

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.



FAA Docket No. 16-22-08

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed by the Aircraft Owners and Pilots Association, *et al.* (AOPA) against the County of Santa Clara, California (County) in accordance with the *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings*, 14 CFR Part 16 (Part 16). The County is the owner, operator, and sponsor of Reid-Hillview Airport (RHV) and San Martin Airport (E16) (jointly, County Airports). (FAA Exhibit 1, Item 2, p. 2).

On October 14, 2022, AOPA filed a formal complaint against the County on behalf of Aperture Aviation, Inc., Glynn Falcon, Robert A. Gingell, Christopher Luvara, Michael Luvara, Paul Marshall, Dr. Joseph C. McMurray, and Trade Winds Aviation as persons directly and substantially affected by the alleged noncompliance by the County. (FAA Exhibit 1, Item 2).

AOPA alleges that the County has violated Grant Assurance 22(a), *Economic Nondiscrimination*, by denying reasonable access to RHV and E16 by unreasonably prohibiting the sale and use of 100LL fuel. Additionally, AOPA alleges the County has violated Grant Assurance 22(f) by unreasonably denying aircraft owners the right to self-fuel their aircraft with leaded fuel at the County Airports (FAA Exhibit 1, Item 2, pp. 8-9). In its Reply, AOPA alleges a violation of Grant Assurance 24, *Fee and Rental Structure* stating, "The County's actions have decimated fuel sales at County Airports." (FAA Exhibit 1, Item 13, p. 6).

The County denies it has violated any federal grant obligations. In its December 29, 2022, Motion to Dismiss and Motion for Summary Judgment, the County admitted that effective January 1, 2022, it transitioned five County-owned fuel tanks at RHV and E16 to the exclusive sale of unleaded

avgas.¹ In its additional motions to supplement the record, the County confirmed that it has terminated FBO fuel storage/sale/distribution permits and reissued new self-fueling permits. (FAA Exhibit 1, Item 15, pp. 1-3) (FAA Exhibit 1, Item 17, p. 1). The County states it took this action to promote the availability of unleaded avgas in response to a County-funded study claiming a clear causal link between general aviation operations using leaded avgas at RHV and environmental and human health impacts in the vicinity of the airport (FAA Exhibit 1, Item 8, p. 2). The County also argues that it has not adopted laws, regulations, or policies that prohibit self-fueling with leaded avgas at the County Airports. (FAA Exhibit 1, Item 8, p. 13).

With respect to the allegations presented in this Complaint, under the specific circumstances discussed in this Determination and based on the evidence of record in this proceeding, including applicable Federal law and FAA policy, the Director, FAA Office of Airport Compliance and Management Analysis (Director), finds that the County is in violation of Grant Assurance 22(a), *Economic Nondiscrimination*; Grant Assurance 22(f), *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*. Finally, the Director finds that the County has not violated Grant Assurance 24, *Fee and Rental Structure*.

II. PARTIES

A. Complainants

The Aircraft Owners and Pilots Association (AOPA) is an aviation membership organization representing aircraft owners and pilots who represent the interests of at least 847 pilots and aircraft owners based out of the RHV and E16 airports who are unable to access 100LL for retail purchase or to self-fuel with 100LL at these airports. The Co-Complainants represent two commercial service providers and five non-commercial tenant aircraft operators. (FAA Exhibit 1, Item 2, p. 3).

B. Respondent

The County owns and operates the Reid-Hillview Airport (RHV) and the San Martin Airport (E16) (County Airports). RHV has approximately 330 based aircraft and averages 573 operations per day (FAA Exhibit 1, Item 1A). E16 has approximately 34 based aircraft and averages 91 operations per day (FAA Exhibit 1, Item 1B). FAA records indicate that the planning and development of the Reid-Hillview and San Martin airports 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 (FAA Exhibit 1, Item 19). Additionally, a majority of Reid-Hillview Airport property was purchased using Federal Aid to Airports (FAAP) or Airport Development Aid Program (ADAP) funds.

¹ Avgas refers to aviation fuel used in aircraft with spark-ignited internal combustion engines. Some types of avgas contain lead as an anti-knocking agent, referred to in this decision as “leaded avgas”, whereas other types of avgas do not contain lead and are referred to as “unleaded avgas”. Additionally, this decision refers to specific types of aviation fuel with reference to their octane level and lead content. For example, 94UL is 94 octane aviation fuel that is unleaded and 100LL is 100 octane aviation fuel with low lead content.

III. PROCEDURAL HISTORY

1. October 14, 2022 - AOPA filed a 14 CFR Part 16 Complaint against the County. (FAA Exhibit 1, Item 2).
2. October 27, 2022 – The County sent a letter requesting dismissal of the Complaint prior to docketing. (FAA Exhibit 1, Item 3).
3. November 2, 2022 – AOPA sent a letter objecting to the County’s request for dismissal of the Complaint. (FAA Exhibit 1, Item 4).
4. November 3, 2022 – FAA Notice of Docketing of 16-22-08. (FAA Exhibit 1, Item 5).
5. November 14, 2022 – Respondent County of Santa Clara’s Motion for Extension of Time to Respond to the Complaint. (FAA Exhibit 1, Item 6).
6. November 21, 2022 – Notice of Extension of Time until December 29, 2022. (FAA Exhibit 1, Item 7).
7. December 29, 2022 – Respondent County of Santa Clara’s Consolidated Motion to Dismiss and Motion for Summary Judgment. (FAA Exhibit 1, Item 8).
8. December 29, 2022 – Declaration of Harry Freitas in Support of Respondent County of Santa Clara’s Consolidated Motion to Dismiss and Motion for Summary Judgment. (FAA Exhibit 1, Item 9).
9. January 9, 2023 - Complainant’s Answer in Opposition to Respondent County of Santa Clara’s Consolidated Motion to Dismiss and Motion for Summary Judgment. (FAA Exhibit 1, Item 10).
10. February 17, 2023 - Respondent County of Santa Clara’s Motion for Extension of Time to Answer the Complaint. (FAA Exhibit 1, Item 10A).
11. February 21, 2023 – Complainants’ Opposition to Respondent County of Santa Clara’s Motion for Extension of Time to File Answer (FAA Exhibit 1, Item 10B).
12. Notice of Extension of Time for the County to Respond until March 27, 2023. (FAA Exhibit 1, Item 11).
13. March 28, 2023 - Answer, Statement of Facts, and Affirmative Defenses of County of Santa Clara. (FAA Exhibit 1, Item 12).
14. April 7, 2023 – Complainants’ Reply to Respondent County of Santa Clara’s Answer, Statement of Facts, and Affirmative Defenses. (FAA Exhibit 1, Item 13).
15. April 17, 2023 – Respondent’s Rebuttal to Complainant’s Reply. (FAA Exhibit 1, Item 14).
16. August 11, 2023 – Respondent County of Santa Clara’s Motion to Supplement the Record. (FAA Exhibit 1, Item 15).
17. August 21, 2023 – Complainant’s Opposition to Respondent County of Santa Clara’s Motion to Supplement the Record. (FAA Exhibit 1, Item 16).
18. November 3, 2023 – Respondent County of Santa Clara’s Motion to Further Supplement the Record. (FAA Exhibit 1, Item 17).

19. November 9, 2023 – Complainant’s Opposition to Respondent County of Santa Clara’s Motion to Further Supplement the Record. (FAA Exhibit 1, Item 18).
20. November 12, 2024 – Respondent County of Santa Clara’s Motion to Further Supplement the Record. (FAA Exhibit 1, Item 20).
21. November 22, 2024 – Complainant’s Opposition to Respondent County of Santa Clara’s Motion to Further Supplement the Record. (FAA Exhibit 1, Item 21).

IV. BACKGROUND

On August 17, 2021, the Santa Clara County Board of Supervisors voted to “adopt” Resolution 36 and Resolution 37. Resolution 36 calls for the County to “take all actions necessary to transition 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 calls for the County to take “such actions . . . both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031.” (FAA Exhibit 1, Item 2, Attachment 17, pp. 20-22).

The County states that leaded avgas has been unavailable for purchase at the County Airports since January 1, 2022. Previously, fixed base operators (FBO) at both County Airports had sold leaded avgas using five fuel tanks currently owned by the County. The County negotiated new contracts with the FBOs, effective January 1, 2022, authorizing the FBOs to continue using the tanks, but only for the sale of unleaded avgas. The County at the time expected to take over operation of all fuel tanks at RHV in early 2023 and exclusively sell unleaded avgas. (FAA Exhibit 1, Item 8, pp. 4-5).

Since the filing of the Complaint, several developments have introduced new material facts relevant to the findings in this Director’s Determination. In particular, as of October 1, 2023, the County now operates all the fuel tanks at RHV, which the County is using to sell unleaded avgas. The County also terminated the last two commercial fueling permits that were at issue in the Complaint and issued new self-fueling permits to FBO tenants at RHV. (FAA Exhibit 1, Item 15, pp. 3-5) (FAA Exhibit 1, Item 17, pp. 1-2).

The County claims that it “took these actions to protect the health and welfare of the surrounding community and to promote the availability of unleaded avgas in response to a study demonstrating a clear causal link between general aviation operations using leaded avgas at RHV and significant increases in blood lead levels for children in the surrounding neighborhood.” (FAA Exhibit 1, Item 12, p. 1).

V. PRELIMINARY ISSUE

Pursuant to 14 CFR § 16.23(j), the County filed a motion to further supplement the record requesting the Director amend the County’s Answer to the Complaint to include “Attachment L” filed in conjunction with the motion. The motion informs the Director of the County’s unleaded fuel offerings and further requests that the Director “dismiss all claims in the Complaint, including those relating to 1) the unavailability of 100LL at Reid-Hillview Airport; 2) effects of County policies or

practices on Skyworks;² 3) restrictions on self-fueling at the County Airports; and 4) restrictions on the sale of 100LL at the County Airports.” (FAA Exhibit 1, Item 20, p. 8). AOPA opposed the County’s motion and asserts that, among other reasons, the FAA should deny the motion to supplement and swiftly issue its determination in this proceeding on the basis that an “unprecedented ban” on 100LL still exists at County airports, that not all piston aircraft are capable of operating off of the unleaded fuels provided by the County, and that dismissal of the Complaint would be premature and without full and fair consideration. (FAA Exhibit 1, Item 21, pp. 2-4).

The Director considered the County’s motion and AOPA’s opposition and determined that the availability of unleaded aviation fuels at County Airports, while notable, does not mitigate the County’s ongoing ban on the sale or use of 100LL aviation gasoline at County Airports. Further, the availability of unleaded fuels at County Airports and the reissued self-fueling permits do not, as the County asserts, mitigate County restrictions on commercial self-fueling with 100LL fuels, which the Director discusses at length in Issues 1 and 2 below. The Director incorporates the County’s motion and AOPA’s opposition into the record but declines to dismiss the complaint for the reasons discussed in the following analysis of the issues.

