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

Office of Airport Safety and
Standards

800 Independence Ave., S.W.
Washington, D.C. 20591

January 4, 2005

Mr. Frank J. Costello
Zuckert, Scoutt, & Rasenberger, LLP
888 Seventeenth Street, N.W.
Washington, DC 20006

Mr. Martin Tachiki
Deputy City Attorney
City of Santa Monica
1685 Main Street
Room 310
Santa Monica, CA 90401

RE: Bombardier Aerospace Corporation and Dassault Falcon Jet Corporation v. City of Santa Monica, Docket No. 16-03-11

Dear Messrs Costello and Tachiki:

Enclosed please find the Director's Determination of the Federal Aviation Administration (FAA) with respect to the above-captioned matter.

As discussed in the Director's Determination, we conclude that the City of Santa Monica is in violation of its Federal obligations, specifically Federal Grant Assurances 22, Economic Nondiscrimination and 23, Exclusive Rights.

Pursuant to 49 U.S.C. § 47106(d), unless and until the City of Santa Monica rescinds, amends, or takes formal action to cease enforcement of the Airside Surfaces Maintenance Program (ASMP) and its corresponding landing fees, the FAA will withhold approval of any applications for new FAA grants submitted by the City for amounts apportioned under 49 U.S.C. § 47114 (c) and (d) and any application by the City for discretionary grants authorized under 49 U.S.C. § 47115.

As discussed more fully in the Director's Determination, the City of Santa Monica may request a hearing within 20 days after service of the Director's Determination. The City of Santa Monica may waive a hearing and appeal the Director's Determination directly to the FAA Associate Administrator for Airports within 30 days after service of the Director's Determination. Alternatively, the City of Santa Monica may submit, jointly with FAA counsel, a proposed consent order under 14 CFR § 16.243(e) disposing of the

case. As explained in the Director's Determination, the City and the FAA may agree to a reasonable extension of time for formulating the City's corrective action.

This Director's Determination is an initial agency determination and does not constitute final agency action subject to judicial review under 49 U.S.C. § 46110. However, if the City of Santa Monica elects not to request a hearing or to file an appeal in writing within the time period specified in 14 CFR § 16.109(c), the Director's Determination becomes final.

Sincerely,

David L. Bennett
Director of Airport Safety
and Standards

cc: Mr. Robert Trimborn

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Bombardier Aerospace Corp., and Dassault Falcon Jet Corp., **Complainants,** **v.** **City of Santa Monica,** **Respondents.**

FAA Docket No. 16-03-11

January 03, 2004

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the Complaint filed under *FAA Rules of Practice for Federally Assisted Airport Proceedings*, 14 Code of Federal Regulations (CFR) Part 16, by the National Business Aviation Association, Inc. (Complainant's Representative),[1] Bombardier Aerospace Corp., and Dassault Falcon Jet Corp., (Complainants). The complaint was filed against the City of Santa Monica (City/Respondents/Sponsor) which owns and operates the Santa Monica Municipal Airport (SMO) in Southern California.

In this Part 16, the Complainants argue that certain rates and charges promulgated by the City with respect to aircraft operations at SMO, namely the landing fees associated with a pavement maintenance program, the "Airside Surfaces Maintenance Program"[2] (ASMP), are contrary to Federal law. The schedule of landing fees that is the subject of this Complaint was set forth in an ordinance adopted by the Santa Monica City Council on June 10, 2003[3] and that went into effect on August 1, 2003.[4]

The Complainants allege that by adopting the ASMP and its associated landing fees, the City, as the sponsor of SMO, has enacted a regulation regarding the use of a federally assisted airport that is unreasonable and unjustly discriminatory. Specifically, the Complainants' arguments concern the landing fees that are imposed on aircraft weighing 10,000 lb or more. Complainants argue that the landing fees violate Grant Assurances 22 (economic non-discrimination) and Grant

[1] In accordance with 14 C.F.R. 16.23(a) and established policy, while National Business Aviation Association, Inc. (NBAA) as an association, is not a party directly affected by the alleged non-compliance, Bombardier Aerospace Corp. (BAC) and Dassault Falcon Jet (DJC) are affected and are parties to this proceeding. The Director, however, recognizes that NBAA may act as BAC's and DJC's representative.
[2] FAA Exhibit 1, Item 3, Exhibit 5.
[3] FAA Exhibit 1, Item 1, p.3.
[4] FAA Exhibit 1, Item 2, p. 3.

Assurance 23 (exclusive rights prohibition) as well as the 1984 Santa Monica Airport Agreement (1984 Agreement) to which the FAA is a party.[5]

Additionally, the Complainants maintain that the landing fees violate the 1948 Surplus Property Instrument of Transfer (Surplus Property Agreement) by which the United States Government transferred its leasehold interest in Santa Monica Airport to the City of Santa Monica.[6] In responding to the entire Complaint, the City denies that that the landing fees violate Grant Assurance 22 and 23 and further states that the 1984 Santa Monica Airport Agreement (1984 Agreement) is not within the jurisdiction of 14 CFR Part 16.[7]

Since the FAA considers the application of any unreasonable or unjustly discriminatory requirement or standard to proposed aeronautical use to be a constructive grant of an exclusive right contrary to applicable law and FAA regulations, the FAA also considered whether such a constructive exclusive right was granted in addition to whether there was violation of the exclusive rights prohibition in Grant Assurance 23, 49 USC § 40103 (e) and 49 USC § 47107 (a)(4). Title 49 USC § 40103 (e) and 49 USC § 47107 (a)(4) prohibit the granting of exclusive rights at federally obligated airports.

SMO is also obligated under the powers and authority contained in the provisions of the Surplus Property Act (SPA) of 1944 as amended, 49 USC § 47151-153. Surplus Property agreements contain restrictive deed covenants similar to those under 49 USC § 47107 (a)(1), 49 USC § 47107 (a)(4) and 49 USC § 40103 (e) addressing reasonableness, unjust discrimination and exclusive rights. Therefore, these surplus property obligations also apply in this case. Surplus property deed covenants run with the land and do not expire.

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

- By implementing and enforcing the ASMP and its associated landing fees, the City has not made SMO available to the public on reasonable terms and without unjust discrimination pursuant to its statutory obligations and grant assurances, and is in violation of Grant Assurances 22 and similar provisions contained in the 1948 Instrument of Transfer and in the 1984 Agreement.

- By implementing and enforcing the ASMP and its associated landing fees, the City has granted exclusive rights for the use of the airport in violation of its statutory obligations and grant assurances, specifically Grant Assurance 23 and similar provisions contained in the 1948 Instrument of Transfer and in the 1984 Agreement.

The FAA's decision in this matter is based on the applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the all the parties, researched and ordered by FAA which comprise the administrative record reflected in the attached FAA Exhibit 1.

---

[5] FAA Exhibit 1, Item 1, p.3.
[6] FAA Exhibit 1, Item 1, p.3.
[7] FAA Exhibit 1, Item 2, p.3.

II. THE COMPLAINANTS

The Complainants in this proceeding are Bombardier Aerospace Corp. (BAC), and Dassault Falcon Jet Corp. (DFJ).[8] The above-mentioned companies whose aircraft use SMO, brought about this Complaint.

NBAA is a not-for-profit corporation incorporated under the laws of the District of Columbia (D.C.) and headquartered at 1200 Eighteenth Street, N.W., Washington, D.C. NBAA states that it represents more than 7,300 member companies which own and operate more than 9,300 general aviation aircraft used to facilitate the conduct of their businesses, or which are otherwise involved with business aviation.[9] According to NBAA, its members comprise a substantial segment of the general aviation community.[10] In this case, the NBAA is the Complainant's representative.

BAC, a member of NBAA, is a corporation incorporated under the laws of the state of Delaware. The Company is headquartered in Canada. BAC's business is the management and operation of fractionally owned aircraft. BAC's clients include employees of Fortune 400 companies, and other clients. In its business, BAC operates into and out of SMO various aircraft. These aircraft include the Challenger 604, Learjet 31, Learjet 45 and Learjet 60.[11] For the 12-month period from September 2002 through August 2003, business jet aircraft operated by BAC averaged approximately 81 landings per month at SMO. As the operator of aircraft subject to the challenged landing fees, BAC claims to be directly and substantially affected by those fees.[12]

DFJ is a privately held for-profit corporation organized under the laws of the state of Delaware, and is a member of NBAA. DFJ's primary business is the sale, finishing, and support of Falcon business jets manufactured by DFJ's parent company, Dassault Aviation, including the Falcon 50EX, Falcon 2000, Falcon 2000EX, Falcon 900C and Falcon 900EX.[13] In the course of its business, DFJ performs demonstration flights for prospective buyers, including flights into and out of SMO that will be subject to the new landing fees. Over the past three years, DFJ has averaged 5 operations per year into and out of SMO. As the operator of aircraft subject to the challenged landing fees, DFJ claims the new fees directly and substantially affect it.[14]

III. THE AIRPORT AND ITS OBLIGATIONS

SMO is a public-use airport owned and operated by the City of Santa Monica, California.[15] The airport is located within the city limits of Santa Monica and is used by general aviation and

---

[8] NBAA is the Complainant's Representative or agent.
[9] FAA Exhibit 1, Item 1, p. 1-2.
[10] NBAA states that it acts as a spokesperson for business aviation before government agencies and the U.S. Congress and, in selected cases of importance, such as this one, represents its members' interests by initiating or participating in court actions and/or proceedings before regulatory agencies such as the FAA. FAA Exhibit 1, Item 1, p. 1-2.
[11] FAA Exhibit 1, Item 4, 5-6.
[12] FAA Exhibit 1, Item 1, p.2.
[13] FAA Exhibit 1, Item 4, 6-7.
[14] FAA Exhibit 1, Item 1, p.2.
[15] FAA Exhibit 1, Item 6, FAA From 5010 "Airport Master Record" for SMO, Date: 05/24/2004, FAA Exhibit 1, Item 1, p. 3. In its Answer to the Complaint, the City argues that since the complainant is challenging the legislative action of the City, the City denies that certain of its employees, namely City Manager Susan McCarthy; City Attorney Marsha Jones Moutrie, Airport Director Jeffrey Mathieu and Airport Manager Robert Trimborn are responsible persons within the meaning of 14 CFR Part 16.23(a) since none of these individuals are members of the City Council. The City of Santa Monica is the airport sponsor and the only Respondent. The individuals named above are employees of the City, and are responsible for their actions on behalf of the City within the scope of their employment. See FAA Exhibit 1, Item 2, p. 3.

executive aircraft and provides access to Santa Monica, Los Angeles and other surrounding communities in the Los Angeles metropolitan area.

Starting in 1919 as Clover Field, SMO has a long history in aviation. The airport was home to the famed Douglas Aircraft Company for 46 years. SMO played a significant role during World War II. With Federal assistance, the airport was reconstructed in 1942 to accommodate the wartime needs of major aircraft manufacturers. The airport's configuration has changed significantly since 1942, particularly with the abandonment of the smaller runway in 1956 and the demolition of the Douglas plant in the mid 1970s.[16]

Today, SMO has no precision instrument approach procedures in place,[17] and consists of one runway, runway 3-21, that is approximately 5,000 feet long. The runway extends almost to the boundaries of the airport on its east and west end.[18] SMO sits on approximately 227 acres and is classified as a reliever airport.[19] It is the base of operations for 405 aircraft and accounts for approximately 165,600 operations each year.[20] In the year 2002, the Airport had 151,499 operations of which 66.8% were itinerant operations. Since 1999, the Airport operations have not exceeded 200,000 nor have itinerant operations been over 70%.[21] Since 1999, operations by jet aircraft have risen from 9,608 to 16,157 in 2002.[22] 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, as amended, 49 USC § 47101, *et seq*. Between 1985 and 1994, the Airport received a total of $9.7 million in Federal airport development assistance in the form of AIP grants.[23]

In 1991, the FAA issued a $2.3 million AIP grant for runway reconstruction.[24] Based on a 1993 pre-application, on June 2, 1994, the City applied for an AIP grant to finance and construct several projects at SMO. On June 29, 1994, the city accepted a grant offer with a maximum Federal obligation of $1,604,700 to: repair taxiways and aprons; pave infield areas; and construct blast walls, fencing, gates, a perimeter road alignment, lighting and signing, and an aircraft run-up enclosure. The specific grant was identified as No. AIP 3-06-0239-06. Two construction contracts were required to accomplish the work with completion in March of 2002. Subsequently, the city submitted a request to amend the grant agreement increasing the federal obligation by 15%, or $240,600.

The current FAA Report to Congress on the National Plan of Integrated Airport Systems (NPIAS) 2001–2005 states that for SMO, the estimated 5-year cost for airport improvements that are eligible under the AIP is over $3.2 million.[25]

---

[16] FAA Exhibit 1, Item 3,Exhibit 5, p. 1
[17] FAA Exhibit 1, Item 3, p. 32.
[18] FAA Exhibit 1, Item 3, p. 26.
[19] National Plan of Integrated Airport Systems (NPIAS), 1998-2002. SMO serves as an important reliever airport to Los Angeles International Airport (LAX). General aviation pilots often find it difficult and expensive to gain access to congested airports, particularly large and medium hub airports. In recognition of this, the FAA has encouraged the development of high capacity general aviation airports in major metropolitan areas. These specialized airports, called relievers, provide pilots with attractive alternatives to using congested hub airports. They also provide general aviation access to the surrounding area. The 260 reliever airports have an average of 228 based aircraft, and together account for 27 percent of the Nation's general aviation fleet. All of the airports that are designated as relievers by the FAA are included in the NPIAS.
[20] FAA Exhibit 1, Item 6, FAA From 5010 "Airport Master Record" for SMO, Date: 05/24/2004.
[21] FAA Exhibit 1, Item 2, p. 4.
[22] FAA Exhibit 1, Item 2, p. 4.
[23] Airport Sponsor AIP Grant History dated July 22, 2002.
[24] FAA Exhibit 1, Item 7.
[25] FAA Exhibit 1, Item 6, FAA Report to Congress National Plan of Integrated Airport Systems NPIAS, 2001 – 2005, Appendix A, California.

In addition, as mentioned above, since 1948, the airport has incurred obligations in the form of restrictive deed covenants arising from conveyances of land executed under the powers and authority contained in the provisions of the Surplus Property Act (SPA) of 1944 as amended, 49 USC § 47151-153.[26] Although several parcels of land were released from the Federal obligations in 1952 and 1953, the 1948 Instrument of Transfer is the instrument by which the United States Government transferred its leasehold interest in Santa Monica Airport to the City of Santa Monica,[27] and is the controlling Federal interest in the remaining parcels of the airport today.

IV. ISSUES UNDER INVESTIGATION

The purpose of FAA's review is to determine whether the City's landing fee program stemming from the ASMP is consistent with Federal law and applicable FAA policy. Under the particular circumstances existing at SMO and the entire record herein, and based on *FAA Rules of Practice for Federally-Assisted Airport Proceedings*, (Part 16) and the applicable Federal law and FAA policy, the issues under investigation before the FAA are:

- Whether by implementing and enforcing the ASMP and its associated landing fees, the City has made SMO available to the public on reasonable terms and without unjust discrimination pursuant to its statutory obligations and grant assurances generally; and specifically pursuant to Grant Assurance 22 and similar provisions contained in the 1948 Instrument of Transfer and in the 1984 Agreement.

- Whether by implementing and enforcing the ASMP and its associated landing fees, the City has granted exclusive rights for the use of the airport in violation of its statutory obligations and grant assurances generally; and specifically of Grant Assurance 23 and similar provisions contained in the 1948 Instrument of Transfer and in the 1984 Agreement.

V. BACKGROUND

A. Issue

The issue raised by the Complainants is whether the ASMP landing fees promulgated by the City with respect to aircraft operations at SMO are contrary to Federal law. Specifically, the Complainants allege that by adopting the ASMP and its associated landing fees, the City, as the sponsor of SMO, has enacted a regulation that violates Grant Assurances 22 and 23 and the provisions of the Surplus Property Agreement and 1984 Agreement, regarding economic nondiscrimination and exclusive authority.[28]

In responding to the Complaint, the City denies that the landing fees enacted by the Santa Monica City Council violate Federal law and further states that the 1984 Santa Monica Airport Agreement (1984 Agreement) is not within the jurisdiction of 14 CFR Part 16.[29] The City "denies that the proposed landing fees are discriminatory and further denies that the proposed

---

[26] FAA Exhibit 1, Item 6, FAA From 5010 "Airport Master Record" for SMO, Date: 05/24/2004 and FAA Order 5190.2R "List of Public Airports Affected by Agreements With the Federal Government," April 30, 1990.
[27] FAA Exhibit 1, Item 1, p.3.
[28] FAA Exhibit 1, Item 1, p.3.
[29] FAA Exhibit 1, Item 2, p. 2.

landing fees are intended to deny access to the Airport by larger business jets."[30] The City argues that the ASMP revised landing fees are designed to enable the City to recover the cost of maintaining SMO in a safe operational condition.[31]

B. Chronology of Events

In 1981, the Santa Monica City Council enacted a resolution to close SMO.[32] That action resulted in extensive litigation against the City by airport associations, the FAA, and the Department of Justice (DOJ). The litigation resulted in a negotiated settlement, the 1984 Agreement, which was executed in early 1984.[33] On January 22, 1985, Santa Monica Municipal Code §10.04.06.l00 was adopted. It provided for landing fees for aircraft operated for commercial purposes. The landing fees were based upon the weight of the aircraft.[34] These landing fees were not implemented, and therefore, it appears that until the ASMP, no landing fees were in affect at SMO.

In 1993, the runway was substantially renovated to improve its operating condition and extend its useful life by bringing the upper layers of the runway to their optimal condition.[35] In 1994, the runway was overlaid with asphalt concrete.[36] Also since 1994, several other AIP-funded projects have been completed to repair taxiways and aprons, pave infield areas, and construct blast barriers. In 2000, the City hired a pavement consulting firm[37] to conduct a comprehensive analysis of the airport's runway and taxiway pavement infrastructure.[38]

In January 2002, the consulting firm completed a study intended to establish a pavement maintenance program, the ASMP.[39] The ASMP included a fee-based formula to defray the airfield's ongoing maintenance costs. The fee-based formula proposed to impose a landing fee on aircraft with weights beginning at 10,000 lb. Aircraft under 10,000 lb. were exempt. Fees range from $2.90 for 10,000 lb. aircraft to $342.79 for 60,000 lb. aircraft.

On February 25, 2002, the Airport Commission received a briefing by the consulting company regarding the methodology used to develop the proposed weight-based landing fees.[40] After discussion and deliberation, the Airport Commission voted unanimously to support the proposal and requested that staff forward the proposal to the City Council for consideration.[41]

During the week of May 5, 2003, the City posted its agenda for the City Council meeting of May 13, 2003, including the Staff Report (also referred to as the ASMP) explaining the proposed

---

[30] FAA Exhibit 1, Item 2, p. 2.
[31] FAA Exhibit 1, Item 2, p.5.
[32] FAA Exhibit 1, Item 1. p. 4.
[33] FAA Exhibit 1, Item 3, p. 27.
[34] FAA Exhibit 1, Item 2, p. 5.
[35] FAA Exhibit 1, Item 3, p. 27.
[36] FAA Exhibit 1, Item 3, Exhibit 5, p. 1.
[37] Pavement Consultant, Inc. or PCI. Throughout the text, the FAA did not use the name or abbreviation of the company, PCI. This was deliberately done in order to avoid confusion. This is because a technical term, Pavement Condition Index, or PCI, uses the same abbreviation. Wherever the abbreviation PCI (referring to the consulting company) was referenced from the record, the FAA used the terms "Airside Surfaces Maintenance Program (ASMP)" or "consulting company" instead. These are clearly marked by [...] in several quotations.
[38] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 1.
[39] FAA Exhibit 1, Item 3, Exhibit 5.
[40] FAA Exhibit 1, Item 2, p. 6.
[41] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 1-2.

changes to fees charged at SMO. Also on May 13, 2003, Ordinance No. 2079, an ordinance to permit the ASMP-based landing fees, was introduced for first reading by the City Council.[42]

On June 9, 2003, NBAA, as Complainant's representative or agent, sent a letter to the City protesting the proposed action.[43] The airport's revised landing fees were adopted by the Santa Monica City Council on June 10, 2003, under Resolution No. 9855 (CCS),[44] with the proposed schedule of landing fees going into effect on August 1, 2003.

