UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

EDWARD C. DART Complainant	)	
v.	)	Docket No. 16-99-20
CITY OF CORONA, CA and CORONA MUNICIPAL AIRPORT, *et al.* Respondents	)	

DIRECTOR'S DETERMINATION

INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the above-referenced complaint filed under *FAA Rules of Practice for Federally-Assisted Airport Proceedings*, 14 CFR Part 16 (FAA Rules of Practice).

Mr. Edward C. Dart filed the complaint (Complaint) against the City of Corona, California (City), which owns and operates the Corona Municipal Airport (Airport), and which is managed by Mr. William P. Cobb (Airport Manager).

The Complaint alleges that the City is denying access to the Airport by ultralight vehicles operating under Federal Aviation Regulations (FAR) Part 103, *Ultralight Vehicles*, 14 CFR Part 103, and, thereby, violating its Federal obligation to make the Airport available as an airport on reasonable and not unjustly discriminatory terms and conditions to all types, kinds and classes of aeronautical use. The Complaint further alleges that the City is also violating its Federal obligation prohibiting the grant of an exclusive right for the use of any landing area or air navigation facility on which Federal funds have been expended.

The Complaint submits that ultralight vehicle operations under FAR Part 103 are an aeronautical activity and must be accommodated on airports which have been developed with Federal assistance. It states that, following extensive discussions regarding the use of the Airport for operation of an ultralight vehicle,

the Complainant was advised by the Airport Manager that the established Visual Flight Rules (VFR) air traffic patterns in effect at the Airport preclude such operations because FAR Part 103 prohibits ultralight vehicle operations over congested areas; and that, consequently, only N-numbered aircraft are allowed at the Airport. It alleges, despite the suggestion of alternative traffic patterns which would safely accommodate ultralight vehicle operations, the City persists in excluding ultralight vehicle operations and restricting Airport use to other general aviation aircraft operations in violation of its Federal obligations regarding airport use.

The Complaint asserts that the City incurred the Federal obligations regarding airport use and prohibiting exclusive rights as a condition of having accepted Federal airport development grants under the Airport and Airway Improvement Act of 1982, 49 USC § 47107(a), *et seq.*, and having entered into deeds for Federal property transferred to the City pursuant to Section 16 of the Federal Airport Act of 1946, Section 23 of the Airport and Airway Development Act of 1970, Section 516 of the Airport and Airway Improvement Act of 1982, 49 USC § 47125, or the Surplus Property Act of 1944, 49 USC §§ 47151-47153.

The Complaint further asserts that, regardless of whether the City is a federally obligated airport sponsor under grant agreements or property deeds, the Airport is one upon which Federal funds have been expended for air navigation equipment and facilities; that airports at which FAA has installed navigational equipment are subject to the prohibition against exclusive rights for as long as the site is operated as an airport; and that the City's restrictions on use of the Airport by ultralight vehicles are designed to deny access to ultralight vehicles, thereby granting other general aviation aircraft an exclusive right to use the Airport contrary to the prohibition against exclusive rights pursuant to Section 308(a) of the Federal Aviation Act of 1958, as amended, 49 USC § 40103(e).

In summary, the Complaint presents the following allegations for evaluation and decision:

- whether the City, by not permitting ultralight vehicle operations at the Airport, is violating its Federal obligations regarding reasonable and not unjustly discriminatory conditions of airport use and prohibiting exclusive rights at an airport developed with Federal assistance under the Surplus Property Act of 1944, the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, or the Airport and Airway Improvement Act of 1982, as amended; and

- whether the City, by not permitting ultralight vehicle operations at an Airport on which Federal money has been expended for the installation of air navigation equipment, is effectively giving other general aviation aircraft operations an exclusive right to use the Airport in violation of its Federal obligations under Section 308(a) of the Federal Aviation Act of 1958, as amended, 49 USC § 40103(e).

