



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

Office of Airport Compliance
and Management Analysis

800 Independence Ave, SW.
Washington, DC 20591

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**Re: *Mike Smith, et al v. City of Santa Monica, California*
FAA Docket No. 16-16-02**

Dear Ms. Marrin and Messrs. Silversmith, Simon and Lewis:

Enclosed is a copy of the final agency decision of the Federal Aviation Administration (FAA) on the Director's Determination in FAA Docket No. 16-16-02.

As discussed in detail in the attached Final Agency Decision, the Director's Determination is reversed in part and affirmed on remaining issue

Sincerely,

SHANNETTA R
GRIFFIN

Digitally signed by SHANNETTA
R GRIFFIN
Date: 2022.07.15 16:59:34 -04'00'

Shannetta R. Griffin, P.E.
Associate Administrator for Airports

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

MARK SMITH, *et al.*,
APPELLANT/COMPLAINANT,
V.
CITY OF SANTA MONICA, CALIFORNIA,
APPELLANT/RESPONDENT.



FAA Docket No. 16-16-02

FINAL AGENCY DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on cross appeals filed by Mark Smith, *et al.* (Smith or Complainant) and the City of Santa Monica, California (City or Respondent). The City owns and operates the Santa Monica Municipal Airport (Airport or SMO). Smith and the City challenge the findings of the November 8, 2019 Director's Determination (FAA Exhibit 2, Item 1).

In the Director's Determination, the Director of Airport Compliance and Management Analysis (Director) concluded:

1. **Issue 1** – The City is in noncompliance with 49 U.S.C. § 47133, 49 U.S.C. § 47107(l), Grant Assurance 25 and related FAA policies concerning certain advances and loans/grants made to the airport fund because they were not clearly documented as loans or interest bearing loans when they were made, as required by the *FAA Policy and Procedures Concerning the Use of Airport Revenue, 1999 (Revenue Use Policy)*.
2. **Issue 2** – Although the City charged below fair market value rents to the College and submitted a corrective action plan, the plan needs to be supplemented and the City needs to provide information showing (1) whether any similar occurrences have taken place with other non-aeronautical users at the Airport and (2) how to prevent any future occurrences of this type.
3. **Issue 3** – The City's landing fee methodology and fees do not reflect the actual use of the Airport (after the settlement was executed) and lack justification, and thus compliance with Grant Assurance 22 and Grant Assurance 24 cannot be established.
4. **Issue 4** – The City's current leasing policies are generally consistent with the 2017 Settlement Agreement, but any leases must be no less than (3) years in duration.

(FAA Exhibit 2, Item 1, p. 12.)

The Director also issued an Interim Order in accordance with 14 CFR §16.109(c) directing the City to submit within 30 days a corrective action plan, the terms of which include:

- a) Subject to FAA review and approval, and using acceptable financial and accounting practices, submit accurate loan and payment schedule which shows only the allowable loans from the general fund to the airport fund, as provided herein, and adjusts the outstanding allowable loan balances to reflect the payment, in full, of the November, 2004 advance of \$2,839,729; credit the improper interest payments charged to the airport fund totaling \$743,665 and \$515,672 and the principal overpayment of \$188,873, plus interest from the date of each improper payment; and provides documentation regarding the interest rate to be charged on the allowable loans does not exceed the rate for other City investments.
- b) Supplement the corrective action plan to (1) ensure future compliance, including any differential rents in FY2017 and beyond and (2) provide details on the current and future leases for the College property.
- c) Provide an updated landing fee methodology, acceptable to the FAA, which reflects the significant physical and operational changes that have occurred at the Airport since the 2017 Settlement Agreement and correct the stated deficiencies.
- d) Provide evidence that the leases being offered to aeronautical service providers at the airport are no less than 3 years in duration.
- e) Pending the FAA's approval of the corrective action plan, any approval of any applications submitted by the City for amounts apportioned under 49 U.S.C. § 47114(d) and authorized under 49 U.S.C. § 47115 will be withheld in accordance with 49 U.S.C. § 47106(d); and
- f) Consideration will also be given to seek and apply the sanctions for noncompliance as provided in Section IX, (E), (e-g) of *FAA Policy and Procedures Concerning the Use of Airport Revenue, 1999 (Revenue Use Policy)*.

(FAA Exhibit 2, Item 1, p. 13.)

Both parties appeal the Director's Determination on Issues 1 and 3 and the Complainant raises a new issue.

Accordingly, the FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, and the pleadings of both parties, in light of applicable law and policy. Based on this reexamination, the Associate Administrator affirms the Director's Determination in part, reverses in part, and modifies the corrective action plan.

This constitutes the final decision of the Associate Administrator for Airports pursuant to 14 CFR § 16.33(a).

II. SUMMARY OF THE DIRECTOR'S DETERMINATION

In the Director's Determination, the Director found the City in non-compliance with 49 U.S.C. §§ 47133 and 47107(1) and Grant Assurance 25, *Airport Revenue*, concerning certain advances and loans/grants to the Airport fund because they were not clearly documented as loans or interest-bearing loans. (FAA Exhibit 2, Item 1, p. 12.) Additionally, the Director found that the

landing fee methodology and fees do not reflect the actual use of the Airport (after the 2017 Settlement Agreement was executed) and lacks justification, and therefore compliance with Grant Assurances 22 and 24 could not be established. (FAA Exhibit 2, Item 1, p. 12.) The Director ordered a corrective action plan to address, among other items not on appeal, the improper loans and payments and provide an updated landing fee methodology, acceptable to the FAA. (FAA Exhibit 2, Item 1, p. 13.)

The findings that the City charged below fair market value rent to the College and that the City's leasing policies were consistent with the 2017 Settlement Agreement are not on appeal. (FAA Exhibit 2, Item 1, p. 12.)

III. PARTIES

A. Appellant/Respondent

The City is the owner and operator of SMO. SMO is a general aviation public-use airport capable of accommodating a wide range of business and personal aircraft, including corporate and business jets. FAA records indicate that the planning and development of the Airport has 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 codified at 49 U.S.C. § 47101, *et seq.* Between 1985 and 2003, the City received approximately \$9.9 million in AIP funds¹ (FAA Exhibit 2, Item 20, p. 2). Since 1948, certain airport land has also incurred obligations arising from land conveyed (*1948 Instrument of Transfer*) under the *Surplus Property Act*, as amended, 49 U.S.C. §§ 47151- 47153. (FAA Exhibit 2, Item 1, p. 2.)

B. Appellant/Complainant

The Complainants are Airport tenants and organizations with members who are users of SMO:²

1. Mark Smith – A pilot and owner of a Mooney 231 aircraft based in a hangar leased from the City.
2. Kim Davidson Aviation, Inc. (Kim Davidson Aviation) – An aircraft service provider at the Airport.
3. Bill's Air Center, Inc. (Bill's Air Center) – An aircraft service provider at the Airport.
4. The National Business Aviation Association, Inc. (NBAA) – A District of Columbia corporation that represents member companies that operate aircraft at the Airport.
5. The Aircraft Owners and Pilots Association, Inc. (AOPA) – An independent, not-for-profit education and advocacy association that represents members who base their aircraft at the Airport.

(FAA Exhibit 1, Item 1, pp. 3-4.)

¹ The total AIP funds was misstated as \$9.7M in the Director's Determination (FAA Exhibit 2, Item 1, p. 2). These AIP funds included a \$1,604,700 grant issued on June 7, 1994 and a \$240,600 amendment to that grant agreement. The amendment was issued on August 27, 2003 (FAA Exhibit 2, Item 21; FAA Exhibit 1, Item 20, p. 2).

² Justice Aviation, Inc. withdrew as a complainant May 13, 2016 (FAA Exhibit 1, Item 7).

IV. PROCEDURAL HISTORY

1. On February 5, 2016, the Complainants filed a 14 CFR Part 16 *Complaint* against the City (FAA Exhibit 1, Item 1).
2. On January 30, 2017, the City and the FAA entered into a *Settlement Agreement/Consent Decree* (the 2017 Settlement) (FAA Exhibit 1, Item 20).
3. On November 8, 2019, the Director issued the *Director's Determination* (FAA, Exhibit 2, Item 1).