On June 10, through counsel, several airport users, including a number of aircraft owners and operators and Fixed Base Operators (FBOs), filed comments with the City regarding the proposed landing fees. These users asked that the landing fees not be implemented because in part the fees were non-uniform and inconsistent.[45]

On June 11, 2003, the Santa Monica Airport Association (SMAA)[46] filed an informal Complaint with the FAA's Western Pacific Airports Divisions under 14 CFR Part 13.1 complaining that the proposed weight-based fees were unreasonable and represented a ploy to deter larger aircraft from using the airport.

On July 2, 2003, the FAA replied to the SMAA stating that the FAA was reviewing SMO's landing fee proposal and had recommending that SMO delay implementation of the new landing fees. To this, City officials publicly stated that "that the FAA has failed to weigh in on the issue at the community and airport commission meetings that led to the new rates, which will pump $500,000 a year to help maintain the airport's runway and adjacent taxiways" and that the City did not "plan to delay the implementation," since "every step of the way there has been outreach. They've been aware, and at the last moment, we get a brief letter."[47]

On July 7, 2003, NBAA submitted a formal Complaint under Part 16 alleging that the weight-based fees were unreasonable and unjustly discriminatory. On July 18, the FAA dismissed the Complaint without prejudice as incomplete in part because of the names of specific NBAA members who would be harmed by the landing fees were omitted from the Complaint.[48] Also on July 18, 2003, the City notified the FAA that it would delay implementation of the landing fees for 30 days.

On August 14, 2003, the FAA issued a preliminary regional determination to SMO under 14 CFR Part 13.1. In it, the FAA stated that the proposed weight-based fees did not appear to

---

[42] FAA Exhibit 1, Item 3, p. 8-9.
[43] FAA Exhibit 1, Item 1, p. 5, FAA Exhibit 1, Item 2, p. 6.
[44] FAA Exhibit 1, Item 2, p. 3.
[45] Letter from Patrick E, Bailey, Counsel for several users to The Honorable Richard Bloom, Mayor of the City of Santa Monica, dated June 10, 2003. See FAA Exhibit 1, Item 10.
[46] SMAA is a not-for-profit corporation, with a membership consisting of aircraft owners, aircraft pilots, fixed base operators, aircraft businesses and aviation oriented businesses, who own, operate, lease or rent aircraft at the Santa Monica Airport, whose businesses involve the sale, rental, lease, maintenance, repair and/or servicing of aircraft at the Airport, or who offer training to pilots at the airport.
[47] http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2003/July-2003/07_14_03_Halt_New_Landing_Fees_for_Jets.htm
[48] FAA Exhibit 1, Item 3, Exhibit 10. The FAA rejected NBAA's initial Complaint in part on the grounds that Part 16 does not recognize associational standing, unless it meets the same standing requirements as non-association parties. Although NBAA has added individual complainants to its later filing, NBAA notes that it disagrees with the FAA on this issue. NBAA states that "Associational standing, the doctrine that an organization may seek to redress its members' injuries even without a showing of injury to the organization itself, long has been regarded as a fundamental due process right. The Preamble to Part 16 indicates that "An association will have to meet the same 'directly and substantially affected' standing requirement individually, but will be able to file a Part 16 Complaint as a representative of its members who are 'directly and substantially affected' by an act or omission of respondent." 61 Fed. Reg. 53998 (1996).

comply with Federal requirements and urged SMO to delay implementation until the FAA completed a more thorough review. At the time, the FAA notified the City that "based on our preliminary review of information provided by the Santa Monica Airport Association and the City, it appears that amended section 10.04.06100 of the Santa Monica Municipal Code, providing for weight-based landing fees at SMO, may not meet these standards, because it would apparently require certain user groups to pay costs properly allocable to other user groups" and that "specifically, costs associated with environmental pavement distress, maintenance, repair, and reconstruction, which were identified in the 'Airside Surface Maintenance Program' (ASMP), are common to all users, not just aircraft over 10,000 lbs.[49] It appears that the City will not charge aircraft weighing 10,000 lbs. or less a landing fee." [50]

The FAA also noted that the projected maintenance data in the ASMP indicates that environmental related maintenance totals 29 percent of the total rehabilitation. If accurate, it would appear that this cost should be allocated among all traffic at the airport consistent with FAA policy. The FAA's preliminary review raised additional concerns regarding the allocation of common costs among aeronautical users. Specifically,

- Heavier aircraft are expected to pay the full rehabilitation cost of pavement used by both heavy and light aircraft.... The heavier airplanes require an incremental thickness added to this baseline pavement. Neglecting the minimum pavement requirement eliminates the cost to lighter aircraft users and appears to unduly penalize the heavier aircraft users.[51]

- Heavier aircraft are expected to cover all costs for pavement they do not use. It appears that certain aircraft do not use certain portions of the facility (i.e., large aircraft do not use the south side of the airport). This limited use of the facility by larger aircraft has not been reflected in the proposed fee schedule."[52]

In addition, the FAA told the City that "the FAA's Policy Regarding Airport Rates and Charges establishes that airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes."[53] A significant overstatement of the costs necessary to maintain the airport pavement surfaces in a serviceable condition could lead to the accumulation of excessive surpluses under the City's weight-based landing fee program. We are concerned that the forecasted cost of maintaining the pavement surfaces may be overstated. Specifically, the pavement life expectancy curve indicates a Pavement Condition Index (PCI) of about 84 (classified as "very good") after 6 years of service,[54] yet the entire runway (after 6 years of service) meets or exceeds a PCI of 93, generally classified as "excellent."[55] This substantial

---

[49] Asphalt pavement deteriorates due to applied loads that induce stresses in the various pavement layers and due to environmental affects, which weaken or modify the layer properties. This environmental deterioration, which is independent of load induced stresses, includes damage due to moisture and ultraviolet oxidation. An asphalt pavement surface material is comprised of aggregates, sand and asphalt oil. Exposure to air, water, and sunlight causes oxidation or "aging" of the asphalt oil used to hold the aggregates and sand material together. Asphalt oil is made up of asphaltenes and maltenes. The asphaltenes are graphite-like materials that do not break down or age with oxidation. Maltenes are oils, which will degrade and oxidize with exposure. As the maltenes breakdown, the asphalt pavement loses flexibility and becomes brittle. As asphalt becomes brittle it is more susceptible to cracking and other external signs of deterioration.

[50] FAA Exhibit 1, Item 4, Exhibit 5.

[51] FAA Exhibit 1, Item 4, Exhibit 5.

[52] FAA Exhibit 1, Item 4, Exhibit 5.

[53] See 61 Fed. Reg. 31994, 32021 (June 21, 1996).

[54] 6 years since last overlay.

[55] The Pavement Condition Index is an index of the pavement's structural and surface operational condition, and is a numerical rating index, ranging from 0 for a failed pavement to 100 for a pavement in perfect condition. Calculation of the PCI is based on

difference (84 versus 93) for a critical pavement may indicate that the formula driven maintenance requirements and associated costs are not representative of actual conditions.[56]

Furthermore, the FAA noted that the airport is charging aeronautical users for facilities not yet constructed. This may also be unreasonable. Under Generally Accepted Accounting Principles (GAAP), some of the "maintenance" costs in the ASMP, such as the strengthening overlay and reconstruction, are ordinarily capitalized and the expense amortized over the life of the improvement through depreciation. Allocation of these kinds of costs prior to the actual expenditure, and/or over a relatively short period of time, may not be consistent with GAAP and therefore may be considered unreasonable. The FAA generally considers it unreasonable to assess charges for facilities that do not exist or are not provided currently or in the future if their costs cannot be related to the specific users being charged.[57]

Finally, to complete its review of the City's rates and charges methodology, the FAA requested additional information pursuant to Grant Assurance 26.[58] The City provided the FAA the requested information.[59]

On September 4, 2003, in reply, the City informed the FAA that it would not further delay implementation of the landing fees and would begin billing for fees already accrued during the month of August.[60] This reply by the City included information that had been requested, including detailed financial information such as consolidated budgetary and financial information from which to derive historical costs of airfield repair and maintenance.

On October 2, 2003, the NBAA re-filed a 14 CFR Part 16 formal Complaint with the FAA on behalf of two if its members, BAC and DJC.[61] On January 6, 2004, the City filed its Answer, a Notice of Motion and Motion to Dismiss and Memorandum of Points and Authorities.[62] On January 23, 2004, the Complainants filed a Reply.[63] On January 26, 2004, the City requested an extension of time to file its Rebuttal. FAA granted the request.[64] Finally, on February 25, 2004, the City filed a rebuttal to the Complainant's Reply.[65]

VI. APPLICABLE LAW AND POLICY

A. The Airport Improvement Program and the Airport Sponsor Assurances

Title 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the AIP established by the AAIA (Airport and Airway Improvement Act) as amended. Section 47107, *et seq.*, sets forth assurances to which an airport

---

the results of a visual condition survey in which distress type, severity, and quantity are identified. The PCI provides an insight into the causes of distress and relates to load or climate. The PCI is the basis for predicting pavement deterioration in time.

[56] FAA Exhibit 1, Item 4, Exhibit 5. The relationship between PCI and costs is inversely proportional. This means that as the PCI number increases, maintenance costs are reduced.

[57] FAA Exhibit 1, Item 4, Exhibit 5.

[58] Grant Assurance 26 provides, in relevant part, that the airport sponsor will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public.

[59] FAA Exhibit 1, Item 4, Exhibit 5.

[60] While it appears that the City may have withheld billings of the new landing fees for some period of time after the effective date of August 1,2003, it appears that the City was, by early 2004, billing for the new fees. See footnote #1, FAA Exhibit 1, Item 1.

[61] See FAA Exhibit 1, Item p. 1.

[62] See FAA Exhibit 2, Item p. 1, FAA Exhibit 1, Item 3, p.1.

[63] FAA Exhibit 1, Item 4, p.1.

[64] Letter from Elizabeth Newman, Attorney, FAA, Airports Law Branch to both parties, dated January 28, 2003.

[65] FAA Exhibit 1, Item 5, p. 1

sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.[66] FAA Order 5190.6A, *Airport Compliance Requirements*, issued on October 1, 1989, provides 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.

B. Public Use of the Airport – Grant Assurance 22

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 reasonable terms, and without unjust discrimination.

Grant Assurance 22, Economic Nondiscrimination, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport

> ...will 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 activities, including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a)]
>
> ...may establish such reasonable and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22(h)]

FAA Order 5190.6A describes in detail the responsibilities 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.[67] 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.[68]

The owner of any airport developed with Federal 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.[69]

The owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public.[70] For example, the airport owner should

---

[66] See, e.g., 49 U.S.C. § 40101, 40103(e), 40113, 40114, 46101, 46104, 46105, 46106, 46110, 47104, 47105(d), 47106(d), 47106(e), 47107, 47108, 47111(d), 47122

[67] *See* Order, Sections 3-1 and 4-14(a)(2).

[68] *See* Order, Sec. 3-8(a).

[69] *See* Order, Sec. 4-13(a).

[70] *See* Order, Sec. 4-7(a).

adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport.[71]

Federal law imposes a reasonableness requirement on the fees charged to aeronautical users by airports. This requirement is based on Grant Assurance 22, discussed above, and the corresponding statute, 49 U.S.C. § 47107, which require that a federally funded airport be available for public use on reasonable terms and without unjust discrimination. In addition, 49 U.S.C. § 40116(e)(2), allows the local airport authority to collect only reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities. See Northwest Airlines v. County of Kent, 510 U.S. 355 (1994).

C. The Prohibition Against Exclusive Rights - Grant Assurance 23

Section 308(a) of the FAA Act, 49 USC § 40103(e), provides, in relevant part, that "[a] person does not have an exclusive right to use an air navigation facility on which Government money has been expended."[72] An "air navigation facility" includes an "airport." [73] Title 49 USC § 40103(e), in which Congress re-codified 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 U.S.C. § 47107(a)(4), similarly provides, in pertinent part, that "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport."

Grant Assurance 23, "Exclusive Rights," of the prescribed sponsor assurances 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... It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities..."

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.[74]

Therefore, it is FAA's policy 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. The FAA will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities. FAA Order 5190.6A 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.

---

[71] *See* Order, Sections 4-7 and 4-8.
[72] 49 USC § 40103(e).
[73] See 49 USC §§ 40102(a)(4), (9), (28).
[74] See FAA Order 5190-1A *Exclusive Rights at Airports, p. 1.*

The exclusive rights prohibition remains in effect as 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.[75]

D. Surplus Property Obligations

Surplus property instruments of disposal are issued under the Surplus Property Act of 1944 (SPA). The Act authorizes conveyance of property surplus to the needs of the Federal government. The FAA (or its predecessor, the Civil Aeronautics Administration [CAA]) recommends to the GSA (General Services Administration) which property should be transferred for airport purposes to public agencies. Such deeds are issued by the GSA that has jurisdiction over the disposition of properties that are declared to be surplus to the needs of the Federal government. Prior to the establishment of the GSA in 1949, instruments of disposal were issued by the War Assets Administration (WAA).[76]

Public Law 80-289, approved July 30, 1947, amended Section 13 of the Surplus Property Act of 1944. This authorized the Administrator of WAA (now GSA) to convey to any state, political subdivision, municipality or tax-supported institution, surplus real and personal property for airport purposes without monetary consideration to the United States. These conveyances are subject to the terms, conditions, reservations and restrictions prescribed therein.

Surplus property instruments of transfer are one of the means by which the Federal government provides airport development assistance to public airport sponsors. The conveyance of surplus Federal land to public agencies for airport purposes is administered by the FAA, in conjunction with the U.S. Department of Defense (DOD) and the GSA and pursuant to 49 USC § 47151, 47152, and 47153.

Public Law 81-311 specifically imposes upon the FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public agencies pursuant to the SPA. Furthermore, pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal obligations.

All surplus airport property instruments of disposal, except those conveying only personal property, provide that the covenants assumed by the grantee regarding the use, operation and maintenance of the airport and the property transferred shall be deemed to be covenants running with the land. Accordingly, such covenants continue in full force and effect until released under Public Law 81-311 or other applicable Federal law.

In this case, under the August 10, 1948 Quitclaim Deed, executed under the provisions of the Surplus Property Act of 1944,[77] the City assumed certain obligations, reservations and

---

[75] *See* FAA Order 5190.1A, Paragraph 8 "Policy" and Paragraph 11 (c) "Imposition of Standards."
[76] FAA Order 5190.6A.
[77] FAA Exhibit 1, Item 1, Exhibit 4, Instrument of Transfer, August 10, 1948.

conditions. These occurred in the form of restrictive covenants in the property deeds and conveyance instruments, to maintain and operate SMO safely, efficiently, and in accordance with specified conditions. Upon acceptance of surplus property conveyance by the City, the obligations in the instrument of disposal became a binding obligation between the City and the Federal government. Commitments assumed by the City in property conveyance 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.

Two of the restrictions listed in the 1948 Quitclaim Deed executed between the Federal government and the City of Santa Monica, which is the surplus airport property instrument of disposal, are applicable in this case. The first one that:

> "...the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, *on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right* for use of the airport..." [78]

The second relevant restriction in the 1948 Quitclaim Deed independently re-states the exclusive rights prohibition that:

> "...no exclusive right for use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the terms *"exclusive right"* being defined to mean...
>
> ...any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft."[79]

Today, 49 USC § 47152 (2) and (3) contains the reasonableness and discriminatory requirements originally stipulated under the Surplus Property Act and set forth in the 1948 Quitclaim Deed. The exclusive rights prohibition is codified at 49 USC § 40103 (e).

E. 1984 Santa Monica Airport Agreement

In 1981, the Santa Monica City Council enacted a resolution to close SMO.[80] That action resulted in extensive litigation against the City by airport associations, the FAA, and the Department of Justice (DOJ). The litigation resulted in a negotiated settlement memorialized on January 31, 1984, referred to as the 1984 Santa Monica Airport Agreement (1984 Agreement), which resolved a series of disputes involving SMO.[81] As a result, the City agreed to operate and maintain the Airport as a viable functioning facility without derogation of its role as a general aviation reliever airport until July 1, 2015. As the basis for the 1984 Agreement, the parties recognized several legal principals including

[78] FAA Exhibit 1, Item 1, Exhibit 4, Instrument of Transfer, August 10, 1948.
[79] FAA Exhibit 1, Item 1, Exhibit 4, Instrument of Transfer, August 10, 1948.
[80] FAA Exhibit 1, Item 1. p. 4.
[81] FAA Exhibit 1, Item 3, Exhibit 6.

> ...the "Airport is to be open and available to and for public use as an airport on fair and reasonable terms, without unjust discrimination, and without granting any exclusive rights prohibited by law."[82]
>
> ..."pursuant to the Federal Aviation Act of 1958, as amended, exclusive authority is vested in the FAA for the regulation of all aspects of air safety, the management and control of the safe and efficient use of the navigable airspace, and movement of aircraft through that airspace."[83]

In Section 8 of the 1984 Agreement, the City committed to "operate and maintain the Airport as a viable functioning facility without derogation of its role as a general aviation reliever as described in Section 2(b)(i) of this Agreement or its capacity in terms of runway length and width, taxiway system, and runway weight bearing strength until July 1, 2015."[84] The 1984 Agreement also states that the "Airport will be capable of accommodating most kinds of general aviation aircraft, generally consistent with Group II Design Standards...."[85]

Section 9 requires the City to maintain "continuously" the one designated runway (3/21) "which is 5,000 feet long and 150 feet wide." The Airport Layout Plan (ALP) depicting the airport's existing runway and taxiway configuration was incorporated by reference into the 1984 Agreement "and shall guide the development of the Airport for the duration of this Agreement."[86] Finally, the 1984 Agreement highlights the SMO's important role in the regional and national system of air transportation and air commerce. SMO serves a "vital and critical role in its functions as a general aviation reliever for the primary airports in the area ... by diverting aircraft away from the air carrier airports and other heavily used airports located in the Greater Los Angeles Area."[87]

F. FAA's Policy Regarding Airport Rates and Charges

The FAA's Policy Regarding Airport Rates and Charges (Policy), dated June 21, 1996, established the requirements to be followed by airport sponsors when establishing airport rates and charges.[88] Rates, fees, rentals, landing fees, and other service charges (fees) imposed on aeronautical users for aeronautical use of airport facilities must be fair and reasonable.[89]

---

[82] FAA Exhibit 1, Item 3, Exhibit 6, p.2-3.
[83] 1984 Agreement, pages 3.
[84] 1984 Agreement, page 9.
[85] 1984 Agreement, pages 3. The Airport Reference Code (ARC) designations, including the B-II designation at issue, are a coding system used to relate airport design criteria to the operational and physical characteristics of the categories of aircraft for which the airport was designed. We note, however, that this provision in the 1984 Agreement would not permit the City of Santa Monica to prohibit the use of the airport by other aircraft that can safely operate at SMO. As discussed more fully below, Design Standards may not be used to limit operations of an airport.
[86] 1984 Agreement, page 6.
[87] 1984 Agreement, page 3-4.
[88] See 61 Fed. Reg. 31994.; http://www.faa.gov/arp/pdftxt/rates1.htm. This policy statement was challenged in the United States Court of Appeals for the District of Columbia. The Court vacated and remanded portions of the Policy Statement setting forth guidance on fair and reasonable airfield and non-airfield fees. See Air Transport Association of America v. Department of Transportation (ATA v. DOT), 119 F.3d 38 (D.C. Cir. 1997), amended 129 F. 3d 625. Specifically, the Court vacated: paragraphs 2.4, 2.4.1, 2.4.1(a), 2.5.1, 2.5.1(a), 2.5.1(b), 2.5.1(c), 2.5.1(d), 2.5.1(e), 2.5.3, 2.5.3(a), 2.6, the Secretary's supporting discussion in the preamble, and any other portions of the rule necessarily implicated by the holding of the August 1, 1997 opinion. Consequently, we will only use those valid portions of the Final Policy that were not vacated when considering the reasonableness of rates in this proceeding.
[89] See Paragraph 2 (no decimal place) of the Policy, found at 61 Fed. Reg. 31994, 32019; http://www.faa.gov/arp/pdftxt/rates1.htm. see also 49 U.S.C. § 47107(a)(1).

Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.[90] Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.[91] In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

Under the terms of grant agreements administered by the FAA, all aeronautical users[92] are entitled to airport access on fair and reasonable terms without unjust discrimination. Therefore, the FAA considers that the principles and guidance set forth in the Policy apply to all aeronautical uses of the airport. The FAA recognizes, however, that airport proprietors may use different mechanisms and methodologies to establish fees for different facilities, e.g., the airfield. The FAA takes these differences into account when called upon to resolve a dispute over aeronautical fees or otherwise consider whether an airport sponsor is in compliance with its obligation to provide access on fair and reasonable terms without unjust discrimination.[93]

Airport proprietors must employ a reasonable, consistent, and transparent (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule. Airport proprietors are encouraged to establish fees with due regard for economy and efficiency. The airport proprietor may include in the rate base amounts needed to fund debt service and other reserves and to meet cash flow requirements as specified in financing agreements or covenants (for facilities in use), including, but not limited to, reasonable amounts to meet debt-service coverage requirements; to fund cash reserves to protect against the risks of cash-flow fluctuations associated with normal airfield operations; and to fund reasonable cash reserves to protect against other contingencies.[94] Unless otherwise agreed by aeronautical users, the airport proprietor must allocate capital and operating costs among cost centers in accordance with the following guidance, which is based on the principle of cost causation:

(a) Costs of airfield facilities and services directly used by the aeronautical users may be fully included in the rate base, in a manner consistent with this policy. For example, the capital cost of a runway may be included in the rate base used to establish landing fees.[95]

(b) Costs of airport facilities and services used for both aeronautical and non-aeronautical uses (shared costs) may be included in the rate base if the facility or service in question supports the airfield activity reflected in that rate base. The portion of shared costs allocated to aeronautical users and among aeronautical uses should not exceed an amount that reflects the respective aeronautical purposes and proportionate aeronautical uses of the facility in relation to each other and in relation to the nonaeronautical use of the facility, and must be allocated by a reasonable, transparent and not unjustly discriminatory methodology. Aeronautical users may not be allocated all costs of facilities or services that are used by both aeronautical and nonaeronautical users unless they agree to that allocation. Likewise, the airfield may not be allocated all of the

---

[90] See Paragraph 3 (no decimal place) of the Policy, found at 61 Fed. Reg. 31994, 32021; http://www.faa.gov/arp/pdftxt/rates1.htm, see also 49 U.S.C. § 47107(a)(1).

[91] See Paragraph 4 (no decimal place) of the Policy, found at 61 Fed. Reg. 31994, 32021; http://www.faa.gov/arp/pdftxt/rates1.htm, see also 49 U.S.C. § 47107(a)(13(A).

[92] The FAA considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft. See e.g., FAA Order 5190.5A, Appendix 5 (1989). Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered to be aeronautical users.

[93] See Section A of the Policy, found at 61 Fed. Reg.31994, 32017; http://www.faa.gov/arp/pdftxt/rates1.htm.

[94] See Paragraphs 2.4.3 and 2.4.4. of the Policy, found at 61 Fed. Reg. 3199, 32020, http://www.faa.gov/arp/pdftxt/rates1.htm.

[95] See Paragraph 2.4.5 of the Policy, found at 61 Fed. Reg.31994, 32020; http://www.faa.gov/arp/pdftxt/rates1.htm.

aeronautical share of commonly-used facilities or services, unless the airfield is the only aeronautical use the facility or service supports. [96]

Aeronautical fees may not unjustly discriminate against aeronautical users or user groups. The airport proprietor must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the airport proprietor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under a cost allocation methodology adopted by the airport proprietor that is consistent with this guidance, unless aeronautical users otherwise agree.[97]

G. Fee and rental Structure – Grant Assurance 24

Grant Assurance 24, *Fee and Rental Structure*, of the prescribed sponsor assurances satisfies the requirements of 49 U.S.C. §47107(a)(13). It provides, in pertinent part, that the sponsor of a federally obligated airport "will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport..." Grant Assurance 24 is designed to encourage airport operators to cover airport costs with income received by the airport. The intent of the grant assurance is for the airport operator to charge fees that are sufficient to cover as much of the airport's costs as is feasible.

It is FAA policy that airport proprietors maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.[98]

Absent agreement with aeronautical users, Grant Assurance 24, the obligation to make the airport as self-sustaining as possible, does not permit the airport proprietor to establish fees for the use of the airfield that exceed the airport proprietor's airfield costs.[99] For those facilities for which FAA policy permits the use of fair market value, the FAA does not construe the obligation on self-sustainability to compel the use of fair market value to establish fees.[100]

At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.[101]

---

[96] See Paragraph 2.4.5 of the Policy, found at 61 Fed. Reg.31994, 32020; http://www.faa.gov/arp/pdftxt/rates1.htm.
[97] See Paragraph 3.1 of the Policy, found at 61 Fed Reg. 31994, 32021; http://www.faa.gov/arp/pdftxt/rates1.htm.
[98] Paragraph 4 of the Policy at 61 Fed. Reg. 31994, 32021.
[99] Paragraph 4.1.1(a) of the Policy at 61 Fed. Reg. 31994, 32021.
[100] Paragraph 4.1.1(b) of the Policy at 61 Fed. Reg. 31994, 32021.
[101] Paragraph 4.1.2 of the Policy at 61 Fed. Reg. 31994, 32021.

In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 USC § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users may exceed the costs of service to those users, the surplus funds accumulated from those fees must be used in accordance with Sec. 47107(b).[102]

The FAA assumes that the limitation on the use of airport revenue and effective market discipline for aeronautical services and facilities will be effective in holding aeronautical revenues, over time, to the airport proprietor's costs of providing aeronautical services and facilities, including reasonable capital costs. However, the progressive accumulation of substantial amounts of surplus aeronautical revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the airport proprietor's obligations to make the airport available on fair and reasonable terms.[103]

In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes. Additional information on the statutorily allowed uses of airport revenue is contained in separate guidance published by the FAA pursuant to Sec. 112 of the FAA Authorization Act of 1994, which is codified at 49 USC §47107(l). The progressive accumulation of substantial amounts of airport revenues may warrant an FAA inquiry into the airport proprietor's application of revenues to the local airport system.[104]

The obligation to make the airport as self-sustaining as possible does not permit the airport proprietor to establish fees for the use of the airfield that exceed the airport proprietor's airfield costs.[105] In general, allegations presented by Complainants are more appropriately discussed within the context of Federal Grant Assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*. Grant Assurance 24 is referred to in the Analysis and Discussion section of this document only as it relates to the airport sponsor's obligation to obtain a reasonable fee to make the airport as self-sustaining as is feasible.

H. Pavement Preventive Maintenance – Grant Assurance 11

This grant assurances requiring a pavement maintenance program stems from Public Law 103-305, section 107, amended 49 USC § 47105. This law requires a sponsor assurance on preventative maintenance for project applications involving airfield pavements. For any project to replace or reconstruct pavement, the sponsor must assure the FAA that they have implemented an effective pavement maintenance management program. The amendment also provides for the submittal of reports addressing the pavement condition and the management program.

The requirement to establish a pavement maintenance management program[106] applies to any pavement at the airport, which has been constructed, reconstructed, or repaired, with Federal

---

[102] Paragraph 4.2 of the Policy at 61 Fed. Reg. 31994, 32021.
[103] Paragraph 4.2.1 of the Policy at 61 Fed. Reg. 31994, 32021.
[104] Paragraphs 5, 5.1, 5.2, Policy at 61 Fed. Reg. 31994, 32021.
[105] Paragraph 4.1.1 (a) of the Policy at 61 Fed. Reg. 31994, 32021.
[106] An effective pavement maintenance management program is one that details the procedures to be followed to assure that proper pavement maintenance, both preventative and repair, is performed. An airport sponsor may use any form of inspection program it deems appropriate. An acceptable program must, as a minimum, include pavement inventory, inspection schedule, record keeping, and information retrieval.

assistance after January 1, 1995. All grants involving pavement rehabilitation or reconstruction contain a grant assurance that addresses the pavement maintenance obligation.

Airfield pavement needs regular maintenance to seal cracks and repair damage, and major rehabilitation is needed on a 15 to 20-year cycle to remedy the effects of age and exposure. If pavement is neglected, severe deterioration can cause damage to propellers, turbines, and aircraft landing gear.

In an effort to ensure that pavement receives the optimum level of maintenance, the FAA has been authorized by Congress to permit the use of AIP grants for routine pavement maintenance at non-primary airports. In order for an eligible sponsor to receive an AIP grant for pavement maintenance, the sponsor must be unable to fund maintenance with its own resources and must implement a pavement maintenance management program.[107] As part of airport inspections, the FAA updates the Airport Master Records for public-use airports, and reports the results as part of the Airport Safety Data Program.[108] Runway pavement condition is classified as good (all cracks and joints sealed), fair (mild surface cracking, unsealed joints, and slab edge spalling), or poor (large open cracks, surface and edge spalling, vegetation growing through cracks and joints).[109]

I. The FAA Airport Compliance Program

The FAA ensures that airport owners comply with their Federal grant obligations through the FAA's Airport Compliance Program. The program is 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 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. As a general rule, the FAA Compliance Program is designed to achieve voluntary compliance with Federal obligations.

In addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable Federal obligations. FAA will make a judgment of whether the airport sponsor is reasonably meeting the Federal obligations. FAA may also take into consideration any action or program the sponsor has taken or implemented or proposed action or program the sponsor intends to take, which in FAA's judgment, is adequate to reasonably carry out the obligations under the grant assurances.[110]

---

[107] http://www.faa.gov/arp/planning/npias/npias2001/npias01.htm#c1p11. FAA Report to Congress, National Plan of Integrated Airport Systems (NPIAS), (2001 - 2005), August 28, 2002. The 2001 - 2005 NPIAS was submitted to Congress in accordance with Section 47103 of Title 49 of United States Code.

[108] FAA Order 5010.4 *Airport Safety Data Program*, January 27, 1981.

[109] See Advisory Circular AC-150/5320-6D *Airport Pavement Design and Evaluation*, July 7, 1995.

[110] See FAA Order 5190.6A, Sec. 5-6.

Thus, the FAA can take into consideration reasonable corrective actions by the airport sponsor as measures to resolve alleged or potential violations of applicable Federal obligations, and as measures that could prevent recurrence of noncompliance and ensure compliance in the future.

VII. ANALYSIS AND DISCUSSION

A. Affirmative Defenses

1. Failure to Engage in Informal Resolution (Also First Affirmative Defense)

The City argues that "there is absolutely no evidence presented that NBAA attempted to engage the City in informal discussions..." and that Complainants failed "to engage the City in a good faith attempt at resolution of this matter[111] as required by 14 CFR Part 16.21(a)." Specifically, in its Motion to Dismiss, the City states that Complainants have failed to comply with 14 CFR Part 16.21 by not initiating and engaging in good faith pre-Complaint resolution discussions regarding the subject matter of this Complaint.[112]

The City asserts that at no time prior to the filing of its response had NBAA, BAC or DFC specifically stated the basis of their claims and that, other than their unsupported blanket claim that the landing fees violate Grant Assurances 22 and 23, there is no specific explanation of the manner in which the revised landing fees violate the grant assurances. In addition, the City contends that, assuming for the sake of argument that Complainants were not informed of the revision of the airport's landing fees until June 9, 2003, they still had almost two months to discuss this issue with the City before the revised landing fees went into effect.[113]

In support of its argument that the Complainants did not engage in good faith efforts to resolve the issue, the City cites the FAA's letter dismissing the first Complaint. In that letter, the FAA recommended "the complainant engage in additional informal resolution with the City of Santa Monica. Such informal resolution should include discussions with the City and the Airports District Office. These discussions could prove helpful and save time for the NBAA, the City and the FAA. Additionally, the FAA recommends the NBAA request from the City of Santa Monica a copy of the study prepared by Pavement Consultants, Inc."[114]

The City continues to argue that the Complaint fails to show any substantial efforts that might constitute compliance and that indeed, as to the Complainants, BAC and DFJ, there is no evidence of any contact with the City whatsoever and that instead, all three entities, NBAA, BAC and DFJ, apparently rely "on scanty allegations as to the NBAA's minimal contact with the City and the NBAA's excuses for noncompliance."[115]

The City dismisses the Complainants' contacts with the City, represented by the City as one letter and one telephone call, as not being a substantial effort at informal resolution and that the NBAA letter sent to the City's attorney on June 9, 2003, the day before the City Council approved the

---

[111] FAA Exhibit 1, Item 2, p. 6-7.
[112] FAA Exhibit 1, Item 3, p. 1-3, FAA Exhibit 1, Item 3, p. 6-7. 14 CFR Part 16.21(a) states in pertinent part that "prior to filing a Complaint under this part, a person directly and substantially affected by the allegedly noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. FAA Exhibit 1, Item 2, p. 7.
[113] FAA Exhibit 1, Item 2, p. 7-8.
[114] FAA Exhibit 1, Item 3, p. 7.
[115] FAA Exhibit 1, Item 3, p. 7-8.

disputed landing fees, does not constitute informal resolution.[116] The City dismisses the Complainants' contentions that they contacted the City at that time because they had no advance knowledge of the fee proposal and that, according to the City, "this seems highly unlikely given the other allegations of the Complaint" (i.e., NBAA's claim to represent 11 unidentified NBAA members who are based at the Airport as well as other unidentified transient users of the Airport) and that if this were true "those NBAA members would likely have been well aware of the proposed landing fees long before June 9, 2003."[117] In addition, the City argues that the NBAA telephone call requesting a copy of the Pavement Consultants, Inc. report was not a meaningful effort at informal resolution.[118]

The City argues that "since almost every aviation business on the Airport, including every full service fixed based operator (FBO) on the Airport, receives an Airport Commission agenda and packet, it is highly probable that one of the unnamed NBAA members received notice of the Airport Commission hearing on the ASMP report and the revised landing fees. In addition, the City posts its agenda and packet on the Internet, as well as leaving copies of the packet in the pilot's lounge. Thus, the Commission's consideration of the matter was widely noticed."[119]

The City states that "a public hearing was held on May 13, 2003, and the City Council voted to approve the ordinance enabling the setting of aircraft landing fees by resolution" and that "finally, the ordinance was returned to the City Council for its consideration on a second reading[120] on June 10, 2003." Moreover, it is argued, "even if complainants did not, in fact, know about the proposed fee schedule in advance of its adoption by the City Council, they could still have fulfilled their obligation to seek informal resolution" since the "the Santa Monica City Council ("City Council") adopted the revised landing fees on June 10, 2003, but made August 1, 2003 the effective date for implementation of the landing fees."[121] The City also states that "NBAA was aware of the deferred effective date as early as June 25, 2003 and that rather than take the opportunity to contact the City, NBAA filed its first Part 16 Complaint on July 7, 2003."[122]

Finally, the City argues that the Complainants ignored Part 16 procedures by taking the position that conferring with City officials about the revised landing fee program would have been "futile," that Complainants "offer no credible or relevant support for their allegation of futility" and that "the bold assertion of futility should be rejected as unsupported and contrary to sound public policy."[123]

The Complainants state that they first learned of the proposed fee schedule shortly before the City Council meeting and that on June 9, 2003, the NBAA, as the Complainants' representative sent a letter to the City protesting the proposed action.[124] The Complainants assert, and the record supports, that the ordinance was adopted the very next day (June 10) without reference to

---

[116] FAA Exhibit 1, Item 3, p. 8.
[117] FAA Exhibit 1, Item 3, p. 8.
[118] FAA Exhibit 1, Item 3, p. 10.
[119] FAA Exhibit 1, Item 3, p. 8.
[120] According to the City, "under the City's procedures, an ordinance is introduced for first reading before the City Council, which hears public testimony at that time. If the ordinance is approved by a majority of the City Council at the first reading, it is brought back to a subsequent City Council meeting for a second vote. If a majority of the City Council again votes in favor of the ordinance, it goes into effect 30 days after the date of the second vote or second reading. Santa Monica City Charter Sections 615 and 619.FAA Exhibit 1, Item 3, p. 9, Footnote 2.
[121] FAA Exhibit 1, Item 3, p. 9.
[122] FAA Exhibit 1, Item 3, p. 9.
[123] FAA Exhibit 1, Item 3, p. 10.
[124] FAA Exhibit 1, Item 1, p. 5.

the NBAA's objections or the objections of other user groups and airport users.[125] It appears the City adopted the measure while ignoring the NBAA request to postpone its consideration to permit additional time for all parties to review and comment further.[126]

The record indicates that the City Council, at the June 10, 2003 meeting that decided the adoption of the ASMP, the meeting to which the Complainants' representative had provided comments in its June 9 letter, specifically stated that *no public discussion* was permitted.[127] As such, the second reading and adoption of the ordinance amending Section 10.04.06.100 of the Municipal Code related to landing fees, effectively adopting the landing fees, did not include any public review or comment nor did it provide a venue for deliberation and for public input.[128] Furthermore, the City admits that "the resolution setting the revised aircraft landing fees could not be changed until after the effective date."[129] Finally, the City Council set the effective date for the revised landing fees for August 1, 2003, in order to permit the ordinance to go into effect and to permit the Airport staff enough time to give notice to those affected.[130]

From these facts, it is clear that not only was there no real venue for changing the resolution setting the revised landing fees after its passage, but the extension of time for the implementation was not provided to give users time to "informally discuss" but rather, as the City states, to give the City staff time to notify users that the resolution would take effect.

The record shows that on or about June 10, 2003, several airport users, including a number of aircraft owners and operators and the Supermarine Fixed Base Operator (FBO), also filed comments with the City regarding the proposed landing fees and asked that the fees not be implemented.[131] On June 11, 2003, the SMAA, a membership entity consisting of aircraft owners, aircraft pilots, fixed base operators, aircraft businesses and aviation-oriented businesses, filed an informal complaint with the FAA Western Pacific Airports Division complaining that the proposed weight-based fees were unreasonable and represented a ploy to deter larger aircraft from using the airport. Based on these communications by airport users and businesses, the argument that every aviation business and user on the airport was well aware of the Airport Commission's agenda and had an opportunity to voice concerns prior to June 10, 2003, is not substantiated by the facts in the record. The record indicates that the official notice to tenants and aircraft operators by the City took place on June 20, 2003, ten days after the landing fees schedule was adopted.[132]

The Director also notes that the speed at which the proposed landing fees were proposed and adopted, approximately within one month,[133] provides little time for either constructive public input or for users to provide useful comments. Additionally, had the City provided ample time and consideration for public comment or had the matter been widely noticed, as the City argues,

---

[125] See FAA Exhibit 1, Item 1, Exhibit 1, p.2.
[126] FAA Exhibit 4, p. 8.
[127] See FAA Exhibit 1, Item 1, Exhibit 1, p.2.
[128] See FAA Exhibit 1, Item 1, Exhibit 1, p.2.
[129] FAA Exhibit 1, Item 3, p. 9, footnote 2.
[130] FAA Exhibit 1, Item 3, p. 9, footnote 2.
[131] Letter from Patrick E, Bailey, Counsel for several users to The Honorable Richard Bloom, Mayor of the City of Santa Monica, dated June 10, 2003. See FAA Exhibit 1, Item 10.
[132] FAA Exhibit 1, Item 1, Exhibit 2.
[133] During the week of May 5, 2003, the City posted its agenda for the City Council meeting for May 13, 2003, which included the Staff Report explaining the proposed changes to fees charged at the Airport. On May 13, 2003, Ordinance No. 2079, an ordinance amending the Santa Monica Municipal Code (SMMC) to permit revision of the provisions related to aircraft landing fees, was introduced for first reading by the City Council." FAA Exhibit 1, Item 3, p. 8-9. The revision of the Airport's landing fees by Resolution occurred on June 10, 2003. FAA Exhibit 1, Item 2, p. 3.

the record would contain evidence of public comments or input. However, the record of evidence contains no such records besides those communications provided by the City and the FAA in the immediate days preceding the adoption of the new landing fees.