VI. ISSUES

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

- **ISSUE 1 – Whether the County violated Grant Assurance 22(a), *Economic Nondiscrimination*, by prohibiting the sale and use of 100LL at the County’s Airports.**
- **ISSUE 2 – Whether the County’s prohibition on the sale of 100LL violates Grant Assurance 22(f), *Economic Nondiscrimination*, by denying commercial aeronautical service providers the right to self-fuel their aircraft with 100LL fuel at County Airports.**
- **ISSUE 3 - Whether the County’s prohibition on the sale of 100LL violates Grant Assurance 22(f), *Economic Nondiscrimination*, by denying non-commercial general aviation users the right to self-fuel their aircraft with 100LL fuel at County Airports.**
- **ISSUE 4 – Whether the County’s prohibition on the sale of 100LL at County Airports violates of Grant Assurance 23, *Exclusive Rights*.**
- **ISSUE 5 - Whether the County’s prohibition on the sale of 100LL at County Airports violates of Grant Assurance 24, *Fee and Rental Structure*.**

² “Skyworks” refers to Complainant Trade Winds Aviation, which is the name the entity uses to do business.

VII. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor. Federal statute, 49 U.S.C. § 47107(a), sets forth the assurances to which an airport sponsor receiving federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See Item 1 in the Index of Administrative Record for a list of all the grant assurances.

FAA Order 5190.6B, *FAA Airport Compliance Manual*, Change 3, provides the most recent policies and procedures the FAA follows in conducting its Airport Compliance Program. The grant assurances relevant to this Complaint are identified in Section V. *Issues*, above.

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA must ensure that airport owners comply with their federal grant assurances.

C. The Complaint and Investigative Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VII. ANALYSIS

ISSUE 1 - Whether the County violated Grant Assurance 22(a), *Economic Nondiscrimination*, by prohibiting the sale and use of 100LL at County Airports.

1. AOPA's Position

AOPA argues that it has "presented a valid and meritorious case that the County is in violation of its grant obligations as it relates to the availability of 100LL fuel at its two County-operated airports" (FAA Exhibit 1, Item 13, p. 1). AOPA makes, among others, the following specific allegations of

violations of Grant Assurance 22 by the County. Supporting arguments are summarized by the Director for brevity:

1. Prohibiting the fueling with 100LL at Reid-Hillview and San Martin denies the public reasonable and nondiscriminatory access to a publicly funded airport.
 - a) Until December 31, 2021, 100LL was available at both County airports through FBOs. 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 the owners and pilots of 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.
 - b) The County has prohibited the sale of 100LL 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 regard to federal grant obligations that the County is bound by in the operation of those airports.
 - c) 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 94UL, it has put forth no solution to ensure availability of 100LL in the absence of a commercially available 100 octane unleaded fuel that can be used by all piston engine aircraft at County Airports.
 - d) Equally problematic is that the County is not allowing 100LL self-fueling. 100LL is required for high performance aircraft that cannot legally or safely use either 94UL or newly available high-octane unleaded alternatives Any restriction on the availability of 100LL, including and particularly self-fueling with 100LL, must be reasonable and comply with the County's obligations under the grant assurances. (FAA Exhibit 1, Item 2, pp. 9-15).
2. The propriety exclusive right claimed by the County does not allow it to take over aviation fueling but not offer 100LL while preventing others from offering or using it.
 - a) AOPA argues the County's prohibition of 100LL sales constitutes a de facto, improper 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 other service providers from exercising 100LL rights they previously held and stand willing and able to exercise again, once the 100LL fueling prohibition is lifted.
 - b) The County lacks any implied power to prohibit the dispensing of certain fuels by contractors and tenants. 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. (FAA Exhibit 1, Item 2, pp. 9-15).
3. The "inconvenience" is not incidental, and adaption to the unreasonable restrictions does not obviate violations.

- a) 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, multiple aircraft owners, pilots, tenants, and other users have aircraft that cannot safely or legally be fueled with 94UL fuel or newly available high octane unleaded alternatives. (FAA Exhibit 1, Item 2, pp. 9-15).

In the Complaint and Reply, AOPA points out that the FAA recently issued “Supplemental Type Certificates (STCs) authorizing use of a 100-octane unleaded fuel [G100UL] 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.” (FAA Exhibit 1, Item 2, p. 7). (FAA Exhibit 1, Item 13, p. 2). In Complainants’ Opposition to Respondent County’s Motion to Further Supplement the Record, Complainants further contend that G100UL is not currently certified for use in all piston engine aircraft and cite additional reasons why the availability of G100UL does not resolve the grant assurance issues herein.

AOPA also cites FAA communications with the City of Santa Monica stating that any “new restriction that serves to prohibit fuel service previously provided would be a violation of . . . Grant Assurance 22.” (FAA Exhibit 1, Item 13, p. 4).

Lastly, AOPA argues that Co-Complainant Trade Winds, which “previously sold 100LL at Reid-Hillview . . . is [now] prohibited from performing either service at Reid-Hillview or San Martin by reason of the County’s unreasonable actions,” and that “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.” (FAA Exhibit 1, Item 2, p. 5).

2. County’s Position

The County admits that it no longer makes 100LL available for purchase at its airports but denies that it has “prohibited the use of leaded fuel at the County Airports . . . Instead, the County ended the sale of leaded avgas at the County Airports by transitioning five County-owned fuel tanks previously used by FBOs to sell 100LL to exclusive use for the sale of unleaded avgas”. (FAA Exhibit 1, Item 14, p. 1).

The County’s voluminous Answer argues that the Director should refuse to grant relief to Complainants for the following reasons, among others, summarized for brevity:

- a) Complainants’ claims the County has prohibited the use of leaded avgas and self-fueling with leaded avgas at the County Airports are simply untrue; the County has not taken these actions.
- b) The County’s prohibition on the sale of leaded avgas is a reasonable restriction necessary for the safe operation of the airport.
- c) Complainants lack standing to challenge the County’s ban on the sale of leaded avgas.
- d) The County has the proprietary discretion to use the County tanks to exclusively store and distribute unleaded avgas. The County is under no obligation to sell leaded avgas (or any fuel at all) from its own fuel tanks.

- e) The unavailability of Complainants' preferred fuel for purchase does not amount to a denial of reasonable access to the County Airports.
- f) The unavailability of Complainants' preferred fuel for purchase does not affect Complainants' ability to self-fuel at the County Airports. (FAA Exhibit 1, Item 12, pp. 21-31).

In its Rebuttal, the County argues:

At the heart of Complainants' argument is a request that the FAA find, for the first time, that airport sponsors must ensure the availability of a given fuel for purchase where there is need and demonstrated ability to provide the fuel. The Director should decline to adopt this rule as doing so would be contrary to both well settled precedent and common industry practice and would severely impinge on airport sponsors' proprietary right to manage their airports.

(FAA Exhibit 1, Item 14, p. 1).

The County states, "In fact, Complainants are well aware that use of leaded avgas is not prohibited at the County Airports. Complainants acknowledged that they have continued to conduct operations out of the County Airports using 100LL since January 1, 2022". (FAA Exhibit 1, Item 14, p. 2).

In its Rebuttal, the County agrees that it "will consider requests to install additional tanks for fuel sale purposes as it receives them" but "the County has neither received, nor denied, any requests since January 1, 2022, the date on which 100LL became unavailable for purchase at the County Airports." (FAA Exhibit 1, Item 14, p. 8).

3. Director's Determination

FAA Policy Concerning Proprietary Exclusive Rights

The primary issue before the Director is whether the County, by prohibiting the sale and use of 100LL, transitioning County tanks to exclusively store and sell unleaded fuel, and exercising a proprietary exclusive right to be the sole provider of unleaded aviation fuel has resulted in an unreasonable restriction on the sale and use of 100LL fuel at County Airports in violation of Grant Assurance 22.

FAA Order 5190.6B, *Airport Compliance Manual*, provides guidance to FAA personnel in carrying out the FAA Airport Compliance Program, and provides in paragraph 8.9 that:

Aircraft fueling is a prime example of an aeronautical service an airport sponsor may choose to provide itself. While the airport sponsor may exercise its proprietary exclusive to provide fueling services, aircraft owners may still assert the right to obtain their own fuel and bring it onto the airport to service their own aircraft, but only with their own employees and equipment and in conformance with reasonable airport rules, regulations, and minimum standards.

FAA guidance in Advisory Circular 150/5190-6 *Exclusive Rights at Federally Obligated Airports*, paragraph 1.3(b)(1) provides:

The owner of a public-use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. The airport sponsor

may exercise, but not grant, an exclusive right to provide aeronautical services to the public. If the airport sponsor opts to provide an aeronautical service exclusively, it must use its own employees and resources.

The FAA has recognized the proprietary exclusive right for public airports since 1963,³ and addressed the proprietary exclusive in *Jet 1 Center, Inc. v. Naples Airport Authority*, FAA Docket No. 16-04-03, Director’s Determination (Jan. 4, 2005) (*Naples*), which was upheld by a Final Agency Decision. In that decision, the Director stated the basis for the proprietary exclusive right for public airports “arises solely from [FAA] interpretation of federal law” and that “[e]lemental to this interpretation are two concepts: 1. Airport owners hold proprietary rights that are not restricted by the exclusive rights prohibitions, and 2. the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), are intended to prevent monopolies by airport users.” *Naples* at 17. Pursuant to the FAA’s determination in *Naples*, a sponsor exercising a proprietary exclusive right involves the exclusion of others from providing the same service at the airport without triggering an exclusive rights violation under the statute or Grant Assurance 23, *Exclusive Rights*.

County Board Vote to Prohibit Leaded Fuels at County Airports

On August 17, 2021, the County Board voted unanimously to “approve as amended” Resolution 37 directing county administrators and attorneys to “eliminate lead exposure from operations” at RHV, which “may include . . . both prohibiting the sale or use of leaded fuel.” (FAA Exhibit 1, Item 2, Attachment 17, pp. 20-22). Separately, Board-approved Resolution 36 directs the County 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.” (FAA Exhibit 1, Item 2, Attachment 17, pp. 20-22).

The text of these Resolutions is unambiguous. In response to the Resolutions, the County took immediate steps – without qualification or limitation – to implement the specific intent to prohibit the “sale or use” of 100LL at County airports. Specifically, the County terminated all FBO 100LL fuel sale permits, purchased unused 100LL stocks from FBO-operated tanks, and transitioned all County-owned fuel tanks to the exclusive sale of 94UL, effective January 1, 2022. (FAA Exhibit 1, Item 8, p. 2). As of October 1, 2023, the County re-assumed the operation of two underground storage tanks by terminating the last two FBO fuel sales and distribution permits. The County’s actions consolidated unleaded fuel sales and distribution under full County control. As a result, the County now operates all County-owned tanks previously leased by RHV FBOs and is the sole retailer of 94UL and G100UL at County Airports. These actions reflect the County’s desire to exercise a proprietary exclusive right to sell 94UL and G100UL using County tanks and employees. It is also worth noting that many of the aforementioned actions have taken place since the original filing of AOPA’s Complaint in October 2022. (FAA Exhibit 1, Items 15 and 17).

