *et. al* v. County of Santa Clara, California  
Docket No. unassigned

Each Complainant listed below is committed to achieving a high octane, unleaded future for the entire national airport system. People across the nation - including pilots, aircraft owners, people who work on aircraft and at airports, and airport neighbors – desire an unleaded future as soon as possible. Systemic challenges such as this require systemic solutions. San Martin and Reid-Hillview are two airports in a *national system*, and Santa Clara County has taken unilateral actions that stand to obstruct a nationwide, coordinated, and safe transition to a future without leaded aviation fuel. Its actions violate federal Grant Assurances by unreasonably restricting access to public airports and unjustly discriminating against piston aircraft, particularly those that must have high octane fuel to safely operate. The actions also threaten the airports' ability to be self-sustaining. Left unaddressed, these actions invite a domino effect that will erode the safe and efficient functioning of airports and aircraft in the national transportation system.

The Eliminate Aviation Gasoline Lead Emissions (EAGLE) initiative is a comprehensive government-industry effort consisting of aviation and petroleum industry stakeholders and the Federal Aviation Administration. A cornerstone of the EAGLE initiative is to ensure 100LL octane fuel remains available during a transition period, until a fleetwide fuel solution is identified and commercialized. EAGLE has set a target date of a lead-free future for piston powered aircraft of no later than 2030. This systematic approach will not compromise the safety or efficient function of the national aviation system. Conversely, Santa Clara County's actions prohibiting 100LL sales and self-fueling is not participating in a national, systemic solution. Instead, it is creating obstacles to a nationwide solution by impermissibly prohibiting a legal and necessary high-octane fuel that allows all piston aircraft to equitably access and use Santa Clara County's public, federally obligated airports that are part of the national system.

100LL Volume Sold in U.S.



- 70% sold to high performance aircraft requiring 100 octane
- 30% sold to aircraft that can use 94UL and/or Mogas

Approximately 70% of 100LL sold nationwide is for high performance aircraft that cannot safely or legally operate using 94UL, including users based at Santa Clara County airports and transient users.<sup>1</sup> One high octane unleaded fuel has been approved by the FAA for use in virtually all piston airplane engines, but it is not yet in commercial production or distribution. More high-octane unleaded fuels hold promise to be approved for use in the near future. At the EAGLE Executive Committee meeting on September 21, 2022, the FAA underscored the importance of EAGLE's mission in addressing "logistical issues of refining, distribution, deployment, training, education, transition solutions **and ensuring 100LL availability until UL fuel is available widespread**". (See Attachment 1, Excerpted EAGLE slide from September 21, 2022). As the FAA has highlighted in the EAGLE initiative, in a settlement agreement with Santa Monica and in a recent FAA letter to Santa Monica Airport, ensuring availability of 100LL while it remains legal and authorized for use by the FAA is vital and necessary and "a ban or restriction on the sale or use of 100LL at a federally obligated airport is also inconsistent with Grant Assurance 22, *Economic Non-Discrimination* (49 U.S.C. § 47107(a)(1) and conflicts with the self-service provision therein. Any restriction on the sale or dispensing of any type of fuel, when there is demand/need or a fuel provider willing to provide the fuel, must be approved in advance by the FAA." (See Attachment 2, FAA letter to City of Santa Monica dated September 1, 2022).

The FAA should be just as clear in holding Santa Clara County accountable for noncompliance with federal grant assurances. That is precisely what we are asking the FAA to do in this Part 16 Complaint. When airport owners or sponsors accept funds from FAA-administered airport financial assistance programs, they agree to grant assurance obligations that require them to maintain and operate their facilities safely and efficiently and in accordance with specified conditions. Airports should channel their resources towards compliance and expediting a safe nationwide transition to an unleaded future rather than raising impediments to nationwide, systemic solutions while causing safety risks, needless delays to progress, and unjust discrimination.

### **Complaining parties:**

Aircraft Owners and Pilots Association

Aperture Aviation, Inc.

Glynn Falcon

Robert A. Gingell

Christopher Luvara

Michael Luvara

Paul Marshall

Dr. Joseph C. McMurray

Trade Winds Aviation

as persons directly and substantially affected by the noncompliance by the County of Santa Clara, California.

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<sup>1</sup> Julie Boatman, *Avgas Coalition on Aviation Fuel Pushes for 100LL Bridge*, Flying, <https://www.flyingmag.com/avgas-coalition-on-aviation-fuel-pushes-for-100ll-bridge/>.

**Respondent:**

Santa Clara County, California, as proprietor and federal grant agreement sponsor for Reid-Hillview Airport (RHV) and San Martin Airport (E16).

**Standing of Parties**

Each Complainant has been directly and substantially affected by Respondent's noncompliance with the terms of applicable grant agreements, as follows:

**Aircraft Owners and Pilots Association**

The Aircraft Owners and Pilots Association (AOPA) is the world's largest aviation membership organization representing the interests of at least 847 pilots and aircraft owners who are based out of Reid-Hillview and San Martin airports and unable to access 100LL for retail purchase or to self-fuel with 100LL at their airports. AOPA members collectively operate more than 85% of all general aviation aircraft in the United States. As of August 31, 2022, 1,245 AOPA members live within 25 miles of Reid-Hillview and 1,224 AOPA members live within 25 miles of San Martin. AOPA members use the County's busy airports, which had 209,314 operations at Reid-Hillview for 12 months ending January 31, 2020, and 33,166 operations at San Martin for the 12 months ending August 21, 2019. (See Attachment 3, Form 5010 for Reid-Hillview Airport and Attachment 4, Form 5010 for San Martin Airport.) AOPA represents the interests of hundreds of thousands of individual pilots and aircraft owners using the 3,300 federally funded airports who will be affected by those airports' decisions to take similar action based on the precedent set by the Santa Clara County. AOPA maintains an airport support network with volunteers at thousands of public use airports to alert AOPA of issues related to general aviation activity, including AOPA airport support network volunteers at Reid-Hillview and San Martin who are able to report to AOPA about the adverse impacts that the County's fuel restrictions are having at the airports. As a 501(c)(4) social welfare organization, AOPA operates primarily to further the common good and general welfare of the general aviation community and not just AOPA members. AOPA's mission includes protecting pilots' freedom to fly, supporting activities that support the long-term health of General Aviation, and participating in informal and formal proceedings to keep General Aviation accessible to all. See AOPA website at <https://aopa.org/about/mission-vision-and-values>.

**Aperture Aviation, Inc.**

Aperture Aviation, Inc. is an aerial survey company owned by a pilot doing business at Reid-Hillview Airport. It operates a fleet of Cessna 206 aircraft that are unable to safely and legally use 94UL, which is the only available fuel at Reid-Hillview as of January 1, 2022. Aperture Aviation requested permission from the County of Santa Clara to continue to fuel its Cessna 206 fleet of aircraft with 100LL until such time as the aircraft would be able to use commercially available unleaded fuel. Aperture Aviation explained that the County's unreasonable action to prohibit the availability of 100LL at the airport left it in an untenable situation. To date, the County has not responded to Aperture Aviation's December 13, 2021, written request for a six-month exemption from the prohibition against fueling with 100LL to afford time to allow for a modification to its fleet of aircraft in order to be able to safely and compliantly operate with unleaded fuel from their home airport. (See Attachment 5, Affidavit of Michael McClelland on behalf of Aperture

Aviation, Inc., and Attachment 5A, Letter on behalf of Aperture Aviation to Santa Clara County dated December 13, 2021.)

Glynn Falcon

Glynn Falcon is an AOPA member, pilot and aircraft owner who regularly flew his aircraft, which cannot legally or safely use 94UL fuel, into Reid-Hillview to meet with business clients. Due to the County's action to prohibit 100LL availability at the airport, he is unable to reasonably access the airport as a transient user and therefore no longer flies into the airport. (See Attachment 6, Affidavit of Glynn Falcon.)

Robert A. Gingell

Robert A. Gingell is an AOPA member and a pilot who owns and flies a Cessna 310, which cannot legally or safely use 94UL, based at Reid-Hillview Airport. As a result of the County's prohibition of the use of 100LL at Reid-Hillview, he has been directly and substantially affected in not being able to obtain fuel at the airport, as detailed in his attached affidavit. (See Attachment 7, Affidavit of Robert A. Gingell.)

Christopher Luvara

Christopher Luvara is an AOPA member and a pilot who owns and flies a Cessna 182, which cannot legally or safely use 94UL, based at Reid-Hillview Airport. As a result of the County's prohibition of the use of 100LL at Reid-Hillview, he has been directly and substantially affected in not being able to obtain fuel at the airport, as detailed in his attached affidavit. (See Attachment 8, Affidavit of Christopher Luvara.)

Michael Luvara

Michael Luvara is an AOPA member and a pilot who owns and flies Cessna 182, which cannot legally or safely use 94UL, based at Reid-Hillview Airport. As a result of the County's prohibition of 100LL at Reid-Hillview, he has been directly and substantially affected in not being able to obtain fuel at the airport, as detailed in his attached affidavit. On June 13, 2022, he emailed the FAA requesting an update regarding the Part 13 complaint initiated by the FAA against Santa Clara County that pertained, in part, to the County's 100LL prohibition and, to date, has not received a response from the FAA. (See Attachment 9, Affidavit of Michael Luvara, and Attachment 10, Email from Michael Luvara to FAA dated June 13, 2022.)

Paul Marshall

Paul Marshall is an AOPA member and a pilot who flies a Bonanza A36, which cannot legally or safely use 94UL, based at San Martin Airport. As a result of the County's prohibition on the use of 100LL at San Martin, he has been directly and substantially affected as detailed in his attached affidavit. (See Attachment 11, Affidavit of Paul Marshall.)

Dr. Joseph C. McMurray

Dr. McMurray is an AOPA member and a pilot who flies a Beechcraft A36 Bonanza and American Champion Super Decathlon, both of which are unable to safely and legally use 94UL fuel, for personal and business purposes and is based at San Martin Airport. As a result of the County's prohibition on the use of 100LL at San Martin, he has been directly and substantially affected as detailed in his attached affidavit. (See Attachment 12, Affidavit of Dr. Joseph C. McMurray.)

Trade Winds Aviation

Trade Winds Aviation is a Fixed Based Operator and flight school doing business at Reid-Hillview and San Martin under an executed and effective lease that prohibits Trade Winds from conducting business selling 100LL and from being able to self-fuel its flight school aircraft with 100LL at the airports. Specifically, Section 4.1.6.3 of its executed lease states that:

“All fueling on the Premises conducted under the above sections or otherwise subject to all applicable federal, state and local laws and regulations, including but not limited to Lessor's order(s) relating to the prohibition of use of leaded fuels on County Airports, effective January 1, 2022.” See Attachment 13B, *Lease Agreement Between County of Santa Clara and Skyworks Aviation DBA Tradewinds Aviation*, effective January 1, 2022.

Trade Winds previously sold 100LL at Reid-Hillview and previously self-fueled its aircraft with 100LL, but now is prohibited from performing either service at Reid-Hillview or San Martin by reason of the County's unreasonable actions. Trade Winds is currently willing and able to sell 100LL and self-fuel with 100LL, but is restricted from doing so by the County's rules that ban the use of 100LL at the airport and the leasing restriction the County inserted into its lease renewal at the end of 2021. Moreover, Trade Winds and its flight school customers are substantially affected by the lack of 100LL availability at the airport since January 1, 2022, and must travel outside the county to obtain 100LL for its most expensive rental aircraft, a Cirrus SR22, which is legally prohibited from using 94UL. (See Attachment 13, Affidavit of Walter Gyger on behalf of Trade Winds Aviation; Attachment 13A, Trade Winds Lease Excerpt; and Attachment 13B, October 8, 2021 Complaint).

**General Description of the Facts Demonstrating  
the County of Santa Clara's Grant Assurance Violations**

Under the current Santa Clara County law, “No person, firm or corporation shall bring, store, use or distribute aviation fuel on the airport except as may be authorized in writing by the County.” (See Attachment 14, County of Santa Clara Rules and Regulations, Section 6.2, *Aviation Fuel Distribution Restrictions*; see also Attachment 15, Airports and Aircraft, Division B2, Sec. B2-17.) “No person, including aircraft operators shall bring, store, or distribute aviation fuel or lubricants on the airport except by contract or permit authorized in writing by the county.” The sale of any fuel at the County's airports has been tightly, specifically, and strictly controlled by the County, the airports' sponsor. The County has now prohibited all 100LL retail sales and self-fueling. There were no 100LL restrictions at the County's airports until the County imposed ones

effective January 1, 2022, after a unanimous vote at the August 17, 2021 County Board's Regular Meeting.

During the August 17, 2021 Santa Clara County Board of Supervisors meeting, there was a limited review of a study commissioned by the County to identify the impact of leaded aviation fuel on children living in the vicinity of Reid-Hillview airport, and it did not assess any impacts related to San Martin airport. County executive staff members Jeff Smith and Sylvia Gallegos represented to the Board that, based on the Lead Study, continued use of 100LL at Reid-Hillview was not recommended. (See Attachment 16, Recommended Action on August 17, 2021) At the meeting, the County Board voted unanimously to "adopt" the recommendations of the County executive staff, including:

Resolution 36 to "take all actions necessary to transition to carrying only lead free gas at both County airports as soon as possible with the understanding that the sales of leaded gas will not be permitted at either County airport after December 31, 2021 except for emergency operations."

Resolution 37 to take "[s]uch actions ... both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031." (See Attachment 17, Board of Supervisors Decision)

To the best of Complainants' knowledge, at no time prior to the meeting where the County decided to prohibit 100LL at its airports did the County advise or coordinate with the FAA about its intent or decision to restrict fuel sales and use at the County's airports. To the best of Complainants' knowledge, at no time prior to the meeting where it decided to prohibit 100LL at its airports did the County seek input from (1) airport tenants, including pilots and businesses based at the airport, or (2) the public at large, and particularly the many persons living near the County's two airports.

Based on that County Board vote, the Deputy County Executive required that new tenant leases at both airports contain language forbidding the sale of and self-fueling with 100LL. (See Attachment 13A, Trade Winds Lease Excerpt). All airport FBO and business leases were set to expire December 31, 2021, less than 4 months after the adoption of the County Board's resolutions to prevent the availability of 100LL sales and self-fueling at both County airports. When new leases were negotiated and executed, terms consistent with the County Board's resolutions were included in the leases and uniformly prohibited the sale or use of leaded fuel at both County airports. In particular, the new leases provide that:

"All fueling on the Premises conducted under the above sections or otherwise subject to all applicable federal, state and local laws and regulations, including but not limited to Lessor's order(s) relating to the prohibition of use of leaded fuels on County Airports, effective January 1, 2022."

At an unknown point in time, the County provided for the emergency use of 100LL under very narrow conditions that only appear available to transient traffic, not airport tenants. As such, this emergency option does little, if anything, to relieve the impact of the County's fuel restriction on the tenants and other based users of the airport. If an aircraft that requires 100LL lands at a Santa

Clara County airport and does not have sufficient fuel to safely depart, the sole authority of whether to allow “one-time” self-fueling with 100LL and of the quantity allowed is held by the Santa Clara County Airports Director, not the pilot in command of the aircraft. (See Attachment 18, Santa Clara County Website Printout).

“Upon request, the Santa Clara County Airports Director will review and approve one-time permission, on a case by case basis, for an aircraft operator to obtain and fuel their aircraft with leaded fuel on the premises of Reid-Hillview or San Martin. Such permission will be granted for aircraft that do not have sufficient fuel onboard to safely leave the County airports and will be limited to a quantity of fuel necessary to safely reposition the aircraft to a nearby airport where the necessary fuel is available. Requests are to be made via email addressed to - [airportops@rda.sccgov.org](mailto:airportops@rda.sccgov.org)”

In practice, it will be rare that an aircraft operator would find themselves in this position. Therefore, the availability of the very limited access to 100LL subject to sole and absolute discretion of the Airports Director does not obviate, or even mitigate, the unreasonableness and discriminating nature of the County’s actions. Even if a transient operator requested permission, there is no 100LL on the airports nor an economical or convenient manner to obtain the 100LL and have it transported to the airport.

The FAA recently issued Supplemental Type Certificates (STCs) authorizing use of a 100 octane unleaded fuel in virtually all piston aircraft engines, however that fuel is not yet in commercial production or distribution. It is without dispute that a significant number of FAA-certificated General Aviation aircraft must continue to operate using 100LL at this time. Seventy-five percent of the nation’s piston fleet is based at 3,300 airports, which are mostly publicly owned and part of the National Plan of Integrated Airport Systems (NPIAS), such as Reid-Hillview and San Martin. (See Attachment 19, Excerpted Slide from EAGLE Presentation on March 25, 2022.) Piston aircraft that can currently use 94UL fuel are estimated to account for only 30% of Avgas sold each year.<sup>2</sup> The majority of the national fuel demand cannot be met by 94UL fuel. As a result, the availability of 100LL continues to indisputably be a necessary commodity and its availability ensures access to airports. Without the ability to fuel aircraft at airports that are able to provide such services, reasonable access to airports is cut off as the system fractures, failing to provide fuel services to the piston aircraft that consume the majority of avgas sold in the nation. Safety and efficiency of the national aviation system is at risk until an unleaded fuel that is legal and safe for use in all piston aircraft is widely available.

Since January 1, 2022, nine months prior to the filing of this complaint, 100LL has not been available at either of the County’s airports. The County’s unreasonable and wide-reaching decision is impacting the accessibility of the airports to all users and, ironically, forces pilots in high performance aircraft to fly more legs and burn more gas in the most fuel inefficient phase of flight (takeoff climb) to obtain the fuel they are legally required to use in their aircraft.

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<sup>2</sup> *Id.*



### FAA's Notice of a Part 13 Investigation

On December 22, 2021, the FAA's Airport's Division in the Western Pacific Region commenced an informal investigation under 14 C.F.R. Part 13 of alleged grant assurance violations by Santa Clara County. (See Attachment 20, FAA Notice of Investigation.) The FAA's Notice was, in part, prompted by complaints sent to the FAA by airport tenants, businesses, and users. (See Attachment 13B, October 8, 2021 complaint; Attachment 21, October 18, 2021 complaint; and Attachment 5A, December 13, 2021 Letter on Behalf of Aperture Aviation to Santa Clara County dated December 13, 2021.) Complaints to the FAA from the Aircraft Owners and Pilots Association, Glynn Falcon, Aperture Aviation, Christopher Luvara, and Michael Luvara were incorporated into the Part 13 complaint against Santa Clara County. As a result of there being little, if any, progress toward a meaningful resolution or reasonable prospect for practical and timely resolution since the Part 13 complaint was initiated, Complainants have filed this Part 16 Complaint.

The FAA specifically identified the County's ban of leaded fuel at the County's airports and the County's prohibition on the sale and use of leaded fuel at the County's airports as the reasons for the FAA's investigation into possible violations of the County's federal grant assurance obligations. The FAA stated that "the County may not ban or phase out leaded fuel or take any actions related to fuel that would conflict with or undermine Federal law and airport access consistent with the grant assurances."<sup>3</sup> In response, by letter dated January 11, 2022, the County maintained that its actions were in compliance with all laws. (See Attachment 22, Santa Clara County Response to Notice of Informal Investigation.) On February 22, 2022, the FAA sent a follow up letter to the County asking for additional information related to their investigation. To date, there has been no written response from the County. However, there was a meeting between the FAA and Santa Clara County and a subsequent March 24<sup>th</sup> letter from the FAA to the County that suggested the FAA would consider putting the informal investigation into abeyance. (See Attachment 23, FAA response following the FAA and County meeting.) Since the effects of the County's decisions are immediate, they are in effect and on-going at the airports, an abeyance does nothing more than perpetuate the adverse impact of the County's unreasonable actions and undoubtedly constitutes violations of the County's grant obligations.<sup>4</sup>

### **Grant Assurance Violations Committed by the County of Santa Clara**

#### Grant Assurance 22 Economic Non-Discrimination, Access and Use of Airport

As to Complaining Parties, the County of Santa Clara has denied reasonable access to the airport by unreasonably prohibiting the availability of 100LL.

#### Grant Assurance 22 Economic Non-Discrimination, Right to Self-Service and Self-Fuel

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<sup>3</sup> The FAA evidenced a similar position in an investigation into similar conduct and an eventual settlement agreement reached with another California airport. "The FAA is committed as a matter of national policy to support the development and use of unleaded aviation gas appropriate to the operation of piston aircraft where commercially and technically feasible. ... Nothing in this Agreement shall allow the City to restrict the sale of leaded aviation fuel for as long as the FAA authorizes use of such fuels within the United States." Settlement Agreement/Consent Decree Between the Federal Aviation Administration and The City of Santa Monica, dated January 30, 2017.

<sup>4</sup> Upon information and belief, there was an additional meeting between the FAA and the County leadership on or around September 16, 2022.

As to the Complaining Parties, the County of Santa Clara has unreasonably denied the right to self-fuel aircraft with leaded fuel at the County's airports.

### Argument

While citizens nationwide, including pilots and aircraft owners look forward to a future with lead free aviation fuel, there is no solution currently commercially available to address the entire fleet and commercial availability is no less than 1-2 years away. Approximately 70% of 100LL volume sold in the United States is to aircraft operating in the U.S. airspace, including at the County's airports, which cannot legally or safely use 94UL fuel.<sup>5</sup> Aircraft with high compression engines must continue to operate with 100LL until an approved alternative is widely available. (See Attachment 1, Excerpted EAGLE slide from September 21, 2022.) Therefore, the County's choice to immediately cease having 100LL available for sale at its airports and to ban any use of 100LL at its airports directly and substantially affects the public's reasonable access to the County's two airports, Reid-Hillview Airport and San Martin Airport. (See Attachment 2, FAA Letter to City of Santa Monica dated September 1, 2022, and Attachment 20, FAA Notice of Investigation.) The County's decision in this regard is not reasonable, is unjust, and is unwarranted under the current facts and circumstances and thus renders the County in violation of its legal obligations under the grant agreement the County executed with the federal government.

Prohibiting the fueling with 100LL at Reid-Hillview and San Martin denies the public reasonable and nondiscriminatory access to a publicly funded airport. Here, the County has unreasonably chosen to ban all leaded fuel at its airports, without any compromise that could accommodate the time needed to allow all general aviation aircraft to use unleaded fuel. The County's complete leaded fuel ban is not reasonable and unjustly discriminates against a certain fleet of aircraft who, through no fault of their own and not due to anything under their control, simply cannot use unleaded fuel. It denies and unnecessarily restricts access to the airports and unnecessarily reduces the amount of revenue that the airports could collect from the sale of 100LL – therefore, the County's actions constitute clear violations of the legal obligations voluntarily entered into by the County in receiving and using federal funds meant for use in the public interest of maintaining a safe and efficient national transportation system.

Until December 31, 2021, 100LL was available at both County airports through Fixed Base Operators (FBOs) doing business at those airports. That availability was cut off solely because of the County's decision to ban fuel at both of its airports based on a Lead Study conducted at one of the airports and the overall national interest in reducing lead emissions. The County appears to justify their actions at *both* airports by relying on a report involving only one airport, which cannot simply be transferred over when the only common factor is County ownership.

The County has prohibited the sale by any commercial operators at the airports through its leasing power, which it exercised within months of its decision to ban legal and necessary 100LL at its airports. And, in this regard, there was no negotiation, but rather a clear singular exercise of municipal power to effectuate an agenda unrelated to the operation of the airport and with no

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<sup>5</sup> *Id.*, at 1.

regard to federal grant obligations that the County is bound by in the operation of those airports. The tenants had no choice. While the County recently informed the FAA of a decision to exercise its proprietary exclusive right over aviation gasoline sale at Reid-Hillview Airport and continue selling UL94, it has put forth no solution – through itself or any of the FBOs that stand willing, able and ready to provide 100LL again – to ensure availability of 100LL in the absence of a commercially available 100 octane unleaded fuel at Reid-Hillview or San Martin. (See Attachment 24, Letter from Santa Clara County to FAA dated September 21, 2022.) Action preventing an FBO from providing 100LL violates Grant Assurance 22. (See Attachment 2, FAA Letter to City of Santa Monica dated September 1, 2022.) It is especially egregious conduct when FBOs stand willing and able to provide the fuel and there is demand/need for the fuel. (*Id.* and see also Attachments 5-13, Affidavits of substantially affected parties).

Equally problematic is that the County is not allowing 100LL self-fueling, which is reasonable and required for high performance aircraft that cannot legally or safely use 94UL. Any restriction on the availability of 100LL, including and particularly self-fueling with 100LL, must comply with the County's obligations under the grant assurances. "The FAA considers the right to self-service as prohibiting the establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment." FAA Order 5190.6B p.11-2. When airport users have been denied the opportunity to self-fuel, or a proposed alternative to self-fueling is unreasonable or unjustly discriminatory, the airport sponsor is in violation of its obligation to provide access to self-fueling pursuant to Grant Assurance 22. *Monaco Coach Corp. v. City of Eugene*, Docket No. 16-03-1 (March 4, 2005) (Final Agency Decision). The FAA has made clear that only *reasonable* restrictions on access to fuel are permissible. And, even when certain restrictions on self-fueling are appropriate in light of safety and public welfare concerns, a sponsor is still in violation of its grant assurance obligations if some other means of self-fueling is not available. *Boston Air Charter v. Norwood Airport Commission*, Docket No. 16-07-03 (Aug. 14, 2008) (Final Decision and Order).

Even if, *arguendo*, the County had a valid justification to restrict leaded fuel, it must provide a reasonable and viable alternative for tenants to self-fuel their aircraft in compliance with the grant assurances. See *id.* Providing a self-fueling "option" that is not actually available for tenants equates to preventing tenants from conducting safe and efficient self-fueling in violation of Grant Assurance 22. *Cedarhurst Air Charter, Inc. v. County of Waukesha*, Wisconsin, Docket No. 16-99-14 (Aug. 7, 2000) (Final Decision and Order). Here, the permitting process is unsurmountable. And even the emergency allowance of using leaded fuel is limited to an emergency situation, which is going to naturally be rare, and the process is cumbersome and discouraging. A County Supervisor, under oath in a recent Congressional hearing, asserted that, "While the County maintains an emergency protocol for operators who need access to leaded fuel, the County has received zero requests to access it."<sup>6</sup> One request made by Aperture Aviation has gone unanswered for 10 months. (See Attachment 5A, Letter on behalf of Aperture Aviation to Santa Clara County dated December 13, 2021.) The County has effectively prohibited self-fueling in violation of its federal obligations.

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<sup>6</sup> Hearing before H. Oversight Env. Subcomm., 117<sup>th</sup> Cong. 6 (2022) (statement of Santa Clara County Supervisor Cindy Chavez), <https://www.congress.gov/117/meeting/house/115056/documents/HHRG-117-GO28-Transcript-20220728.pdf> (last visited October 12, 2022).

While airport sponsors may prohibit aircraft owners who do not meet the standards and regulations for self-fueling from conducting that activity, the airport must have “reasonable minimum standards and rules and regulations relevant to the proposed activity” that are “applied objectively and uniformly.” *Jet 1 Center, Inc. v. Naples Airport Authority*, Docket No. 16-04-03 (Jan 4, 2005) (Director’s Determination). Such reasonable rules and regulations include requiring tenants to maintain a fuel permit and either own aircraft or have aircraft under its operational control, *Id.*, or prohibiting self-fueling outside of designated areas, 5190.6A, Sec. 3-9(e)(3), or requiring fuel tanks to be installed on the sponsor’s fuel farm, *Airborne Flying Service, Inc. v. City of Hot Springs, Arkansas*, Docket No. 16-07-06 (May 2, 2008) (Final Decision and Order). These and other prior decisions show that certain restrictions on the “when” or “how” self-fueling are permitted may be reasonable because they do not *prevent* tenants from fueling their aircraft. *See also Asheville Jet, Inc. d/b/a Million Air Asheville v. Asheville Regional Airport Authority et al*, Docket No. 16-08-02 (Oct. 1, 2009) (Director’s Determination). The County’s restriction here *prevents* users from self-fueling their aircraft entirely; any aircraft that cannot legally or safely operate with 94UL fuel is prohibited from fueling its aircraft at the airports, in violation of the obligations imposed by Grant Assurance 22.

