

Richard K. Simon, Esq.  
1700 Decker School Lane  
Malibu, CA 90265  
(310) 503-7286  
rsimon3@verizon.net

July 2, 2014

Office of the Chief Counsel  
Attention: FAA Part 16 Airport Proceedings Docket  
AGC-610  
Federal Aviation Administration  
800 Independence Ave. S.W.  
Washington, D.C. 20591

**Re: Part 16 Complaint**  
***National Business Aircraft Association, Krueger Aviation, Inc.,  
Harrison Ford, Justice Aviation, Kim Davidson Aviation, Inc., Aero  
Film, Yuri Bujko, James Ross, Paramount Citrus LLC and Aircraft  
Owners and Pilots Association v. City of Santa Monica, California***

Dear Sir or Madam:

Pursuant to 14 C.F.R. § 16.23, National Business Aircraft Association, Krueger Aviation, Inc., Harrison Ford, Justice Aviation, Kim Davidson Aviation, Inc., Aero Film, Yuri Bujko, James Ross, Paramount Citrus LLC and Aircraft Owners and Pilots Association (collectively "Complainants") bring this complaint against the City of Santa Monica, California (the "City"), which is the owner, operator and sponsor of Santa Monica Municipal Airport ("SMO" or the "Airport"). This complaint is based on the City's repeated and continuing assertions that its Grant Assurance obligations will no longer be in effect after July 1, 2015, a position underscored by its intended closure of SMO, or the prohibition or restriction of some or all aircraft operations and other aeronautical activities (such as fuel sales) at SMO after that date.

All communications with respect to this complaint should be addressed to Richard K. Simon, 1700 Decker School Lane, Malibu, CA 90265; (310) 503-7286; rsimon3@verizon.net.

### **Complainants**

1. The National Business Aviation Association, Inc. ("NBAA") is a District of Columbia corporation that is the leading voice for companies that operate aircraft in support of their business or are otherwise involved in business aviation. NBAA

regularly acts as a spokesperson for business aviation before the U.S. government and in court cases and administrative proceedings, including prior disputes regarding the City. NBAA's membership includes more than 10,000 companies that operate aircraft in connection with their business or are otherwise involved in business aviation, and thus can or do make use of SMO, including but not limited to, Krueger Aviation, Inc. and Kim Davidson Aviation, Inc. NBAA acts as their representative in this proceeding, consistent with FAA precedent. *See, e.g., Bombardier Aerospace Corp. v. City of Santa Monica*, Docket No. 16-03-11, Director's Determination, at 1 n.1 and 22 (January 3, 2005).

2. Krueger Aviation, Inc. ("Krueger") is a California corporation engaged in the sale and brokerage of aircraft at SMO, where it has been a tenant for more than forty years. Krueger currently occupies approximately 10,000 feet of office and hangar space on two acres that it leases from the City on the south side of SMO. It sublets office and hangar space to seven sub-tenant businesses and maintains tie-down space for approximately thirty aircraft.

3. Harrison Ford is an actor, businessman and pilot. He has been an Airport tenant for ten years, basing both fixed-wing (piston and jet) and rotor aircraft in his north-side hangar. Ford has testified before Congress as an advocate for general aviation and regularly flies missions in support of humanitarian causes. He is a recipient of the 2010 National Aeronautic Association's Wright Brothers Memorial Trophy for aviation advocacy, mentoring and humanitarian service and the 2013 National Business Aviation Association's Al Ueltschi Award for Humanitarian Leadership.

4. Justice Aviation, a California corporation, is a full service flight school and aircraft rental facility located on the south side of SMO. An Airport tenant for 21 years, Justice Aviation currently employs eight flight instructors and maintains between 9 and 11 instruction and rental aircraft.

5. Kim Davidson Aviation, Inc., a California corporation, is an FAA certified Repair Station and a factory authorized Cirrus Aircraft service center located on the south side of the Airport. It has been an Airport tenant since 1982, and employs a staff of 11.

6. Aero Film is a California limited liability company engaged in the production of television commercials. It is based at the Airport, where it maintains offices and a hangar for two aircraft, a Cessna Citation SII and an MD 500 helicopter, both of which are used in its business. Aero Film has been an Airport tenant for 11 years.

7. Yuri Bujko is the owner and pilot of two aircraft, a Mooney Super M20 E and a Cessna Crusader, which he maintains for both business and personal use on the south side of the Airport, where he has been a tenant since 2008.