Complainants' Appeal

1. On December 9, 2019, the Complainants appealed the Director's Determination and filed Motion for Interim Order (FAA Exhibit 2, Item 4).
2. On December 19, 2019, the City filed an Opposition to Complainant's Motion for Interim Order and Conditional Opposition to Petition to Expand the Record (FAA Exhibit 2, Item 6).
3. On December 30, 2019, the City filed a Reply to Complainants Appeal (FAA Exhibit 2, Item 8).
4. On December 30, 2019, the Complainants filed a Response to the City's Opposition for an Interim Order and the City's Conditional Opposition to Petition to Expand the Record (FAA Exhibit 2, Items 9 and 10).
5. On January 9, 2020, the Complainants filed a Response to the City's Reply to Complainant's Appeal (FAA Exhibit 2, Item 11).
6. On January 23, 2020, the City filed a further Reply to Complainant's Appeal (FAA Exhibit 2, Item 13).

City's Appeal

1. On December 4, 2019, the City filed a Motion to Extend Time to Appeal (FAA Exhibit 2, Item 2).
2. On December 17, 2020, the FAA granted City's Motion to Extend Time to Appeal (FAA Exhibit 2, Item 5).
3. On January 23, 2020, the City appealed the Director's Determination.
4. On February 12, 2020, the Complainants filed their Reply to the City's Notice of Appeal (FAA Exhibit 2, Item 14).

FAA Orders to extend time are listed in the Index of Administrative Record (FAA Exhibit 2).

V. THE APPEALS PROCESS

A party 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 (14 CFR § 16.33(c)). The review is limited to an examination of the Director's Determination and the administrative record upon which such determination was based. The Associate Administrator does not consider new allegations or issues on appeal unless finding good cause as to why the new issue or evidence was not presented to the Director (14 CFR § 16.33(f)).

On appeal, the Associate Administrator will consider (1) whether the findings of fact are supported by a preponderance of reliable, probative, and substantial evidence contained in the record; (2) whether the conclusions were made in accordance with law, precedent, and policy; and (3) whether there are questions on appeal that are substantial; and (4) whether any prejudicial errors occurred (14 CFR § 16.33(e)).

VI. ISSUES

The Associate Administrator identified four issues to be reviewed on Appeal:

- Issue 1** Whether the Director applied incorrect standards when he determined that five City transfers between 1988 and 2000 were not loans.
- Issue 2** Whether the Director applied an incorrect standard when he determined that three City transfers between 2004 and 2012 were loans or interest bearing loans.
- Issue 3** Whether the Director failed to address certain transfers and interest and made calculation errors in his determination.
- Issue 4** Whether the Director erred when he did not address specific issues with the City's landing fee methodology and found that the City's compliance with Grant Assurances 22 and 24 could not be determined based on outdated information and ordered a corrective action plan.

A. Preliminary Issue – New Allegations by Complainants

A significant portion of the Complainants' and the City's pleadings argue the new issue of whether City may use accumulated airport revenue for general fund purposes if SMO closes. The Associate Administrator is addressing this in detail below.

While arguing their appeal of the landing fee methodology (See Issue 4 below), the Complainants further claim that it should be impermissible "for the Airport to accumulate surpluses today that are not intended to ever be used for aeronautical purpose, but rather to be retained until after the Airport has been closed and then used to repurpose the property for non-aeronautical purposes and/or general municipal purposes" (FAA Exhibit 2, Item 4, Pg. 15). The Complainants also state, "The Western Pacific Region's informal determination dated October 21, 2019 [sic] warned Santa Monica that doing so would be non-compliant. Likewise, nothing in 49 U.S.C § 47133 suggests that the closure of an airport releases from its obligations any revenues previously collected under its auspices." (FAA Exhibit 2, Item 4, p. 15, FN 16.)

In response to the City's reply, the Complainants later state that it is unnecessary for the Associate Administrator to consider post-closure applicability of the statute to resolve the appeal. (FAA Exhibit 2, Item 11, p. 2.)

1. City Position on New Allegations

The City asks the Associate Administrator to “reject any finding that § 47133 will continue to restrict the City’s use of any remaining airport revenue if the City closes the Airport after December 31, 2028, as permitted by the Settlement Agreement/Consent Decree.” (FAA Exhibit 2, Item 8, p. 20.)

2. Associate Administrator’s Decision on New Allegations

The FAA’s process for considering a new issue or evidence in an appeal or reply to an appeal is stated in 14 CFR § 16.33(f)(1-3):

Any new issues or evidence presented in appeal or reply will not be considered unless accompanied by a petition of good cause found as to why the new issue or evidence was not presented to the Director. Such a petition must:

- (1) Set forth the new matter;
- (2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and
- (3) Contain a statement explaining why such a new issue or evidence could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

In raising and arguing this issue, neither party presented a petition of good cause as to why the issue was not presented to the Director as required under 14 CFR § 16.33 to raise new issues on appeal. Accordingly, this issue is dismissed.

VII. ANALYSIS

Issue 1 – Whether the Director applied an incorrect standard when he determined that five City transfers between 1988 and 2000 were not loans.

A. City Position

The City appeals the Director’s Determination that five transfers from the City general fund to the airport were not loans. These transfers were:

1. A 1988 transfer for \$575,000,
2. A 1989 transfer for \$1,035,200,
3. A 1990 transfer for \$857,236,
4. A 1990 transfer for \$1,889,322, and
5. A 2000 transfer for \$2,000,000.

(FAA Exhibit 2, Item 12, p. 3.)

The City argues that the Director applied an unduly restrictive and retroactive standard of proof when it found that the City's Comprehensive Annual Financial Reports (CAFRs) did not satisfy the "clearly supportable and documented" standard required to establish the transfers at issue as loans (FAA Exhibit 2, Item 12, p. 2). The City states that the determinative question should be whether there was a "documented expectation of repayment" at the time the transfer was made. The City argues that the Director's finding was contrary to the evidence (FAA Exhibit 2, Item 12, p. 3). The City claims that the CAFRs demonstrate the City's intent to be repaid. The City notes that the CAFRs consistently characterized the transfers as "advances" by the general fund and "payables" of the Airport Fund (FAA Exhibit 2, Item 12, p. 3). The City argues that interfund loans are described in this manner that is in generally accepted government accounting terminology. (FAA Exhibit 2, Item 12, pp. 3-4.)

The City notes that all the disputed transfers were made before the *Revenue Use Policy* was published and that until revenue use policies were published,³ airport sponsors were not on notice of any obligation to document an expectation of repayment. The City asks the Associate Administrator to reverse the Director's Determination to the extent it invalidated the repayment (without interest) of any loans the City made to the Airport (FAA Exhibit 2, Item 12, pp. 5-6).

B. Complainants Position

The Complainants argue that the Director's findings with regard to the disputed transfers should be affirmed and that the Director correctly concluded that the CAFRs references to the transfers were insufficient documentation to repay the principal on the transfers beyond six years. (FAA Exhibit 2, Item 14, pp. 1-2.) The Complainants assert:

To re-emphasize, the FAA requires a loan to be specifically documents 'at the time it was made.' 64 Fed. Reg. 7696, 7718 (February 16, 1999). An "expectation of repayment" does not meet the documentation standard, and a CAFR codified months later is not timely. Nor do general references to Airport related "advances" or "payables" in a CAFR adequately document a loan, consistent with the Revenue Use Policy. Pursuant to that policy, the FAA can require more from the City than may be required by Generally Accepted Accounting Principles ("GAAP"). And the excerpt from a treatise that the City previously submitted as an exhibit establishes that its general CAFR references do not even fulfill the GAAP requirements for loans, much less the FAA requirements for loans.

(FAA Exhibit 2, Item 14, p. 2.)

The Complainants argue that the City's claim that the transfers occurred prior to the *Revenue Use Policy* was raised for the first time on appeal and should not be considered. They also argue that the City waived this argument when it belatedly created documentation for the transfers in 2005. (FAA Exhibit 2, Item 14, p. 2.)

³ The Revenue Use Policy was codified at what is now 49 U.S.C. §47107(k)(5).