Pursuant to Part 16.21(b), the Complainants certified to the FAA that no other substantial and reasonable good faith efforts to resolve this matter could have been made and that there appears to be no reasonable prospect for timely resolution of the dispute. The record shows that in its June 9, 2003 letter, the NBAA asked the City to postpone its consideration of the landing fee schedule to permit interested parties the opportunity to review and comment on it. The record shows that the City Council enacted the ordinance in spite of the concerns expressed by users and the fact that the FAA had also requested that implementation be delayed.[134]

By enacting the ordinance without consideration for, or mention of, the Complainants' or the FAA's request for a time extension or request that the landing fees not be implemented, the City extinguished the possibility for additional and successful communications after that time, and effectively ended the Complainants' ability to expand upon any reasonable good faith efforts to resolve the matter informally.

The City's argument that Complainants failed to engage in good faith pre-Complaint resolution discussions because the NBAA letter to the City dated June 9, 2003 "did not indicate that it is initiating its pre-Complaint resolution efforts under Part 16," is without merit.[135] This is because under Part 13.1 (informal resolution) and under Part 16, the actions by either parties, such as correspondence, face-to-face meetings, and public testimony, all constitute informal resolution. Although it would be helpful for the record, there is no requirement to explicitly "mark" a document as a Part 16 informal resolution for it to be considered as such by the FAA.

The City also argues that BAC and DFJ never communicated with the City regarding the landing fees, and, therefore, have failed to meet Part 16.21(b).[136] The FAA recognizes that the NBAA represents its members' interests in court cases and airport compliance cases such as this one.[137] In addition, as mentioned above, the FAA considers the NBAA to be the Complainants' (BAC and DFJ) representative, similar to representation by counsel, a role the NBAA had before and at the time of the June 9, 2003, letter to the City.

In any event, Part 16 provides for an "authorized representative" to file a Complaint, a fact the City acknowledges in its Rebuttal.[138] In its Rebuttal, the City clearly states that the NBAA's "standing in this matter is limited to acting in a representative capacity for BAC and DFJ."[139] Based on this, in addition to the fact that the City has recognized the NBAA's standing as a representative, the fact that a particular Complainant did not specifically communicate with City while its representative did, does not invalidate the Complaint.

Finally, on several occasions, the FAA recommended and then requested that the City delay implementation of the new landing fees. The City also ignored the FAA's request to withhold billings. To this, City officials publicly stated that the City did not plan to delay the

---

[134] FAA Exhibit 1, Item 1, p. 6.
[135] FAA Exhibit 1, Item 5, p. 4.
[136] FAA Exhibit 1, Item 5, p. 5.
[137] FAA Exhibit 1, Item 4, p. 4.
[138] See FAA Exhibit 1, Item 5, p. 6.
[139] FAA Exhibit 1, Item 5, p. 14.

implementation.[140] Therefore, based on the above, the argument that the Complainants failed to engage in good faith efforts to resolve the matter informally is not supported by the facts. Because of this, the Director concurs with the Complainants' position that to compel further informal resolution efforts would simply require the Complainants to petition the same officials for relief who had for all practical purposes already enacted the ordinance and rejected the appeals of the Complainants and the FAA.[141]

2. Standing Under 14 CFR Part 16 (Also Second Affirmative Defense)

The City asserts that the Complainants have failed to allege facts demonstrating that they have standing to bring this action under 14 CFR § 16.23(a) since they are not parties that are directly and substantially affected by the alleged noncompliance and that the Complainants have not complied with 14 CFR §16.23(b)(4).[142] The City argues in the Motion to Dismiss that the Complainants have failed to describe how they were directly and substantially affected by the alleged noncompliance by the City in view of the fact that Complainant NBAA itself is not an aviation service provider or user of the services at Santa Monica Municipal Airport (SMO) and neither BAC nor DFJ are based at SMO.[143]

The City contends that Complainants BAC and DFJ have not demonstrated that the revised landing fees prevent them from operating at SMO.[144] In its Motion to Dismiss, the City reaffirms its position that the Complainants lack standing under Part 16 to bring the matter because none has shown that they are directly and substantially affected by the alleged noncompliance.[145] The City also questions DFJ's assertions that over the past three years it performed demonstration flights for prospective buyers at SMO, that DFJ aircraft have ever even used SMO and actually paid landing fees. The City concludes by stating that DFJ's assertion that the revised landing fees would affect it is not enough to show that DFJ is directly and substantially impacted. While recognizing that BAC has operated at SMO regularly, the City takes the position that DFJ has only made negligible use of SMO.[146]

With regard to the other Complainant, BAC, the City argues that "BAC has likewise failed to establish standing" and that "BAC has not shown, or even alleged, that it owns any aircraft using SMO or that it has been subject to any landing fees." The City also asserts that BAC has not alleged that it has responsibility for paying landing fees and that there is "no substantiation for BAC's allegation that it is directly affected by the aircraft landing fees." The City also states that "none of the alleged fractional owners (who might be subject to the fees) have been named as complainants."[147]

The City alleges that the Complainants have not met the requirements of 14 CFR Part 16.23 because they failed "to specifically identify the alleged members of NBAA that use the Airport as their home base or those NBAA members that are directly and substantially affected by the proposed landing fees" and that "Complainants, NBAA, BAC and DFJ, are not tenants at the

---

[140] http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2003/July-2003/07_14_03_Halt_New_Landing_Fees_for_Jets.htm

[141] FAA Exhibit 1, Item 1, p. 6. We also note that Part 16 allows a complainant to file a Complaint after the landing fees are enacted. For example, a transient operator could initiate the Complaint process regarding the existing fees at any time.

[142] FAA Exhibit 1, Item 2, p. 8.

[143] FAA Exhibit 1, Item 3, p. 3.

[144] FAA Exhibit 1, Item 3, p. 3.

[145] FAA Exhibit 1, Item 3, p. 11.

[146] FAA Exhibit 1, Item 3, p. 11-12. Also see FAA Exhibit 1, Item 5, p. 23.

[147] FAA Exhibit 1, Item 3, p. 12.

Airport" and that "as a result, Complainants lack standing to bring this action under Part 16."[148] The City also argues that "though Complainants have not reviewed the ASMP report commissioned by the City, it claims that the City's cost allocation is arbitrary and capricious. Since the complainants never requested a copy of the ASMP report, it is not surprising that the ASMP report was not available to them. The complainants' failure to review the City's revenue and expenditures for the Airport and the ASMP report demonstrates their failure to comply with 14 CFR Part 16.23 that requires documentary evidence in support of their claims."[149]

With regard to the City's argument that the Complainants failed to comply with 14 CFR Part 16.23 because they did not request, nor review, the ASMP report commissioned by the City, [150] the record clearly shows that the NBAA, as the Complainants' representative, has received the ASMP report prior to filing the instant Part 16. In any event, the Complainants received FAA's August 14, 2003, assessment of the report.[151] Therefore, this part of the City's argument is rejected.

A review of the record indicates that the Complainants have standing in that they are directly and substantially affected by any alleged noncompliance. Specifically, in Complainants' Reply to the Respondent's Answer and Motion to Dismiss, the Complainants provide ample evidence that both DFJ and BAC have operated and continue to operate at SMO in addition to having paid landing fees on several occasions.[152]

The City's argument that the fees have not impacted BAC because it has yet to pass on to its customers the cost of the additional fees[153] is without merit. If BAC absorbed the costs without passing them on to its customers, it would be adversely affected. Finally, a review of the information submitted by the City in these proceedings indicates that both operators, BAC and DFJ, had flown to and from SMO between May 1 and July 31, 2003.[154] Therefore, we disagree with the argument that the revised landing fees do not directly and substantially impact DFJ because DFJ makes negligible use of SMO.[155]

The Director finds that while the NBAA, as an association, is not itself a party directly affected by the alleged noncompliance, BAC and DJC are affected and are proper parties to this proceeding. The Director, however, recognizes that the NBAA may serve as BAC's and DJC's representative in this proceeding, when it has been shown that BAC and DJC are directly and substantially affected. Consequently, the City's argument that the Complainants have not met the requirements of 14 CFR Part 16.23 because they have no standing to bring this action under Part 16 is rejected.

3. Provide Complete Information - (Also Third Affirmative Defense)

The third affirmative defense provided by the City relates to the failure to provide complete information. The City alleges that the Complainants failed to serve all documents available in

---

[148] FAA Exhibit 1, Item 2, p. 2.
[149] FAA Exhibit 1, Item 2, p. 5-6.
[150] FAA Exhibit 1, Item 2, p. 5-6.
[151] See FAA Exhibit 1, Item 4, Exhibit 5. In addition, the information released by the City prior to and at the time of the adoption of the ASMP-based landing fees provides sufficient information as to the nature of the program. See FAA Exhibit 1, Item 1, Exhibit 1-3. Jeffrey Gilley, NBAA's Manager, Airports/Ground Infrastructure has declared (telephone interview, dated October 8, 2004) that the ASMP report became available to NBAA on August 26, 2003.
[152] See Declarations by Complainants, FAA Exhibit 1, Item 4, Exhibit 2, Exhibit 3, and Exhibit 4.
[153] FAA Exhibit 1, Item 5, p. 15.
[154] FAA Exhibit 1, Item 3, p. 31-32.
[155] FAA Exhibit 1, Item 3, p. 11-12. Also see FAA Exhibit 1, Item 5, p. 23.

the exercise of reasonable diligence, which serves as the basis for the Complainants' claims, and that they failed to provide a concise and complete statement of facts relied upon to substantiate their allegations.[156] The City argues in the Motion to Dismiss that the Complainants have failed to provide a concise, complete, statement of facts relied upon to substantiate their allegations.[157]

In its Motion to Dismiss, the City argues that the Complaint should be dismissed because "it is devoid of specific facts and evidentiary support" and that the Complainants have made general allegations of harm, an analysis of their arguments revealing no factual basis for their claims.[158] A similar claim is made in the City's Rebuttal.[159]

The City also argues that Part 16 procedures (16.23) have been violated because the Complainants failed to (1) provide the name and address of each person who is the subject of the Complaint and the specific provisions of each act that the Complainants believe were violated; (2) serve the Complaint in accordance with §16.15, along with all available documents offered in support of the Complaint; (3) provide a concise, but complete, statement of facts relied upon to substantiate each allegation; and (4) describe how the Complainants were directly and substantially affected by the things done or omitted by the Respondent. In short, the City argues that the Complainants have not fulfilled these requirements.[160]

A review of the Complaint and the record of evidence, as this decision reflects, show that the Complainants did provide adequate information to substantiate their claims and allegations and the FAA found that the Complaint was complete. Had the Complainants not done so, the FAA would not have docketed and processed the Complaint. Under Part 16, the FAA initially reviewed the Complaint for completeness under 14 CFR Part 16.27 examining the procedural issues now raised by the Respondent. FAA found that the Complaint was complete.

Additionally, we note that the FAA began informally investigating the City's proposed new landing fees in 2003 and, based upon a review of the documents provided by the City, stated that the methodology underlying the fees may violate applicable Federal law and policy in several respects. As such, the FAA has decided that the evidence under review is sufficient to proceed under 14 CFR Part 16.

Based on the above, the allegation by the Complaint was incomplete is rejected.

4. The Effect of FAA Docket No. 16-99-21 (Also Fourth Affirmative Defense)

In its Answer, the City argues that the 1984 Santa Monica Airport Agreement (1984 Agreement) is not within the jurisdiction of 14 CFR Part 16. The City cites Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica Air Center v. City of Santa Monica, FAA Docket No. 16-99-21, in its defense.[161]

In FAA Docket 16-99-21, the FAA stated that "on April 7, 1998, the FAA dismissed without prejudice the Complaint as incomplete under 14 CFR Part 16 and beyond the jurisdiction of the FAA because it alleged violations of the 1984 Agreement and a 1984 Airport Plan. Those

---

[156] FAA Exhibit 1, Item 2, p. 8-9 and FAA Exhibit 1, Item 5, p. 11.
[157] FAA Exhibit 1, Item 3, p. 3.
[158] FAA Exhibit 1, Item 3, p. 13.
[159] FAA Exhibit 1, Item 5, p. 11.
[160] FAA Exhibit 1, Item 3, p. 13-14.
[161] FAA Exhibit 1, Item 2, p. 2.

agreements were considered not within the scope of Part 16." At that time, the FAA advised SMAA, that the U.S. District Court in which the litigation arose which resulted in the 1984 Settlement Agreement and Airport Plan would appear to be the proper forum for allegations concerning their breach.[162]

However, since then, a review of FAA records has confirmed that the SMO has received six AIP grants from 1985 to 1994, two of which (in 1985 and 1989)[163] incorporate the 1984 agreement by reference. Specifically, Special Condition 13 in those AIP grant agreements stated that "it is understood and agreed by and between the parties that the Santa Monica Airport Agreement executed on January 31, 1984 by the City of Santa Monica is hereby incorporated by reference.

Because the 1984 Agreement was incorporated by reference in these two AIP grants, it is appropriate to review the Agreement to determine compliance with the grant condition along with the allegations of grant assurance and Surplus Property Act violations.

B. Reasonableness of ASMP and Associated Landing Fees

This section of the decision analyses the ASMP and associated landing fees to determine whether they are reasonable pursuant to Federal law, as explained above in the Applicable Law section. The Complainants allege that by adopting the ASMP and its associated landing fees, the City, as the sponsor of SMO, has enacted a regulation regarding the use of a federally assisted airport that is unreasonable. The Complainants assert that the landing fees are not uniformly applied to all aircraft, that it is inconsistent with the FAA's Policy Regarding Airport Rates and Charges[164] and that the justification for the landing fee schedule "– that it is necessary to apportion pavement maintenance cost – simply is not credible."[165] As stated another way, the Complaint raises the issue of whether the ASMP and associated landing fees are reasonable under Federal law.

In responding to the Complaint, the City denies that the landing fees violate Federal law.[166] The City contends that the revised landing fees have no connection to the City's aircraft noise mitigation program. The City states that it already operates a very successful noise program in which the 65 dB CNEL noise contours are almost within SMO's boundaries and residences are outside the 65 dB CNEL noise contour. The City also states that the purpose of the revised landing fees is to generate sufficient revenue based upon the proportionate damage to pavement caused by all aircraft to enable the City to maintain SMO in a safe operating condition.[167]

According to the City, the Complainants have not provided any evidence that aircraft will be diverted to other airports or that the fees are in any way related to aircraft noise abatement and that "Complainants' attempt to imply that the revised landing fees are tied to an attempt to close the Airport is contradictory to the City's stated effort to maintain the Airport's infrastructure."[168]

---

[162] FAA Docket No. 16-99-21, p. 5-6. The present case is distinguishable because the earlier case was solely based on alleged violations of the 1984 Agreement. The present complaint alleges violations of the Grant Assurances and Surplus property Act instruments, which are expressly within Part 16 jurisdiction. See 14 CFR Part 16.1. After the earlier case was dismissed without prejudice, it was refilled and processed with allegations of violations of the Grant Assurances. See FAA Docket 16-99-21.
[163] See FAA Exhibit 1, Item 7, AIP 3-06-0239-02 executed 9/9/85, AIP 3-06-0239-03 executed 9/25/85, AIP 3-06-0239-04 executed 9/25/89.
[164] FAA Exhibit 1, Item 1, p. 5.
[165] FAA Exhibit 1, Item 1, p. 5.
[166] FAA Exhibit 1, Item 2, p. 2.
[167] FAA Exhibit 1, Item 2, p. 6.
[168] FAA Exhibit 1, Item 2, p. 6.

The City argues that the Complaint should be rejected because the landing fees compensate the City for only a portion of its costs to operate the airport and are rationally related to the impact of use by various aircraft.[169] The City takes the position that the maintenance and operational costs for SMO fully substantiate the revised landing fees set by a resolution of the City Council on June 10, 2003, and that the City's ASMP landing fees are rationally based and do not impermissibly discriminate.[170]

The City also cites paragraph 3.1.1 of the Policy Regarding Airport Rates and Charges (Policy),[171] in its defense. Specifically, the City cites "that airport operators can make reasonable distinctions among aeronautical users and assess higher fees on certain categories of aeronautical users based on those distinctions."[172]

Finally, the City cites FAA policy that the FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues and that the Airport has had a deficit in its budget since the 1998-1999 fiscal year.[173]

As explained in the Applicable Law section above, Federal law requires that fees charged to aeronautical users of a federally obligated airport be reasonable.

1. Airside Surface Maintenance Program (ASMP)

The ASMP report (also referred to as "staff report"), containing the proposed fee changes, claims that to understand how traffic and age will impact pavement life and condition, it was necessary to conduct a thorough investigation of the existing pavement structures at SMO. Also, it stated that knowing how the pavements are currently performing and are projected to perform will allow the City of Santa Monica to develop an ASMP "that best protects one of the airport's largest assets, its pavements."[174]

The ASMP report, providing details on the AMSP, states that airport personnel wanted to make sure that the existing airport pavements are properly maintained so that airport users have pavements with an acceptable surface operational condition and adequate load-carrying capacity. To make sure the pavements are properly maintained, the City argues that it elected to establish an Airside Surfaces Maintenance Program for the airport and it wanted to determine if a "Pay as You Go" fee-based funding program was appropriate for the airport.[175]

The City represents that the benefits gained from implementing the ASMP include having: (1) an objective and consistent method for evaluating pavement condition; (2) a systematic and justifiable engineering basis for determining maintenance needs; (3) a method to identify the funding levels necessary to maintain the pavements at various serviceability levels; (4) a method to predict future conditions; and (5) a method to evaluate the impact, on overall pavement condition, of different aircraft types.[176]

---

[169] FAA Exhibit 1, Item 3, p. 14.
[170] FAA Exhibit 1, Item 3, p. 3.
[171] 61 Fed. Reg. 41994, 32021.
[172] FAA Exhibit 1, Item 3, p. 17.
[173] FAA Exhibit 1, Item 3, p. 17, footnote 6.
[174] FAA Exhibit 1, Item 3, Exhibit 5, p. 1.
[175] FAA Exhibit 1, Item 3, Exhibit 5, p. 1-2.
[176] FAA Exhibit 1, Item 3, Exhibit 5, p. 2.

The City argues that the ASMP is "an excellent tool that airport staff can use when making decisions about needed pavement improvements" and that "an added benefit of developing an independent Airside Surfaces Maintenance Program is that the data collected can be used to determine the relative damage caused by the various aircraft using the airport" and that "this information allows the City to establish landing fees based on the actual damage any given aircraft causes when operating on the airport's pavements."[177]

2. Justification

According to the City, SMO is operated as an airport enterprise fund that is separate and apart from the City's General Fund. SMO operation and maintenance costs are supported through the collection of user fees and rental income from various aviation and non-aviation leaseholds on airport property.[178] The City states that its objective "is to ensure that costs for essential infrastructure, maintenance, operations and staffing for Airport facilities and services be fully covered by the Airport's rates and charges" and that "as established in the [ASMP Report] study, the proposed weight-based landing fees reflect the damage to runway and the taxiways caused by heavier aircraft using the facilities" and that "adoption of the proposed fees would help fulfill the City's objective of funding Airport operation and maintenance through user fees."[179]

The issue under consideration here is for the FAA to ensure that SMO is being made available as an airport for public use on reasonable terms to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. It is also under consideration whether the City, as the sponsor, has established reasonable conditions, including fees, to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

This was accomplished here by reviewing the record and the arguments and considering the following: (a) a detailed analysis of the AMSP, (b) its impact on users, (c) the increase in jet operations, (d) a comparison of SMO landing fees with the fees at other airports as well as applicable industry standards, (e) the relationship between landing fee revenues and past pavement-related expenditures at SMO, (f) compliance with Grant Assurance 24 (self-sustainability), (g) assessing the validity of the requirements under Grant Assurance 11, and in this particular case, (h) the implications of the 1984 Agreement.

a. Detailed Analysis of the ASMP

The City argues that the Complainants, while disagreeing with the City's use of the ASMP analysis, have provided no evidence to contradict the ASMP report nor have they explained why lighter aircraft that have minimal or non-existent damage on the pavement surfaces should subsidize the greater damage caused by heavier aircraft by being assessed a landing fee at the same rates. Furthermore, the City adds "indeed, they (Complainants) could not have contradicted the report, since they have not read it."[180] As to this last argument, the current Part 16 filing by the Complainants shows that it was done after reviewing the ASMP report, which was made public, and to which the Complainants had access. In addition, the Complainants

---

[177] FAA Exhibit 1, Item 3, Exhibit 5, p. 2.
[178] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 2.
[179] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 2.
[180] FAA Exhibit 1, Item 3, p. 19.

previously brought forth those concerns as identified by the FAA in its preliminary determination of August 14, 2003.[181]

The City's financial objective by implementing the findings of the ASMP is to collect $8.3 million over 15 years, or $552,000 on an annual basis.[182] The FAA must initially conduct a technical assessment to ascertain whether the ASMP report is technically sound and supports the City arguments for imposing the new landing fees to collect at least $552,000 each year for the next 15 years.