³ The FAA Office of General Counsel concluded in an internal memorandum that the prohibition against exclusive rights provided for in section 308 of the Federal Aviation Act of 1958 does not apply to the exercise of such rights by municipalities, or equivalent public agencies that are arms of the State. (January 31, 1963).

Based on these facts, the Director rejects the County’s claim that the Board-initiated prohibition on leaded fuel was “authorized” but otherwise not acted on.⁴

County Enactment of a Proprietary Exclusive to Sell Unleaded Fuel

The County’s decision to sell only unleaded fuels using its own equipment and personnel (e.g., proprietary exclusive) does not itself constitute a reasonable access violation under Grant Assurance 22(a). As explained in FAA Order 5190.6B, paragraph 8.5, FAA policy provides that establishing a proprietary exclusive right over “any or all” aeronautical services using airport sponsor employees and resources is permissible.

In evaluating the proprietary exclusive right under FAA policy, it is critical to this analysis that the Director clarify the sponsor’s option to provide “**any or all**” of the aeronautical services demanded by public airport users. A distinction exists in that “any” implies the sponsor will provide one or a certain range of services, but not all, and thus a business decision is made on which services *will or will not* be exercised exclusively by the sponsor. Separately, “all” implies the full range of services at the airport where the exclusive right *will* be applied. In other words, the exclusive right the sponsor grants itself to provide an aeronautical service is inclusive of *only those services for which the right is exercised*.

In *Naples*, for example, the sponsor asserted its proprietary exclusive right to be the sole provider of fuel on the airport. *Naples* at 11. Here, the County’s chosen proprietary right – that is, the aeronautical service that it will exercise sole control over using its own resources – is limited to 94UL and G100UL. No other proprietary exclusive has been claimed or exercised – either by County ordinance, resolution, or any other airport directive.

This position is substantiated by the record. By its own admission, the County issued a new fueling permit to JMM Aviation, LLC, effective October 1, 2023, to “store, sell, and distribute Jet A” using its own equipment. (FAA Exhibit 1, Item 17, Exhibit P). By definition, the County has not exercised a proprietary right over “all” fueling services at RHV. To the degree that it has a proprietary exclusive right to sell fuel at RHV and E16, that right is limited to 94UL and G100UL fuel sales only. Just as the County is disinterested in exercising a proprietary right over Jet A fuel sales, the County’s disinterest in selling 100LL cannot be construed as exercising a proprietary right over 100LL sales. Because the County has not exercised a proprietary exclusive right to provide leaded avgas, it cannot prohibit others from providing leaded avgas in conformance with reasonable airport rules, regulations, and minimum standards.

Retail Sale of Leaded Fuels is Prohibited at County Airports

The County admits that “the retail sale of 100LL is currently prohibited at the County Airports,” but argues that the unavailability of 100LL for purchase does not deny Complainants reasonable access to County airports. (FAA Exhibit 1, Item 12, p. 7) (FAA Exhibit 1, Item 12, pp. 1-2).

⁴ The County claims that although the Board’s August 17, 2021, action authorized the County Executive to prohibit the use of leaded fuel, the County Executive has not implemented such a prohibition and has not used this authority to adopt any rules, regulations, or policies that prohibit the use of leaded avgas at the County Airports. (FAA Exhibit 1, Item 12, p. 15).

In defense of its position, the County cites *Kent J. Ashton v. City of Concord, NC*, FAA Docket No. 16-99-09, Director's Determination (Jan. 28, 2000) (*Ashton*), in multiple instances. Regarding fuel availability, the County cites *Ashton* for the proposition that the obligation to make the airport available to the public "does not mean that the sponsor is obligated to provide a specific level of service or level of convenience." *Ashton* at 21. Regarding fuel offerings, the County cites to *Ashton* in which the Director stated that the sponsor's "decision not to offer auto fuel [MoGas] is a business decision within its rights to make. The Sponsor is simply not obligated to provide a more detailed reason for this business decision." *Id.* at 23. Further citing *Ashton*, the County argues "the FAA has specifically held that availability of fuel for purchase is a matter of convenience, not access" and that "the FAA has applied this principle to sponsor-owned fueling equipment, expressly holding that the decision to sell a particular type of fuel is a business decision within the discretion of the County." (FAA Exhibit 1, Item 12, pp. 24-26). The County further asserts that the "[u]navailability of 100 octane avgas for purchase at the County Airports is no more a denial of access than the unavailability of auto gas was in *Ashton*," and since "the FAA declined to interfere with the City of Concord's business decision not to sell auto gas at its airports, the FAA should respect the County's decision to use the County Tanks for the sale of unleaded fuels." (FAA Exhibit 1, Item 12, pp. 28-29).

The Director reviewed *Ashton* and notes the allegations centered on a claim that a litany of services not offered by the sponsor amounted to a failure to provide fair and reasonable access. One example provided was the unavailability of auto fuel (MoGas). *Ashton* at 27. The sponsor in *Ashton* operated a proprietary exclusive right over all aircraft fueling, and in exercising that right, opted not to offer MoGas to airport users but did not explicitly prohibit MoGas use. The findings in *Ashton* were upheld by Final Agency Decision affirming the Director was correct in finding that the "sponsor has business discretion to decide what types of aviation fuel it will provide on the airport." Importantly, the Director's findings were made in the context of the sponsor's proprietary exclusive right – meaning the sponsor reasonably chose not to devote its personnel or equipment to providing MoGas at the airport. In that regard, the County is correct that it is not required to offer a specific type or level of service or fuel to the public (e.g., 100LL) as part of its proprietary exclusive right.

The Director's findings in *Ashton* are not in conflict with the Director's finding herein. The County's decision to devote its personnel and equipment exclusively to the sale and distribution of unleaded fuels is consistent with FAA policy.⁵ The difference here is that the sponsor in *Ashton* did not prohibit MoGas use at the airport, whereas here, the County has in fact prohibited leaded aviation fuels (e.g., 100LL) at RHV and E16.

Proprietary Exclusive Right as a Tool to Prohibit the Use of 100LL

Regarding the proprietary exclusive right, the County's reliance on *Ashton* is flawed. The question before the Director is not whether to "respect the County's decision to use County Tanks for the sale of unleaded fuels," or whether exclusively selling 94UL or G100UL amounts to a denial of access. Rather, the question is whether the County can employ a proprietary exclusive right over 94UL and G100UL as a means or tool to prohibit RHV/E16 aeronautical users from the acquisition,

⁵ See also *Mainardi v. Lincoln Park Airport*, FAA Docket 16-02-12 (Director's Determination) (Nov. 25, 2003). Grant Assurance 22 "does not require the airport owner to provide any and all services its aeronautical users may desire." (Determination at p.16).

sale, storage, distribution, or use of 100LL or any other FAA-authorized aviation fuel not encompassed by the County's proprietary exclusion.

The County argues repeatedly that it has not "prohibited the use of leaded avgas at County Airports" and the "County continues to allow operations by aircraft using leaded fuel and has adopted no laws, regulations, or policies that prohibit the use of leaded avgas at the County Airports." (FAA Exhibit 1, Item 8, pp. 11-12) (FAA Exhibit 1, Item 12, p. 15). The Director finds that the County's argument does not withstand scrutiny.

The County's prohibition on the "sale or use" of 100LL at County Airports has resulted in a cascade of orchestrated and intentional policy actions culminating in the early termination of multiple FBO fueling permits, rescinded access to County fuel tanks for fuel sales, and the reissuance of fuel permits requiring that the "Permittee may only fuel aircraft with fuel purchased from County." (FAA Exhibit 1, Item 17, Attachments R.1 and R.2) (FAA Exhibit 1, Item 20, Exhibits Q.1 and Q.2). Not coincidentally, the only fuel available from the County is unleaded fuel (currently 94UL and G100UL). Not only has the County prevented aeronautical service providers from selling 100LL, it has taken the extraordinary step to limit those service providers' ability to use any fuel type not sold by the County. In effect, the County has leveraged its proprietary exclusive right over unleaded fuels to prevent aeronautical service providers from acquiring, using, selling, or distributing leaded aviation fuels since the County does not sell them.

This use restriction is not just implied or favored - it is enshrined in County FBO leases to comply with fueling permits, and fueling access is subject to termination if either the lease or permit is breached by the operator. (FAA Exhibit 1, Item 17, Attachments R.1 and R.2) (FAA Exhibit 1, Item 20, Exhibits Q.1 and Q.2). The result is that aircraft service providers at RHV and E16 are presented with an untenable "take it or leave it" approach to airport tenancy preconditioned solely on the type of fuel the FBO aircraft operator seeks to use. In practical effect, a commercial service provider seeking to acquire, use, sell, or distribute leaded aviation fuels has no ability to obtain reasonable access to RHV or E16. This amounts to a blatantly unreasonable term and condition of access in contravention of the County's federal obligations under Grant Assurance 22(a).

Existing and Future Demand for 100LL at County Airports

The County argues it "is not required to make its fuel tanks available to Complainants to sell leaded avgas." (FAA Exhibit 1, Item 12, p. 23) The Director agrees, but not for the same reasons as the County. While the County is not obligated to make available County-owned fuel tanks it uses for its proprietary exclusive fuel service, it is obligated to make the airport land and facilities reasonably available to aeronautical service providers. The FAA interprets commercial aeronautical demand to be the existence of a qualified aeronautical service provider expressing interest in airport property for aeronautical use. There is no question whatsoever that ongoing demand for 100LL exists at County Airports – as evidenced by the user allegations in this Part 16 proceeding, the existence of more than 242,000 local and itinerant operations in a single year (2020), and the ongoing need of at least 32% of the piston general aviation fleet nationwide to use 100LL fuel to operate.

The County attempts to deflect its responsibility to allow the sale and distribution of 100LL by claiming "[t]he County has neither received nor rejected any application from any Complainant to sell avgas, including leaded avgas, since January 1, 2022." (FAA Exhibit 1, Item 13, p. 18). The County's argument is disingenuous. Effective January 1, 2022, the County prohibited the sale of leaded aviation gasoline at RHV and E16. On or before December 14, 2021, the County informed

the RHV FBOs that it would be terminating fuel sale permits. As of October 1, 2023, the County exercises full control over fueling operations at the County Airports through its proprietary exclusive 94UL and G100UL sales, through its Jet A permit to JMM Aviation, and by language in reissued FBO fuel permits requiring aircraft be fueled “only” with the fuel type sold by the County. The practical effect of these actions is that no opportunity exists for any aeronautical service provider to reasonably expect the County would even consider – much less objectively evaluate – a proposal to sell or use leaded avgas. It is therefore unsurprising and not a coincidence that no such application has been received. County Resolutions 36 and 37 and airport leasing and fuel permit policies have, unambiguously, foreclosed on that possibility in totality, and the County provides no evidence to the contrary.