8. James Ross is a recreational flyer. He owns a Cessna 170, which is based in tie-down space on the south side of the Airport. He has been an Airport tenant for 18 years.

9. Paramount Citrus LLC, together with its affiliates, is the largest vertically integrated citrus business in the United States. Paramount Citrus Aviation, based in Bakersfield, California, is the business aviation department for the agricultural-based companies owned and operated by Paramount Citrus LLC and its related entities. Paramount Citrus LLC and Paramount Citrus Aviation are jointly referred to herein as "Paramount". Paramount has been a user of the Airport for more than 10 years, and logs approximately 235 monthly operations at the Airport in support of its business operations. Paramount relies on SMO as a vital hub for employee travel to multiple destinations across the western United States.

10. The Aircraft Owners and Pilots Association, Inc. ("AOPA") is an independent, not-for-profit education and advocacy association incorporated in New Jersey and headquartered in Frederick, Maryland. AOPA is the world's largest aviation membership association, representing approximately 370,000 pilots who fly for personal and business reasons. More than 6,000 of its members are within a 25-mile radius of the City, and many of those members base their aircraft at the Airport, including, but not limited to, Harrison Ford, Yuri Bulko and James Ross. AOPA acts as their representative in this proceeding, consistent with FAA precedent. *See, e.g., Bombardier Aerospace Corp. v. City of Santa Monica*, Docket No. 16-03-11, Director's Determination, at 1 n.1 and 22 (January 3, 2005).

11. As Airport tenants, users and representatives of tenants and users, each of the Complainants will be directly and substantially affected within the meaning of 14 C.F.R. § 16.23(a) should the City be free from Grant Assurance obligations as it contends.

### **Subject of the Complaint**

12. SMO is owned and operated by its sponsor, the City. As more particularly described below, for decades the City has received Airport Improvement Program ("AIP") grant funds by and through the Federal Aviation Administration ("FAA") and is obligated under the terms and covenants that have accompanied those grants.

13. The names and addresses of the responsible persons at the City are: Rod Gould, City Manager, 1685 Main Street, Room 209, Santa Monica, CA 90401; Marsha Jones Moutrie, City Attorney, 1685 Main Street, Room 310, Santa Monica, CA 90401; and Stelios Makrides, Airport Manager, Airport Administration Building, 3223 Donald Douglas Loop South, Santa Monica, CA 90405.

14. The City has repeatedly asserted, and has formally affirmed in pleadings in multiple court actions, that (1) its Grant Assurance obligations end in June 2014; (2) these obligations are extended, by a separate contract with the FAA, only until July

1, 2015; and (3) it is free after that date to operate or to close SMO entirely at its discretion.

15. The FAA has made it clear, and the Complainants believe and contend, that the City's Grant Assurance obligations extend until August 2023.<sup>1</sup>

## Facts

### Grants

16. SMO is a public-use reliever airport at which approximately 370 aircraft are currently based, with a total of 95,152 operations conducted in 2013.

17. The City has received substantial federal funding for improvements at SMO. As described in the Director's Determination in *Bombardier Aerospace Corp. v. City of Santa Monica*, Docket No. 16-03-11 (January 3, 2004):

In 1991, the FAA issued a \$2.3 million AIP grant for runway reconstruction. Based on a 1993 pre-application, on June 2, 1994, the City applied for an AIP grant to finance and construct several projects at SMO. On June 29, 1994, the city accepted a grant offer with a maximum Federal obligation of \$1,604,700 to: repair taxiways and aprons; pave infield areas; and construct blast walls, fencing, gates, a perimeter road alignment, lighting and signing, and an aircraft run-up enclosure. The specific grant was identified as No. AIP 3-06-0239-06. Two construction contracts were required to accomplish the work with completion in March of 2002. Subsequently, the city submitted a request to amend the grant agreement increasing the federal obligation by 15%, or \$240,600.

*Id.* at 4 (footnote omitted; emphasis supplied). The specific documentation relating to the City's grant application, the 1994 Grant Agreement, the 2003 amendment to the Grant Agreement, which extended the City's Grant Assurance obligations until 2023, and the Grant Assurances themselves are in the possession of the FAA, and include Exhibits 6 and 41 previously utilized in Docket No. 16-02-08.