First, we note that at any airport the environmental effects on pavement are not related to load or aircraft weight.[183] All users should share those costs and the ASMP study methodology clearly indicates that they are not sharing them.[184] In other words, all users, regardless of aircraft weight, should pay maintenance costs associated with environmental deterioration equally. From the projected maintenance data shown in appendix D of the ASMP study, environment-related maintenance totals approximately 29 percent of the total rehabilitation cost of the surfaces. This cost, estimated at $2,351,366.62 over 15 years, should be divided by all traffic at SMO, regardless of weight. Only the cost differential, associated with load-related impact, should be allocated by aircraft weight. Instead, the City has allocated all of the costs including those associated with environmentally related maintenance, to those aircraft weighing 10,000 lb. or more. Next, it appears that only runway and taxiway pavements were tested for existing pavement strength. The load-carrying[185]capacity of other pavements, such as aprons, was inferred.[186] Additionally, because it relied on a single non-destructive test program report, without thickness verification cores or other standard geo-technical investigation efforts, the ASMP may overstate the actual needs of the pavement. In addition, the pavement life curve needs verification. Those sections that will have no maintenance performed in the next five years should be re-inspected in the future to establish a more accurate deterioration model.

It is noteworthy, that the curve predicts that a particular section of runway 03 should have a Pavement Condition Index (PCI) of 84, but a PCI of 93 or higher is actually reported.[187] This is a substantial difference for purposes of critical pavement analysis, in that the pavement condition for runway 03 is far superior to that predicted for pavement life since the runway's $2.3 million reconstruction and other pavement work completed in 1993-1994.[188] This calls into question the reliability of the ASMP study, which calls for an annual $552,000 requirement for pavement maintenance. The weight-based pro rata system, to be reasonable, must use fees based on the pavement needed to support current and planned aircraft operations.

---

[181] See FAA Exhibit 1, Item 4, p. 1-2 and Exhibit 5.
[182] FAA Exhibit 1, Item 3, Exhibit 5, p. 58.
[183] The ASMP report refers to weathering and other environmentally-related deterioration. See FAA Exhibit 1, Item 3., Exhibit 5, p. 15. See *infra* page 53-54.
[184] FAA Exhibit 1, Item 3, Exhibit 5, p. 1
[185] The pavement design method is based on the gross weight of the aircraft. For design purposes the pavement should be designed for the maximum anticipated takeoff weight of the aircraft. The design procedure assumes 95 percent of the gross weight is carried by the main landing gears and 5 percent is carried by the nose gear. AC 150/5300-13, Airport Design, lists the weight of nearly all civil aircraft.
[186] FAA Exhibit 1, Item 3, Exhibit 5, p. 3
[187] See FAA Exhibit 1, Item 3, Exhibit 5, p. 37 onward. The Pavement Condition Index is an index of the pavement's structural and surface operational condition, and is a numerical rating index, ranging from 0 for a failed pavement to 100 for a pavement in perfect condition. Calculation of the PCI is based on the results of a visual condition survey in which distress type, severity, and quantity are identified. The PCI provides an insight into the causes of distress and relates to load or climate. The PCI is the basis for predicting pavement deterioration in time. This point is made since the typical pavement conditions curve used to predict the future needs of the pavement show a much faster deterioration than was actually observed at the airport. If a curve which better approximated the measured performance were used the future cost of the facility would be greatly reduced.
[188] FAA Exhibit 1, Item 7.

We developed the table below, which provides for the 20-year design period:

Layer	Pavement thickness required for Aircraft Gross Weight (lb.)			
Using CBR[189]=5	<=2,300 lb.	<=10,000 lb.	<=30,000 lb.	<=64,000 lb.[190]
P-401[191]	2"	2"	2"	4"
P-209[192]	3"	3"	6"	6"
P-154[193]	5.5"	7"	9.5"	11"

As shown, the data does not support the 15-inch sub-base recommended in the ASMP study. In other words, the ASMP report overstates the need, and hence the costs, for the 15-inch sub-base.[194] The FAA also reviewed the gross estimates of section costs from the study. The following were found:

Layer	$ Per Sq. ft.
2" Overlay[195]	0.87
2-6-8 Light[196]	3.87
4-6-15 Heavy[197]	6.09

Using the above data, we found that the difference between the light and heavy pavement sections is found by removing the cost of the 2-inch overlay from the heavy pavement sections and then subtracting the cost of the light pavement section. Using this procedure a value of $1.35 per square foot [(6.09-0.87)-3.87 = 1.35][198] is obtained. Dividing the cost differential by

[189] California Bearing Ratio, a standard measure of soil bearing capacity.
[190] The last column of this table was derived using the maximum reported (ASMP study) equivalent annual departures for the runway and taxiway pavements. A value of 1307 departures was used as noted in Table 2, p. 8 of the ASMP study
[191] P-401 refers to "Plant Mix Bituminous Pavements," a type of base course. See FAA Advisor Circular AC- 150/5320-6D "Airport Pavement Design and Evaluation, 7/7/1995. The hot mix asphalt surface or wearing course must prevent the penetration of surface water to the base course; provide a smooth, well-bonded surface free from loose particles which might endanger aircraft or persons; resist the shearing stresses induced by aircraft loads; and furnish a texture of nonskid qualities, yet not cause under wear on tires.
[192] P-209 refers to "Crushed Aggregate Base Course," a type of base course. See FAA Advisor Circular AC- 150/5320-6D "Airport Pavement Design and Evaluation, 7/7/1995. The base course is the principal structural component of the flexible pavement. It has the major function of distributing the imposed wheel loadings to the pavement foundation, the sub-base and/or sub-grade. The base course must be of such quality and thickness to prevent failure in the subgrade, withstand the stresses produced in the base itself, resist vertical pressures tending to produce consolidation and resulting in distortion of the surface course, and resist volume changes caused by fluctuations in its moisture content. In the development of pavement thickness requirements, a minimum CBR value of 80 is assumed for the base course. The quality of the base course depends upon composition, physical properties and compaction. Many materials and combinations thereof have proved satisfactory as base courses. They are composed of select, hard, and durable aggregates.
[193] P-154 refers to "Sub-Base Course," a type of sub-base. See FAA Advisor Circular AC- 150/5320-6D "Airport Pavement Design and Evaluation, 7/7/1995. A sub-base is included as an integral part of the flexible pavement structure in all pavements except those on sub-grades with a CBR value of 20 or greater (usually GW [well-graded aggregate] or GP [poorly-graded aggregate] type soils). The function of the sub-base is similar to that of the base course. However, since it is further removed from the surface and is subjected to lower loading intensities, the material requirements are not as strict as for the base course. In the development of pavement thickness requirements the CBR value of the sub-base course is a variable.
[194] Our analysis indicates that the pavement cross-section for the heavier traffic only needed to be 4-6-11 as shown in the table above. This reduced pavement sections was produced using the FAA design software F806FAA.xls assuming a 64,000 lb.dual wheel aircraft as the design aircraft with a total of 1,307 annual departures. This implies that the ASMP report required 4 extra inches of P154 material, which would add to the cost of construction.
[195] Hot mix asphalt pavement overlay.
[196] Section to support light aircraft. 2 inches of hot mix, 6 inches of base course and 8 inches of sub-base course.
[197] Section to support heavy aircraft. 4 inches hot mix, 6 inches of base course, and 15 inches of sub-base course.
[198] The procedure for determining the difference between the light and heavy pavements is related to removing the overlay cost ($0.87 per square foot) and subtract the difference between the sub-base layers.

the difference in sub base thickness, $1.35/(15-8), approximates the cost of the additional sub-base = 1.35/7~0.20 dollars per square foot per inch, which in turn leads to the following:[199]

Aircraft Weight	Pavement Section (20-yr) AC-P209-P154[200]	Cost of Section (base +/-) ($/Sq. ft)	Gross Estimated Cost ($/Sq. ft)	Plus for Weight ($/Sq. Ft.)
2,300 lb.	2-3-5.5	$3.87-$1.10	$2.77	$0.00
Light	2-6-8	$3.87	$3.87	$1.00
Heavy	4-6-15	$6.09	$6.09	$3.32

From the table above, the 162,500 annual General Aviation operations at SMO representing aircraft below 10,000 lb. should pay approximately $2.77 per square foot (see table above) towards all reconstruction costs of airside pavements, or 45.5% of the $6.09 cost per square foot for all layers. Instead, the City is allocating all of the costs to only those aircraft weighing 10,000 lbs. or more while allocating none of the costs to aircraft below 10,000 lbs. Thus, the ASMP methodology has been applied in a manner that is both unreasonable and unjustly discriminatory.

The FAA's review of the ASMP report raised questions as to the validity of the relative age scale presented on page 62 of the study. This scale is based on the Corp of Engineers airfield design program (WESLEA),[201] which is slightly different than FAA procedures. WESLEA is an elastic layered analysis program, which requires the input of elastic modulus for each pavement layer. The modulus[202] values presented in the ASMP report are higher than values permitted by the FAA LEDFAA program,[203] the FAA's elastic layered analysis program.

The methodology used to determine the relative damage by each aircraft is to calculate the horizontal strain at the bottom of the asphalt surface layer caused by each aircraft, and then calculate the allowable coverages until failure for each aircraft is determined. A mathematical adjustment is necessary since the WESLEA program does not adjust for pass-to-coverage ratios or departure/arrival considerations as detailed in the FAA pavement design procedures. Also, the relative damage factor as defined in the report is the ratio derived from dividing "Allowable coverages of aircraft in Question" by "Allowable coverages of a standard aircraft" (ratio). It appears the inverse of this may have been used in Table 13 on page 62[204] of the ASMP study. For example, assume the allowable repetitions for the standard aircraft is 10,000, then a heavier aircraft should have less allowable repetitions. This results in aircraft heavier than the standard aircraft having a relative damage factor less than one while aircraft lighter than the standard aircraft having a relative damage factor greater than one. There is an apparent inconsistency in the methodology reported in the ASMP report as Table 13 clearly shows a trend opposite of that expected. The relative scale of the data in Table 13 may be correct but the values shown, and the description of how it was generated are incorrect.

---

[199] This computation allows us to determine the individual cost of each layer based on aircraft weight.
[200] This is an abbreviation of the layer thicknesses for pavement designs for various aircraft as described in the previous page. For example, a 2-3-5.5 means 2" of P-401 pavement, 3" of P-209 and 5.5" of P-154.
[201] The FAA has not adopted WESLEA as an FAA standard.
[202] A measure of the stiffness of the material.
[203] Layer Elastic Pavement Design Program. LEDFAA is a computer program for performing thickness designs of airport pavements. It implements new design procedures based on layered elastic theory developed under the sponsorship of the Federal Aviation Administration (FAA). LEDFAA handles new and overlay design of both flexible and rigid pavements.
[204] See FAA Exhibit 1, Item 3, Exhibit 5, p.62.

The ASMP reported ratios of "Allowable coverages of aircraft in Question" divided by "Allowable coverages of a standard aircraft." When using FAA–accepted computerized pavement design software[205] (R806FAA.XLS) and COMFAA.EXE computerized pavement design software, the FAA obtained ratios that are not comparable with the ratios reported in the ASMP report. (The COMFAA program is technically consistent with the FAA design procedure but the program has not been officially adopted or approved for use by the FAA). While the two programs mentioned here do not use the layered elastic procedures discussed above, they are based upon the California Bearing Ratio CBR method of design, which is the current FAA design procedure used in Chapter 3 of AC 150/5320-6D.

It is not unexpected that the coverage ratios computed using the FAA software are somewhat different from those in the ASMP. However, the differences are pointed out because of their magnitude and the fact that the procedure used to design the pavements at SMO was based upon the CBR method. The modulus value used in the study for the asphalt surface layer in the ASMP report is 500,000 lb. per square inch, which is well above the 200,000 mark used as a default value in the FAA's LEDFAA program. FAA used the 200,000 lb. per square inch mark based upon Witzak's[206] model for 90 degree ACC or Asphalt Cement Concrete (Hot Mix Asphalt). The higher value in the ASMP study has the effect of assuring that horizontal strain in the Asphalt Concrete layer will control the design procedure. This will ultimately decrease allowable annual departures by overstating forecast damage to the pavement section.[207]

In addition, the FAA has concerns regarding the wheel spacing assumed in the ASMP for the dual wheel aircraft. The ASMP report states that it used a wheel spacing of 20 or 21 inches as taken from Appendix 2 in FAA's AC-150/5320-6D. However, from aircraft manufacturer data and the typical data used by the FAA LEDFAA program, these spacings are significantly larger than what would be expected for dual wheel aircraft cited in the ASMP study. This has a large impact on the overall relative damage scale, because closely spaced wheel loads would increase the relative damage attributable to the smaller aircraft. Since the ASMP report does not provide detailed data, it is not possible to recalculate the exact impact this will have on the reported scale.

The FAA used the LEDFAA program to gauge the impact of dual wheel aircraft by varying only the wheel spacing. The FAA compared a 50,000 lb. dual wheel aircraft with a 12-inch dual spacing with a 50,000 lb. dual aircraft with a 20-inch dual spacing. The Cumulative Damage Factor (CDF) for the 12-inch dual was 90 percent of the total CDF while the 20-inch dual was only 10 percent of the total CDF.[208] Thus, wheel spacing, independent of aircraft weight, can have a significant impact on the relative damage scale.[209] In the ASMP, only the heavier aircraft

---

[205] Compliant with AC-150/5320-6, current revision is revision D.

[206] Dr. Matthew W. Witzak is a prominent pavement specialist who has written many reference books on the subject. His books are used throughout the industry, and his model was used to develop the FAA standard.

[207] The FAA design procedure assumes that asphalt horizontal strain is not the failure mode due to the properties and thickness of the AC material. The ASMP report assumes that Asphalt Concrete horizontal strain is the failure criteria and forces this to happen by increasing the AC modulus. To summarize this point, the ASMP failure criteria is different from the FAA criteria and a difference would be expected in pavement life.

[208] We note that the CDF is the amount of the structural fatigue life of a pavement, which has been used up. It is expressed as the ratio of applied load repetitions to allowable load repetitions to failure. In these definitions, failure means failure in a particular structural failure mode according to the assumptions and definitions on which the design procedures are based. A value of CDF greater than one does not necessarily mean that the pavement will no longer support traffic, but that it will have failed according to the definition of failure used in the design procedure, and within the constraints of uncertainties in material property assumptions, etc. Nevertheless, the thickness design is based on the assumption that failure occurs when CDF = 1.

[209] The smaller wheel spacing will cause the strain in the sub-grade layer to increase thereby causing more damage (higher CDF). Failure in the LEDFAA program is assumed to happen when the cumulative CDF = 1.0. Using the smaller gear spacing will cause this to happen sooner.

were considered as damaging the pavement when in fact lighter aircraft also contribute to damage depending on wheel spacing.

Moreover, adopting the City's ASMP methodology to consider only aircraft above 10,000 lb. would implicitly disregard important pavement design standards such as the Cumulative Damage Factor, in which loading is defined as the number of repetitions of a given damage indicator divided by the allowable repetitions of the damage indicator that would cause failure of the pavement. The CDF is determined by summing the damage factors over all the loadings in the traffic spectrum at the airport.

City's methodology incorporates the design repetitions of each aircraft at their various operating weights, the wander of the aircraft, and the material performance properties used in the specified design model. Exempting aircraft below 10,000 lb. at an airport like SMO, with pavement designed for single-wheel aircraft weighing 40,000 lb., will not yield adequate CDF data. In other words, the data representing the cumulative damage suffered by the pavement will not be accurate if aircraft below 10,000 lb. are omitted from computations.

Finally, an important concern regarding the ASMP methodology is that not all aircraft use all pavements at SMO. A minimum pavement section is required for even the lightest of aircraft. Using the 2,300 lb. single-wheel light aircraft at 162,000 annual operations, as noted on page 7 of the ASMP report,[210] requires a minimum section of 2 inch ACC, 3 inch P-209, and 5.5 inch P-154. Small aircraft will have a much larger impart on the thinner sections designed specifically for light aircraft than they will on thicker pavements designed for all aircraft. For example, if large aircraft do not use the south side of the airport, then lighter aircraft should be allocated total costs of repairs on the south side.

Based on the above-mentioned technical shortcomings of the ASMP report, the Director finds that the methodology used in the report as it pertains to landing fees is not reasonable.

b. Impact on Users

The City rejects the Complainants' assertion that the landing fees would cause the exclusion of certain large jet aircraft from using the airport.[211] The FAA disagrees with the City and conveyed this to the City in the August 14, 2003, letter to the City.[212] The impact of the landing fees on certain aircraft and not others is relevant in this case.

The Santa Monica Airport landing fee schedule,[213] effective August 1, 2003, is based on the maximum certificated gross landing weight of the aircraft as published by the aircraft manufacturer. It provides for the following fees per 1,000 lb.:

---

[210] FAA Exhibit 1, Item 3, Exhibit 5, p.7.
[211] FAA Exhibit 1, Item 5, p. 19.
[212] FAA Exhibit 1, Item 4, Exhibit 5.
[213] See FAA Exhibit 1, Item 1, Exhibit 1, Landing Fee Schedule or http://pen.ci.santa-monica.ca.us/resource_mgmt/airport/06-19-03%20landing-fees.pdf

Landing Weight (lb.)	Fee Per 1,000 lbs[214]
10,000 to 10,999	$0.29
11,000 to 11,999	$0.83
12,000 to 12,999	$1.36
13,000 to 13,999	$1.90
14,000 to 14,999	$2.43
15,000 to 15,999	$2.97
16,000 to 16,999	$3.07
17,000 to 17,999	$3.17
18,000 to 18,999	$3.26
19,000 to 19,999	$3.36
20,000 to 20,999	$3.46
21,000 to 21,999	$3.43
22,000 to 22,999	$3.40
23,000 to 23,999	$3.37
24,000 to 24,999	$3.34
25,000 to 25,999	$3.31
26,000 to 26,999	$3.26
27,000 to 27,999	$3.20
28,000 to 28,999	$3.15
29,000 to 29,999	$3.09
30,000 to 30,999	$3.04
31,000 to 31,999	$3.01
32,000 to 32,999	$2.97
33,000 to 33,999	$2.94
34,000 to 34,999	$2.90
35,000 to 35,999	$2.87
36,000 to 36,999	$2.88
37,000 to 37,999	$2.89
38,000 to 38,999	$2.89
39,000 to 39,999	$2.90
40,000 to 40,999	$2.91
41,000 to 41,999	$2.97
42,000 to 42,999	$3.03
43,000 to 43,999	$3.10
44,000 to 44,999	$3.16
45,000 to 45,999	$3.22
46,000 to 46,999	$3.34
47,000 to 47,999	$3.46
48,000 to 48,999	$3.59
49,000 to 49,999	$3.71
50,000 to 50,999	$3.83
51,000 to 51,999	$4.02
52,000 to 52,999	$4.21
53,000 to 53,999	$4.40

[214] The cost per 1,000 pounds does not rise evenly due to the formula incorporating differential effects from the types of wheel configuration used in association with specific weight levels.

54,000 to 54,999	$4.59
55,000 to 55,999	$4.78
56,000 to 56,999	$5.04
57,000 to 57,999	$5.30
58,000 to 58,999	$5.55
59,000 to 60,000	$5.81

The Complainants claim that the above landing fee schedule is a "decidedly non-uniform fee, with the fee per thousand pounds dramatically increasing as the maximum certificated gross landing weight (MLW) of the aircraft increases."[215]

The FAA does not object to basing landing fees upon the maximum certificated gross landing weight of the aircraft. It is a widely accepted methodology and practice throughout the industry.