As a mitigation, the County says it will “consider requests to install additional tanks for fuel sale purposes as it receives them.” The County adds that it “has neither received, nor denied, any requests since January 1, 2022, the date on which 100LL became unavailable for purchase at the County Airports” (FAA Exhibit 1, Item 14, p. 8). However, this is not sufficient. The existing restrictions are based on the County adopting resolutions, enacting policies, and modifying legally binding and enforceable leases and fueling permits. The restrictive effect of these actions cannot be undone by a mere statement that the County would “consider requests” when and if they are presented. Affirmative compliance with Grant Assurance 22(a) and granting reasonable access must be ensured by processes similar to those used to restrict the activity (e.g., resolutions, ordinances, policies, amended leases/permits). Nothing in the record demonstrates the County has taken formal action to allow consideration of a request to “sell or use” leaded avgas.

Conclusion on Issue 1

The County’s use of a proprietary exclusive right over unleaded fuel sales as a means to prohibit the sale or use of 100LL at County Airports is unjust, unreasonable, and constitutes a violation of Grant Assurance 22(a). A sponsor who grants itself the exclusive right to provide an aeronautical service may reserve that exclusivity *only for those services for which the right is exercised*. Disinterest in selling 100LL cannot be construed as exercising a proprietary right over 100LL sales or use.

Accordingly, the Director holds that a federally obligated airport sponsor who has not reserved unto itself the exclusive right to sell 100LL or any other FAA-authorized fuel cannot implement any unreasonable restriction on qualified aeronautical service providers for the acquisition, sale, storage, distribution, or use of such fuel, subject to the sponsor’s reasonable rules, regulations and standards for the activity. Stated differently, establishing the exclusive right to sell one or more types of fuel cannot be construed as the right to prohibit the sale or use of all other fuels by commercial service providers on a federally obligated airport. Any attempt to establish such a prohibition is an unreasonable and unjustly discriminatory restriction on aeronautical access to the airport.

In consideration of the record, the Director finds the County’s actions in prohibiting 100LL fuel, and the subsequent revocation and reissuance of fuel permits at County Airports restricting the ability of users to sell or use fuels not subject to the County’s proprietary exclusive is a direct violation of Grant Assurance 22(a) requirements to make the airport available as an airport for public use on reasonable and not unjustly terms to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Issue 2 - Whether the County's prohibition on 100LL violates Grant Assurance 22(f), *Economic Nondiscrimination*, by denying commercial aeronautical service providers the right to self-fuel their aircraft with 100LL fuel at County Airports.

1. AOPA's Position

AOPA makes the following arguments, which are summarized by the Director:

1. 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. (FAA Exhibit 1, Item 2, p. 9)
2. 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. (FAA Exhibit 1, Item 2, p. 5)
3. Equally problematic is that the County is not allowing 100LL self-fueling. 100LL is 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 be reasonable and comply with the County's obligations under the grant assurances. (FAA Exhibit 1, Item 2, p. 10)
4. Even if 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. (FAA Exhibit 1, Item 2, p. 10)
5. AOPA cites FAA Order 5190.6B p.11-2: "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."
6. AOPA cites Part 16 precedent that "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, Director's Determination (Jan. 4, 2005). (FAA Exhibit 1, Item 2, pp. 10-11).
7. 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. (FAA Exhibit 1, Item 2, pp. 10-11).
8. Even an airport sponsor's proprietary right to be the exclusive provider of aeronautical services at the airport may not interfere with an aeronautical user's right to self-fuel. Such activity must be permitted in conformance with reasonable rules and regulations. See FAA Airport Compliance Manual, Order 5190.6B, p.8-5 n.21.

2. County's Position

The County responded to AOPA's allegations, as summarized below:

1. Complainants' claim the County has prohibited the use of leaded avgas and self-fueling with leaded avgas at the County Airports are simply untrue; the County has not taken these actions. The County has adopted no laws, regulations, or policies that prohibit self-fueling with leaded avgas at the County Airports. (FAA Exhibit 1, Item 12, p. 1).
2. Complainants have not identified any restriction on their right to self-fuel other than its unavailability for purchase. Neither the County's business decisions regarding what fuels it will sell, nor the terms in a permit for the use of a County tank, nor even a ban on fuel sale by third party FBOs, affect Complainants' rights to self-fuel. (FAA Exhibit 1, Item 12, pp. 30-31).
3. The County requires operators to obtain a permit to conduct self-fueling at the County Airports. The County denies that it has entered into any current lease or agreement at RHV or E16 prohibiting the use of or self-fueling with leaded fuel. (FAA Exhibit 1, Item 12, p. 8).
4. The County's Airport Rules and Regulations, which include regulations affecting the use of 100LL, such as for fuel storage and self-fueling, have been in effect since before August 17, 2021, and unchanged since March 27, 2001. (FAA Exhibit 1, Item 12, p. 7).
5. The County issues two types of self-fueling permits: a general aviation self-fueling permit and a commercial self-fueling permit.
 - a. The general aviation self-fueling permit is a nondiscretionary permit issued to individual operators who wish to refuel their aircraft at the County Airports.
 - b. Commercial self-fueling permits are available to commercial operators seeking to perform self-fueling on a large scale.
 - c. The general aviation and commercial self-fueling permits impose insurance, safety, and equipment standards, and require payment of flowage fees, exactly the types of reasonable rules and regulations contemplated by the FAA. *See* FAA Order 5190.6B: FAA Airport Compliance Manual at p.11-3, 11-4.
6. Neither the general aviation self-fueling permit nor the commercial self-fueling permit limits self-fueling with leaded avgas.
7. The County cites Part 16 precedent that "The right to self-fuel does [not] prohibit airport sponsors from imposing reasonable restrictions on airport users who seek to construct fueling infrastructure or transport fuel onto an airport for the purpose of self-fueling." *See Hilton A. Turner, Jr. v. City of Kokomo, Indiana*, Docket No. 16-98-16, Director's Determination, at 26 (Mar. 30, 1997). None of the Complainants have stated that they seek to self-fuel in this manner, nor do they allege that any specific requirement imposed by the County is preventing them from doing so. (FAA Exhibit 1, Item 12, p. 31).
8. These allegations turn on novel interpretations of both the right of reasonable access and the right to self-fuel that would effectively require every airport sponsor to ensure availability of every type of fuel for every aircraft that could conceivably land there. (FAA Exhibit 1, Item 12, pp. 1-2).

9. The County issued self-fueling permits to Tradewinds. The County has not denied any self-fueling permit applications from any Complainant. Other FBOs conduct self-fueling pursuant to permits for storage, sale, or distribution of fuel and lubricants.
10. The Complainants lack standing to challenge the County's self-fueling permit scheme because the County has not denied a request for a self-fueling permit from any Complainant. (FAA Exhibit 1, Item 12, p. 31).

3. Director's Determination

FAA Self-Fueling Access Requirements

Grant Assurance 22(f), *Economic Nondiscrimination*, provides that a 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 self-fueling) that it may choose to perform."

FAA Order 5190.6B, *Airport Compliance Manual*, which provides guidance to FAA personnel in carrying out the FAA Airport Compliance Program, similarly defines "Self-Fueling and Self-Service" as:

The fueling or servicing of an aircraft by the owner of the aircraft or the owner's employee. Self-fueling means using fuel obtained by the aircraft owner from the source of his/her preference.

Paragraph 11.2 of Order 5190.6B provides instruction on unreasonable restrictions to self-fueling and also incorporates the right of airport sponsors to implement reasonable rules and standards:

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.

Aircraft owners and operators must be permitted to tie down, adjust, refuel, clean, perform self-service repair and preventative maintenance, and otherwise take care of their own aircraft, provided that they or their employees perform these tasks. The sponsor is obligated to operate the airport in a safe and efficient manner. The sponsor should establish reasonable rules and standards, and the aircraft owner or operator must conduct self-servicing in accordance with those rules and standards for such work.

FAA policy in Advisory Circular 150/5190-6 *Exclusive Rights at Federally Obligated Airports*, paragraph 1.1(o) defines "Self-Fueling and Self-Service" as:

Self-fueling means the fueling or servicing of an aircraft (i.e., changing the oil, washing) by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling and other self-services cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his/her preference.

Lastly, the publicly available *County of Santa Clara Airport Rules and Regulations* (effective March 27, 2001) (Rules), defines self-fueling as:

Self-Fueling. *Fueling of an aircraft on airport property, performed by the aircraft owner or operator in accordance with the airport's reasonable standards or requirements and using fuel obtained by the aircraft owner from the source of his/her preference.*

(FAA Exhibit 1, Item 14, Attachment G).

As written, the County's definition of "self-fueling" is consistent with FAA policy and guidance as it pertains to the ability to acquire fuel for self-fueling from the source of the aircraft owner/operator's preference, subject to reasonable airport rules, regulations, and standards. However, the core issue here in *Issue 2* is the impact of the County's reissued self-fueling permits on commercial self-fueling operations at County Airports.

Commercial Self-Fueling

In *Issue 1*, the Director determined that the County's prohibition on the "sale or use" of 100LL at RHV and E16 resulted in a cascade of policy actions culminating in the early termination of multiple FBO fueling permits and the reissuance of more restrictive FBO fuel permits. The Director reviewed the full range of permits – starting from the Complaint through the County's most recent Motion to Further Supplement the Record – and observes that the County has not been forthright with its description of access to leaded Avgas (100LL) for commercial self-fueling.

The record shows the County engages in industry-typical administrative airport fueling, leasing, and permit practices. Specifically, County ordinances specify that no entity may "bring, store, or distribute aviation fuel or lubricants on the airport except by contract or permit." County leases prescribe that fueling operations must be authorized in writing via the appropriate self-fueling or sale/distribution/storage permits, and the County Airport Rules and Regulations prescribe the fuel permitting process. (FAA Exhibit 1, Item 12, Exhibits A.1 and A.2) (FAA Exhibit 1, Item 2, Attachments 14 and 15). While not controversial on their face, the County has leveraged these processes to implement County Resolutions 36 and 37, which direct that 1) "the sales of leaded gas will not be permitted at either County airport after December 31, 2021," and 2) the County will take "such actions . . . both prohibiting the sale or use of leaded fuel, and pursuing any and all available paths to early closure prior to 2031." (FAA Exhibit 1, Item 2, Attachment 17, pp. 20-22).