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, we find that:

- the City is not a federally obligated airport sponsor, nor is the Airport a federally obligated airport developed with Federal assistance, under the Surplus Property Act of 1944, the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, or the Airport and Airway Improvement Act of 1982, as amended, because the City never has received Federal airport development assistance under those statutes;

- the prohibitions against unjust discrimination and exclusive rights required in return for Federal airport development assistance under those statutes do not apply to the City's operation of the Airport because the City and the Airport are not obligated under those statutes;

- the Airport is an air navigation facility on which Federal money, *i.e.*, FAA Facilities & Equipment (F&E) funds, has been expended for the installation of navigational equipment and, therefore, is subject to the prohibition against exclusive rights under 49 USC § 40103(e); and

- the City's restrictions on ultralight vehicle operations at the Airport do not constitute a grant of an exclusive right of airport use in violation of the prohibition against exclusive rights under 49 USC § 40103(e).

Our decision in this matter is based on the applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties which comprise the administrative record reflected in the attached FAA Exhibit 1.[1]

[1] FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.

THE COMPLAINANT

Mr. Edward C. Dart is the owner of an ultralight vehicle operating under FAR Part 103. He asserts that he has a pilot's certificate issued by the U.S.A.A. and has about 40 hours of flying time.[2]

THE AIRPORT

Corona Municipal Airport (Airport) is a public-use airport owned and operated by the City of Corona, CA. The Airport is the base of operations for approximately 450-500 general aviation aircraft.[3]

The Airport is located on federally owned property leased to the City by the U.S. Department of the Army for public park and recreational purposes, which include but are not limited to, municipal airport purposes, pursuant to 16 USC § 460d, effective through January 31, 2017.[4]

The financing, planning and development of the Airport has been the sole responsibility of the City, and has been conducted without FAA-administered airport development assistance.

Mr. William P. Cobb is the Airport Manager and the City's representative in this proceeding.

APPLICABLE LAW AND POLICY

Pursuant to 49 USC § 40101, *et seq.*, the FAA Administrator has broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The Federal role in encouraging and developing civil aviation has been augmented by various legislative actions which authorize programs for providing funds and other assistance to local communities for the development of airport facilities.

Federal financial assistance for public-use airport development currently is distributed by the FAA through the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 USC § 47101, *et seq.* The AIP is the successor to previous FAA-administered airport financial assistance programs authorized by superceded statutes, *e.g.*, the Federal Airport Aid Program (FAAP) authorized by the Federal Airport Act of 1946 and the Airport Development Aid Program (ADAP) authorized by the Airport and Airway Development Act of 1970.

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[2] FAA Exhibit 1, Item 1, Attachment B.
[3] FAA Exhibit 1, Item 3.
[4] FAA Exhibit 1, Item 4, Attachments A and B.

The conveyance of Federal land to public agencies for airport purposes is administered by the FAA, in conjunction with the U.S. Department of Defense and the U.S. General Services Administration. Federally owned or controlled land which has been declared surplus property is conveyed to public agencies for public-use airport purposes through the FAA Military Airports Program (MAP), pursuant to 49 USC §§ 47151-47153. Federal property which is not surplus, but in excess of U.S. Government needs may be conveyed for airport purposes pursuant to 49 USC § 47125. Similar property conveyance authority was conferred in Section 16 of the Federal Airport Act of 1946, and Section 23 of the Airport and Airway Development Act of 1970.

Under each Federal airport development program to date, the airport sponsor assumes certain obligations, either by assurances in grant agreements or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance as well as ensuring the public reasonable access to the airport.

Pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*, provides a list of the publicly and privately owned public-use airports developed with Federal assistance authorized by the Surplus Property Act of 1944, the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982.

FAA Order 5190.6A, *Airport Compliance Requirements*, issued October 2, 1989, (Order) provides guidance to FAA personnel, airport sponsors, and other interested persons regarding the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances.

The Airport Sponsor Assurances

As a condition precedent to providing Federal assistance for public-use airport development, the Secretary of Transportation receives certain assurances from the airport sponsor. These assurances are set forth in grant agreements and property conveyance instruments entered into by the FAA with the public-agency recipients of the airport development assistance.

For example, pursuant to 49 USC § 47107(a), each grant agreement must set forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance.

These staturorilly mandated sponsorship requirements are included in every airport improvement grant agreement and instrument of Federal property conveyance. Upon acceptance of a Federal airport improvement grant or Federal property conveyance by an airport sponsor, the assurances become a binding contractual obligation between the airport sponsor and the Federal government.