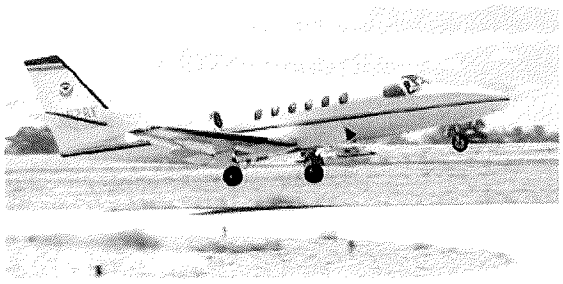
Using the above landing fee schedule results in the following landing fees on certain aircraft using SMO:[216]

- Cessna Citation 500/525 (10,000 lb. MLW) $ 2.90
- Beech Jet 400 (14,000 lb. MLW) $ 34.02
- Cessna 750 (31,800 lb. MLW) $ 95.71
- Falcon 50 (35,700 lb. MLW) $ 102.45
- Bombardier CL-604 (38,000 lb. MLW) $ 109.82
- Falcon 900 (42,000 lb. MLW) $ 127.26
- Gulfstream G-IV (58,500 lb. MLW) $ 324.67

[215] FAA Exhibit 1, Item 1, p 4-5.
[216] The City notes that "the complainants use as examples for the payment of the landing fees, aircraft which apparently they do not use." FAA Exhibit 1, Item 3, p. 17.

The overall impact of the ASMP landing fees on heavier aircraft is clearly disproportionate. The City's position is that it needs to collect an additional $552,000 annually from just a few aircraft that use the airport in order to pay for the pavement maintenance at the entire airport. There are 165,600 operations per year at SMO, [217] of which approximately 12,500[218] are by aircraft weighing over 10,000 pounds (and thus subject to landing fees.)

Therefore, under its new fee schedule, the City is effectively permitting aircraft representing 92.5%[219] of all estimated future operations at the airport to pay no landing fee whatsoever and thus pay nothing for any of the pavements costs. Moreover, the City's landing fee schedule unreasonably allocates approximately 30% of the $552,000 collected annually to an even smaller group of users operating the heaviest aircraft and responsible for only 0.7% of the total operations at SMO.[220]



Above, Piper Cheyenne. Below, Cessna Citation. (Photos: Above, FAA, Below, NOAA)

[217] FAA Exhibit 1, Item 6, FAA From 5010 "Airport Master Record" for SMO, Date: 05/24/2004.

[218] Estimation derived from total number of jet aircraft at the airport. Actual number is most likely slightly lower since there are few jet aircraft weighing less than 10,000 lb. See FAA Exhibit 1, Item 3, Exhibit 5, p. 7.

[219] (12,500/165,500X100=7.5%).

[220] For analysis using g.c.r. & associates, inc. detailed GA operations data (jet operations) for SMO from 01/01/2004 to 06/22/2004. A search of the data shows that a total of 1,216 landings (operations in 6 months) by Learjets (Lear 35, 45, 55 and 60 models-266 landings), Cessna 560 (198 landings), Cessna 750 (30 landings), Hawker 125 Series (34 landings), CL-600 Series (170 landings), Gulfstream G-IV (280 landings), and Falcon Jet (Falcon 50, 900, 900EX and 2000 – 238 landings) took place between these dates. The landing fee schedule was then applied to each type's MLW (using mean averages to account for variations in MLW), by multiplying weight in 1,000 lb. by the cost per 1,000 lb. by the total number of operations for each type. The total revenue collected form these 1,216 operations amounts to $163,000. Therefore, approximately 30% of the costs ($163,000/$552,000) being allocated to only 0.7% of the total operations (1,216/175,000) at SMO. We note that CGR data is underestimated because several aircraft are listed by registration number by not by manufacturer or model. The data is therefore an approximation since actual number is most likely higher. See FAA Exhibit 1, Item 9.

As reflected by these examples, the impact of the landing fee schedule is significant for some aircraft operators, especially for those operating aircraft above 30,000 pounds. A landing fee of $340 for a Gulfstream G-IV is extremely high. In fact, it is among the highest if not the highest landing fee per 1,000 lb. in the United States.

As an example of the impact of the landing fee, we point to the operations conducted by N14456, a Gulfstream G-IV between October 4 and October 16, 2003. The operator of this aircraft was charged over $1,600 for five landings during that time frame.[221] Such a landing fee as compared to the hourly operating costs[222] of $1,700 for a Falcon 50 or $2,100 for a Gulfstream G-IV is significant, and cannot be considered common within the industry.

Common industry landing fees imposed on aircraft such as the Falcon 50, Falcon 900 or Gulfstream G-IV at a typical reliever airport in the United States like SMO range approximate between $50 and $120.[223] Landing fees exceeding $120 are considered high and found typically at the larger commercial service airports, not at airport with one 5,000-foot runway like SMO.

c. Increase in Jet Operations

One of the City's supporting arguments for the landing fees is the assertion that the number of jet aircraft operations at SMO has increased dramatically from 1999 to 2002.[224] However, this is inconsistent with other statements by the City on that subject. In fact, as discussed in more detail below, data provided by the City indicates a comparison of aircraft operations between 2002 and 2003[225] shows, for all intended purposes, a negligible increase in jet operations at SMO during that timeframe. The City also states "airport operations have remained relatively stable for the past four years [2000-2004]."[226] As such, the record does not support the City's argument that the landing fees are necessary because of an increase in heavier jet aircraft in the years immediately preceding the adoption of ASMP. Additionally, if operations have remained relatively stable since 2000, and the earlier landing fees established in 1985[227] were never implemented, there is little justification for the dramatic increase adopted in June 2003. This is compounded by the fact that in 1993 the City completed a runway overlay reconstruction project that brought the runway back to its optimal condition and that the purpose of the runway project was to create a safe operating surface that would last for at least 20 years.[228]

d. Comparison to Other Airports

---

[221] FAA Exhibit 1, Item 12.

[222] Hourly operating costs may include aircraft loan payments, maintenance costs, crew costs, fuel costs, engine reserve costs, insurance costs, hangar and ground servicing, and airport fees among others.

[223] In order to ascertain a realistic and reasonable range of landing fees found in the industry, we contacted by telephone, several operators. Continental Aviation of Naples, Florida, a Gulfstream GIII operator, reports the range between $50 and $120 as realistic for an aircraft of the GIII weight category. NextFlight Aviation, another operator based in Virginia, reported that landing fees assessed on its Falcon 50 charter operations range from $50 to $120 at major relievers airports. Seneca Flight Operations, in New York, reports a landing fee range of $50-$100 for a Falcon 50 at reliever airports. Richmor Aviation, operators of Gulfstream IV report a landing fee range at reliever airport between $50 and $120. At Morristown airport in New Jersey, one of New York's reliever airports, a Falcon 900, weighing 42,000 lb. would pay a landing fee of approximately $50 (landing fee of $1.18 x 42).

[224] FAA Exhibit 1, Item 2, p. 4. Also see FAA Exhibit 1, Item 3, p. 16.

[225] FAA Exhibit 1, Item 3, p. 23-24.

[226] FAA Exhibit 1, Item 5, p. 21.

[227] On January 22, 1985, Santa Monica Municipal Code §10.04.06.l00 was adopted. It provided for landing fees for aircraft operated for commercial purposes. The landing fees were based upon the weight of the aircraft. FAA Exhibit 1, Item 2, p. 5. Those fees were not implemented.

[228] FAA Exhibit 1, Item 3, p. 15, 36.

In assessing the reasonableness of the landing fee schedule implemented by Santa Monica, the FAA examined landing fee rates per 1,000 lb. at other airports in the United States. When compared to other airports across the nation, including commercial airports and similar general aviation relievers, the rate per 1,000 lb. at SMO is the highest for the heaviest aircraft using the airport ($5.81 per 1,000 lb.).

Airport Name	Airport ID	Rate/1,000 lb.
Santa Monica, California	*SMO*	*$0.29 - $5.81*
JFK, New York	JFK	$5.25[229]
Boston Logan, Massachusetts	BOS	$3.58[230]
Lake Tahoe, California	TVL	$2.70
Denver International, Colorado	DIA	$2.09[231]
Los Angeles International, California	LAX	$2.00[232]
Palm Springs, California	PSP	$1.56-$1.95[233]
Baltimore International, Maryland	BWI	$1.63[234]
Hanscom, Massachusetts	BED	$1.50[235]
Reno Tahoe International, Nevada	RNO	$1.44[236]
State College, Pennsylvania	UNV	$1.25[237]
Morristown, New Jersey	MMU	$1.18[238]
Fort Myers, Florida	RSW	$1.01
Santa Fe, New Mexico	SAF	$.90[239]
South West Florida International, Florida	RSW	$.67[240]
Elko, Nevada	EKO	$.20-$0.50[241]
White Plains, New York	HPN	$.46[242]

[229] http://atlanta.bizjournals.com/atlanta/stories/2003/09/22/story1.html?page=1
[230] http://www.massaeronautics.org/mac_files/Article%20-%20Boston%20Herald%203-9-04.pdf
[231] http://www.metrodenveredc.org/documents/Economic%20Impact%20of%20Intl%20Flights.pdf
[232] http://www.eltoroairport.org/issues/march.html
[233] http://www.palmspringsairport.com/rates.html
[234] http://www.usatoday.com/travel/news/2003/05/21-bwi-rent.htm
[235] http://www.massport.com/hansc/hansc_operating.html. There are fees of $10-1$15 dollars for aircraft below 10,000 lb.
[236] http://www.rgj.com/news/stories/html/2004/05/24/71486.php
[237] http://www.statecollegeairport.org/generalaviation/airfield/landingfees.htm.
[238] MMU charges $70 for a 59,000 GII/GII type aircraft. MMU Landing Fee Schedule, effective January 15, 2004.
[239] http://www.santafenm.gov/public-works/municipal-airport/parking-tiedownfees-landingfees.asp
[240] http://www.lee-county.com/minutes/11-24-03ap.htm
[241] http://www.ci.elko.nv.us/codes/City_Municipal_Code/Title_98/87/17.html
[242] During the investigation, FAA contacted the airport manager's office and requested the rate per 1,000 lb. used in assessing landing fees at White Plains, NY. The response provided was $.46. This telephone conversation took plane on June 3, 2004.

The FAA recognizes that for many airports, especially commercial airports, landing fees are the main source of revenue used to recover airfield capital, operations and maintenance costs. However, from the data presented above, it is clear that landing fees above $3.00 per 1,000 lb./ are rare. The landing fee at SMO for aircraft weighing 60,000 lb. is $5.81 per 1,000 lb. while Los Angeles International Airport charges $2.00 per 1,000 lb. We also note that the landing fee collected at JFK International Airport in New York is $5.25 per 1,000 lb, $.56 lower than the top scale in place today at SMO. While this comparison, by itself, is not sufficient to make a finding of whether the landing fees are reasonable, in this particular case it does illustrate that the SMO landing fee methodology is not the result of generally accepted practices used within the industry. It also indicates that no other airport in the U.S. considers a landing fee in this range necessary to recover the costs of pavement maintenance. It is important to remember that SMO has only one 5,000-foot runway and limited pavement areas whereas the larger airports where landing fees are typically higher are multi-runway airports with extensive pavement and runways with lengths up to 12,000 feet.

What becomes apparent from this analysis is that no other airport in the United States has a maximum landing fee rate per 1,000 lb. that equals or exceeds what is in use at SMO, regardless of aircraft type or class of airport.

e. Relationship Between Fee Revenues and Past Pavement Expenditures

As discussed above, the basis of the justification advanced by the City and the ASMP report for the landing fees schedule is the relative damage factor caused by the weight of aircraft on pavement, and that "the associated maintenance costs are directly correlated with the weight of aircraft and their impact on the airside surfaces."[243] In other words, the City states that the justification for the landing fee schedule and resulting revenues is to maintain the airport's airside pavement. Therefore, it is necessary to review the City's financial information, including past expenditures in pavement maintenance (those areas that the paying aircraft use) at SMO to ascertain whether the landing fees are reasonable.

The FAA Rates and Charges Policy requires a consistent methodology in establishing airport fees and when the airport proprietor employs a cost-based methodology, as the City claims here, "aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under a cost allocation methodology adopted by the airport proprietor that is consistent with this guidance, unless aeronautical users otherwise agree."[244] The record indicates that adoption of the ASMP and the landing fee will result in the City collecting about $532,000 annually in landing fees.[245]

The impact of this fee increase was included in the Proposed FY 2003-04 Budget[246] and the City's financial objective of the ASMP is to collect $8.3 million over 15 years, or at least $552,000 a year.[247] The City states that in fiscal year 2002/2003, it spent $3,941,008 to operate the Airport while revenues from both aviation and non-aviation sources generated $2,962,153, resulting in a deficit of $978,855.[248] As part of its budgetary process for the 2003/2004 fiscal

---

[243] FAA Exhibit 1, Item 1, Exhibit 2, or http://pen.ci.santa-monica.ca.us/resource_mgmt/airport/06-19-03%20landing-fees.pdf. FAA Exhibit 1, Item 2, p. 5.
[244] 61 Fed. Reg. 31994 (1996). See paragraph 3.1 of the Policy, found at http://www.faa.gov/arp/pdftxt/rates1.htm.
[245] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 2.
[246] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 2.
[247] FAA Exhibit 1, Item 3, Exhibit 5, p. 58.
[248] FAA Exhibit 1, Item 3, p. 20. The City also states that this deficit does not include capital improvement projects in the amount of $486,208 and aviation debt service of $516,680. The total deficit when these additional costs are factored into the calculation

year, the City adopted a budget for the airport that included the revised landing fees to help decrease the deficit. However, the City projects that even with the new landing fees, the deficit at SMO for this fiscal year will be approximately $409,000.[249] From a pavement maintenance standpoint, a review of the record indicates that in the FY 2003/2004 budget, $150,000 was put aside for runway, taxiway and ramp slurry seals and re-stripping.[250] The FY 2004/2005 budget put aside another $150,000 for the same tasks[251] while the FY 2001/2002 budget put aside $200,000.[252] The record indicates that by August 2003, the runway, taxiway and ramp slurry seals and re-stripping work had been completed.[253]

A review of the City's airport operating budgets indicates that between 1992 and 2003, the account for airport field maintenance (aging pavement)[254] shows the following expenditures:

Year	Level of Expenditure (Aging Pavement) [255]
1992-1993	$34,000
1993-1994	$56,000
1994-1995	$69,000
1995-1996	$91,000
1996-1997	$94,000
1997-1998	$99,000
1998-1999	$88,000
1999-2000	$111,000
2000-2001	$101,000
2001-2002	$125,000
2004 Onward	$552,000/Year

This level of annual expenditures, ranging from $34,000 in 1992 to $125,000 in 2002 is significantly less than the proposed annual spending of $552,000 for 2004 and subsequent years.

---

is $2,274,333. The actual deficit for just aviation operations alone is $3,321,424, but it is offset by a surplus from non-aviation operations of $1,047,091.

[249] FAA Exhibit 1, Item 3, p. 20.

[250] FAA Exhibit 1, Item 11, Santa Monica Airport Proposed Fiscal Year 2003/2004 Budget Discussion, January 27, 2003.

[251] FAA Exhibit 1, Item 11, Santa Monica Airport Proposed Fiscal Year 2004/2005 Budget Discussion, February 2, 2004.

[252] FAA Exhibit 1, Item 11, Santa Monica Airport Proposed Fiscal Year 2001/2002 Budget Discussion, January 22, 2001.

[253] FAA Exhibit 1, Item 11, Presentation of Proposed Capital Improvement Projects for Fiscal year 2004/2005 and Status of Current Projects, November 24, 2003.

[254] This account includes other expenses, including maintenance of open areas, and some building expenses. Therefore, the actual funds used for actual pavement maintenance are lower.

[255] See FAA Exhibit 1, Item 8, Adopted Operating Budget, Fiscal years1992-2003, City of Santa Monica Expenditure Line Item Detail, Fund 33, (Airport Account), Division 631, account reference # 6621.

A review of additional financial information, specifically capital improvement projects (CIP) expenditures (defined by the City as runway and taxiway slurry seal and re-stripping, but not reconstruction), indicates that between 1995 and 2003 the City had the following expenditures:

Year	CIP[256]
1995-1998	$0.00
1998-1999	$387.00
1999-2000	$199,000
2000-2001	$0.0
2001-2002	$290,000
2002-2003	$12,900
2004 Onward	$552,000/Year

This data indicates that the total capital improvement expenditures for runway and taxiway slurry seal and re-stripping between 1995 and 2003 averaged approximately $62,000 annually.[257] In summary, the data show a total of $1.78 million[258] for various airport safety improvements between 1995 and 2003, for an average of approximately $222,000 annually.[259] However, we note that "airport safety improvements" are not necessarily pavement related, and therefore, the actual level of capital improvement expenditures related to pavement maintenance, rehabilitation or reconstruction is actually lower than $222,000.

Therefore, even though the two sets of financial data (operating budgets and capital improvement project expenditures) appear to be duplicated to some extent, since CIP projects are also represented as pavement maintenance items, from these data and from the most optimistic view or perspective, the highest level of expenditures related to pavement maintenance or repair would not exceed $284,000 annually. The actual level is in all likelihood lower. Projected expenditures are significantly under the proposed $552,000 revenue to be collected annually from the new landing fees.

In other words, if the City landing fee revenue collection is $552,000 annually but airfield expenditures have only averaged between $222,000 and $284,000 annually over eight and seven years respectively, a surplus will be accumulated. The FAA generally considers it unreasonable for airport sponsors to accumulate charges for facilities or improvements that do not exist. In addition, revenues collected need to be related directly to the costs assessed to specific users.[260] The total costs advanced by the City through the ASMP, $552,000 annually, are for a full program of maintenance and rehabilitation, a plan that exceeds the pavement's maintenance needs. As described above, the pavement life expectancy curve indicates a PCI of about 84 after 6 years of service, and yet the SMO runway, after 6 years of service, meets or exceeds a PCI of 93. This substantial difference indicates that the formula-driven maintenance requirements of the ASMP and associated landing fee schedule do not appear to correlate with actual maintenance requirements or conditions on the airfield.[261]

---

[256] See FAA Exhibit 1, Item 8, Capital Improvement Projects Expenditures for Fiscal Year Beginning 2003-1995.
[257] $12,900 + $290,000 + $199,000 + $387/ 8 years.
[258] The amount may actually be lower because the data for 1996-1997 ($412,526) is provided while other data specific for 1996, Jan-Dec, is also provided at a level of $743,460.
[259] See FAA Exhibit 1, Item 8, Capital Improvement Projects Expenditures for Fiscal Year Beginning 2003-1995. Computation derived from $447,700 + $17,200 + $3,600 + $4,800 + $ 4,800 + $412,500 + $146,200 + $743,000/ 8 years.
[260] FAA Exhibit 1, Item 4, Exhibit 5.
[261] FAA Exhibit 1, Item 4, Exhibit 5.

Finally, the City has stated that "in 1993, the Airport completed a runway overlay project that brought the upper layers of the runway back to its optimal condition" and that "the purpose of the runway project was to create a safe operating surface that would service the Airport for at least 20 years."[262] In other words, the City's 1993 runway work means that the improvements were to last until 2013 at least, and it does not support the argument that the runway now needs extensive work today, work that would justify an additional $552,000 in new fees, let alone $552,000 each year for the next 9 years. In summary, the record indicates that the City, through the ASMP, appears to overstate the costs necessary to maintain the airfield paved surfaces with the result that excessive surpluses may be accumulated under the City's ASMP landing fee program.

f. Self-Sustainability Under Grant Assurance 24

According to the City, SMO operates as an enterprise fund that is separate and apart from the City's General Fund. Its operation and maintenance costs are supported through the collection of user fees and rental income from various aviation and non-aviation leaseholds. In addition to landing fees, airport revenues are derived from facility rentals (aviation and non-aviation commercial leases), hangar rentals, aircraft tie-down fees, land leases, fuel flowage fees, office rentals, and other miscellaneous income.[263] The City states that its objective is to ensure that costs for essential infrastructure, maintenance, operations and staffing for airport facilities and services be fully covered by the airport's rates and charges.[264]

The City mentions Grant Assurance 24, and provides that "an airport will maintain a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible under the circumstances existing at the airport taking into account factors such as volume of traffic and economy of collection."[265] In addition, the City cites paragraph 4.1 of the FAA Rates and Charges Policy[266] that indicates if an airport is not financially self-sustaining, it should establish long-term goals and targets to make the airport as self-sustaining as possible.[267] The City states that its goal is to have the airport be as "self-sustaining as possible" while maintaining a safe and efficient operation at the airport as directed by paragraph 4.1 of the FAA Policy and that "given the current uncertainty regarding both state and federal funding, even if it were not part of the Grant Assurances, the City, as a responsible airport operator, would be seeking to achieve a goal of financial self-sufficiency."[268]

The City has presented contradictory information with its arguments under Grant Assurance 24. The City first states that it adopted the ASMP landing fees schedule with the stated goal of generating revenue of at least $552,000 annually to ensure that the airfield paved surfaces would be properly maintained, especially under the impact of heavier aircraft. However, historic airfield maintenance expenditures appear to average between $222,000 and $284,000 annually indicating that a possible surplus will be generated under the landing fee schedule.