C. Associate Administrator's Determination

Having examined the arguments of the City and the Complainants, the Associate Administrator affirms the Director's Determination that the five City transfers that occurred between 1988 to 2000 are not loans. Under 49 U.S.C. § 47107(k)(5), "any request by a sponsor or any other governmental entity to any airport... for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred;..." The *Revenue Use Policy*,⁴ provides for an exception to the six-year limitation, "if the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds." See *Revenue Use Policy*, Section V.A.4.a., 64 Fed. Reg. 7696, 7718.

Thus, contributions for capital and operating costs that are **clearly documented as a loan at the time it was made** may be repaid over a longer period of time than six years. The preamble to the *Revenue Use Policy* further supports this position, "If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest-bearing loan to the airport when it is made." (*Revenue Use Policy*, 64 Fed. Reg. 7704.)

The *Revenue Use Policy* requires that reimbursement of principal and interest beyond six years requires that the contribution be clearly documented as a loan at the time it was made. The Director correctly found that the CAFRs do not show the transfers were interest-bearing loans at the time they were made; nor do they show any terms of the loans. (FAA Exhibit 2, Item 1, p. 7.) The CAFRs alone do not satisfy the "clearly documented" part of the standard required by the *Revenue Use Policy*. While the CAFRs are evidence of expenditures, they are not sufficient to document the expenditure as a loan.

After finding the CAFRs were insufficient evidence of a loan, the Director reviewed the loans/grant agreements pertaining to these transfers and found that they were executed years after the transfers. The Director found that these do not qualify as loans or interest-bearing loans under the *Revenue Use Policy* because they were not clearly documented as loans when the contributions were made (FAA Exhibit 2, Item 1, p. 7). Thus these loans/grant agreements do not meet the standard that loans be documented "at the time they were made". The Associate Administrator affirms this determination.

The City also argues that until the statutory revenue use provisions (49 U.S.C. § 47107(k)(5)) were enacted in 1996, airport sponsors were not on notice of any obligation to document their expectation of repayment. (FAA Exhibit 2, Item 12, p. 5.)

As explained in the preamble of the *Revenue Use Policy*:

Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a

⁴ FAA's *Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy)* explains how the FAA applies the statutory requirements of section 47107(k)(5). (64 Fed. Reg. 7696, Feb. 16, 1999).

sponsor may claim interest. The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

(Revenue Use Policy, 64 Fed. Reg. 7704)

We acknowledge the City's point that some of the transfers at issue occurred prior to 1996, but the City's Interfund Loan/Grant Agreements were not completed until 2005 – that is nine years after the enactment of 49 U.S.C. § 47107(k)(5) and six years after publication of the *Revenue Use Policy*. Therefore, even after receiving notice, the City did not establish that these transfers were loans in a reasonable timeframe.

The Associate Administrator affirms the Directors Determination that the City transfers from 1988 to 2002 did not qualify as loans or interest-bearing loans under the *Revenue Use Policy* because they were not clearly documented as loans when the contributions were made. Moreover, the claims were made after the statute was enacted and the *Revenue Use Policy* was published, and the transfers were not documented as loans until over six years after the publication of the *Revenue Use Policy*.

Issue 2 – Whether the Director applied an incorrect standard when he determined that three City transfers between 2004 and 2012 were loans or interest-bearing loans.

A. Complainants Position

The Complainants argue that the Director erred in applying a “reasonably contemporaneous” standard to loan documents when he found the following City transfers to be loans: (1) \$2,839,729 payment on November 30, 2004, (2) \$400,000 advance in April 2009, and (3) \$3,309,648 advance after July 1, 2011. (FAA Exhibit 2, Item 4, pp. 4-7.)

They further argue that the Director did not cite any authority for his interpretation that documentation executed between three and fifteen months after a transfer is reasonably contemporaneous. The Complainants claim that the Director's decision is inconsistent with the *Revenue Use Policy* requirement that a loan be “clearly documented...at the time it was made” (FAA Exhibit 2, Item 4, p. 6). They ask the Associate Administrator to find that “appropriate reimbursement is due the airport.” (FAA Exhibit 2, Item 4, p. 5.)

They request the Associate Administrator to order the following:

Concerning the November 30, 2004 transfer of \$2,839,729 to the Airport: Repayment of any interest paid by the Airport on or after February 5, 2010, and repayment of any principal paid after November 30, 2010. (FAA Exhibit 2, Item 4, p. 5.)

Concerning the April 2009 transfer of \$400,000 to the Airport: Repayment of any interest paid by the Airport on or after February 5, 2010, and any principal paid after April 2015 along with statutory interest. The Complainants also ask the FAA to require the City to provide additional documentation so calculations necessary to determine the reimbursement amount can be made. (FAA Exhibit 2, Item 4, p. 6.)

Concerning the transfer of \$3,309,648 to the Airport between July 1, 2011 and June 30, 2012: Repayment of any interest paid by the Airport after February 5, 2010 and repayment of any principal paid after July 1, 2017 along with statutory interest, and erase any outstanding balance. The Complainants also ask the FAA to require the City to provide additional documentation so calculations necessary to determine the reimbursement amount can be made. (FAA Exhibit 2, Item 4, p. 6.)

B. City Position

In reply, the City argues the Director properly found that the loan documentation was “reasonably contemporaneous” with the three identified transfers (FAA Exhibit 2, Item 8, p. 3). The CAFRs for all related fiscal years showed the “advances” by the City and “payables” by the Airport, which is the terminology used for interfund loans in government accounting (FAA Exhibit 2, Item 8, p. 6).

The City claims that the six-year limitation on reimbursement was codified to prevent a sponsor, many years later, claiming that a contribution was actually a loan (FAA Exhibit 2, Item 8, p. 5). The City argues that its CAFRs reflect the expectation of repayment and, since the loan documents were completed prior to the City closing its books, this is sufficient to document an expectation of repayment rather than merely a contribution (FAA Exhibit 2, Item 8, p. 9).

C. Associate Administrator’s Determination

Having examined the arguments of the Complainants and the City, the Associate Administrator reverses the Director’s Determination as it relates to the three City transfers between 2004 and 2012.

As discussed in Issue 1, there are two options for reimbursement to the City (1) reimbursement for capital and operating costs within six years for which the City CAFR documentation is sufficient to allow repayment and (2) reimbursement beyond the six year statute of limitations “if the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made...” *See Revenue Use Policy*, Section V.A.4.a., 64 Fed. Reg. 7696, 7718.

The record shows that the loan/grant agreement documents were all first signed between three to six months after the transfer of funds occurred.⁵ The Director determined that the loan/grant agreement documentation for each of the three City transfers was made within months of the transfer and therefore “reasonably contemporaneous” to establish the transfers as loans (FAA Exhibit 2, Item 1, p. 8). The *Revenue Use Policy* does not discuss a “reasonably

⁵ The interfund loan/grant agreement for the November 30, 2004 transfer of \$2,839,729 was first signed by the Finance Director on June 23, 2005, then by the Recipient Fund Manager on June 25, 2005 and the City Manager on August 3, 2005 (FAA Exhibit 1, Item 1, Exhibit 15g). The interfund loan agreement for the April 2009 transfer of \$400,000 was first signed by the City Attorney on July 13, 2009 then by the City Finance Director on July 22, 2009 and the City Manager on July 24, 2009 (FAA Exhibit 1, Item 1, Exhibit 16b). The interfund loan agreement for the \$3,309,648 transfer that occurred sometime between July 2011 and June 2012 was first signed by the City Attorney on October 10, 2012 and signed by the City Finance Director and City Manager on October 12, 2012 (FAA Exhibit 1, Item 1, Exhibit 16c).

contemporaneous” standard for documentation. The Director did not explain the “reasonably contemporaneous” standard or how he arrived at the standard.

The *Revenue Use Policy* requires the contribution to must be “clearly documented as a loan at the time it was made.” Under the circumstances in this case, the Associate Administrator finds that documentation completed three months after cannot be construed to be completed at the time the contribution was made. The transfers do not meet the requirements of the statute as explained in Section V.A.4.a of the *Revenue Use Policy* to qualify as loans. (*Revenue Use Policy*, 64 Fed. Reg. 7696, 7718.)