To that end, the October 1, 2023, "Commercial Self-Fueling Authorization" in the reissued "General Aviation Commercial Self-Fueling Permits" include the following conditions:

- A. Permittee may only fuel aircraft on the land space of approximately 97,400 square feet that consists of a commercial hangar and office space, a storage shed, aircraft parking ramp and vehicle parking lot as shown as Area 1 on Exhibit A, attached hereto and incorporated herein, or such non-exclusive public space as the Director of County Airports ("Director") may designate (collectively "Assigned Space");
- B. Permittee may only fuel aircraft owned or operated by Permittee and used in Permittee's day-to-day operations of its business at the Assigned Space.
- C. The Permittee may only fuel aircraft with fuel purchased from County.

This Permit does not authorize [Permittee] to engage in any fueling of aircraft at the Airport except Commercial Self-Fueling, as described stated [sic] herein.

(FAA Exhibit 1, Item 17, Attachments R.1 and R.2).

The reissued permits clearly “allow” the permittee to self-fuel, but they also explicitly require the purchase of fuel directly from the County. The Director finds these terms and conditions to be significantly problematic. The County has not merely required FBO tenants to purchase fuel from the County – a common industry practice. It has preconditioned the ability to self-fuel FBO aircraft “only” with fuel “purchased from the County.” As noted, the County currently only offers 94UL and G100UL.

Under this self-fueling scheme, the County has expressly deprived FBO service providers from exercising discretion on aircraft fuel “source” and “preference” – such as 100LL from a non-County provider. This directly contravenes FAA self-fueling policy and guidance and the County’s own definition of “self-fueling.” Consequently, the restriction effectively excludes a specific type and class of aircraft operator (e.g., commercial FBO operators of high compression piston engine aircraft) from self-fueling with 100LL at County airports.

The County’s actions conflict with Grant Assurance 22(f). Self-fueling activities – whether they be by 94UL, G100UL, 100LL, MoGas, Jet A, or any current or future FAA-authorized fueling technology – are protected by 49 U.S.C. § 47107(a)(6) as implemented in Grant Assurance 22(f).⁶ The County cannot circumvent Grant Assurance 22(f) by conditioning self-fueling (or airport access) on the purchase of fuel from the County. Grant Assurance 22(f) is in place specific to this purpose - to prevent unreasonable actions by airport sponsors to deny an aircraft operator the right and privilege to self-fuel using the fuel it chooses from the source that it prefers. And, as determined in *Issue 1*, Grant Assurance 22(a) precludes the County from unjustly discriminating against any type or class of aeronautical user having or seeking aeronautical access to RHV/E16 – such as commercial FBO operators choosing to self-fuel with 100LL fuel.

Both AOPA and the County cite *Hilton A. Turner, Jr. v. City of Kokomo, Indiana*, Docket No. 16-98-16, Director’s Determination (Mar. 30, 1999) (*Kokomo*) (*aff’d.* by the Associate Administrator, Final Agency Decision (July 27, 1999)), to show that sponsors may develop reasonable and nondiscriminatory restrictions on airport users, including self-fueling activities, in order to ensure the safety of fueling operations at the airport. The parties diverge in that 1) AOPA believes *Kokomo* preserves safety discretion but does not apply to the County’s actions in banning 100LL from County Airports, whereas 2) the County believes *Kokomo* preserves its right to restrict the ability to “construct fueling infrastructure or transport fuel onto the airport for the purpose of self-fueling.” (FAA Exhibit 1, Item 2, p. 11) (FAA Exhibit 1, Item 12, p. 31).

Upon review of *Kokomo*, the Director believes that certain elements of both parties’ reliance on *Kokomo* are correct. In the Determination, the Director stated, “The establishment of reasonable rules on self-servicing, applied in a not unjustly discriminatory manner, that restrict the introduction of equipment, personnel, or practices that would be unsafe, detrimental to the public welfare, or that would affect the efficient use of airport facilities by others, would not be unreasonable.” *Id.* at p. 7.

⁶ Although the FAA does not have sole regulatory responsibility for aviation fuels, it provides initial certification approval of the aircraft for which a certain fuel type is used, and it oversees aircraft operators to ensure use of the correct fuel. (<https://www.faa.gov/about/initiatives/avgas>)

Therefore, the imposition of such reasonable rules would not be considered a violation of Grant Assurance 22. *See also* Order 5190.6B, paragraph 11.2, *Restrictions on Self-Servicing Aircraft*. The County admits that “[n]one of the Complainants have stated that they seek to self-fuel” using newly introduced fueling infrastructure or equipment, and AOPA argues that nothing in the record substantiates the County’s claim that its prohibition on 100LL is the result of the County’s exercise of discretion over unsafe self-fueling facilities, practices, or operations. (FAA Exhibit 1, Item 2, p. 11) (FAA Exhibit 1, Item 12, p. 31). On both points, the Director agrees. The record provides no evidence of unsafe self-fueling equipment, personnel, or practices at the County’s Airports.

Lastly, the County claims it “has not denied any self-fueling permit applications from any Complainant” and cites a March 28, 2023, email it sent to Co-Complainant Trade Winds stating that it would be “open to discussing a different permit for self-fueling with other fuels purchased from other sources.” (FAA Exhibit 1, Item 12, p. 16; FAA Exhibit 1, Item 14, p. 3; and FAA Exhibit 1, Item 14, Attachment F). The Director reviewed the email and concludes – as in *Issue 1* – the assertions therein are diversionary, theoretical, and unpersuasive. Even if the County legitimately could consider Trade Winds’ “self-fueling with other fuels purchased from other sources,” there is no evidence in the record that such policy is allowed – either by formal County action or in practice. The fact that Trade Winds has apparently ceased operations at RHV and E16 in light of the County’s 100LL prohibition is revealing, and potentially foreshadows the fate of other operators at the County’s Airports. (FAA Exhibit 1, Item 17, p. 2).

Conclusion on Issue 2

The County is within its right to establish reasonable self-fueling rules and standards, but this right does not extend to the County prohibiting commercial service providers from self-fueling with the fuel(s) of its preference from a source of its choosing.

Based on the facts of record, the Director holds that the terms and conditions of the County’s “General Aviation Commercial Self-Fueling Permit” effectively and unreasonably prevent FBOs at the County’s Airports from exercising their discretion on fueling “source” or “preference.” Whether the existing FBOs at County Airports accede to the County’s self-fueling terms and conditions is irrelevant. The sponsor of a federally obligated airport cannot implement an unreasonable term and condition for self-fueling access in violation of Grant Assurance 22(f) regardless of its acceptance by users of the airport.

As determined in *Issue 1*, the result of the County’s scheme is that FBO aircraft operators at the County’s Airports are presented with an unreasonable “take it or leave it” approach to airport use and tenancy preconditioned solely on the type of fuel the FBO aircraft operator requires. Indeed, airport access is subject to termination if requirements of the lease and/or fuel permit are breached by the operator. Unambiguously and by design, this includes self-fueling with 100LL avgas because it is not sold by the County.

All of these variables serve to effectuate the County’s prohibition on leaded aviation fuels in accordance with Board-approved Resolutions 36 and 37. The practical effect is that FBO service providers – current or future – have no path to obtaining or maintaining reasonable access to County

Airports if they desire to self-fuel with 100LL.⁷ The County – through its resolutions, policies, rules, leases, and permits – has foreclosed that option. The Director finds the County’s actions and permits impose unreasonable terms and conditions on self-fueling access at a federally obligated airport and are in violation of the County’s federal obligations under Grant Assurance 22(f).

Issue 3 - Whether the County’s prohibition on 100LL violates Grant Assurance 22(f), *Economic Nondiscrimination*, by denying non-commercial general aviation users the right to self-fuel their aircraft with 100LL fuel at County Airports.

For brevity, the Director incorporates by reference previous discussions in *Issue 2* on 1) AOPA’s position on self-fueling, 2) the County’s response to AOPA’s position, 3) FAA policy and guidance on self-fueling rights, privileges, and restrictions, and 4) other tangential claims by the parties applicable to both commercial and non-commercial self-fueling activities at County Airports. Allegations and arguments concerning non-commercial self-fueling not considered in *Issue 2* are evaluated here.

1. AOPA’s Position

The thrust of AOPA’s position on non-commercial self-fueling at County Airports is twofold. First, multiple affidavits from non-commercial Co-Complainants with aircraft based at RHV and/or E16 claim that: 1) they are unable to safely and legally use 94UL fuel or G100UL which 2) results in inconvenient, wasteful, and fuel-intensive diversions to other airports for fueling, and 3) discourages flying for both personal and business purposes, while 4) presenting a fuel tank condensation safety concern for aircraft not stored with full tanks of avgas (i.e. 100LL). (FAA Exhibit 1, Item 2, Attachments 5-12). Second, AOPA and Co-Complainants argue the County’s “General Aviation Self-Fueling Permit” results in costly, burdensome, impractical, and potentially impossible requirements for the procurement and storage of 100LL for self-fueling. (FAA Exhibit 1, Item 2, pp. 9-15). Tangential to these allegations is AOPA’s recurring assertion that “[t]he 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.” (FAA Exhibit 1, Item 2, pp 11-12).

2. County’s Position

The County denies that it has entered into any current lease or agreement at RHV or E16 prohibiting the use of or self-fueling with leaded fuel. (FAA Exhibit 1, Item 12, p. 1). The County responds that “[t]he unavailability of 100 octane avgas for purchase at the County Airports is irrelevant to Complainants’ right to self-fuel” and that it “issues two types of self-fueling permits: a general aviation self-fueling permit and a commercial self-fueling permit. The general aviation self-fueling permit is a nondiscretionary permit issued to individual operators who wish to refuel their aircraft at the County Airports. This permit has been unchanged since 2002.” (FAA Exhibit 1, Item 8, p. 13). The County claims that neither permit “limits the use of leaded avgas for self-fueling” and

⁷ Expecting the permittee to agree to termination of the permit by the County for no cause and with 30 days’ notice puts the commercial service provider’s investment at significant financial risk. This provision alone could discourage or prevent any commercial operator from pursuing a self-fueling permit if 100LL cannot be used. The Director notes this could coerce long-term commercial tenants with significant capital investments at County Airports to execute a lease and fuel permit under duress as a means to protect its investments and to continue business operations at RHV/E16.

that they simply “impose insurance, safety and equipment standards, and require payment of flowage fees, exactly the types of reasonable rules and regulations contemplated by the FAA” in FAA Order 5190.6B, *Airport Compliance Manual*. (FAA Exhibit 1, Item 8, p. 13).