The City then introduces the issue of a deficit. The City argues that as part of its budgetary process for the 2003/2004 fiscal year, it adopted a budget for the airport that included revised landing fees to help decrease the airport's budget deficit. However, the record contains no

---

[262] FAA Exhibit 1, Item 3, p. 15, 36.
[263] FAA Exhibit 1, Item 11, Santa Monica Airport Proposed Fiscal Year 2003/2004 Budget Discussion, January 27, 2003.
[264] FAA Exhibit 1, Item 3, p. 21-22.
[265] FAA Exhibit 1, Item 3, p. 20-21.
[266] See Policy at 61 Fed. Reg. 31994, 32021, at http://www.faa.gov/arp/pdftxt/rates1.htm.
[267] FAA Exhibit 1, Item 3, p. 21.
[268] FAA Exhibit 1, Item 3, p. 21.

information, financial or otherwise, that would indicate that as part of this budgetary process, the City considered revising other airport fees to balance the deficit.

The City also states as justification for the new landing fees that "aviation users have been able to use the Airport at rates and charges below the cost of providing the aviation facilities and services since aircraft operations at the Airport have been subsidized by non-aviation revenue for many years."[269] In other words, in defense of the ASMP and the landing fees, the City provides the argument that aviation users are able to use SMO "at rates below the cost of operation since non-aviation revenue subsidizes the aviation costs" and that "the Airport's aviation operation costs greatly exceed the level of aviation revenue generated at the Airport."[270] However, the use of non-aviation revenues to subsidize aeronautical activities is not contrary to FAA policy, and in fact, the FAA promotes this practice, since it reduces the economic impact on aviation users and the aviation public.

In summary, the FAA is not able to reconcile the contradictory information presented by the City and therefore rejects the use of grant assurance 24 as a defense to the City's landing fee policies.

g. Pavement Maintenance Program and Grant Assurance 11

The City takes the position that under Grant Assurance 11, the City, as the operator of SMO, had to institute a Pavement Maintenance Program[271] and that the ASMP fills that role.[272] Grant Assurance 11 relates to grant projects approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport. This grant assurance requiring a pavement maintenance program stems from Public Law 103-305, section 107, amended Title 49, section 47105 (e), of the United States Code. This law requires a sponsor assurance on preventative maintenance for grant project applications involving the replacement or reconstruction of pavements at the airport.

While the FAA would always require airport sponsors to maintain the airport's infrastructure in serviceable and safe condition, the fact here is that the City asserts that Grant Assurance 11 requires a Pavement Maintenance Program, such as the ASMP. However, the last AIP grant was issued to SMO in 1994, and no AIP grant agreement signed by the City contained an assurance requiring a pavement maintenance program. Grant Assurance 11 expressly applies to grant applications approved after January 1, 1995.

Additionally, even if the ASMP was required to fund a project application to replace or reconstruct pavement at the airport under section 47105(e), that airport pavement maintenance-management program must be in compliance with the airport's other Federal obligations. Therefore, the argument that the ASMP and the landing fees are required under Grant Assurance 11 is rejected as a defense to the City's landing fee policies.

---

[269] FAA Exhibit 1, Item 3, p. 5.
[270] The City states that "the City subsidizes the aviation expenses with non-aviation income in a system that is largely a residual system" and that "the City's fee structure is fair and reasonable" since "all aircraft pay some part of the Airport's operation, but not all aircraft pay the same fees. FAA Exhibit 1, Item 3, p. 23.
[271] FAA Exhibit 1, Item 3, p. 21.
[272] FAA Exhibit 1, Item 3, Exhibit 5, p. 2

h. The 1984 Agreement

The City indicates that the 1984 Agreement, in Section 14, states: "The parties recognize and agree that it is appropriate for the City to exercise its proprietary authority to adopt ordinances and regulations applicable to lessees and users of the Airport consistent with the terms of this Agreement."[273]

The City also argues that the 1984 Agreement envisioned the improvement of the airport, but clearly recognized in Section 7 that the City would not be relying upon federal funds after 1995, and that "preventing the City from funding the residual deficit in the Airport budget would prevent the City from operating the Airport at its optimal capacity while having to deal with the deterioration of the Airport's facilities caused by the increasing traffic of larger aircraft."[274]

The City's argument that under the 1984 Agreement it can exercise its proprietary authority to adopt ordinances and regulations and that it would not be relying upon federal funds after 1995, per se, do not permit the adoption of a landing fees schedule that are unreasonable under its Federal obligations. As clearly provided in the 1984 Agreement, the assessment of the reasonableness of the landing fee is open to consideration and to FAA's analysis.[275]

In any event, recovering airfield costs through users' fees is always permitted and is not the issue at hand. What is under consideration here is whether the ultimate fees charged and the methodology upon which the fees are based are reasonable.

3. Conclusion On Reasonableness

As mentioned above, the City's argument that "FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues and that the airport has had a deficit in its budget since the 1998-1999 fiscal year"[276] is rejected. First, the FAA began informally investigating the City's landing fees in the summer of 2003 and, based upon review of the documents provided by the City, stated that the methodology underlying the fees may have violated applicable Federal law and policy in several respects.

As such, the FAA had decided that the matters under review here were sufficient to then justify investigating. Second, once an investigation is underway, the FAA's role is to ascertain whether the landing fees are reasonable under Federal law. The fact that there might not be a surplus in revenues or that the sponsor has a deficit does not, per se, make a fee charged to a particular user reasonable.

The FAA recognizes that costs of airfield facilities and services directly used by the aeronautical users may be fully included in a rate base. For example, the capital cost of a runway may be included in the rate base used to establish landing fees. In this case, the City claims that the landing fees are necessary to maintain the airside infrastructure at the airport, mainly the runway and taxiway paved surfaces. As such, it claims that the approximate $552,000 in revenues derived from the fees annually are to be used for that purpose.

---

[273] FAA Exhibit 1, Item 3, p. 22.
[274] FAA Exhibit 1, Item 3, p. 22.
[275] See Section 2 (a) of the 1984 Agreement, FAA Exhibit 1, Item 3, Exhibit 6, p.2.
[276] FAA Exhibit 1, Item 3, p. 17, footnote 6.

We find a number of inconsistencies in the City's position. On one hand, the City states that the ASMP and the landing fees are needed as a source of revenue to pay for pavement maintenance due to the damage caused by large aircraft. On the other hand, historic maintenance costs are significantly less than the $552,000 in revenues derived from the fees annually resulting in the possible generation of a surplus. The City argues that its objective "is to ensure that costs for essential infrastructure, maintenance, operations and staffing for Airport facilities and services be fully covered by the Airport's rates and charges" [277] and that "adoption of the proposed fees would help fulfill the City's objective of funding Airport operation and maintenance through user fees."[278] The City also makes the argument that it has a now deficit to overcome[279] and that the revenues from the landing fees are needed to offset it.

In any case, whether the purpose of the City is to preserve airfield pavement and /or correct a budget deficit, the City may not select a small group of aviation users, those with aircraft weighting 10,000 lb. or above and representing 7.5% of airport operations, and allocate 100% of the costs to this group while permitting another select group of aviation users, those with aircraft weighting under 10,000 lb. and representing 92.5% of airport operations, to pay nothing. This is contrary to FAA policy, which specifically states that costs not directly attributable to a specific user group or cost center must be allocated to aeronautical users by a cost allocation plan or rate-setting methodology that is transparent, reasonable, not unjustly discriminatory and applied consistently. That is, the City cannot require one aeronautical user group to pay the costs properly allocable to other users or user groups.[280]

Finally, since the ASMP report contains critical technical shortcomings, the FAA is prevented from accepting its methodology and as justification for the new landing fees schedule. The impact of the landing fees on users is significant. The alleged increase in jet operations is not substantiated. The landing fees imposed by SMO are inherently high by any standard. There is no relationship between landing fee revenues and past pavement expenditures. Grant Assurance 24 (self-sustainability) and Grant Assurance 11 (pavement maintenance) do not justify the methodology. The 1984 Agreement expressly prohibits unreasonable terms and conditions, and contains no independent justification for a rate methodology that is otherwise unreasonable. Accordingly, the Director finds the landing fees, as applied today, to be unreasonable and contrary to the City's Federal obligations and the 1984 Agreement.

C. Unjust Discrimination

Grant Assurance 22, Economic Nondiscrimination, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport will 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 activities*, including commercial aeronautical activities offering services to the public at the airport.[281] Specifically, the sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe

[277] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 2.
[278] FAA Exhibit 1, Item 1, Exhibit 1, City staff report, June 10, 2003, p. 2.
[279] FAA Exhibit 1, Item 3, p. 20.
[280] See 61 Fed. Reg. 31994, 32021. See paragraph 3.1 of the policy, found at http://www.faa.gov/arp/pdftxt/rates1.htm.
[281] Assurance 22(a).

and efficient operation of the airport. A similar obligation stems from the 1948 Surplus Property Agreement and is also incorporated in the 1984 Agreement.[282]

The FAA's Airport Rates and Charges Policy requires, among other things, that direct and common costs (costs not directly attributable to a specific user group or cost center) must be allocated to aeronautical users by a cost allocation plan or rate-setting methodology that is transparent, reasonable, not unjustly discriminatory and applied consistently.[283] In addition, it cannot require any aeronautical user or user group to pay costs properly allocable to other users or user groups.[284]

The Complainants argued that "the purported justification for this patently discriminatory fee schedule ---that this is necessary to apportion pavement maintenance costs ---simply is not credible" and that "everyone at the airport, including both aeronautical and non-aeronautical businesses, benefits from the runway. Taxing the largest aircraft types using the airport with a disproportionate share of the costs is an arbitrary and capricious cost allocation that is inconsistent with the FAA's Policy regarding Airport Rates and Charges."[285] The Complainants assert that "this type of gross discrimination violates Grant Assurances 22 and 23 and the economic nondiscrimination and exclusive authority provisions of the 1984 Agreement."[286]

Further, the Complainants believe that the purpose and effect of the new fee schedule is "to force larger jet aircraft to use airports other than SMO, with weight as the latest proxy for unfounded noise concerns" and that "a landing fee in excess of $340 for larger jets should be compared to no landing fees for general aviation aircraft at Los Angeles International and Burbank. If the new fees become effective, they will turn SMO into a non-reliever airport, and operations will be diverted to other airports."[287]

In answering the allegations in the Complaint, the City "denies that the proposed landing fees are discriminatory and further denies that the proposed landing fees are intended to deny access to the Airport by larger business jet."[288] The City's position is that the landing fees have no effect on the use of the airport by jet aircraft, and that operational figures reveal an increase in jet aircraft operations and therefore, demonstrates that there is no unjust discrimination.[289] The City argues that the ASMP and the landing fees do not discriminate against Interstate Commerce and have not resulted in the denial of access to any aircraft at SMO.[290]

The City also asserts that the ASMP report "amply demonstrates that the increased weight of an aircraft can cause greater damage to the runway and taxiways than a lighter aircraft."[291] The City disputes the Complainant's allegations that the City is discriminating because the landing fees paid by heavier aircraft are allegedly disproportionate to the landing fees paid by lighter aircraft. The City stands by its opinion that the aircraft landing fee schedule is based upon a review by their consultant of the impact aircraft have on SMO's facilities based on their weight

---

[282] FAA Exhibit 1, Item 1, p.3.
[283] See paragraph 3.4 of the policy, found at http://www.faa.gov/arp/pdftxt/rates1.htm.
[284] See 61 Fed. Reg. 31994, 32021. See paragraph 3.1 of the policy, found at http://www.faa.gov/arp/pdftxt/rates1.htm.
[285] FAA Exhibit 1, Item 1, p. 5.
[286] FAA Exhibit 1, Item 1, p. 5.
[287] FAA Exhibit 1, Item 1, p. 5.
[288] FAA Exhibit 1, Item 2, p. 2.
[289] FAA Exhibit 1, Item 5, p. 17-18.
[290] FAA Exhibit 1, Item 3, p. 23.
[291] FAA Exhibit 1, Item 3, p. 16.

and that "since heavier aircraft cause greater damage to the Airport's paved surfaces, it would be unfair to make lighter aircraft pay for the greater damage caused by the heavier aircraft." [292]

The City also states that the ASMP report "establishes the factual basis for the fees and shows they are not illegally discriminatory" and that likewise "there is no support for complainants' assertion that general aviation aircraft will cease to use the Airport as a reliever airport" since "the number of jet aircraft operations has increased since the revised aircraft landing fees have gone into effect." In other words, that "as the ASMP report demonstrates, the aircraft landing fee enacted by the City actually is a reasonable fee since it more accurately attributes the costs of serving particular aircraft based on the size of the aircraft itself."[293]

1. Increased Number of Operations

The City takes the position that the landing fees have no effect on the use of SMO by jet aircraft, and that operational figures reveal an increase in jet aircraft operations and therefore, this demonstrates that there is no unjust discrimination.[294] The City argues that it has continuously and actively accommodated jet traffic for decades at SMO.[295]

The City believes that if the FAA reaches the merits of the Complaint, it should be rejected based on the law and the facts, since the facts belie the Complainants' assertion that the City has adopted revised aircraft landing fees in order to deny access to SMO to "larger business jet aircraft."[296] The City continues by saying that "jet aircraft operations have been on an upward trend for many years at SMO and that the trend did not change when the challenged aircraft landing fees went into effect on August 1, 2003." [297]

The City states that "comparing the monthly average for jet operations during the first seven months of this year with the four months since the challenged aircraft landing fees went into effect, the monthly average of jet aircraft operations has actually risen from 1,339 to 1,395" and that "comparing the same August 1 to November 30 period in both 2002 and 2003, the monthly average for jet aircraft operations increased from 1,292 in 2002 to 1,395 in 2003.[298] Other data in the record indicates that the monthly average number of jet operations in 2002 was 1,346 and 1,359 in 2003.[299]

Therefore, for all practical purposes, and despite the differences in the data provided by the City, there appears to have been a minimal increase in jet operations at SMO between 2002 and 2003. The City also states "airport operations have remained relatively stable for the past four years."[300] Nevertheless, the above-mentioned minimal increase in jet operations at the airport

---

[292] FAA Exhibit 1, Item 3, p. 17.
[293] FAA Exhibit 1, Item 3, p. 17.
[294] FAA Exhibit 1, Item 5, p. 17.
[295] FAA Exhibit 1, Item 3, p. 16.
[296] In this regard, the City asserts that the complainants have not provided any definition of the term "larger business jet aircraft", but by implication, they certainly are conceding that there is no discrimination by type of aircraft or to aircraft that travel in interstate commerce and that "this attempt to create a category of aircraft for its discrimination claim has no factual basis or legal merit." FAA Exhibit 1, Item 3, footnote1, p. 5. The FAA takes the position that any allegation by Complainants or the City that a "new" category of aircraft has been created is without merit and irrelevant, since the issue at hand is the applicability of the fee in relationship to aircraft weight by increments of 1,000 lb.
[297] FAA Exhibit 1, Item 3, p. 5.
[298] FAA Exhibit 1, Item 3, p. 23-24.
[299] See FAA Exhibit 1, Item 3, p. 30.
[300] FAA Exhibit 1, Item 5, p. 21.

appears to be the basis for the City's assertion that there has been no discrimination against aircraft based on the type of aircraft.[301]

The City's argument is not convincing. Even if the increase in aircraft operations was significant, the FAA does not accept the rationale that because there was an increase in the number of jet operations, there can be no unjust discrimination towards aircraft weighing over 10,000 lb.

2. Methodology

According to the City, "the revised landing fee program is based upon a relative damage factor scale that relates to the negative impacts caused by the weight of the aircraft" and that "pavement condition is directly affected by usage and therefore the associated maintenance costs are directly correlated with the weight of aircraft and their impact on the airside surfaces."[302] The City argues that the Complaint should be rejected because the landing fees compensate the City for only a portion of its costs to operate the airport and are rationally related to the impact of use by various aircraft.[303]

In response to Complainant's assertions that the revised landing fees are not uniformly applied to all aircraft, the City states, "as the ASMP report demonstrates, determining the extent of an aircraft's impact on the paved surface and assessing a landing fee based on the damage caused by that aircraft is a uniform application of the cost of using the Airport" and that "by basing the landing fee on the weight of the aircraft, heavier aircraft that cause greater damage to the Airport's pavement are not subsidized by lighter aircraft whose impact is either less damaging or insignificant."[304]

The City asserts that "the nexus between the landing fee and the amount of damage to the runway and taxiways fairly attributes the costs of maintenance and operating the Airport to the level of ongoing damage caused by the aircraft" and that "the complainants have provided no argument demonstrating the absence of a nexus between the revised landing fees and the costs of operating the Airport."[305]

Furthermore, the City adds that by "implementing the "pay as you go" program, aircraft pay for the current damage it causes to the pavement surfaces on an ongoing basis rather than forcing future users of a new runway to pay for the past damage caused by current aircraft. The use of the ASMP study to assess damage to the Airport's pavement on an ongoing basis allows the Airport staff to plan in greater detail and to provide a greater margin of safety and efficiency in the Airport's operation."

In addition, the City argues, "after estimating the amount of the cost for maintenance to the Airport's paved surfaces, a landing fee for each aircraft was determined from the weight of the aircraft and the relative damage caused by the aircraft" and that "using pavement analysis software, the [consulting company] developed the methodology to determine the relative damage caused by aircraft."[306]

---

[301] FAA Exhibit 1, Item 3, p. 23-24.
[302] FAA Exhibit 1, Item 1, Exhibit 2, or http://pen.ci.santa-monica.ca.us/resource_mgmt/airport/06-19-03%20landing-fees.pdf. FAA Exhibit 1, Item 2, p. 5.
[303] FAA Exhibit 1, Item 3, p. 14.
[304] FAA Exhibit 1, Item 3, p. 17-18.
[305] FAA Exhibit 1, Item 3, p. 18.
[306] FAA Exhibit 1, Item 3, p. 18.

The City also argues that "as a small airport, the dominant maintenance factor for Santa Monica is the paved surfaces" and that "recovery of the costs of maintaining the Airport based on the [consulting company] determination of the relative damage caused by aircraft is a fair approximation of the use of the facility."[307]

The City further maintains that the "development of a runway pavement maintenance program does not cause an assessment of costs on current users of the Airport for future improvements" and that "development of a runway pavement management program requires estimating the costs of maintenance in the future and developing a rate structure that uses those estimates." This results in "having aircraft landing fees generate the revenue to handle ongoing maintenance is an important part of the City's pavement management program."[308]

Finally, the City defends its ability to make adjustments either upward or downward to the landing fee program if there are changes in the maintenance costs and that the "[ASMP] analysis gives the City an objective tool to use in assessing the condition of the Airport's paved surfaces."[309]

However, this methodology, as applied in this case, is fundamentally flawed. The ASMP study assumes a future traffic level of 175,000 operations per year with approximately 12,500 by aircraft weighing 10,000 lb. and over (and thus subject to landing fees) and 162,500 by light general aviation aircraft weighing less than 10,000 pounds (and thus exempt from landing fees).[310] Therefore, under its new fee schedule, the City is effectively permitting aircraft representing more than 92.5% of all estimated future operations at the airport to pay no landing fee whatsoever and thus to not pay for any pavements costs, including the costs of environmental deterioration, while allocating all pavement costs to the remaining 7.5% of aircraft operations.