There is no uniqueness to Santa Clara County’s airports warranting such a restriction. Restrictions on airport access required under the grant assurances may be conditioned on compliance “with reasonable and nondiscriminatory regulations adopted to assure the safe use of the airport.” *Hilton A. Turner, Jr. v. City of Kokomo, Indiana*, Docket No. 16-98-16 at 26 (Mar. 30, 1997) (Director’s Determination) (finding it reasonable to require self-fueling occur in a designated self-fueling area as a matter of safety at the airport and not in violation of grant assurances because the complainant was not prevented from self-fueling in the designated area). The County has no such reasonable regulations or valid connection to the safe use of the airports. The County argues in detail that its decision to ban unleaded fuel at *both* of its airports is predominantly based on the results of a Lead Study and the composition of the neighborhoods surrounding *one* of its airports, Reid-Hillview Airport. But, the County’s arguments are flawed and do not justify the whole-sale restriction against all leaded fuel at either Reid-Hillview or San Martin.

On August 17, 2021, the Santa Clara County Office of Education released a county-wide study entitled “Children’s Exposure to Lead in Santa Clara County.” This study revealed that there are multiple locations in Santa Clara County where children have elevated levels of lead in their blood; these areas are countywide and not just airport-centric. The study acknowledged that more than 67% of homes in the county may contain lead-based paint and that lead in plumbing pipes remains. The report listed multiple methods of lead exposure including paint, plumbing, industrial sites, and even artificial turf. Unfortunately, this report was released with little fanfare, no media attention and with no intent of engaging the public.

In a subsequent June 2022 report, which the County failed to make public for its residents, ground-based lead levels at both County airports – Reid-Hillview and San Martin – were studied. The report found that there are no significant lead levels in the soil that exceed EPA guidance and the highest lead levels were actually adjacent to a major vehicle interchange near the airport – not on the airport. More recently, the Bay Area Air Quality Management District ceased monitoring lead emissions at Reid-Hillview Airport in 2020 due to measurements being below the EPA nationally mandated limits. The County has failed to bring full transparency to the issues.

Furthermore, the ban on *sales* of fuel cannot currently prevent the *use* of the fuels or the undesirable emissions the County ban intends to eliminate. As explained above, many aircraft cannot safely or legally use 94UL fuel and a 100UL fuel is not yet commercially available. Thus, the only way the County will obtain its intended purpose of reduced lead emissions is if the aircraft that still require 100LL fuel cease using the airports. The County's actions violate its obligation to ensure access to the airport on reasonable terms but intentionally driving away tenants and users.

There is no allowance under the proprietary exemption that would permit the County's prohibition on fuel use. The prohibition of 100LL sales appears to be a de facto yet failed County exercise of its proprietary exclusive right to provide 100LL for sale at the airport, coupled with a choice not to exercise that right while prohibiting others from exercising 100LL rights they held within the last year and stand willing and able to exercise again once the 100LL fueling prohibition is lifted. "The implied power to exclusively dispense fuel does not extend to the point where the sponsor can contract the dispensing to a third party. Therefore, the interpretation requires the sponsor to operate the proprietary exclusive concession with its own equipment and own employees." *Naples Airport Authority, Docket No. 16-04-03* at 18 (July 15, 2005) (Final Agency Decision and Order). Similarly, the County lacks any implied power to prohibit under all circumstances the dispensing of certain fuels by contractors and tenants and has not provided its own equipment and employees to provide 100LL. Even an airport sponsor's proprietary right to be the exclusive provider of aeronautical services at the airport may not interfere with an aeronautical users' right to self-fuel. Such activity must be permitted in conformance with reasonable rules and regulations. *See FAA Airport Compliance Manual*, Order No. 5190.6B, p.8-5 n.21.

The fact that the fuel tanks were not paid for with federal funds does not relieve any obligation to comply with grant obligations. The County suggests that any grant obligations do not apply to the County's decision to provide, or not provide in this circumstance, certain fuel at the airports is partially based on the fact that federal funds were not used to pay for the County tanks at the airports. But the FAA has already rejected, and the US Court of Appeals affirmed the FAA's determination, such interpretation of a sponsor's obligations under the grant assurances. *See Atlantic Beechcraft Servs. v. FAA*, No. 21-1047, 2022 U.S.App. LEXIS 14795 (D.C. Cir. 2022) (affirming FAA's interpretation that grant assurances apply to the airport as a whole). The basis of the grant assurance obligation to provide a reasonable opportunity to self-fuel is "so that the public taxpayers that finance airport improvements can be assured that the Airport Improvement Program investments are reasonably available to the public, including reasonable access to self-fueling." *Monaco Coach Corp., supra* at 38. There are no grounds to insulate the County here from such accountability simply because it spent the taxpayer funds it received on something other than fuel tanks. The entire airports, at Reid-Hillview and San Martin, are obligated to be reasonably accessible, including with the ability to self-fuel.

The "inconvenience" is not incidental and adaption to the unreasonable restrictions does not obviate violations. The County has suggested publicly that the lack of leaded fuel at Reid-Hillview Airport has not adversely affected the use of the airport. However, the affidavits provided clear evidence of the burden that the County's discrimination has thrust upon tenants. (See Attachments 5 through 13.). Multiple tenants have aircraft that cannot safely or legally be fueled with 94UL fuel, the *only* fuel currently available at the airport. The airport is not available for public use on

reasonable terms if the tenants are unable to fuel their aircraft when that fueling option is otherwise available at the airports by qualified and experienced businesses who are willing to provide it.<sup>7</sup>

Safety is vital when it comes to fueling aircraft, and at least one misfuelling has occurred as a result of the County's ban on leaded fuel. The County's action earlier this year to prematurely ban higher-octane fuel that is required by thousands of general aviation aircraft to fly safely is simply irresponsible. Far beyond causing an inconvenience, the unavailability of required fuel at the airport poses a safety risk. Putting the wrong fuel in an aircraft can cause catastrophic engine failure – placing the pilot and those on the ground in danger – if not detected before takeoff. An AOPA member has reported a misfuelling incident at a Santa Clara County airport, where the pilot mistakenly self-fueled their aircraft with 94UL fuel in an aircraft that could not safely and legally use 94UL fuel. Thankfully, the error was identified before takeoff.

The danger of unintended consequences. The County's willful conduct in violation of its grant assurances obligations and the FAA's actions in response to this noncompliance are being closely watched. The County noted in its response to the FAA's Notice of Investigation that "leaded Avgas is Causing a Public Health Crisis in Santa Clara County and *Across the Nation*." (See Attachment 22, Santa Clara County Response to Notice of Informal Investigation, emphasis added.) If the County is not held accountable for its actions that constitute non-compliance with grant assurance obligations, this will send a clear message to airports across the nation that there are no consequences for such violations of their grant assurance obligations and pose an immediate threat to the safe and efficient function of the national aviation system and compliant use of federal funds.

FAA approval is required in advance for any restriction on the sale or dispensing of any type of fuel, when there is demand or need for the fuel and a fuel provider willing to provide it, as recently affirmed by the FAA in a letter from the FAA Office of Airport Compliance and Management Analysis to the Santa Monica Airport Director. (See Attachment 2, FAA Letter to City of Santa Monica dated September 1, 2022.) Santa Clara County leadership appears to be aware of this yet took deliberate action in violation in grant assurances. In a recent hearing, a Congressional subcommittee member stated, "The FAA is currently working with the County on a permanent ban on leaded fuel at Reid-Hillview Airport. You led the supervisors to pass a unanimous resolution on this,"<sup>8</sup> and a Santa Clara County Supervisor testifying under oath replied that the County needs the FAA to affirm the ability for local agencies to prohibit certain fuels.<sup>9</sup>

Through the network of public use airports and particularly National Plan of Integrated Airport Systems airports such as Reid-Hillview and San Martin, general aviation is an integral part of the

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<sup>7</sup> Note "the airport is used for emergency response to help fight wildfires and create local refueling stations. About 10 employees provide support services at the airport, and others use the space for flight training". Vincente Vera, *Silicon Valley advocates of Reid-Hillview Airport closure face opposition*. San Jose Spotlight (May 15, 2021), <https://sanjosespotlight.com/silicon-valley-advocates-of-reid-hillview-airport-closure-face-opposition/>

<sup>8</sup> Hearing before H. Oversight Env. Subcomm., 117<sup>th</sup> Cong. 14 (2022) (statement of Chairman Ro Khanna), <https://www.congress.gov/117/meeting/house/115056/documents/HHRG-117-GO28-Transcript-20220728.pdf> (last visited October 12, 2022)..

<sup>9</sup> Hearing before H. Oversight Env. Subcomm., 117<sup>th</sup> Cong. 14 (2022) (statement of Santa Clara County Supervisor Cindy Chavez), <https://www.congress.gov/117/meeting/house/115056/documents/HHRG-117-GO28-Transcript-20220728.pdf> (last visited October 12, 2022).

transportation system that supports communities across the United States. General aviation operations include emergency medical personnel and supplies delivery, disaster relief and recovery, search and rescue, agricultural aviation activities, and more. Aircraft needing higher-octane fuel, which cannot use 94UL fuel, include those flying missions of search and rescue, disaster relief and law enforcement. We understand that some of these important missions from Reid-Hillview Airport have already been shelved, which is unfortunate news to local residents who rely on these services. Together the National Plan of Integrated Airport Systems stands but, divided by fuel unavailability, it will fall and fail to function as a successful and functioning integrated system. The Chair of the National Academies of Sciences consensus study *Options for Reducing Lead Emissions from Piston-Engine Aircraft* described it succinctly in her EAGLE initiative presentation on March 25, 2022: Restricting use of high performance aircraft would have far-reaching ramifications for transportation, medical transport and pilot training, and a multi-pathway approach is needed that includes using existing fuels and aircraft. (See Attachment 19, Excerpted Slides From EAGLE Presentation on March 25, 2022.)

The FAA and all stakeholders in the EAGLE initiative committed to a transition to lead-free aviation fuels for piston-engine aircraft by the end of 2030, without compromising safety or economic health of the general aviation industry.<sup>10</sup> Santa Clara County, the FAA, and industry stakeholders can work together on solutions enabling the public use airports to continue to safely serve their communities and the public interest. However, the County has been transparent in its desire to close Reid-Hillview early<sup>11</sup> and avoid the obligations it committed to when it accepted and spent federal funds to improve and maintain the airports. This decision to ban leaded fuel without waiting for an appropriate alternative is just another example of the County's intention to deny, sooner rather than later, the national transportation system of vital resources that Reid-Hillview and San Martin provide.

The County's Ban on 100LL sales or self-fueling of also violates its obligation to maintain a fee and rental structure that will make the airport as self-sustaining as possible. The intent of grant assurance 24 "is for the airport operator to charge fees that are sufficient to cover as much of the airport's costs as is feasible." *William Alfred Hicks, Jr., a/k/a Billy Hicks v. City of Mount Airy, North Carolina, et al*, Docket No. 16-15-07 at 96-97 (April. 29, 2016) (Director's Determination). The sponsor is expected to recover its costs through fair and reasonable fees or other charges that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport. See FAA Order 5190.6B, Chapter 17. In considering such a challenge pursuant to Part 16, the FAA looks to whether the sponsor's complained-of actions are in the best interest of the Airport or are harmful to the Airport. See, e.g. William Alfred Hicks, Docket No. 16-15-07.

Here, the County has banned the sale of 100LL, including self-fueling, following the recommendation of County executive staff members that the use of 100LL at Reid-Hillview was

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<sup>10</sup> Background: ELIMINATE AVIATION GASOLINE LEAD EMISSIONS (EAGLE), <https://www.faa.gov/sites/faa.gov/files/2022-03/EAGLE-Commitment-BACKGROUND.pdf>, (last visited Sept. 7, 2022).

<sup>11</sup> "Santa Clara County officials, led by Supervisor Cindy Chavez, have been gunning to close the airport for years." Vicente Vera, *Blood lead levels near San Jose airport are average, despite alarm*, San Jose Spotlight (Aug. 13, 2021), <https://sanjosespotlight.com/san-jose-airport-lead-levels-are-average-despite-alarm/>, (last visited Sept. 7, 2022).



not recommended. (Attachment 16, Recommended Action on August 17, 2021.) The impact of the County's fuel ban is that revenue is diverted from the airport. At least one tenant is on the verge of having to close his business as a result of being unable to sell 100LL, others are facing increased costs as a result of having to travel to refuel their aircraft which require 100 octane fuel, and other users have stopped using the airport altogether. County Supervisor Chavez testified that fuel sales are down at least 10% from prior year sales.<sup>12</sup>

These numbers will likely continue to deteriorate with compounding financial consequence to the airports as more tenants are forced out of business, transient users go elsewhere because they are unable to obtain the fuel needed and legally required by their aircraft at Reid-Hillview and San Martin, and tenants are forced to spend their money buying fuel at other airports, rather than contributing to the fees acquired by Reid-Hillview and San Martin. The County's ban on sale of a necessary and legally required fuel violates its obligation to ensure the airports are as self-sustaining as possible, as well as the obligation to ensure reasonable access to the airports, while tenants remain willing and able to buy, sell and self-fuel with 100LL.

The FAA is sole enforcer when airports take money from the federal government under a statutory airport grant program and signs a grant agreement that obligates them to certain assurances to make the airport available to the public, but then fails to hold up their side of the bargain. We urge the FAA to use its authority to enforce the grant assurance obligations at issue in this case and assure equitable compliance among all federally funded airports. Allowing Santa Clara County's unilateral action in this case to unjustly discriminate against certain users of the national public-use airport system, to ban the sale and use of fuel that is legal and necessary for aircraft to safely and legally operate, and unreasonably restrict access to its airports is a breach of the grant agreement obligations and, if not addressed, is likely to exacerbate the situation by causing a domino effect at airports across the nation.

### **Conclusion**

Aviation works through a delicate choreography among people and services in an interconnected, complex system, supported by the investment of public monies in airports determined to be integral to a safe and efficient transportation system. When a link in the chain of these interdependencies breaks, as it has with unreasonable and unjustly discriminatory cessation of 100LL availability at Reid-Hillview and San Martin, the integrity and function of the entire system is disrupted and safety is put at risk. Complainants have demonstrated the disruption and safety risks that have occurred since January 1, 2022, and continue to this day, which must be remedied and should not be allowed to replicate and compound through the airport system.

The FAA and aviation stakeholders are working diligently together, through the EAGLE initiative, in pursuit of upstream solutions to address challenges of transitioning the national fleet of nearly 200,000 piston engine aircraft to an unleaded fuel that works safely in all such aircraft. Downstream attempts to tackle issues in isolation detract from efforts towards an industry-wide solution. That solution is closer at hand than ever, with the recent approval of STCs for an

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<sup>12</sup> Hearing before H. Oversight Env. Subcomm., 117<sup>th</sup> Cong. 6 (2022) (statement of Santa Clara County Supervisor Cindy Chavez), <https://www.congress.gov/117/meeting/house/115056/documents/HHRG-117-GO28-Transcript-20220728.pdf> (last visited October 12, 2022).



unleaded fuel that the FAA has authorized for use in virtually all piston aircraft engines. Until a fuel that works safely in all piston engines is widely commercially available, the safe and efficient function of the national aviation system depends on continued availability of 100LL for the aircraft that consume 70% of fuel volume. Our aviation system works because the vast network of stakeholders operates in compliance with legal requirements. Consistent application of these requirements, in Santa Clara County and nationwide, is necessary for fairness and legitimacy of the rule of law, and for safety and reliability of the national aviation system.

By reason of the above, the Complainants submit that Santa Clara County's actions violate its federal grant assurance obligations and the County should be ordered to immediately re-establish the ability to have 100LL reasonably available at the airport for airport users that cannot legally or safely use 94UL fuel.

### **Pre-Complaint Resolution**

In compliance with the requirement of 14 C.F.R. section 16.21, the Complaining Parties make the following statement: We hereby certify that there have been numerous good faith and substantial efforts to resolve the disputed matter described herein informally with Santa Clara County, but those efforts have been unsuccessful, including informal complaints to the FAA that prompted an FAA Notice of Investigation. The County has prohibited sale and use of leaded fuel at both of its airports, despite repeated explanation to the County of the need for General Aviation aircraft to use 100LL until an alternative can be developed and approved and despite being told of the substantial effects on the airport users who must seek fuel outside the County. Nine months have passed since fuel has been unavailable at the airports, and there has not been any resolution or the appearance of a resolution on the multiple allegations of grant assurance violations from those affected and from the FAA. This includes the County's failure to substantively respond to the FAA's letter dated February 22, 2022, the continued lack of 100LL at the County's airports, and the County's failure to address 100LL in its recently announced intention to exercise proprietary exclusive rights. Therefore, sufficient evidence exists to demonstrate that there is no reasonable prospect for timely resolution of the grant assurance violations dispute, and the parties are entitled to formal review and a formal determination under 14 C.F.R. Part 16 over whether the County has and is continuing to violate its grant obligations to make their airports available on reasonable terms and to operate their airports to be self-sustaining.

Respectfully submitted,

DocuSigned by:

**Justine A Harrison**

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Justine A. Harrison, Esq.  
Aircraft Owners and Pilots Association  
421 Aviation Way  
Frederick, MD 21701  
Justine.Harrison@aopa.org  
(301) 695-2200 tel.

DocuSigned by:

*Kathleen A. Yodice*

1D61FB58305E4B9...

Kathleen A. Yodice, Esq.  
Yodice Associates, Counsel  
to AOPA

DocuSigned by:

*Michael McClelland*

0F9DD1B816B340F...

Michael McClelland  
Aperture Aviation, Inc.

DocuSigned by:

*Robert A. Gingell*

4DDC1282337447F...

Robert A. Gingell

DocuSigned by:

*Michael S Luvara*

D5124CAAF954441...

Michael Luvara

DocuSigned by:

*Dr. Joseph C. McMurray*

B397C50BCB324CA...

Dr. Joseph C. McMurray

DocuSigned by:

*Glynn Falcon*

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Glynn Falcon

DocuSigned by:

*Christopher Luvara*

BB4D8A721B83413...

Christopher Luvara

DocuSigned by:

*Paul Marshall*

6449F76961AD474...

Paul Marshall

DocuSigned by:

*Walter Gyger*

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Walter Gyger  
Trade Winds Aviation

### **Certificate of Service**

I hereby certify that I have this day caused the foregoing Complaint to be served on the following persons at the following addresses by first-class mail with a courtesy copy by electronic mail:

Eric Peterson  
County Airports Administration  
Santa Clara County  
2500 Cunningham Ave.  
San Jose, CA 95148  
Eric.Peterson@rda.sccgov.org

James R. Williams  
County Counsel  
Santa Clara County  
70 West Hedding St.  
East Wing, 9<sup>th</sup> Floor  
San Jose, CA 95110  
james.williams@cco.sccgov.org

Dated this 14th day of October, 2022.

DocuSigned by:

**Justine A Harrison**

B62EAE4A321546F...

Justine A. Harrison, Esq.  
General Counsel  
Aircraft Owners and Pilots Association  
421 Aviation Way  
Frederick, MD 21701  
(301) 695-2000  
Justine.Harrison@aopa.org

### **Index of Attached Documents**

1. Excerpted EAGLE slide from September 21, 2022
2. FAA Letter to City of Santa Monica dated September 1, 2022
3. FAA Form 5010 for Reid-Hillview Airport
4. FAA Form 5010 for San Martin Airport
5. Affidavit of Michael McClelland on behalf of Aperture Aviation, Inc.
  - 5A. Letter on behalf of Aperture Aviation to Santa Clara County dated December 13, 2021
6. Affidavit of Glynn Falcon
7. Affidavit of Robert A. Gingell
8. Affidavit of Christopher Luvara
9. Affidavit of Michael Luvara
10. Email from Michael Luvara to FAA dated June 13, 2022
11. Affidavit of Paul Marshall
12. Affidavit of Dr. Joseph C. McMurray
13. Affidavit of Walter Gyger on behalf of Trade Winds Aviation
  - 13A. Trade Winds Lease Excerpt
  - 13B. October 8, 2021 complaints
14. County of Santa Clara Rules and Regulations, Section 6.2, *Aviation Fuel Distribution Restrictions*
15. Airports and Aircraft, Division B2, Sec. B2-17
16. Recommended Action on August 17, 2021
17. Board of Supervisors Decision
18. Santa Clara County Website Printout
19. Excerpted slides from EAGLE presentation on March 25, 2022
20. FAA Notice of Investigation
21. October 18, 2021 complaints
22. County of Santa Clara Response to Notice of Informal Investigation
23. FAA response following the FAA and County meeting dated March 24, 2022
24. Letter from Santa Clara County to FAA dated September 21, 2022

## STC Approvals – AIR 700

Presenter – **AIR 700**

- Reaffirm notes from slide 5 (Robert's talking points):
- The EAGLE Mission remains valid
- The EAGLE Mission has not changed with recent developments
- These are the reason why the EAGLE Mission continues:
  - Recent announcement of our first approval is Just the first step in developing acceptable fuels
  - Encouraging the continuation and eventual approval of additional fuels provides the market the ability to determine suitable replacements
  - The logistical issues of refining, distribution, deployment, training, education, transition solutions and ensuring 100LL availability until UL fuel is available widespread
  - EAGLE continues to support the development of fuels via STC and PAFI requirements
  - EAGLE continues the intent to support all STC and PAFI authorized fuels as needed or requested by fuel developers from R&D to the wing
- From Murray on 9/19 - Mark B. is interested in hearing, during the ExComm, from Robert and the pillars of how EAGLE will help GAMI and Swift with the commercial pathways, along with the PAFI candidates, once ready.



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

Office of Airport Compliance  
and Management Analysis

800 Independence Ave., SW.  
Washington, DC 20591

September 1, 2022

Mr. Stelios Makrides  
Chief Operations Officer/Airport Director  
Department of Public Works, Airport Division  
3223 Donald Douglas Loop South  
Santa Monica, CA 90405-3213

Dear Mr. Makrides:

We received your letter of February 14, 2022, to the FAA's Los Angeles District Office advising that the City of Santa Monica (City) intends to convert its city-owned and operated self-service fuel station at the Santa Monica Municipal Airport (SMO) from 100 Low Lead fuel (100LL) to Swift UL 94 on or before April 1, 2022.

Your letter confirms that the FBO tenant will continue to offer 100LL and asks FAA to consider the change to be a "demonstration project" under Section VII of the Settlement Agreement and Consent Decree between the City and the FAA (Settlement Agreement, February 1, 2017).

As a preliminary matter, such a change to the self-service fuel station is not a "demonstration project" as discussed in the Settlement Agreement. Any demonstration project proposal would need to be provided to the FAA for thorough review and concurrence before implementation.

Beyond that, we have been made aware of the Airport Commission's June 27, 2022, Motion to the Santa Monica City Council recommending that the city stop and prevent the sale or storage of leaded fuel in all City-owned equipment.

An outright ban or restriction on the sale or use of 100LL would be contrary to both the Settlement Agreement and Grant Assurance 22, *Economic Non-Discrimination* (49 U.S.C. § 47107(a)(1)). Section VII "Unleaded Fuel" of the Settlement Agreement provides: "Nothing in this Agreement shall allow the city to restrict the sale of leaded aviation fuel for as long as the FAA authorizes use of such fuels within the United States."

Aside from the Settlement Agreement, a ban or restriction on the sale or use of 100LL at a federally obligated airport is also inconsistent with Grant Assurance 22, *Economic Non-Discrimination* (49 U.S.C. § 47107(a)(1)) and conflicts with the self-service provision

therein. Any restriction on the sale or dispensing of any type of fuel, when there is demand/need or a fuel provider willing to provide the fuel, must be approved in advance by the FAA. Any such proposed restriction must be supported by a valid, FAA-approved justification. Such a justification cannot be unreasonable or unjustly discriminatory.

At this time, converting the City owned and operated self-service fuel station to a self-service UL 94 tank, when the ability to self-service aircraft with 100LL is not restricted and 100LL continues to be offered by one or more FBOs, does not create a violation of Grant Assurance 22. Any future restriction on 100LL self-service or action preventing an FBO from providing 100LL would violate both the Settlement Agreement and Grant Assurance 22.

Nonetheless, the fuel tank conversion is a major change for your tenants, from whom we have received letters and emails of concern. Accordingly, we encourage you to work closely with them to implement this change in a pro-active, fair, and reasonable manner and to do so by taking the appropriate safety marking and notification steps concerning aircraft certification fuel requirements.

The FAA continues to be committed to transitioning to unleaded fuel, which is why it recently created the Eliminate Aviation Gasoline Lead Emissions (EAGLE) initiative achieve this result by 2030 year-end. We are grateful for your support of this objective.

Sincerely,

**KEVIN WILLIS**

Digitally signed by KEVIN  
WILLIS  
Date: 2022.09.01 13:39:56  
-04'00'

Kevin C. Willis  
Director, Office of Airport Compliance  
and Management Analysis

> 1 ASSOC CITY:	SAN JOSE	4 STATE: CA	LOC ID: RHV	FAA SITE NR:	02203.*A
> 2 AIRPORT NAME:	REID-HILLVIEW OF SANTA CLARA COUNTY		5 COUNTY: SANTA CLARA, CA		
3 CBD TO AIRPORT (NM): 4 SE		6 REGION/ADO: AWP /SFO	7 SECT AERO CHT: SAN FRANCISCO		

## GENERAL

10 OWNERSHIP: PUBLIC

> 11 OWNER: COUNTY OF SANTA CLARA

> 12 ADDRESS: 2500 CUNNINGHAM AVE  
SAN JOSE, CA 95148

> 13 PHONE NR: 408-929-7700

> 14 MANAGER: FEMI ODUNBAKU

> 15 ADDRESS: 2500 CUNNINGHAM AVE.  
SAN JOSE, CA 95148

> 16 PHONE NR: 408-918-7707

> 17 ATTENDANCE SCHEDULE:

## SERVICES

> 70 FUEL:	A UL94
> 71 AIRFRAME RPRS:	MAJOR
> 72 PWR PLANT RPRS:	MAJOR
> 73 BOTTLE OXYGEN:	LOW
> 74 BULK OXYGEN:	LOW
75 TSNT STORAGE:	TIE
76 OTHER SERVICES:	INSTR,RNTL,SALES

**BASED AIRCRAFT**

90 SINGLE ENG:	305
91 MULTI ENG:	20
92 JET:	1
93 HELICOPTERS:	3
TOTAL:	<u>329</u>
94 GLIDERS:	1
95 MILITARY:	0
96 ULTRA-LIGHT:	0

MONTHS	DAYS	HOURS
ALL	ALL	0800-1800

## FACILITIES

> 80 ARPT BCN:	CG
> 81 ARPT LGT SKED:	SEE RMK
BCN LGT SKED:	SS-SR
> 82 UNICOM:	122.950
> 83 WIND INDICATOR:	YES-L
84 SEGMENTED CIRCLE:	YES
85 CONTROL TWR:	YES
86 FSS:	OAKLAND
87 FSS ON ARPT:	NO
88 FSS PHONE NR:	
89 TOLL FREE NR:	1-800-WX-BRIEF

## OPERATIONS

100 AIR CARRIER:	0
102 AIR TAXI:	0
103 G A LOCAL:	123,179
104 G A ITNRNT:	86,135
105 MILITARY:	0
TOTAL:	<u>209,314</u>

OPERATIONS FOR 12  
MONTHS ENDING 01/31/2020

### RUNWAY DATA

> 30 RUNWAY IDENT:  
> 31 LENGTH:  
> 32 WIDTH:  
> 33 SURF TYPE-COND:  
> 34 SURF TREATMENT:  
35 GROSS WT: S  
36 (IN THSDS) D  
37 2D  
38 2D/2DS  
> 39 PCN / PCR:

### LIGHTING/APCH AIDS

> 40 EDGE INTENSITY:  
> 42 RWY MARK TYPE-COND:  
> 43 VGSI:  
    44 THR CROSSING HGT:  
    45 VISUAL GLIDE ANGLE:  
> 46 CNTRLN-TDZ:  
> 47 RVR-RVV:  
> 48 REIL:  
> 49 APCH LIGHTS:

### OBSTRUCTION DATA

50 FAR 77 CATEGORY:  
> 51 DISPLACED THR:  
> 52 CTLG OBSTN:  
> 53 OBSTN MARKED/LGTD:  
> 54 HGT ABOVE RWY END:  
> 55 DIST FROM RWY END:  
> 56 CNTRLN OFFSET:  
57 OBSTN CLNC SLOPE:  
58 CLOSE-IN OBSTN:

### DECLARED DISTANCES

- > 60 TAKE OFF RUN AVBL (TORA):
- > 61 TAKE OFF DIST AVBL (TODA):
- > 62 ACLT STOP DIST AVBL (ASDA):
- > 63 LNDG DIST AVBL (LDA):

<b>13L/31R</b>	<b>13R/31L</b>
3,100	3,099
75	75
ASPH-E	ASPH-E
17.0	17.0
MED	
NPI- G / NPI- G	NPI- G / NPI- G
P4R / P4L	/ P4L
45 / 45	/ 45
4.00 / 4.00	/ 4.00
N - N / N - N	N - N / N - N
- N / - N	- N / - N
Y / Y	N / N
/	/
A(NP) / A(NP)	A(V) / A(NP)
499 / 410	499 / 409
TREE / ROAD	TREE / ROAD
/	/
47 / 16	55 / 18
920 / 200	1,016 / 200
205L / 0B	75L / 0B
15:1 / 0:1	14:1 / 0:1
N / Y	N / N

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

> 110 REMARKS:

A 013	DIRECTOR OF AIRPORTS, ERIC PETERSON
A 040	RWY 13R/31L RWY 13R/31L UNLGTD.
A 057	RWY 31R RY 31R APCH RATIO TO DSPLCD THLD 34:1.
A 057	RWY 13L RY 13L APCH RATIO TO DSPLCD THLD 30:1.
A 057	RWY 13R RY 13R APCH RATIO TO DSPLCD THLD 27:1.
A 057	RWY 31L APCH RATIO TO DSPLCD THR 33:1
A 058	RWY 31R & 31L +6 FT FENCE 150 FT FROM THR; RY 31R & 31L ROAD EDGE 155 FT FROM THR.