The Associate Administrator reverses the Director’s Determination and finds that these transfers were not structured as loans at the time the transfers were made; therefore, the City cannot seek reimbursement beyond six years. Since the transfers were documented in the City CAFR, the City is allowed reimbursement of the principal within six years from the date the transfer was made. Specifically, the Associate Administrator finds:

- (1) The November 30, 2004 transfer of \$2,839,729: The City is allowed reimbursement of the principal through November 30, 2010. The Airport is allowed repayment of any principal paid after November 30, 2010, and any interest paid after February 5, 2010 (recovery of improper interest prior to this date is time barred under 49 U.S.C. § 47107(m)(7) and the *Revenue Use Policy*). Within 60 days, the City must provide specific documentation identifying all payments made on this loan, all overpayments of principal and interest, all statutory interest owed, and a plan to credit the airport fund for these amounts.
- (2) The April 2009 transfer of \$400,000: The City is allowed reimbursement of the principal until April 2015. The Airport is allowed repayment of any principal paid after April 2015 and any interest paid on or after February 5, 2010 (recovery of improper interest prior to this date is time barred under 49 U.S.C. § 47107(m)(7) and the *Revenue Use Policy*) with statutory interest. Within 60 days, the City must provide specific documentation identifying the actual date of transfer (*e.g.*, interfund transaction document, or Journal Entries). In the absence of this documentation, the date of transfer will be April 1, 2009.
- (3) The \$3,309,648 transfer between July 1, 2011 and June 30 2012: The City is allowed reimbursement of the principal through July 1, 2017). The Airport is allowed repayment of any interest paid on this transfer and any principal paid after July 1, 2017 with statutory interest. Within 60 days, the City must provide specific documentation identifying the actual date of transfer (*e.g.*, interfund transaction document or Journal Entries). In the absence of this documentation, the date of transfer will be July 1, 2011.

Issue 3 – Whether the Director failed to address certain transfers and interest and made calculation errors in its determination.

A. Complainants Position

The Complainants raise three issues with the Directors findings of fact. The Complainants categorize these as “oversights” and “calculation errors.” Specifically, the Complainants argue:⁶

- (1) The Director failed to discuss a \$115,000 transfer when the City did not provide documentation that it was a loan or that it was repaid and the Airport’s outstanding balance should be reduced by \$115,000 and interest payments since February 5, 2010 be reimbursed (FAA Exhibit 2, Item 4, p. 7);
- (2) The Director used an inappropriate data set for interest paid on a \$2,414,000 loan/grant and miscalculated the amount of interest owed to the Airport. Complainants argue that the Director relied on the City’s “Recalculation of Balance Due on Loans from the City’s General Fund to the Airport Fund” rather than the interest payments made by the Airport to the City. The Complainants argue that this results in a reimbursement amount that is too low and that absent additional documentation, an exact calculation cannot be determined. Complainants ask the FAA to require the City to provide additional documentation so necessary calculations can be performed (FAA Exhibit 2, Item 4, pp. 7-8); and
- (3) The Director should have specified that his reimbursement calculations were subject to revision based on subsequent interest payments and that the City should identify what interest related transactions have occurred since 2016 (FAA Exhibit 2, Item 4, p. 8).

B. City Position

The City does not specifically rebut each allegation, but states,

If these issues have not otherwise been resolved by the time cross-appeals and any subsequent petitions for judicial review are decided, the City will promptly submit to the FAA revised calculations showing that proper reconciliations have been performed as the Complainants ask. There is no need to address each of the alleged accounting errors at this time. (FAA Exhibit 2, Item 8, p. 9).

C. Associate Administrator’s Determination

The Complainants claims are all related to the calculation of payments owed to the Airport and challenge the findings of fact by the Director. First, the Complainants claim that the Director failed to address an \$115,000 payment to the City in Fiscal Year 2007. In reviewing the pleadings, the Associate Administrator notes that the original complaint included \$115,000 in a list of advances from the City’s general fund to the airport and two exhibits that referenced an \$115,000 advance (FAA Exhibit 1, Item 1 at 44; Exhibits 13, 14); however, the City, in its Answer, stated in a footnote, “In FY 2006, the Airport made a payment of \$115,000 to the General Fund on its outstanding loan balance. The payment was returned to the Airport in FY 2007 because of a shortage in Airport funds” (FAA Exhibit 1, Item 11A, p. 13, FN6). The Complainants did not refute the City’s statement in its August 1, 2016, Reply (FAA Exhibit 1,

⁶ Complainants also raised issue with the application of interest on a \$400,000 transfer and the calculation of overpaid principal on the \$2,839,729 transfer (FAA Exhibit 2, Item 4, p. 7). The Associate Administrator discussed these transfers in Issue #2 above and its Order renders these claims moot.

Item 12). The fact was that the \$115,000 was a return of a payment and not a loan. There was no reason for the Director to opine on this matter as the issue is moot.

Next, the Complainants argue that the Director, in determining the amount of interest owed to the Airport on a \$2,414,000 transfer, incorrectly used the City's proposed recalculation of interest rather than the actual interest paid by the airport (FAA Exhibit 2, Item 4, p. 7). A review of the pleadings and the determination indicate that while the Director correctly determined these transfers were not loans and that the City improperly charged interest, the Director did inadvertently use the City's "Recalculation of Balance Due on Loans from the City's General Fund to the Airport Fund" rather than the actual interest payments made by the Airport to the City. The pleadings are silent on the amount of actual interest the Airport paid and the amount of interest owed to the Airport cannot be calculated based on the pleadings.

The Associate Administrator finds that the Director's calculation of interest owed on the \$2,414,000 transfer to the Airport was incorrect and orders the City to submit to the FAA an accounting of the interest payments made after February 5, 2010 and provide a repayment schedule for the interest and principal overpayment plus interest.

Finally, the Complainants take issue with a portion of the Director's Interim Order because the Director did not explain that reimbursement calculations may be revised as additional payments are made and did not require the City to identify all interest related transactions since 2016. The Complainants do not raise issues with the Director's findings, but with the level of instruction provided in the Interim Order. The Associate Administrator finds that the Director did not err in his determination, but supplements the Interim Order to clarify that any accounting of loans and any payment schedule will include all loans and payments made.

For the reasons provided above, the Associate Administrator affirms the Director's finding, but corrects errors in calculation and adds clarification to the order.

ISSUE 4 – Whether the Director erred when he did not address specific issues with the City's landing fee methodology and revenue surplus and found that the City's compliance with Grant Assurances 22 and 24 could not be determined based on outdated information and ordered a corrective action plan.

The Complainants and the City both appealed the Director's Determination on the landing fee methodology. The Complainants argue that the Director failed to address specific issues with the landing fee methodology and revenue surpluses (FAA Exhibit 2, Item 4, pp. 9-15). The City argues that the Director erred when he ordered a corrective action plan requiring the City to submit a landing fee methodology acceptable to the FAA without a finding of non-compliance (FAA Exhibit 2, Item 12, pp. 6-7). The City asks the Associate Administrator to withdraw FAA's Interim Order as it relates to the submission of a new landing fee acceptable to the FAA (FAA Exhibit 2, Item 12, p. 7).

A. Complainants Position

On appeal, the Complainants argue that the Director failed to address if the City's landing fee methodology was compliant with FAA requirements (FAA Exhibit 2, Item 4, pp. 9-13) and failed to address alleged revenue surpluses (FAA Exhibit 2, Item 4, pp. 13-15). The

Complainants ask the Administrator to resolve the compliance issues in the methodology, address the revenue surpluses, and conclude the corrective action instructions should have been broader in scope, including reimbursement of unlawful landing fees (FAA Exhibit 2, Item 4, p. 17). The Complainants also move for an interim order suspending the collection of landing fees at the airport (FAA Exhibit 2, Item 4, p. 2).

The Complainants argue that the Director should have addressed associated legal issues in their Complaint and specified methodological parameters for the corrective action (FAA Exhibit 2, Item 4, p. 9).⁷ They argue that if the prior methodology was improper, then inputting new data into the prior methodology will yield an incorrect result (FAA Exhibit 2, Item 4, p. 10). The Complainants argue that this prevents in-depth analysis of substantive issues raised in the Complaint, avoiding review while providing the City a nominal justification to increase its landing fees further based on prior reasoning (FAA Exhibit 2, Item 4, pp. 9-10).