Based on the record, the Director finds that the ASMP methodology, as applied in this case, is fundamentally flawed in that it fails to provide a reasonable relationship between the revised landing fees and the costs of maintaining the pavement at SMO.

3. Exempting Certain Aircraft

As mentioned above, the ASMP include a landing fee on aircraft with weights beginning at 10,000 lb. Aircraft under 10,000 lb. were exempt. Fees range from $2.90 for 10,000 lb. aircraft to $342.79 for 60,000 lb. aircraft. First and foremost, it is incorrect to assume that damage is only caused by aircraft weighing more than 10,000 lb. Small aircraft also cause damage to pavements. There are a significant number of aircraft weighing less than 10,000 lb. that use the airport; cumulatively these aircraft would cause wear and damage similar to use by aircraft weighing more than 10,000 lb. In addition, there are environmental effects not related to aircraft.

The use of the 10,000 lb. benchmark as the basis for assessing damage and hence assessing a landing fee is also a fundamental flaw in the City's methodology, because aircraft just above and below that weight would have similar effects on the pavement.

---

[307] FAA Exhibit 1, Item 3, p. 18.
[308] FAA Exhibit 1, Item 3, p. 18-19.
[309] FAA Exhibit 1, Item 3, p. 19.
[310] FAA Exhibit 3, p. 6-7

For example, a Cessna Citation 500, weighing 10,300 lb., would cause similar pavement damage to that produced by a Piper PA-31T Cheyenne weighting slightly over 9,700 lb. To demonstrate this, see the example of a single wheel aircraft with the following properties below:

Weight	Single Wheel *9,700 lb.*	Single Wheel *10,300 lb.*
Tire Width	6.5"	7.5"
Foot Print	33.18 sq.in	44.18 sq. in
Tire Pressure	138.86 psi	110.74 psi

From Layered Elastic Design FAA Program (LEDFAA) the Cumulative Damage Factor (CDF) for a pavement designed to handle 1,200 annual departure of both aircraft is as follows:

Aircraft	9,700 lb.	10,300 lb.
CDF	*0.46*	*0.54*

From the above, the heavier aircraft does 54% of the total cumulative damage to the pavement and the light aircraft does 46%. Although this is not equal, the damage is significant for the lighter aircraft and should not be ignored. In addition, we can also use the California Bearing Ratio (CBR) design procedure.

Using the COMFAA software, we make the following analysis for the same two aircraft.

Aircraft	9,700 lb.	10,300 lb.
CBR Value	*Aircraft Classification Number (ACN)*	*Aircraft Classification Number(ACN)*
15	7.7	7.1
10	8.0	8.0
6	8.0	8.2
3	8.2	8.5
Equivalent Single Wheel Load (ESWL)[311]	9,223 lb.	9,773 lb.

From this data you can see that the two aircraft are approximately the same relative damage as measured by the ACN/PCN system.[312]

As mentioned above, environmental effects on the pavement are not solely related to aircraft weight. Therefore, if the ASMP and the landing fees were implemented to maintain and repair the pavement, then all users, regardless of aircraft weight, should pay for some of the costs of maintenance and repairs associated with environmental deterioration.

As explained in detail above, the environment-related maintenance totals 29 percent of the total rehabilitation cost. This cost should be allocated to all traffic at SMO, not just those aircraft above weighting 10,000 lb. or above. Also, if the relative damage methodology is used, then only the cost differential associated with the heavy aircraft should be allocated to the heavy aircraft. It is unjustly discriminatory to exempt a majority of aviation users, representing 92.5% of airport operations from paying a landing fee while a small group of aviation users representing 7.5% of airport operations must pay a landing fee to cover the costs of all airfield users.

---

[311] This is a standard method representing the total weight of the aircraft placed on a standard wheel.

[312] Pavement Classification Number (ACN-PCN) method. Using this method, it is possible to express the effect of individual aircraft on different pavements by a single unique number which varies according to pavement type and subgrade strength, without specifying a particular pavement thickness. This number is the Aircraft Classification Number (ACN). Conversely, the load
carrying capacity of a pavement can be expressed by a single unique number, without specifying a particular aircraft. This number is the Pavement Classification Number (PCN). The ACN and PCN values are defined thusly:

ACN - A number which expresses the relative, structural effect of an aircraft on different pavement types for specified standard subgrade strengths In terms of a standard single wheel load.

PCN- A number which expresses the relative load carrying capacity of a pavement in terms of a standard single wheel load.

The system is structured so that a pavement with a particular PCN value can support, without weight restrictions, an aircraft which has an ACN value equal to or less than the pavement's PCN value. This is possible because ACN and PCN values are computed using the same technical basis.

4. Requiring Heavy Aircraft to Pay for Pavement They Do Not Use

The City states that all heavy aircraft use the north side of the airport.[313] Therefore, it would logical for the ASMP to provide that since large aircraft do not use the south side of the airport, then users of lighter aircraft should have to pay for all the maintenance on the south side. The ASMP provides, on the contrary, that users of heavy aircraft pay for all pavement costs of both sides of the airport. The end result is that heavier aircraft are paying the full rehabilitation cost for airfield pavements used by both heavy and light aircraft and for airfield pavement used exclusively by light aircraft. There is a minimum pavement structure required to support aircraft that should be considered as the baseline pavement common to all users. The heavier airplanes require an incremental thickness added to this baseline pavement. Neglecting the minimum pavement requirement eliminates the cost to lighter aircraft users and unduly penalizes the heavier aircraft users.[314]

Additionally, the thickness of the asphalt layer greatly affects the rate of deterioration due to environmental effects. Oxidation and moisture damage begin at the surface of the asphalt material and their affect is limited with depth and time. Thick asphalt layers will demonstrate better resistance to environmental deterioration since the material at the middle of the layer is protected and will retain the desired performance properties for a longer period of time. In other words, the pavement used by smaller aircraft will deteriorate at a higher rate than the pavement used by heavier aircraft, yet the ASMP imposes all costs to maintain all layers of the pavement solely on heavier aircraft. Indeed, the ASMP report contains information related to the visual condition of the pavement at SMO and shows several deteriorated pavement areas that are used predominantly by small aircraft weighing less than 10,000 lb.[315] This tends to further illustrate the unjustly discriminatory effect of the ASMP.

It is unjustly discriminatory to base the landing fees on relative damage caused by large aircraft when large aircraft pay for pavement repair and maintenance in areas they do not use. There is no rationale in using the ASMP and the new landing fees in justifying joint spalling, corner spalls or block cracking[316] on the south side of the airport as the responsibility of aviation users (aircraft above 10,000 lb.) that never use those areas.

5. Conclusion on Unjust Discrimination

For all of the above reasons, the Director finds that the ASMP and the associated landing fees, as currently implemented by the City, constitute unjust discrimination as it imposes *all* of the airfield pavement maintenance costs on one group of aviation users while exempting another group of aviation users from any costs for airfield pavement maintenance. Section 10.04.06100 of the Santa Monica Municipal Code, requires one user group to pay costs properly allocable to another user group.

---

[313] FAA Exhibit 1, Item 3, Exhibit 5, p.8.
[314] FAA Exhibit 1, Item 4, Exhibit 5.
[315] See FAA Exhibit 1, Item 3, Exhibit 5, p. 14-15.
[316] Spalling is the further breaking of pavement or loss of materials around cracks or joints. Corner spalling is the raveling or breakdown of the slab within approximately 2 ft of the corner. A corner spall differs from a corner break in that the spall usually angles downward to intersect the joint, while a break extends vertically through the slab. Block Cracking refers to interconnected cracks that divide the pavement into approximately rectangular pieces. The blocks may range in size from 1 by 1 ft to 10 by 10 ft. Block cracking is caused mainly by shrinkage of the asphalt concrete and daily temperature cycling (that results in daily stress/strain cycling). **It is not load associated.** The occurrence of block cracking usually indicates that the asphalt has hardened significantly.

Costs associated with environmental pavement distress, maintenance, repair, and reconstruction, which were identified in the ASMP, are common to all users, should be borne by all aviation users, not just aviation users whose aircraft weight 10,000 lb. or more.

Moreover, within the group of users paying the costs of pavement maintenance, operators of heavier aircraft pay a disproportionately high fee for the relative wear on pavement resulting from those aircraft.

D. Exclusive Rights

Grant Assurance 23, "Exclusive Rights," of the prescribed sponsor assurances 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... It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities..."

As discussed in more detail in the applicable law section of this decision, Title 49 USC § 40103(e) prohibits exclusive rights 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 U.S.C. § 47107(a)(4), similarly provides, in pertinent part, that "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport."

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.[317]

In this case, an exclusive right, as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right, was expressly conferred to some users and service providers but not to others.[318] The owners and operators of aircraft weighing less than 10,000 lb. have been granted the privilege to operate at SMO without paying any landing fees while those owners and operators of aircraft weighing more than 10,000 lb. have not and must bear all of the costs the landing fees are supposed to recover.

In addition, as mentioned in the Applicable Law section, the application of any unreasonable or unjustly discriminatory requirement or standard to proposed aeronautical uses of the airport is considered to be a constructive grant of an exclusive right contrary to applicable law and FAA regulations.[319] In this case, because the ASMP and the associated landing fees are found to be unreasonable and unjustly discriminatory, the airport sponsor has also constructively granted an exclusive right. Specifically, the City has applied an unreasonable or unjustly discriminatory requirement in the form of the new landing fee schedule benefiting one group of aviation users at the expense of another group of aviation users.

---

[317] See FAA Order 5190-1A *Exclusive Rights at Airports, p. 1.*
[318] See FAA Order 5190-1A *Exclusive Rights at Airports, p. 1.*
[319] *See* FAA Order 5190.1A, Paragraph 8 "Policy" and Paragraph 11 (c) "Imposition of Standards."

Therefore, the Director finds the landing fee schedule as the granting of an exclusive right contrary to applicable law and FAA policies.[320]

VIII. FINDINGS AND CONCLUSIONS

Upon consideration of the evidence and argument presented by the parties, the Director concludes that, based on a preponderance of reliable, probative and substantial evidence, the ASMP and the landing fees it imposes constitutes an unreasonable and unjustly discriminatory term and condition for access into SMO and therefore violates the Federal grant assurances and the similar provisions contained in the surplus property conveyances and the 1984 Agreement.

Specifically, based on the record evidence, the FAA concludes that the ASMP as currently written and implemented, is unreasonable and results in unjust discrimination against one group of aviation users to the benefit of another group. Specifically, the Director finds that:

- The ASMP report contains critical technical shortcomings.
- The impact of the landing fees is significant.
- The increase in jet operations in recent years is not significant and as such, does not affect the reasonableness issue.
- The landing fees imposed by SMO are inherently high by any standard.
- There is no relationship between landing fee revenues and historic pavement expenditures.
- Grant Assurance 24 (self-sustainability) and Grant Assurance 11 (pavement maintenance) do not support the ASMP methodology.
- The landing fees are unreasonable pursuant to the 1984 Agreement. The 1984 Agreement was made a condition of the grant assurances by agreements signed by the City, and is properly considered under 14 CFR Part 16.
- Airfield costs properly allocable to all user groups are instead only applied to one group of users operating aircraft weighing 10,000 lb. or above, and this group pays for all airfield costs while another group of users operating aircraft weighing less than 10,000 lb. pays nothing.
- Within the group of operators of aircraft weighing 10,000 lb. or above, the operators of heavier aircraft pay a fee disproportionate to the share of pavement wear resulting from operations by those aircraft.

Therefore, under the particular circumstances existing at SMO and the entire record herein, and upon consideration of the submissions and responses by the parties, the applicable law and policy, and for the reasons stated above, the Director further finds that:

- By implementing and enforcing the ASMP and its associated landing fees, the City has not made SMO available to the public on reasonable terms and without unjust discrimination, pursuant to its statutory obligations and grant assurances, and has specifically acted in violation of Grant Assurance 22 and similar provisions contained in the 1948 Instrument of Transfer and in the 1984 Agreement.

- By implementing and enforcing the ASMP and its associated landing fees, the City has granted exclusive rights for the use of the airport in violation of its statutory obligations

[320] *See* FAA Order 5190.1A, Paragraph 8 "Policy" and Paragraph 11 (c) "Imposition of Standards."

and grant assurances, specifically of Grant Assurance 23 and similar provisions contained in the 1948 Instrument of Transfer and in the 1984 Agreement.

ORDER

ACCORDINGLY, it is ordered that:

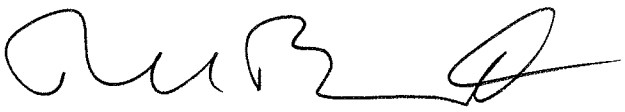
1. Pursuant to 49 U.S.C. § 47106(d), unless and until the City of Santa Monica rescinds, amends or takes formal action to cease enforcement of the ASMP and its corresponding landing fees, the FAA hereby withholds approval of any applications for new FAA grants submitted by City for amounts apportioned under 49 U.S.C. § 47114(c) and (d) and any application by the City for discretionary grants authorized under 49 U.S.C. § 47115.

2. All motions not specifically granted herein are denied.

RIGHT TO APPEAL OR REQUEST A HEARING

Pursuant to 14 C.F.R. Part 16, the City may request a hearing under subpart F of Part 16 within 20 days after service of the Director's Determination.[321] The City may waive a hearing and appeal the Director's Determination directly to the FAA Associate Administrator within 30 days after service of the Director's Determination.[322] Alternatively, the City may submit, jointly with FAA counsel, a proposed consent order under §16.243(e) disposing of the case.[323]

This Director's Determination is an initial agency determination and does not constitute final agency action subject to judicial review under 49 U.S.C. § 46110.[324] However, if the City elects not to request a hearing or to file an appeal in writing within the time period specified in 14 C.F.R. §16.109(c), the Director's Determination becomes final.[325]



Date: January 4, 2005

David L. Bennett, Director
Office of Airport Safety and Standards

---

[321] 14 C.F.R. §§ 16.31(d) and 16.109(c)(1). The FAA and the City may agree to extend the date for the City to request a hearing by agreeing to extend the 180 day period for issuing a final decision pursuant to 49 U.S.C. § 47106 (d)(2)(A).
[322] 14 C.F.R. §§ 16.31(c), 16.33, and 16.109(c)(2). The FAA and the City may agree to extend the date for the City to Appeal directly to the FAA Associate Administrator for agreeing to extend the 180 day period for issuing a final decision pursuant to 49 U.S.C. § 47106 (d)(2)(A).bn
[323] 14 C.F.R. §16.109(c)(4).
[324] See also 14 C.F.R. § 16.247.
[325] 14 C.F.R. §16.109(d).

FAA Docket No. 16- 03-11

INDEX OF THE ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

FAA Exhibit 1

Item 1

Complaint No. 16-03-11, dated October 2, 2003, National Business Aviation Association, Inc., Bombardier Aerospace Corp., and Dassault Falcon Jet Corp., including an Appendix containing the following documents:

❑	Exhibit 1	City of Santa Monica Regular City Council Meeting Agenda, June 10, 2003.
❑	Exhibit 2	Revised Landing Fee Program, June 20, 2003.
❑	Exhibit 3	Letter/Fax from Mr. John W. Olcott, President, NBAA to Ms. Marsha Jones Moutrie, Santa Monica City Attorney, June 9, 2003.
❑	Exhibit 4	Instrument of Transfer, August 10, 1948.

Item 2

City of Santa Monica's Answer to the Complaint of the National Business Aviation Association, Inc., Bombardier Aerospace Corp., and Dassault Falcon Jet Corp., dated January 6, 2004.

Item 3

Notice of Motion and motion to Dismiss; memorandum of Point and Authorities, Declarations and Exhibits in Support Thereof, dated January 6, 2004, including an Appendix containing the following documents:

❑	Exhibit 1	Report entitled "introduce and hold first reading of Ordinance to amend Section 10.04.06.100 of the Santa Monica Municipal Code providing for Weight-based Landing Fees at the Santa Monica Airport, and Resolution to revise Fees at the Airport for Event and Film Permits and Vehicle Parking," dated May 13, 2003.
❑	Exhibit 2	Presentation of Airside Surfaces Maintenance Program Report, dated February 25, 2002.
❑	Exhibit 3	Presentation of a Proposed Landing Fee Program, dated February 25, 2002.
❑	Exhibit 4	City of Santa Monica Regular Meeting of the Santa Monica Airport Commission, Minutes of February 25,

		2002.
❑	Exhibit 5	Airside Surfaces Maintenance Program, January 2002.
❑	Exhibit 6	Santa Monica Airport Agreement, 1984.
❑	Exhibit 7	Status Report on Implementation of Noise Mitigation Program and Recommendation to Set Advisory Performance Based Noise Standards, dated June 8, 1987.
❑	Exhibit 8	SMO Airport Layout Plan, January 31, 1984.
❑	Exhibit 9	Color Aerial Photography of SMO. Date unknown.
❑	Exhibit 10	Letter from David L. Bennett, FAA Director, Office of Airport Safety and Standards to Frank J. Costello, (Counsel for NBAA), dated July 18, 2003.

Item 4

Complainant's Reply to Respondent's Answer and Motion to Dismiss, dated January 23, 2004, including an Appendix containing the following documents:

❑	Exhibit 1	Declaration of Jeffrey H. Gilley, January 21, 2004.
❑	Exhibit 2	Declaration of Matthew A. Boyle, January 21, 2004.
❑	Exhibit 3	Declaration of Kent A. Dreier, January 20, 2004.
❑	Exhibit 4	Declaration of G. Scott Shatzer, January 19, 2004.
❑	Exhibit 5	Letter from Mr. Andrew M. Richards, FAA Western Pacific (Airports) to Mr. Robert D. Trimborn, Dated August 14, 2003.
❑	Exhibit 6	Letter/Fax from Mr. John W. Olcott, President, NBAA to Ms. Marsha Jones Moutrie, Santa Monica City Attorney, June 9, 2003.
❑	Exhibit 7	Letter from David L. Bennett, FAA Director, Office of Airport Safety and Standards to Mr. Robert Trimborn, dated November 10, 2003.
❑	Exhibit 8	FAA Notice docketing FAA Complaint No. 16-03-11, October 21, 2003.

Item 5

Memorandum of Points and Authorities and Declarations in Rebuttal to Complainant's Reply to Respondent's Answer and Motion to Dismiss, February 25, 2004.

Item 6

FAA From 5010 "Airport Master Record" for SMO, Date: 05/24/2004.

Item 7

FAA Grant History Report for SMO. (1982-2003)

Item 8

Letter from Mr. Robert Trimborn, SMO Airport Manager to Mr. Mark A. McClardy, Manager, FAA Airport's Division, dated September 4, 2003, containing several documents, including budgets, annual financial reports, rates and charges, and airport capital improvement project expenditures.

Item 9

Santa Monica Airport, Private Jet Operations, 01/01/2004 to 06/22/2004

Item 10

Letter from Patrick E, Bailey, Counsel for several user to The Honorable Richard Bloom, Mayor of the City of Santa Monica, dated June 10, 2003.

Item 11

Santa Monica Airport Proposed Fiscal Year Budget Discussions and Presentations of Proposed Capital Improvement Projects for several fiscal years.

Item 12

Santa Monica Airport, Invoice to AvJet Corp., November 25, 2003.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Jan. 04 2005, I caused to be placed in the United States mail (first class mail, postage paid) a true copy of the foregoing document addressed to:

Mr. Frank J. Costello
Zuckert, Scoutt, & Rasenberger, LLP
888 Seventeenth Street, N.W.
Washington, DC 20006

Mr. Martin Tachiki
Deputy City Attorney
City of Santa Monica
1685 Main Street
Room 310
Santa Monica, CA 90401

Mr. Robert Trimborn
Airport Manager
Santa Monica Municipal Airport
3223 Donald Douglas Loop S.
Santa Monica, CA 90405

FAA Part 16 Airport Proceedings Docket

Airport Compliance Division, Office of Airport Safety and Standards, AAS-400

W. Celeste Colbert-King

W. Celeste Colbert-King
Office of Airport Safety and Standards