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<sup>1</sup> The City is also obligated under the terms of a 1948 Instrument of Transfer, which it unsuccessfully challenged in *City of Santa Monica v. United States of America, et al.*, No. CV 13-8046, 2014 WL 1348499 (C.D. Cal.), now on appeal. That appeal may not be decided before July 1, 2015, and could result in further proceedings. In addition, the requirement of Grant Assurance 23 (that the City operate the Airport without granting any exclusive right or rights), in conjunction with 49 U.S.C. § 40103(e), extends in perpetuity so long as the Airport is operated as an airport.

### **The City's Efforts to Close or Restrict SMO**

18. For decades, the City has sought to close SMO or to restrict operations of jet aircraft, flight schools and other airport users. Its efforts have been thwarted only by the timely involvement of the FAA, including through Part 16 proceedings. The following is an exemplary, rather than all-inclusive, list of such efforts, which provides a context for understanding the City's current position.

19. In 1962, the Santa Monica City Council (the "City Council") sought the opinion of the Santa Monica City Attorney (the "City Attorney") as to whether the City could unilaterally "abandon the use of [SMO] as an airport." The City Attorney opined that it could not. *See* Exhibit 1.

20. In 1975, the City posed the same question to the California Attorney General, who also opined that the City's federal obligations precluded such an action. *See* Exhibit 2.

21. Unable to close the Airport at that time, the City Council instead adopted a series of ordinances governing Airport operations, one of which purported to ban all jet aircraft operations. The ordinance was stricken as unconstitutional by a federal District Court in *Santa Monica Airport Association v. City of Santa Monica*, 481 F. Supp. 927 (C.D. Cal. 1979), *aff'd* 659 F.2d 100 (9th Cir. 1981).

22. Obligated by the court's decision to accommodate jet operations at SMO, in 1981 the City Council nevertheless unanimously adopted Resolution No. 6296, which provided, in pertinent part:

It is the policy of the City of Santa Monica to effect the closure of the Santa Monica Municipal Airport as soon as possible and to devote the property on which it is located to its highest and best use, consistent with the needs of the City for a continuous base of revenue, for provision of affordable housing, for parks and open space, and for an environment consistent with the City's generally residential character.

*See* Exhibit 3. This resolution has never been rescinded.

23. In March 1982, the City began to implement Resolution No. 6296 by issuing Notices of Termination of leases to Airport tenants, including Fixed Base Operators. Following the filing of several tenant lawsuits, the City Council rescinded the Notices, but remained adamant about the City's goal of closing the Airport. As stated by then-City Attorney Robert Myers:

They [City Council] would like to close the airport at the earliest possible time. The earliest possible time may be 2015 and it may be earlier than 2015.

See Exhibit 4.

24. In 1984, as a result of the tenant lawsuits, and following extensive negotiations, the City and the FAA entered into an agreement (the “1984 Agreement”) which, *inter alia*, obligated the City to maintain the Airport through July 1, 2015:

[F]or public use as an airport on fair and reasonable terms, without unjust discrimination, and without granting any exclusive rights prohibited by law.

See Exhibit 5.

25. Notwithstanding the 1984 Agreement, and the separate obligations imposed by the Grant Assurances it executed thereafter, the City remained committed to eliminating or constraining Airport operations. In June 2003, the City Council adopted an ordinance promulgating a weight-based landing fee for aircraft weighing over 10,000 lbs. The ordinance was challenged in the *Bombardier Aerospace Corp.* Part 16 proceeding, and was found to violate Grant Assurance 22, the 1948 Instrument of Transfer and the 1984 Agreement. See Docket No. 16-03-11, Director’s Determination (January 3, 2005).

26. Undeterred, in March 2008, the City Council voted to simply ban all Category C and D (jet) operations at the Airport, ostensibly for safety reasons. After extensive administrative proceedings, the FAA found the ban to be in violation of the City’s federal obligations, see *In the Matter of the City of Santa Monica*, Docket No. 16-02-08, and the Court of Appeals subsequently upheld the decision and denied the petition for review. See *City of Santa Monica v. FAA*, 631 F.3d 550 (D.C. Cir. 2011).