Terms and Conditions of Airport Use

Assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances implements the provisions of 49 USC § 47107(a)(1) and requires, in pertinent part, that the sponsor of a federally obligated airport

> make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical uses, including any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport. Assurance 22(a)
>
> establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. Assurance 22(h)
>
> may...limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. Assurance 22(i)

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions which would be detrimental to the civil aviation needs of the public.

FAA Order 5190.6A, *Airport Compliance Requirements*, issued October 2, 1989, (Order) describes in detail the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those aeronautical users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. *See* Order, Secs. 3-1 and 4-14(a)(2). Aeronautical use is any activity which involves, makes possible, or is required for the operation of aircraft, or which is required for the safety of such operations. *See* Order, Appendix 5.

The FAA considers it inappropriate to provide Federal assistance for improving airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. *See* Order, Sec. 3-8(a). The

owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. *See* Order, Sec. 4-13(a).

The owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. *See* Order, Sec. 4-7(a). For example, the airport owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport. *See* Order, Secs. 4-7 and 4-8.

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must, however, be reasonable and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied. *See* Order, Sec. 3-12.

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies an aeronautical activity access to a public-use airport. Such determinations often include consideration of whether failure to meet the qualifications of the standard is a reasonable basis for such denial and/or whether the application of the standard results in an attempt to create an exclusive right. *See* Order, Sec. 3-17(b).

The airport owner may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the airport users. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable. *See* Order, Sec. 3-17(c).

While an airport sponsor may impose minimum standards on those engaged in aeronautical activities, an unreasonable requirement or any requirement which is applied in an unjustly discriminatory manner could constitute the grant of an exclusive right. *See* Order, Sec. 3-8(b).

The Prohibition Against Exclusive Rights

49 USC § 40103(e), in which Congress recodified and adopted substantially unchanged the exclusive rights prohibition prescribed in Section 303 of the Civil Aeronautics Act of 1938 and in Section 308(a) of the Federal Aviation Act of 1958, as amended, prohibits exclusive rights at certain facilities and states, in pertinent part, that "[a] person does not have an exclusive right to use an air navigation facility on which Government money has been expended."

49 USC § 47107(a)(4) requires that "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport."

Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements the provisions of 49 USC §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the sponsor of a federally obligated airport

> "...will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public...will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airpor to conduct any aeronautical activities....and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code."

In FAA Order 5190.1A, *Exclusive Rights At Airports*, issued October 10, 1985, the FAA published its exclusive rights policy which defined exclusive rights as proscribed by the various relevant statutes, broadly identified the aeronautical activities subject to the statutory prohibition against exclusive rights, and enunciated FAA policy regarding the extent and duration of the exclusive rights prohibition.

Section 303 of the Civil Aeronautics Act of 1938, as amended, provided that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended." Section 308(a) of the Federal Aviation Act of 1958, as amended, adopted this language intact and expanded the proscription to include the providing of services at an airport by a single fixed-base operator (FBO), *i.e.*, commercial aeronautical activity, subject to certain specific conditions. *See* FAA Order 5190.1A, para. 7.a.

FAA Order 5190.6A, *Airport Compliance Requirements*, clarifies the applicability, extent and duration of the prohibition against exclusive rights under 49 USC § 40103(e) with regard to airports developed with FAA-administered grant assistance and Federal property conveyances. The exclusive rights prohibition is effective for

so long as the airport is operated as an airport. FAA Order 5190.1A, *Exclusive Rights At Airports*, issued October 10, 1985, provides that beneficiaries of FAA Facilities and Equipment (F&E) Program funds for installation of FAA navigational equipment on privately owned airports are also subject to the exclusive rights prohibition. *See* FAA Order 5190.1A, Para. 7.a. FAA policy recognizes that, logically consistent with that policy provision, any public-use airport, not otherwise federally obligated, on which such FAA F&E Program funds have been expended is also subject to the exclusive rights prohibition for so long as the airport is operated as an airport.

FAA takes the position that the grant of an exclusive right for the conduct of any aeronautical activity on such airports is regarded as contrary to the requirements of the applicable laws, whether such exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means. Consequently, the application of any unreasonable or unjustly discriminatory requirement or standard to proposed aeronautical use of such airports will be considered to be a constructive grant of an exclusive right contrary to applicable law and FAA regulations. *See* FAA Order 5190.1A, Paras. 8 and 11.c.