In sum, the County argues AOPA has “not identified any restriction on their right to self-fuel other than its unavailability for purchase. Neither the County’s business decisions regarding what fuels it will sell, nor the terms in a permit for the use of a County Tank, nor even a ban on fuel sale by third party FBOs, affect Complainants’ rights to self-fuel.” (FAA Exhibit 1, Item 12, p. 31).

3. Director’s Determination

The Director is compelled to segregate evaluation of “commercial” and “non-commercial” fueling permits because self-fueling by design requires the use of the operator’s own employees and equipment. As a result, the Director’s finding in *Issue 2* that the County deprived commercial service providers the right to self-fuel does not automatically extend to non-commercial self-fuelers. The terms and conditions of each permit type must be reasonable on their own accord.

Unlike the County’s commercial self-fueling permits, the record does not include an executed “General Aviation Self-Fueling Permit” and AOPA does not present evidence that any non-commercial aircraft user of County Airports has been denied a permit to self-fuel with 100LL avgas. The only evidence of an attempt to secure any permit is by Co-Complainant Marshall, who by email dated October 7, 2021, requested a “self-fueling permit” for the use of “R100UL” from Swift Fuels, which is not relevant as to the resolution of the Complainant’s complaint because Marshall requested a self-fueling permit for unleaded fuel. (FAA Exhibit 1, Item 10, Attachment 25). AOPA claims that Marshall “waited three months and never received a response to his application for a self-fueling permit.” (FAA Exhibit 1, Item 10, p. 4). The County counters that Marshall “withdrew his application before the County completed its processing of the application” and “did not deny Complainant Marshall’s application for a self-fueling permit.” (FAA Exhibit 1, Item 12, p. 31). The status of Marshall’s application is presently unknown.

Absent an executed self-fueling permit, the Director is limited to evaluating the County’s template “General Aviation Self-Fueling Permit” adopted on June 26, 2002, which apparently has been unchanged since its adoption and seemingly unaffected by the Board’s resolutions. As is typical, the permit is observed to contain requisite sections on definitions, fueling authorizations, restricted fueling activities, minimum equipment requirements, fee collection, use of assigned facilities, and insurance requirements. (FAA Exhibit 1, Item 12, Exhibit I). Unlike the County’s “General Aviation Commercial Self-Fueling Permit”, the Director observed nothing in the permit that directly or indirectly limits the acquisition of 100LL for self-fueling purposes. For example, the non-commercial permit does not contain a requirement that tenant aircraft may “only” be self-fueled “with fuel purchased from County.” As in *Issue 2*, such a condition would effectively deprive non-commercial users of obtaining fuel of their preference from a source of their choosing. However, no such restriction is stated or implied in the 2002 permit evaluated here.

A complainant making the argument that an airport sponsor’s requirements for conducting a particular activity are so unreasonable or burdensome as to deny the complainant access for that particular activity has the responsibility to demonstrate with supporting evidence that the requirements are, in fact, unreasonable and burdensome. It is not sufficient to show the sponsor’s requirements are merely less convenient or even more costly than the complainant’s preferred

options. See *Airborne Flying Service, Inc. v. City of Hot Springs, Arkansas*, FAA Docket No. 16-07-06, Final Decision and Order, at 16 (May 2, 2008).

Such is the case here. The Director rejects AOPA's allegation that the County's prohibition on the sale and use of 100LL at County Airports amounts to unreasonable access to self-fueling by non-commercial general aviation aircraft tenants, such as the Complainants. While the requirements to comply with the self-fueling permit may be costly to users, the Director does not interject on issues where user costs (e.g., equipment costs, state/local permits, facility requirements) do not involve the sponsor's uniformly and equitably applied aeronautical fees, rates, and charges. Grant Assurance 22(f) and FAA policy do not require contemplation of convenience or cost-effectiveness for users, only reasonable and not unjustly discriminatory self-fueling access, rules, and standards.

A plain reading of the permit indicates common industry terms and practices, and none of the restrictions appear unreasonable in the context of federal, state, and local fuel storage and handling requirements. AOPA fails to point to a single provision of the fueling permit that it believes is unreasonable. Instead, it leans on the County's prohibition of 100LL to demonstrate that the requirements are unreasonable for users under the current circumstances at County Airports. The Director does not agree. The record is not sufficiently persuasive to demonstrate that compelling compliance with the "General Aviation Self-Fueling Permit" is unreasonably burdensome and inconvenient to non-commercial County Airport users. Lacking evidence of an unreasonable condition or the County rejecting non-commercial self-fueling with 100LL, the Director declines to find a compliance violation in *Issue 3* at the current time.

Conclusion on Issue 3

The County is well within its right to require reasonable rules and standards for the acquisition and handling of fuel for non-commercial self-fueling operations at County Airports. Here, the County implements its policies through the "General Aviation Self-Fueling Permit." The permit template provided to the record is comprehensive but not overtly unreasonable. Conceivably, users meeting the qualification standards in the permit will be allowed to self-fuel with 100LL, although that has not yet been tested at County Airports. And, in the event the County rejects a qualified applicant from self-fueling with 100LL, airport users can again engage the 14 CFR Part 13 or Part 16 complaint processes for further investigation. At this point, however, the County's prohibition on the sale of 100LL avgas has not demonstrably resulted in an unreasonable restriction on self-fueling with 100LL by non-commercial general aviation aircraft tenants and users. Based on the allegations and facts evaluated here in *Issue 3*, the County is not in violation of Grant Assurance 22(f) with respect to this claim.

ISSUE 4 – Whether the County's prohibition of 100LL at County Airports results in a violation of Grant Assurance 23, Exclusive Rights.

AOPA did not allege a violation of Grant Assurance 23, *Exclusive Rights*. However, the County has raised the exclusive rights issue vis-a-vis its claim of a propriety exclusive right. Therefore, the Director assesses this issue and whether the County's alleged exercise of a proprietary exclusive right complies with Grant Assurance 23. FAA Order 5190.6B is instructive. It states:

In accordance with the Airport and Airway Improvement Act of 1982 (AAIA), 49 U.S.C. § 47101, *et seq.*, the Federal Aviation Act of 1958 (FAA Act) 49 U.S.C. § 40103(e), and the Airport Improvement Program (AIP) grant assurances, the owner or operator of any airport

that has been developed or improved with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity and without granting an exclusive right.

FAA Order 5190.6B defines an exclusive right as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements, or by another means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right, or right, would be an exclusive right.

FAA guidance in Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, paragraph 1.2, *Agency Policy*, provides:

The existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits that flow from competitive enterprise. The purpose of the exclusive rights provision as applied to civil aeronautics is to prevent monopolies and combinations in restraint of trade and to promote competition at federally obligated airports. An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. A prohibited exclusive right can be manifested by an express agreement, unreasonable minimum standards, or by any other means. Significant to understanding the exclusive rights policy, is the recognition that it is the impact of the activity, and not necessarily the airport sponsor's intent, that constitutes an exclusive rights violation.

Paragraph 1.3(a)(2) provides:

Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation.

In *Issue 1*, the Director found that an obligated sponsor who has not reserved unto itself the proprietary exclusive right to sell 100LL, or any other FAA-authorized fuel, cannot implement any unreasonable restriction on aeronautical service providers for the acquisition, sale, storage, distribution, or use of such fuel, subject to the sponsor's reasonable rules for the activity. Consequently, the Director found the County's actions to be a violation of Grant Assurance 22(a). In *Issue 2*, the Director found that the terms and conditions of the County's "General Aviation Commercial Self-Fueling Permit" actively and unreasonably prevent FBOs at the County Airports from exercising their discretion on self-fueling "source" or "preference" in violation of Grant Assurance 22(f). In enacting the prohibitions against leaded fuels, the County has favored one class of aircraft (those that can safely use 94UL or G100UL) to the detriment of another class of aircraft (those that cannot safely use 94UL or G100UL). Similarly, it has favored the manufacturers and suppliers of unleaded aviation fuel to the detriment of manufacturers and suppliers of leaded aviation fuels by effectively granting the suppliers of unleaded fuels a monopoly at the County Airports.

Conclusion on Issue 4

While it may not be the County's express or implied intent to create an exclusive right at County Airports, the totality of the County's actions evaluated in *Issue 1* and *Issue 2* lead the Director to

find the County's prohibition on the sale and use of 100LL are an unreasonable restriction on legitimate aeronautical activities at County Airports in violation of Grant Assurance 23, *Exclusive Rights*.

ISSUE 5 - Whether the County's prohibition of 100LL at County Airports results in a violation of Grant Assurance 24, *Fee and Rental Structure*.

1. AOPA Position

Complainants introduce an allegation of violation of Grant Assurance 24 in their Reply, and request that the Director find the County in non-compliance. (FAA Exhibit 1, Item 13, p. 12).

The Complainants state, "The County's assertions that its actions have had no detrimental effects on operations at County airport and that 'unavailability of 100LL for purchase has not affected utilization of County Airports' . . . are false. Fuel sales have plunged, illustrating that the primary consumer continues to use and need 100LL fuel . . . The County's own presentation at an Airport Commission meeting earlier this week documents a 14.4% decrease in fuel sales at RHV and a 50% decrease in fuel sales at E16." (FAA Exhibit 1, Item 13, pp. 6-7 and p. 12).

2. County's Position

In its Rebuttal, the County states, "Complainants request in the conclusion to their Reply that the Director find the County in noncompliance with Grant Assurance 24, *Fee and Rental Structure*. As Complainants have not alleged in their Complaint that any County fees or rental structures violate Grant Assurance 24, the FAA should ignore this unsupported allegation raised for the first time in their Reply". (FAA Exhibit 1, Item 14, p. 10).

3. Director's Determination

Other than the allegation that fuel sales have decreased at County Airports due to the unavailability of 100LL, AOPA does not point to evidence that supports its contention that the County is failing to make the airport as self-sustaining as possible under the circumstances. The airport sponsor is expected to make appropriate business decisions that will make the airport as self-sustaining as circumstances permit while maintaining a fair and reasonable pricing structure for aeronautical users. Grant Assurance 24, *Fee and Rental Structure*, does not require airport sponsors to establish fees that will generate the greatest possible income. See *Thermco Aviation, Inc., and A-26 Company v. City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airports*, FAA Docket No. 16-06-07, Director's Determination (June 21, 2007).

Conclusion on Issue 5

The Director agrees with the County that AOPA has not sufficiently demonstrated that a prohibition on 100LL at County airports results in a diminished ability to collect fees and rentals sufficient to render the County Airports not self-sustaining under the circumstances. The Director finds the County is not currently in violation of Grant Assurance 24, *Fee and Rental Structure*.

VIII. FINDINGS AND CONCLUSION

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

ISSUE 1 – The County of Santa Clara currently is in violation of Grant Assurance 22(a), *Economic Nondiscrimination*.

ISSUE 2 – The County of Santa Clara currently is in violation of Grant Assurance 22(f), *Economic Nondiscrimination*.