111 INSPECTOR: (S)	112 LAST INSP: 12/03/2020	113 LAST INFO REQ:
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> 1 ASSOC CITY:	SAN JOSE	4 STATE: CA	LOC ID: RHV	FAA SITE NR:	02203.*A
> 2 AIRPORT NAME:	REID-HILLVIEW OF SANTA CLARA COUNTY		5 COUNTY: SANTA CLARA, CA		
3 CBD TO AIRPORT (NM): 4 SE		6 REGION/ADO: AWP /SFO	7 SECT AERO CHT: SAN FRANCISCO		

## GENERAL

10 OWNERSHIP: PUBLIC

> 11 OWNER: COUNTY OF SANTA CLARA

> 12 ADDRESS: 2500 CUNNINGHAM AVE  
SAN JOSE, CA 95148

> 13 PHONE NR: 408-929-7700

> 14 MANAGER: FEMI ODUNBAKU

> 15 ADDRESS: 2500 CUNNINGHAM AVE.  
SAN JOSE, CA 95148

> 16 PHONE NR: 408-918-7707

> 17 ATTENDANCE SCHEDULE:

**MONTHS**

ALL

**DAYS**

ALL

## HOURS

0800-1800

## SERVICES

> 70 FUEL:	A UL94
> 71 AIRFRAME RPRS:	MAJOR
> 72 PWR PLANT RPRS:	MAJOR
> 73 BOTTLE OXYGEN:	LOW
> 74 BULK OXYGEN:	LOW
75 TSNT STORAGE:	TIE
76 OTHER SERVICES:	INSTR,RNTL,SALES

**BASED AIRCRAFT**

90 SINGLE ENG:	305
91 MULTI ENG:	20
92 JET:	1
93 HELICOPTERS:	3
TOTAL:	<u>329</u>
94 GLIDERS:	1
95 MILITARY:	0
96 ULTRA-LIGHT:	0

## FACILITIES

> 80 ARPT BCN:	CG
> 81 ARPT LGT SKED:	SEE RMK
BCN LGT SKED:	SS-SR
> 82 UNICOM:	122.950
> 83 WIND INDICATOR:	YES-L
84 SEGMENTED CIRCLE:	YES
85 CONTROL TWR:	YES
86 FSS:	OAKLAND
87 FSS ON ARPT:	NO
88 FSS PHONE NR:	
89 TOLL FREE NR:	1-800-WX-BRIEF

## OPERATIONS

100 AIR CARRIER:	0
102 AIR TAXI:	0
103 G A LOCAL:	123,179
104 G A ITNRNT:	86,135
105 MILITARY:	0
TOTAL:	<u>209,314</u>

OPERATIONS FOR 12  
MONTHS ENDING 01/31/2020

### RUNWAY DATA

> 30 RUNWAY IDENT:  
> 31 LENGTH:  
> 32 WIDTH:  
> 33 SURF TYPE-COND:  
> 34 SURF TREATMENT:  
35 GROSS WT: S  
36 (IN THSDS) D  
37 2D  
38 2D/2DS  
> 39 PCN / PCR:

### LIGHTING/APCH AIDS

> 40 EDGE INTENSITY:  
> 42 RWY MARK TYPE-COND:  
> 43 VGSI:  
    44 THR CROSSING HGT:  
    45 VISUAL GLIDE ANGLE:  
> 46 CNTRLN-TDZ:  
> 47 RVR-RVV:  
> 48 REIL:  
> 49 APCH LIGHTS:

### OBSTRUCTION DATA

50 FAR 77 CATEGORY:  
> 51 DISPLACED THR:  
> 52 CTLG OBSTN:  
> 53 OBSTN MARKED/LGTD:  
> 54 HGT ABOVE RWY END:  
> 55 DIST FROM RWY END:  
> 56 CNTRLN OFFSET:  
57 OBSTN CLNC SLOPE:  
58 CLOSE-IN OBSTN:

### DECLARED DISTANCES

- > 60 TAKE OFF RUN AVBL (TORA):
- > 61 TAKE OFF DIST AVBL (TODA):
- > 62 ACLT STOP DIST AVBL (ASDA):
- > 63 LNDG DIST AVBL (LDA):

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

> 110 REMARKS:

A 070	BGNG JANUARY 1, 2022 100LL UNAVBL.
A 081	WHEN ATCT CLSD ACTVT REIL RWYS 13L & 31R; MIRL RWY 13L/31R - CTAF. PAPI RWYS 13L, 31R & 31L OPR CONSLY.
A 110-001	RY 31R CALM WIND RY WHEN ATCT CLSD.
A 110-002	<NO PURE JET AND NO SURPLUS MIL ACFT EXCEPT THOSE MEETING FAR 36 NOISE CRITERIA.
A 110-003	NO TURNS BLO 500' WHEN LEAVING PATTERN EXCEPT RWY 31R DEPARTURES - AS SOON AS PRACTICABLE AFTER DEPARTURE MAKE A SLIGHT RIGHT TURN TO AVOID SCHOOL ONE HALF MILE OFF DEPARTURE END.
A 110-004	NO TOUCH & GO LNDGS BTN 2100-0700.
A 110-005	NO SIMULATED EMERGENCIES IN ARPT TFC AREA.

111 INSPECTOR: ( S )	112 LAST INSP: 12/03/2020	113 LAST INFO REQ:
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> 1 ASSOC CITY:	SAN JOSE	4 STATE: CA	LOC ID: RHV	FAA SITE NR:	02203.*A
> 2 AIRPORT NAME:	REID-HILLVIEW OF SANTA CLARA COUNTY		5 COUNTY: SANTA CLARA, CA		
3 CBD TO AIRPORT (NM): 4 SE		6 REGION/ADO: AWP /SFO	7 SECT AERO CHT: SAN FRANCISCO		

## GENERAL

10 OWNERSHIP: PUBLIC  
> 11 OWNER: COUNTY OF SANTA CLARA  
> 12 ADDRESS: 2500 CUNNINGHAM AVE  
SAN JOSE, CA 95148  
> 13 PHONE NR: 408-929-7700  
> 14 MANAGER: FEMI ODUNBAKU  
> 15 ADDRESS: 2500 CUNNINGHAM AVE.  
SAN JOSE, CA 95148  
> 16 PHONE NR: 408-918-7707

> 17 ATTENDANCE SCHEDULE:

MONTHS

**DAYS**

HOURS

ALL

ALL

0800-1800

18 AIRPORT USE:	PUBLIC
19 ARPT LAT:	37-19-58.3N ESTIMATED
20 ARPT LONG:	121-49-11.3W
21 ARPT ELEV:	135.4 SURVEYED
22 ACREAGE:	179
> 23 RIGHT TRAFFIC:	31R 13R
> 24 NON-COMM LANDING:	NO
25 NPIAS/FED AGREEMENTS:	YES / NGY
> 26 FAR 139 INDEX:	/

## SERVICES

> 70 FUEL:	A UL94
> 71 AIRFRAME RPRS:	MAJOR
> 72 PWR PLANT RPRS:	MAJOR
> 73 BOTTLE OXYGEN:	LOW
> 74 BULK OXYGEN:	LOW
75 TSNT STORAGE:	TIE
76 OTHER SERVICES:	INSTR,RNTL,SALES

### BASED AIRCRAFT

90 SINGLE ENG:	305
91 MULTI ENG:	20
92 JET:	1
93 HELICOPTERS:	3
TOTAL:	<u>329</u>
94 GLIDERS:	1
95 MILITARY:	0
96 ULTRA-LIGHT:	0

## FACILITIES

> 80 ARPT BCN:	CG
> 81 ARPT LGT SKED:	SEE RMK
BCN LGT SKED:	SS-SR
> 82 UNICOM:	122.950
> 83 WIND INDICATOR:	YES-L
84 SEGMENTED CIRCLE:	YES
85 CONTROL TWR:	YES
86 FSS:	OAKLAND
87 FSS ON ARPT:	NO
88 FSS PHONE NR:	
89 TOLL FREE NR:	1-800-WX-BRIEF

## OPERATIONS

100 AIR CARRIER:	0
102 AIR TAXI:	0
103 G A LOCAL:	123,179
104 G A ITNRNT:	86,135
105 MILITARY:	0
TOTAL:	<u>209,314</u>

OPERATIONS FOR 12  
MONTHS ENDING 01/31/2020

### RUNWAY DATA

> 30 RUNWAY IDENT:  
> 31 LENGTH:  
> 32 WIDTH:  
> 33 SURF TYPE-COND:  
> 34 SURF TREATMENT:  
35 GROSS WT: S  
36 (IN THSDS) D  
37 2D  
38 2D/2DS  
> 39 PCN / PCR:

## LIGHTING/APCH AIDS

> 40 EDGE INTENSITY:  
> 42 RWY MARK TYPE-COND:  
> 43 VGSI:  
    44 THR CROSSING HGT:  
    45 VISUAL GLIDE ANGLE:  
> 46 CNTRLN-TDZ:  
> 47 RVR-RVV:  
> 48 REIL:  
> 49 APCB LIGHTS:

### OBSTRUCTION DATA

50 FAR 77 CATEGORY:  
> 51 DISPLACED THR:  
> 52 CTLG OBSTN:  
> 53 OBSTN MARKED/LGTD:  
> 54 HGT ABOVE RWY END:  
> 55 DIST FROM RWY END:  
> 56 CNTRLN OFFSET:  
57 OBSTN CLNC SLOPE:  
58 CLOSE-IN OBSTN:

### DECLARED DISTANCES

- > 60 TAKE OFF RUN AVBL (TORA):
- > 61 TAKE OFF DIST AVBL (TODA):
- > 62 ACLT STOP DIST AVBL (ASDA):
- > 63 LNDG DIST AVBL (LDA):

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

> 110 REMARKS:

A 110-006	BIRDS ON AND INVOF ARPT.
A 110-007	BE ALERT ALL PILOTS - DO NOT CONFUSE ILLUMINATION FROM STREET LGTS NORTH-EAST OF AND PARALLEL TO RHV RYS THAT COULD BE MISTAKEN FOR RY LGTS. ENSURE PROPER ACTVTN OF PILOT CTLD ARPT SFC LGTG.
A 110-008	FOR CD WHEN ATCT IS CLSD CTC NORCAL APCH AT 916-361-3748.

111 INSPECTOR: ( S )	112 LAST INSP: 12/03/2020	113 LAST INFO REQ:
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> 1 ASSOC CITY:	SAN MARTIN	4 STATE: CA	LOC ID: E16	FAA SITE NR:	02213.4*A
> 2 AIRPORT NAME:	SAN MARTIN		5 COUNTY: SANTA CLARA, CA		
3 CBD TO AIRPORT (NM): 1 E		6 REGION/ADO: AWP /SFO	7 SECT AERO CHT: SAN FRANCISCO		

## GENERAL

10 OWNERSHIP: PUBLIC  
> 11 OWNER: COUNTY OF SANTA CLARA  
> 12 ADDRESS: 2500 CUNNINGHAM AVE.  
SAN JOSE, CA 95148  
  
> 13 PHONE NR: 408-918-7700  
> 14 MANAGER: ERIC PETERSON  
> 15 ADDRESS: 2500 CUNNINGHAM  
SAN JOSE, CA 95046

## SERVICES

> 70 FUEL:	A UL94
> 71 AIRFRAME RPRS:	MAJOR
> 72 PWR PLANT RPRS:	MAJOR
> 73 BOTTLE OXYGEN:	HIGH/LOW
> 74 BULK OXYGEN:	NONE
75 TSNT STORAGE:	HGR TIE
76 OTHER SERVICES:	CHTR,INSTR,PAJA, RNTL,SALES

**BASED AIRCRAFT**

90 SINGLE ENG:	29
91 MULTI ENG:	4
92 JET:	0
93 HELICOPTERS:	1
TOTAL:	34
<hr/>	
94 GLIDERS:	0
95 MILITARY:	0
96 ULTRA-LIGHT:	0

> 16 PHONE NR: 408-918-7700

> 17 ATTENDANCE SCHEDULE:

MONTHS	DAYS	HOURS
ALL	WED-THU	1000-1700

## FACILITIES

> 80 ARPT BCN:	CG
> 81 ARPT LGT SKED:	SEE RMK
BCN LGT SKED:	SEE RMK
> 82 UNICOM:	122.700
> 83 WIND INDICATOR:	YES-L
84 SEGMENTED CIRCLE:	YES
85 CONTROL TWR:	NO
86 FSS:	OAKLAND
87 FSS ON ARPT:	NO
88 FSS PHONE NR:	
89 TOLL FREE NR:	1-800-WX-BRIEF

## OPERATIONS

100 AIR CARRIER:	0
102 AIR TAXI:	0
103 G A LOCAL:	16,266
104 G A ITNRNT:	16,900
105 MILITARY:	0
TOTAL:	<u>33,166</u>

OPERATIONS FOR 12  
MONTHS ENDING 08/21/2019

18 AIRPORT USE:	PUBLIC
19 ARPT LAT:	37-4-53.7N ESTIMATED
20 ARPT LONG:	121-35-48.5W
21 ARPT ELEV:	283.8 SURVEYED
22 ACREAGE:	179
> 23 RIGHT TRAFFIC:	32
> 24 NON-COMM LANDING:	NO
25 NPIAS/FED AGREEMENTS:	YES / NGY
> 26 FAR 139 INDEX:	/

### RUNWAY DATA

> 30 RUNWAY IDENT:  
> 31 LENGTH:  
> 32 WIDTH:  
> 33 SURF TYPE-COND:  
> 34 SURF TREATMENT:  
35 GROSS WT: S  
36 (IN THSDS) D  
37 2D  
38 2D/2DS

14/32  
3,095  
75  
ASPH-E

### LIGHTING/APCH AIDS

- > 40 EDGE INTENSITY:
- > 42 RWY MARK TYPE-COND:
- > 43 VGSi:
  - 44 THR CROSSING HGT:
  - 45 VISUAL GLIDE ANGLE:
- > 46 CNTRLN-TDZ:
- > 47 RVR-RVV:
- > 48 REIL:
- > 49 APCH LIGHTS:

MED  
NPI- G / NPI- G  
P2L / P2L  
41 / 42  
4.00 / 4.00  
N - N / N - N  
- N / - N  
N / N  
/

### OBSTRUCTION DATA

50 FAR 77 CATEGORY:  
> 51 DISPLACED THR:  
> 52 CTLG OBSTN:  
> 53 OBSTN MARKED/LGTD:  
> 54 HGT ABOVE RWY END:  
> 55 DIST FROM RWY END:  
> 56 CNTRLN OFFSET:  
57 OBSTN CLNC SLOPE:  
58 CLOSE-IN OBSTN:

A(V) / A(NP)  
/  
POLE / TREE  
/  
41 / 32  
1,100 / 1,040  
200R / 73R  
21:1 / 26:1  
N / N

### DECLARED DISTANCES

- > 60 TAKE OFF RUN AVBL (TORA):
- > 61 TAKE OFF DIST AVBL (TODA):
- > 62 ACLT STOP DIST AVBL (ASDA):
- > 63 LNDG DIST AVBL (LDA):

/ / / /

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

> 110 REMARKS:

A 013 ERIC PETERSON, DIRECTOR OF AIRPORTS.

A 070 BGNG JANUARY 1, 2022 100LL UNAVBL.

A 081 DUSK-DAWN.

A 081 ACTVT MIRL RWY 14/32 - CTAF. PAPI RWYS 14 & 32 ON CONTINUOUSLY.

A 110-001 NO CROSSWIND TURNS BLO 1300 FT MSL; DEPS CLIMB TO 2000 FT MSL.

A 110-003 APCHG ACFT FLY DOWNWIND LEGS E OF FREEWAY.

A 110-004 FOR CD CTC NORCAL APCH AT 916-361-3748.

111 INSPECTOR: ( S )	112 LAST INSP: 12/03/2020	113 LAST INFO REQ:
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1.

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**AIRCRAFT OWNERS AND PILOTS  
ASSOCIATION, *et al*,**

**Complainants,**

**v.**

**COUNTY OF SANTA CLARA,  
CALIFORNIA**

**Respondent.**

\* \* \* \* \*

**AFFIDAVIT OF MICHAEL MCCLELLAND**

I, Michael McClelland, being over 18 years of age and otherwise fully competent to testify state that:

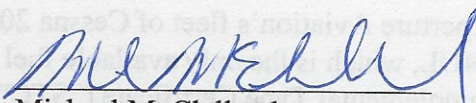
2. I have personal knowledge of the facts stated herein.
3. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at Reid-Hillview Airport (KRHV).
4. I am the owner of Aperture Aviation, Inc., (Aperture Aviation) an aerial survey company doing business and operating a fleet of Cessna 206 aircraft from its home base and offices at KRHV.
5. Aperture Aviation's fleet of Cessna 206 aircraft are unable to safely and legally use 94UL, which is the only available fuel at KRHV. These aircraft are not covered by any Supplemental Type Certificate ("STC") for their use of 94UL, as would be required for safe and legal operation.
6. The use of 94UL in Aperture Aviation's Cessna 206 aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject Aperture to FAA violations, sanctions, and penalties, as well as violation of its liability insurance.



7. Aperture Aviation is experiencing extra cost and inconvenience due to the necessity of flying aircraft that cannot legally use 94UL to airports outside the county to refuel, being unable to top off fuel tanks for long flights from KRHV and having to make intermediate refueling stops (requiring additional flight planning, flight time, time on ground, takeoffs, and landings as well as increasing traffic at these airports) and returning to land at KRHV with extra fuel not required by the regulations.
8. By written request dated December 13, 2021, (a true and correct copy is attached hereto) Aperture Aviation, through counsel, requested permission from the County of Santa Clara to continue to fuel Aperture Aviation's Cessna 206 fleet of aircraft with 100LL fuel until such time as the aircraft would be able to use commercially available unleaded fuel provided at the airport and explained that the County's action to prohibit the availability of 100LL at the airport left it in an untenable situation.
9. In the December 13, 2021, letter, Aperture Aviation requested that the letter be forwarded to those who can grant the requested permission, and advised that if such permission was granted, it would forestall any need for Aperture Aviation to seek further legal action or claims.
10. As of the date of this affidavit, the County has not responded to Aperture Aviation's December 13, 2021, written request for permission for a six-month exemption to afford time to allow for modification to its fleet of aircraft in order to be able to safely and compliantly operate with unleaded fuel.

**I AFFIRM** under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed this 15<sup>TH</sup> day of September, 2022.



Michael McClelland  
Owner  
Aperture Aviation, Inc.

**Affidavit of Michael McClelland**

**Attachment 5A:** Letter on behalf of Aperture Aviation to Santa Clara County dated December 13, 2021



# Glynn P. Falcon

ATTORNEY AT LAW

December 13, 2021

Eric Peterson  
Director of County Airports  
County of Santa Clara  
Reid-Hillview Airport  
2500 Cunningham Avenue  
San Jose, CA 95148-1001

**via Email only to avoid delay**

to: [espeterson@gmail.com](mailto:espeterson@gmail.com)  
[OpsSuper@CountyAirports.org](mailto:OpsSuper@CountyAirports.org)

Dear Mr. Peterson:

As attorney for Aperture Aviation, Inc., this letter is to formally request a short-term exemption to the looming prohibition against fueling aircraft at RHV with 100LL avgas.

Specifically, Aperture operates a fleet of Cessna 206 aircraft from its home base and offices at the Reid-Hillview Airport. These aircraft are not yet covered by any Supplemental Type Certificate ("STC"), as required by the FAA for legal and safe operation, for their use of any unleaded fuels, including the 94UL, which will be the only piston-engine fuel being offered for sale and use at the Reid-Hillview Airport.

We understand that there should be availability and a STC of G100UL avgas sometime in 2022, (See attached articles.) which will be compatible with Cessna 206 airplanes and powerplants. Aperture also requests that the County contact GAMI now, and begin negotiation for obtaining a license to receive and sell G100UL fuel at RHV Airport, so there is no delay in providing that fuel at RHV.

The use of 94UL in Aperture 206 aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject Aperture to FAA violations, sanctions, and penalties, as well as violation of its liability insurance. As you are likely aware, the Sponsor's prior Grant Assurances will be violated if the low-lead fuel prohibition goes into effect without exemptions, which will then unlawfully discriminate between low-power, low compression GA aircraft and GA engines, and those of higher power, higher compression engines for which there is no available STC for use of no-lead fuels. When the prior Grant Assurances were entered into, there was no such divisions created by the types of fuel usage. There should be none, now.

As a good neighbor and long-time operator at Reid-Hillview Airport, Aperture fully intends to switch to unleaded fuels once they become available and legal for use by its fleet of 206 aircraft. It just needs time in which to do so, while fuel manufacturers work to bring G100UL available and legal for use in Aperture aircraft. The sudden and totally unexpected prohibition of 100LL at RHV leaves Aperture Aviation in an untenable position.

ATTACHMENT 5A

December 13, 2021

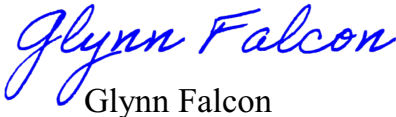
Letter to Peterson

Page 2

Therefore, it is respectfully requested that Aperture received permission to continue to fuel its 206 fleet of Cessna aircraft with 100LL avgas at RHV airport. This permission (or call it an exemption) shall be for a six-month period from 1-1-2022 thru 7/31/2022, at which point the County and Aperture will agree to meet and confer to determine if a further exemption is required before 100 No-Lead fuel is commercially available at RHV and a legal STC is available for Aperture's Cessna 206 aircraft.

Please forward this letter and request to those who can grant such permission and exemption. Such an exemption, if granted, will forestall any need for Aperture to seek further legal action or legal claims.

Sincerely,

  
Glynn Falcon

cc: Aperture Aviation, Inc.  
Attachments as indicated above

ATTACHMENT 5A



**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**AIRCRAFT OWNERS AND PILOTS       \***  
**ASSOCIATION, *et al*,**

\*

**Complainants,**  
**v.     \***

**COUNTY OF SANTA CLARA,       \***  
**CALIFORNIA**

\*

**Respondent.**

\*       \*       \*       \*       \*       \*       \*       \*       \*       \*       \*       \*       \*

**AFFIDAVIT OF GLYNN P. FALCON**

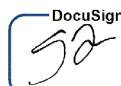
I, Glynn P. Falcon, being over 18 years of age and otherwise fully competent to testify state that:

1. I have personal knowledge of the facts stated herein.
2. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at Reid-Hillview Airport (KRHV).
3. I am a member of the Aircraft Owners and Pilots Association.
4. I am an owner of a Beechcraft Bonanza, operating from its home base at Watsonville Municipal Airport (KWVI).
5. I operate the aircraft for personal and business use.
6. The aircraft is unable to safely and legally use 94UL, which is the only available fuel at KRHV. The aircraft is not covered by any Supplemental Type Certificate (“STC”) for use of 94UL, as would be required for safe and legal operation.
7. The use of 94UL in the aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject me to FAA violations, sanctions, and penalties, as well as violation of the aircraft’s liability insurance.
8. I used to fly my aircraft into Reid-Hillview airport (KRHV) to meet with various business clients. This allowed me to expediently get between meetings or work commitments without the need to fight Bay Area traffic.

9. Since 100LL is no longer available at KRVH due to the actions of the County of Santa Clara, I no longer fly into KRVH because there is no fuel available for my aircraft.

**I AFFIRM** under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed this 16th day of September, 2022.

DocuSigned by:  
  
9A48E2B26B4C4A9...  
Glynn P. Falcon

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**AIRCRAFT OWNERS AND PILOTS       \***  
**ASSOCIATION, *et al*,**

\*

**Complainants,**  
**v.     \***

**COUNTY OF SANTA CLARA,       \***  
**CALIFORNIA**

\*

**Respondent.**

\*       \*       \*       \*       \*       \*       \*       \*       \*       \*       \*       \*       \*

**AFFIDAVIT OF ROBERT A. GINGELL**

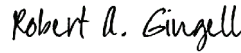
I, Robert A. Gingell, being over 18 years of age and otherwise fully competent to testify state that:

1. I have personal knowledge of the facts stated herein.
2. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at San Martin Airport (E16).
3. I am a member of the Aircraft Owners and Pilots Association.
4. I operate a Cessna 310P, registration number N5782M, which is based at E16. I operate this aircraft for personal use.
5. The aircraft is unable to safely and legally use 94UL, which is the only available fuel at E16. To the best of my knowledge, the aircraft is not covered by any Supplemental Type Certificate ("STC") for use of 94UL, as would be required for safe and legal operation.
6. The use of 94UL in the aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject me to FAA violations, sanctions, and penalties, as well as violation of its liability insurance.
7. Since 100LL is no longer available at E16 due to the actions of the County of Santa Clara, I have had to make unnecessary accommodations and stops to fuel the aircraft. The aircraft is powered by two Continental IO-550-E engines. The use of 94UL in these engines is not legally permitted by the FAA.

8. These diversions to seek fuel are adding additional wear and cycles to hardware that otherwise would not previously have been required. This in turn increases maintenance and cost associated with that maintenance.
9. The County's restriction of 100LL has also made operations more complex. Longer flights returning to E16 require a stop in close proximity to E16 in order to maximize range upon subsequent departures or I will be again required to fuel enroute to other destinations.
10. In addition to requiring additional flight planning, flight time, time on ground, takeoffs, and landings as well as increasing traffic at these airports, these fuel stops are extremely wasteful since the takeoff phase of flight is the most fuel-intensive, and I am now forced to burn more fuel than previous because of the need to stop and refuel the aircraft.
11. I am deeply concerned that if Santa Clara County is allowed to continue to not offer 100 octane fuel at the airport that is approved for use in all planes that require 100 octane fuel, that other airport operators will follow suit and it will become more difficult and eventually impossible for me to use the national system of airports causing me great hardship and a very large capital loss in the value of the plane.

**I AFFIRM** under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed this 22nd day of September, 2022.

DocuSigned by:  
  
4DDC1282337447F...  
ROBERT A. GINGELL

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**AIRCRAFT OWNERS AND PILOTS       \***  
**ASSOCIATION, *et al*,**

\*

**Complainants,**  
**v.     \***

**COUNTY OF SANTA CLARA,       \***  
**CALIFORNIA**

\*

**Respondent.**

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**AFFIDAVIT OF CHRISTOPHER LUVARA**

I, Christopher Luvara, being over 18 years of age and otherwise fully competent to testify state that:


1. I have personal knowledge of the facts stated herein.
2. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at Reid-Hillview Airport (KRHV).
3. I am a member of the Aircraft Owners and Pilots Association.
4. I am an owner of N1824, a Cessna 182 (“the aircraft”), which operates from its home base at KRHV.
5. I operate the aircraft for personal use, including business travel.
6. The aircraft is unable to safely and legally use 94UL, which is the only available fuel at KRHV. The aircraft is not covered by any Supplemental Type Certificate (“STC”) for their use of 94UL, as would be required for safe and legal operation.
7. The use of 94UL in the aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject us to FAA violations, sanctions, and penalties, as well as violation of its liability insurance.
8. Since 100LL is no longer available at KRHV due to the actions of the County of Santa Clara, I have had to make unnecessary accommodations and stops to fuel the aircraft, which is powered by an O-470-50 engine installed under STC’s SE4988NM &

SA5664M. Per the STC, the aircraft is required to utilize 100/130 Minimum Grade Aviation Gasoline.