While federally assisted public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, established FAA policy provides that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. Nonetheless, we recognize that, under some circumstances, a person may be denied the right to engage in an aeronautical activity at an airport for reasons of airport safety, efficiency and utility. The justification for such restrictions, if challenged, must be fully documented by the airport owner.

The FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring airport sponsor compliance with Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations which an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of property conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports; rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in

exchange for monetary grants and donations of Federal property to ensure that the public interest is being served.

FAA Order 5190.6A, *Airport Compliance Requirements*, sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather it explains the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

FAR Part 16, *FAA Rules of Practice for Federally-Assisted Airport Proceedings*, 14 CFR Part 16 (FAA Rules of Practice) provides detailed procedures for investigating and adjudicating exclusively airport-related complaints under the applicable Federal statutes and the obligations imposed on the FAA-Airport Sponsor relationship by those statutes.[5] The FAA Rules of Practice also provide the only available vehicle for obtaining a final FAA decision in airport-related compliance matters.

BACKGROUND

On December 24, 1959, the City of Corona entered into a lease with the U.S. Department of the Army to occupy and use certain federally owned property for municipal airport purposes, pursuant to 16 USC § 460d. The lease, as subsequently amended, is effective through January 31, 2017.[6]

On May 13, 1999, on behalf of himself and a purportedly similarly qualified colleague, Mr. Dart submitted an official request to the City for permission to rent a hangar and use other facilities at the Airport for the conduct of ultralight vehicle operations under FAR Part 103. He stated that, while the ultralight vehicles for which access was requested were not N-numbered ultralights, they would be operated in accordance with FAR Part 103. He further stated that he was aware of other ultralight vehicles, N-numbered and not, which operated from the Airport; and that he proposed to use the same traffic pattern as did those ultralight vehicles, unless otherwise directed.[7]

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[5] *FAA Rules of Practice for Federally-Assisted Airport Proceedings*, 61 FR 53998-54012, effective December 16, 1996.

[6] FAA Exhibit 1, Item 4, Attachment B.

[7] FAA Exhibit 1, Item 1, Attachment B.

On June 29, 1999, Mr. William P. Cobb, Airport Manager, responding to Mr. Dart's request to engage in FAR Part 103 ultralight vehicle operations at the Airport, advised that FAR Section 103.15, *Operations over Congested Areas*, specifically prohibits ultralight vehicle operations over areas such as those surrounding the Airport and that, consequently, ultralight vehicle operations are not allowed at the Airport. He further advised that ultralights which have received an N-number from the FAA are not prohibited from adhering to the established fixed-wing Visual Flight Rules (VFR) traffic pattern over congested areas and are welcome to operate at the Airport. He stated that, according to FAA representatives, N-numbered ultralight vehicles are not classified as "ultralights;" rather they are classified as "experimental aircraft" which are allowed to operate over congested areas. He also rejected the establishment of the alternative ultralight flight pattern suggested by Mr. Dart, stating that establishing an additional VFR flight pattern for other than N-numbered aircraft would create a safety hazard directly above a congested area outside the Airport. Responding to the statement that ultralights without N-numbers were operating at the Airport under an adjusted VFR flight pattern, he advised that his investigation of this allegation had disclosed no such operations and invited Mr. Dart to provide the name and location of these unidentified operators, so that they could be apprised of the City's policy regarding such operations at the Airport.[8]

On November 1, 1999, Mr. Dart filed the instant Complaint under the FAA Rules of Practice, alleging that the City is violating its Federal obligations regarding airport use and exclusive rights by denying use of the Airport for ultralight vehicle operations (Complaint).[9]

On December 15, 1999, the City filed its answer to the Complaint (Answer). The City takes the position that it is not a federally obligated airport sponsor and that the Airport is not a federally obligated airport because the land area on which the Airport is located was not conveyed by or paid for by the Federal government. In support of its assertion, the City submits that the Airport is not identified as such by inclusion in FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*, and that the City consequently is not obligated to make the airport available to FAR Part 103 ultralight vehicle operations.