In its reply, the City argues that the Complainants have not offered a good reason as to why the Associate Administrator should address all the legal challenges raised on a record that the Director determined was stale and would amount to an advisory opinion on a seven-year-old methodology (FAA Exhibit 2, Item 8, pp. 2, 12). The City states that it will propose a new landing fee for SMO within 90 days, taking into account the changed circumstances (FAA Exhibit 2, Item 8, p. 11).

The City argues that the Complainants have not pointed to any statutory authority for the FAA to order refunds, and if the FAA found the City's landing fees unlawful, it must first provide the opportunity for a hearing before ordering a refund (FAA Exhibit 2, Item 13, p. 11).

B. City's Position

On appeal, the City argues that the Director erred when, absent a finding of noncompliance, it ordered the City to "provide an updated fee methodology acceptable to the FAA, which reflects the significant physical and operational changes that have occurred at the Airport since the 2017 Settlement Agreement and correct the stated deficiencies." The City claims that without a finding of noncompliance, the Director cannot order corrective action and by doing so, this Order shifts the burden of proof to the City, when the burden of proof of a violation rests with Complainants. The City also argues that there is no provision of law providing that an airport sponsor obtains pre-approval from the FAA prior to implementing a new airport rate-setting (FAA Exhibit 2, Item 12, pp. 6-7). The City asks the Associate Administrator to withdraw the FAA's Interim Order as it relates to the submission of a new landing fee acceptable to the FAA (FAA Exhibit 2, Item 12, p. 7).

In its reply, the Complainants argue that matters related to implementing a corrective action directive remain with the Director even after the issuance of a Director's Determination and therefore the appeal is premature. The Complainants also note that the City cites no authority for the proposition that a finding of noncompliance is required for the FAA to order a sponsor to

⁷ The Complainants raised issues regarding transparency and documentation in establishing fees, airfield costs and revenue, indirect cost reimbursement, legal expenditures, amortization costs, double charges, facial reasonableness of the fees, and revenue surplus at the airport.

address a situation in which current compliance cannot be established (FAA Exhibit 2, Item 14, p. 3).

C. Associate Administrator's Determination

On January 30, 2017, after the pleadings in the case had been docketed, the FAA and City entered into a Settlement Agreement that led to significant changes at the airport. (FAA Exhibit 1, Item 20). Both the Complainants and the City agree that the circumstances at the airport have changed. (FAA Exhibit 2, Item 4, Page 9; FAA Exhibit 2, Item 8, Page 11.) However, the Complainants argue the Director should have addressed the issues they raised with the prior methodology and revenue surplus and the City asks the Associate Administrator to withdraw FAA's Interim Order as it relates to the submission of a new landing fee acceptable to the FAA.

It has been over five years since the Settlement Agreement was entered into and this is sufficient time for the City to have established a new landing fee methodology based on current and actual costs and use of the Airport. The City, in its Reply to Complainant's Appeal, stated that it would propose a new landing fee within 90 days, taking into account the changed circumstances (FAA Exhibit 2, Item 8, p. 11.)

The Director correctly explained in his analysis that due to the significant changes at the airport, the City's justification for the landing fee structure and rate setting methodology is obsolete, compliance could not be established and the City must update its methodology. The Director summarized these changes to include, "the reduction of the runway length from 5,000 feet to 3,500 feet, expanding non-aviation uses and related revenues (and how these are applied), changes in the airport's fleet mix, distinctions between based v. transient users, changes in budgets and forecasts, and an 80% reduction in jet operations." (FAA Exhibit 2, Item 1, p. 11.)

The Director concluded:

Because the City's justification for its landing fee methodology and rates does not reflect the current and actual costs and use of the Airport, and some of the methodology is unclear, compliance with Grant Assurances 22 and 24 cannot be established. Therefore, within 60 days, the City must update its methodology and fees to reflect current and actual costs in the use of the Airport and in accordance with FAA guidance.

(FAA Exhibit 2, Item 1, p. 11.)

Finally, the Director summarized this finding in his Conclusions and Findings, "The City's landing fee methodology and fees do not reflect the actual use of the airport (after the settlement was executed) and lack justification and thus compliance with Grant Assurance 22 and Grant Assurance 24 cannot be established." (FAA Exhibit 2, Item 1, p. 12.)

The Associate Administrator agrees with the Director's decision to not analyze an obsolete methodology. Addressing specific details of an old methodology risks misapplication and misinterpretation and does not serve to further establish an accurate rate setting. FAA's role in a Part 16 Complaint is to determine whether the Respondent is in current compliance with its federal obligations. (*See Platinum Aviation and Platinum Jet Center BMI v. Bloomington-*

Normal Airport Authority, FAA Docket 16-06-09, Final Decision and Order, (November 28, 2007), p. 25).

The Associate Administrator also agrees with the Director’s decision to require the City “update its methodology and fees to reflect current and actual costs in the use of the Airport and in accordance with FAA guidance.” This is supported by the *FAA Policy Regarding Airport Rates and Charges*, requirement that a sponsor have “a reasonable, ‘transparent’ and not unjustly discriminatory methodology.” (*FAA Policy Regarding Airport Rates and Charges*, 78 Fed. Reg. 55330, par. 2.4.5(b), September 10, 2013.)

While, the Associate Administrator agrees with the Director’s conclusions, since the Director did not find the City in non-compliance, the requirement to “Provide an updated landing fee methodology, acceptable to the FAA...” should not have been placed in the section on the corrective action plan.

The Associate Administrator affirms the Directors decision on this and removes the discussion of the landing fee methodology from the corrective action plan. The Associate Administrator reminds the City, that it has committed to updating its landing fee methodology. (FAA Exhibit 2, Item 8, p. 11.) Furthermore, failure to do so could result in future action under 14 CFR Part 16.

VIII. CONCLUSIONS AND FINDINGS

The Associate Administrator’s role is to determine whether the Director erred in findings of fact or conclusions of law in issuing the Director’s Determination. In arriving at a final decision in this Appeal, the Associate Administrator has reexamined the record in detail, including the Director’s Determination, the administrative record supporting the Director’s Determination, the pleadings of both parties, and applicable law and policy.

Based on this re-examination, the Associate Administrator reverses the Director’s Determination on Issue 1 and finds that the three identified City transfers do not qualify as loans.

On Issue 4, the Associate Administrator affirms the Director’s Determination and revises the Director’s Interim Order regarding the City’s landing fee methodology.

The Director’s Determination on all remaining issues are supported by a preponderance of reliable, probative, and substantial evidence, and are consistent with applicable law, precedent, and FAA policy.

Director’s prescribed corrective actions are modified as ordered below.

ORDER

ACCORDINGLY, it is hereby **ORDERED** that the Director’s Determination is reversed on Issue 1 and affirmed on all remaining issues.

The City is afforded 60 days to submit a detailed Correction Action Plan (CAP) consistent with this Final Agency Decision and acceptable to the FAA, which would:

- a) Regarding the \$2,839,729 transfer: Provide specific documentation identifying all payments made on the \$2,839,729 transfer, all overpayments of principal (after

November 30, 2010) and interest (after February 5, 2010), all statutory interest owed, and a plan to credit the airport fund for these amounts.