9. These diversions to seek fuel are adding additional wear and cycles to hardware that otherwise would not previously have been required. This in turn increases maintenance and cost associated with that maintenance.
10. The County's restriction of 100LL has also discouraged me from flying since it makes operations more complex. Longer flights returning to RHV require a stop in close proximity to RHV in order to maximize range upon subsequent departures or I will be again required to fuel enroute to other destinations. In addition to requiring additional flight planning, flight time, time on ground, takeoffs, and landings as well as increasing traffic at these airports, these fuel stops are extremely wasteful since the takeoff phase of flight is the most fuel-intensive, and I am now forced to burn more fuel than previous because of the need to stop and refuel the aircraft.
11. Additionally, I also rely on the aircraft for business travel. Prior to the actions of the County of Santa Clara concerning 100LL, the aircraft allowed me to expediently get between meetings or work commitments without the need to fight Bay Area traffic. With the elimination of 100LL sales at the two County airports in effect, I am now forced to make extra fuel stops that reduce the utility and efficiency of my travel.

**I AFFIRM** under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed this 16th day of September, 2022.

DocuSigned by:  
  
BB4D8A721B83413...  
Christopher Luvara

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**AIRCRAFT OWNERS AND PILOTS       \***  
**ASSOCIATION, *et al*,**

\*

**Complainants,**  
**v.     \***

**COUNTY OF SANTA CLARA,       \***  
**CALIFORNIA**

\*

**Respondent.**

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**AFFIDAVIT OF MICHAEL S. LUVARA**

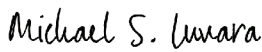
I, Michael S. Luvara, being over 18 years of age and otherwise fully competent to testify state that:

1. I have personal knowledge of the facts stated herein.
2. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at Reid-Hillview Airport (KRHV).
3. I am a member of the Aircraft Owners and Pilots Association.
4. I am an owner of N1824, a Cessna 182, operating from its home base at KRHV.
5. I operate aircraft for personal and business use.
6. The aircraft is unable to safely and legally use 94UL, which is the only available fuel at KRHV. The aircraft is not covered by any Supplemental Type Certificate ("STC") for use of 94UL, as would be required for safe and legal operation.
7. The use of 94UL in the aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject me to FAA violations, sanctions, and penalties, as well as violation of the aircraft's liability insurance.
8. Since 100LL is no longer available at KRHV due to the actions of the County of Santa Clara, I have had to make unnecessary accommodations and stops to fuel the aircraft, which is powered by an O-470-50 engine installed under STC's SE4988NM & SA5664M. Per the STC, the aircraft is required to utilize 100/130 Minimum Grade Aviation Gasoline.

9. These diversions to seek fuel are adding additional wear and cycles to hardware that otherwise would not previously have been required. This in turn increases maintenance and cost associated with that maintenance.
10. The County's restriction of 100LL has also discouraged me from flying since it makes operations more complex. Longer flights returning to RHV require a stop in close proximity to RHV in order to maximize range upon subsequent departures or I will be again required to fuel enroute to other destinations. In addition to requiring additional flight planning, flight time, time on ground, takeoffs, and landings as well as increasing traffic at these airports, these fuel stops are extremely wasteful since the takeoff phase of flight is the most fuel-intensive, and I am now forced to burn more fuel than previous because of the need to stop and refuel the aircraft.
11. Additionally, I also rely on the aircraft for business travel. Prior to the actions of the County of Santa Clara concerning 100LL, the aircraft allowed me to expediently get between meetings or work commitments without the need to fight Bay Area traffic. With the elimination of 100LL sales at the two County airports in effect, I am now forced to make extra fuel stops that reduce the utility and efficiency of traveling in the aircraft. For IFR operations, this is especially important since higher fuel reserves are required for safe and legal operations.

**I AFFIRM** under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed 9/15/2022 | 8:45 PM PDT.

DocuSigned by:  
  
D5124CAAF95441...  
MICHAEL S. LUVARA





Michael Luvara <mluvara@gmail.com>

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## Opportunity to Reply to Complainant's Rebuttals

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Michael Luvara <mluvara@gmail.com>

Mon, Jun 13, 2022 at 7:24 AM

To: "Armstrong, Brian (FAA)" <Brian.Armstrong@faa.gov>

Cc: "Suttmeier, Laurie (FAA)" <laurie.suttmeier@faa.gov>, "Choi, Amy L (FAA)" <Amy.L.Choi@faa.gov>, "Globa, Victor (FAA)" <Victor.Globa@faa.gov>

Good morning Mr Armstrong,

I was reminded of the part 13 investigation this weekend as the local newspaper did a story on soil lead levels study that the County appeared to be sitting on. <https://www.mercurynews.com/2022/06/11/study-finds-no-elevated-lead-levels-in-reid-hillview-airports-soil/>

I have not heard anything from the FAA regarding the status of the part 13 investigation since your last message in April. Are there any status updates on this? It is continuing to be frustrating to suffer harm from the county's elimination of fuel necessary for my aircraft.

Regards,  
Michael Luvara

On Tue, Apr 5, 2022 at 1:06 PM Armstrong, Brian (FAA) <Brian.Armstrong@faa.gov> wrote:

Dr. Smith and Mr. Williams

Please see the attached letter offering the County an opportunity to respond to the Complainant's rebuttals to the County's responses to the Part 13 complaints. All of the rebuttals received from the complainant's are also attached.

Brian Q. Armstrong  
Manager, Airport Safety & Standards Branch  
FAA Western-Pacific Region  
424-405-7303

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

AIRCRAFT OWNERS AND PILOTS \*  
ASSOCIATION, *et al*,

Complainants, \*  
v. \*

COUNTY OF SANTA CLARA, \*  
CALIFORNIA \*

Respondent.

\* \* \* \* \*

AFFIDAVIT OF PAUL MARSHALL

I, Paul Marshall, being over 18 years of age and otherwise fully competent to testify state that:

1. I have personal knowledge of the facts stated herein.
2. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at San Martin Airport (E16).
3. I am a member of the Aircraft Owners and Pilots Association.
4. I am the owner of N4305U, a Bonanza A36 which is based at E16.
5. I operate the aircraft for personal use extensively throughout the western US and northern Mexico.
6. My aircraft is unable to safely and legally use 94UL, which is the only available fuel at E16. The aircraft is not covered by any Supplemental Type Certificate (“STC”) for use of 94UL, as would be required for safe and legal operation.
7. The use of 94UL in my aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject us to FAA violations, sanctions, and penalties, as well as violation of its liability insurance.
8. Since 100LL is no longer available at E16 due to the actions of the County of Santa Clara, I have had to make unnecessary accommodations and stops to fuel the aircraft, which is powered by a Continental Motors IO-550B. The use of 94UL in this engine is not legally permitted by the FAA.

9. These diversions to seek fuel are adding additional wear and cycles to hardware that otherwise would not previously have been required. This in turn increases maintenance and cost associated with that maintenance.
10. The County's restriction of 100LL has also discouraged me from flying since it makes operations more complex. Longer flights returning to E16 require a stop in close proximity to E16 in order to maximize range upon subsequent departures or I will be again required to fuel enroute to other destinations.
11. In addition to requiring additional flight planning, flight time, time on ground, takeoffs, and landings as well as increasing traffic at these airports, these fuel stops are extremely wasteful since the takeoff phase of flight is the most fuel-intensive, and we are now forced to burn more fuel than previous because of the need to stop and refuel the aircraft.
12. I am concerned that parking my plane in the hangar without a full fuel condition causes condensation in the air in the tank during winter months, with water running down the inside of the tank into the gasoline and making it more likely that I will have a water-fuel safety incident.
13. I am deeply concerned that if Santa Clara County is allowed to continue to not offer 100 octane fuel at the airport that is approved for use in all planes that require 100 octane fuel, that other airport operators will follow suit and it will become more difficult and eventually impossible for me to use the national system of airports causing me great hardship and a very large capital loss in the value of my plane.

**I AFFIRM** under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed this 15th day of September, 2022.

DocuSigned by:  
*Paul Marshall*  
6449F76961AD474...  
Paul Marshall

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

AIRCRAFT OWNERS AND PILOTS \*  
ASSOCIATION, *et al*,

Complainants, \*  
v. \*

COUNTY OF SANTA CLARA, \*  
CALIFORNIA \*

Respondent.

\* \* \* \* \*

AFFIDAVIT OF DR. JOSEPH C. MCMURRAY


I, Dr. Joseph C. McMurray, being over 18 years of age and otherwise fully competent to testify state that:

1. I have personal knowledge of the facts stated herein.
2. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at San Martin Airport (E16).
3. I am a member of the Aircraft Owners and Pilots Association.
4. I operate a Beechcraft A36 Bonanza, registration number N168JG, which is based at E16. I operate this aircraft for personal use.
5. I am the owner and operator of an American Champion 8KCAB Super Decathlon, registration number N963TT, which is also based at E16. I operate this aircraft for personal use.
6. The Beechcraft Bonanza and Super Decathlon are unable to safely and legally use 94UL, which is the only available fuel at E16. To the best of my knowledge, the aircraft are not covered by any Supplemental Type Certificate (“STC”) for use of 94UL, as would be required for safe and legal operation.
7. The use of 94UL in the aircraft would not only be a severe safety hazard, it would also be unlawful, and would subject me to FAA violations, sanctions, and penalties, as well as violation of its liability insurance.

8. Since 100LL is no longer available at E16 due to the actions of the County of Santa Clara, I have had to make unnecessary accommodations and stops to fuel the aircraft. The Beechcraft Bonanza is powered by a Continental IO-550 series engine and the Super Decathlon is powered by a Lycoming AEIO-360-H1B engine. The use of 94UL in these engines is not legally permitted by the FAA.
9. These diversions to seek fuel are adding additional wear and cycles to hardware that otherwise would not previously have been required. This in turn increases maintenance and cost associated with that maintenance.
10. The County's restriction of 100LL has also discouraged me from flying since it makes operations more complex. Longer flights returning to E16 require a stop in close proximity to E16 in order to maximize range upon subsequent departures or I will be again required to fuel enroute to other destinations.
11. In addition to requiring additional flight planning, flight time, time on ground, takeoffs, and landings as well as increasing traffic at these airports, these fuel stops are extremely wasteful since the takeoff phase of flight is the most fuel-intensive, and I am now forced to burn more fuel than previous because of the need to stop and refuel the aircraft.
12. I am concerned that parking the plane in the hangar without a full fuel condition causes condensation in the air in the tank during winter months, with water running down the inside of the tank into the gasoline and making it more likely that I will have a water-fuel safety incident.
13. Additionally, I rely on the Beechcraft Bonanza for business travel. Prior to the actions of the County of Santa Clara concerning 100LL, the aircraft allowed me to expediently get between meetings or work commitments without the need to fight Bay Area traffic. With the elimination of 100LL sales at the two County airports in effect, I am now forced to make extra fuel stops that reduce the utility and efficiency of my travel.
14. I am deeply concerned that if Santa Clara County is allowed to continue to not offer 100 octane fuel at the airport that is approved for use in all planes that require 100 octane fuel, that other airport operators will follow suit and it will become more difficult and eventually impossible for me to use the national system of airports causing me great hardship and a very large capital loss in the value of the plane.

**I AFFIRM** under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed this 20th day of September, 2022.

DocuSigned by:  
  
B397C50BCB324CA...  
Dr. Joseph C. McMurray

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**AIRCRAFT OWNERS AND PILOTS       \***  
**ASSOCIATION, *et al*,**

\*

**Complainants,**  
**v.     \***

**COUNTY OF SANTA CLARA,       \***  
**CALIFORNIA**

\*

**Respondent.**

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**AFFIDAVIT OF WALTER GYGER**

**I, WALTER GYGER,** being over the age of 18 and otherwise competent to testify state that:

1. I am an AOPA member in good standing.
2. I have personal knowledge of the facts stated herein.
3. I make this affidavit in support of the Part 16 complaint against the County of Santa Clara relating to violations of Grant Assurances at Reid-Hillview Airport (KRHV).
4. I am the owner of Skyworks Aviation dba Trade Winds Aviation (“Trade Winds Aviation”) and serve as its CEO and President.
5. Trade Winds Aviation is a flight school with locations at Reid-Hillview Airport (KRHV) and San Martin Airport (E16).
6. Trade Winds Aviation maintains a fleet of aircraft rented for flight training.
7. Prior to January 1, 2022, Trade Winds Aviation was party to a lease with the County of Santa Clara.

8. Prior to January 1, 2022, Trade Winds Aviation also provided fixed base operator services to pilots and aircraft owners.

9. Prior to January 1, 2022, Trade Winds Aviation self-fueled its flight training fleet with 100LL fuel provided by LP Enterprises LLC.

10. The County of Santa Clara prohibited use of 100LL fuel for retail sale as of January 1, 2022.

11. Trade Winds Aviation entered into a Lease Agreement with the County of Santa Clara effective January 1, 2022, which states that all fueling on the leased premises is subject to, among other things, “Lessor’s order(s) relating to the prohibition of use of leaded fuels on County Airports, effective January 1, 2022.”

12. As of January 1, 2022, only 94UL fuel is available at Santa Clara County airports for retail and self-fueling.

13. 94UL is not legal or safe to use in every Trade Winds Aviation fleet aircraft.

14. There is not currently an unleaded fuel that is in commercial production or distribution, nor available for use, in every Trade Winds Aviation fleet aircraft.

15. Trade Winds Aviation and its customers are experiencing extra cost and inconvenience due to the necessity of flying aircraft that cannot legally use 94UL to airports outside the county to refuel, being unable to top off fuel tanks for long flights from KRHV and having to make intermediate refueling stops (requiring additional flight planning, flight time, time on ground, takeoffs, and landings as well as increasing traffic at these airports) and returning to land at KRHV with extra fuel not required by the regulations so the next rental pilot has sufficient fuel to safely depart before flying out of Santa Clara County to refuel.

16. On October 8, 2021, I submitted the attached letter (“Complaint Letter”) to Mark McClardy at the FAA Western Pacific Region Airports Division.

17. The Complaint Letter states that including that some flight schools at Santa Clara County airports are able to offer competitively priced flight training by purchasing fuel wholesale and receiving discounted fuel pricing because of long term volume agreements, and that higher performance aircraft used by flight schools that must refuel elsewhere will impact students and competitiveness of flight schools based at Santa Clara County airports.

18. On December 22, 2021, the FAA sent a Notice of Informal Investigation Under 14 CFR 13.1 to Santa Clara County, with my Complaint Letter attached.

19. Many of the concerns raised in the Complaint Letter have become reality, and neither I nor Trade Winds Aviation has received an FAA decision on the merits of the allegations submitted in the Complaint Letter.

20. There has been no further apparent Part 13 activity by the FAA since the County of Santa Clara responded to the FAA’s Notice of Informal Investigation letter to the FAA on January 11, 2022.

21. Trade Winds Aviation is willing and able to use 100LL fuel for self-fueling, if not legally prohibited, until an unleaded fuel is locally available and approved for use in all Trade Winds Aviation aircraft.

**I AFFIRM** under the penalties of perjury that the foregoing is based upon personal knowledge and is true.

DocuSigned by:  
*Walter Gyger*  
4DEAF0EF4F32432...  
Walter Gyger  
Owner, President & CEO  
Trade Winds Aviation



**Affidavit of Walter Gyger**

**Attachment 13A:** January 1, 2022 Trade Winds Aviation Lease  
Agreement excerpt

4.1.5 Lessee agrees not to wash vehicles on the Premises in such a manner as to allow any cleaning detergent or water to reach the surface of the ground.

4.1.6 Fueling

4.1.6.1 Lessee is authorized to operate its own fuel truck for the sole purpose of fueling aircraft used in the course of its daily flight training and aircraft rental business, provided Lessee obtains a Commercial Self Fueling Permit.

4.1.6.2 If authorized in writing by the County separately from this lease to conduct retail fueling operations, Lessee must obtain an approved Permit for Retail Sale or Distribution of Fuel and Lubricants from Lessor prior to exercises its privilege of retail fuel sales.

4.1.6.3 All fueling on the Premises conducted under the above sections or otherwise subject to all applicable federal, state, and local laws and regulations, including but not limited to Lessor's order(s) relating to the prohibition of use of leaded fuels on County Airports, effective January 1, 2022.

4.1.7 Licensee shall use the premises for legal commercial business purposes only. No residential use is permitted. Licensee action of non-compliance shall constitute an Agreement violation.

4.2 A Fee Schedule describing all charges and hourly rates for services for airport patrons shall be posted at the Premises by the Lessee in plain view and kept up to date. All rates and charges shall be reasonable and fairly applied to all users of Lessee's services.

4.3 Identification and Periodic Reporting of Stored Aircraft

Lessee shall, at all times, maintain a current list of all aircraft permanently based, hangered, either inside or outside the Premises (excluding such other areas of the Airport which are not part of the Premises), and containing for each aircraft the name and address of the aircraft owner, the aircraft type (make, model, year, if known), and the aircraft registration number. Starting on the Effective Date, the Lessee shall provide the County with a copy of such a list on the first day of every other month, and at any other time the County reasonably requests same.

4.4 Accident Reports

Lessee agrees to report any accidents at the Airport, including but not limited to, involving Lessee, or Lessee's guests which occur at the Airport to the Lessor in writing within 24 hours of Lessee's learning of such. Lessee is also responsible for notifying any federal, state or local authorities, as required by law.

## **Affidavit of Walter Gyger**

**Attachment 13B:** October 8, 2021 Complaint Letter

8 October 2021

**To:** Mark McClardy  
Director, Airports Division  
Western Pacific Region

Kevin C. Willis, Director  
Office of Airport Compliance and Management Analysis

**From:** Walt Gyger  
Owner, Tradewinds Aviation (FBO and flight school at Reid Hillview Airport)

Josh Watson  
Owner / CEO AeroDynamic Aviation (FBO and flight school at Reid Hillview Airport)

Michael McDonald  
Pilot at Reid Hillview (RHV) airport in Santa Clara County, California

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Dear Sirs,

As I know you are aware, Santa Clara County Supervisors voted 5-0 on August 17, 2021 to *"Direct Administration and County Counsel to take such actions as may be necessary to expeditiously eliminate lead exposure from operations at Reid-Hillview Airport, consistent with all established federal, state, and local laws and all court orders. Such actions may include, but are not limited to, both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031."*

During the Board of Supervisors October 5, 2021 meeting, Supervisor President Wasserman indicated that the county would be pursuing 30-day lease agreements with all tenants once existing leases expired on 12/31/2021; this is in less than 90 days.<sup>1</sup> He personally advocated for offering one, two and three year leases in his motion, and said in his prepared remarks during the meeting: "It's [30-day leases] neither fair nor right to do at this time. FBOs won't want to invest their dollars in equipment knowing they can be evicted in 30-days. Banks won't want to loan money to FBOs knowing they can be evicted in 30 days. FBOs can't sell their businesses if the prospective buyer knows she can be evicted in 30 days." There was no second and the motion died; it can only be assumed that the county will continue to pursue only 30-day lease agreements at the termination of existing leases on 12/31/2021.

During the Santa Clara County Airport Commission meeting also held on October 5, 2021, Director of County Airports Eric Peterson indicated that they would only be offering lease agreements to four of the tenants at Reid Hillview Airport; leases with five other tenants would expire and not be renewed at the end of the year.<sup>2</sup> He indicated "that the Board was pretty clear in their direction today that they would be month-to-month."

<sup>1</sup> <http://sccgov.igm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=13232&Format=Agenda> [44 minute mark, 10:09 am]

<sup>2</sup> <http://sccgov.igm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=13275&Format=Agenda> [31:20 mark]

A copy of the county letter giving notice to one of the tenants [Tradewinds] is attached. This letter was provided 95-days prior to the termination of the existing lease. This has left tenants with minimal time to respond and negotiate new leases.

Two FBOs [Properties 3 and 7 in the county notice] provide flight training operations and currently source their own fuel. The county has indicated that they will take over these fuel operations under their *proprietary exclusive* rights; the fear is that they will not offer competitive fuel pricing to these FBOs and flight schools, thereby making it difficult for these flight schools to operate.

With the county taking on all fuel operations, fuel operators at Reid Hillview will be reduced from four competing fuel providers down to one: the county. With the county identifying their interest to close the airport as quickly as possible, there is a concern that they may leverage their monopoly to the detriment of the airport and aviation community.

Furthermore, the pilot community at the airport aggressively worked to bring unleaded "UL94" avgas offered by Swift Fuel to the airport. While the county ostensibly wants the airport to move to unleaded fuel to reduce lead exposure to the community, success in such efforts removes the urgent need to close the airport and therefore runs counter to the county's stated goal. The concern is they might eliminate 100LL and price UL94 extremely high. In the event that UL94 sales at Reid Hillview are severely reduced through such actions, this has implications to other airports in the region that now also sell unleaded avgas; Reid Hillview consumes a substantial amount of avgas, which enabled the business case for Swift Fuels to transport UL94 in rail cars to California. If the county sabotages unleaded avgas efforts at Reid Hillview, this will impact unleaded fuel sales in California.

With respect to the five leases [Properties 1, 2, 5, 6, 8] that will expire at the end of the year: these operators rent tie-down space to some aircraft owners on their property. It is the commonly held belief that the county did not like that these operators offered lower prices than those of the county. It is expected that these aircraft owners will see substantial increases in their monthly tie-down rates.

The actions by the county appear intended to cause impairment of the airport and the aeronautical tenants of the airport; indeed, the County Board of Supervisors President Wasserman acknowledges in his statement that the county's actions are doing so. Such actions by the county will likely take effect within the next 90 days, so we would ask that an expedited review of the situation occur pursuant to 14 C.F.R §16.11(b).

### **Concerns**

Poorly providing or providing a diminution of services may be a *de facto* closure of the airport. The county has indicated their intent to close the airport, so it is not consistent that they wish to run a fuel operation that promotes aviation.

The county is exercising their right to operate fuel as a *proprietary exclusive* operation. In so doing, the airport will go from four fuel providers down to one. By eliminating all competition, there is a concern that fuel may no longer be offered on similar and reasonable terms as it is currently offered.

The county does not have experience in or equipment (e.g. fuel trucks) for running fuel operations at Reid Hillview. While the county owns the fuel infrastructure at another airport (E16), the day-to-day operations are contracted out there.

Some of the flight schools offer competitively priced flight training by purchasing fuel wholesale for their aircraft. The lack of fuel on reasonable terms from the county will impact the ability of flight schools and FBOs to run viable and competitive businesses.

Some of the flight schools receive discounted fuel pricing because of long-term volume agreements. As month-to-month leases are the antithesis of long-term agreements, it will likely be difficult to negotiate discounted fuel prices.

The county may be reluctant to enter long-term agreements with fuel suppliers. This may increase county costs, which would presumably be passed onto the Reid Hillview aviation community in the form of higher fuel prices.

The county has indicated in their motion that they wish to prohibit the sale of leaded fuel. While the local pilot community supports moving to unleaded fuel at every opportunity, the removal of a high octane option at the airport removes a necessary fuel for some high performance aircraft. Some higher performance aircraft are used by flight schools, so the lack of a high octane fuel at Reid Hillview will impact students and the competitiveness of these flight schools if they must refuel elsewhere.

It is not expected that the county will negotiate in good faith. Indeed, they have waited until the last moment to give notice to tenants, have indicated they will only allow month-to-month leases, and have openly acknowledged the challenges that tenants will face in securing financing, hiring employees, getting new students, and making investments with such limited visibility.

The county is not offering lease extensions to some qualified companies offering aeronautical and aeronautical-support services.

The County's refusal to enter into lease agreements with aeronautical tenants [Properties 1, 2, 5, 6, 8] appears to be in violation of Grant Assurance 22.

#### **Assistance Requested**

We would ask that the FAA assist Reid Hillview tenants in achieving the following objectives:

1. Lease terms available up to 2031. This is the date at which the county is no longer subject to FAA AIP grant covenants.
2. Lease rates and terms must be consistent and competitive with rates and terms of other nearby comparable general aviation airports.
3. Fuel prices and terms must be consistent and competitive with rates and terms of other nearby comparable general aviation airports.
4. Fuel service levels must not be degraded. For example, Tradewinds Aviation aircraft are automatically and immediately fueled by the current fuel provider; that should be continued. In another example, both full-service and discounted self-service fueling options should be available. In another example, comparable hours of operation must exist.
5. Discounted and volume fuel pricing consistent with what an FBO or flight school historically negotiated under a long-term agreement even if the county does not offer lease terms of that duration.
6. To insure a smooth transition from the existing fuel suppliers to the county, the county must make whole existing fuel providers for any fuel that is in the tank when the county takes control of the fuel operations and fuel tanks.

7. Ensure the on-going availability of leaded fuel at the airport, until such time as an FAA-approved unleaded alternative suitable for all aircraft is commercially available and viable.
8. Leases offered to all existing aviation tenants and businesses, with the exception of the fuel operations where the county has exercised their *proprietary exclusive* rights.
9. The ability for existing aviation businesses to continue to operate at the airport. These include, for example, private individuals offering cleaning services of aircraft or those performing avionics certification.
10. The maintenance of Reid Hillview airport and its facilities must be done in a timely manner and not neglected; the lack of attention by the county on the airport environs should not continue.
11. Individual aircraft owners who are leasing facilities (e.g., tie downs, hangars, etc.) from the county should see rates consistent with comparable general aviation airports in the region.
12. The county should continue to fulfill the obligations and assurances it has to the FAA under existing grants.

### **Potential Remedies**

Santa Clara County has the city of San Jose and San Jose International airport within its borders. The Department of Transportation and FAA has discretion on hundreds of millions of dollars in federal funds that can affect the county; last year, for example, San Jose International was awarded \$65.6 million in 2020 through the CARES Act. San Jose International 2020-2024 Capital Improvement Program expenditures are projected at \$349.7 million; they have indicated that they will pursue FAA AIP grants for a substantial portion of this amount. The FAA has economic leverage which they can directly exert on the county and indirectly through entities within the county.

The FAA also has statutory authority to enforce compliance with sponsor assurances.

### **Urgency Required**

The county provided the minimal notice required to airport tenants regarding the new proposed terms of the lease. Airport tenants – while under no illusion about the desires of the county to close the airport – have felt that the airport would remain open through 2031 due to the AIP grants; the expeditious actions of the county to make the situation immediately untenable makes business operations difficult. With uncertainty in the airport's future beyond the end of this year, the loss of employees is an immediate concern. The ability to secure financing at reasonable terms is now in jeopardy. The ability to get students is now in jeopardy. The ability to relocate businesses to other airports is significantly compromised. As pilots explore moving their aircraft to other airports, airport businesses are impacted.

Airport tenants have very little metaphorical runway to figure this out.

We would ask that the FAA expeditiously review the situation at Reid Hillview and Santa Clara County and take the necessary actions to preserve the airport and the valuable role it has in our nation's aviation network. We continue to appreciate the advocacy that you have shown to the airport and hope that you will continue to strongly advocate for the airport at every opportunity.

**Respectfully and with thanks,**

Walt Gyger

Owner, Tradewinds Aviation

Josh Watson

CEO/Owner, Aerodynamic Aviation

Michael McDonald

Angel Flight Pilot

Aircraft owner at Reid Hillview Airport

Community and Airport Partnership for Safe Operation (CAAPSO) Board Member

**Attachments:**

Reid Hillview as a Valuable Aviation Asset

Lease termination notice

Proposed motion by Supervisor Wasserman



### **Reid Hillview as a Valuable Aviation Asset**

Reid Hillview is a 180-acre airport in the San Francisco Bay area. It is one of the busiest airports in California, with roughly 573 operations per day and 209,000 annual operations; it is busier than San Jose International (SJC) located 5nm away. Reid Hillview airport serves as a reliever airport for San Jose International, and occasionally San Francisco (SFO) and Oakland (OAK) airports; the loss of Reid Hillview will have an impact on commercial operations at these other airports. Redirection of GA aircraft to these airports impacts the safe and efficient operation of the national airspace system. Bounded on all sides, San Jose International has no ability to expand aviation operations beyond its current limits; it does not have the ability to accept a significant amount of Reid Hillview traffic.