The City states that the Airport does not exclude ultralight vehicles; that the Airport is available for use by N-numbered ultralight vehicles, *i.e.*, FAA-certificated as experimental aircraft, meeting the aircraft insurance requirements specified in the Corona Municipal Code are eligible to use the Airport; and that approximately eight N-numbered ultralight vehicles are based and operate at the Airport. The City maintains that these N-numbered ultralight vehicles *cum* experimental aircraft are distinguishable from the type of FAR Part 103 ultralight vehicle operated by Mr. Dart; and that FAA certification of such aircraft is

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[8] FAA Exhibit 1, Item 1, Attachment A; and Item 2, Attachment C.
[9] FAA Exhibit 1, Item 1.

considered by the City to be evidence that they are capable of operating safely using the established VFR traffic pattern over congested and environmentally sensitive areas surrounding the Airport.[10] In addition, the City submits that the FAA has previously stated its opinion that the area immediately surrounding the Airport is a congested area within the meaning of FAR Part 103; that FAR Part 103 specifically prohibits ultralight vehicle operations over any congested area of a city, town or settlement; and that, consequently, it appears that ultralight vehicle operations at the Airport could not be conducted in compliance with FAR Part 103.[11]

The City further submits that the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (USACOE) have often expressed concerns about aircraft operations over protected critical habitats by existing Airport-based aircraft which are FAA-certificated and flown by FAA-licensed pilots over the established VFR traffic pattern, and that the City's restrictions on Airport use are based, in part, on the City's conclusion that the USFWS and USACOE would not look favorably on having non-certificated aircraft flown by non-licensed pilots operating at lower than the established VFR traffic pattern altitude over protected critical habitats.[12]

With regard to Mr. Dart's proposals for traffic patterns which would ostensibly accommodate FAR Part 103 ultralight vehicle operations at the Airport, the City submits that it has explored those options in consultation with FAA representatives and has concluded that adopting the proposals would severely degrade the safety of flight operations at the Airport and over the immediately surrounding area; and that the FAA, when apprised of the City's conclusion, had no objection to the City maintaining the established VFR traffic pattern for all aircraft operations at the Airport.[13]

On December 23, 1999, Mr. Dart filed a reply to the Answer (Reply). Mr. Dart submits that the Airport is located on 100 acres of USACOE land leased to the City, which fact is reflected in the City Parks and Recreation Department posting on the City's internet website; and that he believes an investigation would find that Federal funds have been expended on the development of the Airport. He contends that the City, by refusing to accommodate FAR Part 103 ultralight vehicle operations at the Airport, is ignoring FAA Order 5190.1A, *Exclusive Rights at Airports*, which states that the prohibition against exclusive rights remains in effect at an airport on which Federal funds have been expended for as long as it is operated as an airport. He further submits that FAR Part 103 recognizes that the intermixing of general aviation aircraft with relatively slower ultralight vehicle operations can be accommodated when operations are conducted in accordance with specific authorizations, and contends that FAR

[10] FAA Exhibit 1, Item 2, Attachment D.
[11] FAA Exhibit 1, Item 2, Attachment G.
[12] FAA Exhibit 1, Item 2, Attachment F.
[13] FAA Exhibit 1, Item 2, Attachments E-1 thru E-3, F and G.

Part 103 allows for varying patterns at or near uncontrolled airports when necessary to accommodate ultralight vehicle operations at an airport. He also contends that the City's allegedly unreasonable requirement that ultralight vehicles be N-numbered in order to use the Airport is evidence that the City is discriminating against FAR Part 103 ultralight vehicle operations and granting an exclusive right of airport use to N-numbered general aviation aircraft operations. He also disputes the reasons for the City's commitment to maintaining the established VFR traffic pattern for all aircraft operations at the Airport.

ANALYSIS AND DISCUSSION

The Complaint generally alleges that the City is operating the Airport in a manner inconsistent with its Federal obligations to make the airport available for aeronautical use on reasonable and not unjustly discriminatory terms and conditions without granting, directly or indirectly, any exclusive right of airport use, which obligations were incurred by the City upon entering into Federal airport development grant agreements and/or property deeds. Moreover; the Complaint alleges that, regardless of the City's current status under any such deed or agreement, that Federal funds have been expended on the Airport for the installation of air navigation facilities and/or equipment and, thus, the Airport remains subject to the prohibition against exclusive rights for so long as it is operated as an airport.