- b) Regarding the \$400,000 transfer:
 - i. Provide specific documentation identifying the actual date of the transfer. In the absence of this documentation, the date of transfer will be April 1, 2009.
 - ii. Provide specific documentation of any interest paid on or after February 5, 2010 and any principal paid after April 1, 2015 (or 6 years after the date identified in (1)(b)(i) above) and statutory interest owed and a plan to credit the airport fund for these amounts.
- c) Regarding the \$3,309,648 transfer:
 - i. Provide specific documentation identifying the actual date of transfer. In the absence of this documentation, the date of transfer will be July 1, 2011.
 - ii. Provide specific documentation of any interest paid on this transfer and any principal paid after July 1, 2017 (or 6 years after the date identified in (1)(c)(i) above) with statutory interest owed and a plan to credit the airport fund for these amounts.
- d) Regarding the \$2,414,000 transfer: Provide an accounting of all payments made on the \$2,414,000 transfer, all overpayments of principal (after November 30, 2010) and interest payments (after February 5, 2010), all statutory interest owed, and provide a repayment schedule.
- e) Subject to FAA approval and using acceptable financial and accounting practices, submit accurate loan and payment schedules that show only the allowable loans from the general fund to the airport fund as provided herein. This applies to all existing loans, transfers and payments and must account for all interest paid and accrued up to the date of FAA approval of the schedule.
 - i. The loan and payment schedule must document all loans, transfers, payments, and interest paid and accrued up to the date of FAA approval.
 - ii. All current and past loan interest rates cannot exceed the rate which the City received for other investments at the time of the loan.
 - iii. The airport may recover unlawful payments of principal or interest that were made with airport revenue after February 5, 2010.
 - iv. The City may only receive reimbursement of transfers to the airport that occurred over six years prior to the request, if the transfers has been determined to qualify as a loan.
 - v. Interest rates on repayments to the Airport must be at the statutory interest rate.
 - vi. The loan payment schedule must allow for continuing rolling calculation of payments made, interest accumulated, and remaining balance.
- f) Pending the FAA's approval of the corrective action plan, any approval of any applications submitted by the City for amounts apportioned under 49 U.S.C. § 47114 (d) and authorized under 49 U.S.C. § 47115 will be withheld in accordance with 49 U.S.C. § 47106 (d); and
- g) Consideration will also be given to seek and apply the sanctions for noncompliance as provided in Section IX,(E),(e-g) of FAA *Revenue Use Policy*.

All other Motions not specifically granted herein are DENIED.

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Agency Decision has been served on the party. (14 CFR § 16.247(a)).

SHANNETTA R GRIFFIN Digitally signed by SHANNETTA R
GRIFFIN
Date: 2022.07.18 16:09:14 -04'00'

Shannetta R. Griffin, P.E.
Associate Administrator for Airports
Federal Aviation Administration

Date

Mark Smith, *et.al.*, Complainants
v.
City of Santa Monica, California, Respondent

Docket No. 16-16-02

INDEX OF ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

FAA Exhibit 1

Item 1 – Part 16 Complaint, February 5, 2016.

- Exhibit 1 Transcript of remarks from Mayor McKeown and Councilmember Himmelrich to FAA on July 8, 2015.
- Exhibit 2 FAA Delays Part 16 Ruling, by Matthew Hall, (<http://smdp.com/author/matthew-hall>) on August 24, 2015.
- Exhibit 3 Santa Monica Warns Fuel Companies at Airport, by Niki Cervantes, Santa Monica Lookout, December 9, 2015.
- Exhibit 4 E-mail from Ted Winterer to Rick Rosenthal, October 27, 2015.
- Exhibit 5 City of Santa Monica City Council Minutes (unapproved), October 27, 2015.
- Exhibit 6 Resolution No. 6296, City Council Meeting, June 23, 1981.
- Exhibit 7 City of Santa Monica Inter-Department Memo, January 23, 1962.
- Exhibit 8 City Rescinds Eviction Notices to Airport Firms, Evening Outlook, October 15, 1981.
- Exhibit 9 Santa Monica Airport Agreement, January 31, 1984.
- Exhibit 10 City Council Report, City Council Meeting, October 4, 2011.
- Exhibit 11a Letter from Office of the City Attorney to Richard K. Simon, May 29, 2015.
- Exhibit 11b Memorandum of Agreement Regarding Santa Monica Airport Lease No. 4670 (CCS).
- Exhibit 12 Memorandum to Mayor and City Council from Rod Gould, City Manager, City Council Meeting, November 27, 2012.
- Exhibit 13 The City of Santa Monica - Advances from the City's General Fund to the Airport Fund.

- Exhibit 14 Airport Financial Tables.
- Exhibit 15a Interfund Loan/Grant Agreement, 08/03/05 (First Document).
- Exhibit 15b Interfund Loan/Grant Agreement, 08/03/05 (Second Document).
- Exhibit 15c Interfund Loan/Grant Agreement, 08/03/05 (Third Document).
- Exhibit 15d Interfund Loan/Grant Agreement, 08/03/05 (Fourth Document).
- Exhibit 15e Interfund Loan/Grant Agreement, (undated), (Fifth Document).
- Exhibit 15f Interfund Loan/Grant Agreement, (undated), (Sixth Document).
- Exhibit 15g Interfund Loan/Grant Agreement, 08/03/05 (Seventh Document).
- Exhibit 16a Interfund Loan Agreement from General Fund to the Airport Fund, 7/29/05.
- Exhibit 16b Interfund Loan Agreement Between City of Santa Monica and the City of Santa Monica Municipal Airport, 7/24/09.
- Exhibit 16c Interfund Loan Agreement Between City of Santa Monica and the City of Santa Monica Municipal Airport, 10/12/12.
- Exhibit 16d Interfund Loan Agreement Between City of Santa Monica and the City of Santa Monica Municipal Airport, 3/28/13.
- Exhibit 17 Santa Monica Airport Proposed FY 2010/2011 Budget Discussion, 1/25/2010.
- Exhibit 18 Santa Monica Airport Campus, October 4, 2011.
- Exhibit 19 General Fund Advances to Airport Fund – Airport Loan Balances, March 14, 2013.
- Exhibit 20 Email from Candace Tysdal, August 3, 2012.
- Exhibit 21a City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2008.
- Exhibit 21b City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2009.
- Exhibit 21c City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2010.
- Exhibit 21d City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2011
- Exhibit 21e City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2012.

- Exhibit 21f City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2013.
- Exhibit 21g City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2014.
- Exhibit 22 City of Santa Monica Advances from the City to the Airport through 6.30.08. City of Santa Monica Advances from the City to the Airport Estimate of Balances through June 30, 2016.
- Exhibit 23 City of Santa Monica FY 2015-2017 Proposed Biennial Budget Line Item Detail.
- Exhibit 24 City of Santa Monica City Council Minutes, April 30, 2013.
- Exhibit 25 City of Santa Monica Airport Commission Meeting Minutes (Unapproved), May 16, 2012.
- Exhibit 26 Airport Commission Memo, Santa Monica Airport Proposed Biennial Budget Fiscal Year 2013-2014 and FY 2014-2015 Discussion, February 25, 2013.
- Exhibit 27 Airport Commission Memo, Proposed Landing Fee Rate, April 2, 2013.
- Exhibit 28 Financial Projections – Proposed Landing Fee Calculation, March 13, 2013.
- Exhibit 29 City of Santa Monica Airport Commission Meeting Minutes (unapproved), April 1, 2013.
- Exhibit 30 Financial Projections – Proposed Landing Fee Calculation, April 17, 2013.
- Exhibit 31 City of Santa Monica Statement of Revenues, Expenses and Changes in Fund Net Assets, Year Ended Jun 30, 2008; June 30, 2010; June 30, 2011; June 30, 2012.
- Exhibit 32 Airport Commission Memo, Proposed Adjustments to the Landing Fee Program (Continued), April 22, 2013.
- Exhibit 33 City of Santa Monica City Agenda, April 30, 2013.
- Exhibit 34 City Council Report, Contractual Service Agreement for Airport Landing Fee Services, June 9, 2015.
- Exhibit 35a E-mail from and to Stelios Makrides and Kevin Nagata, January 17, 2013.
- Exhibit 35b E-mail from Stephanie Manglares to Stelios Makrides, November 19, 2012.
- Exhibit 35c Allocation of Operating expenses, November 15, 1012.