Reid Hillview provides safety functions to the community. During the SCU Complex wildfire in 2020, 49 airborne firefighting missions were performed over three days from Reid Hillview airport. CalDART – the California Disaster Air Relief Team – operates out of Reid Hillview and is part of a valuable network that provides aid in the event of an earthquake or other disaster in areas around California. The Civil Air Patrol also has an aircraft at Reid Hillview.

Reid Hillview provides important humanitarian services. There are 36 active Angel Flight pilots at Reid Hillview that have already flown 120 missions in 2021, and 1628 missions in aggregate. Approximately one in six Angel Flight missions in northern California is flown by a Reid Hillview pilot, given our proximity to Stanford Research hospital and UCSF Medical Center. These flights connect patients with critical and often life-saving services.

Reid Hillview provides valuable aviation education. San Jose State University has an aviation campus and building at Reid Hillview. This program has graduated nearly 5000 pilots since its inception 84 years ago.

Reid Hillview offers extensive flight instruction through four flight schools and the numerous private CFIs that operate on the airfield.

Reid Hillview provides for numerous jobs on the airfield, including flight instruction, aircraft maintenance, airport maintenance, fuel operations personnel, FBO operations, and tower control personnel.

September 27, 2021

Walt Gyger  
2505 Cunningham Ave  
San Jose, CA 95148

Sent via email

RE: Account 200100

Dear Walt:

On August 17, 2021 the Santa Clara County Board of Supervisors received a report from the administration regarding airborne lead exposure at Reid Hillview Airport. The Board, among other actions directed:

*Administration and County Counsel to take such actions as may be necessary to expeditiously eliminate lead exposure from operations at Reid-Hillview Airport, consistent with all established federal, state, and local laws and all court orders. Such actions may include, but are not limited to, both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031*

In order to provide the County flexibility with regard to the FBO leases and implement the Board direction regarding leaded fuel, Airport management will proceed with the following:

All existing Reid-Hillview FBO leases expire on December 31, 2021. Effective January 1, 2022 the County proposes to:

- Allow five leases to expire, as shown in yellow on the diagram below. County will offer rental agreements to existing tenants on-site
- Offer new short term leases, with additional terms and new rates, to the current leaseholders of the four properties shown in green.
- Assume management of all commercial fueling operations at Reid-Hillview and exercising its *Proprietary Exclusive* right as recognized by federal regulations.
- Assume ownership of all fixed commercial fuel tanks at the airport. New leases for properties 3 and 7 will exclude the land currently occupied by the underground tanks.

For properties 3, 4, 7 and 9 the County will schedule a meeting with the leaseholder to discuss terms and conditions of new leases going forward.

For properties 1, 2, 5, 6, and 8 the County requests contact information for existing occupants so that tenancy can be maintained under County management.



We will be holding a Zoom meeting shortly to discuss these changes with you. Please look for a follow up email with the meeting time and invitation.

Sincerely,

A handwritten signature in blue ink that reads "Eric Peterson".

Eric

**County of Santa Clara  
Board of Supervisors  
Supervisorial District One  
Supervisor Mike Wasserman**



107886

**DATE:** October 5, 2021  
**TO:** Board of Supervisors  
**FROM:** Mike Wasserman, Supervisor  
**SUBJECT:** CBO Leases at Reid Hillview Airport

**RECOMMENDED ACTION**

Approve referral to Administration and County Counsel to report to the Board on October 19, 2021 with options for consideration relating to extending the proposed length of leases for Fixed-Base Operators (FBOs) at Reid Hillview Airport (RHV) to include one-year, two-year and/or three-year lease options. (Wasserman)

**REASONS FOR RECOMMENDATION**

On December 4, 2018 (Item #19), the Administration presented the Airports Business Plan to the Board of Supervisors. The Business Plan specified how to make the Airport Enterprise Fund self-sufficient and not dependent on funding from the General Fund. It also outlined the leasing strategy for tenants within both County airports.

The Board's action at that time was to continue to refuse FAA Airport Improvement Program (AIP) grants for RHV. The intention of this action was to potentially allow the County further discretion over alternate uses of RHV's grounds once the current Federal obligations expire in 2031.

The County has been laying the groundwork for an eventual RHV Master Plan since 2018, however, there has been no further direction from the Board of Supervisors to address the need for a leasing plan for the tenants at RHV. This has created uncertainty for current airport stakeholders, particularly the FBOs who are integral to the daily operations of the airport.

While discussions for alternative uses for the airport's land moves forward, the County must continue to honor our Federal obligations. Further, the County still has the responsibility of

developing a leasing plan for the FBOs, who have been grappling with the uncertainty of their business' futures. This matter has become increasingly urgent because the current FBO leases expire at the end of 2021—in less than 90 days. This poses several limitations to planning for future operations, including deferring maintenance and improvements to their buildings.

This referral intends to provide FBOs with stronger assurances so that they continue their operations at RHV, while discussions for alternative uses for the airport's land move forward. With a more robust leasing strategy in place, the Airport Enterprise Fund is likely to receive increased revenue, thus creating a favorable outcome for both the Roads and Airports Department as well as Reid-Hillview Airport stakeholders.

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# Aviation Fuel Distribution and Permits

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## 6.1 Approved Aviation Fuels.

No person shall operate an aircraft on or at a County airport except with FAA-approved fuel.

## 6.2 Aviation Fuel Distribution Restrictions.

The County shall provide by contract (permit or license) for the manner of distribution of aviation fuel, (i.e., AVGAS, AVJET, or MOGAS). No person, firm or corporation shall bring, store, use or distribute aviation fuel on the airport except as may be authorized in writing by the County. Any person, firm or corporation so authorized shall pay the flowage fees prescribed by County ordinance.

## 6.3 FBO Retail Fueling Permit

The County may license an FBO master lessee to provide retail fueling on the County Airports within the requirements of the FAA grant assurances currently in force. Each licensed FBO master lessee retail fueling permittee shall maintain an approved above or below ground fuel storage tank with a minimum storage capacity of not less than 7,500 gallons.

## 6.4 Self-Fueling

No person may conduct self-fueling activity on the airport without securing a permit from the Airport Authority.

## 6.5 Bulk Delivery of Aviation Fuels.

- a. Bulk fuel delivery (including AVGAS, AVJET, and MOGAS) is the delivery of petroleum quantities exceeding 100 gallons. Any delivery of fuel exceeding 100 gallons shall be to an approved above or below ground fuel storage facility located on an Airport master lessee property or to County airport fuel storage facilities, unless delivery is directly to an aircraft's fuel tanks.
- b. Truck-to-truck delivery of aviation fuels on the County Airports is prohibited for safety and environmental reasons unless specifically authorized by Airport Authority.

**Division B2  
AIRPORTS AND AIRCRAFT\***

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\*Cross-reference(s)--Airport zoning, app. II.  
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**Chapter I. RESERVOIRS, §§ B2-1 – B2-10**

**Chapter II. Use of County Airports, §§ B2-11 – B2-30**

**CHAPTER I.  
RESERVOIRS**

**Sec. B2-1. Operating aircraft on reservoirs.**

(a) Prohibited. No person shall launch, taxi or land any aircraft upon or take off from any reservoir of the Santa Clara Valley Water District.

(b) Definition. The term “aircraft” as used in this section, shall mean any contrivance now known or hereafter invented, designed or used for navigation or flight in the air.

(c) Emergencies excepted. Nothing in this section shall be construed to prohibit any emergency landing by an aircraft on or upon any reservoir of the aforementioned district.

(Code 1954, §§ 6.2.1-13—6.2.1-13.2; Ord. No. NS-617, § 1, 3-25-57; Ord. No. NS-3.16, § 5, 10-8-74)

**Secs. B2-2 - - B2-10. Reserved.**

**CHAPTER II.  
USE OF COUNTY AIRPORTS\***

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State law reference(s)--Authority to provide for airports, Gov. Code, § 26020 et seq.  
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**Sec. B2-11. Purpose.**

The purpose of this Chapter is to provide for the proper operation and control of the County’s general aviation airports, consistent with other applicable law, particularly federal law controlling elements of flight operations.

**Sec. B2-12. Director of Airports.**

The County Director of Roads and Airports shall, consistent with the provisions of Section A13-14 of this Ordinance Code, appoint a Director of County Airports, who shall report to the Director of Roads and Airports.

**Sec. B2-13. “Airport” defined.**

As used in this chapter, “airport” shall mean each and every airport and all airport property owned, operated or controlled by the county. It shall include all improvements, facilities and appurtenances. (Code 1954, § 3.7.1-1; Ord. No. NS-815, § 3, 10-18-65)

**Sec. B2-14. “Operate aircraft” defined.**

As used in this chapter, “operate aircraft” shall mean the self-propelled, pushed or towed movement of aircraft on the ground, or the movement of aircraft in flight. (Code 1954, § 3.7.1-3; Ord. No. NS-815, § 3, 10-18-65)

**Sec. B2-15. “Maintain aircraft” defined.**

As used in this chapter, “maintain aircraft” shall mean any form of service, maintenance or repair of aircraft. (Code 1954, § 3.7.1-4; Ord. No. NS-815, § 3, 10-18-65)

**Sec. B2-16. Fees and Charges.**

Persons using, or applying to use, county airports, including without limitation, persons who park and store their planes on paved or unpaved surfacing or in hangars or shelters at county airports; persons wishing to be placed on the county’s waiting lists for aircraft parking/storage permits; air charter and air taxi operators at county airports; persons providing car rental services at county airports; persons selling, using, or distributing fuel at the airport; shall pay such fees and charges as shall be adopted by resolution by the Board from time to time in a Schedule of Fees and Charges. The Director of Roads and Airports, through the County Executive, may from time to time propose such a Schedule of Fees and Charges as the Director deems reasonable and necessary to the proper operation and maintenance of the airport for adoption by resolution by the Board of Supervisors.

**Sec. B2-17. Who may sell fuel.**

No person, including aircraft operators shall bring, store, or distribute aviation fuel or lubricants on the airport except by contract or permit authorized in writing by the county. Any person, firm or corporation so authorized shall pay the fees prescribed in the Schedule of Fees and Charges adopted from time to time by the Board of Supervisors. The Director of Airports shall issue, deny, or condition the issuance of such permits in accordance with reasonable rules and standards adopted by the Director of Airports.

**Sec. B2-18. Firearms, explosives.**



No person except peace officers, authorized federal, state and county employees or members of the armed forces of the United States on official duty or other legally authorized persons shall carry any firearms or explosives on the airport without prior permission of the airport manager. No person shall hunt, conduct target practice or discharge firearms on the airport. This section shall not preclude the transport of unloaded firearms in compliance with all federal, state and local laws. (Code 1954, § 3.7.3-10; Ord. No. NS-815, § 3, 10-18-65)

**Sec. B2-19. Violations, penalties.**

Any person who violates Section B2-18 of this chapter shall be guilty of a misdemeanor and shall be subject to the penalties provided in section A1-28 of this Code. In addition to any penalties otherwise provided, any person who violates any rule or regulation adopted by the county for the use of any airport, or any person who fails or refuses to comply with any rule or regulation, may be removed from the airport or any facilities located hereon and may be refused the further use thereof. Failure or refusal to comply with the rules and regulations, or the violations of any ordinance, may be deemed a basis for termination of any license, permit or lease to use or occupy the airport or any facility thereon. (Code 1954, Title 3, Chapter 7, Article 6; Ord. No. NS-815, § 3, 10-18-65)

**Sec. B2-20. Rules and Regulations.**

In order to effect and supplement this Division B2 concerning airports and aircraft, the Director of Roads and Airports, through the County Executive, may from time to time propose such Rules and Regulations as the Director deems reasonable and necessary to the proper operation and maintenance of the airport for adoption by the Board of Supervisors.

**Secs. B2-21 -- B2-30 Reserved.**

**County of Santa Clara**  
**Office of the County Executive**



107018

**DATE:** August 17, 2021

**TO:** Board of Supervisors

**FROM:** Jeffrey V. Smith, County Executive  
Sylvia Gallegos, Deputy County Executive

**SUBJECT:** Actions to Prevent Lead Contamination from Operations at Reid-Hillview Airport

**RECOMMENDED ACTION**

Direct Administration and County Counsel to take all necessary actions, including closure, to immediately prevent lead contamination from operations at Reid-Hillview Airport.

**FISCAL IMPLICATIONS**

There are fiscal implications related to the recommended action that would require further assessment and a report back should the Board approve the recommendation.

**REASONS FOR RECOMMENDATION**

Reid-Hillview Airport (RHV) was originally constructed and opened in 1939 by Bob and Cecil Reid as "Reid's Hillview Airport," a private airport open to the public. The County paid \$600,000 to the Reid brothers to acquire the airport, then approximately 65 acres in size, in 1961. Over the next several years, the County acquired additional land to expand the airport to its current size of approximately 180 acres, receiving grants from the Federal Aviation Administration (FAA) for this purpose.

Reid-Hillview Airport is surrounded by built-out urban neighborhoods and schools where an estimated 52,450 people live within a 1.5-mile Study Area orbit (7.1 square miles) around the airport. This population is greater than those of seven of the 15 cities in Santa Clara County. Of this population, about 12,805 are children, which is greater than all but two school districts. There are twenty-one schools and childcare centers located within the Study Area.

Because of public concerns regarding the health risks to children in the area that may be caused by the operations of the airport, the Board commissioned a study to learn about the possibility of lead contamination caused by the airport operations. Among its findings, the Study documented that compared to sampled children residing upwind (west, northwest) of Reid-Hillview, sampled children residing downwind (east, southeast) of RHV present with

Blood Lead Levels (BLLs) that are 0.4 µg/dL higher<sup>1</sup>, other factors held equal. **For context, this estimated BLL increase is equal to the difference between children measured at the peak of the Flint, Michigan Water Crisis relative to children before the Crisis.** Other Study conclusions may be found in the Study itself. (See linked file #103282)

Children exposed to lead can suffer substantial, long-lasting, and possibly irreversible negative health, behavioral, and cognitive effects. Importantly, the **highest marginal negative impact on IQ is at a comparatively low BLL**, with a diminishing impact as the BLL increases. In other words, small increases in lead exposure among children with low BLLs have an outsized negative impact on cognition, particularly in young children who absorb lead more efficiently than older children and adults.

**The harm caused by lead emissions from airplanes operating at the County's airport – particularly to children's developing minds, which are vulnerable to environmental exposures – is antithetical to the County's purposes** of protecting the health and safety and promoting the welfare of its residents and **to two decades in court litigating against lead paint manufacturers** to hold them accountable for promoting use of lead paint in homes despite knowing that the product is highly toxic, especially to children.

The County is currently creating a lead abatement program to identify and remove lead paint hazards from homes, prioritizing low-income households occupied by children or pregnant women in disproportionately burdened areas.

**Unlike other sources of lead exposure, remediating airport lead emissions requires government action.** Despite every effort the Administration would make to secure a reliable supply of unleaded avgas for airplanes at RHV and San Martin Airports, **the County cannot ensure entirely lead-free operations at the airports.** There is currently only one supplier of unleaded avgas in the marketplace, and it supplies a 94-octane unleaded fuel (UL94), which means that about 43% of GA airplanes cannot use it<sup>2</sup>.

The FAA did recently authorize a limited number of engines and airframes for large-scale testing of a 100-octane unleaded avgas<sup>3</sup> by General Aviation Modifications, Inc. (GAMI). The FAA also requested GAMI conduct additional testing before its consideration of an expanded authorization for high compression engines and other airframes. To be clear, GAMI's unleaded avgas is not available in the marketplace. While aviation proponents may assert that a GA fleet-wide unleaded solution is on the horizon, **if or until there is a widely available 100-octane unleaded avgas for the entire GA fleet, a Federal mandate that requires all pilots to use unleaded avgas, a phase-out of leaded avgas production, and**

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<sup>1</sup> The measure of lead exposure in blood is micrograms per deciliter (µg/dL).

<sup>2</sup> The National Academies of Sciences, "Options for Reducing Lead Emissions from Piston-Engine Aircraft," (2021), p. 75

<sup>3</sup> The significance of this news is that GAMI's 100-octane unleaded avgas may be the "universal drop-in" solution to replace 100-octane low lead avgas for the vast majority, if not all, general aviation airplane fleet without engine or other modifications.

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian

County Executive: Jeffrey V. Smith

Agenda Date: August 17, 2021

**the supplies of leaded avgas depleted, it would be very difficult to operate the airports entirely lead-free while subject to restrictions imposed by FAA grant obligations.**

Unlike most land uses in the County's jurisdiction, the County lacks the primary legal authority to regulate on behalf of residents any of the critical operational characteristics of the airports to prevent or reduce adverse impacts including lead emissions because the airport's operations are almost exclusively regulated by the FAA. Due to current AIP grant obligations, the FAA would very likely reject the County's efforts to limit hours of operations when children are in school to reduce lead exposure or to ban lead-based avgas. Local elected officials (County and City) strive to protect the health and safety of their constituents, but they have extremely limited legal authority to do so in this situation. This would almost certainly be the case for as long as Reid-Hillview remains an airport.

The FAA, which has authority over the airport's operations, is a federal agency with headquarters 3,000 miles away and is not directly accountable to local communities. **The FAA's singular mission is to "provide the safest, most efficient aerospace system in the world."** This mission has many times resulted in unmitigated impacts and unmet community needs. Its decades-long track record as the regulator of Reid-Hillview, San Martin, and Mineta San José International Airports' operations has been of an agency whose mission advancing aeronautical purposes has been in conflict with the community.

**To fully understand the meaning and enduring consequences of the Airborne Lead Study's findings on the 52,000 people who reside in Reid-Hillview Airport's vicinity and the larger East San José community,** it is necessary to place the findings in the context of East San José's history and its current circumstances as a highly segregated community of color that experiences racial disparities in key life measures and that has been disproportionately burdened by COVID-19.

**The accumulation of injuries already suffered by families of East San José through past decades of both government actions and neglect is compounded by the harm caused by lead emissions.** The mainly Latino and Asian families around RHV already experience race-based disparities in key life measures and disproportionate burdens as presented in the report that diminish their overall life chances. To give meaning to the statement that lead emissions exacerbate the injuries of an already disadvantaged community, the Study estimates a gain of \$11 to \$25 million in lifetime earnings for the cohort of children  $\leq 18$  years of age residing within 1.5 miles of Reid-Hillview Airport if the airport were to close.

The County's Government Alliance for Race and Equity (GARE) commitment to eliminating race-based outcome gaps such that race does not predict one's life success calls attention to the County's responsibility to this community. **The East San José community is at significant risk. Owning an airport whose operations cause harm through lead emissions that the County cannot effectively prevent due to existing FAA grant obligations warrants significant County action.**

For these reasons, the Administration recommends that the Board direct the Administration and County Counsel to take all necessary actions to stop lead contamination of children in the area around Reid-Hillview Airport immediately. An effective panoply of actions would include rapid planned closure of the airport.

### **Lead Emissions and Challenges to Lead-Free Airports**

Avgas contains tetraethyl lead, which is a fuel additive that boosts the octane rating (measure of fuel stability) of fuel and allows for the safe operation of piston-engine aircraft. As discussed in the companion report relating to the RHV Airborne Lead Study, tetraethyl lead is a known neurotoxin and carcinogen that poses significant risks to human health, particularly in children. The companion staff report presents the human health effects. While there have been initiatives to remove lead from avgas in recent years, the formulation for avgas has been relatively unchanged for the past 70 years.

### FAA Process to Authorize Use of Unleaded Fuel

When an aircraft is manufactured, the engine and airframe receive a type certificate (TC) from the FAA. The TC specifies the exact fuel allowed in the aircraft and use of a different fuel is a violation of Federal rules. To obtain authorization from the FAA to use a different fuel, there are two main options<sup>4</sup>.

- The original equipment manufacturer can request an amended TC for the aircraft type.
- The owner of an aircraft may apply for an individual Supplemental Type Certificate (STC) for the aircraft.

In the past, these processes have been lengthy and costly, and the approval has been specific to either the exact engine and airframe combination or to the individual aircraft.

While the FAA did form a collaborative – the Piston Aviation Fuels Initiative (PAFI) – with the GA industry in 2013 to establish testing standards for new fuels and a qualification test program to confirm that compliant fuels work with a broad range of engine types, the two unleaded avgas products discussed below arose outside of the PAFI process.

### Swift Fuels' 94-octane Unleaded Avgas

Swift Fuels based in Indiana has a 94-octane unleaded avgas, UL94, which is currently the only FAA-approved, commercially available, unleaded avgas in the United States. The fuel is estimated to be usable by 43% of GA fleet. **It is available in about twenty-eight of the 5,217 public use airports across the country.** San Carlos is the only airport west of the Rocky Mountains that has in the past dispensed UL94. Unleaded fuel was made available at San Carlos after publication of a U.S. EPA study of airborne lead at the airport in 2011.

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<sup>4</sup> The FAA can also issue a Special Airworthiness Information Bulletin indicating that a grade of avgas is acceptable for a specific designated class of aircraft.

UL94 is intended to be a short-term solution for a subset of the GA fleet while Swift continues work on a 100-octane low lead replacement. The replacement unleaded fuel is intended to be compatible with the entire general aviation fleet. Swift Fuels' position is that it hopes to gain FAA approval of a 100UL avgas within three years.

**Swift's UL94 is only refined in Indiana and low demand and logistical challenges have limited its widespread adoption in the United States.** Truck transport is the current delivery method to California. Recently, Swift Fuels announced that truck transport of avgas has been affected by the nationwide shortage of truck drivers and fuel handlers. An added challenge for thousands of small airports, which typically only have one fuel storage tank, is the need to add a tank for unleaded fuel. The infrastructure cost of a new tank can be challenging to amortize, especially if the unleaded fuel is more expensive and thus causes low demand. This is significant in that Federal action to mandate unleaded avgas would likely consider the impact to small airports nationwide.

Swift UL94 costs for truck transportation adds about \$1.15 to the cost of each gallon. If demand were to be initiated and be consistent, Swift Fuels states that it would be possible to deliver the fuel via railcar, which has the potential to bring the transportation costs down. If the fuel were delivered by rail, it would need to be offloaded immediately into trucks and then delivered to local airports. Delivery turn-around time could be three days, but is contingent upon the railroad schedule, presenting some risk to fuel providers that they could deplete the fuel if a railcar is delayed. Rail delivery would also require that multiple fuel providers at multiple airports coordinate their orders.

#### GAMI's Unleaded Avgas

General Aviation Modifications Incorporated (GAMI) is an Oklahoma-based manufacturer that specializes in developing and manufacturing new technologies for general aviation aircraft. In late July, GAMI announced that it had received approval from the FAA in a limited number of Cessna 172 airframes with Lycoming engines to use its avgas.

GAMI is currently in discussions with Embry-Riddle Aeronautical University to complete additional wide-scale testing mandated by the FAA. In addition, the FAA has requested GAMI undertake two additional tests for approval of airframes and high compression engines. The outcome of the testing remains to be learned.

#### Limits to Adoption of Unleaded Avgas

There currently would be numerous limitations to achieving entirely lead-free operations at County airports:

- Even if unleaded UL94 avgas could be reliably supplied, the FAA would still require the County to supply 100-octane low lead avgas and would very likely object to a ban on lead-formulated avgas, at least if or until a universal unleaded avgas is available for the entire GA aircraft fleet.
- An aircraft owner could continue to self-fuel with lead-formulated avgas.

- Pilots of County airport-based aircraft could fuel with leaded avgas at other airports.
- Itinerant flights landing at RHV and San Martin could be using leaded avgas.
- If the GAMI 100UL fuel does pass additional testing and becomes available sometime in the future, the GAMI chief engineer estimates the fuel would cost between .60 to 85-cents per gallon more than 100-octane low lead, a premium many price-sensitive pilots would likely not pay.
- To use GAMI 100UL fuel, a pilot would need to obtain and pay for a Supplemental Type Certificate<sup>5</sup>, the process and cost of which is unknown, and would present another barrier for adoption of the fuel by a segment of pilots.

**If or until there is a widely available 100-octane unleaded avgas for the entire GA fleet, a Federal mandate that requires all pilots to use unleaded avgas, a phase-out of leaded avgas production, and the supplies of leaded avgas depleted, it would be very difficult to operate the airports entirely lead-free while subject to restrictions imposed by FAA grant obligations.** The phase-out of leaded gasoline in automobiles may be instructive for estimating the time horizon of a transition from leaded to unleaded avgas. The automobile phase-out began with the adoption of a schedule in the 1970 Clean Air Act and by 1975, unleaded gasoline was widely available, but leaded auto gasoline was not completely phased out until 1996.

### **Understanding the Airborne Lead Findings' Impact on East San José**

To fully understand the meaning and enduring consequences of the Airborne Lead Study's findings on the 52,000 people who reside in Reid-Hillview Airport's vicinity and the larger East San José community, it is necessary to place the findings in the context of East San José's history and its current circumstances as a highly segregated community of color that experiences racial disparities in key life measures and that has been disproportionately burdened by COVID-19.

It has been argued for decades that Reid-Hillview Airport "was there first." The implication is that families who moved nearby understood and thereby freely made a choice to endure the unavoidable impacts that emanate from the airport. From scholarly research, the very premise that racial and ethnic minorities had, in fact, unconstrained choices historically on where to live has been disproved, that a negative land use depresses property values and thus the only people who live nearby are those too poor to live elsewhere, and that highly segregated non-white communities correlate with poverty and race-based disparities that diminish people's life chances.

### **Racial Segregation in Housing**

Richard Rothstein, who wrote the "Color of Law: A Forgotten History of How Our

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<sup>5</sup> Public reports indicate that GAMI has elected to follow the FAA Approved Model List (AML) Supplemental Type Certificate (STC) process whereby the FAA issues the initial scope of STCs with an AML of specific airframes and engines, and then progressively expands the scope of the AML based on additional testing and data.

Government Segregated America (2017),” posits that while a common perception is that housing segregation mainly arose from private practices, such as, “white flight” that, in fact, from the first segregated public housing projects of President Roosevelt’s New Deal to the Federal Housing Administration (FHA) and Veterans Administration’s central role in the massive growth of exclusively white subdivisions in the 1950s<sup>6</sup>, the pervasive patterns of housing segregation and unequal access to public goods and services like quality schools as reflected in the Bay Area were advanced and institutionalized by government-sponsored racism and these patterns of segregation persist decades later.

Jessica Trounstone, a professor and researcher, who wrote “Segregation by Design: Local Politics and Inequality in American Cities, (2018),” highlights, in contrast to Rothstein’s focus on the Federal government, the role of cities that have segregated communities along race and class lines to protect white homeowners’ property values and access to high-quality public goods and services, generally to the detriment of poor, minority neighborhoods. Trounstone’s research emphasizes these factors in propelling and maintaining racial segregation today.

### Environmental Justice

Trounstone states, moreover, that not only is local governmental policy the fundamental driver of race and class segregation, but through regulation of land uses, local governments have ultimate and direct authority over property values by deciding what can be built, the intensity of the use, and where these uses, both negative and desirable, are located.

According to Trounstone, when cities are segregated along race and class lines, land uses that produce pollution tend to produce much worse outcomes for minorities and the poor. In some cases, cities place negative land uses (landfills, freeways) in poor, minority neighborhoods on purpose. In other cases, a negative land use depresses property values and thus the only people who live nearby are those who cannot afford to live elsewhere.

Well before 2018 when an Environmental Justice (EJ) Element became a General Plan requirement for California cities and counties with disadvantaged communities, research indicated – as described in a 1992 EPA report – that racial minority and low-income populations experience higher than average exposures to air pollutants, hazardous waste facilities, and other forms of environmental pollution.

When undertaking an update to two or more existing General Plan elements, California law now requires cities and counties with disadvantaged communities to incorporate an EJ Element that “identifies objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality . . .”

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<sup>6</sup> Richard Rothstein, “The Color of Law: A Forgotten History of How Our Government Segregated America,” p. 70-73.



The body of research that describes the forces that create segregated nonwhite communities and the attendant racial disparities and higher exposure risks to environmental toxins that collectively affect life chances is further explored in an analysis of the people who live in the vicinity of RHV and the larger East San José community.

### East San José

While there are no known housing segregation case studies examining East San José specifically, available historical accounts, including notably “The Devil in Silicon Valley: Northern California, Race, and Mexican Americans” by Stephen Pitti, a history and American Studies professor at Yale University, as well as oral histories uncover circumstances and patterns that mirror those set forth in case studies of segregated nonwhite communities, and East San José today exhibits the hallmarks of a highly racially segregated nonwhite community with concomitant disproportionate rates of poverty and other race-based disparities. A cursory review of East San José’s history helps inform an initial understanding of the implications of the Airborne Lead Study.