ISSUE 3 – The County of Santa Clara currently is not in violation of Grant Assurance 22(f), *Economic Nondiscrimination*.

ISSUE 4 – The County of Santa Clara currently is in violation of Grant Assurance 23, *Exclusive Rights*.

ISSUE 5 – The County of Santa Clara currently is not in violation of Grant Assurance 24, *Fees and Rental Structure*.

ORDER

ACCORDINGLY, it is ordered that:

The County of Santa Clara shall present a corrective action plan to the Director for review and approval within 30 days from the date of the Order. The plan shall explain in detail how the County, as sponsor of RHV and E16, intends to return to compliance with its Federal grant obligations, including the following required actions:

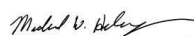
1. Elimination of the County's prohibition on aeronautical users from the acquisition, sale, storage, distribution, or use of 100LL or any other FAA-authorized aviation fuel not encompassed by the County's proprietary exclusion at County Airports (Issue 1).
2. Elimination of the prohibition on the right of commercial aeronautical service providers to self-fuel their aircraft with 100LL fuel at County Airports subject to reasonable airport rules, regulations, and standards (Issue 2).
3. Elimination of the prohibited exclusive right favoring one class of aircraft (those that can safely use 94UL and G100UL) to the detriment of another class of aircraft (those that cannot safely use 94UL and G100UL) (Issue 4).

Failure to submit an acceptable corrective active plan as specified in this Order will result in the FAA withholding approval pursuant to any applications submitted by the County for amounts apportioned under 49 U.S.C. § 47114(d), and/or authorized under 49 U.S.C. § 47115 for both County Airports.

All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-22-08 is an initial agency determination and does not constitute final agency decision and order subject to judicial review under 49 U.S.C. § 46110. 14 CFR § 16.247(b)(2). A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final, because there is no administrative appeal, is not judicially reviewable. 14 CFR § 16.33.



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Michael Helvey
Director, Office of Airport Compliance
and Management Analysis

Aircraft Owners and Pilots Association, et.al, Complainants

v.

County of Santa Clara, CA, Respondent

Docket No. 16-22-08

INDEX OF ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

FAA Exhibit 1

Item 1 – Airport Sponsor Assurances, [Airport Improvement Program Grant Assurances for Airport Sponsors, May 2022 \(faa.gov\)](#)

Item 1A – <https://adip.faa.gov/agis/public/#/simpleAirportMap/RHV>

Item 1B – <https://adip.faa.gov/agis/public/#/simpleAirportMap/E16>

Item 2 - Part 16 Complaint against the County of Santa Clara, CA.

Attachment 1 – Page from presentation entitled “STC Approvals – AIR-700

Attachment 2 – Letter from Kevin Willis, Director, Office of Airport Compliance to Stelios Makrides, Chief Operations Officer/Airport Director, Santa Monica, CA., dated September 1, 2022. Includes exhibits 1-24.

Attachment 3 – 3 copies of FAA 5010 Master Record for RHV, dated October 6, 2022.

Attachment 4 – Copy of FAA 5010 Master Record for E16, dated October 6, 2022.

Attachment 5 – Affidavit of Michael McClelland, dated September 15, 2022.

Attachment 6 – Affidavit of Glenn P. Falcon, dated September 16, 2022.

Attachment 7 – Affidavit of Robert A. Gingell, dated September 22, 2022.

Attachment 8 – Affidavit of Christopher Luvara, dated September 16, 2022.

Attachment 9 – Affidavit of Michael S. Luvara, dated September 15, 2022.

Attachment 10 – Email from Michael Luvara to FAA dated June 13, 2022

Attachment 11 – Affidavit of Paul Marshall

Attachment 12 – Affidavit of Dr. Joseph C. McMurray

Attachment 13 – Affidavit of Walter Gyger on behalf of Trade Winds Aviation

Attachment 13A – Trade Winds Lease Excerpt

Attachment 13B – October 8, 2021, complaints

Attachment 14 – County of Santa Clara Rules and Regulations, Section 6.2, Aviation Fuel Distribution Restrictions

Attachment 15 – Airports and Aircraft, Division B2, Sec. B2-17

Attachment 16 – Recommended Action on August 17, 2021

Attachment 17 – Board of Supervisors Decision

Attachment 18 – Santa Clara County Website Printout

Attachment 19 – Excerpted slides from EAGLE presentation on March 25, 2022

Attachment 20 – FAA Notice of Investigation

Attachment 21 – October 18, 2021, complaints

Attachment 22 – County of Santa Clara Response to Notice of Informal Investigation

Attachment 23 – FAA response following the FAA and County meeting dated March 24, 2022

Attachment 24 – Letter from Santa Clara County to FAA dated September 21, 2022

Item 3 – Email from Jerett Yan, Counsel for Santa Clara County to Kevin Willis, FAA, opposing docketing of the complaint filed by the Aircraft Owners and Pilots Association, dated October 27, 2022.

Item 4 – Letter from Justine Harrison, General Counsel for Aircraft Owners and Pilots Association to FAA Part 16 Docket Clerk objecting to Email from Jerett Yan (Item 3) opposing docketing, dated November 2, 2022.

Item 5 – Notice of Docketing of FAA Docket 16-22-08, dated November 3, 2022.

Item 6 – Respondent County of Santa Clara’s Motion for Extension of Time to Respond to the Complaint, dated November 14, 2022.

Item 6A - Complainants Opposition to Santa Clara County's Motion for Extension of Time to Respond to the Complaint, dated November 17, 2022.

Item 7 – Notice of Extension of Time until December 29, 2022, dated November 21, 2022.

Item 8 - Respondent County of Santa Clara’s Consolidated Motion to Dismiss and Motion for Summary Judgement, dated December 29, 2022.

Item 9 – Declaration of Harry Freitas in Support of Respondent County of Santa Clara’s Consolidated Motion to Dismiss and Motion for Summary Judgment, dated December 29, 2022.

Exhibit A –A.1 - Lease Agreement between County of Santa Clara and Amelia Reid Aviation LLC dba Aerodynamic Aviation. Effective January 1, 2022. Signed December 30, 2021.

Exhibit A.2 – Lease Agreement Between County of Santa Clara and JMM Aviation, LLC Effective January 1, 2022. Signed December 31, 2021.

Exhibit A.3 – Lease Agreement Between County of Santa Clara and California In Nice dba Nice Air, Effective January 1, 2022. Signed December 31, 2021.

Exhibit A.4 – Lease Agreement Between County of Santa Clara and Skyworks Aviation dba Tradewinds Aviation, effective January 1, 2022. Signed December 30, 2021.

Exhibit B – Lease Agreement Between County of Santa Clara and San Martin Aviation, effective December 12, 2020. Signed November 17, 2020.

Exhibit C – County of Santa Clara Office of the County Executive – Recommendations Relating to an Airborne Lead Study of Reid-Hillview Airport, dated August 17, 2021.

Exhibit D – Leaded Aviation Gasoline Exposure Risk at Reid-Hillview Airport in Santa Clara County, California, dated August 2, 2021.

Exhibit E – Santa Clara County Minutes for August 17, 2021, 9:30 AM Regular meeting.

Exhibit F – List of airports and fuel types offered.

Exhibit G – G.1 - Permit for Storage, Sale or Distribution of Fuel and Lubricants for JMM Aviation, LLC At Reid-Hillview Airport, effective January 1, 2022. Dated January 11, 2022.

Exhibit G.2 – Permit For Storage, Sale or Distribution of Fuel and Lubricants for Amelia Reid Aviation dba Aerodynamic Aviation at Reid-Hillview Airport, effective January 1, 2022. Signed January 11, 2022.

Exhibit G.3 – Permit For Storage, Sale or Distribution of Fuel and Lubricants for California in Nice dba Nice Air at Reid-Hillview Airport, effective 1, 2022. Signed January 3, 2022.

Exhibit H – Permit for Storage, Sale or Distribution of Fuel and Lubricants for San Martin Aviation at San Martin Airport, signed December 14, 2020.

Exhibit I – Santa Clara County Airports General Aviation Self-Fueling Permit, dated June 26, 2002.

Exhibit J – Santa Clara County Airports General Aviation Commercial Self-Fueling Permit, dated December 30, 2021.

Exhibit K – Letter dated December 13, 2021, to (then) FAA Administrator Stephen Dickson, from industry stakeholders regarding the safe transition to unleaded fuels in general aviation and requesting FAA use its safety mandate to prohibit individual airports from interrupting the availability of 100LL and stifling the cooperative industry-government effort to safely transition the entire general aviation fleet to unleaded fuels.

Exhibit L – Letter from the County of Santa Clara to Glynn P. Falcon responding to a request on behalf of Aperture Aviation for a short-term exemption to the “prohibition against fueling aircraft at [Reid-Hillview Airport] with 100LL avgas.” Dated December 19, 2022.

Item 10 – Complainant’s Answer In Opposition To Respondent County of Santa Clara’s Consolidated Motion to Dismiss and Motion for Summary Judgment, dated January 9, 2023. Includes 8 exhibits numbered 25-32.

Attachment 25 – Declaration of Paul Marshall in Opposition of Respondent’s Motion to Dismiss and Motion for Summary Judgment.

Attachment 25.1 – Paul Marshall email requesting self-fuel permit & permit application.

Attachment 25.2 – Letter from Paul Marshall and other E16 pilots re ensuring a smooth transition to unleaded Avgas at San Martin Airport.

Attachment 25.3 – Email from Mike McDonald on behalf of individual/private tenants.

Attachment 25.4 – Email from Eric Peterson to Paul Marshall with S.C.A.N. newsletter.

Attachment 25.5 – S.C.A.N. newsletter December 2021.

Attachment 26 – Survey and email from Michael Luvara August 2021.

Attachment 27 – Commercial Self-Fueling Permit.

Attachment 28 – Declaration of Niknam Nickravesh.

Attachment 29 – Santa Clara Press Release.

Attachment 30 – December 2022 Santa Clara County Airport Commission Meeting Notes.

Attachment 31 – Declaration of Dr. Joseph McMurray.

Attachment 31.1 – Complaint signature page including Dr. McMurray signature.

Attachment 32 – Declaration of Walter Gyger in Opposition of Respondent’s Motion to Dismiss and Motion for Summary Judgment.

Attachment 32.1 – Excerpt, Trade Winds Aviation Lease Agreement with the County of Santa Clara, effective January 1, 2022.

Attachment 32.2 – Santa Clara County Airports General Aviation Commercial Self-Fueling Permit.

Item 10A - Respondent County of Santa Clara's Motion for Extension of Time to Answer the Complaint, February 17, 2023.

Item 10B – Complainants’ Opposition to Respondent County of Santa Clara's Motion for Extension of Time to File Answer, February 21, 2023.