- Exhibit 35d E-mail from Stephanie Manglares to Stelios Makrides, April 23, 2013.
- Exhibit 36a Letter from Jol Silversmith to Brigitte Garay, July 3, 2013.
- Exhibit 36b Letter from Brigitte Garay to Jol Silvermith, July 24, 2013.
- Exhibit 36c Letter from Jol Silversmith to Brigitte Garay, July 31, 2013.
- Exhibit 36d Letter from Ivan Campbell to Jol Silvermith, August 30, 2013.
- Exhibit 37 Letter from Brigitte Garay to Mark Smith, May 15, 2014.
- Exhibit 38 Letter from Brigitte Garay to Mark Smith, July 16, 2014.
- Exhibit 39 Letter from Mark Smith to Brigitte Garay, June 29, 2015.
- Exhibit 40 Letter from Brigitte Garay to Mark Smith, July 23, 2015.
- Exhibit 41 Financial Table (Not Titled or dated).
- Exhibit 42 Financial Table Prof Services 2012-2014.
- Exhibit 43a City of Santa Monica Final Allocation Detail Report Fiscal Year 2008-2009 Actual, July 8, 2010.
- Exhibit 43b City of Santa Monica Final Allocation Detail by Division and Subpool, Total CAP for FY 2012-2013.
- Exhibit 44 Amortization Charges for Year Ended June 30 (undated).
- Exhibit 45a City of Santa Monica 2010-2011 Adopted Budget Line Item Detail and 2011-2012 Budget Plan Line Item Detail.
- Exhibit 45b City of Santa Monica FY 2013-2015 Adopted Biennial Budget Line Item Detail.
- Exhibit 45c City of Santa Monica FY 2015-2017 Adopted Biennial Budget Line Item Detail.
- Exhibit 46 City of Santa Monica Information Item, July 12, 2012.
- Exhibit 47 Review of Santa Monica Airport landing Fee Proposal and Related Financial Information (GRA Review).
- Exhibit 48a Massachusetts Port Authority Meeting Minutes, September 17, 2015.
- Exhibit 48b Schedule of Fees and Charges, Denver Municipal Airport System Rules and Regulations 92015).
- Exhibit 48c Massport Aircraft Operating & Parking Fees.
- Exhibit 48d RTAA Monthly Financial Reporting Package, May 31, 2015.

- Exhibit 48e Southwest Florida International Airport Rates and Charges
October 1, 2015 to September 30, 2016.
- Exhibit 48f Santa Fe Municipal Airport General Aviation Data Sheet.
- Exhibit 49 Santa Monica Airport Leasing Guidelines, August 12, 2014.
- Exhibit 50 Historical Tenant Ledger, Santa Monica College, August 28, 2008.
- Exhibit 51 Lease Ledger, Santa Monica College, August 28, 2013.
- Exhibit 52 GRA Memo: Santa Monica College Lease.
- Exhibit 53 Airport Leases.
- Exhibit 54 City of Santa Monica, City Council Report, March 25, 2014.
- Exhibit 55 City of Santa Monica, City Council Minutes, March 25, 2014.
- Exhibit 56 City of Santa Monica, City Council Minutes, August 12, 2014.
- Exhibit 57 City of Santa Monica, Airport Commission Minutes (unapproved),
October 27, 2014.
- Exhibit 58 City of Santa Monica, Airport Commission Minutes (unapproved),
February 23, 2015.
- Exhibit 59 City of Santa Monica, Airport Commission Minutes (unapproved),
March 23, 2015.
- Exhibit 60 City Council Meeting Memorandum, March 24, 2015.
- Exhibit 61 City of Santa Monica, City Council Minutes, March 24, 2015.
- Exhibit 62 City Council Meeting, Agenda, July 14, 2015.
- Exhibit 63 City of Santa Monica, City Council Minutes, July 14, 2015.
- Exhibit 64 City of Santa Monica, City Council Report, October 27, 2015.
- Exhibit 65 Letter from Richard Simon to City of Santa Monica, December 2, 2015.
- Exhibit 66 Letter from NBAA to Santa Monica Airport Commission,
March 28, 2013.
- Exhibit 67 Letter from NBAA to Santa Monica Mayor, April 26, 2013.
- Exhibit 68 Letter from NBAA to Santa Monica Mayor, March 24, 2014.
- Exhibit 69 Letter from NBAA to Santa Monica Mayor, March 19, 2015.
- Exhibit 70 Letter from NBAA to Santa Monica Mayor, July 14, 2015.
- Exhibit 71 Letter from NBAA to Santa Monica Mayor, October 26, 2015.

- Exhibit 72 Letter from NBAA to Santa Monica Airport Manager, December 2, 2015.
- Exhibit 73 E-mails to and from M. Pastucha, S. Manglaras, B. Dunn, April 24 & 29, 2013.
- Exhibit 74 Letter from Richard Simon to City of Santa Monica's Attorney, December 18, 2015.
- Exhibit 75 Letter from Richard Simon to City of Santa Monica's Attorney, January 22, 2016.
- Exhibit 76 Letter from Santa Monica City Attorney to Richard Simon, January 29, 2016.
- Exhibit 77 Letter from Richard Simon to City of Santa Monica's Attorney, February 3, 2016.

Item 2 – FAA Notice of Docketing, February 25, 2016.

Item 3 – City's Assented - To Motion to Extend Time, March 15, 2016.

Item 4 – FAA Order Granting Extension of Time, March 22, 2016.

Item 5 – City's Motion to Dismiss, April 11, 2016.

- Exhibit A Completed Agenda City of Santa Monica Regular Meeting, March 22, 2016.
- Exhibit B Instrument of Transfer, August 10, 1948.
- Exhibit C City of Santa Monica v. United States of America, CV-13-8046-JFW, Principal Brief for Plaintiff-Appellant City of Santa Monica, October 14, 2014.
- Exhibit D FAA Docket No. 16-14-04, Brief for Respondent City of Santa Monica on Appeal from the Director's Determination, January 8, 2016.

Item 6 – Complainant's Answer to Respondent's Motion to Dismiss, April 22, 2016.

- Exhibit 78 City of Santa Monica v. United States of America, CV-13-8046-JFW, brief Amici Curiae Aircraft Owners and Pilots Association and National Business Aviation Association in Support of Defendant-Appellees and Affirmance of District Court, January 22, 2015.
- Exhibit 79 Santa Monica Airport Commission (Minutes), March 15, 2016.

Item 7 – Motion of Justice Aviation, Inc. to Withdraw as a Complainant, May 13, 2016.

Item 8 – City's Assented - To Motion to Extend Time, June 1, 2016.

Item 9 – FAA Order Granting an Extension of Time, June 10, 2016.

Item 10 – Complainants' Assented-To Motion to Extend Time, July 8, 2016.

Item 11 – FAA Order Granting Extension of Time, July 27, 2016.

Item 11A – City’s Answer, July 1, 2016.

- Exhibit A Instrument of Transfer, August 10, 1948.
- Exhibit B City of Santa Monica v. United States of America, No. 14-55583, D.C. No. 2:13-cv- 08046-JFW-VBK (Memorandum), March 11, 2016.
- Exhibit C Comprehensive Annual Financial Report (excerpt Interfund Advances), City of Santa Monica, Years June 30, 1987 through June 30, 2015.
- Exhibit D Interfund Loan/Grant Agreement, 8/3/2005.
- Exhibit E Interfund Loan/Grant Agreement, 3/23/2013.
- Exhibit F City of Santa Monica Portfolio Management Summary, Monthly July 31, 2004 through June 30 2012.
- Exhibit G City of Santa Monica Recalculation of Balance on Loans from the City's general Fund to the Airport Fund, 6/30/16.
- Exhibit H Report 3, Final Allocation Report with Detail by Division & Subpool.
- Exhibit I City of Santa Monica, Overview of the Cost Allocation Plan.
- Exhibit J Letter from Eugene Korney to Martin Pastucha, April 19, 2013 and letter from Martin Pastucha to Eugene Korney, April 24, 2013 (includes financial tables).
- Exhibit K Santa Monica Airport, Financial Projects, Proposed Landing Fee Calculations, 4/1/2013.
- Exhibit L Letter from NBAA to Pam O'Connor, April 26, 2013.
- Exhibit M Completed Agenda, City of Santa Monica Regular Meeting, March 22, 2016.
- Exhibit N *City of Santa Monica v. United States of America*, Case No. CV13-08046, Complaint for Declaration and Injunctive Relief Under the Quiet Title Act and United States Constitution, October 31, 2013.
- Exhibit O *City of Santa Monica v. United States of America*, Case No. CV13-08046, Principal Brief for Plaintiff-Appellant, City of Santa Monica, October 14, 2014.
- Exhibit P FAA Docket No. 16-14-04, Brief for Respondent City of Santa Monica on Appeal from the Director's Determination, January 8, 2016.