As a partial account of Mexican migration into Santa Clara Valley, the Valley was transformed at the turn of the twentieth century into an agricultural powerhouse. In 1890, 10% of the valley was used for agriculture. By 1930, 65% of valley lands were devoted to fruit orchards, prunes became a cash crop, and the Valley became a leading exporter of fruit and a national center for fruit production<sup>7</sup>.

In the early 1900s, California boosters endeavored to recruit White families from eastern states to become permanent residents. In contrast, like African Americans from the South, and Chinese and Japanese immigrants, Mexicans were often treated with hostility in Santa Clara Valley. While Mexicans were allowed to serve as temporary workers – generally as low-paid migrant workers consigned to low-skill manual labor – they were discouraged from permanent residency<sup>8</sup>.

Nevertheless, as the demand for agricultural workers outpaced local supply (and immigration laws amended to support workforce needs) in the decades preceding World War II, East San José became home to a burgeoning agricultural workforce as other areas of San José were off-limits (due to covenants and other forms of discrimination) to Mexicans (and Blacks, Chinese, and Japanese). The Mayfair Fruit Packing Plant was established in 1931 and owned substantial tracts on both sides of Silver Creek. By 1941, there were eleven main canneries in San José.

As more Mexicans arrived for agricultural and fruit processing work, these East San José lands became highly segregated barrios. The Mayfair district, as East San José was also known by, which constitutes only part of what is presently East San José, was incorporated

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<sup>7</sup> Stephen Pitti, “The Devil in Silicon Valley: Northern California, Race, and Mexican Americans,” p. 80.

<sup>8</sup> Ibid., p. 80-92.

into San José in 1911<sup>9</sup>, but still lacked paved streets, water and sewer systems, sidewalks, and other basic public investments as late as the 1950s<sup>10</sup>. “Eastsiders” did not benefit like other parts of San José from water and sewer systems that in the United States contributed to significant declines in the mortality rate and infectious disease mortality rate<sup>11</sup>. The lack of public infrastructure investment and desirable public amenities, such as, street trees and parks with play structures also had the effect of depressing surrounding property values. East San José fits a pattern Trounstein identifies, which is that “. . . from the beginning, poor and minority neighborhoods received fewer and lower quality services. They were less likely to be connected to sewers, to have graded and paved streets, or to benefit from disease mitigation programs<sup>12</sup>.”

Mexican Americans through the middle of the twentieth century were often relegated to low-paying manual labor including cannery work<sup>13</sup>. In 1947, for instance, it is reported that of 1,000 County employees, only nine were Mexican American<sup>14</sup>. County Public Health officials were reportedly indifferent to the needs of Eastsiders, and a drive to test Mexican Americans for tuberculosis, for example, only arose in August 1945 in response to ongoing advocacy by José Alvarado, a prominent radio disc jockey, activist, and president of the Latin American Association<sup>15</sup>. Battles over political and district representation in City government, ongoing concerns about police brutality and unequal treatment, and employment discrimination<sup>16</sup> were some of the prominent issues from the 1950s through 1970s. East San José was prior to WWII and through the twentieth century into the present day the demographic center for Mexican Americans in San José. In more recent decades, East San José has become home to a growing number of Asian families who now represent about one-third of the people living within 1.5-miles of RHV.

### **Racial Segregation as Main Instrument of Racial Inequality**

East San José – with a focus on the neighborhoods around Reid-Hillview – is composed of highly segregated<sup>17</sup> neighborhoods of disproportionately poor Latino/Hispanic and Asian families. Neighborhoods (census blocks) have populations that are up to 90% Latino/Hispanic north and west of the Airport and neighborhoods (census blocks) south and east of the Airport that are up to 88% Asian. The neighborhoods immediately abutting the

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<sup>9</sup> <https://www.sanjosehistory.org/horticultural-expansion/>

<sup>10</sup> Stephen Pitti, “The Devil in Silicon Valley: Northern California, Race, and Mexican Americans,” p. 90, 124 and Blanca Alvarado 2020 Oral History Abstract by Amanda Tewes for the “Women in Politics Oral History Project” for U. C. Berkeley Oral History Center, p. 21.

<sup>11</sup> Jessica Trounstein, “Segregation by Design: Local Politics and Inequality in American Cities,” p. 1.

<sup>12</sup> Ibid., p. 2.

<sup>13</sup> Stephen Pitti, “The Devil in Silicon Valley: Northern California, Race, and Mexican Americans,” p. 124.

<sup>14</sup> <https://northwesternbusinessreview.org/riding-the-wave-how-immigrants-transformed-santa-clara-county-into-silicon-valley-d41dacfe2623>

<sup>15</sup> Stephen Pitti, “The Devil in Silicon Valley: Northern California, Race, and Mexican Americans,” p. 125.

<sup>16</sup> Blanca Alvarado Oral History Abstract by Amanda Tewes for the “Women in Politics Oral History Project” for U. C. Berkeley Oral History Center, p. 18, 30-36.

<sup>17</sup> [Justice Map.org: Visualize Race and Income Data in Your Community](https://justice-map.org: Visualize Race and Income Data in Your Community) and [https://belonging.berkeley.edu/sites/default/files/santaclara\\_di\\_oct18\\_rev.png](https://belonging.berkeley.edu/sites/default/files/santaclara_di_oct18_rev.png)

Airport show some of the highest nonwhite populations in the vicinity with up to 99.3% of residents identifying as a race other than White<sup>18</sup>.

### Communities of Color in East San José

According to the 2019 American Community Survey, of census respondents living within a 1.5-mile orbit around Reid-Hillview Airport, census data indicate that those respondents identified themselves as being a member of the following races and/or ethnic groups<sup>19</sup>.

<b>Race (within 1.5-mile Orbit of RHV)</b>	<b>Respondents</b>	<b>Percentage</b>
Hispanic/Latino (any race)	31,810	61%
Asian alone	16,960	32%
White alone	1,740	3%
Black or African American alone	690	1%
Two or More Races	490	1%
Native Hawaiian or Other Pacific Islander alone	460	1%
Some Other Race alone	240	>1%
American Indian or Alaska Native alone	60	>1%
<b>TOTAL</b>	<b>52,450</b>	<b>100%</b>

Census data also show that 79% of the persons who live within the 1.5-mile Study Area orbit and responded to the Census question on Primary Language Spoken at Home speak a primary language other than English.

The fact of East San José's highly segregated nonwhite neighborhoods is of significance because, as Stephen Menendian, Assistant Director of the Othering and Belonging Institute at U.C. Berkeley, puts it, "These segregated residential patterns shape the life chances of its residents, who not only reside in racially segregated neighborhoods, but attend racially segregated schools and have racially differentiated access to public and private resources as well. Racial segregation shapes life chances and is the main instrument of racial inequality."

There are consistent and strong correlations between the degree of racial residential segregation and key life outcomes, such as, poverty rates, chronic disease, home values,

<sup>18</sup> Justicemap.org: [Justice Map: Visualize race and income data in your community](#)

<sup>19</sup> For the purposes of the American Community Survey, and the U.S. Census more broadly, the category of Hispanic/Latino is considered an ethnicity, not a race. This is primarily because a person whose ethnic origin is a Latin American country may be a member of any racial group and still identify as Hispanic or Latino, and the U.S. OMB (which oversees the census) defines "Hispanic or Latino" as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race. For this reason, respondents to the American Community Survey may indicate that they are a member of any racial group, while also asserting a Latino or Hispanic ethnicity.

educational achievement, life expectancy, economic mobility, and more<sup>20</sup>.

### Rates of Poverty and Social Determinants of Disparities

The people of East San José face substantial hardships due to economic and social forces that affect life outcomes. Four East San José zip codes near and around Reid Hillview Airport (95122, 95116, 95127, and 95148) represent 14% of the total Santa Clara County population.

- More than one in four (27%) people in this area live below 200% of the Federal Poverty Line, compared to 16% for the rest of Santa Clara County.
- 2019 Census data indicate a Per Capita Income of approximately \$27,000.
- One in two residents ages 25 and older (49%) have a high school education or less, which is more than double the rate of the rest of Santa Clara County (22%).
- The unemployment rate is higher than the rest of Santa Clara County (6% vs. 4%).

### California Poverty Measure

Another way to measure the hardships families in East San José endure is by the **California Poverty Measure (CPM)**,<sup>21</sup> which is a joint research effort between the Public Policy Institute of California and the Stanford Center on Poverty and Inequality. The CPM is a new way of measuring poverty through adjustments to the Federal Poverty threshold by considering the cost of living and resources from social safety net programs to formulate a “CPM Poverty Rate.” **The average CPM Poverty Rate in the East San José area was 22.7%, with some subsets of the subject area experiencing a 27.6% rate, the highest in Santa Clara County.**<sup>22</sup>

### United Way Real Cost Measure

Yet another measure of poverty and hardship is reflected in the “**Struggling to Move Up: The Real Cost Measure in California 2021**”<sup>23</sup> report by the United Ways of California in partnership with twenty-nine local United Ways. The report was released in July, and it is its fourth study on the necessary resources for households to meet basic needs in California.

Unlike the official Federal poverty measure that primarily accounts for the cost of food, the Real Cost Measure factors the costs of housing, healthcare, childcare, transportation, and other basic needs to reveal the costs to live in California.

The table displays the percentage of households who cannot meet their basic needs, and it casts in stark relief the vast disparities in resources spatially in this valley.

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<sup>20</sup> [The Roots of Structural Racism Project | Othering & Belonging Institute \(berkeley.edu\)](#)

<sup>21</sup> California Poverty by County and Legislative District, 2016-2018, <https://www.ppic.org/interactive/california-poverty-by-county-and-legislative-district/>; accessed July 13, 2021.

<sup>22</sup> The CPM local areas surrounding the Airport include an estimated 49,600 people, so comparisons to census data are for illustrative purposes only.

<sup>23</sup> [United Ways of California - The Real Cost Measure in California 2021 \(unitedwaysca.org\)](#)

<b>Local Area</b>	<b>% of Households Below Real Cost Measure</b>
Cupertino, Saratoga, Los Gatos	12%
San Jose (Southwest/Almaden Valley)	15%
San Jose (East Central/East Valley)	54%
Santa Clara County	25%

Living in poverty affects all members of a family, but for children there are significant consequences for life chances. These include cognitive development, social and emotional well-being, and physical health. Living in persistent and severe poverty presents the greatest risk, with a significant portion of those children living more than half of their childhood in poverty continuing to be poor well into adulthood.<sup>24</sup>

By contrast, children in families with greater resources enjoy more secure living conditions and attachments and greater access to a range of opportunities often unavailable to children of low-income families.<sup>25</sup> In the Bay Area, a study by the Othering & Belonging Institute at U.C. Berkeley concluded that segregated communities of color were found to have high neighborhood poverty (21% compared to 7% in segregated white neighborhoods). East San José fits this profile.

#### Other Social Determinants of Health Disparities

East San José is also characterized by other socioeconomic and environmental determinants that put populations at risk for poorer health outcomes downstream, such as, those associated with higher COVID-19 exposure and infection:

- The population density is almost five times higher in this area than in rest of Santa Clara County.
- Nearly four in ten residents (37%) ages 16 and older are “Essential Workers” (those who work in a range of occupations deemed essential to continuity of critical functions, such as, food processing and distribution), compared to 23% of the rest of Santa Clara County.

Essential Workers are inherently at higher risk of COVID-19, not only due to the nature of their work which may make social distancing difficult, but also because many of these occupations cannot be performed remotely. Minorities are disproportionately represented among essential workers and industries, which may explain COVID-19 racial health disparities.

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<sup>24</sup> National Center for Children in Poverty, 2009

<sup>25</sup> Gupta, et al., 2007

In addition, the uninsured rate is higher in these East San José zip codes than the rest of Santa Clara County (6% vs. 4%), which may put individuals at higher risk of worse outcomes once infected, due to delays in care and other factors.

The COVID-19 pandemic has illustrated how such factors result in downstream health disparities and disproportionately burdens East San José relative to the rest of Santa Clara County. While comprising only 14% of the county population, it had 24% of COVID-19 cases and 22% of COVID-19 deaths to-date. **The cumulative test positivity rate is more than double that of the rest of the county.** In addition, case rates for Latino residents in Santa Clara County are the highest of any race or ethnic group, accounting for over 50% of cases, and 31.2% of deaths, while only making up 25.78% of the population.

### Other Health Disparities

Residents in East San José also experience other health disparities. Public Health data show higher rates in zip codes immediately surrounding Reid-Hillview Airport of mortality related to cancer, Alzheimer's disease, strokes, diabetes, and hypertension when compared to areas of San José and Santa Clara County.

#### **Deaths per 100,000 Residents**

<b>Local Area</b>	<b>Cancer</b>	<b>Alzheimer's</b>	<b>Stroke</b>	<b>Diabetes</b>	<b>Hypertension</b>
Reid-Hillview Vicinity <sup>26</sup>	150.5	41.23	41.28	43.35	36.1
San Jose - Almaden Valley	123.2	25.9	20.2	19.2	19.9
San Jose - Rose Garden	145.3	40.8	27.6	No Data	No Data
Monte Sereno/Los Gatos	132	37.35	28.75	16.2	No Data
Saratoga	130.2	38.05	22.35	No Data	17.8

These patterns are a few of many examples of the effects of social determinants of health in East San José, which may exacerbate the long-term health impacts of environmental risk factors like lead exposure. The Government Alliance on Race and Equity (GARE) framework that the Board adopted by resolution in 2020 sets forth our commitment to focus

<sup>26</sup> This row depicts average rates in the area surrounding Reid-Hillview. The local areas used to generate the average are the following neighborhoods: Capitol Goss, Evergreen North, Alum Rock East, East Foothills, East Valley, Mayfair, Tully King, Tully Ocala as defined by the Public Health Department on its Open Data Portal: <https://data-sccphd.opendata.arcgis.com/datasets/health-status-statistics-small-area-neighborhood/explore?location=37.188811%2C-121.705428%2C10.64>

on reducing race-based inequities by eliminating race-based outcome gaps such that race does not predict a child's life success.

## **Conclusions**

Within a 1.5-mile orbit of Reid-Hillview Airport are 52,000 people, nearly 13,000 of whom are children and who are predominantly Latino and Asian and mostly speak a primary language other than English. This community is larger than about half of the fifteen cities in Santa Clara County and the number of children is more than almost all local school districts except for San Jose Unified and East Side Union High School districts.

The RHV Airborne Lead Study provides evidence that children proximate to RHV are being poisoned with high BLL caused by airport operations. Numerous studies have linked elevated BLLs in children to cognitive and intellectual impairments, poor academic achievement, and higher risk of attention-deficit and hyperactivity disorders.

Lead emissions from GA airplane operations and the resulting harm to children is antithetical to the County's purposes of protecting the health and safety and promoting the welfare of its children and families.

Unlike other sources of lead exposure, remediating airport lead emissions requires government action. There would currently be numerous limitations to achieving entirely lead-free operations at County airports as described in the report. If or until there is a widely available 100-octane unleaded avgas for the entire GA fleet, a Federal mandate that requires all pilots to use unleaded avgas, a phase-out of leaded avgas production, and the supplies of leaded avgas depleted, it would be very difficult to operate the airports entirely lead-free while subject to restrictions imposed by FAA grant obligations.

It is necessary to place the RHV Airborne Lead Study findings in the context of East San José's history and its current circumstances as a highly segregated community of color that experiences racial disparities in key life measures and that has been disproportionately burdened by COVID-19.

This report presented information about government's role in advancing and institutionalizing residential segregation and suggests the reasons for the high degree of nonwhite residential segregation in East San José and its implications. The accumulation of injuries already suffered by families of East San José through past decades of both government actions and neglect is compounded by the harm caused by lead emissions. The mainly Latino and Asian families around RHV already experience race-based disparities in key life measures and disproportionate burdens that diminish their overall life chances.

The Government Alliance on Race and Equity (GARE) framework that the Board adopted by resolution in 2020 sets forth our commitment to focus on reducing race-based inequities by eliminating race-based outcome gaps such that race does not predict a child's life success.

In the face of our new knowledge and understanding that many of the County's powers to prevent or limit adverse airport impacts are preempted by Federal authority and applying GARE principles of equity to reduce racial inequity, the policy question is whether to continue to own and operate an airport whose operations cause harmful impacts the County cannot effectively prevent or close the airport and plan for higher community-serving reuse possibilities on this 180-acre site that could catalyze a broader vitalization of East San José.

The Administration believes government action is necessary to effectively prevent lead emissions to protect surrounding children and families, and that closing the airport as soon as possible would have the effect of reducing racial inequity by reducing exposure risks that result in adverse cognitive and health effects, reduced lifetime earnings and wealth, and that the reuses could cause a vitalization of East San José.

Therefore, the Administration recommends that the Board direct the Administration and County Counsel to take all necessary actions to close Reid-Hillview Airport as soon as possible.

### **CHILD IMPACT**

The recommended action would have positive impact on children or youth.

### **SENIOR IMPACT**

The recommended action would have positive impact on seniors.

### **SUSTAINABILITY IMPLICATIONS**

The recommended action would have positive sustainability implications.

### **CONSEQUENCES OF NEGATIVE ACTION**

The Board would not receive the report.

### **LINKS:**

- References: 103282 : Under advisement from December 4, 2018 (Item No. 19), November 17, 2020 (Item Nos. 12-15), and April 20, 2021 (Item No. 9): Consider recommendations relating to an Airborne Lead Study of Reid-Hillview Airport.

### **ATTACHMENTS:**

- November 17, 2020 BOS Report - Emergency Capacity Should RHV Change Use (PDF)



**Time Certain - To Be Heard No Earlier Than 6:00 p.m.****36. Under advisement from December 4, 2018 (Item No. 19), November 17, 2020 (Item Nos. 12-15), and April 20, 2021 (Item No. 9): Consider recommendations relating to an Airborne Lead Study of Reid-Hillview Airport. (ID# 103282)**

Possible action:

- a. Receive report from the Office of the County Executive relating to the Leaded Aviation Gasoline Exposure Risk at Reid-Hillview Airport in Santa Clara County, California Study.
- b. Approve funding in the amount of \$90,000 for publication of the Study in a peer-reviewed scientific journal.
- c. Direct County Counsel to submit or join a Petition for Rulemaking to the U.S. Environmental Protection Agency under the authority granted by the Administrative Procedure Act, 5 U.S.C. section 553 to make a finding that lead emissions from general aviation aircraft endanger public health and welfare and issue proposed emission standards for lead from general aviation aircraft under Section 231(a)(2)(A) of the Clean Air Act.
- d. Direct Administration to continue working on securing unleaded aviation gasoline for the County Airports System.
- e. Direct Administration to discuss with California Department of Public Health (CDPH) and Mountain Data Group their interest in and the feasibility of undertaking a broader study of airborne lead emissions at general aviation airports with jurisdictions expressing a desire to participate in a study.

President Wasserman reconvened the meeting at 6:02 p.m. with all members present.

Considered concurrently with Item Nos. 37, 38, and 126.

Two hundred nine individuals addressed the Board.

At the request of Supervisor Chavez, the Board directed Administration to offer technical assistance and expertise to other local jurisdictions considering a similar airborne lead emission study.

At the request of Supervisor Chavez, the Board directed Administration to prepare and implement a robust culturally and linguistically appropriate community education and awareness campaign to educate parents, families, schools, and all sensitive receptors relating to health risks, available medical services, and next steps given the results of the airborne lead study.

At the request of Supervisor Chavez, the Board directed Administration to amend and update all of the County Health Assessments to include the epidemiology of the airborne lead study.

At the request of Supervisor Chavez, the Board directed Administration to recommend actions around anti-displacement policies, public safety and disaster response, and community recreation, including Eastridge Little League baseball, throughout the Reid-Hillview Vision Plan process.

At the request of Supervisors Chavez and Simitian, the Board directed Administration to continue the already approved engagement process with the San Martin community and communities surrounding Moffett Field, Mineta San Jose International, and Palo Alto airports communities.

At the request of Supervisor Chavez, the Board directed Administration to begin testing the lead levels of children incarcerated in juvenile hall.

At the request of Supervisor Ellenberg, the Board directed Administration to report to the Board on date uncertain relating to child lead screening and prevention activities in the County, including any current or potential funding sources available for community remediation efforts.

At the request of Supervisor Lee, the Board directed Administration to report to the Board on date uncertain with a displacement plan for those impacted by the closure of Reid-Hillview Airport, including a comprehensive study relating to minimizing the impact on San Martin Airport and the surrounding area.

The Board received the report from the Office of the County Executive relating to the Leaded Aviation Gasoline Exposure Risk at Reid-Hillview Airport in Santa Clara County, California Study.

The Board approved funding in the amount of \$90,000 for publication of the Study in a peer-reviewed scientific journal.

The Board directed County Counsel to submit or join a Petition for Rulemaking to the United States Environmental Protection Agency under the authority granted by the Administrative Procedure Act, 5 U.S.C. Section 553, to make a finding that lead emissions from general aviation aircraft endanger public health and welfare and issue proposed emission standards for lead from general aviation aircraft under Section 231(a)(2)(A) of the Clean Air Act.

The Board directed Administration to continue working on securing unleaded aviation gasoline for the County Airports System; and, at the request of President Wasserman, the Board further directed Administration and County Counsel to collaborate with the private sector and Reid-Hillview Airport Fixed Base Operators responsible for the recent delivery of lead free gas to Reid-Hillview Airport, and take all actions necessary to transition to carrying only lead free gas at both County airports as soon as possible with the understanding that the sales of leaded gas will not be permitted at either County airport after December 31, 2021 except for emergency operations.

The Board directed Administration to discuss with CDPH and Mountain Data Group their interest in and the feasibility of undertaking a broader study of airborne lead emissions at general aviation airports with jurisdictions expressing a desire to participate in a study.

A verbatim transcript of Item Nos. 36, 37, 38 and 126 is attached to these minutes as Appendix A, and is hereby incorporated into the minutes.

**36 RESULT: APPROVED AS AMENDED [UNANIMOUS]**

**MOVER:** Cindy Chavez, Supervisor

**SECONDER:** Susan Ellenberg, Vice President

**AYES:** Wasserman, Chavez, Lee, Ellenberg, Simitian

**37. Direct Administration and County Counsel to take all necessary actions, including closure, to immediately prevent lead contamination from operations at Reid-Hillview Airport. (ID# 107018)**

Considered concurrently with Item Nos. 36, 38, and 126.

Approved as amended to direct Administration and County Counsel to take such actions as may be necessary to expeditiously eliminate lead exposure from operations at Reid-Hillview Airport, consistent with all established federal, state, and local laws and all court orders. Such actions may include, but are not limited to, both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031.

**37 RESULT: APPROVED AS AMENDED [UNANIMOUS]**

**MOVER:** Cindy Chavez, Supervisor

**SECONDER:** Susan Ellenberg, Vice President

**AYES:** Wasserman, Chavez, Lee, Ellenberg, Simitian

**38. Under advisement from November 17, 2020 (Item No. 12): Receive report from the Facilities and Fleet Department and the Roads and Airports Department relating to the development of a community participation framework for collaborative and transparent stakeholder engagement regarding potential land use changes at the Reid-Hillview Airport site. (ID# 104882)**

Considered concurrently with Item Nos. 36, 37 and 126.

**38 RESULT: RECEIVED [UNANIMOUS]**

**MOVER:** Cindy Chavez, Supervisor

**SECONDER:** Susan Ellenberg, Vice President

**AYES:** Wasserman, Chavez, Lee, Ellenberg, Simitian

**39. Consider items previously removed from the Consent Calendar.**

The Clerk noted for the record that Item No. 39 was incorrectly placed under Time Certain - To Be Heard No Earlier Than 6:00 p.m.

County of Santa Clara

## County Airports

### Menu



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## Fuel at RHV and E16

In an effort to reduce the level of airborne lead pollution around RHV and E16, effective January 1, 2022, 100LL is no longer offered for sale at either airport. In its place, Swift Fuels 94 octane UL94 has been provided. Jet fuel remains available at both airports.

To utilize UL94, the aircraft operator must receive a Swift Fuels STC, which is available through the Swift Fuels website. To learn more about the fuel and to obtain the STC, visit <https://www.swiftfuelsavgas.com>.

If you find yourself at RHV or E16 and in need of 100LL, please review the following protocol to obtain authorization to bring a limited quantity of 100LL onto the airport.

### Protocol for the emergency use of Leaded Fuel at Santa Clara County Airports

Upon request, the Santa Clara County Airports Director will review and approve one-time permission, on a case by case basis, for an aircraft operator to obtain and fuel their aircraft with leaded fuel on the premises of RHV or E16. Such permission will be granted for aircraft that do not have sufficient fuel onboard to safely leave the County airports and will be limited to a quantity of fuel necessary to safely reposition the aircraft to a nearby airport

where the necessary fuel is available. Requests are to be made via email addressed to - [airportops@rda.sccgov.org](mailto:airportops@rda.sccgov.org)

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## 13,100 Different Airports

- - 75% of fleet is based at 3,300 airports
  - Mostly publicly owned
  - Are in the National Plan of Integrated Airport Systems (NPIAS) and receive federal assistance.
- ~ 25 % of fleet is based at 9,800 airports.
  - Many are very small, with limited capability to add fueling infrastructure or assess lead impact of airport layout.
- Wide variations in proximity to people, number of operations, fueling infrastructure, etc.

## Some Actions That Cannot Widely Help

- Imposing restrictions on aircraft using avgas would not be a viable sole mitigation. Restricting their use, especially high-performance aircraft, would have far-reaching ramifications for many critical functions, including:
  - Transportation, particularly in remote regions,
  - Medical transport, and
  - Pilot training.
- Automobile gasoline is not a viable unleaded alternative to avgas.
  - Ethanol, which is added to motor gasoline, may cause vapor lock and is corrosive to aircraft components.
  - Without ethanol, automobile gasoline does not meet minimum octane requirements.



## A Multi-Pathway Approach

- There is currently no single known technical solution that is certain to be available in the near-term.
- A multi-pathway approach is needed:
  - Ultimate development of a drop-in fuel (recognizing uncertainty in if/how/when it will succeed).
  - Ultimate development of new propulsion technologies.
  - Interim mitigation pathways focused on modifying airport operations and practices and on using existing fuels and aircraft.
- Implementation will require the participation of many across a diverse industry involving private, corporate and public entities, including: pilots; airport managers and personnel; fuel suppliers; and aircraft propulsion and airframe manufacturers.



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

Western-Pacific Region  
Airports Division

777 S. Aviation Blvd., Suite #150  
El Segundo, CA 90245

December 22, 2021

County of Santa Clara  
County Airports Administration  
ATTN: Mr. Eric Peterson  
2500 Cunningham Ave  
San Jose, CA 95148

Subject: Notice of Informal Investigation Under 14 CFR § 13.1.

Dear Mr. Peterson,

This letter is to inform you that the Federal Aviation Administration (FAA) has received multiple complaints from airport tenants and users, along with a group representing industry stakeholders who allege violations of grant assurances at the Reid-Hillview Airport (RHV) and the San Martin Airport (E16). Under 14 CFR § 13.1, the FAA will review reports of potential violations of 49 U.S.C. subtitle VII or any rule, regulation, or order issued thereunder. As a result of these complaints the FAA is commencing an informal investigation under 14 CFR part 13.

As part of our investigation we request that the County of Santa Clara (County) respond to this notice within **20 days of from the date of service of this notice**. Although Santa Clara County would normally have 30 days to respond, the FAA may shorten this time period if it finds the circumstances require expedited handling of a particular case or controversy. The FAA finds that expedited handling of this matter is required because it appears the County will be banning the sale of leaded aviation fuel at both airports after December 31, 2021. Further, the County is apparently refusing to offer long-term leases for all tenants at Reid-Hillview airport whose leases will expire on December 31, 2021, including the fixed base operators (FBOs) who provide aviation fuel. Accordingly, the FAA has shortened the response period.

The FAA is committed to building a sustainable aviation system and a lead-free future, and the agency will work with the County to achieve this shared goal. However, in the interim, all parties must adhere to grant assurances. Therefore, the FAA strongly recommends that the County take action to suspend the effective date of its ban on leaded gas at the County-owned airports until this matter can be resolved. In such a case the FAA is amenable to an extension of time with regard to your response.

