



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

Western-Pacific Region  
Airports Division

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

December 22, 2021

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

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

Dear Mr. Peterson,

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

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

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

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

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

## **I. BACKGROUND**

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

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

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

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

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

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

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

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

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

- **Grant Assurance 22**

FAA Grant Assurance 22 provides, in relevant part:

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

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

- f. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- g. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- h. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

- **Grant Assurance 23**

FAA Grant Assurance 23 provides, in relevant part:

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

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

- **Grant Assurance 19**

FAA Grant Assurance 19 provides, in relevant part:

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

## **II. FACTS AND ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

### **III. ISSUES UNDER INVESTIGATION**

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

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

#### **IV. OPPORTUNITY TO RESPOND**

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

Additionally, FAA is requesting a copy of the following:

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

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

Sincerely,

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

Attachments:

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

CC (*Without Attachments*):

Laurie J. Suttmeier, Manager, FAA, San Francisco Airports District Office  
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