Item 12 – Complainants’ Reply to Respondent’s Answer, August 1, 2016.

- Exhibit 28 Landing Fee Calculation (Excerpt).

- Exhibit 80 Airport Revenue Diversion, FAA Presentation, March 30, 2012.
- Exhibit 81 City Council Report, March 17, 2015.
- Exhibit 82 City of Santa Monica Comprehensive Annual Financial Report Year Ended June 30, 2015, Independent Auditor's Report (Memo).
- Exhibit 83 City of Santa Monica Staff Report 1621.
- Exhibit 84 City of Santa Monica Staff Report 1919.
- Exhibit 85a City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2005.
- Exhibit 85b City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2006.
- Exhibit 85c City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2007.
- Exhibit 85d City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2008.
- Exhibit 85e City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2009.
- Exhibit 85f City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2010.
- Exhibit 85g City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2011.
- Exhibit 85h City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2012.
- Exhibit 85i City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2013.
- Exhibit 85j City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2014.
- Exhibit 85k City of Santa Monica Comprehensive Annual Financial Report Ended June 30, 2015.
- Exhibit 86 Declaration of Kim Davidson, July 20, 2016.
- Exhibit 87 Airport Commission Rules.
- Exhibit 88 Notice regarding City's Control of Property at SMO.
- Exhibit 89 Santa Monica City Council Airport leasing and Licensing Policy.

Exhibit 90 Letter from Richard K. Simon to Stelios Makrides, June 7, 2016.

Exhibit 91 Letter from Richard K. Simon to Stelios Makrides, June 7, 2016.

Item 13 – City's Assented - To Motion to Extend Time, August 5, 2016.

Item 14 – FAA Order Granting Extension Request, August 16, 2016.

Item 15 – City's Rebuttal, September 13, 2016.

Exhibit Q Governmental Accounting, Auditing, and Financial Reporting, Stephen J. Gauthier, Government Finance Officers Association.

Exhibit R Operating Expense Detail Report.

Item 16 – Complainants' Supplement and Objections, September 19, 2016.

Exhibit 92 City of Santa Monica, City Council Report, August 23, 2016.

Item 17 – Notice of Change of Firm Address, September 27, 2016.

Item 18 – City's Corrective Action Plan, September 29, 2016.

Exhibit A Real Estate Appraisal Report - 2800 Airport Avenue.

Exhibit B Calculations of Rent Shortfall and Interest on SMC's Airport Arts Campus.

Item 19 – Complainant's Response to Santa Monica College Corrective Action Plan, October 11, 2016.

Item 20 – Settlement Agreement/Consent Decree between the FAA and the City of Santa Monica, January 30, 2017.

Item 21 – Notice of Address Change, April 1, 2019.

Item 22 – Santa Monica City Council Airport Leasing and Licensing Policy, August 2018 (Not found in regs.gov).

Item 23 – Santa Monica Airport News, From the City Manager's Office, June 20, 2018 (Not found in regs.gov) – note that this was not referenced in the DD and was not submitted to the docket by either party. We may want to identify it as deleted and not used.

Item 24 – FAA order for Extension of Time to Issue Director's Determination, June 7, 2018.

Item 25 – FAA order for Extension of Time to Issue Director's Determination, September 5, 2018.

Item 26 – FAA order for Extension of Time to Issue Director's Determination, October 17, 2018.

- Item 27** – Complainants Notice of Change of Address and Notice of Appearance, November 14, 2018.
- Item 28** – FAA order for Extension of Time to Issue Director’s Determination, December 14, 2018.
- Item 29** – Complainants Notice of Firm Name Change, January 7, 2019.
- Item 30** – FAA order for Extension of Time to Issue Director’s Determination, March 13, 2019.
- Item 31** – FAA order for Extension of Time to Issue Director’s Determination, May 29, 2019.

FAA Exhibit 2

- Item 1** – November 8, 2019 – Director’s Determination.
- Item 2** – December 4, 2019 – City of Santa Monica’s Motion to Extend Time to Appeal.
- Exhibit A *NBAA/AOPA/GMA v. City of Santa Monica/Santa Monica Municipal Airport, Informal Determination, October 21, 2019.*
- Item 3** – December 6, 2019 – Complainants Objection to Motion to Extend Time to Appeal.
- Item 4** – December 9, 2019 – Complainant Notice of Appeal and Brief, Motion for Interim Order.
- Item 5** – December 17, 2019 – FAA Order Granting Motion to Extend Time to Appeal.
- Item 6** – December 19, 2019 – City of Santa Monica’s Opposition to Motion for Interim Order.
- Exhibit A *NBAA/AOPA/GMA v. City of Santa Monica/Santa Monica Municipal Airport, Informal Determination, October 21, 2019.*
- Item 7** – December 19, 2019 – City of Santa Monica’s Conditional Opposition to Petition to Expand the Record.
- Item 8** – December 30, 2019 – City of Santa Monica’s Reply to Complainants’ Appeal.
- Item 9** – December 30, 2019 – Complainant’s Response to City of Santa Monica’s Opposition to Motion for an Interim Order.
- Item 10** – December 30, 2019 – Response of the Complainants to City of Santa Monica’s Conditional Opposition to Petition to Expand the Record.
- Item 11** – January 9, 2020 – Complainant’s Response to City of Santa Monica’s Reply to Complainant’s Appeal.
- Item 12** – January 23, 2020 – City of Santa Monica’s Notice of Appeal and Brief.
- Item 13** – January 23, 2020 – City of Santa Monica’s Further Reply to Complainant’s Appeal.

- Exhibit 1 142 Cong.Rec. S12232-01 (1996) Statement of Sen. Ford.
- Exhibit 2 Statement of A. Mary Schiavo, Inspector General, U.S. Department of Transportation, May 1, 1996.

- Item 14** – February 12, 2020 – Complainant’s Reply to City of Santa Monica’s Notice of Appeal.
- Item 15** – June 25, 2020 – FAA order for Extension of Time to Issue Final Agency Decision.
- Item 16** – September 22, 2020 – FAA Order for Extension of Time to Issue Final Agency Decision.
- Item 17** – November 30, 2020 – FAA Order for Extension of Time to Issue Final Agency Decision.
- Item 18** – January 22, 2021 – Notice of Email Address Change (Complainants Counsel).
- Item 19** – January 28, 2021 – FAA Order for Extension of Time to Issue Final Agency Decision.
- Item 20** – SMO Airport Improvement Program Grant History.
- Item 21** – Grant Step History Report, Grant Number: 3-06-0239-006-1994.
- Item 22** – March 3, 2021 – FAA Order for Extension of Time to Issue Final Agency Decision.
- Item 23** – May 4, 2021 – FAA Order for Extension of Time to Issue Final Agency Decision.
- Item 24** – July 1, 2021 – FAA Order for Extension of Time to Issue Final Agency Decision.
- Item 25** – September 8, 2021 – FAA Notice for Extension of Time to Issue Final Agency Decision.
- Item 26** – November 3, 2021 – FAA Notice of Extension of Time to Issue Final Agency Decision.
- Item 27** – December 22, 2021 – FAA Notice of Extension of Time to Issue Final Agency Decision.
- Item 28** – March 1, 2022 – FAA Notice of Extension of Time to Issue Final Agency Decision.
- Item 29** – April 28, 2022 – FAA Notice of Extension of Time to Issue Final Agency Decision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 19, 2022, I caused to be emailed and/or to be placed in the Federal Express a true copy of this Final Agency Decision for FAA Docket No. 16-16-02 addressed to:

For the Complainant

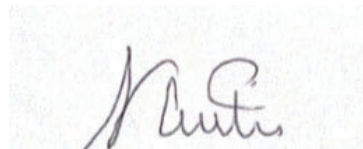
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Western Pacific Region Airports Division (AWP-600)



Natalie Curtis
Office of Airport Compliance
and Management Analysis