The complaints giving rise to this investigation are attached herein as Exhibit A. The complaints arise from a number of actions taken by the County that include but are not limited to:

- The failure to address a significant number of significant safety concerns which have been enumerated in detail to the County via letters from the FAA as discussed further below. The County is on notice with regard to these serious safety concerns and the issues remain unresolved;
- An August 17, 2021 ban on sales of leaded gas at both County airports after December 31, 2021;
- An August 17, 2021 County resolution to “take such actions as may be necessary to expeditiously eliminate lead exposure from operations at Reid-Hillview Airport . . . includ[ing], but [] not limited to, both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031;”
- An alleged statement of Supervisor President Wasserman at an October 5, 2021 Board of Supervisors meeting that the County will be pursuing 30-day lease agreements with all tenants once existing leases expire on December 31, 2021;
- An alleged statement of Director of County Airports Eric Peterson at an October 5, 2021 County Airport Commission meeting that the County will only be offering lease agreements to four tenants of the Reid-Hillview airport, which will be on a month-to-month basis, and that the leases with five other tenants will expire and not be renewed at the end of the year; and
- Information received from users of Reid-Hillview airport and from users of the San Martin airport which indicate that the County is moving forward with a ban on the use of leaded aviation fuel, termination of leases, and associated conduct.

## **I. BACKGROUND**

The Reid-Hillview airport and the San Martin airport are public-use airports owned and operated by the County. Both are general aviation airports. The Reid-Hillview airport has approximately 124 based aircraft and averages 573 operations per day. The San Martin airport has approximately 34 based aircraft and averages 91 operations per day.

FAA records indicate that the planning and development of the Reid-Hillview airport and the San Martin airport have been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982 (AAIA), as amended, 49 U.S.C. § 47101, *et seq.* Between 1983 and 2011, the County received approximately \$6.8 million in Federal airport development assistance. Additionally, a majority of Reid-Hillview Airport was purchased using Federal Aid to Airports (FAAP) or Airport Development Aid Program (ADAP) funds.

The San Martin airport has also received Federal airport assistance. Between 1984 and 2021, the County received approximately \$4.6 million in Federal assistance for the San Martin airport. Both airports are federally obligated.

### **a. Applicable Federal Law and Policy**

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

### **b. The Airport Improvement Program (AIP)**

Federal statutory law, 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the AIP established by the AAIA. As a condition precedent to providing airport development assistance under AIP, the FAA must receive certain assurances from the airport sponsor. These assurances are set forth in statute, 49 U.S.C. § 47101, along with additional assurances that are part of the grant agreement.

The FAA has statutory authority to enforce compliance with the sponsor assurances, including the power to seek judicial enforcement. 49 U.S.C. § 47111(f). FAA Order 5190.6, *FAA Airport Compliance Manual* (Order), provides the policies and procedures to be followed by the FAA in carrying out its functions related to compliance and enforcement.

Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal Government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system and a safe and efficient national airspace system.

### **• Grant Assurance 22**

FAA Grant Assurance 22 provides, in relevant part:

- a. [An airport sponsor] will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.  
\* \* \*
- d. Each air carrier using the airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. [The airport sponsor] will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees

[including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

- f. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involves will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- g. The sponsor 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.
- h. The 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.

- **Grant Assurance 23**

FAA Grant Assurance 23 provides, in relevant part:

[The airport sponsor] will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.

The Order explains that “[t]he exclusive rights prohibition does not apply to services provided by the sponsor itself. The airport sponsor may elect to provide any or all of the aeronautical services at its airport, and to be the exclusive provider of those services. A sponsor may exercise –but not grant – the exclusive right to provide any aeronautical service. This exception is known as the airport’s ‘proprietary exclusive’ right.” Para. 8.5.

- **Grant Assurance 19**

FAA Grant Assurance 19 provides, in relevant part:

The airport and all facilities which are necessary to serve the aeronautical users of the airport .... Shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation.

## **II. FACTS AND ALLEGATIONS**

1. On August 17, 2021, the County Board of Supervisors held a meeting at which they unanimously voted to support two related resolutions<sup>1</sup>:

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<sup>1</sup> The County of Santa Clara commissioned a study of the impact of leaded aviation fuel on blood lead levels (BLLs) of children living in the vicinity of the Reid-Hillview airport. The study was completed on August 3, 2021 and concluded that it is statistically probable that the BLLs increased with proximity to the Reid-Hillview airport, particularly downwind from the airport. The Report made no similar findings with respect to San Martin airport. The report has not been peer-reviewed or independently verified, including with respect to other potential sources of the lead exposure.

- a. Resolution 36: to “take all actions necessary to transition to carrying only lead free gas at both County airports as soon as possible with the understanding that the sales of leaded gas will not be permitted at either County airport after December 31, 2021 except for emergency operations.”
  - b. Resolution 37: to “direct Administration and County Counsel to take such actions as may be necessary to expeditiously eliminate lead exposure from operations at Reid-Hillview Airport, consistent with all established federal, state, and local laws and all court orders. Such actions may include, but are not limited to, both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031.”
2. The FAA has not received a request for approval from the County regarding its plans to ban the sale and use of 100LL at the two airports. The FAA has not approved the County’s restrictions. It appears the County is unilaterally moving forward with its plans to ban the sale and use of 100LL at the airports without the input, advance notice, or prior approval of the FAA.
3. On October 8, 2021, two major tenants and a private pilot operating from the Reid-Hillview airport submitted a letter to the FAA. The tenants state that the County is terminating all long-term leases with existing FBOs and taking over all fuel operations and will no longer sell leaded fuel at the airport. The tenants claim the prohibition of the sale of leaded fuel is unreasonable and higher performance planes will have to re-fuel elsewhere. They also raises safety issues regarding the County’s expertise and qualifications to run fuel operations.

The tenants assert the termination of all long-term leases is unreasonable. They claim the County’s offer of month-to-month leases presents difficult challenges for airport tenants seeking financing, hiring employees, getting new students and making investments. The tenants also complain that they airport is not being properly maintained and the poor services may be a “*de facto*” closing of the airport. The tenants assert that they cannot even sell their businesses due to the uncertainty regarding their tenancy at the airport under month-to-month leases.

4. On October 18, 2021, a group of pilots and other interested persons operating at the San Martin airport submitted a second letter to the FAA. The letter stated that the County’s ban on the sale of 100LL fuel at the San Martin airport would be unjustly discriminatory because approximately 40% of the aircraft can only use 100LL fuel. Those aircraft would be unable to fuel at San Martin and would have to fuel elsewhere. This would be inefficient, result in additional expense, and result in additional lead exposure caused by the unnecessary fueling trip. The letter also raised safety concerns, including aircraft fuel exhaustion caused by being unable to re-fuel at San Martin. The letter was signed by 37 persons.
5. At both airports, until the Federal Government certifies the use of unleaded fuel in all aircraft, the County may not ban or phase out leaded fuel or take any actions related to fuel that would conflict with or undermine Federal law and airport access consistent with

the grant assurances. The County may work in cooperation with users to increase use of unleaded fuels. However, the ban on the use of leaded fuel constitutes a probable violation of Grant Assurance 22, which provides the County “will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities....”

6. At the Reid Hillview airport, the FBO lease terminations and failure to enter into long-term leases with the FBOs constitutes probable violations of Grant Assurance 22. Grant Assurance 22 requires the County to “make the airport available as an airport for public use on reasonable terms . . . to all types . . . of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” An offer of month-to-month leases to tenants who previously had long-term leases may not comply with Grant Assurance 22.
7. With respect to the County’s desire to exercise its proprietary exclusive rights as an FBO, the County must be able to demonstrate that it is ready, willing, and able to provide the full range of services that the current FBOs are providing on or before the date that the leases for the private FBOs have been terminated. The County must demonstrate that there will be no break in FBO services at Reid-Hillview Airport. The County must provide assurance that once it involuntarily removes the private FBOs, it will continue to provide such services on similar terms. The County is not permitted to exercise its right to provide exclusive FBO services as a strategy to ban the sale of leaded fuel, close or materially restrict airport operations and access.
8. The County may exercise an exclusive right to operate FBO services, but it may not grant an exclusive right. In order to exercise an exclusive right, the County is required to use its own employees to provide the FBO services and may not use contractors. The use of third parties would constitute a violation of Grant Assurance 23 and the prohibition on exclusive rights contained in 49 U.S.C. § 40103(e).
9. The FAA has no knowledge that the County currently possesses any experience or expertise in operating a full-service FBO. The County must demonstrate such expertise.
10. The use of contractors by the County to provide FBO services on an exclusive basis may constitute a *de facto* grant of an exclusive right to those contractors.
11. On August 27, 2019, October 18, 2019, February 28, 2020, and February 19, 2021 the FAA provided letters to the County regarding a number of critical safety issues at the Reid Hillview Airport; issues that remain unresolved. In addition, in May 2020, FAA provided the County with a written Runway Safety Action Plan following a March 10, 2020 Local Runway Safety Action Team (LRSAT) meeting held at RHV. These letters and the March 2020 Runway Safety Action Plan are attached.



FAA's safety concerns are outlined in the referenced letters and the March 2020 Runway Safety Action Plan are summarized as follows:

- FAA raised concerns over weed abatement. This continues to be an ongoing concern due to overgrown vegetation obscuring key airfield signage.
- FAA raised concerns over non-standard airfield. Airfield signs, in good condition and disposition, are critical components in maintaining airfield safety and operational efficiency. However, numerous airport signs do not meet standards. Faded sign panels were found throughout the airfield. Delamination is occurring in some of the faded panels. FAA recommend that the County develop a Sign Replacement Program to ensure future compliance in the most efficient and cost effective manner.
- FAA noted Canada geese droppings were found at the approach end of Runway 13R. Canada geese represents a significant hazard to the flying public. FAA recommended that the County take immediate action to reduce the potential for airstrikes with Canada geese around RHV.
- FAA noted that three helicopter pads located near the self-service fuel pumps, marked on the airport as established heliports, do not meet the minimum FAA and State design standards for a designated heliport and must be removed or remarked.
- FAA noted that the Runway Safety Area (RSA) prior to the approach ends of Runways 31R and 31L do not meet the minimum design standards described in Advisory Circular 150/5300-13A, Airport Design. The RSA for Runway 31R is currently cleared out to 147 feet and 161 feet for Runway 31L.
- FAA noted that Visual Approach Slope Indicators (VASIs) for 31R are inoperative and were replaced with Precision Approach Path Indicators (PAPIs). Because the VASIs are no longer functional they should be removed as soon as possible.
- FAA noted that the segmented circle visual indicator system is missing traffic pattern indicators for Runway 31L/13R.



- FAA noted that gate access played a role in the vehicle deviations that occurred since last RSAT. Unauthorized access to the airfield by drivers has been an issue.
- During the March 2020 LRSAT, hot spots were discussed using data collected since 2015. Google map overlay with specific points of where the incidents occurred were used as references to highlight problematic areas. The collection of the data showed that events continue to occur at the three hotspot areas. Discussion followed with ways to reduce surface events at hotspot locations
- During the March 2020 LRSAT, non-standard airfield layout (geometry), pilot confusion over location and movement on airport pavements (signs and markings) and lack of visibility of signs and markings (airfield maintenance / weed abatement) were raised in FAA's letters and were extensively explored. Consensus on addressing many of these items was not reached because the County expressed concern over identifying improvements that would require substantial funding. *See March 10, 2020 Runway Safety Action Plan Section V-D, Surface Safety Issues for additional discussion.*

### III. ISSUES UNDER INVESTIGATION

The issues under investigation include, but are not limited to the following:

- Whether the County's ban on the sale and use of leaded fuel at both County airports violates Grant Assurance 22.
- Whether the County's ban on the sale and use of leaded fuel violates 49 U.S.C. § 47107(a).
- Whether the County's ban on the sale and use of leaded fuel violates the commerce clause to the U.S. Constitution.
- Whether the County's ban on the sale and use of leaded fuel is precluded under the Clean Air Act, 42 U.S.C. § 7573.
- Whether the County's actions to terminate leases with certain tenants of the Reid-Hillview airport and enter into month-to-month leases with other tenants of the Reid-Hillview airport violates Grant Assurance 22.
- Whether the County's plans to become the exclusive provider of fuel at the airports and only sell 94UL fuel violates Grant Assurance 22.
- Whether the County's failure to remedy multiple unsafe conditions as outlined in FAA letters referenced above violates Grant Assurance 19.
- Whether any of the actions taken by the County, as described herein, violate an assurance, pledge, commitment, promise or deed restriction resulting from or relating to the purchase of airport land with Federal grant funds.

#### IV. OPPORTUNITY TO RESPOND

The County is requested to reply to this Part 13 Notice no later than 10 days from its service. The FAA invites demonstrable good faith actions by the County to resolve informally the matters that are addressed in this Notice. Please review these complaints and provide your response to the allegations and the status of any efforts to resolve these complaints.

Additionally, FAA is requesting a copy of the following:

- The proposed Rental Agreement(s) that the County proposes to issue to tenants on both RHV and E16 once their current lease expires.
- One (1) year's-worth of fuel logs, for both RHV and E16, which includes aircraft identification and a copy of the County's fueling quality control plan.
- All property records related to land granted to the County from the United States or purchased or acquired by the County using funding from the United States (collectively "Land Grants"). Such records shall include copies of deeds, contracts for sale or purchase, any document related to restrictions, assurances or pledges made by or agreed to by the County in consideration of such Land Grants including, but not limited to, resolutions or ordinances passed by the County Commission as part of, or related to, their acceptance of such land transfers and/or funding. For purposes of this request the term "County Commission" shall include the Commission, any committee thereof or any County board or authority having jurisdiction with regard to the airport.

If you have any questions concerning this letter, please contact either Brian Armstrong, FAA Manager, Safety and Standards Branch, at 424-405-7303 or Laurie Suttmeier, Manager, FAA San Francisco Airports District Office, at (650) 827-7600.

Sincerely,

**MARK A MC  
CLARDY** Digitally signed by  
MARK A MC CLARDY  
Date: 2021.12.22  
15:06:50 -08'00'

Mark A. McClardy  
Director, Airports Division  
Western-Pacific Region

Attachments:

August 27, 2019, FAA RHV Site Visit Letter  
October 18, 2019, FAA letter to Board of Supervisors President Joe Simitian  
February 28, 2020, FAA letter to Board of Supervisors President Joe Simitian  
March 10, 2020, FAA Runway Safety Action Team Action Plan  
February 19, 2021, FAA letter to the Board of Supervisors  
October 8, 2021, RHV Complaint Letter (Gyger, Watson, McDonald)  
October 18, 2021, E16 Complaint Letter (Marshall, Neal, and Other E16 Pilots)  
December 13, 2021, Aviation Industry Groups Complaint Letter

CC (*Without Attachments*):

Laurie J. Suttmeier, Manager, FAA, San Francisco Airports District Office  
Kevin C. Willis, Director, FAA Office of Airport Compliance and Management Analysis  
Walt Gyger, Tradewinds Aviation [walt@tradewindsaviation.com](mailto:walt@tradewindsaviation.com)  
Josh Watson, AeroDynamic Aviation [josh.watson05@gmail.com](mailto:josh.watson05@gmail.com)  
Michael McDonald, Pilot ([Michael.mcdonald@ieee.org](mailto:Michael.mcdonald@ieee.org))  
Paul Marshall, South County Airport Pilots Association [pmarshall96037@gmail.com](mailto:pmarshall96037@gmail.com)  
Mark Baker, Aircraft Owners and Pilots Association [mark.baker@aopa.org](mailto:mark.baker@aopa.org)  
Jack J. Pelton, Experimental Aircraft Association [jpelton@eaa.org](mailto:jpelton@eaa.org)  
Peter J. Bunce, General Aviation Manufacturers Association [pbunce@gama.aero](mailto:pbunce@gama.aero)  
James Viola, Helicopter Association International [president@rotor.org](mailto:president@rotor.org)  
Timothy Obitts, National Air Transportation Association [tobitts@nata.aero](mailto:tobitts@nata.aero)  
Ed Bolen, National Business Aviation Association [ebolen@nbaa.org](mailto:ebolen@nbaa.org)

Date: 2021 October 18, 2021

To: Mark McClardy Director, Airports Division, FAA Western Pacific Region  
Kevin C. Willis, FAA Director Office of Airport Compliance and Management Analysis

From: Paul Marshall, President, South County Airport Pilots Association  
Dan Neal, Co-Owner, San Martin Aviation  
Other E16 pilots, see signature pages (E16 100LL Signatures.pdf)

Subject: Protection from Santa Clara County Discriminatory Fueling Actions at E16

On August 17, 2021, Santa Clara County Supervisors received a report on aviation lead emissions impact on child blood lead levels (attached, "Attachment-216891 Lead Study report"). The supervisors directed staff that "...the sales of leaded gas will not be permitted at either County airport after December 31, 2021 except for emergency operations." (attached "2021-08-17 Board of Supervisors - Full Minutes-8842," last line of page 21). We ask your assistance to prevent the great aggravation, operational dislocations, safety impacts and unjust discrimination if 100LL fuel sales are ended Jan 1 2022 at E16.

It should be noted that E16 has only 1 fuel tank, and the county is telling San Martin Aviation it wants to convert that fuel tank from 100LL to 94UL at the beginning of the year. 100LL can be used by all pilots at the airport, but 94UL can only be used by about 60% of the pilots at the airport. So, a conversion to 94UL combined with a prohibition of fueling 100LL would result in approximately 40% of the pilots no longer being able to fuel their planes at the airport.

Eliminating sales of 100LL at county airports will do very little incrementally to reduce the amount of lead emitted into the environment by piston engine aircraft burning 100LL fuel. If 100LL sales are eliminated, pilots will either suffer the operational inconvenience and expense of getting self-fueling permits to all pump their own 100LL gas, or will fly to other airports to get their 100LL gas, resulting in extra arrivals and departures solely for procuring 100LL avgas, which will actually increase the total amount of lead emissions rather than reduce them. A very few pilots may be forced to move away to a different airport where they can fuel before and after operations – such a forced move would not reduce overall 100LL usage but would simply transfer it to another place. Pilots visiting E16 from other airports arrive and depart the airport emitting the same amount of lead even though they did not do any fueling at the airport – in this case the FBO has been harmed by being deprived of revenue, but the lead emissions do not change. Some pilots may refuse to visit the airport, lessening its value in the national system of airports, but effecting a very small percentage of total operations and lead emissions compared with the based aircraft. So, a 100LL fueling ban won't significantly change lead emissions at the airport.

If 100LL sales are ended, significant numbers of E16 pilots will be unjustly discriminated against because they are unable to use unleaded fuel and because the FAA has not yet approved their model of airplane and engine to use UL94. Similarly, this unjust discrimination will financially harm San Martin Aviation through the loss of all its 100LL business from the approximately 40% of the planes which are only FAA-approved to use 100LL – those planes would be forced to refuel at other airports using other FBOs. We believe unjustly discriminating against the FBO and pilots who can't use the unleaded fuel constitutes an inefficient, unfair, and illegal way to change over to unleaded avgas. At a minimum, our pilots will suffer operational inconvenience because they have to plan their fueling to occur at other airports and must

start every trip with less than full tanks – even their long trips. Some pilots crash and die due to fuel exhaustion on long trips, and the county shouldn't create one more cause for this to happen. Pilots visiting E16 from other airports may get into unsafe fuel conditions because they don't realize that 100LL is not available at the airport, where in the past it was always available, and they end up flying home or to an alternate refueling airport with inadequate fuel reserves. So, this action of eliminating 100LL sales has much more discriminatory, punitive, safety-reducing effect than helpful lead-reducing effect.

A better way to handle this transition is to simply

- continue to keep 100LL fuel plentiful, convenient, with timely access to those planes which can't use the 94UL fuel, and
- provide plentiful, convenient, timely access to 94UL fuel for the pilots who can use the fuel.

In this case, most pilots who can use 94UL will immediately change over to 94UL. The remaining few pilots who are uncomfortable with using 94UL fuel will still have the option of fueling with 100LL at other airports, and they will likely become comfortable with and start using unleaded fuel at some point in the not distant future.

We believe the county's lead consultants found a small opportunity to reduce average blood lead levels in children living near Reid Hillview, but inappropriately described this opportunity as a crisis (Attachment-216891 Lead Study report.pdf). Yes, we should try to reduce children's blood lead levels from 1.93 ug/dL to 1.83 ug/dL (0.10 ug/dL improvement) as suggested would occur if aviation lead were eliminated by Zarhan on his lead study report on page 29. And yes, maybe people living downwind of Reid Hillview airport can get an extra 0.12 ug/dL benefit relative to all people (1.94 ug/dL vs 1.82 ug/dL also on page 29). And yes, the traffic data is persuasive to suggest that blood lead levels rise when 100LL air traffic is greatest, and fall when 100LL air traffic falls, and that also points to 100LL elimination representing an opportunity to reduce blood lead levels. But if just 11% of the problem  $((0.10 + 0.12)/1.94)$  is attributable to lead, that means that 89% of the blood lead problem has nothing to do at all with aviation lead. Aviation lead is not a crisis. Aviation lead merely represents a small opportunity to improve our pollution profile for one of hundreds of pollutants in one small way. Yes, the county should take gradual, effective steps to eventually eliminate all lead in county avgas. No, this is not a crisis, just one small opportunity for improvement. The county and its pilots should make this improvement in a legal way which does not unjustly discriminate against pilots by causing operational dislocation, aggravation and safety hazards. The county should not pursue its present course which will cause all these problems while failing to materially change aviation lead emissions.

***We request that you help prevent these problems by communicating to Santa Clara County that they must continue to make 100LL readily and conveniently available to all planes at E16 which are only FAA-approved to use 100LL.***

In our view, the proper way to facilitate a smooth, timely change from leaded to unleaded fuels would be to procure another self-serve fuel island and fuel truck at E16. Two fuel islands and trucks would allow both unleaded and leaded fuels to be pumped while the fleet undergoes the change from leaded to unleaded. In the long term, once only unleaded avgas is used, the second fuel island could be

repurposed to JetA. We have communicated this view to the county since February of 2021, but to date the county has taken no action to approve or procure this additional facility, and instead has chosen the discriminatory path of attempting to outlaw all 100LL sales.

We urgently look forward to your support on this issue, and would appreciate you taking the appropriate action well before Jan 1, 2022. Thank you.

**Additional Signatures – FAA Request – 100LL Fuel Availability at San Martin E16**

**Signature**

Printed Name \_\_\_\_\_

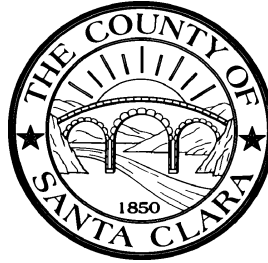
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**OFFICE OF THE COUNTY EXECUTIVE  
COUNTY OF SANTA CLARA**

**Jeffrey V. Smith  
COUNTY EXECUTIVE**

County Government Center  
70 West Hedding Street  
East Wing, 11<sup>th</sup> Floor  
San Jose, California 95110-1770

(408) 299-5105



**OFFICE OF THE COUNTY COUNSEL  
COUNTY OF SANTA CLARA**

**James R. Williams  
COUNTY COUNSEL**

County Government Center  
70 West Hedding Street  
East Wing, 9<sup>th</sup> Floor  
San Jose, California 95110-1770

(408) 299-5900

January 11, 2022

SENT VIA EMAIL AND CERTIFIED MAIL

Mark McClardy  
Director, Airports Division, Western-Pacific Region  
Federal Aviation Administration  
777 S. Aviation Blvd., Suite #150  
El Segundo, CA 90245

Re: Response to Notice of Informal Investigation Under 14 C.F.R. § 13.1.

Dear Director McClardy:

This letter is in response to your Notice of Informal Investigation Under 14 CFR § 13.1, dated December 22, 2021, your supplemental letter dated January 4, 2022, and your email dated January 10, 2022 to Eric Peterson, Director of Airports. The County takes seriously its obligation to comply with all applicable laws, regulations, and grant assurances in the operation of Reid-Hillview Airport (RHV) and San Martin Airport ("E16") (collectively, "County Airports").<sup>1</sup> We appreciate the opportunity to respond to the Federal Aviation Administration's (FAA) concerns. The County's intention is to protect the communities surrounding the County Airports, while providing for continued aviation infrastructure in Santa Clara County in a manner consistent with the County's federal obligations. The County welcomes the FAA's partnership in striking that balance.

The County is committed to ending the threat of lead exposure to its residents. To this end, since 2000, the County has played a leading role in successful and groundbreaking litigation against lead paint manufacturers to remedy harms from lead exposure. The County is equally determined to eliminate lead exposure from the largest remaining source of aerial lead emissions,

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<sup>1</sup> We interpret your request for "all property records related to land granted to the County from the United States or purchased or acquired by the County using funding from the United States" to refer to the County Airports. Neither RHV or E16 were constructed on land acquired from and/or granted to the County from the United States. Property records for the acquisition of RHV, the only County airport for which the FAA provided funds to assist with purchase, are included as Exhibit A.



Letter to Mark McClardy, Director, Airports Division, Western-Pacific Region  
Re: Response to Notice of Informal Investigation Under 14 C.F.R. § 13.1  
January 11, 2022  
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leaded aviation fuel (“avgas”). Due to its urban location and the volume and nature of its operations, RHV poses one of the highest lead exposure risks of any general aviation airport in the nation. To address this public health crisis, the County has recently issued fueling permits to fixed base operators (FBOs) at RHV that authorize the use of four County-owned fuel tanks exclusively for unleaded fuel and prohibit the permittees from storing, selling, or distributing leaded fuel at County Airports. This limited, but important, action is consistent with all applicable laws, regulations, and contracts.

The following provides a summary of the principal allegations raised in your correspondence and our summary responses, with further detail provided in the letter below:

- **Allegation:** The County is improperly banning the use of leaded fuel at the County Airports.

**County Response:** The County has not banned the use of leaded fuel at the County Airports.

- **Allegation:** The County is improperly banning the sale of leaded fuel at the County Airports.

**County Response:** Each of the five FBOs selling fuel at the County Airports uses a County-owned fuel tank. Using its proprietary authority over these County-owned fuel tanks, the County has negotiated fuel permits to require that only unleaded avgas is being sold from these tanks. Permittees are prohibited from storing, selling, or distributing leaded fuel at County Airports. The County’s goal in negotiating these terms with the FBOs is to promote the use of unleaded avgas at County Airports to protect nearby populations from lead poisoning. The County’s actions are consistent with 49 U.S.C. § 47107(a), the Commerce Clause of the U.S. Constitution, the Clean Air Act, and all applicable grant assurances with the FAA, including the County’s obligation to provide access to the County Airport on a reasonable basis and without unjustly discriminatory terms.

- **Allegation:** The County did not request the FAA’s approval to prohibit the sale of leaded fuel.

**County Response:** The County is not required to seek the FAA’s approval for the action it has taken.

- **Allegation:** The County is only offering month-to-month leases to existing FBOs at RHV.

**County Response:** The County has taken appropriate action to enter into new leases with prior existing FBOs to improve the financial stability of the airport

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enterprise fund. After good-faith negotiations between the County and existing FBOs, each of the existing FBOs agreed to new leases, with one-year terms.

- **Allegation:** The County is *de facto* closing RHV.

**County Response:** The County's actions do not *de facto* close RHV. To the contrary, RHV is fully operational with four FBOs providing services. The only difference is that FBOs are exclusively selling unleaded avgas.

- **Allegation:** The County has not demonstrated its readiness to act as the proprietary exclusive provider of fuel at the County Airports.

**County Response:** The County is not operating as a proprietary exclusive provider of fueling services at either County Airport, and any plans to do so are still preliminary in nature. The County will comply with all rules and regulations, obtain all necessary permits, and ensure that staff are properly trained if it moves forward with exercising its right to act as the exclusive provider of fueling services. The County does not intend—and has never stated an intention—to operate a “full-service FBO.”

- **Allegation:** The County has not addressed the runway and signage safety issues at RHV identified in prior letters from the FAA to the County.

**County Response:** As detailed in the County's letters to the FAA on November 8, 2019 and October 1, 2021, the County is taking action to address the alleged runway and signage safety issues that the FAA has raised in the past. To date, the FAA has neither objected nor responded to the County's clear articulation of the actions it is taking to address these alleged issues.

The following provides further information on our actions relevant to the issues raised in your letters and email. We will provide the exhibits referenced electronically by separate cover in light of the number and length of the documents contained therein. Please let us know if you have trouble accessing the documents. Due to the expedited timeframe for this response, we are still reviewing our records to determine whether the County has additional documents responsive to your requests. We will provide additional documents as they become available.