### **The Present**

27. SMO operations and planning are overseen by the Santa Monica Airport Commission (the “Airport Commission”), which reports to and advises the City Council. At its March 25, 2014 meeting, the City Council received, discussed and voted unanimously to adopt the proposals of the Airport Commission, presented and recommended by the City staff in its Staff Report *The Future of Santa Monica Airport* (the “Staff Report”). See Exhibit 6. These proposals, set forth in the City Council Meeting Agenda for March 25, 2014 (Exhibit 7) and detailed in the Staff Report, are summarized as follows:

- Continue to pursue City control of the use of its Airport land;
- Direct staff to begin positioning the City for possible closure of all or part of the Airport after July 1, 2015;
- Direct preparation of a preliminary conceptual plan for a smaller airport that excludes the Airport’s western parcel;

- Direct staff to continue to consider zoning the Airport land to require uses compatible with surrounding uses;
- Consider notifying flight schools that flight school leases will be conditioned or will not be renewed after July 1, 2015; and
- Evaluate whether and how fuel sales should be prohibited or eliminated.

See Exhibit 7, at p. 3. The City Council also voted unanimously to offer Airport tenants only 3-year lease extensions after July 1, 2015, subject to terms and conditions which are to be developed by the Airport Commission and City staff and proposed to the City Council in the Fall of 2014.

### **Grant Duration**

28. As noted above, the City's acceptance of \$240,000 in additional AIP funds in 2003 extends its Grant Assurance obligations until 2023. The City, however, contends that these obligations end in June 2014, and are extended by the 1984 Agreement only until July 1, 2015. The City's contention is documented in:

- The City's 2010 brief on appeal of the FAA's Final Decision in Docket No. 16-02-08 (Exhibit 8), which states at p. 8, footnote 3 (citation omitted):

FAA claims that the City accepted a later grant in 2003. It did not. The 2003 transaction was just an accounting on a previous grant and included no new grant assurances. The Hearing Officer's language to the contrary, as stated in his findings of facts, is incorrect, and the City reserves all of its rights.

- Paragraphs 2 and 50 of the City's complaint in *City of Santa Monica v. U.S., et al.*, No. CV 13-08046 (C.D. Cal.) (Exhibit 9), in which the City averred at par. 2 and par. 50:

Santa Monica has clearly and repeatedly asserted its unencumbered title to the Airport Property and its ability, after certain contractual and legal obligations expire in July 2015, to use the Airport Property as it chooses in its sovereign discretion, including for non-aviation purposes.

\* \* \*

In June 1994, the City accepted its last federal grant for airfield improvements, in exchange for contractual promises to maintain the Airport for the use and benefit of the public for the useful life of improvements made

with federal funds, but no more than twenty years from the date of execution of the federal grant agreement. As of June 2014, therefore, the Airport will owe no further obligations to the United States under any federal grant agreement contracts.

- The January 16, 2014 Joint Rule 26 Report of Early Meeting of Counsel in the same case (Exhibit 10), in which the City stated at p. 3:

The City contends that its obligations to the Federal Government concerning the Airport property end in July 2015.

- The City Staff Report for the March 25, 2014 City Council meeting (Exhibit 6, at p. 24), which states:

As to the grant, the FAA contends that it obligates the City until 2023, while the City contends that the last grant was made on June 6, 1994 and expires on June 5<sup>th</sup> of this year.

29. It should be apparent from the foregoing that the City remains committed to its long-held position that it will not be obligated by its grant covenants after July 1, 2015 and that, as stated in its Complaint, Exhibit 9 *supra*, it can thereafter “use the Airport property as it chooses in its sovereign discretion.”

30. The City’s refusal to acknowledge and abide by Grant Assurance obligations after July 1, 2015 is appropriately addressed through the present Part 16 Complaint because:

- Part 16 governs “all proceedings involving Federally-assisted airports,” including those that arise under Grant Assurances, and an airport sponsor’s unabashed refusal to accept that it has any Grant Assurance obligations past a certain date directly implicates the validity and enforceability of the entire AIP Grant Assurance regime;
- The City has clearly and repeatedly expressed and documented its disregard for its ongoing Grant Assurance obligations and its intention to close or significantly restrict the Airport and its operations, in violation of those obligations, after July 1, 2015;
- Neither the Complainants, as owners of businesses located at and users of the Airport, nor the FAA can wait until July 2015, when the City plans to implement further measures, in disregard of its Grant Assurance obligations, to effectively gut Airport operations, causing harm that can never be undone;
- The Complainants’ businesses and operations already have been, currently are, and will continue to be adversely affected by the City’s repeated public



announcements of its intention to close or to significantly restrict the Airport and its operations after July 1, 2015, which effectively discourages investment in and commitment to the Airport by current and prospective tenants and users. Formal confirmation of the City's Grant Assurance obligations is essential to prevent further, possibly fatal, erosion of the Airport's viability and availability for all users and the general public.<sup>2</sup>

Accordingly, Complainants request that the FAA exercise its plenary authority under Part 16 to determine that the City's Grant Assurance obligations remain binding and effective, and that the City must continue to comply with those obligations, until no sooner than August 2023.