We conclude, based on our review of the airport-specific circumstances and the evidence of record, as discussed in detail below, that: (i) the City is not a federally obligated airport sponsor, nor is the Airport a federally obligated airport developed with Federal assistance, with respect to FAA-administered grants or property conveyances as alleged in the Complaint; (ii) the allegations, as presented in the Complaint, regarding unjust discrimination and exclusive rights in violation of the Federal obligations incurred upon receipt of such grant agreements and property conveyances will not be addressed further because the City has not received, nor has the Airport been developed with, such Federal airport development assistance; (iii) the Airport, on which FAA F&E funds have been expended for the installation of navigational equipment, is subject to the prohibition against exclusive rights under 49 USC § 40103(e); and (iv) the restrictions on ultralight vehicle operations at the Airport do not constitute a constructive grant of an exclusive right of airport use for other general aviation operations.

The Complaint alleges that the Airport is a federally obligated airport under obligations which were incurred, and included in contractual assurances, by the City in accepting Federal airport development grants under the Airport and Airway Improvement Act (AAIA), 49 USC § 47107(a), *et seq.*, or deeds for Federal property pursuant to Section 16 of the Federal Airport Act, Section 23 of the Airport and Airway Development Act, or the Surplus Property Act, 49 USC §§ 47151-47153.

The Complainant alleges that the Airport is listed as a sponsor airport under the AAIA, and that, as a condition of receiving financial assistance under the AAIA or property conveyances under certain Federal statutes, the Airport is required by its agreement to Standard Assurance 22 to permit airport use by all aeronautical activities, including FAR Part 103 ultralight vehicle operations. The Complainant further alleges that the Airport's refusal to permit FAR Part 103 ultralight vehicle operations is violating the exclusive rights prohibition set forth in Standard Assurance 23 to which all public agency recipients of such Federal airport development assistance must expressly agree.

The City maintains that the Airport is not a federally obligated airport within the meaning of the statutes cited by the Complainant; that the Airport is not included in the list of public airports affected by airport development agreements with the Federal government; and that the Airport is located on federally owned land which is leased, rather than deeded, to the City.

The FAA role in developing civil aviation has been augmented by the statutory authority to provide Federal grants and other assistance to local communities for the development of public-use airport facilities.[14] The FAA also has a statutory mandate to ensure that federally obligated airport owners comply with their sponsor assurances.[15] The scope of FAA's jurisdiction with regard to the operation of airports developed with federal assistance is prescribed by its statutory authority and the airport sponsor assurances set forth in grant agreements and property conveyance instruments.

In accepting Federal airport development assistance, an airport owner assumes certain obligations, fundamental among which is the responsibility for accommodating civil aviation by operating the airport in a reasonable and not unjustly discriminatory manner, particularly with regard to the terms and conditions of aeronautical use. This responsibility, prescribed in standard airport sponsor assurances included in FAA-administered Federal grant agreements and property conveyance instruments, requires the federally obligated airport sponsor to make its airport available for public use on reasonable terms and without unjust discrimination to all aeronautical uses without granting any person, either directly or indirectly, the exclusive right to conduct aeronautical activities at the airport.[16] FAA relies on this commitment, among others, made by airport sponsors in grant agreements to maintain a high degree of safety, utility and efficiency in the operation of federally obligated public-use airports.

Consequently, at issue for FAA evaluation and determination in this proceeding are only those matters raised in the Complaint which involve the obligations incurred

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[14] For Example, FAA administers the Airport Improvement Program (AIP), pursuant to 49 USC § 47101, *et seq*.

[15] FAA enforces federally obligated airport sponsors' compliance with their grant assurances under authority pursuant to 49 USC § 47122.

[16] *See*, Standard Assurances 22 and 23 discussed above.

by a public-agency airport sponsor participant in Federal airport development grant agreements or property deeds and/ or the obligations incurred at an airport on which Federal funds have been expended and, therefore, are within the scope of the Agency's jurisdiction to decide.

The Complainant has not provided, nor has our search of FAA files and databases disclosed, any evidence to support allegations that the Airport has been developed with Federal assistance, or that the City is a federally obligated airport sponsor, under any agreement or property conveyance instrument to which FAA is a party or over which FAA has congressionally mandated jurisdiction.