Item 11 — Notice of Extension of Time to Answer the Complaint until March 27, 2023, dated February 23, 2023.

Item 12 - Answer, Statement of Facts, And Affirmative Defenses of County Of Santa Clara, California, dated March 28, 2023. Includes Attachments A – M.

Attachment A – Complaint Filed Pursuant to 14 C.F.R. Part 16. Aircraft Owners and Pilots Association, *et.al* v. County of Santa Clara, California.

Attachment B – FAA EAGLE Initiative– A Path to a Lead-Free Aviation System. Initiative dated February 22, 2022.

Attachment C – Declaration of Harry Freitas in Support of Respondent County of Santa Clara’s Answer, Statement of Facts, And Affirmative Defenses, dated March 28, 2023.

Exhibit A-1 – Lease Agreement Between County of Santa Clara and JMM Aviation, LLC., dated December 31, 2021, and January 3, 2022. Effective January 1, 2022.

Exhibit A-2 – Lease Agreement Between County of Santa Clara and Amelia Reid Aviation LLC dba Aerodynamic Aviation, dated December 30, 2021, and January 3, 2022. Effective January 1, 2022.

Exhibit A-3 – Lease Agreement Between County of Santa Clara and California In Nice dba Nice Air, dated December 31, 2021, and January 3, 2022. Effective January 1, 2022.

Exhibit A-4 – Lease Agreement Between County of Santa Clara and Skyworks Aviation dba Tradewinds Aviation, dated December 30, 2021. Effective January 1, 2022.

Exhibit B – Lease Agreement Between County of Santa Clara and San Martin Aviation, dated November 10, 2020, and November 17, 2020. Effective December 12, 2020.

Exhibit C - Leaded Aviation Gasoline Exposure Risk at Reid-Hillview Airport in Santa Clara County, California, Study by Mountain Data Group, dated August 3, 2021.

Exhibit C-2 – Research Report – “Leaded aviation gasoline exposure risk and child blood levels. Published in PNAS NEXUS, 2022.

Exhibit D – County of Santa Clara Office of the County Executive – Recommendations Relating to an Airborne Lead Study of Reid-Hillview Airport, dated August 17, 2021.

Exhibit E – Santa Clara County Board of Supervisors, Minutes from August 17, 2021.

Exhibit F – List of airports by Site ID and State ID that do not offer leaded fuel. Chart prepared based on data downloaded on November 14, 2022, from FAA’s Airport Data and Information Portal. (Declaration of Harry Freitas)

Exhibit G-1 – Permit For Storage, Sale or Distribution of Fuel and Lubricants for JMM Aviation, LLC At Reid-Hillview Airport, effective January 1, 2022.

Exhibit G-2 – Permit For Storage, Sale or Distribution of Fuel and Lubricants for Amelia Reid Aviation dba Aerodynamic Aviation at Reid-Hillview Airport, effective January 1, 2022.

Exhibit G-3 – Permit For Storage, Sale or Distribution of Fuel and Lubricants for California In Nice dba Nice Air at Reid-Hillview Airport, effective January 1, 2022.

Exhibit H – Permit for Storage, Sale or Distribution of Fuel and Lubricants for San Martin Aviation at San Martin Airport, dated December 14 and 16, 2020.

Exhibit I – Santa Clara County Airports General Aviation Self-Fueling Permit. Dated June 6, 2002.

Exhibit J - Santa Clara County Airports General Aviation Commercial Self-Fueling Permit, dated December 30, 2021.

Exhibit K – Letter to the Honorable Stephen Dickson, Administrator, Federal Aviation Administration, from: Aircraft Owners and Pilots Association, Experimental Aircraft Association, General Aviation Manufacturing Association, Helicopter Association International, National Air Transport Association and National Business Aircraft Association, dated December 13, 2021.

Exhibit L – Letter from County of Santa Clara, Roads, and Airports Department to Glynn P. Falcon, dated December 19, 2022.

Exhibit M - Memorandum of Understanding Between the Federal Aviation Administration and the County of Santa Clara Regarding Part 13 Investigation, includes Exhibits A-C. Effective February 8, 2023.

Exhibit A. Notice of Informal Investigation under 14 CFR §13.1.

Exhibit B. - List of FAA Safety and Compliance-Related Concerns

Exhibit C - List of County of Santa Clara Requested Land Releases and Changes of Aeronautical Land Use Status.

Attachment D – Federal Register Notice, Vol. 87, No. 199- Monday, October 17, 2022 – Proposed Rule: Proposed Finding That Lead Emissions from Aircraft Engines That Operate on Leaded Fuel Cause or Contribute to Air Pollution That May Reasonably Be Anticipated to Endanger Public Health and Welfare – Environmental Protection Agency.

Attachment E – FAA Webpage – Environment and Airports – “Is tetraethyllead (TEL) Toxic?”

Item 13 – Complainants’ Reply to Respondent County of Santa Clara’s Answer, Statement of Facts, And Affirmative Defenses, dated April 7, 2023. Includes Attachments 1 – 10.

Attachment 1 – Past and Present FAA Grant Documents from 1963 – 2011, from website County of Santa Clara SCCGOV, dated 04/07/2023.

Attachment 2- PowerPoint presentation (one page) entitled Two Paths to Fuel Authorization, from Stakeholder Meeting March 16-17, 2022.

Attachment 3 - Supplemental Type Certificate, issues to General Aviation Modifications, dated July 23, 2021. Includes FAA Approved Model List.

Attachment 4 – PowerPoint page from EAGLE Stakeholder Meeting, June 23, 2022, entitled Aviation Gasoline Distribution System – Refinery to Wing.

Attachment 5 – Presentation to the Santa Clara County Airports Commission, dated April 4, 2023, from Douglas Rice, Regional Vice President of CalPilots. Includes a letter from California Pilots Association to Eric Peterson, Director of Airports, Santa Clara County, dated January 13, 2023.

Attachment 6 – Second Affidavit of Michael S. Luvara regarding efforts to obtain self-fueling privileges, dated April 7, 2023.

Attachment 7 – PowerPoint presentation on Fueling Program Overview, April Airports Commission Meeting, 2023.

Attachment 8 – PowerPoint presentation (one page) Objective 5 – Support Policy and Regulatory Proposals, from EAGLE Stakeholder Meeting, June 23, 2023.

Attachment 9 – PowerPoint presentation (one page) National Safe Transition to an Unleaded Aviation Future, from EAGLE Stakeholder Meeting, June 23, 2023.

Attachment 10 – Copy of Interim Cease and Desist Order to the City of Santa Monica, regarding a Notice of Investigation on alleged evictions of fixed base operators at the Santa Monica Airport, dated December 12, 2016.

Item 14 – Respondent’s Rebuttal to Complainant’s Reply. Includes Attachments F – J, Dated April 17, 2023.

Attachment F – Email from Eric Peterson to Walter Gyger regarding self-fueling permit. Dated March 28, 2023.

Attachment G – County of Santa Clara Airport Rules and Regulations. Dated March 27, 2001.

Attachment H – Fire Department, Santa Clara County, memo to Airport Operations with list of violations commonly found during the annual airport hangar inspections. Appears to be dated 02/22/13.

Attachment I – Stipulation and Order/Consent Decree between United States District County for the Central District of California and the City of Santa Monica. Attached is Settlement Agreement/Consent Decree Between the Federal Aviation Administration and the City of Santa Monica. Dated January 30, 2017. Attachment I also contain Exhibits A – D as attachments to the Settlement Agreement.

Attachment J – Letter from General Aviation Modifications, Inc. to Michael Regan, Administrator, United States Environmental Protection Agency regarding its projected availability of G100UL Avgas. Dated January 17, 2023.

Page 128 of 128 – Email from Pat Walenga (FAA) to parties with attachment of County’s Rebuttal to Complaint, 16-22-08.

Item 15 – Respondent County of Santa Clara’s Motion to Supplement the Record, dated August 11, 2023.

Item 16 – Complainant’s Opposition to Respondent County of Santa Clara’s Motion to Supplement the Record, dated August 21, 2023.

Item 17 – Respondent County of Santa Clara’s Motion to Further Supplement the Record, dated November 3, 2023.

Attachment L – Declaration of Harry Freitas in Support of the County’s Motion to Further Supplement the Record

Exhibit P – Permit for Storage, Sale or Distribution of Jet Fuel by JMM Aviation, LLC At Reid-Hillview Airport Permit 1029-Pt-23 (October 1, 2023).

Exhibit R.1 – Santa Clara County Airports General Aviation Commercial Self-Fueling Permit 1028-PT-23 (JMM Aviation, LLC, October 1, 2023).

Exhibit R.2 – Santa Clara County Airports General Aviation Commercial Self-Fueling Permit Number 1027-PT-23 (Amelia Reid Aviation LLC dba Aerodynamic Aviation, October 1, 2023).

Item 18 – Complainant’s Opposition to Respondent County of Santa Clara’s Motion to Further Supplement the Record, dated November 9, 2023.

Item 19 – County of Santa Clara, CA, FAA-generated SOAR AIP/Development Grant History Report.

Item 20 – Respondent County of Santa Clara’s Motion to Further Supplement the Record, dated November 12, 2024.

Item 21 – Complainant’s Opposition to Respondent County of Santa Clara’s Motion to Further Supplement the Record, dated November 22, 2024.

Item 22 – FAA Notice of Extension of Time, dated September 6, 2023.

Item 23 – FAA Notice of Extension of Time, dated February 9, 2024.

Item 24 – FAA Notice of Extension of Time, dated May 6, 2024.

Item 25 – FAA Notice of Extension of Time, dated June 7, 2024.

Item 26 – FAA Notice of Extension of Time, dated July 3, 2024.

Item 27 – FAA Notice of Extension of Time, dated August 7, 2024.

Item 28 – FAA Notice of Extension of Time, dated, September 10, 2024.

Item 29 – FAA Notice of Extension of Time, dated October 7, 2024.

Item 30 – FAA Notice of Extension of Time, dated November 4, 2024.

Item 31 – FAA Notice of Extension of Time, dated December 4, 2024.

Item 32 – FAA Notice of Extension of Time, dated January 3, 2025.

Item 33 – FAA Notice of Extension of Time, dated February 4, 2025.

Item 34 – FAA Notice of Extension of Time, dated March 4, 2025.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 24, 2025, I caused to be emailed a true copy of this Notice of Extension of Time for FAA Docket No. 16-22-08 addressed to:

FOR THE COMPLAINANT

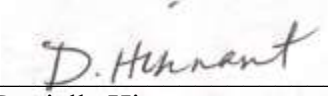
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FOR THE RESPONDENT

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Copy to:

FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Office of Airport Compliance and Management Analysis (ACO-100)
FAA Western-Pacific Region Airports Division (AWP)



Danielle Hinnant
Office of Airport Compliance
and Management Analysis