## **I.     Leaded Avgas is Causing a Public Health Crisis in Santa Clara County and Across the Nation**

Emissions from piston engine aircraft collectively account for about 70% of lead released domestically into the atmosphere. This lead settles in the surrounding community and can cause severe and irreversible harm to the nervous, cardiovascular, immune, and reproductive systems of people living in surrounding areas. Lead exposure is also linked to anemia, increased blood pressure, and an increased risk of cancer and death. Children are particularly susceptible to harm

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from lead poisoning. The U.S. Environmental Protection Agency (EPA) has determined that any level of lead in the blood leads to adverse health effects, and that there is *no* safe level of lead in the blood. While lead exposure from avgas affects millions of people across the nation, RHV has one of the highest lead exposure risks in the nation due to its location and the nature of its operations. Additionally, the communities surrounding RHV are particularly vulnerable to the dangers of lead poisoning. Together, these factors make RHV one of the most severe risks in the nation for lead exposure from avgas.

**A. Reid-Hillview Airport Poses One of the Most Severe Exposure Risks from Leaded Avgas of Any Airport in the Nation**

RHV is one of the busiest general aviation airports in the nation. In 2017, it ranked 24<sup>th</sup> nationally in general aviation operations. As RHV's runways can only accommodate smaller aircraft, most of the air traffic consists of lead-emitting piston engine aircraft. Consequently, the EPA found that ***RHV emitted 745 pounds of lead in 2017, placing it in the highest 1.5% of landing facilities in the FAA's National Plan of Integrated Airport System in terms of annual lead emissions.*** These emission levels place RHV amongst the top sources of airport-based lead emissions in the United States.

The lead emitted from RHV operations is more likely to be deposited in the neighborhoods immediately surrounding the airport due to the nature of operations at RHV. One of the largest uses at RHV is flight training, with several flight training programs operating directly out of the airport. Flight training using leaded avgas powered aircraft is especially dangerous to surrounding communities because training pilots often make numerous take-offs and landings, circle the airport in a pattern at relatively low altitudes, and consequently operate closer to the airport. Accordingly, the lead and other pollutants from such operations are more likely to be deposited in the airport's vicinity.

Lead deposited near RHV is more likely to poison people than lead emitted at most other airports due to RHV's location in a densely populated urban area. RHV is only four miles from the heart of San José, the 10<sup>th</sup> largest city in the nation, and is surrounded by built-out residential neighborhoods where the population density is almost five times higher than the rest of Santa Clara County. An estimated 52,450 people live within a 1.5-mile radius of the airport, including about 12,805 children; and an estimated 31,982 people live within one mile of the airport, setting it apart from the vast majority of other airports in the nation. The combination of a high-volume of operations by leaded avgas powered aircraft and high population density create a particularly high risk of lead exposure. ***Even with an extraordinarily high population density around the airport, among the 150 highest lead-emitting airports, RHV's ratio of lead emissions per person living within a one-mile radius is the third-highest in the nation, and is over ten times the median (see fig. 2).*** These estimates may understate the actual risk as they do not account for persons who live more than 1.5 miles from the airport but spend time near the airport for work, school, or other reasons. For example, ***there are 21 schools and childcare centers located within 1.5 miles of the airport.***

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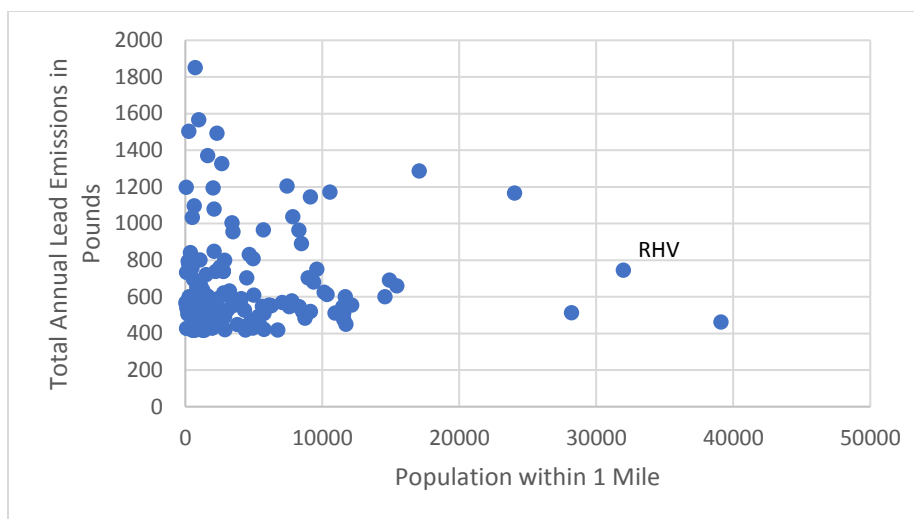


Figure 1 Annual lead emissions and population for top 150 airports by lead emissions

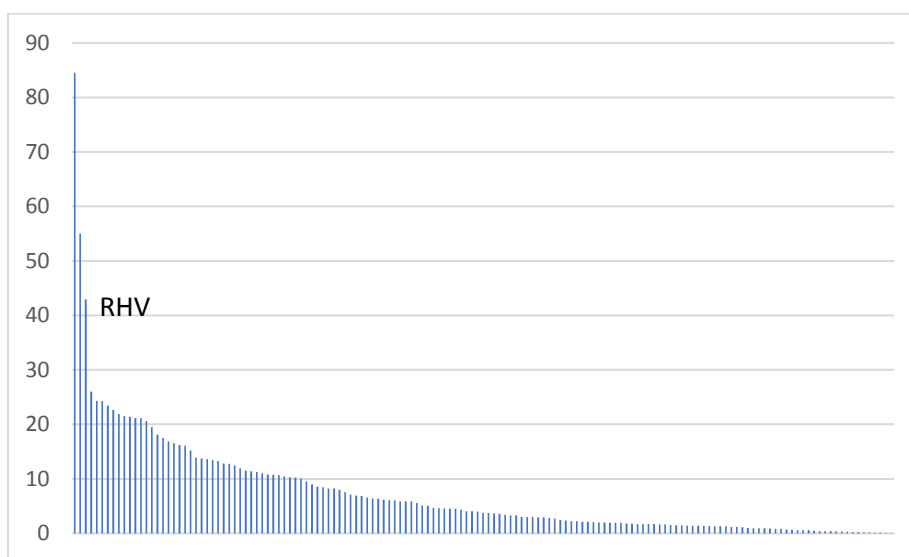


Figure 2 Persons within one mile per pound of lead emissions for 150 highest lead emitting airports

Multiple factors make the communities near RHV more vulnerable to lead poisoning, and underscore why this is one of the most urgent environmental justice crises in the nation. **More than 99% of the population living within 1.5 miles of RHV identifies as nonwhite, and 79% speak a primary language other than English at home.** More than one in four (27%) people in the four zip codes near and around RHV live below 200% of the federal poverty line. Residents of East San José, where RHV is located, also have higher rates of mortality related to cancer, Alzheimer's disease, strokes, diabetes, and hypertension when compared to other areas of San José and Santa Clara County, and lower rates of health insurance. These conditions can exacerbate the effects of lead poisoning, and prevent individuals from accessing proper information, care, and treatment for lead poisoning.

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**B. A Peer-Reviewed Study Shows that Reid-Hillview Aviation is Responsible for Increased Prevalence and Severity of Childhood Lead Exposure in the Surrounding Neighborhoods**

The lead exposure from aviation at RHV is well documented. In August 2021, the County released a study (“Zahran Study”) conducted by Dr. Sammy Zahran, a leading expert on the economic, health, and social costs of pollution and environmental risks, that provides a detailed and robust account of the effects of RHV’s operations on blood lead levels in local children.<sup>2</sup> The study examined over 300,000 blood lead test results collected by the California Department of Public Health (CDPH) over a 10-year period. The extensive data the study analyzed allowed for it to control for variables such as other sources of exposure to lead and demographic factors. Prior to its completion—and contrary to the assertion in your December 22, 2021 letter—two independent leading experts peer reviewed the study and confirmed the validity of the study’s methodology and its results.<sup>3</sup>

The Zahran Study found higher blood lead levels in children living near RHV based on a variety of metrics. Children within 0.5 miles of RHV have blood lead levels that are about 0.2 µg/dL higher than statistically similar children more distant from RHV. Wind patterns affect where the airborne lead released from piston-engine aircrafts is deposited. Sampled children residing predominately downwind of RHV present with blood lead levels that are 0.4 µg/dL higher as compared to sampled children residing predominately upwind of RHV. Indeed, children living downwind of the airport were 200% more likely than children residing upwind of the airport to have a blood lead level greater than 4.5 µg/dL, the threshold value that CDPH uses when testing for childhood lead poisoning. The gravity of these results constitutes a public health crisis. *In fact, the study found that living downwind of RHV is associated with childhood blood lead level increases comparable to those from the Flint water crisis, and that children living within half a mile of the airport during periods of maximum piston-engine aircraft traffic had blood lead level increases nearly twice the amount that occurred during the Flint crisis.*

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<sup>2</sup> A full copy of the study is available at <https://news.sccgov.org/sites/g/files/exjcpb956/files/documents/RHV-Airborne-Lead-Study-Report.pdf>.

<sup>3</sup> The peer reviewers were Dr. Rebecca Anthopolos, an Assistant Professor in the Division of Biostatistics within the Department of Population Health at New York University Grossman School of Medicine, who has published on the risk of early childhood lead exposure in relation to aviation gasoline and Dr. Mark Cullen, a retired professor of Medicine, Epidemiology, and Biomedical Data Sciences at Stanford University, where he served as the Founding Director of the Center for Population Health Sciences, and as Senior Associate Dean for Research for the School of Medicine. Their comments on the Zahran Study are available upon request.

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**C. Sale of Leaded Avgas at Reid Hillview Contributes to Increased Prevalence and Severity of Childhood Lead Exposure in the Surrounding Neighborhoods**

The Zahran Study specifically found that blood lead levels of sampled children increase linearly with the quantity of aviation gasoline sold to fixed-base operators at RHV, other factors held equal. A change in the quantity of aviation gasoline sold from the observed minimum to the maximum is associated with an increase in child blood lead levels by about 0.18 µg/dL.<sup>4</sup> This calculated difference is equivalent to about 50% of the estimated surge in child blood lead levels at the height of the Flint water crisis.

**II. Limiting the Use of County-Owned Tanks to Unleaded Fuel at County Airports and Prohibiting the Sale and Distribution of Leaded Fuel is a Reasonable Measure to Ensure Safe Operation of the Airports and Protect Surrounding Communities**

In response to this public health crisis, the County of Santa Clara Board of Supervisors directed County Administration to take all actions necessary to transition both County Airports as soon as possible to selling only lead-free avgas. The four FBOs providing fuel at RHV and the FBO providing fuel at E16 each use a County-owned tank. In negotiating the agreements for usage of these tanks, the County has issued Fuel Permits that limit the tanks to storage of unleaded fuel. While the Fuel Permits vary somewhat, each of the Permittees is effectively prohibited from storing, selling, or distributing leaded fuel at County Airports.<sup>5</sup> The Fuel Permits are consistent with all applicable federal, state, and local laws, regulations, and grant assurances.

As you acknowledge in your letter, the County has the authority to work in cooperation with users to increase use of unleaded fuel. Transitioning these five County-owned fuel tanks to use exclusively for unleaded fuels and prohibiting the storage, sale, and distribution of leaded fuel at County Airports by FBOs using those tanks are important steps to promote usage of unleaded avgas at County Airports. Indeed, a substantial portion of the aircraft operating out of RHV can use commercially available unleaded avgas, and some have already transitioned to unleaded avgas. Increasing the consumption of unleaded avgas rather than leaded fuel by these aircraft will reduce lead emissions near County Airports and lead exposure in the surrounding communities. Cost and availability of unleaded avgas pose significant barriers to more widespread adoption. Making unleaded fuel the most convenient option for fueling at County Airports will incentivize adoption among the aviation community. Additionally, increasing the supply of unleaded avgas in the Bay Area will allow manufacturers and transporters to better utilize economies of scale, reducing prices for unleaded avgas.

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<sup>4</sup> Zahran Study at 45.

<sup>5</sup> The Fuel Permit for the E16 FBO does not expressly prohibit the sale or distribution of leaded avgas, but allows the County to require that the FBO sell unleaded avgas once it becomes available. Because unleaded avgas is currently available at E16, the FBO is complying with the requirement in its Fuel Permit to sell unleaded avgas.

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Negotiating the terms of use for five County-owned fixtures by County tenants is entirely a proprietary action.<sup>6</sup> Contrary to suggestions in your December 22nd letter, the County has not prohibited the use of leaded fuel at County Airports; it has only prohibited the storage, sale, and distribution of leaded fuel at County Airports by FBOs. These five County tanks were not purchased using any federal funds, nor are they subject to any other contractual restrictions implicated by the County's actions. The County is entitled to use them for any lawful purpose, including promoting the use of unleaded fuel at the County Airports. This includes conditioning their usage on an agreement from FBOs not to store, sell, or distribute leaded fuel on County Airports. After good faith negotiations, the FBOs selling avgas voluntarily agreed to this term of use.

The County's Fuel Permits are consistent with the County's obligations to provide access to the County Airport on a reasonable basis and without unjustly discriminatory terms.<sup>7</sup> The County has not prohibited access to aircraft unable to use unleaded fuel at County Airports; many such aircraft are currently operating out of both County Airports. While limiting the use of the five County-owned fuel tanks to unleaded fuel does make accessing leaded avgas at County Airports less convenient, this promotes the use of unleaded avgas. Aircraft operators who want to purchase leaded avgas can do so from multiple commercial operators a short distance from both RHV and E16. The County is unaware of any federal obligation that requires it to ensure that leaded avgas is commercially provided at the County Airports. Moreover, the County has not taken any action to ban self-fueling with leaded fuel. Finally, the County has a protocol in place to ensure that aircraft can quickly access leaded fuel for emergency purposes, such as if an aircraft that is only able to use leaded avgas becomes stranded at one of the County Airports.

In contrast to this incidental inconvenience on lead fuel users, the Zahran Study demonstrated a strong correlation between the volume of leaded avgas sales at RHV and increased blood lead levels in children living near RHV. Reducing the blood lead levels of children in the communities surrounding RHV can mitigate the severe and irreversible health effects of lead exposure. Indeed, any reduction in use of leaded avgas results in lower blood lead levels among nearby residents. Accordingly, prohibiting the storage, sale, and distribution of leaded avgas by FBOs is justifiable and reasonable—and indeed essential—in light of the harms lead emissions cause to neighboring communities caused by use of leaded avgas.

The Fuel Permits do not violate the Commerce Clause of the U.S. Constitution or Section 233 of the Clean Air Act. The Fuel Permits do not distinguish between intrastate and interstate flights or between California-based and non-California based fuel sellers or aircraft operators. We are unaware of any effect the Fuel Permits may have on interstate commerce. The Fuel Permits do not set any emission standard or regulate the operation or use of aircraft engines. We

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<sup>6</sup> You indicate that the FAA has not received a request for approval from the County regarding its plans. We are unaware of any requirement for FAA preapproval of permits to use County property.

<sup>7</sup> See Grant Assurance 22, FAA Order 5190.6 (2009), Para. 14.3.

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are also unaware of any authority indicating that the County's actions constitute an "emission standard" under the Clean Air Act.

### **III. Recent Operational Changes at the County Airports to Improve the Financial Strength of the County's Airport Enterprise Fund Have Not Negatively Impacted Operations at the County Airports**

Contrary to the assertions in your letter, recent changes in the FBO leases at RHV are not a *de facto* closure of the airport. In fact, these changes have not resulted in any operational changes at RHV, except for the transition from sale of leaded avgas to unleaded avgas. The new leases as well as the County's ongoing consideration of whether to exercise its proprietary, exclusive right to provide fuel at RHV, are part of the County's long-term strategy to increase revenues and improve the financial position of the County's airport enterprise fund, in addition to promoting the use of unleaded avgas.<sup>8</sup> We do not expect these measures to have any material adverse effects on the services available at either County Airport.

#### **A. New Leases and Licenses at RHV Starting January 1, 2022 Result in Increased Revenue for the County Airport Enterprise Fund with No Effect on Businesses Operating at RHV**

As part of a long-term strategy, the County aligned the termination of all the FBO leaseholds at RHV to expire concurrently on December 31, 2021. Prior to January 1, 2022, the County had nine long-term leaseholders at RHV. In part due to the long-term nature of the leases, the expired leases had very unfavorable terms to the County. Five of the leaseholders provided limited or no aviation services, and instead acted as commercial landlords licensing space to other businesses. The remaining four leaseholders acted as FBOs and provided aviation services.

Approximately three months prior to the December 31, 2021 expiration date for those nine leases, the County initiated negotiations for new leases on financial terms that were more favorable to the County while remaining reasonable for the tenants and assuring no disruption of service at RHV. In addition to incentivizing the use of unleaded fuel, the County's goal in reconfiguring its leaseholds at RHV is to increase revenue, improve service, and establish minimum standards.

With regard to the four FBOs, the County negotiated in good faith for several months and responded to the primary concerns of the FBOs, including providing a one-year term,<sup>9</sup> market rent discount, and by modifying insurance requirements to meet the requests of the FBOs. The four FBOs at RHV have all voluntarily entered into new leases effective January 1, 2022. That

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<sup>8</sup> The County's most recent analysis of the airport enterprise fund and proposals for revenue enhancement are detailed in the proposed *Santa Clara County Airports Business Plan Reid-Hillview and San Martin Airports*. The Board of Supervisors considered and declined to adopt the plan on December 12, 2018. See <https://countyaairports.sccgov.org/sites/g/files/exjcpb686/files/document/Business%20Plan%20Proposal%202018.pdf>.

<sup>9</sup> Some existing businesses at RHV had month-to-month tenancies as subtenants of the prior FBOs, and during lease negotiations the County inquired whether additional tenants would be interested in month-to-month tenancies. While some businesses agreed, the four FBOs at RHV indicated that they wished to have one-year leases.



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four FBOs have agreed to these terms in separate negotiations indicates that the County's terms are commercially reasonable, and not unjustly discriminatory.

With respect to the five non-aviation leaseholders, the County's primary concern was that the leaseholders collected substantially more rent from their subtenants than the rent they paid to the County on the outdated long-term leases. These five leases expired on December 31, 2021. The County has executed license agreements with many of the previous subtenants of the prior leaseholders and is continuing to negotiate additional agreements. The County has offered all existing subtenants of the prior leaseholders the same rent amounts that they previously had with the former leaseholders. All subtenants are continuing to operate while license negotiations progress. In addition to capturing the revenue that was previously going to the prior FBOs, the County also expects that directly leasing space at RHV will allow the County to better manage the services available at RHV. The renegotiation of these leases places the airport enterprise fund in a far better financial position and, ultimately, improves the ability of the County to provide for the safe operation of County Airports.

Finally, it is important to note that the template lease and license agreements used at RHV are based upon the lease and license terms that the County requires of its tenants countywide. While certain terms are specific to the context of an airport, the County has not imposed more onerous terms and conditions on lessees and licensees at RHV than it does on a countywide basis. All leases and licenses and Fuel Permits between the County and its tenants and licensees at RHV and San Martin Airport completed as of January 11, 2022 are included as Exhibit B. As previously noted, the County is continuing to negotiate licenses with other former subtenants, and will provide copies of those new licenses upon request.

**B. The County has Made Only Preliminary Preparations to Exercise Its Proprietary, Exclusive Right to Provide Fuel at RHV**

The County is working towards becoming the proprietary, exclusive provider of fuel at RHV. The County's goal in operating as the exclusive fuel provider is to improve service and safety at RHV and enhance airport enterprise fund revenue. However, the County's plans are still preliminary and there is currently no target date for the County to begin providing fueling service. The County has not granted an exclusive right to sell fuel at any County Airport, nor have there been any recent changes in the FBOs providing fuel at the County Airports, except that they are now selling unleaded avgas consistent with the Fuel Permits. The County is committed to complying with all applicable laws, regulations, and grant assurances in exercising its proprietary, exclusive right to provide fuel at RHV. Prior to exercising this right, the County will make all applicable training records, permits, and licenses available to the FAA.

As the County does not currently sell fuel, the County does not maintain fuel logs that identify specific aircraft or have a fueling quality control plan of its own. The County's Fuel Permits with the FBOs do, however, require the FBOs to maintain more detailed fuel sales records and to comply with several quality control and safety steps in order to assure that fueling

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occurs safely and with high-quality fuel.<sup>10</sup> The County can obtain documentation of compliance with those requirements from the FBOs at the FAA's request. The County does track fuel sales at the County Airports for the purpose of collecting fuel flowage fees. Copies of the County's fuel flowage fee records for 2020 are included as Exhibit C.

#### **IV. The County is Operating Its Airports in a Safe and Serviceable Condition**

Although the FAA has raised specific safety issues at County Airports in the past, we are unaware of any outstanding safety issues at either of the County Airports. The County responded to the FAA's earlier safety concerns in letters it sent to the FAA dated November 8, 2019 and October 1, 2021 providing a detailed explanation of actions the County is taking to address the alleged issues, copies of which are included as Exhibit D. The County did not receive a response from the FAA to either of these letters and the FAA has not suggested any disagreement with the County's analysis or plans to further improve safety at County Airports. If the FAA disagrees with the County's actions, it is incumbent upon the FAA to respond to the County's letters and to explain what, if any, deficiencies it perceives. As always, the County stands ready to work with the FAA to ensure that County Airports are operating in a safe and serviceable condition.

Further, the County has taken, and continues to take, action to address safety concerns raised by the FAA to the extent possible. As our November 8, 2019 letter indicates, the County has taken steps to address several of the concerns raised by the FAA and CalTrans (including improving the runway safety area, pavement issues, and correcting markings on a private helipad). Since then, the County has taken additional steps, as summarized in our October 1, 2021 letter, including the following:

- The County's comprehensive RHV Signage Compliance Project is in the final design phase and is progressing on schedule. We will forward the final plans to the FAA for concurrence prior to offering the project for public bid, which is currently anticipated in Spring 2022.
- The County has engaged with the Runway Safety Action Team (RSAT) to identify ways to reduce runway incursions. However, the RSAT did not reach consensus that incursions could be reduced by physical changes to the airfield and the RSAT did *not* recommend any specific changes. As discussed in our October 1, 2021 letter, the RSAT members debated various theories to explain incursion patterns, but did not agree on either a theory or solutions. The County remains open to discussions with the FAA to identify specific, feasible measures that will address safety concerns.

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<sup>10</sup> While individual aircraft operators are responsible for determining that they are fueling with appropriate fuels, the leases and Fuel Permits require the FBOs to ensure that fueling operations are carried out in a safe manner. For example, several FBOs have trained staff who are working with operators to ensure that they are aware that the fuel sold at County Airports is unleaded. Additionally, the County is preparing to install additional signage notifying aircraft operators that the fuel sold from the fuel tanks on County Airports is unleaded avgas that may not be suitable for all engines.

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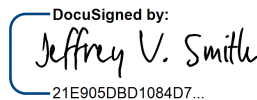
- As discussed in our November 8, 2019 letter, many of the FAA's prior concerns arise from changes in advisory documents related to lighting and signage standards for newly constructed airports, which the FAA typically does not require older existing airports to meet. Due to airfield conditions and geometry at RHV, it is not possible for the County to meet those design standards for new airports. Indeed, several of the non-standard signs were installed with FAA funds following FAA approval based on analysis performed at the time showing that the current placement was the best solution given airfield geometry and conditions. If the FAA has developed additional information indicating a different outcome, please share that information with the County so we can determine if there is an appropriate alternative solution.

## V. Conclusion

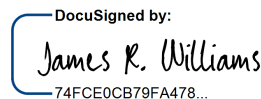
We appreciate the opportunity to clarify the nature of our recent actions to address the ongoing environmental justice and public health concerns caused by lead exposure at the County Airports, improve the revenue streams in the County's airport enterprise fund, and address the alleged compliance issues raised in previous letters from the FAA. The County fully intends to operate the County Airports in compliance with all laws, while protecting the health, safety, and well-being of people in the vicinity of the County Airports.

We would be happy to meet with you and your staff and provide any additional information that you may require regarding these concerns raised in your letter.

Sincerely yours,

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Jeffrey V. Smith  
County Executive

DocuSigned by:  
  
74FCE0CB79FA478...

James R. Williams  
County Counsel

## Attachments:

- Exhibit A: RHV Property Records
- Exhibit B: Rental Leases, Fuel Permits, and Licenses
- Exhibit C: Flowage Fee Records
- Exhibit D: FAA Correspondence

c: County of Santa Clara Board of Supervisors



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

Office of the Deputy Administrator

800 Independence Ave., S.W.  
Washington, DC 20591

March 24, 2022

Dear Santa Clara County Leaders and Community:

Thank you for meeting with leaders from the U.S. Department of Transportation (DOT) and the Federal Aviation Administration (FAA) on Wednesday, March 9. It was a productive meeting, and we look forward to continuing the partnership as we seek to create a lead-free future in Santa Clara County and in aviation.

During our meeting, the FAA presented several paths forward to assist Reid-Hillview County Airport (RHV). One path is a pilot demonstration initiative to facilitate the most effective measures to address lead emissions, while keeping aviation accessible. The FAA is in early stages of this potential pilot demonstration initiative with a select number of airports. The specifics of such an initiative need to be carefully developed, but as mentioned in the meeting, we are actively pursuing this option.

In addition to the pilot demonstration initiative, we outlined other efforts underway at the FAA to achieve our shared goal. Those include: prioritizing the review of unleaded fuels that have the best potential for fleet-wide use; seeking input and advice from the EPA on air monitoring and supporting its endangerment finding process; and exploring operational steps that would lower the community's exposure to emissions, such as working with pilots to minimize idle time. These efforts would be designed to reduce emissions around Santa Clara ahead of the EAGLE Initiative.

During the coming days and weeks, the FAA will continue to engage with Santa Clara County leaders. This includes working on a potential way to put the informal investigation into abeyance if the County and general aviation partners enter into an agreement with the FAA to (i) address maintenance and safety issues at the airport, (ii) explore other aeronautical uses at RHV, and (iii) operate in good faith within the pilot demonstration initiative that the FAA is exploring.

Finally, the following DOT and FAA officials will serve as points of contact for the county: Maeve Bartlett (maeve.bartlett@dot.gov) and Tara McDaniel (Tara.B.McDaniel@faa.gov).

Every community deserves safe and equitable transportation, and we understand the need to mitigate impacts on economically disadvantaged communities. This is an environmental justice issue that requires us to act, and to act now. Aviation remains the last source of lead emissions in transportation, and we can and should move as quickly and as safely as we can to a better future.

Sincerely,

A handwritten signature in black ink, reading "A. Bradley Mims", followed by a horizontal line.

A. Bradley Mims  
Deputy Administrator

**County of Santa Clara**  
Roads and Airports Department



101 Skyport Drive  
San Jose, California 95110-1302  
1-408-573-2400

September 21, 2022

Mark McClardy  
Director, Airports Division  
Western Pacific Region  
Federal Aviation Administration  
777 Aviation Blvd, Suite 150  
El Segundo CA 90245

Sent via email

Dear Mr. McClardy:

This notice is to inform you that the County of Santa Clara ("County") has decided to exercise its proprietary exclusive right over aviation gasoline ("avgas") sale at Reid-Hillview Airport, consistent with Section 8.5 of Order 5190.6B. The County intends to continue the ongoing sale of UL94 and to begin selling unleaded 100 octane avgas as soon as it is commercially available. While the County has not yet set a date for the transition to proprietary exclusive sale of avgas, the County will not implement this transition sooner than October 15, 2022. As the FAA requested in its February 22, 2022, Request for Additional Information, the County will provide you with the date prior to the transition.

The County has obtained all permits and licenses necessary to exercise its proprietary exclusive right over avgas sales, provided comprehensive training to all staff involved, and enacted policies and procedures to ensure that the County's avgas fueling operations will be conducted safely and in compliance with all applicable laws and regulations. The County will also provide you with additional details regarding its licenses, permits, training, and safety protocols prior to exercising its proprietary exclusive right.

The County has not determined yet whether to exercise its proprietary exclusive right over avgas sales at San Martin Airport or jet fuel sales at either County Airport. The County will consider reasonable requests for avgas self-fueling at Reid-Hillview as they arise. Please let me know if you would like to discuss this matter further.

Sincerely,

DocuSigned by:  
*Harry Freitas*  
6DC28984CB2D46D...

C: Brian Armstrong  
Laurie Suttmeier