The Airport is indisputably a public-use airport. However, contrary to the Complainant's allegation, the Airport is not identified as a federally obligated airport in the list of publicly and privately owned public-use airports subject to agreements with the Federal government over which FAA has jurisdiction.[17]

The Airport is located on federally owned property leased to the City by the U.S. Department of the Army for public park and recreational purposes, which specifically include municipal airport purposes. However, the terms and conditions applicable to that portion of the Federal property leased for airport purposes do not include any obligations directly relevant to the use of the property for operation as an airport.[18]

Against this background, and based on the evidence of record in this proceeding, we conclude that the City is not a federally obligated airport sponsor subject to Federal obligations set forth in agreements or property deeds over which FAA has congressionally mandated jurisdiction.

However, our inquiry does not end here. FAA policy regarding the applicability of the exclusive rights prohibition specifically provides that the expenditure of FAA F&E funds for the installation of navigation aids on an airport makes the airport subject to the exclusive rights prohibition.[19]

Therefore, we also conclude that the only issue raised in the complaint which is within the scope of FAA jurisdiction to decide is whether the City, in operating an airport on which FAA F&E Program funds have been expended, is imposing terms and condition of airport use which result in the effective grant of an exclusive right. As discussed below, we further conclude that the City's restrictions on ultralight operations do not effectively grant an exclusive right of

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[17] FAA Order 5190.2R, *List of Public Airports Affected by Agreements with the Federal Government*. The Order provides a comprehensive list of airports developed with Federal assistance under Federal laws including, but not limited to, the Surplus Property Act of 1944, the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, as those statutes have been amended:

[18] FAA Exhibit 1, Item 4, Attachment B.

[19] FAA Order 5190.1A, para. 7(a).

airport use for general aviation aircraft operations other than ultralight vehicle operations at the Airport, as represented in the Complaint.

The Complaint contends that unreasonable terms and conditions of airport use for ultralight vehicle operations result in the exclusion of FAR Part 103 ultralight vehicle operations at the Airport and, therefore, grant other general aviation aircraft, either directly or indirectly, an exclusive right of airport use.

The Complaint alleges that the City refuses to permit FAR Part 103 ultralight vehicle operations at the Airport; that the City insists that the established Visual Flight Rules (VFR) air traffic patterns in effect at the Airport preclude such operations because FAR Part 103 prohibits ultralight vehicle operations over congested areas; that, consequently, the City permits only N-numbered aircraft operations at the Airport; and that, despite the availability of alternative traffic patterns which would safely accommodate ultralight vehicle operations, the City persists in excluding ultralight vehicle operations and restricting Airport use to other general aviation aircraft operations. The Complaint maintains that such unreasonable and unjustly discriminatory restriction of airport use to only N-numbered aircraft not only denies access to the Airport for FAR Part 103 ultralight vehicle operations, but also grants N-numbered general aviation aircraft an exclusive right to use the Airport.

The City, in response, denies that the Airport excludes ultralight vehicles. However, the City does not dispute the Complainant's description of the requirements for permissible aircraft operations at the Airport, and states that only ultralight vehicles bearing N-numbers, *i.e.*, ultralights certificated by FAA as experimental aircraft, which satisfy the aircraft insurance requirements specified in the Corona Municipal Code and are capable of flying the established VFR traffic pattern at the Airport are eligible to use the Airport.

In support of its position, the City submits that approximately eight N-numbered ultralight vehicles are based and operate at the Airport. The City maintains that these N-numbered ultralight vehicles *cum* experimental aircraft are distinguishable from FAR Part 103 ultralight vehicles and that FAA certification of the ultralight vehicles as experimental aircraft is considered by the City to be evidence that these N-numbered ultralight vehicles are capable of operating safely using the established VFR traffic pattern over congested and environmentally sensitive areas surrounding the Airport.[20] The City further submits that the FAA has confirmed its opinion that the area immediately surrounding the Airport is a congested area within the meaning of FAR Part 103; that FAR Part 103 specifically prohibits ultralight vehicle operations over any congested area of a city, town or settlement; and that, consequently, ultralight vehicle operations at the Airport could not be conducted in compliance with FAR Part 103.[21]

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[20] FAA Exhibit 1, Item 2, Attachment D.
[21] FAA Exhibit 1, Item 2, Attachment G.