### **Pre-Complaint Resolution**

31. The FAA has recognized – in a prior Part 16 proceeding that also involved the City – that complainants are not required to engage in further one-sided efforts to resolve a dispute with officials who have “for all practical purposes” made clear that they will not comply with the Grant Assurances. *See Bombardier Aerospace Corp., and Dassault Falcon Jet Corp. v. City of Santa Monica*, Docket No. 16-03-11, at 23 (January 3, 2004). The City's insistence on non-compliance is equally clear in this instance; moreover, because only the FAA can modify Grant Assurance obligations, including their duration, and because the Complainants cannot represent or commit other Airport tenants in any negotiation with the City regarding those obligations, futility is even more evident. Nevertheless, the Complainants made the following efforts to determine if the City would be willing to consider that its Grant Assurance obligations continue through 2023.

32. On June 11, 2014, Complainants caused the letter attached hereto as Exhibit 11 to be delivered by certified mail and e-mail to City Manager Rod Gould, City Attorney Marsha Moutrie and Airport Manager Stelios Makrides.

33. On June 23, 2014, Ivan O. Campbell, Assistant City Attorney, responded with a letter, attached hereto as Exhibit 12. Mr. Campbell declined to even consider the duration of the City's Grant Assurance obligations.

34. On June 25, 2014, Complainants replied to Mr. Campbell, *see* Exhibit 13. Complainants received no response to this letter, and no further communication

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<sup>2</sup> Notably, as discussed *supra*, City staff have been specifically directed to proceed on the assumption that the City's federal obligations expire on July 1, 2015. Further, to the extent tenants will be offered lease extensions at all (i.e., in light of the City's position that it may adopt terms and conditions which prohibit some types of aeronautical activities, such as fuel sales), the City Council has directed that lease extensions be for a term of only three years (i.e., through 2018). This directive is contrary to the general obligation of a sponsor to offer long-term leases to tenants, in conjunction with the 2023 expiration date of the City's Grant Assurance-based obligations.

from the City.<sup>3</sup>

35. Accordingly, Complainants in this case have fulfilled the requirements of 14 C.F.R. § 16.21.

**Request for Relief**

36. The Complainants request that the FAA find that the Grant Assurances at SMO are effective through August 2023, and that the FAA take any actions that are necessary and appropriate to ensure compliance with those obligations.



Richard K. Simon, Esq.,  
1700 Decker School Lane  
Malibu, CA 90265  
310-503-7286  
[rsimon3@verizon.net](mailto:rsimon3@verizon.net)

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<sup>3</sup> Nor were the June 11, 2014 and June 25, 2014 letters Complainants' only prior effort to resolve this matter the City. *See, e.g.*, Exhibit 14 (a letter from NBAA to Santa Monica dated March 24, 2014).

## Certificate of Service

I hereby certify that I have this day caused the foregoing complaint to be served on the following persons by first-class mail and electronic mail:

Rod Gould  
City Manager  
City of Santa Monica  
1685 Main Street, Room 209  
Santa Monica, CA 90401  
[rod.gould@smgov.net](mailto:rod.gould@smgov.net)

Marsha Moutrie, Esq.  
City Attorney  
City of Santa Monica  
1685 Main Street, Room 310  
Santa Monica, CA 90401  
[marsha.moutrie@smgov.net](mailto:marsha.moutrie@smgov.net)

Ivan Campbell, Esq.  
Deputy City Attorney  
City of Santa Monica  
1685 Main Street, Room 310  
Santa Monica, CA 90401  
[ivan.campbell@smgov.net](mailto:ivan.campbell@smgov.net)

Stelios Makrides  
Airport Manager  
City of Santa Monica  
Airport Administration Building  
3223 Donald Douglas Loop South  
Santa Monica, CA 90405  
[stelios.makrides@smgov.net](mailto:stelios.makrides@smgov.net)

Dated this 2nd day of July, 2014.



Richard K. Simon, Esq.,  
1700 Decker School Lane  
Malibu, CA 90265  
310-503-7286  
[rsimon3@verizon.net](mailto:rsimon3@verizon.net)