The City further submits that the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (USACOE) have often expressed concerns about aircraft operations over protected critical habitats surrounding the Airport by existing Airport-based aircraft which are FAA-certificated and flown by FAA-licensed pilots over the established VFR traffic pattern, and that the City's restrictions on Airport use are based, in part, on the City's conclusion that the USFWS and USACOE would not look favorably on having non-certificated aircraft flown by non-licensed pilots operating at lower than the established VFR traffic pattern altitude over protected critical habitats.[22]

Regarding the suggested alternative traffic patterns which would ostensibly accommodate FAR Part 103 ultralight vehicle operations at the Airport, the City submits that it has explored those options in consultation with FAA representatives and has concluded that adopting the proposals would severely degrade the safety of flight operations at the Airport and over the immediately surrounding area; and that the FAA, when apprised of the City's conclusion, had no objection to the City maintaining the established VFR traffic pattern for all aircraft operations at the Airport.[23]

Against this background, we conclude that the City is operating the Airport in a manner consistent with the prohibition against exclusive rights by restricting aircraft operations at the Airport to those which are capable of operating within the established VFR traffic pattern. The City's restrictions which preclude FAR Part 103 ultralight vehicle operations simply reflect the established FAA position regarding the limitations necessary for safe aircraft operations over congested areas, such as those surrounding the Airport.

The City's restrictions on ultralight vehicle operations at the Airport are clearly based on a belief that uncertificated aircraft operations have no place over the congested areas surrounding the Airport. The City's belief is one shared by the FAA which bases its opinion on the fact that ultralight vehicles are not certificated as airworthy by any approved method and are flown by uncertificated pilots. The FAA believes that concentrations of the general public must be protected from the possible dangers inherent in the operations of ultralight vehicles of uncertificated and possibly unproven designs.[24]

Moreover, FAA has recently reviewed and evaluated the City's restrictions on ultralight vehicle operations at the Airport, including the established and alternative traffic patterns, and determined that ultralight vehicle operations at the Airport could not be conducted in compliance with FAR Part 103.[25]

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[22] FAA Exhibit 1, Item 2, Attachment F.
[23] FAA Exhibit 1, Item 2, Attachments E-1 through E-3, F and G.
[24] FAA Exhibit 1, Item 2, Attachment D, p. 12.
[25] FAA Exhibit 1, Item 2, Attachments E-1 through E-3, F and G.

Consequently, we conclude that the City's restrictions on ultralight vehicle operations at the Airport are consistent with the applicable FAA regulations designed to ensure airspace safety. Despite the fact that the restrictions preclude FAR Part 103 ultralight vehicle operations at the Airport, while permitting other general aviation aircraft operations. we cannot conclude that the restrictions constitute a constructive grant of an exclusive right at the Airport.

ORDER

On the basis of the airport-specific circumstances at Corona Municipal Airport and the administrative record in this proceeding, as discussed, we find that:

- the City of Corona, CA, is not a federally obligated airport sponsor, nor is the Corona Municipal Airport a federally obligated airport developed with Federal assistance, under the Surplus Property Act of 1944, the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, or the Airport and Airway Improvement Act of 1982, as amended;

- the prohibitions against unjust discrimination and exclusive rights required as a condition of Federal airport development assistance under those statutes do not apply to the City of Corona's operation of the Corona Municipal Airport;

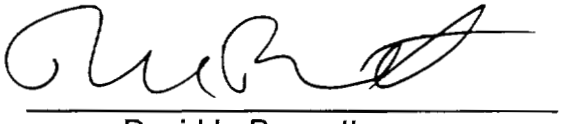
- the Corona Municipal Airport, an air navigation facility on which FAA Facilities & Equipment (F&E) funds have been expended for the installation of navigational equipment, is subject to the prohibition against exclusive rights under Section 308(a) of the Federal Aviation Act of 1958, as amended, 49 USC § 40103(e); and

- the restrictions on ultralight vehicle operations at the Corona Municipal Airport do not constitute a grant of an exclusive right of airport use in violation of the prohibition against exclusive rights under 49 USC § 40103(e).

ACCORDINGLY, the complaint is **DISMISSED**.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 USC § 46110. *See* 14 CFR 16.247(b)(2). Any party to this proceeding adversely affected by the Director's Determination may appeal this initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination.



David L. Bennett
Director
Office of Airport Safety and Standards

June 26, 2000
Date